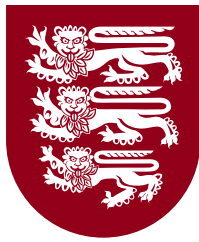


STATES OF JERSEY



Jersey

DRAFT SHIPPING (JERSEY) AMENDMENT LAW 202-

Lodged au Greffe on 28th January 2025
by the Minister for Sustainable Economic Development
Earliest date for debate: 18th March 2025

STATES GREFFE



Jersey

DRAFT SHIPPING (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Sustainable Economic Development has made the following statement –

In the view of the Minister for Sustainable Economic Development, the provisions of the Draft Shipping (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy K.F. Morel of St. John, St. Lawrence and Trinity**
Minister for Sustainable Economic Development

Dated: 27th January 2025

REPORT

The amendments to the [Shipping \(Jersey\) Law 2002](#), if adopted, will strengthen Jersey's maritime legal framework.

The amendments are designed to make Jersey's territorial waters safer for everyone. The changes will expand the definition of a "ship" to include small watercraft used for leisure activities, in turn enhancing responsibilities on users of a wider range of watercraft.

This report should be read in conjunction with the report in the Draft Harbours (Inshore Safety) (Jersey) Amendment Regulations 202- (P.3/2025), which refers to amendments which have been drafted in parallel with amendments to the Shipping (Jersey) Law 2002 and which Regulations in certain respects rely upon the amendments made to the Regulation-making power in the Shipping (Jersey) Law 2002 regarding safety at sea.

Background

The 2023 Ministerial Delivery Plan committed to updating Jersey's maritime laws. The need for these updates is rooted in case law which in recent years has highlighted areas of deficiency in Jersey's maritime legislation, but also have the general objective of making Jersey's waters safer and more accessible for all Islanders and visitors. There is also a need to address legal anomalies which currently put some seafarers at a lesser level of legal responsibility to others.

Economy Officers worked with the Legislative Drafting Office, Ports of Jersey Ltd and Justice & Home Affairs to develop the amendments. Due to the policy objectives spanning two specific Jersey laws, the amendments have been split into two separate drafts – one referring to the Shipping (Jersey) Law 2002 and the other referring to the [Harbours \(Inshore Safety\) \(Jersey\) Regulations 2012](#). This Report refers to the amendments to the Shipping (Jersey) Law 2002.

In late 2023 / early 2024 the draft amendments were re-worked by the Legislative Drafting Office to ensure areas of expression and language within the drafts were consistent with modern expressions in law. These re-works – while not impacting the legal effect of the amendments – required additional time to finalise both sets of amendments.

The Draft Law

These amendments seek to amend the Shipping (Jersey) Law 2002 to expand the definition of a "ship" and to amend the [Harbours \(Administration\) \(Jersey\) Law 1961](#) to expand the definition of "vessel".

Currently, the general legal definition of "ship" or "vessel" in these Laws only includes watercraft used for navigation. These amendments see the definition of a "vessel" broadened to include smaller watercraft designed for having fun on the water. These types of watercraft might include non-displacement vessels, jet skis, and smaller speedboats.

By expanding the definition of "ship" or "vessel", the amendments ensure that everyone who enjoys using Jersey's waters does so to the same level of responsibility as other, larger vessels, and ensures accountability if an incident occurs during which the person in control of the vessel is at fault.

The amendments also include up to date provisions for the investigation of marine accidents involving Jersey ships, or ships in Jersey waters.

Development and Consultation

A public consultation took place in June 2023 to ensure sea users and the wider community had the opportunity to feedback on the proposed amendments to the law.

The results of the consultation were positive, with most respondents welcoming the change in law. 86% of respondents agreed with the draft Shipping Law amendment.

Financial and staffing implications

There are no financial or staffing implications for the States of Jersey arising from the adoption of the draft Law.

There will be a modest resource implication for Ports of Jersey Limited, which has been accounted for in upcoming business planning. The resource implication will be underpinned by a new enforcement policy statement which will clarify how Ports of Jersey Limited will discharge its enforcement responsibilities. As of November 2024, this policy statement is pending approval.

Children’s Rights Impact Assessment

A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

Human Rights

The following note has been prepared by the Law Officers’ Department with respect to the draft Shipping (Jersey) Amendment Law 202- (the “draft Law”) and is included for the information of States Members **and it is not, and should not be taken as, legal advice.**

The Law Officers’ Department does not consider that the amendments to legislation to be brought about by the draft Law would have implications for (or would cause engagement with) rights afforded under the European Convention on Human Rights and Fundamental Freedoms (“ECHR”) that are given effect in the [Human Rights \(Jersey\) Law 2000](#).

