



Jersey

HARBOURS (AMENDMENT No. 41) (JERSEY) REGULATIONS 2008

Arrangement

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Made

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Coming into force

6th May 2008

THE STATES, in pursuance of Articles 4 and 4A of the Harbours (Administration) (Jersey) Law 1961¹, have made the following Regulations –

1 Interpretation

In these Regulations “the principal Regulations” means the Harbours (Jersey) Regulations 1962².

2 Parts 1 and 2 substituted

For Parts 1 and 2 of the principal Regulations there are substituted the following Parts –

“PART 1

POWERS OF THE MINISTER

1 Minister may restrict, prohibit and reserve access

- (1) If it appears to the Minister necessary or expedient to do so, the Minister may issue a direction restricting or prohibiting access to any part of –
 - (a) a harbour; or
 - (b) territorial waters.
- (2) If it appears to the Minister necessary or expedient to do so, the Minister may issue a direction reserving a specified part of –
 - (a) a harbour; or
 - (b) territorial waters,

for a specific purpose, subject to such conditions and in such manner as the Minister considers appropriate.

- (3) The Minister must publish a direction issued under this Regulation.
- (4) A person who contravenes a direction issued under this Regulation is guilty of an offence and is liable to a fine of level 3 on the standard scale.

PART 2

POWERS OF THE HARBOUR MASTER

2 Unserviceable vessels and other obstructions

- (1) The Harbour Master may issue a direction requiring the removal of an unserviceable or abandoned vessel or other obstruction from –
 - (a) a harbour; or
 - (b) territorial waters.
- (2) The direction must be –
 - (a) served on the owner of the vessel or obstruction; or
 - (b) published if the owner is unknown or cannot be traced.
- (3) If, within 7 days, the vessel or obstruction has not been moved in accordance with the direction the Harbour Master may cause the vessel or obstruction to be moved.
- (4) If the Harbour Master causes the vessel or obstruction to be moved –
 - (a) expenses incurred in removing and storing the vessel or obstruction shall be payable by the owner; and
 - (b) no claim for damages shall lie against the Harbour Master or any person who moved and stored the vessel or obstruction.
- (5) If –
 - (a) the expenses mentioned in paragraph (4)(a) are not paid within 7 days of being demanded; or
 - (b) the owner of the vessel or obstruction cannot be found after reasonable enquiry,the Harbour Master may dispose of the vessel or obstruction in such manner as the Harbour Master considers appropriate.
- (6) The Harbour Master must pay any proceeds arising from the disposal, after deduction of the expenses incurred –
 - (a) to the owner; or
 - (b) if no owner can be found, into the consolidated fund.
- (7) For the purpose of this Regulation a vessel or obstruction is to be taken to be unserviceable or abandoned –

- (a) if it appears to the Harbour Master to be abandoned due to its state of neglect, lack of maintenance or lack of attention by its owner; or
- (b) where it is occupying a space in return for the payment of a fee, charge or other consideration, if the fee, charge or other consideration has not been paid.

3 General

- (1) The Harbour Master may give directions –
 - (a) to regulate the time at, and the manner in which, a vessel may enter into, go out of, or lie in, a harbour;
 - (b) to regulate a vessel's position, mooring or unmooring, placing and removing, while in a harbour.
- (2) The Harbour Master may give directions to regulate the time at, and the position in which a vessel may –
 - (a) take in or discharge its cargo or any part of its cargo;
 - (b) take in or land its passengers;
 - (c) take in or deliver ballast,within a harbour.
- (3) The Harbour Master, or a person authorized to do so by the Harbour Master, may give directions and orders necessary –
 - (a) to maintain order in a harbour;
 - (b) to control the movement of persons and vehicles in a harbour;
 - (c) to maintain security in a harbour;
 - (d) to maintain safety in a harbour.
- (4) A person must comply with a direction or order given in accordance with paragraph (3) that is applicable to the person.
- (5) The Harbour Master may give directions in respect of –
 - (a) the circulation and parking of vehicles in a harbour;
 - (b) the charges to be paid to park a vehicle in a harbour or in any part of a harbour.
- (6) Despite Regulation 2, the Harbour Master may cause to be removed any vessel or obstruction from –
 - (a) a harbour; or
 - (b) territorial waters,where the Harbour Master is satisfied that its immediate removal is necessary.

