



Jersey

## PILOTAGE (JERSEY) LAW 2009

### Arrangement

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## PILOTAGE (JERSEY) LAW 2009

A LAW relating to pilotage.

*Adopted by the States* 12th February 2008

*Sanctioned by Order of Her Majesty in Council* 10th December 2008

*Registered by the Royal Court* 2nd January 2009

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### *Preliminary*

#### **1 Interpretation**

(1) In this Law, unless a contrary intention appears –

“compulsory pilotage area” means an area declared to be a compulsory pilotage area in accordance with a pilotage direction;

“Harbour Master” means the Harbour Master appointed in pursuance of Article 2 of the Harbours (Administration) (Jersey) Law 1961<sup>1</sup>;

“licensed pilot” means –

(a) in relation to a part of a compulsory pilotage area, a person licensed under Article 3 for that part of the area; and

(b) in relation to a ship, means a person so licensed in respect of ships of that description;

“master” has the same meaning as in the Shipping (Jersey) Law 2002<sup>2</sup>;

“Minister” means the Minister for Economic Development;

“pilot” means a person not belonging to a ship who has the conduct of it and “pilotage” is to be construed accordingly;

“pilotage direction” means a direction given by the Harbour Master in accordance with Article 5(1);

“pilotage exemption certificate” means a certificate granted by the Harbour Master under Article 6(1);

“ship” has the same meaning as in the Shipping (Jersey) Law 2002 and includes both British and foreign ships;

“States’ employee” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>.

- (2) In this Law a reference to a ship navigating or being navigated includes a ship moving or being moved within a harbour to change its mooring or to be taken into or out of a dock.

### *Provision of pilotage services*

## **2 Harbour Master duties as to provision of pilotage services**

- (1) The Harbour Master must keep under consideration –
- (a) whether any and, if so, what pilotage services need to be provided to secure the safety of ships navigating in the territorial waters applicable to Jersey; and
  - (b) whether in the interests of safety pilotage should be compulsory for ships navigating in any part of those waters and, if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships.
- (2) Without prejudice to the generality of paragraph (1), the Harbour Master must, in performing his or her functions under that paragraph, have regard, in particular, to the hazards involved in the carriage of dangerous goods or harmful substances by ship.
- (3) The Harbour Master must ensure that any pilotage service required by virtue of paragraph (1) is available and that it is adequately equipped and appropriately manned.

## **3 Licensing of pilots**

- (1) The Harbour Master may license persons the Harbour Master considers are suitably qualified to do so to act as pilots in or in any part of a compulsory pilotage area.
- (2) A licence issued by the Harbour Master –
- (a) must specify the area within which it has effect; and
  - (b) may specify that it only has effect in relation to ships of a particular description.
- (3) The Harbour Master shall –
- (a) determine the qualifications in respect of age, physical fitness, time of service, local knowledge, skill, including language skill, character and otherwise to be required from a person applying for a licence under this Article; and
  - (b) provide for the examination and checks in respect of those qualifications.

- (4) Before determining a requirement mentioned in paragraph (3)(a) or making provision for an examination or check mentioned in paragraph (3)(b) the Harbour Master must consult persons who have expert knowledge in respect of the requirement or provision.
- (5) A requirement or provision mentioned in paragraph (4) is not effective until the Harbour Master has published details of it in a manner that will bring it to the notice of those persons likely to be interested.
- (6) The Harbour Master may suspend or revoke a licence granted under this Article if it appears to the Harbour Master –
  - (a) that the licensed pilot has been guilty of incompetence or misconduct affecting the person's capability as a pilot; or
  - (b) that the licensed pilot has ceased to have the qualifications required by a person to be licensed under this Article or has failed to provide evidence that he or she continues to have those qualifications.
- (7) The Harbour Master must, before suspending or revoking a licence in accordance with paragraph (6), give written notice of his or her intention to do so to the licensed person.
- (8) The notice must –
  - (a) state the reason why the Harbour Master proposes to act; and
  - (b) give the licensed pilot a reasonable opportunity to make representations to the Harbour Master.
- (9) A person who is not a licensed pilot for a compulsory pilotage area is guilty of an offence and liable to a fine if, while in that area, he or she –
  - (a) describes himself or herself as being a licensed pilot for the area; or
  - (b) so holds himself or herself out as to indicate or be reasonably understood to indicate that he or she is a licensed pilot for the area.

