

Review: Draft Harbours (Inshore Safety)(Jersey) Amendment Regulations 202-, initial Report by Professor Claire de Than, September 2025.

Remit:

1. Analysis of policy, procedures and the Memorandum of Understanding (MOU) between the States of Jersey Police and Ports of Jersey
2. Opinion in respect of the new offences being introduced by the draft Regulations and how these new offences might be used in court.
3. Advice in respect of the potential implications should the Panel be minded to lodge an amendment to introduce a stand-alone offence for operation of a ship when under the influence of drink or drugs.
4. Provide advice on the governance of the draft Regulations and if the arrangements proposed are sufficient to meet operational requirements.
5. Provide technically informed interpretation on issues that the Panel should continue to scrutinise going forward.
6. Provide technically informed analysis/interpretation of relevant submissions received by the Panel from key stakeholders.
7. Complete a final report in September 2025 for the Panel's consideration.

A. Preliminary information: 3-stage theory of criminalisation

This Report centres upon the proposed creation of additional criminal offences to deal with harms occurring in Jersey's harbours and territorial waters. Before assessing the proposed offences, their context, and their potential extension, it is helpful to consider briefly why and how we extend the scope of criminal law.

In my academic work with Dr Jesse Elvin, one theme is a workable three-stage theory of when and how it is appropriate to criminalise behaviour. As we have explained elsewhere,¹ it is our position that whether conduct should be criminalised involves considering two questions identified by Paul Roberts²:

- (1) Is there a good (moral) reason to justify extending the criminal law to this particular conduct?

This first question focuses on matters of principle, considering relevant philosophical and policy perspectives, some of which may clash.

- (2) Should this conduct be criminalised all things considered (with particular reference to other moral principles and the pragmatics of law enforcement)?

This second stage considers anything else that is relevant, including whether criminalisation might have undesired negative effects. As Stevens puts it, 'Making something criminal that neither wrongs nor threatens to wrong another person should only be done where we can point to a strong public policy reason [of this kind] for doing so'³. If the Panel are minded to propose criminalisation of operation of a ship while under the influence of drink or drugs, then this factor would merit detailed consideration. Further, the aim of 'holding everyone operating ships to the same level of responsibility' needs to be weighed up in the context that many sailors in Jersey are children, both above and below the age of criminal responsibility.

We then add a third stage:

- (3) where criminalisation is appropriate, it is necessary to consider in a careful manner **how** this should be done

Indeed, this is of fundamental importance, particularly where the criminal offences proposed would have serious penalties, or are novel. Some of those under current or potential consideration would have lengthy prison sentences and some are novel. In this context, the purpose of the criminalisation of the behaviour needs to be made explicit and considered.

There is no academic consensus about the purposes of criminalisation of behaviour; it is common to state that criminal law punishes wrongdoers and serves as a deterrent,

¹ Jesse Elvin and Claire de Than, 'Consent to Death' in Alan Reed, Chris Ashford and Nicola Wake (eds), *Consent and Control: Legal Perspectives on State Power* (Cambridge Scholars Publishing 2016), 50.

² Paul Roberts, 'The Philosophical Foundations of Consent in the Criminal Law' (1997) 17 *Oxford Journal of Legal Studies* 389.

³ Robert Stevens, *Torts and Rights* (2007, Oxford University Press) 86.

but as I have explored elsewhere⁴ this is an oversimplification. Civil laws can achieve both of those aims, and criminal courts can compensate victims or absolve those who cause harm. Although preventing the unlawful causing of harm (the harm principle) is one of the main aims of criminal law, it sits uneasily with the requirement of fault which applies to most serious offences. Various submissions to Scrutiny about the proposed offences assume that criminalisation will be a deterrent, but entire academic careers have been spent on examining whether criminalisation has any deterrent function, with mixed results. Again, some responses seek punishment mechanisms for serious harms once they have occurred, which would apply only in a small number of cases. Further, it appears that some of the proposed offences have different and potentially clashing purposes, which we shall explore below.

