

19-21 Broad Street | St Helier
Jersey | JE2 4WE

By email

5th March 2025

Dear Chair,

Shipping (Jersey) Law 2002 and Harbours (Inshore Safety) Regulations

Thank you for your letter of 20th February in which you ask a number of questions relating to the forthcoming shipping legislation. I have set out answers to each of your questions below in turn:

- 1. The Panel understands that the first priority was to broaden the definition of a 'vessel' and 'ship' to include smaller watercraft used merely for having fun on as distinct from the navigation of the water. Can you confirm if the amending legislation updates any requirements as to registration of a ship, including smaller craft such as jet skis or surf boards used for recreation?*

There will be no changes to vessel registration requirement under these provisions. The policy objective is to "tighten up" the definition of a vessel and add clarity for water users rather than add to the number of vessel types requiring registration.

- 2. Will the new legislation capture all forms of transportation on, in or under water, for example would this include a floatation device/arm bands and body boards etc.?*

Definition of a "Ship" would not include flotation devices and body boards. Referring to the draft proposition, the definition of "ship" includes a vessel or watercraft that –

- a. (a) is of any type, including a non-displacement craft, seaplane or wing-in ground craft (meaning a craft that operates using different modes and that flies close to the surface, using surface-effect action, in its main mode); and*
 - b. (b) is used, or is capable of being used, as a means of transportation on, in or under water*
- 3. Please can you outline the need for a person with experience in the relevant activity in or on a ship and how this will be practically implemented, for example what level of experience of water skiing would be required?*

Implementation and enforcement will be informed by Ports of Jersey's Enforcement Policy. Ports of Jersey's public user guide "Using Our Coastline Safely" is kept under regular review but there is no change to the legal of effect of the existing position. This provision replicates the existing regulation 9(4) in the Harbours (Inshore Safety) (Jersey) Regulations 2012.

4. *To confirm would the requirement for experience impact single user ships or vessels such as jet skis or surf boards or are they only related to towing a person?*

In new Regulation 9K (1)(a) & (b) when related to towing a person, the master must be accompanied by an experienced person in relevant activity who is watching over the well-being of the person being towed.

This provision replicates the existing regulation 9(4) in the Harbours (Inshore Safety) (Jersey) Regulations 2012.

5. *Is there any relevant oversight of the hire of ships or vessels such as jet skis, included in the amending or existing laws, requiring relevant experience in their use?*

There are distinct provisions within Harbours (Inshore Safety) Regulations which protect members of the public when undertaking activities with a commercial operator. Operators have to be inspected and approved by the Harbour Master, and must, in turn, operate vessels which are approved by a certified Jersey coding authority.

Commercial operators must attain a Local Knowledge Endorsement which is equivalent to a Local Boat Master's Licence in the United Kingdom, as well as a commercial qualification such as commercially endorsed Yacht Master's Certificate.

6. *What existing or new provision is in place to require sufficient experience or seamanship when operating a ship, including pleasure craft such as speed boats?*

There is no requirement for anyone using a pleasure vessel non-commercially to have any maritime qualifications. This is consistent with the position of the United Kingdom. However, Ports of Jersey Ltd encourage all seafarers to seek Royal Yacht Association qualifications.

7. *There are a number of updates to the amount that liability for carriers can be set, with the proposed increases in the amounts established in Article 8 ranging from 170% to 1064%, how have these been calculated?*

Jersey's obligations in this area are set by the International Maritime Organisation. The update brings Jersey in-line with the [Athens Convention](#) and this sets the maximum level of liability.

8. *The amending law will maintain that "The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant." What impact will this have on any investigation?*

None. Issues of commercial liability do not form any part of a Marine Safety Investigation.

9. *The amending legislation will insert an Article 4b regarding compulsory insurance, can you please outline the purpose of this article?*

The change will bring Jersey in line with international conventions (namely the Athens Convention).

10. *Another article, 17bis, will also be inserted regarding recognition and enforcement of judgements, can you please outline the purpose if this article?*

I refer to my previous answer.

11. *Studying the legislation it appears that Article 5 of the Draft Shipping (Jersey) Amendment Law 202- will remove the Assembly's ability to repeal by regulations, can you confirm why this is the case? Law would be "amend or modify" rather than "repeal or modify".*

The change of wording does not affect the Assembly's Regulation making power, as the ability to amend includes, but is not limited to, the ability to repeal.

12. *Under the current Law the Minister is required to publish an inquiry report, unless there are ongoing criminal proceedings. However, the amending law establishes the Minister may do so, unless again there are ongoing criminal proceedings, and only requires publication of any sections that require immediate action. Can you please outline the reasons the removal of the requirement to publish any report of an inquiry?*

The purpose of delaying any report's publication is to make sure it does not influence a potential court case. The proposed changes only clarify that the Minister *has the ability* to publish a report. Previously, there was no requirement for the Minister to initiate an investigation whereas the proposals place a legal obligation on them now to do so.

13. *Contravention of the law shall be punishable with imprisonment of 2 years and a fine, or 5 years and a fine if an offence leads to a person's death or serious injury, with these times doubled if the offender is impaired by drink or drugs. Can you please outline how these punishments have been set?*

Penalties have been set in-line with the Road Traffic (Jersey) Law.

