

# STATES OF JERSEY



## DRAFT AIR AND SEA PORTS (INCORPORATION) (JERSEY) LAW 201-

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Lodged au Greffe on 15th January 2015  
by the Council of Ministers

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STATES GREFFE





Jersey

## **DRAFT AIR AND SEA PORTS (INCORPORATION) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

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

In the view of the Chief Minister, the provisions of the Draft Air and Sea Ports (Incorporation) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 13th January 2015

## REPORT

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### 1. Introduction

This Law, if adopted, will put in place the framework for the creation of a wholly States-owned self-funding company to be called the 'Ports of Jersey Limited', to control and operate the air and sea ports. This is in accordance with the instructions of the States Assembly resulting from the approval of [P.70/2012](#).

The harbours and airport together (the Ports of Jersey) require a £420 million investment to keep them operating at current levels over the next 25 years. This necessary capital investment creates a potential cash shortfall of up £314 million that would need to be funded by the States, which is not accounted for in the Medium Term Financial Plan. Incorporation provides the best possible structure for the harbours and airport operations to be financially self-sustainable and therefore avoid the potential risk of the financial shortfall falling upon the public purse.

### 2. Objectives of incorporation

This Law represents the legislative element of a much wider project, which has been undertaken by the Economic Development Department and the Ports of Jersey, with considerable support from other government departments. The ultimate intention of this project has been to meet the following objectives –

- (a) To incorporate the air and sea ports within a single limited company to be 100% owned by the States of Jersey, and for that company to be run on a commercial basis by a Board of Directors appointed for the purpose.
- (b) To ensure that the new entity continues to conduct necessary essential functions for the Island that would not normally fall within the remit of a limited company.
- (c) To develop a scheme of effective regulation of the new company in the interests of customers, the wider general public and the Island economy.
- (d) To transfer the relevant infrastructure assets currently under government administration to the new company, by freehold transfer in the case of the airport, and by leasehold in the case of the harbour assets.

### 3. The history of incorporation

When the States established the Trading Committees during the 1990s, it was with the intention that they would become self-sustainable, incorporated entities. The significant financial challenges faced by the States that are outlined in Section 4 underline the importance of achieving the aim of self-sustainability. There have been a number of reviews, reports and statements made in respect of the incorporation of the harbours and airport, and these are briefly outlined below:

<a href="#">P.213/1998</a>	Jersey Airport: Future status and financing	In 1998 the States approved, in principle, the incorporation by 2002 of Jersey Airport Limited, as a company wholly owned by the States, and to charge the Harbours and Airport Committee to present the necessary proposals to the States for approval in 1999.
<a href="#">P.198/2002</a>	Jersey Airport: future funding	Rescinded P.213/1998; however, the Committee was strongly of the belief that in the future the Airport would require some form of corporate

		structure that gave it the ability to act commercially whilst taking account of its strategic role. The Trading Committee status was unsatisfactory in that it allowed too much political interference on a day-to-day basis, and did not permit commercial situations to be reacted to in a timely manner.
April 2005	Statement – President of the Harbours and Airport Committee	The analysis points clearly to the benefit of a new corporate governance structure with legally accountable directors, financial independence and a property portfolio supported by WEB. At the same time, policy oversight and ultimate control will still rest with the States. Together these changes will provide best value for the Jersey taxpayer.

In addition, externally commissioned studies completed by Vector and Deloitte came to the following conclusions:

February 2004	Deloitte Report: Jersey Harbours High Level Review	The evaluation, which gave equal weighting to 9 objectives, revealed that a States-owned Limited Company would best be able to achieve the objectives.
February 2006	Vector: Jersey Airport Strategic Study	Incorporation would give greater commercial freedom, and with the appropriate incentives, performance could improve significantly.

Taking the clear and consistent recommendations from these reports into account, in 2010 the Minister for Economic Development took the decision to establish a ‘Shadow’ Board for Jersey Harbours and Jersey Airport. On the Shadow Board’s advice, the Minister approved the integration of the harbours and airport into one organisation, known as ‘Ports of Jersey’, under a single Group Chief Executive. The businesses were successfully integrated in early 2012. Additionally, the Minister instructed the Shadow Board to establish whether the Ports of Jersey should move to an incorporated governance model. In mid-2012 the Shadow Board advised the Minister that incorporation represented the best option to deliver a sustainable commercial future. In light of this recommendation, the Minister lodged [P.70/2012](#) – ‘Incorporation of Ports of Jersey’ on 27th July 2012 seeking in-principle approval of the Assembly for incorporation of the Ports.

The proposition was adopted by the States on 9th October 2012 by 42 votes *pour* to 5 votes *contre*, with one abstention from the vote. At that time, the Minister for Economic Development concluded –

*“This Report lays out a compelling case for the incorporation of Jersey Harbours and Jersey Airport under the Ports of Jersey Limited, a 100% States owned company. Not only through the reduction in financial liability, but also through a significant return to the States and a better deal for customers, the ability for the States to meet public service obligations will be very considerably enhanced. The incremental benefits to a range of stakeholders demonstrate substantial improvements for our customers, employees, the parishes and the public at large.”*

### Recent analysis of incorporations

Following the adoption of P.70/2012, a review of other incorporations was undertaken by Holman Fenwick Willan LLP (HFW). It is clear from that review that incorporation is not a new concept for ports, but is a widely recognised method of operation globally.

As part of its work, HFW undertook a review of the incorporated governance arrangements of ports in jurisdictions such as Amsterdam, Rotterdam and Singapore. This review demonstrated that incorporated ports provide improved social and economic returns, which are delivered through broadening the revenue base through a commercial approach to the development of assets, rather than simply generating revenues from harbour dues and landing fees. The report produced by HFW states –

*“The main benefit of the corporatisation [incorporation] of ports is that port authorities become more autonomous as the decision-making process devolves from the government to the company's directors.*

*This more dynamic decision-making process fosters competitiveness, growth and transparency in the port authority's development, and business and customer satisfaction are given priority.*

*The focus is also on sustainability and improved productivity, in order to encourage investment in the port authority's development. Overall, corporatisation of port authorities has in many cases led to increased economic profitability, enhanced employment opportunities in the port area and improved commercial flexibility.”*

Incorporation provides the ability to develop and deliver commercial initiatives, as has been ably demonstrated by both Jersey Telecom and Jersey Post. The HFW report observes that in many of the ports that it reviewed, politicians and civil authorities are required to balance a range of diverse priorities, and may lack the specific knowledge and experience required to manage ports operations. The report comments that –

*“Incorporating a port tends to speed up the decision-making process, as it will in many cases only involve the company's internal decision-making process instead of governmental approval being necessary. In turn, this limits the bureaucracy involved in decision-making, enabling the port to meet developments and market demands more efficiently and flexibly.”*

All of the above reinforces the clear intent of States over the years, which was overwhelmingly supported in the adoption of P.70/2012.

#### **4. The Financial Case**

##### The financial challenge faced by Ports of Jersey

The Ports are capital intensive businesses, with a requirement for long-term capital funding totalling £420 million in the period to 2038. This capital investment is required simply in order to maintain the essential infrastructure on which the Ports depend, and to enable them to remain open, safe and secure.

Over the past 10 years, the Ports have experienced declining business volumes and a cost base that is rising faster than revenue. Financial modelling, undertaken as part of the process of preparing for incorporation, suggests a potential cash shortfall of up to £314 million by the end of the financial model period in 2038. Without the positive intervention possible within an incorporated Ports of Jersey, such a shortfall could only be addressed through other measures such as price increases including, but not limited to, harbour dues and landing charges, or from subsidy derived from general

taxation – in either case, taxpayers and the community would face an incremental and unnecessary burden.

#### Self-sustainability achievable through incorporation

In addition to mitigating the risk of the Ports of Jersey having to call upon States funding, an incorporated entity will provide incremental benefits to Jersey, including a cash contribution of c.£35 million through taxation and dividends. A cash-flow analysis provides an overview of the benefits that the States could expect to derive from incorporation. In summary, during the life of the financial model, the Ports will –

- Invest £276 million in Ports infrastructure necessary to keep the Ports operational. This figure is at 2013 prices, with the inflation increasing that figure to £420 million at the time of investment.
- Repay the pre-1987 pension debt of £18 million.
- Fully cover the substantial Public Service Obligations (mainly Coastguard and historic harbours) of £49 million.
- Deliver new cash income to the States of Jersey of £35 million, comprising taxes and dividends.
- Generate £1.6 billion in revenues, leading to a net cash inflow from operations of £507 million (which is after an assumption of £99 million ongoing benefit to the States of Jersey for service contracts).
- Retaining in the business £15 million, demonstrating that Ports of Jersey is able to be self-sustainable.

#### Addressing the financial challenge

The financial model underpinning this proposition includes an initial tranche of commercial projects which have been identified and researched by the Ports Executive Team and Shadow Board, with a combined value of c.£60 million over the next 25 years. Attempts to apply the commercial discipline required to deliver such initiatives without an incorporated structure have not been effective historically, since management control and strategic focus has been dissipated between various components of the States, which has served to inhibit progress.

Incorporation will enable the agility, focus and capability required to deliver commercial development projects on the Ports' estate to create cash reserves that can be utilised to address the long-term capital programme requirements. Importantly, incorporation will reduce the potential dependence on significant price increases and/or States funding to satisfy future capital requirements.

The analysis shows that that the incorporation of Ports of Jersey offers the best opportunity of delivering the aim of 'self-sustainability'.

### **5. Regulation**

The primary purpose of the Ports of Jersey Limited, as required by the Law, will be to ensure the provision of safe, secure and efficient port operations for Jersey. 'Port operations' includes the operation of the commercial port, the harbours and the airport. Ports of Jersey Limited will be expected to provide facilities and services for commercial passenger travel and freight transport, as well as facilities and services for non-commercial travel and leisure pursuits around the Island. In some instances, these duties will be carried out by Ports of Jersey Limited and its employees, and in others by agents or sub-contractors. In carrying out these operations, the company will be required to act in the manner best calculated to secure sustainable growth in the economy in the medium to long term.

As a counterweight to its commercial drive, the Law creates a framework of regulation around the company. The Law places duties upon the company, the JCRA and government to fulfil social and other objectives to ensure that it acts in the interests of the Island as a whole.

There is a division between regulation intended to protect the interests of the customers and the economy, which primarily concerns itself with the operation of the company as a commercial entity (see section 6), and regulation of the safety and security of the harbours and airport, which relates to the company's roles as Harbour Authority and Airport Authority (see sections 8, 9 and 10). The Jersey Competition Regulatory Authority (the JCRA) as part of the Channel Islands Competition Regulatory Authority (the CICRA), will be responsible for the economic regulation of the company, while the relevant government departments will remain responsible for the regulation of safety and security.

## **6. The JCRA**

The Jersey Competition Regulatory Authority (the JCRA), as part of the Channel Islands Competition Regulatory Authority (the CICRA), will be responsible for the economic regulation of the new company.

The role of the JCRA is to oversee the operation of the Ports of Jersey Limited, to ensure that the company cannot make unfair use of its status as a monopoly, and that it is making efficient use of the public assets entrusted to it, and to act in the interests of the customers of the harbour. This includes freight operators, pleasure-boaters, the travelling public, airlines and any other people and companies who will rely on the Ports of Jersey Limited to provide services.

The JCRA also has a wider set of general responsibilities to the Island. It is expected to fulfil these to the extent that they are consistent with the primary duties above. It must act –

- (a) So as best to encourage sustainable growth in the economy of Jersey in the medium to long term.
- (b) So as to impose a minimum of restriction on persons engaging in commercial activities.
- (c) With due regard to any relevant policies of the States of Jersey.
- (d) With due regard to preserving and maximizing the benefits of Jersey's resources.
- (e) With due regard to the special needs of persons who are disabled.

The Law grants the JCRA certain powers over the company, the most notable of which stem from the requirement that the company must hold a licence to operate the harbours and airport. The licence will ensure that the Ports of Jersey Limited acts in accordance with the interests of the Island and the Public. The JCRA has said that –

*“In the case of a single operator like Ports of Jersey Limited, the purpose of the licence the JCRA issues is mainly to determine how Ports of Jersey Limited performs, as if it were a performance contract between the JCRA and Ports of Jersey Limited unilaterally determined by the JCRA to reflect legislation enacted by the States.”.*

This licence will be granted subject to conditions, and if the company breaches those conditions, the JCRA will have the power to take action.

The JCRA has discretion over the licensing regime for Port operations, so if it considers that any particular function can be carried out without a licence (for example the laying of moorings), then it has the power to remove that function from the

licensing regime. This allows the JCRA to have flexibility in its regulatory approach, and ensures that it is not bound by the Law to act in response to situations that it considers trivial.

The company will have a right of appeal to the Royal Court against the exercise of the regulator's powers.

## **7. The Shareholder**

The Minister for Treasury and Resources will represent the Public as the shareholder. The role of a shareholder, as in any company, is to oversee the operation of the business, set the broad strategic direction for the Board, and to derive a return from the company in return for its investment. As the investment in this case takes the form of a significant transfer of assets from the Public, the Minister will seek to realise a return on those assets in the form of a dividend which will be paid to public funds.

In the role of shareholder, the Minister for Treasury and Resources will be required to act in the best interests of the States of Jersey, and also in such a way as to encourage sustainable growth in the economy of Jersey in the medium to long term.

The Minister will be able to exercise the normal shareholder powers over the company, and will ultimately have the power to dismiss the Board of Directors should he or she feel it appropriate to do so. This is not provided for in the Incorporation Law, instead these powers arise naturally from the 100% shareholding the Public will retain in the company.

In addition, the Minister will have oversight of the Board, and one Board member will act as a shareholder representative, who will act directly in the interests of the Public at Board level. The exact relationship between the shareholder and the company will be set by the Memorandum and Articles of Association, which will also define the general responsibilities of the directors.

Additionally, there will be a Memorandum of Understanding (an MOU) between the company and the shareholder. The MOU will require that the Ports of Jersey Limited produce a Strategic Business Plan annually, outlining the objectives for the upcoming year. This will ensure alignment of strategic direction between the States of Jersey and the company. Any significant change to the Balance Sheet of the company, such as asset disposals, will have to be approved by the shareholder.

This structure leaves the ultimate ownership of the assets of the company in the hands of the Public, and introduces a commercially focussed and accountable executive structure to manage and operate those assets.

Although the Minister for Treasury and Resources has the normal powers of a 100% shareholder in almost all respects, certain rights will be reserved to the States of Jersey, which will be the only body with the power to create new shares in the company, to sell those shares or to wind up the company. Any of these actions would require a vote of the States Assembly.

## **8. The Harbour Authority and Airport Authority**

It is intended that Ports of Jersey Limited will serve as the Harbour Authority and the Airport Authority for Jersey. These are legal creations designed to allow powers and duties relating to the harbours and airport to be placed in the right hands, without giving the Ports of Jersey Limited, as a company, those powers. In respect of the management of safety and security of ports, the control of shipping or aircraft movements and the exercise of legal powers, the Harbourmaster and the Airport Director will be responsible to the government through the Harbour or Airport Authority, not the company. This is a recognition that the commercial objectives of

the company seeking to make a reasonable return for the States may not always be fully in alignment with the legal responsibilities of a port operator.

Additionally, this division adds flexibility to the operation of the Law in the longer term. One option this will permit is the existence of different harbour authorities in future if, for example, a parish wished to take over the running of an outlying harbour within its boundaries. The parish could then become the Harbour Authority for that harbour and run it as it wished (under licence from the JCRA and subject to the same type of controls as the PoJL). While there is no suggestion that this will be the case even in the long term, it is prudent to allow for such flexibility in the future.

## **9. Public Service Obligations**

The incorporation proposals are underpinned by a central assumption that Ports of Jersey Limited will continue to assume responsibility for those key areas and duties that its predecessor currently fulfils today.

This means that some of the functions carried out by the new company will be over and above those normally associated with the commercial operation of a port or airport, and may previously have been responsibilities of government. These are ultimately responsibilities of the States of Jersey, but after incorporation the personnel and equipment necessary to conduct them will be part of the incorporated entity.

As the name suggests, these Public Service Obligations (PSOs), are legal requirements on the company, and their effective provision is a duty owed by the company to the Public. These include the co-ordination of search and rescue services and the maintenance of historic Harbours, as well as other requirements. These particular functions are defined in the Law, and will be subject to agreement with government. Should there be any failure of provision by the new company, or should an agreement be impossible to reach, the relevant Minister will have the power to instruct the Ports of Jersey Limited as to the manner in which the services should be provided. This provides an essential safeguard to the Public by ensuring that the PSOs must be conducted.

## **10. Safety and security**

The ultimate oversight of the safety and security of the harbours and airport will remain with government. For the avoidance of doubt, where there is any conflict between the pressure to make a return to the States and considerations of safety and security, safety and security will come first. This is the current situation and will remain so after incorporation. The Law and wider regulatory framework has been specifically developed to ensure that this is the case.

There will be no change to the arrangement for the safety and security of the airport after incorporation. Safety and security in respect of aviation is overseen by the Director of Civil Aviation (the DCA), who performs in Jersey a similar role to that of the Civil Aviation Authority in the UK. The DCA is part of the Chief Minister's Department, not the Ports of Jersey, and has overall responsibility to ensure the safety of civil aviation in Jersey and its airspace. The DCA is responsible for issuing a licence to Jersey Airport to operate as an aerodrome, which certifies that the airport is safe and secure for that use. The staff at the airport will continue to carry out their roles with due consideration of safety and security, and their responsibilities in this area will not change.

The Minister for Economic Development will retain his current legal responsibility for oversight of the safety and security of the harbours. The day-to-day maintenance of safety and security will still be the responsibility of the staff at the harbours, in particular the Harbour Master, albeit as a company employee rather than as a civil

servant. The Harbour Master will retain some legal rights and powers, albeit he or she will be a company employee, and in the exercise of legal powers will be subject to the oversight of the government via the Harbour Authority. Although the details differ, this is not an unusual situation in the UK, where Harbour Masters of trust ports and private ports have legal powers.

## **11. Staff transfer**

There has been extensive communication and engagement with staff and trade unions. A staff transfer policy (the transfer of public sector employees or 'TOPSE' policy) has been developed with the full involvement of the trade unions, which states that staff will all transfer on their existing terms and conditions, including maintaining current pension arrangements. There will be no job losses or reduction in levels of pay as a result of incorporation. The union Prospect carried out its own review of TOPSE that showed that these arrangements are equal to TUPE in the UK, and in some areas better.

The stated intent in P.70/2012 was that staff would be transferred to the incorporated entity on 'identical terms to those which they are entitled to as States' employees.'

In order to achieve this, a comprehensive and inclusive process was established, known as the Staff Transfer Working Party (STWP). The STWP has held over 25 meetings with all appropriate parties, including representatives from Prospect, Unite, the Housing Department, Ports of Jersey and the Central Human Resources Department.

The key principles contained within the TOPSE policy, which has been based upon an overriding principle that roles and role-holders transfer across on a like-for-like basis, are as follows –

- There will be no redundancies as a result of the process of incorporation.
- There will be no requirement for existing employees to apply for their current roles, nor will there be any probationary period.
- All current employees will be transferred on their existing pay, terms, conditions and main policies and procedures. Importantly, existing employees will continue to participate in the Public Employees Contributory Retirement Scheme (PECRS). This provision is an improvement on UK TUPE legislation which does not provide any pension protection.

Employees who do not wish to transfer to the new entity, will be deemed to have resigned. This is in line with TUPE legislation.

## **12. Property**

The principle established in P.70/2012 was that all the relevant land, buildings and other assets owned by the Public and under the operational control of the Ports of Jersey at the point of incorporation will be transferred to the newly-formed company. The property assets have been mapped out following careful study and agreement with the Parishes and TTS using GPS technology to identify the specific detail of each property or piece of land.

In considering the methodology of transferring the immovable property assets, it has been recognised that a balance needs to be established between allowing the newly-formed company sufficient commercial freedom and agility to enhance potential income-streams, whilst still providing the States with sufficient assurance that the underlying infrastructure assets are secured to meet the ongoing operation in the Island's overall best interest.

In order to achieve this, all airport property will be transferred on a freehold basis through subordinate Regulations under the Law. Harbour property will be managed by the Ports under an operating agreement.

The property portfolio will be detailed in Regulations (subordinate legislation to be made under the Law). Maps of the property to be transferred will be made available to members.

### **13. The Public Consultation**

The consultation ran from 29th May 2014 to 15th August 2014. It consisted of a short White Paper document, the Case for Incorporation document prepared by the Ports of Jersey, an analysis of the regulatory framework under which the ports will operate prepared by EDD, and 22 other documents dealing with various elements of the incorporation proposal.

As this was a White Paper consultation, it did not contain a list of questions to be answered. The consultation consisted of the policy and legislative work that has been conducted in respect of the incorporation since the States debate on the subject in October 2012, as well as an analysis of the case behind incorporation itself. The public were given the opportunity to comment on whatever aspects of the work they wished.

Four public meetings were arranged at various locations, as well as technical briefings on subjects of particular interest. These were open to all, and invitations were sent out to interested parties. Advertisements were taken out in the JEP to publicise the later 3 meetings. The Ports of Jersey also conducted a mailshot to nearly 3,000 stakeholders, using lists of commercial clients, boat-owners, clubs, and societies and tenants.

Twenty-nine written responses were received, and comments made during public meetings were transcribed and responded to either at the time or shortly afterwards. Of the 18 written responses containing comments about the incorporation –

- Twelve were supportive of the principle of incorporation based on the evidence provided, although some raised specific concerns or questions about matters relating to their own position.
- Four of the responses were neutral, in that they did not express an opinion about the incorporation itself, but instead addressed particular issues of concern or raised points of interest.
- Two of the submissions were not supportive of incorporation, and sought to address the shortcomings of the proposal. These were both received from trade unions.

The full consultation response is available online at:

<http://www.gov.je/Government/Consultations/Pages/PortsIncorporation.aspx>.

The fact that only 18 substantive responses were received suggests that the general public were not deeply engaged in the consultation. This was despite the Economic Development Department and the Ports of Jersey together going to considerable lengths to promote the consultation, indeed going further than many other recent consultations which have received considerably more responses.