The new offences will essentially be legal transplants from road traffic law to water. Transplants are extremely common in small jurisdictions like Jersey. Normally research into legal transplants looks at cross-jurisdictional borrowing, copying or imposing of legal principles, but it is also a common feature within legal systems. The fate of transplanted laws is unpredictable, and there are surprises in both directions. Transplants normally work better at the micro level than the macro level; copying and pasting a legal principle can work very well, but the end result of wholesale copying is often very different from intentions, and much depends on the recipient. For example, the human rights laws of most British jurisdictions have the same source, with some local adaptations, but the end result has been dramatically different in practice due to the underlying legal systems, structures and cultures onto which they have been grafted, and the steps (if any) taken to educate the public and to champion and enforce rights after the relevant legislation was passed. Careful preparation before conducting a legal transplant will improve the chances of success, as will careful consideration of how to support its implementation. Such preparation includes researching both the source and receiving jurisdictions to understand how they differ, and what impact that might have on the law once transplanted. Here, the source jurisdiction is largely road traffic law, and the receiving jurisdiction is Jersey's water-based activities. One gap in the preparation for the 2023 consultation is comprehensive mapping of how Jersey's population uses its territorial waters, and how that differs from the use of roads. There are notable differences which need to be understood in order to have the best chance of the proposed new offences achieving their aims. For example, there are regattas and a vibrant water-based social life, plus many charitable and leisure organisations. The responses to the 2023 Consultation did not include all key stakeholders, and some responses were brief or partial. Only one of the three Jersey yacht clubs has responded to the Scrutiny consultation, and there are no responses from the Boat Owners' Associations or most of the water-based charities and rescue associations, nor from lawyers who would have to advise clients about the offences, so there are evidential gaps. These could be filled relatively quickly

⁴ For example in 'Causation in Tort and Criminal Law: Is it Truly a Distinction Without a Difference?' with Jesse Elvin, in *Causation*, Reed and Bohlander (eds), Routledge, 2025

and easily, and doing so would improve the chances of successful transplant. Then attention needs to be given to how the transplant will be supported so that it demonstrably achieves its purpose(s).

1. The MOU

A few explanatory words may be helpful before analysing the provisions of the draft MOU between SOJP and POJ. As well as an outline of its purpose, and of the roles and responsibilities of the parties signing it, an MOU normally includes details of financial arrangements, reporting requirements, references to any relevant regulatory requirements including safeguarding and codes of conduct or practice, provisions about property and equipment, timelines, dispute resolution, confidentiality. Not all of these are covered in the current draft MOU, but most of them could be helpfully added. It should use clear, concise language; drafts will of course have potential for improvements of clarity, since that is why drafts are used. Since it is not legally binding, some terms will need to be backed up by more formal mechanisms, for example the costing mechanisms. An MOU is usually a step before creation of something more enforceable. A Code of Practice would be worth considering in the present context, and would be a more usual way to govern relationships between enforcement agencies.

The main documents governing how the proposed new offences will be investigated and enforced are the POJ Enforcement Policy and the Police Procedures and Criminal Evidence (Jersey) Law 2003. It would also be helpful to see the Jersey version of the JESIP-based agreed incident management framework so that the interplay between the documents can be understood from a governance perspective. The POJ Enforcement Policy is very brief, which may well be suited to its current responsibilities, but the new proposed offences would take it into new and complex investigations. From a human rights perspective, POJ investigations must have safeguards of the same level as SOJP investigations, so more detail should be provided on how investigations for the new offences will be carried out. Such detail could be in the MOU, or it could be in a more formal document. As discussed below, there are issues involving children which will need consideration in terms of POJ's responsibilities, powers and liaison with other agencies.

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- How will the relationship be managed with the Honorary Police?
- Are Parish Hall Enquiries possible for any of the new offences? They are commonly used for road-based offences. If so, which parish(es), and what are the resource implications? If they are not, is there a gap for minor offences and first-offenders and does this fit with the Panel's position on a standalone intoxication offence?
- What is the mechanism for resolving any disputes about jurisdiction, costs, seriousness of an offence, or primacy?
- Some worked example scenarios of how the agencies will work together would add clarity and assurance, and reduce risks. A flowchart of decision-making would also be very helpful.

