

# PROJET DE LOI

ENTITLED

## **The Merchant Shipping (Bailiwick of Guernsey) Law, 2002**

\*

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. VIII of 2004; as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. \*\* of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003). See also the Government of Alderney Law, 2004 (No. III of 2005). This Law is prospectively amended by the Merchant Shipping (Oil Pollution) (Supplementary Fund Protocol) (Bailiwick of Guernsey) Ordinance, 2009 (No. XXXV of 2009).

*Consolidated text*

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## **The Merchant Shipping (Bailiwick of Guernsey) Law, 2002**

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# PROJET DE LOI

ENTITLED

## **The Merchant Shipping (Bailiwick of Guernsey) Law, 2002**

**THE STATES**, in pursuance of their Resolution of the 10<sup>th</sup> day of June, 1998<sup>a</sup>, have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### BRITISH SHIPS

##### **British ships and Guernsey ships.**

1. (1) A ship is a British ship if –
  - (a) the ship is registered in Guernsey under Part II of this Law, or
  - (b) the ship is, as a Government ship, registered in the United Kingdom in pursuance of an Order in Council under section 308 of the Merchant Shipping Act 1995<sup>b</sup>, or
  - (c) the ship is registered under –

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<sup>a</sup> Article IV of Billet d'État No X of 1998.

<sup>b</sup> An Act of Parliament (1995 c. 41).

- (i) Part II of the Merchant Shipping Act 1995, or
  - (ii) the law of a relevant British possession, or
- (d) the ship is a small ship other than a fishing vessel and –
- (i) is not registered under Part II of this Law, but
  - (ii) is wholly owned by qualified owners, and
  - (iii) is not registered under the law of a country outside Guernsey.

(2) For the purposes of subsection (1)(d) –

**"qualified owners"** means persons of such description qualified to own British ships as is prescribed by regulations made by the Board for the purposes of that paragraph, and

**"small ship"** means a ship less than 24 metres in length (**"length"** having the same meaning as in the tonnage regulations).

(3) A ship is a **"Guernsey ship"** for the purposes of this Law (except sections 80 and 152(3)) if the ship is registered in Guernsey under Part II of this Law (and in Part V **"Guernsey fishing vessel"** has a corresponding meaning).

**British flag.**

2. (1) The flag which every British ship is entitled to fly is the red ensign (without any defacement or modification) and, subject to subsections (2) to

(4), no other colours.

(2) Subsection (1) does not apply to Government ships.

(3) When authorised in accordance with the terms of a Royal Warrant dated 30<sup>th</sup> April, 1985<sup>c</sup>, the flag which a British ship owned by a person specified therein is entitled to fly in place of the red ensign is the Island of Guernsey Ensign.

(4) The following are also proper national colours, that is to say –

(a) any colours allowed to be worn in pursuance of a warrant from Her Majesty or from the Secretary of State,

(b) in the case of British ships registered in a relevant British possession, any colours consisting of the red ensign defaced or modified whose adoption for ships registered in that possession is authorised or confirmed by Her Majesty by Order in Council.

**Offences relating to British character of ship.**

3. (1) If the master or owner of a ship which is not a British ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a British ship then, except as provided by subsections (2) and (3), the ship shall be liable to forfeiture and the master, the owner and any charterer shall each be guilty of an offence.

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<sup>c</sup> Ordres en Conseil Vol. XXIX, p. 85.

(2) No liability arises under subsection (1) where the assumption of British 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.

(3) Where the registration of any ship has terminated by virtue of any provision of registration regulations, any marks prescribed by registration regulations displayed on the ship within the period of 14 days beginning with the date of termination of that registration shall be disregarded for the purposes of subsection (1).

(4) If the master or owner of a British ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship, the ship shall be liable to forfeiture and the master, the owner and any charterer of the ship shall each be guilty of an offence.

(5) Without prejudice to the generality of subsections (1) and (4), those subsections 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.

(6) Any person guilty of an offence under this section shall be liable –

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- (a) on summary conviction, to a fine not exceeding £50,000,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(7) This section applies to things done outside, as well as to things done within, Guernsey.

**Penalty for carrying improper colours.**

4. (1) If any of the following colours, namely –
- (a) any distinctive national colours except –
    - (i) the red ensign,
    - (ii) the Island of Guernsey Ensign,
    - (iii) the Union flag (commonly known as the Union Jack) with a white border, or
    - (iv) any colours authorised or confirmed under section 2(4)(b), or
  - (b) any colours usually worn by Her Majesty's ships or resembling those of Her Majesty, or
  - (c) the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant,

are hoisted on board any British ship without warrant from Her Majesty or from the Secretary of State, the master of the ship, or the owner of the ship (if on board), and every other person hoisting them shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(3) If any colours are hoisted on board a ship in contravention of subsection (1), any of the following, namely –

- (a) any commissioned naval or military officer,
- (b) any officer of Customs and Excise, and
- (c) any British consular officer,

may board the ship and seize and take away the colours.

(4) Any colours seized under subsection (3) shall be forfeited to Her Majesty.

(5) In this section, "**colours**" includes any pendant.

**Duty to show British flag.**

**5.** (1) Subject to subsection (2), a British ship, other than a fishing

vessel, shall hoist the red ensign, the Island of Guernsey Ensign or other proper national colours –

- (a) on a signal being made to the ship by one of Her Majesty's ships (including any ship under the command of a commissioned naval officer), and
- (b) on entering or leaving any foreign port, and
- (c) in the case of ships of 50 or more tons gross tonnage, on entering or leaving any British port.

(2) Subsection (1)(c) does not apply to a small ship (as defined in section 1(2)) registered under Part II.

**Duty to declare national character of ship.**

6. (1) An officer of Customs and Excise shall not grant a clearance or transire for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that the ship belongs, and that officer shall thereupon enter that name on the clearance or transire.

(2) If a ship attempts to proceed to sea without such clearance or transire, the ship may be detained until the declaration is made.

**Proceedings on forfeiture of a ship.**

7. (1) Where any ship has either wholly or as to any share in it become liable to forfeiture under this Part –

- (a) any commissioned naval or military officer, or

- (b) any person appointed by the Board for the purposes of this section,

may seize and detain the ship and bring the ship for adjudication before the Ordinary Court.

(2) Where a ship is subject to adjudication under this section the Court may –

- (a) adjudge the ship and her equipment to be forfeited to Her Majesty, and
- (b) make such order in the case as seems just.

(3) No officer or person bringing proceedings under this section shall be liable in damages in respect of the seizure or detention of the ship, notwithstanding that the ship has not been proceeded against or, if proceeded against, adjudicated not liable to forfeiture, if the Court is satisfied that there were reasonable grounds for the 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 II REGISTRATION

### *General*

#### **Guernsey register of British ships.**

8. (1) There shall continue to be a register of British ships for all

registrations of ships in Guernsey.

(2) The register shall be maintained by the Registrar of British Ships as registrar.

(3) The Board may designate any person to discharge, on behalf of the registrar, all his functions or such of them as the Board may direct.

(4) The Board may give to the registrar directions of a general nature as to the discharge of any of his functions.

(5) The register shall be so constituted as to distinguish, in a separate part, registrations of fishing vessels and may be otherwise divided into parts so as to distinguish between classes or descriptions of ships.

(6) The register shall be maintained in accordance with registration regulations and the private law provisions for registered ships and any directions given by the Board under subsection (4).

(7) The register shall be available for public inspection.

**Registration of ships: basic provisions.**

9. (1) A ship is entitled to be registered if –
- (a) it is owned, to the prescribed extent, by persons qualified to own British ships, and
  - (b) such other conditions are satisfied as are prescribed under subsection (2)(b),

(and any application for registration is duly made).

- (2) It shall be for registration regulations –
  - (a) to determine the persons who are qualified to be owners of British ships, or British ships of any class or description, and to prescribe the extent of the ownership required for compliance with subsection (1)(a),
  - (b) to prescribe other requirements designed to secure that, taken in conjunction with the requisite ownership, only ships having a British connection are registered.

(3) The registrar may, nevertheless, if registration regulations so provide, refuse to register or terminate the registration of a ship if, having regard to any relevant requirements of this Law, he considers it would be inappropriate for the ship to be or, as the case may be, to remain registered.

(4) The registrar may, if registration regulations so provide, register a fishing vessel notwithstanding that the requirement of subsection (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.

(5) Where a ship becomes registered at a time when it is already registered under the law of a country other than Guernsey, 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.

(6) Subsection (5) does not apply to a ship which becomes registered on a transfer of registration to the register from –

- (a) the United Kingdom, or
- (b) a relevant British possession.

(7) Any person who contravenes subsection (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(8) In this section, "**the relevant requirements of this Law**" means the requirements of this Law (including requirements falling to be complied with after registration) relating to –

- (a) the condition of ships or their equipment so far as relevant to their safety or any risk of pollution, and
- (b) the safety, health and welfare of persons employed or engaged in them.

(9) In this Part, references to a ship's having a British connection are references to compliance with the conditions of entitlement imposed by subsection (1)(a) and (b) and "**declaration of British connection**" is to be construed accordingly.

**Registration regulations.**

**10.** (1) The Board shall by regulations (to be known as registration regulations) make provision for and in connection with the registration of ships as British ships.

(2) Without prejudice to the generality of subsection (1), registration regulations may, in particular, make provision with respect to any of the following matters –

- (a) the persons by whom and the manner in which applications in connection with registration are to be made,
- (b) the information and evidence (including declarations of British connection) to be provided in connection with such applications and such supplementary information or evidence as may be required by any specified authority,
- (c) the shares in the property in, and the numbers 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 specified circumstances,
- (d) the issue of certificates (including provisional certificates) of registration, their production and surrender,
- (e) restricting and regulating the names of ships registered or to be registered,
- (f) 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,

- (g) the period for which registration is to remain effective without renewal,
- (h) the production to the registrar of declarations of British connection or other information relating thereto, as respects registered ships, at specified intervals or at his request,
- (i) 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,
- (j) the refusal, suspension and termination of registration in specified circumstances,
- (k) matters arising out of the expiration, suspension or termination of registration (including the removal of marks and the cancellation of certificates),
- (l) the charging of fees in connection with registration or registered ships,
- (m) the transfer of the registration of ships to and from the register from and to registers or corresponding records in countries other than Guernsey,
- (n) inspection of the register,

- (o) any other matter which is authorised or required by this Part to be prescribed in registration regulations.
- (3) Registration regulations may –
- (a) make different provision for different classes or descriptions of ships and for different circumstances,
  - (b) without prejudice to paragraph (a), make provision for the granting of exemptions or dispensations by the Board from specified requirements of the regulations, subject to such conditions (if any) as it thinks fit to impose, and
  - (c) make such transitional, incidental or supplementary provision as appears to the Board to be necessary or expedient, including provision authorising investigations and conferring powers of inspection for verifying the British connection of a ship.
- (4) Registration regulations –
- (a) may make provision 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,

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- (b) may make provision for any matter which is authorised or required by those provisions to be prescribed by registration regulations, and
- (c) shall make provision precluding notice of any 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.

(5) Registration regulations may create offences subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding level 5 on the uniform scale.

(6) Registration regulations may provide for –

- (a) the approval of forms by the Board, and
- (b) the discharge of specified functions by specified authorities or persons.

(7) Registration regulations may provide for any of their provisions to extend to places outside Guernsey.

(8) Any document purporting to be a copy of any information contained in an entry in the register and to be certified as a true copy by the registrar shall be evidence of the matters stated in the document.

(9) Registration regulations may provide that any reference in any other Law or in any other enactment having effect in Guernsey, or a part thereof, to the port of registry or the port to which a ship belongs shall be construed as a

reference to the port identified by the marks required for the purpose by registration regulations.

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**NOTE**

*The following Regulations have been made under section 10:*

*Merchant Shipping (Registration of Ships) (Bailiwick of Guernsey) Regulations, 2009.*

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**Tonnage ascertained for registration to be tonnage of ship.**

11. When the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations that tonnage shall be treated as the tonnage of the ship except so far as registration regulations provide, in specified circumstances, for the ship to be re-measured and the register amended accordingly.

**Tonnage of ships of foreign countries adopting tonnage regulations.**

12. (1) The Board may by Order make such provision in relation to the ships of a foreign country as is authorised by this section where it appears to the Board that regulations equivalent to the tonnage regulations have been adopted by the foreign country and are in force there.

(2) An Order under this section may order that the ships of the foreign country shall, without being re-measured in Guernsey, 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 Guernsey ship is treated as being the tonnage of that ship.

(3) Where an Order under this section 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 Guernsey ship depends on compliance with any conditions or on the compliance being evidenced in any manner, be treated as complying with those conditions and as being so evidenced, unless a surveyor of ships certifies to the Board that the construction and equipment of the ship as respects that space do not come up to the standard which would be required if the ship were a Guernsey ship.

- (4) Any such Order may –
  - (a) operate for a limited time, and
  - (b) be subject to such conditions and qualifications (if any) as the Board may consider expedient.

(5) If it appears to the Board that the tonnage of any 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 Board may by Order order that, notwithstanding any Order in force under this section, any of the ships of that country may, for all or any of the purposes of this Law, be re-measured in accordance with the tonnage regulations.

**Status of certificate of registration.**

13. The certificate of registration of a British ship shall be used only for the lawful navigation of the ship, and shall not be subject to detention to secure any private right or claim.

**Offences relating to a ship's British connection.**

14. (1) Any person who, in relation to any matter relevant to the British connection of a ship –

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- (a) makes to the registrar a statement which he knows to be false or recklessly makes a statement which is false, or
- (b) furnishes to the registrar information which is false,

shall be guilty of an offence.

(2) If at any time there occurs, in relation to a registered ship, any 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 he fails to do so he shall be guilty of an offence.

(3) Any person who intentionally alters, suppresses, conceals or destroys a document which contains information relating to the British connection of a ship and which he has been required to produce to the registrar in pursuance of registration regulations shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(5) This section applies to things done outside, as well as to things done within, Guernsey.

**Supplementary provisions as respects fishing vessels.**

15. (1) Subject to subsection (2), if a fishing vessel which –
- (a) is either –
    - (i) entitled to be registered, or
    - (ii) wholly owned by persons qualified to be owners of British ships, but
  - (b) is registered neither under this Law in the part of the register relating to fishing vessels nor under the law of any country outside Guernsey,

fishes for profit the vessel shall be liable to forfeiture and the skipper, the owner and any charterer of the vessel shall each be guilty of an offence.

(2) Subsection (1) does not apply to fishing vessels of such classes or descriptions or in such circumstances as may be specified in regulations made by the Board.

(3) If the skipper or owner of a fishing vessel which is not registered in Guernsey does anything, or permits anything to be done, for the purpose of causing the vessel to appear to be a vessel registered in Guernsey, then, subject to subsection (4), the vessel shall be liable to forfeiture and the skipper, the owner and any charterer of the vessel shall each be guilty of an offence.

(4) Where the registration of a fishing vessel has terminated by virtue of any provision of registration regulations, any marks prescribed by registration regulations displayed on the fishing vessel within the period of 14 days

beginning with the date of termination of that registration shall be disregarded for the purposes of subsection (3).

(5) Any person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(6) This section applies to things done outside, as well as to things done within, Guernsey.

(7) Sections 8 and 9 of the Sea Fisheries Act 1968<sup>d</sup>, as extended to Guernsey<sup>e</sup>, (general powers of British sea-fishery officers and powers of sea-fishery officers to enforce conventions) shall apply in relation to any provision of this section or of registration regulations in their application to fishing vessels or fishing vessels of any class or description as they apply in relation to any order mentioned in section 8 of that Act as so extended and in relation to any convention mentioned in section 9 of that Act as so extended respectively; and sections 10 to 12 and 14 of that Act as so extended (offences and supplemental proceedings as to legal proceedings) shall apply accordingly.

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<sup>d</sup> An Act of Parliament (1968 c. 77).

<sup>e</sup> By Order in Council under section 21 of that Act: the Sea Fisheries (Channel Islands) Order 1973 (S.I. 1973/1319 (see Ordres en Conseil Vol. XXIV, p. 128)), as amended by the Sea Fisheries (Channel Islands) (Amendment) Order 1989 (S.I. 1989/2412 (see Ordres en Conseil Vol. XXXII, p. 23)).

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

16. (1) Schedule 1 (which makes provision relating to the title to, and the registration of mortgages over, ships) shall have effect.

(2) Schedule 1 does not apply in relation to ships which are excluded from its application by registration regulations under section 10(4)(a).

(3) Where any person is beneficially interested, otherwise than as mortgagee, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be liable to any pecuniary penalties imposed by or under this Law or any other enactment having effect in Guernsey, or a part thereof, on the owners of registered ships.

(4) Where the registration of any ship terminates by virtue of any provision of registration regulations, the termination of that registration shall not affect any entry made in the register so far as relating to any undischarged registered mortgage of that ship or of any share in it.

(5) In subsection (4), "**registered mortgage**" has the same meaning as in Schedule 1.

(6) In this Part, "**the private law provisions for registered ships**" means the provisions of Schedule 1 and registration regulations made for the purposes of that Schedule or the provisions of registration regulations made under section 10(4)(a).

*Ships on bareboat charter*

**Ships bareboat chartered-in by British charterers.**

17. (1) This section applies to any ship which –
- (a) is registered under the law of a country other than Guernsey ("**the country of original registration**"),
  - (b) is chartered on bareboat charter terms to a charterer who is a person qualified to own British ships, and
  - (c) is so chartered in circumstances where the conditions of entitlement to registration prescribed under section 9(2)(b), read with the requisite modifications, are satisfied as respects the charterer and the ship.

(2) The "**requisite modifications**" of those conditions 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 section applies is entitled to be registered if an application for registration is duly made, but section 9(3) applies also in relation to registration by virtue of this section.

(4) The registration of a ship registered by virtue of this section shall remain in force (unless terminated earlier by virtue of registration regulations and subject to any suspension thereunder) until the end of the charter period and shall then terminate by virtue of this subsection.

(5) Section 9(5) does not apply to a ship registered by virtue of this section but registration regulations shall include provision for securing that the authority responsible for the registration of ships in the country of original

registration is notified of the registration of the ship and of the termination of its registration whether by virtue of subsection (4) or registration regulations.

(6) Accordingly, throughout the period for which a ship is registered by virtue of this section –

- (a) the ship shall, as a British ship, be entitled to fly the British flag,
- (b) this Law shall, subject to subsections (7) and (8), apply to the ship as a British ship or as a registered ship as it applies to other British ships and to registered ships, and
- (c) any other enactment having effect in Guernsey, or a part thereof, applicable to British ships or ships registered under this Law shall, subject to subsection (8), apply to the ship as a British ship or as a registered ship.

(7) The private law provisions for registered ships shall not apply to a ship registered by virtue of this section and any matters or questions corresponding to those for which the private law provisions for registered ships make provision shall be determined by reference to the law of the country of original registration.

(8) The Board may, subject to subsection (9), by Order, provide that any enactment falling within subsection (6)(b) or (c) –

- (a) shall not have effect in accordance with that subsection

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in relation to a ship registered by virtue of this section,  
or

(b) shall so have effect subject to such modifications (if any) as may be specified in the Order.

(9) No provision shall be made by an Order under subsection (8) which would have the effect of relaxing the relevant requirements of this Law (as defined in section 9(8)) in their application to a ship to which this section applies.

(10) An Order under subsection (8) may make such transitional, incidental or supplementary provision as appears to the Board to be necessary or expedient (including provision divesting or providing for the divestment of ownership in the ship).

(11) In this section –

**"bareboat charter terms"**, in relation to a ship, means the hiring of the ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew, and

**"the charter period"** means the period during which the ship is chartered on bareboat charter terms.

*Supplemental*

**Tonnage regulations.**

**18.** (1) The tonnage of any ship to be registered under this Part shall be ascertained in accordance with regulations made by the Board ("**tonnage**

**regulations").**

- (2) Tonnage regulations –
  - (a) may make different provisions for different descriptions of ships or for the same description of ships in different circumstances,
  - (b) may make any regulation dependent on compliance with such conditions, to be evidenced in such manner, as may be specified in the regulations,
  - (c) may prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage and may provide for making the master and the owner each liable to a fine not exceeding level 3 on the uniform scale where such a prohibition or restriction is contravened.
  
- (3) Tonnage regulations may make provision –
  - (a) for assigning to 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 where the ship is not loaded to the full depth to which it can be safely loaded,
  - (b) for indicating on the ship, by such mark as may be specified in the regulations, that such a lower tonnage has been assigned to it, and

- (c) where the 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.

(4) Tonnage regulations may provide for the measurement and survey of ships to be undertaken, in such circumstances as may be specified in the regulations by persons appointed by such organisations as may be authorised for the purpose by the Board.

(5) Tonnage regulations may provide for the issue, by the Board or by persons appointed by such organisations as may be authorised for the purpose by the Board, of certificates of the registered tonnage of any ship or of the tonnage which is to be taken for any purpose specified in the regulations as the tonnage of a ship not registered in Guernsey, and for the cancellation and delivery up of such certificates in such circumstances as may be prescribed by the regulations.

(6) Regulations requiring the delivery up of any certificate may make a failure to comply with the requirement an offence punishable on summary conviction with a fine not exceeding level 3 on the uniform scale.

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**NOTE**

*The following Regulations have been made under section 18:*

*Merchant Shipping (Tonnage) (Bailiwick of Guernsey) Regulations, 2009.*

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**Proceedings on forfeiture of ship.**

**19.** Section 7 applies in relation to ships or shares in ships which become

liable to forfeiture under this Part as it applies in relation to ships or shares in ships which become liable to forfeiture under Part I.

**Disclosure of information relating to registration by other bodies.**

**20.** (1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) shall preclude any of the bodies or persons mentioned in subsection (2) from disclosing –

- (a) to the Board, or
- (b) to the registrar, or
- (c) to an authorised officer of the Board,

information for the purpose of assisting the Board in the performance of its functions under this Part.

- (2) The bodies and persons referred to in subsection (1) are –
  - (a) the States [Commerce and Employment Department],
  - (b) the States [Treasury and Resources Department],
  - (c) the Guernsey Financial Services Commission,
  - (d) the States of Alderney,
  - (e) the Chief Pleas of Sark, and
  - (f) an authorised officer of any of the persons falling

within paragraphs (a) to (e).

(3) Information obtained by any person in pursuance of subsection (1) shall not be disclosed by him to any other person except where the disclosure is made –

- (a) to a person to whom the information could have been disclosed by any of the persons mentioned in subsection (2) in accordance with subsection (1), or
- (b) for the purposes of any legal proceedings arising out of this Part.

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**NOTES**

*In section 20,*

*the words in the first pair of square brackets in subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004;*

*the words in the second pair of square brackets in subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 18, with effect from 6th May, 2004.*

*The functions, rights and liabilities of the Sea Fisheries Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Commerce and Employment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

*The functions, rights and liabilities of the Income Tax Authority and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Treasury and Resources Department and its Minister by the Machinery of Government (Transfer of Functions)*

*(Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 18, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

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**Interpretation.**

**21.** (1) In this Part –

**"British connection"** and **"declaration of British connection"** have the meaning given in section 9(9),

**"the private law provisions for registered ships"** has the meaning given in section 16,

**"the register"** means the register of British ships maintained for Guernsey under section 8 and **"registered"** (except with reference to the law of another country) is to be construed accordingly, and

**"the registrar"** means the Registrar of British Ships in his capacity as registrar or, as respects functions of his being discharged by another authority or person, that authority or person.

(2) Where, for the purposes of any enactment the question arises whether a ship is owned by persons qualified to own British ships, the question shall be determined by reference to registration regulations made under section 9(2)(a).

**PART III**

**MASTERS AND SEAMEN**

*Application of Part*

**Application of this Part.**

22. (1) With the exceptions specified in subsection (2), this Part applies only to ships which are sea-going ships and masters and seamen employed in sea-going ships.

(2) Those exceptions are sections 41, 44 to 50, 52, 53, 56 and 59 to 66.

(3) This Part, in its application to fishing vessels and persons serving in them, has effect subject to the modifications made by Part V and in particular sections 112 and 114 apply to the exclusion of sections 28 and 29.

*Engagement and discharge of crews*

**Crew agreements.**

23. (1) Except as provided under subsection (5), an agreement in writing shall be made between each person employed as a seaman in a Guernsey ship and the persons employing him and shall be signed both by him and by or on behalf of them.

(2) The agreements made under this section with the several persons employed in a ship shall be contained in one document (in this Part referred to as a crew agreement) except that in such cases as the Board may approve –

- (a) the agreements to be made under this section with the persons employed in a ship may be contained in more than one crew agreement, and
- (b) one crew agreement may relate to more than one ship.

(3) The provisions and form of a crew agreement must be of a kind approved by the Board; and different provisions and forms may be so approved for different circumstances.

(4) Subject to the following provisions of this section, a crew agreement shall be carried in the ship to which it relates whenever the ship goes to sea.

(5) The Board may make regulations providing for exemptions from the requirements of this section –

- (a) with respect to such descriptions of ship as may be specified in the regulations or with respect to voyages in such areas or such description of voyages as may be so specified, or
- (b) with respect to such descriptions of seamen as may be specified in the regulations,

and the Board may grant other exemptions from those requirements (whether with respect to particular seamen or with respect to seamen employed by a specified person or in a specified ship or in the ships of a specified person) in cases where the Board is satisfied that the seamen to be employed otherwise than under a crew agreement will be adequately protected.

(6) Where, but for an exemption granted by the Board, a crew agreement would be required to be carried in a ship or a crew agreement carried in the ship would be required to contain an agreement with a person employed in a ship, the ship shall carry such document evidencing the exemption as the Board may direct.

(7) Regulations under this section may enable ships required under this section to carry a crew agreement to comply with the requirement by carrying a copy thereof, certified in such manner as may be provided by the regulations.

(8) If a ship goes to sea or attempts to go to sea in contravention of the requirements of this section the master or the person employing the crew shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale and the ship, if in Guernsey, may be detained.

**Regulations relating to crew agreements.**

24. (1) The Board may make regulations –
- (a) requiring such notice as may be specified in the regulations to be given to an officer of the Board appointed for that purpose or a proper officer, except in such circumstances as may be so specified, before a crew agreement is made or an agreement with any person is added to those contained in a crew agreement,
  - (b) providing for the delivery to an officer of the Board appointed for that purpose or a proper officer or the Registrar of British Shipping of crew agreements and agreements added to those contained in a crew agreement and of copies of crew agreements and of agreements so added,

- (c) requiring the posting in ships of copies of or extracts from crew agreements,
- (d) requiring copies of or extracts from crew agreements to be supplied to members of the crew demanding them and requiring copies of or extracts from documents referred to in crew agreements to be made available, in such circumstances as may be specified in the regulations, for inspection by members of the crew, and
- (e) requiring any documents carried in a ship in pursuance of section 23 to be produced on demand to an officer of Customs and Excise.

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable, on summary conviction, with a fine not exceeding level 3 on the uniform scale or such less amount as may be specified in the regulations.

**Discharge of seamen.**

**25.** (1) The Board may make regulations prescribing the procedure to be followed in connection with the discharge of seamen from Guernsey ships.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision –

- (a) requiring notice of such a discharge to be given at such time as may be specified in the regulations to an officer of the Board appointed for that purpose or the

proper officer at a place specified in or determined under the regulations,

- (b) requiring such a discharge to be recorded, whether by entries in the crew agreement and discharge book or otherwise, and requiring copies of any such entry to be given to an officer of the Board appointed for that purpose or a proper officer or the Registrar of British Shipping.

(3) Regulations under this section may provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seaman shall not be discharged outside Guernsey from a Guernsey ship without the consent of the proper officer.

(4) Regulations under this section may make a contravention of any provision thereof an offence punishable, on summary conviction, with a fine not exceeding level 3 on the uniform scale or such less amount as may be specified in the regulations.

**Seamen left behind abroad otherwise than on discharge.**

26. Regulations under section 25 may apply any provision thereof, with such modifications as appear to the Board to be appropriate, to cases where a seaman employed in a Guernsey ship is left behind outside Guernsey otherwise than on being discharged from the ship.

**Discharge of seamen when ship ceases to be registered in Guernsey.**

27. Where a Guernsey ship ceases to be registered, any seaman employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship; and sections 28 to 31 shall apply in relation

to his wages as if the ship had remained a Guernsey ship.

*Wages, etc.*

**Payment of seamen's wages.**

**28.** (1) Where a seaman employed under a crew agreement relating to a Guernsey ship leaves the ship on being discharged from it, then, except as provided by or under this Part or any other enactment, the wages due to the seaman under the agreement shall either –

- (a) be paid to him in full at the time when he so leaves the ship (in this section and in section 29 referred to as the time of discharge), or
- (b) be paid to him in accordance with subsections (4) and (5).

(2) If the amount shown in the account delivered to a seaman under section 29(1) as being the amount payable to him under subsection (1)(a) is replaced by an increased amount shown in a further account delivered to him under section 29(3), the balance shall be paid to him within seven days of the time of discharge; and if the amount so shown in the account delivered to him under section 29(1) exceeds £50 and it is not practicable to pay the whole of it at the time of discharge, not less than £50 nor less than one-quarter of the amount so shown shall be paid to him at that time and the balance within seven days of that time.

(3) If any amount which, under subsection (1)(a) or (2), is payable to a seaman is not paid at the time at which it is so payable the seaman shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid during the period of 56 days following the time of

discharge; and if any such amount or any amount payable by virtue of this subsection remains unpaid after the end of that period it shall carry interest at the rate of 20 per cent. per annum.

(4) Where the crew agreement referred to in subsection (1) provides for the seaman's basic wages to be payable up-to-date at specified intervals not exceeding one month, and for any additional amounts of wages to be payable within the pay cycle following that to which they relate, any amount of wages due to the seaman under the agreement shall (subject to subsection (5)) be paid to him not later than the date on which the next payment of his basic wages following the time of discharge would have fallen due if his employment under the agreement had continued.

(5) If it is not practicable, in the case of any amount due to the seaman by way of wages additional to his basic wages, to pay that amount by the date mentioned in subsection (4), that amount shall be paid to him not later than what would have been the last day of the pay cycle immediately following that date if his employment under the crew agreement had continued.

(6) If any amount which, under subsection (4) or (5), is payable to a seaman is not paid at the time at which it is so payable, it shall carry interest at the rate of 20 per cent. per annum.

(7) The provisions of subsection (3) or (6) shall not apply if the failure to pay was due to –

- (a) a mistake,
- (b) a reasonable dispute as to liability,

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- (c) the act or default of the seaman, or
- (d) any other cause, not being the wrongful act or default of the persons liable to pay his wages or of their servants or agents,

and so much of those provisions as relates to interest on the amount due shall not apply if a court in proceedings for its recovery so directs.

(8) Where a seaman is employed under a crew agreement relating to more than one ship the preceding provisions of this section shall have effect, in relation to wages due to him under the agreement, as if for any reference to the time of discharge there were substituted a reference to the termination of his employment under the crew agreement.

(9) Where a seaman, in pursuance of section 27, is discharged from a ship outside Guernsey but returns to Guernsey under arrangements made by the persons who employed him, the preceding provisions of this section shall have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the reference in subsections (1) to (4) to the time of discharge there were substituted references to the time of his return to Guernsey, and subsection (8) were omitted.

(10) For the purposes of this section any amount of wages shall, if not paid to him in cash, be taken to have been paid to a seaman –

- (a) on the date when a cheque, or a money or postal order issued by the Post Office, for that amount was despatched by the recorded delivery service to the seaman's last known address, or

- (b) on the date when any account kept by the seaman with a bank or other institution was credited with that amount.

**Account of seaman's wages.**

29. (1) Subject to subsections (4) and (5) and to regulations made under section 30 or 70, the master of every Guernsey ship shall deliver to every seaman employed in the ship under a crew agreement an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.

(2) The account shall indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and shall be delivered not later than 24 hours before the time of discharge or, if the seaman is discharged without notice or at less than 24 hours' notice, at the time of discharge.

(3) If the amounts stated in the account require adjustment the persons who employed the seaman shall deliver to him a further account stating the adjusted amounts; and that account shall be delivered not later than the time at which the balance of his wages is payable to the seaman.

(4) Where section 28(4) or (5) applies to the payment of any amount of wages due to a seaman under a crew agreement –

- (a) the persons who employed the seaman shall deliver to him an account of the wages payable to him under that subsection and of the deductions subject to which the wages are payable, and

- (b) any such account shall be so delivered at the time when the wages are paid to him, and
- (c) subsections (1) to (3) shall not apply,

and section 28(10) shall apply for the purposes of this subsection as it applies for the purposes of that section.

(5) Where a seaman is employed under a crew agreement relating to more than one ship any account which under the preceding provisions of this section would be required to be delivered to him by the master shall instead be delivered to him by the persons employing him and shall be so delivered on or before the termination of his employment under the crew agreement.

(6) If a person fails without reasonable excuse to comply with the preceding provisions of this section he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the uniform scale.

**Regulations relating to wages and accounts.**

**30.** The Board may make regulations –

- (a) authorising deductions to be made from the wages due to a seaman under a crew agreement (in addition to any authorised by any provision of this Part or of any other enactment for the time being in force) in cases where a breach of his obligations under the agreement is alleged against him and such conditions, if any, as may be specified in the regulations are complied with, or in such other cases as may be specified in the regulations,

- (b) regulating the manner in which any amounts deducted under the regulations are to be dealt with,
- (c) prescribing the manner in which wages due to a seaman under a crew agreement are to be or may be paid,
- (d) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seaman leaves his ship in Guernsey otherwise than on being discharged therefrom,
- (e) prescribing the form and manner in which any account required to be delivered by section 29 is to be prepared and the particulars to be contained therein (which may include estimated amounts).

**Power of officer of Board or proper officer to decide disputes about wages.**

31. (1) Any dispute relating to the amount payable to a seaman employed under a crew agreement may be submitted by the parties to an officer of the Board appointed for that purpose or a proper officer for decision; but the officer of the Board or proper officer shall not be bound to accept the submission or, if he has accepted it, to decide the dispute, if he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.

(2) The decision of an officer of the Board or a proper officer on a dispute submitted to him under this section shall be final.

**Restriction on assignment of and charge upon wages.**

32. (1) As respects the wages due or accruing to a seaman employed in a Guernsey ship –

- (a) the wages shall not be subject to attachment or arrest,
- (b) an assignment thereof before they have accrued shall not bind the seaman and the payment of the wages to the seaman shall be valid notwithstanding any previous assignment or charge, and
- (c) a power of attorney or authority for the receipt of the wages shall not be irrevocable.

(2) Nothing in this section shall affect the provisions of this Part with respect to allotment notes.

(3) Nothing in this section applies to any disposition relating to the application of wages –

- (a) in the payment of contributions to a fund declared by regulations made by the Board to be a fund to which this section applies, or
- (b) in the payment of contributions in respect of membership of a body declared by regulations made by the Board to be a body to which this section applies,

or to anything done or to be done for giving effect to such a disposition.

(4) Subsection (1)(a) is subject to the Ordinance entitled "Ordonnance relative à l'arrêt de Gages des Employés" made on 8<sup>th</sup> July, 1933<sup>f</sup>.

**Power of court to award interest on wages due otherwise than under crew agreement.**

33. In any proceedings by the master of a ship or a person employed in a ship otherwise than under a crew agreement for the recovery of any sum due to him as wages the court, unless it appears to it that the delay in paying the sum was due to –

- (a) a mistake,
- (b) a reasonable dispute as to liability,
- (c) the act or default of the person claiming the amount,  
or
- (d) any other cause, not being the wrongful act or default of the persons liable to make the payment or their servants or agents,

may order them to pay, in addition to the sum due, interest on it at the rate of 20 per cent. per annum or such lower rate as the court may specify, for the period beginning seven days after the sum became due and ending when the sum is paid.

**Allotment notes.**

34. (1) Subject to the following provisions of this section, a seaman

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<sup>f</sup> Recueil d'Ordonnances Tome VIII, p. 298.

may, by means of an allotment note issued in accordance with regulations made by the Board, allot to any person or persons part of the wages to which he will become entitled in the course of his employment in a Guernsey ship or ships.

(2) A seaman's right to make an allotment under this section shall be subject to such limitations as may, by virtue of the following provisions of this section, be imposed by regulations made by the Board.

(3) Regulations made by the Board for the purposes of this section may prescribe the form of allotment notes and –

- (a) may limit the circumstances in which allotments may be made,
- (b) may limit (whether by reference to an amount or by reference to a proportion) the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated,
- (c) may limit the persons to whom allotments may be made by a seaman to persons of such descriptions or persons standing to him in such relationships as may be prescribed by the regulations,
- (d) may prescribe the times and the intervals at which payments under allotment notes are to be made.

(4) Regulations under this section may make different provision in relation to different descriptions of seamen and different circumstances.

**Right of person named in allotment to sue in own name.**

35. (1) A person to whom any part of a seaman's wages has been allotted by an allotment note issued in accordance with regulations made under section 34 shall have the right to recover that part in his own name and for that purpose shall have the same remedies as the seaman has for the recovery of his wages.

(2) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seaman's wages has been allotted it shall be presumed, unless the contrary is shown, that the seaman is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

**Right, or loss of right, to wages in certain circumstances.**

36. (1) Where a Guernsey ship is wrecked or lost a seaman whose employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed shall, subject to the following provisions of this section, be entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the two months following that date.

(2) Where a Guernsey ship is sold while outside Guernsey or ceases to be a Guernsey ship and a seaman's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall, subject to the following provisions of this section, be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date.

(3) A seaman shall not be entitled to wages by virtue of subsection (1) or (2) for a day on which he was unemployed, if it is shown –

(a) that the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a Guernsey ship, or

(b) that the seaman was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

(4) This section shall apply to a master as it does to a seaman.

**Protection of certain rights and remedies.**

37. (1) A seaman's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.

(2) Subsection (1) does not affect such of the terms of any agreement made with the seamen belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, as provide for the remuneration to be paid to them for salvage services rendered by that ship.

**Claims against seaman's wages for maintenance, etc. of dependants.**

38. (1) Where, during a seaman's employment in a ship, expenses are incurred by a responsible authority for the benefit of any dependant of his and the expenses are of a kind specified in regulations under this section and such further conditions, if any, as may be so specified are satisfied, the authority may by

notice in writing complying with the regulations require the persons employing the seaman –

- (a) to retain for a period specified in the notice such proportion of his net wages as may be so specified, and
- (b) to give to the responsible authority as soon as may be notice in writing of the seaman's discharge from the ship,

and the persons employing the seaman shall comply with the notice (subject to subsection (3)) and give notice in writing of its contents to the seaman.

(2) For the purposes of this section –

- (a) the following persons, and no others, shall be taken to be a seaman's dependants, that is to say, his spouse and any person under the age of 19 whom he is liable, for the purposes of any enactment in any part of Guernsey, to maintain or in respect of whom he is liable under any such enactment to make contributions to a responsible authority, and
- (b) expenses incurred for the benefit of any person include (in addition to any payments made to him or on his behalf) expenses incurred for providing him with accommodation or care or for exercising supervision over him,

but no expenses shall be specified in regulations under this section unless they are such that the Magistrate's Court has power under any enactment in force in any part of Guernsey to order the making of payments in respect thereof.

(3) Not more than the following proportion of a seaman's net wages shall be retained under subsection (1) (whether in pursuance of one or more notices) –

- (a) one-half if the notice or notices relate to one dependant only,
- (b) two-thirds if the notice or notices relate to two or more dependants.

(4) Where a responsible authority has served a notice under this section on the persons employing a seaman the Magistrate's Court may, on the application of the authority, make an order for the payment to the authority of such sum, not exceeding the proportion of the seaman's wages which those persons were required by virtue of this section to retain, as the Court, having regard to the expenses incurred by the authority and the seaman's means, thinks fit.

(5) Any sums paid out of a seaman's wages in pursuance of an order under this section shall be deemed to be paid to him in respect of his wages; and the service, on the persons who employed the seaman, of such an order or of an order dismissing an application for such an order shall terminate the period for which they were required to retain the wages.

(6) An application for an order under this section for the payment of any sum by the persons who employed a seaman shall be deemed, for the purposes of any proceedings, to be an application for an order against the seaman;

but the order, when served on those persons, shall have effect as an order against them and may be enforced accordingly.

(7) Any sum payable by any persons under an order made under this section in any part of Guernsey may, in any other part of Guernsey, be recovered from them as a debt due to the authority on whose application the order was made.

(8) Any notice or order under this section may be served by registered post or recorded delivery service.

(9) The Board may make regulations specifying –

- (a) the expenses in respect of which a notice may be served by a responsible authority under subsection (1),
- (b) any conditions that must be satisfied if such a notice is to be served,
- (c) the period that may be specified in such a notice (being a period beginning with the service of the notice and ending a specified number of days after the seaman's discharge from his ship),
- (d) the form of such a notice and the information to be contained therein, and
- (e) the amounts to be deducted from a seaman's wages in computing his net wages for the purposes of this section,

and the amounts specified under paragraph (e) may include amounts allotted by allotment notes issued under section 34.

(10) In this section –

"**Magistrate's Court**" includes the Court of Alderney and the Court of the Seneschal of Sark, and

"**responsible authority**" means a Committee of the States of Guernsey, of the States of Alderney or of the Chief Pleas of Sark.

