

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

## Statement of Licensing Policy

### 1. Background

1.1 Amendments made to the Alderney and Sark (Licensing of Vessels) Law, 1951 by the Chief Pleas of Sark at their meeting of 14 April 2010 came into force on 1 January 2013. As announced by the Shipping Committee, the amendments are designed, amongst other things, to strengthen the protection of the key shipping service between Sark and Guernsey<sup>1</sup>, as operated by the Isle of Sark Shipping Company ("IoSS", the service often being referred to as Sark's "life-line service") and to ensure its ongoing financial viability.

1.2 Operators, and potential operators, of vessels to which the 1951 Law applies are reminded that under the Law acts of trade within Sark territorial waters are prohibited, unless an exemption has been conferred by Ordinance of the Chief Pleas or a licence has been obtained from His Excellency the Lieutenant-Governor and Commander-in Chief of Guernsey. An act of trade in connection with a vessel to which the Law applies, means the embarkation or disembarkation of passengers or the loading or unloading of cargo at, or in the territorial waters of, Sark.

### 2. General

2.1 The specific purpose and objectives of the 1951 Law are as follows –

**"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*

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<sup>1</sup> For the purposes of this statement, it should be noted that references to Guernsey include Herm.

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

Given this provision of the Law, it is intended that overall licensing policy and implementation will be designed to ensure that the viability of the "life-line service" is protected and maintained. In adopting this as the principal policy driver, His Excellency has taken into account the observations made and conclusions reached in the Report compiled by Dr. Jonathan Spencer CB ("the Spencer Report") in 2007. He has also taken into account the views of the Shipping Committee, vessel operators and others who have commented upon the issue of Sark and shipping services.

2.2 The policy is designed to enable His Excellency, when exercising licensing powers under the Law, to strike a reasonable balance between the need to preserve and develop the "life-line service" and a wide number of other considerations. These range from the needs and interests of the general body of the inhabitants of Sark, individual inhabitants of Sark and the special circumstances in which they may live and the requirements of other commercial vessel operators wishing to provide services between Sark and Guernsey and for other routes.

2.3 Against the above background, whilst this statement of policy will be used to provide guidance, there may be circumstances in which it may be necessary to depart from some detailed aspects of the policy in order to ensure that the "life-line service" is protected and maintained. In addition there will be occasions on which it will be necessary to review and amend the policy or certain aspects of the policy. Whenever it becomes apparent that any departure or change is, or may be, required efforts will be made to provide as much notice as possible to existing and potential licence holders so that their views may be taken into account.

### **3. 12 and Under Licenses**

3.1 In recent years, perhaps the most active category of licence granted under the Law has been that of the so-called "12 and under". The purposes of licensing the operation of "12 and under" vessels to which the Law applies and which are intended to be used for the purposes of acts of trade within Sark waters and are not exempted by Ordinance is (and has historically been):

3.1.1 "To supplement the main "over 12" services between Guernsey and Sark without materially damaging their financial viability

3.1.2 To give Sark residents a wider choice, albeit in all likelihood at higher prices, especially in emergencies and in bad weather

3.1.3 To give visitors to, and residents of, the Bailiwick a wider range of choices for leisure activities incorporating a visit to Sark."<sup>2</sup>

3.2 Subject to the modifications described below, it is not intended that there should be any significant change in or departure from the policy that has operated historically in relation to this category of licence in relation to operations involving the Guernsey/Sark route. It is clear that there will continue to be a demand for shipping services covered in the category on the Guernsey/Sark route and it is anticipated that a limited number of licences will continue to be granted for relevant vessels. Of course, it will be necessary to review the number of licences granted and the precise terms and conditions, depending upon the effect that the operations of all vessels within the category have upon the long term viability of the "life-line service".

3.3 Going forward it is intended that, where practical and possible and having regard to historic operations, licences are awarded in two categories subject to any limitation on numbers described -

#### 3.3.1 Category One

Licences awarded to operators of vessels to which the Law applies for whom the embarkation or disembarkation of passengers within Sark waters is a principal purpose of their business and, in the case of the Guernsey/Sark route, who are prepared to commit to the provision of all season/all weather operations, using vessels with suitable characteristics which are operated appropriately to meet this undertaking safely and reliably. The terms of this class of licence will not restrict the total number of passengers these operators are permitted to carry in any one day except in the case of the Guernsey/Sark route where a limit of 12 passengers in any one day will apply unless otherwise agreed with IOSS, as has been established practice. For the 2013 season, it is not anticipated that licences in this category will exceed 4 in number and the impact on passenger numbers of these licensed vessels will be reviewed regularly.

#### 3.3.2 Category Two

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See Annex 4 to Spencer Report

Licences awarded to operators for whom embarkation or disembarkation of passengers within Sark waters is incidental to the main purposes of their business (eg. angling, diving, marine observation). In the case of the Guernsey/Sark route a limit of 12 passengers in any one day will apply

3.4 As mentioned at paragraph 3.2, the total number of licences awarded will be kept under periodic review in the light of the effect on Sark's lifeline shipping service and its ongoing financial viability, demand for licences, and the pattern of usage that emerges. Changes in the total number of licences awarded and any variation of policy will be the subject of consultation with the Shipping Committee and relevant vessel operators. Where there are more applications for licences than licences available, regard will be had to past records of applicants, including the record of compliance with licence conditions, licensing of vessels legislation and other relevant statutory requirements.

