

STATES OF JERSEY



DRAFT SHIPPING (AMENDMENT No. 4) (JERSEY) LAW 201-

Lodged au Greffe on 9th January 2014
by the Minister for Economic Development

STATES GREFFE



Jersey

DRAFT SHIPPING (AMENDMENT No. 4) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development, the provisions of the Draft Shipping (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator A.J.H. Maclean**

Minister for Economic Development

Dated: 7th January 2014

REPORT

There are 2 amendments proposed and each is best explained separately:

1. Ensigns authorised for use in Jersey ships

Background

Article 4 of the Shipping (Jersey) Law 2002 (“the 2002 Law”) currently makes provisions for the type of flag to be flown in Jersey ships and these do not include the UK Secretary of State as a person who can issue a warrant for that purpose.

However, immediately prior to the coming into force of the 2002 Law, local craft belonging to 2 local yacht clubs, and States-owned vessels, flew colours authorised by warrant from the Secretary of State under the Merchant Shipping Act 1894, as it then applied to Jersey.

No saving provision was made by the 2002 Law to preserve the status of these warrants when the 1894 Act was repealed insofar as it applied to Jersey. The 2002 Law came into force in May 2004. As a result, Jersey vessels are not currently authorised under Jersey law to fly these special flags and technically they are in breach of Article 6 of the 2002 Law.

Detailed discussion over a number of years has taken place both locally and with UK departments to try and find a solution which did not contradict the original intention of Article 4.

The solution

A saving provision has now been prepared so as to hold safe the status of the flags as they were authorised before the 2002 Law came into force. Whilst re-establishing the status of the particular flags, the law amendment does not grant any new authority to the UK Secretary of State with regard to Jersey ships or the flag they can fly going forward in time.

Article 2 amends Article 4 of the Law by ensuring that any warrant issued under the 1894 Act and in force prior to the 2002 Law, remains a valid authority to fly the relevant colours both in the past and in the future.

Article 3 amends Article 6 to ensure that it is not an offence to fly colours allowed to be worn under a pre-existing warrant, even though those colours were not authorised or confirmed under Article 4 of the Shipping Law as it was originally brought into force.

Finally, Article 5 amends Schedule 9 to the Law so that, although the 1894 Act remains a repealed Act in its application to Jersey, warrants issued under the Act prior to its repeal remain unaffected by that repeal.

These changes place beyond doubt the validity of the wearing of special ensigns by the Royal Channel Islands Yacht Club, the St. Helier Yacht Club and States vessels.

2. United Nations Convention against transnational organised crime (the Palermo Convention)

Background

The Chief Minister's Department and the Law Officers' Department have been working to ensure that the United Kingdom could be asked to extend the Palermo Convention to the Island. This Convention makes provisions for international standards to help combat money laundering and transnational organised crime. It is a political priority that it should be extended so that the Island may continue to provide the best protection it can against such offences.

Specifically, the draft amendment to the Shipping Law addresses a matter regarding the Island's jurisdiction when a crime occurs outside Jersey. There is a gap concerning offences committed by non-British nationals on board Jersey ships while in a foreign port or harbour.

The definition of 'high seas' also needed clarification to make clear that Jersey courts have jurisdiction in respect of offences committed on board Jersey ships in the territorial waters of another jurisdiction.

The solution

Article 4 makes an amendment to Article 173 of the 2002 Law and widens the application of that Article in accordance with the Convention. The effect is to provide Jersey courts with jurisdiction in respect of offences committed on board Jersey ships on the high seas (including, by virtue of the Law, the territorial sea) or in a foreign port or harbour, irrespective of the nationality or residence of the offender.

The words, "in a foreign port or harbour" will now apply in a Jersey ship to all potential offenders, and not just British citizens ordinarily resident in the Island.

The definition of high seas is added so as to include explicitly another country's territorial waters with regard to offences in Jersey ships or by British citizens. This falls into line with the accepted definition in English law when an offence is brought to trial. Legal advice is that Jersey courts should be able to hear similar cases.

Conclusions

These small changes are of real benefit.

Firstly, the change concerning the flying of colours will ensure there is no doubt, legally, that the honour of flying a special ensign should be continuous and permanent. This will bring to an end what has at times been an unnecessary worry for individuals. It is an overdue change that will particularly please the 2 local yacht clubs and their members.

