

ORDER IN COUNCIL

**XXI
2012**

ratifying a Projet de Loi

ENTITLED

The Licensing of Vessels (Alderney) Law, 2010

(Registered on the Records of the Island of Guernsey
on the 5th November, 2012.)



2012

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

5th day of November, 2012 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Terry George Snell, David Percy Langley Hodgetts LVO, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

Judge Finch having this day placed before the Court an Order of Her Majesty in Council dated 17th October, 2012 approving and ratifying a Projet de Loi entitled “The Licensing of Vessels (Alderney) Law, 2010”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:

1. That the said Order be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney for registration on the records of that Island.



At the Court at Buckingham Palace

THE 17th DAY OF OCTOBER 2012

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Alderney:

"That, at a meeting of the States of Alderney on 21st July 2010 the States approved a Projet de Loi entitled the Licensing of Vessels (Alderney) Law, 2010 and requested the President to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Licensing of Vessels (Alderney) Law, 2010 and to order that it shall have force of law in the Island of Alderney.

"The Committee have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it."

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Alderney; and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Licensing of Vessels (Alderney) Law, 2010

ARRANGEMENT OF SECTIONS

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3. Grant or refusal of licence.
4. Conditions of licence.
5. Duration and renewal of licence.
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PROJET DE LOI

ENTITLED

The Licensing of Vessels (Alderney) Law, 2010

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 21st July, 2010 have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

Purpose and objectives of this Law.

1. (1) The purpose of this Law is to ensure the provision of passenger and cargo shipping services between Guernsey and Alderney for the benefit of residents of Alderney and of visitors to Alderney.

(2) The objectives of this Law are -

(a) to facilitate the provision of safe, reliable and low-cost shipping services between Guernsey and Alderney which are available throughout the year and without interruption due to weather, and

(b) to ensure that such services are financially viable.

Licensing of vessels.

2. (1) 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

issued in respect of that vessel under the provisions of this Law, do or permit the doing of any act of trade in connection with that vessel at, or in the territorial waters of, Alderney.

(2) A person wishing to apply for a licence under this Law shall apply to the Committee; and such application shall be made in such form and manner, as the Committee may, from time to time, require and shall be accompanied by -

- (a) such information and documents, for the purposes of determining the application, as the Committee may require,
- (b) an application fee in such sum as may be prescribed, and
- (c) a licence fee in such sum as may be prescribed.

(3) The licence fee referred to in subsection (2) shall be refunded to the applicant in the event that his application is refused.

Grant or refusal of licence.

3. (1) The Committee may, following receipt of an application under section 2(2), request the applicant to provide such additional information and documents relating to the application, as the Committee thinks fit, for the purpose of determining the application.

(2) Following receipt of an application submitted in accordance with section 2(2), any additional information and documents requested under subsection (1) and any application fee and licence fee prescribed under section 2(2),

the Committee shall -

- (a) grant the application,
- (b) refuse the application, or
- (c) grant the application subject to conditions imposed under section 4.

Conditions of licence.

4. (1) The Committee may, when granting a licence in respect of a vessel under this Law, or at any time during the validity of such a licence, impose such conditions as it thinks fit.

(2) Such conditions may apply to licensed vessels generally, to any class of licensed vessels, or to any particular licensed vessel.

(3) The Committee may, at any time during the validity of a licence granted under this Law, vary, suspend or rescind any condition of a licence.

(4) Without prejudice to the generality of subsection (1), the conditions which may be imposed in respect of a licence may include (without limitation) -

- (a) a requirement as to the minimum amount of insurance cover maintained in respect of the licensed vessel,
- (b) conditions as to the minimum number of crew required to be carried on the vessel and the training of, and qualifications held by, such crew,

- (c) conditions relating to compliance with health and safety requirements,
- (d) conditions as to the minimum level of service required to be maintained by the licensee, including (without limitation) -
 - (i) the minimum number of voyages to be undertaken by the vessel during any period of time,
 - (ii) the timetabling of such voyages, and
 - (iii) the minimum or maximum fares, or charges, imposed in respect of passengers and cargo,
- (e) conditions as to the minimum or maximum number of passengers carried on any voyage or on any particular day,
- (f) conditions relating to pilotage requirements and to the seaworthiness of the vessel,
- (g) conditions relating to the conduct of the master or other person in charge of, the vessel, or of any person who is employed or engaged in any capacity on board the vessel on the business of the vessel, and
- (h) conditions requiring details of voyages undertaken by

the vessel and the number of passengers carried on each such voyage to be reported in such form and to such person as the Committee may require.

(5) Where the Committee decides, otherwise than with the agreement of the owner, charterer or other person having control over, or being the master or other person in charge of, a licensed vessel, to impose, vary, suspend or rescind any condition in respect of a licence granted in respect of that vessel under this Law, it shall serve upon the person concerned, notice in writing of the decision setting out particulars of the condition in question.

(6) The contravention of a condition of a licence granted under this Law shall, in addition to constituting an offence under section 10, be a ground for the suspension or revocation of the licence under section 7.

Duration and renewal of licence.

5. (1) A licence granted under this Law shall be valid, unless previously revoked under section 7, for a period of one calendar year from the date when it is granted by the Committee.

(2) A licence granted under this Law may be renewed by application made not less than 6 months before it would otherwise expire, and such application must be made in such form and manner, and accompanied by such information and documents, as the Committee may require and must be accompanied by a renewal fee in such sum as may be prescribed.

Licence fees.

6. No licence granted under this Law, nor any renewal thereof, shall be effective until the licence fee, or the renewal fee, as the case may be, has been paid to the Treasurer.

Suspension or revocation of licence.