4 Use of facilities or provision of services that requires permits

- (1) For the purposes of Article 4A of the Law, the Harbour Master may designate –
 - (a) a facility; or
 - (b) a service,in a harbour or in territorial waters that may not be used or provided except with and in accordance with a permit.
- (2) In doing so the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (3) The Harbour Master must publish details of a designation under paragraph (1).
- (4) The Minister may, by written notice, direct the Harbour Master –
 - (a) to amend a designation made under paragraph (1); or
 - (b) to make such a designation,as specified in the direction.
- (5) The Harbour Master must act in accordance with the direction.
- (6) The Minister must lay a copy of a direction given under paragraph (4) before the States Assembly at the first opportunity to do so.
- (7) The –
 - (a) use of a facility; or
 - (b) provision of a service,designated under paragraph (1) without a permit issued under Regulation 5 is an offence punishable by a fine.
- (8) The –
 - (a) use of a facility; or
 - (b) provision of a service,designated under paragraph (1) by a person permitted to use the facility or to provide the service under a permit issued under Regulation 5 other than in accordance with the terms, conditions and limitations of the permit is an offence punishable by a fine of level 4 on the standard scale.
- (9) An offence under paragraph (8) may be charged by reference to a day or any longer period of time and a person may be convicted of a second offence or subsequent offences under paragraph (8) by reference to any period of time following the preceding conviction for such an offence.

5 Permits

- (1) This Regulation applies where the Harbour Master has designated a facility or service under Regulation 4(1).

- (2) A person who wants to acquire a permit to use the designated facility or to provide the designated service, as the case may be, must apply to the Harbour Master for the permit.
- (3) The application must be made in such form as the Harbour Master may publish.
- (4) The Harbour Master must publish the application and seek comment from those likely to be affected.
- (5) When considering the application the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (6) The Harbour Master must also take into account any relevant –
 - (a) policy of the States as conveyed to the Harbour Master by the Minister; and
 - (b) comments received as a result of publishing the application.
- (7) After considering the application the Harbour Master may –
 - (a) issue the permit;
 - (b) refuse to issue the permit; or
 - (c) issue the permit subject to terms (including terms requiring the payment of fees or charges), conditions and limitations.
- (8) The Harbour Master may at any time –
 - (a) amend the terms, conditions or limitations attached to a permit; or
 - (b) suspend or revoke a permit.
- (9) If the Harbour Master takes any action mentioned in paragraph (7)(b) or (c) or paragraph (8), the Harbour Master must give the applicant for, or holder of, the permit –
 - (a) written reasons for doing so; and
 - (b) notice of his or her right to appeal under paragraph (10).
- (10) The applicant or holder may, within 28 days of receiving those reasons and the notice, appeal to the Royal Court against the action taken by the Harbour Master on the grounds that taking the action was not reasonable in the circumstances.
- (11) The Royal Court may –
 - (a) uphold the action taken by the Harbour Master; or
 - (b) direct the Harbour Master to take such other action as the Court considers appropriate.
- (12) The Harbour Master must comply with the direction.
- (13) In reaching its decision, the Royal Court must take into account the extent to which the Harbour Master has complied with paragraphs (5) and (6).

