
STATUTORY INSTRUMENTS

1997 No. 2598

MERCHANT SHIPPING

The Merchant Shipping (Oil Pollution) (Jersey) Order 1997

Made - - - - 30th October 1997

Coming into force - - 1st December 1997

At the Court at Buckingham Palace, the 30th day of October 1997

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 315(2) of the Merchant Shipping Act 1995⁽¹⁾ is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation and commencement

1. This Order may be cited as the Merchant Shipping (Oil Pollution) (Jersey) Order 1997 and shall come into force on 1st December 1997.

Implementation of the Liability and Fund Conventions

2. Sections 152 to 170, 172 to 181, 277, 279, 281, 284, 308, 313 and 316 of, and Part I of Schedule 5 to, the Merchant Shipping Act 1995⁽²⁾ shall, subject to the exceptions, adaptations and modifications specified in Schedule 1 to this Order, extend to Jersey and any instruments made, or to be made, under section 152(2), 157(2), 157(4), 163(1), 172(2) or 176(5) of that Act shall also extend to Jersey if registered in the Royal Court of Jersey and from the date of such registration.

Supplementary provision

3. After section 277 of the Merchant Shipping Act 1995, as extended to Jersey by virtue of article 2 above, there shall be inserted—

(1) 1995 c. 21; the power in section 315(2) is extended by section 315(4) and "relevant British possession" is defined in section 313(1) to include the Bailiwick of Jersey.

(2) Section 158(2) was amended, and section 158(2A) was added, by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 6, paragraph 4; section 170 was amended by that Act, Schedule 6, paragraph 5; and section 313 was amended by that Act, Schedule 6, paragraph 19.

“Accessories and abettors

277A. Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Act shall be liable to be dealt with, tried and punished as a principal offender.”.

Interpretation

4. In this Order, “Jersey” means the Bailiwick of Jersey.

Revocation and transitional provisions

5.—(1) Subject to paragraph (2) below, the Merchant Shipping Act 1974 (Jersey) Order 1975**(3)**, the Merchant Shipping Act 1974 (Jersey) (Amendment) Order 1977**(4)** and the Merchant Shipping (Oil Pollution) Act 1971 (Jersey) Order 1981**(5)** are hereby revoked.

(2) The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996**(6)**, shall, subject to the exceptions, adaptations and modifications specified in Schedule 2 to this Order, extend to Jersey.

N. H. Nicholls
Clerk of the Privy Council

(3) S.I.1975/2181.
(4) S.I. 1977/1242.
(5) S.I. 1981/434.
(6) S.I. 1996/1143.

SCHEDULE 1

Article 2

EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS SUBJECT TO WHICH PROVISIONS OF THE MERCHANT SHIPPING ACT 1995 EXTEND TO JERSEY

1. In section 152(1), in the definition of “Liability Convention country”, after “in force” add “, and includes the United Kingdom and any relevant British possession to which the Liability Convention has been extended”.
2. In section 153—
 - (a) in paragraphs (a), (b) and (c) of subsection (1), for “the United Kingdom” substitute “Jersey”;
 - (b) in paragraphs (a) and (b) of subsection (2), for “the United Kingdom” substitute “Jersey”;
 - (c) in subsection (5), for “the United Kingdom” substitute “Jersey”;
 - (d) in subsection (8), for the words from “The Law Reform (Contributory Negligence) Act 1945” to “1948” substitute “Article 6 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960”.
3. In section 154—
 - (a) in paragraphs (a), (b) and (c) of subsection (1), for “the United Kingdom” substitute “Jersey”;
 - (b) in paragraphs (a) and (b) of subsection (2), for “the United Kingdom” substitute “Jersey”;
 - (c) in subsection (4), for the words from “the Law Reform (Contributory Negligence) Act 1945” to “1948” substitute “Article 6 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960”.
4. In section 158—
 - (a) in subsection (3)(b), after “the Treasury” insert “of the United Kingdom”;
 - (b) in subsection (5), for “section 185 or 186” substitute “section 17 or 18 of the Merchant Shipping Act 1979 as extended to Jersey by the Merchant Shipping Act 1979 (Jersey) Order 1980(7)”;
 - (c) in subsection (7), for “the United Kingdom” substitute “Jersey”.
5. In section 159—
 - (a) in subsection 1(b), omit “(or in Scotland, expenses)”;
 - (b) omit subsection (2).
6. In paragraph (b) of section 160, for “section 185 or 186” substitute “section 17 or 18 of the Merchant Shipping Act 1979 as extended to Jersey by the Merchant Shipping Act 1979 (Jersey) Order 1980”.
7. In section 161, in the sidenote, for “United Kingdom” substitute “Jersey”.
8. In section 162, for “the United Kingdom” substitute “Jersey”.
9. In section 163—
 - (a) in subsection (2), for “the United Kingdom” substitute “Jersey” (in two places) and for “United Kingdom ship” substitute “ship registered in Jersey”;
 - (b) in subsection (3)(a), for “United Kingdom ship” substitute “ship registered in Jersey” and for “Secretary of State” substitute “Committee”;

