



Jersey

SHIPPING (MARPOL) (JERSEY) REGULATIONS 2012

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*Made**17th January 2012**Coming into force**in accordance with Regulation 22*

THE STATES, in pursuance of Articles 90, 91 and 196 of the Shipping (Jersey) Law 2002¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“Administration” has the meaning set out in Regulation 2;

“Annex I” means Annex I to the MARPOL Convention;

“Annex II” means Annex II to the MARPOL Convention;

“discharge” has the meaning set out in Regulation 3;

“function” includes power and duty;

“harmful substance” means any substance that, if introduced into the sea, is liable to create hazards to human health, liable to harm living resources and marine life, liable to damage amenities or liable to interfere with other legitimate uses of the sea, and includes any substance subject to control by the MARPOL Convention;

“IMO” means the International Maritime Organisation;

“incident” means an event involving the actual or probable discharge into the sea of a harmful substance, or effluents containing such a substance;

“the Law” means the Shipping (Jersey) Law 2002²;

“MARPOL Convention” has the meaning set out in Regulation 4;

“Organization” means the Inter-Governmental Maritime Consultative Organization;

“Protocol I” means Protocol I to the MARPOL Convention.

2 Administration defined

- (1) This Regulation applies for the purposes of the interpretation of the MARPOL Convention, as that Convention has effect in accordance with these Regulations.
- (2) Subject to paragraph (3), the Administration in respect of a ship is the statutory body, ministry, or other public authority, that is responsible for shipping in relation to the State under whose authority the ship is operating.
- (3) In respect of a ship entitled to fly a flag of a State, the Administration is the statutory body, ministry, or other public authority, that is responsible for shipping in relation to the State.
- (4) In respect of fixed or floating platforms engaged in exploration or exploitation of the sea-bed and subsoil thereof adjacent to the coast over which a coastal State exercises sovereign rights for the purposes of exploration and exploitation of their natural resources, the Administration is the statutory body, ministry, or other public authority, that is responsible for shipping in relation to the coastal State concerned.
- (5) In respect of a Jersey ship, the Administration is the Minister.

3 Discharge defined

- (1) This Regulation applies for the purposes of the interpretation of the MARPOL Convention, as that Convention has effect in accordance with these Regulations.
- (2) A discharge, in relation to harmful substances or effluents containing harmful substances, is any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying.
- (3) A discharge does not include –
 - (a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, done at London on 13 November 1972;
 - (b) the release of harmful substances directly arising from the exploration, exploitation and associated offshore processing of sea-bed mineral resources; or
 - (c) the release of harmful substances for purposes of legitimate scientific research into pollution abatement or control.

4 MARPOL Convention as applied under Regulation 5

For the purposes of these Regulations, except Regulations 21 and 22, “MARPOL Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, and including all amendments that took effect on or before the day on which this Regulation came into force, and –

- (a) includes the following provisions of that Convention as in force on that day –

- (i) Annex I,
 - (ii) Annex II,
 - (iii) Articles II to V of Protocol I, being those Articles as modified and set out in the Schedule to these Regulations; but
- (b) does not include the following provisions of that Convention –
 - (i) Article I of Protocol I,
 - (ii) Protocol II,
 - (iii) Annexes III to VI.

5 Application of MARPOL Convention and Regulations

- (1) The MARPOL Convention shall have effect in relation to –
 - (a) all Jersey ships whether in Jersey waters or elsewhere; and
 - (b) all other ships while they are in Jersey waters.
- (2) Additionally, these Regulations shall have effect –
 - (a) in relation to a ship so far as Regulation 13(3) creates an offence in relation to the ship in the circumstances specified by Regulation 13(3)(b); and
 - (b) to the extent that they are otherwise expressed to have application.
- (3) However, the MARPOL Convention, and these Regulations, shall not have effect in relation to –
 - (a) any ship that forms part of Her Majesty's navy or the navy of any country or territory; or
 - (b) Government ships or any ship owned or operated by a country or territory (other than Jersey) and used, for the time being, only on non-commercial service of the country or territory.