6 Use of facility or provision of a service by agreement

- (1) For the purposes of Article 4A of the Law, the Harbour Master may designate a facility or a service in a harbour or in territorial waters that may not be used or provided except with and in accordance with an agreement.
- (2) In doing so the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (3) The Harbour Master may but, if required to do so by the Minister, must, publish details of a designation under paragraph (1).
- (4) The Minister may, by written notice, direct the Harbour Master –
 - (a) to amend a designation made under paragraph (1); or
 - (b) to make such a designation,as specified in the direction.
- (5) The Harbour Master must act in accordance with the direction.
- (6) The Minister must lay a copy of any direction given under paragraph (4) before the States Assembly at the first opportunity to do so.
- (7) Where the Harbour Master has designated a facility or service under paragraph (1), the Harbour Master may enter into an agreement with a person that provides for the person to use the facility or to provide the service, as the case may be, in accordance with the agreement (which may include provisions for the payment of fees or charges).
- (8) Before entering into the agreement, the Harbour Master may but, if required to do so by the Minister, must, publish details of the proposed agreement and seek comment from those likely to be affected.
- (9) In negotiating the terms of the agreement the Harbour Master must follow the policy guidelines specified in Schedule 1.
- (10) The Harbour Master must also take into account any relevant –
 - (a) policy of the States as conveyed to the Harbour Master by the Minister; and
 - (b) comments received as a result any publication of the proposed agreement.
- (11) The –
 - (a) use of a facility; or
 - (b) provision of a service,designated under paragraph (1) without an agreement entered into under this Regulation is an offence punishable by a fine.”.

3 Regulation 8 substituted

For Regulation 8 of the principal Regulations there is substituted the following Regulation –

“8 Communication to be made by vessel bound for harbour

- (1) The master of a vessel that –
 - (a) is bound for a harbour in Jersey; and
 - (b) is equipped with a means of communication by radio telephone,
must, on arrival in territorial waters, establish communication with Jersey Coastguard, and maintain the communication until the vessel enters the harbour or leaves territorial waters.
- (2) The master of a vessel that is in territorial waters bound for a harbour in Jersey must, at the first opportunity to do so, inform the Harbour Master of any deficiency or incident that may –
 - (a) decrease the normal safe manoeuvrability of the vessel; or
 - (b) constitute a hazard to the marine environment or adjacent areas, or both.”.

4 Regulation 11 substituted

For Regulation 11 of the principal Regulations there is substituted the following Regulation –

“11 Speed of vessels

- (1) The Harbour Master may issue directions limiting the speed at which vessels may travel in any part of a harbour or of territorial waters.
- (2) The Harbour Master must publish a direction issued under paragraph (1).
- (3) The master of a vessel must comply with any direction published in accordance with this Regulation that is applicable to the vessel.”.

5 Regulation 16 substituted

For Regulation 16 of the principal Regulations there is substituted the following Regulation –

“16 Lost anchors, etc. to be reported

- (1) This Regulation applies if –
 - (a) a vessel within a harbour parts from its anchor;
 - (b) a vessel (other than a small ship) within the territorial water parts from its anchor; or
 - (c) a vessel in a harbour or in territorial waters loses anything overboard that may cause an obstruction on the sea bed.

- (2) The master of the vessel must report the incident to the Harbour Master as soon as possible.
- (3) In this Regulation, ‘small ship’ means a vessel that is less than 24 metres in length when its length is determined in accordance with the Tonnage Regulations.”.

6 Regulation 33 amended

For Regulation 33(b)(iv) of the principal Regulations there is substituted the following sub-clause –

- “(iv) the Harbour Master must ensure that adequate and properly tested fire fighting facilities are provided in the vicinity of any ship loading or unloading explosives,”.

7 Regulation 42 amended

In Regulation 42(1) of the principal Regulations for “arrival in the territorial waters of Jersey” there is substituted “arrival in territorial waters”.

