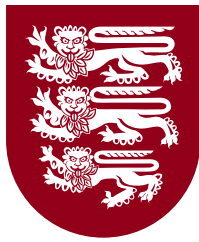


# STATES OF JERSEY



Jersey

## **DRAFT HARBOURS (INSHORE SAFETY) (JERSEY) AMENDMENT REGULATIONS 202-**

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**Lodged au Greffe on 28th January 2025  
by the Minister for Sustainable Economic Development  
Earliest date for debate: 18th March 2025**

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**STATES GREFFE**

## REPORT

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The amendments to the [Harbours \(Inshore Safety\) \(Jersey\) Regulations 2012](#), if adopted, will strengthen Jersey's maritime legal framework.

The amendments will introduce penalties for individuals found guilty of causing harm to other people, in turn enhancing responsibilities on users of a wider range of watercraft.

The purpose of the amendments is to make Jersey's territorial waters safer for everyone and to hold everyone who uses Jersey's waters to the same level of responsibility.

This report should be read in conjunction with the report in the Draft Shipping (Jersey) Amendment Law 202- (P.4/2025), which refers to amendments which have been drafted in parallel with amendments to the Harbours (Inshore Safety) (Jersey) Regulations 2012 and which, if adopted, will create the power to introduce some of the penalties in the Regulations.

### Background

The 2023 Ministerial Delivery Plan committed to updating Jersey's maritime laws. The need for these updates is rooted in case law which in recent years have highlighted areas of deficiency in Jersey's maritime legislation, but also have the general objective of making Jersey's waters safer and more accessible for all Islanders and visitors. There is also a need to address legal anomalies which currently put some seafarers at a lesser level of legal responsibility to others.

Economy Officers worked with the Legislative Drafting Office, Ports of Jersey Ltd and Justice & Home Affairs to develop the amendments. Due to the policy objectives spanning two specific Jersey laws, the amendments have been split into two separate drafts – one referring to the [Shipping \(Jersey\) Law 2002](#) and the other referring to the Harbours (Inshore Safety) (Jersey) Regulations 2012. This Report refers to the amendments to the Harbours (Inshore Safety) (Jersey) Regulations 2012.

In late 2023 / early 2024 the draft amendments were re-worked by the Legislative Drafting Office to ensure areas of expression and language within the drafts were consistent with modern expressions in law. These re-works – while not impacting the legal effect of the amendments – required additional time to finalise both sets of amendments.

### The Draft Regulations

These amendments seek to amend Jersey's Shipping Legislation via the introduction of new offences.

These offences include the following:

- (a) dangerous operation of a ship;
- (b) causing serious injury by dangerous operation of a ship;
- (c) causing death by dangerous operation of a ship;
- (d) careless operation of a ship;
- (e) causing serious injury by careless operation of a ship;
- (f) causing death by careless operation of a ship;
- (g) operating a ship with excessive emissions;
- (h) failure to have a person with experience in the relevant activity in or on a ship;
- (i) providing false or misleading information or evidence.

Further, there is recognition where drugs or alcohol have been consumed, with the introduction of aggravated offences when there is death or serious injury when the skipper is under the influence of either.

The offences will also give the Police and Harbour Master the authority to require a breath test of a suspect during the course of an investigation into a serious injury or death.

### **Development and Consultation**

A public consultation took place in June 2023 to ensure sea users and the wider community had the opportunity to feedback on the proposed amendments to the law.

The results of the consultation were positive, with most respondents welcoming the change in law. 75% agreed with the draft Harbour (Inshore Safety) Regulations amendments.

### **Financial and staffing implications**

There are no financial or staffing implications for the States of Jersey arising from the adoption of the draft Regulations.

There will be a modest resource implication for Ports of Jersey Limited, which has been accounted for in upcoming business planning. The resource implication will be underpinned by a new enforcement policy statement which will clarify how Ports of Jersey Limited will discharge its enforcement responsibilities. As of November 2024, this policy statement is pending approval.

