

Island of



Guernsey

Ordinance of the States

XI
2012

Made30th May, 2012

The Merchant Shipping (Oil Pollution) (Bunkers Convention) (Bailiwick of Guernsey) Ordinance, 2012

The Merchant Shipping (Oil Pollution) (Bunkers Convention) (Bailiwick of Guernsey) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 30th day of September, 2011^a, and in exercise of the powers conferred on them by sections 130(1)(e), 289(1)(b) and 290(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^b and all other powers enabling them in that behalf, hereby order:-

Amendment of the 2002 Law.

1. The Merchant Shipping (Bailiwick of Guernsey) Law, 2002 is amended as follows.

Meaning of "the Liability Convention", "the Bunkers Convention" and other expressions.

2. (1) Section 160 (meaning of "**the Liability Convention**" and related expressions) is amended as follows.

(2) In the heading, before "**the Liability Convention**" there is inserted "**the Bunkers Convention**",.

(3) In subsection (1) –

(a) before the definition of "**the Liability Convention**",

^a Article XVII of Billet d'État No XV of 2011.

^b Order in Council No. VIII of 2004; amended by Ordinance XXXIII of 2003; by Ordinance No. XXXV of 2009); and by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010).

there is inserted -

"the Bunkers Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

"Bunkers Convention country" means a country in respect of which the Bunkers Convention is in force;

"Bunkers Convention State" means a State which is a party to the Bunkers Convention;"; and

(b) in the definition of **"Liability Convention State"**, after "the" there is inserted "Liability".

(4) In subsection (2), after "Convention" (in the first place it appears), there is inserted "or the Bunkers Convention" and for "the Liability Convention" (in the second place it appears), there is substituted "that Convention".

Liability for oil pollution in case of tankers.

3. (1) Section 161 (liability for oil pollution in case of tankers) is amended as follows.

(2) For "owner" and "owners" (in each place), there is substituted respectively "registered owner" and "registered owners".

(3) In subsection (2), the words after paragraph (b) are omitted.

(4) After subsection (2), there is inserted -

"(2A) In this Chapter, such a threat is referred to as a relevant threat of contamination falling within subsection (2) of this section."

(5) Subsections (7) and (8) are omitted.

Liability for pollution by bunker oil.

4. After section 161, there is inserted –

"Liability for pollution by bunker oil.

161A. (1) Subject to subsection (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship then (except as otherwise provided by this Chapter) the owner of the ship shall be liable –

- (a) for any damage caused outside the ship in the territory of Guernsey by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Guernsey by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of Guernsey by any measures so taken.

(2) Subject to subsection (3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused

outside a ship by the contamination that might result if there were a discharge or escape of bunker oil from the ship then (except as otherwise provided by this Chapter) the owner of the ship shall be liable -

(a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Guernsey; and

(b) for any damage caused outside the ship in the territory of Guernsey by any measures so taken.

(3) There shall be no liability under this section in relation

to -

(a) a discharge or escape of bunker oil from a ship to which section 161 applies, or

(b) a threat mentioned in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

(4) In the subsequent provisions of this Chapter -

(a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subsection (3)(a), is referred to as a discharge or escape of bunker oil falling within subsection (1) of this section; and

- (b) a threat mentioned in subsection (2), other than one excluded by subsection (3)(b), is referred to as a relevant threat of contamination falling within subsection (2) of this section.

(5) Where a person incurs a liability under subsection (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of Guernsey included the territory of any other Bunkers Convention country.

(6) Where –

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) In this Chapter (except in section 178(1)) "owner", except when used in the term "registered owner", means the registered owner, bareboat charterer, manager and operator of the ship. "

Further liability for oil pollution.

5. (1) Section 162 (liability for pollution in case of other ships) is amended as follows.

(2) In the heading, for "in case of other ships" there is substituted "in other cases".

(3) For "owner" and "owners" (in each place), there is substituted respectively "registered owner" and "registered owners".

(4) In subsections (1) and (2), at the beginning there is inserted "Subject to subsection (2A)," and the words "other than a ship to which section 161 applies" are omitted.

(5) In subsection (2), the words after paragraph (b) are omitted.

(6) After subsection (2), there is inserted –

"(2A) No liability shall be incurred under this section by reason of –

(a) a discharge or escape of oil from a ship to which section 161 applies or a relevant threat of contamination falling within subsection (2) of that section;

(b) a discharge or escape of bunker oil falling within section 161A(1) or a relevant threat of contamination falling within section 161A(2).