(7) S.I. 1980/570.

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- (c) in subsection (3)(b), for “the United Kingdom” substitute “Jersey”;
- (d) in subsection 3(c), for “Secretary of State” substitute “Committee”;
- (e) in subsection (4), for “any officer of customs and excise or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer” substitute “the Agent of the Imports or any other officer of the Imports”;
- (f) in subsection (5), for the words from “liable” onwards substitute “guilty of an offence and liable to a fine”;
- (g) in subsection (6), for “liable on summary conviction to a fine not exceeding level 4 on the standard scale” substitute “guilty of an offence and liable to a fine not exceeding level 3 on the standard scale”;
- (h) in subsection (7), for “the United Kingdom” substitute “Jersey”.

10. In section 164—

- (a) in the sidenote, for “Secretary of State” substitute “Committee”;
- (b) in subsection (1), for “Secretary of State” substitute “Committee” and for “United Kingdom ship” substitute “ship registered in Jersey”;
- (c) in subsection (2), for “Secretary of State” substitute “Committee”;
- (d) in subsection (3), for “Secretary of State” substitute “the States”;
- (e) in subsection (4), for “liable on summary conviction to a fine not exceeding level 4 on the standard scale” substitute “guilty of an offence and liable to a fine not exceeding level 3 on the standard scale”;
- (f) for subsection (5) substitute—

“(5) The Committee shall send a copy of any certificate issued by it under this section in respect of a ship registered in Jersey to the Registrar of British Ships for Jersey, and the Registrar shall make the copy available for public inspection.”.

11. For section 165(5) substitute—

“(5) The Third Party (Rights against Insurers) (Jersey) Law 1948 shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 163 relates.”.

12. In section 166—

- (a) in the sidenote, for “United Kingdom” substitute “Jersey”;
- (b) omit subsection (1);
- (c) in subsection (2), for “the United Kingdom” substitute “Jersey” (in three places);
- (d) for subsection (4) substitute—

“(4) Part II of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 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 153; and in its application to such a judgment that Part shall have effect with the omission of paragraphs (2) and (3) of Article 6 of that Law.”.

13. In section 167(3), for “the United Kingdom” substitute “Jersey” and omit “, or in Scotland the execution of diligence,”.

14. In section 168, for “section 185” substitute “section 17 of the Merchant Shipping Act 1979 as extended to Jersey by the Merchant Shipping Act 1979 (Jersey) Order 1980” and for “Convention in Part I of Schedule 7” substitute “Convention on Limitation of Liability for Maritime Claims 1976”.

15. In section 170—

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- (a) in subsection (1), in the definition of “the court”, for “High Court or, in Scotland, the Court of Session” substitute “Inferior Number of the Royal Court”;
- (b) omit subsection (3);
- (c) for subsection (4) substitute—

“(4) References in this Chapter to the territory of any country include the territorial sea of that country and, in the case of any Liability Convention country other than Jersey, 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.”.

16. In section 172(1)(d), after “is in force” add “, and includes the United Kingdom and any relevant British possession to which the Fund Convention has been extended”.

