

STATES OF JERSEY

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DRAFT HARBOURS (AMENDMENT No. 41) (JERSEY) REGULATIONS 200

**Lodged au Greffe on 11th March 2008
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT HARBOURS (AMENDMENT No. 41)(JERSEY) REGULATIONS 200

REPORT

Contents

Introduction

Background

Timescale

Consultation

Individual Amendments

Policy notices – Permits and Agreements

Appeals and HR Compliance

Penalties and Enforcement Mechanisms

Resource Implications

Conclusions

Appendix 1 – Draft direction and designation

Appendix 2 – Draft notice regarding permits

Appendix 3 – Draft notice regarding agreements

Appendix 4 – Draft notice of charges regarding goods left on harbours

Appendix 5 – Draft Channel Islands passenger car ferry sea transport policy statement

Introduction

The States approved amendments to the Harbours (Administration) Law shortly before Christmas.^[1]

In the light of changes made to that Law, the Assembly is now asked to consider and approve amendments to the existing Harbours Regulations, first introduced in 1962. The intention is to improve the effectiveness and efficiency of their application in the specific areas detailed below.

Background

There are two broad issues behind these reforms:

1. A review of the Regulations in 2004-5 was carried out both in response to the Red Tape Reform initiative and as a result of practical difficulties in enforcing certain aspects. This review led to a number of improvements being suggested aimed at more effective enforcement and a clearer separation of political powers of the Minister and the professional and enforcement duties of the Harbour Master.
2. Members may recall the difficulties that arose concerning the demise of Emeraude Ferries and Condor's desire to enter the car-carrying market on the St. Malo route. It was made clear to the Harbours and Airpor Committee of the day that the ramp permit Regulations were constrained by a number of unhelpful factors. Subsequently these were addressed in the Report that accompanied the Draft Harbours (Administration) (Amendment No. 7) (Jersey) Law 200 "... helping to ensure the Island has reliable, frequent and affordable ferry services is a crucial area of States policy. Yet, the Law limits the States to making Regulations for the issue of permits that relate solely to the control of the ferry ramps for vehicles... Furthermore, the advice is that conditions attached to ramp permits must at the moment be quite narrowly drafted ... Broad policy issues which relate to the socio-economic needs of the Island rather than day-to-day port management alone are also believed to be outside the ambit of the current Law. To date these matters have been the subject of somewhat unsatisfactory Service Level Agreements".

Timescale

We are lucky to be in a situation where a number of companies now compete for custom in passenger and car services as well as freight. Greater competition may well be on the way. However, instability and uncertainty could be the outcome if the States are not in a position to give clear and enforceable directions as to the minimum standards that must be adhered to for sustainable competition to take place.

For this reason alone it is important that services commencing this year are authorised under these new Regulations with their greater enforcement powers and wider remit.

Consultation

The draft Regulations were formally issued for Consultation on 6th November 2007. Consultation remained formally open until Christmas but correspondence with key stakeholders has continued up until the beginning of February 2008.

Port users

Departmental officers held an initial meeting with the Chairman of the Jersey Commercial Port Users Association, followed by 2 meetings with the full Association. Direct meetings were also held with the Managing Directors of both Condor and HD Ferries.

Written submissions were made by Condor individually. These stressed the need for the States, not the Harbour Master, to be in a position to disallow the granting of a permit on socio-economic grounds and for the terms of a permit not to be variable at the Harbour Master's discretion. The first of these points has now been clearly addressed by the requirement of the Harbour Master to follow specified objectives laid down in the legislation and to apply the policy guidance. These include a stipulation to refer to the Minister (who in turn may consult the JCRA) before rejecting an applicant who does not meet the policy criteria. Regarding the second matter it is important, indeed it is vital on safety or security grounds, for the Harbour Master to be able vary the terms in a permit. The port user is protected by any arbitrary change or by unreasonable fees being set by a clear and Human Rights compliant appeal process. This is discussed below.

Various other matters were raised, including the need to make even more explicit the differing roles of the Minister and the Harbour Master. By and large the administrative changes in the Regulations were welcomed. However, regarding the matter of permits, concern was expressed about whether the Regulations would be used to restrict business in the port. The word 'licence' was seen by some as preferable to 'permit.' For some port users the whole matter of issuing permits at all is anathema and ideally they would pursue a completely 'open port'

policy. Inevitably, others would welcome the introduction of the Regulations if they genuinely help to protect life-line routes and prevent predatory competition.

In response to these issues, structural changes have been made to the Regulations. Additionally, it has been stressed that they are essentially permissive. It is envisaged that currently only 2 areas of port operations will be subject to the requirement of a permit – stevedoring and combined passenger and car ferry services. This is made explicit by the draft direction and designation attached to this report in Appendix 1. These services will only be restricted as far as absolutely necessary to meet States socio-economic and competition policy requirements.

The JCRA and others

The Jersey Competition Regulatory Authority has given much good advice over the years. In their advice to the Industries Committee in June 2002, they stated that “new services and routes need to be encouraged for the benefit of the Jersey consumer. However, there is a need for economic analysis of the market ... and enhanced knowledge of the state of profitability (or otherwise) of ... ferry services ...”^[2]. To date whilst attempts have been made to gain this knowledge, it remains unclear whether the northern routes in particular can really sustain competition.

Furthermore, they have considered alternatives to Service Level Agreements and pointed out that in telecommunications and postal services there is very specific legislation giving them quite stringent and comprehensive pricing powers. The Competition (Jersey) Law 2005 by itself “is not the most suitable tool for ensuring on a sustained basis that prices are kept to such a level that excessive profits are not being made.”^[3]

It is therefore clear that, unless control of sea routes is to be through totally new legislation and unless much greater direct intervention powers were to be given to the Authority, alternative strategies have had to be sought. In this context, the JCRA were specifically invited to comment on the draft Regulations. Two very constructive and comprehensive submissions were made. The JCRA noted the improved transparency compared with the current Regulations. This is achieved through the explicit requirements for applications for permits to be published, for the public to be able to comment and for those comments to be formally considered.

The JCRA expressed concerns that the potential requirement for a permit for any facility or service, which could include such facilities in territorial waters, is an expansion of a regulatory barrier to market entry and is drafted to give wide discretion to the Minister and Harbour Master. That discretion was also seen to be broad and uncertain. The JCRA was concerned that the initial proposals did not have sufficient legal certainty and cited considerations that have to be taken into account by the Minister and the JCRA when exercising their functions under the Telecommunications (Jersey) Law 2002 and Postal Services (Jersey) Law 2004.

Members may recall that some of these issues were anticipated and debated in the Assembly when the amendments to the primary Law were passed. Regarding the exercise of control in territorial waters it was pointed out then that the Harbour Master already had authority to enforce the Law in territorial waters. Furthermore, it would be surprising if the States were not in a position to require permits to be issued and require fees to be paid “if it were some private institution that were wanting to set up some tidal power station^[4],” for example. There must also be no doubt that the term “territorial waters” included tidal waters, so that the Harbour Master can authorise such events as unloading of rock armour in an area that might not be considered strictly to be a harbour but was still in the inter-tidal zone or to control an exclusion zone such as that required during the Battle of Britain air display.

In response to the matter of legal certainty, redrafting led to Schedule 1 being added to the Regulations, explicitly defining the objectives that should underpin decisions of the Harbour Master when designating facilities, issuing permits or negotiating agreements. These objectives already have their equivalent in the Telecommunications and Postal Services Laws. This means that there is now built into the legislation a set of clear guidelines that, it is believed, increase legal certainty.

Additionally, following the JCRA’s advice and some concerns expressed by port users, the Harbour Master now has a duty specified at paragraph 4 of schedule 1 not to show undue preference or to discriminate unfairly. A duty such as this is implicit in the duty of all Ministers and officers in carrying out any legislative function. However, its inclusion will help to allay any fears in that area.

The JCRA subsequently made comments on the revised draft and the draft policy notice. This notice is discussed below and appears in full at Appendix 2 of the report. The Authority stated it supports the general thrust of the drafting changes, recognising that efforts have been made to improve certainty and to remove broad discretion. However, it is fair to say that they remained concerned, as a matter of competition principle, by the need to

regulate at all and by the potential conflict between competition aims and government policy on sea transport.

