

JERSEY HARBOURS: HARBOUR DUES

**Lodged au Greffe on 23rd July 2002
by the Harbours and Airport Committee**



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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

- (a) to agree, in principle, that the Harbour and Light Dues (Jersey) Law 1947, as amended, should be repealed;
and
- (b) to charge the Harbours and Airport Committee -
 - (i) to implement new arrangements with port users as soon as possible, in accordance with the existing powers granted to it under the Harbours (Administration) Law 1961, as amended and its subordinate legislation, concerning charges to be raised for commercial vessels; and
 - (ii) to bring forward for approval by the States a draft Law that will repeal the Harbour and Light Dues (Jersey) Law 1947 and that will allow sustainable long-term measures which are compatible with the Island's international obligations.

HARBOURS AND AIRPORT COMMITTEE

REPORT

Background

The Island's obligations under E.C. Law in so far as it applies to the Island prevent the imposition of customs duties (or charges having equivalent effect) on trade between the Island and member states of the Community. Advice recently received from the Attorney General indicates that the current practice of charging Harbour Dues on the weight or volume of freight imports and exports may be open to challenge as being not in accordance with the Island's obligations.

The Harbour and Light Dues (Jersey) Law 1947 has other deficiencies in that the Light Due should not apply only to vessels entering the harbour but to all commercial vessels entering and leaving. To correct this, an amendment to the Law is required. If used to generate income in the future, the Light Due would provide a relatively small income, as it must be based solely on the cost of providing lighthouses, buoys, beacons and such directly related facilities as Jersey Radio and Port Control. These costs are only a small proportion of the States long-term commitment to maintaining all harbour infrastructure and the enforcement of maritime legislation.

Mooring Fees under the existing law are compatible with E.C. Law. However, the current Jersey Law requires these to be reduced (or abated) by the amount of passenger or freight due also paid when the ship enters the harbour. This was originally designed for the purpose of covering the cost of long-stay mooring facilities where a vessel may lay alongside for a month or more. However, to use such a mooring fee for fast turn around vessels makes little sense. The reductions required by Law will negate the financial benefit of applying the fee in the first place. The use of these fees as defined in the 1947 Law is not seen as a workable long-term solution.

The effect of the Proposition

On the basis of the advice received, the Committee has concluded that nothing less than repeal of the existing Law will suffice. The Proposition, if agreed, will allow this and be a clear signal of the Island's good intentions.

The Proposition will enable a solution to be put in place that is not based on the existing Harbour and Light Dues Law. Normally, officers of the department would now be working on instructions for a new tariff to be presented to the States towards the end of the year but this is clearly untenable. Instead, it is proposed that individual one-year licence agreements with Port Users will be drawn up, as allowed for under exiting powers granted to the Committee under the Harbours (Administration) Law 1961, as amended. These arrangements can include considerations such as the mooring space occupied and a contribution to the cost of providing navigation aids as well as the cost of providing the shore based facilities: in effect it will be a general permission to engage in their business activity. It should ensure the legitimate recovery of costs for the services provided but not related to the volume or tonnage of goods shipped or unshipped.

Furthermore, the Proposition gives the Committee the support of the States to develop more sustainable measures for the long-term. These may involve in part a new Harbour and Light Dues Law which specifically address the issue of Light Dues.

Competition and the Role of the JCRA

The Jersey Competition Regulatory Authority will have an important and statutory role in maintaining fair and reasonable port charges. If the States approve a Competition Law as described in Report R.C.1/2002 then this will provide a key regulatory mechanism in the future.

Even without such a Law, dues must be seen to be fair and equitable if they are not to be open to challenge^[1]. To this end, the Committee will negotiate dues for the year 2003 with Port Users on an 'open book' basis.

Timing

The advice recently received from the Attorney General makes matters pressing.

Financial implications

For *Jersey Harbours*, 2002 is the last year of its current three-year agreement with Treasury concerning the annual return to the States. It was stated in the Budget, presented to the States last December, that the capital expenditure requirements for the next few years make it likely that there will be little or no return from the Harbours and Airport Committee. Additionally, the recently obtained legal advice makes it clear that harbour dues cannot be expected to provide a return for the States without leading back into difficulties with E.C. Law.

The need to cease to levy charges on goods via the Harbour and Light Dues (Jersey) Law 1947 presents a real threat to the annual income of £4.2 million from this source unless action is taken to put in place an alternative. Therefore, the Committee must bring this Proposition to States members precisely to maintain an uninterrupted revenue stream.

Human Resource implications

There are no Human Resource implications arising from this Proposition.

^[1] If dues were to be found partial and unequal in their operation as between different classes: if they were manifestly unjust: if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say “[The States Assembly] never intended to give authority to make such rules: they are unreasonable and ultra vires.” Taken from *Modernising Trust Ports - A Guide to Good Governance*, published by the Department for Transport in the U.K.