- [REDACTED]
- Some comments about the Harbour Authority Enforcement Policy:
 - a. Under 'HOW WE INVESTIGATE', 'any cases involving death or serious injury will ordinarily be considered beyond the capacity of Maritime Standards to investigate, irrespective of whether has been a suspected breach of one or more offences within the Shipping (Jersey) Law 2002 or

- the Harbours (Administration) (Jersey) Law 1961 or within relevant subordinate legislation.’ What would make a case fall outside ‘ordinarily’?
- b. In the same section, ‘Maritime Standards will endeavour to complete any investigation in a timely manner.’ ‘Timely’ needs definition, since it is an important legal/human rights matter.
- c. In the section ‘HOW WE DECIDE ON ENFORCEMENT ACTION’ it states ‘As a general rule, the Harbour Master should be expected to refer a case to the Attorney General when:
- a significant offence appears to have been committed
 - there is evidence of an offence having been committed consciously and deliberately
 - there is evidence of a persistent lack of conformity with the law
 - there is evidence of a trend of similar breaches by others that justifies a prosecution as a warning or deterrent to others.’ Presumably any one of these factors is sufficient for referral? Further, what is the definition of ‘significant’ here? Does it mean ‘serious’ or is it excluding de minimis? To which offences does it refer?
- d. In the section ‘COMPLAINTS PROCEDURE’, ‘A person that wishes to make a complaint about our handling of an enforcement matter should contact the Harbour Master in the first instance, who will endeavour to resolve the matter directly.’ What are the time limits for making a complaint, and does it need to take any particular form?

2. Opinion on the new offences and how they might be used in court

It is unlikely that the new offences will be used often, but they include serious offences which map very closely onto existing, tried-and-tested Road Traffic offences. Hence it is likely that they will be used similarly to those offences, and most issues of interpretation will already have been resolved. However there are potential defences which merit attention, and scenarios which are more likely at sea than on roads eg needing to take over operation of a vessel temporarily or in an emergency; road trips in Jersey are rarely deliberately a whole day long, there are few road-based party vehicles, the vehicles on land and sea have different facilities, there is usually much more space for manoeuvring away from risks at sea and the risk factors are very different.

There is a contrast against the way that English law deals with harms at sea, but that is not a disadvantage in itself.

There will need to be clarity of key definitions, and of the responsibilities of SOJP and POJ.

There will need to be amendments to other legislation eg the Police Procedures and Criminal Evidence (Jersey) Law 2003, Schedule 1.

The stated purposes of the proposed new offences are to :

- introduce penalties for individuals found guilty of causing harm to other-people,
- in turn enhancing responsibilities on users of a wider range of watercraft.
- With the overall aim of making Jersey's territorial waters safer for everyone and holding everyone who uses Jersey's waters to the same level of responsibility.

Hence, according to the three-stage test, more than one good moral reason is being argued in support of criminalisation: punishing harm; making people more responsible; improving safety; and creating uniform expectations of water-users. These reasons sometimes conflict, since punishing people does not make them more responsible, and may worsen their lives in ways which make them more, not less, likely to breach society's expectations. But uniform expectations make it easier for good people to comply with laws, which may improve safety and responsibility, so clear laws could assist with all of the stated purposes.

The second stage of the test requires looking at the bigger picture and counter arguments, and weighing up whether criminalisation is the best tactic to achieve the purposes. As discussed above, criminalisation does not in itself always serve as a deterrent, and the criminal law is not the only mechanism for raising safety standards or creating uniform expectations. Thus the strongest argument for using the criminal law here is the harm principle, and in particular to make appropriate punishment available for serious harms which society expects to be punished. There is also legal clarity, to remove uncertainties about scope of existing offences and anomalies about liability which have been identified in cases in Jersey and the UK, for example.

That leads us to the third stage: how should the offences be criminalised? The considerations here for the Panel include whether road traffic offences are the appropriate model, and whether a partial or a comprehensive transplant of offences is more likely to be successful. They also include the practical implications of the offences, such how they will be enforced, how compliance will be incentivised, costs issues, whether the impact on children has been considered sufficiently, and whether the necessary resources are in place for all stakeholders in enforcement.

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.

