
STATES OF JERSEY



STATES OF JERSEY LAW 2005: DELEGATION OF FUNCTIONS – ECONOMIC DEVELOPMENT – HARBOUR AUTHORITY AGREEMENT

**Presented to the States on 15th December 2015
by the Minister for Economic Development**

STATES GREFFE

REPORT

On 14th December 2015, 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-2015-0109, 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

There are consequential matters that follow the coming into force of the Air and Sea Ports (Incorporation) (Jersey) Law 2015 (“the Law”) and the signing of an Agreement between the Minister for Economic Development and the Chairman of the Board of Ports of Jersey Ltd. (POJL). The Agreement covers public service obligations, maritime safety and related matters. These consequential matters are explained below.

Inshore safety entrustment

Prior to the formation of POJL, the Minister had delegated the responsibility for designating inshore sea areas for the purpose of sport and recreational activities to certain officers at Jersey Harbours. Under the new arrangements, this delegation should be replaced by an entrustment to POJL in its capacity as the Harbour Authority. This is required because it is not legally possible to delegate functions to persons who are not either Ministers or officers employed by the States Employment Board.

Although it would not normally be necessary for him to do so, neither entrustment nor delegation removes the right of the Minister to make a decision or make a direction himself.

Delegation of functions

As a consequence of the Law, the Agreement and related amendments to legislation, a number of other delegations fall away and new ones are required.

Functions previously delegated to the Chief Executive, Harbour Master or other officers of the now defunct Jersey Harbours have mostly been replaced by passing those functions directly to the Harbour Authority. These may in turn be delegated by the Harbour Authority to their employees, at the Authority’s discretion. Such delegations do not therefore appear in a list of delegated ministerial functions.

A number of functions that either were not delegated at all or which the States decided could no longer be delegated to Jersey Harbours are now delegated to officers within the Economic Development Department. A table of the new delegations is attached.

Articles 30 and 30A of the States of Jersey Law 2005 require delegations to be notified to the States by the Minister and for the Chief Minister to see that these are published and a consolidated list maintained. In effect, this means that R.181/2014 should be updated, whilst R.3/2015 will be unaffected.

Decision

The Minister –

1. Entrusted the Harbour Authority with responsibility for designating inshore sea areas for the purpose of sport and recreational activities.
2. Updated the list of delegated functions as a consequence of the coming into force of the Air and Sea Ports (Incorporation) (Jersey) Law 2015.

Legislation:	Air and Sea Ports (Incorporation) (Jersey) Law 2015: Article 6(2)(a)
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	Management of the Minister's functions in the Agreement as referred to therein – this does not extend to giving directions under Article 6(2)(b) unless separately and explicitly delegated.

Legislation:	Harbours (Administration) (Jersey) Law 1961: Article 2(6)(a)
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	Management of the Minister's functions in the Agreement as referred to therein – this does not extend to giving directions under Article 2(6)(b) unless separately and explicitly delegated.

Legislation:	Harbours (Inshore Safety) (Jersey) Regulations 2012: Regulation 3
Delegate:	Harbour Authority
Functions delegated and scope of delegation:	<p>To designate areas and issue directions in accordance with the procedures in the Regulation.</p> <p>Any designation made in an area of territorial waters outside harbour limits must be limited for the duration of a specific sporting or recreational event, and shall be notified to the Minister at the time it is made.</p> <p><i>This is an entrustment and not strictly a delegation of function, but it is included here for completeness.</i></p>

Legislation:	Shipping (Jersey) Law 2002: Article 104(2), (3) and (4)
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	<p>To prevent or reduce oil pollution – issue direction concerning ship movement, cargo handling, salvage, destruction or other control.</p> <p>Wherever reasonably possible, to be exercised having received appropriate advice from U.K. SOSREP, the Jersey Harbour Master or other relevant professional persons.</p>

Legislation:	Shipping (Jersey) Law 2002: Article 108(1) and (2)
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	Service of directions.

Legislation:	Shipping (Jersey) Law 2002: Article 108(2)
Delegate:	Harbour Master
Functions delegated and scope of delegation:	<p>To act on behalf of the Minister or his delegate in serving a direction.</p> <p><i>This is not strictly a delegation of function, but is included here for completeness.</i></p>

Legislation:	Shipping (Jersey) Law 2002: Article 111(3)
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	Action by Minister on being informed non-Jersey ship has been detained by Harbour Master: ensuring notification of U.K. Secretary of State or relevant diplomatic representative.

Legislation:	Shipping (Jersey) Law 2002: Article 153(2)
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	<p>Concerning Harbour Authority taking possession of, removing or destroying a wreck –</p> <p>(a) consultation by Harbour Authority with Minister; and</p> <p>(b) having regard to views of the Minister.</p> <p>Consultation is to be with delegate. Wherever reasonably possible, delegate should express a view having received appropriate advice from U.K. SOSREP, Jersey Harbour Master or other relevant professional persons.</p>

Legislation:	Shipping (Distress Signals and Prevention of Collisions) (Jersey) Order 2004: Article 1(2)(e); and text of associated U.K. Regulation 5
Delegate:	<ul style="list-style-type: none"> • Assistant Director • Head of Maritime Administration
Functions delegated and scope of delegation:	Grant exemptions to the collision regulations as far as they relate to lights, shapes and sound signals.