**Remedies of master for remuneration, disbursements and liabilities.**

39. The master of a ship shall have the same lien for his remuneration, and all disbursements or liabilities properly made or incurred by him on account of the ship, as a seaman has for his wages.

*Safety, health and welfare*

**Obligation of shipowners as to seaworthiness.**

40. (1) In every contract of employment between the owner of a Guernsey ship and the master of or any seaman employed in the ship there shall be implied an obligation on the owner of the ship that –

- (a) the owner of the ship,
- (b) the master of the ship, and
- (c) every agent charged with –

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- (i) the loading of the ship,
- (ii) the preparing of the ship for sea, or
- (iii) the sending of the ship 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) The obligation imposed by subsection (1) applies notwithstanding any agreement to the contrary.

(3) No liability on the owner of a ship arises under subsection (1) in respect of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

**Crew accommodation.**

**41.** (1) The Board may make regulations with respect to the crew accommodation to be provided in Guernsey ships.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular –

- (a) prescribe the minimum space per man which must be provided by way of sleeping accommodation for seamen and the maximum number of persons by whom a specified part of such sleeping accommodation may be used,

- (b) regulate the position in the ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation,
- (c) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of any such accommodation and authorise the surveyor to inspect any such works, and
- (d) provide for the maintenance and repair of any such accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed.

(3) Regulations under this section may make different provision with respect to different descriptions of ship or with respect to ships which were registered in Guernsey at different dates or the construction of which was begun at different dates and with respect to crew accommodation provided for seamen of different descriptions.

(4) Regulations under this section may exempt ships of any description from any requirements of the regulations and the Board may grant other exemptions from any such requirement with respect to any ship.

(5) Regulations under this section may require the master of a ship or any officer authorised by him for the purpose to carry out such inspections of the crew accommodation as may be prescribed by the regulations.

(6) If the provisions of any regulations under this section are contravened in the case of a ship the owner or master shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale and the ship, if in Guernsey, may be detained.

(7) In this section, "**crew accommodation**" includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seamen but does not include any accommodation which is also used by or provided for the use of passengers.

**Complaints about provisions or water.**

**42.** (1) If three or more seamen employed in a Guernsey ship consider that the provisions or water for the seamen employed in that ship are not in accordance with safety regulations containing requirements as to the provisions and water to be provided on ships (whether because of bad quality, unfitness for use or deficiency in quantity) they may complain to the master, who shall investigate the complaint.

(2) If the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action they may state their dissatisfaction to him and may claim to complain to an officer of the Board appointed for that purpose or a proper officer; and thereupon the master shall make adequate arrangements to enable the seamen to do so as soon as the service of the ship permits.

(3) The officer of the Board or proper officer to whom a complaint has been made under this section shall investigate the complaint and may examine the provisions or water or cause them to be examined.

(4) If the master fails without reasonable excuse to comply with the provisions of subsection (2) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale and if he has been notified in writing by the person making an examination under subsection (3) that any provisions or water are found to be unfit for use or not of the quality required by the regulations, then –

- (a) if they are not replaced within a reasonable time the master or owner shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale unless he proves that the failure to replace them was not due to his neglect or default, or
- (b) if the master, without reasonable excuse, permits them to be used he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

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

43. (1) If a person, while employed in a Guernsey ship, receives outside Guernsey any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him.

(2) If a person dies while employed in a Guernsey ship and is buried or cremated outside Guernsey, the expenses of his burial or cremation shall also be borne by those persons.

(3) The reference in subsection (2) to dying in a ship includes a reference to dying in a ship's boat.

*Manning, qualifications, training and uniform*

**Application of sections 45 to 49.**

**44.** Sections 45 to 49 apply to every Guernsey ship and also to any ship registered under the law of a country outside Guernsey which carries passengers –

- (a) between places in Guernsey or between Guernsey and the United Kingdom, Jersey or the Isle of Man, or
- (b) on a voyage which begins and ends at the same place in Guernsey and on which the ship calls at no place outside Guernsey.

**Manning.**

**45.** (1) Subject to subsection (2), the Board may make regulations –

- (a) requiring ships to which this section applies to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of other seamen or qualified seamen of any description as may be specified in the regulations, and
- (b) prescribing or enabling the Board to specify standards of competence to be attained and other conditions to be satisfied (subject to any exceptions allowed by or under the regulations) by officers and other seamen of

any description in order to be qualified for the purposes of this section.

(2) The Board shall not exercise its power to make regulations requiring ships to carry seamen other than doctors and cooks except to the extent that it appears to it necessary or expedient in the interests of safety.

(3) Regulations under this section may make different provision for different descriptions of ship or for ships of the same description in different circumstances.

(4) Without prejudice to the generality of subsection (1)(b), the conditions prescribed or specified under that paragraph may include conditions as to nationality, and regulations made for the purposes of that paragraph may make provision, or enable the Board to make provision, for –

- (a) the manner in which the attainment of any 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,

and different provisions may be so made or enabled to be made for different circumstances.

(5) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a certificate or other document which may be issued under this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Power to exempt from manning requirements.**

46. (1) The Board may exempt any ship or description of ship from any requirements of regulations made under section 45.

(2) An exemption given under this section may be confined to a particular period or to one or more particular voyages.

**Prohibition of going to sea undermanned.**

47. (1) Subject to section 46, if a ship to which this section applies goes to sea or attempts to go to sea without carrying such officers and other seamen as it is required to carry under section 45, the owner or master shall be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale,

(b) on conviction on indictment, to a fine,

and the ship, if in Guernsey, may be detained.

(2) This section shall, in its application to ships which are not sea-going ships, have effect as if for the words "goes to sea or attempts to go to sea" there were substituted the words "goes on a voyage or excursion or attempts to do so" and the words "if in Guernsey" were omitted.

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

48. (1) Any person serving or engaged to serve in any ship to which this section applies and holding any certificate or other document which is evidence that he is qualified for the purposes of section 45 shall on demand produce it to any officer of the Board authorised to require its production, surveyor of ships or proper officer and (if he is not himself the master) to the master of the ship.

(2) If, without reasonable excuse, a person fails to comply with subsection (1) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

**Crew's knowledge of English.**

49. (1) Where in the opinion of an officer of the Board appointed for that purpose or a proper officer the crew of a ship to which this section 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, then –

- (a) if the officer of the Board or proper officer has informed the master of that opinion, the ship shall not go to sea, and
- (b) if the ship is in Guernsey, it may be detained.

(2) If a ship goes to sea or attempts to go to sea in contravention of this section the owner or master shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Unqualified persons going to sea as qualified officers or seamen.**

**50.** (1) If a person goes to sea as a qualified officer or seaman of any description without being such a qualified officer or seaman he shall be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(b) on conviction on indictment, to a fine.

(2) In this section, "**qualified**" means qualified for the purposes of section 45.

**Medical treatment on board ship.**

**51.** Where a Guernsey ship does not carry a doctor among the seamen employed in it the master shall make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

**Special certificates of competence.**

**52.** (1) The Board may issue and record documents certifying the attainment of any standard of competence relating to ships or their operation, notwithstanding that the standard is not among those prescribed or specified under section 45(1)(b); and may, in relation thereto, make regulations for purposes corresponding to those mentioned in section 45(4).

(2) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a document which may be issued under this section he shall be guilty of an offence and liable on summary conviction to a

fine not exceeding level 5 on the uniform scale.

**Young persons.**

**53.** (1) A person under school-leaving age shall not be employed in any Guernsey ship except as permitted by regulations under this section.

(2) The Board may make regulations –

(a) prescribing circumstances in which and conditions subject to which persons under school-leaving age who have attained such age as may be specified in the regulations may be employed in a ship in such capacities as may be so specified,

(b) prescribing circumstances and capacities in which persons over school-leaving age but under the age of 18 or under such lower age as may be specified in the regulations must not be employed in a Guernsey ship or may be so employed only subject to such conditions as may be specified in the regulations.

(3) Regulations made for the purposes of this section may make different provision for different employments and different descriptions of ship and any other different circumstances.

(4) If any person is employed in a ship in contravention of this section or if any condition subject to which a person may be employed under regulations made for the purposes of this section is not complied with, the owner or master shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(5) For the purposes of this section, a person employed in a ship shall be deemed to be over school-leaving age if he has, and under school-leaving age if he has not, attained the age which is the upper limit of compulsory school age under the enactments or practices relating to education in the part of Guernsey in which he entered into the agreement under which he is so employed or, if he entered into that agreement outside Guernsey or is employed otherwise than under an agreement, under the enactments relating to education in the Island of Guernsey; and if he is treated for the purposes of those enactments as not having attained that age he shall be so treated also for the purposes of this section.

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**NOTE**

*In accordance with the provisions of subsection (5) of section 16 of the Education (Guernsey) Law, 1970, with effect from 28th October, 1970, the reference in this section to "compulsory school age" shall be construed in accordance with the provisions of that section .*

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**Financial assistance for training.**

**54.** (1) The States may give any person or body of persons of any description determined by them for the purposes of this section financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training (whether in Guernsey or elsewhere) of officers and ratings for service in merchant ships, including expenses incurred or to be incurred by any such person in connection with his undergoing any such training.

(2) Assistance under this section may be given by way of a grant or a loan or otherwise; and in giving any such assistance the States may impose such conditions as they think fit, including conditions requiring a grant to be repaid in specified circumstances.

(3) This section is without prejudice to any other power of the States to give financial assistance in connection with any such training as is mentioned in subsection (1).

(4) In providing assistance in accordance with this section the States shall have regard to the maintenance and development of Guernsey's merchant fleet and marine related business and for that purpose shall –

- (a) keep under review all aspects of that fleet and business, and
- (b) seek the advice of those who appear to them to have experience of that fleet and business.

(5) In this section –

**"marine related business"** means any trade, business or other activity concerned with the manufacture of, or the provision of goods and services for, or the operation or use of, ships and includes maritime educational establishments, marine classification societies, marine equipment suppliers, marine surveyors, marine and naval architects, marine insurance companies, protection and indemnity clubs, providers of maritime financial or legal services, the operators of ports and harbours and shipbrokers, and

**"the States"** means the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

**Uniform.**

**55.** (1) Subject to subsection (3), if any person, not being entitled to wear the merchant navy uniform, wears that uniform or any part thereof, or any

dress having the appearance or bearing any of the distinctive marks of that uniform, he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable, on summary conviction –

- (a) except in a case falling within paragraph (b), to a fine not exceeding level 1 on the uniform scale,
- (b) if he wears it in such a manner or under such circumstances as to be likely to bring contempt on the uniform, to a fine not exceeding level 1 on the uniform scale or to imprisonment for a term not exceeding one month.

(3) Subsection (1) shall not prevent any person from wearing any uniform or dress in the course or for the purposes of a stage play or representation, or a music-hall or circus performance if the uniform is not worn in such a manner or under such circumstances as to bring it into contempt.

(4) If any person entitled to wear the merchant navy uniform when aboard a ship in port or on shore appears dressed partly in uniform and partly not in uniform under such circumstances as to be likely to bring contempt on the uniform, or, being entitled to wear the uniform appropriate to a particular rank or position, wears the uniform appropriate to some higher rank or position, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the uniform scale.

*Offences by seamen, etc.*

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

**56.** (1) This section applies –

- (a) to the master of, or any seaman employed in, a Guernsey ship, and
- (b) to the master of, or any seaman employed in, a ship which –
  - (i) is registered under the law of any country outside Guernsey, and
  - (ii) is in a port in Guernsey or within Guernsey waters while proceeding to or from any such port.

(2) If a person to whom this section applies, while on board his ship or in its immediate vicinity –

- (a) does any act which causes or is likely to cause –
  - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment, or
  - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
  - (iii) the death of or serious injury to any person, or

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

and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, he shall (subject to subsections (6) and (7)) be guilty of an offence.

- (3) Those conditions are –
  - (a) that the act or omission was deliberate or amounted to a breach or neglect of duty,
  - (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.
- (4) If a person to whom this section applies –

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- (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a), or
- (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,

he shall (subject to subsections (6) and (7)) be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(6) In proceedings for an offence under this section it shall be a defence to prove –

- (a) in the case of an offence under subsection (2) where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty,

- (b) in the case of an offence under subsection (2), that at the time of the act or omission alleged against the accused he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice and complied with any directions given as part of that advice or that he had no reason to believe that the drug might have the influence it had,
- (c) in the case of an offence under subsection (4), that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence, or
- (d) in the case of an offence under either of those subsections –
  - (i) that he could have avoided committing the offence only by disobeying a lawful command, or
  - (ii) that in all the circumstances the loss, destruction, damage, 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 accused or could not reasonably have been avoided by him.

(7) In the application of this section to any person falling within subsection (1)(b), subsections (2) and (4) shall have effect as if subsection (2)(a)(i) and (b)(i) were omitted.

(8) In this section –

**"breach or neglect of duty"**, except in relation to a master, includes any disobedience to a lawful command,

**"duty"** –

- (a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such, and
- (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment, and

**"structure"** means any fixed or movable structure (of whatever description) other than a ship.

**Concerted disobedience and neglect of duty.**

**57.** (1) If a seaman employed in a Guernsey ship combines with other seamen employed in that ship –

- (a) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea,
- (b) to neglect any duty which is required to be discharged at such a time, or

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- (c) to impede, at such a time, the progress of a voyage or the navigation of the ship,

he shall be liable –

- (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) For the purposes of this section a ship shall be treated as being at sea at any time when it is not securely moored in a safe berth.

*Disciplinary offences*

**Breaches by seamen of codes of conduct.**

**58.** (1) The Board may make regulations under the following provisions of this section for the purpose of maintaining discipline on board Guernsey ships; and in this section "**disciplinary body**" means a body established or approved by the Board under subsection (6).

(2) Regulations may provide for the hearing on shore in Guernsey, by a disciplinary body, of a complaint by the master or owner of a Guernsey ship, other than a fishing vessel, against a seaman alleging that during his employment on board the ship the seaman contravened a provision of a code of conduct approved by the Board for the purposes of this section.

The alleged contravention may be one on or off the ship and in

Guernsey or elsewhere.

- (3) Regulations may enable a disciplinary body –
  - (a) to dismiss the complaint if it finds the allegation not proved,
  - (b) if it finds the allegation proved –
    - (i) to warn the seaman,
    - (ii) to reprimand the seaman, or
    - (iii) to recommend to the Board that the seaman shall, either for a period specified in the recommendation or permanently, cease to be entitled to a discharge book in pursuance of section 77 and shall be required to surrender any such book which has been issued to him.
  
- (4) Regulations may –
  - (a) enable the seaman to appeal against such a recommendation to another disciplinary body (an **"appellate body"**),
  - (b) enable an appellate body –
    - (i) to confirm the recommendation,

- (ii) to cancel the recommendation, or
- (iii) in the case of a recommendation that the seaman shall cease to be entitled to a discharge book permanently or for a particular period, to substitute for it a recommendation that he shall cease to be so entitled, instead of permanently, for a period specified in the substituted recommendation or, instead of for the particular period, for a shorter period so specified.

(5) Regulations may make provision for securing that a recommendation that the seaman shall permanently cease to be entitled to a discharge book is not submitted to the Board unless it has been confirmed, either on appeal or otherwise, by an appellate body.

(6) Regulations may make provision for the establishment or approval for the purposes of this section of such number of bodies as the Board thinks fit and with respect to the composition, jurisdiction and procedure of any such body.

(7) Regulations may make provision for the payment of such remuneration and allowances as the Board may determine to any member of such a body.

(8) Regulations may make different provision for different circumstances and may contain such incidental and supplemental provisions as the Board considers appropriate.

(9) Without prejudice to the generality of the preceding provisions, regulations may include provision for any proceedings to take place notwithstanding the absence of the seaman to whom they relate.

(10) Nothing in the regulations or done in pursuance of the regulations shall be construed as affecting any power to institute, prosecute, entertain or determine proceedings (including criminal proceedings) under any other enactment or customary law or at common law.

*Disqualification of seamen and inquiries*

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

**59.** (1) If it appears to the Board that an officer –

- (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason, or
- (b) has been seriously negligent in the discharge of his duties, or
- (c) has failed to comply with the provisions of section 87,

the Board may cause an inquiry to be held by one or more persons appointed by it and, if it does so, may, if it thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 45 and require the officer to deliver it to the Board.

(2) Where a certificate issued to an officer has been suspended under subsection (1) the suspension may, on the application of the officer, be

terminated by the Ordinary Court, and the decision of the Ordinary Court on such an application shall be final.

(3) An inquiry under this section shall be conducted in accordance with rules made under section 62(1) and those rules 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 section into the fitness or conduct of an officer –

- (a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (c) of subsection (1), cancel or suspend any certificate issued to him under section 45 or censure him,
- (b) may make such order with regard to the costs of the inquiry as they think just, and
- (c) shall make a report on the case to the Board,

and if the certificate is cancelled or suspended the officer (unless he has delivered it to the Board in pursuance of subsection (1)) shall deliver it forthwith to the persons holding the inquiry or to the Board.

(5) Any costs which a person is ordered to pay under subsection (4)(b) may be recovered from him by the Board.

**Disqualification of holder of certificate other than officer's.**

**60.** (1) Where it appears to the Board that a person who is the holder of a certificate to which this section applies is unfit to be the holder of such a

certificate, whether by reason of incompetence or misconduct or for any other reason, the Board may give him notice in writing that it is considering the suspension or cancellation of the certificate.

(2) The notice must state the reasons why it appears to the Board that that person is unfit to be the holder of such a certificate and must state that within a period specified in the notice, or such longer period as the Board may allow, he may make written representations to the Board or claim to make oral representations to the Board.

(3) After considering any representations made in pursuance of subsection (2) the Board shall decide whether or not to suspend or cancel the certificate and shall give the holder of it written notice of his decision.

(4) Where the decision is to suspend or cancel the certificate the notice shall state the date from which the cancellation is to take effect, or 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 Board 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 section 61.

(5) Where, before the date specified in the notice, he requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation shall not take effect except as ordered in pursuance of the inquiry.

(6) The Board may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps

are to be taken.

(7) This section applies to every certificate issued under section 52 and to any certificate issued under section 45 other than one certifying that a person is qualified as an officer.

**Inquiry into fitness or conduct of seaman other than officer.**

**61.** (1) Where a person has, before the date mentioned in section 60(4), required his case to be dealt with by an inquiry under this section the Board shall cause an inquiry to be held by one or more persons appointed by it.

(2) An inquiry under this section shall be conducted in accordance with rules made under section 63(1) and those rules 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 section –

- (a) may confirm the decision of the Board and cancel or suspend the certificate accordingly,
- (b) may, where the decision was to cancel the certificate, suspend it instead,
- (c) may, where the decision was to suspend the certificate, suspend it for a different period,
- (d) may, instead of confirming the decision of the Board, censure the holder of the certificate or take no further action,

- (e) may make such order with regard to the costs of the inquiry as they think just, and
- (f) shall make a report on the case to the Board,

and if the certificate is cancelled or suspended it shall be delivered forthwith to the persons holding the inquiry or to the Board.

(4) Any costs which a person is ordered to pay under subsection (3)(e) may be recovered from him by the Board as a civil debt.

**Re-hearing of and appeal from inquiries.**

**62.** (1) Where an inquiry has been held under section 59 or 61 the Board may order the whole or part of the case to be reheard, and shall do so –

- (a) if new and important evidence which could not be produced at the inquiry has been discovered, or
- (b) if there appear to the Board to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the re-hearing to be by the persons who held it, by a wreck commissioner or by the Ordinary Court.

(3) Any re-hearing under this section which is not held by the Ordinary Court shall be conducted in accordance with rules made under section 63(1).

(4) Where the persons holding the inquiry have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no application for an order under subsection (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 to the Ordinary Court.

**Rules as to inquiries and appeals.**

**63.** (1) The Board may make rules for the conduct of inquiries under sections 59 and 61 and for the conduct of any re-hearing under section 62 which is not held by the Ordinary Court.

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of court made for the purpose of re-hearings under section 62 which are held by the Ordinary Court, or of appeals to the Ordinary Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

**Failure to deliver cancelled or suspended certificate.**

**64.** If a person fails to deliver a certificate as required under section 59, 60 or 61 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

**Power to restore certificate.**

**65.** Where a certificate has been cancelled or suspended under section

59, 60, 61 or 62, the Board, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

**Power to summon witness to inquiry into fitness or conduct of officer or other seaman.**

- 66.** (1) The persons holding an inquiry under section 59 or 61 may –
- (a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any 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 such an inquiry in answer to a summons under this section –
- (a) the persons holding the inquiry are satisfied by evidence on oath –
    - (i) that the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry,

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- (ii) that he has been duly served with the summons, and
  - (iii) that a reasonable sum has been paid or tendered to him for costs and expenses, and
- (b) it appears to them that there is no just excuse for the failure,

they may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant.

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

- (a) commit him to custody until the end of such period not exceeding one month as may be specified in the warrant or until he gives evidence or produces the document (whichever occurs first), or
- (b) impose on him a fine not exceeding level 4 on the uniform scale,

or both.

(4) A fine imposed under subsection (3)(b) shall 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 the fine, give particulars of it to Her Majesty's Greffier.

*Civil liability of seamen for offences*

**Civil liability for absence without leave.**

67. (1) The following provisions of this section shall apply with respect to the liability of a seaman employed in a Guernsey ship to damages for being absent from his ship at a time when he is required under his contract of employment to be on board.

(2) If he proves that his absence was due to an accident or mistake or some other cause beyond his control and that he took all reasonable precautions to avoid being absent his absence shall not be treated as a breach of contract.

(3) Where subsection (2) does not apply, then –

- (a) if no special damages are claimed his liability shall be £10,
- (b) if special damages are claimed his liability shall not be more than £100.

**Civil liability for smuggling.**

68. If a seaman employed in a Guernsey ship is found in civil proceedings before a court in Guernsey to have committed an act of smuggling, whether within or outside Guernsey, he shall be liable to make good any loss or expense that the act has caused to any other person.

**Civil liability for fines imposed under immigration laws.**

69. (1) The following provisions of this section shall apply where, at

a time when a Guernsey ship is in the national or territorial waters of any country outside Guernsey, a seaman employed in the ship is absent without leave and present in that country in contravention of that country's laws.

(2) If, by reason of the contravention, a penalty is incurred under those laws by the persons employing the seaman the penalty shall be treated as being attributable to his absence without leave and may, subject to the provisions of section 67, be recovered from him as special damages for breach of contract.

(3) If, by reason of the contravention, a penalty is incurred under those laws by any other person the amount thereof, or, if that amount exceeds £100, £100, may be recovered by him from the seaman.

*Relief and repatriation and relief costs*

**Relief and return of seamen, etc. left behind and shipwrecked.**

70. (1) Where –

- (a) a person employed as a seaman in a Guernsey ship is left behind in any country outside Guernsey or is taken to such a country on being shipwrecked, or
- (b) a person who became so employed under an agreement entered into outside Guernsey is left behind in Guernsey or is taken to Guernsey on being shipwrecked,

the persons who last employed him as a seaman shall make such provision for his return and for his relief and maintenance until his return and such other provisions as may be required by regulations made by the Board.

(2) The provisions to be so made may include the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore and the payment of the expenses of burial or cremation of a seaman who dies before he can be returned.

(3) The Board may also make regulations providing for the manner in which any wages due to any person left behind or taken to any country as mentioned in subsection (1), and any property of his left on board ship, are to be dealt with.

(4) The Board may make regulations requiring an officer of the Board appointed for that purpose or a proper officer –

(a) to make such provision as may be prescribed by the regulations with respect to any matter for which provision may be required to be made by regulations under the preceding provisions of this section, and

(b) to make the like provision with respect to persons who are British citizens, British Dependent Territories citizens or British Overseas citizens and are found in distress in any country outside Guernsey after being employed in ships registered in, or belonging to the government of, such a country.

(5) Without prejudice to the generality of the preceding provisions, regulations made under this section may make provision –

(a) for determining the place to which a person is to be

returned,

- (b) for requiring the master of any Guernsey ship to convey a person to a place determined in accordance with the regulations and for enabling an officer of the Board appointed for that purpose or a proper officer to give the master directions for that purpose,
- (c) for the making of payments in respect of the conveyance of a person in accordance with the regulations, and
- (d) for the keeping of records and the rendering of accounts.

(6) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the uniform scale or such less amount as may be specified in the regulations.

(7) This section applies to a person left behind on being discharged in pursuance of section 27, whether or not at the time he is left behind the ship is still a Guernsey ship.

(8) This section applies to the master of a ship as it applies to a seaman and sections 71 and 72 shall have effect accordingly.

**Limit of employer's liability under section 70.**

71. Where a person left behind in or taken to any country as mentioned in section 70(1) remains there after the end of a period of three months the persons

who last employed him as a seaman shall not be liable under that section to make provision for his return or for any matter arising after the end of that period, unless they have before the end of that period been under an obligation imposed on them by regulations under that section to make provision with respect to him.

**Recovery of expenses incurred for relief and return, etc.**

72. (1) Where any expenses are incurred in respect of any matter for which the employers of a seaman are required to make provision under section 70, then –

- (a) if the expenses are incurred by the States, or are incurred by the government of any country outside Guernsey and are repaid to them on behalf of the States of Guernsey, the States may recover them from the employers,
- (b) if the expenses are incurred by the seaman he may recover them from the employers unless they prove either that under the terms of his employment they were to be borne by him or that he would not have been left behind but for his own wrongful act or neglect.

(2) Where, in the case of any seaman, expenses are incurred by the States or are incurred by the government of any country outside Guernsey and repaid to them on behalf of the States –

- (a) in respect of any matter for which, but for section 71, the seaman's last employers would have been required to make provision under section 70, or

- (b) in respect of any matter for which provision is required to be made under section 70(4)(b),

the States may recover them from the seaman (or, if he has died, from his personal representatives).

(3) In this section, "**the States**" means the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

**Financial assistance in respect of crew relief costs.**

**73.** (1) The States may give financial assistance to –

- (a) the owner of a ship registered in Guernsey, or
- (b) any manager of a ship so registered, being either an individual ordinarily resident in Guernsey or a body corporate which is incorporated and has its principal place of business in Guernsey,

in respect of travel and other costs incurred by the owner or manager in connection with members of the ship's crew joining or leaving the ship outside the limited European trading area.

(2) If the States so determine, eligibility for assistance under this section shall be conditional on the fulfilment of such conditions with respect to all or any of the following matters as are specified in their determination –

- (a) the nationality of any person in relation to whom any such costs as are mentioned in subsection (1) are

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incurred,

- (b) the ordinary residence of any such person,
- (c) the place (outside the limited European trading area) where any such person joins or leaves his ship.

(3) Assistance under this section may be given by way of a grant or loan or otherwise; and in giving any such assistance the States may impose such conditions as they think fit.

(4) For the purposes of this section –

- (a) the crew of a ship shall be taken to include the master and other officers of the ship,
- (b) "**the limited European trading area**" has the same meaning as it has for the purposes of any regulations made under section 45, and
- (c) "**the States**" means the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

*Documentation*

**Official log books.**

74. (1) Except as provided by regulations under this section an official log book in a form approved by the Board shall be kept in every Guernsey ship.

(2) The Board may make regulations prescribing the particulars to be entered in official log books, the persons by whom such entries are to be made, signed or witnessed, and the procedure to be followed in the making of such entries and in their amendment or cancellation.

(3) The regulations may require the production or delivery of official log books to such persons, in such circumstances and within such times as may be specified therein.

(4) Regulations under this section may exempt ships of any description from any requirements thereof, either generally or in such circumstances as may be specified in the regulations.

(5) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the uniform scale or not exceeding a lesser amount.

(6) If a person intentionally destroys or mutilates or renders illegible any entry in an official log book he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

**Lists of crew.**

**75.** (1) Except as provided by regulations made under this section, the master of every Guernsey ship shall make and maintain a list of the crew containing such particulars as may be required by the regulations.

(2) The Board may make regulations –

(a) specifying the particulars to be entered in a list of the

crew,

- (b) limiting the time for which a list of the crew may remain in force,
- (c) providing for the maintenance by such persons and either in such place as may be specified in the regulations or, if it is so specified, in the ship, of a copy or copies of each list of a crew, and for the notification to such persons of any changes therein,
- (d) for the production of a list of the crew to such persons, in such circumstances and within such time as may be specified in the regulations, and
- (e) for the delivery to an officer of the Board appointed for that purpose or a proper officer or the Registrar of British Ships, in such circumstances as may be specified in the regulations, of a list of the crew or a copy thereof maintained under the regulations and for the notification to him of any changes in such a list.

(3) Regulations under this section may enable a list of the crew to be contained in the same document as a crew agreement and may treat any particulars entered in the crew agreement as forming part of the particulars in the list.

(4) Regulations under this section may exempt from the requirements thereof such descriptions of ship as may be specified in the regulations and may make different provisions for different circumstances.

(5) Regulations under this section may make contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the uniform scale or not exceeding a lesser amount.

**British seamen's cards.**

76. (1) The Board may make regulations providing –
- (a) for the issue to British seamen of cards (in this section referred to as "**British seamen's cards**") in such form and containing such particulars with respect to the holders thereof and such other particulars (if any) as may be prescribed by the regulations, and for requiring British seamen to apply for such cards,
  - (b) for requiring the holders of British seamen's cards to produce them to such persons and in such circumstances as may be prescribed by the regulations,
  - (c) for the surrender of British seamen's cards in such circumstances as may be prescribed by the regulations,
  - (d) for any incidental or supplementary matters for which the Board thinks it expedient for the purposes of the regulations to provide,

and any provision of the regulations having effect by virtue of paragraph (a) may be so framed as to apply to all British seamen or any description of them and as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the uniform scale or not exceeding a lesser amount.

(3) In this section, "**British seamen**" means persons who are not aliens within the meaning of the British Nationality Act 1981<sup>g</sup> and are employed, or ordinarily employed, as masters or seamen in Guernsey ships.

(4) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a British seaman's card he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

**Discharge books.**

77. (1) The Board may make regulations providing –

(a) for the issue of discharge books –

(i) to persons who are or have been employed in Guernsey ships, or

(ii) to persons who are or have been employed in other ships but are not aliens within the meaning of the British Nationality Act 1981,

(b) for requiring the persons mentioned in paragraph (a)

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<sup>g</sup> An Act of Parliament (1981 c. 61).

to apply for discharge books,

- (c) for the form of discharge books and the particulars (if any) that they are to contain with respect to their holders,
- (d) for requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed by the regulations,
- (e) for the surrender of discharge books in such circumstances as may be prescribed by the regulations,
- (f) for any incidental or supplementary matters for which the Board thinks it expedient for the purposes of the regulations to provide,

and any provision of the regulations having effect by virtue of paragraph (a), (b) or (c) may be so framed as to apply to all such persons as are mentioned in paragraph (a) or any description of such persons and as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may –

- (a) provide for a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body by virtue of regulations made under section 58(3) or (4), and
- (b) provide for the re-issue of discharge books which have

been surrendered in consequence of such a recommendation.

(3) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the uniform scale or not exceeding a lesser amount.

(4) A person who, in Guernsey or elsewhere –

(a) obtains employment as a seaman on board a Guernsey ship and does so when he is disentitled to a discharge book by virtue of regulations made under subsection (2)(a), or

(b) employs as such a seaman a person who he knows or has reason to suspect is disentitled as aforesaid,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale or, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

**Handing over of documents by master.**

**78.** (1) If a person ceases to be the master of a Guernsey ship during a voyage of the ship he shall deliver to his successor the documents relating to the ship or its crew which are in his custody.

(2) If, without reasonable excuse, the master of such a ship fails to comply with subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

*Interpretation*

**Interpretation.**

**79.** (1) In this Part –

**"crew agreement"** has the meaning given to it by section 23(2),

**"relief and maintenance"** includes the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, and

**"ship's boat"** includes a life-raft.

(2) References in this Part to going to sea include references to going to sea from any country outside Guernsey.

(3) For the purposes of this Part a seaman is discharged from a ship when his employment in that ship is terminated.

(4) For the purposes of this Part a seaman discharged from a ship in any country and left there shall be deemed to be left behind in that country notwithstanding that the ship also remains there.

(5) Any power conferred by this Part to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions.

**PART IV  
SAFETY**

*Safety and Health on Ships*

**Safety and health on ships.**

**80.** (1) The Board may by regulations (in this Law referred to as "**safety regulations**") make such provision as it considers appropriate for all or any of the following purposes –

- (a) for securing the safety of Guernsey ships and persons on them, and for protecting the health of persons on Guernsey ships,
- (b) for securing the safety of other ships and persons on them while they are within Guernsey waters and for protecting the health of persons on ships other than Guernsey ships while they are within Guernsey waters.

(2) Except as provided by subsection (3), safety regulations shall not apply in relation to –

- (a) a qualifying foreign ship while it is exercising –
  - (i) the right of innocent passage, or
  - (ii) the right of transit passage through straits used for international navigation, or
- (b) persons on such a ship while it is exercising any such right.

(3) Safety regulations shall apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (2)(a), to the extent that the safety regulations give effect to any provisions of an international agreement which the United Kingdom has ratified on behalf of Guernsey 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.

(4) In subsection (1), "**Guernsey ship**" means a ship which –

(a) is registered in Guernsey, 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, a British Dependent Territories citizen or a British Overseas citizen who is ordinarily resident in any part of Guernsey, or

(ii) a body corporate which is established under the law of any part of Guernsey and has its principal place of business in Guernsey.

(5) Regulations in pursuance of subsection (1)(a) or (b) may make provision with respect to any of the following matters, that is to say –

(a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment,

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- (b) the packaging, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship which 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 which 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 for ensuring communication 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,

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- (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 any collision involving a ship and in consequence of any collision involving a ship,
- (l) the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving 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 for the purpose of avoiding, removing or reducing danger to persons or property,
- (n) the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger,
- (o) the making of records and the keeping of documents relating to ships and the keeping and use on a ship of information to facilitate the navigation of the ship,
- (p) the keeping of registers and the issue of certificates in cases for which registration or a certificate is required

by virtue of the regulations, and

(q) the furnishing of information,

but the mention of specific matters in this subsection shall not be construed as restricting the generality of the power conferred by paragraph (a) or (b) of subsection (1).

(6) The power to make regulations conferred by subsection (1) shall extend also to the making of regulations for the prevention of collisions between seaplanes on the surface of water and between ships and seaplanes and subsections (5)(k) and (7) to (9) and section 81(1) shall have effect accordingly.

(7) Safety regulations –

(a) may make provision in terms of approvals given by the Board or another body or person and in terms of any document which the Board or another body or person considers relevant from time to time,

(b) may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval, and

(c) must provide for any approval in pursuance of 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.

(8) Without prejudice to section 81(1)(b), safety regulations may

provide –

- (a) for the granting by the Board or another body or person, on such terms (if any) as the Board or other body or person may specify, of exemptions from specified provisions of the regulations for classes of cases or individual cases, and
  - (b) for the alteration or cancellation of exemptions granted in pursuance of the regulations.
- (9) Safety regulations may provide –
- (a) that in such cases as are prescribed by the regulations a ship shall be liable to be detained and that section 270 shall have effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship,
  - (b) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding level 5 on the uniform scale and on conviction on indictment by imprisonment for a term not exceeding two years and a fine,
  - (c) that any such contravention shall be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale, or such less amount as is prescribed by the regulations,

- (d) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (b) or (c),
  
- (e) that, notwithstanding anything in paragraph (b) or (c), a person convicted summarily of an offence under the regulations of a kind which is stated by the regulations to correspond to an offence which is triable either summarily or on indictment under an enactment specified in the regulations which authorises or authorised a fine on summary conviction of a maximum amount exceeding level 5 on the uniform scale shall be liable to a fine not exceeding level 5 on the uniform scale.

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**NOTE**

*The following Regulations have been made under section 80:*

*Small Fishing Vessels (Safety) (Bailiwick of Guernsey) Regulations, 2007.*

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**Provisions supplementary to section 80: general.**

- 81.** (1) Safety regulations may –
- (a) make different provision for different circumstances and, in particular, make provision for an individual case,

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- (b) be made so as to apply only in such circumstances as are prescribed by the regulations,
- (c) be made so as to extend outside Guernsey,
- (d) contain such incidental, supplemental and transitional provisions as the Board considers appropriate,
- (e) make provision for compensation to be paid, where a signal is used or displayed otherwise than in accordance with the regulations, for any expense or loss caused in consequence of the signal's being taken for a signal of distress,

and any compensation falling to be paid by virtue of regulations under paragraph (e) may, without prejudice to any other remedy, be recovered in the same manner as salvage.

(2) The Board may by regulations –

- (a) suspend the application, or make such other modifications, of provisions of the Merchant Shipping Acts 1894 to 1977 as they apply in Guernsey and are re-enacted in this Law, and of any instruments made under those Acts which have effect in Guernsey as it considers appropriate in consequence or in anticipation of the making of safety regulations,
- (b) suspend the application, or make such other modifications, of provisions of any enactment passed

and any instrument made before 4<sup>th</sup> April 1979 as it considers appropriate in connection with any modification made or to be made in pursuance of paragraph (a),

- (c) provide for anything done under a provision the application of which is suspended or otherwise modified by virtue of either of the preceding paragraphs to have effect as if done under safety regulations and make such other transitional provision and such incidental and supplemental provision as it considers appropriate in connection with any modification made by virtue of either of those paragraphs.

(3) Nothing in section 80(5) to (8) or subsection (1) shall be construed as prejudicing the generality of section 80(1).

(4) Where the Board proposes to make safety regulations or it or another body or person proposes to give an approval in pursuance of safety regulations it shall be the duty of the Board or other body or person, before it or he gives effect to the proposal, to consult such persons in Guernsey (if any) as it or he considers will be affected by the proposal.

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**NOTE**

*The following Regulations have been made under section 81:*

*Small Fishing Vessels (Safety) (Bailiwick of Guernsey) Regulations, 2007.*

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**Provisions supplementary to section 80: dangerous goods.**

82. (1) Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any ship, whether or not a Guernsey ship –

- (a) without being marked as required by safety regulations,
- (b) without such notice having been given as is required by safety regulations,
- (c) under a false description, or
- (d) with a false description of their sender or carrier,

the Ordinary Court, the Court of Alderney or the Court of the Seneschal of Sark, as the case may be, may declare the goods, and any package or receptacle in which they are contained, to be forfeited.

(2) On a declaration of forfeiture being made, the goods shall be forfeited and they shall be disposed of as the Court directs.

(3) The powers conferred on the Court by subsections (1) and (2) are exercisable notwithstanding that the owner of the goods –

- (a) has not committed any offence under 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.

(4) Nevertheless, the Court may, in their discretion, require such notice as they may direct to be given to the owner or shipper of the goods before they are forfeited.

(5) In this section, "**dangerous goods**" means goods designated as dangerous goods by safety regulations.

**Safety of submersible and supporting apparatus.**

**83.** (1) This section applies to any submersible or supporting apparatus –

- (a) operated within Guernsey waters, or
- (b) launched or operated from, or comprising, a Guernsey ship.

(2) The Board may make regulations –

- (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

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any submersible apparatus except in accordance with the conditions of a licence granted under the regulations, and

(e) for the registration of submersible apparatus.

(3) Schedule 2 shall have effect for supplementing the provisions of this section.

(4) In this section –

**"apparatus"** includes any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment,

**"specified"** means specified in regulations made by the Board for the purposes of this section,

**"submersible apparatus"** means any 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, and

**"supporting apparatus"** means any apparatus used, or designed for use, in connection with the operation of any submersible apparatus.

*Special provisions*

**Load lines.**

**84.** Schedule 3 (which makes provision as to load lines) shall have effect.

**Charts and other information.**

**85.** (1) The Board may make rules specifying such charts, directions or information as appear to it necessary or expedient for the safe operation of ships.

(2) Rules under this section may require Guernsey ships, or such descriptions of Guernsey ships as may be specified in the rules, to carry (either at all times or on such voyages as may be specified in the rules) copies of the charts, directions or information so specified.

(3) If a ship goes to sea or attempts to go to sea without carrying copies of the charts, directions or information which it is required to carry by rules under this section the master or owner shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

**Report of dangers to navigation.**

**86.** (1) The master of any Guernsey ship, on meeting with any of the dangers to navigation specified in subsection (2), shall send information accordingly, by all means of communication at his disposal and in accordance with rules to be made for the purposes of this section, to ships in the vicinity and to such authorities on shore as may be prescribed by those rules.

(2) The dangers to navigation referred to in subsection (1) are –

- (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, or
- (f) any other direct danger to navigation.

(3) Rules for the purposes of this section shall be made by the Board.

(4) If the master of a ship fails to comply with the provisions of this section, he shall be liable to a fine not exceeding level 4 on the uniform scale.

(5) Every person in charge of a controlled station for wireless telegraphy shall, on receiving the signal prescribed by the said rules for indicating that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so required by the Board, shall transmit the message in such manner as may be required by the Board.

(6) Compliance with subsection (5) shall be deemed to be a condition of every wireless telegraphy licence.

(7) In this section –

**"controlled station for wireless telegraphy"** means such a station controlled by the Secretary of State; and **"controlled"** includes controlled by means of a licence granted by him,

**"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 meaning as in the Wireless Telegraphy Act 1949<sup>h</sup>, as extended to Guernsey<sup>i</sup>;

and the master of a ship shall be deemed to have met with a tropical storm if he has reason to believe that there is such a storm in his vicinity.