Secondly, the changes regarding jurisdiction for transnational crime are of considerable importance to the Island, its international reputation and the fight against potential money laundering.

Members are recommended to approve these amendments.

Financial and manpower implications

There are no immediate resource implications arising from these changes. However, the widening of the Island's jurisdiction could lead to a person being charged with an offence and tried in Jersey where in the past that would not have been possible. Whilst this has the normal resource implications of any criminal case, it is clearly in the Island's interest to be able to deal with such crimes. The related cost of this is expected to be managed within planned resources.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on the draft Shipping (Amendment No. 4) (Jersey)
Law 201-**

These Notes have been prepared in respect of the Shipping (Amendment No. 4) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law concerns 2 unrelated matters:

First matter – jurisdiction in respect of offences committed on board Jersey ships

The purpose of the amendment to Article 173 of the Shipping (Jersey) Law 2002 – which sets out the circumstances in which a court in Jersey has jurisdiction to deal with offences on board a Jersey ship – is to extend its scope so that its provisions are fully consistent with the United Nations Convention against Transnational Organised Crime (known as the Palermo Convention). The effect of the amendment is twofold –

- To provide the Jersey courts with jurisdiction with respect to offences committed on board Jersey ships on the high seas or in a foreign port or harbour irrespective of the offender’s nationality or residence, where the person is subsequently found in Jersey. There is currently a small gap in compliance in that Convention offences committed by non-British nationals on board Jersey ships while in a foreign port or harbour are not treated by virtue of Article 173 as offences which can be tried in Jersey.
- To make it clear that the expression “high seas” includes any navigable part of any sea below the low water mark, whether or not within territorial waters.

None of the above provisions gives rise to any Human Rights issues.

Second matter – warrants for defaced Ensigns under the Merchant Shipping Act 1894

This is concerned with the status of certain warrants that used to have effect under section 73(1) of the Merchant Shipping Act 1894 of the United Kingdom (“**section 73(1)**”) which was repealed in its application to Jersey by the Shipping (Jersey) Law 2002 (“**the 2002 Law**”). The effect of the repeal was to remove the legal basis upon which such warrants had effect in this jurisdiction. The draft Law does not mention them by name, but the warrants affected by the repeal of section 73(1) were for the flying of –

- the distinctive Blue Ensign for vessels of the Royal Channel Islands Yacht Club; and
- the distinctive Red Ensign granted to the St. Helier Yacht Club for its vessels.

The draft Law seeks to hold safe the warranted status of the Yacht Clubs’ distinctive Ensigns. In so doing, the draft Law does not give rise to any Human Rights issues, as such, but acknowledges implicitly that the removal of the legal basis upon which the warrants had effect might have engaged Article 1 of Protocol No. 1 to the ECHR (“**A1P1**”) A1P1 provides that –

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The Yacht Clubs were granted rights by the Warrants, in recognition of past services performed by them or their members. Those warrants or the rights they confer *might* be seen as having been the Clubs’ property; and their members have boats on which they had been granted, by dint of their membership, special rights to fly particular flags or colours, albeit in each case subject to withdrawal of the warrant. It is arguable that those rights constituted their property, or at least that the right to fly the ensigns affected the way in which they used their property.

The object of the draft Law is to ensure that any such rights are held safe and, far from raising Human Rights issues in this regard, the effect of the draft Law will be to resolve any such issues that might, arguably, have arisen.

Although not vital to this Human Rights assessment, it may be helpful to give the historical background concerning the relevant warrants, and the precise manner in which the draft Law seek to hold safe their legal status.