6 Interpretation of Protocol I and Annexes I and II

In Annex I and Annex II (as they have effect in accordance with these Regulations) and in articles II to V of Protocol I (as those articles have effect in accordance with these Regulations) –

- (a) a reference to a Party (or State Party or Government of a Party) shall be taken to be a reference to Jersey, to the extent that it means the Party (or State Party or Government of a Party) as a party to the MARPOL Convention in relation to Jersey ships and Jersey waters;
- (b) a reference to a Party (or State Party or Government of a Party) shall be taken to be a reference to the Minister, to the extent that it means the Party (or State Party or Government of a Party) that is charged under the MARPOL Convention with its implementation in relation to Jersey ships and Jersey waters;
- (c) a reference to the Administration shall be taken to be a reference to the Minister, to the extent that it means the Administration of a Party (or State Party), being the Administration charged under the MARPOL

Convention with its implementation in relation to Jersey ships and Jersey waters;

- (d) a reference to a function of the Administration shall be taken to be a reference to a function of the Minister, to the extent that it means the Administration referred to in sub-paragraph (c);
- (e) a reference to the Government of each Party (or to Governments of Parties) to the MARPOL Convention, or a reference to the Government, shall be taken to be a reference to the Minister, to the extent that it is or may be taken to be a reference to the Government of Jersey;
- (f) a reference to the competent authority, or the competent Port State Authority, of the Government of a Party to the MARPOL Convention shall, to the extent that it is or may be taken to be a reference to the competent authority of the Government of Jersey, be taken to be a reference to any of the following –
 - (i) an inspector,
 - (ii) a surveyor of ships,
 - (iii) a designated officer within the meaning of the Water Pollution (Jersey) Law 2000³;
- (g) a reference to a function that is expressed to be that of the Government of each Party to the MARPOL Convention shall be taken to be a reference to a function of the Minister, to the extent that the reference to the Party is a reference to Jersey; and
- (h) a reference to an officer duly authorised by a Party shall be taken to be a reference to an inspector within the meaning of the Law, to the extent that the reference to the Party is a reference to Jersey.

7 Information and investigation

- (1) Where information, or evidence, as to a breach of the MARPOL Convention or of these Regulations by or in respect of a ship comes to the notice of the Minister, the Minister shall –
 - (a) in the case where the breach occurred by or in respect of a Jersey ship or in Jersey waters, investigate the breach; or
 - (b) in any other case, transmit that information or evidence to the Administration of the ship or of the State in whose waters the breach occurred.
- (2) The Minister shall take reasonable steps to inform the master of the ship that the Minister has acted under paragraph (1).
- (3) If the Minister receives information or evidence from any Administration (other than the Minister) as to a breach of these Regulations by or in respect of a Jersey ship or in Jersey waters, the Minister shall investigate the matter, and may request the Administration to furnish further or better evidence of the alleged breach.
- (4) If the Minister believes that sufficient evidence is available to enable proceedings to be brought in respect of a breach referred to in paragraph (1) or (3), the Minister shall so inform the Attorney General.

- (5) The Minister shall inform an Administration that has transmitted information or evidence to the Minister as referred to in paragraph (3), as well as the Organization, of any action taken by the Minister in relation to the information or evidence.

8 In-port checks on certificates and oil or cargo record books

- (1) An inspector, a surveyor of ships or a designated officer may board and search a ship while it is in a port in Jersey if it is a ship that is required to hold a certificate in accordance with the MARPOL Convention.
- (2) However, any such search shall be carried out only for the purpose of verifying that there is on board a valid certificate that relates to the ship.
- (3) Despite paragraph (2), in a case where there are reasonable grounds to believe that the condition of the ship or of its equipment does not correspond substantially with the particulars of any certificate found on board, a search under paragraph (1) may be extended to gathering evidence, and determining the extent, of that lack of correspondence.
- (4) An inspector, a surveyor of ships or a designated officer may exercise a power under regulation 11, 17 or 36 of Annex I (as those regulations have effect in accordance with these Regulations) or regulation 15 or 16 of Annex II (as those regulations have effect in accordance with these Regulations).
- (5) In the case referred to in paragraph (3), or if a ship does not carry a valid certificate at all, the inspector, surveyor of ships, or designated officer, who is carrying out the search shall ensure that the ship does not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.
- (6) However, in the case referred to in paragraph (3), the inspector, surveyor of ships, or designated officer, may allow the ship to leave the port for the purpose of proceeding to the nearest repair yard where the lack of correspondence referred to in paragraph (3) can be rectified.
- (7) If regulation 11 of Annex I (as that regulation has effect in accordance with these Regulations) or regulation 16 of Annex II (as that regulation has effect in accordance with these Regulations) requires steps to be taken to ensure that a ship does not sail, the inspector, surveyor of ships, or designated officer, who is exercising the relevant power under that regulation shall ensure that the ship does not sail until the relevant situation has been brought to order as referred to in that regulation.
- (8) If the master or other member of the crew of a ship obstructs an inspector, a surveyor of ships, or a designated officer, in the carrying out of a function referred to in this Regulation, the master shall be guilty of an offence and liable to a fine.
- (9) For the avoidance of doubt, it is hereby stated that nothing in this Regulation affects the operation of any provision of Part 10 of the Law.
- (10) In this Regulation, “designated officer” means a designated officer within the meaning of the Water Pollution (Jersey) Law 2000.

