

# **STATES OF JERSEY**



## **PROPOSED RATIFICATION OF THE INTERNATIONAL CONVENTION FOR SAFETY OF LIFE AT SEA, 1974 AND IMPLEMENTATION OF THE ASSOCIATED INTERNATIONAL SHIP AND PORT SECURITY CODE**

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**Lodged au Greffe on 21st October 2003  
by the Harbours and Airport Committee**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) to request the Bailiff to inform the Secretary of State and Lord Chancellor that it is the wish of the Insular Authorities that the International Convention for Safety of Life at Sea 1974, and its subsequent protocols and amendments, be ratified on behalf of the Island;
- (b) to charge the Harbours and Airport Committee –
  - (i) to bring forward for approval by the States the necessary legislation to give legal effect to the said Convention and to enable the Shipping (Jersey) Law 2002 to come into force;
  - (ii) to carry out all necessary security work at the ports of Jersey so that the International Ship and Port Security Code may be implemented on 1st July 2004;
  - (iii) to agree arrangements with the appropriate United Kingdom authorities to ensure that the proper international standards are satisfied for the Island to meet its obligations under the Convention and in particular the International Ship and Port Security Code.

### **HARBOURS AND AIRPORT COMMITTEE**

- Notes:
- 1. The Finance and Economics Committee's comments are to follow.
  - 2. The Policy and Resources Committee's comments are to follow.

# REPORT

## 1. Purpose

The purpose of this Report is to inform the States as to the need, following recent international developments in the areas of ship and port security, to combat the risk of terrorist attacks and to introduce new safety and security measures for Jersey ships, ships in Jersey waters and the parts of the ports of the Island which handle international shipping. The Report also explains that to gain international recognition and acceptance of these measures and therefore safeguard the future use of the ports of the Island by international shipping, it is necessary that the U.K.'s ratification of the International Convention for Safety of Life at Sea (SOLAS) is extended to the Island.

## 2. Background

### 2.1 The Convention – history and overview

The current SOLAS Convention has its roots in the loss of the Titanic in 1912. It is the oldest Convention of its kind and the most important with regard to maritime safety.

The International Maritime Organisation (“IMO”), a United Nations body, set up in the 1950s was responsible for the creation of the SOLAS Convention, in 1960. Until recently, the Convention was concerned with shipping and crew safety in relation to international maritime traffic. Last year, IMO decided to adopt a new Chapter of the Convention, in response to the increased threat to international ports and shipping from acts of terrorism. For the first time, therefore, a part of SOLAS will apply onshore as well as onboard and at sea. The new Chapter comes into effect on 1st July 2004.

The U.K. is a member of IMO and has long been a party to SOLAS. The U.K.'s ratification of the Convention has never been extended to Jersey, because the Island only registers vessels, mostly pleasure craft, of a size smaller than that to which SOLAS has applied. Now, however, the new Chapter of SOLAS and the International Ship and Port Security (“ISPS”) Code extend not only to all SOLAS ships but also to the ports that handle them on international voyages.

Thus, it would be applicable to passenger ferries and freight services between Jersey and France or between Jersey and some other foreign port. The implications of this for the Island are that if the Island cannot meet, and have not recognised, the port security standards required under the new SOLAS regime, ships may avoid coming here on international voyages, for fear of compromising their security status and risking being subjected to extra controls, or possibly even refusal to enter, at their next port of call.

In addition to this principal reason for requesting extension of ratification, however, ratification would also bring with it the ability to exercise other useful powers in relation to shipping in the Island's ports and waters. The Convention is concerned with protecting the safety of ships and the lives of those on board regardless of the flag flown by the vessel. A particular example is that of the concept of port state control which allows port officials in any country to board a ship of another Convention country for the purpose of inspecting safety certificates. This is undoubtedly something the Committee believes should be authorised in Jersey.

Another example is that countries party to the Convention can apply key safety legislation to vessels in their waters even where such vessels are only exercising the right of innocent passage and not due to enter port. This is a power that should be available to Jersey, to reduce the risk of the loss of ships or lives in Jersey waters.