Of all of the submissions, the most extensive and challenging were the 2 received from the trade unions Prospect and Unite, which were not supportive. They took the general position that incorporation was detrimental to the interests of the staff of the Ports, and that it was therefore unwise. The primary issues raised were as follows –

- Concerns over examples of other ‘privatisations’ – mainly drawn from the UK.
- The possibility of cost-cutting resulting in lower levels of safety and security.
- Challenges to the basis of the Business/Financial case.
- Contention that ‘privatisation’ can lead to higher costs and lower levels of service.
- Contention that there could be job losses and there could be a reduction in staff terms and conditions.
- Contention that property and assets would not be protected and could be sold off.

To reflect the material difference between these responses and the others received, as well as the fact that the unions represented a considerable proportion of the workforce of the Ports, they have been dealt with separately and published in full. Furthermore, in light of the issues raised, the Minister considered that the unions required a detailed response from the Ports of Jersey itself. This is intended to serve 2 purposes –

- To ensure that the Ports of Jersey had considered the detailed response of the unions and the implications thereof, and
- To ensure that the Minister was appropriately advised on both sides of the issues raised, and that the advice he has received was made public for transparency.

The consultation summary, including a detailed response to the trade unions’ submissions, is available at:

<http://www.gov.je/Government/Consultations/Pages/PortsIncorporation.aspx>

#### **14. Clubs and Societies**

The Ports of Jersey supports many clubs, associations and organisations, all of which are connected to maritime and aviation activities. Ports of Jersey feels strongly that vibrant and growing clubs and associations are very important for its future prosperity and customer base, and that principle is a core pillar of its approach to Corporate Social Responsibility.

It is understandable that clubs, societies and associations are seeking reassurance in respect of the perceived changes that the proposed incorporation of the Ports represents. The position of clubs and societies was given considerable consideration during the course of the consultation, and significant efforts were made before and during the consultation period to engage with clubs and societies. Much of this engagement took place outside of the consultation itself, by means of small group or on-to-one meetings.

The management of the Ports has made significant efforts to support the various clubs, and a package of measures is being discussed with the clubs and societies at this time and while it is not currently ready for publication (as it requires agreement from many parties, not least the clubs themselves), it will form part of the Ports of Jersey’s work on corporate social responsibility, whereby it will continue to work closely with all of the clubs, societies and associations that they support.

It is important to state that the Ports of Jersey intends to continue to follow the existing policy, and that no changes are envisaged in respect of either, terms or security of tenure, as a result of incorporation.

## **15. Conclusion**

The external analyses conducted during the long history detailed above all endorse incorporation as the way forward that provides the best opportunity of Ports of Jersey achieving self- sustainability.

The Law provides for the effective regulation and control of the new company, while permitting it to operate commercially in its regulated environment. This commercial operation will allow it to generate the income necessary to resolve a potentially very significant liability in the form of a demanding and essential programme of capital investment.

The Assembly approved the previous proposition P.70/2012, which set the Ports of Jersey on course for incorporation, and this draft Law is the direct outcome of that decision.

The draft Law is the first step in the legislative process which will allow incorporation. It will be followed shortly by subordinate legislation in the form of draft Regulations, which will make provision for the transfer of property, staff and assets to the new company.

### **Financial and manpower implications**

There are no direct financial or manpower implications for the States arising from the adoption of this draft Law. The indirect effects will include a financial benefit to the States as detailed above.

### **Further information**

A significant amount of detailed information has been produced as part of the incorporation programme. The full Case for Incorporation, along with details of the regulatory framework, the consultation summary and all other relevant documents can be found at:

<http://www.gov.je/Government/Consultations/Pages/PortsIncorporation.aspx>

In the light of the amount of information to be considered, a number of briefings for States members will be held in order to ensure that everyone is fully informed in advance of the debate.

### **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 Note on the Draft Air and Sea Ports (Incorporation) (Jersey)  
Law 201-**

This Law deals essentially with matters of regulation and organisation of economic activity and resources. These are matters of limited interest to the European Convention on Fundamental Rights and Freedoms. The rights involved will generally be property rights under Article 1 of Protocol 1 to the Convention, where states are given a broad margin of appreciation. Essentially, providing that the measures strike a 'fair balance', they will be held to be compatible, see *Sporrong and Lonnroth v Sweden*.

The Law creates a licensing regime for port operations and lifeline services (which are services designated by the States as such under Regulations). The identification of what conduct requires a licence is well-defined, and the principles to be used in determining how the JCRA and the Minister should undertake their regulatory roles are well-defined insofar as it is not possible to perfectly define powers which are necessarily discretionary. All uses of regulatory functions so as to affect the position of individuals and bodies-corporate is subject to effective court oversight. Thus, insofar as all economic regulation of necessity interferes with property rights (Article 1 of Protocol 1 of the Convention), the legislation is manifestly justifiable and within the margin of appreciation accorded to legislatures under the European Convention on Human Rights.

The legislation creates offences at Article 11 of acting without a licence. These offences are (other than the offence of holding oneself out as willing to provide a port operation without a licence) analogous to the existing offence of acting without a permit under Regulation 4 of the Harbours (Jersey) Regulations 1962. Although the potential penalty for acting without a licence (i.e. one year in prison) is higher than that under the current legislation, the offences are well-defined, the level of penalty is the same as equivalent offences in the Telecommunications (Jersey) Law 2002 and the Postal Services (Jersey) Law 2004, and the creation of offences of this type creates no human rights problems.

The creation of a system of regulation for moorings, including payment of fees, strikes a fair balance of interests so, even if we accept that any individual has a property right over any affected moorings, the interference with such a right will be justified for the purposes of Article 1 of Protocol 1 to the Convention.

The provisions limiting civil liability of those acting in an official capacity (i.e. Article 50 of the Law and the new Article 5A of the Harbours (Administration) (Jersey) Law 1961) to cases of bad faith and damages under the Human Rights (Jersey) Law 2000, is a justifiable interference with claims that might have subsisted under the ordinary law. It strikes a fair balance between the need for those holding powers for the public good to act freely, and the right of the Public not to suffer loss. There is no potential problem with Article 1 of Protocol 1 of the Convention.

The provisions on non-disclosure provide a balance between competing interests (e.g. privacy interests (Article 8 of the Convention), free-speech (Article 10 of the Convention), and commercial interests). It is difficult to see any plausible human rights arguments against this provision.

The principal personal rights capable of being affected by this Law are those of the employees who will see a change of employer – but there is no such interference as Part 5 of the Law provides for continuity. This is particularly important with regard to accrued pension rights, which most certainly would fall with Article 1 of Protocol 1 of the European Convention on Human Rights – but the legislation is clear about protecting those rights.

**The draft Law therefore does not give rise to any human rights issues and is compatible with the Human Rights (Jersey) Law 2000.**

## Explanatory Note

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Part 1 of this draft Law is concerned with interpretation of words, expressions and concepts which would be used within the Law. *Article 1* would deal with general interpretation. *Article 2* would give the key definition of “port operations”, including both airport and harbour operations, which would be the business of companies licensed under and in accordance with Part 3 of the draft Law, and in particular of the company which would be established on commencement of Part 2 of the draft Law, namely Ports of Jersey Ltd. (“POJL”).

*Article 3* would provide for the establishment of POJL as a company limited by shares and capable of being a transferee company (as that term would be defined in Part 5) and with the principal object set out in *Article 5(1)*. A transferee company would be one to which assets owned by the public of Jersey may be transferred, and for this reason would be subject to a number of constraints as set out in *Article 31* (which makes provision about transferee companies). In particular, POJL would have to have each of its shares held by the States or by one or more nominees on behalf of the States (*Article 31(2)(a)*) and the Minister for Treasury and Resources would exercise the powers of the States as shareholder (*Article 3(5)*). However, most such powers, in particular the power to dispose of shares or share rights in POJL or to vote in a resolution to wind up POJL, may only be exercised by that Minister as directed by the States (*Article 3(6)*).

It is envisaged by Part 5 (which deals with transfer matters) that in future there may be more than one transferee company, but only POJL would be established by this draft Law. In relation to what would thus be a unique entity, *Article 4* would further make provision as to the scope and manner of exercise of powers by POJL, in particular making its operation subject to emergency Orders or directions by a competent authority under the Emergency Powers and Planning (Jersey) Law 1990, and to matters of safety and security administered by the Director of Civil Aviation (in relation to aerodromes) and by the harbour authority or Harbour Master as the case may be (in relation to harbours). *Article 4* would also reinforce the requirement for POJL to comply with the terms of any licence granted to it under Part 3 of the draft Law.

*Article 5* would state the primary object of POJL, by virtue of which it would have an overarching purpose of providing safe, secure and efficient port operations. In carrying out commercial port operations POJL would also have to act in the manner best calculated to secure sustainable economic growth for Jersey in the medium to long term. Commercial port operations are those subject to the licensing regime explained below, and do not include public service obligations.

*Article 6* would describe the additional public service obligations which would be conferred on POJL, over and above its commercial role. These would ensure continuing provision of coastguard operations, maintenance of aids to navigation, and other matters which would not normally be incidents of the commercial operation of a harbour or airport or which have previously been responsibilities of government.

A licensing regime would apply to commercial port operations as follows. Any person (including but not limited to POJL) carrying out port operations in Jersey would, by reason of Part 3 of the draft Law, be required to be licensed to do so in accordance with that Part. *Article 7* would contain the prohibition against carrying out port operations without such a licence, but that prohibition would not apply to the States, to

allow for emergencies or for certain non-commercial activities otherwise falling within the definition of “port operations” to be carried out, under the direction of the Minister: *Article 7(2)* and *(3)*. (By virtue of *Article 1* the “Minister” for most purposes of the Law would be the Minister for Economic Development.)

The prohibition could be enforced as a statutory duty by any person aggrieved by a failure to comply with it (*Article 9*), and as a civil wrong by the Minister or the Jersey Competition Regulatory Authority (“JCRA”) (*Article 10*), and a failure to comply with the prohibition would also be a criminal offence (*Article 11*) punishable on conviction by imprisonment not exceeding 12 months and a fine. The Minister could suspend the requirement for a licence in certain circumstances and on terms and conditions, under and in accordance with *Article 13*.

The requirement for a licence under Part 3 would not derogate from other legal licensing requirements (*Article 12*). A licence would be granted by the JCRA (*Article 7(4)*), and could, but need not be, exclusive. Under *Article 8*, a licensee would have to comply with any conditions, either to be contained in the licence or upon the terms of which the licence may be granted. *Article 14* would confer power on the JCRA to prescribe the form and particulars of an application for a licence, and to grant or refuse a licence as it sees fit, and also to refuse a licence in certain circumstances such as where the applicant fails to pay a licence fee (which may be determined by the JCRA under *Article 16*). The JCRA would also be able to grant a licence to carry out port operations either generally or as specified, and on conditions. *Article 15* would specify a range of conditions which may be contained in a licence as the JCRA might see fit, though the list would be neither exhaustive nor exclusive. Under *Article 17* the JCRA would be able to modify conditions imposed, whether of its own motion or on application. A direction to comply with licence conditions where a licensee was in breach could be given by the JCRA under *Article 18* in accordance with the requirements for notification to the licensee which would also be specified in that Article. *Article 19* would permit a person affected by a failure to comply with such a direction to enforce it by means of civil proceedings.

It would also be possible for licence conditions to be enforced by the imposition of financial penalties by the JCRA, under *Article 20*, though this sanction would only be available where the contravention of the condition is trivial or the licensee is taking steps to comply. Financial penalties received by the JCRA under this provision would be payable to the Treasurer of the States. As an ultimate sanction the JCRA would be able to revoke a licence (*Article 21*).

The JCRA would be obliged, by *Article 22*, to keep a register of licences, revocations of licences, and directions, which would be open to public inspection. The JCRA would also have to give notice of the exercise of a “regulatory function” (as defined in that Article and including grant, refusal or revocation of licences and imposition of financial penalties), under and in accordance with *Article 23*. A right of appeal against the exercise of such a function would be created by *Article 24* and by *Article 25* the Royal Court would have power to stay the exercise of a regulatory function.

Part 4 of the draft Law would make further provision as to the respective roles of the JCRA and the Minister in ensuring the safe, secure, effective and efficient provision of port operations under this Law, and *Article 26* would accordingly set out their primary duties in performing their functions for these purposes. *Article 27* would ensure that the Minister could give directions to the JCRA (following consultation with that body) as to the exercise of any of its functions. The JCRA would be given additional non-licensing functions (such as research, or providing information or assistance to the Minister) by *Article 28*. The JCRA would also be obliged, under *Article 29*, to provide an annual report to the Minister.

Part 6 of the draft Law would set up a parallel – though slightly different – licensing regime in respect of lifeline services (as specified in Regulations which would be made under *Article 42*) connecting Jersey with the rest of the world through its air and sea ports and harbours. *Article 42* would additionally permit the Minister to direct that certain sea transport services should be treated as lifeline services under Part 6 (instead of falling within the permit regime under the Harbours (Administration) (Jersey) Law 1961). This would bring lifeline services within the licensing requirements established by this Law. *Article 43* prohibits the supply of lifeline services except by persons licensed to do so (again, this prohibition would not apply to the States of Jersey). *Article 44* would apply relevant provisions governing licensing in Parts 3 and 4 in relation to lifeline services, with the necessary modifications.

It should be noted that, by reason of the amendments to be made to the Harbours (Administration) (Jersey) Law 1961 and the Harbours (Jersey) Regulations 1962 (set out in the Schedule), it would remain possible for the Minister to direct that a particular service should be subject to the permit regime under those Regulations, and where such a service (which could include lifeline services) is so designated, the licensing regimes under Parts 3 and 6 are disapplied. A particular service could thus move from one regulatory regime to another.

*Article 45* further enables special licence conditions to be imposed on a supplier of lifeline services so as to ensure the continuity of such services where that supplier is the only one supplying such services and to prevent the sudden termination of supply.

The transfer of assets to POJL or other transferee companies would be governed, as already indicated above, by Part 5 of the draft Law. Key concepts for the purposes of this Part would be interpreted in accordance with *Article 30*. Assets, rights and liabilities could only be transferred to a “transferee company” i.e. a company fully conforming to the description in *Article 31*. *Article 32* would regulate the States’ holding of securities in any transferee company. *Article 33* would provide that on the transfer date such property as may be specified in Regulations would be transferred on the terms and conditions also specified by the Regulations. *Article 34* would make provision for the status of transfer Regulations as evidence of a transfer. *Article 35* would provide that a transfer should not be chargeable to stamp duty, and would also confer power to make Regulations as to the valuation of transfer property for certain purposes including the determination of premiums, and distributions, under the Companies (Jersey) Law 1991.

By virtue of *Article 36* the continuity of anything done before the transfer would be preserved. *Article 37* would permit the creation of rights for the transferor in both transferred and retained property, and the transfer of rights which are less than the whole interest of the transferor.

Further matters affecting the transfer of employees would be dealt with by *Articles 38* to *41*, which concern (respectively) continuity of employment of transferred employees, termination of contracts of employees objecting to a transfer, and continuity of collective agreements and of retirement schemes.

Part 7 of the draft Law would contain miscellaneous provisions of general application. *Article 46* would confer a power of compulsory acquisition of land on the States, where necessary for facilitating the purposes of the Law. Under *Articles 47* and *48*, provision could be made by Regulations for parts of roads on transferred land to be extinguished, and licensees under the Law would be permitted to do works below, on or above roads.

*Article 49* would contain a general prohibition on disclosure of information obtained in the course of the exercise of a function under the Law, subject to specified

exemptions for certain types of disclosure. *Article 50* would limit the civil liability of the States, the Minister and Chief Minister and their officers, employees or agents in discharging their functions under the Law. *Article 51* would make provision with regard to corporate liability for offences, while *Article 52* would deal with service of directions and notices under the Law. *Article 53* would confer the necessary powers to make secondary legislation.

*Article 54* would give effect to the Schedule making consequential amendments to other legislation, for the most part being enactments dealing with harbours, shipping, pilotage, lighthouses and other matters relating to maritime port operations.

The principal amendments in these respects – to the Harbours (Administration) (Jersey) Law 1961, and to Regulations made under it – would create new roles for a harbour authority and for the Harbour Master who would be employed by that authority. A new Schedule is also introduced into that Law, defining the limits of harbours for the purpose of the management of moorings within those harbours. Amendments to the Shipping (Jersey) Law 2002 would revise the role of the Harbour Master in consequence of the changes to that role mentioned above, conferring instead many of the existing safety functions under that Law on either the Minister or the Receiver of wreck. Corresponding amendments would also be made to the Pilotage (Jersey) Law 2009.

The Harbour and Light Dues (Jersey) Law 1947 would be repealed and provision creating new powers to make charges for ship, passenger and freight dues and use of other harbour facilities would instead be inserted into the Harbours (Administration) (Jersey) Law 1961.

In relation to aviation and air transport, amendments would be made to the Aerodromes (Administration) (Jersey) Law 1952 and the Aerodromes (Jersey) Regulations 1965, to reflect the creation of the analogous role of an airport authority; and the Airport Dues (Jersey) Law 1956 would be repealed.

The taxation position of POJL or any other person licensed to carry out port operations would be dealt with by an amendment to the Income Tax (Jersey) Law 1961, placing such a licensee under the same liability to tax as any other utility company.

Finally, amendments would be made to the Emergency Powers and Planning (Jersey) Law 1990, to provide for powers to be conferred on a competent authority for the purposes of that Law in respect of port operations.

*Article 55* would provide for the citation of the Law and its commencement on a day or days to be appointed by Act of the States.



Jersey

## DRAFT AIR AND SEA PORTS (INCORPORATION) (JERSEY) LAW 201-

### Arrangement

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Jersey

## **DRAFT AIR AND SEA PORTS (INCORPORATION) (JERSEY) LAW 201-**

**A LAW** to establish Ports of Jersey Ltd., and to make provision about it; to make new provision relating to port operations and the management of passenger and freight services into and out of Jersey; to enable staff, assets and liabilities to be transferred to one or more companies; to enable the Jersey Competition Regulatory Authority to license any such companies, and to license the operation of lifeline services; to make further related and consequential provision about the operation and management of Jersey's airport and sea ports and harbours, and about air and maritime safety and security; and for connected purposes

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*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 –

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### **PART 1**

#### **PRELIMINARY**

##### **1 Interpretation: general**

In this Law –

“administration” –

- (a) in relation to an aerodrome, means the exercise of any of the powers of policing, administration and management conferred on the Airport Director by the Aerodromes (Administration) (Jersey) Law 1952<sup>1</sup> and by Regulations under that Law;
- (b) in relation to a harbour or territorial waters, means any matters for which the harbour authority or, as the case may be, the Harbour Master is responsible under or by virtue of the Harbours (Administration) (Jersey) Law 1961<sup>2</sup>;

“aerodrome” has the meaning given by Article 1(1) of the Civil Aviation (Jersey) Law 2008<sup>3</sup>;

“company” has the meaning given by Article 1(1) of the Companies (Jersey) Law 1991<sup>4</sup>;

“competent authority” means a Minister designated as such for the purposes of any Article of Part 1 of the Emergency Powers and Planning (Jersey) Law 1990<sup>5</sup>;

“Court” means the Royal Court;

“DCA” means the person appointed under Article 3 of the Civil Aviation (Jersey) Law 2008<sup>6</sup> to hold the office of Director of Civil Aviation established under Article 2 of that Law;

“facilities” includes harbours, land, immovable property, and movable structures and equipment;

“freight” includes the transportation of fuel;

“harbour”, unless the context otherwise requires, has the meaning given by Article 1 of the Harbours (Administration) (Jersey) Law 1961<sup>7</sup>;

“harbour authority” means the person or body appointed as such, in relation to any particular harbour, under Article 2(1) of the Harbours (Administration) (Jersey) Law 1961<sup>8</sup>;

“Harbour Master” means the person who is appointed as such under Article 2(7) of the Harbours (Administration) (Jersey) Law 1961<sup>9</sup>;

“JCRA” means the Jersey Competition Regulatory Authority established by Article 2 of the Competition Regulatory Authority (Jersey) Law 2001<sup>10</sup>;

“licensee”, except where otherwise indicated, means –

- (a) in relation to port operations, a person to whom a licence to carry out such operations is granted by the JCRA under Part 3;
- (b) in relation to lifeline services, a person to whom a licence to carry out such services is granted by the JCRA under Part 3 as applying by virtue of Part 6;

“lifeline services” means such activities, services and operations as may be specified in accordance with Article 42;

“Minister”, except where otherwise indicated, means the Minister for Economic Development;

“POJL” means the company established under Article 3;

“port operations” has the meaning given by Article 2;

“port operator” means a person licensed under Part 3 of this Law to carry out port operations;

“public service obligations” has the meaning given by Article 6;

“territorial waters” has the meaning given by Article 1 of the Harbours (Administration) (Jersey) Law 1961<sup>11</sup>.

## **2 Port operations**

- (1) In this Law, “port operations” –
  - (a) means –
    - (i) the provision of facilities and services for and in relation to commercial passenger travel and freight transport into and out of Jersey, by air or by sea,
    - (ii) the provision of facilities and services for and in relation to non-commercial travel and leisure pursuits around, into and out of Jersey, by air or by sea, and specifically (in the case of harbour operations) within Jersey territorial waters, and
    - (iii) the management, maintenance and operation of such facilities and services;
  - and
  - (b) except where otherwise indicated or required by the context, should be read as referring to both airport operations and harbour operations.
- (2) In this Law, “airport operations” means any operations falling within the description in paragraph (1) and carried out in or in relation to an aerodrome or to travel and transport by air.
- (3) In this Law, “harbour operations” means any operations falling within the description in paragraph (1) and carried out in or in relation to a harbour or to travel and transport by sea.
- (4) Without derogation from the generality of the preceding paragraphs, the States may by Regulations specify further ancillary or related operations and activities (whether individually, or by reference to the nature or a class of operation or activity) as falling, or not falling, within the definitions “port operations”, “airport operations” or “harbour operations”.
- (5) The power conferred by paragraph (4) to specify further operations and activities shall include power consequentially to amend this Part and Article 7.

