

STATES OF JERSEY



DRAFT SHIPPING (MARPOL) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 18th October 2011
by the Minister for Economic Development

STATES GREFFE



Jersey

DRAFT SHIPPING (MARPOL) (JERSEY) REGULATIONS 201-

REPORT

Introduction

These Regulations provide the framework for the States to ask the UK to extend ratification to the Island, of the International Convention for the Prevention of Pollution from Ships (the MARPOL Convention of 1973 and its associated Protocol of 1978, known simply as MARPOL 73/78).

Background

The Convention is considered by the International Maritime Organisation (IMO) as one of the three major maritime Conventions, the others being Safety of Life at Sea (SOLAS) and Standards of Training, Certification and Watchkeeping (STCW). Jersey has had the former ratified and it is hoped that work can begin on the latter in the next 2 years.

A total of 151 countries have ratified the MARPOL Convention. The United Kingdom has also ratified it on behalf of Bermuda, the Cayman Islands, Falklands, Gibraltar and the Isle of Man.

The Convention has 6 discrete annexes covering potential pollution from (1) Oil, (2) Noxious Liquid Substances, (3) Harmful Substances in packaged form, (4) Sewage, (5) Ship's Rubbish and (6) Air Pollution. However, only the first two, relating to oil and noxious liquid substances, are mandatory for the Island to be a party to the Convention. These Regulations thus deal with those annexes alone and allow the States to implement a staged and managed process. This approach, of opting for the most relevant or appropriate annexes first, has also been taken by many of the ratifying jurisdictions, including the United Kingdom and those for which it has ratified the Convention.

The need for the Convention

Although the States have already put in place a sound legal structure for combating water pollution, such as the Water Pollution (Jersey) Law 2000 and other related legislation, this does not cover much of the very specific issues that relate to ships, such as design and construction of ships, segregation and filtering of oil on board, maintenance of oil record books, pumping arrangements, survey and certification. These matters are covered in depth in the MARPOL Convention but at present if a ship is found to be non-compliant in Jersey waters, no enforcement action or

prosecution could follow. One example of this is that the Island cannot enforce the ban on single-hull oil tankers and has to rely on the standards imposed by neighbouring States. Another example is the Convention requirement for ships to hold oil pollution emergency plans and Oil Record Books, both of which should be available for inspection. At present the Island has no legal authority to carry out such inspections.

In the event of a suspected oil or chemical spill in Jersey waters, there are good anti-pollution provisions in the Water Pollution (Jersey) Law 2000 so that some action can be taken at present. However, using the MARPOL Convention, experts in the field of ship design would have additional authority to look at additional matters, such as whether the ship had adequate subdivision and damage stability, or whether its construction met the standards laid down in the International Bulk Chemical Code.

In the event of a suspected spill, failures in ship construction and equipment or inadequate ship certification, the Convention requires reports to be made to a ship's national authorities.

Spillage by a non-Jersey ship that takes place outside Island waters can also constitute an offence if pollution results inside those waters. This is an important additional deterrent to careless ship-owners and a useful protection for our environment.

Even where no spill has occurred, the Convention includes explicit powers to detain a ship in port. These include detention if there are clear grounds to believe that the Master or crew are not familiar with essential shipboard procedures designed to prevent pollution by oil.

The legislation also provides for Jersey ships worldwide and thus raises the standards beyond Jersey shores. Even with the current Jersey fleet of mostly pleasure-craft, the legislation will have a beneficial impact. One example of this is the requirement for ships under 400 tons, regardless of whether they are commercial vessels or pleasure-yachts, only ever to discharge oil or oily mixtures *en route* and at a rate of not more than 15 parts per million. Alternatively, ships will have to have effective on-board storage capacity and equipment so that they can discharge the oil ashore. Technically, Jersey ships entering the waters or ports of a Convention country already have to comply under that country's legislation. However, they do not have to comply in a non-Convention country. These Regulations will enable Jersey to take action itself, to require these standards to be met, even in international waters, and where relevant to set a better example than merely rely on another jurisdiction's enforcement standards.

The Regulations, Convention and Annexes

The Regulations aim to give effect in Jersey legislation to the Convention, its relevant Protocols and Annexes I and II. They do not attempt to reproduce each Article of the Convention or each Regulation of the Annexes. The wording in the Annexes undergoes change from time to time as the international community refines the effectiveness of the Convention. This only occurs if there is a two-thirds majority in favour, and individual Parties may still decline to accept an amendment. The most recent consolidated text was published in 2006, with a number of minor amendments agreed since then. For these reasons, with the exception of Protocol I (which is included as a Schedule to the Regulations), the details of the Convention and Annexes are not contained in the Regulations. Members seeking specific details are invited to contact the Maritime Compliance section via shipsregistry@gov.je .