9 State to be informed

- (1) If the Minister denies a ship, other than a Jersey ship, entry to the ports of Jersey or takes any action against such a ship for the reason that the ship does not comply with the MARPOL Convention, the Minister shall immediately give notice of the denial or action to a consul or other representative of the Administration of the ship, or if that is not possible, directly to the Administration of the ship.
- (2) Before denying entry or taking such action the Minister may request the Administration of the ship concerned to enter into consultation with the Minister.
- (3) If, under article 5(3) of the MARPOL Convention, a Party to that Convention requests consultation with the Minister in relation to a proposal to deny a Jersey ship entry, or the proposed taking of action against a Jersey ship, the Minister shall take reasonable steps to enter into consultation with the Party.
- (4) The Minister shall inform the Administration of a ship (if that Administration is not the Minister) if it comes to the Minister's knowledge that the ship is not carrying a valid certificate in accordance with the MARPOL Convention.

10 Duty to report incidents

- (1) If an incident occurs that involves anything set out in any of sub-paragraphs (a) to (d) of paragraph (1) of article II of Protocol I (as that article has effect in accordance with these Regulations), a report of the incident shall be made to the Administration of the State in whose waters the incident occurred.
- (2) The report shall be made in accordance with articles III to V of Protocol I (as those articles have effect in accordance with these Regulations).
- (3) If the Minister receives a report of an incident that involves anything set out in any of sub-paragraphs (a) to (d) of paragraph (1) of article II of Protocol I (as that article has effect in accordance with these Regulations), or otherwise becomes aware of such an incident, the Minister shall report the incident to –
 - (a) the Administration of the ship (if any) involved in the incident;
 - (b) the Administration of the State in whose waters the incident occurred; and
 - (c) the Administration of any other State that may be affected by the incident,to the extent that the Minister is not the Administration referred to in sub-paragraph (a), (b) or (c).
- (4) If –
 - (a) a report is required by paragraph (1) to be made in relation to an incident;
 - (b) the incident involved one or more ships; and
 - (c) the report is not made in accordance with that paragraph,

the following parties shall each shall be guilty of an offence and liable to a fine –

- (i) the master of each ship,
- (ii) the owner of each ship,
- (iii) the charterer (if any) of each ship.

11 Minister to report to Organization

The Minister shall forward to the Organization –

- (a) specimens of certificates issued for the purposes of Annexes I and II (as those Annexes have effect in accordance with these Regulations) by the Minister;
- (b) a list of reception facilities established in Jersey for the purposes of Annexes I and II (as those Annexes have effect in accordance with these Regulations), including their location, capacity and available facilities and other characteristics;
- (c) a copy of those parts of any reports prepared by or for the Minister that relate to the implementation of these Regulations; and
- (d) an annual report on penalties actually imposed in Jersey for breaches of these Regulations.

12 Casualties to ships

- (1) The Minister shall ensure that an investigation of any casualty occurring to any ship is carried out if the casualty has produced a major deleterious effect upon the marine environment and –
 - (a) the ship is a Jersey ship;
 - (b) the effect has occurred in Jersey waters; or
 - (c) the effect has occurred outside Jersey waters in such circumstances as to cause, or to be likely to cause, pollution in Jersey waters.
- (2) The Minister shall supply the Organization with information concerning the findings of such an investigation, if the Minister believes that the information may assist in determining what changes to the MARPOL Convention might be desirable.

13 Construction, equipment and operation in accordance with Annex I and Annex II

- (1) The requirements referred to in paragraph (2) as to the design, construction, equipment and operation of a ship, being a ship in relation to which Regulation 5 applies the MARPOL Convention, shall be complied with in relation to such a ship.
- (2) The requirements are, as the case requires, those set out in –

- (a) Annex I (as that Annex has effect in accordance with these Regulations and including regulation 36 of Annex I as applied by Regulation 17 of these Regulations); and
 - (b) Annex II (as that Annex has effect in accordance with these Regulations).
- (3) If paragraph (1) is not complied with –
 - (a) in Jersey waters in relation to a ship;
 - (b) outside Jersey in relation to a ship in such circumstances that the failure to comply has caused, or is likely to cause, pollution in Jersey waters; or
 - (c) in relation to a Jersey ship, wherever the failure to comply occurred,

the following parties shall each shall be guilty of an offence and liable to a fine –

 - (i) the master of the ship,
 - (ii) the owner of the ship,
 - (iii) the charterer (if any) of the ship.

