
STATUTORY INSTRUMENTS

1998 No. 260

MERCHANT SHIPPING

**The Merchant Shipping (Oil Pollution and
General Provisions) (Guernsey) Order 1998**

Made - - - - 11th February 1998

Coming into force - - 11th March 1998

At the Court at Buckingham Palace, the 11th day of February 1998

Present,

The Queen's Most Excellent Majesty in Council

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

Citation and commencement

1. This Order may be cited as the Merchant Shipping (Oil Pollution and General Provisions) (Guernsey) Order 1998 and shall come into force on 11th March 1998.

Implementation of the Liability and Fund Conventions

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

Supplementary provision

3. After section 277 of the Merchant Shipping Act of article 2 above, there shall be inserted—

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- (1) 1995 c. 21; the power in section 315(2) is extended by section 315(4), and by section 30(2)(a) of the Merchant Shipping and Maritime Security Act 1997 (c. 28); and “relevant British possession” is defined in section 313(1) to include the Bailiwick of Guernsey.
- (2) Section 158(2) was amended, and section 158(2A) was added, by the Merchant Shipping and Maritime Security Act 1997, Schedule 6, paragraph 4; section 170 was amended by that Act, Schedule 6, paragraph 5; and section 313 was amended by that Act, Schedule 6, paragraph 19.

“Accessories and abettors

277A Any person who-knowingly or wilfully 1995, as extended to Guernsey by virtue aids, abets, counsels, causes, procures or commands the commission of an offence under this Act shall be liable to be dealt with, tried and punished as a principal offender.”.

Interpretation

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

Revocation and transitional provisions

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

(2) The Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996**(5)**, shall, subject to the exceptions, adaptations and modifications specified in Schedule 2 to this Order, extend to Guernsey.

N. H. Nicholls
Clerk of the Privy Council

(3) S.I.1981/224.
(4) S.I. 1981/225.
(5) S.I. 1996/1143.

SCHEDULE 1

Article 2

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

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

(6) S.I. 1980/569.

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- (c) in subsection (3)(b), for “the United Kingdom” substitute “Guernsey”;
 - (d) in subsection (3)(c), for “Secretary of State” substitute “Board”;
 - (e) in subsection (4), for “any officer of customs and excise or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer” substitute “the Chief Officer of Customs and Excise or any other person authorised by the Board to act as an officer of Customs and Excise”;
 - (f) in subsection (6), for “standard scale” substitute “uniform scale”;
 - (g) in subsection (7), for “the United Kingdom” substitute “Guernsey”.
- 10.** In section 164—
- (a) in the sidenote, for “Secretary of State” substitute “Board”;
 - (b) in subsection (1), for “Secretary of State” substitute “Board” (in two places) and for “United Kingdom ship” substitute “ship registered in Guernsey”;
 - (c) in subsection (2), for “Secretary of State” substitute “Board”; and for “he may” substitute “it may”;
 - (d) in subsection (3), for “Secretary of State” substitute “Board”;
 - (e) in subsection (4), for “standard scale” substitute “uniform scale”;
 - (f) for subsection (5) substitute—

“(5) The Board shall send a copy of any certificate issued by it under this section in respect of a ship registered in Guernsey to the Registrar of British Ships for Guernsey, and the Registrar shall make the copy available for public inspection.”.
- 11.** For section 165 (5) substitute—
- “(5) The Third Party (Guernsey) Law, 1936 shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 163 relates.”.
- 12.** In section 166—
- (a) in the sidenote, for “United Kingdom” substitute “Guernsey”;
 - (b) omit subsection (1);
 - (c) in subsection (2), for “the United Kingdom” substitute “Guernsey” (in three places);
 - (d) for subsection (4) substitute—

“(4) Part II of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 153; and in its application to such a judgment that Part shall have effect with the omission of section 6(2) and (3) of that Law.”.
- 13.** In section 167 (3), for “the United Kingdom” substitute “Guernsey” and omit “, or in Scotland the execution of diligence,”.
- 14.** In section 168, for “section 185” substitute “section 17 of the Merchant Shipping Act 1979 as extended to Guernsey by the Merchant Shipping Act 1979 (Guernsey) Order 1980” and for “Convention in Part I of Schedule 7” substitute “Convention on Limitation of Liability for Maritime Claims 1976”.
- 15.** In section 170—
- (a) in subsection (1), for the definition of “the court”, substitute—