The Regulations will apply the Convention as in force on 1st August 2011. The effect and purpose of each Regulation is given by the Explanatory Note. However, some key points not covered elsewhere in this Report are as follows:

Regulations 7 and 12 ensure that if an incident occurs, Jersey informs the ship's Flag and, if sufficiently serious, the IMO, and that a proper investigation takes place.

Regulation 8 makes sure that the duties and powers of inspectors are adequate.

Regulations 10 and 11 put important reporting procedures in place.

Regulation 13 creates the offences for breach of the Regulations and Annexes.

Regulation 16 particularly will be of interest to owners of small ships. If less than 400 tons, the ships will either have to retain all oil on board to be disposed of in port, or to be equipped to discharge at sea within the set limits of 15 parts per million and with equipment approved by the Minister. Advice will be given regarding this, but it is expected that the majority of small pleasure-craft will choose to retain waste oil and bilge oil on board until they can take it ashore safely.

Regulation 19 ensures that where any special allowance, approval or exemption is authorised by the Minister, this is properly published in written form. Where a general approval is given applicable to several ships, a website notice may be used.

Regulation 20 will ensure that an individual person could still be liable where an offence is committed by a business partnership or body corporate.

Consequential Ministerial Orders

There is an overlap and possible contradiction between the prohibition of discharges of oil in Article 98 of the Shipping (Jersey) Law 2002 and the prohibition and controls set out in Annex I of the Convention. A consequential Ministerial Order will follow that removes that contradiction, so that Article 98 will not apply to certain allowed discharges. The Order will also ensure that fixed or floating platforms (such as an oil rig) will also be subject to the Convention as far as it is relevant.

Regulation 21 will authorise further changes that may be made from time to time by Ministerial Order so as to maintain the currency and effect of the Convention in force in Jersey.

Consultation

Discussions have taken place with officers at Planning and Environment as well as at Jersey Harbours. They are fully aware and supportive of this legislation.

Because of the intention to ratify an international Convention, the legislation has also been reviewed by the UK's Maritime and Coastguard Agency for compliance with MARPOL and it has received approval from that quarter.

Enforcement

Jersey already has limited responsibility for Port State Control (known as PSC – this is the practice of boarding and inspecting non-Jersey ships to assess compliance with maritime Conventions). There is an understanding with French and UK surveyors that allows them to carry out PSC here. Additionally, the legislation specifically recognises officers already designated under the Water Pollution (Jersey) Law 2000. The

introduction of MARPOL here in Jersey will allow these officers to enforce compliance if necessary.

Penalty approval

Penalties are based on existing standards in relevant comparative legislation. The Attorney General has given his approval.

Financial and manpower implications

Because the enforcement regime is to be part of the existing arrangements, there are *no* new resource requirements for the States. Enforcement will be through the provision of information and reacting to known incidents, rather than there being any plans to increase policing of vessels in Jersey waters.

When a ship is inspected locally for other routine reasons, such as commercial certification of small craft or compliance with other Conventions for larger ships, MARPOL monitoring can be added to the checklist. If actual evidence of pollution or the likelihood of pollution were apparent, we would then react and involve the Environmental Protection team at the Environment Department. These functions can be managed within existing resources.

This approach has been discussed with the Treasury and Resources Department, which acknowledges there are no new resource requirements for the States.

Income from fines

There may be some resultant income from fines if prosecutions take place following an infraction of the Regulations. However, it is not possible to make any accurate prediction of this, as in the first place, the seriousness of any proven incident varies enormously, and of course it is for the Attorney General to decide on whether or not to prosecute.

As a guide, typically maritime pollution fines have ranged from £5,000 to £30,000. Official website information¹ on the Bonn Agreement² cites fines in the UK averaging £20,000 for accidental operational spills, with 9 cases occurring over a period of 2 years. Locally, there have been 12 successful prosecutions under the Water Pollution (Jersey) Law 2000, with a range of fines, the maximum being £4,500. Really major disasters can result in far greater fines. For example, the major pilotage failure that resulted in the grounding of the Sea Empress off Milford Haven in 1996 led to a record fine of £4 million.

Conclusion

It is important that Jersey is able to enforce all the major international maritime Conventions effectively in Island waters. It is also important that the Island continues to build a maritime legal framework fit for purpose for Jersey ships worldwide.

Accordingly, the Assembly is recommended to endorse these new Regulations and seek the ratification of the Convention by the UK on behalf of the Island.

