

STATES OF JERSEY



DRAFT SHIPPING (REGISTRATION) (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 1st June 2011
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT SHIPPING (REGISTRATION) (AMENDMENT) (JERSEY) REGULATIONS 201-

REPORT

Background

Regulation 5 of the Shipping (Registration) (Jersey) Regulations 2004 provides the basic rules of ownership under which a fishing vessel can be registered in Jersey.

In particular, the Registrar must not register a fishing vessel unless it is managed and its operations are controlled and directed from within Jersey. This should have provided a strong and genuine connection with the Island and for the management of the vessel to be by individuals living in the Island before registration could be allowed. This would, it was hoped, make compliance with modern and appropriate standards and if necessary, prosecution, easier to achieve. It was also intended to assist in ensuring that any economic benefit accruing to the owners could also accrue to the Island.

To some extent this worked, and a number of vessels not based in Jersey and with no strong link with the Island had their registration terminated in 2004 on the coming into force of the current Regulations. However, issues of interpretation of the rules have continued, with 2 recent cases causing problems.

It has become apparent that where ownership rests with a company incorporated in Jersey, all the owners can be resident abroad and management can be conducted on the basis of visits 'as and when required'. Additionally, the role and responsibilities of a local operator are not sufficiently explicit within the Regulation and can result in a rather tenuous association.

It would appear that these points may have resulted in fishing vessels having merely technical links with the Island, rather than those within the spirit and intent of the Regulation.

Legal advice

Written advice was obtained from the Law Officers as to both the interpretation of the current Regulation and the material changes needed to improve the situation.

Proposed changes

The fundamental change is to strengthen the use of the role of a *managing owner* (who must be an individual resident in the Island), instead of expressions such as 'manager'

or 'operator'. The concept is already used in the Regulations elsewhere but is not a mandatory requirement for all forms of ownership.

The relevant amendments are at Regulation 3, amending Regulation 5(5) and 5(6).

Importantly, for a very substantial majority of owners where they fish from a Jersey harbour and own their own vessel, the change will be very simple. The Registrar will automatically identify them as the *managing owner* and the fisherman will *not* have to take any action.

Where ownership is shared, the managing owner must be clearly authorised and identified. He will be a resident of the Island and must satisfy the Registrar that operational control is carried out from within the Island. The signing of a declaration to that effect will be required and the Registrar may make further enquiries to verify the situation.

Where the managing owner is not the sole owner, he will still have responsibility for compliance with safety legislation and could be held culpable. This responsibility will be made explicit in new safety training and safety provisions legislation for which Law Drafting time has been allocated.

In the case of company-owned vessels, the managing owner must be a director, manager or other similar officer. This terminology reflects the legal responsibility of such an individual as already defined in the primary Law regarding offences by officers of bodies corporate (Article 175). In this way, it will no longer be adequate for a company to be named as the manager or operator without also identifying a specific individual.

These changes are achieved by a substantial rewriting of the current Regulation 5. Changes to other Regulations are consequential only and have no substantive effect on registration eligibility.

Consultation and involvement of the fishing industry

Correspondence and a formal meeting took place between a cross-section of parties during 2009. These included representatives from both the Jersey Fishermen's Association and the Fisheries section at the Planning and Environment Department. These discussions particularly looked at the issues surrounding one particular case that had arisen, concerning the degree with which the fishing vessel was genuinely being managed from within the Island.

It is important to note that some of the industry might wish more could be done to improve the economic and conservatory issues that have arisen when considering fishing vessels which may not seem to have strong links with the Island. These matters are not within the remit of the Registrar of Shipping. It is nevertheless believed that indirectly the amendments proposed here will indeed strengthen the economic benefits and prevent exploitation of the Jersey fish stock by those who do not live in the Island.

During drafting of these proposed changes dialogue has continued. Consultation took place with the Marine Resources Panel in November 2010. Discussion has continued through the Chairmanship of the Jersey Fishermen's Association and with individual fishermen who expressed concerns as how to manage the amendments.

According to current records there are just 7 vessels which are in company ownership, where specific action (such as making a formal resolution of the company) may be needed. A further 6 vessels are recorded as in joint ownership and, where it is not

already clear from existing records, the change will mean their owners will need to clarify who is the managing owner.

It may seem disproportionate¹ to be doing anything at all for such a handful of vessels. However, the impact of getting it wrong in terms of safety, legal compliance and international reputation cannot be ignored.

To assist those with company ownership in particular, an explanatory memorandum was sent to those concerned and to the Chairman of the Jersey Fishermen's Association. Advice and assistance will be made available whenever a fishing vessel is due for registration or re-registration.

Transitional provisions and commencement

These have been written to allow a 2 stage process.

In the first place, if the States approve the amendments, there will be a 3 month period before they come into force. This interim period will ensure that any prospective new owner or an existing owner applying to register or re-register his fishing vessel has time to make the appropriate arrangements, such as agreeing with other owners as to who to appoint as managing owner or getting a Resolution from a meeting of principles in the case of a company-owned vessel.

For those not currently applying to register or re-register, they will have no need to make any change until registration expires at the end of its normal 5 year term or is cancelled for other reasons. This is a specific concession made as a result of consultation and will ease transition.

Financial and manpower implications

There are no additional financial, staff, I.T., property or other resources requirements for the States arising from these Regulations. The Registrar's team will have some initial implementation and communication tasks but these can be managed internally.

Conclusions

These amendments are important in making sure that all Jersey fishing vessel owners and operators have a substantive link with the Island and are genuinely committed to maritime safety standards. Fishing is a dangerous occupation. For that reason alone, the Island must protect its reputation for being able to have effective legal control over its fleet and is not unreasonably left open to criticism.