In response to their concerns, further significant changes have been made. In particular the objectives in Schedule 1 now require the Harbour Master “to protect and further the long-term interests of end users”, not simply “users”. In this way the public and individual importers or exporters are given primacy over the companies operating the services. The policy notice was also further refined and the draft direction from the Minister (Appendix 1) makes it clear that only 2 specific areas of port operations will require permits. Quite rightly, the option to alter this remains if the need arose, but it is anticipated that for the foreseeable future all other areas and facilities should remain, as now, not subject to the requirement for a permit.

It is to be expected that the JCRA should view matters from a fairly pure competition perspective – indeed that is what they were set up to do. However, governments cannot do this and must balance other policy considerations. In this case the very survival of frequent and reliable sea services to the UK may depend on appropriate intervention rather than unrestrained dog-eat-dog competition. It is felt that further significant changes to the draft legislation would have undermined the very purpose of widening the *vires* of the Primary Law in the first place.

Future considerations and research

Part of the consultation with the JCRA looked at finding a way forward to deal with the northern route problem. In essence, this problem concerns the vital strategic importance of the routes because they are Jersey’s main freight supply link, particularly when taken with modern “just in time” methods of supply. The sudden withdrawal of a service can very quickly lead to shortages in the supply of basic commodities, as was shown when the Commodore Goodwill was put out of action shortly before Christmas.

Other factors need careful consideration: In the roll-on/roll-off market, passenger and car ferry services are bundled with freight. Additionally, market stability and route viability are probably stronger because the current operation is run as a network of routes where the more profitable legs can help sustain weaker components.

These matters taken together may mean that inappropriate competition in the passenger market could disrupt the freight market.

For passengers and cars alone, stability and a reliable year round service have been achieved where the current operator has provided a fast ferry and a traditional Ro/Pax service. This is an expensive option but one which the Island has enjoyed and may be sorry to lose.

How great the risk of losing either the Ro/Pax or the fast ferry services may only be understood by investigation into the commercial viability and long-term profitability of the markets and it is in this area that the JCRA are now commencing preliminary work. It may be that solutions exist which allow one operator to offer a much cheaper service, perhaps only running a summer fast ferry for example, whilst the other maintains the current year round mix. To do that and for both companies to remain profitable may require both companies to contribute to the cost of the non-profitable component.

It is also planned that public opinion could be canvassed through appropriately worded questions in the next Jersey Annual Social Survey.

So, an applicant who offers a year-round service, (which includes a reasonable winter service) using a traditional Ro/Pax vessel and a fast ferry service clearly meets the criteria. To require that level of service for a new entrant to the market is a high barrier to entry. However, until such time as the research sheds some light on the issues at stake, it is believed that any operator who cannot show he can offer year-round, long-term, reliable and robust passenger car ferry services and, where relevant, that he has appropriate recourse to back-up arrangements, should probably not have a permit. Such a refusal would be for the Minister, not the Harbour Master, to decide and this is spelled out in section 5 of the draft policy guidance in Appendix 2, below. Before refusing, the Minister may discuss the matter with the JCRA and would obviously carefully scrutinise the proposal.

The intention is that competition should be managed to meet the policy aims. These new Regulations are sufficiently robust for States policy to be enforced and for a permit to be legitimately refused until a potential operator or research shows it is safe to do otherwise. The Regulations are also sufficiently flexible to allow States policy to be amended without an amendment to the legislation itself. This crucially allows a response to be made to changing circumstances or in the light of the proposed research and any advice of the JCRA.

Guernsey

It was very important that the termination of existing Service Level Agreements were brought into line and an attempt made to plan a way forward together. It is futile to imagine that any operator will offer services to and from the Island entirely separately from the market Guernsey also offers. Discussion has been ongoing for over a

year and these original aims have largely been achieved.

The publication of the draft statement last month is welcome confirmation that the Islands can work together to the benefit of both. It is reproduced for Members at Appendix 5. The statement has been discussed with the JCRA and the individual operators concerned. Both Condor and HD Ferries, whilst having differing views on aspects of it, appear to recognise that it brings a welcome degree of clarity.

Both Islands would rather have managed competition than a tender process on any route as such a process could exclude an operator for 5 years or more. However, as discussed above, that competition has to be in the context of understanding what form it should take on any particular route.

The statement lays down clear expectations: Operators are expected to offer a good and fair standard of service and reasonable fares. In return they get stability and will be granted guaranteed medium-term access on the routes they currently serve.

Both Islands clearly reserve the right to intervene by deliberately seeking new operators or requiring a tender process if there is market or operator failure. The changes made to the Primary Law on 5th December explicitly provide the *vires* for such a process in Jersey. Meanwhile, Guernsey's Commerce and Employment department has signalled its intention to strengthen its own legislation^[5].

Individual Amendments

The official Explanatory Note should be referred to but the following gives Members some additional background information. References to Regulation numbers are regarding the Regulations as they will appear in the amended version.

Regulation 1– The power of the Minister to restrict access is amended to ensure that territorial waters outside a harbour can also be managed appropriately. It is a power reserved for the Minister and not automatically in the purview of the Harbour Master.

Regulation 2– The authority to deal with unserviceable vessels is passed to the Harbour Master directly rather than, as now, being a responsibility delegated to the Harbour Master by the Minister. This is much more practical regarding the day-to-day running of an operational port, which should not be a political matter at all. The term 'abandoned' is added as a reason for a vessel's removal. At sub-paragraph (7) the definition of what is unserviceable or abandoned is expanded to include neglect or non-payment of mooring charges. Both of these situations have arisen in the recent past and caused considerable difficulty to port managers. As protection for owners, a minimum 7 day notice period is introduced.

Regulation 3– This is broadly a re-working of existing powers of the Harbour Master under the current Regulation 6. There is now an explicit provision to set charges to be paid for parking on a harbour instead of this being done via the Minister. Safety and security are added as reasons for controlling vehicles and persons. The authority is clarified for the Harbour Master to move an unserviceable vessel without notice if urgently required.

Regulation 4– The method by which the Harbour Master can designate a facility or service requiring a permit is spelled out. Importantly, he must follow the guidelines in Schedule 1. The Minister can overrule the Harbour Master and require a designation to be made, changed or withdrawn completely. Designations must be published and the Minister must place before the Assembly any direction he gives. Transparency of process is thus high.

Regulation 5– This is a more thorough and expanded version of the existing Regulation governing ramp permits. It ensures firstly that the Harbour Master must follow the policy guidelines embedded in Schedule 1, that an application is published, that he considers both relevant public comments and the policy of the States, the latter being as per Appendix 2 of this report. In the absence of any clear States policy or public comment then his primary duty will be to meet the objectives stated in paragraph 3 of the Schedule. Because of the wide *vires* of the Law and the general nature of permits, much of what has in the past been in a service level agreement could be included in the terms and conditions attached to the permit. Refusing a permit or making it subject to terms, amending those terms or making a charge all have to be justified in writing and the applicant has the right of appeal. This process is important to ensure that charges are fair and that the process is reasonably managed.

Regulation 6– Currently no strict guidance is laid down for the Harbour Master to make agreements. However, a number of business agreements obviously are required as a matter of managing a commercial port. The Regulation offers a practical and transparent process and requires adherence to the very permissive approach spelled out in Schedule 1. It requires the Harbour Master to take account of any additional policy statement, as shown in draft Appendix 3. The main differences between agreements and permits are that: (i) whilst there is a presumption of openness, for obvious business reasons aspects of them may remain confidential; and (ii) there are no crimina

sanctions for breaches of the terms and conditions of the agreement. The latter is important as agreements are negotiated and there should be a sense in which both parties come to the agreement as equals, able to offer and receive part of the bargain. Arbitration is therefore seen as a better way of resolving matters and this is a requirement of the policy (Appendix 3, paragraphs 5 and 6).

Regulation 8– Jersey Radio has now been subsumed into a joint Jersey Coastguard function which also involves Port Control. As a result the references in the current Regulation 8 needed to be replaced.

Regulation 11– The speed of vessels is currently controlled in fairways by a vague reference to speeds that ‘may cause ... wash to do damage to any other vessel ...’ The changes allow the Harbour Master to make specific directions as to the maximum speed and this will increase certainty and the likelihood of successful prosecutions. It also is extended to territorial waters and will be useful in controlling speeds in any restricted zone that might need to be set up.