¹ www.bonnagreement.org/eng/html/FEPO_manual/chapter_3.htm

² The Bonn Agreement (signed in 1983) <http://195.129.2.22.bonnagreement.org/eng/html/agreement/welcome.html> is the mechanism by which North Sea States in particular and more generally the EU work together to combat pollution from maritime disasters and chronic pollution from ships and offshore installations.

Explanatory Note

Implementation of Annexes I and II to the MARPOL Convention

The object of these Regulations is to give effect, in relation to Jersey, Jersey waters and Jersey ships, to the requirements and standards of the International Convention for the Prevention of Pollution from Ships, 1973, known as the MARPOL Convention.

The Regulations extend as far as Annexes I and II to that Convention (that is, the prevention of pollution by oil and of pollution by noxious liquid substances in bulk), but, at this stage, do not give effect to Annexes III to VI (the prevention of pollution by harmful substances in packaged form, by sewage and by garbage, and the prevention of air pollution).

The Regulations complement the anti-pollution provisions of the Shipping (Jersey) Law 2002 and are made under that Law.

The Regulations give effect to Protocol I to the Convention by setting out a reporting obligation in Regulation 10 (taking the place of article I of Protocol I) in relation to the incidents referred to in article II of Protocol I, and requiring such a report to be in accordance with articles III to V of Protocol I.

The Regulations do not give effect to Protocol II to the Convention because that Protocol applies to States that are parties to the Convention rather than in relation to day-to-day marine administration and the operation of shipping. Protocol II sets out a procedure for the resolution of disputes between 2 or more parties to the Convention where the dispute concerns the interpretation or application of the Convention.

Scope and terms of Regulations

Regulation 1 sets out a number of defined terms, and *Regulation 2* defines “Administration” in relation to a ship and a number of different contexts. The Minister for Economic Development is the Administration in relation to a Jersey ship. A Jersey ship is defined in the Shipping (Jersey) Law 2002 to mean a ship registered in Jersey or a ship belonging to certain other classes. *Regulation 3* spells out what is and what is not a discharge of harmful substances or effluents.

Regulations 4 and *5* indicate the extent to which the Convention is to be implemented in relation to Jersey ships and Jersey waters. They exclude naval and other government ships from the scope of the Regulations and of the Convention as it applies to Jersey.

Regulation 6 goes on to specify a number of other Jersey equivalents to terms that appear in the Convention so as to enable the implementation of the Convention in relation to Jersey.

Requirements

Regulation 7 requires the Minister to investigate pollution incidents, or to transmit any information that the Minister has about such incidents to overseas Administrations.

Regulation 8 provides for surveyors and inspectors to check the certificates of ships that are in Jersey and to exercise inspection functions set out in Annexes I and II to the Convention.

Regulation 9 requires the Minister to inform the relevant overseas Administration if the Minister takes action against a ship on the ground that the ship does not comply with the Convention.

Regulation 10 requires (in accordance with Protocol I to the Convention) masters, owners and charterers to report pollution incidents and the Minister to relay those reports in appropriate cases.

Regulation 11 requires the Minister to present annual reports and other documents to the Inter-Governmental Maritime Consultative Organization.

Regulation 12 requires the Minister to investigate Jersey shipping incidents that impact seriously on the environment and to report on them to the Inter-Governmental Maritime Consultative Organization.

Regulation 13 makes masters, owners and charterers guilty of an offence if Annex I or Annex II is breached in relation to their ships. However, certain defences are set out in *Regulation 14*. By virtue of *Regulation 15* and the Shipping (Jersey) Law 2002, the ships involved may be subject to detention.

Regulations 16 and *17* supplement Annex I in relation to requirements against oil pollution for certain smaller ships.

Regulation 18 requires certain documents to be set out in English, and *Regulation 19* requires a large variety of instruments to be set out in writing for the purposes of the Convention.

Miscellaneous provisions

Regulation 20 sets out standard provisions about criminal liability for offences under the Regulations. The provisions relate to the officers and members of bodies corporate and partners of partnerships.

Regulation 21 allows the Minister to make Orders to keep the Regulations up to date.

Regulation 22 sets out the name of the Regulations and specifies that they are to come into effect on the extension of the MARPOL Convention to Jersey.

The *Schedule* sets out Articles II to V of Protocol I to the MARPOL Convention as those Articles are to apply under the Regulations. Protocol I deals with the reporting of maritime pollution incidents.



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Made [date to be inserted]

Coming into force [date to be inserted]

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 under article I of Protocol I 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 201-.
- (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.

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*