There are also provisions about how evidence is obtained and used. There is a statement that there are modest resource implications for POJ, but no calculations or assumptions are provided. There is a Children's Rights Impact Assessment (CRIA) but no Human Rights Impact Assessment. The impact on the human rights of adults is likely to be greater than that on children, and the rights are not identical. I can provide further detail on potential human rights implications if it would assist the Panel. However, one of the significant differences between road use and sea use in Jersey is that children cannot lawfully drive cars on roads. They can and do lawfully operate many types of ship on the sea, from very young ages, sometimes at speed and in large numbers. This factor needs to be taken into account in all aspects of the proposed offences and how they will be enforced. For example, does POJ even have the power to breathalyse young children, and where could sufficient suitable resources be found to police the large fleet of children sailing from St Catherine's? Spot checks for leisure users would require age checks and safeguarding, and would risk breaking other laws.

Taking the proposed offences in turn,

- (a) dangerous operation of a ship;
This is an adaptation of the dangerous driving offence under Art 22 of the Road Traffic Law, with 'operation of a ship' substituted for 'driving' and parallel sentencing. A harm-prevention offence.

(b) causing serious injury by dangerous operation of a ship;

Drawn from Art 23A of the Road Traffic Law. However the definition of 'serious injury' differs from that in the Road Traffic Law, being drawn instead from Art 1 of the Shipping Law 2002. It is not clear why this should be the case. There would be merit in harmonising these definitions as far as possible, particularly since SOJP will be making some decisions about primacy in investigations by judging whether serious injury has occurred, with their experience being based on the Road Traffic Law definition. Whether an injury occurs on a road, at sea or in the Central Market should not make a difference as to whether it is classified as 'serious' or not, but at present it can. Jersey's customary law offence of grave and criminal assault does not match the definitions for roads or sea.

A harm-punishing offence.

(c) causing death by dangerous operation of a ship;

Drawn from Art 23 Road Traffic Law

A harm-punishing offence.

(d) careless operation of a ship;

Drawn from Art 25 Road Traffic Law

A harm-prevention offence.

(e) careless operation of a ship when under the influence of drink or drugs

This is the least serious of the proposed offences related to intoxication, and is not drawn from the Road Traffic Law. It seeks to criminalise impaired operation of a ship through drink or drugs. Hence there is no criminalisation of operating a ship while intoxicated under the proposed offences, unless harm is caused or risked; this complies with the harm principle. We will return below to the Panel's position that operating a ship while intoxicated should be a standalone offence. A harm-prevention offence of a more abstract nature than the others.

(f) causing serious injury by careless operation of a ship;

Drawn from Art 26A of the Road Traffic Law

A harm-punishment offence.

(g) causing death by careless operation of a ship;

Drawn from Art 25A Road Traffic Law

A harm-punishment offence.

(h) causing serious injury by careless operation of a ship when under the influence of drink or drugs

Drawn from Art 26B of the Road Traffic Law

A harm-punishment offence.

(i) causing death by careless operation of a ship when under the influence of drink or drugs

Drawn from Art 26 Road Traffic Law

A harm-punishment offence.

(j) operating a ship with excessive emissions

This nuisance offence will need dovetailing with existing environmental law provisions, which are a hot topic in Jersey at present. The threshold for statutory nuisance currently seems to be very high, and there is a risk of different standards being applied if similar harms are dealt with by different agencies under separate legislation. As the Panel has already recommended, this offence requires greater clarity.

A regulatory offence.

(k) failure to have a person with experience in the relevant activity in or on a ship;

This offence targets a current gap in the law where serious injury has already been caused in cases in Jersey and elsewhere, and is proportionate to the harm risked.

A harm-prevention offence.

(l) providing false or misleading information or evidence.

This is a common form of statutory offence.

A fault-based offence of a different nature and pattern from the others in the amendments.

For adult defendants, the harm-preventing and harm-punishing offences may be justified on a legal and theoretical level, and they follow familiar patterns of criminalisation of harmful and risky behaviour on roads. However, three points are important here:

- data has not been provided on the use and usefulness of road traffic offences in Jersey, and how it compares to the low recorded numbers of marine incidents. There are current calls to amend road traffic offences due to perceived gaps; this needs to be taken into account in the sea context too. Publicly-available information shows much higher incident levels on roads than at sea, but it is not currently possible to compare at more than a superficial level since the figures are very high-level, the data is held by one of several agencies and the offences on roads and sea are different. Public Freedom of Information Requests for detailed breakdown of offences and their causes have not always been successful⁵, and the SOJP Annual Report for 2024 shows data for collisions, not all road traffic offences. Comprehensive data on each of the number of offences investigated, prosecuted, dealt with by Parish Hall Enquiry and No Further Actioned for each of the road traffic offences within the scope of the proposed transplant would assist greatly in assessing the potential impact of the new sea offences on key stakeholders, and the potential increased costs for POJ.
- as has been mentioned in responses to Scrutiny, roads are not always like the sea, but the implications of this need more detailed consideration. As one

