

STATES OF JERSEY

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DRAFT SHIPPING (AMENDMENT No. 2)(JERSEY) LAW 200

**Lodged au Greffe on 3rd June 2008
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT SHIPPING (AMENDMENT No. 2)(JERSEY) LAW 200

European Convention on Human Rights

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

In the view of the Minister for Economic Development the provisions of the Draft Shipping (Amendment No. 2, (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

Background

The aim of the Convention on Limitation of Liability for Maritime Claims (LLMC) and that of its associated Protocol is to provide a manageable liability regime for maritime claims. Limitation is necessary for a variety of reasons not least to prevent the liability and consequential insurance being prohibitive.

Limitation is achieved on an agreed international sliding scale that relates to the size of the ship. Large ships carrying more passengers or greater quantities of cargo carry higher liability than small ships.

The Convention came into force in Jersey in 1976. The Protocol to that Convention was agreed internationally in 1996 and raises the limits of liability. It came into force in the United Kingdom in 2004. It is not in force in Jersey.

Partial provision was made for the 1996 Protocol in the Shipping (Jersey) Law 2002 and the Insular Authorities wrote in November 2003 requesting the United Kingdom to extend it to Jersey. The intention was for the Protocol to be in place in Jersey on the coming into force of the Shipping Law, on 1st June 2004 but this did not happen.

The purpose of the Protocol

Primarily the Protocol will have the effect of raising the limitation of liability to more appropriate levels. The passage of time inevitably has reduced the real monetary value of the original limits.

In terms of vessels visiting Jersey and considering a claim for serious injury or loss of life, liability based on the old rates is currently limited to approximately £780,000 for a small cargo vessel of 3,000 tons in size, rising to £2.1 million for a large roll-on/roll-off freighter of 11,000 tons.

For the same vessels, the new rates will be in a range of £1.38m up to £4.5m^[1].

Legal changes

There are procedural issues in the Shipping (Jersey) Law 2002 concerning both this Convention and the Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996. As the Law stands, the States can only bring in relevant Regulations once these Conventions, or revisions to them, have been agreed to on behalf of Jersey by the UK Government. The Economic Development Department has received advice that this will not work and that the correct way round is for the Regulations or other implementing legislation to be in place first. The Island can then request the UK to agree the relevant international instrument on our behalf.

In order for the Protocol to be effective, the Shipping (Jersey) Law 2002, as the implementing legislation, needs amending. It must specify the new limits and other aspects of the Protocol which improve and clarify the purposes of the original Convention.

Once this is done, the United Kingdom's Ministry of Justice will be requested to extend the Protocol to the Island and simultaneously denounce the Convention. We are advised by the UK that this is necessary to avoid a potential conflict between the old and new systems for setting the limits and determining which limits should apply.

Details of Articles

Articles 2 and 3

Articles 117 and 119 are amended so as to ensure Regulations can be made as soon as the UK has ratified the relevant instrument for itself. This avoids the problem that Jersey might face if it asked the UK to ratify on behalf of the Island before it had the right implementing legislation in place first.

Article 4

Article 4(1)(a) to (d) amend Schedule 6 of the primary Law so that the new financial limits established by the Protocol replace the old 1976 limits. These are set as a number of Units of Accounts depending on the tonnage of the ship concerned. At the time of writing one Unit of Account (being defined as the same as a Special Drawing Right), equates to one US dollar.

Article 4(1)(e) amends Article 15 of the Convention. It introduces some flexibility for participating State regarding inland waterways and vessels of less than 300 tons.

Article 4(1)(f) inserts the new chapter on reservations that was agreed in the Protocol.

Finally, Article 4(2) makes some small but important law drafting corrections that were identified both in the Jersey and UK legislation.

Resource implications

There are no financial, manpower, property, ICT or other implications for the States of Jersey.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 30th May 2008 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Shipping (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law would allow the 1996 Protocol to the International Convention on the Limitation of Liability of Maritime Claims, 1976, to be applied to Jersey.

The 1996 Protocol increases the limit on the total amount a ship owner or salvor can be required to pay for damages caused by the ship.



Jersey

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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 117 amended</u>
<u>3</u>	<u>Article 119 amended</u>
<u>4</u>	<u>Schedule 6 amended</u>
<u>5</u>	<u>Citation</u>
<u>6</u>	<u>Commencement</u>



Jersey

DRAFT SHIPPING (AMENDMENT No. 2)(JERSEY) LAW 200

A LAW to amend further the Shipping (Jersey) Law 2002.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law, “the principal Law” means the Shipping (Jersey) Law 2002^[1].

2 Article 117 amended

In Article 117 of the principal Law, in paragraphs (1)(a) and (b), “on behalf of Jersey” is deleted.

3 Article 119 amended

In Article 119 of the principal Law, in paragraphs (4)(a) and (b), “on behalf of Jersey” is deleted.

4 Schedule 6 amended

(1) In Schedule 6 of the principal Law, in Part 1–

(a) in the heading, for “CONVENTION” there is substituted “EXTRACT FROM CONVENTION AS MODIFIED BY THE PROTOCOL OF 1996”;

(b) in Article 3, for paragraph (a) there is substituted the following paragraph–

“(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;”;

(c) in Article 6, for paragraph 1 there is substituted the following paragraph–

“1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in

addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account;;

(d) in Article 7, for paragraph 1 there is substituted the following paragraph-

“1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.”;

(e) in Article 15-

(i) the existing text is numbered 1, and

(ii) at the end there is added the following paragraphs -

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

(a) according to the law of that State, ships intended for navigation on inland waterways;

(b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3bis. Notwithstanding the limit of liability prescribed in paragraph 1 of article 7, a State Part may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.”;

(f) before Part 2, there is inserted the following Chapter-

“CHAPTER V

FINAL CLAUSES

ARTICLE 18

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

(a) to exclude the application of article 2, paragraphs 1(d) and (e);

(b) to exclude claims for damage within the meaning of the International Convention

on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.”.

- (2) In Schedule 6 of the principal Law, in Part 2–
 - (a) in paragraph 2, after“paragraph 6” there is inserted “below”;
 - (b) in paragraph 3–
 - (i) sub-paragraph (1) is deleted,
 - (ii) for “(2) Paragraph” there is substituted “Paragraph”.

5 Citation

This Law may be cited as the Shipping (Amendment No. 2) (Jersey) Law 200.

6 Commencement

- (1) Except as provided by paragraph (2), this Law shall come into force 7 days after it is registered.
- (2) Article 4 shall come into force on the day the 1996 Protocol to the International Convention on Limitation of Liability for Maritime Claims, 1976 enters into force in respect of Jersey.

[1] These rates vary, as they are based on Special Drawing Rights (SDR) where 1SDR = 1\$. As the dollar value has fallen, so has the actual liability in sterling.

[1]

chapter 19.885