

STATES OF JERSEY

r

DRAFT HARBOUR CHARGES (JERSEY) LAW 200-

**Lodged au Greffe on 19th July 2005
by the Harbours and Airport Committee**

STATES GREFFE



Jersey

DRAFT HARBOUR CHARGES (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Harbours and Airport Committee has made the following statement –

In the view of the Harbours and Airport Committee the provisions of the Draft Harbour Charges (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator L. Norman**

REPORT

Background

The States approved P.129/2002 in October 2002. This directed the Harbours and Airport Committee to bring forward a draft Harbour Charges Law that would repeal and replace the Harbour and Light Dues (Jersey) Law 1947.

The Committee needed to do this because the current Law was allegedly defective and open to challenge. The Island's obligations under E.C. Law insofar as it applies to the Island prevent the imposition of customs duties (or charges having equivalent effect) on trade between the Island and Member States of the Community. In this respect, the absolute requirement within the current Law to pay a due on all goods, was a core issue. The current Law has other deficiencies. For example, the Light Due can only be applied to vessels entering the harbour but not to those leaving. A Light Due is a component of the charges that is used to cover the cost of buoys, beacons, lighthouses and other navigation aids. This should be applicable to all commercial voyages.

Consultation and development of the new Law

Considerable discussion has taken place, in particular with the commercial port users. They have been emphatic that they did not wish to be forced to abandon the existing charges based on freight tonnage. They have sound commercial reasons for this insistence: it is seen as much fairer to be able to pass charges on to customers on the basis of the quantity of freight discharged or loaded, instead of solely on the basis of the size of the ship or its length of time alongside.

Advice has been taken from the Law Officers and EU specialists. There is confidence that the draft Law is compatible with the Island's Treaty obligations.

The draft Law removes the absolute requirement to make charges based on freight tonnage but does not prohibit it. This gives scope for a charge to remain where it is commercially justifiable and legally correct to do so. It will be in the drafting of the tariff under a future Committee Order that full account will be taken of both the legal advice and commercial sensibilities.

As a result, the tariff structure will provide sufficient flexibility for port users. As now, there will be a clearly published and wholly transparent tariff of charges. It will include Light Dues and mooring charges as applicable to a vessel's size and its length of stay.

Wherever possible and in agreement with port users, the Committee intends to allow a consolidated single charge per unit handled that takes account of the overall cost of fulfilling the Committee's maritime and harbour duties under the law. This approach and the availability of annual payment agreements for those who operate regular services will together offer a satisfactory and open basis for future charges.

Financial implications

There are risks in any change of charging method. However, *Jersey Harbours* has modelled the proposed methodology and compared income streams with the current system. Adjustments may need to be made to the tariff structure in the light of experience but port users should find the charges transparent and justifiable. They should not find the cost of their operation is affected.

There are no financial implications for the Treasury given the fact that *Jersey Harbours* 'pays its way' as a trading arm of the States.

Manpower implications

No change in manpower requirements is anticipated as a result of the new Law.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 22nd June 2005 the Harbours and Airport Committee made the following statement before Second Reading of this *projet* in the States Assembly –

In the view of the Harbours and Airport Committee the provisions of the Draft Harbour Charges (Jersey) Law

200- are compatible with the Convention Rights.

Explanatory Note

Article 1 is the interpretation provision.

Article 2 imposes charges payable by the master of a ship in respect of the arrival at or departure of the ship from a harbour in Jersey and in respect of its mooring or berthing in a harbour in Jersey.

Article 3 states when charges are payable. Generally, charges must be paid upon demand by the Committee or, if no demand is made, before the ship departs. However, the Committee may make different payment arrangements regarding individual ships and require security to be provided for charges.

Article 4 states what happens if charges are not paid when they are due. In that event, the owner and the manager of the ship and the owner's agent are jointly and severally liable for them, the costs of their recovery and an additional late payment charge. The Committee has a discretion to waive or reduce the late payment charge. The monies may be recovered as a civil debt.

Article 5 empowers the Committee to make Orders prescribing the charges (including any late payment charge) and classes and descriptions of ships that are exempt from charges. By virtue of Article 15(4) of the Interpretation (Jersey) Law 1954, the power may be exercised so as to make different provision for different cases and for different purposes, either unconditionally or subject to conditions.

Article 6 requires the master of a ship to provide a person authorized by the Committee with documents, evidence and information and make any declaration. The purpose of obtaining the information is the preparation of statistical returns.

Article 7 makes it an offence for a person knowingly to supply false information or to fail to provide information when required to do so under the Law. The usual provision is made for aiders and abettors and corporate offences.

Article 8 repeals the Harbours and Light Dues (Jersey) Law 1947, which is replaced by this Law.

Article 9 amends the remainder of the Law consequentially upon the move to Ministerial government.

Article 10 is the citation and commencement provision.



