
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – SHIPPING LEGISLATION – REVISED DELEGATIONS MARCH 2014

Presented to the States on 28th March 2014
by the Minister for Economic Development

STATES GREFFE

REPORT

On 25th March 2014, the Minister for Economic Development made a Ministerial Decision delegating certain of his functions under Article 28 of the States of Jersey Law 2005 (MD-E-2014-0021, available at www.gov.je).

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

“28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
 - (a) one of his or her Assistant Ministers;
 - (b) an officer.
- (2) A Minister shall not delegate –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited by an enactment.
- (3) The delegation of functions by a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article –

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.
- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

The terms of the delegations, and the legislation under which those delegations were made, were recorded in a Report attached to the Ministerial Decision, as shown below –

Background

Following public elections and the subsequent appointment of a new Ministerial team in December 2011, a set of revised delegated functions for the Economic Development Department was published as R.25/2012.

On 19th November 2013, the States adopted the Shipping (Safety Code – Yachts and Small Ships) (Jersey) Regulations 2013, and on 21st November 2013, the Minister made the Shipping (Survey and Certification) (Jersey) Order 2013. These respectively *repealed and replaced* the Shipping (Safety Codes) (Jersey) Order 2005 and the Shipping (Survey and Certification) (No. 2) (Jersey) Order 2005.

As a result, the delegation of functions authorised in R.25/2012 must be replaced by ones that refer to the correct legislation.

Considerations

In drawing up the new delegation of functions, close consideration was given to the limits and constraints placed on the power to delegate under Article 28 of the States of Jersey Law 2005. These limits ensure that no officer has the power to make a legal enactment, to decide an appeal under such enactments or to do anything prohibited. At all times the Minister retains the power to exercise the delegated functions himself.

The functions delegated concern professional maritime matters, and care has been taken to ensure they are not of a political nature. Consistency and accuracy of statutory references has been maintained, and in effect the functions replicate those that existed under the repealed legislation. The persons delegated remain as previously nominated.

Conclusions

The replacement delegations are shown in the attached table.

DELEGATION OF FUNCTIONS TO REPLACE EXISTING EQUIVALENT DELEGATIONS AS PUBLISHED IN R.25/2012

LEGISLATION:	FUNCTION:	PERSONS DELEGATED TO:
<i>Shipping (Safety Code – Yachts and Small Ships) (Jersey) Regulations 2013 – Regulation 3(4)</i>	<p>To accept equivalent equipment, machinery or provisions.</p> <p>The delegate shall only accept such equivalents on having taken advice from professional surveyors appropriately appointed under the Shipping Law and to advise on the Jersey Code as that code is referred to in Regulation 1(2) of the Regulations.</p>	<ul style="list-style-type: none"> ● Director, Strategic Development, Economic Development Department ● Registrar of Shipping

LEGISLATION:	FUNCTION:	PERSONS DELEGATED TO:
<i>Shipping (Safety Code – Yachts and Small Ships) (Jersey) Regulations 2013 – Regulation 4(2)</i>	<p>To accept certificates of compliance issued otherwise than in accordance with paragraph (1) of Regulation 4.</p> <p>The delegate shall only accept such alternative certificates on having taken advice from professional surveyors appropriately appointed under the Shipping Law, and to advise on the Jersey Code as that code is referred to in Regulation 1(2) of the Regulations.</p>	<ul style="list-style-type: none"> ● Director, Strategic Development, Economic Development Department ● Registrar of Shipping
<i>Shipping (Survey and Certification) (Jersey) Order 2013 – Articles 1(2)(a) and 2(3) and Regulation 2(2) of the U.K. Survey and Certification Regulations</i>	<p>To grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) on such terms (if any) as he may do specify and may, subject to giving reasonable notice, alter or cancel any such exemption.</p>	<ul style="list-style-type: none"> ● Director, Strategic Development, Economic Development Department ● Registrar of Shipping
<i>Shipping (Survey and Certification) (Jersey) Order 2013 – Article 1(2)(a) and Regulation 11 of the U.K. Survey and Certification Regulations</i>	<p>To issue a Passenger Certificate in accordance with the associated U.K. Regulation 11(a).</p>	<ul style="list-style-type: none"> ● Director, Strategic Development, Economic Development Department ● Registrar of Shipping
<i>Shipping (Survey and Certification) (Jersey) Order 2013 – Article 1(2)(a) and Regulation 19 of the U.K. Survey and Certification Regulations</i>	<p>To cancel a certificate issued to a Jersey ship in accordance with the associated U.K. Regulation 19(1) and to require the surrender of such a certificate in accordance with the associated U.K. Regulation 19(2).</p>	<ul style="list-style-type: none"> ● Director, Strategic Development, Economic Development Department ● Registrar of Shipping
<i>Shipping (Survey and Certification) (Jersey) Order 2013 – Article 4(10) and Regulation 8 of the U.K. Domestic Voyage Regulations</i>	<p>To exempt subject to such conditions as may be specified, classes of ships or individual ships from specified provisions of these Regulations, and may alter or cancel any such exemption.</p> <p>This to be based on a report issued on behalf of the Harbour Master.</p>	<ul style="list-style-type: none"> ● Director, Strategic Development, Economic Development Department ● Registrar of Shipping