Regulation 16– This is amended so that there is a duty not only to report a lost anchor but also to report any other thing lost overboard that might cause an obstruction.

Regulation 33– The wording of sub-paragraph (b)(iv) is changed so that there is no absolute requirement to have a fire appliance in attendance on all occasions that explosives are loaded or unloaded. The Harbour Master has pointed out that this can be an unnecessary expense. If there is an incident then it may well be that the particular appliance on duty is inappropriate, as different fires require different equipment. There are certainly times, such as the unloading of a small quantity of pleasure vessel emergency flares, when it is believed that the risk of an accident is very small. The Fire Service are in agreement with this change as it still leaves in place an explicit requirement to have adequate facilities on hand. It will also allow the Harbour Master to adjust the type and amount of equipment available according to the risk.

Regulation 42– This is a drafting change that merely reflects the change in the definition of territorial waters in the Primary Law.

Regulation 45– This is substantially a redrafting of the current Regulation governing the leaving of goods and commercial trailers on the harbour beyond specified times. It is an important tool in the management of space in freight areas. The main change is to replace the schedule of charges which are currently part of the Regulations with a schedule issued and published by the Minister, as reproduced in Appendix 4. This leaves the control of charges in the hands of the Minister and via him, the States. However, it avoids the bureaucracy of having to draft and debate an amendment to the Regulations every year regarding a matter which should not strictly be seen as political. The charges proposed here are the same as have already been proposed in the draft amendment to the Regulations, lodged as P.15/2008. If ever the charges published are unacceptable it remains the prerogative of a Member to bring the matter to the Assembly.

Regulation 46– The current Regulation refers to the now repealed Merchant Shipping (Jersey) Act of 1916 and this is corrected.

Regulation 47– The amendment removes a reference to certain Pilotage Regulations which the States agreed to repeal^[6].

Regulation 48 – Amongst the list of prohibited acts, paragraph (1)(b) has been added to include that of allowing a dog to foul the piers and quays of the harbours. Paragraph 2(c) makes provision for ballast water to be discharged providing this is done in accordance with guidelines laid down by the International Maritime Organisation (IMO).

Regulation 50– The penalties provisions are presented slightly differently than at present. The substantive changes are that there is now explicit recognition of offences committed by bodies corporate or vicariously. Aiding and abetting also becomes an offence. The initial level 2 fine (€500) is maintained as the standard but rather than specify for a continuing offence a fine at level 1 per day thereafter, the wording allows for the time to vary and if necessary for the repeat offence also to attract a level 2 fine.

Schedule 1– This inserts the new policy guidelines to be followed by the Harbour Master. The objectives set in paragraph 3 and the non-discrimination duty in paragraph 4 are vital in ensuring an unbureaucratic and fair process. The old Schedule 1 specifying charges for leaving goods on a harbour becomes redundant because of the new notice procedure described in Regulation 45, above.

Policy notices – Permits and Agreements

These notices are not legislative. They can thus be amended in the light of a change to States policy without formal recourse to a change in the Law or subordinate legislation. This greatly improves flexibility for the States

via the Minister. However, it also can be argued that it increases uncertainty. To combat that fear, the notices are being published now alongside the draft Regulations. Should the Assembly or the Minister want to deviate from any aspect of sea transport policy, this could be brought before the States and thus fully in the public domain.

Permits

In issuing permits, the Harbour Master must act in accordance with the notice from the Minister regarding States policy (Appendix 2). States policy on sea transport was last debated in detail on 28th March 2006. The Minister believes that the policy aim remains absolutely right and no change is sought to the general statement, “to secure year round, long-term, reliable, robust and reasonably priced services of sufficient quality and frequency.”^[7]

This statement has now been incorporated into the notice, so that in issuing or granting a permit the Harbour Master will be bound as far as practicable by the policy aim. One important difference is that the reference to reasonable prices is not imposed directly on the Harbour Master as it simply is not within his power to deliver that. Instead, as in existing SLAs the operator must submit increases in maximum public fares for approval and this is spelled out in section 4 of the notice, at bullet point 8. Additionally, it is believed that reasonable prices are best achieved by promoting competition and in extreme cases having to invoke the Competition (Jersey) Law 2005.

The policy notice has been through a number of redrafts to improve clarity and certainty. However, there remains an inevitable policy uncertainty: On the one hand, competition is held as a key States objective and on the other, the States also require sustainable, all year services which may need some form of protection to maintain the viability of routes. As a result, where a carrier cannot meet all the policy aims, the Harbour Master must refer the matter back to the Minister before refusing or issuing a permit (see section 5 of the notice).

The notice also refers to the requirement for a ‘reasonable winter service’. This says more than stating simply that the service should be year round. A single rotation per week to/from Jersey to the UK or St. Malo would not qualify as reasonable. What matters is for each company’s proposals to be judged on their merits. Such proposals need to show consideration for the needs of local people at half-terms and Christmas and to respond to the Fête de Noué. Balanced by those considerations might be an operational requirement for a vessel to have a planned maintenance period during a quieter month and for proposed schedules to complement rather than conflict with other operators. So, a number of factors have to be taken together rather than simply requiring a year-round service.

Members familiar with existing Service Level Agreements will recognise that a number of the ‘Customer Care’ requirements are in the policy notice, section 4. In this way such requirements are maintained without the need for a SLA that is separate from the permit.

It remains the long-term intention to achieve a virtually ‘open port’ if market and route stability can be achieved. This would allow the policy notice to be amended to reduce the demands made on individual carriers and allow competition to deliver the service the customer requires without government interference. The Harbour Master would then be free to follow the Regulations and the objectives in Schedule 1 alone. This would give applicants for permits a much higher degree of certainty that they would get a permit and make the balancing of possibly conflicting aims a great deal easier.

Agreements

As already stated previously, separate SLAs for passenger car ferry services, sitting alongside permits, will no longer be necessary. This is because the permit and the associated policy notice can (if these Regulations are passed) together contain all of the terms and conditions of the existing agreements.

The process by which the Harbour Master may make other agreements with port users is spelled out in Regulation 6 and Schedule 1. This is supplemented by a brief policy notice, as appears at Appendix 3. These agreements are already part of the normal and current practice of administering commercial port operations and should not be confused with the SLAs.

The policy notice is intentionally brief and covers key aspects only, such as the requirement to follow States Financial Directions, to abide by the spirit of openness laid down in the Code of Practice on Access to Information and to follow due legal process by applying the Arbitration (Jersey) Law 1998 in a case where there is a dispute.

Objective (d) of Schedule 1, paragraph 3, states that there is to be a minimum of restriction on persons engaged in commercial activities connected with port and shipping services.” This, taken together with the new Regulation 6, Schedule 1 and the policy notice provide a framework in which the Harbour Master must mak

agreements with port users which by definition must remain un-bureaucratic.

Appeals and HR Compliance

In amending the Law last year care was taken to ensure it remained compatible with the European Convention on Human Rights.

The appeal to the Royal Court applies particularly to permits, as the requirement for a permit can be imposed on a port user, without choice. The detail of the process is spelled out in the proposed new Regulations 5(9) to 5(13). It is comprehensive and specifically requires the Royal Court to take account of the extent the Harbour Master has complied with Schedule 1 and States policy. Appeals beyond the Royal Court to the Court of Appeal will be available in accordance with the Court of Appeal (Jersey) Law 1961, as amended. The room for unfair decisions or unreasonable charges is thus minimised.

Agreements are just that, agreements, and as such do not have the same appeal process. Nevertheless, the Harbour Master remains under a legal duty to abide by the policy guidelines stated in Schedule 1, which includes a duty to show no undue preference nor to discriminate. Both parties can turn to arbitration to resolve a problem and the port user has recourse to the Administrative Decisions (Review) (Jersey) Law 1982 if he is aggrieved.

Penalties and enforcement mechanisms

No change has been made to the principle already established in the primary Law and existing Regulations that criminal sanction may at times be necessary to enforce the law. Penalty levels are authorised by the Harbours (Administration (Jersey) Law 1961 and were of course approved by the Attorney General when that Law was amended before Christmas.

