

PROJET DE LOI

ENTITLED

The Alderney and Sark (Licensing of Vessels) Law, 1951 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XV, p. 37; as amended, in its application to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010 (No. XVII of 2011); the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017 (Sark Ordinance No. I of 2017). This Law is prospectively repealed, in its application to Alderney, by the Licensing of Vessels (Alderney) Law, 2010 (No. XXI of 2012). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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The Alderney and Sark (Licensing of Vessels) Law, 1951

THE STATES OF ALDERNEY AND THE CHIEF PLEAS OF SARK have approved the following provisions, which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Islands of Alderney and Sark.

Repeal.

1. The Sark (Licensing of Vessels) Law, 1949, is hereby repealed.

[Purpose and objectives of this Law.]

1A. (1) The purpose of this Law is to ensure the provision of passenger and cargo shipping services to and from Sark for the benefit of residents of Sark and of visitors to Sark.

(2) The objectives of this Law are –

- (a) to facilitate the provision of safe and reliable shipping services to and from Sark which are available throughout the year and with minimal interruption due to weather, and
- (b) to ensure that such services are financially viable.]

NOTE

Section 1A was inserted, in the application of this Law to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(a), with effect from 1st January, 2013.

Licensing of Vessels.

2. A person, being the owner, charterer or otherwise having control over, or being the master or other person in charge of, a vessel, shall not, except under the authority and in accordance with the conditions of a licence in that behalf previously obtained from His Excellency the Lieutenant-Governor and Commander-in-Chief of Guernsey, do or permit the doing of any act of trade in connection with that vessel at, or in the territorial waters of, the Islands of Alderney or Sark.

Period and conditions of licences.

3. A licence granted under the last preceding section may be for such period and on such terms and conditions as His Excellency may therein specify.

Variation, revocation, etc. of licences.

4. His Excellency may, at his discretion, vary any term or condition of, or may revoke or suspend, a licence granted under this Law.

[Obligation to consult.

4A. (1) Before exercising his powers under sections 2 or 4, His Excellency shall consult the [Harbours & Shipping Committee] appointed by the Chief Pleas.

(2) Any failure on the part of His Excellency to consult the [Harbours & Shipping Committee] under subsection (1) shall not affect the validity of any licence granted under section 2, or of any variation of any term or condition of, or revocation or suspension of, any such licence pursuant to a decision of His Excellency under section 4.]

NOTES

Section 4A was inserted, in the application of this Law to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(b), with effect from 1st January, 2013.

In section 4A, the words "Harbours & Shipping Committee" in square brackets, wherever occurring, were substituted by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 2, Schedule 1, paragraph 5, with effect from 14th January, 2017.

The functions, rights and liabilities of the Shipping Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Harbours & Shipping Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 1, Schedule 1, paragraph 5, with effect from 14th January, 2017, subject to the savings and transitional provisions in section 3 of the 2017 Ordinance.

Offences and penalty.

5. A person who infringes any of the provisions of this Law, or any term or condition of a licence granted hereunder, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding [One Hundred Pounds] [level 4 on the Sark uniform scale under the Uniform Scale of Fines (Sark) Law, 1989,] for every such infringement.

NOTE

In section 5,

the words in the first pair of square brackets have not been amended, in the application of this Law to the Island of Alderney, pursuant to either the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 or the Uniform Scale of Fines (Alderney) Law, 1989 on the grounds that this Law, while registered on the Records of the Island of Guernsey, does not satisfy the requirements of paragraph (a) of subsection (1) of section 2 of either of the above Laws, being respectively neither applicable in Guernsey nor applicable only in Alderney;

the words in the second pair of square brackets were substituted, in the application of this Law to the Island of Sark, for the words "One Hundred Pounds" (which words, while continuing to apply in the application of this

Law to the Island of Alderney, no longer apply in the application of this Law to the Island of Sark) by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(c), with effect from 1st January, 2013.

[Powers of Harbourmaster.