(2B) In the subsequent provisions of this Chapter –

- (a) a discharge or escape of oil from a ship, other than one excluded by subsection (2A), is referred to as a discharge or escape of oil falling within subsection (1) of this section; and
- (b) a threat mentioned in subsection (2), other than one excluded by subsection (2A), is referred to as a relevant threat of contamination falling within subsection (2) of this section."

(7) In subsection (5), after "section", there is inserted "(apart from subsection (2A))".

Exceptions from liability under sections 161, 161A and 162.

6. (1) Section 163 (exceptions from liability under sections 161 and 162) is amended as follows.

(2) In the heading, after "161", there is inserted ", 161A".

(3) For the words from "No" to "contamination" (in the second place it appears) there is substituted –

"(1) No liability shall be incurred by a person ("the defendant") under section 161, 161A or 162 by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subsection (2) applies.

(2) This subsection applies if the discharge or escape or the relevant threat of contamination (as the case may be) -".

(4) In paragraph (b), for "owner", there is substituted "defendant".

Restriction of liability for oil pollution.

7. (1) Section 164 (restriction of liability for oil pollution) is amended as follows.

(2) In the heading, for "oil pollution", there is substituted "pollution from oil or bunker oil".

(3) In subsection (1) –

(a) for paragraphs (a) and (b), there is substituted –

"(a) there is a discharge or escape of oil from a ship to which section 161 applies or there arises a relevant threat of contamination falling within subsection (2) of that section, or

(b) there is a discharge or escape of oil falling within section 162(1) or there arises a relevant threat of contamination falling within section 162(2),",

and

(b) for "owner", there is substituted "registered owner".

(4) In subsection (2), for "owner", in both places, there is substituted "registered owner".

(5) After subsection (2), there is inserted –

"(2A) Where, as a result of any occurrence –

- (a) there is a discharge or escape of bunker oil falling within section 161A(1); or
- (b) there arises a relevant threat of contamination falling within section 161A(2),

then, whether or not the owner of the ship in question incurs any liability under section 161A –

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2B) Subsection (2A)(ii) applies to-

- (a) any servant or agent of the owner;
- (b) any person not falling within paragraph (a) above but engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (d) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 161A; and
- (e) any servant or agent of a person falling within paragraph (c) or (d)."

(6) In subsection (3), for "the owner of a ship under section 161 or 162", there is substituted "a person under section 161, 161A or 162".

Liability under section 161, 161A or 162: supplementary provisions.

8. After section 164, there is inserted –

"Liability under section 161, 161A or 162: supplementary provisions.

164A. (1) For the purposes of this Chapter –

- (a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;
- (b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;
- (c) where more than one discharge or escape of oil or bunker oil results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (d) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(2) Part I of the Law Reform (Tort) Guernsey Law, 1979 shall apply in relation to any damage or cost for which a person is liable under section 161, 161A or 162, but which is not due to his fault, as if it were due to his fault."

Limitation of liability under section 161.

9. (1) In the cross-heading before section 165, at the end, there is inserted "*under section 161*".

- (2) In section 165 (limitation of liability under section 161) –
- (a) in subsection (1), for "owner" there is substituted "registered owner" and after "contamination" there is inserted "falling within subsection (2) of that section", and
 - (b) in subsection (3), for "owner" there is substituted "registered owner".

Limitation actions.

10. In section 166 (limitation actions) –

- (a) in subsection (1), for "owner", there is substituted "registered owner", and
- (b) in subsection (6)(a), for "owner" there is substituted "registered owner" and at the end there is inserted "(in relation to any insurance or other security provided as mentioned in subsection (1) of that section)".

Concurrent liabilities of owners and others.

11. In section 168 (concurrent liabilities), for "owner" (in each place), there is substituted "registered owner".

Limitation period for claims.

12. (1) Before section 170, there is inserted the following cross-heading: "*Limitation period for claims under this Chapter*".

(2) In section 170 (extinguishment of claims), after "161", there is inserted ", 161A".

Compulsory insurance against liability for oil pollution.

13. In section 171(5) (compulsory insurance against liability for pollution), for "owner", there is substituted "registered owner".

Compulsory insurance for pollution by bunker oil.

14. After section 171, there is inserted –

"Compulsory insurance against liability for pollution from bunker oil.

171A. (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship having a gross tonnage greater than 1,000 tons calculated in the manner prescribed by an order made by the Board under paragraph 5(2) of Part II of Schedule 7.

(2) The ship shall not enter or leave a port in Guernsey or arrive at or leave a terminal in the territorial sea adjacent to Guernsey nor, if the ship is a Guernsey ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force –

- (a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunkers Convention; and
- (b) a certificate complying with the provisions of subsection (3) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.