⁵ FOI Requests for detailed breakdowns of number of offences and their results have been rejected under the Freedom of Information (Costs)(Jersey) Regulations on the basis that they would take more than 12.5 working hours or £500 in costs to answer. For example <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=4318>

example, and for various reasons, careless driving is easier to observe objectively than careless operation of a ship, and so are drink-driving and drug-driving. How would the 'careless operation of a ship' offences be evidenced in practice? It would require an observation of behaviour which did not risk any injury to a person or damage to property, since such risks would fall under more serious offences, so what is the scope of these offences and what do they look like in practice, often from a distance? Some worked examples would be helpful here. Further, common behaviours at sea (such as capsizing) do not have road equivalents, and might become offences without full evaluation of their value. Learner sailors cannot go onto private sea to practice. Jersey's sea is much larger than its roads and does not usually have lanes. The practicalities of breathalysing people are much more complex when a potential offence occurs at sea. Roads have clear speed limits. Roads do not usually move. 9 year olds do not lawfully operate most kinds of vehicles on roads. 15 year olds cannot lawfully drive motor vehicles on roads. All road drivers are held to the same standards of care and competence, but that does not map easily onto children's operation of sea vessels; the Regulations do not make concessions for children, probably because of their source being road traffic law ,

- Leading on from the last few issues, there is a complex and unassessed impact on children, which does not appear to have been raised and considered in consultation, in responses, in the MOU or in other relevant documents. Children may be victims, witnesses and potential defendants in relation to the proposed offences. The offences will impact children's rights in ways which are not relevant to the source offences in road traffic law, so will not have been considered previously. There is potential for criminalisation of children's leisure activities in some circumstances. The decision will have a direct or indirect impact on children, and hence due regard must be given to their UNCRC rights under Art 3 of the Children (Convention Rights)(Jersey) Law 2012. There should have been a full CRIA, and input from the Children's Commissioner is needed. I am happy to provide a list of relevant rights and commentary if that would assist the Panel.

3. Opinion on the potential implications of a stand-alone offence of operation of a ship when under the influence of drink or drugs.

The Panel is of the opinion that there should be an offence equivalent to the drink-driving and drug-driving offences in road traffic law. They have proposed at this stage that 'The Minister for Sustainable Economic Development should analyse data on maritime accidents and call outs of the coastguard on a quarterly basis.⁶ If there is an increase in accidents where alcohol or drugs have been consumed, the Minister should consider updating the draft Regulations to include the provision for breathalysing when there is a suspicion of alcohol or drug consumption'.⁷ This would be an evidence-based approach which could include further consultation with stakeholder groups, including those who opposed this suggestion and those who have not previously responded to consultation.

Applying the three-stage test for criminalisation gives some questions for consideration if this idea is taken forward.

- What is the 'good moral reason' for criminalisation here? If it is that it is a 'wrong' to cause a risk of harm or actual harm when under the influence, then that is already covered by the existing proposed offences. If it is being argued to be a 'wrong' to be under the influence of drink or drugs on water regardless of any evidence of risk of harm to people or property, then this is an offence which does not follow the harm principle, so requires further justification and careful consideration of its scope and potential defences as part of the second stage of the test. Criminalising being under the influence while *carefully and safely* operating a ship needs clear justification, and clear thresholds of intoxication, and the definition of 'operating a ship' is very broad. Hence the drafting (third stage) would require particular attention.

This is a proposed transplant which appears to be suggested because the source jurisdiction (roads) has such offences. As a matter of logic that makes sense, but legal transplants do not always work according to logic, and the preparatory work for legal transplants should be carried out too, which involves answering many questions;

- what are the similarities and differences between roads and the sea, and how they are regulated and used in Jersey?
- Why was the source offence introduced, and do similar factors apply here?