#### **4 Employment, etc. of licensed pilots**

- (1) The Harbour Master must make appropriate arrangements for the provision of the services of licensed pilots in a compulsory pilotage area.
- (2) The arrangements under paragraph (1) may provide for the services to be provided by licensed pilots who are States' employees, by licensed pilots who provide their services under contracts for services or by a mixture of those methods.
- (3) The Harbour Master may refuse to license a person who is not willing to provide his or her services as a licensed pilot in accordance with arrangements made in accordance with paragraph (1).

*Compulsory pilotage***5 Pilotage directions**

- (1) The Harbour Master may direct, in the interest of safety, that pilotage is compulsory in any part of the territorial waters applicable to Jersey.
- (2) A pilotage direction –
  - (a) may apply to all ships or to all ships of a description specified in the direction subject to any exception also so specified;
  - (b) must specify the area and circumstances in which the pilotage direction applies;
  - (c) may contain such supplementary provisions as the Harbour Master considers appropriate.
- (3) Except in an emergency, the Harbour Master must, before giving a pilotage direction, consult the owners of ships that customarily navigate in the area to which the proposed direction would apply or such persons as the Harbour Master considers to be representative of them.
- (4) A pilotage direction has no effect until it has been published by the Harbour Master in a manner that will bring it to the notice of those persons likely to be interested.

**6 Pilotage exemption certificates**

- (1) The Harbour Master may grant a person a pilotage exemption certificate.
- (2) An application for the grant of a pilotage exemption certificate may only be made by a person who is bona fide the master or first mate of a ship.
- (3) The Harbour Master must not grant an applicant a pilotage exemption certificate unless the Harbour Master is satisfied that the applicant's skill, experience and local knowledge are sufficient for the applicant to be capable of piloting the ship of which he or she is master or first mate or that ship and any other ships specified in the certificate within a compulsory pilotage area or such part of it as may also be specified in the certificate.
- (4) If it appears to the Harbour Master to be necessary in the interests of safety that the applicant should have a knowledge of English, the Harbour Master must not grant an applicant a pilotage exemption certificate unless the Harbour Master is satisfied that the applicant has a sufficient knowledge of English for the purpose.
- (5) An applicant's qualifications may be ascertained by examination or by reference to such other requirements as the Harbour Master may reasonably impose.
- (6) A requirement imposed under paragraphs (3), paragraph (4) or paragraph (5) must not be unduly onerous having regard to the difficulties and dangers of navigation in the area in question.

- (7) Before determining a requirement under paragraph (3), paragraph (4) or paragraph (5) the Harbour Master must consult persons with appropriate knowledge and experience.
- (8) A requirement under paragraph (3), paragraph (4) or paragraph (5) has no effect until the Harbour Master has published it in a manner that will bring it to the notice of those persons likely to be interested.
- (9) A pilotage exemption certificate expires on the 31 December next following its grant but if the holder continues to be the master or first mate of a ship, may be renewed by the Harbour Master, on application by its holder, if the Harbour Master continues to be satisfied as mentioned in paragraphs (3) and (4).
- (10) A pilotage exemption certificate may, on application by its holder, be altered so as to refer to different ships from those to which it previously referred if the Harbour Master is satisfied as mentioned in paragraphs (3) and (4) as respects those ships.
- (11) The Harbour Master may suspend or revoke a pilotage exemption certificate if it appears to the Harbour Master that its holder has been guilty of incompetence or misconduct affecting the holder's capability to pilot the ship of which he or she is master or first mate or any other ships specified in the certificate.
- (12) The Harbour Master must, before suspending or revoking a pilotage exemption certificate, give written notice of his or her intention to do so to its holder.
- (13) The notice must –
  - (a) state the reason why the Harbour Master proposes to act; and
  - (b) give the holder of the pilotage exemption certificate a reasonable opportunity to make representations to the Harbour Master.
- (14) The Harbour Master may charge fees in respect of any examination required to be taken for the purposes of this Article or the grant, renewal or alteration of a pilotage exemption certificate.
- (15) The fees must be such as the Harbour Master considers reasonable to meet his or her relevant administrative costs.
- (16) A fee mentioned in paragraph (14) is not effective until the Harbour Master has published it in a manner that will bring it to the notice of those persons likely to be interested.