““the court” means—

 - (a) in relation to Guernsey, the Royal Court sitting as an Ordinary Court;

- (b) in relation to Alderney, the Court of Alderney; and
 - (c) in relation to Sark, the Court of the Seneschal;”;
- (b) omit subsection (3);
- (c) for subsection (4) substitute—
 - “(4) References in this Chapter to the territory of any country include the territorial sea of that country and, in the case of any Liability Convention country other than Guernsey, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.”.
- 16.** In section 172(1)(d), after “is in force” add “, and includes the United Kingdom and any relevant British possession to which the Fund Convention has been extended”.
- 17.** In section 173—
 - (a) in subsection (1), for “the United Kingdom” substitute “Guernsey”; and for “its national waters” substitute “waters landward of the baselines for measuring the breadth of the territorial sea of Guernsey”;
 - (b) in subsection (3), for “the United Kingdom” substitute “Guernsey”;
 - (c) in subsection (4)(a), for “the United Kingdom” substitute “Guernsey”;
 - (d) in subsection (8), for “Secretary of State” substitute “Board” (in two places);
 - (e) in subsection (9)(a), for “Secretary of State” substitute “Board”;
 - (f) in subsection (9)(b), for “standard of scale” substitute “uniform scale”;
 - (g) in subsection (10), in the definition of “company”, for “the United Kingdom” substitute “Guernsey”;
 - (h) in subsection (10), for the definition of “group” substitute—
 - ““group” in relation to companies, means a holding company and its subsidiaries as defined by section 15 of the Amalgamation of Companies Ordinance, 1997, subject, in the case of a company incorporated outside Guernsey, to any necessary modifications of those definitions;”.
- 18.** In section 174—
 - (a) in subsection (1), for “Secretary of State” substitute “Board”;
 - (b) in subsection (4), for “Secretary of State” substitute “Board”;
 - (c) in subsection (5), for “standard scale” substitute “uniform scale”;
 - (d) in subsection (6), for “standard scale” substitute “uniform scale”; and for “the statutory maximum” substitute “level 5 on the uniform scale”.
- 19.** In section 175—
 - (a) in subsection (1), for “the United Kingdom” substitute “Guernsey”;
 - (b) in subsection (2), for ““United Kingdom”” substitute ““Guernsey””, omit paragraph (a), and for “the United Kingdom” substitute “Guernsey” (in two places);
 - (c) in subsection (3), for “The United Kingdom” substitute “Guernsey”;
 - (d) omit subsection (4).
- 20.** In section 176(4)(b), after “the Treasury” insert “of the United Kingdom”.

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

“(4) Subject to subsection (5) below, Part II of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 175; and in its application to such a judgment the said Part shall have effect with the omission of section 6(2) and (3) of that Law.”;
 - (d) in subsection (5), for “Part I of the Act of 1933” substitute “Part II of the Law of 1957”;
- 22.** In section 178—
- (a) in subsection (1), for “the United Kingdom” substitute “Guernsey”;
 - (b) in subsection (2), for “the United Kingdom” substitute “Guernsey”.
- 23.** In section 179(2), for “the United Kingdom” substitute “Guernsey”.
- 24.** In section 279—
- (a) in subsection (1), for “the United Kingdom” substitute “Guernsey”;
 - (b) in subsection (2), for “the United Kingdom” substitute “Guernsey”.
- 25.** In section 281—
- (a) paragraph (a)(i), for “any United Kingdom ship” substitute “a ship registered in Guernsey”;
 - (b) omit paragraph (a)(iii);
 - (c) in paragraph (b), for “any United Kingdom ship” substitute “a ship registered in Guernsey”;
 - (d) for the words from “within the jurisdiction” to “that court” substitute—

“in Guernsey, any court which would have had jurisdiction in relation to the offence had it been committed on board a ship registered in Guernsey within the limits of its ordinary jurisdiction to try the offence”.
- 26.** In section 284—
- (a) for paragraphs (b) and (c) of subsection (1), substitute—
 - “(b) the Harbourmaster,
 - (bb) any officer of the Board (other than the Harbourmaster) authorised in writing to detain the ship, whether generally or specially,
 - (c) the Chief Officer of Customs and Excise or any other person authorised by the Board to act as an officer of Customs and Excise,
 - (cc) any sea-fishery officer.”;
 - (b) in subsection (5), for “the statutory maximum” substitute “level 5 on the uniform scale”;
 - (c) in subsection (6), for “an officer of customs and excise” substitute “the Chief Officer of Customs and Excise or any other person authorised by the Board to act as an officer of Customs and Excise” (in two places);
 - (d) omit subsection (7);
 - (e) after subsection (8), add—

“(9) In subsection (4) above, “surveyor of ships” means a surveyor appointed under section 727 of the Merchant Shipping Act 1894(7).”.