### **Children's Rights Impact Assessment**

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

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## EXPLANATORY NOTE

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If passed these Regulations would amend the Harbours (Inshore Safety) (Jersey) Regulations 2012 to introduce new offences.

*Regulation 2* inserts definitions of “operating a ship”, “operator” and “serious injury” in the interpretation provisions (and *Regulation 4* deletes that definition from where it was previously).

*Regulation 3* introduces the new offences. The new offences are –

- (a) dangerous operation of a ship;
- (b) causing serious injury by dangerous operation of a ship;
- (c) causing death by dangerous operation of a ship;
- (d) careless operation of a ship;
- (e) careless operation of a ship when under influence of drink or drugs;
- (f) causing serious injury by careless operation of a ship;
- (g) causing serious injury by careless operation of a ship when under the influence of drink or drugs;
- (h) causing death by careless operation of a ship;
- (i) causing death by careless operation of a ship when under influence of drink or drugs;
- (j) operating a ship with excessive emissions;
- (k) failure to have a person with experience in the relevant activity in or on a ship; and
- (l) providing false or misleading information or evidence.

It also makes provision about how evidence is obtained and used.

*Regulation 5* provides that the Regulations come into force 7 days after they are made.



Jersey

## **DRAFT HARBOURS (INSHORE SAFETY) (JERSEY) AMENDMENT REGULATIONS 202-**

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Jersey

## DRAFT HARBOURS (INSHORE SAFETY) (JERSEY) AMENDMENT REGULATIONS 202-

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES** make these Regulations under Article 4 of the [Harbours \(Administration\) \(Jersey\) Law 1961](#) and Article 49 of the [Shipping \(Jersey\) Law 2002](#) –

### **1** [Harbours \(Inshore Safety\) \(Jersey\) Regulations 2012](#) amended

These Regulations amend the [Harbours \(Inshore Safety\) \(Jersey\) Regulations 2012](#).

### **2** **Regulation 1 (interpretation) amended**

In Regulation 1 –

- (a) before the definition of “permit” there is inserted –
  - “operating a ship” includes –
    - (a) sailing a ship;
    - (b) using a ship to ride the surf;
    - (c) using a ship under any form of propulsion; and
    - (d) allowing a ship to be at anchor without the ship being alongside or moored into a pier;
  - “operator” means a person operating a ship, and includes a person who has charge of the conduct of the ship;
- (b) after the definition of “permit” there is inserted –
  - “serious injury” has the meaning given in Article 165(3) of the [Shipping \(Jersey\) Law 2002](#);

### **3** **Regulation 9 (various offences) substituted**

For Regulation 9 there is substituted –

#### **9** **Interpretation of Regulations 9A to 9U**

- (1) For the purposes of Regulations 9A to 9C, a person operates a ship dangerously only if –

- (a) the person operates the ship in a way that –
    - (i) falls far below what would be expected of a competent and careful operator of a ship; and
    - (ii) would be obvious to a competent and careful operator of a ship is dangerous; or
  - (b) the person operates the ship while it is in a state that would be obvious to a competent and careful operator is dangerous.
- (2) For the purposes of paragraph (1) –
- (a) “dangerous” refers to danger of injury to a person or of serious damage to property;
  - (b) in determining what would be expected of, or obvious to, a competent and careful operator of a ship in a particular case, regard must be had to –
    - (i) any circumstance shown to have been within the knowledge of the operator of the ship; and
    - (ii) the circumstances of which the operator of the ship could be expected to be aware; and
  - (c) in determining the state of a ship, regard may be had to anything attached to it or carried on or in it and to the manner in which anything is attached or carried.
- (3) In Regulations 9E, 9G, 9I and 9T, “prescribed limit” means, as the case may require –
- (a) 35 microgrammes of alcohol in 100 millilitres of breath;
  - (b) 80 milligrammes of alcohol in 100 millilitres of blood; or
  - (c) 107 milligrammes of alcohol in 100 millilitres of urine.