1. The repeal of section 73(1), and the absence of a saving provision in the 2002 Law for the respective Ensigns of the 2 Clubs meant that, technically, they both fell foul of –
 - 1.1 Article 4(1) of the 2002 Law which provides that the Flag that a Jersey ship may fly “*is the red ensign without any defacement or modification*”; and
 - 1.2 Article 6(1) of the 2002 Law which makes it an offence to hoist on board a Jersey ship without warrant from Her Majesty any distinctive national colours except those: (i) authorized or confirmed by Her Majesty by Order in Council; or (ii) authorized by the States of Jersey; or (iii) allowed to be worn under a warrant from Her Majesty.
2. The warrants of both Clubs were originally granted by the Admiralty:
 - A: Royal Channel Islands Yacht Club
 - A1 A warrant dated 15th May 1894 (“**the 1894 warrant**”) authorised: “*. . . the Blue Ensign of Her Majesty’s Fleet, with the distinctive marks of the Royal Channel Islands Yacht Club thereon . . . to be worn on board the respective vessels belonging to the Royal Channel Islands Yacht Club, and to Members of such Yacht Club, being natural born or naturalised British Subjects . . .*”.
 - A2 The 1894 warrant was effective under section 73(1) which declared that: “*The red ensign usually worn by merchant ships, without any defacement or modification whatsoever, is . . . the proper national colours for all ships and boats belonging to any British subject, except in the case of Her Majesty’s ships or boats, or in the case of any other ship or boat for the time being allowed to wear any other national colours in pursuance of a warrant from Her Majesty or from the Admiralty.*” [emphasis supplied]

- A3 The Admiralty was brought under the roof of the Ministry of Defence. On 8th February 1985, the Secretary of State for Defence issued a warrant authorising “ . . . *the Blue Ensign of Her Majesty’s Fleet with the distinctive marks of the Club thereon to be worn by yachts belonging to or chartered by members of the Royal Channel Islands Yacht Club*”.
- A4 Section 73 continued in force in the United Kingdom until it was repealed by the Merchant Shipping (Registration, etc.) Act, 1993 (“**the 1993 Act**”), Schedule 3, paragraph 2 of which provided that: “*The flag which every British ship is entitled to fly is the red ensign (without any defacement or modification)*”. However, ‘proper national colours’ included “*any colours allowed to be worn in pursuance of a warrant from Her Majesty or from the Secretary of State*”.
- A5 The 1993 Act extended to England and Wales, Scotland and Northern Ireland, but not to Jersey. The 1993 Act did not repeal section 91 of the 1894 Act under which section 73(1) applied to *the whole of Her Majesty’s dominions, and to all places where Her Majesty has jurisdiction*. The repeal did not therefore affect section 73(1) as it applied to Jersey. Thus the Club continued – in spite of the 1993 Act – to hold a warrant under section 73(1).
- A6 Section 2 of the Merchant Shipping Act, 1995 (“**the 1995 Act**”) re-enacted the provisions in respect of the British flag in the 1993 Act – which remained in force in the United Kingdom. The 1995 Act did not extend to Jersey.
- A7 The position for the Club after the passing of the 1995 Act was therefore unchanged from its position after the passing of the 1993 Act. Its warrant still took effect under section 73(1), which remained in force in Jersey.
- A8 Article 201(1) of, and Schedule 8 to, the 2002 Law repealed the 1894 Act in its application to Jersey. There was no saving provision in respect of warrants that were effective in Jersey law, immediately prior to the coming into force of the 2002 Law, under section 73. Hence the Club’s warrant ceased to be underpinned legally with the repeal of the power under which it had been granted.
- B: *St. Helier Yacht Club*
- B1 The history is slightly different, but the end result the same in legal terms. On 12th May 1952, the Lieutenant-Governor of the day wrote to the Commodore of the Club in the following terms –

“*Sir,*

I have the honour to refer to a letter dated 4th January 1952, addressed to me by the Commodore, asking that representation might be made to The Lords of the Admiralty that permission be granted for craft belonging the members of the St. Helier Yacht Club to have the privilege of wearing a defaced Red Ensign.

It is with great pleasure that I have to inform you that Their Lordships have approved that craft belonging to members of the St. Helier Yacht Club should have the privilege of wearing a defaced Red Ensign, under warrant, when afloat. This

privilege is granted as a special award in recognition of the prompt and efficient response by the St. Helier Yacht Club to the call for yachts to take part in the operations connected with the evacuation of St. Malo in June 1940, in co-operation with the Royal Navy.

This award is to be regarded as a battle honour.”