Permits

As now, operating without a permit when one is required is an offence ((Regulation 4(7). Likewise, the breach of conditions will remain an offence ((Regulation 4(8). However, instead of both these offences being subject to a maximum of a level 4 fine (£5,000) an important distinction is introduced. A user attempting to operate without a permit could receive an unlimited fine, allowing the Court discretion as to the seriousness of the offence or whether it is a repeat offence or not. This allows proper account to be taken of whether the offence has been committed wilfully and in the knowledge, for example, that security or safety was being compromised, or if the Minister has deemed that it is absolutely essential for the economy of the Island that there should be a restriction in the number of services running on a particular sea route. In contrast, regarding breaches of conditions attached to a permit, the penalty is restricted to a fine not exceeding level 4.

A further level of differentiation has also been introduced. Some elements of what is currently to be found in the Service Level Agreements have been drafted into the policy notice, as discussed above and as appears in Appendix 2 at section 4 in particular. The Harbour Master will need to be satisfied that good standards of customer care are in place and will convey the requirements to an operator before issuing a permit. However, if an operator failed to take “reasonable steps to assist small groups and families to sit together ...” or if he failed “to publish its following year’s timetable ... no later than the end of October of the preceding year,” these are hardly matters that should be criminalised. Such matters would not therefore appear as strict conditions within the permit but as standards which an operator was expected to achieve and which would affect the likelihood of a permit being renewed. The Harbour Master would also be able to consider making them contractual through an Agreement, the breach of which would be a civil matter.

In general, customer care and pricing issues are probably better pursued in the longer term by appropriate Consumer Protection Legislation and not through an overt permit regime.

Other practical and port-related considerations, such as “the effective management of passengers and their cars in the event of delayed, disrupted or cancelled sailings,” should be voluntarily agreed to initially but where they were conspicuously ignored they could subsequently be included in a revised permit containing amended conditions, as authorised by Regulation 5(8).

Agreements

Commercial agreements are already commonplace, and the failure to obtain permission to engage in business within any Jersey harbour already requires the written permission of the Minister. Failure to obtain that permission or a breach of conditions is currently punishable by a level 2 fine (£500). Under the new Regulation (arrangements if a more formal agreement is required then the use of a facility or the operation of a service without that agreement would be subject to an unlimited fine, allowing the Court discretion as to the seriousness of the offence or whether it is a repeat offence or not.

However, it is not believed to be reasonable to impose any form of criminal sanction for the breach of a condition in an agreement. That matter is properly addressed through civil action and recourse if necessary to arbitration in accordance with the Arbitration (Jersey) Law 1998.

Resource Implications

There are no new financial, manpower, property ICT or other resource implications for the States of Jersey in these amendments. Jersey Harbours is a Trading Operation of the States and manages its processes largely without Treasury funding.

Conclusions

This report has quite deliberately reviewed States policy regarding sea transport and gone into some detail to ensure States Members have the opportunity of fully understanding the policy implications. This is especially relevant concerning the changes in how and when permits may be issued in future.

Other matters are largely administrative and procedural and will help the efficient and safe operation of the port of St. Helier.

The accompanying draft direction in Appendix 1 makes it clear that permits are not going to be required except for stevedores, (who are already licensed) and for passenger car ferry services, (which are already subject to ramp permits). These Regulations thus do not increase bureaucracy. What they do is provide the government with choice and the availability of effective enforcement of sea transport policy, if and when necessary, rather than force the Island into a corner.

Consultation has been rigorous and the Regulations improved as a consequence. Of course it remains the prerogative of the Assembly to reject or amend the particular Regulations that are intended to improve the States ability to manage sea transport policy (Regulations 4 and 5). If that were the case then an entirely new era of unfettered competition on sea routes could be ushered in, with unknown and possibly very damaging results.

DRAFT

Direction under Regulation 4(4) of the Harbours (Jersey) Regulations 1962

To the Harbour Master.

I, the Minister for Economic Development, acting in accordance with Regulation 4(4) of the Harbours (Jersey) Regulations 1962, direct you, acting in accordance with Regulation 4(1) of the Harbours (Jersey) Regulations, to designate –

- (i) stevedoring operations; and
- (ii) combined passenger and private vehicle ferry services (regardless of whether or not these include the carriage of freight),

to be services in a harbour or in territorial waters that may not be provided except with and in accordance with a permit.

Minister for Economic Development

Date.....

Designation under Regulation 4(1) of the Harbours (Jersey) Regulations 1962

I, the Harbour Master, acting in accordance with Regulation 4(1) of the Harbours (Jersey) Regulations and on the direction of the Minister for Economic Development, given in accordance with Regulation 4(4) of the Harbours (Jersey) Regulations 1962, designate –

- (i) stevedoring operations; and
- (ii) combined passenger and private vehicle ferry services (regardless of whether or not these include the carriage of freight),

to be services in a harbour or in territorial waters that may not be provided except with and in accordance with a permit.

Harbour Master

Date.....

DRAFT**Notice under Regulation 5(6)(a) of the Harbours (Jersey) Regulations 1962****To the Harbour Master.**

I, the Minister for Economic Development, acting in accordance with Regulation 5(6)(a) of the Harbours (Jersey) Regulations 1962, advise you that the policy of the States on the issue of permits is as follows –

Stevedoring Operations

1. On the basis of advice from the Jersey Competition Regulatory Authority, it is my opinion that those wishing to offer a stevedore service for vessels berthing in the Elizabeth Harbour or alongside the New North Quay require a permit, available through competitive tender.
2. Those wishing to offer a stevedore service for vessels using any other berth in St Helier Harbour require a permit available through direct application to the Harbour Master.

Combined passenger and private vehicle car ferry services

1. As far as is practicable, in granting or refusing permits or imposing terms, conditions and limitations, the Harbour Master shall aim to maintain and develop year round, long-term, reliable and robust passenger car ferry services. These services, (which must include a reasonable winter service) should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.
2. Providing the facilities are available at the times requested (and such availability will not be unreasonably withheld) permits shall be granted to all who apply to provide a service or make use of a facility and who can demonstrably meet reasonable and relevant terms, conditions and limitations and policy, safety and security criteria.
3. Policy considerations:

Regardless of whether the application for a permit is for the northern or southern routes, existing and potential operators who can demonstrate the capability to meet the criteria of year round, long-term, reliable and robust services, (which must include a reasonable winter service) may be offered permits of such duration that are designed to encourage route stability and public confidence. However, such permits are not to be issued on an exclusive basis.

The “northern route,” is defined as any service between St. Helier and either Portsmouth, Poole or Weymouth, which may or may not be via Guernsey.

The northern route is of strategic importance to the Island because this is Jersey’s main freight supply and logistics link particularly when taken with changes in provisioning of the Island towards “just in time” methods of supply. It is also recognised that, in the roll-on/roll-off market, passenger and car ferry services are bundled with freight and that the northern route is currently operated as a network of routes, which may improve market stability.

On the northern route market stability and a reliable year round service has been achieved where the operator has provided a fast ferry and Ro/Pax service. It is believed that each type of service may be important to different segments of the market where the Ro/Pax service may be more important to the Island’s need for a year-round service and the fast ferry service may be of more importance to the tourism industry. An applicant who offers a year-round service, (which includes a reasonable winter service) using a traditional Ro/Pax vessel and a fast ferry service clearly meets these criteria. Other proposals may also do so, but they will need careful scrutiny.

The intention is that competition should be managed in passenger and car ferry markets in such a way as to provide sufficient year-round reliable services that meets the needs of current and prospective transport users.

The “southern route” is important to the quality of life of Island residents and is defined as services between Jersey and St. Malo whether or not via Guernsey. The overarching requirement of the States is

that there should be a year round service on this route and this must include reasonable winter frequencies.

Services between St. Helier and other ports– where an application for such a service is made and there are reasonable grounds to believe that the proposed service should be considered as part of the northern route (because of the possible affect on the provision of year round reliable services) then the policy considerations for the northern route should be taken into account.

