



Jersey

DRAFT HARBOURS INSHORE SAFETY (AMENDMENT) (JERSEY) REGULATIONS 202-

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 4 of the Harbours (Administration) (Jersey) Law 1961 and Article 49 of the Shipping (Jersey) Law 2002 –

1 Interpretation

Reference in these Regulations to a Regulation by its number is to a Regulation of the same number in the Harbours (Inshore Safety) (Jersey) Regulations 2012.

2 Regulation 1 (Interpretation) amended

In Regulation 1, after the definition of “permit” there is inserted –
“ “serious injury” has the meaning given in Article 1 of the Shipping (Jersey) Law 2002;”.

3 Regulation 9 (various offences) amended

For Regulation 9 there is substituted –

“9 Interpretation of Regulations 9A to 9S

- (1) In Regulations 9A to 9S –
 - (a) a reference to operating a ship includes sailing, using a ship to ride the surf and using the ship under any form of propulsion, as well as allowing a ship to be at anchor without the ship being alongside or moored into a pier; and
 - (b) a reference to a person who operates a ship includes any other person who has charge of the conduct of the ship.
- (2) For the purposes of Regulations 9A to 9C, a person is to be regarded as operating a ship dangerously if and only if –
 - (a)
 - (i) the way the person operates the ship falls far below what would be expected of a competent and careful operator of a ship, and

- (ii) it would be obvious to a competent and careful operator of a ship that operating a ship in that way would be dangerous; or
 - (b) it would be obvious to a competent and careful operator that operating the ship in its current state would be dangerous.
- (3) In paragraph (2), “dangerous” refers to danger either of injury to any person or serious damage to property and, in determining for the purposes of those paragraphs what would be expected of, or obvious to, a competent and careful operator of a ship in a particular case, regard must be had not only to the circumstances of which the operator of the ship could be expected to be aware but also any circumstance shown to have been within the knowledge of the accused.
- (4) In determining the state of a ship for the purposes of paragraph (2)(b), regard may be had to anything attached to it or carried on or in it and to the manner in which anything is attached or carried.
- (5) In Regulations 9F and 9H, the “prescribed limit” means, as the case may require –
 - (a) 35 microgrammes of alcohol in 100 millilitres of breath;
 - (b) 80 milligrammes of alcohol in 100 millilitres of blood; or
 - (c) 107 milligrammes of alcohol in 100 millilitres of urine.

9A Dangerous operation of a ship

A person who operates a ship dangerously in territorial waters is guilty of an offence and is liable to imprisonment for a term not exceeding 2 years and to a fine.

9B Causing death by dangerous operation of a ship

A person who causes the death of another person by operating a ship dangerously in territorial waters is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years and to a fine.

9C Causing serious injury by dangerous operation of a ship

A person who causes serious injury to another person by operating a ship dangerously in territorial waters is guilty of an offence and is liable to imprisonment for a term not exceeding 5 years and to a fine.

9D Careless operation of a ship

A person who operates a ship in territorial waters without due care and attention, or without reasonable consideration for other persons using the territorial waters is guilty of an offence and liable to a fine of level 3 on the standard scale.

9E Causing death by careless operation of a ship

A person who causes the death of another person by operating a ship in territorial waters without due care and attention, or without reasonable consideration for other

persons using the territorial waters is guilty of an offence and liable to imprisonment for a term of 5 years and to a fine.

9F Causing death by careless operation of a ship when under the influence of drink or drugs

- (1) A person who causes the death of another person by operating a ship in territorial waters without due care and attention or without reasonable consideration for other persons using the territorial waters and –
 - (a) the person is, at the time when operating the ship, unfit to operate it through drink or drugs;
 - (b) the person has consumed so much alcohol that the proportion of it in his or her breath, blood or urine at that time exceeds the prescribed limit;
 - (c) the person is, within 18 hours after that time, required to provide a specimen in pursuance of Regulation 9M, but, without reasonable excuse, fails to provide it; or
 - (d) the person is required by a police officer to give permission for a laboratory test of a specimen of blood taken from the person under Regulation 9N, but without reasonable excuse fails to do so,the person is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years and to a fine.
- (2) For the purposes of this Regulation, a person is taken to be unfit to operate a ship if his or her ability to operate a ship properly is for the time being impaired.