- B2* The warrant was effective under section 73(1) (see A2 above).
- B3* The Secretary of State, on 8th February 1985, issued a warrant that authorised yachts belonging to members of the St. Helier Yacht Club to wear the Red Ensign with the distinctive marks thereon of the Club.
- B4* The Club’s warrant still took effect under section 73(1), which remained in force, but Article 201(1) of, and Schedule 8 to, the 2002 Law repealed the 1894 Act in its application to Jersey, with the result described A8 above.
3. The draft Law seeks to restore the status of the warrants of the Yacht Clubs by amending Articles 4 and 6 of the 2002 Law (see paragraphs 1.1 and 1.2 above) so that a flag flown in pursuance of a warrant having effect under section 73(1) shall be lawfully flown; and by amending Schedule 9 to the 2002 Law – transitional and saving provisions – to make it clear that the repeal of section 73(1) shall not be taken as invalidating the wearing of colours “in pursuance of a warrant under section 73(1) ... and having effect immediately before the commencement of this Law [*i.e.* the 2002 Law], and for the purpose of the validity of such a warrant that subsection shall, in its application to Jersey, continue in force as though unaffected by the repeal of that Act by this Law.”
4. There is an element of retrospectivity in this provision, but any objection on that ground is countered by the fact that the provision is restorative of a right possessed by the Clubs affected.

Explanatory Note

This draft Law would further amend the Shipping (Jersey) Law 2002 (“the Law” in this Note, and in the draft Law by virtue of *Article 1*) in two respects. By *Articles 2, 3 and 5* it would amend Articles 4 and 6 of, and Schedule 9 to, the Law to place beyond doubt the validity of the wearing of special ensigns by the Royal Channel Islands Yacht Club and the St. Helier Yacht Club. The rights to wear these colours were granted by warrants from the Admiralty, as it then was, under a provision of the UK Merchant Shipping Act 1894. (That Act in its application to Jersey was repealed, upon commencement of the Law, without any intention adversely to affect such rights.)

Article 4 would make a wholly separate amendment to Article 173 of the Law, to widen the application of that Article in accordance with the United Nations Convention against Transnational Organised Crime (the “Palermo Convention”) to provide Jersey courts with jurisdiction in respect of offences committed on board Jersey ships on the high seas (including, by virtue of the Law, the territorial sea) or in a foreign port or harbour, irrespective of the nationality or residence of the offender.

Article 6 provides for the citation of this draft Law, which would come into force upon registration, in accordance with the Interpretation (Jersey) Law 1954.



Jersey

DRAFT SHIPPING (AMENDMENT No. 4) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT SHIPPING (AMENDMENT No. 4) (JERSEY) LAW 201-

A LAW to amend further the Shipping (Jersey) Law 2002

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “Law” means the Shipping (Jersey) Law 2002¹.

2 Amendment of Article 4

At the end of sub-paragraph (1)(c) of Article 4 of the Law, the full stop shall be deleted and there shall be added the words “or in pursuance of any other warrant having effect, prior to the commencement of this provision, under section 73(1) of the Merchant Shipping Act 1894 of the United Kingdom.”.

3 Amendment of Article 6

In sub-paragraph (1)(a)(ii) of Article 6 of the Law, for the words “authorized or confirmed” there shall be substituted the words “authorized, confirmed or allowed to be worn”.

4 Amendment of Article 173

(1) For paragraph (1) of Article 173 of the Law there shall be substituted the following paragraph –

“(1) This Article applies where –

- (a) a person is charged with having committed an offence on board a Jersey ship on the high seas or in a foreign port or harbour; or

- (b) a person being a British citizen ordinarily resident in Jersey is charged with having committed an offence on board a foreign ship to which the person does not belong, and that person is found in Jersey.”.
- (2) At the end of Article 173 of the Law there shall be added the following paragraph –
- “(6) In paragraph (1), ‘high seas’ includes any navigable part of any sea below the low water mark, whether or not within territorial waters.”.

5 Amendment of Schedule 9

At the end of Schedule 9 to the Law there shall be added the following paragraph –

“5 Warrants for the wearing of colours

Nothing in Article 201 of, or Schedule 8 to, this Law shall be taken as invalidating the wearing of colours in pursuance of a warrant under section 73(1) of the Merchant Shipping Act 1894 of the United Kingdom and having effect immediately before the commencement of this Law, and for the purpose of the validity of such a warrant that subsection shall, in its application to Jersey, continue in force as though unaffected by the repeal of that Act by this Law.”.

6 Citation

This Law may be cited as the Shipping (Amendment No. 4) (Jersey) Law 201-.

¹ *chapter 19.885*