#### **9A Dangerous operation of a ship**

A person who operates a ship dangerously in territorial waters commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

#### **9B Causing serious injury by dangerous operation of a ship**

A person who causes serious injury to another person by operating a ship dangerously in territorial waters commits an offence and is liable to imprisonment for a term of 5 years and to a fine.

#### **9C Causing death by dangerous operation of a ship**

A person who causes the death of another person by operating a ship dangerously in territorial waters commits an offence and is liable to imprisonment for a term of 10 years and to a fine.

**9D Careless operation of a ship**

A person who operates a ship in territorial waters without due care and attention, or without reasonable consideration for other people, commits an offence and is liable to a fine of level 3 on the standard scale.

**9E Careless operation of a ship when under influence of drink or drugs**

A person commits an offence and is liable to imprisonment for a term of 2 years and to a fine if the person operates a ship in territorial waters without due care and attention, or without reasonable consideration for other people, and –

- (a) the person is, at the time when operating the ship, unfit to properly operate it because they are impaired by drink or drugs;
- (b) the person has consumed so much alcohol that the proportion of it in their breath, blood or urine at that time exceeds the prescribed limit;
- (c) the person is, within 18 hours after that time, required to provide a specimen under Regulation 9N but, without reasonable excuse, does not provide it; or
- (d) the person is required by a police officer to give permission for a laboratory test of a specimen of blood taken from the person under Regulation 9O but, without reasonable excuse, fails to do so.

**9F Causing serious injury by careless operation of a ship**

A person who causes serious injury to another person by operating a ship in territorial waters without due care and attention, or without reasonable consideration for other people, commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

**9G Causing serious injury by careless operation of a ship when under influence of drink or drugs**

A person commits an offence and is liable to imprisonment for a term of 4 years and to a fine if the person causes serious injury to another person by operating a ship in territorial waters without due care and attention, or without reasonable consideration for other people, and –

- (a) the person is, at the time when operating the ship, unfit to properly operate it because they are impaired by drink or drugs;
- (b) the person has consumed so much alcohol that the proportion of it in their breath, blood or urine at that time exceeds the prescribed limit;
- (c) the person is, within 18 hours after that time, required to provide a specimen under Regulation 9N but, without reasonable excuse, does not provide it; or
- (d) the person is required by a police officer to give permission for a laboratory test of a specimen of blood taken from the person under Regulation 9O but, without reasonable excuse, fails to do so.



**9H Causing death by careless operation of a ship**

A person who causes the death of another person by operating a ship in territorial waters without due care and attention, or without reasonable consideration for other people, commits an offence and is liable to imprisonment for a term of 5 years and to a fine.

**9I Causing death by careless operation of a ship when under influence of drink or drugs**

A person commits an offence and is liable to imprisonment for a term of 10 years and to a fine if the person causes the death of another person by operating a ship in territorial waters without due care and attention, or without reasonable consideration for other people, and –

- (a) the person is, at the time when operating the ship, unfit to properly operate it because they are impaired by drink or drugs;
- (b) the person has consumed so much alcohol that the proportion of it in their breath, blood or urine at that time exceeds the prescribed limit;
- (c) the person is, within 18 hours after that time, required to provide a specimen under Regulation 9N but, without reasonable excuse, does not provide it; or
- (d) the person is required by a police officer to give permission for a laboratory test of a specimen of blood taken from the person under Regulation 9O but, without reasonable excuse, fails to do so.

**9J Operating a ship with excessive emissions**

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.

**9K Failure to have a person with experience in relevant activity in or on a ship**

- (1) The master in command of a ship commits an offence and is liable to a fine of level 2 on the standard scale if –
  - (a) the ship is in territorial waters, towing a person who is water-skiing, aquaplaning, parasailing or undertaking a similar activity (the “relevant activity”);
  - (b) the master is not accompanied in or on the ship by a person with experience in the relevant activity who is watching over the well-being of the person being towed.
- (2) In this Regulation, “master” has the same meaning as in the [Shipping \(Jersey\) Law 2002](#).

