

The Harbour and Airport Authorities under the Air and Sea Ports Incorporation (Jersey) Law 201-

Briefing note for the Economic Affairs Scrutiny Panel

The Air and Sea Ports Incorporation (Jersey) Law 201- (the Law) creates entities with certain responsibilities for the harbour and airport – the Harbour Authority and the Airport Authority.

Of these, the existence of the Harbour Authority has the more significant effect, due to the greater level of autonomy Jersey retains in the operation of its harbours.

Function of the Authorities

The Harbour Authority is responsible for managing, maintaining and improving the harbours, policing, safety and security matters within harbour limits, and such other matters as the Minister may entrust to it. The Harbour Authority must appoint a Harbour Master, who must be approved by the Minister. The office of Harbour Master remains a statutory office, for which there will continue to be an oath of office administered in the Royal Court. The Harbour Master will carry out day-to-day oversight of the harbours and to exercise his or her legal powers as necessary. In exercising statutory powers conferred on the Harbour Master, it is the Harbour Master and not the Harbour Authority who is responsible for taking the decision.

The Airport Authority has fewer duties in respect of safety and security, as the strict requirements of international agreements on the security of air travel means that the relevant responsibilities are not held within the Ports of Jersey or the States of Jersey, but by the Director of Civil Aviation. Like the Harbour Authority, the Airport Authority must appoint an Airport Director with the Minister's approval, the Airport Director will take an oath of office administered in the Royal Court. As with the Harbour Master, the Airport Director will carry out day-to-day oversight of the airport and to exercise his or her legal powers as necessary.

The source of the terms

“Harbour Authority” is the term used in the Port Marine Safety Code, the Merchant Shipping Act 1995, Jersey's own Shipping Law and in other legislation and agreements, so use of that term aligns the statutory concepts with the regulatory concepts. Indeed, it is defined specifically by the UK as an entity with *'powers or duties of improving, maintaining or*

*managing a harbour*¹, and this form of words has formed the base of our domestic definition. This allows us to develop local arrangements based on international norms by using terms instantly recognisable throughout the UK ports community.

“Airport Authority” is intended simply to mirror the term Harbour Authority for clarity.

Utility of the arrangement

It is intended that Ports of Jersey Limited will serve as the Harbour Authority and the Airport Authority for Jersey. This recognises that in terms of maritime and aviation regulation, POJL will act as a regulatory authority with statutory powers and duties – it would be more normal to entrust such powers and duties to an “authority” rather than a company named in statute. By contrast, in much the draft Air and Sea Ports (Jersey) Law, POJL is a commercial company itself subject to regulation. A statutory designation as “Harbour Authority” or “Airport Authority” does not create any new entity; it recognises a concept that will exist in any case. For example, if a “harbour authority” was not identified on the face of the legislation, POJL would be identified as such for the purpose of applicable international maritime standards, such as the Port Marine Safety Code.

Making ownership and being the “authority” will allow regulatory powers and duties related to the operation of the Harbours and Airport to be retained by key personnel ‘on the spot’. 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 Harbour Master and the Airport Director will be responsible to the government through the Harbour or Airport Authority, not via the company and shareholder. This recognises that in some limited circumstances, such as the approach of a damaged vessel into harbour, the commercial objectives of the company seeking to make a reasonable return for the States may not align with the responsibilities of a port operator. This is no different to a captain of a ship or a health and safety officer having legal duties which they must exercise even to the financial detriment of their immediate employer.

This division is already reflected in the existing suite of legislation around the ports, which provide for the existence of the Harbour Master and the Airport Director, and which imposes legal responsibilities directly on the individuals holding these posts. The changes to the legislation will allow certain of these less critical responsibilities (such as the power to control

¹ Section 57 of the UK Harbours Act 1964

the circulation of vehicles in the ports) to be assigned instead to the authorities as entities rather than to individuals. This will be in keeping with the powers usually available to operators of ports elsewhere. It is common in the United Kingdom for a private company to own a port, and even to have its own Act of Parliament, whilst carry out the role of a Harbour Authority under the Harbours Act 1964.

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.