4. In granting a permit, the Harbour Master shall set service level standards which include that an operator –

- maintains published information in the form of a Customer Charter, Terms and Conditions of Carriage or some other means that, as a minimum, include the effective management of passengers and their cars in the event of delayed, disrupted or cancelled sailings;
- takes reasonable steps to assist small groups and families to sit together or if this is not possible it will advise the passengers at the time of booking;
- provides facilities allowing access for the disabled on all vessels;
- in the event that technical or severe weather problems with a vessel cause delays in excess of four hours, and without prejudice to any contractual arrangements between the carrier and a tour operator and customers, will entitle passengers to cancel their bookings with full refund of fare;
- will endeavour to publish its following year’s timetables as soon as possible but at any rate no later than the end of October of the preceding year. Prior to the publication of the timetables, customers will be able to reserve space on a passage on the nearest equivalent date and time, based on expected schedules (this is known as pre-registration).

Alternatively, the Company will maintain a rolling annual timetable so that at all times customers will be able to reserve space on a passage up to a year in advance.

- will have documented and published procedures setting out the arrangements for receiving and addressing passenger complaints and for the management of passengers in the event of delayed, disrupted or cancelled sailings;
- undertakes passenger surveys on a regular basis to test the services delivered with the results of these surveys, together with a summary analysis of customer communications being made public;
- ensures that its public fare pricing policy does not discriminate on the basis of origin of customer booking. This means, for example, that two passengers from different locations and travelling on the same vessel, who had booked at the same time for the same journey, will pay the same price. However, where a passenger books a package involving other services or via a tour operator then there may be a price difference;
- submits any proposed increase in maximum public fare levels to the Minister for approval and provides commercial reasoning for such increases until such time as stable competition has emerged or it is proven that other effective constraints on pricing exist;
- maintains and publishes a record of vessel performance against schedules.

5. An applicant unable or unwilling to offer a year-round service on the southern route or unable to fulfil all the policy considerations for the northern route shall not automatically be refused a permit. Such a refusal may be justified in terms of route vulnerability or other Island socio-economic requirements and the Harbour Master shall first seek the advice of the Minister who in turn may consult with the JCRA in order to determine if a transparent and non-discriminatory solution can be found that would facilitate both additional competition and support the States objectives of year-round reliable services.

6. Operators should be aware that applications which do not conform fully to policy will take time to evaluate. In such cases it is reasonable to expect that a decision on an application may take longer than normal. Any delay will be solely to allow the Minister to take whatever steps are considered necessary to evaluate the impact of the application on service levels and to consult with other parties as appropriate.

7. Consideration of an application shall take account of any policy understanding between Jersey and Guernsey. In particular, there may be a need to coordinate the commencement and duration of permits to ensure that the option to tender services remains available within the timescales agreed between Jersey and Guernsey.

8. Where an applicant has materially failed to meet relevant policy considerations in relation to a previously operated service and has been unable or unwilling to remedy the deficiency in any subsequent period, then this would normally be considered sufficient grounds for refusal. Nevertheless, the Harbour Master shall first seek the advice of the Minister, who in turn may consult with the JCRA to determine if a transparent and non discriminatory solution can be found that would allow the permit to be granted and support States objectives of year-round reliable services.

Minister for Economic Development

Date.....

DRAFT

Notice under Regulation 6(10)(a) of the Harbours (Jersey) Regulations 1962

To the Harbour Master.

I, the Minister for Economic Development, acting in accordance with Regulation 6(10)(a) of the Harbours (Jersey) Regulations 1962, advise you that the policy of the States on the negotiating of agreements is as follows –

1. Agreements are to be entered into as required as part of the normal commercial practice of port operations.
2. Agreements must be in accordance with any relevant States Financial Directions.
3. The designation, availability and existence of agreements shall in general be available to any person who requests access to that information. However, the Harbour Master is not required to publish details unless the Minister specifically requires him to do so under Regulation 6(3) of the Harbours (Jersey) Regulations 1962.
4. In accordance with Regulation 6(8) and insofar as proper commercial confidentiality will allow, the details of proposed agreements must be made available for comment to any person who is likely to be affected. Additionally, the agreements themselves must be made publicly available thereafter on request.
5. Any dispute between the parties may, in default of agreement between the parties, be referred to arbitration to be conducted in accordance with the Arbitration (Jersey) Law 1998, save that two arbitrators (one to be nominated by the Harbour Master and one by the other party) shall be appointed. No arbitrator or umpire shall be an officer, servant or agent of the parties and the proper charges of the arbitrators and any umpire shall be shared equally by the parties.
6. In accordance with Article 14 of the Arbitration (Jersey) Law 1998, available remedies include specific performance.
7. Arbitration is not available for any matter relating to the issue of Permits, the terms and conditions of which are governed by Regulation 5 of the Harbours (Jersey) Regulations 1962.

Minister for Economic Development

Date.....

DRAFT**Notice under Regulation 45(2) of the Harbours (Jersey) Regulations 1962**

I, the Minister for Economic Development, acting in accordance with Regulation 45(2) of the Harbours (Jersey) Regulations 1962, give notice that if a person, without the Harbour Master's permission, allows goods to remain on a harbour in excess of the period specified in Part 1 of the Schedule to this notice in relation to goods of that description, the person shall be liable to the daily charge specified in Part 2 of that Schedule in relation to the goods in question for each working day or part of a day during which the goods remain on a harbour in excess of that period.

In this notice and in the Schedule "working day" means any day other than a Saturday or Sunday, Christmas Day, Good Friday or any day appointed as a public holiday or bank holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951.

This notice shall have effect on and from 2008 and replaces all previous notices published under Regulation 45(2) of the Harbours (Jersey) Regulations 1962.

Minister for Economic Development

Date.....

SCHEDULE**PART 1****PERIOD DURING WHICH GOODS MAY REMAIN ON A HARBOUR**

| <i>Description of goods</i> | <i>Period</i> |
|--|---|
| 1. Inbound goods not specified in item 2 of this Part of this Schedule | The day of arrival plus 3 working days |
| 2. Inbound vehicles for trade and unaccompanied vehicles (other than vehicles being shipped for the use of a person travelling to Jersey separately) | Where the vehicle arrives before midday, the period from its arrival to midnight that same day (or if that day is not a working day, the next working day); and where the vehicle arrives after midday, the period from its arrival to 6 pm the following day (or if that day is not a working day, the next working day) |
| 3. Outbound empty trailers, flats, containers and cargo for bulk carriers | The day of arrival plus 5 working days |
| 4. Any vehicle not specified in item 2 of this Part of this Schedule | 12 hours in any working day |
| 5. Any goods not otherwise specified in this Part of this Schedule | The day of arrival plus 2 working days |

PART 2**CHARGES FOR GOODS REMAINING ON A HARBOUR LONGER THAN THE PERIOD SPECIFIED IN PART 1 OF THIS SCHEDULE**

| <i>Description of goods</i> | <i>Daily charge</i> |
|---|---|
| 1. Flats, trailers, containers and equipment: | |
| Not more than 3 metres long | £14.36 |
| More than 3 metres long but not more than 6 metres long | £28.70 |
| More than 6 metres long but not more than 7 metres long | £33.50 |
| More than 7 metres long but not more than 8 metres long | £38.27 |
| More than 8 metres long but not more than 10 metres long | £47.85 |
| More than 10 metres long but not more than 12 metres long | £57.42 |
| More than 12 metres long | £65.08 |
| 2. Vehicles | £11.80 |
| 3. All other goods | £19.64 for every 10 square metres of floor space or part thereof occupied by such goods |

DRAFT

Changes in the number and type of operators on the sea routes serving the Islands and with Service Level Agreements either due to expire or recently expired, an opportunity now presents itself for the two Island governments to state their joint resolve to provide a coordinated and effective approach to sea transport.

As a basic policy position, it is believed that, in the interests of the people of the Islands, the States of Guernsey and the States of Jersey should share a common aspiration: **“to maintain and develop year round, long-term, reliable, robust and reasonably priced passenger car ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.”**

However, policy aims can conflict with each other: A low-priced fare may be bought with a consequently lower quality or less reliable service. The guarantee of a robust service (such as an all-weather conventional ship available at the same time as a fast ferry) comes at a price. Unrealistically low fares, high capacity and frequency may result from competition but be impossible to sustain in the long-term. Both Islands recognise this inevitable, and to some extent insoluble, dilemma.