**9L Providing false or misleading information or evidence**

A person who, in an application or notice to the Minister or the Harbour Master under these Regulations, knowingly or recklessly provides information or evidence that is

false or misleading in a material particular is guilty of an offence and is liable to a fine of level 3 on the standard scale.

#### **9M Breath tests**

- (1) A Harbour Master or police officer may require a person to provide a specimen of breath for a breath test if the Harbour Master or police officer has reasonable cause to suspect that the person –
  - (a) is operating or attempting to operate a ship or is in charge of a ship in territorial waters;
  - (b) has alcohol in their body; and
  - (c) has committed an offence under Regulation 9E, 9G or 9I.
- (2) A Harbour Master or police officer may require a person to provide a specimen of breath for a breath test if –
  - (a) an accident occurs involving a ship in territorial waters; and
  - (b) the Harbour Master or police officer has reasonable cause to believe that, at the time of the accident, the person was operating or attempting to operate the ship or was in charge of the ship.
- (3) A person may be required under paragraph (1) or (2) to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under paragraph (2) and the police officer making the requirement thinks fit, at a police station specified by the police officer.
- (4) A person commits an offence and is liable to a fine of level 2 on the standard scale if the person is required to provide a specimen of breath and, without reasonable excuse, the person –
  - (a) does not provide a specimen that is sufficient to enable the test or analysis to be carried out; or
  - (b) does not provide a specimen in a way that enables the objective of the test or analysis to be satisfactorily achieved.

#### **9N Provision of specimens for analysis**

- (1) In the course of an investigation into whether a person has committed an offence under Regulation 9E, 9G or 9I, a police officer may require the person –
  - (a) to provide, at a police station, 2 specimens of breath for analysis by means of a device of a type approved by the Minister for Justice and Home Affairs (a “suitable device”); or
  - (b) to provide, at a police station or hospital, a specimen of blood or urine for a laboratory test.
- (2) A police officer must not require a person to provide a specimen of breath if more than 18 hours have passed after the person allegedly committed the offence.
- (3) A police officer must not require a person to provide a specimen of blood or urine at a police station unless –

- (a) the police officer has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required;
  - (b) at the time the requirement is made, it is not practicable to require the person to provide a specimen of breath at the police station (for example, because a suitable device is not available at the police station);
  - (c) the person has provided a specimen of breath by means of a suitable device at the police station and the police officer has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the person's breath; or
  - (d) a registered medical practitioner advises the police officer that the condition of the person required to provide the specimen might be due to a drug other than alcohol.
- (4) A police officer must not require a person to provide a specimen of blood if a registered medical practitioner advises the police officer that, for medical reasons, a specimen of blood cannot or should not be taken.
- (5) A person commits an offence and is liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale if –
- (a) the person is required to provide a specimen of breath and, without reasonable excuse, the person –
    - (i) does not provide a specimen that is sufficient to enable the required test or analysis to be carried out; or
    - (ii) does not provide a specimen in a way that enables the objective of the required test or analysis to be satisfactorily achieved; or
  - (b) the person is required to provide a specimen of urine and, without reasonable excuse, the person does not provide the specimen within 1 hour of the requirement being imposed; or
  - (c) the person is required to provide a specimen of blood and, without reasonable excuse, the person does not –
    - (i) consent to a registered medical practitioner taking the specimen; or
    - (ii) take all reasonable steps to allow a registered medical practitioner to take the specimen.
- (6) A police officer who requires a person to provide a specimen must, when imposing the requirement, warn the person that failing to provide the specimen may make the person liable to prosecution under this Regulation, or Regulation 9E, 9G or 9I.