*Assistance at sea*

**Duty of ship to assist the other in case of collision.**

**87.** (1) In every case of collision between two ships, it shall be the duty of the master of each ship, if and so far as he can do so without danger to his own ship, crew and passengers (if any) –

- (a) to render to the other ship, its master, crew and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other ship until he has ascertained that it has no need of further assistance, and
- (b) to give to the master of the other ship the name of his own ship and also the names of the ports from which it

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<sup>h</sup> An Act of Parliament (1949 c. 54).

<sup>i</sup> By Order in Council under section 20(3) of that Act: the Wireless Telegraphy (Channel Islands) Order, 1952 (S.I. 1952/1900 (see Ordres en Conseil Vol. XV, p. 304)), as amended (S.I. 1967/1279 and S.I. 1969/1369 (see Ordres en Conseil Vol. XXI, p. 181; Vol. XXII, p. 222)).

comes and to which it is bound.

(2) The duties imposed on the master of a ship by subsection (1) apply to the masters of Guernsey ships and to the masters of foreign ships when in Guernsey waters.

(3) The failure of the master of a ship to comply with the provisions of this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default.

(4) If the master fails without reasonable excuse to comply with this section, he shall –

- (a) in the case of a failure to comply with subsection (1)(a), be guilty of an offence and liable –
  - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £50,000, or both,
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both, and
- (b) in the case of a failure to comply with subsection (1)(b), be guilty of an offence and liable –
  - (i) on summary conviction to a fine not exceeding level 5 on the uniform scale,

- (ii) on conviction on indictment, to a fine,

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

**Duty to assist ships, etc. in distress.**

**88.** (1) The master of a ship, on receiving at sea a signal of distress or information from any source that a ship or aircraft is in distress, shall proceed with all speed to the assistance of the persons in distress (informing them if possible that he is doing so) unless he is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he is released from this duty under subsection (4) or (5).

(2) Where the master of any ship in distress has requisitioned any ship that has answered his call, it shall be the duty of the master of the requisitioned ship to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.

(3) The duties imposed on the master of a ship by subsections (1) and (2) apply to the masters of Guernsey ships and to the masters of foreign ships when in Guernsey waters.

(4) A master shall be released from the duty imposed by subsection (1) as soon as he is informed of the requisition of one or more ships other than his own and that the requisition is being complied with by the ship or ships requisitioned.

(5) A master shall be released from the duty imposed by subsection (1), and, if his ship has been requisitioned, from the duty imposed by subsection (2), if he is informed by the persons in distress, or by the master of any

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ship that has reached the persons in distress, that assistance is no longer required.

(6) If a master fails to comply with the preceding provisions of this section he shall be guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(7) Compliance by the master of a ship with the provisions of this section shall not affect his right, or the right of any other person, to salvage.

*Unsafe ships*

**Meaning of "dangerously unsafe ship".**

89. (1) For the purposes of sections 90, 91, 92 and 93 a ship in port is "**dangerously unsafe**" if, having regard to the nature of the service for which it is intended, the ship is, by reason of the matters mentioned in subsection (3), unfit to go to sea without serious danger to human life.

(2) For the purposes of those sections 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, the ship is, by reason of the matters mentioned in subsection (3), either –

- (a) unfit to remain at sea without serious danger to human life, or

- (b) unfit to go on a voyage without serious danger to human life.
- (3) Those matters are –
  - (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) undermanning,
  - (c) overloading or unsafe or improper loading,
  - (d) any other matter relevant to the safety of the ship,

and are referred to in those sections, in relation to any ship, as "**the matters relevant to its safety**".

(4) Any reference in those sections to "**going to sea**" shall, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

**Power to detain dangerously unsafe ship.**

90. (1) Where a ship which is –

- (a) in a port in Guernsey, or
- (b) at sea in Guernsey waters,

appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained.

(2) Subject to subsection (3), the power of detention conferred by subsection (1) is exercisable in relation to foreign ships as well as Guernsey ships.

(3) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising –

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation.

(4) The officer detaining the ship shall serve on the master of the ship a detention notice which shall –

- (a) state that the relevant inspector is of the opinion that the ship is a dangerously unsafe ship,
- (b) specify the matters which, in the relevant inspector's opinion, make the ship a dangerously unsafe ship, and
- (c) require the ship to comply with the terms of the notice until it is released by a competent authority.

(5) In the case of a ship which is not a British ship the officer detaining the ship shall cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs.

(6) In this section –

"**competent authority**" means any officer mentioned in section 270(1), and

"**relevant inspector**" means any person mentioned in paragraph (a) or (b) of section 248(1).

**References of detention notices to arbitration.**

**91.** (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of section 90(4)(b) in connection with any opinion formed by the relevant inspector constituted a valid basis for that opinion shall, if the master or owner of the ship so requires by a notice given to the relevant inspector within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, appointed by the Bailiff for that question to be decided by him.

(2) Where a notice is given by the master or owner of the ship in accordance with subsection (1), the giving of the notice shall not suspend the operation of the detention notice unless, on the application of the person requiring the reference, the arbitrator so directs.

(3) The arbitrator shall have regard, in coming to his decision, to any other matters not specified in the detention notice which appear to him to be relevant to whether the ship was or was not a dangerously unsafe ship.

(4) Where on a reference under this section the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion he shall either cancel the detention notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(5) The arbitrator shall include in his decision a finding whether there was or was not a valid basis for the detention of the ship as a dangerously unsafe ship.

(6) A person shall not be qualified for appointment as an arbitrator under this section unless he is –

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate,
- (b) a naval architect,
- (c) a person falling within subsection (7), or
- (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(7) For the purposes of subsection (6)(c) a person falls within this subsection if he is –

- (a) an Advocate of the Royal Court of Guernsey, or
- (b) a member of the Bar of England and Wales, or the Bar of Northern Ireland, or of the Faculty of Advocates in Scotland, or
- (c) a Solicitor of the Supreme Court of England and Wales, or of the Supreme Court of Northern Ireland, or in Scotland,

of not less than 10 years' standing.

(8) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 249.

(9) The Arbitration (Guernsey) Laws, 1982 and 1986<sup>j</sup> or the Arbitration (Alderney) Laws, 1983 and 1986<sup>k</sup>, as the case may be, shall apply in relation to an arbitration in pursuance of this section.

(10) In this section, "**relevant inspector**" has the same meaning as in section 90.

**Compensation in connection with invalid detention of ship.**

**92.** (1) If on a reference under section 91 relating to a detention notice in relation to a ship –

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<sup>j</sup> Ordres en Conseil Vol. XXVII, p. 525; Vol. XXIX, p. 178.

<sup>k</sup> Ordres en Conseil Vol. XXVIII, p. 236; Vol. XXIX, p. 171.

- (a) the arbitrator decides that any matter did not constitute a valid basis for the relevant inspector's opinion, and
- (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the owner of the ship such compensation in respect of any loss suffered by him in consequence of the detention of the ship as the arbitrator thinks fit.

(2) Any compensation awarded under this section shall be payable by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

(3) In this section, "**relevant inspector**" has the same meaning as in section 90.

**Owner and master liable in respect of dangerously unsafe ship.**

**93.** (1) If a ship which –

- (a) is in a port in Guernsey, or
- (b) is a Guernsey ship and is in any other port,

is dangerously unsafe, then, subject to subsections (4) and (5), the master and the owner of the ship shall each be guilty of an offence.

(2) Where, 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 any person or persons other than the

owner, and have been so assumed by that person or (as the case may be) by each of those persons 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 subsection (1) shall be construed as a reference to that other person or (as the case may be) to each of those other persons.

(3) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to a fine not exceeding £50,000,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(4) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence –

- (a) arrangements had been made which 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 which are specified in the charge, or

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

(5) It shall also be a defence in proceedings for an offence under this section to prove –

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

- (i) where the accused is the owner, his responsibilities with respect to the matters relevant to the ship's safety, or

- (ii) where the accused is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection, had at the time of the alleged offence been wholly assumed by some other person or persons party thereto, and

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

and, in determining whether the accused had done so, regard shall be had in particular to the matters mentioned in subsection (6).

(6) Those matters are –

(a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of the deficiency in the discharge of the relevant responsibilities, and

(b) the extent to which the accused was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (5)(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 accused to place himself in that position.

(7) In this section –

**"management agreement"**, in relation to a ship, means any 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 or behalf of the owner or on behalf of some other person), and

"relevant responsibilities" shall be construed in accordance with subsection (5).

(8) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

**Use of unsafe lighters, etc.**

**94.** (1) If any person uses or causes or permits to be used in navigation any lighter, barge or like 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 thereby endangered, he shall be guilty of an offence and liable –

- (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (ii) on conviction on indictment, to a fine.

(2) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to

any person carried in the vessel.

**Owner liable for unsafe operation of ship.**

**95.** (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

(2) This section applies to –

(a) any Guernsey ship, and

(b) any ship which –

(i) is registered under the law of any country outside Guernsey, and

(ii) is within Guernsey waters while proceeding to or from a port in Guernsey,

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

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding £50,000,

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (4) Where any such 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 section 93,

any reference to the owner of the ship in subsection (1) or (3) shall be construed as including a reference –

- (i) to the charterer under the charter by demise, or
- (ii) to any such manager as is referred to in paragraph (b), or
- (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager,

and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

*Temporary exclusion zones*

**Temporary exclusion zones.**

96. (1) Subsection (2) applies where a ship, structure or other thing –

(a) is in Guernsey waters or a part of the sea specified by virtue of section 131(2)(b), and

(b) is wrecked, damaged or in distress,

and in this section and section 97, "**the relevant casualty**" means that ship, structure or other thing.

(2) If it appears to the Board –

(a) that significant harm will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress, and

(b) that if access to an area around the relevant casualty were restricted in accordance with section 97, significant harm, or the risk of such harm, would be prevented or reduced,

it may by direction identify an area to which access is so restricted ("**a temporary exclusion zone**").

(3) In this section, "**significant harm**" means –

(a) significant pollution in Guernsey, in Guernsey waters or in a part of the sea specified by virtue of section 131(2)(b), or

(b) significant damage to persons or property.

(4) A temporary exclusion zone may not include any area which is neither within Guernsey waters nor within a part of the sea specified by virtue of section 131(2)(b).

(5) If it appears to the Board at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of such harm, it shall by direction vary the direction establishing the zone accordingly.

(6) Subject to subsections (4) and (5), a temporary exclusion zone may be identified by reference to the position of the relevant casualty from time to time.

(7) If it appears to the Board at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of such harm, it shall by direction revoke the direction establishing the zone.

(8) Where the Board gives a direction under this section, it shall –

(a) as soon as practicable, publish it in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by it, and

(b) within the period of 24 hours from the giving of the direction, send a copy of it to the International Maritime Organization.

(9) Subsection (2) does not apply where an order under section 14 of the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986, as amended<sup>1</sup>, has effect in relation to the relevant casualty.

**Temporary exclusion zones: offences.**

97. (1) If a direction establishing a temporary exclusion zone contains a statement of a description mentioned in subsection (2), then, subject to subsection (4), no ship shall enter or remain in the zone.

(2) The statement is one to the effect that the direction is given for the purpose of preventing or reducing significant pollution, or the risk of significant pollution, in Guernsey, in Guernsey waters or in a part of the sea specified by virtue of section 131(2)(b).

(3) If a direction establishing a temporary exclusion zone does not contain a statement of a description mentioned in subsection (2), then, subject to subsections (4) and (5) –

(a) no ship shall enter or remain in any part of the zone that is in Guernsey waters, and

(b) no Guernsey ship shall enter or remain in any part of the zone that is in a part of the sea specified by virtue of section 131(2)(b).

(4) A ship may enter or remain in a temporary exclusion zone or

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<sup>1</sup> Ordres en Conseil Vol. XXIX, p. 390; No. XIV of 1997; No. VIII of 1998; Recueil d'Ordonnances Tome XXVI, pp. 182 and 306.

a part of such a zone if it does so –

- (a) in accordance with the direction establishing the zone,
- (b) with the consent of the Board, or
- (c) in accordance with regulations made by the Board for the purposes of this section.

(5) A qualifying foreign ship may enter a temporary exclusion zone or a part of such a zone if in doing so it is exercising the right of transit passage through straits used for international navigation.

(6) If a ship enters or remains in a temporary exclusion zone or a part of such a zone in contravention of subsection (1) or (3) then, subject to subsection (7), its owner and its master shall each be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding £50,000,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(7) It shall be a defence for a person charged with an offence under this section to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable enquiry have become, known to the master.

*Power to require ships to be moved*

**Power to require ships to be moved.**

98. (1) The powers conferred by this section shall be exercisable where a ship in Guernsey waters –

- (a) is not a qualifying foreign ship, or
- (b) is such a ship but appears to the Board to be exercising neither of the following rights –
  - (i) the right of innocent passage, and
  - (ii) the right of transit passage through straits used for international navigation.

(2) Subject to subsection (3), the Board may, for any one or more of the purposes specified in subsection (4), give directions to any of the persons specified in subsection (5) requiring –

- (a) that the ship is to be moved, or is to be removed from a specified area or locality or from Guernsey waters, or
- (b) that the ship is not to be moved to a specified place or area within Guernsey waters, or over a specified route within Guernsey waters.

(3) The power of the Board under subsection (2)(a) to require a ship to be removed from Guernsey waters is not exercisable in relation to a Guernsey ship.

- (4) The purposes referred to in subsection (2) are –
- (a) the purpose of securing the safety of the ship or of other ships, of persons on the ship or other ships, or of any other persons or property, or of preventing or reducing any risk to such safety, and
  - (b) the purpose of preventing or reducing pollution in Guernsey, in Guernsey waters or in a part of the sea specified by virtue of section 131(2)(b), or of preventing or reducing any risk of such pollution.

- (5) The persons referred to in subsection (2) are –
- (a) the owner of the ship or any person in possession of the ship, or
  - (b) the master of the ship.

(6) If in the opinion of the Board the powers conferred by subsection (2) are, or have proved to be, inadequate for any of the purposes specified in subsection (4), the Board may for that purpose take any such action as it has power to require to be taken by a direction under this section.

(7) The powers of the Board under subsection (6) shall also be exercisable by such persons as may be authorised for the purpose by the Board.

(8) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(9) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (6) or (7) –

- (a) does not constitute contempt of court, and
- (b) does not in any circumstances make Her Majesty's Sheriff, the Clerk of the Court of Alderney or the Prévôt of Sark, as the case may be, liable in any civil proceedings.

(10) In this section, unless a contrary intention appears, "**specified**" in relation to a direction under this section, means specified by the direction.

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**NOTE**

*In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.*

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**Offences in relation to section 98.**

**99.** (1) If the person to whom a direction is duly given under section 98 contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

- (2) If a person intentionally obstructs any person who is –
- (a) acting on behalf of the Board in connection with the giving or service of a direction under section 98,
  - (b) acting in compliance with a direction under that section, or
  - (c) acting under section 98(6) or (7),

he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

(4) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to a fine not exceeding £50,000,
- (b) on conviction on indictment, to a fine.

**Service of directions under section 98.**

**100.** (1) If the Board is satisfied that a company or other body is not

one to which section 116 of the Companies (Guernsey) Law, 1994, as amended<sup>m</sup>, or, as the case may be, section 160 of the Companies (Alderney) Law, 1994<sup>n</sup> (service of documents) applies so as to authorise the service of a direction on that body under either of those sections, it may give a direction under section 98 of this Law to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship.

(2) For the purpose of giving or serving a direction under section 98 to or on any person on a ship, a person acting on behalf of the Board shall have the right to go on board the ship.

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**NOTE**

*The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.*

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**Requirements to be met by ships in respect of which trans-shipment licences in force.**

**101.** (1) In this section and section 102, "**trans-shipment licence**" means a licence under section 4A of the Sea Fish (Conservation) Act 1967<sup>o</sup> as

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<sup>m</sup> Orders in Council No. XXXIII of 1994 and No. XIV of 1996; Ordinance No. VII of 1995.

<sup>n</sup> Order in Council No. XXXIV of 1994.

<sup>o</sup> An Act of Parliament (1967 c. 84); section 4A was inserted by section 21(1) of the Fisheries Act 1981 (1981 c. 29).

extended to Guernsey<sup>P</sup> (prohibition of trans-shipment of fish unless authorised by a licence).

(2) The Board may, for all or any of the purposes specified in subsection (3), by regulations prescribe requirements to be met by ships in respect of which trans-shipment licences are in force.

(3) Those purposes are –

- (a) the purpose of securing the safety of ships in respect of which trans-shipment licences are in force and persons on them,
- (b) the purpose of protecting the health of persons on such ships,
- (c) the purpose of securing the safety of any other persons or property, and
- (d) the purpose of preventing or reducing pollution.

(4) The matters with respect to which requirements may be prescribed under subsection (2) include, in particular, the construction and equipment of ships, the manning of ships, and operational matters.

(5) Without prejudice to the generality of subsection (2),

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<sup>P</sup> By Order in Council under section 24(2) of that Act: the Sea Fish (Conservation) (Channel Islands) Order 1981 (S.I. 1981/737 (see *Ordres en Conseil* Vol. XXVII, p. 315)), as amended (S.I. 1989/2411 (see *Ordres en Conseil* Vol. XXXII, p. 12)).

regulations under that subsection may apply in relation to a ship in respect of which a trans-shipment licence is in force any requirements contained in –

- (a) safety regulations,
- (b) regulations under section 130, or
- (c) any international agreement,

whether or not those requirements would otherwise apply in relation to that ship.

**Failure to comply with prescribed standards in respect of ship in respect of which trans-shipment licence is in force.**

**102.** (1) If it appears to the Board that any requirement of regulations under section 101(2) or regulations under section 202 is being contravened in respect of a ship in respect of which a trans-shipment licence is in force, it may serve on the master a notice under subsection (2).

(2) A notice under this subsection must specify the contravention by reason of which it is given and must –

- (a) prohibit the receiving by the ship of fish trans-shipped from another ship,
- (b) prohibit the processing of fish on the ship, or
- (c) prohibit both such receiving and such processing.

(3) The Board shall revoke a notice under subsection (2) if it is satisfied that the contravention specified in it has been remedied.

(4) If a trans-shipment licence ceases to be in force in respect of a ship to which a notice under subsection (2) relates, the notice is revoked by virtue of this subsection.

(5) If without reasonable excuse the master of a ship causes or permits any prohibition imposed by a notice under subsection (2) to be contravened in respect of the ship, he shall be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding £50,000,

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(6) The obligation imposed by regulations under section 101(2) shall not be enforceable except in accordance with this section, but this subsection does not limit the powers conferred by section 248.

*Control of, and returns as to, persons in ships*

**Offences in connection with passenger ships.**

**103.** (1) A person commits an offence if, in relation to a ship to which this section applies, he does any of the following things, that is to say –

(a) if, being drunk or disorderly, he has been on that account refused admission to the ship by the owner or any person in his employment, and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to

enter the ship,

- (b) if, being drunk or disorderly on board the ship, he is requested by the owner or any person in his employment to leave the ship at any place in Guernsey at which he can conveniently do so, and, after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request,
- (c) if, on board the ship, after warning by the master or other officer thereof, he molests or continues to molest any passenger,
- (d) if, after having been refused admission to the ship by the owner or any person in his employment on account of the ship being full, and having had the amount of his fare (if he has paid it) returned or tendered to him, he nevertheless persists in attempting to enter the ship,
- (e) if, having gone on board the ship at any place, and being requested, on account of the ship being full, by the owner or any person in his employment to leave the ship before it has left that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, he does not comply with that request,
- (f) if, on arriving in the ship at a point to which he has paid his fare, he knowingly and intentionally refuses or neglects to leave the ship, and

- (g) if, on board the ship he fails, when requested by the master or other officer thereof, either to pay his fare or show such ticket or other receipt, if any, showing the payment of his fare, as is usually given to persons travelling by and paying their fare for the ship,

but his liability in respect of any such offence shall not prejudice the recovery of any fare payable by him.

(2) A person commits an offence if, on board any ship to which this section applies he intentionally does or causes to be done anything in such a manner as to –

- (a) obstruct or damage any part of the machinery or equipment of the ship, or
- (b) obstruct, impede or molest the crew, or any of them, in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship.

(3) The master or other officer of any ship to which this section applies, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any offence against subsection (1) or (2) and whose name and address are unknown to the master or officer, and deliver that person to an officer of police.

(4) A person guilty of an offence against subsection (1) or (2) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the uniform scale.

(5) If any person commits an offence against subsection (1) or (2) and on the application of the master of the ship, or any other person in the employment of the owner thereof, refuses to give his name and address, or gives a false name or address, that person shall be guilty of an additional offence and liable, on summary conviction, to a fine not exceeding level 2 on the uniform scale.

(6) This section applies to a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations.

**Power to exclude drunken passengers from certain passenger ships.**

**104.** (1) The master of any ship to which this section applies may refuse to receive on board any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him on shore at any convenient place.

(2) A person so refused admittance or put on shore shall not be entitled to the return of any fare he has paid.

(3) This section applies to a ship (whether or not a Guernsey ship) carrying more than 12 passengers and employed in carrying passengers between places in the limited European trading area as for the time being defined in regulations made under section 45 by the Board.

**Stowaways.**

**105.** (1) If a person, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a Guernsey ship, he shall be guilty of an offence and liable on summary conviction to a fine not

exceeding level 3 on the uniform scale.

(2) Nothing in section 267 shall be taken to limit the jurisdiction of any court in Guernsey to deal with an offence under this section which has been committed in a country outside Guernsey by a person who is not a British citizen.

**Unauthorised presence on board ship.**

**106.** Where a Guernsey ship or a ship registered in any other country is in a port in Guernsey and a person who is neither in Her Majesty's service nor authorised by law to do so –

- (a) goes on board the ship without the consent of the master or of any other persons authorised to give it, or
- (b) remains on board the ship after being requested to leave by the master, an officer of police, an officer authorised by the Board or an officer of Customs and Excise,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Master's power of arrest.**

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

**Unauthorised persons: offences relating to safety.**

**108.** (1) Where a person goes to sea in a ship without the consent of

the master or of any other person authorised to give it or is conveyed in a ship in pursuance of section 70(5)(b), sections 56 and 57 shall apply as if he were a seaman employed in the ship.

(2) Subsection (1) shall, in its application to section 56 so far as that section applies to ships which are not sea-going ships have effect –

(a) with the omission of the words "goes to sea in a ship",  
and

(b) with the insertion, after the words "to give it", of the words "is on board a ship while it is on a voyage or excursion".

(3) This section does not apply to fishing vessels.

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

**109.** (1) The master of every ship, whether or not a Guernsey ship, which carries any passenger to a place in Guernsey from any place out of Guernsey, or from any place in Guernsey to any place out of Guernsey, shall furnish to such person and in such manner as the Board directs a return giving the total number of any passengers so carried, distinguishing, if so directed by the Board, the total number of any class of passengers so carried, and giving, if the Board so directs, such particulars with respect to passengers as may be for the time being required by the Board.

(2) Any passenger shall furnish the master of the ship with any information required by him for the purpose of the return.

(3) If –

- (a) the master of a ship fails to make a return as required by this section, or makes a false return,
- (b) any passenger refuses to give any information required by the master of the ship for the purpose of the return required by this section, or, for that purpose, gives to the master information which he knows to be false or recklessly gives to him information which is false,

the master or (as the case may be) passenger shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale in the case of a failure or refusal and level 3 on the uniform scale in the case of a false return or false information.

**Returns of births and deaths in ships, etc.**

**110.** (1) The Board may make regulations under the following provisions of this section in relation to births and deaths in the circumstances specified in those provisions.

(2) Regulations under this section may require the master of any Guernsey ship to make a return to an officer of the Board appointed for that purpose or a proper officer of –

- (a) the birth or death of any person occurring in the ship,  
and
- (b) the death of any person employed in the ship,  
wherever occurring outside Guernsey,

and to notify any such death to such person (if any) as the deceased may have named to him as his next of kin.

(3) Regulations under this section may require the master of any ship not registered in Guernsey which calls at a port in Guernsey in the course of or at the end of a voyage to make a return to an officer of the Board appointed for that purpose of any birth or death of a British citizen, a British Dependent Territories citizen or a British Overseas citizen which has occurred in the ship during the voyage.

(4) The returns referred to in subsections (2) and (3) shall be for transmission to the Registrar of British Ships.

(5) Regulations under this section may require the Registrar of British Ships to record such information as may be specified in the regulations about such a death as is referred to in subsection (2) in a case where –

- (a) it appears to him that the master of the ship cannot perform his duty under that subsection because he has himself died or is incapacitated or missing, and
- (b) any of the circumstances specified in subsection (6) exist.

(6) Those circumstances are that –

- (a) the death in question has been the subject of –
  - (i) an inquest held by the Magistrate's Court, or

(ii) an inquiry held in pursuance of section 261,

and the findings of the inquest or inquiry include a finding that the death occurred, or

(b) the deceased's body has been the subject of a post-mortem examination and in consequence the Magistrate's Court is satisfied that an inquest is unnecessary.

(7) Regulations under this section may require the Registrar of British Ships to send a certified copy of any return or record made thereunder to the Registrar-General of Births and Deaths for the Bailiwick of the Island of Guernsey or the Registrar of Births and Deaths of the Island of Alderney or Sark, as the case may require.

(8) The Registrar of Births and Deaths to whom any such certified copies are sent –

(a) shall record the information contained therein in the marine register, and

(b) may record in the marine register such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register,

and the enactments relating to the registration of births and deaths in the Islands of Guernsey, Alderney and Sark shall have effect as if the marine register were a register of births (other than stillbirths) or deaths or certified copies of entries in

such a register had been transmitted to the Registrar of Births and Deaths in accordance with those enactments.

(9) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 2 on the uniform scale or not exceeding a lesser amount.

(10) Regulations under this section may contain provisions authorising the registration of the following births and deaths occurring outside Guernsey in circumstances where no return is required to be made under the preceding provisions of this section –

- (a) any birth or death of a British citizen, a British Dependent Territories citizen or a British Overseas citizen which occurs in a ship not registered in Guernsey,
- (b) any death of any such citizen who has been employed in a ship not registered in Guernsey which occurs elsewhere than in the ship, and
- (c) any death of a person who has been employed in a Guernsey ship which occurs elsewhere than in the ship.

(11) References in this section to deaths occurring in a ship include references to deaths occurring in a ship's boat.

(12) In this section, "**the Magistrate's Court**" includes the Court of Alderney and the Court of the Seneschal of Sark, as the case may be.

PART V  
FISHING VESSELS

CHAPTER I  
SKIPPER AND SEAMEN

*Engagement and discharge of crews*

**Regulations relating to crew agreements.**

111. (1) The Board may make regulations prescribing the procedure to be followed in connection with the making of crew agreements between persons employed in Guernsey fishing vessels and persons employing them and prescribing the places where such crew agreements are to be made or where an agreement with any person may be added to those contained in such a crew agreement.

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 3 on the uniform scale or such less amount as may be specified in the regulations.

*Wages*

**Payments of seamen's wages.**

112. Except as provided by or under Part III or any other enactment, the wages due to a seaman under a crew agreement relating to a Guernsey fishing vessel shall be paid to him in full.

**Regulations relating to wages: deductions.**

113. The power to make regulations conferred by section 30 shall include

power to provide that the amount of a deduction of a description specified in the regulations from wages in respect of employment in a fishing vessel is to be determined by a body established or approved by the Board in pursuance of regulations made under section 58.

**Accounts of wages and catch.**

**114.** (1) Subject to regulations made under section 30 or 70, the persons employing any seaman under a crew agreement relating to a Guernsey fishing vessel shall deliver to him at a time prescribed by regulations under this section an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.

(2) Where the wages of any person employed in a Guernsey fishing vessel are in any manner related to the catch the persons employing him shall at a time prescribed by regulations under this section deliver to the master an account (or, if the master is the person employing him, make out an account) showing how those wages (or any part thereof related to the catch) are arrived at and shall make the account available to the crew in such manner as may be prescribed by the regulations.

(3) Where there is a partnership between the master and any members of the crew of a Guernsey fishing vessel the owner of the vessel shall at a time prescribed by regulations under this section make out an account showing the sums due to each partner in respect of his share and shall make the account available to the partners.

(4) The Board may make regulations prescribing the time at which any account required by this section is to be delivered or made out and the manner in which the account required by subsection (2) and (3) is to be made available.

(5) If a person fails without reasonable excuse to comply with the preceding provisions of this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

**Restriction on assignment of and charge upon wages.**

**115.** Nothing in section 32 shall affect the operation of the Ordinance entitled "Ordonnance relative à l'arrêt de Gages des Employés" made on 8<sup>th</sup> July, 1933 in relation to wages due to a person employed in a fishing vessel.

**Right, or loss of right, to wages in certain circumstances.**

**116.** Section 36 does not apply to so much of the wages of a seaman employed in a fishing vessel as is in any manner related to the catch.

*Safety, health and welfare*

**Hours of work.**

**117.** (1) The Board may make regulations prescribing the maximum periods of duty and minimum periods of rest for seamen employed in Guernsey fishing vessels, and such regulations may make different provision for different descriptions of fishing vessels or seamen employed in them or for fishing vessels and seamen of the same description in different circumstances.

(2) If any provision of regulations made under this section is contravened in the case of any seaman employed in a fishing vessel the persons employing him and the master shall each be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

*Manning and qualifications*

**Production of crew certificates and other documents of qualification.**

**118.** (1) Any person serving or engaged to serve in a Guernsey fishing vessel and holding any certificate or other document which is evidence that he is qualified for the purposes of section 45 shall on demand produce it to any person who is a British sea-fishery officer for the purposes of the Sea Fisheries provisions.

(2) If a person fails without reasonable excuse to produce on demand any such certificate or other document he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(3) In this section, the "**Sea Fisheries provisions**" means any enactment for the time being in force relating to sea fishing, including any enactment relating to fishing for shellfish, salmon or migratory trout.

*Offences by seamen*

**Drunkenness on duty.**

**119.** (1) If the skipper of or a seaman employed or engaged in a Guernsey fishing vessel is, while on board the vessel, under the influence of drink or a drug to such an extent that his capacity to fulfil his responsibility for the vessel or, as the case may be, carry out the duties of his employment or engagement is impaired, he shall (subject to subsection (2)) be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) In proceedings for an offence under this section it shall be a

defence to prove that at the time of the act or omission alleged against the accused he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice and complied with any directions given as part of that advice or that he had no reason to believe that the drug might have the influence it had.

**Unauthorised liquor.**

- 120.** (1) A person who, in Guernsey or elsewhere –
- (a) takes any unauthorised liquor on board a Guernsey fishing vessel,
  - (b) has any unauthorised liquor in his possession on board such a vessel,
  - (c) permits another person to take on board such a vessel, or to have in his possession on board such a vessel, any unauthorised liquor, or
  - (d) intentionally obstructs another person in the exercise of powers conferred on the other person by subsection (5),

shall, subject to subsections (3) and (4), be guilty of an offence.

- (2) A person guilty of an offence under subsection (1) shall be liable –
- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(3) It shall be a defence in proceedings for an offence under subsection (1)(a) or (b) to prove –

- (a) that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he had reasonable grounds for the belief, or
- (b) that the accused did not know that the liquor in question was in his possession.

(4) It shall be a defence in proceedings for an offence under subsection (1)(c) to prove that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he had reasonable grounds for the belief.

(5) If an authorised person has reason to believe that an offence under subsection (1)(a) or (b) has been committed by another person in connection with a fishing vessel, the authorised person –

- (a) may go on board the vessel and search it and any property on it and may, if the other person is on board the vessel, search him there in an authorised manner, and
- (b) may take possession of any liquor which he finds on

the vessel and has reason to believe is unauthorised liquor and may detain the liquor for the period needed to ensure that the liquor is available as evidence in proceedings for the offence.

(6) In this section –

**"an authorised manner"** means a manner authorised by regulations made by the Board,

**"authorised person"**, in relation to a vessel, means –

- (a) an officer of the Board authorised for that purpose,
- (b) a proper officer,
- (c) the master of the vessel in question,
- (d) the owner of the vessel in question,
- (e) any person instructed by the master or owner to prevent the commission of offences under subsection (1) in relation to the vessel,

**"liquor"** means spirits, wine, beer, cider, perry and any other fermented, distilled or spirituous liquor, and

**"unauthorised 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 master nor the owner of the vessel nor by a person authorised by the owner

of the vessel to give such permission.

(7) Any reference in subsection (6) to the owner of a vessel shall be construed –

- (a) as excluding any 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.

**Disciplinary offences.**

**121.** (1) Section 57(1)(a) and (b) shall not apply to fishing vessels and persons serving in them.

(2) In relation to Guernsey fishing vessels, section 58 shall have effect with the substitution for subsection (2) of the following –

" (2) Regulations may provide for the hearing on shore in Guernsey, by a disciplinary body, of a complaint by the master or owner of such a fishing vessel against a seaman alleging that during his employment in the vessel, the seaman contravened a local industrial agreement relating to his employment on the vessel and for requiring the disciplinary body to have regard to the agreement in determining whether the allegation is proved.

The alleged contravention may be one on or off the ship and in Guernsey or elsewhere."

(3) Regulations under section 58 may include provision authorising persons to determine, for the purposes of that section in its application to Guernsey fishing vessels, what agreements are or were local industrial agreements and which local industrial agreement relates or related to a person's employment in a particular vessel.

*Exemptions*

**Power to grant exemptions from this Chapter.**

**122.** The Board may grant exemptions from any requirements of Part III or this Chapter or of any regulations made thereunder –

- (a) with respect to any fishing vessel or to a fishing vessel of any description, or
- (b) with respect to any person or a person of any description serving in a fishing vessel or in a fishing vessel of any description,

and nothing in any other provision of Part III or this Chapter conferring a power to provide for or grant exemptions shall be taken to restrict the power conferred by this section.

CHAPTER II

SAFETY

**Fishing vessel construction rules.**

**123.** (1) The Board may make rules (in this Chapter referred to as "**fishing vessel construction rules**") prescribing requirements for the hull, equipment and machinery of Guernsey fishing vessels of any description (including

any description framed by reference to the areas in which the vessels operate or the dates on which they were first registered in Guernsey or on which their construction was begun).

(2) The Board may exempt any fishing vessel or description of fishing vessel from any requirement of the fishing vessel construction rules.

(3) The Board may do so generally or for a specified time or with respect to a specified voyage or to voyages in a specified area, and it may do so subject to any specified conditions.

(4) A surveyor of ships may inspect any fishing vessel for the purposes of seeing that it complies with the fishing vessel construction rules.

(5) If –

(a) the fishing vessel construction rules are contravened with respect to any vessel, or

(b) a vessel is, under subsection (2), exempted from any requirement subject to a condition and the condition is not complied with,

the owner or master of the vessel shall be guilty of an offence and liable –

(i) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(ii) on conviction on indictment, to a fine.

**Fishing vessel survey rules.**

124. (1) The Board may make rules (in this Chapter referred to as "**fishing vessel survey rules**") for the surveying and periodical inspection of Guernsey fishing vessels or any description of such fishing vessels, for the purpose of ensuring their compliance with the requirements of the fishing vessel construction and equipment provisions.

(2) In this Chapter, "**the fishing vessel construction and equipment provisions**" means fishing vessel construction rules and rules or safety regulations relating to life-saving, radio and navigational equipment for fishing vessels.

**Fishing vessel certificates.**

125. (1) If the Board or any person authorised by it for the purpose is satisfied, on receipt of a declaration of survey in respect of a fishing vessel surveyed under the fishing vessel survey rules, 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, then, subject to subsection (2), the Board or person shall, on the application of the owner, issue a certificate (in this and the following sections referred to as a "**fishing vessel certificate**") showing that the vessel complies with those requirements; and for this purpose any requirement from which the vessel has been exempted under section 123(2) or any other provision of this Law shall be deemed not to be applicable to it.

(2) Fishing vessel survey rules may require, in the case of such fishing vessel certificate as may be specified in the rules, that the Board or person authorised to issue it shall not issue the certificate unless satisfied that the vessel in respect of which it is to be issued is provided with the lights, shapes and means of making fog signals required by safety regulations for the prevention of collisions.

(3) A fishing vessel certificate shall be in such form as may be prescribed by the fishing vessel survey rules; and those rules may make provision for the duration, extension or cancellation of any such certificate and for the endorsement on it of information relating to the inspection, in accordance with the rules, of the vessel to which it relates and of any extension of the period for which the certificate was issued.

**Provisions supplementary to section 125.**

**126.** (1) The Board may require a fishing vessel certificate which has expired or been cancelled, to be delivered up as it directs.

(2) If the owner or skipper of the fishing vessel fails without reasonable excuse to comply with the requirement made under subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

(3) The owner or skipper of a fishing vessel to whom a fishing vessel certificate is issued shall forthwith, on the receipt of the certificate by him (or his agent), cause a copy of it to be put up in some conspicuous place on board the vessel, so as to be legible to all persons on board, and to be kept so put up and legible while the certificate remains in force and the vessel is in use.

(4) If the owner or skipper of a fishing vessel fails without reasonable excuse to comply with subsection (3), he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the uniform scale.

(5) If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent fishing vessel certificate he shall be guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale, or both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) A fishing vessel certificate shall be admissible in evidence.

**Prohibition on going to sea without appropriate certificate.**

**127.** (1) No fishing vessel required to be surveyed under the fishing vessel survey rules shall go 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 the vessel.

(2) If a fishing vessel goes to sea in contravention of subsection (1) the owner or skipper of the vessel shall be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(3) The skipper of any Guernsey fishing vessel shall on demand produce to any sea-fishery officer or any officer of Customs and Excise, or of the Board, any certificate required by this Chapter; and the fishing vessel, if in Guernsey waters, may be detained until the certificate is so produced.

**Notice of alterations.**

**128.** (1) Where a fishing vessel certificate is in force in respect of a fishing vessel and –

- (a) the certificate shows compliance with requirements of the fishing vessel construction rules and an alteration is made in the vessel's hull, equipment or machinery which affects the efficiency thereof or the seaworthiness of the vessel, or
- (b) the certificate shows compliance with requirements of the fishing vessel equipment provisions and an alteration is made affecting the efficiency or completeness of the appliances or equipment which the vessel is required to carry by the fishing vessel equipment provisions,

the owner or skipper shall, as soon as possible after the alteration is made, give written notice containing full particulars of it to the Board or, if the certificate was issued by another person, to that person.

(2) If the notice required by subsection (1) is not given as required by that subsection the owner or skipper shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(3) In this section –

**"alteration"** in relation to anything includes the renewal of any part of it, and

**"the fishing vessel equipment provisions"** means the provisions of

the fishing vessel construction and equipment provisions other than the fishing vessel construction rules.

*Training*

**Training in safety matters.**

**129.** (1) The Board may make regulations for securing that the skipper of and every seaman employed or engaged in a Guernsey fishing vessel is trained in safety matters.

(2) The regulations may provide that if a person goes to sea on a fishing vessel in contravention of a requirement of the regulations –

- (a) he commits an offence and is liable on summary conviction to a fine not exceeding level 2, or if he is the skipper or an owner of the vessel level 5, on the uniform scale, and
- (b) the skipper and each owner of the vessel is (except in respect of a contravention by himself) liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(3) Regulations under this section may make different provision for different cases, or descriptions of case, including different provisions for different descriptions of vessel or according to the circumstances of operation of a vessel.

PART VI

PREVENTION OF POLLUTION

CHAPTER I  
POLLUTION GENERALLY

**Prevention of pollution from ships, etc.**

**130.** (1) The States may by Ordinance make such provision as they consider appropriate for the purpose of giving effect to any provision of any of the following which have been ratified by the United Kingdom on behalf of Guernsey –

- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2<sup>nd</sup> November, 1973,
- (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid,
- (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17<sup>th</sup> 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 30<sup>th</sup>

November, 1990,

- (e) any international agreement not mentioned in paragraphs (a) to (d) which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships,

and in paragraph (e) the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c).

(2) The powers conferred by subsection (1) to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may in particular include provision –

- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and also any of sections 82, 258, 259 and 260,
- (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid and 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 section,

- (d) with respect to the application of the Ordinance to the Crown and the extra-territorial operation of any provision made by or under the Ordinance,
- (e) that a contravention of a provision made by or under the Ordinance shall be an offence punishable on summary conviction by a fine not exceeding level 5 on the uniform scale and on conviction on indictment by imprisonment for a term not exceeding two years and a fine,
- (f) that any such contravention shall be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding level 5 on the uniform scale or such less amount as is prescribed by the Ordinance,
- (g) in connection with offences created by or under the Ordinance, corresponding to that made in connection with offences under section 138 by sections 151(1), 152 and 154 (whether by applying, or making provision for the application of, any of those sections, subject to such modifications as may be specified by or under the Ordinance, or otherwise),
- (h) for detaining any ship in respect of which such a

contravention is suspected to have occurred and, in relation to such a ship, for applying section 270 with such modifications, if any, as are prescribed by the Ordinance,

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular neither paragraph (e) nor (f) shall prejudice paragraph (a).

(4) An Ordinance under subsection (1) in pursuance of paragraph (d) of that subsection may include provision imposing on the Board responsibilities in relation to the preparation, review and implementation of any plans required by the agreement mentioned in that paragraph.