9G Causing serious injury by careless operation of a ship

A person who causes serious injury to another person by operating a ship in territorial waters without due care and attention, or without reasonable consideration for other persons using the territorial waters is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

9H Causing serious injury by careless operation of a ship when under the influence of drink or drugs

- (1) A person who causes serious injury to another person by operating a ship in territorial waters without due care and attention or without reasonable consideration for other persons using the territorial waters and –
 - (a) the person is, at the time when operating the ship, unfit to operate it through drink or drugs;
 - (b) the person has consumed so much alcohol that the proportion of it in his or her breath, blood or urine at that time exceeds the prescribed limit;
 - (c) the person is, within 18 hours after that time, required to provide a specimen in pursuance of Regulation 9M, but, without reasonable excuse, fails to provide it; or
 - (d) the person is required by a police officer to give permission for a laboratory test of a specimen of blood taken from the person under Regulation 9N, but without reasonable excuse fails to do so,

is guilty of an offence and is liable to imprisonment for a term of 4 years and to a fine.

- (2) For the purposes of this Regulation, a person is taken to be unfit to operate a ship if his or her ability to operate a ship properly is for the time being impaired.

9I Operating a ship with excessive emissions

A person who operates a ship in territorial waters that is emitting, whether from its engine or otherwise, excessive or unreasonable noise or fumes is guilty of an offence and liable to a fine of level 2 on the standard scale.

9J Failure to have a person with experience in the relevant activity in or on the ship

The master in command of a ship while it is, in territorial waters, towing a person who is water-skiing, aquaplaning, parascending or undertaking a similar activity is guilty of an offence and liable to a fine of level 2 on the standard scale if the master is not accompanied in or on the ship by a person with experience in the relevant activity who is watching over the well-being of the person being towed.

9K Providing false or misleading information or evidence

A person who, in an application, or notice, to the Minister or the Harbour Master under these Regulations, provides information or evidence that is false or misleading in a material particular is guilty of an offence and is liable to a fine of level 3 on the standard scale.

9L Breath tests

- (1) Where the Harbour Master or a police officer has reasonable cause to suspect –
- (a) that a person operating or attempting to operate a ship or in charge of a ship in territorial waters has alcohol in his or her body or has committed an offence under these Regulations;
 - (b) that a person has been operating or attempting to operate a ship or been in charge of a ship in territorial waters with alcohol in his or her body and that that person still has alcohol in his or her body; or
 - (c) that a person has been operating or attempting to operate a ship or been in charge of a ship in territorial waters and has committed an offence under these Regulations,

the Harbour Master or a police officer may, subject to Regulation 9Q, require the person to provide a specimen of breath for a breath test.

- (2) If an accident occurs involving a ship in territorial waters the Harbour Master or a police officer may, subject to Regulation 9Q require any person who the Harbour Master or police officer has reasonable cause to believe was operating or attempting to operate the ship, or in charge of the ship at the time of the accident to provide a specimen of breath for a breath test.

- (3) A person may be required under paragraph (1) or (2) to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under paragraph (2) and the police officer making the requirement thinks fit, at a police station specified by the police officer.
- (4) A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so in pursuance of this Regulation is guilty of an offence and liable to a fine of level 2 on the standard scale.
- (5) A person does not provide a specimen of breath for a breath test or for analysis unless the specimen –
 - (a) is sufficient to enable the test or the analysis to be carried out; and
 - (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.

9M Provision of specimens for analysis

- (1) In the course of an investigation into whether a person has committed an offence under Regulation 9F, a police officer may, subject to the following provisions of this Regulation and Regulation 9Q, require the person –
 - (a) to provide 2 specimens of breath for analysis by means of a device of a type approved by the Minister for Home Affairs; or
 - (b) to provide a specimen of blood or urine for a laboratory test.
- (2) A requirement under this Regulation to provide specimens of breath can only be made at a police station.
- (3) A requirement under this Regulation to provide a specimen of blood or urine can only be made at a police station or at a hospital and it cannot be made at a police station unless –
 - (a) the police officer making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required;
 - (b) at the time the requirement is made a device or a reliable device of the type mentioned in paragraph (1)(a) is not available at the police station or it is for any other reason not practicable to use such a device there;
 - (c) a device of the type mentioned in paragraph (1)(a) has been used at the police station and the police officer making the requirement has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned; or
 - (d) the suspected offence is one under Regulation 9F and the police officer making the requirement has been advised by a registered medical practitioner that the condition of the person required to provide the specimen might be due to some drug,but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide 2 specimens of breath.
- (4) If the provision of a specimen other than a specimen of breath may be required in pursuance of this Regulation, the question whether it is to be a specimen of blood or a specimen of urine will be decided by the police officer making the requirement, except that if a registered medical practitioner is of the opinion