## **PART 2**

### **PORTS OF JERSEY LTD.**

## **3 Establishment of Ports of Jersey Ltd.**

- (1) There shall be a company known as Ports of Jersey Ltd. (“POJL”).
- (2) POJL shall be a company limited by shares and capable of being a transferee company in the sense given to that term by Part 5.
- (3) The Minister for Treasury and Resources shall, following consultation with the Minister –
  - (a) appoint the first Chairman of the Board of directors of POJL; and

- 
- (b) determine the terms and conditions of service which are applicable to the first Chairman of the Board on appointment.
  - (4) In relation to any appointment subsequent to the appointment of the first Chairman under paragraph (3), POJL shall not appoint a person as Chairman of the Board without the approval of the Minister.
  - (5) Subject to paragraph (6), the Minister for Treasury and Resources shall exercise, in relation to POJL, the powers of the States in their capacity of holder of securities in a company, but in doing so the Minister for Treasury and Resources shall act –
    - (a) in the interests of the States in that capacity; and
    - (b) in such a way as to encourage sustainable growth in the economy of Jersey in the medium to long term.
  - (6) The following powers may not be exercised by the Minister for Treasury and Resources unless directed to do so by the States and in accordance with any such direction, namely –
    - (a) powers to dispose of shares or share rights in POJL and to create or dispose of security interests over, or otherwise charge, such shares or share rights;
    - (b) power to authorize the issue of shares or share rights in POJL to any person other than the States;
    - (c) power to vote on a resolution to wind up POJL; and
    - (d) such other powers as the States may prescribe by Regulations.

#### **4 Powers and functions of POJL: scope and manner of exercise**

- (1) Subject to paragraphs (2) and (3), POJL shall exercise each of its powers and carry out each of its functions (whether those powers and functions are conferred by this Law, by Regulations made under it or by any other enactment, or arise otherwise by operation of law) –
  - (a) with regard to its primary object as defined in Article 5; and
  - (b) in compliance with conditions imposed by or in connection with any licence granted under Part 3.
- (2) If and to the extent that any Order or direction made by a competent authority in relation to port operations is in contravention of or conflicts with one or more of its objects, or with a condition mentioned in paragraph (1), POJL shall comply with that Order or direction.
- (3) POJL shall at all times exercise its powers so as not to conflict with –
  - (a) the administration by the DCA of an aerodrome or of airport operations in the interests of aviation safety and security; or
  - (b) the administration by a harbour authority or the Harbour Master of a harbour or of harbour operations in the interests of maritime safety and security.
- (4) In this Article, a reference to the exercise of powers by POJL includes reference to exercise of those powers by or by means of a subsidiary, agent, employee or sub-contractor of POJL.

## **5 Primary object of POJL**

- (1) The primary object of POJL shall be to provide, or ensure the provision of, safe, secure and efficient port operations for Jersey, whether by itself or by any other person acting as its subsidiary, agent, employee or sub-contractor.
- (2) Without derogation from the primary object stated in paragraph (1), in carrying out commercial port operations POJL shall act in the manner best calculated to secure sustainable growth in the economy of Jersey in the medium to long term.
- (3) In paragraph (2), “commercial port operations” means any port operations licensed under Part 3, but does not include harbour operations which form part of POJL’s public service obligations as expressed in Article 6.

## **6 Public service obligations of POJL**

- (1) POJL shall be responsible for discharging, in accordance with this Article, the following functions (referred to collectively in this Law as “public service obligations”) –
  - (a) co-ordinating, or providing resources for co-ordinating, maritime search and rescue within the Jersey Search and Rescue Region;
  - (b) maintenance of aids to navigation in territorial waters;
  - (c) acting as custodian of Jersey harbours;
  - (d) enforcement of shipping legislation in territorial waters;
  - (e) carrying out certain port State control functions;
  - (f) management of the Channel Islands Control Area.
- (2) The functions listed in sub-paragraphs (a), (b), (d), (e) and (f) of paragraph (1) shall be discharged by POJL –
  - (a) in accordance with any agreement for the purpose between the Minister and POJL; or
  - (b) in the absence of any such agreement, as directed by the Minister.
- (3) The function listed in sub-paragraph (c) of paragraph (1) shall be discharged by POJL in accordance with any agreement for the purpose with the Minister for Treasury and Resources and, in relation to a particular harbour, in consultation with the Connétable of the Parish in which the harbour in question is situated.
- (4) The Minister may (following consultation with POJL, and with any other Minister concerned in respect of a particular function) by Order amend this Article to add, remove or modify a particular function and the manner of discharge of that function.
- (5) For the purpose of discharging its public service obligations, it is immaterial whether or not POJL is appointed as a harbour authority under the Harbours Administration (Jersey) Law 1961<sup>12</sup>.
- (6) In this Article –

“Channel Islands Control Area” has the meaning given by Article 1 of the Civil Aviation (Jersey) Law 2008<sup>13</sup>;

“port State control” means the procedures set out in the Annex to Resolution A.1052(27) adopted by the Assembly of the International Maritime Organization on 30th November 2011, as from time to time modified in their application in relation to Jersey by agreement with the Minister.

## PART 3

### LICENSING OF PORT OPERATORS

#### *Chapter 1*

#### *Requirement for licence*

#### **7 Licences needed to carry out port operations**

- (1) Subject to paragraphs (2), (3) and (7), no person may carry out port operations in Jersey unless that person is a licensee under a licence which is in force at the time when the person is carrying out such operations.
- (2) For the avoidance of doubt, the prohibition in paragraph (1) does not apply to the States or to any Minister, department or administration of the States.
- (3) The prohibition in paragraph (1) does not apply in relation to any operation or activity –
  - (a) which falls within the definition “port operations” but is carried out in pursuance of an Order or directions made by a competent authority;
  - (b) which falls within the definition “harbour operations” but is the provision of a facility or a service in a harbour or territorial waters designated by –
    - (i) the Harbour Master, prior to the coming into force of the Schedule, or
    - (ii) the relevant harbour authority, after the coming into force of the Schedule,as directed by the Minister under Regulation 4 of the Harbours (Jersey) Regulations 1962<sup>14</sup>; or
  - (c) which is specified as one of the public service obligations of POJL.
- (4) A licence under this Article may be granted by the JCRA in respect of airport operations or harbour operations or both, but in every case shall specify the particular operation or activity, or nature or class of operation or activity, in respect of which the licence is granted.
- (5) Article 14 makes further provision as to the powers of the JCRA in relation to the grant and content of licences.

- (6) Nothing in this Article or in Articles 14 or 15 shall be taken as precluding the grant of an exclusive licence where in the JCRA's opinion such a grant is appropriate.
- (7) The JCRA may grant an exemption from paragraph (1) –
  - (a) subject to any direction by the Minister; and
  - (b) where relevant, having regard to any public service obligation in respect of harbour operations.
- (8) An exemption under paragraph (7) –
  - (a) may be granted to a particular person or particular class of persons;
  - (b) may be granted subject to such conditions as the JCRA thinks fit;
  - (c) if granted to a particular class of persons, shall be published; and
  - (d) shall continue in force for such period as may be specified in the exemption.

## **8 Duty of licensee to comply with conditions**

- (1) A licensee shall comply with any conditions (as to which Chapter 2 of this Part makes further provision) –
  - (a) under Article 14(6)(b), upon the terms of which the licence in question is granted;
  - (b) under Article 15, in relation to port operations and contained in the licence.
- (2) A contravention of a condition described in paragraph (1) does not of itself amount to a contravention of the requirement in Article 7(1), except that if and to the extent that a particular port operation is prohibited by a condition contained in a licence, the licensee shall not carry out that operation.

## **9 Enforcement of requirement by persons aggrieved**

- (1) Compliance with Article 7(1) is a duty owed to any person who may be aggrieved by a failure to comply.
- (2) Where the duty mentioned in paragraph (1) is owed to a person –
  - (a) a breach of the duty which causes loss or damage to that person; or
  - (b) any act which, by inducing a breach of the duty or by interfering with its performance, causes loss or damage to that person and is done wholly or partly for that purpose,shall be actionable by that person.

## **10 Enforcement of requirement by Minister or JCRA**

Where there is a failure to comply with Article 7(1), the Minister or the JCRA may bring civil proceedings for an injunction or such other relief as the Court may deem appropriate, to compel compliance with that provision.

## 11 Offences

A person who –

- (a) acts in contravention of the prohibition in Article 7(1) or of the prohibition in Article 43(1);
- (b) offers to do anything, or represents that they are able or willing to do anything, which if carried out would be a contravention of either of those prohibitions; or
- (c) acts in contravention of a prohibition contained in a licence as described in Article 8(2),

shall be guilty of an offence and liable to imprisonment for a term of 12 months and a fine.

## 12 Other licences and permits

The provisions of this Part are in addition to, and do not derogate from, any requirement for a licence or permit imposed by or under any other enactment and in particular –

- (a) in relation to aerodromes, by or under Part 3 of the Civil Aviation (Jersey) Law 2008<sup>15</sup> and the Air Navigation (Jersey) Law 2014<sup>16</sup>;
- (b) in relation to harbours, by or under the Harbours (Jersey) Regulations 1962<sup>17</sup> and the Harbours (Inshore Safety) (Jersey) Regulations 2012<sup>18</sup>.

## 13 Suspension of requirement for licence

- (1) The Minister may by Order suspend in whole or in part the operation of Article 7 –
  - (a) after consultation with the JCRA as to doing so;
  - (b) if the Minister considers that it is in the public interest to do so;
  - (c) on such terms and subject to such conditions as the Minister thinks fit; and
  - (d) for such period (not being a period beginning before the making of the Order) as shall be specified in the Order.
- (2) The Minister may not amend an Order made under paragraph (1) so as to extend the period of suspension for longer than a total period of 6 months beginning with the date of making of the Order.
- (3) The power conferred on the Minister by paragraph (1) shall not be exercised more than once in respect of a particular set of circumstances, except to revoke or amend an Order made under that paragraph.

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*Chapter 2**Licences***14 Grant of licences**

- (1) An application for a licence shall be made to the JCRA in writing and in such form and containing such particulars as the JCRA may require.
- (2) The JCRA may grant a licence or refuse the grant of a licence as it thinks fit.
- (3) Without derogation from the generality of paragraph (2), the JCRA may refuse the grant of a licence where at any time during the period of 5 years preceding the date of the application, the applicant has failed –
  - (a) to pay such fee in respect of a licence (whether the licence for which application is made, or any other licence) as may have been due under Article 16;
  - (b) to provide such information as may reasonably have been required in connection with the application for a licence under paragraph (1);
  - (c) to comply with a direction under Article 18 in respect of any licence other than the licence for which application is made; or
  - (d) to pay a financial penalty imposed on the applicant under Article 20 in relation to the contravention of a condition contained in a licence other than the licence for which application is made.
- (4) A licence must be in writing and must specify the name of the licensee and the period for which the licence will remain in force.
- (5) A licence may be granted authorizing the licensee –
  - (a) to conduct port operations generally; or
  - (b) to conduct only such port operations as may be specified in the licence.
- (6) A licence –
  - (a) may be granted unconditionally; or
  - (b) the grant of the licence, the licence itself, or both may be limited by such conditions as the JCRA may think fit, including (but not limited to) conditions of any of the kinds described in Article 15.

**15 Conditions in licence**

- (1) A licence may contain conditions which, in the opinion of the JCRA, are necessary or desirable, including but not limited to conditions relating to, or imposing requirements for, any one or more of the following –
  - (a) the management and conduct of port operations in respect of which the licence is granted (in this Article, “licensed operations”);
  - (b) standards of performance in the conduct of licensed operations;

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- (c) competition in the conduct of licensed operations and in relation to facilities used in the conduct of licensed operations;
  - (d) the co-location and sharing of services and facilities, and of access thereto, in relation to or for the conduct of licensed operations;
  - (e) the creation or upholding by the licensee of specified rights in or over land or facilities used in the conduct of licensed operations;
  - (f) mechanisms for receiving and resolving complaints against the licensee by users within Jersey of services provided under the licence;
  - (g) requiring the licensee to make what, in the opinion of the JCRA, is a fair contribution to the costs of another licensee incurred –
    - (i) in the performance of an operation or activity pursuant to a public service obligation, or
    - (ii) because the other licensee is required to perform any kind of cross-subsidized operation or activity;
  - (h) the implementation of any directions or guidance given to the JCRA under Article 27, which in the opinion of the JCRA can be implemented only by, or with the assistance of, the licensee;
  - (i) the levels of prices, premiums and discounts which may be charged or (as the case may be) allowed by a licensee having a dominant position in the conduct of port operations;
  - (j) prohibiting, regulating or requiring the provision of a particular operation or activity; or
  - (k) preventing or controlling anti-competitive behaviour.
- (2) A licence may contain conditions regulating the terms and conditions to be included in any contract between the licensee and –
- (a) any user in Jersey of services provided under the licence in connection with port operations; or
  - (b) any provider of such services to the licensee.
- (3) A licence may contain conditions requiring the licensee –
- (a) to provide such information relating to the conduct of licensed operations by the licensee, and to do so in such form and at such times, as the JCRA may reasonably require;
  - (b) to pay to the JCRA –
    - (i) any fee falling due upon application for or grant of a licence, in accordance with Article 16(1)(a),
    - (ii) any periodical payment determined under Article 16(1)(b),
    - (iii) any payment in respect of a consent or determination mentioned in this paragraph;
  - (c) not to do, or not to continue or cease to do, anything specified under the licence without the JCRA's prior written consent;
  - (d) to refer for determination by the JCRA any specified question or class of question, and to abide by or act upon such a determination;
  - (e) to comply with any direction given by the JCRA in respect of anything to which the licence relates.

- (4) For the purposes of paragraph (3) the JCRA shall have power to give, refuse or revoke a consent, determination or direction mentioned in that paragraph.

## **16 Licence fees**

- (1) The JCRA may determine –
  - (a) the amount of any fee payable on application for a licence or upon grant of a licence;
  - (b) any periodical payment due under the terms or conditions of a licence, and the period in respect of which it is payable.
- (2) For the purposes of sub-paragraph (1)(b) –
  - (a) the JCRA may determine such a payment at a level which enables the JCRA to recover in whole or in part any of its costs attributable to the performance of its functions under this Law (whether such costs are actual, projected, direct or apportioned);
  - (b) the payment or fee may be fixed as a percentage of the turnover or profit of a licensee or a member of a class of licensees.
- (3) A payment or fee for which this Article makes provision shall be recoverable as a civil debt due to the JCRA.

## **17 Modification of conditions**

- (1) The JCRA may –
  - (a) of its own motion, following consultation with the licensee; or
  - (b) on the application of the licensee,modify or decline to modify any condition contained in a licence by virtue of Article 15, as the JCRA sees fit.
- (2) The power to modify a condition conferred by paragraph (1) includes power to insert a new condition or to amend or delete a condition, but any new condition or amended condition –
  - (a) must be a condition which a licence may contain by virtue of this Chapter; and
  - (b) shall be taken, as from the date of the modification, to be a condition contained in the licence by virtue of Article 15.

## **18 Direction to comply with licence conditions**

- (1) Where in the opinion of the JCRA a licensee is, or acts, in contravention of a condition contained in a licence, the JCRA may give a direction to the licensee in accordance with this Article for the purpose of ensuring compliance with the condition.
- (2) If the JCRA is minded to give a direction under paragraph (1), the JCRA shall give notification to the licensee which –

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- (a) sets out the direction which the JCRA proposes to give to the licensee under paragraph (1);
  - (b) specifies the period during which the licensee has an opportunity to –
    - (i) make representations about the matters notified,
    - (ii) comply with any conditions referred to in the notification in respect of which the licensee remains in contravention, or
    - (iii) remedy the consequences of any contraventions referred to in the notification.
  - (3) Subject to paragraphs (4) and (5), the period specified in the notification under paragraph (2)(b) shall be the period of 28 days beginning with the day after the day on which the notification is given.
  - (4) The period specified in the notification may be shorter if –
    - (a) the JCRA has reasonable grounds for believing that the contravention in respect of which it is proposing to make a determination is a repeated contravention; and
    - (b) the JCRA has determined that, in those circumstances, a shorter period would be appropriate.
  - (5) The period specified in the notification may be longer, or may be extended by a further period to be specified in writing, if the JCRA determines that in all the circumstances a longer period would be appropriate.
  - (6) A notification under this Article –
    - (a) shall be in writing;
    - (b) may be given in respect of more than one contravention; and
    - (c) if it is in respect of a continuing contravention, may be given in respect of any period during which the contravention has continued.
  - (7) For the purposes of paragraph (4)(a), a repeated contravention is a contravention of the same condition in respect of which the JCRA has given a notification or direction under this Article less than 12 months earlier than the notification now being given.
  - (8) The JCRA shall not give a direction if it is satisfied that –
    - (a) its duties under Article 26 preclude the giving of such a direction;
    - (b) the contravention of the condition is trivial; or
    - (c) the licensee is taking effective steps to comply with the condition and to remedy any deleterious effects of the contravention.
  - (9) A direction under this Article shall –
    - (a) be in writing addressed to the licensee;
    - (b) specify the licence to which it relates, the condition contravened and the manner of the contravention; and
    - (c) require the licensee to act or not to act in a manner specified.
  - (10) A direction may –

- (a) require the licensee to take such steps within such period as may be specified in the direction; and
- (b) be modified at any time by the JCRA giving a fresh direction in accordance with this Article.

## **19 Enforcement of directions: civil proceedings**

- (1) The obligation to comply with a direction is a duty owed by the licensee to any person who may be affected by the failure to comply with the direction.
- (2) Where the duty mentioned in paragraph (1) is owed to a person –
  - (a) a breach of the duty which causes loss or damage to that person; or
  - (b) any act which, by inducing a breach of the duty or by interfering with its performance, causes loss or damage to that person and is done wholly or partly for that purpose,shall be actionable by that person.
- (3) In any proceedings brought against a licensee under paragraph (2)(a), it shall be a defence for the licensee to prove that the licensee took all reasonable steps and exercised all due diligence to comply with the direction.
- (4) The JCRA may bring civil proceedings for an injunction or other appropriate relief, to compel compliance with a direction duly given under Article 18.

## **20 Enforcement of conditions: financial penalties**

- (1) Subject to paragraph (2), where a licensee is, or acts in, contravention of a condition contained in a licence, the JCRA may impose a financial penalty (in addition to, and without derogating from, any direction given in exercise of its powers under Article 18).
- (2) The JCRA shall not seek to impose a financial penalty where –
  - (a) the contravention is trivial; or
  - (b) the licensee is taking reasonable steps to comply with the condition or to remedy any deleterious effects caused by the contravention.
- (3) The total of any financial penalties imposed on any individual licensee shall not exceed 10% of turnover of the licensee for any period (to a maximum of 3 years) during which the licensee was in contravention of the condition.
- (4) A financial penalty imposed under this Article is recoverable as a civil debt due to the JCRA.
- (5) The JCRA shall pay to the Treasurer of the States any money received by it in payment of a financial penalty, which shall be paid by the Treasurer into the Consolidated Fund.

**21 Enforcement of conditions and directions: revocation of licence**

- (1) Where a person fails to comply with a direction duly given under Article 18, the JCRA may revoke the licence in respect of which the direction was given, or any other licence held by that person, and the licence shall cease to have effect upon revocation.
- (2) A transaction between a person and a former licensee shall not be invalid merely because of a failure to comply with a direction as mentioned in paragraph (1) nor because of revocation of a licence consequent upon such failure.

**22 Register**

- (1) The JCRA shall keep a register in which it shall enter details of the following –
  - (a) every licence granted under Article 14 and the licensee to whom it is granted;
  - (b) every direction given under Article 18;
  - (c) every revocation of a licence under Article 21.
- (2) The register shall be open to inspection by the public during such reasonable hours as the JCRA shall determine.
- (3) The JCRA shall supply copies or extracts from the register to a member of the public upon payment of such reasonable fee as the JCRA may determine.

**23 Notice of exercise of regulatory function**

- (1) For the purposes of this Article and Article 24, “regulatory function” means any of the following functions of the JCRA –
  - (a) the grant or refusal of a licence under Article 14;
  - (b) the exercise of a power conferred by Article 15(4) to give, refuse or revoke consents, determinations or directions, as the case may be;
  - (c) the modification of, or refusal to modify, a condition, under Article 17;
  - (d) the exercise of the power to give directions to a licensee, under Article 18;
  - (e) the imposition of a financial penalty under Article 20;
  - (f) the revocation of a licence under Article 21.
- (2) Before exercising a regulatory function mentioned in any of subparagraphs (1)(a) to (c) or (f), the JCRA shall give notice (“initial notice”) –
  - (a) stating the regulatory function which it proposes to exercise and the action proposed;
  - (b) stating the reason for the proposed exercise;

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- (c) stating the date (being no earlier than 29 days after the date of service or publication of the initial notice in accordance with this Article);
  - (d) specifying the place where any document giving effect to the proposed exercise may (if it is not or has not been supplied to the licensee) be inspected; and
  - (e) specifying a period (which may not end less than 7 days from the date of service or publication of the initial notice) within which written representations in respect of the proposed exercise may be made by the licensee to the JCRA.
- (3) For the purposes of sub-paragraph (2)(d), “document” includes –
- (a) a copy of any licence, approval, consent, determination, direction or other instrument; and
  - (b) a copy of any conditions proposed to be modified, and (in draft form) of the conditions as so modified.
- (4) Where any representations are made within the period specified in the initial notice, the JCRA shall consider them and shall give notice (“final notice”) –
- (a) referring to the matters contained in the initial notice;
  - (b) summarizing the representations received, and setting out or summarizing the JCRA’s response thereto, and the reasons for that response;
  - (c) specifying the place where (if it is not contained in the initial notice) the full text of the JCRA’s response may be inspected; and
  - (d) stating whether the JCRA intends to exercise the regulatory function in question or not, and if it does so intend, stating the action proposed and the date on which the action is to be taken.
- (5) Initial or final notice under this Article shall be given by the JCRA in the following manner –
- (a) by notice served on any person named in a licence or, if an application has been made to the JCRA by any other person, on the applicant; and
  - (b) by taking all reasonable steps to publish notice of the proposed exercise of a regulatory function in such a way as to bring it to the attention of the public at large.
- (6) The JCRA may give fresh initial notice in any case where –
- (a) after considering any representations or objections, the JCRA decides not to take the action proposed in the initial notice but to take some other action; and
  - (b) the JCRA is satisfied that any person or the public at large should be given an opportunity to make representations in respect of the taking of that other action.
- (7) Where it is requested to do so the JCRA shall make any document or text mentioned in this Article available for inspection by the public at large at reasonable hours or supply copies of such document or text at reasonable cost.

- (8) A requirement in this Article to publish, make available for inspection, or bring a notice, document or any other matter to the attention of the public at large shall be taken to be satisfied by the publication in the Jersey Gazette of the notice, document or matter in question.
- (9) Where, in response to an application made to it for the purpose, the JCRA fails to give initial notice within 56 days (or such longer period as may be agreed) from the date of receipt of the application, the JCRA shall be taken to have given initial notice refusing the application and to have published such notice on the day immediately after the expiration of that period.