EXPLANATORY NOTE

This Law if passed would make amendments to the Shipping (Jersey) Law 2002 (the “Shipping Law”) to give effect in Jersey to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.

Part 1 amends the Shipping (Jersey) Law 2002.

Article 2 inserts a definition of “serious injury” and amends the definition of “ship”.

Article 3 corrects an error in Article 17.

Article 4 increases the penalty for breaching Regulations made under the Law if the offence leads to death or serious injury.

Article 7 substitutes Article 118 (Scheduled Convention to have force of law) of the Shipping Law, and *Article 15* amends Schedule 5 to the Shipping Law, to set out more fully the provisions of the Convention in particular as they are amended by the Protocol.

Articles 10 to 12 substitute Article 165, 166 and 169 of the Shipping Law, to bring up to date provisions for the investigation of marine accidents involving Jersey ships, or ships in Jersey waters.

Article 13 makes provision for Regulations and Orders under Part 11.

Article 14 introduces the Schedule to this Law which amends Schedule 5 of the Shipping Law to bring up to date the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 to give effect in Jersey to the Protocol of 2002.

Articles 5, 6 and 8 make technical changes to clarify and facilitate future amendment, and *Article 9* makes consequential changes.

Part 2 amends the definition of “vessel” and “pleasure vessel” in various Laws.

Part 3 does the same in various Regulations and Orders.

Part 4 (Article 22) gives the name of the Law and provides that it comes into force 7 days after it is registered.



Jersey

DRAFT SHIPPING (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT SHIPPING (JERSEY) AMENDMENT LAW 202-

A LAW to amend further the [Shipping \(Jersey\) Law 2002](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

AMENDMENTS TO [SHIPPING \(JERSEY\) LAW 2002](#)

1 [Shipping \(Jersey\) Law 2002](#) amended

This Part amends the [Shipping \(Jersey\) Law 2002](#).

2 **Article 1 (general interpretation provisions) amended**

In Article 1(1) –

- (a) after the definition “seaman” there is inserted –
 - “serious injury” means –
 - (a) a fracture of the skull, spine or pelvis;
 - (b) a fracture of a bone in the arm or leg other than in the wrist, hand, ankle or foot;
 - (c) the amputation of a hand or foot;
 - (d) a physical injury that –
 - (i) results in the person being admitted to hospital as an in-patient for more than 24 hours; or
 - (ii) would have resulted in that if the ship (at sea) had been in port; or

- (e) an injury that results in the person becoming incapacitated, by not being able to function normally, starting within 7 days after the injury and lasting at least 72 hours;
- (b) for the definition “ship” there is substituted –
 - “ship” includes a vessel or watercraft that –
 - (a) is of any type, including a non-displacement craft, seaplane or wing-in-ground craft (meaning a craft that operates using different modes and that flies close to the surface, using surface-effect action, in its main mode); and
 - (b) is used, or is capable of being used, as a means of transportation on, in or under water;

3 Article 17 (offences relating to a ship’s British connection) amended

In Article 17(2), for “Registrar” in the second place it occurs, there is substituted “owner”.

4 Article 49 (safety and health on ships) amended

- (1) Article 49(3A) is deleted.
- (2) For Article 49(8)(b) there is substituted –
 - (b) that a person who contravenes the Regulations commits an offence and is liable to –
 - (i) imprisonment for 10 years, or a lesser penalty prescribed by the Regulations, if the offence leads to a person’s death or serious injury; or
 - (ii) imprisonment for 2 years and a fine, or a lesser penalty prescribed by the Regulations, in all other cases;

5 Article 50 (provisions supplementary to Article 49: general) amended

- (1) In Article 50(2)(a), for “repeal” there is substituted “amend”.
- (2) In Article 50(2)(b) –
 - (a) for “repeal” in the first place there is substituted “amend”;
 - (b) for “repeal” in the second place there is substituted “amendment”.
- (3) In Article 50(2)(c), for “repealed” there is substituted “amended”.

6 Article 117 (power to give effect to Convention) amended

In Article 117(3)(c), for “amend” there is substituted “amend or modify”.