5A. (1) The Harbourmaster or the Constable may, if he has reasonable cause to suspect that an offence under this Law is being, or is likely to be, committed, prohibit a vessel –

- (a) from remaining in, or entering, La Maseline Harbour or Le Creux Harbour; and
- (b) from berthing or mooring alongside, or remaining berthed or moored alongside, any breakwater, pier or other landing area or beach over which the Committee has control under the Harbours (Sark) Ordinance, 1987, as amended,

and a person, being the owner, charterer or otherwise having control over, or being the master or other person in charge of, a vessel, who, without reasonable excuse, causes or permits that vessel to remain in, or enter, either of the said harbours, or to berth or moor, or remain berthed or moored, alongside any breakwater, pier or other landing area or beach as aforesaid, in contravention of such a prohibition, is guilty of an offence under section 5.

(2) The Harbourmaster or the Constable may, if he has a reasonable suspicion that an offence under this Law may have been committed –

- (a) enter upon and remain upon any vessel, or

- (b) having obtained a warrant so to do upon information laid on oath before the Seneschal, in accordance with that warrant and on production of it if so required, enter and remain upon any premises,

and may carry out such inspection and make such other photographic or other record as he reasonably considers appropriate for the purpose of establishing whether or not an offence has been committed.]

NOTES

Section 5A was inserted, in the application of this Law to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(d), with effect from 1st January, 2013.

The Harbours (Sark) Ordinance, 1987 has since been repealed by the Harbours (Sark) Ordinance, 2011, section 13, with effect from 5th May, 2011.

Definition of act of trade.

6. For the purposes of this Law—

- (a) an act of trade in connection with a vessel at, or in the territorial waters of, the Island of Alderney, means,
 - (i) the embarkation of passengers or the loading of cargo at, or in the territorial waters of, that Island, in a vessel bound from Alderney to Guernsey or to Sark, or
 - (ii) the disembarkation or the unloading at, or in the territorial waters of, that Island, of passengers or cargo carried in a vessel between

Guernsey or Sark and Alderney and,

[(b) an act of trade in connection with a vessel at, or in the territorial waters of, the Island of Sark, means,

- (i) the embarkation of passengers or the loading of cargo at, or in the territorial waters of, that Island, in a vessel bound from Sark to Guernsey or Herm or to Alderney, or
- (ii) the disembarkation or the unloading at, or in the territorial waters of, that Island of passengers or cargo carried in a vessel between Guernsey or Herm or Alderney and Sark:]

[PROVIDED that the transhipment of fish from a fishing-boat to a vessel at, or in the territorial waters of, the Island of Alderney or the Island of Sark or the loading or unloading at, or in the territorial waters of, the Island of Alderney, or of the Island of Sark, into or from any vessel of a bulk cargo in excess of 150 tons dead weight, not being or forming part of a general cargo, shall for the purposes of this Law, be deemed not to be an act of trade.]

[(b) an act of trade in connection with a vessel at, or in the territorial waters of, the Island of Sark, means –

- (i) the embarkation or disembarkation of passengers, or

- (ii) the loading or unloading of cargo.]

NOTE

In section 6, in its application to the Island of Sark (but not in its application to the Island of Alderney), paragraph (b) was substituted (by the paragraph (b) in the third pair of square brackets), and the Proviso to section 6 was repealed, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1, respectively paragraph (e) and paragraph (f), with effect from 1st January, 2013.¹

Definition of vessel.

7. The expression "**vessel**" in this Law, shall not include any of His Majesty's ships, any ship belonging to a sovereign state, any [yacht *bona fide* used exclusively for pleasure] [pleasure vessel], any vessel belonging to or under control of any Department of His Majesty's Government or of the States of Guernsey or any harbour, navigational or lighthouse authority or body, being a vessel used exclusively for the purpose of such Department, authority or body other than the carrying of passengers or the transport of cargo for hire or reward, any vessel operated by or on behalf of the British Transport Commission and engaged on a voyage between Guernsey and Alderney solely for the purpose of an excursion, or any fishing vessel not carrying passengers or merchandise other than fish.

NOTE

In section 7, in its application to the Island of Sark (but not in its application to the Island of Alderney), the words "pleasure yacht" in the second pair of square brackets were substituted for the words "yacht bona fide used exclusively for pleasure" in the first pair of square brackets (which words, while continuing to apply in the application of this Law to the Island of Alderney, no longer apply in the application of this Law to the Island of Sark) by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(g), with effect from 1st January, 2013.