## **24 Appeal against exercise of regulatory function**

- (1) An appeal may be made to the Court in accordance with this Article against the exercise of a regulatory function.
- (2) Paragraph (1) does not limit or exclude any other avenue of review of the exercise of a regulatory function.
- (3) An appeal may be made –
  - (a) by the applicant, where the exercise consists of refusal (including deemed refusal under Article 23(9)) of an application;
  - (b) by the licensee, in so far as the exercise consists of the enforcement of any condition contained in the licence;
  - (c) by any person, where the exercise consists of the grant of a licence;
  - (d) by any person, where the exercise consists of giving, or declining to give, a direction under Article 18;
  - (e) by any person, where the exercise consists of the imposition of a financial penalty under Article 20.
- (4) Notice of an appeal shall be lodged with the Court no later than 28 days after publication of initial notice under Article 23 (or within such further period as the Court may in the interests of justice allow).
- (5) In determining an appeal under this Article, the Court is not restricted to considering questions of law or the facts contained in any application or representations before the JCRA, and the Court may –
  - (a) confirm the proposed exercise of a regulatory function;
  - (b) refer the matter of the exercise back to the JCRA for its further determination or other action; or
  - (c) exercise a regulatory function in the same way and to the same extent as the JCRA has power to do.
- (6) The Court may make such orders as it considers appropriate, including ancillary orders and orders as to costs, except that the Court shall not award costs –
  - (a) against the JCRA, unless it is satisfied that the JCRA acted wholly unreasonably in the exercise which is the subject of the appeal;
  - (b) against the appellant, unless it is satisfied that the appellant had no reasonable grounds for bringing the appeal.

**25 Power of court to stay exercise of regulatory function**

- (1) Where –
  - (a) a person lodges notice of appeal in accordance with Article 24 against the exercise of a regulatory function; and
  - (b) on the date of lodging, the exercise of that regulatory function has not taken effect,the person may seek an order of the Court that the exercise be postponed.
- (2) The Court shall consider the question of postponement as a matter of urgency.
- (3) The Court may make an order requiring the exercise to be postponed where it considers that –
  - (a) there are prima facie reasonable grounds for the appeal; and
  - (b) the balance of convenience lies in favour of postponement.
- (4) The Court may in its discretion specify a period of postponement whether by reference to a date on which the Court determines the full appeal, or in any other manner.
- (5) Where the Court declines to order a period of postponement, the exercise of the regulatory function shall have effect on either –
  - (a) the 7th day following the date on which the Court so declines; or
  - (b) the date on which the exercise was to take effect according to the initial or final notice in the case,whichever is the later.

**PART 4****ROLES OF THE MINISTER AND THE JCRA****26 Duties of both Minister and JCRA**

- (1) In relation to port operations, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law –
  - (a) so as best to protect and further the interests of users of port operations, in the short and long term, and to do so where appropriate by promoting competition in the provision of port operations; and
  - (b) so as best to ensure –
    - (i) that provision is made to satisfy all reasonable demands, both current and prospective, for port operations,
    - (ii) that port operations are provided efficiently and effectively, and
    - (iii) that a company (in particular including POJL), to the extent that it is or is to be licensed under this Law, has sufficient financial resources to discharge its liabilities under securities issued by the company to the States.

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- (2) In relation to lifeline services, the Minister and the JCRA shall each have a primary duty to perform their respective functions under this Law so as best to ensure that such services are provided –
    - (a) efficiently, effectively and without interruption; and
    - (b) so far as consistent with sub-paragraph (a), with due regard to –
      - (i) any relevant policies of the States,
      - (ii) the interests of persons using or likely to use such services, and
      - (iii) the special needs of persons who are disabled.
  - (3) So far as consistent with paragraphs (1) and (2), the Minister and the JCRA shall each have duties to perform their respective functions under this Law –
    - (a) so as best to encourage sustainable growth in the economy of Jersey in the medium to long term;
    - (b) so as to impose a minimum of restriction on persons engaging in commercial activities;
    - (c) with due regard to any relevant policies of the States;
    - (d) with due regard to preserving and maximizing the benefits of Jersey's resources; and
    - (e) with due regard to the special needs of persons who are disabled.

## **27 Directions and guidance by Minister to JCRA**

- (1) The Minister, having first consulted the JCRA, may give written directions or guidance to the JCRA as to the exercise of any of its functions under this Law.
- (2) For the purpose of paragraph (1), giving directions or guidance includes varying or revoking directions or guidance already given under this Article.
- (3) As soon as reasonably practicable after a direction or guidance is given under this Article –
  - (a) the Minister shall notify the States of the direction or guidance, and of any comments received by the Minister from the JCRA in relation to the direction or guidance;
  - (b) the Minister shall take reasonable steps to bring the purport of that notification to the attention of the public, by publishing it in the Jersey Gazette and in any other way as the Minister may see fit.
- (4) In exercising its functions under this Law, the JCRA shall –
  - (a) comply with any relevant directions; and
  - (b) have due regard to any guidance given and for the time being in force under this Article.

**28 Non-licensing functions of JCRA**

- (1) The JCRA may, in respect of the provision of port operations and such other matters as the States may prescribe by Regulations –
  - (a) conduct research;
  - (b) act as facilitator and co-operate with other regulators or port operators;
  - (c) provide advice, assistance and services;
  - (d) establish or approve schemes, standards, and arrangements.
- (2) The JCRA may charge such a fee as it considers reasonable for anything it does under paragraph (1).
- (3) The JCRA shall, if requested by the Minister to do so, provide information, help and advice to the Minister in relation to port operations or any matter concerning port operations.
- (4) The JCRA may prepare and publish, in such form and manner as it considers appropriate, a report in relation to any matter relevant to the functions of the JCRA under this Law.

**29 Annual report of JCRA**

- (1) The JCRA shall prepare an annual report and provide the report to the Minister as soon as reasonably practicable (and in any case no later than 4 months) after the end of the financial year to which the report relates.
- (2) The JCRA may do so either in addition to any other report which it is required to prepare under another enactment, or as part of such other report.
- (3) The report shall contain such matters as the Minister may require.
- (4) Following receipt of the report, the Minister shall lay the report before the States as soon as reasonably practicable.
- (5) The JCRA shall use its best endeavours to exclude from the report any matter relating to a person mentioned, or identifiable from information contained in, the report if the JCRA considers that the publication of such matter would or might seriously and prejudicially affect the person's privacy, reputation or commercial interests, unless –
  - (a) the person has consented, prior to the provision of the report, to publication of the matter in the report; or
  - (b) the JCRA considers that the importance of the public interest in the matter outweighs the effect of publication on the person.

**PART 5****TRANSFER OF PORT ASSETS, STAFF ETC.****30 Interpretation of Part 5**

- (1) In this Part –

“assets” means any interest in or rights over property whether immovable or movable and of any description, including (but not limited to) deeds, mortgages, and securities;

“employee” means a person who is a States employee as defined by Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>19</sup>;

“liabilities” means any liabilities, debts or obligations, whether present or future, vested or contingent, and (for the avoidance of doubt) includes obligations owed to an employee;

“Public”, without more, means the Public of the Island of Jersey;

“rights” means any rights, powers, privileges or immunities, whether present or future, vested or contingent;

“share rights” means rights to subscribe for or to acquire shares or any other rights in connection with shares;

“stamp duty” has the meaning given by Article 1 of the Stamp Duties and Fees (Jersey) Law 1998<sup>20</sup>;

“transfer”, except where otherwise indicated, means a transfer under this Part;

“transfer date” means a date prescribed by transfer Regulations;

“transfer property” means assets, rights and liabilities transferred by transfer Regulations, and includes rights and liabilities under or comprising contracts of employment;

“transfer Regulations” means Regulations made under Article 33(1); and

“transferee company” has the meaning given by Article 31(1).

- (2) For the purposes of this Part –
- (a) it makes no difference whether assets, rights or liabilities are situated in Jersey, the United Kingdom or in any other country or territory, or arise or subsist under the law of Jersey, of any part of the United Kingdom, or of any other country or territory;
  - (b) reference to an asset or right includes an asset or right of the Public to the use or enjoyment of which the Minister is entitled;
  - (c) a liability includes a liability to which the Public is subject.

### **31 Transferee companies**

- (1) No assets, rights, or liabilities may be transferred under this Part except to a company which complies with the requirements specified in paragraph (2) (a “transferee company”).
- (2) The requirements mentioned in paragraph (1) are that a company must be, at the transfer date –
  - (a) a company limited by shares, incorporated under the Companies (Jersey) Law 1991<sup>21</sup> and having each of its shares held by the States or by one or more nominees on behalf of the States; or
  - (b) a subsidiary of such a company.

- (3) The Minister for Treasury and Resources may from time to time appoint nominees for the purposes of sub-paragraph (2)(a), but may not be such a nominee.
- (4) A nominee shall hold and deal with securities in the company on such terms and in such manner as the States may direct.
- (5) Subject to paragraph (6), the Minister for Treasury and Resources may exercise the powers of the States in their capacity as holder of securities in a company, but in doing so the Minister for Treasury and Resources shall act in the interests of the States in that capacity.
- (6) Only the States (and not a Minister) may exercise –
  - (a) powers to dispose of shares or share rights in the company and to create or dispose of security interests over, or otherwise charge, such shares or share rights;
  - (b) powers to authorize the issue of shares or share rights in the company to any person other than the States;
  - (c) power to vote on a resolution to wind up the company;
  - (d) such other powers as the States may prescribe by Regulations.
- (7) Nothing in this Article shall be taken as imposing a greater liability on the States than any liability the States have by virtue of being a holder of securities in the company.

### **32 States' holding in transferee company**

- (1) This Article applies where assets, rights or liabilities are to be transferred to a transferee company.
- (2) Where this Article applies, such securities as the States may by Regulations require to be issued –
  - (a) shall be issued by the proposed transferee company to the States; or
  - (b) if the proposed transferee is a subsidiary, shall be issued by the subsidiary to its parent company.
- (3) The States may by Regulations prescribe classes of securities and any terms and conditions (in addition to those prescribed under paragraph (4)(a)) to which the securities may be subject.
- (4) Such of the securities as are shares –
  - (a) shall be of such nominal value and be issued in such manner (namely as fully, partly or not paid up) as may be prescribed by Regulations;
  - (b) shall be treated for the purposes of the Companies (Jersey) Law 1991<sup>22</sup> as if any amount paid on them were constituted by the payment to the issuing company of a corresponding value in cash.

### **33 Transfer of assets, etc.**

- (1) The States shall by Regulations –

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- (a) prescribe one or more transfer dates for the purposes of this Law; and
    - (b) make provision that, on the transfer date, such transfer property of the States or of the Public as may be specified in the Regulations shall be transferred to a specified transferee company in accordance with the provisions of this Part (unless and to the extent that any such provision is expressly disapplied) and with those Regulations.
  - (2) A transfer date prescribed under paragraph (1) shall not be earlier than the date on which the Regulations prescribing the transfer date come into force.
  - (3) A transfer may be made on such further terms and conditions as are specified by the transfer Regulations.
  - (4) If it appears expedient to the States to do so for the purposes of this Law, the States may by Regulations (whether by transfer Regulations, or Regulations made separately under this paragraph) –
    - (a) direct that specified assets, rights or liabilities shall not be transferred, or be taken to be transferred, either at all or except upon specified conditions;
    - (b) direct that specified assets or types of assets shall be transferred only to a specified transferee company, or provide that they may be so transferred only upon specified conditions.
  - (5) Except to the extent provided by Article 34(3), assets transferred by transfer Regulations shall vest in the transferee company without the need for any further or additional conveyance, transfer, assignment, notice, assurance or other action.
  - (6) Rights and liabilities transferred under this Article shall forthwith become (unless otherwise provided in transfer Regulations) rights and liabilities of the transferee company.
  - (7) The operation of this Article or of Article 35(3) shall not be regarded –
    - (a) as a breach of contract or confidence or otherwise as a civil wrong, nor in particular as an event of default under or breach of any contractual provision prohibiting or purporting to prohibit, restrict or regulate the assignment or transfer of assets, rights or liabilities;
    - (b) as giving rise to any remedy by way of damages or otherwise in favour of a party to any contract or other instrument; nor
    - (c) as causing or permitting the termination of any contractual or other obligation or relationship solely because of a change in the legal or beneficial ownership of an asset, right or liability.
  - (8) For the avoidance of doubt, transfer Regulations and Regulations made under paragraph (4) may include provision for, and relating to, the transfer of employees.

### **34 Evidence and registration of transfer**

- (1) The production of a copy of transfer Regulations signed by the Greffier of the States shall, for all purposes, be conclusive evidence of the transfer

to, and vesting in, the transferee of any transfer property to which those Regulations apply.

- (2) Nothing in paragraph (1) affects the use or value for any particular purpose of any other evidence of a transfer.
- (3) On the transfer date or as soon as reasonably practicable following the transfer date, Regulations made under Article 33 and relating to the transfer of any interest in immovable property situated in Jersey shall be registered in the Public Registry of Contracts, and –
  - (a) such registration shall have the same effect as a contract passed before the Court; and
  - (b) the title to such an interest shall vest in the transferee company on, and subsist in the transferee company from, the date of such registration.

### **35 Treatment of transfer with respect to tax, valuation, etc.**

- (1) Stamp duty shall not be chargeable for or in respect of a transfer made –
  - (a) by transfer Regulations; or
  - (b) otherwise, where prescribed by Regulations for the purposes of this paragraph.
- (2) Stamp duty shall not be chargeable for or in respect of anything prescribed by Regulations as a thing done in consequence of such a transfer.
- (3) The States may make provision by Regulations with respect to the values to be assigned to specified assets, rights and liabilities and the treatment of any transfer under this Part of such assets, rights and liabilities, including and in particular for the purposes of –
  - (a) estimates under Articles 24A, 26 or 27 of the Public Finances (Jersey) Law 2005<sup>23</sup>;
  - (b) the determination of premiums for the purposes of Article 39 of the Companies (Jersey) Law 1991<sup>24</sup>;
  - (c) distributions for the purposes of Article 114 of that Law; or
  - (d) any other matter under that Law.

### **36 Continuity**

- (1) A transfer does not affect the validity of anything done, before the transfer takes effect, by or in relation to the transferor.
- (2) Anything which –
  - (a) is done by or in relation to the transferor for the purposes of, or otherwise in connection with, transfer property; and
  - (b) is in effect or subsists immediately before the transfer date,shall be treated as done by the transferee company.

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- (3) There may be continued by or in relation to the transferee company any act or thing (including legal proceedings) which –
    - (a) relates to any transfer property; and
    - (b) is in effect or subsists immediately before the transfer date.
  - (4) A reference to the transferor in any enactment, instrument made under any enactment, or document of any kind which is in effect or subsists immediately before the transfer date, shall (to the extent that it relates to designated assets, rights or liabilities) be taken, on and after the transfer date, to include a reference to the transferee company.
  - (5) In particular and without derogation to the generality of paragraph (4), no attornment to the transferee by a lessee from the transferor is required.

### **37 Creation and apportionment of assets, rights, etc.**

- (1) A transfer –
  - (a) may create for the transferor interests in, or rights over, property transferred from or retained by the transferor; and
  - (b) may effect the transfer of property that would not otherwise be capable of being transferred or assigned.
- (2) In particular, a transfer may take effect (as and to the extent specified in Regulations made under this Part) regardless of any contravention of, or interference with, a right or interest that would otherwise exist by reason of any provision (whether in an enactment or otherwise) subsisting in relation to the terms on which the transferor is entitled to the right or interest in question.
- (3) As and to the extent specified in transfer Regulations, a transfer may consist of a transfer of an interest which is less than the entire interest of the Public subsisting in the property immediately before the transfer.

### **38 Transfer of employees**

- (1) Where any right or liability transferred is a right or liability under a contract of employment, the contract –
  - (a) shall not be terminated by the transfer, unless express provision is made to that effect, or unless Article 39 applies;
  - (b) shall have effect from the transfer date as if between the employee and the transferee company.
- (2) Any act done before the transfer date by or in relation to the transferor in respect of the contract of employment or the employee is to be treated from that date as having been done by or in relation to the transferee company.
- (3) In particular, a period of employment with the transferor is to be treated as a period of employment with the transferee company, and the transfer is not to be treated as interrupting the continuity of that period.

**39 Termination of contract of employment**

- (1) This Article applies where –
  - (a) an employee objects to a transfer of his or her contract of employment; and
  - (b) prior to the transfer date, he or she gives notice to the transferor in writing of that fact; and
  - (c) immediately before the transfer date, the notice has not been withdrawn.
- (2) Where this Article applies –
  - (a) the rights and liabilities of the employee's contract of employment are not transferred by the transfer;
  - (b) the employee is not to be treated, for any purpose, as having been either employed by the transferee company or dismissed by the transferor;
  - (c) the employee's contract of employment shall terminate on whichever is the later of –
    - (i) the transfer date, or
    - (ii) the expiry of any period of notice which applied to the employee's contract of employment immediately before the transfer date.

**40 Collective agreements**

Any collective agreement which is –

- (a) made by the States Employment Board or otherwise by or on behalf of the States with a representative body recognized by the Board; and
- (b) in force in relation to an employee immediately before the transfer date, shall continue to have effect in respect of that employee as if made by or on behalf of the transferee company with that representative body.

**41 Retirement schemes**

- (1) This Article applies where a person was a member of a retirement scheme immediately before becoming an employee of a transferee company by virtue of a transfer.
- (2) Where this Article applies, on the transfer date –
  - (a) notwithstanding any contrary provision in any enactment or under any other contract or arrangement, the transferee company shall become the person's employer for the purposes of that scheme; and
  - (b) the terms of the person's membership of the scheme, and the person's rights and liabilities under that scheme, shall be (otherwise than as provided by sub-paragraph (a)) unaffected by the transfer.

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## PART 6

### LICENSING OF LIFELINE SERVICES

#### 42 Lifeline services

- (1) The States may make Regulations for the purpose of specifying that certain activities, services and operations in or from a harbour or territorial waters are lifeline services in relation to Jersey.
- (2) Following consultation with –
  - (a) the relevant harbour authority;
  - (b) the supplier, or (as the case may be) the intended supplier, of the service in question; and
  - (c) such other parties as the Minister may see fit to consult,the Minister may by Order direct that, from a date specified in the Order, a designated service shall be treated as if it were a lifeline service specified as such in Regulations made under paragraph (1).
- (3) In this Part, “designated service” means an activity, service or operation in or from a harbour or territorial waters designated by –
  - (a) the Harbour Master, prior to the coming into force of the Schedule; or
  - (b) the relevant harbour authority, after the coming into force of the Schedule,as directed by the Minister under Article 4 of the Harbours (Jersey) Regulations 1962<sup>25</sup>.
- (4) Where Regulations under paragraph (1) or Orders under paragraph (2) are made –
  - (a) the provisions of Parts 3 and 4 of this Law shall apply, with the modifications set out in Article 44, in relation to lifeline services as they do in relation to port operations; and
  - (b) upon grant of a licence under Article 14(2), Article 4A of the Harbours (Administration) (Jersey) Law 1961<sup>26</sup> and the provisions of Regulations made under that Article shall cease to apply,in respect of the service in question.

#### 43 Licences needed to carry out the provision of lifeline services

- (1) Subject to paragraphs (2) and (3), no person may carry out the supply of lifeline services in, to and from Jersey unless that person is a licensee under a licence which is in force at the time when the person is carrying out the supply of such services.
- (2) For the avoidance of doubt, the prohibition in paragraph (1) does not apply to the States or to any Minister.
- (3) The prohibition in paragraph (1) does not apply in relation to any activity, service or operation which is specified as a lifeline service but is carried

on or supplied in pursuance of an Order or directions made by a competent authority.

- (4) A licence granted by the JCRA in respect of a lifeline service shall in every case specify the particular activity, service or operation in respect of which the licence is granted.
- (5) Articles 14 and 45 make further provision as to the powers of the JCRA in relation to the grant and content of licences.
- (6) Nothing in this Article or in Article 14 or 15 shall be taken as precluding the grant of an exclusive licence where in the JCRA's opinion such a grant is appropriate.

#### **44 Modification of Parts 3 and 4 in their application to lifeline services**

In their application to lifeline services under Article 42(4), Parts 3 and 4 of this Law shall have effect as if –

- (a) in Articles 8, 14, and 15 for each reference to port operations there were substituted a reference to lifeline services, and for each reference to an operation there were substituted a reference to a service;
- (b) in Articles 8, 9, and 10, as though the reference in each place to Article 7(1) were a reference to Article 43(1); and
- (c) in Article 26, as though paragraph (1)(b) were omitted.

#### **45 Lifeline services: supplier of last resort**

- (1) Upon being directed to do so by the Minister under Article 27, and in accordance with any Regulations made under paragraph (2), the JCRA may impose, in a licence granted by the JCRA in respect of a lifeline service, conditions relating to the continuous supply of that service by the licensee as the sole supplier.
- (2) The States may make Regulations for the purpose of ensuring the continuous supply of lifeline services, and such Regulations may make provision for all matters (including the creation of offences, and penalties in relation to offences) as may be necessary or expedient for that general purpose, and may in particular but without derogation from that general purpose –
  - (a) specify the circumstances in which conditions such as are mentioned in paragraph (1) shall –
    - (i) be imposed, and
    - (ii) be enforceable;
  - (b) prescribe the matters to be contained in conditions imposed under paragraph (1);
  - (c) following consultation with the Minister for Treasury and Resources, establish a scheme for compensating, to a specified extent, any licensee subject to conditions imposed under paragraph (1) and for guaranteeing specified liabilities of such a licensee;

- (d) provide for penalties for breach of such conditions; and
- (e) provide for arbitration and for appeals in relation to matters arising under the Regulations or otherwise in relation to such conditions.

## **PART 7**

### **PROVISIONS OF GENERAL APPLICATION**

#### **46 Acquisition of land for purposes of Law**

- (1) The States may acquire land by compulsory purchase if it appears to the Minister that any land should be acquired on behalf of the Public of the Island of Jersey for the purpose of facilitating the provision, conduct or management of port operations or lifeline services.
- (2) Where paragraph (1) applies, the Minister shall be the acquiring authority for the purposes of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961<sup>27</sup> (the “Compulsory Purchase Law”).
- (3) The power conferred by paragraph (1) includes power –
  - (a) to acquire any interest in land or other right in, on or over land by the creation of a new interest, servitude or right;
  - (b) to extinguish or modify an interest, servitude or other right in, on or over land.
- (4) Where compensation is payable to any person in respect of a compulsory purchase of land under this Article, any increase in value of the land which, in the opinion of the Board of Arbitrators, is attributable to the expenditure of public money shall be set off against the value of the land used to assess the compensation.
- (5) Paragraph (4) shall apply in addition to and not in derogation from the rules in Article 10 of the Compulsory Purchase Law, and in that paragraph “Board of Arbitrators” means the Board established under Article 8 of that Law.
- (6) The States shall have, in addition to the power conferred by Article 21 of the Compulsory Purchase Law to sell any land acquired by compulsory purchase, the power to transfer any interest in land so acquired under this Article to a licensee for a purpose mentioned in paragraph (1).