7 Article 118 (Scheduled Convention to have force of law) substituted

For Article 118 there is substituted –

118 Convention has force of law

- (1) In this Article, “Convention” means the Convention that –
 - (a) is called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002; and
 - (b) is constituted under paragraph 3 of Article 15 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.
- (2) The provisions of the Convention that are set out in Part 1 of Schedule 5 have the force of law in Jersey and –
 - (a) are subject to Part 2 of Schedule 5, which has effect for the purpose of implementing the Convention in Jersey; and
 - (b) apply in relation to a Jersey ship that, in Jersey waters, performs all or part of a carriage to which the Convention applies.
- (3) But the Minister may, in writing, exempt a ship from the application of the Convention –
 - (a) in relation to a particular voyage or a class of voyage; and
 - (b) subject to any conditions that the Minister thinks fit.
- (4) The States may by Regulations, for the purpose stated in paragraph (5) –
 - (a) amend this Article; or
 - (b) amend or modify the provisions of the Convention that are set out in Part 1 of Schedule 5.
- (5) The purpose is to resolve any inconsistency between –
 - (a) on 1 side, this Article or the Convention; and
 - (b) on the other side, any provisions relating to the carriage of passengers or luggage for reward by land, sea or air in –
 - (i) a convention signed or ratified on behalf of Jersey by the Government of the United Kingdom before 4 April 1979; or
 - (ii) any enactment of the United Kingdom Parliament that is in force in Jersey and gives effect to such a convention.
- (6) The States may by Regulations amend this Article or Schedule 5 –
 - (a) as a result of a revision of the Convention; or
 - (b) to apply the Convention to domestic voyages, in circumstances specified in the Regulations.
- (7) The States may by Regulations give further or full effect to the Convention in Jersey, including by a provision that –
 - (a) amends Schedule 5;
 - (b) applies any provision of this Law, with or without modification, in relation to the application of the Convention; or
 - (c) relates to enforcement of the Convention (for example, by creating offences, imposing penalties for offences or giving rights to appeal against enforcement).
- (8) This Article and the Convention, as applied, amended or modified by this Article, do not affect any rights or liabilities arising from an event that happened before this Article came into force.

- (9) This Article binds the Crown, and any Regulations made under this Article may provide that they bind the Crown in whole or to a specified extent.

8 Article 129 (Salvage Convention 1989 to have force of law) amended

- (1) In Article 129(3), for “modify Parts 1 and 2 of Schedule 7” there is substituted “amend or modify the Salvage Convention as applied by Schedule 7”.
- (2) In Article 129(4)(b), for “modification” in both places there is substituted “amendment or modification”.

9 Part 11 Chapter 1 heading substituted

For the heading of Chapter 1 of Part 11 there is substituted –

Chapter 1 – Marine incident investigations

10 Article 165 (application and interpretation of Chapter) substituted

For Article 165 there is substituted –

165 Application and interpretation of Chapter

In this Chapter –

“accident” means an incident that –

- (a) involves –
- (i) a Jersey ship or a Jersey ship’s boat; or
 - (ii) a ship, or ship’s boat, that is in Jersey waters; and
- (b) results in 1 or more of the following –
- (i) a ship is lost, presumed to be lost, abandoned or in collision;
 - (ii) a ship or any marine infrastructure is destroyed or materially damaged, meaning that the damage –
 - (A) significantly affects its structural integrity, performance or operational characteristics; and
 - (B) requires major repairs or the replacement of a significant component;
 - (iii) a ship is disabled, meaning it is not under command –
 - (A) for more than 12 hours; or
 - (B) for 12 hours or less but needs help to reach port;
 - (iv) a ship is stranded, meaning it accidentally touched the ground and could not immediately refloat;
 - (v) a person dies or is seriously injured on, or is lost overboard from, a ship or ship’s boat; or
 - (vi) there is a hazardous situation, meaning that –
 - (A) the safety of a ship, or a person on board, is imperilled; or

(B) serious damage to another ship, a structure or the environment might be caused;

“IMO” means the International Maritime Organization of the United Nations;

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

“very serious marine casualty” means an accident involving –

- (a) the total loss of a ship;
- (b) a person’s death; or
- (c) any severe damage to the environment.