⁶ This will require data to be made available on a standardised basis, and using the same classifications as used by SOJP for the transplanted road traffic offences.

⁷ Recommendation 2

- Does the source offence work well, are there any problems identified with its operation or scope, what are all the resources which it requires, and do we have those in place for the receiving jurisdiction?
- What happened when drink driving was first regulated on roads, and what have we learnt from the decades of these offences being applied ?
- How can POJ benchmark being 'under the influence of drugs', and which drugs? Should an offence criminalise operating a ship while 'unfit due to the influence of alcohol or unlawful drugs' with exceptions to cover intoxication through prescription drugs which do not normally have adverse effects? The Panel has already recommended further work here, which I support.
- There would also need to be clear definitions of 'unfit' 'unlawful drugs' and 'ship'.
- Pedestrians who are drunk or drugged might pose serious risk on roads, but it is not an offence to be such; nor is jaywalking. A new offence would criminalise similar behaviour for sea-users.
- What is the evidence about drink driving and drug driving on roads in Jersey? Has prevalence decreased or increased?
- What are the practical implications of such an offence, given how Jersey's waters are used by adults and by children ? Some submissions to Scrutiny have raised concerns about the resources required for the existing proposed offences. Mapping out all the requirements and stages in enforcement of a standalone offence would assist here: who, why, what, when, where, how, how often, with what, then what happens?
- What would trigger investigation of such an offence? Is the startpoint a spot check (resource issues, more coercive, different factors for dutybound and leisure users) or an observation (erratic behaviour by a water-user, which might have other causes, and which would constitute an offence in itself)?
- Do we have the paid and volunteer resources to police such an offence on water, during busy times such as events and also everyday?
- What consideration has been given to the impact on insurance for water-users? Training has been mentioned, but insurance has not.

Since the Panel is not proposing that such an offence should be added to the Regulations at this stage, there is time to consider such issues and questions.

4. Advice on the governance of the draft Regulations and if the arrangements proposed are sufficient to meet operational requirements.

I have addressed this matter throughout this report, and am happy to provide any further advice or analysis requested by the Panel. A full answer to this point will require more evidence on matters such as those raised above at 1 and 2 about how the offences would work in practice, and an answer to a further set of fundamental questions:

- if POJ is to bear the cost of investigations even when they are conducted by SOJP, how will those costs be recouped by POJ?
- Who will end up paying those costs, and what is the current estimate of costs?
- It is less efficient to have two bodies investigating crimes than one, unless their fields of operation or the offences are entirely separate. That is not the case here. What will ensure that the population do not pay twice for the same services to be available, once as taxpayers and once as customers?
- If POJ does have to pay costs beyond their current relevant expenditure, what will be done to prevent recouping them having an inflationary impact?

5. Provide technically informed interpretation on issues that the Panel should continue to scrutinise going forward.

I have highlighted such issues throughout this report. For convenience, I can provide a numbered list if it would assist the Panel. I remain available for further assistance on all matters within the report, and to answer any further questions which the Panel may have. I will then provide an updated version of this report, incorporating any further materials, discussion, references and content requested by the Panel.

6. Provide technically informed analysis/interpretation of relevant submissions received by the Panel from key stakeholders.

I have referred to the Minister's response to Panel questions in the sections above, and will focus here upon remaining issues and other submissions. The number of submissions is too small for meaningful statistics and they are of varying nature, detail, and specificity. Some are anonymous and so it cannot be assessed whether they are expert, evidenced, or based on gut feeling. Others are expert and/or from key stakeholders. For each submission I will consider assurances given (where relevant) and points which the Panel may wish to consider.

Responses to questions from the Panel

A. Ports of Jersey

Assurances

- POJ believes that it has adequate resources to manage the increased workload under the new offences.
- POJ has recruited an additional Maritime and Safety Control Officer with relevant expertise.
- Procedures and training materials are already under review.

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B. Minister for Sustainable Development

Assurances

- The first agency on the scene will inform the others so that primacy can be assessed.

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Points for consideration by the Panel

- Is there an update on the final MOU?
- [REDACTED]
- The POJ enforcement policy does not cover child suspects.
- The 'relevant agencies' list will have additional entries if an investigation involves a child.
- Could you see the POJ decision-making protocols about multi-agency cooperation, and the agreed incident manage framework, for assurance?