The full requirements that must be met by ships and contracting governments are laid down in the Convention Annex. A Report considering the consequences and responsibilities of ratification has been presented to and endorsed by the Harbours and Airport and Policy and Resources Committees.

Key extracts of the Convention Annex are reproduced as Appendix of this Report.

## 2.2 The International Ship and Port Security Code

The ISPS Code makes detailed requirements complementing the new Chapter XI2 of SOLAS. New obligations will be imposed which go beyond safety responsibilities towards ships flying the national flag of a Contracting Government. These obligations affect all passenger ships and cargo ships of 500 gross tons or more as well as port facilities. They will, as mentioned, come into effect on 1st July 2004.

For Jersey to continue to be able to receive commercial shipping traffic, it will need to be able to show to the international community that it is capable of operating a high level of security in the port when required. For the port this in essence means the ability to restrict access to port facilities, provide cargo search facilities and check that ships have the required security certification. It also brings in requirements to identify a port facility security officer and ensure that there are approved security plans in place.

However, it will not be necessary to maintain the highest security levels at all times and the requirements will reflect the level of risk to the Island. The Committee operates as far as possible an open port policy. Therefore, some areas, such as the Albert and Victoria piers will only be restricted zones when shipping movements dictate, for a part of the area and for a temporary period only. Elizabeth Harbour and the New North Quay will remain largely unaltered.

Such increased vigilance at ports is of paramount importance to security and this has been amply illustrated by the situation in Dover: Twice during this past summer large quantities of guns and ammunition have been found in vehicles attempting to enter the country.

## 3. **Options**

The first option is for the Island to take no steps to implement the new Chapter and the ISPS Code; since it is not a party to SOLAS, it is not currently bound by it. There are obvious drawbacks in this, as explained above; ships on international voyages may not wish to visit the Island, in which case the only shipping traffic would be between the Island and Guernsey or the U.K.

There is no realistic alternative but for the Island to implement the new security arrangements and find a way to achieve international recognition of them. With the support of the Policy and Resources and Harbours and Airport Committees, the Law Officers' Department has already pursued alternative routes to obtain the international recognition of the new security regime that is now required. The only assured way is by the Island becoming a part of the SOLAS regime. A possible alternative means, by using European Union legislation giving effect to the new SOLAS provisions, has recently been ruled out.

Consideration has also been given to ratifying the Convention so that only the security aspects are implemented. However, advice from the Foreign and Commonwealth legal advisers is to the effect that it is not permissible to seek ratification of only a part of the Convention and neither is it permissible to ratify the whole Convention, then denounce all parts except the new Chapter XI2. Even if this were not the case, the Committee is of the view that it is not possible to apply security measures in isolation from the rest of the Convention because the Convention is an integral whole not capable or designed to be implemented by selecting parts that suit. The safety aspects are especially important for the protection of the Island's coastline and for the safety of passengers in ships in Jersey waters.

The Committee view is therefore that full ratification of the Convention is required. However, there are some resource implications in ratification that are explained further below.

## 4. **Consultation process and action to date**

Locally, the Committees and Departments principally involved are Policy and Resources, Harbours, Home Affairs (covering Customs and Immigration and Police) and the Law Officers. Officers of all these have worked closely together to ensure both clarification of what was required and effective implementation of solutions.

The Harbours and Airport Committee first recommended the ratification of the Convention to the Policy and Resources Committee and the latter has endorsed this view. Consultation has taken place informally with Guernsey, where similar steps are shortly to be taken by the States to seek ratification of SOLAS, the Isle of Man and the United Kingdom.

Close consultation has taken place with the United Kingdom's Department for Constitutional Affairs and the Island has been informed that ratification of the Convention as a whole is seen as a way forward.

As part of this consultation it has been emphasised that ratification would not change the status of the Island regarding its Register of British Ships. The current restrictions on tonnage and type would remain. A draft memorandum of understanding, which would clarify the responsibilities of the relevant authorities in implementing the Security Code, is being considered and if agreed this would be signed by the Committee and the United Kingdom Department for Transport.

Regarding practical matters, the United Kingdom takes a close interest in that the security arrangements have been agreed at an international level and clearly affect international shipping operating to and from the Island. For these reasons the Department for Transport's Transport Security Directorate (known as TRANSEC) have been involved. Information about Jersey's port facilities and shipping traffic has been supplied to TRANSEC and its officials have visited the Island to assess and advise on how we might introduce the new measures. They have been very positive and helpful.

Commercial port users have been consulted and involved. A new system for the issue of security passes has already been introduced. A number of security assessments have been carried out for various parts of the port. These are then passed to TRANSEC for comment.

The Committee approved at its July meeting extensions to those areas already identified as restricted zones. This is so that unauthorised people can be prevented from entering or requested to leave the designated areas. It must be emphasised however that any new restrictions on access to areas of the ports will arise as a result of the necessity to implement these new security measures and the Committee will not use this power unreasonably and it is aware of the traditional freedom of access many islanders value.

## **5. Law Drafting**

The Shipping (Jersey) Law 2002 will be the key legislative vehicle for implementing the Convention in the Island. It was drafted in anticipation of implementing a modern ship Registration and Safety regime and it gives the necessary powers to enable Regulations to be made to give effect to the ISPS Code. Further, if there were any gaps in the enabling powers in the Law, there are, in addition, powers to make rules and directions under the Maritime Security (Jersey) Order 1996.

Drafts for Regulations under the 2002 Law have already been prepared in a number of areas so that the Law can be brought fully into force. Manning Regulations await Law Officers' guidance on the levels of penalties. Law drafting instructions are with the Law Draftsman for the Registrations and Safety Regulations. Together with those already drafted, these are regarded as the minimum essential for the Law to be of practical use.

## **6. Timing**

SOLAS Convention countries, including the United Kingdom, have made it clear that they intend to meet the implementation deadline of 1st July 2004 for Chapter XI2 and the ISPS Code. This date has been set by the International Maritime Organisation and agreed by Convention Countries.

Jersey should ensure that it can meet the same deadline. Fortunately, considerable work has already been carried out both practically and on the legal front. Providing the remaining work is now properly prioritised and subject to the States adopting the Regulations, the Committee believes the deadline is realistic.

The Committee would like to see immediate action on the ratification process and completion of the legal drafting. Once these matters are complete the Committee will lodge an Appointed Day Act to bring the Shipping Law into force early in 2004.

This timetable will give a clear indication of the Island's commitment to the international community, in the interest of maritime safety and international security.

## **7. Financial Implications**

### **7.1 Background**

The safety aspects of implementing the SOLAS Convention have few financial consequences and these can be met from within *Jersey Harbours* resources.

The security aspects of implementing the SOLAS Convention are quite far-reaching in their resource implications. The assessments that have been carried out by *Jersey Harbours* and discussed with TRANSEC show a requirement for additional fencing and gates, x-ray search equipment, an effective security pass system and staff training.

It is anticipated that for much of the time the security level will be at the lowest of the three levels, known as Security level 1. However, to fulfil its commitment the Island must have the ability to go quickly to a higher level where additional protective measures are maintained. These measures will mean short-term additional costs, related particularly to the employment of additional security staff.

To maintain level 1 and have the physical structures in place to raise that level, cost estimates amount to an initial cost of £228,632 and an on-going annual cost of £373,945. These sums are in addition to previously planned and budgeted costs amounting to £140,246 in 2003.

The Committee has already agreed with the Finance and Economics Committee that there will be no return made to the States at the end of 2003 from any surplus generated by *Jersey Harbours*. This is so that the funds can be used in full to help meet major structural repairs and for *Jersey Harbours* to continue to meet its non-trading "Community, Custodial and Heritage" commitments. The Committee hopes a similar arrangement can be agreed for future years as well.

As a result, there are no funds readily available to meet these new security requirements.

### **7.2 Financial proposal**

The magnitude of the additional charge is expected to be 26 pence per movement. This represents 1% of a standard adult return fare to St. Malo or 0.6% of a standard adult return fare to the United Kingdom. For an adult and a 6 metre vehicle, on a standard one-way trip to the U.K., it represents just 0.3% of the fare. (2003 published prices).

For 2004 this charge will be inadequate to meet the set-up costs and recurring costs in total but the Committee is content to accept a 5-year recovery period for the set-up costs. At the end of this period the charge can be reviewed to see if it can be reduced to meet only the on-going maintenance costs of security.

## **8. Human Resource implications**

The major part of the initial set-up effort for the security regime is being met from within States manpower resources. However, there are requirements for new permanent security officers to maintain the basic level 1 security regime. The Committee intends to achieve this through the extension of existing contracts with private security firms and some restructuring of existing staff arrangements. This restructuring may include some adjustment between seasonal and permanent posts.

If the Island should have to raise the security profile to level 2, additional staff will need to be drafted in on a short-term basis. Some of these staff will simply represent a temporary increase in the number of those employed by the security firms. There will also be a need for an increase in the number of temporary *Jersey Harbours* staff but this would be within the agreed limits of seasonal staff allowed under the Regulation of Undertakings licence held by *Jersey Harbours*.

It is believed that the anticipated requirement, even allowing for a small permanent increase in staff, may be accommodated within a restructured licence agreement with the Economic Development Committee, without an increase to the total number of permanent and seasonal staff.

## **9. Conclusions**

This is an important decision. Commitment to the Convention and its associated Code is essential, if shipping services between the Island and the Continent are to be maintained. Additionally, the maritime safety and security arrangements proposed here are designed to enhance Islanders' safety and security as well as allowing the Island to play its part in implementing international measures against terrorism.

These measures are a vital part of an international safety and security regime, lead by the United Nations International Maritime Organisation. Jersey needs to be seen to fulfil its international commitments professionally and to the highest standard possible that are commensurate with its size.

The Committee strongly recommends adoption of the Proposition.

## **Appendix**

Key extracts from the Convention and Proposed Code.

Details of the Convention –

[http://www.imo.org/Conventions/mainframe.asp?topic\\_id=250](http://www.imo.org/Conventions/mainframe.asp?topic_id=250)

**KEY EXTRACTS OF THE CONVENTION ANNEX, AS THEY WOULD AFFECT JERSEY**

**The International Convention for Safety of Life at Sea (SOLAS), 1974 as amended by its Protocol of 1988 and subsequent amendments**

**Introduction**

The purpose of the Convention is to promote safety of life at sea. The detail of how the Convention and its amendments affect a Contracting Government, the ports and ships, is contained in its annex. The application of certain key Regulations and chapters of the annex, as they would affect Jersey, is given below.

**Jersey Ships**

Registration is largely restricted to fishing vessels and pleasure craft. The registration of vessels over 150 gross tons is not generally permitted.

**The Convention**

Jersey would give effect to the Convention through the Shipping (Jersey) Law 2002 and deposit various information, such as the text of the relevant laws, with the International Maritime Organisation (IMO).

**Annex to the Convention**

Chapter 1: General Provisions

Application (Regulation 1) and Exceptions (Regulation 3)

Unless expressly provided otherwise, the regulations apply only to ships engaged on international voyages and do not apply to cargo ships of less than 500 tons, pleasure craft or fishing vessels.

Inspection and Survey (Regulation 6)

Inspection and survey for the purpose of enforcement of the regulations has to be carried out by officers of the flag state or those nominated by it. Given that the majority of the regulations do **not** apply to Jersey ships, this function will only occasionally be required.

Issue of Certificates (Regulation 13)

Jersey could be asked by another Administration to survey one of its ships and to issue the relevant certificates. In practice this is likely to be a rare event. *Jersey Harbours* would provide the service with due notice, either by using its own appropriately trained officers or by bringing a qualified person over from the U.K.

Control (Regulation 19)

“Every ship ..... is subject to control by officers duly authorised by such Government in so far as this control is directed towards verifying the certificates issued under regulation 12 or regulation 13 are valid.”

Ships may be prevented from sailing if the certificates are not valid or have expired. The authorised officers would be the Harbour Master, his assistants and other persons appointed by the Harbours and Airport Committee for the purpose under Article 156 of the Shipping (Jersey) Law 2002.

This form of control provides an important power for any port authority to be able to exercise if it is serious about the safety of life at sea.

Notes on these General Provisions

- (a) They do not generally affect local coastal voyages, voyages between Jersey and other Channel Islands nor

between Jersey and the U.K.

- (b) Because of the restricted nature of the Jersey Register of British Ships, ships registered in the Island are not generally affected.
- (c) Ships on the French or Rotterdam routes and others from ports outside the U.K. are affected.
- (d) The ships affected that most frequently visit Jersey include: *Solidor 4* and *Solidor 5*, *Commodore Goodwill*, *Condor 10*, *Isis* and *Burhou*. All these ships fly flags of States which are already party to the Convention.
- (e) The certificates referred to above include: Passenger Ship Safety, Cargo Ship Safety, Radio, Equipment and Construction Certificates.
- (f) Under the new requirements of Chapter XI-2 in order to meet the ISPS Code, a Ship Security Certificate will also be added to this list.

#### Chapter II-1, Chapter II-2 and Chapter III

Because of the restricted categories of vessels on the Jersey Register, these chapters introduce **no** additional obligations for the Island.

#### Chapter IV: Radiocommunications

There is need to provide a radiocommunications service. Jersey already does this and would be expected to provide the IMO with the pertinent information.

#### Chapter V: Safety of Navigation

The Regulations apply good, modern and appropriate safety standards at sea.

#### Application (Regulation 1)

Jersey can determine to what extent the provisions of regulations 15 to 28 should apply to ships below 150 gross tons on any voyage; ships below 500 gross tons not engaged on international voyages and fishing vessels. The extent of the obligations imposed on owners of ships registered in the Island could be very limited and is for the Island to decide.

#### Promulgation of Dangers to Navigation (Regulation 4)

Information concerning dangers must be brought to the attention of those concerned and to other interested Governments. Jersey already does this and can inform the U.K. Hydrographic Office, which has an approved system of promulgation through the World-Wide Navigation Warning Service (WWNWS).

#### Meteorological Services and Warnings (Regulation 5)

Contracting Governments have various obligations. Jersey already warns ships of gales and transmits weather forecasts.

#### Search and Rescue Services and Signals (Regulations 7 and 8)

The Contracting Governments have obligations concerning an adequate service and the use of life-saving signals. Jersey already meets these obligations and would need to provide the IMO with the relevant information outlining the provision.

#### Hydrographic Services (Regulation 9)

The promulgation of Notices to Mariners is already carried out by the Island. Other obligations include hydrographic surveying and the preparation and issue of charts and other nautical publications. The Island does not fulfil this function. However, as a Contracting Government the U.K. already does this on our behalf.

#### Ship Reporting Systems (Regulation 11)

Jersey's existing system conforms to IMO guidelines and criteria.

#### Vessel Traffic Services (VTS) (Regulation 12)

Jersey already has a form of VTS in place, which conforms to IMO guidelines.

#### Establishment and Operation of Aids to Navigation (Regulation 13)

Contracting Governments are required to provide navigation aids, to take account of international guidelines and make the relevant information available. Jersey does this.

#### Ships' Manning (Regulation 14)

There is a general requirement that all ships shall be sufficiently and efficiently manned. Provisions within the Shipping (Jersey) Law 2002 allow for appropriate Regulations, Committee Orders and offences to cover this. New Regulations are due to come into force for Training, Certification and Manning for commercial shipping operating in Jersey waters. These Regulations meet the SOLAS Convention requirements.

#### Regulations 15 to 28

The extent of the application of these Regulations is for Jersey to decide. A number of the regulations should apply to all ships in that they are not onerous, they are common sense and represent good navigational and seamanship practices. It is already planned that these should come in under the Shipping (Jersey) Law 2002.

#### Life-Saving signals (Regulation 29)

Encouragement of familiarity with the appropriate table of life-saving signals, is sought. This can be achieved in Jersey by Notices to Mariners.

#### Danger Messages (Regulations 31 and 32)

There is a requirement to take all steps necessary to promulgate intelligence of dangers effectively. *Jersey Harbours* will ensure that its practices are in conformity with this.

#### Distress Messages: Obligations and Procedures (Regulation 33)

This imposes obligations on the Master of a ship. Article 56 of the Shipping (Jersey) Law 2002 covers this situation but may need amendment to be entirely compliant.

#### Safe Navigation and avoidance of dangerous situations (Regulation 34)

Promulgation of these requirements may be necessary, as part of the Safety Regulations to be introduced under Article 49, Shipping (Jersey) Law 2002.

#### Misuse of Distress Signals

To give the prohibition the force of Law in Jersey, a specific offence may need to be created under Article 49, Shipping (Jersey) Law 2002.

#### Chapters VI, VII, VIII, IX, X & XI-1

These chapters introduce limited additional obligations for the Island, involving the occasional verification of the correct safety procedures, certificates and codes.

#### Chapter XI-2 Special Measures to Enhance Maritime Security

The chapter would impose security-related obligations on the Island, shipping companies, ship Masters and port facilities, in order to counter the threat posed by terrorists. Such people may attempt to enter or leave Jersey as well as carry potentially dangerous devices with them. The chapter and its associated International Ship and Port Security (ISPS) Code come into effect on 1st July 2004.

#### Application (Regulation 2)

The application is to ships on international voyages. Passenger ships and cargo ships of 500GT and upwards are affected as well as the port facilities serving such ships.

Given that Jersey has no ships in these categories on its Register, the Island's principal responsibility is with regard to the security of the port facilities and the ship/port interface.

#### Obligations of Contracting Governments with respect to security (Regulation 3)

The need to set a security level for ships registered in Jersey will not apply, because the vessels registered here are outside the scope of the chapter.

However, there is an obligation to "set the security levels and ensure the provision of security level information to port facilities ..... and to ships prior to entering a port or whilst in a port."

Discussion locally and with the U.K. as to the setting of the level and how the information is passed, has taken place. Security information is already routinely passed to the Island as required. U.K. authorities will inform the Island of the security level and the Chief of Police will then liaise with the Harbour Master and others, concerning the required action.

#### Ship Security Alert System (Regulation 6)

If the U.K., as a contracting Government, receives notification of a ship security alert from a non-U.K. ship there will be an obligation to "immediately notify the relevant Administration and, if appropriate, the State(s) in the vicinity of which the ship is presently operating." This will mean in practice that the Island will be informed when necessary.

#### Threat to Ships (Regulation 7)

Having set the security levels, as per Regulation 3, Jersey will have to inform ships in Jersey waters and ships intending to enter those waters. Specific advice must be made available. *Jersey Harbours* will do this.

#### Control and compliance Measures (Regulation 9)

Each ship to which these regulations apply will carry an International Ship Security Certificate. Jersey will be expected to verify that the certificate is valid. Where there are grounds, ships may be inspected, delayed, detained, restricted in their movement within the port or expelled. Additional obligations can include inspection at sea within Jersey waters or denial of entry into port. Denial of entry into port, or expulsion from port, can only occur if there is an immediate threat to security or safety.

The Regulation makes it clear that control can be carried out by the same officers as authorised in Regulation I/19, above. This can therefore be carried out by the Harbour Master and his team. Customs and Immigration Officers and the Police will also be asked to assist, dependent on operational requirements, as determined by the security level.

Where non-compliance is suspected, the Harbour Master and his deputies have the explicit authority under the Law to enforce detention or delay of a ship, or to restrict its movements.

#### Requirements for Port Facilities (Regulation 10)

Jersey will have to ensure that Security assessments are carried out, reviewed and approved. Likewise Security Plans must be developed, reviewed and approved.

The Contracting Government will "designate and communicate the measures required ..... for the various security levels." The U.K. government, through its Transport Security Directorate (TRANSEC) is working with Jersey Harbours to achieve this.

#### Communication of Information (Regulation 13)

Contracting Governments have until 1st July 2004 to pass on all the relevant information to the IMO showing that decisions have been made, responsible authorities and security organisations named and that the port facility plans are approved. Plans are to be updated every 5 years.

Chapter XII Additional Safety Measures for Bulk Carriers

The chapter will not affect Jersey.

1st October 2003