

STATES OF JERSEY



DRAFT TRANSFER OF FUNCTIONS (ENVIRONMENT AND PUBLIC SERVICES COMMITTEE) (JERSEY) ACT 200

**Lodged au Greffe on 25th May 2004
by the Environment and Public Services Committee**

STATES GREFFE



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REPORT

The Machinery of Government Implementation Plan refers explicitly to the need to have clarity regarding operational and regulatory functions (see section 7, page 115). This is reiterated in the Report accompanying the Policy and Resources projet P.70/2002 passed by the States on 23rd July 2002. The Report also recommended that the Environment Department should have responsibility for marine environmental issues.

For the most part, the regulatory and operational arms of the functions of the Harbours and Airport Committee are quite separate: the Committee regulates for the safety of ships in Jersey waters but it is not an operator of any of those ships (except for the non-commercial States vessels).

However, where maintenance dredging is required for harbour operations, the Committee licenses itself for the subsequent deposit of dredged material.

The proper licensing authority for deposits at sea should therefore be the Environment and Public Services Committee.

The issuing of licences for deposits in the sea requires the licensing authority to have regard to both the safe navigation of ships and the protection of the marine environment. In as much as the Harbours and Airport Committee has been required to have regard to the protection of the marine environment when issuing a licence, it follows that the Environment and Public Services Committee will be required to consider the safe navigation of ships and the necessity of maintenance dredging. In the past, the Sea Fisheries Advisor has been involved and his advice sought. Analysis of the sea bed has been carried out before and after dumping of dredged material to ensure no damage to the marine environment.

Consultation between departments will continue and they will continue to seek sensible and well-balanced solutions that respect the primary interests of each committee. This intention to continue consultation with the Harbours and Airports Committee in respect of regulatory activities is set out in a Memorandum of Understanding.

No additional resources will be required by the Planning and Environment Department to undertake the transferred duties and responsibilities.

Explanatory Note

This Act transfers the functions of the Harbours and Airport Committee under the Food and Environment Protection Act 1985 (Jersey) Order 1987, as amended by the Food and Environment Protection Act 1985 (Jersey) (Amendment) Order 1997 to the Environment and Public Services Committee.

Article 1 provides for interpretation of terms used in the Act.

Article 2 transfers the functions of the Harbours and Airport Committee under the Food and Environment Protection Act 1985 (Jersey) Order 1987, as amended by the Food and Environment Protection Act 1985 (Jersey) (Amendment) Order 1997, to the Environment and Public Services Committee.

Article 3(1) provides for the manner in which references to the Harbours and Airport Committee in the Food and Environment Protection Act 1985 (Jersey) Order 1987, as amended by the Food and Environment Protection Act 1985 (Jersey) (Amendment) Order 1997, are now to be construed as references to the Environment and Public Services Committee.

Article 3(2) provides for how any reference to the Harbours and Airport Committee or its officers in any other enactment, judgement, award, contract, certificate or other document that is in existence before this Act comes into force is now to be construed as a reference to the Environment and Public Service Committee or its officers.

Article 3(3) provides for the continuation of any appointment, determination, direction, instruction, approval, consent, requirement, authorization or other thing made, given or done by the Harbours and Airport Committee before this Act comes into force.

Articles 3(4) to 3(7) provide for the transfer to the Environment and Public Services Committee of any rights and liabilities of the Harbours and Airport Committee arising out of the exercise by the Harbours and Airport Committee of the transferred functions.

Article 3(8) provides for the substitution of the Environment and Public Services Committee for the Harbours and Airport Committee in any legal proceedings concerning the transferred functions and to which the Harbours and Airport Committee is a party.

Article 4 names the Act and states that it will come into force 7 days after it is made.



Jersey

DRAFT TRANSFER OF FUNCTIONS (ENVIRONMENT AND PUBLIC SERVICES COMMITTEE) (JERSEY) ACT 200

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 29 of the States of Jersey Law 1966,^[1] have made the following Act –

1 Interpretation

In this Act, unless the context otherwise requires –

“enactment” includes an enactment of the Parliament of the United Kingdom extended to Jersey by Order in Council;

“liabilities” means –

- (a) any liabilities, whether civil or criminal;
- (b) any debts; and
- (c) any obligations,

whether present or future and whether vested or contingent;

“receiving Committee” means the Environment and Public Services Committee;

“rights” means –

- (a) any rights, including a right of action in respect of a civil matter;
- (b) any powers;
- (c) any privileges; and
- (d) any immunities,

whether present or future and whether vested or contingent;

“transferring Committee” means the Harbours and Airport Committee.

2 Functions transferred

There are transferred to the receiving Committee the functions of the transferring Committee under Part II (including Schedules 2 and 3) and Part IV of the Food and Environment Protection Act 1985 as extended to Jersey by the Food and Environment Protection Act 1985 (Jersey) Order 1987,^[2] as amended and extended by the Food and Environment Protection Act 1985 (Jersey) (Amendment) Order 1997.^[3]

3 Construction and transitional provisions

- (1) In the Orders mentioned in Article 2 any reference to the transferring Committee in relation to the functions transferred by Article 2 shall be construed as a reference to the receiving Committee.
- (2) In the construction of, and for the purposes of, any other enactment or any judgment, award, contract, certificate, licence or other document passed or made before this Act comes into force, anything that is, or is to be construed as, a reference to the transferring Committee or its officers shall, so far only as may be necessary for and in consequence of the transfer of functions effected by Article 2, be construed as a reference to the receiving Committee or its officers.
- (3) The transfer of functions effected by Article 2 shall not prejudice the operation of any appointment determination, direction, instruction, approval, consent, requirement, authorization, licence or other thing made, given or done by the transferring Committee before the time when this Act comes into force in relation to the functions transferred by Article 2, but such matter shall, if then in force continue in force to the like extent and subject to the like provisions as if it had been duly made, given or done by the receiving Committee.
- (4) Any rights, and any liabilities, enjoyed or incurred by the transferring Committee in connection with those functions shall be transferred to the receiving Committee and shall become by virtue of this Act the rights and liabilities of the receiving Committee.
- (5) The operation of paragraph (4) shall not be regarded –
 - (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.
- (6) For the purposes of paragraph (4), to the extent that a contract, or other instrument, that creates or passes a right or liability of the transferring Committee specifies that it is incapable of transfer or assignment, the contract or instrument shall be of no effect.
- (7) Anything commenced before this Act comes into force by or under the authority of the transferring Committee may, so far as it relates to the functions, rights, or liabilities, transferred by this Act, be carried on and completed by or under the authority of the receiving Committee.
- (8) Where, at the coming into force of this Act, any legal proceeding is pending to which the transferring Committee is a party and the proceeding has reference to any of the functions, rights, or liabilities, transferred by this Act, the receiving Committee shall be substituted in the proceeding for the transferring Committee and the proceeding shall not abate by reason of the substitution.

4 Citation and commencement

This Act may be cited as the Transfer of Functions (Environment and Public Services Committee) (Jersey) Act 200- and shall come into force 7 days after it is made.

^[1] *Recueil des Lois, Volume 1966-1967, page 16 and Volume 1996-1997, page 803.*

^[2] *Recueil des Lois, Volume 1986-1987, page 251.*

^[3] *Recueil des Lois, Volume 1996-1997, page 739.*