*Charging pilotage charges*

**7 Pilotage charges**

- (1) The Harbour Master may make reasonable charges in respect of pilotage services provided in accordance with this Law.
- (2) Without prejudice to the generality of paragraph (1), the charges to be made under that paragraph may include –

- (a) charges for the services of a pilot licensed by the Harbour Master;
  - (b) charges in respect of any expenses reasonably incurred by a licensed pilot in connection with the provision of his or her services as a pilot;
  - (c) charges by way of penalties payable in cases where the estimated time of arrival or departure of a ship is not notified as required by the Harbour Master or the ship does not arrive or depart at the notified time;
  - (d) charges in respect of the cost of providing, maintaining and operating pilot boats for the relevant compulsory pilotage area; and
  - (e) charges in respect of any other costs involved in providing and maintaining a pilotage service.
- (3) The Harbour Master may also make reasonable charges in respect of any ship navigating within a compulsory pilotage area under the pilotage of a master or first mate who is the holder of a pilotage exemption certificate in respect of the area and ship in question.
- (4) Different charges may be made under this Article in different circumstances.
- (5) Before determining a charge under this Article the Harbour Master must consult the owners of ships that customarily navigate in the area to which the proposed charges would apply or such persons as the Harbour Master considers to be representative of them.
- (6) A charge mentioned in this Article is not effective until the Harbour Master has published it in a manner that will bring it to the notice of those persons likely to be interested.
- (7) Charges imposed by the Harbour Master under this Article are recoverable as a debt due to the Minister.

*Compulsory pilotage*

**8 Compulsory pilotage**

- (1) A ship that is being navigated in an area and in circumstances in which pilotage is compulsory for the ship by virtue of a pilotage direction must be –
- (a) under the pilotage of a licensed pilot; or
  - (b) under the pilotage of a master or first mate who is the holder of a pilotage exemption certificate in respect of that area and ship.
- (2) If a ship is not under pilotage as required by paragraph (1) after a licensed pilot has offered to take charge of the ship, the master of the ship is guilty of an offence and is liable to a fine of level 4 on the standard scale.
- (3) If the master of a ship navigates the ship in part of a compulsory pilotage area and in circumstances in which pilotage is compulsory for the ship without notifying the Harbour Master that he or she proposes to do so, the master shall be guilty of an offence and liable to a fine of level 2 on the standard scale.



**9 Liability for ships in a compulsory pilotage area**

The fact that a ship is being navigated in an area and in circumstances in which pilotage is compulsory for it shall not affect any liability of the owner or master of the ship for any loss or damage caused by the ship or by the manner in which it is navigated.

*Rights of pilots***10 Right of licensed pilot to supersede unlicensed pilot**

- (1) A licensed pilot may, within the compulsory pilotage area in relation to which or a part of which he or she is licensed, supersede as the pilot of a ship any unlicensed person who has been employed to pilot it.
- (2) If the master of a ship navigates it in any part of a compulsory pilotage area under the pilotage of an unlicensed person without first notifying the Harbour Master that he or she proposes to do so, the master is guilty of an offence and is liable to a fine of level 2 on the standard scale.
- (3) If an unlicensed person pilots a ship within a compulsory pilotage area knowing that a licensed pilot has offered to pilot the ship, the person is guilty of an offence and is liable to a fine of level 3 on the standard scale.
- (4) If the master of a ship navigating within a compulsory pilotage area knowingly employs or continues to employ an unlicensed person to pilot the ship after a licensed pilot has offered to pilot the ship, the master is guilty of an offence and is liable to a fine of level 3 on the standard scale.
- (5) For the purposes of this Article –
  - (a) a person is an unlicensed person if he or she is neither a licensed pilot nor the holder of a pilotage exemption certificate in respect of the ship and the area in question;
  - (b) a person (other than the master or one of the crew of a ship) who is on the bridge of the ship or in any other position from which the ship is navigated (whether on board or elsewhere) is to be taken to be piloting the ship unless it is proved otherwise.