11 Article 166 (investigation of marine accidents) substituted

For Article 166 there is substituted –

166 Inquiries into marine incidents

- (1) The Minister –
 - (a) must appoint a person to hold an inquiry into a very serious marine casualty or other accident;
 - (b) may appoint a person to hold an inquiry into another marine incident.
- (2) The appointed person –
 - (a) must conduct the inquiry in accordance with –
 - (i) Part II of the Casualty Investigation Code published as IMO Resolution MSC.255(84); or
 - (ii) any equivalent provisions of an international standard that are agreed by the IMO and apply in Jersey when the inquiry is held;
 - (b) may otherwise conduct the inquiry where, when and how they think fit; and
 - (c) in conducting the inquiry, has the powers of an inspector under Article 157.
- (3) The inquiry –
 - (a) must cover the circumstances and cause of the incident; and
 - (b) may cover –
 - (i) the events and circumstances before the incident that, in the appointed person’s opinion, may be relevant to the cause or outcome of the incident; or
 - (ii) the outcome and consequences of the incident.
- (4) The appointed person must, on completing the inquiry, give the Minister a written report of –
 - (a) their findings of fact about the incident, which they must state are established facts;
 - (b) if any facts cannot be clearly established, their opinion about the most probable facts, which they must state are matters of opinion;
 - (c) their analysis and conclusions; and

- (d) the observations and recommendations about the incident that they think fit to make.
- (5) The Minister –
 - (a) may publish the report; and
 - (b) must immediately publish any part of the report that includes an urgent finding or recommendation about –
 - (i) safety, and preserving life, at sea; or
 - (ii) preventing serious pollution of the marine environment.
- (6) But if the report indicates that a prosecution should be considered for a breach, or potential breach, of the law of Jersey, the Minister must not publish the report until –
 - (a) the prosecution and any appeal has ended; or
 - (b) there is a decision not to prosecute.
- (7) The Minister may end the inquiry at any time before it is completed.
- (8) The Minister must pay a person's reasonable expenses for attending the inquiry if they are required to attend it.

12 Article 169 (duties of owners, masters etc. in relation to accidents) substituted

For Article 169 there is substituted –

169 Duties of owners, masters and others in relation to accidents

- (1) This Article applies if a Jersey ship is involved in an accident that falls under sub-paragraph (b)(i) to (v) of the definition “accident” in Article 165 (not merely a hazardous situation).
- (2) A report of the accident must be sent to the Minister as follows –
 - (a) if the accident happens within a harbour or within Jersey waters and a report of the accident has been sent to the Harbour Master in accordance with Regulations made under Article 49, the harbour authority must send the report –
 - (i) as soon as practicable; and
 - (ii) by the quickest means available; or
 - (b) if the accident happens elsewhere and –
 - (i) is a very serious marine casualty, the owner, master or senior surviving officer of the ship must send the report –
 - (A) as soon as practicable but no later than 24 hours after the accident happened; and
 - (B) by the quickest means available; or
 - (ii) is not a very serious marine casualty, the master of the ship must send the report as soon as reasonably practicable but no later than 24 hours after the ship next arrives in port.
- (3) The Minister may, after receiving the report, require its sender to give any further information that the Minister thinks is necessary to decide whether an inquiry should be held under Article 166.

- (4) The sender must give the further information to the best of their knowledge and ability.
- (5) The person (including a sender) who is responsible for any relevant document or equipment must, so far as possible, ensure the following until they receive the required notice –
 - (a) the document is safely kept and not altered;
 - (b) the equipment is left undisturbed.
- (6) Any document (including a chart, a log-book, an electronic document or a link to an electronic document) or equipment is “relevant” if it is reasonably considered to be relevant to an inquiry or investigation into the accident.
- (7) The “required notice” is –
 - (a) a notice from the Minister that there will be no inquiry or investigation into the accident; or
 - (b) a notice from the person or tribunal conducting the inquiry or investigation that the document or equipment is no longer needed.
- (8) A person commits an offence if they –
 - (a) do not send a report as required by paragraph (2);
 - (b) do not give further information as required by paragraphs (3) and (4); or
 - (c) contravene paragraph (5).
- (9) A person who commits the offence is liable to a fine of level 3 on the standard scale.