[Power of Chief Pleas to confer exemptions.]

7A. The Chief Pleas may by Ordinance confer exemption from the requirements of this Law on any description or class of person or vessel, or on any type of activity carried out by any such person or vessel, subject to such conditions or limitations as may be specified.]

NOTES

Section 7A was inserted, in the application of this Law to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(h), with effect from 1st January, 2013.

The following Ordinance has been made under section 7A:

Alderney and Sark (Licensing of Vessels) (Exemptions) (Sark) Ordinance, 2012.

[Interpretation.]

7B. (1) In this Law, unless the context otherwise requires –

"Assistant Constable" means a person appointed by the Chief Pleas to act as an Assistant Constable pursuant to section 53 of the Reform (Sark) Law, 2008, as amended,

"cargo" means all items which are transported by the vessel except –

- (a) fuel for the vessel,
- (b) ballast (either solid or liquid),
- (c) consumables to be used on board,
- (d) permanent outfit and equipment of the vessel,

- (e) stores and spare gear for the vessel, and
- (f) the personal effects of the crew and any passengers,

"the Committee" means the [Harbours & Shipping Committee] or such other committee as may be appointed by the Chief Pleas to exercise the functions of the Committee under this Law,

"the Constable" means a person appointed by the Chief Pleas to act as Constable pursuant to section 52 of the Reform (Sark) Law, 2008, as amended and shall include the Vingtenier, an Assistant Constable, a special constable and a Guernsey police officer on duty in Sark,

"customs officer" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"Guernsey police officer" means a member of the salaried police force of the Island of Guernsey, and includes a customs officer,

"Harbourmaster" means the person employed in that capacity by the Chief Pleas and includes any person acting under the authority of the Harbourmaster,

"passenger" means any person carried in a vessel other than –

- (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a vessel on the business of that vessel,

- (b) a child under one year of age, and
- (c) persons who are on board the vessel by reason of *force majeure* or in consequence of any obligation laid upon the master or other person having control of the vessel to carry shipwrecked or other persons, or by reason of any circumstances that neither the master nor such other person having control of the vessel, nor the owner nor the charterer (if any), could have prevented,

"pleasure vessel" means any vessel which is –

- (a) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or
- (b) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion,

"special constable" means a person appointed to be a special constable pursuant to section 54 of the Reform (Sark) Law, 2008, and

"the Vingtenier" means the person appointed to act as Vingtenier pursuant to section 52 of the Reform (Sark) Act, 2008.

(2) The Chief Pleas may by Ordinance amend the definitions of "cargo", "passenger", and "pleasure vessel" in subsection (1).]

NOTES

Section 7B was inserted, in the application of this Law to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(h), with effect from 1st January, 2013.

In section 7B, the words "Harbours & Shipping Committee" in square brackets, wherever occurring, were substituted by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 2, Schedule 1, paragraph 8(a), with effect from 14th January, 2017.

The functions, rights and liabilities of the Harbours and Pilotage Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Harbours & Shipping Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 1, Schedule 1, paragraph 8(a), with effect from 14th January, 2017, subject to the savings and transitional provisions in section 3 of the 2017 Ordinance.

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

[General provisions as to Ordinances.]

- 7C.** (1) Any Ordinance made under this Law –
- (a) may be amended or repealed by a subsequent Ordinance or subordinate legislation made hereunder, and
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make any Ordinance or subordinate legislation may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.]

NOTE

Section 7C was inserted, in the application of this Law to the Island of Sark, by the Alderney and Sark (Licensing of Vessels) (Amendment) (Sark) Law, 2010, section 1(h), with effect from 1st January, 2013.

Interpretation.

8. The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Law in like manner as it applies to an enactment having force in

the Island of Guernsey.

NOTES

The Law received Royal Sanction on 28th April, 1951 and was registered on the Records of the Island of Guernsey and came into force on 19th May, 1951.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

1 In section 6, the first paragraph (b) applies in the Island of Alderney; and the second paragraph (b) applies in the Island of Sark.