

ORDINANCE OF THE CHIEF PLEAS

ENTITLED

The Harbours (Sark) Ordinance, 2011^a

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use.

^a Amended by the Harbours (Sark) (Amendment) Ordinance, 2012.

ORDINANCE OF THE CHIEF PLEAS

ENTITLED

The Harbours (Sark) Ordinance, 2011

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 19th day of January, 2011, and in exercise of the powers conferred upon them by section 37 of the Reform (Sark) Law, 2008^b and of all other powers enabling them in that behalf, hereby order:-

Control of harbours and specified bays.

1. (1) The Committee shall be responsible for all necessary maintenance work at Les Laches Bay, Le Creux Harbour, La Maseline Jetty, the slipway between Le Creux and La Maseline, and Havre Gosselin.

(2) The Committee shall have control of the areas specified in subsection (1) and also of the bay known as Greve de la Ville.

(3) Without prejudice to the generality of the foregoing the Committee may give directions to the master, owner or operator of a vessel –

(a) to provide it, within a specified period, with specified information (including, but not limited to, sailing times) relating to voyages to and from La Maseline Harbour, Le Creux Harbour, the slipway

^b Order in Council V of 2008; amended by No. VI of 2008; No. XXVII of 2008; and No. XIV of 2010.

between Le Creux and La Maseline, or Havre Gosselin ("the Harbours") by the vessel, and

(b) in the case of a vessel licensed to carry more than 12 passengers operating to or from any of the Harbours –

(i) to provide passenger numbers and other specified passenger information within a specified period before entering or leaving the Harbours, and

(ii) to take such steps as the Committee considers necessary to protect the safety of passengers embarking or disembarking, or waiting to embark or disembark, the vessel within the Harbours.

(4) For the avoidance of doubt, directions under subsection (3) may specify conditions with which the master, owner, or operator must comply for the vessel to enter or leave the Harbours, to berth in the Harbours, or to embark or disembark passengers in the Harbours, as the case may be.

(5) The Committee may authorise the Harbourmaster to exercise some or all of its powers under subsection (3).

Parking of vessels and trailers.

1A. No person may, without the permission of the Harbourmaster, park a vessel or trailer on land within the Harbours.

Harbourmaster's power to direct.

1B. (1) The Harbourmaster may direct the master, owner or operator of a vessel in respect of whether, when and how the vessel may enter, leave and berth within the Harbours.

(2) The Harbourmaster may direct one or more persons, or all persons, not to enter one or more of the Harbours, or immediately to leave one or more of the Harbours (as the case may be), if in his opinion such a direction is necessary in the interests of safety; provided that such a direction must be withdrawn as soon as the Harbourmaster is satisfied that it is safe to do so.

(3) The Harbourmaster may direct the owner or person in charge of any vessel or trailer parked in contravention of section 1A to remove it, either immediately or within a specified period.

(4) The Harbourmaster may direct the master of any vessel to remove it, either immediately or within a specified period, from any place in the Harbours, or from within the approaches of Le Creux Harbour, in the interests of safety or if, in his opinion the vessel is causing an obstruction to navigation, or impeding the efficient operation of any of the Harbours.

(5) The Harbourmaster may direct the owner or person in charge of any tractor, trailer, vessel, or any other object or garbage left in any of the Harbours, or in the area between La Maseline Harbour and Le Creux Harbour extending up harbour hill and ending in a parallel line with the most western end of the water tanks situated on the south side of harbour hill, to remove it, either immediately or within a specified period, if in the opinion of the Harbourmaster it is-

(a) impeding the efficient operation of any of the

Harbours,

- (b) giving rise to a contravention of this Ordinance or any other enactment, or
- (c) an unacceptable risk to public safety,

or it is likely to do or be so if not removed.

Placing of moorings in Controlled Zone prohibited without permission.

2. Subject to section 4, no person may place a mooring anywhere within the area ("**the Controlled Zone**") bounded by an imaginary line running anti-clockwise around Sark from Bec du Nez through the centre of Gouliot Passage, Peche Lucas, Moie de Viet, Pierre du Cours, La Conchee, the east side of Les Bourons and the north extremity of Petite Moie, and marked on the excerpt from Admiralty Chart 808 in the Schedule to this Ordinance.

Berthing, mooring and anchoring of vessels.

3. Except with the permission of the Harbourmaster, the master of a vessel shall not cause or permit the vessel –

- (a) to be berthed alongside the jetty of La Maseline Harbour or the breakwater or pier of Le Creux Harbour for longer than is necessary to enable any person to embark or disembark;
- (b) to be moored or anchored –
 - (i) within 300 feet of the jetty of La Maseline Harbour,

- (ii) within Le Creux Harbour, where no anchors with double flukes shall be used, or
 - (iii) within the approaches of Le Creux Harbour unless the Committee has granted an application under section 4 for permission to place a mooring there; or
- (c) if it is a vessel licensed to carry more than twelve passengers, to use the Goulet Passage southbound.