17. In section 173—

- (a) in subsection (1), for “the United Kingdom” substitute “Jersey” and for “its national waters” substitute “waters landward of the baselines for measuring the breadth of the territorial sea of Jersey”;
- (b) in subsection (3), for “the United Kingdom” substitute “Jersey”;
- (c) in subsection (4)(a), for “the United Kingdom” substitute “Jersey”;
- (d) in subsection (8), for “Secretary of State” substitute “States” (in two places);
- (e) in subsection (9)(a), for “Secretary of State” substitute “States”;
- (f) in subsection (9)(b), for “on summary conviction by a fine not exceeding level 5” substitute “on conviction by a fine not exceeding level 4”;
- (g) in subsection (10), in the definition of “company”, for “the United Kingdom” substitute “Jersey”;
- (h) in subsection (10), for the definition of “group” substitute—

““group” in relation to companies, means a holding company and its subsidiaries as defined by Article 2 of the Companies (Jersey) Law 1991, subject, in the case of a company incorporated outside Jersey, to any necessary modifications of those definitions;”.

18. In section 174—

- (a) in subsection (1), for “Secretary of State” substitute “Committee”;
- (b) in subsection (4), for “Secretary of State” substitute “Committee”;
- (c) in subsection (5), for “on summary conviction to a fine not exceeding level 5” substitute “on conviction to a fine not exceeding level 4”;
- (d) in subsection (6), for the words from “liable” onwards substitute “guilty of an offence and liable to a fine or to imprisonment for a term not exceeding twelve months, or to both”.

19. In section 175—

- (a) in subsection (1), for “the United Kingdom” substitute “Jersey”;
- (b) in subsection (2), for ““United Kingdom”” substitute ““Jersey””, omit paragraph (a), and for “the United Kingdom” substitute “Jersey” (in two places);
- (c) in subsection (3), for “the United Kingdom” substitute “Jersey”;
- (d) omit subsection (4).

20. In section 176(4)(b), after “the Treasury” insert “of the United Kingdom”.

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- 21.** In section 177—
- (a) omit subsection (1);
 - (b) in subsection (3), for “the United Kingdom” substitute “Jersey”;
 - (c) for subsection (4) substitute—

“(4) Subject to subsection (5) below, Part II of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 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 175; and in its application to such a judgment the said Part shall have effect with the omission of paragraphs (2) and (3) of Article 6 of that Law.”;
 - (d) in subsection (5), for “Part I of the Act of 1933” substitute “Part II of the Law of 1960”;
 - (e) after subsection (5) insert—

“(6) Rules may be made in the manner prescribed by the Royal Court (Jersey) Law 1948 for the purposes of subsection (2) above.”.
- 22.** In section 178—
- (a) in subsection (1), for “the United Kingdom” substitute “Jersey”;
 - (b) in subsection (2), for “the United Kingdom” substitute “Jersey”.
- 23.** In section 179(2), for “the United Kingdom” substitute “Jersey”.
- 24.** In section 279—
- (a) in subsection (1), for “the United Kingdom” substitute “Jersey”;
 - (b) in subsection (2), for “the United Kingdom” substitute “Jersey”.
- 25.** In section 281—
- (a) in paragraph (a)(i), for “any United Kingdom ship” substitute “a ship registered in Jersey”;
 - (b) omit paragraph (a)(iii);
 - (c) in paragraph (b), for “any United Kingdom ship” substitute “a ship registered in Jersey”;
 - (d) for the words from “within the jurisdiction” to “that court” substitute “in Jersey, any court which would have had jurisdiction in relation to the offence had it been committed on board a ship registered in Jersey within the limits of its ordinary jurisdiction to try the offence”.
- 26.** In section 284—
- (a) for paragraphs (b) and (c) of subsection (1), substitute—
 - “(b) the Harbourmaster and any officer of the Committee,
 - (c) the Agent of the Imports or any officer of the Imports,
 - (cc) any fisheries officer.”;
 - (b) in subsection (2), for the words from “liable” onwards substitute “guilty of an offence and liable to a fine”;
 - (c) in subsection (4), omit paragraph (b) and, in paragraph (i), the words “or, surveyor”;
 - (d) in subsection (5), for the words from “liable” onwards substitute “guilty of an offence and liable to a fine”;
 - (e) in subsection (6), for “an officer of customs and excise” substitute “the Agent of the Imports or any officer of the Imports” (in two places);
 - (f) omit subsection (7);