#### **47 Extinguishment of highways**

- (1) On the transfer date any roads (including parts of roads) which may be identified for this purpose with greater particularity in Regulations made under Part 5 shall be extinguished as though an order to the same effect had been made in respect of each such road by the Royal Court under Article 3 of the Extinguishment of Roads (Jersey) Law 1972<sup>28</sup>.
- (2) Where a road is extinguished by virtue of paragraph (1), the land which by reason of that extinguishment ceases to be a road shall be at the disposal of the transferee company.

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- (3) The provisions of Schedule 2 to the Extinguishment of Roads (Jersey) Law 1972<sup>29</sup> shall apply where –
- (a) a road is extinguished under paragraph (1); and
  - (b) immediately before it is so extinguished, there is below, on or above the road any apparatus belonging to or used by any statutory undertakers for the purpose of their undertaking,
- as though for the words “the applicant authority” in each place in which they occur in that Schedule there were substituted the words “the transferee company”.
- (4) In this Article, “transfer date” and “transferee company” have the same meanings as in Part 5.
- (5) In this Article and in Article 48, “road” has the meaning given by Article 1 of the Roads Administration (Jersey) Law 1960<sup>30</sup>.

#### **48 Roads and apparatus on roads**

- (1) A licensed port operator may break up or open any road –
- (a) to the extent that its licence specifies, and subject to any conditions in the licence; and
  - (b) for the purpose only of carrying out works to install, maintain, remove or operate any apparatus (being or forming part of an aid to navigation or communication equipment) below, on, or above the road.
- (2) This Article shall not affect the application of the Highways (Jersey) Law 1956<sup>31</sup>, the Public Utilities Road Works (Jersey) Law 1963<sup>32</sup> or the Planning and Building (Jersey) Law 2002<sup>33</sup> nor relieve a person of the duty to comply with those Laws or with any relevant requirement of the Island Plan.

#### **49 Prohibition on disclosure**

- (1) A person shall not disclose any information –
- (a) with respect to a person (during the person’s lifetime) or a business (so long as the business continues); and
  - (b) relating to the private affairs of the person or business,
- which is obtained in the course of the exercise of a function under this Law.
- (2) The prohibition in paragraph (1) shall not apply where the disclosure is made –
- (a) with the consent of the person or business concerned;
  - (b) for the purpose of facilitating the discharge by the Minister of functions under this Law;
  - (c) to enable a port operator to comply with the terms of its licence;

- (d) in connection with the investigation of any criminal offence or for the purposes of criminal proceedings or generally in the interests of preventing or detecting crime in Jersey or elsewhere;
- (e) in connection with the discharge of an international obligation;
- (f) to assist an authority of another country or territory to carry out a function which appears to the JCRA to correspond with one of the JCRA's functions under this Law;
- (g) for the purposes of civil proceedings arising under this Law;
- (h) to comply with a direction of the Court;
- (i) to enable or assist the Minister or the Jersey Financial Services Commission established under the Financial Services Commission (Jersey) Law 1998<sup>34</sup> to exercise powers conferred by or under any enactment and relating to companies or financial services of any kind;
- (j) to enable or assist an inspector appointed under the Companies (Jersey) Law 1991<sup>35</sup> to carry out any functions of an inspector as such under that Law or any other enactment;
- (k) to enable or assist the Viscount to carry out any functions under the Bankruptcy (Désastre) (Jersey) Law 1990<sup>36</sup>;
- (l) to facilitate the carrying out by any person of functions under the Health and Safety at Work (Jersey) Law 1989<sup>37</sup>;
- (m) for such other purposes as the States may prescribe by Regulations, and such Regulations may amend, or modify the application of, sub-paragraphs (a) to (l).

## **50 Limitation of civil liability**

- (1) This Article applies to the following persons and bodies –
  - (a) the States;
  - (b) the Minister and the Chief Minister;
  - (c) any person who –
    - (i) is, or is acting as, an officer, employee, or agent in an administration of the States for which either of those Ministers is assigned responsibility, or
    - (ii) is performing any duty or exercising any power on behalf of either of those Ministers.
- (2) A person to whom this Article applies shall not be liable in damages for any act done in the discharge or purported discharge of any function under this Law or under an enactment made under this Law.
- (3) Paragraph (2) does not apply –
  - (a) if it is shown that the act was done in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>38</sup>.

- (4) For the purposes of this Article and the avoidance of doubt, “damages” includes any compensation in respect of a change in the value of a licence or the value of any right arising under this Law, resulting from the modification of a condition in a licence, the revocation of a licence or otherwise directly or indirectly from the exercise of a function under Part 3.

## **51 Liability of directors and officers**

- (1) Where an offence committed by an entity listed in paragraph (2) is proved to have been committed with the consent or connivance of any person specified in the case of that entity in paragraph (3), that person shall also be guilty of the offence and liable in the same manner as the entity to the penalty provided for that offence.
- (2) The entities mentioned in paragraph (1) are –
  - (a) a limited liability partnership;
  - (b) a separate limited partnership;
  - (c) an incorporated limited partnership or other body corporate.
- (3) The persons to whom liability for an offence may attach in accordance with paragraph (1) are –
  - (a) in the case of a limited liability partnership, a person who is a partner of the partnership;
  - (b) in the case of a separate limited partnership or an incorporated limited partnership –
    - (i) a general partner, or
    - (ii) a limited partner who is participating in the management of the partnership;
  - (c) in the case of a body corporate other than an incorporated limited partnership, a director, manager, secretary or other similar officer of the body corporate; or
  - (d) any person purporting to act in any capacity described in subparagraphs (a) to (c).
- (4) Where the affairs of a body corporate are managed by its members, paragraphs (1) to (3) shall apply in relation to acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.
- (5) In this Article, reference to an offence is to an offence under this Law or any Regulations made under it.

## **52 Service of directions, notices, etc.**

- (1) A direction authorized by or under this Law to be given to the JCRA shall not be regarded as given until it is in fact received by the JCRA.
- (2) Such a direction may be given by electronic transmission or any other means by which the JCRA may obtain or recreate the direction in legible form.

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- (3) A notice or direction authorized or required under this Law or an enactment made under this Law to be given or served on any person other than the JCRA shall be given or served –
    - (a) by post to the person at the person's proper address;
    - (b) by leaving it addressed to the person at that address;
    - (c) by otherwise delivering it to the person, including by electronic transmission or any other means by which the person may obtain or recreate it in legible form.
  - (4) For the purposes of paragraph (3) and of Article 7 of the Interpretation (Jersey) Law 1954<sup>39</sup>, the proper address of any person shall be the person's last known address, except that –
    - (a) in the case of a company, the proper address shall be that of the registered or principal office of the company in Jersey; and
    - (b) in the case of a partnership, company incorporated outside Jersey, or unincorporated association, the proper address shall be that of –
      - (i) a principal person in relation to that body,
      - (ii) any officer or person who purports to act in such a capacity or who has control or management of the business of that body, or
      - (iii) the body's principal office in Jersey.

### **53 Orders and Regulations**

- (1) The Minister may by Order make provision in respect of any matter that may be prescribed under this Law.
- (2) The States may by Regulations make further provision for the purpose of carrying this Law into effect, and (without derogation from that general power) in particular for or in respect of any matter that may be prescribed under this Law by Regulations.
- (3) An Order or Regulations made under this Law may contain such further transitional, consequential, incidental or supplementary provisions as appear to the Minister or the States, as the case may be, to be necessary or expedient.
- (4) Regulations made under this Law may create an offence punishable by a fine not exceeding level 4 on the standard scale.

### **54 Consequential provisions**

- (1) The Schedule shall have effect to make such consequential amendment to an enactment mentioned in the Schedule as is specified in each entry in respect of that enactment.
- (2) The States may by Regulations amend or modify any enactment in consequence of the provisions of this Law, regardless of whether that enactment –
  - (a) came into force before or after this Law; or
  - (b) has already been amended or modified under paragraph (1).

**55 Citation and commencement**

- (1) This Law may be cited as the Air and Sea Ports (Incorporation) (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint, and different dates may be appointed for different provisions and different purposes of this Law.

**SCHEDULE**

(Article 54)

**CONSEQUENTIAL AMENDMENTS****1. Loi (1881) sur les brevets d'apprentissage pour le service de mer**

The Loi (1881) sur les brevets d'apprentissage pour le service de mer<sup>40</sup> shall be repealed.

**2. Aerodromes (Administration) (Jersey) Law 1952**

In the Aerodromes (Administration) (Jersey) Law 1952<sup>41</sup> –

- (a) in Article 1, after the definition “aerodrome” there shall be inserted the following definition –

“ ‘airport authority’ means the authority appointed under Article 2(1);”;

- (b) in Article 2 –

- (i) for paragraphs (1) and (2) there shall be substituted the following paragraphs –

“(1) The Minister shall appoint an airport authority and the authority shall have responsibility for every aerodrome in Jersey.

(2) The airport authority shall appoint as Airport Director a person approved by the Minister, and the person so appointed shall be employed by the airport authority.”;

- (ii) in paragraph (3), for the words “Airport Director” there shall be substituted the words “airport authority”;

- (iii) for paragraph (4) there shall be substituted the following paragraph –

“(4) The airport authority may appoint one or more of its employees to act as the Airport Director during any time when the Airport Director is not on duty, is absent from Jersey or is suspended from the office of Airport Director or there is a vacancy in the office of Airport Director.”;

- (c) in Article 4, at the end there shall be added the following paragraphs –

“(4) Without prejudice to the generality of paragraphs (1) to (3), the States may by Regulations make particular provision, in connection with –

- (a) the exercise of the powers conferred by Article 3(1); and  
(b) the persons entitled to exercise those powers,  
as to the matters further specified in paragraph (5).

- (5) The matters mentioned in paragraph (4) are –

- (a) training;

- (b) complaints, discipline, and penalties for misconduct; and
- (c) collaboration and co-ordination with police officers.”;
- (d) for Article 7 there shall be substituted the following –
  - “The Minister may direct that in relation to any seadrome, any powers conferred or duties imposed under or by virtue of this Law –
    - (a) upon the airport authority, may be exercised by the relevant harbour authority; and
    - (b) upon the Airport Director, may be exercised by the Harbour Master,
 and if the Minister does so the provisions of this Law and of Regulations made under it shall have effect accordingly.”.

### 3. **Harbour and Light Dues (Jersey) Law 1947**

The Harbour and Light Dues (Jersey) Law 1947<sup>42</sup> shall be repealed.

### 4. **Civil Aviation (Supplementary Provisions) (Jersey) Law 1955**

In the Civil Aviation (Supplementary Provisions) (Jersey) Law 1955<sup>43</sup> –

- (a) in Article 1, before the definition “Court” there shall be inserted the following definition –
  - “ ‘airport authority’ has the meaning given by Article 1 of the Aerodromes (Administration) (Jersey) Law 1952<sup>44</sup>;”;
- (b) in Article 3(1), after the word “Minister” in the second place in which it occurs, there shall be inserted the words “or of an airport authority”.

### 5. **Airport Dues (Jersey) Law 1956**

The Airport Dues (Jersey) Law 1956<sup>45</sup> shall be repealed.

### 6. **Harbours (Administration) (Jersey) Law 1961**

In the Harbours (Administration) (Jersey) Law 1961<sup>46</sup> –

- (a) in Article 1 –
  - (i) for the definition “Harbour Master” there shall be substituted the following definitions –
    - “ ‘harbour authority’ and ‘Harbour Master’ mean the persons appointed as such under Article 2(1) and (7) respectively;
  - (ii) the definition “officer” shall be omitted;
- (b) for Article 2 there shall be substituted the following Article –

**“2 Administration of harbours**

- (1) The Minister shall appoint a harbour authority for each harbour in Jersey and for this purpose may appoint the same harbour authority in respect of more than one harbour or different authorities in respect of different harbours.
- (2) Without derogation from the generality of the power conferred by paragraph (1), the Minister shall appoint Ports of Jersey Limited (being the company established under Article 3 of the Air and Sea Ports (Incorporation) (Jersey) Law 201-<sup>47</sup>) as the harbour authority in respect of the harbours listed and further described in the Schedule.
- (3) The Minister may by Order amend the Schedule to add, remove, or further particularize an entry in relation to any harbour.
- (4) A harbour authority shall be responsible for –
  - (a) managing, maintaining and improving the harbours in the areas in respect of which it is appointed;
  - (b) policing, safety and security matters in the harbours in respect of which it is appointed;
  - (c) such other matters as the Minister may entrust to it from time to time for the purpose of carrying into effect any legislation in force in Jersey relating to shipping and sea navigation.
- (5) Without prejudice to the generality of paragraph (4), a harbour authority shall in particular be responsible for –
  - (a) preventing, reducing, and minimising the effects of marine pollution, by means including but not limited to those from time to time agreed with the Minister under Article 186(1) of the Shipping (Jersey) Law 2002<sup>48</sup>;
  - (b) co-ordinating, or providing resources for co-ordinating, maritime search and rescue within territorial waters; and
  - (c) repair and maintenance of aids to navigation in or in relation to the harbours in respect of which it is appointed and in respect of which it is the local lighthouse authority for the purposes of Schedule 10 to the Shipping (Jersey) Law 2002.
- (6) A harbour authority shall carry out a responsibility imposed on it by paragraph (4) or (5) –
  - (a) in accordance with any agreement made for the purpose between the Minister and the harbour authority; or
  - (b) in the absence of any such agreement, as the Minister may from time to time direct,but the absence of any agreement or direction shall not absolve the authority of its duty to carry out a responsibility so imposed.
- (7) A harbour authority shall appoint as Harbour Master a person approved by the Minister, and the person so appointed –
  - (a) shall be employed by the harbour authority; and

- (b) in addition to carrying out all functions conferred on the Harbour Master by this or any other enactment, shall be responsible for all such matters for which the authority is responsible as the authority may delegate to the Harbour Master from time to time.
- (8) Where a responsibility conferred on the harbour authority would have been, before the commencement of this provision, a responsibility of the person then holding the office of Harbour Master, any action taken, direction given or other exercise of such a power by that person shall continue to have full effect and shall be taken, unless otherwise expressly stated, to be an action taken, direction given or other exercise of power by the harbour authority.
- (9) The States may by Regulations –
- (a) amend paragraphs (4) and (5); and
  - (b) make all such further or consequential provision (including amending any other enactment) as may be necessary to bring this Article into full effect.”;
- (c) in Article 2A(1), for the words “The States Employment Board within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>49</sup> may appoint one or more employees within the meaning of that Law” there shall be substituted the words “A harbour authority may appoint one or more of its employees”;
- (d) in Article 4, at the end there shall be added the following paragraphs –
- “(4) Without prejudice to the generality of paragraphs (1) to (3), the States may by Regulations make particular provision, in connection with –
- (a) the exercise of the powers conferred by Article 3(1); and
  - (b) the persons entitled to exercise those powers,
- as to the matters further specified in paragraph (5).
- (5) The matters mentioned in paragraph (4) are –
- (a) training;
  - (b) complaints, discipline, and penalties for misconduct; and
  - (c) collaboration and co-ordination with police officers.”;

(e) after Article 4A, there shall be inserted the following Articles –

**“4B Provision, etc. of moorings**

(1) A harbour authority may –

    - (a) maintain and manage existing moorings; and
    - (b) provide new moorings,

within the limits of any harbour in respect of which it is appointed and which is listed in the Schedule.

- (2) The power conferred by paragraph (1) includes power to charge a fee for the use of a mooring, for such period and of such amount as the harbour authority may consider reasonable.
- (3) A harbour authority may forbid the laying of moorings within the limits of any harbour in respect of which the authority is appointed and which is listed in the Schedule, if the authority considers that such moorings –
  - (a) would cause a hazard to navigation or otherwise be detrimental to navigational safety; or
  - (b) would otherwise be detrimental to the general enjoyment of the harbour and its facilities by all users.

#### **4C Power to charge harbour dues, etc.**

- (1) A harbour authority may make such charges as it considers reasonable, including (in particular, but not by way of limitation) charges for –
  - (a) ship, passenger and freight dues;
  - (b) use of freight facilities;
  - (c) use of weighbridges;
  - (d) quay rental;
  - (e) use of quays and harbour facilities by fishermen; and
  - (f) parking permits,in or in relation to a harbour in respect of which it is appointed and which is listed in the Schedule.
- (2) The harbour authority shall publish a list showing all charges for the time being made under paragraph (1), and the authority –
  - (a) shall not enforce payment of any charge unless it is so published; and
  - (b) may, for the purposes of publication under this paragraph, provide copies of the list for sale at a reasonable price.
- (3) Any charges of a type specified in paragraph (1) which are in force immediately before the commencement of this Article by virtue of any other enactment shall continue in effect as though made, and be deemed to have been made, by virtue of this Article.
- (4) Charges made under paragraph (1) shall not be enforced in relation to –
  - (a) ships belonging to or employed in the service of the Armed Forces of Her Majesty the Queen;
  - (b) ships belonging to or used by the general lighthouse authority or by any department of Her Majesty's Government of the United Kingdom;
  - (c) ships of war belonging to or employed in the service of any foreign government; and

- (d) fishing vessels belonging to countries with which treaties exist for the time being exempting such vessels from duties and port charges when forced by stress of weather to seek shelter in the ports or on the coasts of the United Kingdom, when such vessels are forced by stress of weather to make use of any of the harbours of Jersey and do not break bulk while so doing.
- (5) The harbour authority may grant exemption from charges made under paragraph (1) –
  - (a) to different classes or descriptions of ships, passengers and freight;
  - (b) to the same class or description of ships, passengers and freight in different circumstances; and
  - (c) to any ship which, having departed from Jersey, is compelled to return by reason of accident, stress of weather, or other unavoidable cause.”;
- (f) after Article 5, there shall be inserted the following Article –

**“5A Limitation of liability**

- (1) A person or body to whom this Article applies shall not be liable in damages for any act done in the performance or purported performance of any functions conferred by or under this Law, unless it is shown that the act was in bad faith.
- (2) This Article applies to –
  - (a) the States;
  - (b) the Minister;
  - (c) any States employee who is, or is acting as, an officer, employee or agent of the States or of the Minister or performing any function on behalf of the States or of the Minister;
  - (d) a harbour authority and any person who is, or is acting as, an officer, employee, or agent of the authority or performing any function on behalf of the authority;
  - (e) the Harbour Master and any person who is, or is acting as, an officer, employee, or agent of the Harbour Master or performing any function on behalf of the Harbour Master.
- (3) Paragraph (1) does not apply –
  - (a) if it is shown that the act was done in bad faith; nor
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>50</sup>.”;
- (g) at the end there shall be added the following Schedule –

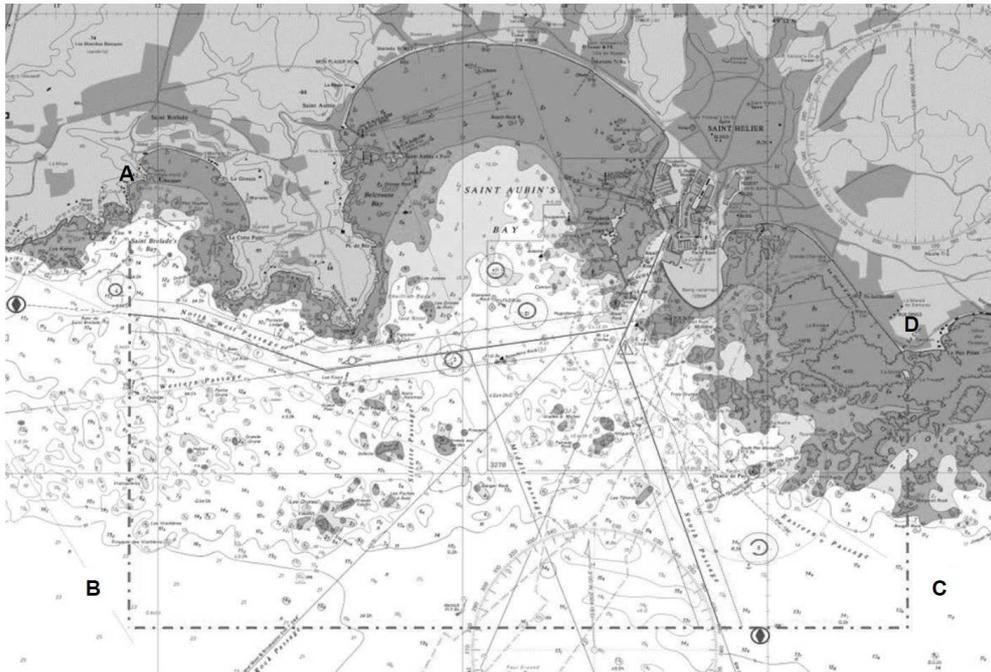
**“SCHEDULE**

**HARBOURS – MANAGEMENT ETC. OF MOORINGS**

(Articles 2(2) and 4B)