Jersey

DRAFT HARBOUR CHARGES (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Requirement to pay charges</u>
<u>3</u>	<u>Time when charges are due</u>
<u>4</u>	<u>Liability in the event of non-payment</u>
<u>5</u>	<u>Orders</u>
<u>6</u>	<u>Supply of information</u>
<u>7</u>	<u>Offences</u>
<u>8</u>	<u>Repeal and transitional provision</u>
<u>9</u>	<u>Amendments consequential upon move to Ministerial government</u>
<u>10</u>	<u>Citation and commencement</u>



Jersey

DRAFT HARBOUR CHARGES (JERSEY) LAW 200-

A LAW to make provision for the making of charges for arrivals at, mooring or berthing in, or departures from, harbours in Jersey and for connected purposes.

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, unless the context otherwise requires –

“charges” means charges payable under Article 2;

“Committee” means the Harbours and Airport Committee;

“goods” includes merchandise, vehicles, baggage and live animals, but excludes ships’ stores and the personal baggage, carried free of charge, of the passengers and crew of a ship;

“harbour” means any harbour, whether natural or artificial, and includes any port, dock, pier, jetty or quay, and any waters in which sea-going ships can obtain shelter, or ship or unship goods or passengers;

“Jersey” includes the territorial waters adjacent to Jersey;

“passengers” includes all persons carried in a ship, whether gratuitously or for reward, but excludes the master and crew, and members of the armed forces on active service;

“prescribed” means prescribed by Order of the Committee.

“ship” includes every description of vessel used in navigation.

2 Requirement to pay charges

The master of a ship shall pay, when due, the prescribed charges in respect of –

- (a) the arrival of the ship at a harbour in Jersey;
- (b) the mooring or berthing of the ship in a harbour in Jersey; and
- (c) the departure of the ship from a harbour in Jersey.

3 Time when charges are due

- (1) Subject to paragraph (2), all charges in respect of the ship are due –
 - (a) upon demand being made on behalf of the Committee; or
 - (b) where no demand is made, before the ship departs from the harbour.
- (2) The Committee may, in any case –
 - (a) make such arrangement or agreement as it thinks fit with the owner of the ship, the owner's agent or the manager of the ship for the payment of charges in respect of the ship; and
 - (b) require that good and sufficient security is provided for the payment of charges in respect of the ship.

4 Liability in the event of non-payment

- (1) If the master of a ship fails to pay charges at the time when they are due under Article 3, the owner of the ship, the owner's agent and the manager of the ship shall be jointly and severally liable to pay –
 - (a) those charges;
 - (b) all costs incurred in their recovery; and
 - (c) subject to paragraph (2), the prescribed late payment charge.
- (2) The Committee may waive or reduce any person's liability to pay a late payment charge.
- (3) The charges, costs and late payment charge described in paragraph (1) are recoverable as a civil debt.

5 Orders

- (1) The Committee shall by Order prescribe charges for the purposes of Article 2.
- (2) The Committee may by Order –
 - (a) prescribe a late payment charge for the purposes of Article 4(1)(c);
 - (b) exempt specified classes or descriptions of ships from all or any charges.

6 Supply of information

- (1) An authorized person may require the master of a ship which arrives at a harbour in Jersey to furnish such documents, evidence and information and make such declarations as may be needed for the purpose of compiling statistical returns.
- (2) An authorized person may require the master of a ship which arrives at a harbour in Jersey to produce the certificate of registry of the ship and all manifests, freight notes, way bills, bills of lading, passenger lists and any or all other documents relating to the carriage of passengers or goods in the ship, for the purpose of verifying any information furnished or declaration made under paragraph (1).
- (3) The Committee may authorize persons for the purposes of this Article.

7 Offences

- (1) A person who, for the purposes of the Law, knowingly makes a false declaration, or furnishes a document, evidence or information which is false, or makes a statement which is false in a material particular, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (2) A person who fails, without reasonable excuse, to make a declaration or produce any document, evidence or information, when required to do so under this Law, shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine of level 4 on the standard scale.
- (3) A person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty

provided for that offence.

- (4) Where an offence committed by a limited liability partnership or body corporate under this Law is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for the offence.
- (5) Where the affairs of a body corporate are managed by its members, paragraph (4) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

8 Repeal and transitional provision

- (1) The Harbour and Light Dues (Jersey) Law 1947^[1] shall be repealed.
- (2) Any arrangement or agreement made pursuant to the proviso to Article 8(1) of the Harbour and Light Dues (Jersey) Law 1947 and in force immediately before the commencement of this Law shall continue in force as if made under Article 3(2) of this Law.

9 Amendments consequential upon move to Ministerial government

- (1) In Article 1 –
 - (a) the definition “Committee” shall be deleted;
 - (b) after the definition “Jersey” there shall be inserted the following definition –

“ ‘Minister’ means the Minister for Economic Development;”.
- (2) In Article 3(2) for the words “as it thinks fit” there shall be substituted the words “as he or she thinks fit”.
- (3) In the following provisions, for the words “the Committee” there shall be substituted the words “the Minister” –
 - (a) Article 1, in the definition “prescribed”;
 - (b) Article 3(1)(a) and (2);
 - (c) Article 4(2);
 - (d) Article 5(1) and (2);
 - (e) Article 6(3).

10 Citation and commencement

This Law may be cited as the Harbour Charges (Jersey) Law 200- and shall come into force on such day as the States by Act appoint.

[\[1\]](#) *Chapter 19.080.*