(5) An Ordinance under subsection (1) may –

- (a) make different provision for different circumstances,
- (b) make provision in terms of any document which the States or any person considers relevant from time to time,
- (c) provide exemptions from any provisions of the Ordinance,
- (d) provide for the delegation of functions exercisable by virtue of the Ordinance,
- (e) include such incidental, supplemental and transitional provisions as appear to the States to be expedient for

the purposes of the Ordinance,

- (f) authorise the making of regulations and other instruments for the purposes of this section (except the purposes of subsection (3)(a) and (c)), and
- (g) provide that any enactment or instrument applied by the Ordinance shall have effect as so applied subject to such modifications as may be specified in the Ordinance.

(6) Where an Ordinance under subsection (1) authorises the making of regulations for the purpose of giving effect to an agreement mentioned in paragraphs (a) to (d) or falling within paragraph (e) of that subsection the Ordinance also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement.

This subsection applies in relation to Ordinances and international agreements whenever made.

(7) Regulations made by virtue of paragraph (f) of subsection (5) may make provision corresponding to the provision authorised for an Ordinance by paragraphs (a) to (e) of subsection (5).

(8) An Ordinance in pursuance of subsection (1)(b) or (e) may apply to areas of land or sea or other Guernsey waters notwithstanding that the agreement in question does not relate to those areas.

(9) An Ordinance proposed to be made by virtue of subsection (1) shall not be made unless it is to contain a statement that it is made only for any of

the following purposes, namely –

- (a) giving effect to an agreement mentioned in subsection (1)(a) to (d),
- (b) providing as authorised by subsection (2) in relation to such an agreement and the purposes of subsection (5).

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

**131.** (1) The States may by Ordinance make such provision as they consider appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.

(2) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may in particular include provision –

- (a) corresponding to provision that is authorised for the purposes of section 130 by subsections (3) and (5) of that section, and
- (b) specifying areas of sea above any of the areas for the time being designated under section 1(7) of the Continental Shelf Act 1964<sup>q</sup> as waters within which the jurisdiction and rights of the United Kingdom are exercisable in accordance with Part XII of that Convention for the protection and preservation of the marine environment,

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<sup>q</sup> An Act of Parliament (1964 c. 29).

and provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of paragraph (f) of the said subsection (5).

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

132. (1) The Board may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within Guernsey waters, such provision as it considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

(2) Regulations under this section may, in particular, do any of the following things –

- (a) prohibit transfers of any 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 any specified description employed on board, and
  - (iii) the qualifications and experience to be possessed by persons (whether masters or not)

*Consolidated text*

controlling the carrying out of transfers or operations ancillary thereto,

- (c) provide for proposed transfers to be notified to and approved by persons appointed by the Board or 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 such as may be prescribed by any document specified in the regulations, and
  - (ii) for references in the regulations 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 Board or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Board or that other person may specify, and for altering or cancelling exemptions,

- (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide –
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding £25,000 and on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both,
  - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding £25,000 or such lower amount as is prescribed by the regulations,
  - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b).
- (4) Regulations under this section may –
- (a) make different provision for different classes or descriptions of ships and for different circumstances, and
  - (b) make such transitional, incidental or supplementary provision as appears to the Board to be necessary or

expedient.

CHAPTER II  
WASTE RECEPTION FACILITIES AT HARBOURS

**General.**

**133.** (1) The Board may by regulations make such provision as it considers appropriate in relation to –

- (a) the provision at harbours in Guernsey of facilities for the reception of waste from ships (in this Chapter referred to as "**waste reception facilities**"), and
- (b) the use of waste reception facilities provided at such harbours.

(2) In making the regulations, the Board shall take into account the need to give effect to provisions –

- (a) which are contained in any international agreement mentioned in section 130(1) which has been ratified by the United Kingdom on behalf of Guernsey, and
- (b) which relate to waste reception facilities.

(3) Sections 134 to 136 make further provision with respect to the regulations that may be made under this section.

**Waste management plans.**

**134.** (1) The regulations may make provision requiring a harbour

authority for a harbour in Guernsey –

(a) in such circumstances as may be prescribed, to prepare a plan with respect to the provision and use of waste reception facilities at the harbour, and

(b) to submit the plan to the Board for approval.

(2) The regulations may make provision requiring a person –

(a) if directed to do so by the Board, to prepare a plan with respect to the provision and use of waste reception facilities at any terminals operated by him within a harbour which is in Guernsey and is specified in the direction, and

(b) to submit the plan to the Board for approval.

(3) For the purposes of this Chapter –

(a) "**terminal**" means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers, and

(b) a person operates a terminal if activities at the terminal are under his control.

(4) In the following provisions of this section, "**waste management plan**" means a plan of a description mentioned in subsection (1) or

(2).

(5) The regulations may make provision with respect to the form and content of waste management plans and may in particular require such plans to include –

- (a) proposals as to the information to be provided about waste reception facilities to those who are expected to use them,
- (b) proposals designed to ensure that adequate provision will be made for the disposal of waste deposited in waste reception facilities, and
- (c) proposals about how costs incurred in establishing and running waste reception facilities will be recovered.

(6) The regulations may require a person preparing a waste management plan to have regard to such matters as the Board may prescribe or in a particular case direct.

(7) The regulations may make provision as to the procedures to be followed in connection with waste management plans and may in particular –

- (a) require a person preparing a waste management plan to consult such persons as the Board may prescribe or in a particular case direct,
- (b) enable the Board to approve waste management plans with or without modification or to reject such plans,

- (c) enable the Board, if it is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan, to prepare such a plan,
- (d) require harbour authorities and persons operating terminals to implement waste management plans once approved, or to take such steps as the Board may in a particular case direct for the purpose of securing that approved plans are implemented,
- (e) enable waste management plans, in such circumstances as may be prescribed, to be withdrawn, altered or replaced.

**Charges for and use of waste reception facilities.**

**135.** (1) The regulations may make provision enabling the Board or any other harbour authority, on levying Harbour Dues, to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the harbour authority of waste reception facilities at the harbour.

(2) The regulations may make provision requiring the master of a ship –

- (a) if reasonably required to do so by an officer of the Board appointed for that purpose, or
- (b) in such other circumstances as may be prescribed,

to deposit any waste carried by the ship, or any prescribed description of such waste, in waste reception facilities provided at a harbour in Guernsey.

- (3) The regulations may make provision –
  - (a) for the reference to arbitration of questions as to whether requirements made under regulations made in pursuance of subsection (2)(a) were reasonable, and
  - (b) for compensation to be payable by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be, where a requirement is found to have been unreasonable.

- (4) The regulations may make –
  - (a) provision prohibiting the imposition by persons providing waste reception facilities at harbours in Guernsey of charges for the depositing of waste, or any prescribed description of waste, in the facilities, or
  - (b) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed.

(5) The regulations may provide for charges to be imposed by virtue of subsection (4)(b) –

- (a) even though the charges are for the depositing of

waste in compliance with a requirement imposed by virtue of subsection (2), and

(b) even though charges are also imposed by virtue of subsection (1).

(6) Subsection (7) to (9) apply if the regulations make provision enabling a harbour authority to impose charges of a description mentioned in subsection (1).

(7) The regulations may require information about the charges to be published in a way that is designed to bring the charges to the notice of persons likely to be affected.

(8) The regulations may provide for the charges to be reduced at the instance of the Board following the making of an objection by a person of a prescribed description.

(9) The regulations may make provision as to the recovery of any charges imposed by virtue of this section.

**Supplementary.**

**136.** (1) The regulations may provide that where a person contravenes a requirement under the regulations he is guilty of an offence and is liable –

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, and

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

- (2) The regulations may –
- (a) provide for exemptions from any provision of the regulations,
  - (b) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time,
  - (c) make different provision for different cases,
  - (d) include such incidental, supplemental and transitional provision as appears to the Board to be expedient.

**Interpretation of Chapter II.**

137. In this Chapter –

"**Harbour Dues**" has the same meaning as in the Harbour Dues (Saint Peter Port and Saint Sampson) Law, 1957, as amended<sup>r</sup>, the Harbour Dues, Fees and Charges (Alderney) Law, 1984, as amended<sup>s</sup>, or Part II of the Financial Provisions (Sark) Law, 1978, as amended<sup>t</sup>, as the case may be,

"**prescribe**" means prescribe by regulations, and

"**waste reception facilities**" has the meaning given by section 133(1).

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<sup>r</sup> Ordres en Conseil Vol. XVII, p. 264; Vol. XXIX, p. 340.

<sup>s</sup> Ordres en Conseil Vol. XXVIII, p. 524; Vol. XXX, p. 572.

<sup>t</sup> Ordres en Conseil Vol. XXVI, p. 480; No. X of 1991.

CHAPTER III  
OIL POLLUTION

*General provisions for preventing pollution*

**Discharge of oil from ships into certain Guernsey waters.**

**138.** (1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into Guernsey national waters which are navigable by sea-going ships, then, subject to the following provisions of this Chapter, the following shall be guilty of an offence, that is to say –

- (a) if the discharge is from a ship, the owner or master of the ship, unless he proves that the discharge took place and was caused as mentioned in 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 any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.

(2) Subsection (1) does not apply to any discharge which –

- (a) is made into the sea, and
- (b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Board.

(3) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding £250,000,

(b) on conviction on indictment, to a fine.

(4) In this section, "**sea**" includes any estuary or arm of the sea.

(5) In this section, "**place on land**" includes anything resting on the bed or shore of the sea, or of any other waters included in Guernsey national waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters.

(6) In this section, "**occupier**", in relation to any such thing as is mentioned in subsection (5), if it has no occupier, means the owner thereof.

**Defences of owner or master charged with offence under section 138.**

**139.** (1) Where a person is charged with an offence under section 138 as the owner or master of a ship, it shall be a defence to prove that the oil or mixture was discharged for the purpose of –

(a) securing the safety of any ship,

(b) preventing damage to any ship or cargo, or

(c) saving life,

unless the court is satisfied that the discharge of the oil or mixture was not

necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged with an offence under section 138 as the owner or master of a ship, it shall also be a defence to prove –

- (a) that the oil or mixture escaped in consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture, or
- (b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

**Defences of occupier charged with offence under section 138.**

140. Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 138 as the occupier of a place on land, it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

**Protection for acts done in exercise of certain powers of harbour authorities, etc.**

141. Where any oil, or mixture containing oil, is discharged in

consequence of –

- (a) the exercise of any power conferred by section 242 or 243, or
- (b) the exercise, for the purpose of preventing obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned ships which is exercisable by a harbour authority under any enactment,

and apart from this subsection the authority exercising the power, or a person employed by or acting on behalf of the authority, would be guilty of an offence under section 138 in respect of that discharge, the authority or person shall not be convicted unless it is shown that they or he failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

**Restrictions on transfer of oil at night.**

**142.** (1) No oil shall be transferred between sunset and sunrise to or from a ship in any harbour in Guernsey unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.

(2) A general notice may be given to the harbour master of a harbour that transfers of oil between sunset and sunrise will be frequently carried out at a place in the harbour within such period, not ending later than twelve months after the date on which the notice is given, as is specified in the notice; and if such a notice is given it shall be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice.

(3) Subject to subsection (2), the requisite notice for the purposes of this section shall be a notice given to the harbour master not less than three hours nor more than 96 hours before the transfer of oil begins.

(4) In the case of a harbour which has no harbour master, references in this section to the harbour master shall be construed as references to the harbour authority.

(5) If any oil is transferred to or from a ship in contravention of this section, the master of the ship, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

**Duty to report discharge of oil into waters of harbours.**

**143.** (1) If any oil or mixture containing oil –

- (a) is discharged from a ship into the waters of a harbour in Guernsey, or
- (b) is found to be escaping or to have escaped from a ship into any such waters,

the owner or master of the ship shall forthwith report the occurrence to the harbour master, or, if the harbour has no harbour master, to the harbour authority.

(2) A report made under subsection (1) shall state whether the occurrence falls within subsection (1)(a) or (b).

(3) If a person fails to make a report as required by this section he shall be guilty of an offence and liable on summary conviction to a fine not

exceeding level 5 on the uniform scale.

*Shipping casualties*

**Shipping casualties.**

**144.** (1) The powers conferred by this section shall be exercisable where –

- (a) an accident has occurred to or in a ship, and
- (b) in the opinion of the Board oil from the ship will or may cause significant pollution in Guernsey, in Guernsey waters or a part of the sea specified by virtue of section 131(2)(b), and
- (c) in the opinion of the Board the use of the powers conferred by this section is urgently needed,

but those powers are subject to the limitations contained in subsections (6) and (7).

(2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Board may give directions as respects the ship or its cargo –

- (a) to the owner of the ship, or to any person in possession of the ship, or
- (b) to the master of the ship, or
- (c) to any pilot of the ship, or

*Consolidated text*

- (d) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation, or
- (e) where the ship is in waters which are regulated or managed by a harbour authority –
  - (i) to the harbour master, or
  - (ii) to the harbour authority.

(3) Directions under subsection (2) may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require –

- (a) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality, or
- (b) that the ship is not to be moved to a specified place or area, or over a specified route, or
- (c) that any oil or other cargo is to be, or is not to be, unloaded or discharged, or
- (d) that specified salvage measures are to be, or are not to be, taken.

(4) If in the opinion of the Board the powers conferred by subsection (2) are, or have proved to be, inadequate for the purpose, the Board may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Board may –

- (a) take any such action as it has power to require to be taken by a direction under this section,
- (b) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom it can give directions,
- (c) undertake operations which involve the taking over of control of the ship.

(5) The powers of the Board under subsection (4) shall also be exercisable by such persons as may be authorised for the purpose by the Board.

(6) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(7) The provisions of this section and of section 149 are without prejudice to any rights or powers of Her Majesty's Government in the United Kingdom acting on behalf of Guernsey or the States exercisable apart from those sections whether under international law or otherwise.

(8) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5) –

- (a) does not constitute contempt of court, and
- (b) does not in any circumstances make Her Majesty's Sheriff, the Clerk of the Court of Alderney or the Prévôt of Sark, as the case may be, liable in any civil proceedings.

(9) In this section, unless the context otherwise requires –

**"accident"** means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo,

**"owner"**, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident,

**"pilot"** means any person not belonging to a ship who has the conduct of the ship,

**"specified"**, in relation to a direction under this section, means specified by the direction, and

**"the States"** means the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

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**NOTE**

*In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.*

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**Right to recover in respect of unreasonable loss or damage.**

**145.** (1) If any action duly taken by a person in pursuance of a direction given to him under section 144, or any action taken under section 144(4) or (5) –

- (a) was not reasonably necessary to prevent or reduce oil pollution, or 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 incurring expense or suffering damage as a result of, or by himself taking, the action shall be entitled to recover compensation from the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

(2) In considering whether subsection (1) applies, account shall 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 which has been caused by the action.

(3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.

**Application of sections 144 and 145 to pollution by substances other than oil.**

**146.** (1) In sections 144 and 145, any reference to oil pollution includes a reference to pollution by any other substance which –

- (a) is prescribed by the Board by Order for the purposes of this section, 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.

(2) Accordingly, any reference in those sections to oil includes a reference to any substance falling within subsection (1)(a) or (b).

**Offences in relation to section 144.**

**147.** (1) If the person to whom a direction is duly given under section 144 contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

(2) If a person intentionally obstructs any person who is –

- (a) acting on behalf of the Board in connection with the giving or service of a direction under section 144,
- (b) acting in compliance with a direction under that section, or
- (c) acting under section 144(4) or (5),

he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

(4) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to a fine not exceeding £50,000,
- (b) on conviction on indictment, to a fine.

**Service of directions under section 144.**

**148.** (1) If the Board is satisfied that a company or other body is not one to whom section 116 of the Companies (Guernsey) Law, 1994, as amended<sup>u</sup>,

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<sup>u</sup> Orders in Council No. XXXIII of 1994 and No. XIV of 1996; Ordinance No. VII of 1995.

or, as the case may be, section 160 of the Companies (Alderney) Law, 1994<sup>v</sup> (service of documents) applies so as to authorise the service of a direction on that body under either of those sections, it may give a direction under section 144 of this Law –

- (a) to that body, as the owner 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) For the purpose of giving or serving a direction under section 144 to or on any person on a ship, a person acting on behalf of the Board shall have the right to go on board the ship.

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**NOTE**

*The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.*

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**Application of section 144 to 148 to certain foreign and other ships.**

**149.** (1) The States may by Ordinance provide that sections 144 to 148, together with any other provision of this Chapter, shall apply to a ship –

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<sup>v</sup> Order in Council No. XXXIV of 1994.

*Consolidated text*

- (a) which is not a Guernsey ship, and
- (b) which is for the time being neither within Guernsey waters nor within a part of the sea specified by virtue of section 131(2)(b),

in such cases and circumstances as may be specified in the Ordinance, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) An Ordinance under subsection (1) may contain such transitional and other consequential provisions as appear to the States to be expedient.

(3) Except as provided by an Ordinance under subsection (1), no direction under section 144 shall apply to a ship which is not a Guernsey ship and which is for the time being neither within Guernsey waters nor within a part of the sea specified by virtue of section 131(2)(b), and no action shall be taken under section 144(4) or (5) as respects any such ship.

(4) No direction under section 144 shall apply to any ship of Her Majesty's navy or to any Government ship and no action shall be taken under section 144(4) or (5) as respects any such ship.

*Enforcement*

**Oil records.**

**150.** (1) The Board may make regulations requiring oil record books to be carried in Guernsey ships and requiring the master of any such ship to record in the oil record book carried by it –

*Consolidated text*

- (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed relating to –
  - (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, such tanks,
  - (v) the separation of oil from water, or from other substances, in any mixture containing oil,
  - (vi) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in (i) to (v), or
  - (vii) the disposal of any other oil residues,
- (b) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life,
- (c) any occasion on which oil or a mixture containing oil

is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.

(2) The Board may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within Guernsey waters; and the requirements of any regulations made under this subsection shall be in addition to the requirement of any regulations made under subsection (1).

(3) Any records required to be kept by regulations made under subsection (2) shall, unless the ship is a barge, be kept by the master of the ship, and shall, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(4) Regulations under this section requiring the carrying of oil record books or the keeping of records may –

- (a) prescribe the form of the oil record books or records and the nature of the entries to be made in them,
- (b) require the person providing or keeping the books or records to retain them for a prescribed period,
- (c) require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations,
- (d) provide for the custody or disposal of the books or

records after their transmission to such a place or person.

- (5) Regulations under this section may –
- (a) be made with respect to all or with respect to any one or more of the classes of ship or other matters to which this section relates,
  - (b) make different provision for different classes of ship or otherwise for different classes of case or different circumstances.

(6) If any ship fails to carry such an oil record book as it is required to carry under this section the owner or master shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(7) If any person fails to comply with any requirements imposed on him by or under this section, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(8) If any person makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, he shall be guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale, or both,

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (9) In any proceedings under this Chapter –
- (a) any oil record book carried or record kept in pursuance of regulations made under this section shall be admissible as evidence of the facts stated in it,
  - (b) any copy of an entry in such an oil record book or record which is certified 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 to be a true copy of the entry shall be admissible as evidence of the facts stated in the entry,
  - (c) any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in paragraph (b), shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.
- (10) In this section, "barge" includes a lighter and any similar vessel.

**Prosecutions and enforcement of fines.**

**151.** (1) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under

section 138 alleged to have been committed by the company as the owner of the ship shall be treated as duly served on that company if the document is served on the master of the ship.

(2) In subsection (1), "**foreign company**" means a company or body which is not one to which either section 116 of the Companies (Guernsey) Law, 1994, as amended<sup>W</sup>, or section 160 of the Companies (Alderney) Law, 1994<sup>X</sup> applies so as to authorise the service of the document in question under one of those provisions.

(3) Any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Chapter shall, for that purpose, have the right to go on board the ship in question.

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**NOTE**

*The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.*

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**Power to detain ship for section 138 offences.**

**152.** (1) Where a harbour master has reason to believe that the master or owner of a ship has committed an offence under section 138 by the discharge

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<sup>W</sup> Orders in Council No. XXXIII of 1994 and No. XIV of 1996; Ordinance No. VII of 1995.

<sup>X</sup> Order in Council No. XXXIV of 1994.

from the ship of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the ship.

(2) Section 270, in its application to the detention of a ship under this section, shall have effect with the omission of subsection (1), (6) and (7) and as if –

- (a) in subsection (2), the reference to competent authority were a reference to the harbour authority, and
- (b) in subsection (4), the person in relation to whom that subsection applies were the harbour master or any person acting on his behalf.

(3) Where a harbour master detains a ship other than a Guernsey ship under this section he shall immediately notify the Board, which shall then inform –

- (a) in the case of a British ship, the Secretary of State, or
- (b) in the case of any other ship, the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

In this subsection, "**Guernsey ship**" has the same meaning as in section 80.

(4) A harbour master who detains a ship under this section shall immediately release the ship –

*Consolidated text*

- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the ship is detained,
- (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted,
- (c) if either –
  - (i) the sum of £255,000 is paid to the harbour authority by way of security, or
  - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than £255,000 is given to the harbour authority,

by or on behalf of the master or owner, or

- (d) where the master or owner is convicted of the offence, if any costs ordered to be paid by him, and any fine imposed on him, have been paid.

(5) The harbour authority shall repay any sum paid in pursuance of subsection (4)(c) or release any security so given –

- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the sum is paid, or

- (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (4)(c) and the master or owner is convicted of the offence, the sum so paid or the amount made available under the security shall be applied as follows –

- (a) first in payment of any costs ordered by the court to be paid by the master or owner, and
- (b) next in payment of any fine imposed by the court,

and any balance shall be repaid to the first-mentioned person.

(7) This section does not apply in relation to a ship of Her Majesty's navy or any Government ship.

**Interpretation of section 152.**

**153.** (1) This section has effect for the interpretation of the references in section 152 to the institution of proceedings or their conclusion without the master or owner of a ship being convicted of an offence under section 138.

(2) For the purposes of section 152 –

- (a) proceedings for an offence under section 138 are instituted in the Bailiwick when a person is charged with the offence, and

- (b) proceedings for the offence are concluded without the master or owner being convicted on the occurrence of one of the following events –
  - (i) the acquittal of the master or owner,
  - (ii) the proceedings are expressly abandoned by the Law Officers,
  - (iii) the quashing of the master's or owner's conviction of the offence,
  - (iv) the grant of Her Majesty's pardon in respect of the master's or owner's conviction of the offence.

(3) Where the application of subsection (2)(a) would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

**Enforcement and application of fines.**

**154.** (1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Chapter is not paid, or any costs ordered to be paid by him are not paid, at the time ordered by the court, the court shall, in addition to any other powers of enforcing payment, have power to direct the amount remaining unpaid to be levied by an arrest and sale of the ship and its equipment.

(2) Where a person is convicted of an offence under section 138,

and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is 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.

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

**155.** (1) The States may by Ordinance empower such persons as may be designated by or under the Ordinance to go on board any Convention ship while the ship is within a harbour in Guernsey, and to require production of any oil record book required to be carried in accordance with the Convention.

(2) An Ordinance under this section may, for the purposes of the Ordinance, and with any necessary modifications, apply any of the provisions of this Chapter relating to the production and inspection of oil record books and the taking of copies of entries therein, and to the admissibility in evidence of such oil record books and copies, including any penal provisions of this Chapter in so far as they relate to those matters, and may also apply section 249.

(3) Where Her Majesty by Order in Council made under section 147(3) of the Merchant Shipping Act 1995<sup>y</sup> has made a declaration –

- (a) that the government of any country has accepted, or denounced, the Convention, or
- (b) that the Convention extends, or has ceased to extend, to any territory,

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<sup>y</sup> An Act of Parliament (1995 c. 21).

the Board may by Order make a declaration to the like effect.

(4) In this section –

**"the Convention"** means any Convention accepted by Her Majesty's Government in the United Kingdom and extended to Guernsey in so far as it relates to the prevention of pollution of the sea by oil, and

**"Convention ship"** means a ship registered in –

- (a) a country the government of which has been declared by an Order under subsection (3) 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.

*Miscellaneous and supplementary*

**Power of Board to grant exemptions.**

**156.** The Board may exempt from any of the provisions of this Chapter or of any regulations made thereunder, either absolutely or subject to such conditions as it thinks fit –

- (a) any ship or classes of ships,
- (b) any discharge of, or of a mixture containing, oil.

**Application to Government ships.**

**157.** (1) This Chapter does not apply to ships of Her Majesty's navy, nor to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy.

(2) Subject to subsection (1) and to section 149(4) and section 152(7) –

(a) provisions of this Chapter which are expressed to apply only to Guernsey ships apply to Government ships registered in Guernsey and also to Government ships not so registered but held for the purposes of Her Majesty's Government in the United Kingdom,

(b) provisions of this Chapter which are expressed to apply to ships generally apply to Government ships.

**Annual Report.**

**158.** (1) The Board shall, as soon as possible after the end of each calendar year, make a report on the exercise and performance of its functions under this Chapter during that year.

(2) Every such report shall include such observations as it may think fit to make on the operation during that year of this Chapter and of any Convention accepted by Her Majesty's Government in the United Kingdom on behalf of Guernsey in so far as it relates to the prevention of pollution of the sea by oil.

(3) Every such report shall be submitted for inclusion as an

appendix to a Billet d'État.

**Interpretation.**

**159.** (1) In this Chapter –

**"harbour authority"** means a person or body of persons empowered by an enactment to make charges in respect of ships entering a harbour in Guernsey or using facilities therein,

**"harbour in Guernsey"** means a port, estuary, haven, dock or other place the waters of which are within Guernsey national waters and in respect of entry into or the use of which by ships a person or body of persons is empowered by an enactment to make any charges other than charges in respect of navigational aids or pilotage,

**"harbour master"** includes any person specially appointed by a harbour authority for the purpose of enforcing the provisions of this Chapter in relation to the harbour,

**"oil"** means oil of any description and includes spirit produced from oil of any description, and also includes coal tar,

**"oil residues"** means any waste consisting of, or arising from, oil or a mixture containing oil,

**"place on land"** has the meaning given by section 138,

**"transfer"**, in relation to oil, means transfer in bulk.

(2) For the purposes of the definition of "harbour in Guernsey",

**"charges in respect of navigational aids"** means general light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons.

(3) Any reference in any provision of this Chapter to a mixture containing oil shall be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.

(4) Any reference in this Chapter, other than in section 143, to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except where 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.

(5) For the purposes of any provision of this Chapter relating to the discharge of oil or a mixture containing oil from a ship, any floating craft (other than a ship) which is attached to a ship shall be treated as part of the ship.

(6) Any power conferred by section 249 in its application to this Chapter to test any equipment on board a ship shall be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of that section as to submitting equipment for testing shall be construed accordingly.

(7) Subject to section 15 of the Interpretation (Guernsey) Law, 1948<sup>z</sup> (offences under two or more enactments) nothing in this Chapter shall –

(a) affect any restriction imposed by or under any other

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<sup>z</sup> Ordres en Conseil Vol. XIII, p. 355.

enactment, or

- (b) derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

CHAPTER IV  
LIABILITY FOR OIL POLLUTION

*Preliminary*

**Meaning of "the Liability Convention" and related expressions.**

**160.** (1) In this Chapter –

**"the Liability Convention"** means the International Convention on Civil Liability for Oil Pollution Damage 1992,

**"Liability Convention country"** means a country in respect of which the Liability Convention is in force, and includes the United Kingdom and any relevant British possession to which the Liability Convention has been extended,

**"Liability Convention State"** means a State which is a party to the Convention.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Liability Convention in respect of any country so specified the Order shall, while in force in the United Kingdom, be conclusive evidence that that State is a party to the Liability Convention in respect of that country.

*Liability*

**Liability for oil pollution in case of tankers.**

**161.** (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable –

- (a) for any damage caused outside the ship in the territory of Guernsey by contamination resulting from the discharge or escape, and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Guernsey by contamination resulting from the discharge or escape, and
- (c) for any damage caused in the territory of Guernsey by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable –

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Guernsey, and

- (b) for any damage caused outside the ship in the territory of Guernsey by any measures so taken,

and in this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Subject to subsection (4), this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any such ship –

- (a) while it is carrying oil in bulk as cargo, and
- (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil,

but not otherwise.

(5) Where a person incurs a liability under subsection (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of Guernsey included the territory of any other Liability Convention country.

(6) Where –

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more

ships, but

- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) For the purposes of this Chapter –

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank,
- (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape, and
- (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(8) Part I of the Law Reform (Tort) (Guernsey) Law, 1979<sup>aa</sup> shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

**Liability for oil pollution in case of other ships.**

**162.** (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 161 applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable –

- (a) for any damage caused outside the ship in the territory of Guernsey by contamination resulting from the discharge or escape, and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Guernsey by contamination resulting from the discharge or escape, and
- (c) for any damage so caused in the territory of Guernsey by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 161 applies by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable –

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<sup>aa</sup> Ordres en Conseil Vol. XXVII, p. 50.

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Guernsey, and
- (b) for any damage caused outside the ship in the territory of Guernsey by any measures so taken,

and in the subsequent provisions of this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Where –

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) Part I of the Law Reform (Tort) (Guernsey) Law, 1979<sup>bb</sup> shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

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<sup>bb</sup> Ordres en Conseil Vol. XXVII, p. 50.

(5) In this section, "ship" includes a vessel which is not seagoing.

**Exceptions from liability under sections 161 and 162.**

**163.** No liability shall be incurred by the owner of a ship under section 161 or 162 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination –

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon, or
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage, or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

**Restriction of liability for oil pollution.**

**164.** (1) Where, as a result of any occurrence –

- (a) any oil is discharged or escapes from a ship (whether one to which section 161 or one to which section 162 applies), or
- (b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 161 or 162 –

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it, and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) applies to –

- (a) any servant or agent of the owner of the ship,
- (b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship,
- (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship,
- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions

*Consolidated text*

of a competent public authority,

- (e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 161 or 162,
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e).

(3) The liability of the owner of a ship under section 161 or 162 for any impairment of the environment shall be taken to be a liability only in respect of –

- (a) any resulting loss of profits, and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

*Limitation of liability*

**Limitation of liability under section 161.**

**165.** (1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 161 by reason of a discharge or escape or by reason of any relevant threat of contamination, then (subject to subsection (3)) –

- (a) he may limit that liability in accordance with the provisions of this Chapter, and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 161 resulting from the occurrence) shall not exceed the relevant amount.

- (2) In subsection (1), "**the relevant amount**" means –
- (a) in relation to a ship not exceeding 5,000 tons, three million special drawing rights,
  - (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 million special drawing rights,

but the Board may by Order make such amendments of paragraphs (a) and (b) as appear to it to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(3) Subsection (1) shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 161 or recklessly in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this section a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an Order made by the Board.

(5) Any such Order shall, so far as it appears to the Board to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

**Limitation actions.**

**166.** (1) Where the owner of a ship has or is alleged to have incurred a liability under section 161 he may apply to the court for the limitation of that liability to an amount determined in accordance with section 165.

(2) If on such an application the court finds that the applicant has incurred such a liability but has not found that he is not entitled to limit it, the court shall, after determining the limit which would apply to the applicant's liability if he were entitled to limit it and directing payment into court of the amount of that limit –

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings, and
- (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(3) Where –

- (a) a distribution is made under subsection (2)(b) without the court having found that the applicant is entitled to limit his liability, and
- (b) the court subsequently finds that the applicant is not so entitled,

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(4) A payment into court of the amount of a limit determined in pursuance of this section shall be made in sterling, and

(a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –

(i) the day when the determination is made, or

(ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed,

(b) a certificate given by or on behalf of the Treasury of the United Kingdom stating –

(i) that a particular sum in sterling has been so fixed for the day on which the determination was made, or

(ii) that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on

which the determination was made,

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

- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(5) No claim shall be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.

(6) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends –

- (a) by the owner or the persons referred to in section 173 as "the insurer", or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 161, for the damage or costs and who is entitled to limit his liability in connection with the ship by virtue of section 194 or 195,

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(7) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(8) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside Guernsey.

(9) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b).

**Restriction on enforcement after establishment of limitation fund.**

**167.** Where the court has found that a person who has incurred a liability under section 161 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount –

- (a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest, and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into court, or such part thereof as corresponds to the claim, will be

actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 166 had been taken.

**Concurrent liabilities of owners and others.**

**168.** Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability under section 161 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if –

- (a) the owner has been found in proceedings under section 166 to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount, and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 194 or 195,

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

**Establishment of limitation fund outside Guernsey.**

**169.** Where the events resulting in the liability of any person under section 161 also resulted in a corresponding liability under the law of another Liability Convention country sections 167 and 168 shall apply as if the references to sections 161 and 166 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

**Extinguishment of claims.**

**170.** No action to enforce a claim in respect of a liability incurred under section 161 or 162 shall be entertained by any court in Guernsey unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the liability was incurred.

*Compulsory insurance*

**Compulsory insurance against liability for pollution.**

**171.** (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Board.

(2) The ship shall not enter or leave a port in Guernsey or arrive at or leave a terminal in the territorial sea of Guernsey nor, if the ship is a Guernsey ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).

(3) The certificate must be –

(a) if the ship is a Guernsey ship, a certificate issued by the Board,

- (b) if the ship is registered in a Liability Convention country other than Guernsey, a certificate issued by or under the authority of the government of the other Liability Convention country, and
- (c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Board or by or under the authority of the government of any Liability Convention country other than Guernsey.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to the Chief Officer of Customs and Excise or any other person authorised by the Board to act as an officer of Customs and Excise and, if the ship is a Guernsey ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or owner shall be guilty of an offence and liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £50,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(7) If a ship attempts to leave a port in Guernsey in contravention of this section the ship may be detained.

**Issue of certificate by Board.**

172. (1) Subject to subsection (2), if the Board is satisfied, on the application for such a certificate as is mentioned in section 171 in respect of a Guernsey ship or a ship registered in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Board shall issue such a certificate to the owner.

(2) If the Board is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 161 in all circumstances, it may refuse the certificate.

(3) The Board may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) to deliver up a certificate fails to do so he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(5) The Board shall send a copy of any certificate issued by it under this section in respect of a Guernsey ship to the Registrar of British Ships, and the Registrar shall make the copy available for public inspection.

**Rights of third parties against insurers.**

173. (1) Where it is alleged that the owner of a ship has incurred a liability under section 161 as a result of any discharge or escape of oil occurring, or

as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 171 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "**the insurer**").

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 165(3).

(4) Where the owner and the insurer each apply to the court for the limitation of his liability any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(5) The Third Parties (Rights against Insurers) (Guernsey) Law, 1936<sup>cc</sup> shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 171 relates.

*Supplementary*

**Jurisdiction of Guernsey courts and registration of foreign judgments.**

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<sup>cc</sup> Ordres en Conseil Vol. X, p. 381; Vol. XXIX, p. 214.

**174.** (1) Where –

- (a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of Guernsey and no measures are reasonably taken to prevent or minimise such damage in that territory, or
- (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Guernsey,

no court in Guernsey shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost –

- (i) against the owner of the ship, or
- (ii) against any person to whom section 164(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(2) In subsection (1), "**relevant damage or cost**" means –

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the

territory of another Liability Convention country,

- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country, or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b),

and section 164(2)(e) shall have effect for the purpose of subsection (2)(ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

(3) Part II of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957<sup>dd</sup> shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 161; and in its application to such a judgment that Part shall have effect with the omission of section 6(2) and (3) of that Law.

**Government ships.**

**175.** (1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(2) In relation to a ship owned by a State and for the time being

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<sup>dd</sup> Ordres en Conseil Vol. XVII, p. 178; No. IX of 1994.

used for commercial purposes it shall be a sufficient compliance with section 171(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in Guernsey to enforce a claim in respect of a liability incurred under section 161, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

**Limitation of liability under section 162.**

176. For the purposes of section 194 any liability incurred under section 162 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph 1(a) of Article 2 of the Convention in Part I of Schedule 7.

**Saving for recourse actions.**

177. Nothing in this Chapter shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Chapter may have against another person in respect of that liability.

**Interpretation.**

178. (1) In this Chapter –

"the court" means –

(a) in respect of matters arising in Alderney, the Court of

Alderney,

- (b) in respect of matters arising in Sark, the Court of the Seneschal of Sark, and
- (c) in respect of all other matters, the Ordinary Court,

**"damage"** includes loss,

**"oil"** means persistent hydrocarbon mineral oil,

**"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, except that, in relation to a ship owned by a State which is operated by a person registered as the ship's operator, it means the person registered as its operator,

**"relevant threat of contamination"** shall be construed in accordance with section 161(2) or 162(2), and

**"ship"** (subject to section 162(5)) means any sea-going vessel or sea-borne craft of any type whatsoever.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.

(3) References in this Chapter to the territory of any country

include the territorial sea of that country and –

- (a) in the case of Guernsey, any area specified by virtue of section 131(2)(b), and
- (b) in the case of any other Liability Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.

## CHAPTER V

### INTERNATIONAL OIL POLLUTION COMPENSATION FUND

#### *Preliminary*

#### Meaning of "Liability Convention", "the Fund Convention" and related expressions.

179. (1) In this Chapter –

- (a) **"the Liability Convention"** has the same meaning as in Chapter IV of this Part,
- (b) **"the Fund Convention"** means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

1992,

- (c) **"the Fund"** means the International Fund established by the Fund Convention, and
- (d) **"Fund Convention country"** means a country in respect of which the Fund Convention is in force, and includes the United Kingdom and any relevant British possession to which the Fund Convention has been extended.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified, the Order shall, while in force in the United Kingdom, be conclusive evidence that that State is a party to that Convention in respect of that country.

*Contributions to Fund*

**Contributions by importers of oil and others.**

**180.** (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Guernsey otherwise than on a voyage only within its national waters.

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Guernsey after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund

Convention country.

- (4) The person liable to pay contributions is –
  - (a) in the case of oil which is being imported into Guernsey, the importer, and
  - (b) otherwise, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.

- (6) For the purposes of subsection (5) –
  - (a) all the members of a group of companies shall be treated as a single person, and
  - (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

- (7) The contributions payable by a person for any year shall –
  - (a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund,
  - (b) be payable in such instalments, becoming due at such times, as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the Assembly of the Fund, until it is paid.

(8) The Board may by regulations impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Board, or the Fund.

(9) Regulations under subsection (8) –

(a) may contain such supplemental or incidental provisions as appear to the Board expedient, and

(b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding level 5 on the uniform scale, or such lower limit as may be specified in the regulations.

(10) In this section and in section 181, unless the context otherwise requires –

**"company"** means a body incorporated under the law of any part of Guernsey, or of any other country,

**"group"**, in relation to companies, means a holding company and its subsidiaries as defined by section 15 of the Amalgamation of Companies

Ordinance, 1997<sup>ee</sup>, subject, in the case of a company incorporated outside Guernsey, to any necessary modifications of those definitions,

**"importer"** means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and **"import"** shall be construed accordingly,

**"oil"** means crude oil and fuel oil, and –

- (a) **"crude oil"** means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes –
  - (i) crude oils from which distillate fractions have been removed, and
  - (ii) crude oils to which distillate fractions have added,
- (b) **"fuel oil"** means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel or the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D396-69)", or heavier,

**"terminal installation"** means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including

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<sup>ee</sup> Ordinance No. XIX of 1997.

any facility situated offshore and linked to any such site.

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**NOTE**

*The Amalgamation of Companies Ordinance, 1997 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(i), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.*

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**Power to obtain information.**

**181.** (1) For the purposes of transmitting to the Fund the names and addresses of the persons who under section 180 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Board may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 180(6).

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 180, particulars contained in any list transmitted by the Board to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list;

and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, then, unless the disclosure is made –

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the execution of this section, or
- (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(6) A person who –

- (a) refuses or wilfully neglects to comply with a notice under this section, or
- (b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be guilty of an offence and liable –

- (i) on summary conviction, to a fine not exceeding level 4 on the uniform scale in the case of an offence under paragraph (a) and not exceeding level 5 on the uniform scale in the case of an offence under paragraph (b), and
- (ii) on conviction on indictment, to imprisonment for a term not exceeding twelve months or a fine, or both.

*Compensation for persons suffering pollution damage*

**Liability of the Fund.**

**182.** (1) The Fund shall be liable for pollution damage in the territory of Guernsey if the person suffering the damage has been unable to obtain full compensation under section 161 –

- (a) because the discharge or escape, or the relevant threat of contamination, by reason of which the damage was caused –
  - (i) resulted from an exceptional, inevitable and irresistible phenomenon, or
  - (ii) was due wholly to anything done or omitted to be done by another person (not being a servant or agent of the owner) with intent to do damage, or

(iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,

(and because liability is accordingly wholly displaced by section 163), or

(b) because the owner or guarantor liable for the damage cannot meet his obligations in full, or

(c) because the damage exceeds the liability under section 161 as limited by section 165.

(2) Subsection (1) shall apply with the substitution for the word "Guernsey" of the words "a Fund Convention country" where the incident has caused pollution damage in the territory of Guernsey and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in Guernsey.

(3) Where the incident has caused pollution damage in the territory of Guernsey and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter IV of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this section an owner or guarantor is to be

treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(5) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 161.