The States are recommended to endorse the changes.

¹ A maximum of 13 vessels may be affected out of a total of 215.

Explanatory Note

These Regulations amend the requirements that must be satisfied before a fishing vessel may be registered pursuant to Regulation 5 of the Shipping (Registration) (Jersey) Regulations 2004. They provide for the appointment of a managing owner before a fishing vessel may be registered, and make minor consequential amendments.



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Arrangement

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Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 12, 13 and 196 of the Shipping (Jersey) Law 2002¹, have made the following Regulations –

1 Interpretation

In these Regulations, “principal Regulations” means the Shipping (Registration) (Jersey) Regulations 2004².

2 Regulation 4 amended

In Regulation 4 of the principal Regulations –

(a) in paragraph (8) for the word “Article” there shall be substituted the word “Regulation”; and

(b) after paragraph (8), there shall be added the following paragraph –

“(9) Where –

(a) a ship has more than one owner or the shares in which are owned by more than one owner; and

(b) a representative person has not been appointed under this Regulation,

one of the owners of the ship, being a person resident in Jersey, must be nominated by the owners as its managing owner.”.

3 Regulation 5 amended

In Regulation 5 of the principal Regulations for paragraphs (3), (4) and (5) there shall be substituted the following paragraphs –

“(3) The Registrar may register a fishing vessel even though it is owned by an individual who is not, or individuals some or all of whom are not, ordinarily resident in Jersey if the Minister advises the

Registrar that the Minister considers it appropriate to do so, having regard to –

- (a) the length of time that any of the owners have resided in Jersey; and
- (b) their involvement in the fishing industry in Jersey.

(4) The Registrar may register a fishing vessel even though an interest in it is owned by a body corporate that is not incorporated in Jersey, or bodies corporate that are not registered in Jersey, if the Minister advises the Registrar that the Minister considers it appropriate to do so, having regard to –

- (a) the length of time the individual or individuals who have a controlling interest in the body or bodies have resided in Jersey; and
- (b) their involvement in the fishing industry in Jersey.

(5) Despite paragraphs (1), (3) and (4) the Registrar shall not register a fishing vessel unless –

- (a) an individual has been appointed managing owner of the fishing vessel; and
- (b) the Registrar is satisfied that –
 - (i) the individual so appointed is authorized by the other owners to control the operation of the fishing vessel, and
 - (ii) the control of the operation of the fishing vessel by that individual will be carried out from within Jersey.

(6) The individual who is appointed as the managing owner of a fishing vessel under this Regulation must be ordinarily resident in Jersey and –

- (a) where the fishing vessel is owned by one individual, must be that individual;
- (b) where the fishing vessel is owned by more than one individual, must be one of those individuals, who must be nominated by the other owners;
- (c) where the fishing vessel is owned by a body corporate, must be a director, manager or similar officer of that body corporate, who must be nominated by the owner;
- (d) where the fishing vessel is owned by more than one body corporate, must be a director, manager or similar officer of one of the bodies corporate that owns the fishing vessel, who must be nominated by the other owners; and
- (e) where the fishing vessel is owned by an individual or individuals jointly with one or more bodies corporate, must be one individual owner or one director, manager or similar officer of one of the bodies corporate that owns the fishing vessel, who must be nominated by the other owners.

(7) Where the individual appointed under paragraph (6)(c), (d) or (e) is a director, manager or similar officer of a body corporate, nothing

in this Regulation implies that legal or beneficial title in the fishing vessel must be, or must be treated as being, vested in that individual.”.

4 Regulation 6 amended

In Regulation 6(1) of the principal Regulations the words “, or Regulation 5(4)” shall be deleted.

5 Regulation 11 amended

In Regulation 11 of the principal Regulations –

(a) for paragraph (1) there shall be substituted the following paragraph –

“(1) This Regulation applies where a managing owner has been appointed under Regulation 4 or 5.”; and

(b) paragraph (2) shall be deleted.

6 Regulation 22 amended

In Regulation 22 of the principal Regulations –

(a) for paragraph (1)(b) there shall be substituted the following subparagraph –

“(b) in respect of a fishing vessel –

(i) there is a change in the legal or beneficial title of the vessel or any share in the vessel,

(ii) there is a change of managing owner of the vessel,

(iii) the control of the operation of the fishing vessel ceases to be carried out by the managing owner from within Jersey, or

(iv) the managing owner ceases to be an individual who satisfies the requirements of Regulation 5(6).”;

(b) for paragraph (2) there shall be substituted the following paragraph –

“(2) The registered owner of the ship (or where there is more than one owner, the registered owners of the ship) shall notify the Registrar of any event mentioned in paragraph (1) within 28 days of the event occurring.”.

7 Regulation 23 amended

In Regulation 23(1)(j) for the word “Article” in both places where it appears there shall be substituted the word “Regulation”.

8 Transitional provision

Where a fishing vessel was registered under the principal Regulations immediately before the coming into force of these Regulations, these Regulations shall not have effect in respect of that fishing vessel until the earlier of –

- (a) the date which is 5 years after the commencement of the current registration of the vessel;
- (b) the date of any change in the ownership of the vessel; or
- (c) the date of cancellation of the vessel's current registration.

9 Citation and commencement

These Regulations may be cited as the Shipping (Registration) (Amendment) (Jersey) Regulations 201- and come into force 3 months after they are made.

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- ¹ *chapter 19.885*
² *chapter 19.885.70*