7. (1) The Committee may, by notice in writing served on the owner, charterer or other person having control over, or being the master or other person in charge of, a vessel, suspend or revoke a licence granted under this Law where it appears to the Committee that there has been a contravention of any provision of this Law, or of any condition of the licence imposed pursuant to section 4.

(2) The suspension of a licence under subsection (1) shall have effect -

- (a) for such period,
- (b) until the occurrence of such event, or
- (c) until compliance with such requirement,

as may be specified by the Committee

(3) During a period of suspension of a licence under subsection (1), the licence will not be effective.

(4) A decision of the Committee to revoke a licence shall not have effect until the end of the period within which, under section 11, an appeal can be brought against the revocation or, if an appeal is brought within that period, until the appeal is finally disposed of or withdrawn.

Powers to prohibit and of entry.

8. (1) The Harbour Officer or a police officer 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, the harbour,
- (b) from berthing alongside any quay, jetty, wharf, pier, wall, slipway or step adjacent to the harbour, and
- (c) from mooring or anchoring in the harbour,

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, the harbour, or to berth, moor or anchor, or remain berthed, moored or anchored, as aforesaid, in contravention of such a prohibition, is guilty of an offence under section 10.

(2) The Harbour Officer or a police officer may, if he has a reasonable cause to suspect that an offence under this Law may have been committed -

- (a) enter upon and remain upon any licensed vessel, or
- (b) having obtained a warrant so to do upon information laid on oath before the Chairman of the Court of Alderney, 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 photographic or other record as he reasonably considers appropriate for the purposes of establishing whether or not

an offence has been committed.

Exclusion of liability.

9. No liability shall be incurred by the Committee or any officer, servant or member of the Committee, or by the Harbour Officer or any police officer, in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions and powers, unless the thing was done or omitted to be done in bad faith.

Offences and penalties.

10. A person who contravenes any provision of this Law, or any condition of a licence granted under this Law, shall be guilty of an offence and liable on conviction to a fine not exceeding level 4 on the Alderney uniform scale.

Appeals.

11. (1) Any person aggrieved by any decision of the Committee under the provisions of this Law may appeal therefrom to the Court.

(2) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section shall be instituted –
 - (a) within a period of 28 days immediately following the date of the notice of the decision, and
 - (b) by summons served on the President of the Committee stating the grounds and material facts on which the appellant relies.
- (4) On an appeal under this section the Court may –
 - (a) set the decision of the Committee aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the tribunal thinks fit, or
 - (b) confirm the decision, in whole or in part.

Repeal.

12. The Alderney and Sark (Licensing of Vessels) Law, 1951^a is repealed in its application to Alderney.

Interpretation.

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

^a Ordres en Conseil, Vol. XV, p. 37.

"act of trade" means -

- (a) the embarkation or disembarkation of passengers, or
- (b) the loading or unloading of cargo,

"Alderney" means the Island of Alderney,

"Alderney uniform scale" means the uniform scale established under the Uniform Scale of Fines (Alderney) Law, 1989^b,

"body" includes a body incorporated under the law of any country or territory and any unincorporated body,

"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

^b Ordres en Conseil Vol. XXXI, p. 306.

(f) the personal effects of the crew and any passengers,

"the Chairman of the Court of Alderney" means the person appointed or selected as Chairman of the Court under section 6(1) of the Government of Alderney Law, 2004^c;

"the Committee" means the Policy and Finance Committee appointed pursuant to section 49(2) of the Government of Alderney Law, 2004,

"the Court" means the Court of Alderney,

"enactment" means any Law, Ordinance or subordinate legislation,

"harbour" has the same meaning as in the Braye Harbour (Alderney) Ordinance, 1983^d,

"Harbour Officer" has the meaning given under section 62(1) of the Government of Alderney Law, 2004,

"licensed vessel" means a vessel in respect of which a licence, granted under this Law, is in force,

"master" means every person (except a pilot) having command or charge of a vessel,

^c Order in Council No. III of 2005.

^d Ordinance No. IV of 1983.

"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 the 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,

"person" includes any body or authority,

"pilot" means any person not belonging to a ship who has the conduct thereof,

"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 and no payments, other than those mentioned above, are made by or on behalf of users of the vessel, other than by the owner, and in this definition, "**immediate family**" means, in relation to an individual, the husband or the wife of the individual, and a brother, sister, ancestor or lineal descendant of that individual or that individual's husband or wife,

"**police officer**" has the same meaning as "officer of police" under section 62(1) of the Government of Alderney Law, 2004,

"**prescribed**" means prescribed by regulations made by the Committee,

"**States**" means the States of Alderney,

"**Treasurer**" means the person appointed to act as Treasurer of the States under section 54(1) of the Government of Alderney Law, 2004,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, and

"**vessel**" does not include -

- (a) any of Her Majesty's ships,

- (b) any ship belonging to a sovereign state,
- (c) any pleasure vessel,
- (d) any vessel belonging to or under the control of the States,
- (e) any vessel belonging to or under the control of any Department of Her Majesty's Government or of the States of Guernsey, nor belonging to or under the control of any harbour, navigational or lighthouse authority or body and being used exclusively by such Department, authority or body other than for the carrying of passengers or the transport of cargo for hire or reward, and
- (f) any fishing vessel not carrying passengers nor carrying any goods other than fish.

(2) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Law.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) Subsection (1) may be amended from time to time by Ordinance of the States.

^e Ordres en Conseil Vol. XIII, p. 355.

General Provisions as to Ordinances.

14. (1) Any Ordinance under this Law -
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law 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.

Citation.

15. This Law may be cited as the Licensing of Vessels (Alderney) Law, 2010.

Commencement.

16. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

S. M. SIMMONDS,
Her Majesty's Deputy Greffier.

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