(6) The Fund shall incur no obligation under this section if –

(a) it proves that the pollution damage –

(i) resulted from an act of war, hostilities, civil war or insurrection, or

(ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or

(b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.

(7) If the Fund proves that the pollution damage resulted wholly or partly –

- (a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage, or
- (b) from the negligence of that person,

the Fund may (subject to subsection (9)) be exonerated wholly or partly from its obligations to pay compensation to that person.

(8) Where the liability under section 161 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall (subject to subsection (9)) be exonerated to the same extent.

(9) Subsections (7) and (8) shall not apply where the pollution damage consisted of the costs of preventive measures or any damage caused by such measures.

**Limitation of Fund's liability under section 182.**

**183.** (1) The Fund's liability under section 182 shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Schedule 4), and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

(2) A certificate given by the Director of the Fund stating that sub-paragraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 182 shall be conclusive evidence for the purposes of this Chapter that it is so applicable.

(3) For the purpose of giving effect to paragraphs 4 and 5 of

Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 182 shall notify the Fund, and –

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

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

- (a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right shall be treated as equal to such sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –
  - (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident, or

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- (ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed, and
- (b) a certificate given by or on behalf of the Treasury of the United Kingdom stating –
  - (i) that a particular sum in sterling has been so fixed for the relevant day, or
  - (ii) that no sum has been so fixed for the relevant day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

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

(5) The Board may by Order make such amendments of this section and Schedule 4 as appear to it to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in that Schedule.

(6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4)(b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

*Supplemental*

**Jurisdiction and effect of judgments.**

184. (1) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 161, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(2) Where a person incurs a liability under the law of a Fund Convention country corresponding to Chapter IV of this Part for damage which is partly in the territory of Guernsey, subsection (1) shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

(3) Subject to subsection (4), Part II of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957<sup>ff</sup> shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 182; and in its application to such a judgment the said Part II shall have effect with the omission of section 6(2) and (3) of that Law.

(4) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under Part II of the Law of 1957 gives leave to enforce it; and –

- (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is

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<sup>ff</sup> Ordres en Conseil Vol. XVII, p. 178; No. IX of 1994.

not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out in Schedule 4 to this Law) or that it is to be reduced to a specified amount, and

- (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

**Extinguishment of claims.**

**185.** (1) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in Guernsey unless –

- (a) the action is commenced, or
- (b) a third party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,

not later than three years after the claim against the Fund arose.

In this subsection, "**third party notice**" means a notice of the kind described in section 184(1) and (2).

(2) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in Guernsey unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the claim against the fund arose.

**Subrogation.**

**186.** (1) In respect of any sum paid by the Fund as compensation for

pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

(2) In respect of any sum paid by a public authority in Guernsey as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Chapter.

**Supplementary provisions as to proceedings involving the Fund.**

**187.** (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative.

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

**Interpretation.**

**188.** (1) In this Chapter, unless the context otherwise requires –

"**damage**" includes loss,

"**discharge or escape**", in relation to pollution damage, means the discharge or escape of oil from the ship,

"**guarantor**" means any person providing insurance or other financial security to cover the owner's liability of the kind described in section 171,

**"incident"** means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination,

**"oil"**, except in sections 180 and 181, means persistent hydrocarbon mineral oil,

**"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, except that, in relation to a ship owned by a State which is operated by a person registered as the ship's operator, it means the person registered as its operator,

**"pollution damage"** means –

- (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship,
- (b) the cost of preventive measures, and
- (c) further damage caused by preventive measures,

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of –

- (i) any loss of profits, or
- (ii) the cost of any reasonable measures of

reinstatement actually taken or to be taken,

**"preventive measures"** means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken –

- (a) after an incident has occurred, or
- (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences,

**"relevant threat of contamination"** means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship, and

**"ship"** means any ship (within the meaning of Chapter IV of this Part) to which section 161 applies.

- (2) For the purposes of this Chapter –
  - (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank, and
  - (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

(3) References in this Chapter to the territory of any country shall be construed in accordance with section 178(3) reading the reference to a Liability

Convention country as a reference to a Fund Convention country.

CHAPTER VI  
CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES

**Introductory.**

**189.** (1) In this Chapter, unless the context otherwise requires, "**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 5.

(3) In interpreting the definition of "**hazardous and noxious substances**" in Article 1, paragraph 5 of the Convention, any reference in that paragraph to a particular convention or code as amended shall be taken to be a reference to that convention or code as amended from time to time (whether before or after the commencement of this Chapter).

**Power to give effect to Convention.**

**190.** (1) The States may by Ordinance make such provision as they consider appropriate for the purpose of giving effect to –

- (a) the Convention on or after its ratification by the United Kingdom on behalf of Guernsey, or
- (b) any revision of the Convention which appears to the States to have been agreed to by the Government of the United Kingdom on behalf of Guernsey.

(2) The power conferred by subsection (1) to make provision for the purpose of giving effect to the Convention or an agreement revising the Convention includes power to provide for the provision to come into force even though the Convention or the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may include provision –

- (a) requiring contributions to be paid in accordance with the Convention to the International Hazardous and Noxious Substances Fund established under the Convention,
- (b) for applying for the purpose mentioned in subsection (1) any enactment or instrument relating to the pollution of the sea or other waters (including provisions creating offences) with such modifications, if any, as may be prescribed by the Ordinance,
- (c) making such modifications of any enactment or instrument (including, where the Ordinance is made under paragraph (b) of that subsection, modifications of Schedule 5 and section 191) as appear to the States to be appropriate for the purpose specified in that subsection,
- (d) with respect to the application of the Ordinance to the Crown,

- (e) for detaining any ship in respect of which a contravention of a provision made by or under the Ordinance is suspected to have occurred and, in relation to such a ship, for applying section 270 with such modifications, if any, as are prescribed by the Ordinance,
  - (f) for a certificate issued by or on behalf of the Board and stating that at a particular time a particular substance was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of that matter.
- (4) An Ordinance under subsection (1) may –
- (a) make different provision for different circumstances,
  - (b) make provision for references in the Ordinance to any 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 Ordinance,
  - (d) include such incidental, supplemental and transitional provisions as appear to the States to be expedient for the purposes of the Ordinance, and
  - (e) authorise the making of regulations for the purposes of this section (except the purposes of subsection (3)(a),

(b) and (c)).

**Power of Board to make Orders.**

**191.** (1) The Board may by Order make such amendments of Schedule 5 and any Ordinance under section 190(1) as appear to it to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 48 of the Convention.

(2) In subsection (1), "**a relevant limit**" means any of the limits for the time being specified in article 9, paragraph 1 and article 14, paragraph 5 of the Convention.

PART VII

LIABILITY OF SHIPOWNERS AND OTHERS

*Carriage of passengers and luggage by sea*

**Scheduled convention to have force of law.**

**192.** (1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 6 (hereafter in this section and in Part II of that Schedule referred to as "**the Convention**") shall have the force of law in Guernsey.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention and subsection (1) shall have effect subject to the provisions of that Part.

(3) If it appears to the States that there is a conflict between the provisions of this section or of Part I or II of Schedule 6 and any provisions relating to the carriage of passengers or luggage for reward by land, sea or air in –

- (a) any convention which has been signed or ratified by or on behalf of the Government of the United Kingdom on behalf of Guernsey before 4<sup>th</sup> April, 1979 (excluding the Convention), or
- (b) any enactment of the States or, as the case may be, of the Parliament of the United Kingdom, giving effect to such a convention,

they may by Ordinance make such modifications of this section or that Schedule or any such enactment of the States as they consider appropriate for resolving the conflict.

(4) If it appears to the States that the Government of the United Kingdom has agreed to any revision of the Convention as it has effect in Guernsey they may by Ordinance make such modification of Parts I and II of Schedule 6 as they consider appropriate in consequence of the revision.

(5) Nothing in subsection (1) or (2) or in any modification made by virtue of subsection (3) or (4) shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the said subsection (1) or (2), or as the case may be, the modification, comes into force.

(6) This section shall bind the Crown, and any Ordinance made by virtue of this section may provide that the Ordinance or specified provisions of it shall bind the Crown.

**Application of Schedule 6 to carriage within British Islands.**

**193.** (1) The States may by Ordinance provide that Part I of Schedule

6 –

- (a) shall have the force of law in Guernsey, with such modifications as are specified in the Ordinance, in relation to, and to matters connected with, a contract of carriage where the places of departure and destination under the contract are within the British Islands and under the contract there is no intermediate port of call outside those Islands, and
- (b) shall, as modified in pursuance of paragraph (a), have effect in relation to, and to matters connected with, any such contract subject to the provisions of Part II of that Schedule or to those provisions with such modifications as are specified in the Ordinance.

(2) An Ordinance made by virtue of subsection (1) may provide that the Ordinance or specified provisions of it shall bind the Crown.

(3) In subsection (1) expressions to which meanings are assigned by article 1 of the Convention set out in Part I of Schedule 6 have those meanings but any reference to a contract of carriage excludes such a contract which is not for reward.

*Limitation of liability of shipowners, etc. and salvors for maritime claims*

**Limitation of liability for maritime claims.**

**194.** (1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 7 (in this section and Part II of that Schedule referred to as "**the Convention**") shall have the force of law in

Guernsey.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and subsection (1) shall have effect subject to the provisions of that Part.

(3) The States may by Ordinance make such modifications of Parts I and II of Schedule 7 as they consider appropriate in consequence of the revision of the Convention by the Protocol of 1996 amending the Convention (in this section referred to as "**the 1996 Protocol**").

(4) If it appears to the States that the Government of the United Kingdom has agreed to any further revision of the Convention or to any revision of article 8 of the 1996 Protocol (as the case may be) as it has effect in Guernsey, they may by Ordinance make such modifications of Parts I and II of Schedule 7 and subsections (5) and (6) as they consider appropriate in consequence of the revision.

(5) The Board may by Order make such amendments of Parts I and II of Schedule 7 as appear to it to be appropriate for the purpose of giving effect to any amendment of a relevant time limit which is adopted in accordance with article 8 of the 1996 Protocol.

(6) In subsection (5), "**a relevant limit**" means any of the limits for the time being specified in either of the following provisions of the Convention –

(a) article 6, paragraph 1, and

(b) article 7, paragraph 1.

(7) No modification made by virtue of subsection (3), (4) or (5)

shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the modification comes into force.

(8) The provisions having the force of law under this section shall apply in relation to Her Majesty's ships as they apply in relation to other ships.

(9) The provisions having the force of law under this section shall not apply to any liability 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 the salvage operations in question if –

- (a) he is so on board or employed under a contract of service governed by the law of any part of Guernsey, and
- (b) the liability arises from an occurrence which took place after the commencement of this Law.

In this subsection, "**ship**" and "**salvage operations**" have the same meaning as in the Convention.

**Exclusion of liability.**

**195.** (1) Subject to subsection (3), the owner of a Guernsey ship shall not be liable for any loss or damage in the following cases, namely –

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship, or
- (b) where any gold, silver, watches, jewels or precious

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stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and 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) Subject to subsection (3), where the loss or damage arises from anything done or omitted by any person in his capacity of master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) shall also exclude the liability of –

- (a) the master, member of the crew or servant, and
- (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(4) This section shall apply in relation to Her Majesty's ships as it applies in relation to other ships.

(5) In this section, "owner", in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

*Multiple fault; apportionment, liability and contribution*

**Damage or loss: apportionment of liability.**

196. (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault.

(2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(6) In this section, "**freight**" includes passage money and hire.

(7) In this section references to damage or loss caused by the

fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

**Loss of life or personal injuries: joint and several liability.**

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

(2) Section 196(3) applies also to this section.

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by law.

(4) Section 196(7) applies also for the interpretation of this section.

**Loss of life or personal injuries: right of contribution.**

**198.** (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) Section 196(3) applies also to this section.

(3) Nothing in this section authorises the recovery of any amount

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

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

*Time limit for proceedings against owners or ship*

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

**199.** (1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners –

- (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 any person on board another ship.

(2) The extent of the fault is immaterial for the purposes of this section.

(3) Subject to subsections (5) and (6), no proceedings to which this section applies shall be brought after the period of two years from the date when –

*Consolidated text*

- (a) the damage or loss was caused, or
- (b) the loss of life or injury was suffered.

(4) Subject to subsections (5) and (6), no proceedings under any of sections 196 to 198 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(5) Any court having jurisdiction in such proceedings may, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(6) Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within –

- (a) the jurisdiction of the court, or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,

shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

*Limitation of liability of harbour and dock authorities*

**Limitation of liability.**

**200.** (1) This section applies in relation to a harbour authority and the

owners of any dock.

(2) The liability of any authority or person to which this section applies for any loss or damage caused to any ship, or to any goods, merchandise or other things whatsoever on board any ship shall be limited in accordance with subsection (5) by reference to the tonnage of the largest Guernsey ship which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which the authority or person discharges any functions.

(3) The limitation of liability under this section relates to the whole of any losses and damages which may arise on any one distinct occasion, although such losses and damages may be sustained by more than one person, and shall apply whether the liability arises at customary or common law or under any enactment, and notwithstanding anything contained in such an enactment.

(4) This section does not exclude the liability of an authority or person to which it applies for any loss or damage resulting from any such personal act or omission of the authority or person as is mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(5) The limit of liability shall be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in paragraph 1(b) of Article 6 of the Convention set out in Part I of Schedule 7 read with paragraph 5(1) and (2) of Part II of that Schedule.

(6) Articles 11 and 12 of that Convention and paragraphs 8 and 9 of Part II of that Schedule shall apply for the purposes of this section.

(7) For the purposes of subsection (2) a ship shall not be treated as having been within the area over which a harbour authority discharges any

functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within the area.

(8) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.

(9) In this section –

**"dock"** includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties, and

**"owners of any dock"** includes any authority or person having the control and management of any dock.

*Application to Crown and its ships*

**Application to Crown and its ships.**

**201.** (1) Sections 194, 195, 196, 197, 198 and 199 (except subsection (6)) apply in the case of Her Majesty's ships as they apply in relation to other ships and section 200 applies to the Crown in its capacity as an authority or person specified in subsection (1).

(2) In this section, **"Her Majesty's ships"** means –

(a) ships of which the beneficial interest is vested in Her Majesty,

- (b) ships which are registered as Government ships,
- (c) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Crown,

except that it does not include any 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.

*Regulations requiring insurance or security*

**Compulsory insurance or security.**

**202.** (1) Subject to subsections (2) and (3), the Board may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in Guernsey waters, there must be in force in respect of the ship –

- (a) a contract of insurance insuring such person or persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified, or
  - (b) such other security relating to those liabilities as satisfies requirements specified by or under the regulations.
- (2) Regulations under this section shall not apply in relation to –
- (a) a qualifying foreign ship while it is exercising –

- (i) the right of innocent passage, or
  - (ii) the right of transit passage through straits used for international navigation,
- (b) any warship, or
- (c) any ship for the time being used by the government of any State for other than commercial purposes.

(3) Regulations under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 171 or by or under an Ordinance under section 190.

(4) Regulations under this section may require that, where a person is obliged to have in force in respect of a ship a contract of insurance or other security, such documentary evidence as may be specified by or under the regulations of the existence of the contract of insurance or other security must be carried in the ship and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified.

(5) Regulations under this section may provide –

- (a) that in such cases as are prescribed a ship which contravenes the regulations shall be liable to be detained and that section 270 shall have effect, with such modifications (if any) as are prescribed by the

regulations, in relation to the ship,

- (b) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations, and on conviction on indictment by a fine, and
  - (c) that any such contravention shall be an offence punishable only on summary conviction by a fine of an amount not exceeding £50,000, or such less amount as is prescribed by the regulations.
- (6) Regulations under this section may –
- (a) make different provision for different cases,
  - (b) make provision in terms of any document which the Board or any person considers relevant from time to time, and
  - (c) include such incidental, supplemental and transitional provision as appears to the Board to be expedient for the purposes of the regulations.

PART VIII  
LIGHTHOUSES

*Lighthouse authorities*

**General lighthouse authority.**

**203.** (1) As respects Guernsey and the adjacent seas, the Trinity House are the general lighthouse authority.

(2) The general lighthouse authority has the functions, powers and obligations set out in Part VIII of the Merchant Shipping Act 1995<sup>gg</sup> as they apply in Guernsey by virtue of that Part.

**Local lighthouse authority.**

**204.** For the purposes of this Part –

- (a) each harbour authority, as respects their area, and
- (b) any other local lighthouse authority appointed by the Board, as respects their area,

are the local lighthouse authority.

**Control of local lighthouse authorities.**

**205.** (1) Subject to subsection (2), a local lighthouse authority shall not, without the consent of the general lighthouse authority –

- (a) erect or place any lighthouse, buoy or beacon,
- (b) remove or discontinue any lighthouse, buoy or beacon,
- (c) vary the character of any lighthouse, buoy or beacon or the mode of exhibiting lights in any lighthouse,

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<sup>gg</sup> An Act of Parliament (1995 c. 21).

buoy or beacon.

(2) Subsection (1) shall not apply to local buoys and beacons placed or erected for temporary purposes.

**Powers of local lighthouse authorities.**

**206.** (1) Every local lighthouse authority shall have power to carry out the marking or lighting of a harbour or any part thereof either within the harbour or on harbour land.

(2) In this section, "**harbour land**" means land adjacent to a harbour and occupied wholly or mainly for the purposes of activities there carried on.

*Local light dues*

**Light dues leviable by local lighthouse authorities.**

**207.** (1) This section applies to charges leviable by a local lighthouse authority who are not a harbour authority in respect of lighthouses, buoys or beacons over which they have authority ("**local light dues**").

(2) A local lighthouse authority (who are not a harbour authority) may demand, take and recover in respect of every ship, other than ships belonging to Her Majesty and any ships exempted from payment in pursuance of subsection (3), which –

- (a) enters or leaves the port, harbour or estuary in which is situated any lighthouse, buoy or beacon over which they have authority, and

- (b) passes the lighthouse, buoy or beacon and derives benefit from it,

such charges as they think fit and for that purpose appoint persons to collect them.

(3) The Board may make regulations with respect to the levying of local light dues (including the cases in which the dues are not to be levied) and the regulations may make different provision for different circumstances.

(4) A list showing the local light dues leviable by a local lighthouse authority shall be kept at the authority's office and shall be open there during reasonable hours for inspection by any person without charge, and copies of the list shall be kept for sale there at such reasonable price (if any) as the authority determine.

(5) No local light due shall be leviable by a local lighthouse authority if, at the time at which it is leviable –

- (a) the authority are in default in compliance with subsection (4) as respects the keeping of the list of dues, or
- (b) the light due is not shown in the list kept there at that time.

(6) Every person appointed by a local lighthouse authority to collect local light dues shall collect all such dues payable at the port at which he is so appointed or (as the case may be) such of those dues as he is appointed to collect, whether they are collected on account of that authority or on account of one of the other local lighthouse authorities.

(7) Any person appointed by a local lighthouse authority to collect local light dues shall pay over to that authority, or as that authority directs, the whole of the local light dues received by him.

(8) All local light dues shall be applied by the authority by whom they are levied for the purpose of the construction, placing, maintenance and improvement of the lighthouses, buoys or beacons in respect of which the dues are levied, and for no other purpose.

(9) The local lighthouse authority to whom any local light dues are paid shall keep a separate account of the receipt and expenditure of those dues.

**Recovery of local light dues.**

**208.** (1) The following persons shall be liable to pay local light dues in respect of any ship in respect of which such dues are payable, namely –

- (a) the owner or master, or
- (b) such consignees or agents of the owner or master as have paid, or made themselves liable to pay, any other charge on account of the ship in the port of her arrival or discharge.

(2) Local light dues so payable in respect of any ship may be recovered summarily as a civil debt.

(3) Any consignee or agent (not being the owner or master of the ship) who is, by this section, made liable for the payment of local light dues in respect of any ship may, out of any money received by him on account of the ship

or belonging to its owner, retain the amount of all local light dues paid by him, together with any reasonable expenses he may have incurred by reason of the payment of the dues or his liability to pay them.

**Arrest and sale of items on ship for local light dues.**

209. (1) If the owner or master of any ship fails, on demand of the appointed collector, to pay the local light dues due in respect of the ship, the collector may enter the ship and arrest the goods or any equipment or other thing belonging to, or on board, the ship and detain any such items arrested until those dues are paid.

(2) If the payment of the dues so demanded is not made within the period of five days following the arrest, the collector may, at any time during the continuance of the non-payment, cause any items arrested to be independently appraised and thereupon sold by public auction.

(3) The collector shall apply the proceeds of the sale in payment of –

(a) the local light dues due, and

(b) all reasonable expenses incurred by him under this section,

and shall pay the surplus (if any), on demand, to the owner or master of the ship.

(4) The remedy conferred by this section is in addition to any other remedy available to the collector or the local lighthouse authority by whom he was appointed.

**Right of objection to local light dues.**

**210.** (1) Subject to the provisions of subsections (9) and (10), the provisions of subsections (2) to (5) shall have effect where written objection to a local light due imposed under section 207 by a local lighthouse authority is lodged with the Board by –

- (a) a person appearing to it to have a substantial interest,  
or
- (b) a body representative of persons so appearing,

and the objection is expressed to be made on all or any of the following grounds, namely –

- (i) that the local light due ought not to be imposed at all,
- (ii) that the local light due ought to be imposed at a rate lower than that at which it is imposed,
- (iii) that, according to the circumstances of the case, ships of a class specified in the objection ought to be excluded from the scope of the local light due either generally or in circumstances so specified,
- (iv) that, according to the circumstances of the case, the local light due ought to be imposed, either generally or in circumstances specified in the objection, on ships of a class so specified

at a rate lower than that at which it is imposed on others.

(2) The Board shall, forthwith after the objection is lodged, send a copy thereof to the authority and shall give notice to the objector that, as a condition precedent to the taking by the Board of further steps in the matter of the objection, he must publish in La Gazette Officielle and, where appropriate, in the Alderney Official Gazette a notice (which, if the form therefor is specified, must be in that form) –

- (a) stating that he has lodged with the Board an objection to the charge (and specifying the ground or grounds on which it is expressed to be made), and
- (b) stating that any such person or body as the following who desires to make to the Board representations in the matter, that is to say, a person having a substantial interest and a body representative of persons who have such an interest, should do so in writing within the time specified in the notice (which shall not be less than 42 days from the publication thereof).

(3) Where the proper notice concerning the objection has been duly published, then so soon as practicable after the expiration of the time therein specified (but subject to subsection (4)), the Board shall, unless the objection has been withdrawn before the expiration of that time and no written representations in the matter have been made to it by any such person or body as is mentioned in subsection (2)(b) before the expiration of that time, proceed to consideration of the local light due and any representations made and, unless the Board is satisfied that it can properly proceed to a decision in the matter without causing an inquiry to be

held with respect to it, shall cause an inquiry to be so held.

(4) Where written representations are made as mentioned in subsection (3), the Board shall send copies thereof to the authority and (except where the objection has been withdrawn) to the objector, and shall not proceed to consideration of the local light due until such period for consideration of, and comment upon, the representations by the authority and by the objector (if the objection has not been withdrawn) as the Board thinks reasonable has elapsed.

(5) The Board, after effect has been given to subsection (3), shall either –

(a) approve the local light due but set a limit (not being later than the expiration of 12 months from the date on which the Board approves it) to the period during which the approval is to be of effect, and give to the authority written notice that the Board has approved it, stating the limit set, or

(b) give to the authority such direction with respect to the local light due as would meet objection thereto made on any of the grounds specified in subsection (1) (whether that is or is not the ground, or is or is not included amongst the grounds, on which the objection whose lodging gives rise to the proceedings is expressed to be made).

(6) A direction given under subsection (5) to an authority must be in writing and must specify a date for its coming into operation and the period from that date (which shall not exceed 12 months) during which it is to have effect, and

the authority shall comply with it.

(7) If a local lighthouse authority fail to comply with an obligation to which they are subject by virtue of subsection (6), they shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding level 4 on the uniform scale.

(8) Forthwith after complying on any occasion with subsection (5), the Board shall publish in *La Gazette Officielle* and, where appropriate, in the *Alderney Official Gazette* the notice or direction given by it to the local lighthouse authority concerned.

(9) Where, by virtue of this section, a local light due imposed by a local lighthouse authority is approved, subsections (2) to (5) shall not have effect by virtue of the lodging of a further objection thereto during the period during which the approval is of effect; and where, by virtue of this section, a direction is given with respect to a local light due so imposed, the said subsections shall not have effect by virtue of the lodging of a further objection to that local light due during the period during which the direction has effect or of the lodging, during that period, of an objection to a local light due that has come into existence by virtue of the direction.

(10) Where effect to subsections (2) to (4) is in course of being given in consequence of the lodging with the Board of an objection to a local light due and a further objection to the local light due is lodged with the Board, subsections (2) to (5) shall not have effect by virtue of the lodging of that further objection.

**Damage, etc. to lighthouses, etc.**

211. (1) A person who, without lawful authority –
- (a) intentionally or recklessly damages –
    - (i) any lighthouse or the lights exhibited in it, or
    - (ii) any lightship, buoy or beacon,
  - (b) removes, casts adrift or sinks any lightship, buoy or beacon, or
  - (c) conceals or obscures any lighthouse, buoy or beacon,

commits an offence.

- (2) A person who, without reasonable excuse –
- (a) rides by,
  - (b) makes fast to, or
  - (c) runs foul of,

any lightship, buoy or beacon commits an offence.

(3) A person who is guilty of an offence under this section shall, in addition to being liable for the expenses of making good any damage so occasioned, be liable, on summary conviction, to a fine not exceeding level 4 on the uniform scale.

**Exemption from harbour dues.**

**212.** All ships belonging to or used by the general lighthouse authority shall be entitled to enter, resort to, and use any harbours, ports, docks or piers in Guernsey without any payment of tolls, dues or rates of any kind.

**Interpretation, etc.**

**213.** (1) In this Part –

**"buoys and beacons"** includes all other marks and signs of the sea,

**"lighthouse"** includes any floating and other light exhibited for the guidance of ships, and also any sirens and any other description of fog signals, and also any addition to a lighthouse of any improved light, or any siren, or any description of fog signal,

**"local light dues"** has the meaning given in section 207(1),

**"the Trinity House"** means the master, wardens and assistants of the guild, fraternity or brotherhood of the most glorious and undivided Trinity and of St. Clement in the parish of Deptford Strond in the county of Kent, commonly called the corporation of the Trinity House of Deptford Strond.

(2) Any reference in this Part to a lighthouse, buoy or beacon includes its appurtenances.

(3) The Board may by order provide that references or a particular reference to a buoy or beacon in this Part shall be construed as including, in such circumstances as are specified in the order, equipment of a kind so specified which is intended as an aid in the navigation of ships.

PART IX  
SALVAGE AND WRECK

CHAPTER I  
SALVAGE

**Salvage Convention 1989 to have force of law.**

**214.** (1) The provisions of the International Convention on Salvage, 1989 as set out in Part I of Schedule 8 (in this Chapter referred to as "**the Salvage Convention**") shall have the force of law in Guernsey.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Salvage Convention, and subsection (1) shall have effect subject to the provisions of that Part.

(3) If it appears to the States that the Government of the United Kingdom has agreed to any revision of the Convention, they may by Ordinance make such modifications of Parts I and II of Schedule 8 as they consider appropriate in consequence of the revision.

(4) Nothing in any modification made by virtue of subsection (3) shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which the modification comes into force.

**Valuation of property by receiver.**

**215.** (1) Where any 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, shall be admissible as evidence in any subsequent proceedings.

(4) There shall be paid in respect of the valuation by the person applying for it such fee as the Board may direct.

**Detention of property liable for salvage by receiver.**

**216.** (1) Where salvage is due to any person under this Chapter, the receiver shall –

(a) if the salvage is due in respect of services rendered –

(i) in assisting a vessel, or

(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 any wreck, and the wreck is not sold as unclaimed under this Chapter, detain the wreck.

(2) Subject to subsection (3), the receiver shall detain the vessel and the cargo and equipment, or the wreck, as the case may be, until payment is made for salvage, or process is issued for the arrest or detention of the property by

the court.

(3) The receiver may release any property detained under subsection (2) if security is given –

(a) to his satisfaction, or

(b) where –

(i) the claim for salvage exceeds £5,000, and

(ii) any question is raised as to the sufficiency of the security,

to the satisfaction of the court.

(4) Any security given for salvage under this section to an amount exceeding £5,000 may be enforced by the court in the same manner as if security in respect of a remand had been given in that court.

(5) In this section, "**the court**" means –

(a) in respect of matters arising in Alderney, the Court of Alderney,

(b) in respect of matters arising in Sark, the Court of the Seneschal of Sark, and

(c) in respect of all other matters, the Ordinary Court.

**Sale of detained property by receiver.**

217. (1) The receiver may sell any 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.

(2) Those cases are –

- (a) where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due,
- (b) where the amount is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within twenty days after the decision of the first court,
- (c) where the amount is disputed and an appeal lies from the decision of the first court to some other court, and within twenty days of the decision of the first court neither payment of the sum due is made nor proceedings are commenced for an appeal.

(3) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees and salvage and any excess shall be paid to the owners of the property or any other persons entitled to it.

(4) In this section, "**detained property**" means property detained by the receiver under section 216(2).

**Apportionment of salvage under £5,000 by the receiver.**

218. (1) Where –

- (a) the aggregate amount of salvage payable in respect of salvage services rendered in Guernsey 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.

(2) The receiver shall, if he thinks fit, receive the amount and, if he does, he 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 subsection (2) shall be a full discharge and indemnity to the person by whom it was paid, and to his vessel, cargo, equipment and effects against the claims of all persons in respect of the services mentioned in the certificate.

(4) The receiver shall with all convenient speed distribute any amount received by him under this section among the persons entitled to it, on such evidence, and in such shares and proportions, as he thinks fit.

(5) Any decision by the receiver under subsection (4) shall be made on the basis of the criteria contained in Article 13 of the Salvage Convention.

(6) The receiver may retain any money which appears to him to

be payable to any person who is absent.

(7) A distribution made by a receiver under this section shall be final and conclusive as against all persons claiming to be entitled to any part of the amount distributed.

**Apportionment of salvage by the court.**

**219.** (1) Where –

- (a) the aggregate amount of salvage payable in respect of salvage services rendered in Guernsey waters has been finally determined and exceeds £5,000, or
- (b) the aggregate amount of salvage payable in respect of salvage services rendered outside Guernsey waters (of whatever amount) has been finally determined, but
- (c) in either case, any delay or dispute arises as to the apportionment of the amount,

the court may cause the amount of salvage to be apportioned among the persons entitled to it in such manner as it thinks just.

(2) Any decision of the court under this section shall be made on the basis of the criteria contained in Article 13 of the Salvage Convention.

(3) For the purpose of making that apportionment, the court may –

- (a) appoint any person to carry that apportionment into effect,

- (b) compel any person in whose hands or under whose control the amount may be to distribute it or pay it into court to be dealt with as the court directs, and
  - (c) issue such process as it thinks fit.
- (4) In this section, "**the court**" means –
- (a) in respect of matters arising in Alderney, the Court of Alderney,
  - (b) in respect of matters arising in Sark, the Court of the Seneschal of Sark, and
  - (c) in respect of all other matters, the Ordinary Court.

**Salvage claims against the Crown and Crown rights of salvage and regulation thereof.**

**220.** (1) So far as consistent with the Salvage Convention, the law relating to civil salvage, whether of life or property, except sections 215, 216 and 217, shall apply in relation to salvage services in assisting any of Her Majesty's ships, or in saving life therefrom, or in saving any cargo or equipment belonging to Her Majesty in right of Her Government in the United Kingdom, in the same manner as if the ship, cargo or equipment belonged to a private person.

(2) Where 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 shall be entitled to claim salvage in respect of those services to the same extent as any other salvor, and shall have the same rights and remedies in

respect of those services as any other salvor.

(3) No claim for salvage services by the commander or crew, or part of the crew, of any of Her Majesty's ships shall be finally adjudicated upon without the consent of the Secretary of State to the prosecution of the claim.

(4) Any document purporting to give the consent of the Secretary of State for the purposes of subsection (3) and to be signed by an officer of the United Kingdom Ministry of Defence shall be evidence of that consent.

(5) If a claim is prosecuted without the consent required by subsection (3) the claim shall be dismissed with costs.

(7) "**Her Majesty's ships**" has the same meaning in this section as in section 201.

## CHAPTER II

### WRECK

#### *Vessels in distress*

#### **Application of, and discharge of functions under, sections 222, 223, 224 and 225.**

**221.** (1) Sections 222, 223, 224 and 225 apply in circumstances where a Guernsey or foreign vessel is wrecked, stranded, or in distress at any place on or near the coasts of Guernsey or any tidal water within Guernsey waters.

(2) Where any function is conferred on the receiver by any of those sections that function may be discharged by any officer of the Board authorised for that purpose.

(3) An officer discharging any such functions of the receiver shall, with respect to any goods or articles belonging to a vessel the delivery of which to the receiver is required by any provision of this Chapter, be treated as the agent of the receiver.

(4) However, an officer discharging such functions shall not –

- (a) be entitled to any fees payable to receivers, or
- (b) be deprived of any right to salvage to which he would otherwise be entitled.

(5) In any of those sections, "**shipwrecked persons**", in relation to a vessel, means persons belonging to the vessel.

**Duty of receiver where vessel in distress.**

**222.** (1) In circumstances in which this section applies by virtue of section 221 in relation to any vessel the receiver shall, on being informed of the circumstances, discharge the following functions.

(2) Subject to subsection (3), the receiver shall –

- (a) forthwith proceed to the place where the vessel is,
- (b) take command of all persons present, and
- (c) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons.

(3) The receiver shall not interfere between the master and crew of the vessel in reference to the management of the vessel unless he is requested to do so by the master.

(4) Subject to subsection (3), if any person intentionally disobeys the direction of the receiver he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

**Powers of receiver in case of vessel in distress.**

**223.** (1) In circumstances where this section applies by virtue of section 221 in relation to any vessel the receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and equipment –

- (a) require such persons as he thinks necessary to assist him,
- (b) require the master, or other person having the charge, of any vessel near at hand to give such assistance with his men, or vessel, as may be in his power, and
- (c) require the use of any vehicle that may be near at hand.

(2) The receiver may not under subsection (1) impose any requirement on the master or other person having charge of a vessel owned or operated by the Royal National Lifeboat Institution.

(3) If any person refuses, without reasonable excuse, to comply with any requirement made under subsection (1) he shall be guilty of an offence and

liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

**Power to pass over adjoining land.**

**224.** (1) In circumstances where this section applies by virtue of section 221 in relation to any vessel, all persons may, subject to subsections (3) and (4), for the purpose of –

- (a) rendering assistance to the vessel,
- (b) saving the lives of shipwrecked persons, or
- (c) saving the cargo or equipment of the vessel,

pass and repass over any adjoining land without being subject to interruption by the owner or occupier and deposit on the land any cargo or other article recovered from the vessel.

(2) The right of passage conferred by subsection (1) is a right of passage with or without vehicles.

(3) No right of passage is conferred by subsection (1) where there is some public road equally convenient.

(4) The rights conferred by subsection (1) shall be so exercised as to do as little damage as possible.

(5) Any damage sustained by an owner or occupier of land in consequence of the exercise of the rights conferred by this section shall be a charge on the vessel, cargo or articles in respect of or by which the damage is caused.

(6) Any amount payable in respect of such damage shall, in case of dispute, be determined and shall, in default of payment, be recoverable in the same manner as the amount of salvage is determined and recoverable under this Part.

- (7) If the owner or occupier of any land –
- (a) impedes or hinders any person in the exercise of the rights conferred by this section,
  - (b) impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel, or
  - (c) prevents or attempts to prevent any cargo or other article recovered from the vessel from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the uniform scale.

**Inquiry in respect of vessels in distress and their cargo.**

**225.** (1) In circumstances where this section applies by virtue of section 221, the receiver may examine on oath (being hereby empowered to administer the oath) any person belonging to the vessel or any other person who in his opinion may be able to give information relating to the vessel, its cargo or the occasion of the wrecking as to the following matters –

- (a) the name and description of the vessel,

*Consolidated text*

- (b) the name of the master and owner,
- (c) the name of the owner of the cargo,
- (d) the ports from and to which the vessel was bound,
- (e) the occasion of the wrecking,
- (f) the services rendered,
- (g) such other matters relating to the vessel, its cargo or the occasion of the wrecking as the receiver thinks fit.

(2) The receiver shall cause the examination to be recorded in writing and shall send a copy of the record to the Board, which shall cause it to be exhibited for public inspection, and shall otherwise give such publicity to it, as it thinks fit.

*Dealing with wreck*

**Duties of finder, etc. of wreck.**

**226.** (1) If any person finds or takes possession of any wreck in Guernsey waters or finds or takes possession of any wreck outside Guernsey waters and brings it within those waters he shall –

- (a) if he is the owner of it, give notice to the receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised,
- (b) if he is not the owner of it, give notice to the receiver

that he 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.

(2) If any person fails, without reasonable excuse, to comply with subsection (1) he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the uniform scale and if he is not the owner of the wreck he shall also –

- (a) forfeit any claim to salvage, and
- (b) be 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 person entitled to the wreck.

(3) Any sum payable under subsection (2)(b) to the owner of the wreck or to persons entitled to the wreck may be recovered summarily as a civil debt.

**Provisions as respects cargo, etc.**

227. (1) Where a vessel is wrecked, stranded, or in distress at any place on or near the coasts of Guernsey or any tidal water within Guernsey waters, any cargo or other articles belonging to or separated from the vessel which are washed on shore or otherwise lost or taken from the vessel shall be delivered to the receiver.

(2) If any person (whether the owner or not) –

- (a) conceals or keeps possession of any such cargo or article, or
- (b) refuses to deliver any such cargo or article to the receiver or to any person authorised by the receiver to require delivery,

he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the uniform scale.

(3) The receiver or any person authorised by him may take any such cargo or article (if necessary by force) from any person who refuses to deliver it.

**Receiver to give notice of wreck.**

**228.** (1) Where the receiver takes possession of any wreck, other than historic wreck, he shall, within 48 hours –

- (a) make a record describing the wreck and any marks by which it is distinguished, and
- (b) if in his opinion the value of the wreck exceeds £5,000, also cause to be published in La Gazette Officielle and, where appropriate, in the Alderney Official Gazette a description of the wreck, mentioning the place in which it was found or from which it was recovered and in which it is presently to be found, and transmit a similar description to the chief executive officer of Lloyd's in London for

posting by him in some conspicuous place for inspection, and shall otherwise give such publicity to it as he thinks fit.

(2) The record made by the receiver under subsection (1)(a) shall be kept by him available for inspection by any person during reasonable hours without charge.

**Claims of owners to wreck.**

**229.** (1) The owner of any wreck, other than historic wreck, in the possession of the receiver who establishes his 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 shall, on paying the salvage, fees and expenses due, be entitled to have the wreck delivered or the proceeds of sale paid to him.

(2) Where –

- (a) a foreign ship has been wrecked on or near the coasts of Guernsey, or
- (b) any articles belonging to or forming part of or of the cargo of a foreign ship which has been wrecked on or near the coasts of Guernsey are found on or near the coast or are brought into any port,

the appropriate consular officer shall, in the absence of the owner and of the master or other agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck and such articles.

(3) In subsection (2), "**the appropriate consular officer**", in

relation to a foreign ship, means 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 any consular officer of that country authorised for the purpose by any treaty or arrangement with that country who, in either case, is for the time being serving in the United Kingdom.

**Immediate sale of wreck in certain cases.**

**230.** (1) The receiver may at any time sell any wreck, other than historic wreck, in his possession if, in his 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 any wreck, other than historic wreck, in his possession before the end of the year referred to in section 229(1) if –

- (a) in his opinion it is unlikely that any owner will establish a claim to the wreck within that year, and
- (b) no statement has been given to the receiver under section 232(1) in relation to the place where the wreck was found.

(3) Subject to subsection (4), the proceeds of sale shall, after defraying the expenses of the sale, 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) Where the receiver sells any wreck in a case falling within subsection (2), he may make to the salvors an advance payment, of such amount as he thinks fit and subject to such conditions as he thinks fit, on account of any salvage that may become payable to them in accordance with section 233(5).

*Unclaimed wreck*

**Right of Crown to unclaimed wreck.**

231. Her Majesty and Her Royal successors are entitled to all unclaimed wreck, other than historic wreck, found in Guernsey or in Guernsey waters except in places where Her Majesty or any of Her Royal Predecessors has granted the right to any other person.

**Notice of unclaimed wreck to be given to persons entitled.**

232. (1) Any person who is entitled to unclaimed wreck, other than historic wreck, found at any place in Guernsey or in Guernsey waters shall give the receiver a statement containing the particulars of his entitlement and specifying an address to which notices may be sent.

(2) Where a statement has been given to the receiver under subsection (1) and the entitlement is proved to the satisfaction of the receiver, the receiver shall, on taking possession of any wreck found at a place to which the statement refers, within 48 hours, send to the specified address a description of the wreck and of any marks distinguishing it.

**Disposal of unclaimed wreck.**

233. (1) Where, as respects any wreck, other than historic wreck, found in Guernsey or in Guernsey waters and in the possession of the receiver, no

owner establishes a claim to it within one year after it came into the receiver's possession, the wreck shall be dealt with as follows.