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C. Harbour Master

Assurances

- The enforcement policy is a living document which can be reviewed as new offences come into force.
- POJ and the Minister have worked together to answer the Panel's questions.
- Training will be provided on key aspects of the new offences and their operation, and on breathalyser use.
- POJ is confident that existing resources are sufficient for the currently proposed offences.

Points for consideration by the Panel

- When will the necessary updated training commence?

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D. States of Jersey Police

Assurances

- SOJP procedures will ensure breath samples meet evidential standards.

- Clarity has been provided on primacy in your five scenarios.

Points for consideration by the Panel

- 'Where investigations are transferred to SoJP, cost recovery will be necessary. Should we lack the capacity to manage a particular investigation, e.g. very serious crime/incident, specialist resources may need to be sourced from the UK, with associated costs to be borne by Ports of Jersey'. These are normal customary law and statutory offences which happen to occur off dry land. 1. The occurrence of such offences is low. 2. The mere fact of death or serious injury occurring on or near water should not in principle offload the costs. 3. What if the offence starts on water and ends on land? This needs better justification and some worked examples. The history of similar cost-offloading schemes in the UK has not gone well.
- No additional policies are being developed by SOJP. Might not a policy be needed about preservation of evidence in offences which are to be handed over between agencies?
- No additional training is envisaged. Might an awareness session about investigations at sea not be helpful, or is this already covered?

Consultation responses to the Economic and International Affairs Scrutiny Panel

E. Ben Shenton

Points for consideration by the Panel

- How are complaints about the new offences to be managed, and will mitigate the issues raised in this response?
- Have the information-management issues about investigations raised in this response been redressed satisfactorily?
- Is the Panel satisfied that there is no conflict of interest for the Harbour Master or other POJ entities?
- Does the Panel see merit in the suggested Independent Maritime Safety Regulator?
- Are public awareness campaigns about alcohol consumption in maritime leisure required and who should fund them?
- Is there sufficient protection for maritime whistleblowers?
- Should POJ have additional public reporting requirements?
- Criminalisation does not in itself change culture, so are the efforts to achieve cultural change sufficient and sufficiently resourced? Can agencies work together on campaigns re land and sea?

F. Anonymous 4

Points for consideration by the Panel

- Reports longstanding lack of enforcement in St Aubin's Bay.
- Believes that lack of enforcement is the problem, not lack of offences.
- The emissions offence needs more clarity about acceptable levels.
- Believes that mandatory training would impose costs on large numbers of skilled sailors in Jersey, and only benefit the inexperienced.

G. Simon Harrison, End Cannabis Prohibition Jersey

Points for consideration by the Panel

- What is the intention re people who operate ships after using medicinal cannabis, or other prescription drugs? This relates to the broader point about absence of defences from the amendments to the Regulations, and to whether road traffic offences will be updated in Jersey.
- How will drug use be detected and measured, both for the currently proposed offences and if a standalone offence is adopted in future?
- The Panel has already recommended further work on this.

H. Comité des Connetables

Assurances

- They support the measures to enhance safety at sea.

Points for consideration by the Panel

- Should there be a limit for prescribed drugs, and how might this be possible? Has medical opinion been sought as to how maritime drug offences are to be benchmarked?
- The limited evidence available shows a low conviction rate for drug driving offences. How would offences at sea be different if at all? Is reform under consideration for the drug driving offences and if so, should the maritime equivalents be reconsidered as part of the same process?
- Have Centeniers had sufficient training about their role in the new offences?

I. Anonymous 3

Points for consideration by the Panel

- This response sees risk of over-regulation, and points to the different approach taken in the UK. Is the Panel confident that Jersey's approach in the proposed offences is a better fit for local needs than the UK's, given the UK's experience and status as an earlier source of the laws which are being transplanted?
- Does 'reasonable consideration for others' within careless operation of a ship' require a clearer definition? In the UK, specific guidance and examples have been provided to the public on the types of behaviour which constitute failure

to show consideration for others, and a similar list would assist the Panel with assurance here.

J. Anonymous 2

Points for consideration by the Panel

- States that they are a maritime training organisation, and argues that all boat users should hold a recognised qualification for the type and size of vessel they operate, and where they operate it. Other responses state that this is not practicable; does the Panel agree?