- (3) The certificate must be –
- (a) if the ship is a Guernsey ship, a certificate issued by the Board;
 - (b) if the ship is registered in a Bunkers Convention country other than Guernsey, a certificate issued by or under the authority of the government of the other Bunkers Convention country; and
 - (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Board or by or under the authority of the government of any Bunkers Convention country other than Guernsey.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of Customs and Excise or of the Board and, if the ship is a Guernsey ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) by reason of there being no certificate in force as mentioned in that subsection, the master or registered owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding level 5 on the uniform scale.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(7) If a ship attempts to leave a port in Guernsey in contravention of subsection (2), the ship may be detained.

(8) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of (or otherwise in connection with) proceedings for an offence under subsection (5) against the company as registered owner of the ship shall be treated as duly served on the company if the document is served on the master of the ship; and in this subsection "**foreign company**" means a company or body which is not one to which either section 116 of the Companies (Guernsey) Law, 1994^c, as amended, or section 160 of the Companies (Alderney) Law, 1994^d applies so as to authorise the service of the document in question under one of those provisions.

(9) Any person authorised to serve any document for the purposes of the institution of (or otherwise in connection with) the institution of proceedings for an offence under this section shall, for that purpose, have the right to go on board the ship in question.

^c Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; No. IX of 2006; and by Ordinance No. X of 1997; Ordinance No. XXXIII of 2003 and Ordinances XI, XII and XVIII of 2006.

^d Ordres en Conseil Vol. XXXV(2), p. 777; as amended by Vol. XLI, p.13; Vol. XLII, p. 420; and Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; and Ordinance No. VII of 2009; and Alderney Ordinances No. V of 1995; No. I of 1996; No. II of 1997; No. III of 1995; No. II of 1997; No. XI of 2007; No. XVII of 2008; and No. VI of 2009.

(10) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (1), the best available evidence shall be used in calculating the tonnage of the ship in accordance with any order under paragraph 5(2) of Part II of Schedule 7."

Issue of certificate by Board.

15. (1) Section 172 (issue of certificate by Board) is amended as follows.

(2) In subsection (1) –

(a) for "section 171", there is substituted "section 171(2)", and

(b) for "owner", there is substituted "registered owner".

(3) After subsection (1), there is inserted –

"(1A) Subject to subsection (2) below, if the Board is satisfied, on the application for such a certificate as is mentioned in section 171A(2) in respect of a Guernsey ship or a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Board shall issue such a certificate to the registered owner."

(4) For subsection (2), there is substituted –

"(2) The Board may refuse the certificate if it is of the opinion that there is a doubt whether –

- (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
- (b) the insurance or other security will cover the registered owner's liability under section 161, or the owner's liability under section 161A, as the case may be."

Rights of third parties against insurers.

16. (1) Section 173 (rights of third parties against insurers) is amended as follows.

(2) In subsection (1) –

- (a) for "owner" there is substituted "registered owner",
- (b) for "171" there is substituted "171(2)", and
- (c) the words from "(in the" to the end are omitted.

(3) After subsection (1), there is inserted –

"(1A) Where it is alleged that the owner of a ship has incurred a liability under section 161A as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination

arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 171A(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.

(1B) In the following provisions of this section, “the insurer” means the person who provided the insurance or other security referred to in subsection (1) or subsection (1A), as the case may be.”.

(4) In subsection (2) –

- (a) after "section", there is inserted "in respect of liability under section 161",
- (b) for "owner's", there is substituted "registered owner's", and
- (c) for "owner", there is substituted "registered owner".

(5) In subsection (3) –

- (a) after "claims", there is inserted "in respect of liability under section 161 which are",
- (b) for "owner" (in both places), there is substituted "registered owner", and
- (c) after "his liability" (in the second place it appears), there is inserted "under section 165".

(6) In subsection (4) –

(a) for "owner", there is substituted "registered owner",
and

(b) after "liability", there is inserted "(in relation to
liability under section 161)".

(7) After subsection (4), there is inserted –

"(4A) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 161A it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.

(4B) The insurer may limit his liability in respect of claims in respect of liability under section 161A which are made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability by virtue of section 194; but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from any act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(4C) Where the owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under section 161A) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other."

(8) In subsection (5), after "171", there is inserted "or 171A".

Jurisdiction of Guernsey courts and registration of foreign judgments.

17. (1) Section 174 (jurisdiction of Guernsey courts and registration of foreign judgments) is amended as follows.