(2) If the wreck is claimed by any person who has delivered the statement required by section 232 and has proved to the satisfaction of the receiver his entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck shall, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

(3) If the wreck is not claimed by any person in accordance with section 232, the receiver shall sell the wreck and pay the proceeds as directed by subsection (6), after making the deductions required by subsection (4) and paying to the salvors the amount of salvage determined under subsection (5).

(4) The amounts to be deducted by the receiver are –

- (a) the expenses of the sale,
- (b) any other expenses incurred by him, and
- (c) his fees.

(5) The amount of salvage to be paid by the receiver to the salvors shall be such amount as the Board directs generally or in the particular case.

(6) The proceeds of sale (after making those deductions and salvage payments) shall be paid by the receiver for the benefit of Her Majesty to Her Majesty's Receiver-General.

**Effect of delivery of wreck, etc. under this Part.**

**234.** (1) Delivery of wreck or payment of the proceeds of sale of wreck by the receiver under this Chapter shall discharge the receiver from all liability in respect of the delivery or payment.

(2) Delivery of wreck by the receiver under this Chapter shall not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck or concerning the title to the soil of the place at which the wreck was found.

*Offences in respect of wreck*

**Taking wreck to foreign port.**

**235.** (1) A person commits an offence if he takes into any foreign port and sells –

- (a) any vessel stranded, derelict or otherwise in distress found on or near the coasts of Guernsey or any tidal water within Guernsey waters,
- (b) any part of the cargo or equipment of, or anything belonging to, such a vessel, or
- (c) any wreck found within those waters.

(2) A person who is guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or both.

**Interfering with wrecked vessel or wreck.**

**236.** (1) Subject to subsection (2), a person commits an offence if,

without the permission of the master, he boards or attempts to board any vessel which is wrecked, stranded or in distress.

(2) No offence is committed under subsection (1) if the person is the receiver or a person lawfully acting as the receiver or if he acts by command of the receiver or a person so acting.

(3) A person commits an offence if –

(a) he impedes or hinders or attempts to impede or hinder the saving of –

(i) any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water, or

(ii) any part of the cargo or equipment of any such vessel, or

(iii) any wreck,

(b) he conceals any wreck,

(c) he defaces or obliterates any mark on a vessel, or

(d) he wrongfully carries away or removes –

(i) any part of any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water,

- (ii) any part of the cargo or equipment of any such vessel, or
- (iii) any wreck.

(4) The master of a vessel may forcibly repel any person committing or attempting to commit an offence under subsection (1).

(5) A person who is guilty of an offence under this section shall be liable, on summary conviction –

- (a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the uniform scale,
- (b) in the case of an offence under subsection (3), to a fine not exceeding level 4 on the uniform scale.

**Powers of entry, etc.**

**237.** (1) Where the receiver has reason to believe that –

- (a) any wreck is being concealed by or is in the possession of some person who is not the owner of it, or
- (b) any wreck is being otherwise improperly dealt with,

he may apply to the appropriate judicial officer for a search warrant.

(2) Where a search warrant is granted under subsection (1) to the

receiver, the receiver may, by virtue of the warrant –

- (a) enter any house, or other place (wherever situated) or any vessel, and
- (b) search for, seize and detain any wreck found there.

(3) If any seizure of wreck is made under this section in consequence of information given by any person to the receiver, the person giving the information shall be entitled, by way of salvage, to such sum, not exceeding £100, as the receiver may allow.

- (4) In this section, "**the appropriate judicial officer**" means –
  - (a) as respects the Island of Alderney, the Chairman of the Court of Alderney,
  - (b) as respects the Island of Sark, the Seneschal of Sark, and
  - (c) in all other cases, the Bailiff.

CHAPTER III  
SUPPLEMENTAL

*Administration*

**Functions of Board as to wreck.**

**238.** (1) On behalf of Her Majesty's Receiver-General, the Board shall have the general superintendence throughout Guernsey of all matters relating to

wreck.

(2) The Board may appoint one or more persons to be receiver of wreck for the purposes of this Part and a receiver so appointed shall discharge such functions as are assigned to him by the Board.

(3) Such public notice of appointments to the office of receiver shall be given as appears to the Board to be appropriate.

**Expenses and fees of receivers.**

239. (1) There shall be paid to the receiver the expenses properly incurred by him in the discharge of his functions and also, in respect of such matters as may be prescribed by regulations made by the Board, such fees as may be so prescribed.

(2) The receiver shall not be entitled to any other remuneration.

(3) The receiver shall, in addition to all other rights and remedies for the recovery of those expenses and fees, have the same rights and remedies in respect of those expenses and fees as a salvor has in respect of salvage due to him.

(4) Whenever any dispute arises as to the amount payable to the receiver in respect of expenses or fees, that dispute shall be determined by the Board whose decision shall be final.

*Coastguard services*

**Remuneration of services of coastguard.**

240. (1) Subject to subsection (2), where services are rendered by any officers or men of the coastguard service in watching or protecting shipwrecked

property the owner of the property shall pay in respect of those services remuneration according to a scale fixed by the Board.

(2) No liability in respect of those services arises under subsection (1) where –

- (a) the services have been declined by the owner of the property or his agent at the time they were tendered, or
- (b) salvage has been claimed and awarded for the services.

(3) Remuneration under this section shall –

- (a) be recoverable by the same means,
- (b) be paid to the same persons, and
- (c) be accounted for and applied in the same manner,

as fees received by the receiver under section 239.

(4) The scale fixed by the Board shall not exceed the scale by which remuneration to officers and men of the coastguard for extra duties in the ordinary service of the Board is for the time being regulated.

*Release from customs and excise control*

**Release of goods from customs and excise control.**

**241.** (1) The Chief Officer of Customs and Excise shall, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination.

(2) The Chief Officer of Customs and Excise shall, subject to taking such security, permit all goods saved from any ship stranded or wrecked on her outward voyage to be returned to the port at which they were shipped.

(3) In this section, "**goods**" includes wares and merchandise.

*Removal of wrecks*

**Powers of harbour authorities in relation to wrecks.**

**242.** (1) Where any vessel is sunk, stranded or abandoned in, or in or near any approach to, any harbour or tidal water under the control of a harbour authority in such a manner as, in the opinion of the authority, to be, or to be likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service in that harbour or water or approach thereto, that authority may exercise any of the following powers.

- (2) Those powers are –
- (a) to take possession of, and raise or remove the whole or any part of the vessel and any other property to which the power extends, and
  - (b) to light or buoy the vessel or part of the vessel and any such other property until it is raised or removed.

(3) The other property to which the powers conferred by subsection (2) extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel.

(4) Any vessel or part of a vessel raised or removed and any other property recovered by a harbour authority in exercise of the powers conferred by subsection (2) shall be delivered by the authority to the receiver.

(5) Where a harbour authority have incurred expenses in the exercise of their powers under this section in relation to any vessel or other property –

- (a) the authority shall be reimbursed by the receiver for the full amount of those expenses out of the proceeds of any sale, and
- (b) if the proceeds of sale are insufficient to reimburse the authority for the full amount of those expenses, the authority may recover the amount of the deficiency from the owner of the vessel at the time of the sinking, stranding or abandonment of the vessel.

(6) This section is without prejudice to any other powers of a harbour authority.

**Powers of lighthouse authority in relation to wreck.**

**243.** (1) Where –

- (a) any vessel is sunk, stranded or abandoned in any fairway or on the seashore or on or near any rock,

shoal or bank in Guernsey or any of the adjacent seas,  
and

- (b) there is no harbour authority having power to raise or remove the vessel,

the general lighthouse authority shall, if in that authority's opinion the vessel is, or is likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, have the same powers in relation thereto as are conferred by section 242.

(2) Where the general lighthouse authority have incurred expenses in the exercise of their powers under this section in relation to any vessel or other property, then –

- (a) if there is a sale –
  - (i) the authority shall be reimbursed by the receiver out of the proceeds of that sale for the full amount of those expenses, and
  - (ii) if the proceeds of sale are insufficient to reimburse the authority for the full amount of those expenses, the authority may recover the amount of the deficiency from the relevant person, or
- (b) if there is no such sale, the authority may recover the full amount of those expenses from the relevant person.

(3) In this section, "**the relevant person**", in relation to any vessel, means the owner of the vessel at the time of the sinking, stranding or abandonment of the vessel.

**Referral of questions as to powers between authorities.**

**244.** (1) If any question arises between a harbour authority and the general lighthouse authority as to their respective powers under sections 242 and 243 in relation to any place in or near an approach to a harbour or tidal water, that question shall, on the application of either authority, be referred to the court for its decision.

(2) Any decision of the court under this section shall be final.

(3) In this section, "**the court**" means –

(a) in respect of matters arising in Alderney, the Court of Alderney,

(b) in respect of matters arising in Sark, the Court of the Seneschal of Sark, and

(c) in respect of all other matters, the Ordinary Court.

*Interpretation*

**Interpretation.**

**245.** (1) In this Part –

"**historic wreck**" has the same meaning as in the Wreck and Salvage

(Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986<sup>hh</sup>;

**"receiver"** means a receiver of wreck appointed under section 238,

**"salvage"** includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of the salvage services,

**"the Salvage Convention"** has the meaning given by section 214(1),

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

**"tidal water"** means any part of the sea within the ebb and flow of the tide at ordinary spring tides, and not being a harbour,

**"vessel"** includes any ship or boat, or any description of vessel used in navigation, and

**"wreck"** includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

(2) Fishing boats or fishing gear lost or abandoned at sea and either –

(a) found or taken possession of within Guernsey waters,  
or

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<sup>hh</sup> Ordres en Conseil Vol. XXIX, p. 390; No. XIV of 1997; No. VIII of 1998; Recueil d'Ordonnances Tome XXVI, pp. 182 and 306.

- (b) found or taken possession of beyond those waters and brought within those waters,

shall be treated as wreck for the purposes of this Part.

PART X  
ENFORCEMENT OFFICERS AND POWERS

*Enforcement Officers*

**Appointment of inspectors and surveyors.**

**246.** (1) The Board may, if it thinks fit, appoint any person as an inspector to report to it –

- (a) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused,
- (b) whether any requirements, restrictions or prohibitions imposed by or under this Law have 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 Board may, at such ports as it thinks fit, appoint persons

to be surveyors of ships for the purposes of this Law and may remove any person so appointed.

(3) A surveyor of ships may be appointed either as a ship surveyor or as an engineer surveyor or as both.

(4) Surveyors of ships may be appointed either generally or for any particular case or purpose.

(5) The Board may appoint persons to be inspectors for the purposes of section 251 to 256.

(6) Every inspector appointed under subsection (1) shall be treated as appointed under subsection (5).

(7) Every surveyor of ships shall be treated as a person appointed generally under subsection (1) to report to the Board in every kind of case falling within paragraphs (b) and (d) of that subsection in relation to Chapter III of Part VI.

(8) In this Law –

(a) "**Board shipping inspector**" means an inspector appointed under subsection (1),

(b) "**surveyor of ships**" means a surveyor appointed under subsection (2),

and any reference to requirements, restrictions or prohibitions under this Law includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given in any document issued under

this Law.

*Inspection, etc. powers*

**Powers to require production of ships documents.**

247. (1) The powers conferred by this section are conferred in relation to Guernsey ships and are available to any of the following officers, namely –

- (a) any commissioned naval officer,
- (b) any British consular officer,
- (c) the Registrar of British Ships or any person discharging his functions,
- (d) the Chief Officer of Customs and Excise,
- (e) any officer of the Board authorised for that purpose,

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

(2) Those powers are –

- (a) to require the owner, master, or any of the crew to produce any official log-books or other documents relating to the crew or any member of the crew in their possession or control,
- (b) to require the master to produce a list of all persons on

board his ship, and take such copies of or extracts from the official log-books or other such documents,

- (c) to muster the crew, and
- (d) to require the master to appear and give any explanation concerning the ship or her crew or the official log-books or documents produced or required to be produced.

(3) If any person, on being duly required by an officer under this section to produce a log-book or any document, fails without reasonable excuse to produce the log-book or document, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(4) If any person, on being duly required by any officer under this section –

- (a) to produce a log-book or document, refuses to allow the log-book or document to be inspected or copied,
- (b) to muster the crew, impedes the muster, or
- (c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

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

**248.** (1) For the purposes of seeing that the provisions of this Law other than sections 138 to 149 and 151 to 159 and the provisions of regulations and rules made under this Law (other than those sections) are complied with or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, the following persons, namely –

- (a) a surveyor of ships,
- (b) any person appointed by the Board, either generally or in a particular case, to exercise powers under this section,

may at all reasonable times go on board a ship in Guernsey or in Guernsey waters and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Law or in pursuance of regulations or rules under this Law.

(2) The powers conferred by subsection (1) are not exercisable in relation to a qualifying foreign ship while the ship is exercising –

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation.

(3) The powers conferred by subsection (1) are, if the ship is a Guernsey ship, also exercisable outside Guernsey waters and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

(4) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(5) Where any such person as is mentioned in subsection (1) has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a Guernsey ship which, if provided on the ship, would not be in accordance with safety regulations containing requirements as to provisions and water to be provided on ships he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.

(6) If any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (3), he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Powers of inspectors in relation to premises and ships.**

**249.** (1) The powers conferred by this section are conferred in relation to –

- (a) any premises in Guernsey, or
- (b) any Guernsey ship wherever it may be and any other ship which is present in Guernsey or in Guernsey waters,

and are available to any Board shipping inspector, or any inspector appointed under section 246(5), for the purpose of performing his functions.

- (2) Such an inspector –
- (a) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) –
    - (i) enter any premises, or
    - (ii) board any ship,if he has reason to believe that it is necessary for him to do so,
  - (b) may, on entering any premises by virtue of paragraph (a) or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Board and any equipment or materials he requires,
  - (c) may make such examination and investigation as he considers necessary,
  - (d) may give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c),

*Consolidated text*

- (e) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c),
- (f) may take samples of any articles or substances 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 any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any 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 any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –
  - (i) to examine it and do to it anything which he has power to do under that paragraph,
  - (ii) to ensure that it is not tampered with before his examination of it is completed,
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Law or any instrument made under it,

*Consolidated text*

- (i) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c) –
  - (i) to attend at a place and time specified by the inspector, and
  - (ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask, and
  - (iii) to sign a declaration of the truth of his answers,
- (j) may require the production of, and inspect and take copies of or of any entry in –
  - (i) any books or documents which by virtue of any provisions of this Law are required to be kept, and
  - (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c),

(k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(3) The powers conferred by subsection (2) to require the production of any document and copy it include, in relation to oil record books required to be carried under section 150, power to require the master to certify the copy as a true copy.

(4) The powers conferred by subsection (2) to inspect premises shall also be exercisable, for the purpose of Chapter III of Part VI, in relation to any apparatus used for transferring oil.

(5) The powers conferred by subsection (2)(a), (c) and (j) shall also be exercisable, in relation to a ship in a harbour in Guernsey, by the harbour master or other persons appointed by the Board for the purpose, 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.

(6) It is hereby declared that nothing in the preceding provisions of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(7) The Board may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(f) and subsection (10) and provision as to the way in which samples that have been so taken are to be dealt with.

(8) Where an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which 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 done in that person's presence would be prejudicial to the safety of that person.

(9) Before exercising the power conferred by subsection (2)(g), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(10) Where under the power conferred by subsection (2)(h) an inspector takes possession of any article or substance found in any premises or ship, he shall 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 has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

[(11) An answer given by a person in response to a requirement under subsection (2)(i) –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and

- (b) may not be used in evidence against him in criminal proceedings except –
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
  - (ii) in proceedings for –
    - (A) an offence under subsection 250(1)(c),
    - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
    - (C) perjury, or
    - (D) perverting the course of justice.]

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**NOTE**

*In section 249, subsection (11) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.*

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**Provisions supplementary to section 249.**

- 250.** (1) A person who –

*Consolidated text*

- (a) intentionally obstructs an inspector in the exercise of any power available to him under section 249, or
- (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 249 or prevents another person from complying with such a requirement, or
- (c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 249,

shall be guilty of an offence and liable –

- (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) Nothing in section 249 shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production in an action in the Royal Court.

(3) A person who complies with a requirement imposed on him in

pursuance of paragraph (i)(i) or (k) of subsection (2) of section 249 shall be entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Board.

(4) Regulations under subsection (3) may make different provision for different circumstances.

(5) Any payments under subsection (3) shall be made out of moneys provided by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

*Improvement notices and prohibition notices*

**Improvement notices.**

**251.** (1) If an inspector appointed under section 246(5) 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 contravention will continue or be repeated,

he may serve on that person a notice under this section, (referred to in the following sections of this Part as an "**improvement notice**").

(2) An improvement notice shall –

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- (a) state that the inspector is of the said opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion, and
- (b) require the person on whom the notice is served to remedy the contravention in question or (as the case may be) the matters occasioning it within such period as may be specified in the notice.

(3) The period specified in pursuance of subsection (2)(b) shall not expire before the end of the period within which a notice can be given under section 254 requiring questions relating to the improvement notice to be referred to arbitration.

(4) In this and the following sections of the Part, "**the relevant statutory provisions**" means –

- (a) sections 41, 42, 44 to 53, 80, 81, 83 (and Schedule 2), 84 (and Schedule 3), 85, 94, 111, 117, 118, 123 to 128, 130, 131, 132, 133, 138 to 159 and 262, and
- (b) the provisions of any instrument of a legislative character having effect under any of those provisions.

**Prohibition notices.**

**252.** (1) If, as regards any relevant activities which are being or are likely to be carried on on board any ship by or under the control of any person, an inspector appointed under section 246(5) is of the opinion that, as so carried on or as likely to be so carried on, the activities involve or (as the case may be) will

involve the risk of –

- (a) serious personal injury to any person (whether on board the ship or not), or
- (b) serious pollution of any navigable waters,

the inspector may serve on the first-mentioned person a notice under this section (referred to in the following sections of this Part as a "**prohibition notice**").

(2) In subsection (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 subsection, apply.

(3) A prohibition notice shall –

- (a) state that the inspector is of the said opinion,
- (b) specify the matters which in his opinion give or (as the case may be) will give rise to the said risk,
- (c) where in his opinion any of those matters involve or (as the case may be) will involve a contravention of any of the relevant statutory provisions state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion, and
- (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, or
- (ii) that the ship shall not go to sea,

(or both of those things) unless the matters specified in the notice in pursuance of paragraph (b), and any associated contraventions of any provision so specified in pursuance of paragraph (c), have been remedied.

(4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) shall take effect –

- (a) at the end of a period specified in the notice, or
- (b) if the direction is given in pursuance of subsection (3)(d)(ii) or the notice so declares, immediately.

**Provisions supplementary to sections 251 and 252.**

**253.** (1) An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such 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 any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.

(3) Where an improvement notice or 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 in pursuance of section 251(2)(b) or (as the case may be) section 252(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 section 254.

**References of notices to arbitration.**

**254.** (1) Any question –

- (a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 251(2)(a) or 252(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion, or
- (b) as to whether any directions included in the notice in pursuance of section 253(1) were reasonable,

shall, if the person on whom the notice was served so requires by a 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 for that question to be decided by him.

(2) Where a notice is given by a person in accordance with subsection (1), then –

- (a) in the case of an improvement notice, the giving of the notice shall have 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 that person,
- (b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs (and then only from the giving of the direction).

(3) Where on a reference under this section the arbitrator decides as respects any 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 shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(4) Where any reference under this section involves the

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consideration by the arbitrator of the effects of any particular activities or state of affairs on the health or safety of any persons, he shall not on that reference make any decision such as is mentioned in subsection (3)(a) or (b) except after –

- (a) in the case of an improvement notice, affording an opportunity of making oral representations to him with respect to those effects to a member of any such panel of representatives of maritime trade unions as may be appointed by the Board for the purposes of this subsection, or
- (b) in the case of a prohibition notice, affording an opportunity of making such representations to him to either –
  - (i) a representative of a trade union representing persons whose interests it appears to him that the notice was designed to safeguard, or
  - (ii) a member of any such panel as is referred to in paragraph (a),

as he thinks appropriate, and

- (c) (in either case) considering any representations made to him in pursuance of paragraph (a) or (b).

(5) A person shall not be qualified for appointment as an arbitrator under this section unless he is –

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- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate,
- (b) a naval architect,
- (c) a person falling with subsection (6), or
- (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(6) For the purposes of subsection (5)(c) a person falls within this subsection if he is –

- (a) an Advocate of the Royal Court of Guernsey, or
- (b) a member of the Bar of England and Wales, or the Bar of Northern Ireland, or of the Faculty of Advocates in Scotland, or
- (c) a Solicitor of the Supreme Court of England and Wales, or of the Supreme Court of Northern Ireland, or in Scotland,

of not less than 10 years' standing.

(7) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 249 other than

subsections (3), (4) and (5).

(8) The Arbitration (Guernsey) Laws, 1982 and 1986<sup>ii</sup> or the Arbitration (Alderney) Laws, 1983 and 1986<sup>jj</sup>, as the case may be, shall apply in relation to an arbitration in pursuance of this section.

**Compensation in connection with invalid prohibition notices.**

**255.** (1) If on a reference under section 254 relating to a prohibition notice –

- (a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion, and
- (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit.

(2) If on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the direction as the arbitrator thinks fit.

(3) An arbitrator shall not award any compensation under

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<sup>ii</sup> Ordres en Conseil Vol. XXVII, p. 525; Vol. XXIX, p. 178.

<sup>jj</sup> Ordres en Conseil Vol. XXVIII, p. 236; Vol. XXIX, p. 171.

subsection (1) or (2) in the case of any prohibition notice unless –

- (a) it appears to him that the direction given in pursuance of section 252(3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision, or
- (b) it appears to him 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 in pursuance of section 252(3)(d) was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions, referred to in the direction were remedied.

(4) Any compensation awarded under this section shall be payable by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

**Offences.**

**256.** (1) Any person who contravenes any requirement imposed by an improvement notice shall be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(b) on conviction on indictment, to a fine.

(2) Any person who contravenes any prohibition imposed by a prohibition notice shall be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(3) It shall be a defence for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.

(4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 254(3).

## PART XI

### ACCIDENT INVESTIGATIONS AND INQUIRIES

#### *Marine accident investigations*

#### **Investigation of marine accidents.**

**257.** (1) The Board shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2), appoint such number of persons as it may determine to be inspectors of marine accidents, and it shall appoint one of those persons to be Chief Inspector of Marine Accidents.

- (2) The accidents referred to in subsection (1) are –
- (a) any accident involving a ship or ship's boat where, at the time of the accident –
    - (i) the ship is a Guernsey ship, or
    - (ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within Guernsey waters, and
  - (b) such other accidents involving ships or ships' boats as the Board may determine.

(3) The Board may by regulations make such provision as it considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2).

- (4) Any such regulations may, in particular, make provision –
- (a) with respect to the definition of "accident" for the purposes of this section and the regulations,
  - (b) imposing requirements as to the reporting of accidents,
  - (c) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident,
  - (d) authorising any person, so far as may be necessary for

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the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat,

- (e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged,
- (f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents,
- (g) for the appointment by the Bailiff of persons to review any finding or conclusions of a person carrying out an investigation under this section,
- (h) for the procedure to be followed in connection with investigations or reviews under this section,
- (i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an

inspector by section 249,

- (j) for the submission to the Board, and the publication by it, of reports of investigations or reviews under this section,
- (k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.

(5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely –

- (a) the loss or destruction of or serious damage to any ship or structure,
- (b) the death of or serious injury to any person, or
- (c) environmental damage,

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

(6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding level 5 on the uniform scale and on conviction on

indictment by a fine.

(7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Board may determine.

(8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 249.

(9) Nothing in this section shall limit the powers of any authority under sections 242, 243 and 244.

(10) In this section –

(a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any references to a ship or ship's boat involved in an accident shall be construed accordingly), and

(b) "**ship's boat**" includes a life-raft.

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**NOTE**

*The following Regulations have been made under section 257:*

*Merchant Shipping (Accident Reporting and Investigation)  
(Bailiwick of Guernsey) Regulations, 2009.*

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**Formal investigation into marine accidents.**

**258.** (1) Where any accident has occurred, the Board may (whether or not an investigation into it has been carried out under section 257) cause a formal investigation into the accident to be held by a wreck commissioner; and in this section "**accident**" means any accident to which regulations under that section apply or any incident or situation to which any such regulations apply by virtue of subsection (5) of that section.

(2) A wreck commissioner holding a formal investigation shall conduct it in accordance with rules under section 260(1); and those rules shall require the assistance of one or more assessors and, if any question as to the cancellation or suspension of an officer's certificate is likely, the assistance of not less than two assessors.

(3) A wreck commissioner shall, for the purposes of a formal investigation under this section, have the same powers as the Royal Court of Guernsey in respect of –

- (a) the attendance and examination of witnesses,
- (b) the administration of oaths or affirmations to witnesses,
- (c) the production of documents and exhibits,

and a summons in relation to any of these matters signed by a wreck commissioner shall be equivalent to a formal process issued in that behalf in an action before the Royal Court.

(4) If as a result of the investigation the wreck commissioner is

satisfied, with respect to any officer, of any of the matters mentioned in paragraphs (a) to (c) of section 59(1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, he may cancel or suspend any certificate issued to the officer under section 45 or censure him; and if he cancels or suspends the certificate the officer shall deliver it forthwith to him or to the Board.

(5) If a person fails to deliver a certificate as required under subsection (4) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(6) Where a certificate has been cancelled or suspended under this section, the Board, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

(7) The wreck commissioner may make such awards as he thinks just with regard to the costs (or, as the case may be, expenses) of the investigation and of any parties at the investigation, and with regard to the parties by whom those costs or expenses are to be paid; and any such award of the wreck commissioner may, on the application of any party named in it, be made an order of the Royal Court.

(8) Any costs or expenses directed by an award to be paid are taxable in the Royal Court.

(9) The wreck commissioner shall make a report on the investigation to the Board.

**Re-hearing of and appeal from investigations.**

259. (1) Where a formal investigation has been held under section 258 the Board may order the whole or part of the case to be re-heard, and shall do so –

- (a) if new and important evidence which could not be produced at the investigation has been discovered, or
- (b) if there appear to the Board to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the re-hearing to be by a wreck commissioner or by the Ordinary Court.

(3) Any re-hearing under this section which is not held by the Ordinary Court shall be conducted in accordance with rules made under section 260(1); and section 258 shall apply in relation to a re-hearing of an investigation by a wreck commissioner as it applies in relation to the holding of an investigation.

(4) Where the wreck commissioner holding the investigation has decided to cancel or suspend the certificate of any person or has found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who, having an interest in the investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the Ordinary Court.

(5) Section 258(6) applies for the purposes of this section as it applies for the purposes of that section.

**Rules as to investigations and appeals.**

**260.** (1) The Board may make rules for the conduct of formal investigations under section 258 and for the conduct of any re-hearing under section 259 which is not held by the Ordinary Court.

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of court made for the purpose of re-hearings under section 259 which are held by the Ordinary Court, or of appeals to the Ordinary Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

*Inquiries into and reports on deaths and injuries*

**Inquiries into deaths of crew members and others.**

**261.** (1) Subject to subsection (6), where –

- (a) any person dies in a Guernsey 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 Guernsey,

an inquiry into the cause of the death shall be held by an officer of the Board appointed for that purpose or a proper officer at the next port where the ship calls after the death and where there is such an officer or a proper officer, or at such other place as the Board may direct.

- (2) Subject to subsection (6), where it appears to the Board that –
- (a) in consequence of an injury sustained or a disease contracted by a person when he was the master of or a seaman employed in a Guernsey ship, he ceased to be employed in the ship and subsequently died, and
  - (b) the death occurred in a country outside Guernsey during the period of one year beginning with the day on which he so ceased,

the Board may arrange for an inquiry into the cause of the death to be held by an officer of the Board appointed for that purpose or a proper officer.

- (3) Subject to subsection (6), where it appears to the Board that a person may –

- (a) have died in a Guernsey ship or in a boat or life-raft from such a ship, or
- (b) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost,

the Board may arrange for an inquiry to be held by an officer of the Board appointed for that purpose or a proper officer into whether the person died as mentioned above and, if the officer finds that he did, into the cause of the death.

- (4) The officer holding the inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 249.

(5) The person holding the inquiry shall make a report of his findings to the Board 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 his 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 Board to be interested.

(6) No inquiry shall be held under this section where an inquest is to be held.

**Reports of and inquiries into injuries.**

**262.** (1) Where the master or a member of the crew of a Guernsey fishing vessel is injured during a voyage, an inquiry into the cause and nature of the injury may be held by an officer of the Board appointed for that purpose or a proper officer.

(2) The officer holding an inquiry under this section shall, for the purposes of the inquiry, have the powers conferred on a Board shipping inspector by section 249 and shall make a report of his findings to the Board.

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

**263.** Where –

(a) an inquest is held into a death or a post mortem

examination is made of a dead body as a result of which the court is satisfied that an inquest is unnecessary, and

- (b) it appears to the court that the death in question is such as is mentioned in section 110(2) or in that subsection as extended (with or without amendments) by virtue of section 292,

it shall be the duty of the court to send to the Registrar of British Ships particulars in respect of the deceased of a kind prescribed by regulations made by the Board.

PART XII  
LEGAL PROCEEDINGS

*Prosecution of offences*

**Offences by officers of bodies corporate.**

**264.** (1) Where a body corporate is guilty of an offence under this Law or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Accessories and abettors.**

**265.** Any person who knowingly and wilfully aids, abets counsels, causes, procures or commands the commission by another person of an offence under this Law or any instrument made under it, shall be liable to be dealt with, tried and punished as a principal offender.

*Jurisdiction*

**Jurisdiction in relation to offences.**

**266.** (1) For the purpose of conferring jurisdiction, any offence under this Law shall be deemed to have been committed in any place in Guernsey where the offender may for the time being be.

(2) For the same purpose, any matter of complaint under this Law shall be deemed to have arisen in any place in Guernsey where the person complained against may for the time being be.

(3) The jurisdiction under subsections (1) and (2) shall be in addition to and not in derogation of any jurisdiction or power of a court under any other enactment.

**Jurisdiction in case of offences on board ship.**

**267.** Where any person is charged with having committed any offence under this Law then –

(a) if he is a British citizen and is charged with having committed it –

(i) on board any Guernsey ship on the high seas,

- (ii) in any foreign port or harbour, or
  - (iii) on board any foreign ship to which he does not belong, or
- (b) if he is not a British citizen and is charged with having committed it on board any Guernsey ship on the high seas,

and he is found in Guernsey, any court which would have had jurisdiction in relation to the offence if it had been committed on board a Guernsey ship within the limits of its ordinary jurisdiction to try the offence shall have jurisdiction to try the offence as if it had been so committed.

**Offences committed by Guernsey seamen.**

**268.** (1) Any act in relation to property or persons done in or at any place (ashore or afloat) outside Guernsey by any master or seaman who at the time is employed in a Guernsey ship, which, if done in any part of Guernsey, would be an offence under the law of any part of Guernsey, shall –

- (a) be an offence under that law, and
- (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Magistrate's Court.

(2) Subsection (1) also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

(3) Subsections (1) and (2) apply to omissions as they apply to acts.

*Return of offenders*

**Return of offenders.**

**269.** (1) The powers conferred on a British consular officer by subsection (2) are exercisable in the event of any complaint being made to him –

- (a) that any offence against property or persons has been committed at any place (ashore or afloat) outside Guernsey by any master or seaman who at the time when the offence was committed, or within three months before that time, was employed in a Guernsey ship, or
- (b) that any offence on the high seas has been committed by any master or seaman belonging to any Guernsey ship.

(2) Those powers are –

- (a) to inquire into the case upon oath, and
- (b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by Guernsey ship as soon as practicable in safe custody to Guernsey for proceedings to be taken against him.

(3) The consular officer may, subject to subsections (4) and (5), order the master of any Guernsey ship bound for Guernsey to receive and carry the offender and the witnesses to Guernsey; and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the Board requires.

(4) A consular officer shall not exercise the power conferred by subsection (3) unless no more convenient means of transport is available or it is available only at disproportionate expense.

(5) No master of a ship may be required under subsection (3) to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of his ship's registered tonnage.

(6) The master of any ship to whose charge an offender has been committed under subsection (3) shall, on his ship's arrival in Guernsey, give the offender into the custody of an officer of police.

(7) If any master of a ship, when required under subsection (3) to receive and carry any offender or witness in his ship –

(a) fails to do so, or

(b) in the case of an offender, fails to deliver him as required by subsection (6),

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(8) The expenses of imprisoning any such offender and of

carrying him and witnesses to Guernsey otherwise than in the ship to which they respectively belong shall be paid out of money provided by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

(9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

*Detention of ship and arrest and sale of ship*

**Enforcing detention of ship.**

**270.** (1) Where under this Law a ship is to be or may be detained any of the following officers may detain the ship –

- (a) any commissioned naval or military officer,
- (b) the Harbourmaster,
- (c) any officer of the Board (other than the Harbourmaster) authorised by the Board, either generally or in a particular case, to exercise powers under this section,
- (d) any officer of Customs and Excise,
- (e) any sea-fishery officer, and
- (f) any British consular officer.

(2) A notice of detention may –

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- (a) include a direction that the ship –
  - (i) must remain in a particular place, or
  - (ii) must be moved to a particular anchorage or berth, and
- (b) if it includes such a direction, may specify circumstances relating to safety or the prevention of pollution in which the master may move his ship from that place, anchorage or berth.

(3) If a ship as respects which notice of detention has been served on the master proceeds to sea, otherwise than in accordance with such a notice, before it is released by a competent authority, the master of the ship shall be guilty of an offence.

(4) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under subsection (2)(a), the master of the ship shall be guilty of an offence.

(5) A person guilty of an offence under subsection (3) or (4) shall be liable –

- (a) on summary conviction to a fine not exceeding £50,000,
- (b) on conviction on indictment, to a fine.

(6) The owner of a ship, and any person who sends to sea a ship,

as respects which an offence is committed under subsection (3) or (4) shall, if party or privy to the offence, also be guilty of an offence under that subsection and liable accordingly.

(7) Where a ship proceeding to sea in contravention of subsection (3) or failing to comply with a direction given under subsection (2)(a) carries away without his consent any of the following who is on board the ship in the execution of his duty, namely –

- (a) any officer authorised by subsection (1) to detain the ship, or
- (b) any surveyor of ships,

the owner and master of the ship shall each –

- (i) be liable to pay all expenses of and incidental to the officer or surveyor being so carried away, and
- (ii) be guilty of an offence.

(8) A person guilty of an offence under subsection (7) shall be liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(9) Where under this Law a ship is to be detained an officer of Customs and Excise shall, and where under this Law a ship may be detained an officer of Customs and Excise may, refuse to clear the ship outwards or grant a transire to the ship.

(10) When any provision of this Law provides that a ship may be detained until any document is produced to the proper officer of Customs and Excise the officer able to grant a clearance or transire of the ship is (unless the context otherwise requires) that officer.

(11) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.

**Sums ordered to be paid leviable by arrest and sale of the ship.**

271. (1) Where any court has power to make an order directing payment to be made of any seaman's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the court which made the order may direct the amount remaining unpaid to be levied by the arrest and sale of the ship and its equipment.

(2) The remedy made available by this section is in addition to any other powers for compelling the payment of money ordered to be paid.

*Special evidential provisions*

**Depositions of persons abroad admissible.**

272. (1) If the evidence of any person is required in the course of any legal proceedings before a court in relation to the subject matter of the proceeding

and it is proved that that person cannot be found in Guernsey, any deposition that he may have previously made at a place outside Guernsey in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1) in any proceedings, the deposition –

- (a) must have been taken on oath,
- (b) must have been taken before –
  - (i) a justice or magistrate in the United Kingdom or any relevant British possession, or
  - (ii) a British consular officer in any other place,
- (c) must be authenticated by the signature of the justice, magistrate or officer taking it, and
- (d) must, if the proceedings are criminal proceedings, have been taken in the presence of the accused,

and, in a case falling within paragraph (d), the deposition shall be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the

accused shall, unless the contrary is proved, be evidence of that fact.

(4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.

(5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or practice of any court.

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

**273.** (1) The following documents shall be admissible in evidence and, when in the custody of the Registrar of British Ships, shall be open to public inspection –

- (a) documents purporting to be submissions to or decisions by officers of the Board or proper officers under section 31,
- (b) the official log book of any ship kept under section 74 and, without prejudice to section 274(2), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship,
- (c) crew agreements, lists of crews made under section 75 and notices given under Part III of additions to or changes in crew agreements and lists of crews,
- (d) returns or reports under section 110,
- (e) documents transmitted to the Registrar of British Ships

under section 284.

(2) A certificate issued under section 45 shall be admissible in evidence.

**Admissibility of documents in evidence.**

**274.** (1) Where a document is by this Law declared to be admissible in evidence the document shall, on its production from proper custody –

- (a) be admissible in evidence in any court or before any person having by law or consent of the parties authority to receive evidence, and
- (b) subject to all just exceptions, be evidence of the matters stated in the document.

(2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3), also be admissible in evidence and evidence of the matters stated in the document.

(3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2) unless –

- (a) 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 that officer shall furnish the certified copy or extract to any person who applies

for it at a reasonable time and pays such reasonable price as the Board determines.

(4) A person shall, on payment of such reasonable price as the Board determines, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Law.

(5) If any officer having duties of certification under subsection (3) in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy of extract he shall be guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

**Inspection and admissibility in evidence of copies of certain documents.**

**275.** (1) Where under any enactment a document is open to public inspection when in the custody of the Registrar of British Ships –

- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original, but
- (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the Registrar of British Ships destroys any document which has been sent to him under or by virtue of any enactment, and keeps a copy or other reproduction of that document, then –

- (a) any 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 subsection (1), that subsection,

shall apply to the copy or other reproduction as if it were the original.

(3) For the purposes of this section, and of section 274(2) in its application to documents in the custody of the Registrar of British Ships, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

**Proof, etc. of exemptions.**

**276.** (1) Where any 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 any charge or summons,

and, if so specified or negated, shall not require to be proved by the informant or complainant.

(2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.

*Service of documents*

**Service of documents.**

**277.** (1) Any document authorised or required to be served on any person may be served on that person –

- (a) by delivering it to him,
- (b) by leaving it at his proper address, or
- (c) by sending it by post to him at his proper address.

(2) Any such document required to be served on the master of a ship may be served –

- (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship,
- (b) where there is no master, on –
  - (i) the managing owner of the ship, or
  - (ii) if there is no managing owner, on any agent of the owner, or

- (iii) where no such agent is known or can be found, by leaving a copy of the document fixed to the mast of the ship.
- (3) Any document authorised or required to be served on any 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) Any notice authorised or required by or under Part II to be served on the Board may be served by post.
- (5) Any notice authorised by section 251, 252, 253 or 254 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (6) Any document authorised or required by or under any enactment to be served on the registered owner of a Guernsey ship shall be treated as duly served on him if served on such persons, in such circumstances and by such method, as may be specified in registration regulations.
- (7) For the purposes of this section and of section 11 of the Interpretation (Guernsey) Law, 1948<sup>kk</sup> (service by post) in its application to this

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<sup>kk</sup> Ordres en Conseil Vol. XIII, p. 355.

section, the proper address of any person on whom any document is to be served shall be his last known address, except that –

- (a) in the case of a body corporate or their secretary or clerk it shall be 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 shall be the principal office of the partnership,

and for the purposes of this subsection the principal office of a company registered outside Guernsey or of a partnership carrying on business outside Guernsey shall be their principal office in Guernsey.

(8) If the person to be served with any notice has (whether in pursuance of registration regulations or otherwise) specified an address in Guernsey other than his proper address within the meaning of subsection (7) as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 11 of the Interpretation (Guernsey) Law, 1948 as his proper address.

- (9) For the purposes of the said section 11 a letter containing –
  - (a) a notice to be served on any person in pursuance of subsection (6), or
  - (b) a notice authorised or required to be served under registration regulations on a representative person (within the meaning of those regulations),

shall be deemed to be properly addressed if it is addressed to that person at the address for the time being recorded in relation to him in the register; and a letter containing any other notice under the registration regulations shall be deemed to be properly addressed if it is addressed to the last known address of the person to be served (whether of his residence or of a place where he carries on business).

PART XIII  
SUPPLEMENTAL

*Administration*

**General functions of the Board.**

278. (1) The Board has the general superintendence of all matters relating to merchant shipping and seamen and is authorised to carry into execution the provisions of this Law and of all Laws relating to merchant shipping and seamen for the time being in force, except where otherwise provided or so far as relating to revenue.

(2) The Board may take legal proceedings under this Law in the name of any of its officers.

**Functions of the Board in relation to marine pollution.**

279. (1) The Board has the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effects of, marine pollution.

(2) Without prejudice to the generality of subsection (1), the functions of the Board under that subsection include –

(a) the preparation, review and implementation of a plan

setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects,

- (b) the acquisition, maintenance, use and disposal of ships, aircraft, equipment and other property,
- (c) the provision of services, including research, training and advice, and
- (d) the giving of assistance to any State or territory or international institution under any international agreement relating to the prevention, reduction or control of marine pollution as it has effect for the time being in relation to Guernsey.