K. St Helier Yacht Club

Assurances

- A careful and competent person should take reasonable steps to avoid the risks inherent in maritime leisure.
- Regards the offences of dangerous operation and careless operation as reasonable, because they have a relatively high threshold.
- Has given careful consideration to the scope of the offences and how it will work in practice.

Points for consideration by the Panel

- Should there be a necessity/ duress of circumstances defence, to deal with emergencies? Jersey's criminal law is extremely unclear about general defences and clarity would be helpful here (and indeed throughout criminal law).
- The response does not consider how the offences will work for children, possibly because of its member demographic. Is the Panel confident that children operating 'ships' of all kinds can and should be held to the same standards as adults, given that criminal penalties apply?
- Notes that the emissions offence may need clarification, as discussed above.
- Raises concerns about any mandatory training requirements for leisure users, including costs and that they cannot ensure competence or safety, recommends education and support about training instead, and notes that practical experience enhances safety. This links to the issue about children and learners: does the Panel have sufficient assurance that the offences will not criminalise non-dangerous bad sailing by learners and children, when experience is a vital element in enhancing safety at sea for leisure users?

L.Chief Officer States of Jersey Police

Assurances

- States that the draft offences appear to provide a sufficient legal framework to address maritime offences.
-

Points for consideration by the Panel

- Does the draft MOU sufficiently meet the stated aims: 'clarify roles, responsibilities and operational boundaries in relation to maritime safety and enforcement.'?
- Has the response's concern about resources been sufficiently addressed by subsequent discussions and the MOU?
- Does SOJP now have sufficient information and training about the new offences, given that they were not included in earlier stages of discussion?
- Has the perceived ambiguity about powers of boarding vessels and conducting tests been resolved to the Panel's satisfaction?
- Given that SOJP was not initially consulted, is the Panel confident that all key stakeholders have been included, and are mechanisms in place to ensure that SOJP is contacted in other proposed reforms to criminal laws?
- Have the resourcing issues been adequately addressed?
- [REDACTED]
- Has the Health and Safety Inspectorate been sufficiently involved in the MOU and the consultation process?

M. Anonymous

Points for consideration by the Panel

- Strongly supports an offence of operating a ship under the influence of drink or drugs.
- Supports a legal seaworthiness requirement.
- Does not support compulsory training.
- Does the Panel consider that the definition of 'operating a ship' is now sufficiently clear when 'you're under way but not making way' or 'whilst attached to a mooring buoy'?
- Like others, this submission is anonymous but suggests that the Panel should get in touch. Does the Panel have the identity of the anonymous contributors in order to do so?

N. Confidential expert submission

- The Panel's recommendations already address some of the concerns, so I have omitted those.

Points for consideration by the Panel

- This expert with substantial relevant experience raises a series of significant concerns. Has the Panel spoken to them/ does it wish to do so?
- Given the submission's opinion that the policy objectives may be compromised by the enforcement regime, does the Panel have sufficient assurance that this will not be the case?
- Is the Panel assured that POJ has all the resources and expertise necessary for their expanded list of offences and their new powers? Will the end result be comparable to land-based investigations, and that the same standards will apply, given the fundamental differences between SOJP and POJ? What oversight mechanisms will ensure this, and does the audit mechanism need further thought?
- Does the MOU give sufficient clarity to the public as to which agency to call, or is public-facing guidance needed?
- Does the Panel have assurance that sufficient POJ inspectors have experience of leading criminal investigations?
- Is it still the case that maritime enforcement will 'remain primarily reactive rather than aiming to catch people out?'
- Does the Panel have assurance that a specialist unit within SOJP would not be a better solution than increasing the criminal law enforcement functions of POJ?
- Have all necessary statutory amendments been scoped out re powers to seize evidence eg mobile phones?
- Is the Panel confident that when offences under both SOJP and POJ primacy occur in the same incident, the potential for overlapping investigations will not compromise any evidence?

7.Gaps, questions and further enquiries

- [REDACTED]
- What about current police initiatives such as the new secure digital evidence app- will POJ have access to these too?
- How will the differences in resources for criminal investigations, evidence preservation and prosecution be managed so that victims receive comparable treatment and standards of justice do not vary? What will be done to ensure

[REDACTED]

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