**PORT & HARBOUR LIMITS**

**ST HELIER HARBOUR**



**ST HELIER PORT LIMITS**

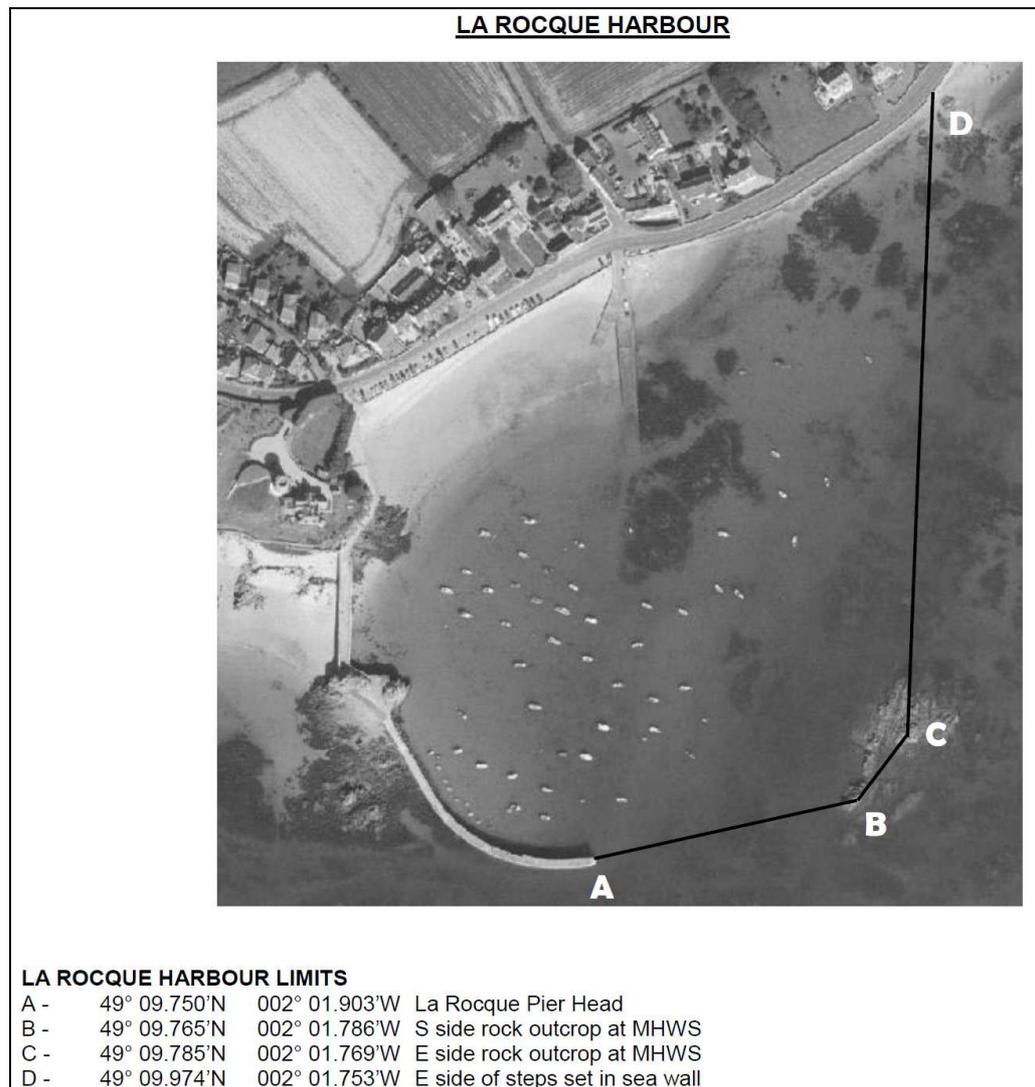
- A 49° 10.70'N 002° 12.28'W - Headland east of Beauport Bay (Les Jeteuses on O/S Maps)
- B 49° 08.00'N 002° 12.28'W
- C 49° 08.00'N 002° 04.60'W
- D 49° 09.60'N 002° 04.60'W - Green Island (La Motte)

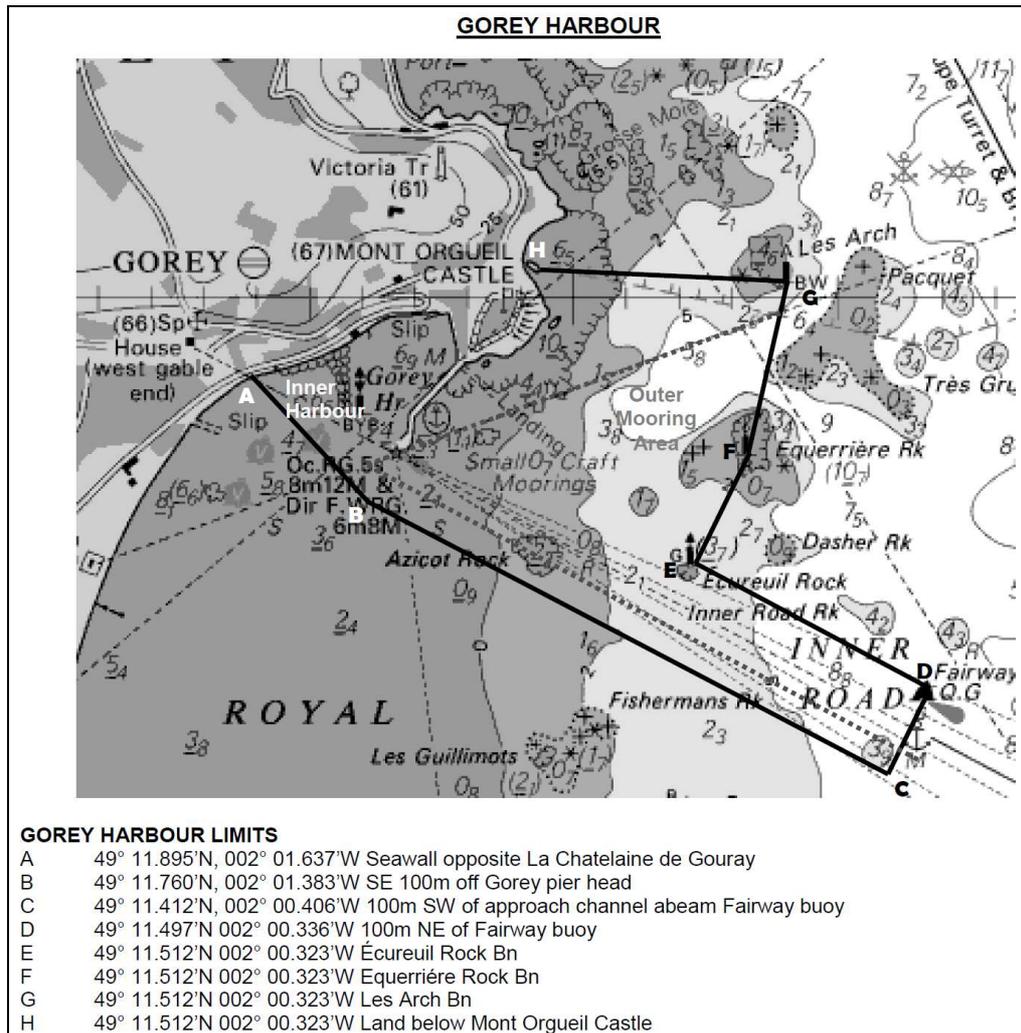
**ST HELIER PILOTAGE DISTRICT LIMITS**

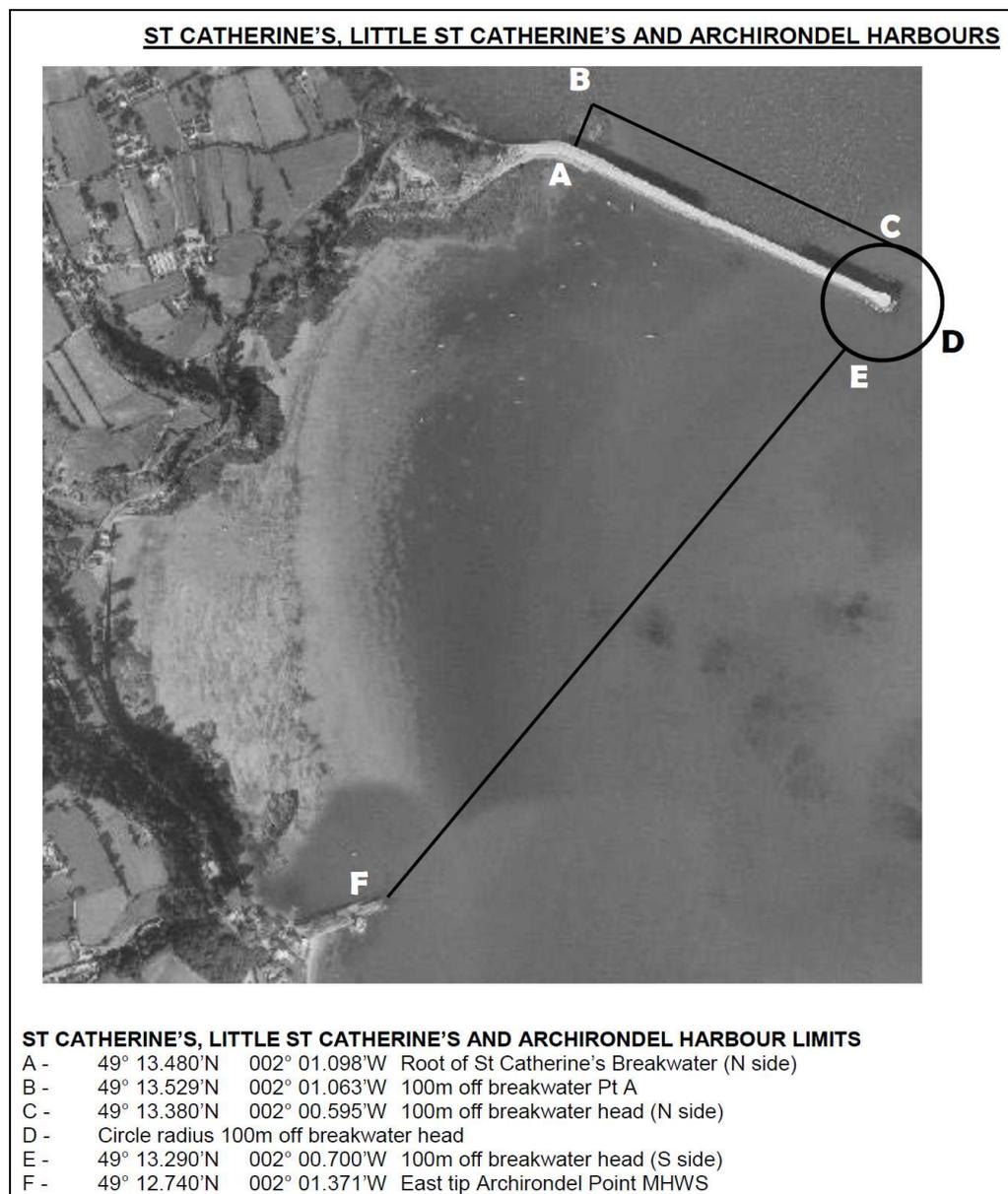
St Helier Pilotage District has the same coordinates as the port limits

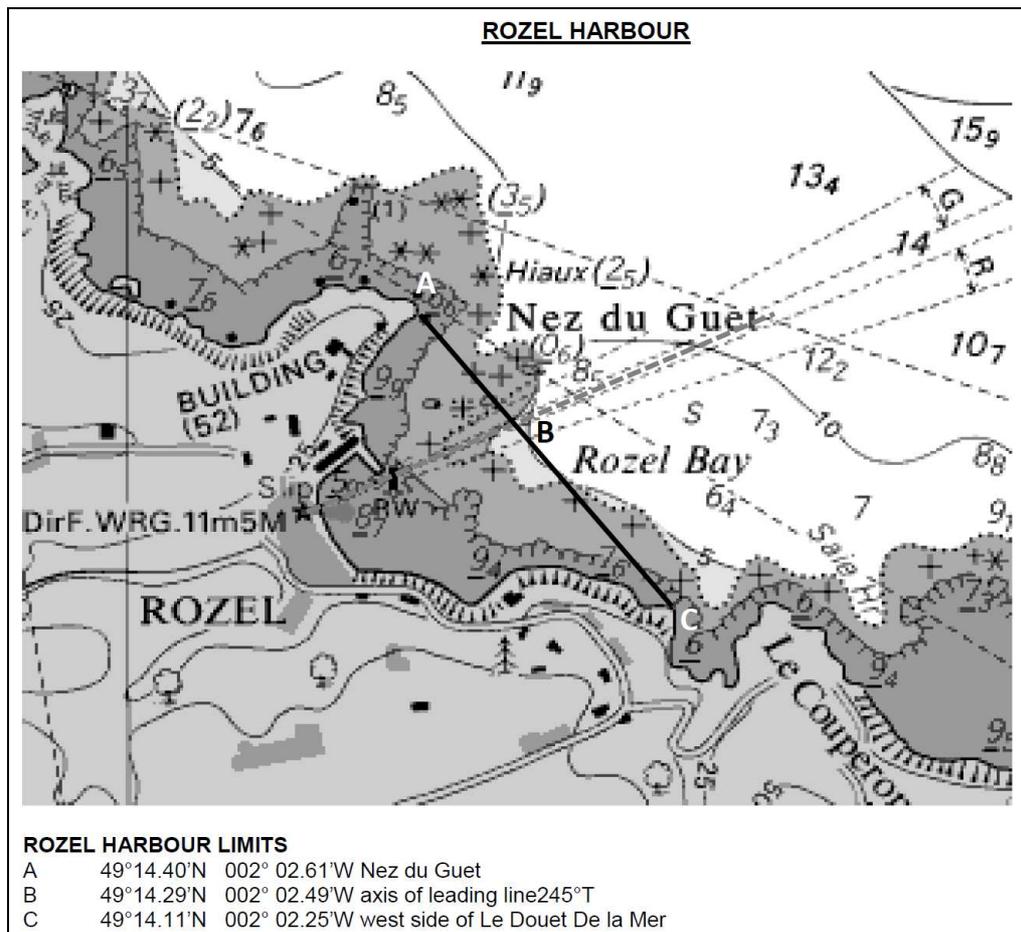
Pilot Boarding Position from West – 49° 10.10'N 002° 13.45'W (4 cables south of La Moye Point)

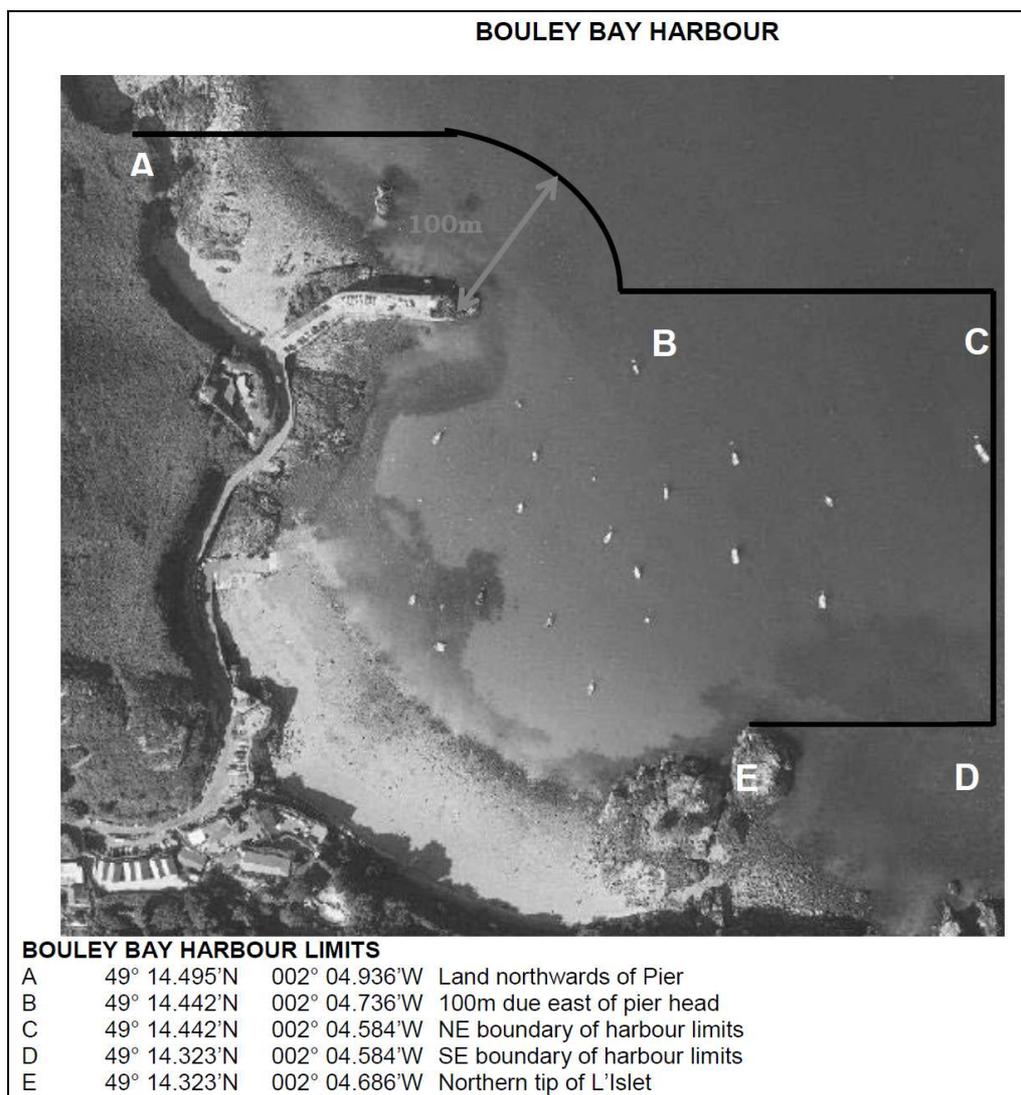
Pilot Boarding Position from South – 49° 08.00'N 002° 06.15'W (1nm south of Demie de Pas Lighthouse)