(3) Assistance under subsection (2)(d) shall be given on such terms as will secure reimbursement of the cost of giving the assistance if and to the extent that reimbursement will be practicable in the circumstances.

(4) The Board may make reasonable charges for the supply of goods and services.

(5) Where under subsection (1) the Board agrees that another person shall take any measures to prevent, reduce or minimise the effects of marine pollution, it 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 section –

**"marine pollution"** means pollution caused by ships or submarine pipelines affecting or likely to affect Guernsey or Guernsey waters,

**"pipeline"** means a pipe or system of pipes (excluding a drain or sewer) for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system; and for the purposes of this section the following apparatus and works and no other shall be treated as associated with such a pipe or system, namely –

- (a) any apparatus for inducing or facilitating the flow of any thing through, or through a part of, the pipe or system,
- (b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system,
- (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system,
- (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding paragraphs,
- (e) apparatus for the transmission of information for the operation of the pipe or system,
- (f) apparatus for the cathodic protection of the pipe or

system, and

- (g) a structure used or to be used solely for the support of a part of the pipe or system, and

**"submarine"** means in, under or over Guernsey waters,

but no restriction as to the seas to which functions under this section extend is implied as regards the functions mentioned in subsection (2)(d).

**General power to dispense.**

**280.** (1) The Board may, if it thinks fit, and upon such conditions (if any) as it thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Law other than Chapter III of Part VI, or dispense with the observance of any such requirement in the case of any ship, if it is satisfied, as respects that requirement, of the matters specified in subsection (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.

(3) The Board shall annually publish as an annex to a Billet d'État a special report stating –

- (a) the cases in which it has exercised its powers under this section during the preceding year, and
- (b) the grounds upon which it has acted in each case.

**Registrar of British Ships.**

**281.** (1) There shall continue to be an officer known as the Registrar of British Ships.

(2) The Registrar of British Ships shall be appointed, and may be removed, by the Board.

(3) The Registrar of British Ships shall exercise such functions as are conferred on him by this Law and keep such records and perform such other duties as the Board may direct.

(4) The Board may appoint and remove persons to perform on behalf of the Registrar of British Ships such of his functions as the Board or the Registrar of British Ships may direct.

(5) Subsection (4) does not apply in relation to the functions of the Registrar of British Ships as registrar under Part II.

**Wreck commissioners, etc.**

**282.** (1) The Bailiff may appoint such number of persons as he thinks fit to be wreck commissioners and may remove any wreck commissioners appointed by him.

(2) A wreck commissioner shall vacate his office on the day on

which he attains the age of seventy years.

(3) There shall be paid to any wreck commissioner such remuneration as the Bailiff determines.

(4) There shall be paid to any assessor appointed under this Law such remuneration as the Bailiff determines.

**Transmission of documents to Registrar.**

**283.** (1) The following duties are imposed on all officers of the Board appointed under this Law and all officers of Customs and Excise as respects all documents which are delivered or transmitted to or retained by them in pursuance of this Law.

(2) They shall take charge of the documents 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 their hands, or for any other proper purpose.

(3) They shall, if required, produce them for any of those purposes, and shall transmit them to the Registrar of British Ships.

(4) The Registrar of British Ships shall retain documents transmitted to him under subsection (3) for such period as the Board may direct.

**Returns, etc. to the Board.**

**284.** (1) All officers of the Board appointed under this Law shall make and send to the Board such returns or reports on any matter relating to Guernsey merchant shipping or seamen as it may require.

(2) All officers of the Board appointed under this Law shall, when required by the Board, produce to it or to its officers all official log-books and other documents which are delivered to them under this Law.

(3) All surveyors of ships shall make such returns to the Board as it may require with respect to –

- (a) the build, dimensions, draught, burden, speed and room for fuel of ships surveyed by them, and
- (b) the nature and particulars of machinery and equipment of such ships.

(4) The owner, master and engineer of any ship being surveyed shall, when required to do so, give to the surveyors all such information and assistance within his power as the surveyors require for the purpose of returns under subsection (3).

(5) If the owner, master or engineer, on being required under subsection (4) to give any information or assistance, fails, without reasonable excuse, to give the information or assistance he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

**Forms.**

**285.** (1) The Board may prepare and approve forms for any book, instrument or paper required under this Law, and may alter such forms as it thinks fit.

(2) The Board shall cause every such form to be marked with a distinguishing mark approved by it and, before finally issuing any form or making

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any alteration in a form, shall cause public notice thereof to be given in such manner as it thinks requisite in order to avoid inconvenience.

(3) The Board shall cause such forms to be supplied at Harbour Offices, free of charge or at such reasonable prices as the Board may fix, or he may licence any persons to print and sell the forms.

(4) Every such book, instrument or paper shall be made in the form (if any) approved by the Board, or as near as circumstances permit; and unless so made shall not be admissible in evidence in civil proceedings on the part of the owner or master of any ship.

(5) Every such book, instrument or paper if made in a form purporting to be the proper form and to be marked in accordance with subsection (2) shall be deemed to be in the form required by this Law, unless the contrary is proved.

(6) The foregoing provisions do not apply where special provision is made by this Law.

(7) If any person prints, sells or uses any document purporting to be a form approved by the Board knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Board that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the uniform scale.

*Financial provisions*

**Fees.**

**286.** (1) The Board may make regulations prescribing fees to be

charged in respect of –

- (a) the issue or recording in pursuance of this Law of any certificate, licence or other document, or
- (b) the doing of any thing in pursuance of this Law.

(2) In the case of fees for the measurement of a ship's tonnage the fees may be prescribed as maximum fees.

**Funding of maritime services.**

**287.** Schedule 9 (funding of maritime services) shall have effect.

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

**288.** The following expenses and other amounts shall be payable out of money provided by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be –

- (a) the expenses incurred by the Board under this Law,
- (b) the salaries, pensions, gratuities and allowances of surveyors of ships, Board shipping inspectors and officers of the Board appointed under this Law,
- (c) the expenses of obtaining depositions, reports and returns respecting wrecks and casualties,
- (d) such sums as the Board may, in its discretion, think fit to pay in respect of claims on account of the proceeds of wreck,

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- (e) the expenses incurred in respect of receivers of wrecks and the performance of their duties,
- (f) such expenses as the Board directs for –
  - (i) establishing and maintaining on the coasts of Guernsey 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 such cases,
- (g) any other amounts which are by virtue of any provision of this Law payable out of money provided by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be.

*Subordinate legislation*

**General provisions as to subordinate legislation.**

- 289.** (1) Any instrument made under this Law –
- (a) may be amended or repealed by a like subsequent instrument,

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- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States or, as the case may be, the Board to be necessary or expedient,
- (c) shall, in the case of an Order, be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new Order.

(2) Any power conferred upon the States or the Board by this Law to make an instrument may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (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 any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Power to modify by Ordinance.**

**290.** (1) For the purpose of making similar provision in respect to merchant shipping and seamen as applies in the United Kingdom, whether under the Merchant Shipping Act 1995<sup>II</sup> or any other enactment, the States may, from time to time, by Ordinance make such amendment –

- (a) to this Law, or
- (b) to any other enactment,

as they deem necessary or expedient.

(2) An Ordinance under subsection (1)(a) may empower the Board, in specified circumstances, to make an Order or regulations.

(3) For the purposes of this section, "**amendment**" includes any alteration, addition or deletion.

*Application of Law to certain descriptions of ships, etc.*

**Application of Law to non-Guernsey ships.**

**291.** (1) The Board may make regulations specifying any description of non-Guernsey ships and directing that such of the provisions of this Law and of instruments under this Law as may be specified in the regulations –

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<sup>II</sup> An Act of Parliament (1995 c. 21).

- (a) shall extend to non-Guernsey ships of that description and to masters and seamen employed in them, or
- (b) shall so extend in such circumstances as may be so specified, with such modifications (if any) as may be so specified.

(2) Regulations under this section may contain such transitional, supplementary and consequential provisions as appear to the Board to be expedient.

(3) In this section, "**non-Guernsey ships**" means ships which are not registered in Guernsey.

**Application of Law to government ships.**

**292.** (1) Subject to any other provision of it, this Law shall not apply to ships belonging to Her Majesty.

(2) The Board may make regulations with respect to the manner in which Government ships may be registered as British ships under Part II; and this Law, subject to any exceptions and modifications which may be made by the regulations, either generally or as respects any special class of Government ships, shall apply to government ships registered in accordance with the regulations as if they were registered in accordance with Part II.

(3) In this section, "**Government ships**" means ships not forming part of Her Majesty's Navy which belong to Her Majesty, or are held by any person on behalf of or for the benefit of the Crown (and for that reason cannot be registered under Part II).

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

**293.** (1) The Board 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 any specified provision of this Law or of an instrument made thereunder.

- (2) An order under this section may –
- (a) make different provision in relation to different occasions,
  - (b) if it provides that a thing is to be treated as a ship for the purposes of a specified provision, provide that the provision shall have effect in relation to the thing with such modifications as are specified.
- (3) In this section, "**specified**" means specified in the order.

*Final provisions*

**Definitions.**

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

"**the Board**" means the States of Guernsey [Public Services Department] or, as the case may be, a Committee of the States of Alderney or a Committee of the Chief Pleas of Sark performing similar functions in either of those Islands,

"**Board shipping inspector**" has the meaning given in section 246(8),

**"British connection"** has the meaning given in section 9(9),

**"British citizen"**, **"British Dependent Territories citizen"**, **"British Overseas citizen"** and **"Commonwealth citizen"** have the same meaning as in the British Nationality Act 1981<sup>mm</sup>,

**"British ship"** has the meaning given in section 1(1),

**"commissioned military officer"** means a commissioned officer in Her Majesty's land forces on full pay,

**"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 recognised by Her Majesty as a consular officer of that foreign country,

**"contravention"** includes failure to comply (and **"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 (including crustaceans and molluscs of any kind), salmon (including any fish of the salmon species) and any

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<sup>mm</sup> An Act of Parliament (1981 c. 61).

species of trout which migrates to and from the sea,

**"foreign"**, in relation to a ship, means that it is neither a Guernsey ship nor a small ship (as defined in section 1(2)) which is a British ship,

**"Government ship"** has the meaning given in section 292,

**"Guernsey"** means the Bailiwick of Guernsey,

**"Guernsey ship"** (and in Part V **"Guernsey fishing vessel"**) has the meaning given in section 1(3) except in the contexts there mentioned,

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

**"harbour authority"** includes all persons entrusted with the function of constructing, improving, managing, regulating, maintaining or lighting a harbour,

**"the Harbourmaster"** means the States Harbourmaster and any States Deputy Harbourmaster, the Alderney Harbour Officer and the Sark Harbourmaster, and includes any person acting under the authority of any of those persons upon production, if so required, of his authority so to act,

**"the Magistrate's Court"** means the Magistrate's Court established under the Magistrate's Court (Guernsey) Law, 1954<sup>nn</sup>;

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<sup>nn</sup> Ordres en Conseil Vol. XVI, p. 103; Vol. XVII, p. 218; Vol. XXVII, p. 170; Vol. XXVIII, pp. 5 and 385; Vol. XXX, p. 224; Vol. XXXI, p. 278; No. III of 1992; No. IX of 1996.

**"master"** includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper,

**"officer of Customs and Excise"** means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended<sup>oo</sup>;

**"officer of police"** means a member of the salaried police force of the Island of Guernsey and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987<sup>pp</sup>;
- (c) in relation to Sark, the Constable and the Vingtenier,

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<sup>oo</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991.

<sup>pp</sup> Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1998; No. I of 2000; section 15 has been prospectively repealed and replaced by the Government of Alderney (Amendment) Law, 2000.

**"the Ordinary Court"** means the Royal Court of Guernsey sitting as an Ordinary Court,

**"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 Guernsey which is not a foreign country, also any officer exercising in that port functions similar to those of an officer of the Board appointed under this Law,

**"qualifying foreign ship"** has the meaning given in section 295,

**"the register"** and **"registered"** have the meaning give in section 23(1),

**"the registrar"**, in relation to the registration of ships, has the meaning given in section 8,

**"registration regulations"** means regulations under section 10,

**"relevant British possession"** means –

- (a) the Isle of Man,
- (b) Jersey, and
- (c) any colony,

**"safety regulations"** means regulations under section 80,

"**sea-fishery officer**" means a person who by virtue of section 7 of the Sea Fisheries Act 1968<sup>qq</sup> is a British sea-fishery officer,

"**seaman**" includes every person (except masters and pilots) employed or engaged in any capacity on board any ship,

"**ship**" includes every description of vessel used in navigation,

"**surveyor of ships**" has the meaning given in section 246(8),

"**the tonnage regulations**" means regulations under section 19,

"**wages**" includes emoluments.

(2) In this Law –

- (a) "**Guernsey waters**" means the sea or other waters within the seaward limits of the territorial sea of Guernsey, and
- (b) "**national waters**", in relation to Guernsey, means Guernsey waters landward of the baselines for measuring the breadth of its territorial sea.

(3) In this Law, "**right of innocent passage**", "**right of transit passage**" and "**straits used for international navigation**" shall be construed in accordance with the United Nations Convention on the Law of the Sea 1982.

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<sup>qq</sup> An Act of Parliament (1968 c. 77).

(4) 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.

(5) The provisions of the Interpretation (Guernsey) Law, 1948<sup>rr</sup> shall apply to the interpretation of this Law throughout the Bailiwick.

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**NOTES**

*In section 294,*

*the words in square brackets in the definition of the expression "the Board" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 3(b), Schedule 2, paragraph 2(b), with effect from 6th May, 2004;*

*the words in square brackets in paragraph (b) of the definition of the expression "officer of police" in subsection (1) were substituted by the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002.*

*The functions, rights and liabilities of the Board of Administration and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Public Services Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 3(b), Schedule 2, paragraph 2(b), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.*

*The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.*

*The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in*

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<sup>rr</sup> Ordres en Conseil Vo. XIII, p. 355.

*section 63(2) and section 64 of the 2004 Law.*

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**Meaning of "qualifying foreign ship".**

**295.** (1) In this Law, "**qualifying foreign ship**" means any ship other than –

- (a) a British ship, or
- (b) a ship which is not registered under Part II and which (although not by virtue of section 1(1)(d) a British ship) –
  - (i) is wholly owned by persons falling within subsection (2), and
  - (ii) is not registered under the law of a country outside Guernsey.

(2) The following persons fall within this subsection, namely –

- (a) British citizens,
- (b) British Dependent Territories citizens,
- (c) British Overseas citizens,
- (d) persons who under the British Nationality Act 1981<sup>ss</sup> are British subjects,

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<sup>ss</sup> An Act of Parliament (1981 c. 61).

- (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, in Guernsey or in any relevant British possession and having their principal place of business in the United Kingdom, in Guernsey or in any relevant British possession.

**Repeals, consequential amendments and transitional provisions.**

**296.** (1) Subject to subsection (3), the enactments specified –

- (a) in Parts I and III of Schedule 10 are repealed to the extent specified in the second column of those Parts, and
- (b) in Part II of Schedule 10 are hereby repealed.

(2) The States may by Ordinance amend or repeal any provision of the Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986, as amended<sup>tt</sup>.

(3) The saving and transitional provisions in Schedule 11 shall

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<sup>tt</sup> Ordres en Conseil Vol. XXIX, p. 390; No. XIV of 1997; No. VIII of 1998; Recueil d'Ordonnances Tome XXVI, pp. 182 and 306.

have effect.

**Citation and commencement.**

**297.** (1) This Law may be cited as the Merchant Shipping (Bailiwick of Guernsey) Law, 2002.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes; and, in particular, different days may be appointed for the taking effect of the repeal of particular enactments, or parts of such enactments to be specified, set out in Schedule 10.

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**NOTES**

*Sections 80 to 83, sections 85 to 100, sections 103 to 110, sections 123 to 129, section 270, sections 289 to 295 and section 297 of the Law were brought into force on 30th May 2007 by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2007, section 1.*

*Part I, Part II (save for section 17), sections 130 to 132, sections 138 to 188, Parts X and XI, sections 264 to 266, section 269, sections 272 to 283, section 285 and section 286 of, and Schedules 1 and 4 to, the Law were brought into force on 1st February, 2009 by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009, section 1, subject to the savings in section 4 of the 2009 Ordinance.*

*Section 296 of the Law was brought into force on 1st February, 2009 by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009, section 2, only to the extent necessary to give effect, first, to paragraph 1 of Schedule 11 and, second, to the repeal of such of those provisions listed in Schedule 10 as are set out in paragraph (a), paragraph (b) and paragraph (c) of section 2 of the 2009 Ordinance, and subject to the savings in section 4 of the 2009 Ordinance .*

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SCHEDULE 1

Section 16

PRIVATE LAW PROVISIONS FOR REGISTERED SHIPS

*General*

1. (1) Subject to any rights and powers appearing from the register to be vested in any other person, the registered owner of a ship or of a share in a ship shall have power absolutely to dispose of it provided the disposal is made in accordance with this Schedule and registration regulations.

(2) Sub-paragraph (1) does not imply that interests arising under contract or other equitable interests cannot subsist in relation to a ship or a share in a ship; and such interests may be enforced by or against owners and mortgagees of ships in respect of their interest in the ship or share in the same manner as in respect of any other personal property.

(3) The registered owner of a ship or of a share in a ship shall have power to give effectual receipts for any money paid or advanced by way of consideration on any disposal of the ship or share.

*Transfers, etc. of registered ships*

2. (1) Any transfer of a registered ship, or a share in such a 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) Where any such ship or share has been transferred in accordance with sub-paragraph (1), the transferee shall not be registered as owner of the ship or share unless –

- (a) he has made the prescribed application to the registrar,  
and
- (b) the registrar is satisfied that the ship retains a British connection and that he 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.

**3.** (1) Where a registered ship, or a share in a registered ship, is transmitted to any person by any lawful means other than a transfer under paragraph 2 and the ship continues to have a British connection, that person shall not be registered as owner of the ship or share unless –

- (a) he has made the prescribed application to the registrar,  
and
- (b) the registrar is satisfied that the ship retains a British connection and that he 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.

**4.** (1) Where the property in a registered ship or share in a

registered ship is transmitted to any person by any lawful means other than a transfer under paragraph 2, but as a result the ship no longer has a British connection, the Ordinary 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, shall 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) Every such application must be made within the period of 28 days beginning with the date of the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding one year) as the Court may allow.

(4) If –

(a) such 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 transmitted shall be liable to forfeiture.

**5.** (1) Where any court (whether under paragraph 4 or otherwise) orders the sale of any registered ship or share in a registered ship, the order of the court shall contain a declaration vesting in some named person the right to transfer the ship or share.

(2) The person so named shall be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner of the ship or share.

(3) The registrar shall deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

6. (1) The Ordinary Court may, if it thinks fit (without prejudice to the exercise of any other power), on the application of any interested person, make an order prohibiting for a specified time any dealing with a registered ship or 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, shall be binding on him whether or not he was made a party to the proceedings.

*Mortgages of registered ships*

7. (1) A registered ship, or share in a registered ship, may be made a security for the repayment of a loan or the discharge of any other obligation.

(2) The instrument creating any such security (referred to in the following provisions of this Schedule as a "**mortgage**") shall be in the form prescribed by or approved under registration regulations.

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(3) Where a mortgage executed in accordance with sub-paragraph (2) is produced to the registrar, he 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*

8. (1) Where two or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves shall, subject to sub-paragraph (2), be determined by the order in which the mortgages were registered (and not by reference to any other matter).

(2) 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 which, when recorded in the register, determine the priority of the interest to which the notice relates.

*Registered mortgagee's power of sale*

9. (1) Subject to sub-paragraph (2), every registered mortgagee shall have power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money.

(2) Where two or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee shall 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 mortgagees*

- 10.** Where a ship or share is subject to a registered mortgage then –
- (a) except so far as may be necessary for making the ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be treated as owner of the ship or share, and
  - (b) the mortgagor shall be treated as not having ceased to be owner of the ship or share.

*Transfer of registered mortgage*

**11.** (1) A registered mortgage may be transferred by an instrument made in the form prescribed by or approved under registration regulations.

(2) Where any such instrument is produced to the registrar, the registrar shall register the transferee in the prescribed manner.

*Transmission of registered mortgage by operation of law*

**12.** Where the interest of a mortgagee in a registered mortgage is transmitted to any person by any lawful means other than by a transfer under paragraph 11, 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*

13. Where 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.

*Definitions*

14. In this Schedule –

"**mortgage**" shall be construed in accordance with paragraph 7(2),

"**prescribed**" means prescribed in registration regulations, and

"**registered mortgage**" means a mortgage registered under paragraph 7(3).

SCHEDULE 2

Section 83

REGULATIONS RELATING TO SUBMERSIBLE AND  
SUPPORTING APPARATUS

1. (1) In this Schedule, "**regulations**" means regulations made under section 83 and "**prescribed**" means prescribed by regulations.

(2) Nothing in this Schedule shall be taken to prejudice the generality of section 83.

*Registration of submersible apparatus*

2. Regulations made by virtue of section 83(2)(e) of this Law may make provision –

- (a) for all matters relevant to the maintenance of a register of submersible apparatus,
- (b) without prejudice to sub-paragraph (a), for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemption or of any conditions attached thereto, the person by whom and manner in which applications in connection with any registration or exemption are to be made, and information and evidence to be furnished in connection with any such application,
- (c) for the marking or other means of identification of any

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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 any registration or exemption, or any conditions attached thereto.

*Offences*

3. (1) Subject to sub-paragraph (2), regulations –

- (a) may provide for the creation of offences and for their punishment on summary conviction or on conviction on indictment, and
- (b) may afford, in respect of any description of offence created by the regulations, such defence (if any) as may be prescribed.

(2) The punishment for an offence created by regulations shall

be –

- (a) on summary conviction, a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both,

but without prejudice to any further restriction contained in the regulations on the punishments which can be awarded and without prejudice to the exclusion by the regulations of proceedings on indictment.

*Exemptions from regulations*

4. (1) The operation of any regulations may be excluded in whole or in part in relation to any class or description of submersible or supporting apparatus by regulations, or in relation to any particular apparatus by the direction of the Board given in such manner as it thinks appropriate.

(2) Any exemption or exclusion by regulations or by directions of the Board under this paragraph may be made subject to the imposition of conditions specified by the regulations or directions.

(3) Where, in pursuance of this paragraph, a person is exempted or excluded from the requirements of the provisions of regulations but subject to a condition, and the condition is not observed, the exemption or exclusion shall not have effect, and accordingly proceedings may be brought in respect of any offence created by the regulations.

*General*

5. Regulations –

- (a) may provide for their operation outside Guernsey and for their application to persons, whether or not Commonwealth citizens, and to companies, whether or not incorporated under the law of any part of

Guernsey,

- (b) may provide that in any proceedings for an offence under the regulations a statement in any process of the fact that anything was done or situated within Guernsey waters shall, until the contrary is proved, be sufficient evidence of that fact as stated in the statement,
- (c) may provide that proceedings for an offence under the regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in Guernsey,
- (d) may provide for any provisions of Part XI relating to inquiries and investigations into marine accidents to apply (with such modifications as may be specified) in relation to accidents involving any submersible apparatus which is not a ship as they apply to ships,
- (e) may provide that specified provisions of any enactment (other than section 83 and this Schedule) shall, in such circumstances as may be prescribed, not have effect in relation to such class or description of, or to such particular, submersible or supporting apparatus as may be prescribed,
- (f) may make different provision for different classes or descriptions of submersible or supporting apparatus and for different circumstances,

- (g) may contain such supplemental and incidental provisions as appear to the Board to be expedient.

SCHEDULE 3

Section 84

LOAD LINES

GENERAL PROVISIONS

*Ships to which Schedule applies*

1. This Schedule applies to all ships except –
  - (a) ships of war,
  - (b) ships solely engaged in fishing, and
  - (c) pleasure yachts.

*Load Line rules*

2. (1) The Board shall make rules in accordance with the following provisions of this Schedule (referred to as "**the load line rules**"); and in making those rules the Board shall have regard in particular to the Convention of 1966.

- (2) The load line rules shall make provision –
  - (a) for the surveying and periodical inspection of ships to which this Schedule applies,
  - (b) for determining freeboards to be assigned from time to time to such ships,
  - (c) for determining, in relation to any such ship, the deck

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which is to be taken to be the freeboard deck of the ship, and for requiring the position of that deck to be indicated on each side of the ship by a mark of a description prescribed by the rules, and

- (d) for determining, by reference to that mark and the freeboards for the time being assigned to any such ship, the positions in which each side of the ship is to be marked with lines of a description prescribed by the rules, indicating the various maximum depths to which the ship may be loaded in circumstances prescribed by the rules.

(3) The load line rules shall include the following provisions –

- (a) provisions specifying such requirements in respect of the hulls, superstructures, fittings and appliances of ships to which this Schedule applies as appear to the Board to be relevant to the assignment of freeboards to such ships,
- (b) provisions whereby, at the time when freeboards are assigned to a ship in accordance with the load line rules, such particulars relating to those requirements as may be determined in accordance with the rules are to be recorded in such manner as may be so determined, and
- (c) provisions for determining by reference to those requirements and that record whether, at any time

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after freeboards have been so assigned to a ship and while they continue to be so assigned, the ship is for the purposes of this Schedule to be taken to comply, or not to comply, with the conditions of assignment,

and those provisions shall be set out separately in the load line rules under the title "rules as to conditions of assignment".

(4) The load line rules shall also include provisions requiring such information relating to the stability of any ship to which freeboards are assigned thereunder, and such information relating to the loading and ballasting of any such ship, as may be determined in accordance with the rules to be provided for the guidance of the master of the ship in such manner as may be so determined.

(5) In relation to any matter authorised or required by this Schedule to be prescribed by the load line rules, those rules may make different provision by reference to (or to any combination of) any of the following, that is to say, different descriptions of ships, different areas, different seasons of the year and any other different circumstances.

(6) Except in so far as the context otherwise requires, in this Schedule "**deck-line**" means such a mark as is referred to in sub-paragraph (2)(c), and "**load lines**" means such lines as are referred to in sub-paragraph (2)(d).

## GUERNSEY SHIPS

### *Compliance with load line rules*

3. (1) Subject to any exemption conferred by or under this Schedule, no Guernsey ship to which this Schedule applies shall proceed or attempt

to proceed to sea unless –

- (a) the ship has been surveyed in accordance with the load line rules,
- (b) the ship is marked with a deck-line and with load lines in accordance with those rules,
- (c) the ship complies with the conditions of assignment, and
- (d) the information required by those rules to be provided as mentioned in paragraph 2(4) of this Schedule is provided for the guidance of the master of the ship in the manner determined in accordance with the rules.

(2) If any ship proceeds or attempts to proceed to sea in contravention of sub-paragraph (1), the owner or master of the ship shall be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(3) Any ship which in contravention of sub-paragraph (1) proceeds or attempts to proceed to sea without being surveyed and marked as mentioned in sub-paragraph (1)(a) and (b) and which is in Guernsey waters may be detained until it has been so surveyed and marked.

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(4) Any such ship as is mentioned in sub-paragraph (1) which does not comply with the conditions of assignment shall be deemed to be dangerously unsafe for the purposes of sections 90, 91 and 92.

*Submersion of load lines*

4. (1) Where a Guernsey ship to which this Schedule applies is marked with load lines, the ship shall not be so loaded that –

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged, or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) If any ship is loaded in contravention of sub-paragraph (1), the owner or master of the ship shall (subject to sub-paragraph (5)) be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale and to such additional fine, not exceeding the amount calculated in accordance with sub-paragraph (3), as the court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was increased by reason of the contravention,
- (b) on conviction on indictment, to a fine.

(3) Any additional fine imposed under sub-paragraph (2)(a) shall not exceed £1,000 for each complete centimetre by which –

- (a) in a case falling within sub-paragraph (1)(a), the appropriate load line on each side of the ship was submerged, or
- (b) in a case falling within sub-paragraph (1)(b), the appropriate load line on each side of the ship would have been submerged as therein mentioned.

(4) If the master of a ship takes the ship to sea when it is loaded in contravention of sub-paragraph (1), or if any other person, having reason to believe that the ship is so loaded, sends or is party to sending the ship to sea when it is loaded in contravention of that sub-paragraph, then (without prejudice to any fine to which he may be liable in respect of an offence under sub-paragraph (2)) he shall be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(5) Where a person is charged with an offence under sub-paragraph (2), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

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(6) Without prejudice to any proceedings under the preceding provisions of this paragraph, any ship which is loaded in contravention of subparagraph (1) may be detained until it ceases to be so loaded.

(7) For the purposes of the application of this paragraph to a ship in any circumstances prescribed by the load line rules in accordance with paragraph 2(2)(d) of this Schedule, "**the appropriate load line**" means the load line which, in accordance with those rules, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

*Miscellaneous offences in relation to marks*

5. Where a Guernsey ship to which this Schedule applies is marked in accordance with any requirements as to marking imposed by or under this Schedule, then if –

- (a) the owner or master of the ship fails without reasonable excuse to keep the ship so marked, or
- (b) any person conceals, removes, alters, defaces or obliterates, or causes or permits any person under his control to conceal, remove, alter, deface or obliterate, any mark with which the ship is so marked, except where he does so under the authority of a person empowered under the load line rules to authorise him for that purpose,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

*Issue of load line certificates*

6. (1) Where a Guernsey ship to which this Schedule applies has been surveyed and marked in accordance with the load line rules, the appropriate certificate shall be issued to the owner of the ship on his application.

(2) For the purposes of this paragraph the appropriate certificate –

(a) in the case of a pre-1966 Convention ship of not less than 150 tons gross tonnage, and in the case of a post-1966 Convention ship of not less than 24 metres in length, is a certificate which shall be called an **"International Load Line Certificate (1966)"**, and

(b) in the case of any other ship, is a certificate which shall be called a **"Guernsey load line certificate"**.

(3) Subject to sub-paragraph (4), any certificate required by sub-paragraph (1) to be issued –

(a) shall be issued by the Board or by a person authorised for that purpose by the Board, and

(b) shall be in such form, and shall be issued in such manner, as may be prescribed by the load line rules.

(4) The Board may request Her Majesty's Government in the United Kingdom to request another Contracting Government to issue an International Load Line Certificate (1966) in respect of any ship to which this Schedule applies which is a Guernsey ship falling within sub-paragraph (2)(a); and

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the following provisions of this Schedule shall have effect in relation to such a certificate so issued, which contains a statement that it has been issued at the request of Her Majesty's Government in the United Kingdom on behalf of the Board, as they have effect in relation to an International Load Line Certificate (1966) issued by the Board.

*Effect of load line certificate*

7. Where a certificate, issued in pursuance of paragraph 6 and for the time being in force, is produced in respect of the ship to which the certificate relates –

- (a) the ship shall be deemed to have been surveyed in accordance with the load line rules, and
- (b) if lines are marked on the ship corresponding in number and description to the deck-line and load lines as required by the load line rules, and the positions of those lines so marked correspond to the positions of the deck-line and load lines so specified in the certificate, the ship shall be deemed to be marked as required by those rules.

*Duration, endorsement and cancellation of load line certificates*

8. (1) The load line rules shall make provision for determining the period during which any certificate issued under paragraph 6 of this Schedule is to remain in force, including –

- (a) provision enabling the period for which any such

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certificate is originally issued to be extended within such limits and in such circumstances as may be prescribed by the rules, and

- (b) provision for cancelling any such certificate in such circumstances as may be so prescribed.

(2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to –

- (a) periodical inspections of the ship in accordance with the load line rules, and
- (b) any extension of the period for which the certificate was issued,

as may be prescribed by the rules.

*Ships not to proceed to sea without load line certificate*

9. (1) Subject to any exemption conferred by or under this Schedule, no Guernsey ship to which this Schedule applies shall proceed or attempt to proceed to sea unless the appropriate certificate is in force in respect of the ship.

(2) Before any such ship proceeds to sea, the master of the ship shall produce the appropriate certificate to the officer of Customs and Excise from whom a clearance for the ship is demanded; and a clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.

(3) If any ship proceeds or attempts to proceed to sea in

contravention of this paragraph, the master of the ship shall be guilty of an offence and liable –

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,
- (b) on conviction on indictment, to a fine.

(4) In this paragraph, "**the appropriate certificate**" means the certificate which is the appropriate certificate for the purposes of paragraph 6 of this Schedule.

*Publication of load line certificate and entry of particulars in official log book*

**10.** (1) Where a certificate is issued in respect of a ship under paragraph 6 of this Schedule the owner of the ship shall forthwith on receipt of the certificate cause it to be framed and posted up in some conspicuous place on board the ship, and shall cause it to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use.

(2) Before any Guernsey ship to which this Schedule applies leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master of the ship, subject to sub-paragraph (4), shall cause a notice to be posted up in some conspicuous place on board the ship, which shall be in such form and contain such particulars relating to the depth to which the ship is for the time being loaded as may be specified in regulations made by the Board under this Schedule.

(3) Where a notice required by sub-paragraph (2) has been posted up, the master of the ship shall cause it to be kept posted up and legible as required

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by that sub-paragraph until the ship arrives at some other dock, wharf, harbour or place.

(4) The regulations may exempt ships employed in trading or going between places in the limited European trading area, or any class of such ships specified in the regulations, from the requirements as to notices contained in sub-paragraph (2).

(5) If the owner or master of a ship fails to comply with any requirement imposed on him by the preceding provisions of this paragraph, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(6) In this paragraph, "**the limited European trading area**" has the same meaning as in regulations under section 45.

*Inspection of ships*

**11.** A ship surveyor or engineer surveyor may inspect any Guernsey ship to which this Schedule applies for the purpose of seeing that the provisions of this Schedule have been complied with in respect of the ship.

**NON-Guernsey SHIPS**

*Valid Convention certificates*

**12.** (1) This paragraph applies to any non-Guernsey ship to which this Schedule applies which –

(a) is registered in a Convention country or, not being

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registered in any such country or elsewhere, flies the flag of a Convention country, and

- (b) is either a pre-1966 Convention ship of not less than 150 tons gross tonnage or a post-1966 Convention ship of not less than 24 metres in length.

(2) The Board may, at the request of the Government of the parent country of a ship to which this paragraph applies, including Her Majesty's Government in the United Kingdom, issue in respect of the ship a certificate in such form as may be prescribed by the load line rules, if the Board is satisfied that it could properly issue a certificate in respect of the ship under paragraph 6(1) of this Schedule if the ship were a Guernsey ship.

(3) The load line rules shall make such provision as appears to the Board to be appropriate for securing that certificates which are issued as International Load Line Certificates (1966) in respect of ships to which this paragraph applies, and are so issued by Governments of other Convention countries, including Her Majesty's Government in the United Kingdom, shall be recognised for the purposes of this Schedule in such circumstances as may be prescribed by the rules.

(4) Certificates issued as mentioned in sub-paragraph (2) or (3) shall be included among the certificates called "International Load Line Certificates (1966)".

(5) In this Schedule, "**valid Convention certificate**" means a certificate which either –

- (a) has been issued under sub-paragraph (2) and is for the

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time being in force, or

- (b) having been issued as mentioned in sub-paragraph (3), is produced in circumstances in which it is required by the load line rules to be recognised for the purposes of this Schedule.

*Compliance with load line rules*

**13.** (1) Subject to sub-paragraph (2), and to any exemption conferred by or under this Schedule, no non-Guernsey ship to which this Schedule applies shall proceed or attempt to proceed to sea from any port in Guernsey unless –

- (a) the ship has been surveyed in accordance with the load line rules,
- (b) the ship is marked with a deck-line and with load lines in accordance with those rules,
- (c) the ship complies with the conditions of assignment, and
- (d) the information required by those rules to be provided as mentioned in paragraph 2(4) of this Schedule is provided for the guidance of the master of the ship in the manner determined in accordance with the rules.

(2) Sub-paragraph (1) does not apply to a ship in respect of which a valid Convention certificate is produced.

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(3) If any ship proceeds or attempts to proceed to sea in contravention of the preceding provisions of this paragraph, the owner or master of the ship shall be guilty of an offence and liable –

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(b) on conviction on indictment, to a fine.

(4) Any ship which in contravention of this paragraph proceeds or attempts to proceed to sea without being surveyed and marked as mentioned in sub-paragraphs (1)(a) and (b) may be detained until it has been so surveyed and marked.

(5) The power of detention conferred by sub-paragraph (4) is not exercisable in relation to a qualifying foreign ship while the ship is exercising –

(a) the right of innocent passage, or

(b) the right of transit passage through straits used for international navigation.

(6) If any such ship as is mentioned in sub-paragraph (1), not being a ship in respect of which a valid Convention certificate is produced, does not comply with the conditions of assignment it shall be deemed to be dangerously unsafe for the purposes of sections 90, 91 and 92.

*Submersion of load lines*

**14.** (1) Where a non-Guernsey ship to which this Schedule applies is

within any port in Guernsey, and is marked with load lines, the ship shall not be so loaded that –

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged, or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) Sub-paragraphs (2), (3), (5) and (6) of paragraph 4 of this Schedule shall have effect for the purposes of this paragraph as if any reference in those sub-paragraphs to sub-paragraph (1) of that paragraph, or to sub-paragraph (1)(a) or (b) of that paragraph, were a reference to sub-paragraph (1), or (as the case may be) to the corresponding provision of sub-paragraph (1) of this paragraph, subject, however, to sub-paragraph (3).

(3) In the case of a ship to which paragraph 12 of this Schedule applies, the ship shall not be detained, and no proceedings shall be brought by virtue of sub-paragraph (2), unless the ship has been inspected by a ship surveyor or engineer surveyor in pursuance of paragraph 17 of this Schedule.

(4) In relation to a ship in respect of which a valid Convention certificate is produced, "**load line**" in sub-paragraph (1) means a line marked on the ship in the position of a load line specified in that certificate; and for the purposes of the application of the relevant provisions to such a ship in any circumstances for which a particular load line is specified in the certificate, the "**appropriate load line**" means the load line which, in accordance with the certificate, indicates the maximum depth to which the ship may be loaded in salt water in those

circumstances.

(5) Where a valid Convention certificate is not produced in respect of a ship, then, for the purposes of the application of the relevant provisions to that ship in any circumstances prescribed by the load line rules in accordance with paragraph 2(2)(d) of this Schedule, "**the appropriate load line**" means the load line which, in accordance with those rules, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(6) In sub-paragraphs (4) and (5), "**the relevant provisions**" means the provisions of sub-paragraph (1) and any provisions of paragraph 4 of this Schedule as applied by sub-paragraph (2).

*Guernsey load line certificates*

**15.** (1) Where a non-Guernsey ship to which this Schedule applies has been surveyed and marked in accordance with the load line rules, then on the application of the owner of the ship a Guernsey load line certificate shall be issued to him by the Board or by a person authorised for the purpose by the Board.

(2) Subject to sub-paragraph (3), paragraphs 7 and 8 of this Schedule shall have effect in relation to a certificate issued under sub-paragraph (1) as they have effect in relation to a certificate issued under paragraph 6 of this Schedule.

(3) Any certificate issued under sub-paragraph (1) in respect of a ship to which paragraph 12 of this Schedule applies shall be valid only so long as the ship is not plying on international voyages, and shall be cancelled by the Board if it has reason to believe that the ship is plying on international voyages.

*Production of certificate to Customs and Excise officer*

**16.** (1) Subject to any exemption conferred by or under this Schedule, before a non-Guernsey ship to which this Schedule applies proceeds to sea from any port in Guernsey, the master of the ship shall produce the appropriate certificate to the officer of Customs and Excise from whom a clearance for the ship is demanded; and a clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.

- (2) For the purposes of this paragraph the appropriate certificate –
- (a) in the case of a ship to which paragraph 12 of this Schedule applies, where a clearance for the ship is demanded in respect of an international voyage, is a valid Convention certificate,
  - (b) in the case of any such ship, where a clearance for the ship is demanded in respect of any other voyage, is either a valid Convention certificate or a Guernsey load line certificate for the time being in force in respect of the ship, and
  - (c) in any other case, is a Guernsey load line certificate for the time being in force in respect of the ship.

*Provisions as to inspection*

**17.** (1) Subject to the following provisions of this paragraph, a ship surveyor or engineer surveyor may inspect any non-Guernsey ship to which this Schedule applies while the ship is within Guernsey waters.

(2) Any such surveyor may go on board any ship to which paragraph 12 of this Schedule applies, while the ship is within Guernsey waters, for the purpose of demanding production of any International Load Line Certificate (1966) or Guernsey load line certificate for the time being in force in respect of the ship.

(3) No power of inspection conferred by sub-paragraph (1) or (2) is exercisable in relation to a qualifying foreign ship while the ship is exercising –

- (a) the right of innocent passage, or
- (b) the right of transit through straits used for international navigation.

(4) If on any such demand a valid Convention certificate is produced to the surveyor in respect of the ship, the powers of the surveyor under sub-paragraph (1) shall be limited to seeing –

- (a) that the ship is not loaded beyond the limits allowed by the certificate,
- (b) that lines are marked on the ship in the positions of the load lines specified in the certificate,
- (c) that no material alterations have taken place in the hull or superstructures of the ship which affect the position in which any of those lines ought to be marked, and
- (d) that the fittings and appliances for the protection of

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openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(5) If on an inspection of a ship under this paragraph the ship is found to have been so materially altered in respect of the matters referred to in sub-paragraph (4)(c) or (d) that the ship is manifestly unfit to proceed to sea without danger to human life, it shall be deemed to be dangerously unsafe for the purposes of sections 90, 91 and 92.