14 Prosecutions in general, and defence relating to Regulation 13

- (1) Article 99 of the Law shall apply in respect of an offence under Regulation 13 in relation to the discharge of oil, or of a harmful substance, from a ship in the same way as it applies in respect of an offence under Article 98 of the Law, and as if a reference in Article 99 of the Law (as so applied) to oil or a mixture containing oil were a reference to oil or a harmful substance.
- (2) Article 110 of the Law shall apply in respect of an offence under these Regulations in the same way as it applies in respect of an offence under Article 98, or under Chapter 3 of Part 7, of the Law.

15 Detention of ships and application of fines for Regulation 13 offence

- (1) Articles 111 and 112 of the Law shall apply in respect of an offence under Regulation 13 in the same way as they apply in respect of an offence under Article 98 of the Law and as if a reference in Article 111 of the Law (as so applied) to oil or a mixture containing oil were a reference to oil or a harmful substance.
- (2) Article 177 of the Law shall apply in respect of a ship if a person referred to in paragraph (1) of that Article has reasonable grounds to suspect that a contravention of Regulation 13 has occurred in relation to the ship, but Article 177 of the Law, as so applied, shall apply as modified in Article 111 of the Law.

16 Management of oily residues on ship under 400 gross tons

- (1) A Jersey ship of less than 400 gross tonnage shall be equipped in such a way as to be capable of meeting the requirements of regulation 15.6 of

Annex I (as that regulation has effect in accordance with these Regulations).

- (2) A Jersey ship of less than 400 gross tonnage that discharges oil or oily mixtures as referred to in regulation 15.6 of Annex I (as that regulation has effect in accordance with these Regulations) does not comply with paragraph (1) unless the equipment that it has in operation as so referred to is of a design that has the written approval of the Minister.
- (3) If paragraph (1) is not complied with aboard a Jersey ship of less than 400 gross tonnage, the following parties shall each shall be guilty of an offence and liable to a fine –
 - (a) the master of the ship;
 - (b) the owner of the ship;
 - (c) the charterer (if any) of the ship.

17 Oil record book on ship under 150 gross tons

- (1) For a Jersey ship, being an oil tanker of less than 150 gross tons, the appropriate Oil Record Book for the purposes of regulation 36.9 of Annex I (as that regulation has effect in accordance with these Regulations) shall be a document in or to the form of the Oil Record Book Part II set out in Appendix III to Annex I (as that Appendix has effect in accordance with these Regulations).
- (2) Regulation 36 of Annex I (as that regulation has effect in accordance with these Regulations) shall apply in respect of such a ship as if it were a ship of 150 gross tons and as if the reference in that regulation to the Oil Record Book Part II were a reference to the document specified under paragraph (1).

18 Language of documents

- (1) The following documents, to the extent that they are required by the MARPOL Convention to be held aboard a Jersey ship, shall be in English –
 - (a) an international oil pollution prevention certificate referred to in regulation 9 of Annex I (as that regulation has effect in accordance with these Regulations);
 - (b) an international pollution prevention certificate for the carriage of noxious substances in bulk, being the certificate referred to in regulation 9.4 of Annex II (as that regulation has effect in accordance with these Regulations).
- (2) They may be in one or more additional languages, being languages permitted under the MARPOL Convention.