3.5 Licences will be granted subject to a number of conditions including as follows –

- 3.5.1 That fares to be charged in respect of the carriage of passengers shall not be less than standard fares charged by the Isle of Sark Shipping Company in respect of passengers carried between Guernsey and Sark and vice versa.
- 3.5.2 That no cargo may be loaded or unloaded within Sark waters, apart from personal effects of the crew or passengers or items essential to the main purpose of the journey such as Diving or Sea Fishing equipment.
- 3.5.3 That licensees will collect and pay, and will be personally responsible for the payment of, landing taxes due to the relevant respective authorities in Guernsey and Sark
- 3.5.4 That the vessel remains in the same ownership and control of the licensee
- 3.5.5 That the vessel is licensed, and continues to hold a licence, where required under the Hired Boats and Passenger Boats (Guernsey) Law 1989 or the equivalent local requirement for a vessel operating from a port other than Guernsey

- 3.5.6 That the vessel is seaworthy and, in particular, is certificated and remains certificated in accordance with requirements of the certificating authority.
- 3.5.7 That the vessel is operated in accordance with the requirements of the relevant certificating authority and applicable legislation
- 3.5.8 That, where appropriate, the vessel is operated so as to comply with specified minimum departure/arrival times ) (e.g. the elapsed time between departure and arrival for at least one of either the outward or return journey must be at least 90 minutes.
- 3.5.9 That the licensee complies with the customs and immigration laws of the Bailiwick<sup>3</sup>.

#### **4. Other licences to carry passengers**

4.1 The IoSS does not currently run scheduled passenger services except on the Guernsey/Sark life-line service route. As a result, it is not expected that any limitations would apply in relation to the licensing of vessels to carry passengers between Sark and ports other than those located in Guernsey. However, this approach would need to be reviewed in the event that operation of any other passenger route were to effect the viability of the "life-line service".

4.2 Subject to the reservation noted above, licences will normally be granted subject to conditions including the following –

- 4.2.1 That licensees will collect and pay, and will be personally responsible for the payment of, landing taxes due to the relevant respective authorities in Guernsey and Sark .
- 4.2.2 That the vessel remains in the same ownership and control of the licensee
- 4.2.3 That the vessel is licensed, and continues to hold a licence, where required under the Hired Boats and Passenger Boats (Guernsey)

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<sup>3</sup> Licensees are reminded that Sark does not have an Approved Port for customs and immigration purposes, and therefore they may not travel to Sark from outside the Bailiwick without having first obtained GBA clearance

Law 1989 or the local equivalent for a vessel operating from a port other than Guernsey

- 4.2.4 That the vessel is seaworthy and, in particular, is certificated and remains certificated in accordance with requirements of the certificating authority.
- 4.2.5 That the vessel is operated in accordance with the requirements of the relevant certificating authority and applicable legislation
- 4.2.6 That the licensee complies with the customs and immigration laws of the Bailiwick.

## **5. Licences to carry cargo**

5.1 It is self evident that any cargo not carried to Sark by IoSS, but that reasonably could be, results in a reduction in IoSS income. Given the importance of IoSS cargo revenues to the preservation of the life-line service, applications for licences to carry cargo to and from Sark, and from and to any other destination, will be determined on a case by case basis. When determining applications, the following considerations will be of particular relevance –

- 5.1.1 Whether or not the cargo movement contemplated can reasonably be achieved by use of an IoSS scheduled service.
- 5.1.2 Where the cargo movement contemplated cannot reasonably be achieved by use of an IoSS scheduled service, whether or not IoSS have been given the opportunity to provide a suitable unscheduled service.

5.2 In relation to this issue, it is accepted that there are occasions on which items of cargo are better sourced through ports other than Guernsey. Whilst IoSS does offer a charter service to/from such ports, for reasons of timing, size and possibly cost, there may be circumstances when it will not be reasonable to refuse licence applications. In these circumstances, applicants will be required to demonstrate that by not using an IoSS service, there is a genuine commercial advantage after all costs (whether actual or underlying) have been taken into consideration, when compared to having that same cargo delivered by IoSS, or that IoSS are unable, or cannot in a timely or regular manner, carry such cargo.

5.3 Licences will normally be granted subject to a number of conditions including as follows –

- 5.3.1 That cargo unloaded at Sark must consist only of items that are intended for the exclusive use and enjoyment of specifically identified individuals or persons,
- 5.3.2 That licensees will pay, and will be personally responsible for the payment of, all costs associated with the unloading or loading of cargo including any landing taxes due to the relevant respective authorities in Sark,
- 5.3.3 That the vessel remains in the same ownership and control of the licensee,
- 5.3.4 That the vessel is licensed, and continues to hold a licence, where required under the Hired Boats and Passenger Boats (Guernsey) Law 1989 or, in the case of a vessel which is not subject to the Law, that appropriate equivalent authorisation is in place,
- 5.3.5 That the vessel is seaworthy and, in particular, is certificated and remains certificated in accordance with requirements of the certificating authority.
- 5.3.6 That the vessel is operated in accordance with the requirements of the relevant certificating authority and applicable legislation
- 5.3.7 That the licensee complies with the customs and immigration laws of the Bailiwick.

16 April 2013