Government can guide and oversee matters but there is always a limit to how much is achievable by overt intervention. A good level of service and reasonable fares are undoubtedly achieved by a strong relationship between the shipping operators and their customers and not by government standing proxy for one party alone. Because of this, the two Islands believe they will most effectively achieve their sea transport aims by establishing some overarching parameters and keeping regulatory matters to a minimum.

However, on the UK northern routes, a year round reliable service is currently being achieved by an operator offering both a conventional Ro/Pax and fast ferry services. Should a new application be received for services to and from the UK, there will be value in assessing the effect that additional competition and expanded capacity could have on the UK links and whether or not a potential new operator could provide an acceptable level of services in the event that they became the sole operator.

The Chairman of Guernsey’s External Transport Group and the Minister for Economic Development in Jersey have agreed that –

1. In the medium-term passenger car ferry operators will not be subject to a tender process.
2. The administrations in Guernsey and Jersey will work with existing operators to ensure as far as possible that the Islands’ sea transport needs are adequately served. Remedies will be sought for identified deficiencies.
3. Unless there is demonstrable market or operator failure, neither administration will pro-actively seek new operators on any existing route^[8] in the period prior to 31st December 2013, but the option to do either of these things or to run a tender process will be retained and exercised in the event of operator or market failure.
4. Notwithstanding the above, an application from any new operator will be fully evaluated with particular regard to how the proposal might meet the policy aims of both Islands.
5. The decision whether or not to seek tenders for services from 1st January 2014 will be taken by the two Islands together. If, to achieve the policy aims, a tender process is believed necessary on any particular route, incumbent operators will be given 18 months’ notice of the intention to tender.
6. The Islands believe that all operators should –
 - maintain published information in the form of a Customer Charter, Terms and Conditions of Carriage or some other means, which as a minimum will include the effective management of passengers and their cars in the event of delayed, disrupted or cancelled sailings and meet other requirements laid down by the two administrations;
 - address all customer complaints openly, effectively and swiftly;
 - undertake passenger surveys on a regular basis to test the services delivered. The results of these surveys, together with a summary analysis of customer communications will be made public;

- seek approval from the relevant administration for increases in maximum prices and to provide commercial reasoning for such increases until such time as stable competition has emerged or it is proven that other effective constraints on pricing exist;
 - maintain and publish a record of vessel performance against schedules.
7. The primary mechanisms that influence fares are the market and actual, or the threat of competition. Alternatively, the threat of entry, substitution to other modes of transport and consumer behaviour (choosing not to travel) may act as a sufficient constraint on prices where direct competition does not exist. The Islands will maintain the option to further develop local competition law or increase the use of competition regulatory authorities rather than direct government intervention should this prove necessary.
 8. Customer complaints not successfully dealt with by the operators themselves will as far as possible be addressed by the appropriate bodies such as Trading Standards services.
 9. The mechanisms that each Island uses to manage the routes, control market access and administer the harbours will differ. However, the broad policy structure made explicit in these statements will be adhered to by both administrations.

Explanatory Note

These Regulations amend the Harbours (Jersey) Regulations 1962.

Their main objective is to provide for the implementation of the permit and agreement arrangement for certain services to be provided in harbours and territorial waters.

In addition, they amend the present Regulations to give affect to more efficient practices and arrangements.

Regulation 1 defines the Harbours (Jersey) Regulations 1962 as “the principal Regulations”.

Regulation 2 replaces Parts 1 and 2 of the principal Regulations.

Regulation 1 prescribes the Minister’s power to restrict access to a harbour or any part of territorial waters.

Regulation 2 prescribes the Harbour Master’s powers in respect of unserviceable vessels and other obstructions.

Regulation 3 sets out the Harbour Master’s general power to give directions.

Regulation 4 gives the Harbour Master the general power to determine which services can only be provided in accordance with a permit – the Harbour Master must designate a service if required to do so by the Minister.

Regulation 5 sets out how a permit may be obtained.

Regulation 6 gives the Harbour Master the general power to determine which services can only be provided in accordance with an agreement – the Harbour Master must designate a service if required to do so by the Minister. In particular, the Regulation stipulates the criteria to be followed by the Harbour Master when acting under the Regulation.

Regulation 3 replaces Regulation 8 of the principal Regulations to reflect the present situation.

Regulation 4 replaces Regulation 11 of the principal Regulations to provide for a more efficient means of controlling the speed of vessels.

Regulation 5 replaces Regulation 16 of the principal Regulations to provide for a more efficient system of dealing with lost anchors and other things likely to cause obstruction to navigation.

Regulation 6 amends Regulation 33 of the principal Regulations to provide for a more practical approach in respect of explosives.

Regulation 7 makes a consequential amendment to Regulation 42 of the principal Regulations.

Regulation 8 replaces Part 7 of the principal Regulations.

Regulation 45 sets out a more efficient way of dealing with goods that are left in a harbour for an excessive time after being unloading.

Regulation 46 gives the Harbour Master the general power to issue directions in respect of the embarking and disembarking of passengers and their effect.

Regulation 9 omits a provision of Regulation 47 of the principal Regulations that is no longer relevant due to changes in the provision of pilots.

Regulation 10 replaces Regulation 48 of the principal Regulations to define more clearly what actions are prohibited in a harbour.

Regulation 11 replaces Regulation 50 of the principal Regulations to prescribe more clearly who is liable in respect of offences under the Regulations.

Regulation 12 replaces Schedule 1 of the principal Regulations (which related to fees in respect of goods left in harbours) with a Schedule that contains provisions that specify policy guidelines to be followed by the Harbour Master when taking certain defined actions under the Regulations.

Regulation 13 sets out the citation of the Regulations and provides for them to come into force 7 days after they are made.



Jersey

DRAFT HARBOURS (AMENDMENT No. 41)(JERSEY) REGULATIONS 200

Arrangement

Regulation

| | |
|-----------|----------------------------------|
| <u>1</u> | <u>Interpretation</u> |
| <u>2</u> | <u>Parts 1 and 2 substituted</u> |
| <u>3</u> | <u>Regulation 8 substituted</u> |
| <u>4</u> | <u>Regulation 11 substituted</u> |
| <u>5</u> | <u>Regulation 16 substituted</u> |
| <u>6</u> | <u>Regulation 33 amended</u> |
| <u>7</u> | <u>Regulation 42 amended</u> |
| <u>8</u> | <u>Part 7 substituted</u> |
| <u>9</u> | <u>Regulation 47 amended</u> |
| <u>10</u> | <u>Regulation 48 substituted</u> |
| <u>11</u> | <u>Regulation 50 substituted</u> |
| <u>12</u> | <u>Schedule 1 substituted</u> |
| <u>13</u> | <u>Citation and commencement</u> |



Jersey

DRAFT HARBOURS (AMENDMENT No. 41)(JERSEY) REGULATIONS 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 4 and 4A of the Harbours (Administration) (Jersey) Law 1961^[1], have made the following Regulations –

1 Interpretation

In these Regulations “the principal Regulations” means the Harbours (Jersey) Regulations 1962^[2].

2 Parts 1 and 2 substituted

For Parts 1 and 2 of the principal Regulations there are substituted the following Parts –

“PART 1

POWERS OF THE MINISTER

1 Minister may restrict, prohibit and reserve access

- (1) If it appears to the Minister necessary or expedient to do so, the Minister may issue a direction restricting or prohibiting access to any part of –
 - (a) a harbour; or
 - (b) territorial waters.
- (2) If it appears to the Minister necessary or expedient to do so, the Minister may issue a direction reserving a specified part of –
 - (a) a harbour; or
 - (b) territorial waters,for a specific purpose, subject to such conditions and in such manner as the Minister considers appropriate.
- (3) The Minister must publish a direction issued under this Regulation.
- (4) A person who contravenes a direction issued under this Regulation is guilty of an offence and is liable to a fine of level 3 on the standard scale.