- (g) omit subsection (8).
27. In section 308, omit subsections (2) to (4).
28. In section 313—
- (a) in subsection (1)—
- (i) omit all the definitions apart from the definitions of “British citizen”, “commissioned military officer”, “commissioned naval officer”, “consular officer”, “contravention”, “harbour”, “master”, “port”, “relevant British possession” and “ship”;
- (ii) after the definition of “commissioned naval officer”, insert—
- ““the Committee” means the Harbours and Airport Committee of the States of Jersey;”;
- (iii) after the definition of “contravention”, insert—
- ““fisheries officer” has the same meaning as in Article 14 of the Sea Fisheries (Jersey) Law 1994;”;
- (iv) after the definition of “harbour”, insert—
- ““Harbourmaster” has the same meaning as in Article 2 of the Harbours (Administration) (Jersey) Law 1961;”;
- (v) after the definition of “port”, insert—
- ““registered” means, in relation to a ship registered in Jersey, registered under the provisions of the Merchant Shipping Act 1894(8);”;
- (vi) after the definition of “ship”, insert—
- ““standard scale” means the standard scale of fines for the time being set out in the Schedule to the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993;”;
- (b) omit subsections (2), (2A) and (3).
29. In section 316, omit subsection (2).
30. In Schedule 5, Part I, in the text of Article 4(4)(c) of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, for “(c)” substitute “(b)”.

SCHEDULE 2

Article 5

EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS SUBJECT TO WHICH THE MERCHANT SHIPPING (LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE) (TRANSITIONAL PROVISIONS) ORDER 1996 EXTENDS TO JERSEY

1. In article 1, omit the words “and shall come into force on 30th May 1996”.
2. In article 2—
 - (a) in the definition of “the Act”, after “1995” insert “as extended to Jersey by the 1997 Order”;
 - (b) omit “and” following the definition of “the 1992 Fund Convention”; and
 - (c) at the end, add—

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“the 1975 Order” means the Merchant Shipping Act 1974 (Jersey) Order 1975⁽⁹⁾;
“the 1981 Order” means the Merchant Shipping (Oil Pollution) Act 1971 (Jersey) Order 1981; and
“the 1997 Order” means the Merchant Shipping (Oil Pollution) (Jersey) Order 1997”.

3. In article 3(1), for “Chapters III and IV of Part VI of the Act” substitute “the 1997 Order”; for “Schedule 4 and Part II of Schedule 5 to that Act” and for “Schedule 4 and Part II of Schedule 5 to the Act” substitute “the 1975 and 1981 Orders”; and for “the United Kingdom” substitute “Jersey”.

4. In article 4, after “United Kingdom” insert “in respect of Jersey”.

5. For paragraph 1 of Part A of Schedule 2, substitute—

“1. References to a State being a Party to a Convention shall be construed as references to the United Kingdom being Party to such a Convention in respect of Jersey.”.

6. In paragraph 3 of Part A of Schedule 2, for “as a reference to sections 152 to 170 in Schedule 4 to the Act” substitute “a reference to the 1981 Order”.

7. In paragraph 4 of Part A of Schedule 2, for “sections 172 to 181 in Schedule 4 to the Act” substitute “the 1975 Order”.

8. In paragraph 5 of Part A of Schedule 2—

(a) for “section 153 in Schedule 4 to the Act” substitute “section 1 of the Merchant Shipping (Oil Pollution) Act 1971 as extended to Jersey by the 1981 Order”;

(b) for “section 156(b) in Schedule 4 to the Act” substitute “section 3(b) of the Merchant Shipping (Oil Pollution) Act 1971 as extended to Jersey by the 1981 Order”.

9. In paragraph 1 of Part B of Schedule 2, for “this Order to the date on which the Order ceases to have effect” substitute “the 1997 Order to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect in the United Kingdom”.

10. In paragraph 3 of Part B of Schedule 2, for “sections 172 to 181 of the Act as set out in Schedule 4 to the Act” substitute “the 1975 Order”.