**11 Declaration as to draught, etc. of ship**

- (1) A pilot may require the master of a ship that the pilot is piloting –
  - (a) to declare its draught of water, its length and its beam; and
  - (b) to provide the pilot with any other information relating to the ship or its cargo as the pilot may specify and is necessary to enable the pilot to carry out his or her duties as the pilot of the ship.
- (2) A master of a ship who refuses to comply with a request made in accordance with paragraph (1) is guilty of an offence and is liable to a fine of level 3 on the standard scale.
- (3) A master of a ship who –

- (a) makes a statement that is false in a material particular in answer to a request made in accordance with paragraph (1), knowing it to be false or being reckless as to whether it is false; or
  - (b) fails without reasonable excuse to correct such a statement made by another person in answer to a request made in accordance with paragraph (1), although himself or herself knowing it to be false,
- is guilty of an offence and is liable to a fine of level 4 on the standard scale.

## **12 Master to give pilot notice of defects in ship**

- (1) The master of a ship must bring to the notice of a person who pilots the ship any defect in, and any matter peculiar to, the ship and its machinery and equipment –
  - (a) that the master knows about; and
  - (b) that might materially affect the navigation of the ship.
- (2) A master of a ship who, without reasonable excuse, fails to comply with paragraph (1) is guilty of an offence and is liable to a fine of level 3 on the standard scale.

## **13 Facilities to be given for pilot boarding or leaving ship**

- (1) This Article applies where –
  - (a) a ship is navigating in a compulsory pilotage area in circumstances in which pilotage is compulsory for the ship;
  - (b) the ship is not under the pilotage of a licensed pilot or of a master or first mate who is the holder of a pilotage exemption certificate in respect of the ship and the area; and
  - (c) the master of the ship is offered the services of a licensed pilot.
- (2) It also applies where the master of a ship accepts the services of a licensed pilot in any other circumstances.
- (3) The master must facilitate the pilot boarding and subsequently leaving the ship.
- (4) If the master, without reasonable excuse, fails to comply with paragraph (3), the master is guilty of an offence and is liable to a fine of level 3 on the standard scale.

### *Misconduct by pilots*

## **14 Misconduct by pilot endangering ship or persons on board ship**

- (1) This Article applies if the pilot of a ship –
  - (a) does an act that causes or is likely to cause the loss or destruction of, or serious damage to, the ship or its machinery, navigational equipment or safety equipment, or the death of, or serious injury to, a person on board the ship; or

- (b) omits to do anything required to preserve the ship or its machinery, navigational equipment or safety equipment from loss, destruction or serious damage or to preserve any person on board the ship from death or serious injury,
- and –
- (c) the act or omission is deliberate or amounts to a breach or neglect of duty; or
  - (d) the pilot is under the influence of drink or a drug at the time of the act or omission.
- (2) The pilot is guilty of an offence and is liable to imprisonment for 2 years and a fine.

*Limitation of liability*

**15 Limitation of liability in respect of pilots**

- (1) The liability of a licensed pilot for any loss or damage caused by an act or omission of the pilot while acting as a licensed pilot shall not exceed –
- (a) £2,000; and
  - (b) the amount of the pilotage charges in respect of the voyage during which the liability arose.
- (2) A person is to be taken to be a licensed pilot for the purpose of paragraph (1) despite the fact that the pilot is acting as a pilot of a ship navigating outside the compulsory pilotage area in relation to which the pilot is licensed if –
- (a) the pilot is piloting the ship to that area from a place where pilots licensed for the area regularly board ships navigating to it; or
  - (b) the pilot is piloting the ship from that area to a place where pilots regularly leave ships navigating from it,
- and in either case, the ship is one in respect of which the pilot is licensed.
- (3) Where loss or damage to a ship, to property on board a ship or to any other property or rights of any kind is caused by a licensed pilot who is a States' employee, no administration of the States shall be liable to damages beyond the amount of £2,000 multiplied by the number of licensed pilots who are States' employees at the time when the loss or damage occurred, if the loss or damage was not attributable to an act or omission by the Minister or by a person employed by or acting on behalf of an administration of the States committed –
- (a) with the intent to cause the loss or damage; or
  - (b) recklessly with knowledge that such loss or damage would probably result.
- (4) Where loss or damage to a ship, to property on board a ship or to any other property or rights of any kind is caused by a licensed pilot who is employed by a person other than as a States' employee, that person shall

not be liable to damages beyond the amount of £2,000 multiplied by the number of licensed pilots who are employed by the person at the time when the loss or damage occurred, if the loss or damage occurred without any personal act or omission by the person committed –