14. *Please can you outline the relevance and implications of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea?*

The Athens Convention is an international convention which seeks to make sure that commercial operators which carry passengers have the ability to compensate passengers for injury or loss. Maximum liabilities under the Convention are capped across the Crown Dependencies.

15. *Article 129 (Salvage Convention 1989 to have force of law) will be updated by the amending law to allow the Assembly to amend or modify the Salvage Convention, why is there a need to update this article?*

There is a need for an update because the current convention is out of date. It will give Jersey the ability to meet international standards.

16. *Please can you outline the practical implementation of proposed testing of breath, blood or urine of a suspect during the course of an investigation into a serious injury, death, or careless operation of a ship? For example, who would undertake the testing and in what circumstances would this take place?*

Implementation of these powers would be circumstantial to a given scenario, and the nature of the testing, but either the Acting Harbour Master or States of Jersey Police (SoJP) would have the ability to require testing.

17. *The Panel understands from our previous questioning that there are other areas that may provide further protection for those using our inshore waters, for example requirement for greater training, issuing of licences or proactive testing upon suspicion of operating watercraft whilst under influence of drugs or alcohol. Can you please outline if these, or any other protections, will be progressed in the future and why they have not been included at this stage?*

These proposals are, in part, informed by examples of case law. Therefore, agencies should have the ability to test how the amendments work in practice and assess the potential need for enhancements over time.

For commercial operators there are enhanced safety control measures in place for operations e.g. operator must demonstrate they are fully insured, obtain Local Knowledge Endorsement, commercially recognised qualification and a permit to operate.

- a. *Please can you outline what provision exists within current legislation to stop recreational or commercial ship masters from being intoxicated when operating vessels?*

A vessel may be stopped if there is suspicion of careless operation but a breath or blood sample, which might prove intoxication, cannot be required. This is what we are proposing to change.

- b. *Can you confirm that being intoxicated whilst operating a ship will not itself constitute an offence under the proposed draft regulations, and if so what is the rationale behind this?*

The changes will not introduce an offence of being intoxicated operating a vessel. However, intoxication can form part of the offence of Careless Operation of a Vessel. For the first time, authorities can now prove it is an aggravating factor, and Magistrates or Judges can adjust penalties accordingly.

I reiterate (as I stated to the Panel on 20th February 2025) that I do not believe it is safe or acceptable to sail a vessel while intoxicated. However, given sparser density of water traffic in Jersey's open territorial waters, it may be that a low level of alcohol consumption by non-commercial seafarers does not present as high a risk to safety as, for example, it absolutely does among road vehicle users. However, I do not endorse or encourage any level of consumption among people who might choose to do so, and I am guided by the expertise of Jersey's Harbour Authority and Coastguard.

- c. *Can you confirm if careless operation would also allow for testing or only upon serious injury or death?*

Yes, it would.

18. *The new legislation will establish that a person who is required to provide a specimen for alcohol testing will have to do so within 18 hours, can you please explain the rationale for this timing?*

- a. *Does this risk alcohol leaving the body prior to a specimen being collected?*

This provision is consistent with the Road Traffic (Jersey) Law.

19. *It is understood that alcohol testing will only be undertaken once the Harbour Master or police officer has reasonable cause to suspect that a person has committed an offence. What would the impact be should they be given the power to require a specimen of breath if they had reason to believe an operator of a ship has alcohol in their body and why has this ability not been included?*

The approach to enforcement is set out in PoJ's new Enforcement Policy and would be evidenced in any given scenario. As it will not be an offence to operate a ship with alcohol in the body, it might also be true to say that there is no reason or justification to test for this unless there is reason to believe another offence has been committed. However, as Minister, I defer to and respect the independent judgement of enforcement Officers, be they from Ports of Jersey Ltd or from the States of Jersey Police.

20. *How has the prescribed limits been set and how do they compare to other jurisdictions?*

- a. *How does the prescribed limit relate to road users?*

Again, the limit is consistent with the Road Traffic (Jersey) Law and it set out 35 micrograms of alcohol per 100 millilitres of breath.

21. *The amending legislation will introduce a new article regarding Operating a ship with excessive emissions, establishing that: A person who operates a ship in territorial waters that is emitting excessive or unreasonable noise or fumes, whether from its engine or otherwise, commits an offence and is liable to a fine of level 2 on the standard scale. Can you please outline the reason that this has been included?*

These articles already exist as part of regulations.

- a. *What will be the measure of excessive or unreasonable noise or fumes?*

The law does not set out metric limits for offences in this area. Investigation and any enforcement will be informed by the particular circumstances of a given scenario. For example, an enforcement Officer might respond to situations that are visible or audible to them, or to complaints from others.

- b. *Have any points on this been raised during consultation with stakeholders?*

No.

22. The amending Law will come into effect within 7 days if it is adopted by the Assembly, does this allow enough time for the changes to be effectively communicated?

This is a standard period of time for legislation of this type. The propositions have been consulted on publicly, and Government has worked with Ports of Jersey Ltd, through the Territorial Seas Coordination Advisory Group (TSCAG), in the developing the propositions. Authorities are already prepared to reflect the changes in their practices.

I hope the above information provides clarity to the areas you have raised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kirsten Morel', written in a cursive style.

Deputy Kirsten Morel
Minister for Sustainable Economic Development