13 New Article 172A (Regulations and Orders under this Part)

After Article 172 there is inserted –

172A Regulations and Orders under this Part

The States may by Regulations provide for –

- (a) anything that is necessary to give full effect to this Part, including a provision –
 - (i) that requires a person to report a marine incident;
 - (ii) for the appointment, duties and powers of a person who inquires into, or investigates, an incident; or
 - (iii) that requires a person to give information relating to an incident;
- (b) anything that is necessary, including making provision for the charging of fees, to give full effect to an international standard that applies in Jersey and relates to the reporting of, or an inquiry or investigation into, an incident, including a provision to amend or modify this Part;
- (c) an offence –
 - (i) for breaching a requirement of Regulations or a requirement of an Order made under such Regulations; and
 - (ii) for which the penalty is a fine; or

- (d) the Minister to have a power or duty to make, by Order, any provision specified in paragraphs (a) to (c) relating to an inquiry or investigation into an incident.

14 **Schedule 5 amended**

Schedule 5 is amended as set out in the Schedule to this Law.

PART 2

AMENDMENTS TO OTHER LAWS

15 **Harbours (Administration) (Jersey) Law 1961 amended**

In the Harbours (Administration) (Jersey) Law 1961, in Article 1 (interpretation), for the definition “vessel” there is substituted –

“vessel” includes a ship or watercraft that –

- (a) is of any type, including a non-displacement craft, seaplane or wing-in-ground craft (meaning a craft that operates using different modes and that flies close to the surface, using surface-effect action, in its main mode); and
- (b) is used, or is capable of being used, as a means of transportation on, in or under water.

16 **Taxation (Companies – Economic Substance) (Jersey) Law 2019 amended**

In the Taxation (Companies – Economic Substance) (Jersey) Law 2019, in Article 1 (interpretation), in the definition “ship”, in paragraph (b), for “(as defined by Article 169(6) of that Law)” there is substituted “(as defined by Regulation 1 of the Shipping (Tonnage) (Jersey) Regulations 2004)”.

17 **Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 amended**

In the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021, in Article 1 (interpretation – general), in the definition “ship”, in paragraph (c), for “(as defined by Article 169(6) of that Law)” there is substituted “(as defined by Regulation 1 of the Shipping (Tonnage) (Jersey) Regulations 2004)”.

PART 3

AMENDMENTS TO REGULATIONS AND ORDERS

18 **Shipping (Tonnage) (Jersey) Regulations 2004 amended**

In the Shipping (Tonnage) (Jersey) Regulations 2004, in Regulation 1 (interpretation), for the definition “pleasure vessel” there is substituted –

“pleasure vessel” means –

- (a) a vessel that, at the time it is being used –
 - (i) is used only for the sport or pleasure of any of the following –
 - (A) for a vessel wholly owned by 1 or more individuals, the owner and their friends and immediate family;
 - (B) for a vessel wholly owned by a body corporate, the body corporate's employees and officers and their friends and immediate family;
 - (C) for a vessel owned by 1 or more individuals and 1 or more bodies corporate, any individual owner and their friends and immediate family, or the employees and officers of any body corporate owner and their friends and immediate family; and
 - (ii) is on a voyage or excursion –
 - (A) for which the owner receives no payment for operating the vessel or carrying a person, other than payment towards the direct expenses of that operation; and
 - (B) for which the people using it, except the owner, pay nothing else; or
- (b) a vessel –
 - (i) that is wholly owned by, or on behalf of, a members' club formed for the purpose of sport or pleasure;
 - (ii) that, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate families;
 - (iii) for which any charges for its use are paid into club funds and applied for the general use of the club; and
 - (iv) for the use of which the people using it, except the owner, pay nothing else;

19 [Shipping \(Safety Code – Yachts and Small Ships\) \(Jersey\) Regulations 2013](#)

In the [Shipping \(Safety Code – Yachts and Small Ships\) \(Jersey\) Regulations 2013](#), in Regulation 1(1) (interpretation), for the definition “pleasure vessel” there is substituted –

“pleasure vessel” has the meaning given by Regulation 1 of the [Shipping \(Tonnage\) \(Jersey\) Regulations 2004](#);

20 [Maritime Security \(Jersey\) Order 2014 amended](#)

In the Maritime Security (Jersey) Order 2014, in the Schedule, in the second column of the entry for section 46 (interpretation of Part III), in paragraph (a)(xiv) for the definition of “WIG craft” there is substituted –

“WIG craft” means a craft that operates using different modes and that flies close to the surface, using surface-effect action, in its main mode;

21 [Shipping \(Standards of Training, Certification and Watchkeeping\) \(Jersey\) Order 2021](#) amended

In the [Shipping \(Standards of Training, Certification and Watchkeeping\) \(Jersey\) Order 2021](#), in Article 1(1) (interpretation), for the definition “pleasure vessel” there is substituted –

“pleasure vessel” has the meaning given by Regulation 1 of the [Shipping \(Tonnage\) \(Jersey\) Regulations 2004](#);

PART 4

FINAL PROVISION

22 Citation and commencement

This Law may be cited as the Shipping (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.