PART 2

POWERS OF THE HARBOUR MASTER

2 Unserviceable vessels and other obstructions

- (1) The Harbour Master may issue a direction requiring the removal of an unserviceable or abandoned vessel or other obstruction from –
 - (a) a harbour; or
 - (b) territorial waters.
- (2) The direction must be –
 - (a) served on the owner of the vessel or obstruction; or
 - (b) published if the owner is unknown or cannot be traced.
- (3) If, within 7 days, the vessel or obstruction has not been moved in accordance with the direction the Harbour Master may cause the vessel or obstruction to be moved.
- (4) If the Harbour Master causes the vessel or obstruction to be moved –
 - (a) expenses incurred in removing and storing the vessel or obstruction shall be payable by the owner; and
 - (b) no claim for damages shall lie against the Harbour Master or any person who moved and stored the vessel or obstruction.
- (5) If –
 - (a) the expenses mentioned in paragraph (4)(a) are not paid within 7 days of being demanded; or
 - (b) the owner of the vessel or obstruction cannot be found after reasonable enquiry, the Harbour Master may dispose of the vessel or obstruction in such manner as the Harbour Master considers appropriate.
- (6) The Harbour Master must pay any proceeds arising from the disposal, after deduction of the expenses incurred –
 - (a) to the owner; or
 - (b) if no owner can be found, into the consolidated fund.
- (7) For the purpose of this Regulation a vessel or obstruction is to be taken to be unserviceable or abandoned –
 - (a) if it appears to the Harbour Master to be abandoned due to its state of neglect, lack of maintenance or lack of attention by its owner; or
 - (b) where it is occupying a space in return for the payment of a fee, charge or other consideration, if the fee, charge or other consideration has not been paid.

3 General

- (1) The Harbour Master may give directions –
 - (a) to regulate the time at, and the manner in which, a vessel may enter into, go out of, or lie in, a harbour;
 - (b) to regulate a vessel's position, mooring or unmooring, placing and removing, while in a harbour.
- (2) The Harbour Master may give directions to regulate the time at, and the position in

which a vessel may –

- (a) take in or discharge its cargo or any part of its cargo;
- (b) take in or land its passengers;
- (c) take in or deliver ballast,

within a harbour.

- (3) The Harbour Master, or a person authorized to do so by the Harbour Master, may give directions and orders necessary –
 - (a) to maintain order in a harbour;
 - (b) to control the movement of persons and vehicles in a harbour;
 - (c) to maintain security in a harbour;
 - (d) to maintain safety in a harbour.
- (4) A person must comply with a direction or order given in accordance with paragraph (3) that is applicable to the person.
- (5) The Harbour Master may give directions in respect of –
 - (a) the circulation and parking of vehicles in a harbour;
 - (b) the charges to be paid to park a vehicle in a harbour or in any part of a harbour.
- (6) Despite Regulation 2, the Harbour Master may cause to be removed any vessel or obstruction from –
 - (a) a harbour; or
 - (b) territorial waters,where the Harbour Master is satisfied that its immediate removal is necessary.

4 Use of facilities or provision of services that requires permits

- (1) For the purposes of Article 4A of the Law, the Harbour Master may designate –
 - (a) a facility; or
 - (b) a service,in a harbour or in territorial waters that may not be used or provided except with and in accordance with a permit.
- (2) In doing so the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (3) The Harbour Master must publish details of a designation under paragraph (1).
- (4) The Minister may, by written notice, direct the Harbour Master –
 - (a) to amend a designation made under paragraph (1); or
 - (b) to make such a designation,as specified in the direction.
- (5) The Harbour Master must act in accordance with the direction.
- (6) The Minister must lay a copy of a direction given under paragraph (4) before the States Assembly at the first opportunity to do so.
- (7) The –
 - (a) use of a facility; or
 - (b) provision of a service,designated under paragraph (1) without a permit issued under Regulation 5 is an offence

punishable by a fine.

- (8) The –
- (a) use of a facility; or
 - (b) provision of a service,
- designated under paragraph (1) by a person permitted to use the facility or to provide the service under a permit issued under Regulation 5 other than in accordance with the terms, conditions and limitations of the permit is an offence punishable by a fine of level 4 on the standard scale.
- (9) An offence under paragraph (8) may be charged by reference to a day or any longer period of time and a person may be convicted of a second offence or subsequent offences under paragraph (8) by reference to any period of time following the preceding conviction for such an offence.

5 Permits

- (1) This Regulation applies where the Harbour Master has designated a facility or service under Regulation 4(1).
- (2) A person who wants to acquire a permit to use the designated facility or to provide the designated service, as the case may be, must apply to the Harbour Master for the permit.
- (3) The application must be made in such form as the Harbour Master may publish.
- (4) The Harbour Master must publish the application and seek comment from those likely to be affected.
- (5) When considering the application the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (6) The Harbour Master must also take into account any relevant –
 - (a) policy of the States as conveyed to the Harbour Master by the Minister; and
 - (b) comments received as a result of publishing the application.
- (7) After considering the application the Harbour Master may –
 - (a) issue the permit;
 - (b) refuse to issue the permit; or
 - (c) issue the permit subject to terms (including terms requiring the payment of fees or charges), conditions and limitations.
- (8) The Harbour Master may at any time –
 - (a) amend the terms, conditions or limitations attached to a permit; or
 - (b) suspend or revoke a permit.
- (9) If the Harbour Master takes any action mentioned in paragraph (7)(b) or (c) or paragraph (8), the Harbour Master must give the applicant for, or holder of, the permit –
 - (a) written reasons for doing so; and
 - (b) notice of his or her right to appeal under paragraph (10).
- (10) The applicant or holder may, within 28 days of receiving those reasons and the notice, appeal to the Royal Court against the action taken by the Harbour Master on the grounds that taking the action was not reasonable in the circumstances.
- (11) The Royal Court may –
 - (a) uphold the action taken by the Harbour Master; or
 - (b) direct the Harbour Master to take such other action as the Court considers

appropriate.

- (12) The Harbour Master must comply with the direction.
- (13) In reaching its decision, the Royal Court must take into account the extent to which the Harbour Master has complied with paragraphs (5) and (6).

6 Use of facility or provision of a service by agreement

- (1) For the purposes of Article 4A of the Law, the Harbour Master may designate a facility or a service in a harbour or in territorial waters that may not be used or provided except with and in accordance with an agreement.
- (2) In doing so the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (3) The Harbour Master may but, if required to do so by the Minister, must, publish details of a designation under paragraph (1).
- (4) The Minister may, by written notice, direct the Harbour Master –
 - (a) to amend a designation made under paragraph (1); or
 - (b) to make such a designation,as specified in the direction.
- (5) The Harbour Master must act in accordance with the direction.
- (6) The Minister must lay a copy of any direction given under paragraph (4) before the States Assembly at the first opportunity to do so.
- (7) Where the Harbour Master has designated a facility or service under paragraph (1), the Harbour Master may enter into an agreement with a person that provides for the person to use the facility or to provide the service, as the case may be, in accordance with the agreement (which may include provisions for the payment of fees or charges).
- (8) Before entering into the agreement, the Harbour Master may but, if required to do so by the Minister, must, publish details of the proposed agreement and seek comment from those likely to be affected.
- (9) In negotiating the terms of the agreement the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (10) The Harbour Master must also take into account any relevant –
 - (a) policy of the States as conveyed to the Harbour Master by the Minister; and
 - (b) comments received as a result any publication of the proposed agreement.
- (11) The –
 - (a) use of a facility; or
 - (b) provision of a service,designated under paragraph (1) without an agreement entered into under this Regulation is an offence punishable by a fine.”.

3 Regulation 8 substituted

For Regulation 8 of the principal Regulations there is substituted the following Regulation–

“8 Communication to be made by vessel bound for harbour

- (1) The master of a vessel that –

- (a) is bound for a harbour in Jersey; and
 - (b) is equipped with a means of communication by radio telephone, must, on arrival in territorial waters, establish communication with Jersey Coastguard, and maintain the communication until the vessel enters the harbour or leaves territorial waters.
- (2) The master of a vessel that is in territorial waters bound for a harbour in Jersey must, at the first opportunity to do so, inform the Harbour Master of any deficiency or incident that may –
- (a) decrease the normal safe manoeuvrability of the vessel; or
 - (b) constitute a hazard to the marine environment or adjacent areas, or both.”.

4 Regulation 11 substituted

For Regulation 11 of the principal Regulations there is substituted the following Regulation–

“11 Speed of vessels

- (1) The Harbour Master may issue directions limiting the speed at which vessels may travel in any part of a harbour or of territorial waters.
- (2) The Harbour Master must publish a direction issued under paragraph (1).
- (3) The master of a vessel must comply with any direction published in accordance with this Regulation that is applicable to the vessel.”.