19 Acts of the Minister to be in writing

- (1) Any of the following acts of the Minister provided for in Annex I or II (as that Annex has effect in accordance with these Regulations) shall be effected by instrument in writing –
 - (a) a specification;
 - (b) the imposition of a requirement;
 - (c) a notification;
 - (d) an approval, acceptance or determination;
 - (e) an exemption or waiver;
 - (f) a refusal, suspension, withdrawal or cancellation;
 - (g) a renewal, or extension of validity;
 - (h) any act that the Minister may prescribe by Order for the purposes of this paragraph.
- (2) An instrument in writing required under this Regulation may be amended, substituted or revoked from time to time, but only by further instrument in writing.
- (3) An instrument in writing required under this Regulation shall set out –
 - (a) when it is to take effect; and
 - (b) any equipment standards, or system standards, on which it is based.
- (4) An instrument in writing required under this Regulation shall –
 - (a) be served on the parties to whom it is directed or who applied for it; or
 - (b) take any other form reasonably capable of bringing the substance of the instrument to the attention of the parties who are affected by the act, amendment, substitution, or revocation, effected by the instrument.
- (5) In particular, and without limiting the operation of paragraph (4), such an instrument may take an electronic form and may, if there is more than one party affected by the relevant act, amendment, substitution or revocation, be by publication.
- (6) Such publication may be made –
 - (a) by posting on a website that is likely to have the attention of the parties that are affected by the relevant act, amendment, substitution or revocation;
 - (b) by any other means reasonably capable of bringing the relevant act, amendment, substitution or revocation to the attention of the parties that are affected by it;
 - (c) by service on the parties that are affected by the relevant act, amendment, substitution or revocation; or
 - (d) by a combination of any 2 or more of the means referred to in subparagraphs (a) to (c).

20 Extended liability for offences

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

21 Orders about the MARPOL Convention

- (1) The Minister may by Order amend these Regulations for the purpose of adapting them to any modification of the MARPOL Convention or for the purpose of making more effective provision for the implementation of the MARPOL Convention.
- (2) In this Regulation, "MARPOL Convention" means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, and as amended from time to time.

22 Citation and commencement

- (1) These Regulations may be cited as the Shipping (MARPOL) (Jersey) Regulations 2012.
- (2) These Regulations shall come into force when Annex I and Annex II of, and Protocol I and Protocol II to, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, enter into force in respect of Jersey.

A.H. HARRIS

Deputy Greffier of the States

SCHEDULE

(Regulation 4(a)(iii))

PROTOCOL I: REPORTING INCIDENTS**Article II When to make reports**

- (1) The report shall be made when an incident involves –
 - (a) a discharge above the permitted level or probable discharge of oil or of noxious liquid substances for whatever reason including those for the purpose of securing the safety of the ship or for saving life at sea;
 - (b) a discharge or probable discharge of harmful substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges;
 - (c) damage, failure or breakdown of a ship of 15 metres in length or above which –
 - (i) affects the safety of the ship; including but not limited to collision, grounding, fire, explosion, structural failure, flooding and cargo shifting, or
 - (ii) results in impairment of the safety of navigation; including but not limited to, failure or breakdown of steering gear, propulsion plant, electrical generating system, and essential shipborne navigational aids; or
 - (d) a discharge during the operation of the ship of oil or noxious liquid substances in excess of the quantity or instantaneous rate permitted under the MARPOL Convention.
- (2) For the purposes of this Protocol –
 - (a) oil referred to in paragraph 1(a) means oil as defined in regulation 1(1) of Annex I (as that regulation has effect in accordance with these Regulations);
 - (b) noxious liquid substances referred to in paragraph 1(a) means noxious liquid substances as defined in regulation 1(6) of Annex II (as that regulation has effect in accordance with these Regulations);
 - (c) harmful substances in packaged form referred to in paragraph 1(b) means substances which are identified as marine pollutants in the International Maritime Dangerous Goods Code (IMDG Code).

Article III Contents of report

Reports shall in any case include –

- (a) identity of ships involved;
- (b) time, type and location of incident;
- (c) quantity and type of harmful substance involved;
- (d) assistance and salvage measures.

Article IV Supplementary report

Any person who is obliged under the provisions of this Protocol to send a report shall, when possible –

- (a) supplement the initial report, as necessary, and provide information concerning further developments; and
- (b) comply as fully as possible with requests from affected States for additional information.

Article V Reporting procedures

- (1) Reports shall be made by the fastest telecommunications channels available with the highest possible priority to the nearest coastal State.
- (2) Reports shall be made in accordance with the General Principles for Ship Reporting Systems and Ship Reporting Requirements, including Guidelines for Reporting Incidents involving Dangerous Goods, Harmful Substances and/or Marine Pollutants adopted by the Organization by resolution A.851(20).
- (3) Reports shall be made –
 - (a) when the nearest coastal State is Jersey, to the Administration;
 - (b) when the nearest coastal State is the United Kingdom, to the Maritime and Coastguard Agency of the United Kingdom; or
 - (c) when the nearest coastal State is any other State, to the Administration of that State.

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- ¹ *chapter 19.885*
² *chapter 19.885*
³ *chapter 27.800*