that for medical reasons a specimen of blood cannot or should not be taken the specimen will be a specimen of urine.

- (5) A person provides a specimen of blood if and only if he or she consents to its being taken by a registered medical practitioner and it is so taken.
- (6) A specimen of urine must be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.
- (7) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this Regulation is guilty of an offence and liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale.
- (8) A police officer must, on requiring any person to provide a specimen in pursuance of this Regulation warn the person that a failure to provide it may render him or her liable to prosecution.

9N Specimens of blood from persons who cannot consent

- (1) A police officer may ask a registered medical practitioner to take a specimen of blood from a person, whether or not that person consents, if the conditions in paragraph (2) are fulfilled.
- (2) The conditions are –
 - (a) that the person concerned is one from whom the police officer may under Regulation 9M (in the absence of any incapacity of that person and of any objection under Regulation 9Q) require the provision of a specimen of blood for a laboratory test;
 - (b) that it appears to that police officer that the person has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
 - (c) that it also appears to that police officer that the person is or may be incapable of giving consent to the taking of a specimen of blood; and
 - (d) that it also appears to that police officer that the person's incapacity is attributable to medical reasons.
- (3) A request under paragraph (1) must not be made to a registered medical practitioner who for the time being has any responsibility for the clinical care of the person concerned (other than the responsibility that would arise in respect of the taking of the specimen of blood).
- (4) A request under paragraph (1) must not be made to a registered medical practitioner other than a police medical practitioner, unless –
 - (a) it is not reasonably practicable for the request to be made to a police medical practitioner; or
 - (b) it is not reasonably practicable for a police medical practitioner who is willing to do so to take the specimen of blood.
- (5) It is lawful for a registered medical practitioner to whom a request is made under paragraph (1), if he or she thinks fit to do so –
 - (a) to take a specimen of blood from the person concerned, whether or not that person consents; and
 - (b) to provide the sample to a police officer.

- (6) In this Regulation –
- (a) “the person concerned” means the person from whom a police officer under paragraph (1) asks a registered medical practitioner to take a specimen of blood;
 - (b) “police medical practitioner” means a registered medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of the Honorary Police or the States of Jersey Police Force; and
 - (c) it is immaterial for the purposes of the condition in paragraph (2)(c) that the person concerned has or has not purported to give consent to the taking of the specimen on blood.

90 Testing of blood taken under Regulation 9N

- (1) If a specimen of blood is taken under Regulation 9N, it must not be subjected to a laboratory test unless the conditions in paragraph (2) of this Regulation are fulfilled.
- (2) The conditions are –
 - (a) that the person from whom the specimen of blood was taken has been informed that it was taken;
 - (b) that he or she has been required by a police officer to give permission for a laboratory test of the specimen; and
 - (c) that he or she has given permission.
- (3) A police officer must, on requiring a person to give his or her permission for the purposes of this Regulation for a laboratory test of a specimen of blood, warn that person that a failure to give the permission may render the person liable to prosecution.
- (4) A person who, without reasonable excuse, fails to give his or her permission for a laboratory test of a specimen of blood that has been taken from the person under Regulation 9N is guilty of an offence and liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale.

9P Choice of specimens of breath

Of any 2 specimens of breath provided by any person in pursuance of Regulation 9M, that with the lower proportion of alcohol in the breath must be used and the other must be disregarded but if the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath the person who provided it may claim that it should be replaced by such specimen as may be required under Regulation 9M(4), and if the person then provides such a specimen neither specimen of breath must be used.