SCHEDULE

(Article 14)

AMENDMENTS TO SCHEDULE 5 TO [SHIPPING \(JERSEY\) LAW 2002](#)

1 Schedule 5 amended

This Schedule amends Schedule 5 to the [Shipping \(Jersey\) Law 2002](#) as follows –

- (a) paragraph 2 amends its sub-heading;
- (b) paragraphs 3 to 15 amend the Articles and content of the Convention set out in its Part 1;
- (c) paragraph 16 amends its Part 2.

2 Sub-heading amended

For the sub-heading there is substituted –

ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2002

3 Article 1 amended

In Article 1 –

- (a) in paragraph 1(a), for “is actual performed by him or by a performing carrier” there is substituted “is actually performed by that person or by a performing carrier”;
- (b) after paragraph 1(b) there is inserted –
 - (c) “carrier who actually performs the whole or a part of the carriage” means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;
- (c) after paragraph 9 there is inserted –
 10. “Organization” means the International Maritime Organization;
 11. “Secretary-General” means the Secretary General of the Organization.

4 Article 2 amended

In Article 2, in paragraph 2, for “shall apply” there is substituted “shall not apply”.

5 Article 3 substituted

For Article 3 there is substituted –

ARTICLE 3

Liability of the carrier

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident:
 - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exception, inevitable and irresistible character; or
 - (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party,and if and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier, and the burden of proving fault or neglect shall lie with the claimant.
3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier, and the fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.
4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.
5. For the purposes of this Article:
 - (a) “shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;
 - (b) “fault or neglect of the carrier” includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;
 - (c) “defect in the ship” means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for –
 - (i) the escape, evacuation, embarkation or disembarkation of passengers;
 - (ii) the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or
 - (iii) the launching of life saving appliances; and
 - (d) “loss” shall not include punitive or exemplary damages.
6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage, and the burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention, and nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.
8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

6 Article 4bis inserted

After Article 4 there is inserted –

ARTICLE 4bis

Compulsory insurance

1. When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the insurance or other financial security shall be not less than 250,000 units of account per passenger on each distinct occasion.
2. A 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 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 certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:
 - (a) name of ship, distinctive number or letters and port of registry;
 - (b) name and principal place of business of the carrier who actually performs the whole or a part of the carriage;
 - (c) IMO ship identification number;
 - (d) type and duration of security;
 - (e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and
 - (f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.
3.
 - (a) A State Party may authorize an institution or an Organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the

- State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation;
- (b) A State Party shall notify the Secretary-General of:
- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
 - (ii) the withdrawal of such authority; and
 - (iii) the date from which such authority or withdrawal of such authority takes effect. An authority delegated shall not take effect prior to 3 months from the date from which notification to that effect was given to the Secretary-General;
- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.
4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.
 5. The 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.
 6. 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, before 3 months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.
 7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.
 8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.
 9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as 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 insurance certificate is not financially capable of meeting the obligations imposed by this Convention.
10. Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.
 11. 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, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.
 12. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.
 13. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.
 14. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.
 15. 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 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 liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2 and set out in the annex to this Convention.
 16. The annex to this Convention shall constitute an integral part of the Convention.

7 Article 7 substituted

For Article 7 there is substituted –

ARTICLE 7*Limit of liability for death or personal injury*

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400,000 units of account per passenger on each distinct occasion. 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. A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or the fact that there is none.

8 Article 8 amended

In Article 8 –

- (a) in paragraph 1, for “833” there is substituted “2,250”;
- (b) in paragraph 2, for “3,333” there is substituted “12,700”;
- (c) in paragraph 3, for “1,200” there is substituted “3,375”;
- (d) in paragraph 4 –
 - (i) for “deduction” there is substituted “deductible”;
 - (ii) for “117” there is substituted “330”;
 - (iii) for “13” there is substituted “149”.

9 Article 9 substituted

For Article 9 there is substituted –

ARTICLE 9*Unit of account and conversion*

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 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 by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. 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 Party.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 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 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams 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.
3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible the same real value for the amounts in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, 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 Article 16 amended

In Article 16, for paragraph 3 there is substituted –

3. The law of the court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:
 - (a) a period of 5 years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier;
 - (b) a period of 3 years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.