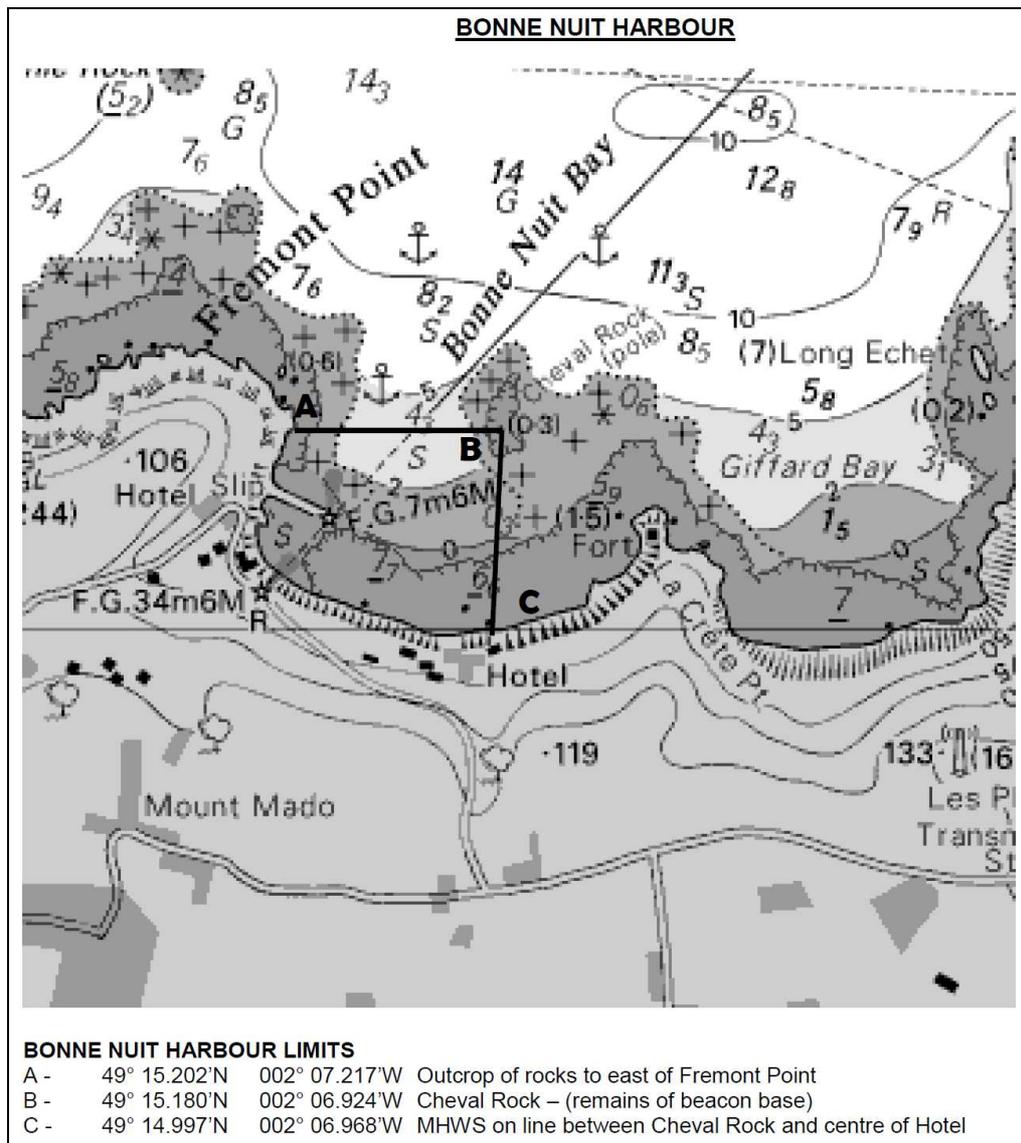


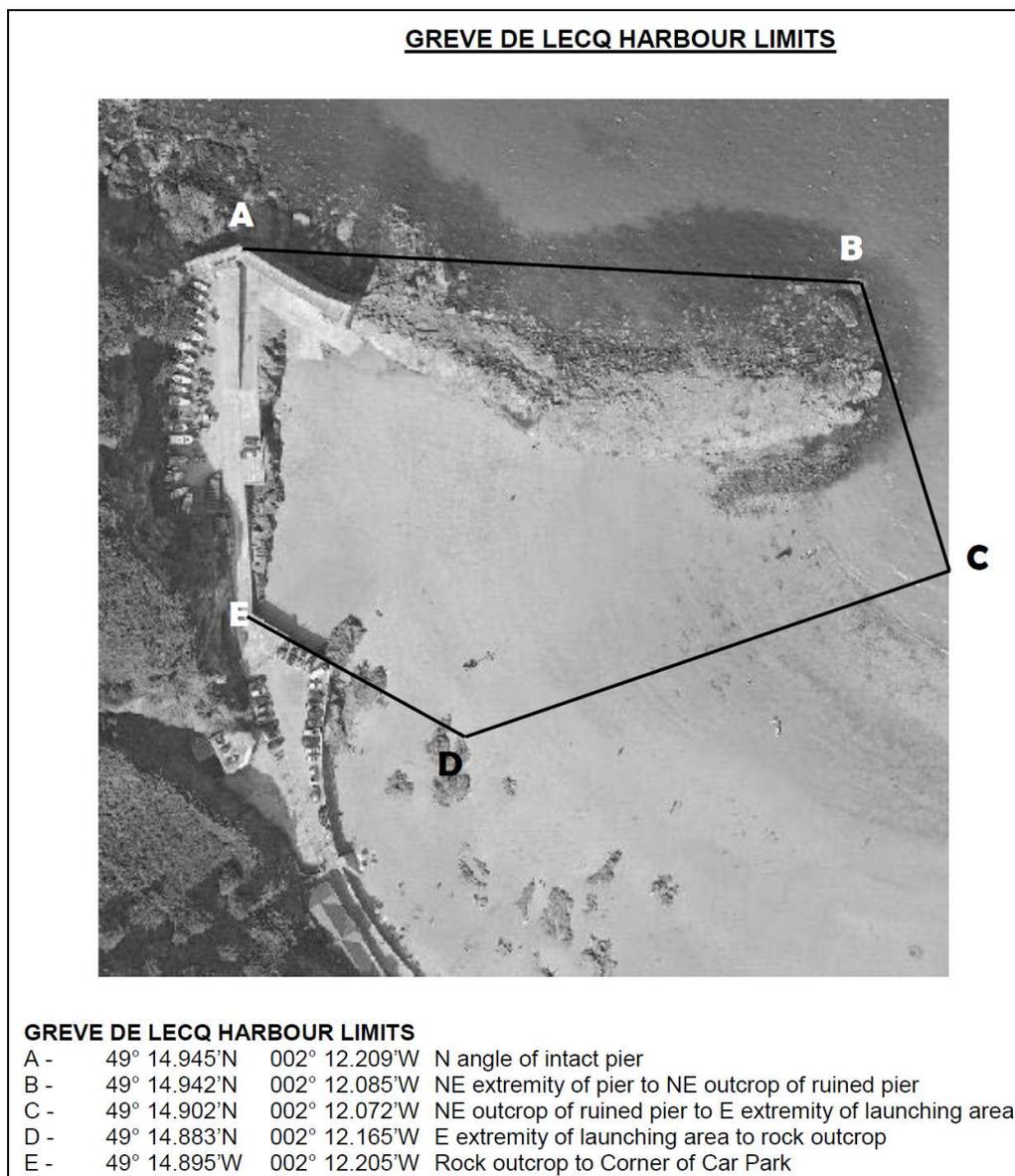


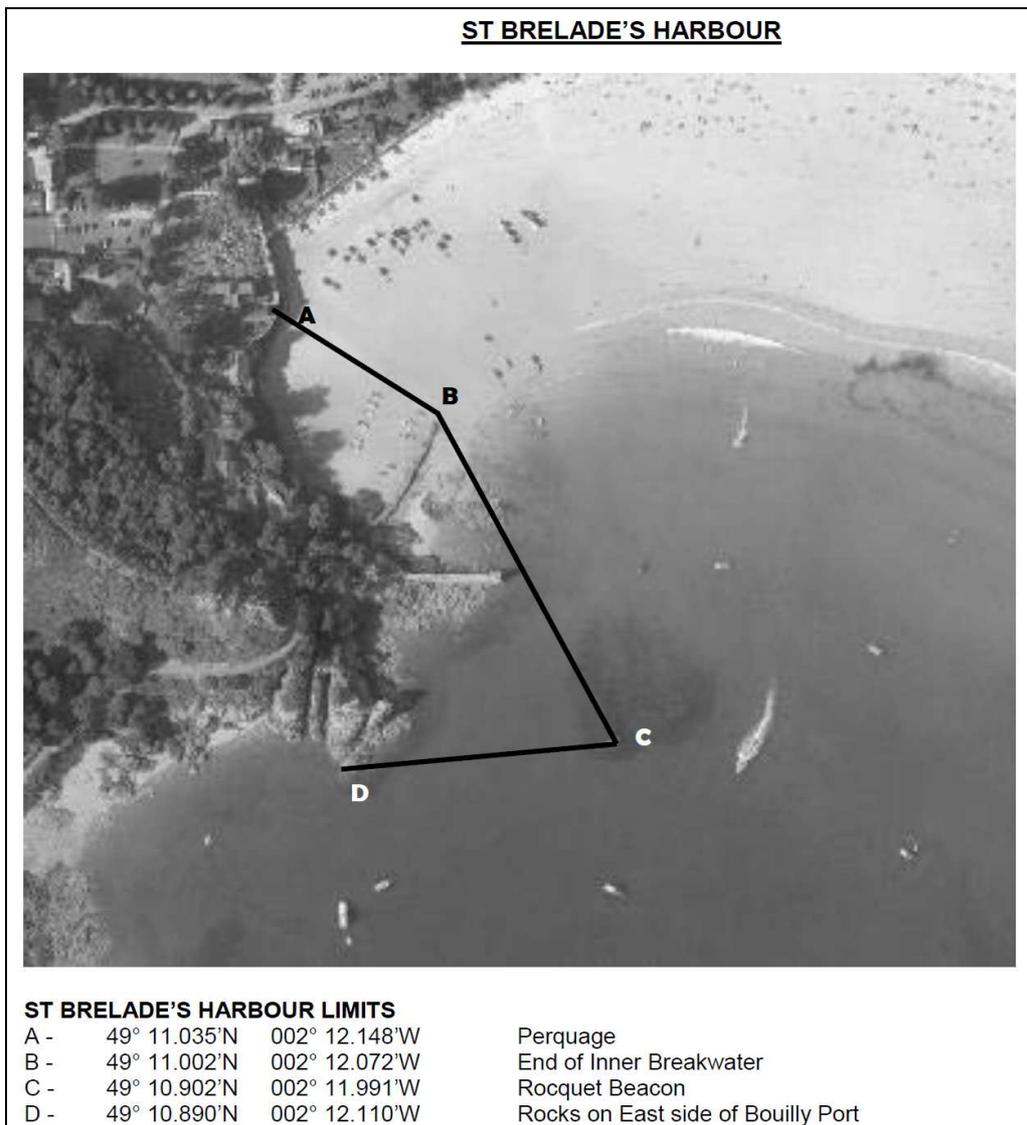


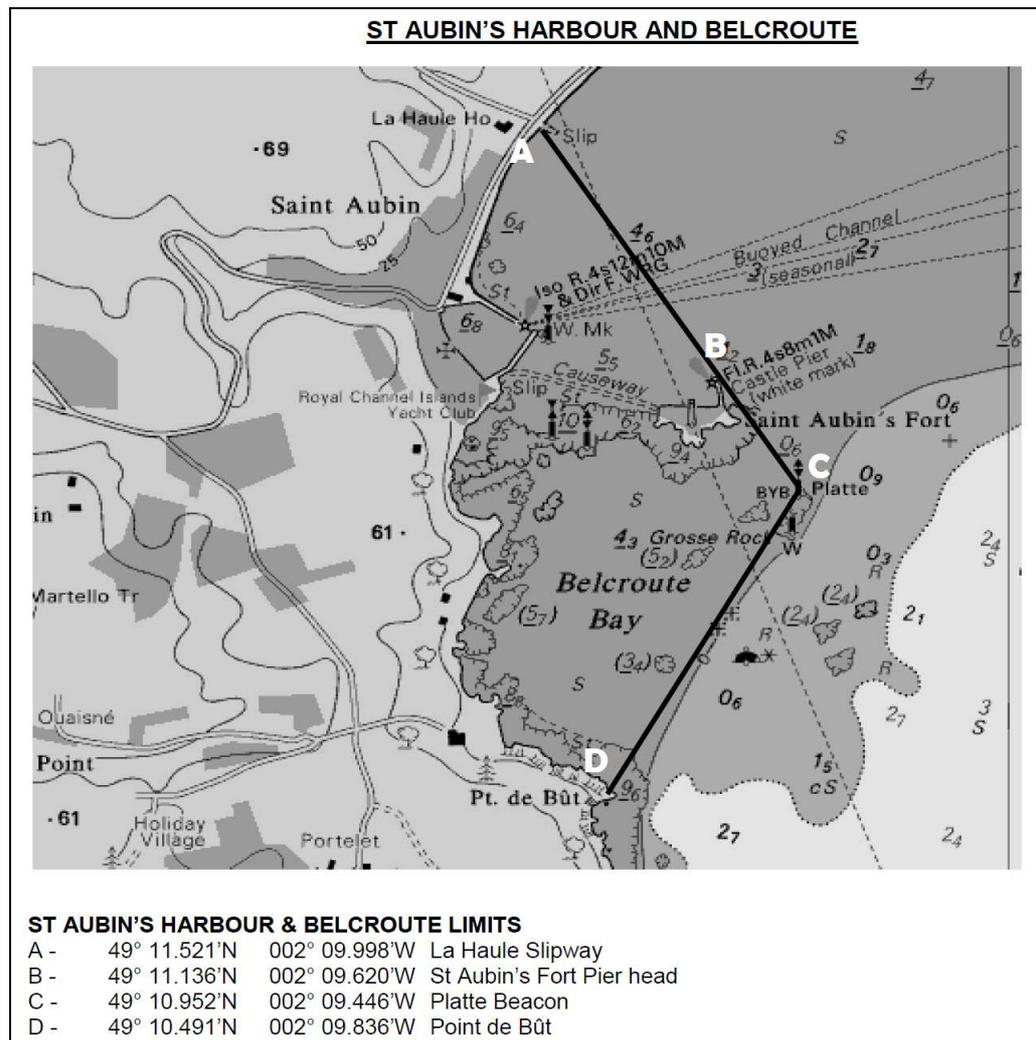


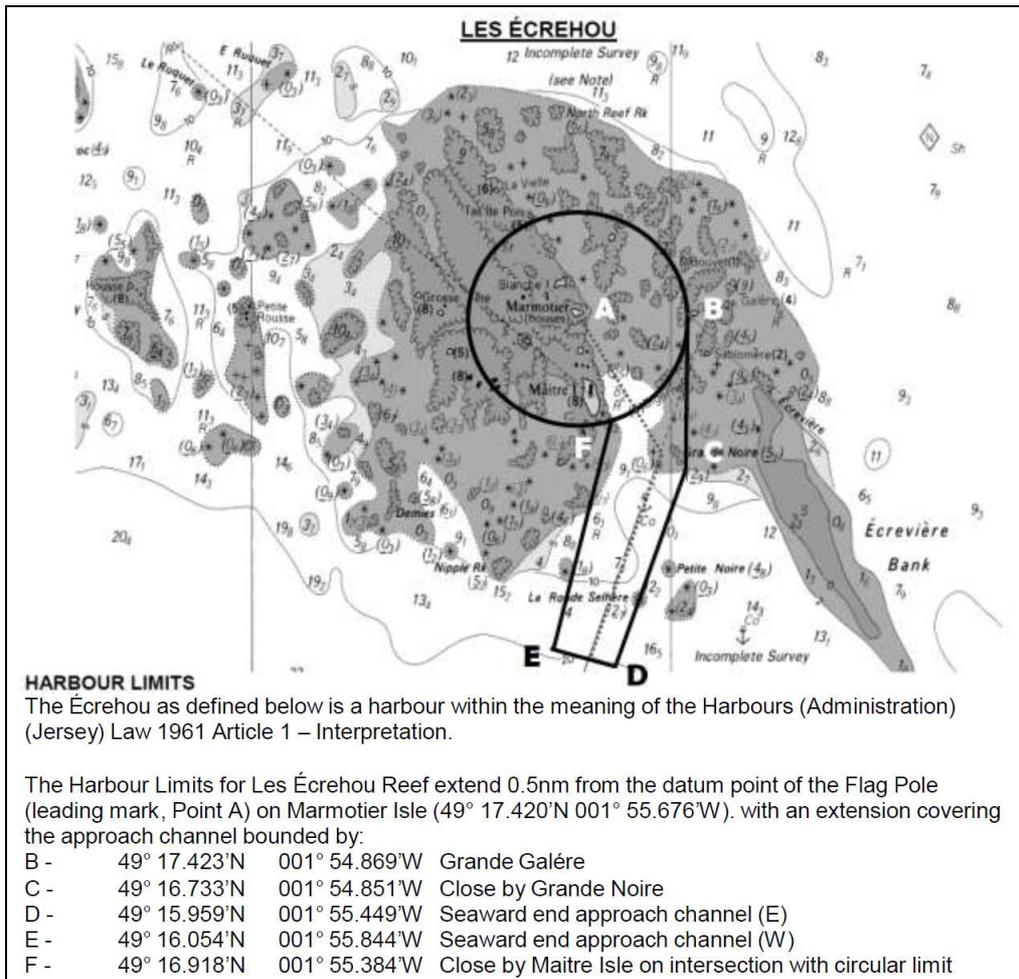


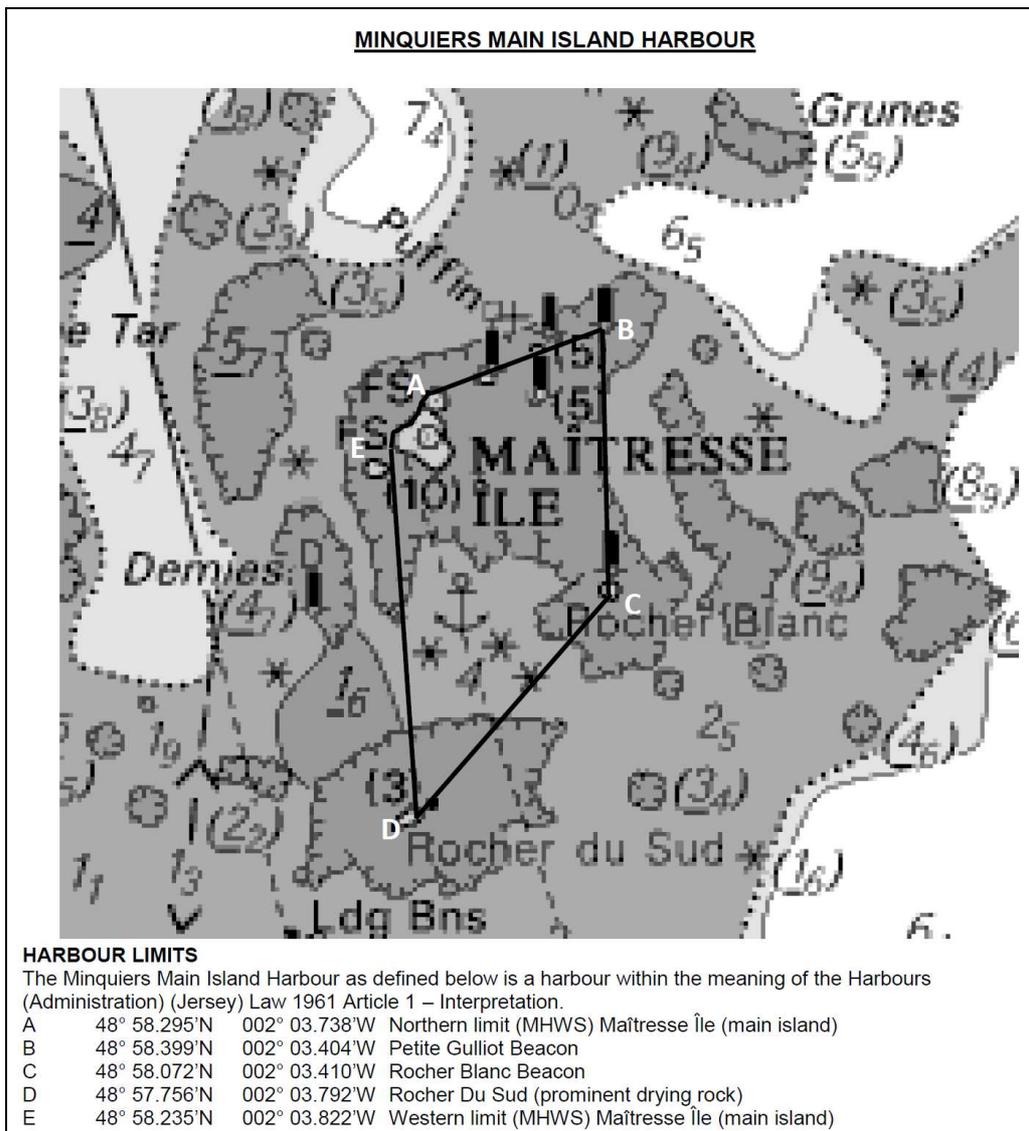












**7. Income Tax (Jersey) Law 1961**

In Article 123C(3) of the Income Tax (Jersey) Law 1961<sup>51</sup>, in the definition “utility company” at the end there shall be added the following sub-paragraph –

- “(f) a person licensed to carry out port operations under the Air and Sea Ports (Incorporation) (Jersey) Law 201<sup>-52</sup>.”.

**8. Aerodromes (Jersey) Regulations 1965**

In the Aerodromes (Jersey) Regulations 1965<sup>53</sup> –

- (a) in Regulations 2, 3 and 4, for the word “Minister” in each place in which it occurs there shall be substituted the words “airport authority”;
- (b) in Regulation 7 –
  - (i) in paragraph (1) –
    - (aa) for the words “Airport Director” there shall be substituted the words “airport authority”,
    - (bb) for the words “he or she” there shall be substituted the words “the authority”,
  - (ii) for paragraph (4) there shall be substituted the following paragraph –
    - “(4) No claim in damages shall lie against the airport authority, the Airport Director or any other officer or servant of the airport authority in connection with the removal or storage of any object or vehicle under this Regulation.”;
- (c) Regulation 8 shall be repealed;
- (d) in Regulations 9 and 11, for the word “Minister” in each place in which it occurs there shall be substituted the words “airport authority”.

**9. Harbours (Jersey) Regulations 1962**

In the Harbours (Jersey) Regulations 1962<sup>54</sup> –

- (a) for the sub-heading to Part 1 there shall be substituted the following sub-heading –
  - “POWERS TO RESTRICT ACCESS, ETC.”;
- (b) for the heading to Regulation 1 there shall be substituted the following heading –
  - “**Restriction of access – harbours and territorial waters**”;
- (c) in Regulation 1, for paragraphs (1) to (3) there shall be substituted the following paragraphs –
  - “(1) If it appears to the authority necessary or expedient to do so, a harbour authority may issue a direction –

- (a) restricting or prohibiting access to any part; or
  - (b) for a specified purpose, reserving a specified part, of a harbour under the control of that authority.
- (2) If it appears to the Minister necessary or expedient to do so, the Minister may issue a direction –
- (a) restricting or prohibiting access to any part; or
  - (b) for a specified purpose, and subject to such conditions as the Minister may consider appropriate, reserving a specified part, of any territorial waters.
- (3) The harbour authority or, as the case may be, the Minister must publish a direction issued under this Regulation.”;
- (d) in Regulation 2 –
- (i) for paragraph (1) there shall be substituted the following paragraph –
- “(1) The Harbour Master may issue a direction requiring the removal of an unserviceable vessel or other obstruction from a harbour.”;
- (ii) in paragraphs (3), (4)(a), (5), and (6), for the words “Harbour Master” in each place in which they occur there shall be substituted the words “harbour authority”,
  - (iii) in sub-paragraph (4)(b), after the words “Harbour Master” there shall be inserted the words “, harbour authority”;
- (e) in Regulation 3(5), for the words “Harbour Master” there shall be substituted the words “harbour authority”;
- (f) for Regulation 4 there shall be substituted the following Regulation –

**“4 Permits for use of facilities or provision of services**

- (1) For the purposes of Article 4A of the Law, the use of certain facilities or the provision of certain services may be designated in accordance with paragraphs (4) and (5) of this Regulation as facilities or services which may not be used or, as the case may be, provided except in accordance with a permit issued under Regulation 5.
- (2) It is an offence punishable by a fine to use a designated facility or to provide a designated service without such a permit.
- (3) It is an offence punishable by a fine of level 4 on the standard scale to use a designated facility or to provide a designated service otherwise than in accordance with the terms, conditions or limitations of or in such a permit.
- (4) A harbour authority may designate a facility to be used, or a service to be provided, in a harbour or (subject to paragraph (5)) in territorial waters as a facility or a service to which this Article applies, but in doing so the harbour authority must –

- (a) follow the policy guidelines specified in Schedule 1; and
    - (b) publish details of the designation.
  - (5) A harbour authority may not make a designation under paragraph (4) in relation to the use of a facility or the provision of a service in territorial waters unless directed to do so by the Minister.
  - (6) The Minister may, by written notice, direct the harbour authority –
    - (a) to make such a designation under paragraph (4) as is specified in the direction; or
    - (b) to amend, in the manner specified in the direction, a designation made under paragraph (4).
  - (7) Where the Minister gives a direction in accordance with paragraph (6) –
    - (a) the Minister shall lay a copy of the written notice before the States at the earliest opportunity; and
    - (b) the harbour authority shall act in accordance with the direction.
  - (8) A requirement for a licence under Part 3 of the Air and Sea Ports (Incorporation) (Jersey) Law 201-<sup>55</sup> shall not apply to any facility or service in relation to which the Minister has directed a harbour authority to make or amend a designation in accordance with paragraph (6).
  - (9) An offence under paragraph (3) may be charged by reference to a day or any longer period of time and a person may be convicted of a second offence or subsequent offences under that paragraph by reference to any period of time following the preceding conviction for such an offence.
  - (10) Any designation made by the Harbour Master before the commencement of this provision shall continue in full force and effect as if it were a designation made by the harbour authority under paragraph (4), and as though any reference in such designation to the Harbour Master were a reference to the harbour authority.
  - (11) Any direction given by the Minister before the commencement of this provision shall continue in full force and effect but as though any reference in that direction to the Harbour Master were a reference to the harbour authority.”;
- (g) in Regulation 5 –
- (i) for the words “Harbour Master” in each place in which they occur there shall be substituted the words “harbour authority”,
  - (ii) in paragraph (1), for the words “Regulation 4(1)” there shall be substituted the words “Regulation 4(4)”,
  - (iii) after paragraph (8) there shall be inserted the following paragraph –