Power of Committee to permit placing of moorings in Controlled Zone.

4. (1) A person may apply to the Committee, in such manner as the Committee may specify from time to time, for permission to place a mooring in the Controlled Zone.

(2) The Committee may grant an application under subsection (1) subject to any conditions that it considers appropriate, including, without limitation, conditions specifying or otherwise restricting the vessel or vessels that may use the mooring, and any conditions relating to the insurance of the vessel or vessels to be moored there.

(3) Any condition to which permission is granted under subsection (2) may be varied or revoked at the discretion of the Committee.

(4) The Committee shall refuse to grant an application under subsection (1) where the Committee considers it appropriate, having regard to –

- (a) the need to protect the marine environment, the living

resources which it supports, and human health,

- (b) the need to prevent interference with legitimate uses of the sea,
- (c) the proper administration of the moorings within the Controlled Zone, and
- (d) such other matters as the Committee considers relevant.

(5) The Committee may consult such person or persons as it considers appropriate when considering whether it should refuse to grant an application under this section.

Appeals.

- 5.** (1) Any person aggrieved by a decision –
- (a) of the Committee or Harbourmaster to give directions under section 1(3)(b)(ii), or to specify conditions in such directions, or
 - (b) of the Committee to refuse an application under section 4(1), or to impose a condition or conditions when granting such an application,

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 14 days immediately following the date of the notice of the decision, and
 - (b) by summons served on the President of the Committee or the Harbourmaster (as the case may be) 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 aside and, if the Court considers it appropriate to do so, remit the matter to the Committee or Harbourmaster (as the case may be) with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

Power to remove moorings.

6. The Harbourmaster may remove, or cause to be removed, a mooring placed in the Controlled Zone without the permission of the Committee under section 4, in contravention of section 2.

Power to remove vessels, trailers etc.

7. (1) If a person to whom a direction has been issued under section 1B(3), (4) or (5) does not cause the removal of the vessel, trailer, tractor or other object or garbage in question within the period specified (if any), or otherwise within a reasonable time, the Harbourmaster may, subject to subsections (3) and (4), cause it to be removed.

(2) In the case of a vessel berthed, moored or anchored in contravention of section 3(a) or (b), the Harbourmaster may, subject to subsections (3) and (4), cause that vessel to be removed to and anchored, moored or berthed in such place and in such manner as the Harbourmaster thinks fit.

(3) The Harbourmaster may only cause a vessel, trailer, tractor or other object to be removed under subsection (1) or (2) after –

- (a) notifying the person to whom the direction has been issued, or the master, operator or owner, as the case may be ("**the relevant person**"), of when the removal will take place and the place to which the vessel, tractor or other object will be moved, and
- (b) affording the relevant person the opportunity to remove it himself.

(4) Subsection (3) does not apply where, in all the circumstances, it would not be reasonably practicable or otherwise appropriate for the relevant person to be notified before the removal or afforded that opportunity; in which case that person must be notified of the removal and of the location of the vessel, tractor or object as soon as reasonably practicable thereafter.

Exclusion of liability in respect of power to remove.

7A. (1) Subject to subsection (2), no person is to be –

(a) liable in damages, or

(b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done under section 6 or 7, unless the relevant act or omission was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful under section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^c.

Charges for use of cranes and for harbour services.

7B. (1) There shall be payable –

(a) for the use of a crane (including the hiring of crane operators) at any of the Harbours, and

^c Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXIII of 2003; and Guernsey Statutory Instrument 2006 No. 27.

- (b) in respect of harbour services provided by or on behalf of the Harbourmaster or the Committee,

charges at such rates as Chief Pleas may from time to time by resolution determine.

- (2) A resolution passed under subsection (1) may –

- (a) determine different rates for different classes or descriptions of vessels, vehicles, trailers, containers or goods, for different facilities and for different circumstances generally,

- (b) empower the Committee, in its absolute discretion in any particular case, to determine which of two or more alternative charges shall be payable,

- (c) exempt any person or class of persons from all or any charges, and

- (d) be varied or revoked by a subsequent resolution so passed.

- (3) In this section, "**harbour services**" means -

- (a) the provision of assistance at the Harbours with the berthing and tying up of passenger boats, the embarkation and disembarkation of passengers, and the discharge, offloading and collection of cargo, and

- (b) such other services relating to the use of the Harbours and their facilities as may be specified by resolution of Chief Pleas from time to time.

(4) In this section and in section 7B, "crane" includes all equipment related to the normal use of a crane.