(6) Where a ship is detained under the provisions of this Law as applied by sub-paragraph (5), the Board shall order the ship to be released as soon as it is satisfied that the ship is fit to proceed to sea without danger to human life.

EXEMPTIONS

*Power to make exemption orders*

**18.** (1) If in the opinion of the Board the sheltered nature and conditions of international voyages –

- (a) between neighbouring ports in Guernsey and in another Convention country, or
- (b) between near neighbouring ports in any two or more countries or territories outside Guernsey,

make it unreasonable or impracticable to apply the provisions of this Schedule to ships plying on such voyages, and the Board is satisfied that the Government of the

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other country or territory (or, as the case may be, of each of the other countries or territories) concurs in that opinion, the Board may by order specifying those ports direct that ships plying on international voyages between those ports, or any class of such ships specified in the order, shall be exempt from the provisions of this Schedule.

(2) The Board may by order direct that ships under 80 tons register engaged solely in the coasting trade, or any class of such ships specified in the order, shall be exempt from the provisions of this Schedule while not carrying cargo, or (if the order so provides) shall be exempt from the provisions of this Schedule whether carrying cargo or not.

(3) Any order under this paragraph may be made subject to such conditions as the Board thinks fit; and, where any such order is made subject to conditions, the exemption conferred by that order shall not have effect in relation to a ship unless the ship complies with those conditions.

*Further powers to exempt ships*

**19.** (1) In this paragraph any reference to exempting a ship is a reference to exempting the ship either –

- (a) from all the provisions of this Schedule and of the load line rules, or
- (b) from such of those provisions as are specified in the instrument conferring the exemption.

(2) On the application of the owner of a Guernsey ship to which this Schedule applies which is either a pre-1966 Convention ship of not less than

150 tons gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, the Board may exempt the ship if in its opinion the ship embodies features of a novel kind such that, if the ship had to comply with all the requirements of this Schedule and of the load line rules, the development of those features and their incorporation in ships engaged on international voyages might be seriously impeded.

(3) On the application of the owner of a Guernsey ship to which this Schedule applies which is either –

- (a) a pre-1966 Convention ship of less than 150 tons gross tonnage or a post-1966 Convention ship of less than 24 metres in length, or
- (b) a ship (not falling within (a)) which does not ply on international voyages,

the Board may exempt the ship.

(4) Without prejudice to sub-paragraph (3), where a Guernsey ship to which this Schedule applies which is either a pre-1966 Convention ship of not less than 150 tons gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, does not normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Board, on the application of the owner of the ship, specifying the international voyage in question, may exempt the ship while engaged on that voyage.

(5) Any exemption conferred under this paragraph may be conferred subject to such conditions as the Board thinks fit; and, where any such exemption is conferred subject to conditions, the exemption shall not have effect

unless those conditions are complied with.

*Issue of exemption certificates*

**20.** (1) Where the Board exempts a ship under paragraph 19 of this Schedule, the Board shall issue the appropriate certificate to the owner of the ship.

(2) For the purposes of this paragraph the appropriate certificate –

(a) where the exemption is conferred under sub-paragraph (2) or sub-paragraph (4) of paragraph 19 of this Schedule, is an "**International Load Line Exemption Certificate**", and

(b) where the certificate is conferred under sub-paragraph (3) of that paragraph, is a "**Guernsey load line exemption certificate**".

(3) Any certificate issued under this paragraph shall be in such form, and shall be issued in such manner, as may be prescribed by the load line rules.

*Duration and termination of exemptions, and duration, endorsement and cancellation of exemption certificates*

**21.** (1) The load line rules shall make provision for determining the period during which any exemption conferred under paragraph 19 of this Schedule, or any certificate issued under paragraph 20 of this Schedule, is to remain in force, including –

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- (a) provision enabling the period for which any exemption or certificate is originally conferred or issued to be extended within such limits and in such circumstances as may be prescribed by the rules, and
- (b) provision for terminating any such exemption, and for cancelling any such certificate, in such circumstances as may be so prescribed.

(2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to –

- (a) periodical inspections of the ship in accordance with the load line rules, and
- (b) any extension of the period for which the certificate was issued,

as may be prescribed by the rules.

*International Load Line Exemption Certificates*

**22.** (1) The load line rules shall make such provision as appears to the Board to be appropriate for securing that exemption certificates which, in accordance with the Convention of 1966, are issued in respect of ships to which paragraph 12 of this Schedule applies, and are so issued by Governments of other Convention countries or territories, including Her Majesty's Government in the United Kingdom, shall in such circumstances as may be prescribed by the rules have like effect for the purposes of this Schedule as if they were valid Convention certificates.

(2) Certificates issued as mentioned in sub-paragraph (1) shall be included among "International Load Line Exemption Certificates".

## SUBDIVISION LOAD LINES AND DECK CARGO

### *Subdivision load lines*

**23.** (1) Where in pursuance of safety regulations a Guernsey passenger ship to which this Schedule applies is marked with subdivision load lines, and the lowest of those lines is lower than the line which, apart from this sub-paragraph, would be the appropriate load line for the purposes of paragraph 4 of this Schedule, the said paragraph 4 shall have effect as if that subdivision load line were the appropriate load line for the purposes of that paragraph.

(2) Where in pursuance of safety regulations a non-Guernsey passenger ship to which this Schedule applies is marked with subdivision load lines, and the lowest of those load lines is lower than the line which, apart from this sub-paragraph, would be the appropriate load line for the purposes of sub-paragraph 14 of this Schedule, that paragraph shall have effect as if that subdivision load line were the appropriate load line for the purposes of that paragraph.

### *Deck cargo*

**24.** (1) The Board shall make regulations (in this paragraph referred to as "**the deck cargo regulations**") prescribing requirements to be complied with where cargo is carried in any uncovered space on the deck of a ship to which this Schedule applies; and different requirements may be so prescribed in relation to different descriptions of ships, different descriptions of cargo, different voyages or classes of voyages, different seasons of the year or any other different

circumstances.

(2) If the load line rules provide (either generally or in particular cases or classes of cases) for assigning special freeboards to ships which are to have effect only where a cargo of timber is so carried, then (without prejudice to the generality of sub-paragraph (1)) the deck cargo regulations may prescribe special requirements to be complied with in circumstances where any such special freeboard has effect.

(3) In prescribing any such special requirements as are mentioned in sub-paragraph (2), the Board shall have regard in particular to the provisions of Chapter IV of the Convention of 1966.

(4) If any provisions of the deck cargo regulations are contravened –

(a) in the case of a Guernsey ship, or

(b) in the case of any other ship while the ship is within any port in Guernsey,

the master of the ship shall (subject to sub-paragraph (5)) be guilty of an offence and liable –

(i) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(ii) on conviction on indictment, to a fine.

(5) Where a person is charged with an offence under sub-

paragraph (4), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(6) For the purpose of securing compliance with the deck cargo regulations, any person authorised for the purpose by the Board may inspect any ship to which this Schedule applies which is carrying cargo in any uncovered space on its deck.

#### MISCELLANEOUS PROVISIONS

##### *Notice to consular officer of proceedings against foreign ships*

**25.** (1) Where any non-Guernsey ship is detained under this Schedule, and where any proceedings are taken under this Schedule against the master or owner of any such ship, notice shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being or, as the case may be, the Secretary of State.

(2) A notice under this paragraph shall specify the grounds on which the ship has been detained or the proceedings have been taken.

##### *Delivery up of certificates*

**26.** (1) The Board may require any certificate which can be issued under this Schedule, which has expired or been cancelled, to be delivered up as it directs.

(2) If any owner or master of a ship fails without reasonable

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excuse to comply with such a requirement he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the uniform scale.

*Penalty for false statements, etc.*

27. If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent certificate which can be issued under this Schedule, he shall be guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

*Admissibility of certificates in evidence*

28. Any certificate issued under this Schedule shall be admissible in evidence.

*Convention countries*

29. (1) Where Her Majesty by Order in Council made under paragraph 29(1) of Schedule 3 to the Merchant Shipping Act 1995<sup>uu</sup> has made a declaration –

- (a) that the Government of a country has accepted or

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<sup>uu</sup> An Act of Parliament (1995 c. 21).

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acceded to, or has denounced, the Convention of 1966, or

- (b) that the Convention of 1966 extends, or has ceased to extend, to a particular territory,

the States may by Ordinance make a declaration to the like effect.

(2) In this Schedule, "**Convention country**" means a country or territory which is either –

- (a) a country the Government of which has been declared under this paragraph to have accepted or acceded to the Convention of 1966, and has not been so declared to have denounced that Convention, or
- (b) a territory to which it has been so declared that the Convention of 1966 extends, not being a territory to which it has been so declared that that Convention has ceased to extend,

and "**Contracting Government**" means any such Government as is referred to in (a).

*Ordinances, orders, rules and regulations*

**30.** Any Ordinance, order, rules or regulations made under this Schedule may contain such transitional or other incidental and supplementary provisions as may appear to the States or the Board, as the case may be, to be appropriate.

*Interpretation*

31. (1) In this Schedule, except in so far as the context otherwise requires –

"**alteration**" includes deterioration,

"**clearance**" includes transire,

"**the Convention of 1966**" means the International Convention on Load Lines which was signed in London on 5<sup>th</sup> April, 1966,

"**Convention country**" and "**Contracting Government**" have the meanings given to them by paragraph 29(2) of this Schedule,

"**non-Guernsey ship**" means a ship which is not registered in Guernsey,

"**post-1966 Convention ship**" means a ship whose keel is laid, or which is at a similar stage of construction, on or after the material date; and "**pre-1966 Convention ship**" means a ship which is not a post-1966 Convention ship,

"**parent country**", in relation to a ship, means the country or territory in which the ship is registered, or, if the ship is not registered anywhere, means the country or territory whose flag the ship flies,

"**valid Convention certificate**" has the meaning given to it by paragraph 12(5) of this Schedule.

(2) For the purposes of the definitions of pre-1966 and post-1966 Convention ship the material date –

(a) in relation to a ship whose parent country is a Convention country other than Guernsey, is the date as from which it is declared under paragraph 29 of this Schedule either that the Government of that country has accepted or acceded to the Convention of 1966 or that it is a territory to which that Convention extends, and

(b) in relation to any other ship, is 21<sup>st</sup> July, 1968.

(3) In this Schedule, subject to sub-paragraph (4), "**international voyage**" means a voyage between –

(a) a port in Guernsey and a port outside Guernsey, or

(b) a port in a Convention country (other than Guernsey) and a port in any other country or territory (whether a Convention country or not) which is outside Guernsey.

(4) In determining, for the purposes of sub-paragraph (3), what are the ports between which a voyage is made, no account shall be taken of any deviation by a ship from its intended voyage which is due solely to stress of weather or any other circumstance which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and for the purposes of that sub-paragraph any colony, protectorate or other dependency, and any territory for whose international relations a Government is separately responsible shall be taken to be a separate territory.

(5) Any reference in this Schedule to the gross tonnage of a ship shall be construed as a reference to the tonnage of the ship as ascertained in accordance with the tonnage regulations; and, where in accordance with those regulations alternative tonnages are assigned to a ship, the gross tonnage of the ship shall, for the purposes of this Schedule, be taken to be the larger of those tonnages.

(6) For the purposes of this Schedule the length of a ship shall be ascertained in accordance with regulations made by the Board under this Schedule.

(7) Any reference in this Schedule to any provision of the Convention of 1966 shall, in relation to any time after that provision has been amended in pursuance of Article 29 of that Convention, be construed as a reference to that provision as so amended.

SCHEDULE 4

Section 183

OVERALL LIMIT ON LIABILITY OF FUND

*Article 4 - paragraphs 4 and 5*

4. (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.

(b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.

(c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article 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 decision of the Assembly of the Fund as to the first date of payment of compensation.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, 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.

SCHEDULE 5

Section 189

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

The States parties to the present Convention,

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

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

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

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

Have agreed as follows:

Chapter I

GENERAL PROVISIONS

*Definitions*

Article 1

For the purposes of this Convention:

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

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

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

4. "Receiver" means either:

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

(b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports

and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

5. "Hazardous and noxious substances" (HNS) means:
- (a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:
    - (i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended,
    - (ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally 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,

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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 processing 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

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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

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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 caused 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,

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- (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

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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 purposes 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 a 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.

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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 so 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

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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 functions 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

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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.

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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,

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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 operations 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.

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

4. Where a State Party does not 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

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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 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 obligations specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

*Organization and administration*

*Consolidated text*

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

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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 that the States Parties are appropriately represented; the Rules of Procedure of

*Consolidated text*

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.

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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:

*Consolidated text*

- (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

*Consolidated text*

- (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:

*Consolidated text*

- (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),

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- (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

*Consolidated text*

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

*Consolidated text*

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 the 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 judgment or decision on proceedings to which it has not been a party or by any settlement to which it is not a party.

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

*Recognition and enforcement*

Article 40

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

- (a) where the judgement was obtained by fraud, or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

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

*Consolidated text*

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 that 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

*Consolidated text*

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, paragraph 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

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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

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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 an 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

*Consolidated text*

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.

*Consolidated text*

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

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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 6

Section 192

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND  
THEIR LUGGAGE BY SEA

PART I

TEXT OF CONVENTION

ARTICLE 1

*Definitions*

In this Convention the following expressions have the meaning hereby 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 actually 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 of 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 this Convention, or
  - (b) the contract of carriage has been made in a State Party to this Convention, or
  - (c) the place of departure or destination, according to the contract of carriage, is a State Party to this Convention.

2. Notwithstanding paragraph 1 of this Article, this Convention shall not 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 as those provisions have mandatory application to carriage by sea.

ARTICLE 3

*Liability of 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

*Consolidated text*

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 this 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.

*Consolidated text*

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 upon 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 for 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 per 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.

*Consolidated text*

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 in 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 of 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*

*Consolidated text*

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 limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts 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

*Consolidated text*

*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:

*Consolidated text*

- (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,

*Consolidated text*

- (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 is

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 that 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 towards 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

*Consolidated text*

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 II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned 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 such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall 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 to the law of the court in article 6 shall be construed as

a reference to Part I of the Law Reform (Tort) (Guernsey) Law, 1979<sup>vv</sup> or, as the case may be, customary law.

4. The Board may by order provide that, in relation to a carrier whose principal place of business is in Guernsey, paragraph 1 of article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which 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 of the Convention in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –

- (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 by or on behalf of the Treasury of the United Kingdom 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

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<sup>vv</sup> Ordres en Conseil Vol. XXVII, p. 50.

which is the last day for which a sum has been so fixed before the particular day,

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

6. It is hereby declared that by virtue of article 12 the limitations on liability there mentioned 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 which may be brought whether in Guernsey or elsewhere.

7. Article 16 shall apply to an arbitration as it applies to an action; and section 29(4) of the Arbitration (Guernsey) Law, 1982<sup>ww</sup> and section 29(4) of the Arbitration (Alderney) Law, 1983<sup>xx</sup> (which determine when an arbitration is deemed to commence) shall apply for the purposes of article 16 as they apply for the purposes of those Laws.

8. The court before which proceedings are brought in pursuance of article 17 to enforce a liability which is limited by virtue of article 12 may at any stage of the proceedings make such orders as appear to the court to be just and equitable in view of the provisions of article 12 and of any other proceedings which have been or are likely to be begun in Guernsey or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceedings in Guernsey or elsewhere, have jurisdiction

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<sup>ww</sup> Ordres en Conseil Vo. XXVII, p. 525; Vol. XXIX, p. 178.

<sup>xx</sup> Ordres en Conseil Vol. XXVIII, p. 236; Vol. XXIX, p. 171.

to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

*Other provisions adapting or supplementing the Convention*

**9.** Any reference in the Convention to a contract of carriage excludes a contract of carriage which is not for reward.

**10.** If Her Majesty by Order in Council made under paragraph 10 of Part II of Schedule 6 to the Merchant Shipping Act 1995<sup>yy</sup> declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of that paragraph, be conclusive evidence that the State is a party to the Convention in respect of that country.

**11.** The Board 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 Part I of this Schedule as are so specified,
- (b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 4 on the uniform scale or not exceeding a lesser amount.

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<sup>yy</sup> An Act of Parliament (1995 c. 21).

*Application of sections 194 and 195 of this Law*

**12.** It is hereby declared that nothing in the Convention affects the operation of section 194 of this Law (which limits a shipowner's liability in certain cases of loss of life, injury or damage).

**13.** Nothing in section 195 of this Law (which among other things limits a shipowner's liability for the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

SCHEDULE 7

Section 194

CONVENTION ON LIMITATION OF LIABILITY FOR  
MARITIME CLAIMS 1976

PART I

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,

*Consolidated text*

- (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

*Consolidated text*

the International Convention on Civil Liability for Oil Pollution Damage dated 29<sup>th</sup> 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,

*Consolidated text*

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

*Consolidated text*

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).

3. 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

*Consolidated text*

*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

*Consolidated text*

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 by 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

*Consolidated text*

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:

*Consolidated text*

- (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 is 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 II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

*Right to limit liability*

2. The right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of "shipowner" in paragraph 2 of article 1 shall be construed accordingly.

*Claims subject to limitation*

3. (1) Paragraph 1(d) of article 2 shall not apply unless provision has been made by an order of the Board for the setting up and management of a fund to be used for the making to harbour authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) may contain such incidental and supplemental provisions as appear to the Board to be necessary or

expedient.

*Claims excluded from limitation*

4. (1) The claims excluded from the Convention by paragraph (a) of article 3 include claims under article 14 of the International Convention on Salvage 1989 as set out in Part I of Schedule 8 and corresponding claims under a contract.

(2) The claims excluded from the Convention by paragraph (b) of article 3 are claims in respect of any liability incurred under section 161 of this Law.

(3) The claims excluded from the Convention by paragraph (c) of article 3 are claims made by virtue of either of section 10 or 11 of the Nuclear Installations Act 1965<sup>zz</sup> as extended to Guernsey<sup>aaa</sup>.

*The general limits*

5. (1) In the application of article 6 to a ship with a tonnage less than 300 tons that article shall have effect as if –

(a) paragraph 1(a)(i) referred to 166,667 Units of Account, and

(b) paragraph 1(b)(i) referred to 83,333 Units of Account.

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<sup>zz</sup> An Act of Parliament (1965 c. 57).

<sup>aaa</sup> By Order in Council under section 28 of that Act: the Nuclear Installations (Guernsey) Order 1978 (S.I. 1978/1528 (see Ordres en Conseil Vol. XXVII, p. 13)), as amended (S.I. 1985/1640 (see Ordres en Conseil Vol. XXIX, p. 119)).

*Consolidated text*

(2) For the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Board.

(3) Any order under this paragraph shall, so far as appears to the Board to be practicable, give effect to the regulations in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

*Limit for passenger claims*

6. (1) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations, the ship's certificate mentioned in paragraph 1 of article 7 shall be that certificate.

(2) In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents (Guernsey) Laws, 1900 and 1960<sup>bbb</sup>.

*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 shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –

(a) the relevant date under paragraph 1 of article 8, or

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<sup>bbb</sup> Ordres en Conseil Vol. III, p. 235; Vol. XVIII, p. 281.

*Consolidated text*

- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury of the United Kingdom stating –

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

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

*Constitution of fund*

8. (1) In the event that the Secretary of State makes an order under paragraph 8(2) of Part II of Schedule 7 to the Merchant Shipping Act 1995<sup>ccc</sup>, the Board may, in like terms to that order, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.

(2) Where 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

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<sup>ccc</sup> An Act of Parliament (1995 c. 21).

*Consolidated text*

stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

*Distribution of fund*

9. No lien or other right in respect of any ship or property shall affect the proportions in which under article 12 the fund is distributed among several claimants.

*Bar to other actions*

10. Where 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 shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

*Meaning of "court"*

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references –

- (a) in respect of matters arising in Alderney, to the Court of Alderney,
- (b) in relation to matters arising in Sark, to the Court of the Seneschal of Sark, or
- (c) in all other cases, to the Royal Court sitting as an Ordinary Court.

*Meaning of "ship"*

**12.** References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship.

*Meaning of "State Party"*

**13.** An Order in Council made under and for the purposes of paragraph 13 of Part II of Schedule 7 to the Merchant Shipping Act 1995<sup>ddd</sup> and declaring that any State specified in the Order is a party to the Convention shall, subject to the provisions of any subsequent Order made by virtue and for the purposes of that paragraph, be conclusive evidence that the State is a party to the Convention.

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<sup>ddd</sup> An Act of Parliament (1995 c. 21).

SCHEDULE 8

Section 214

INTERNATIONAL CONVENTION ON SALVAGE 1989

PART I

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.

*Consolidated text*

- (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

*Consolidated text*

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 recognised 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

*Consolidated text*

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 recognised 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

*Consolidated text*

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

*Consolidated text*

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

*Consolidated text*

*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 salvaging 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

*Consolidated text*

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

*Consolidated text*

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 recognised principles of international law.

ARTICLE 26

*Humanitarian cargoes*

*Consolidated text*

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 II

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 I of this Schedule and any reference to a numbered article is a reference to the article of the Convention which is so numbered.

*Assistance to persons in danger at sea*

2. (1) The master of a vessel who fails to comply with the duty imposed on him by article 10, paragraph 1 commits an offence and shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a

term not exceeding two years or a fine, or both.

(2) Compliance by the master of a vessel with that duty shall not affect his right or the right of any other 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 where –
- (a) services are rendered wholly or in part in Guernsey waters in saving life from a vessel of any nationality or elsewhere in saving life from any Guernsey ship, and
  - (b) either –
    - (i) the vessel and other property are destroyed, or
    - (ii) the sum to which the salvor is entitled under article 16, paragraph 2 is less than a reasonable amount for the services rendered in saving life.

(2) Where this paragraph applies, the Board may, if it thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as it thinks fit in respect of the services rendered in saving life.

*Meaning of "judicial proceedings"*

5. References in the Convention to judicial proceedings are references to proceedings –

- (a) in the Island of Guernsey, in the Ordinary Court,
- (b) in Alderney, in the Court of Alderney,
- (c) in Sark, in the Court of the Seneschal of Sark,

and any reference to the tribunal having jurisdiction (so far as it refers to judicial proceedings) shall be construed accordingly.

*Meaning of "State Party"*

6. (1) An Order in Council made for the purposes of paragraph 7(1) of Part II of Schedule 11 to the Merchant Shipping Act 1995<sup>eee</sup> and declaring that any State specified in the Order is a party to the Convention in respect of a specified country shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention in respect of that country.

(2) In this paragraph, "**country**" includes "territory".

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<sup>eee</sup> An Act of Parliament (1995 c. 21).

SCHEDULE 9

Section 287

FUNDING OF MARITIME SERVICES

*Interpretation*

1. In this Schedule, "**prescribe**" means prescribe by regulations.

*Charges in respect of maritime matters*

2. (1) Regulations under this Schedule may make provision imposing charges for the purpose of recovering the whole or a part of the costs incurred by the Board in connection with its maritime functions.

- (2) In sub-paragraph (1), "**maritime functions**" means –
  - (a) functions conferred by or under any provision of this Law apart from Part II of Part VIII,
  - (b) functions under any international agreement as it has effect for the time being in relation to Guernsey relating to –
    - (i) the safety of ships,
    - (ii) the prevention of pollution from ships, or
    - (iii) living and working conditions on board ships, and
  - (c) other functions relating to the promotion of the safety

of ships.

*Ships in respect of which charges may be imposed*

3. (1) Regulations under this Schedule may not require a charge to be paid except in respect of –

- (a) a ship which has entered a port in Guernsey,
- (b) a ship which is anchored off a port in Guernsey, or
- (c) a ship which is anchored within a part of the sea specified by virtue of section 131(2)(b).

(2) Nothing in any regulations under this Schedule shall be construed as requiring a charge to be paid in respect of a qualifying foreign ship which is exercising –

- (a) the right of innocent passage, or
- (b) the right of transit passage through straits used for international navigation,

except to the extent that international law allows such a charge to be imposed.

(3) Subject to sub-paragraphs (1) and (2), the regulations may impose a charge in respect of such description of ship as may be prescribed.

(4) In particular –

*Consolidated text*

- (a) regulations may impose a charge in respect of a ship even though no service has been provided or function exercised in the case of that ship, and
- (b) regulations may provide that no charge is imposed in respect of a ship which does not exceed a prescribed tonnage or does not exceed a prescribed length.

(5) For the purposes of sub-paragraph (1)(a), the circumstances in which a ship shall be regarded as entering a port in Guernsey include circumstances in which a ship enters any Guernsey waters which are regulated or managed by a harbour authority.

*Persons by whom charges to be paid*

4. (1) Regulations under this Schedule may not require a charge to be paid in respect of a ship by a person who is not –

- (a) the owner of the ship,
- (b) the person registered as the owner of the ship,
- (c) the operator of the ship,
- (d) the manager of the ship,
- (e) the charterer of the ship, or
- (f) the agent of a person mentioned in any of paragraphs (a) to (e).

*Consolidated text*

(2) Subject to sub-paragraph (1), charges imposed by the regulations shall be payable by such persons as may be prescribed.

*Amount of charges*

- 5.** (1) Regulations under this Schedule may impose a charge –
- (a) of a fixed amount, or
  - (b) of an amount determined in accordance with the regulations,

and may impose different charges in relation to ships of different descriptions or in different circumstances.

(2) Regulations under this Schedule may, in particular, impose in respect of a ship a charge whose amount depends on –

- (a) whether action has been or is being taken with a view to –
  - (i) enforcing international shipping standards in the case of that ship, or
  - (ii) preventing, reducing or minimising the effects of pollution from that ship, and
- (b) if any such action has been or is being taken, the nature of the action.

(3) Regulations under this Schedule may, in particular, impose in respect of a ship a charge whose amount depends on the tonnage or length of the ship.

*Powers to require information*

6. Regulations under this Schedule may include provision requiring any person who is or may be liable to pay charges under the regulations in respect of a ship, to provide the Board with such information as it may reasonably require for the purposes of the regulations.

*Disclosure of information*

7. (1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) shall prevent a Committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be, or the Guernsey Financial Services Commission, or an authorised officer thereof, from disclosing –

- (a) to the Board, or
- (b) to a person appointed by the Board to collect charges under regulations made under this Schedule,

information for the purpose of enabling or assisting the Board to perform its functions under the regulations.

(2) Information obtained by any person by virtue of subparagraph (1) shall not be disclosed by him to any other person except where the

disclosure is made –

- (a) to the Board or a person falling within sub-paragraph (1)(b), or
- (b) for the purposes of any legal proceedings arising out of the regulations.

*Collection and recovery, etc.*

**8.** Regulations under this Schedule may make provision –

- (a) with respect to the collection and recovery of charges, and
- (b) for charges which fall due under the regulations but which are not paid to carry interest.

**9.** Regulations under this Schedule may make provision for appeals against decisions that charges are due in respect of ships.

*Arrest and disposal*

**10.** Regulations under this Schedule may make provision –

- (a) for authorising the arrest of any ship in respect of which the owner or master has failed to pay charges due under the regulations and of any goods, equipment or other thing belonging to, or on board, the ship,

*Consolidated text*

- (b) for the disposal of any ship, goods, equipment or other thing so arrested in accordance with the regulations, and
- (c) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under regulations made by virtue of paragraph (a) or (b).

*Supplementary*

**11.** Regulations under this Schedule may include such transitional, incidental or supplementary provision as appears to the Board to be necessary or appropriate.

**12.** Regulations under this Schedule shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

SCHEDULE 10

Section 296

REPEALS

PART I

ACTS OF PARLIAMENT APPLYING TO GUERNSEY

(1) Enactment	(2) Extent of repeal
Merchant Shipping Act 1894 <sup>fff</sup>	The whole Act
Merchant Shipping Act 1897 <sup>ggg</sup>	The whole Act
Merchant Shipping (Liability of Shipowners) Act 1900 <sup>hhh</sup>	Sections 2 to 5
Merchant Shipping Act 1906 <sup>iii</sup>	The whole Act
Maritime Conventions Act 1911 <sup>jjj</sup>	The whole Act
Merchant Shipping (Amendment) Act 1920 <sup>kkk</sup>	The whole Act
Merchant Shipping Act 1921 <sup>lll</sup>	Sections 2 to 4

- <sup>fff</sup> An Act of Parliament (57 & 58 Vict. C. 60).  
<sup>ggg</sup> An Act of Parliament (60 & 61 Vict. C. 59).  
<sup>hhh</sup> An Act of Parliament (63 & 64 Vict. C. 32).  
<sup>iii</sup> An Act of Parliament (6 Edw. 7 c. 48).  
<sup>jjj</sup> An Act of Parliament (1 & 2 Geo. 5 c. 57).  
<sup>kkk</sup> An Act of Parliament (10 & 11 Geo. 5 c. 2).  
<sup>lll</sup> An Act of Parliament (11 & 12 Geo. 5 c. 28).

PART II  
ORDERS IN COUNCIL EXTENDING UNITED KINGDOM  
ENACTMENTS TO GUERNSEY

- (a) Merchant Shipping (Guernsey) Order 1927<sup>mmm</sup>
- (b) Merchant Shipping Load Line Convention (Guernsey) Order, 1933<sup>nnn</sup>
- (c) Merchant Shipping Safety Convention (Guernsey), No. 1 Order 1935<sup>ooo</sup>
- (d) Merchant Shipping Safety Convention (Guernsey) No. 2 Order, 1935<sup>ppp</sup>
- (e) Merchant Shipping (Helm Orders) Order, 1935<sup>qqq</sup>
- (f) Load Line Exemption (Guernsey) Order, 1958<sup>rrr</sup>
- (g) Merchant Shipping Load Line Convention (Guernsey) (Amendment) Order,  
1958<sup>sss</sup>
- (h) Merchant Shipping (Liability of Shipowners and Others) Act 1958

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- <sup>mmm</sup> S.R. & O. 1927/267 (see Ordres en Conseil Vol. VIII, p. 112).
  - <sup>nnn</sup> S.R. & O. 1933/54 (see Ordres en Conseil Vol. IX, p. 302).
  - <sup>ooo</sup> S.R. & O. 1935/562 (see Ordres en Conseil Vol. X, p. 201).
  - <sup>ppp</sup> S.R. & O. 1935/563 (see Ordres en Conseil Vol. X, p. 231).
  - <sup>qqq</sup> S.R. & O. 1935/837 (see Ordres en Conseil Vol. X, p. 255).
  - <sup>rrr</sup> S.I. 1958/100 (see Ordres en Conseil Vol. XVII, p. 305).
  - <sup>sss</sup> S.I. 1958/1253 (see Ordres en Conseil Vol. XVII, p. 1253).

- (Guernsey) Order 1964<sup>ttt</sup>
- (i) Oil in Navigable Waters (Guernsey) Order 1966<sup>uuu</sup>
- (j) Oil in Navigable Waters (Guernsey) Regulations 1966<sup>vvv</sup>
- (k) Merchant Shipping Load Line Convention (Guernsey) Order 1970<sup>www</sup>
- (l) Merchant Shipping Act 1979 (Guernsey) Order 1980<sup>xxx</sup>
- (m) Merchant Shipping (Oil Pollution) Act 1971 (Guernsey) Order 1981<sup>yyy</sup>
- (n) Merchant Shipping Act 1974 (Guernsey) Order 1981<sup>zzz</sup>
- (o) Merchant Shipping Act 1970 (Guernsey) Order 1981<sup>aaaa</sup>
- (p) Merchant Shipping Act 1979 (Guernsey) Order 1981<sup>bbbb</sup>
- (q) Merchant Shipping (Liability of Shipowners and Others) (Guernsey) Order

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<b>ttt</b>	S.I. 1964/929 (see Ordres en Conseil Vol. XIX, p. 241).
<b>uuu</b>	S.I. 1966/393 (see Ordres en Conseil Vol. XX, p. 202).
<b>vvv</b>	S.I. 1966/425 (see Ordres en Conseil Vol. XX, p. 203).
<b>www</b>	S.I. 1970/1439 (see Ordres en Conseil Vol. XXII, p. 537).
<b>xxx</b>	S.I. 1980/569 (see Ordres en Conseil Vol. XXVII, p. 193).
<b>yyy</b>	S.I. 1981/224 (see Ordres en Conseil Vol. XXVII, p. 266).
<b>zzz</b>	S.I. 1981/225 (see Ordres en Conseil Vol. XXVII, p. 273).
<b>aaaa</b>	S.I. 1981/1809 (see Ordres en Conseil Vol. XXVII, p. 361).
<b>bbbb</b>	S.I. 1981/1810 (see Ordres en Conseil Vol. XXVII, p. 364).

1982<sup>cccc</sup>

- (r) Merchant Shipping Act 1983 (Guernsey) Order 1983<sup>dddd</sup>
- (s) Merchant Shipping Act 1965 (Guernsey) Order 1988<sup>eeee</sup>
- (t) Merchant Shipping Act 1979 (Guernsey) Order 1988<sup>ffff</sup>
- (u) Merchant Shipping (Certification of Deck Officers and Marine Engineer Officers) (Guernsey) Order 1988<sup>gggg</sup>
- (v) Merchant Shipping (Distress Signals and Prevention of Collisions) (Guernsey) Order 1989<sup>hhhh</sup>
- (w) Fishing Vessels (Life-Saving Appliances) (Guernsey) Order 1990<sup>iiii</sup>
- (x) Fishing Vessels (Safety Provisions) (Guernsey) Order 1990<sup>jjjj</sup>
- (y) Merchant Shipping (Safety Convention) (Guernsey) Order 1990<sup>kkkk</sup>

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<b>cccc</b>	S.I. 1982/335 (see Ordres en Conseil Vol. XXVII, p. 421).
<b>dddd</b>	S.I. 1983/1701 (see Ordres en Conseil Vol. XXVIII, p. 337).
<b>eeee</b>	S.I. 1988/1850 (see Ordres en Conseil Vol. XXXI, p. 98).
<b>ffff</b>	S.I. 1988/1851 (see Ordres en Conseil Vol. XXXI, p. 101).
<b>gggg</b>	S.I. 1988/1991 (see Ordres en Conseil Vol. XXXI, p. 102).
<b>hhhh</b>	S.I. 1989/2410 (see Ordres en Conseil Vol. XXXII, p. 4).
<b>iiii</b>	S.I. 1990/2147 (registered on 21 <sup>st</sup> January, 1991).
<b>jjjj</b>	S.I. 1990/2148 (registered on 21 <sup>st</sup> January, 1991).
<b>kkkk</b>	S.I. 1990/2150 (registered on 21 <sup>st</sup> January, 1991).

- (z) Merchant Shipping (Distress Signals and Prevention of Collisions) (Guernsey) (Amendment) Order 1991<sup>llll</sup>
- (aa) Merchant Shipping Act 1988 (Guernsey) Order 1991<sup>mmmm</sup>
- (ab) Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1993<sup>nnnn</sup>
- (ac) Merchant Shipping (Oil Pollution and General Provisions) (Guernsey) Order 1998<sup>oooo</sup>

PART III  
GUERNSEY ENACTMENTS

(1) Enactment	(2) Extent of repeal
Merchant Shipping (Guernsey) Law, 1915 <sup>pppp</sup>	The whole Law
Merchant Shipping (Guernsey) Law, 1953 <sup>qqqq</sup>	The whole Law

<sup>llll</sup> S.I. 1991/763 (registered on 16<sup>th</sup> April, 1991).

<sup>mmmm</sup> S.I. 1991/2875 (registered on 20<sup>th</sup> January, 1992).

<sup>nnnn</sup> S.I. 1993/1072, which apply in Guernsey as a result of section 21 of the Merchant Shipping Act 1979 as extended to Guernsey by the Merchant Shipping Act 1979 (Guernsey) Order 1981 (S.I. 1981/1810).

<sup>oooo</sup> S.I. 1998/260 (registered on 3<sup>rd</sup> March, 1998).

<sup>pppp</sup> Ordres en Conseil Vol. V, p. 189.

Merchant Shipping (Guernsey) Law, 1957 <sup>rrrr</sup>	The whole Law
Merchant Shipping (Guernsey) Law, 1970 <sup>ssss</sup>	The whole Law
Merchant Shipping (Restriction on Employment of Aliens) (Bailiwick of Guernsey) Law, 1984 <sup>tttt</sup>	The whole Law
Merchant Shipping (Registration) (Bailiwick of Guernsey) Law, 1987 <sup>uuuu</sup>	The whole Law
Merchant Shipping (Registration) (Amendment) (Bailiwick of Guernsey) Law, 1989 <sup>vvvv</sup>	The whole Law

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- <sup>qqqq</sup> Ordres en Conseil Vol. XV, p. 472.  
<sup>rrrr</sup> Ordres en Conseil Vol. XVII, p. 210.  
<sup>ssss</sup> Ordres en Conseil Vol. XXII, p. 404.  
<sup>tttt</sup> Ordres en Conseil Vol. XXVIII, p. 350.  
<sup>uuuu</sup> Ordres en Conseil Vol. XXX, p. 156.  
<sup>vvvv</sup> Ordres en Conseil Vol. XXXI, p. 557.

TRANSITORY, SAVING AND TRANSITIONAL PROVISIONS

*References to registration in other legislation*

1. Any reference in another enactment to the registration of a ship (or fishing vessel) under –

- (a) Part I of the Merchant Shipping Act 1894<sup>www</sup>, or
- (b) section 5 of the Merchant Shipping Act 1983<sup>xxxx</sup> as extended to Guernsey<sup>yyyy</sup>,

shall be construed, unless the context otherwise requires, as, or as including, a reference to registration under Part II of this Law; and connected phrases shall be construed accordingly.

*Qualifications: certificates of A.B.*

2. (1) A seaman engaged in any Guernsey ship shall not be rated as A.B. unless he is the holder of a certificate of competency granted in pursuance of regulations under this paragraph.

(2) The Board may make regulations providing for the grant of

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<sup>www</sup> An Act of Parliament (57 & 58 Vict. C. 60).

<sup>xxxx</sup> An Act of Parliament (1983 c. 13).

<sup>yyyy</sup> By Order in Council under section 8(1) of that Act: the Merchant Shipping Act 1983 (Guernsey) Order 1983 (S.I. 1983/1701 (see Ordres en Conseil Vol. XXVIII, p. 337)).

certificates of competency as A.B. for the purposes of this paragraph.

(3) The regulations shall direct that no certificate shall be granted to any person unless –

- (a) he has reached such minimum age as may be prescribed,
- (b) he has performed such qualifying service at sea as may be prescribed, and
- (c) he has passed such examination as may be prescribed.

(4) The regulations may make such consequential provisions as appear to the Board to be necessary or expedient, including provision –

- (a) for the payment of prescribed fees in respect of any application for the grant or replacement of a certificate,
- (b) for applying section 104 of the Merchant Shipping Act 1894 (offences) to certificates, subject to such adaptations and modifications as may be prescribed.

(5) Where provision is made by the law of any Commonwealth country for the grant of certificates of competency as A.B., and the Board is satisfied that the conditions under which such a certificate is granted require standards of competency not lower than those required for the grant of a certificate under the regulations, the States may by Ordinance direct that certificates granted in that country shall have the same effect for the purposes of this paragraph as if they

had been granted under the regulations; and any such Ordinance may apply to any such certificate any of the provisions of the regulations.

(6) Any officer of the Board appointed for that purpose before whom a seaman is engaged in any Guernsey ship shall refuse to enter the man as A.B. on the crew agreement unless the seaman produces a certificate or such other proof that he is the holder of such a certificate as may appear to the officer to be satisfactory.

(7) In this paragraph –

**"certificate"** means a certificate of competency under the regulations,

**"prescribed"** means prescribed by the regulations, and

**"the regulations"** means regulations under this paragraph.

*Manning: certificates previously existing*

3. (1) The power to make regulations under section 45 includes power to make regulations providing that previous certificates shall, except in such cases as are specified in the regulations, be deemed for the purposes of such of the provisions of Part III as are so specified to be issued in pursuance of that section and to confer on the persons to whom they were issued such qualifications for the purposes of that section as are so specified.

(2) In this paragraph, **"previous certificate"** means a certificate granted under section 93, 99 or 414 of the Merchant Shipping Act 1894, a certificate referred to in an Order in Council made under section 102 of that Act, a

*Consolidated text*

certificate granted under section 27(2) of the Merchant Shipping Act 1906<sup>zzzz</sup> or by an institution approved in pursuance of that subsection and a certificate granted under section 5 of the Merchant Shipping Act 1948<sup>aaaaa</sup>.

*Masters and seamen and documents: transitory provisions*

4. (1) A provision to which this paragraph applies shall cease to have effect on such day as the Board by order appoints.

(2) This paragraph applies to section 55, 273(1)(a) and 284, paragraph 26 of Schedule 3 and paragraph 2 of this Schedule.

*Behring Sea Award*

5. Nothing in this Law shall affect the Behring Sea Award Act 1894<sup>bbbbb</sup> insofar as it applies in Guernsey.

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<sup>zzzz</sup> An Act of Parliament (6 Edw. 7 c. 48).

<sup>aaaaa</sup> An Act of Parliament (11 & 12 Geo. 6 c. 44).

<sup>bbbbb</sup> An Act of Parliament (57 & 58 Vict. c. 2).