- (a) with the intent to cause the loss or damage; or
  - (b) recklessly with knowledge that such loss or damage would probably result.
- (5) The limit of liability under this Article applies to the whole of any losses and damages that may arise upon any one distinct occasion although the losses and damages may be sustained by more than one person.
- (6) If proceedings are taken against a person for an act or omission in respect of which liability is limited as provided by this Article and other claims are or appear likely to be made in respect of the same act or omission, the Royal Court may –
- (a) determine the amount of the liability;
  - (b) upon payment by the defendant of that amount into court, distribute it rateably amongst the claimants; and
  - (c) stay any proceedings pending in relation to the same matter.
- (7) The Court may also –
- (a) provide for an interested person to be made a party to the proceedings;
  - (b) exclude a claimant whose claim is not made within a certain time;
  - (c) require security from the defendant; and
  - (d) provide for the payment of any costs.
- (8) Nothing in paragraph (3) or paragraph (4) affects any liability that may be limited under Part 8 of the Shipping (Jersey) Law 2002 (liabilities of shipowners and others).
- (9) The Harbour Master shall not be liable for any loss or damage caused by any act or omission of a pilot licensed by the Harbour Master under Article 3 by virtue only of that licence.
- (10) In this Article “administration of the States” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005.

*Miscellaneous*

## **16 Appeals**

- (1) This Article applies where the Harbour Master –
  - (a) refuses to license a person to act as a pilot in or in any part of a compulsory pilotage area;
  - (b) suspends or revokes a licence to act as a pilot in or in any part of a compulsory pilotage area;
  - (c) refuses to grant or renew a pilotage exemption certificate; or
  - (d) suspends or revokes a pilotage exemption certificate.

- (2) It also applies to a decision made by the Harbour Master in respect of a licence granted to a person to act as a pilot in or in any part of a compulsory pilotage area as to –
  - (a) the area within which the licence has effect; and
  - (b) the class of ships in respect of which the licence has effect.
- (3) It also applies to a decision made by the Harbour Master in respect of a pilotage exemption certificate not to amend the certificate in accordance with a request to do so made in accordance with Article 6(10)
- (4) A person aggrieved by the decision of the Harbour Master may appeal to the Royal Court within the 28 days after being notified of the decision or such longer period as the Court may allow in the interests of justice.
- (5) An appeal under this Article may only be made on the ground that the decision was unreasonable having regard to all the circumstances of the case.
- (6) The Royal Court may confirm the decision of the Harbour Master or may take such other action as the Harbour Master could have taken.

#### **17 Pensions**

- (1) The States may make Regulations to provide for the payment of pensions or other benefits to pilots who are not States' employees, their widows or children by means of a pensions scheme.
- (2) The Regulations shall –
  - (a) provide for the payment of contributions by pilots;
  - (b) provide generally for the administration of, and participation in, the scheme.

#### **18 Repeal**

The Pilotage (Jersey) Law 1988<sup>4</sup> is repealed.

#### **19 Transitional and saving provisions**

The States may make Regulations containing such transitional, saving, consequential, incidental or supplementary provisions as may be necessary or expedient to bring this Law into effect.

#### **20 Citation and commencement**

- (a) This Law may be cited as the Pilotage (Jersey) Law 2009.
- (2) It shall come into force 28 days after it is registered.

**A.H. HARRIS**

*Deputy Greffier of the States*

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- <sup>1</sup> *chapter 19.060*  
<sup>2</sup> *chapter 19.885*  
<sup>3</sup> *chapter 16.325*  
<sup>4</sup> *L.9/1988 (chapter 19.870)*