27. In section 308, omit subsections (2) to (4).

28. In section 313—

(a) in subsection (1)—

(i) omit all the definitions apart from the definitions of “British citizen”, “commissioned military officer”, “commissioned naval officer”, “consular officer”, “contravention”, “harbour”, “master”, “port”, “relevant British possession”, and “ship”;

(ii) after the definition of “British citizen”, insert—

““the Board” means the States Board of Administration;”;

(iii) after the definition of “harbour”, insert—

““the Harbourmaster” means the States Harbourmaster and any States Deputy Harbourmaster, and includes any person acting under the authority of the States Harbourmaster, upon production, if so required, of his authority so to act;”;

(iv) after the definition of “port”, insert—

““registered” means, in relation to a ship registered in Guernsey, registered under the provisions of the Merchant Shipping Act 1894;”;

(v) after the definition of “relevant British possession”, insert—

““sea-fishery officer” has the same meaning as in section 9(1) of the Fishing (Bailiwick of Guernsey) Law, 1989;”;

(b) omit subsections (2), (2A) and (3).

29. In section 316, omit subsection (2).

30. In Schedule 5, Part I, in the text of Article 4(4)(c) of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992, for “(c)” substitute “(b)”.

SCHEDULE 2

Article 5

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

1. In article 1, omit the words “, and shall come into force on 30th May 1996”.

2. In article 2—

(a) in the definition of “the Act”, after “1995” insert “as extended to Guernsey by the 1998 Order”;

(b) omit “and” following the definition of “the 1992 Fund Convention”; and

(c) at the end, add—

““the 1981 Liability Order” means the Merchant Shipping (Oil Pollution) Act 1971 (Guernsey) Order 1981;

(7) 1894 c. 60.

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“the 1981 Compensation Order” means the Merchant Shipping Act 1974 (Guernsey) Order 1981; and

“the 1998 Order” means the Merchant Shipping (Oil Pollution and General Provisions) (Guernsey) Order 1998”.

3. In article 3(1), for “Chapters III and IV of Part VI of the Act” substitute “the 1998 Order”; for “Schedule 4 and Part II of Schedule 5 to that Act” and for “Schedule 4 and Part II of Schedule 5 to the Act” substitute “the 1981 Liability Order and the 1981 Compensation Order”; and for “the United Kingdom” substitute “Guernsey”.

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

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

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

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

7. In paragraph 4 of Part A of Schedule 2, for “sections 172 to 181 in Schedule 4 to the Act” substitute “the 1981 Compensation Order”.

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

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

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

9. In paragraph 1 of Part B of Schedule 2, for “this Order to the date on which the Order ceases to have effect” substitute “the 1998 Order to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect in the United Kingdom”.

10. In paragraph 3 of Part B of Schedule 2, for “sections 172 to 181 of the Act as set out in Schedule 4 to the Act” substitute “the 1981 Compensation Order”.

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

12. For Schedule 3 substitute—

“SCHEDULE 3

Article 5

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

ARTICLE XII BIS

TRANSITIONAL PROVISIONS

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

(a) where an incident has caused pollution damage within the scope of sections 152 to 170 of the Act, liability under sections 152 to 170 of the Act shall be deemed to be discharged if, and to the extent that, it also arises under the 1981 Liability Order;

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

ARTICLE 36 BIS

The following transitional provisions shall apply from the date of entry into force of the 1998 Order to the date on which the Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) Order 1996 ceases to have effect in the United Kingdom:

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

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EXPLANATORY NOTE

(This note is not part of the Order)

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

The International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (the Fund Convention) which was extended to the Bailiwick of Guernsey by the Merchant Shipping Act 1974 (Guernsey) Order 1981 (the 1981 Compensation Order), set up an international fund to provide a supplementary system for compensation and indemnification for such damage. The 1992 Protocol to the CLC and the 1992 Protocol to the Fund Convention respectively create a new 1992 Civil Liability Convention and a new 1992 Fund Convention, which together provide for higher levels of compensation and more extensive liability.

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

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