11. In paragraph 5 of Part B of Schedule 2, for “sections 152 to 170 of the Act as set out in Schedule 4 to the Act” substitute “the 1981 Order”.

12. For Schedule 3 substitute—

“SCHEDULE 3

Article 5

The text of Article XII bis of the 1992 Liability Convention and Article 36 bis of the 1992 Fund Convention, as modified by Schedule 2 to this Order.

Article XII bis

TRANSITIONAL PROVISIONS

The following transitional provisions shall apply when at the time of an incident the United Kingdom is Party in respect of Jersey both to the 1992 Liability Convention and to the 1969 Liability Convention:

(9) S.I. 1975/2181 amended by S.I. 1977/1242.

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- (a) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act liability under sections 152 to 170 of the Act shall be deemed to be discharged if, and to the extent that, it also arises under the 1981 Order;
- (b) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act and the United Kingdom in respect of Jersey is Party both to the 1992 Liability Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of sub-paragraph (a) of this Article shall arise under sections 152 to 170 of the Act only to the extent that pollution damage remains uncompensated after application of the 1975 Order;
- (c) subsection (1)(i) of section 156 of the Act refers to liability under section 153 of the Act or under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 as extended to Jersey by the 1981 Order, as appropriate and subsection (1)(ii) of section 156 applies to the persons referred to in section 156(2) of the Act or in section 3(b) of the Merchant Shipping (Oil Pollution) Act 1971 as extended to Jersey by the 1981 Order, as appropriate.
- (d) in the application of section 158 of the Act the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

Article 36 bis

The following transitional provisions shall apply from the date of entry into force of the 1997 Order to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect in the United Kingdom:

- (b) Where an incident has caused pollution damage within the scope of sections 172 to 181 of the Act, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1981 Order, the 1975 Order and sections 152 to 170 of the Act, provided that, in respect of pollution damage within the scope of sections 172 to 181 of the Act in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the 1969 Liability Convention, the 1992 Liability Convention and the 1971 Fund Convention.
- (c) In the application of Part I of Schedule 5 to the Act the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under the 1981 Order, if any, and the amount of compensation actually paid or deemed to have been paid under the 1975 Order.
- (d) Section 179(1) of the Act shall also apply to the rights enjoyed under the 1981 Order.”.

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EXPLANATORY NOTE

(This note is not part of the Order)

The International Convention on Civil Liability for Oil Pollution Damage 1969 (the CLC), which was extended to the Bailiwick of Jersey by the Merchant Shipping (Oil Pollution) Act 1971 (Jersey) Order 1981 (the 1981 Order), provides uniform rules and procedures for determining questions of liability and for awarding compensation when damage is caused by pollution resulting from the escape or discharge of oil from ships.

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the Fund Convention) which was extended to the Bailiwick of Jersey by the Merchant Shipping Act 1974 (Jersey) Order 1975 (as amended by the Merchant Shipping Act 1974 (Jersey) (Amendment) Order 1977 (the 1975 Order), set up an international fund to provide a supplementary system for compensation and indemnification for such damage. The 1992 Protocol to the CLC and the 1992 Protocol to the Fund Convention respectively create a new 1992 Civil Liability Convention and a new 1992 Fund Convention, which together provide for higher levels of compensation and more extensive liability.

The new 1992 Civil Liability Convention and the new 1992 Fund Convention do not, however, immediately replace the CLC and the Fund Convention: the latter will co-exist with the former for a transitional period. If an incident occurs during this period, compensation could in principle be available under both the original Conventions and the 1992 Conventions. The 1992 Protocols set out specific rules on the payment of compensation in these circumstances.

This Order extends to the Bailiwick of Jersey, with the necessary exceptions, modifications and adaptations, provisions of the Merchant Shipping Act 1995 which give effect in the United Kingdom to the new 1992 Conventions (including certain general provisions concerning legal proceedings). It also gives effect to the transitional arrangements set out in the 1992 Protocols, by extending to the Bailiwick of Jersey, with the necessary exceptions, modifications and adaptations, the provisions of the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996. Subject to the terms of that 1996 Order as so extended, it revokes the 1981 and 1975 Orders.