5 Regulation 16 substituted

For Regulation 16 of the principal Regulations there is substituted the following Regulation–

“16 Lost anchors, etc. to be reported

- (1) This Regulation applies if –
 - (a) a vessel within a harbour parts from its anchor;
 - (b) a vessel (other than a small ship) within the territorial water parts from its anchor;
or
 - (c) a vessel in a harbour or in territorial waters loses anything overboard that may cause an obstruction on the sea bed.
- (2) The master of the vessel must report the incident to the Harbour Master as soon as possible.
- (3) In this Regulation, ‘small ship’ means a vessel that is less than 24 metres in length when its length is determined in accordance with the Tonnage Regulations.”.

6 Regulation 33 amended

For Regulation 33(b)(iv) of the principal Regulations there is substituted the following sub-clause –

- “(iv) the Harbour Master must ensure that adequate and properly tested fire fighting facilities are provided in the vicinity of any ship loading or unloading explosives.”.

7 Regulation 42 amended

In Regulation 42(1) of the principal Regulations for “arrival in the territorial waters of Jersey” there is substituted “arrival in territorial waters”.

8 Part 7 substituted

For Part 7 of the principal Regulations there is substituted the following Part –

‘PART 7

**LOADING AND UNLOADING OF GOODS AND EMBARKATION AND
DISEMBARKATION OF PASSENGERS**

45 Goods

- (1) The Harbour Master may give directions in respect of the loading and unloading of goods on and from a vessel in a harbour.
- (2) The Minister may publish a notice providing that if a person, without the Harbour Master’s permission, allows goods to remain on a harbour in excess of the period specified in the notice the person shall be liable to the charges specified in the notice.
- (3) In addition, if the Harbour Master considers that the goods are interfering with the normal working of the harbour, the Harbour Master may remove them to such other place, within or outwith the harbour, as the Harbour Master thinks fit.
- (4) The Harbour Master may, on behalf of the Minister, recover as a debt due to the Minister from the owner of the goods –
 - (a) any charges incurred under paragraph (2);
 - (b) any expenses incurred in removing the goods under paragraph (3); and
 - (c) any expenses subsequently incurred in storing the goods.
- (5) No claim for damages shall lie against the Minister or an officer in an administration of the States for which the Minister is assigned responsibility in connection with the removal or storage of the goods.
- (6) If –
 - (a) goods have been removed under this Regulation; and
 - (b) any charges and expense mentioned in paragraph (4) have not been paid by their owner within 7 days of being demand or if their owner cannot be found,the Harbour Master may sell the goods and, after deducting the expenses incurred in doing so and any charges and expense mentioned in paragraph (4), pay the proceeds, to the owner or, if the owner cannot be found, into the consolidated fund.

46 Passengers

- (1) The Harbour Master may give directions in respect of the embarkation and disembarkation of passengers and their personal baggage on and from a vessel in a harbour.
- (2) Except with the permission of the Harbour Master, a person must not board a vessel carrying passengers following its arrival in a harbour until all its passengers have

disembarked.

- (3) In this Article, ‘passengers’ means the persons carried on a vessel other than –
- (a) a person employed or engaged in any capacity on the business of the vessel; and
 - (b) a person on board the vessel either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.”.

9 Regulation 47 amended

Regulation 47 of the principal Regulations is amended by omitting paragraph (3).

10 Regulation 48 substituted

For Regulation 48 of the principal Regulations there is substituted the following Regulation–

“48 Prohibited acts

- (1) A person must not in a harbour –
- (a) throw, deposit or put ballast, earth, ashes, stones or other thing into the water;
 - (b) throw down, deposit, put or leave refuse of any nature whatsoever;
 - (c) leave faeces of a dog for which a person is responsible;
 - (d) injure, or deface by writing or otherwise, a wall, building, structure, machinery, statue, erection, seat, railing or other thing;
 - (e) behave in a manner reasonably likely to offend against public decency;
 - (f) wilfully and unreasonably interfere with the convenience of, or cause annoyance to, another person;
 - (g) throw or discharge a stone or missile;
 - (h) cause an obstruction to free passage;
 - (i) obstruct, impede, resist or assault an officer in an administration of the States for which the Minister is assigned responsibility in the exercise of the officer’s duties.
- (2) Despite paragraph (1), a person may in a harbour –
- (a) leave refuse in a receptacle provided for the purpose;
 - (b) leave dog faeces in a receptacle provide for the purpose;
 - (c) discharge ballast water in accordance with the International Maritime Organization’s Guidelines for the Control and Management of Ships’ Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens, as stated in resolution A.868(20), as for the time being in force.”.

11 Regulation 50 substituted

For Regulation 50 of the principal Regulations there is substituted the following Regulation–

“50 Penalties and criminal responsibility

- (1) A person who contravenes –
- (a) a provision of these Regulations; or

(b) a direction issued or given under these Regulations,

in relation to which no special penalty is provided, is guilty of an offence and is liable to a fine of level 2 on the standard scale.

- (2) Where an offence under these Regulations committed by a body corporate 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 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 body corporate to the penalty provided for that offence.
- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.
- (4) A person who aids, abets, counsels or procures the commission of an offence under these Regulations shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (5) Where it is relevant to do so, an offence under these Regulations may be charged by reference to a person's actions during a period of time and the person may be convicted of a second offence or subsequent offences by reference to the same action during a period of time following the preceding conviction for the offence.”.

12 Schedule 1 substituted

For Schedule 1 to the principal Regulations there is substituted the following Schedule–

“SCHEDULE 1

(Regulations 4, 5 and 6)

POLICY GUIDELINES TO BE FOLLOWED BY HARBOUR MASTER

1 Application

This Schedule applies to the following functions of the Harbour Master –

- (a) the designation of a facility or service under Regulation 4(1);
- (b) the grant of a permit under Regulation 5;
- (c) the designation of a facility or a service under Regulation 6(1); and
- (d) the negotiation of an agreement under Regulation 6(7).

2 Performance of function by Harbour Master

The Harbour Master must perform a function to which this Schedule applies in a manner that is best calculated to ensure that, so far as is reasonably practicable and safe –

- (a) shipping services and facilities in the harbours and territorial waters; and
- (b) shipping services between Jersey and other jurisdictions,
- are provided in a manner that achieves the objectives mentioned in paragraph 3.

3 Objectives

The objectives referred to in paragraph 2 are –

- (a) to protect and further the long-term interests of end-users of the services and facilities;
- (b) to satisfy all current and prospective demands for the services and facilities;
- (c) to promote competition, efficiency, economy and effectiveness in commercial activities connected with port and shipping services;
- (d) to impose a minimum of restriction on persons engaged in commercial activities connected with port and shipping services;
- (e) to ensure that persons engaged in commercial activities connected with port and shipping services have sufficient expertise and financial and other resources to conduct the activities.

4 Harbour Master not to show preference or to discriminate

The Harbour Master must not show undue preference or unfairly discriminate in exercising a function to which this Schedule applies.”.

13 Citation and commencement

- (1) These Regulations may be cited as the Harbours (Amendment No. 41) (Jersey) Regulations 200.
- (2) They come into force 7 days after they are made.

[1] 39 votes to 5, 5th December 2007

[2] JCRA (2002), *Competition Effects in the Car Ferry Services Market Serving The Island of Jersey*, page 31.

[3] JCRA, (2006), *Shipping and Port Services Enquiry*, page 4

[4] Attorney General, States of Jersey, Official Report, Wednesday, 5th December 2007 at 6.3.5

[5] Guernsey Commerce and employment Dept. (Jan. 08), *The Regulation and Development of Transport (Air and Sea) Links*, paragraph 76, page 13.

[6] Pilotage (Jersey) Law 200- passed by the States 12th February 2008

[7] Sea Transport: revised policy (P.24/2006) – comments, section 4.1, page 5

[8] Based on the situation in the summer of 2007, current operators in the passenger car ferry market are taken to be Condor and HD Ferries on the St. Malo and interIsland routes and Condor alone on the routes to Portsmouth, Poole and Weymouth.

[1] *chapter 19.060*

[2] *chapter 19.060.60*