(5) In the absence of a resolution of Chief Pleas determining charges payable in respect of a service, the Committee may agree, or continue to agree (as the case may be) the charges to be paid for that service with users of that service.

Payment and recovery of charges.

7C. (1) Any charges payable pursuant to a resolution under section 7B(1) may be recovered as a civil debt due to Chief Pleas from the person by whom, or on whose behalf –

- (a) use of the crane concerned, or
- (b) provision of the harbour service concerned,

was requested, or from any agent of that person.

(2) For the avoidance of doubt, subsection (1) is without prejudice to the power of the Committee to recover expenses under section 8.

Recovery of expenses.

8. (1) The Committee may recover from the owner of any vessel as a civil debt –

- (a) the amount of any expenses reasonably incurred by it and arising out of the exercise by it or the Harbourmaster, in relation to that vessel, of any of the powers conferred on it or him by this Ordinance, and
- (b) any other charges or expenses which it considers have been reasonably incurred in relation to the maintenance or upkeep of that vessel, including, for the avoidance of doubt and without limitation, any charges or expenses relating to storage of the vessel, use of dinghy racks, or the use of electricity or other services when carrying out any work on the vessel.

(2) The Committee may recover from the owner of a mooring removed under section 6 as a civil debt the amount of any expenses reasonably incurred by it arising, directly or indirectly, out of that removal.

(3) Without prejudice to subsection (1), the Committee may recover as a civil debt, from a person to whom a direction has been issued under section 1B(3), (4) or (5) the amount of any expenses reasonably incurred by it arising, directly or indirectly, out of the removal of the vessel, trailer, tractor or other object or garbage in question under section 7(1).

Licensing of passenger vessels.

9. (1) Vessels in respect of which a person is plying for hire in Sark to carry not more than 12 fare-paying passengers in Sark waters shall be licensed.

(2) Licences shall be granted by the Court on the recommendation of the Committee.

(3) Licences (whenever granted) shall expire on the 31st March each year unless the Court specifies otherwise.

(4) Applications for licences shall be made to the Constable at least 14 days before it is intended to use the vessel to carry fare-paying passengers.

(5) The Committee is the surveying authority and shall specify the maximum number of passengers which each vessel may carry (which number shall be a condition of the licence).

(6) The Committee, before making a recommendation under subsection (2), or specifying the maximum number of passengers under subsection (5), shall be satisfied as to -

- (a) the qualifications of the person who will handle the vessel,
- (b) the condition of the vessel, its engine and equipment, and
- (c) the insurance provisions relating to that vessel and, in particular, whether there is any third party insurance,

and in this respect may take advice from appropriately qualified persons if it sees fit to do so.

(7) The licence fee shall be £2 per fare-paying passenger, or such other sum as Chief Pleas by resolution may appoint.

(8) A licence under this section -

- (a) may be varied by the Court from time to time, on the recommendation of the Committee; and
- (b) may be revoked or suspended by the Court, on the recommendation of the Committee if this appears to the Court -
 - (i) to be necessary or expedient for regulating the licensing of passenger vessels, or
 - (ii) to be appropriate in a case where there is an offence under this Ordinance.

(9) If a licence is varied, revoked or suspended, the Committee may, if it considers it appropriate in all the circumstances of the case, refund the whole or any part of any charge made for the licence.

Powers of Committee

10. In order to perform any of the powers conferred on it by this Ordinance or to be satisfied of any matters specified under this Ordinance, the Committee may –

- (a) require the owner of a vessel named in a licence or using a mooring in the Controlled Zone to provide the Committee with such information, in such form, as it may direct,
- (b) require the attendance of the owner, master or charterer on board the boat and may make any reasonable examination and inquiry which appears to it to be necessary.

General Regulations.

10A. (1) The Committee may, by regulations made under this section, make any provision not inconsistent with this Ordinance as to the conduct of persons in the Harbours.

(2) Without prejudice to the generality of subsection (1), the Committee may by regulations make provision for the removal of articles and substances from any part or parts of one or more of the Harbours.

Offences.

11. (1) A person who –

- (za) contravenes section 1A,
- (a) contravenes section 2,
- (b) contravenes section 3,
- (c) moors his boat at a mooring without permission having been granted to place that mooring by the Committee under section 4,
- (d) contravenes or fails to comply with or observe any condition of a permission granted under section 4,
- (e) in Le Creux Harbour uses, or causes or permits the use of, an anchor with double flukes,
- (f) being the owner or master of a vessel required to be

licensed under section 9(1) but not so licensed, carries, or causes or permits to be carried, in Sark waters fare-paying passengers in that vessel,

- (g) contravenes or fails to comply with or observe any term or condition of a licence under section 9,
- (h) moors a vessel of more than 33 feet in overall length at a mooring at the approaches of Le Creux Harbour (also known as Les Laches bay), or
- (i) moors a vessel of more than 16 feet in overall length at a mooring in Le Creux Harbour,

is guilty of an offence and liable, on conviction by the Court, to a fine not exceeding level 2 on the uniform scale.