(2) In subsection (1) –

- (a) in paragraph (a), for "any oil is discharged or escapes from a ship but" there is substituted "there is a discharge or escape of oil from a ship to which section 161 applies, or a discharge or escape of oil falling within section 162(1), which",
- (b) in paragraph (b), after "contamination" there is inserted "falling within section 161(2) or 162(2)", and
- (c) in paragraph (i), for "owner" there is substituted "registered owner".

(3) After subsection (2), there is inserted –

"(2A) Where –

- (a) there is a discharge or escape of bunker oil falling within section 161A(1) which does not result in any damage caused by contamination in the territory of Guernsey and no measures are reasonably taken to prevent or minimise such damage in that territory, or

- (b) any relevant threat of contamination falling within section 161A(2) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Guernsey,

no court in Guernsey shall hear any proceedings to enforce a claim arising from any relevant damage or cost –

- (i) against the owner of the ship, or
- (ii) against any person to whom section 164(2A)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(2B) In subsection (2A) above, "**relevant damage or cost**" means –

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Bunkers Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country;

- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;

and section 164(2B)(d) shall have effect for the purpose of subsection (2A)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above."

(4) For subsection (3), there is substituted –

"(3) Part II of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957^e shall apply, whether or not it would so apply apart from this section, to –

- (a) 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 161; and
- (b) any judgment given by a court in a Bunkers Convention country to enforce a claim in

^e Ordres en Conseil, Vol. XVII, p. 178; amended by Vol. XXXV(1), p. 218.

respect of a liability incurred under any provision corresponding to section 161A;

and in its application to any such judgment that Part shall have effect with the omission of section 6(2) and (3) of that Law."

Government ships.

18. (1) Section 175 (Government ships) is amended as follows.

(2) For subsection (2), there is substituted –

"(2) In relation to a ship owned by a State and for the time being used for commercial purposes –

(a) it shall be sufficient compliance with section 171(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of that Convention; and

(b) it shall be sufficient compliance with section 171A(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Bunkers Convention will be met

up to the limits set out in Chapter II of the Convention in Part I of Schedule 7."

(3) After subsection (3), there is added –

"(4) Every Bunkers Convention State shall, for the purposes of any proceedings brought in a court in Guernsey to enforce a claim in respect of a liability incurred under section 161A, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the execution of a judgment against the property of any State."

Limitation of liability under section 161A.

19. In section 176 (limitation of liability under section 162) –

- (a) in the heading, after "section" there is inserted "161A or",
- (b) for "section 162", there is substituted "section 161A or 162".

Amendment of section 178 (Interpretation).

20. (1) Section 178 (interpretation) is amended as follows.

- (2) In subsection (1) –
 - (a) after "Chapter", there is inserted "(except this subsection)",
 - (b) before the definition of "the court", there is inserted –

"**bunker oil**" means any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;",

- (c) in the definition of "oil", after "**oil**", there is inserted ", except in the term "**bunker oil**",",
- (d) in the definition of "owner", for "means" (in the first place it appears), there is substituted "has the meaning given by section 161A(7), and "**registered owner**" means", and
- (e) in the definition of "relevant threat of contamination" for the words from "shall" to the end there is substituted –

"includes (unless a contrary intention appears) –

- (a) a relevant threat of contamination falling within section 161(2) (as defined in section 161(2A));
- (b) a relevant threat of contamination falling within section 161A(2) (as defined in section 161A(4)(a)); and
- (c) a relevant threat of contamination falling within section 162(2) (as defined in section 162(2B)(b));".

- (3) In subsection (2) –
- (a) after "oil", there is inserted "or bunker oil",
 - (b) after "owner" in the first place it appears, there is inserted "or the registered owner", and
 - (c) after "owner" in the second place it appears, there is inserted "or the registered owner (as the case may be)".
- (4) In subsection (3)(b), after "Liability Convention country", there is inserted "or Bunkers Convention country".

Citation, commencement and transitional provision.

21. (1) This Ordinance may be cited as the Merchant Shipping (Oil Pollution) (Bunkers Convention) (Bailiwick of Guernsey) Ordinance, 2012, and shall come into force on the day appointed by an Order of the Public Services Department.

- (2) Nothing in this Ordinance applies in relation to –
- (a) any occurrence before the day mentioned in subsection (1), or
 - (b) any occurrence in a series of occurrences having the same origin, if the first took place before that day.

D.J. ROBILLIARD,
Her Majesty's Deputy Greffier.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

PRICE £8.00

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE