

STATES OF JERSEY



DRAFT SHIPPING (AMENDMENT No. 3) (JERSEY) LAW 201-

**Lodged au Greffe on 19th August 2011
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT SHIPPING (AMENDMENT No. 3) (JERSEY) LAW 201-

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. 3) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

REPORT

Purpose of the amendments

There are 3 unconnected amendments proposed for the Shipping (Jersey) Law 2002.

Carrying of Colours – Article 2, amending Article 6 of the principal Law

The provisions in Article 6 of the Shipping (Jersey) Law 2002 refer to ships flying a flag or ensign that they are not authorised to fly. The term, ‘colours’ is a generic one and it refers to national ensigns as well as flags containing a special badge or crest.

Flying the wrong flag can be a minor and unimportant mistake. It can however be a deliberate attempt to disguise the nationality of a ship. In June 2010 the States Assembly authorised Jersey-registered ships to fly the special Jersey ensign and it would now be an abuse of privilege if for example an owner flies the special Jersey ensign but has not registered his yacht in the Island.

At the moment, the authority to board a ship and if necessary confiscate colours rests with commissioned naval or military officers, customs officers or Consular officers. For local enforcement, the effect is to place a burden on customs officers alone and in practice is rarely exercised.

The draft Law authorises the Registrar or other nominated officer to carry out this function. For overseas enforcement this could mean a yacht surveyor being appointed to deal with the matter much more appropriately than having to call on the assistance of a British Consular office.

Refusal to register or to renew registration of a Jersey Ship – Article 3, amending Article 12 of the principal Law

These are important powers for maintaining safety and environmental standards. Increasingly the power to refuse registration is also seen as important for ‘know your customer’ issues, ship security and the international reputation of a Flag State. However, the current legal provision is too narrowly drafted to be of use except in matters of ship safety.

There have been examples of attempted illegitimate use of British Ships registered in other Red Ensign jurisdictions. Some time ago, an Iranian Shipping Company attempted to register ships that were subject to UN Sanctions. It would cause considerable embarrassment and damage the good reputation of the Island if a Jersey-registered vessel were involved in crimes such as –

- Terrorism – whether as a means to traffic terrorists, their weapons and equipment or if the vessel itself were used as a weapon;
- The carriage of illegal immigrants;
- Money laundering where the sale of the vessel is used as a vehicle for transferring money of dubious origin;
- Smuggling – contraband including weapons, precious metals and stones, drugs, duty-attracting goods such as alcohol and tobacco;
- Piracy/hijacking/hostage taking;

- Theft, fraud and deception – including tax evasion.
- Inappropriate/unsafe use – including sanctions busting, carrying dangerous but unrecorded goods;
- Espionage;
- Use by pressure groups;
- Environmental issues such as illegal dumping at sea and pollution;
- Port State Control – erroneous recording of detentions and deficiencies.

It is thus proposed that the Minister will either refuse initial registration of a ship suspected of being misused or failing that he should be able to remove a vessel from the Register were any misuse to come to light. Such action would be additional to any criminal sanction being taken against the owner or Master where appropriate.

Bermuda, the British Virgin Islands, Cayman Islands and the Isle of Man all have more robust powers than Jersey does within their equivalent legislation and the United Kingdom is now seeking to introduce its own amendments.

International Agreements – Article 4, amending Article 90 of the principal Law

Work is currently underway concerning legislation for Jersey to benefit from international agreements covering improved protection against oil pollution caused by ships in Jersey waters.

In discussion with the Law Draftsman's and the Attorney General's offices it has become apparent that the Regulation-making powers could be too restrictive and this amendment ensures that the States will be able to apply an international agreement in more effectively than at present.

European Convention on Human Rights

As part of reviewing the draft amendments proposed here, the Attorney General's office undertook a Human Rights audit. Two issues were especially pertinent:

1. If a person who was otherwise entitled to own a Jersey ship had registration refused or terminated the question arises whether this would deny him a civil right to carry on a commercial activity. In simple terms, the answer is that a person who cannot register a ship in Jersey is not barred from registering elsewhere except in certain narrow circumstances. This is because registers are nowadays largely international.
2. If, however, the person was a local Jersey commercial ship owner who could not easily register his ship in another jurisdiction whilst still operating in Jersey waters, the issue arises whether he could appeal against the decision to refuse or terminate his registration. This is an unlikely event and the decision to refuse is likely to be a reasonable one given the examples listed above. Nevertheless, it has been confirmed that the person does have a right of appeal through judicial review and the Court would have full power of redress.

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 17th

August 2011 the Minister for Economic Development made the following statement before Second Reading of this Project in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Shipping (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

Financial and manpower resources implications

There are no additional staff, IT, financial, property or other resources requirements for the States arising from the adoption of this Draft Law.

Conclusions

These amendments are important in making sure that Jersey is genuinely committed to high standards of compliance and transparency in all maritime matters. The Island must protect its reputation for being able to have effective legal control over its fleet and is not unreasonably left open to criticism.

The States are recommended to endorse the changes.

Explanatory Note

This draft Law would amend the Shipping (Jersey) Law 2002 (“the principal Law”).

It is arranged in the following way –

Article 1 is an interpretation clause.

Article 2 amends Article 6 of the principal Law, under which it is a criminal offence to hoist a flag without authority on board a Jersey ship.

Article 6 gives commissioned naval and military officers, customs officers and British consular officers the power to remove offending flags.

The amendment gives the same power to the Registrar of Shipping and to a person appointed for that purpose by the Minister for Economic Development.

Article 3 amends Article 12 of the principal Law.

Article 12(3) authorizes the Registrar of Shipping (if Regulations made under the Law so provide) either to refuse to register or to terminate the registration of a Jersey ship.

The Registrar may do so if he or she considers that, having regard to any relevant requirements of the principal Law, it is inappropriate for the ship to be registered. The relevant requirements are described in Article 12(7).

The effect of the amendment is to give the Minister a power to direct the Registrar to refuse to register or to terminate the registration of a Jersey ship if, having regard to the interests of Jersey or of international shipping, the Minister considers that it would be inappropriate for the ship to be registered or remain registered.

Article 4 amends Article 90(6) of the principal Law.

That paragraph already says that Regulations made under Article 90 may, for the purpose of implementing an international agreement, apply any other enactment or instrument relating (*inter alia*) to pollution of the sea or other waters.

The effect of the amendment is to say that the Regulations may do so as that other enactment or instrument is from time to time in force in the place where it is enacted or made.

Article 5 provides for the citation of the draft Law, and that it will come into force 7 days after it is registered in the Royal Court.



Jersey

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Arrangement

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Jersey

DRAFT SHIPPING (AMENDMENT No. 3) (JERSEY) LAW 201-

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, “principal Law” means the Shipping (Jersey) Law 2002¹.

2 Article 6 amended

For Article 6(2) of the principal Law there shall be substituted the following paragraph –

“(2) If colours are hoisted on board a ship in contravention of paragraph (1) –

- (a) a commissioned naval or military officer;
- (b) a customs officer;
- (c) a British consular officer;
- (d) the Registrar; or
- (e) a person appointed by the Minister for the purpose of this Article,

may board the ship, and seize and take away the colours.”.

3 Article 12 amended

After Article 12(3) of the principal Law there shall be inserted the following paragraph –

“(3A) Despite paragraph (1), the Registrar shall refuse to register or terminate the registration of a ship if the Minister, having regard to the interests of Jersey or the interests of international shipping –

- (a) considers that it would be inappropriate for the ship to be, or to remain, registered; and
- (b) directs the Registrar to do so.”.

4 Article 90 amended

In Article 90(6) of the principal Law, after sub-paragraph (a) there shall be inserted the following sub-paragraph –

“(aa) for so applying an enactment or instrument as it is from time to time in force in the place in which it is enacted or made;”.

5 Citation and commencement

- (1) This Law may be cited as the Shipping (Amendment No. 3) (Jersey) Law 201-.
- (2) This Law shall come into force 7 days after it is registered.

¹ *chapter 19.885*