

Harbour Authority Enforcement Policy

SUMMARY

Ports of Jersey Limited (POJ) serves as the statutory Harbour Authority for all harbours in Jersey. While we are not a police service, we have certain statutory responsibilities that are broadly comparable to those of a police service. These include responsibility for:

- policing, safety and security matters within Jersey's harbours¹
- enforcement of shipping legislation in territorial waters.²

This policy statement sets out the general principles and approach which POJ will follow when carrying out enforcement activity in accordance with these responsibilities.

OUR ENFORCEMENT POLICY PRINCIPLES

POJ is committed to maintaining safe and secure harbours and upholding appropriate safety standards within Jersey's territorial waters. The appropriate use of enforcement powers by POJ staff is one of several ways in which we discharge these responsibilities.

POJ adopts a transparent, proportionate, consistent and accountable approach to specific enforcement cases and to our management of enforcement activity generally.

We aim to provide information and advice in plain language regarding the rules we apply and will be prepared to discuss general issues or compliance shortfalls with any party that is experiencing difficulty and is seeking help. Our approach will be equitable and non-discriminatory.

We are proportionate insofar as we aim to ensure that compliance requirements are balanced against risk and that we take account of specific circumstances of each case. Our preference is to encourage voluntary compliance through constructive engagement with those who operate in or otherwise use our harbours and territorial waters. We will nevertheless take firm action against those who deliberately or persistently fail to comply.

Our Harbour Master, Maritime Standards officers and Acting Harbour Masters are accountable to the Harbour Authority and the Minister for Sustainable Economic Development for their actions in discharging POJ's statutory enforcement responsibilities.

OUR ENFORCEMENT RESPONSIBILITIES

Our policing, safety and security responsibilities and our obligation to enforce shipping legislation in territorial waters may cause us to undertake enforcement activity as required under the following legislation:

¹ See Article 2(4) of the Harbours (Administration) (Jersey) Law 1961

² See Article 6(1)(d) of the Air and Sea Ports (Incorporation) (Jersey) Law 2015

- The Harbours (Administration) (Jersey) Law 1961
- The Pilotage (Jersey) Law 2009
- The Shipping (Jersey) Law 2002
- Subordinate legislation made under any of those laws.

Enforcement activity undertaken by our staff includes any action taken to ensure compliance with, or to respond to potential breaches of, Jersey shipping and harbours legislation. This activity may include:

- the submission of a case file to the Attorney General for consideration
- a Harbour Master's Warning
- suspension or withdrawal of a licence or permit
- the issuing of an enforcement notice
- the giving of oral or written advice with the aim of securing voluntary compliance.

Enforcement actions and decisions taken by the Harbour Master, duly authorised Acting Harbour Masters and / or by Maritime Standards officers will be taken in accordance with this policy statement.

HOW WE INVESTIGATE

Our Maritime Standards team may investigate any incidents that fall within the scope of our enforcement responsibilities and which have been reported to us by a member of the public, by other law enforcement officers or which have been witnessed by or have otherwise been drawn to the attention of one or more of our own staff.

In deciding whether to investigate and what resource to allocate, Maritime Standards will:

- a) adopt the policy principles set out in this statement,
- b) act in accordance with:
 - any enforcement policy instructions issued by the Attorney General
 - the terms of any relevant agreement reached with, or directions issued by, the Minister for Sustainable Economic Development³
 - relevant written procedures within our Enforcement and Regulatory Services Manual; and,
- c) have regard to the following incident-specific factors:
 - The immediate and/or ongoing risk of harm to people and / or property
 - The seriousness of any alleged offence
 - The explanation of any alleged offender
 - Whether any alleged offence is an isolated incident
 - Whether there is potential for multiple offences to have been committed
 - The willingness of an alleged offender to prevent a recurrence
 - The quality and quantity of witness evidence
 - The quality and quantity of other evidence.

If an incident involves or appears to Maritime Standards to involve potential offences that fall outside the scope of POJ's enforcement responsibilities or which are otherwise sufficiently serious and complex that

³ See Article 2(6) of the Harbours (Administration) (Jersey) Law 1961 and Article 6(2) of the Air and Sea Ports (Incorporation) (Jersey) Law 2015.

they are likely to be beyond the capacity of Maritime Standards to investigate effectively, Maritime Standards will recommend that the Harbour Master refer the matter to other agencies as appropriate.

For the avoidance of doubt, any cases involving death or serious injury will ordinarily be considered beyond the capacity of Maritime Standards to investigate, irrespective of whether there has been a suspected breach of one or more offences within the Shipping (Jersey) Law 2002 or the Harbours (Administration) (Jersey) Law 1961 or within relevant subordinate legislation.

Maritime Standards will endeavour to complete any investigation in a timely manner.

HOW WE DECIDE ON ENFORCEMENT ACTION

On completion of their investigation, Maritime Standards will either:

- a) exercise discretion within the limits of any enforcement policy instructions issued by the Attorney General and / or the Harbour Master (e.g. by issuing and filing written words of advice), or
- b) make a recommendation to the Harbour Master regarding next steps (e.g. the issuing of a Harbour Master's Warning or that a case file be forwarded to the Attorney General for consideration).

The Harbour Master, having reviewed an investigation referred in accordance with b) above, will determine the appropriate level of enforcement action to be taken including, where appropriate, the referral of a case file to the Attorney General for a decision on whether a prosecution is appropriate.

As a general rule, the Harbour Master should be expected to refer a case to the Attorney General when:

- a significant offence appears to have been committed
- there is evidence of an offence having been committed consciously and deliberately
- there is evidence of a persistent lack of conformity with the law
- there is evidence of a trend of similar breaches by others that justifies a prosecution as a warning or deterrent to others.

OUR COMPLAINTS PROCEDURE

A person that wishes to make a complaint about our handling of an enforcement matter should contact the Harbour Master in the first instance, who will endeavour to resolve the matter directly.

In the event that the complainant is not satisfied with the response to their complaint, they have the option to put their complaint in writing and forward it to:

The Harbour Authority
Maritime House,
St Helier
JE1 1HB

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