
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – ECONOMIC DEVELOPMENT – REVISED DELEGATIONS AUGUST 2013

**Presented to the States on 2nd August 2013
by the Minister for Economic Development**

STATES GREFFE

REPORT

On 31st July 2013, the Minister for Economic Development made a Ministerial Decision delegating certain of his functions under Article 28 of the States of Jersey Law 2005 (MD-E-2013-0077, available at www.gov.je).

Article 28 of the States of Jersey Law 2005 permits a Minister to delegate, wholly or partly, functions to an Assistant Minister or an officer.

The Law states, *inter alia* –

“28 Power of Minister to delegate functions

- (1) A Minister may delegate, wholly or partly, functions conferred upon or vested in the Minister by or under this Law or any other enactment or any enactment of the United Kingdom having effect in Jersey, to –
 - (a) one of his or her Assistant Ministers;
 - (b) an officer.
- (2) A Minister shall not delegate –
 - (a) any power to make an enactment;
 - (b) any power to decide an appeal under an enactment;
 - (c) any function the delegation of which is prohibited by an enactment.
- (3) The delegation of functions by a Minister under this Article shall not prevent the Minister exercising those functions personally.
- (4) Where any licence, permit or authorization is granted in purported exercise of functions delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the functions had not been delegated, or that any requirement attached to the delegation of the functions had not been complied with.
- (5) In this Article –

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005 and includes a member of the States of Jersey Police Force and an officer appointed under paragraph 1(1) of Part 1 of Schedule 2 to the Immigration Act 1971 as extended to Jersey by the Immigration (Jersey) Order 1993.
- (6) The States may by Regulations amend the definition “officer” in paragraph (5).”

The terms of the delegations, and the legislation under which those delegations were made, were recorded in a Report attached to the Ministerial Decision, as shown below –

Background

Safety training for fishermen has been compulsory since 2001. This was a direct consequence of the sinking of the Jersey fishing vessel RACHEL HARVEY in 1999 and the resulting loss of the life of one crew member. Subsequent recommendations of the UK's Marine Accident Investigation Board (MAIB) highlighted the lack of a safety training requirement for Jersey vessels and this led to the drafting of the necessary legislation.

More recently, the MAIB investigated the loss of another Jersey vessel, the KERLOCH in 2010 and noted safety training deficiencies in the crew. Since that report was published, minor accidents have continued to occur and on some occasions safety training has again been found to be deficient both here and in the UK. In a recent tragic case, investigation following yet another loss of life (this time in a Belfast-registered fishing vessel) revealed that the dead man did not hold all his safety training certificates and 2 other crew members held none. Prosecution and stiff fines followed.

As a result of the above situation, fishing vessel safety training has come under the spotlight, and in order to improve safety, local fishermen are being asked to prove they are properly trained in accordance with the law.

Exemptions

Under Article 4 of the Shipping (Fishing Vessels – Safety Training) (Jersey) Order 2004, the Minister may exempt individual fishermen from the safety training requirements. This exemption was introduced for a number of reasons: Skippers of small vessels working close inshore may not find the full life-raft course as relevant as a locally designed course more suitable to their needs, and also in recognition of the fact that these boats are not required to carry life-rafts. Additionally, whilst national standard courses are readily available throughout the year in the UK, access to these courses is more difficult and expensive for Jersey residents. Inevitably, local courses cannot be run with the same frequency, and some leeway needs to be given therefore concerning the duration and renewal of certificates. It was also found that a skipper may wish to take a new recruit on as crew, who had yet to be qualified or had yet to have the experience to know that he really wanted to make fishing a career.

Given this position, conditional exemptions were stipulated under the original Order. However, scrutiny of the way this has been working in practice revealed anomalies and an inconsistency in interpretation.

Considerations

Over the last decade, the 2 associations have worked hard to offer courses locally, and this has been greatly assisted by the yacht clubs and the Outdoor Education Manager. Progress has been made to increase the number of courses offered locally, and Jersey Harbours has undertaken to underwrite one full sea survival course per year, with the aim of ensuring that at least 3 are available annually. Agreement is being reached to improve the associated management and co-ordination of all 3 course components (First Aid, Firefighting and Sea Survival).

Each of the core reasons for an exemption has been re-examined. Jersey Harbours, the Marine Resources section of the Department of the Environment, and the Shipping Registry, have all worked together to address these matters. This has been in close discussion with the fishermen's associations as well as individual fishermen.

It has been concluded that the basic exemptions are still valid, but that they need clarifying and to be more explicitly applied. The responsibility in law remains for individual fishermen to be fully safety-trained, but the arrangements proposed do now have an agreed and fair degree of flexibility built in.

Amended delegation details

This is, therefore, an amended delegation of functions to replace the existing delegation in respect of the [Shipping \(Fishing Vessels – Safety Training\) \(Jersey\) Order 2004](#), which was published in [R.25/2012](#).

Legislation:	Shipping (Fishing Vessels – Safety Training) (Jersey) Order 2004
Delegate:	<ul style="list-style-type: none"> • Director of Strategic Development, Economic Development Department • Registrar of Shipping
Function delegated:	<p>To grant exemptions from the requirement for safety training under Article 4.</p> <p>Exemption may apply to fishermen operating vessels under 6 metres in length and where they have attended the approved alternative training.</p> <p>Temporary exemptions for fishermen new to the industry and being crew under supervision of a trained skipper operating any size vessel, who have not attended any approved training, must be limited to a maximum of 3 months and dependent on there being on-board safety and emergency briefings. Such exemptions are to be based on a report issued on behalf of the Harbour Master.</p> <p>Temporary exemptions will be allowed for existing fishermen operating any size vessel where a certificate is due to expire within the next 3 months providing they undertake the appropriate renewal course not later than 3 months after the expiry of the current certificate. Certificates for training undertaken before the expiry date of the current certificate may be post-dated up to a maximum of 3 months from completion of the appropriate course.</p>

Conclusion

The changes to the existing exemptions are shown in italics below –

To grant exemptions from the requirement for safety training under Article 4.

Exemption may apply to fishermen operating vessels under 6 metres in length and where they have attended the approved alternative training.

Temporary exemptions for fishermen *new to the industry and being crew under supervision of a trained skipper* operating any size vessel, who have not attended any approved training, must be ~~time-~~ *limited to a maximum of 3 months* and dependent on there being on-board safety and emergency briefings. Such exemptions are to be based on a report issued on behalf of the Harbour Master.

Temporary exemptions will be allowed for existing fishermen operating any size vessel where a certificate is due to expire within the next 3 months providing they undertake the appropriate renewal course not later than 3 months after the expiry of the current certificate. Certificates for training undertaken before the expiry date of the current certificate may be post-dated up to a maximum of 3 months from completion of the appropriate course.