## **90 Specimens of blood from persons who cannot consent**

- (1) A police officer may ask a police medical practitioner to take a specimen of blood from a person if –
- (a) the police officer is entitled to require the person to provide a specimen of blood under Regulation 9N;
  - (b) it appears to that police officer that, due to medical reasons, the person is or may be incapable of consenting to the taking of the specimen; and

- (c) the medical practitioner does not, at the time they are asked, have any responsibility for the clinical care of the person.
- (2) A police officer may ask a registered medical practitioner who is not a police medical practitioner to take a specimen of blood from a person if –
  - (a) the requirements in paragraph (1)(a) to (c) are satisfied with respect to the person and the medical practitioner; and
  - (b) either –
    - (i) it is not reasonably practicable for the police officer to ask a police medical practitioner; or
    - (ii) it is not reasonably practicable for a police medical practitioner who is willing to do so to take the specimen of blood.
- (3) It is lawful for a registered medical practitioner to whom a request is made under paragraph (1) or (2), if they think fit –
  - (a) to take a specimen of blood from the person, whether or not the person consents; and
  - (b) to provide the specimen to a police officer.
- (4) In this Regulation, “police medical practitioner” means a registered medical practitioner who is engaged under an agreement to provide medical services for purposes connected with the activities of the Honorary Police or the States of Jersey Police Force.

#### **9P Testing of blood taken under Regulation 9O**

- (1) A laboratory test must not be performed on a specimen of blood taken from a person under Regulation 9O unless –
  - (a) the person has been informed that the specimen was taken; and
  - (b) the person has given permission for the test to be performed.
- (2) A police officer may require a person to give permission for a laboratory test to be performed on a specimen of blood taken from the person under Regulation 9O.
- (3) A person commits an offence and is liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale if –
  - (a) a police officer requires the person to give permission under paragraph (2); and
  - (b) the person, without reasonable excuse, does not give permission.
- (4) A police officer who requires a person to give permission must, when imposing the requirement, warn the person that failing to give permission may make the person liable to prosecution under this Regulation, or Regulation 9E, 9G or 9I.

#### **9Q Use of specimens of breath in proceedings**

- (1) A specimen of breath provided by a person under Regulation 9N must not be used for the purposes of proceedings for an offence under these Regulations if the person was required to provide another specimen of breath and that specimen, on analysis, contains a lower proportion of alcohol.

- (2) A specimen of breath provided by a person under Regulation 9N must not be used for the purposes of proceedings for an offence under these Regulations if –
  - (a) the specimen of breath, on analysis, contains 50 microgrammes of alcohol or less in 100 millilitres of breath;
  - (b) the person also provided a specimen of blood or urine; and
  - (c) the person elects for the specimen of blood or urine to be used instead of the specimen of breath.

#### **9R Protection for hospital patients**

- (1) A police officer must not require a patient at a hospital to provide a specimen under Regulation 9N at a location other than the hospital.
- (2) A police officer must not require a patient at a hospital to provide a specimen under Regulation 9N unless –
  - (a) the registered medical practitioner in immediate charge of the patient's care has been notified of the proposal to make the requirement; and
  - (b) the medical practitioner does not object to the proposal on the ground that making the requirement, or giving the warning required under Regulation 9N(6), would be prejudicial to the proper care and treatment of the patient.
- (3) A police officer must not, under Regulation 9O, ask a medical practitioner to take a specimen of blood from a patient at a hospital unless –
  - (a) the registered medical practitioner in immediate charge of the patient's care has been notified of the proposal to make the request; and
  - (b) the medical practitioner does not object to the proposal on the ground that taking the specimen would be prejudicial to the proper care and treatment of the patient.
- (4) A police officer must not, under Regulation 9P, require a patient at a hospital to give permission for a blood specimen to be tested unless –
  - (a) the registered medical practitioner in immediate charge of the patient's care has been notified of the proposal to make the requirement; and
  - (b) the medical practitioner does not object to the proposal on the ground that making the requirement, or giving the warning required under Regulation 9P(4), would be prejudicial to the proper care and treatment of the patient.