9Q Protection for hospital patients

- (1) While a person is at a hospital as a patient he or she must not be required under Regulation 9M to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the registered medical practitioner in

immediate charge of the person's case has been notified of the proposal to make the requirement, and –

- (a) if the requirement is then made it must be for the provision of a specimen at the hospital; but
 - (b) if the medical practitioner objects on the ground specified in paragraph (2) the requirement must not be made.
- (2) The ground on which the registered medical practitioner may object is that the requirement or the provision of a specimen or, in the case of a specimen of blood or urine, the warning required under Regulation 9M(8), would be prejudicial to the proper care and treatment of the patient.
- (3) While a person is at a hospital as a patient, no specimen of blood may be taken from the person under Regulation 9N, and he or she must not be required to give permission for a laboratory test of a specimen taken under that Regulation, unless –
- (a) the registered medical practitioner in immediate charge of the person's case has been notified of the proposal to take the specimen or to make the requirement; and
 - (b) the registered medical practitioner has not objected on the ground specified in paragraph (4).
- (4) The ground on which the registered medical practitioner may object is that the taking of the specimen, the requirement to give permission or the warning required under Regulation 9O(3) would be prejudicial to the proper care and treatment of the patient.

9R Evidence in proceedings for an offence under Regulation 9F

- (1) This Regulation and Regulation 9S apply with respect to proceedings for an offence under Regulation 9F.
- (2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from the accused must, in all cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account, and subject to paragraph (3), it will be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.
- (3) The assumption described in paragraph (2) must not be made if the accused proves –
 - (a) that the accused had consumed alcohol before providing the specimen or having it taken, and –
 - (i) in relation to an offence under Regulation 9F, after the time of the alleged offence, or
 - (ii) otherwise, after the accused had ceased to operate or attempt to operate or be in charge of a ship in territorial waters; and
 - (b) that had the accused not done so, the proportion of alcohol in his or her breath, blood or urine would not have exceeded the prescribed limit, and

if it is alleged that the accused was unfit to operate the ship through drink, would not have been such as to impair his or her ability to operate a ship properly.

- (4) A specimen of blood must be disregarded unless it was taken from the accused with his or her consent by a registered medical practitioner, or it was taken from the accused by a registered medical practitioner under Regulation 9N and the accused subsequently gave his or her permission for a laboratory test of the specimen.
- (5) Where, at the time a specimen of blood or urine was provided by the accused, he or she asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless –
 - (a) the specimen in which the alcohol or drug was found is one of 2 parts into which the specimen provided by the accused was divided at the time it was provided; and
 - (b) the other part was supplied to the accused.
- (6) Where a specimen of blood was taken from the accused under Regulation 9N, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless –
 - (a) the specimen in which the alcohol or drug was found is one of 2 parts into which the specimen taken from the accused was divided at the time it was taken; and
 - (b) any request to be supplied with the other part that was made by the accused at the time when he or she gave permission for a laboratory test of the specimen was complied with.

9S Documentary evidence as to specimens in such proceedings

- (1) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say –
 - (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a police officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; and
 - (b) a certificate signed by the Official Analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.
- (2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the accused with his or her consent by a registered medical practitioner may be given by the production of a document purporting to certify the fact and to be signed by a registered medical practitioner.
- (3) Subject to paragraph (4) –
 - (a) a document purporting to be such a statement or such a certificate, or both such a statement and such a certificate as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the prosecution in pursuance of this Regulation only if a copy of it either has been handed to the accused when the document was produced or has been served on the accused not later than 7 days before the hearing; and

- (b) any other document is so admissible only if a copy of it has been served on the accused not later than 7 days before the hearing.
- (4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than 3 days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (5) A copy of a certificate required by the Regulation to be served on the prosecutor may be served personally or sent by registered post or recorded delivery service.
- (6) In this Regulation “Official Analyst” means the Official Analyst appointed under the Official Analyst (Jersey) Law 2022.”.

4 Regulation 10 (certain incidents to be reported to the Harbour Master)

- (1) In Regulation 10(1) at the end there is inserted “by a person other than the harbour authority”.
- (2) Regulation 10(5) is deleted.

5 Citation and commencement

These Regulations may be cited as the Harbours Inshore Safety (Amendment) (Jersey) Regulations 202- and come into force the day after they are made.