11 Article 17 amended

In Article 17 –

- (a) in paragraph 1 –
 - (i) for “under this Convention” there is substituted “under Articles 3 and 4 of this Convention”;
 - (ii) for “provided that the court located in a State Party to this Convention:” there is substituted “provided that the court is located in a State Party to this Convention, and subject to the domestic law governing proper venue within those States with multiple possible forums:”;

- (iii) in sub-paragraphs (a) and (b), for “the place” there is substituted “the State”;
 - (iv) in sub-paragraphs (c) and (d), for “a court” there is substituted “the court”;
 - (v) in sub-paragraph (d), for “the State.” there is substituted “that State.”;
- (b) after paragraph 1 there is inserted the following, and the existing paragraph 2 is renumbered as paragraph 3 –
2. Actions under Article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

12 Article 17bis inserted

After Article 17 there is inserted –

ARTICLE 17bis

Recognition and enforcement of judgments

1. Any judgment given by a court with jurisdiction in accordance with Article 17 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 judgment was obtained by fraud; or
 - (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.
2. A judgment recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.
3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognized and enforced at least to the same extent as under paragraphs 1 and 2.

13 Article 18 amended

In Article 18 –

- (a) for “his luggage” there is substituted “the passenger’s luggage”;
- (b) for “the carrier of his liability” there is substituted “any person liable under this Convention of liability”;
- (c) for “which rests on the carrier” there is substituted “which rests on the carrier or performing carrier”;
- (d) for “the option specified in paragraph 1 of Article 17” there is substituted “the options specified in paragraph 1 or 2 of Article 17”.

14 Article 20 amended

In Article 20 –

- (a) at the end of sub-paragraph (a), after “Nuclear Damage” there is inserted “or any amendment or Protocol thereto which is in force”; and
- (b) at the end of sub-paragraph (b), after “the Vienna Conventions” there is inserted “or any amendment or Protocol thereto which is in force”.

15 Annex inserted

After Article 21 there is inserted –

ANNEX

CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

[Name of ship]

[Distinctive number or letters]

IMO Ship

[Identification number]

[Port of Registry]

[Name and full address of the principal place of business of the carrier who actually performs the carriage]

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

[Type of security].....

[Duration of security]

[Name of insurer(s) and/or guarantor(s)].....

[Address of insurer(s) and/or guarantor(s)].....

This certificate is valid until [date].....

Issued or certified by the Government of.....

[full designation of the State]

OR

[The following text should be used when a State Party avails itself of Article 4bis, paragraph 3]

The present certificate is issued under the authority of the Government of[full designation of the State] by

.....[name of institution or organization]

At.....[place] on.....[date]

.....[Signature and title of issuing or certifying official]

Explanatory Notes:

- 1 If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
- 2 If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
- 3 The entry “Duration of security” must stipulate the date on which such security takes effect.
- 4 The entry “Address” of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

16 Part 2 amended

In Schedule 5, in Part 2 –

- (a) after paragraph 2 there is inserted –
 - 2A.-(1) For the purposes of paragraph 3(a) of Article 4bis, the Minister is authorised to issue certificates in respect of Jersey ships, and (subject to the third sentence of that paragraph) the Minister may in writing authorise another person or body to issue certificates on their behalf.
 - (2) The Minister may by Order specify (subject to paragraph 7 of Article 4bis) conditions for the issue of certificates and concerning their validity.
 - (3) In sub-paragraph (1), the power to issue certificates includes the power to refuse to issue a certificate, or to cancel or withdraw a certificate, if –
 - (a) the relevant contract of carriage appears invalid;
 - (b) the insurance is inadequate or there is doubt as to the ability of the insurer or guarantor to meet their liability;
 - (c) the conditions under which the certificate was issued are not complied with;
 - (d) the carrier or performing carrier ceases to be the person by whom the contract of carriage in question is to be performed; or
 - (e) any other matter that appears to the Minister to be relevant is not complied with.
 - (4) If a certificate is cancelled or withdrawn under sub-paragraph (3) –
 - (a) the Minister or other person or body issuing the certificate may require the return of the certificate; and
 - (b) if the ship concerned is not in Jersey, the certificate may be delivered to any person listed in Article 177(1) of this Law, and that person may lawfully board the ship for that purpose and remove the certificate.
- (b) in paragraph 4, for “46,666” there is substituted “400,000”.