#### **9S Evidence in proceedings: admissibility**

- (1) This Regulation applies to proceedings against a person for an offence under Regulation 9E, 9G or 9I.
- (2) A specimen of the person's blood is not admissible on behalf of the prosecution unless –
  - (a) it was taken by a registered medical practitioner with the person's consent; or
  - (b) it was taken in compliance with Regulation 9O and the person has given permission for a laboratory test of the specimen.

- (3) If, when a person provided a specimen of blood or urine, the person asked to be supplied with a specimen, evidence of the proportion of alcohol or any other drug found in the specimen is not admissible on behalf of the prosecution unless –
  - (a) the specimen in which the alcohol or drug was found is 1 of 2 parts into which the specimen provided by the accused was divided at the time it was provided; and
  - (b) the other part was supplied to the accused.
- (4) If a specimen of blood was taken from the person under Regulation 9O, evidence of the proportion of alcohol or any other drug found in the specimen is not admissible on behalf of the prosecution unless –
  - (a) the specimen in which the alcohol or drug was found is 1 of 2 parts into which the specimen taken from the accused was divided at the time it was taken; and
  - (b) any request to be supplied with the other part that was made by the person at the time when they gave permission for a laboratory test of the specimen was complied with.

#### **9T Evidence in proceedings: evidentiary value**

- (1) This Regulation applies to proceedings against a person for an offence under Regulation 9E, 9G or 9I.
- (2) Evidence of the proportion of alcohol or any drug in an admissible specimen of the person's breath, blood or urine must be taken into account, even if the specimen was not provided or taken in connection with the alleged offence.
- (3) It must be assumed that the proportion of alcohol or any other drug in the person's breath, blood or urine at the time of the alleged offence was not less than in an admissible specimen unless the person proves –
  - (a) that the person consumed alcohol or the drug after the time of the alleged offence but before providing the specimen or having it taken; and
  - (b) that had the person not consumed alcohol or the drug in the intervening period the proportion of alcohol in the person's breath, blood or urine –
    - (i) would not have exceeded the prescribed limit; and
    - (ii) if it is alleged that the person was unfit to operate the ship, would not have been sufficient to impair their ability to operate a ship properly.

#### **9U Documentary evidence as to specimens in proceedings**

- (1) This Regulation applies to proceedings against a person for an offence under Regulation 9E, 9G or 9I.
- (2) Evidence of the proportion of alcohol in a specimen of a person's breath may be given by producing –
  - (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured; and

- (b) a certificate signed by a police officer that the statement relates to a specimen provided by the person at the date and time shown in the statement.
- (3) Evidence of the proportion of alcohol or any other drug in a specimen of a person's blood or urine may be given by producing a certificate signed by the Official Analyst that states the proportion of alcohol or any drug found in the specimen.
- (4) Evidence that a specimen of a person's blood was taken with the person's consent by a registered medical practitioner may be given by the production of a document signed by the registered medical practitioner.
- (5) A document referred to in this Regulation –
  - (a) is admissible in evidence on behalf of the prosecution only if –
    - (i) in the case of a document referred to in paragraph (2), a copy of it is handed to the accused at the time it is produced or is served on the accused at least 7 days before the hearing; and
    - (ii) in the case of any other document, a copy of it is served on the accused at least 7 days before the hearing; and
  - (b) is not admissible if the accused, at least 3 days before the hearing (or at a later date, if the court allows due to special circumstances), serves notice on the prosecutor requiring the person who signed the document to attend the hearing.
- (6) A copy of a notice required to be served on the prosecutor may be served personally or sent by registered post.
- (7) In this Regulation "Official Analyst" means the Official Analyst appointed under the [Official Analyst \(Jersey\) Law 2022](#).

#### **4 Regulation 10 (certain incidents to be reported to the Harbour Master)**

- (1) In Regulation 10(1), at the end insert "other than these Regulations".
- (2) Regulation 10(5) is deleted.

#### **5 Citation and commencement**

These Regulations may be cited as the Harbours (Inshore Safety) (Jersey) Amendment Regulations 202- and come into force 7 days after they are made.