(1A) A person who contravenes, or who otherwise fails to comply with, directions given or made under section 1(3) or 1B is guilty of an offence and liable, on conviction by the Court, to a fine not exceeding level 4 on the uniform scale, or to a term of imprisonment not exceeding one month, or to both.

(1B) A person who deposits garbage on land within the Harbours, other than in a receptacle provided for that purpose by the Harbourmaster or a Committee of Chief Pleas, is guilty of an offence and liable, on conviction by the Court, to a fine not exceeding level 1 on the uniform scale.

(2) It shall be a defence for a person charged with an offence under subsection 1(c) to show that he is a visitor to Sark and did not know, and had no reason to know, that the mooring had been placed unlawfully.

General provisions as to regulations.

11A. Regulations made under this Ordinance –

- (a) may make different provision for different cases and circumstances,
- (b) may prohibit any act or omission without the permission of the Committee or the Harbourmaster,
- (c) must be laid before a meeting of Chief Pleas as soon as possible after being made; and if at that meeting or the next Chief Pleas resolve that the regulations be annulled, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations, and
- (d) may be varied or revoked by subsequent regulations so made.

Permissions, directions, and prohibitions.

11B. (1) Any permission, direction or prohibition of the Committee or the Harbourmaster under, or for the purposes of, any provision of this Ordinance may be –

- (a) given or imposed either generally or in relation to specified descriptions of objects, persons, cases or circumstances, or in relation to a particular object or person,

- (b) given or imposed either unconditionally or subject to such conditions as the Committee, or, as the case may be, the Harbourmaster, thinks fit,
 - (c) withdrawn by the Committee or, as the case may be, by the Harbourmaster, at any time.
- (2) Any such permission, direction or prohibition –
- (a) may be given, imposed or withdrawn in such manner as the Committee or, as the case may be, the Harbourmaster, considers appropriate, and
 - (b) without prejudice to the foregoing, shall be conclusively presumed to have been so given, imposed or withdrawn if it is given, imposed or withdrawn in such manner as the Committee may prescribe by regulations made under this section.

Interpretation.

- 12.** (1) In this Ordinance –

"**Committee**" means the Sark Chief Pleas Harbours and Pilotage Committee;

"**Constable**" includes the Vingtenier;

"**Controlled Zone**" has the meaning given in section 2;

"**Court**" means the Court of the Seneschal;

"**Harbourmaster**", in sections 3, 6 and 7, includes any person appointed or authorised by him to act for the purposes of those sections;

"**master**" means the person having for the time being the command or charge of a vessel;

"**mooring**" means equipment for securing a vessel to the seabed that is not dropped or taken up by the secured vessel, including a buoy or buoys attached to one or more sinkers, anchors or deadmen by a length or lengths of chain, rope or wire; and "**placing a mooring**" means depositing that equipment or part of it on the seabed;

"**owner**" includes a charterer and an agent;

"**Sark waters**" means the territorial waters adjacent to Sark, Brecqhou and L'Etac;

"**the approaches of Le Creux Harbour**" means the area lying to the west of a line 300 feet long drawn due south from the easternmost extremity of Le Creux Harbour;

"**uniform scale**" means the uniform scale for the time being in force under the Uniform Scale of Fines (Sark) Law, 1989 (as amended)^d;

^d Ordres en Conseil Vol. XXXI, p. 320, as amended by the Uniform Scale of Fines (Sark) Amendment Ordinances, 1992, 2004 and 2006.

"vessel" means anything made or used for the conveyance by water of people or property, but does not include a vessel engaged in search and rescue, a vessel being used as a marine ambulance or lifeboat, a vessel being used by the States of Guernsey for sea fisheries protection purposes, or a vessel being used by the organisation known or referred to as "the States of Guernsey Customs and Excise and Immigration and Nationality Service" for law enforcement purposes.

(2) The Interpretation (Guernsey) Law, 1948 shall apply to the interpretation of this Ordinance as if it were an enactment in force in the Island of Guernsey.

Repeal.

13. The Harbours (Sark) Ordinance, 1987 (as amended)^e is repealed.

Citation and Commencement.

14. This Ordinance may be cited as the Harbours (Sark) Ordinance, 2011, and shall come into force on the 5th day of May, 2011.

^e Amended by the Harbours (Sark) (Amendment) Ordinance, 2007 and the Harbours (Sark) (Amendment) Ordinance, 2010.

SCHEDULE

[chart excerpt not reproduced]