- “(8A) Any permit issued by the Harbour Master before the commencement of this provision shall continue in full force and effect and as though issued by the harbour authority.”,
- (iv) after paragraph (10) there shall be inserted the following paragraph –
- “(10A) In a case where the designation was made or amended pursuant to a direction given to the harbour authority by the Minister under Regulation 4(6), the Minister shall be joined as a party in the appeal.”;
- (h) for the text of Regulation 6 there shall be substituted the following –
- “(1) For the purposes of Article 4A of the Law, the use of certain facilities or the provision of certain services may be designated in accordance with paragraph (3) of this Regulation as facilities or services which may not be used or, as the case may be, provided except under and in accordance with an agreement as provided by this Regulation.
- (2) It is an offence punishable by a fine –
- (a) to use a designated facility; or
- (b) to provide a designated service,
- without an agreement as provided by this Regulation.
- (3) A harbour authority may designate a facility to be used, or a service to be provided, in a harbour as a facility or a service to which this Article applies, but in doing so the harbour authority must –
- (a) follow the policy guidelines specified in Schedule 1; and
- (b) publish details of the designation.
- (4) Where a harbour authority has made a designation under paragraph (3), and subject to paragraph (5), the authority may enter into an agreement with a person for the use of the designated facility or the provision of the designated service, as the case may be.
- (5) Before entering into such an agreement, the harbour authority may publish details of the proposed agreement and seek comments from those likely to be affected by it.
- (6) In negotiating the terms of such an agreement, the harbour authority must –
- (a) follow the policy guidelines specified in Schedule 1; and
- (b) have regard to any relevant comments received following publication of the proposed agreement.”;
- (i) in Regulation 7(2) –
- (i) for the words “Regulation 6(1)(a) or (b)” there shall be substituted the words “Regulation 3(1) or (2)”,

- (ii) for the words “Harbour Master” in the second and third places in which they occur, there shall be substituted the words “harbour authority”,
- (iii) for the words from “any officers” to the end there shall be substituted the words “the harbour authority in connection with such removal.”;
- (j) in Regulation 24, for the words “when so required by the Harbour Master or other officer duly authorized by the Minister” there shall be substituted the words “when required to do so by the harbour authority (or any officer duly authorized for the purpose by the authority)”;
- (k) for the text of Regulation 30 there shall be substituted the following –

“Before allowing an explosives ship to enter the harbour, the Harbour Master shall be satisfied that the consignment of explosives for unloading in the harbour corresponds with the types and quantities listed in any import licence issued in accordance with Article 2 of the Explosives (Jersey) Law 1970<sup>56</sup>.”;
- (l) in Regulation 37 –
  - (i) for the words “The Minister may at his or her absolute discretion” there shall be substituted the words “The harbour authority may”,
  - (ii) for the words “provided he or she has obtained approval in principle to the exemption from” there shall be substituted the words “, if prior approval for the exemption has been given in principle by”;
- (m) in Regulation 40 –
  - (i) in the definition “chemicals”, for the words “Chapter VI of the IBC Code for Ships carrying Dangerous Chemicals” there shall be substituted the words “Chapter 17 of the IBC Code”,
  - (ii) for the definition “IMO Code for Ships carrying Dangerous Chemicals” there shall be substituted the following definition –

“ ‘IBC Code for Ships carrying Dangerous Chemicals’ means the International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (as published and amended from time to time by the IMO);”,
  - (iii) in the definition “IMO Code for Ships carrying Liquefied Gases”, for the words in brackets there shall be substituted the words “(as published and amended from time to time by the IMO)”,
  - (iv) in the definition “oil”, for the words “Chapter VI of the IMO Code for Ships Carrying Dangerous Chemicals), when carried on board a tanker as cargo;” there shall be substituted the words “Chapter 17 of the IBC Code);”;
- (n) in Regulation 42 –
  - (i) in sub-paragraph (1)(f)(i), for the words “with the IMO Code for Ships Carrying Dangerous Chemicals” there shall be substituted the following –

“ –

- (aa) in the case of a ship built before 1st July 1986, with the IMO Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk published by the IMO in London in 1977, or
    - (bb) in the case of a ship built on or after 1st July 1986, with the IBC Code for Ships carrying Dangerous Chemicals;”,
  - (ii) in paragraph (4), for the words “Pilotage (General Provisions) (Jersey) Regulations 1988<sup>57</sup>” there shall be substituted the words “Pilotage (Jersey) Law 2009<sup>58</sup>”;
- (o) in Regulation 45 –
  - (i) in paragraph (4) –
    - (aa) for the words “The Harbour Master may, on behalf of the Minister,” there shall be substituted the words “The harbour authority may”,
    - (bb) for the word “Minister” in the second place in which it occurs there shall be substituted the words “harbour authority”,
  - (ii) in paragraph (2), for the word “Minister” there shall be substituted the words “harbour authority”,
  - (iii) in paragraph (5), for the words “Minister or an officer in an administration of the States for which the Minister is assigned responsibility” there shall be substituted the words “harbour authority”,
  - (iv) in paragraph (6), for the words “Harbour Master” there shall be substituted the words “harbour authority”;
- (p) in Regulation 49, for the word “Minister” in each place in which it occurs there shall be substituted the words “harbour authority”;
- (q) in Schedule 1 –
  - (i) for the words “Harbour Master” in each place in which they occur there shall be substituted the words “harbour authority”,
  - (ii) in paragraph 1(a), for the words “4(1)” there shall be substituted the words “4(3)”,
  - (iii) in paragraph 1(c), for the words “6(1)” there shall be substituted the words “6(3)”,
  - (iv) in paragraph 1(d), for the words “6(7)” there shall be substituted the words “6(6)”.

## 10. Emergency Powers and Planning (Jersey) Law 1990

In the Emergency Powers and Planning (Jersey) Law 1990<sup>59</sup> –

- (a) after Article 9 there shall be inserted the following Article –

**“9A Powers of competent authority in relation to port operations**

- (1) A competent authority may by Order –
  - (a) provide for securing, regulating or prohibiting the provision or use of port operations;
  - (b) provide for regulating charges and prices in relation to the provision or use of port operations; and
  - (c) give directions to any person carrying out port operations with respect to the provision of those operations.
- (2) The power conferred by paragraph (1)(a) includes (but shall not be limited to) –
  - (a) power to suspend, restrict or modify the provision of port operations or the terms of any agreement or direction in respect of the provision of port operations; and
  - (b) power to suspend, modify or exclude the application of any obligation or restriction imposed by or under any enactment that directly or indirectly affects the provision or use of port operations.
- (3) An Order under this Article may be made –
  - (a) in relation to port operations generally or in relation to any particular description of port operations;
  - (b) with regard to provision of port operations by any person or by persons specified in the Order;
  - (c) for all purposes or for any particular purpose specified in the Order.
- (4) A competent authority shall not make an Order under this Article except following consultation –
  - (a) in relation to airport operations, with the Director of Civil Aviation appointed under Article 3 of the Civil Aviation (Jersey) Law 2008<sup>60</sup>; or
  - (b) in relation to harbour operations, with the harbour authority, and in relation to all port operations, with the Jersey Competition Regulatory Authority established under the Competition Regulatory Authority (Jersey) Law 2001<sup>61</sup>.
- (5) In this Law, ‘airport operations’, ‘harbour operations’ and ‘port operations’ have the meanings given to those expressions by Article 2 of the Air and Sea Ports (Incorporation) (Jersey) Law 201-<sup>62</sup>.”;
  - (b) in Article 11(4), after the word “maintaining” there shall be inserted the words “port operations and”.

**11. Shipping (Jersey) Law 2002**

In the Shipping (Jersey) Law 2002<sup>63</sup> –

- (a) in Article 1(1), after the definition “harbour” there shall be inserted the following definition –

“ ‘harbour authority’ means a person appointed as such under Article 2 of the Harbours (Administration) (Jersey) Law 1961<sup>64</sup>;”;

- (b) in Article 104, in paragraphs (1), (2), (4) and (7) for the words “Harbour Master” in each place in which they occur there shall be substituted the word “Minister”;
- (c) in Article 107, in paragraph (3)(a) for the words “Harbour Master” there shall be substituted the word “Minister”;
- (d) in Article 108 –
  - (i) in paragraphs (1) and (2), for the words “Harbour Master” in each place in which they occur there shall be substituted the word “Minister”,
  - (ii) in paragraph (2), for the word “101” there shall be substituted the word “104”;
- (e) in Article 111 –
  - (i) in paragraph (3), for the words “Lieutenant Governor who shall thereupon notify” there shall be substituted the words “Minister who shall thereupon ensure notification of the detention to”,
  - (ii) in paragraphs (5)(c) and (6) for the word “Minister” in each place in which it occurs there shall be substituted the words “harbour authority”;
- (f) in Part 9, for the first Chapter heading there shall be substituted the following heading –

*“Chapter 1 – General”;*

- (g) in Article 128(1) –
  - (i) the definition “officer” shall be deleted,
  - (ii) for the definition of “Receiver” there shall be substituted the following definition –
 

“ ‘Receiver’ means a person appointed as such by the Minister under Article 128A;”;
- (h) after Article 128, there shall be inserted the following Article –

**“128A The Receiver: appointment and functions**

- (1) The Minister shall appoint a person to be Receiver of wreck for the purposes of this Part.
- (2) The Minister may appoint more than one person under paragraph (1), but if the Minister does so, there shall be specified in each case the functions under this Part which are to be carried out by each such person.
- (3) Under paragraph (2) the Minister may specify –
  - (a) that more than one function shall be carried out by one person; and

- (b) that more than one person may carry out a particular function.”;
- (i) in Article 136, for paragraphs (2) to (4) there shall be substituted the following paragraphs –
  - “(2) The Receiver may authorize –
    - (a) the Agent of the Impôts; or
    - (b) the Harbour Master,to discharge a function conferred on the Receiver by any of Articles 137 to 140.”.
  - (3) Where a provision of this Chapter requires a vessel to be delivered to the Receiver, a person authorized under paragraph (2) shall be treated, subject to paragraph (4), as the agent of the Receiver with respect to goods or articles belonging to any such vessel.
  - (4) A person discharging a function as authorized under this Article is not deprived of any right to salvage to which the person would otherwise be entitled.
  - (5) In Articles 137 to 140, “shipwrecked persons” in relation to a vessel means persons belonging to that vessel.”;
- (j) for Article 153, there shall be substituted the following Articles –

**“153 Powers and duties of harbour authority in relation to wrecks**

- (1) Subject to paragraph (2), the powers in paragraph (3) may be exercised where, in the opinion of the harbour authority, a vessel which has sunk or has been stranded or abandoned –
  - (a) in, or in or near an approach to, a harbour or tidal water; or
  - (b) in a fairway, on the seashore, or on or near a rock, shoal, bank or island in Jersey waters,is or is likely to become an obstruction or danger to navigation or to lifeboats engaged in lifeboat service.
- (2) Where the proposed exercise by the harbour authority of a power in paragraph (3) would entail action in Jersey waters outside the limits of a harbour, the harbour authority shall –
  - (a) before taking such action, consult upon it with the Minister and any other persons whose interests, in the opinion of the Harbour Master, are likely to be affected by the action; and
  - (b) in taking such action, have regard to views expressed by the Minister and any other persons consulted.
- (3) The powers mentioned in paragraph (1) are –
  - (a) the power to take possession of the vessel;
  - (b) until such time as the power in sub-paragraph (c) has been exercised so that the vessel is no longer an obstruction or danger to navigation, the power to light or buoy the vessel;
  - (c) the power to raise, remove or destroy the vessel.

- (4) In this Article, ‘vessel’ includes any part of a vessel and its property.
- (5) In this Article and in Article 153A, ‘property’ in relation to a vessel means an article, thing or collection of things which are or form part of the equipment, cargo, stores or ballast of the vessel.

#### **153A Powers of sale, etc. of wrecks by harbour authority**

- (1) Subject to paragraphs (2) to (4), a harbour authority may sell anything which is taken into its possession under Article 153(3).
  - (2) Except in the case of property which is perishable or would deteriorate in value by reason of such a delay, no sale under paragraph (1) shall be made until at least 7 days’ notice of the intended sale has been given by means of advertisement in a newspaper circulating in Jersey.
  - (3) At any time before a sale under paragraph (1), the owner of property shall be entitled to delivery of it upon payment of its fair market value.
  - (4) Where a sale under paragraph (1) takes place –
    - (a) the proceeds of sale of any vessel and of any property are to be treated as a single fund; and
    - (b) subject to paragraph (5), the proceeds of sale shall be held by the harbour authority in trust for the persons entitled to those proceeds.
  - (5) The harbour authority may reimburse its own expenses incurred in relation to the raising, removing or sale of the vessel out of the proceeds of sale.
  - (6) Powers conferred on a harbour authority by this Article are in addition to, and do not derogate from, any other powers of the authority.”;
- (k) in Article 155(1), sub-paragraph (a) shall be deleted;
  - (l) in Article 177(1) –
    - (i) sub-paragraph (b) shall be deleted,
    - (ii) at the end of sub-paragraph (e), the word “or” shall be deleted,
    - (iii) at the end of sub-paragraph (f), there shall be added the word “or” and the following sub-paragraph –
      - “(g) under Article 131(1), by the Receiver.”;
  - (m) in Article 192(1), for sub-paragraph (c) there shall be substituted the following sub-paragraph –
    - “(c) shall cause such a form to be supplied –
      - (i) by the Registrar, either at the office of the Registrar free of charge or at a reasonable price fixed by the Minister, or (if the Registrar thinks fit) on a website approved by the Minister for that purpose,

- (ii) by persons licensed by the Minister to print and sell such forms, or
  - (iii) in all the ways described in clauses (i) and (ii).”;
- (n) in Article 194, in paragraph (e) for the words “the Harbour Master or other” there shall be substituted the word “any”;
- (o) in Schedule 10, in paragraph 3, for the words “Minister may make” there shall be substituted the words “harbour authority shall make”.

## 12. Shipping (Distress Signals and Prevention of Collisions) (Jersey) Order 2004

In the Shipping (Distress Signals and Prevention of Collisions) (Jersey) Order 2004<sup>65</sup> –

- (a) in Article 1(2)(e), for the words “Harbour Master” there shall be substituted the words “Minister for Economic Development”; and
- (b) the text of Regulation 5 of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996 of the United Kingdom, as set out together with that Order, shall be modified accordingly.

## 13. Pilotage (Jersey) Law 2009

In the Pilotage (Jersey) Law 2009<sup>66</sup> –

- (a) in Article 1(1) –
  - (i) after the definition “compulsory pilotage area” there shall be inserted the following definition –
    - “ ‘harbour authority’ means the harbour authority appointed in pursuance of Article 2 of the Harbours (Administration) (Jersey) Law 1961<sup>67</sup>;”;
  - (ii) in the definition “pilotage exemption certificate” for the words “the Harbour Master” there shall be substituted the words “a harbour authority”;
- (b) in Article 3 –
  - (i) for paragraph (1) there shall be substituted the following paragraph –
    - “(1) A harbour authority may, on the recommendation of the Harbour Master in accordance with paragraph (3), license suitably qualified persons to act as pilots in or in any part of a compulsory pilotage area.”;
  - (ii) in paragraph (2), for the words “by the Harbour Master” there shall be substituted the words “by the harbour authority under paragraph (1)”;
  - (iii) for paragraphs (3) and (4) there shall be substituted the following paragraphs –
    - “(3) The Harbour Master may recommend for licensing only those persons who are suitably qualified.

- (4) For the purpose of establishing whether a person is suitably qualified, the Harbour Master shall (after consultation with persons having relevant expert knowledge) –
  - (a) determine such qualifications (including, but not limited to, matters such as physical fitness, length of service, local knowledge and relevant skills including language skills) as may be required from a person applying to be licensed under this Article; and
  - (b) make appropriate provision for examinations or checks in respect of those qualifications.”,
- (iv) in paragraph (6) –
  - (aa) for the words “Harbour Master” in the first place in which they occur there shall be substituted the words “harbour authority”,
  - (bb) the words “to the Harbour Master” shall be deleted,
- (v) in paragraph (7) –
  - (aa) for the words “Harbour Master” there shall be substituted the words “harbour authority”,
  - (bb) the words “his or her” shall be deleted,
- (vi) in paragraph (8)(a), for the words “Harbour Master” there shall be substituted the words “harbour authority”,
- (vii) in paragraph (8)(b), for the words “Harbour Master” there shall be substituted the word “authority”;
- (c) in Article 4(1) and (3), for the words “Harbour Master” in each place in which they occur there shall be substituted the words “harbour authority”;
- (d) in Article 6 –
  - (i) in paragraph (1) for the words “The Harbour Master” there shall be substituted the words “The harbour authority”,
  - (ii) in paragraph (3) for the words “The Harbour Master” in the first place in which they occur there shall be substituted the words “The harbour authority”,
  - (iii) in paragraph (4) for the words “the Harbour Master” in the second place in which they occur there shall be substituted the words “the harbour authority”,
  - (iv) in paragraph (9) for the words “the Harbour Master” there shall be substituted the words “the harbour authority”,
  - (v) in paragraph (11) for the words “The Harbour Master” in the first place in which they occur there shall be substituted the words “The harbour authority”,
  - (vi) in paragraphs (12), (13), (14) and (16) for the words “Harbour Master” in each place in which they occur there shall be substituted the words “harbour authority”,
  - (vii) for paragraph (15) there shall be substituted the following paragraph –

“(15) The fees must be such as the harbour authority considers reasonable to meet relevant administrative costs incurred by the authority or by the Harbour Master.”;

(e) in Article 7 –

(i) in paragraph (1) for the words “The Harbour Master” there shall be substituted the words “A harbour authority”,

(ii) in paragraphs (2), (3) and (5) to (7) for the words “Harbour Master” in each place in which they occur there shall be substituted the words “harbour authority”;

(f) in Article 15 –

(i) for paragraphs (3) and (4) there shall be substituted the following paragraphs –

“(3) Where loss or damage to property or rights of any kind (including but not limited to a ship or property on board a ship) is caused by a licensed pilot who is an employee of a harbour authority, the authority shall not be liable in damages beyond the amount of £2,000 multiplied by the number of licensed pilots who are such employees at the time when the loss or damage occurred.

(3A) The limit of liability in paragraph (3) shall not apply where the loss or damage in question was attributable to an act or omission by the authority or by a person employed by or acting on behalf of the authority, committed either –

(a) with intent to cause such loss or damage; or

(b) recklessly as to whether such loss or damage would be caused.

(4) Where loss or damage to property or rights of any kind (including but not limited to a ship or property on board a ship) is caused by a licensed pilot who is an employee of a person other than a harbour authority, that person (‘the employer’) shall not be liable in damages beyond the amount of £2,000 multiplied by the number of licensed pilots who are such employees at the time when the loss or damage occurred.

(4A) The limit of liability in paragraph (4) shall not apply where the loss or damage in question was attributable to an act or omission by the employer or by any person employed by or acting on behalf of the employer, committed either –

(a) with intent to cause such loss or damage; or

(b) recklessly as to whether such loss or damage would be caused.”,

(ii) for paragraph (9) there shall be substituted the following paragraph –

“(9) A harbour authority shall not be liable for any loss or damage caused by any act or omission of a pilot licensed by the authority under Article 3, by virtue only of the fact that the pilot is so licensed.”,

(iii) paragraph (10) shall be omitted;

(g) after Article 16 there shall be inserted the following Article –

**“16A Role of the Minister**

- (1) The Minister may give written directions or guidance to a harbour authority as to the exercise of the authority’s functions under this Law.
- (2) For the purpose of paragraph (1), giving directions or guidance includes varying or revoking directions or guidance already given under that paragraph.
- (3) In exercising its functions under this Law, a harbour authority shall –
  - (a) comply with any relevant directions; and
  - (b) have due regard to any guidance, given and for the time being in force under this Article.”.

**14. Harbours (Inshore Safety) (Jersey) Regulations 2012**

In the Harbours (Inshore Safety) (Jersey) Regulations 2012<sup>68</sup> –

- (a) in Regulation 1, the definition “Harbour Master” shall be deleted;
- (b) in Regulation 2, for the words “Harbour Master” there shall be substituted the words “harbour authority”;
- (c) in Regulations 6 and 7, for the word “Minister” in each place in which it occurs there shall be substituted the words “harbour authority”;
- (d) in Regulation 6(11), for the word “Minister’s” there shall be substituted the word “authority’s”.

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1	<i>chapter 03.035</i>
2	<i>chapter 19.060</i>
3	<i>chapter 03.530</i>
4	<i>chapter 13.125</i>
5	<i>chapter 23.100</i>
6	<i>chapter 03.530</i>
7	<i>chapter 19.060</i>
8	<i>chapter 19.060</i>
9	<i>chapter 19.060</i>
10	<i>chapter 05.075</i>
11	<i>chapter 19.060</i>
12	<i>chapter 19.060</i>
13	<i>chapter 03.530</i>
14	<i>chapter 19.060.60</i>
15	<i>chapter 03.530</i>
16	<i>L.24/2014</i>
17	<i>chapter 19.060.60</i>
18	<i>chapter 19.060.30</i>
19	<i>chapter 16.325</i>
20	<i>chapter 24.960</i>
21	<i>chapter 13.125</i>
22	<i>chapter 13.125</i>
23	<i>chapter 24.900</i>
24	<i>chapter 13.125</i>
25	<i>chapter 19.060.60</i>
26	<i>chapter 19.060</i>
27	<i>chapter 18.135</i>
28	<i>chapter 25.100</i>
29	<i>chapter 25.100</i>
30	<i>chapter 25.650</i>
31	<i>chapter 25.150</i>
32	<i>chapter 25.500</i>
33	<i>chapter 22.550</i>
34	<i>chapter 13.250</i>
35	<i>chapter 13.125</i>
36	<i>chapter 04.160</i>
37	<i>chapter 05.300</i>
38	<i>chapter 15.350</i>
39	<i>chapter 15.360</i>
40	<i>L.2/1881 (chapter 19.030)</i>
41	<i>chapter 03.035</i>
42	<i>L.7/1947 (chapter 19.080)</i>
43	<i>chapter 03.630</i>
44	<i>chapter 03.035</i>
45	<i>L.11/1956 (chapter 03.315)</i>
46	<i>chapter 19.060</i>
47	<i>P.5/2015</i>
48	<i>chapter 19.885</i>
49	<i>chapter 16.325</i>
50	<i>chapter 15.350</i>
51	<i>chapter 24.750</i>
52	<i>P.5/2015</i>
53	<i>chapter 03.035.50</i>

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54	<i>chapter 19.060.60</i>
55	<i>P.5/2015</i>
56	<i>chapter 23.125</i>
57	<i>R&amp;O.7851</i>
58	<i>chapter 19.870</i>
59	<i>chapter 23.100</i>
60	<i>chapter 03.530</i>
61	<i>chapter 05.075</i>
62	<i>P.5/2015</i>
63	<i>chapter 19.885</i>
64	<i>chapter 19.060</i>
65	<i>chapter 19.885.10</i>
66	<i>chapter 19.870</i>
67	<i>chapter 19.060</i>
68	<i>chapter 19.060.30</i>