8 Part 7 substituted

For Part 7 of the principal Regulations there is substituted the following Part –

“PART 7

LOADING AND UNLOADING OF GOODS AND EMBARKATION AND DISEMBARKATION OF PASSENGERS

45 Goods

- (1) The Harbour Master may give directions in respect of the loading and unloading of goods on and from a vessel in a harbour.
- (2) The Minister may publish a notice providing that if a person, without the Harbour Master’s permission, allows goods to remain on a harbour in excess of the period specified in the notice the person shall be liable to the charges specified in the notice.
- (3) In addition, if the Harbour Master considers that the goods are interfering with the normal working of the harbour, the Harbour Master may remove them to such other place, within or outwith the harbour, as the Harbour Master thinks fit.
- (4) The Harbour Master may, on behalf of the Minister, recover as a debt due to the Minister from the owner of the goods –
 - (a) any charges incurred under paragraph (2);
 - (b) any expenses incurred in removing the goods under paragraph (3); and
 - (c) any expenses subsequently incurred in storing the goods.

(5) No claim for damages shall lie against the Minister or an officer in an administration of the States for which the Minister is assigned responsibility in connection with the removal or storage of the goods.

(6) If –

- (a) goods have been removed under this Regulation; and
- (b) any charges and expense mentioned in paragraph (4) have not been paid by their owner within 7 days of being demand or if their owner cannot be found,

the Harbour Master may sell the goods and, after deducting the expenses incurred in doing so and any charges and expense mentioned in paragraph (4), pay the proceeds, to the owner or, if the owner cannot be found, into the consolidated fund.

46 Passengers

(1) The Harbour Master may give directions in respect of the embarkation and disembarkation of passengers and their personal baggage on and from a vessel in a harbour.

(2) Except with the permission of the Harbour Master, a person must not board a vessel carrying passengers following its arrival in a harbour until all its passengers have disembarked.

(3) In this Article, ‘passengers’ means the persons carried on a vessel other than –

- (a) a person employed or engaged in any capacity on the business of the vessel; and
- (b) a person on board the vessel either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.”.

9 Regulation 47 amended

Regulation 47 of the principal Regulations is amended by omitting paragraph (3).

10 Regulation 48 substituted

For Regulation 48 of the principal Regulations there is substituted the following Regulation –

“48 Prohibited acts

(1) A person must not in a harbour –

- (a) throw, deposit or put ballast, earth, ashes, stones or other thing into the water;
- (b) throw down, deposit, put or leave refuse of any nature whatsoever;
- (c) leave faeces of a dog for which a person is responsible;
- (d) injure, or deface by writing or otherwise, a wall, building, structure, machinery, statue, erection, seat, railing or other thing;
- (e) behave in a manner reasonably likely to offend against public decency;
- (f) wilfully and unreasonably interfere with the convenience of, or cause annoyance to, another person;
- (g) throw or discharge a stone or missile;
- (h) cause an obstruction to free passage;
- (i) obstruct, impede, resist or assault an officer in an administration of the States for which the Minister is assigned responsibility in the exercise of the officer's duties.

(2) Despite paragraph (1), a person may in a harbour –

- (a) leave refuse in a receptacle provided for the purpose;
- (b) leave dog faeces in a receptacle provide for the purpose;
- (c) discharge ballast water in accordance with the International Maritime Organization's Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens, as stated in resolution A.868(20), as for the time being in force.”.

11 Regulation 50 substituted

For Regulation 50 of the principal Regulations there is substituted the following Regulation –

“50 Penalties and criminal responsibility

- (1) A person who contravenes –
 - (a) a provision of these Regulations; or
 - (b) a direction issued or given under these Regulations,in relation to which no special penalty is provided, is guilty of an offence and is liable to a fine of level 2 on the standard scale.
- (2) Where an offence under these Regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the body corporate to the penalty provided for that offence.

- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.
- (4) A person who aids, abets, counsels or procures the commission of an offence under these Regulations shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (5) Where it is relevant to do so, an offence under these Regulations may be charged by reference to a person's actions during a period of time and the person may be convicted of a second offence or subsequent offences by reference to the same action during a period of time following the preceding conviction for the offence."

12 Schedule 1 substituted

For Schedule 1 to the principal Regulations there is substituted the following Schedule –

“SCHEDULE 1

(Regulations 4, 5 and 6)

POLICY GUIDELINES TO BE FOLLOWED BY HARBOUR MASTER

1 Application

This Schedule applies to the following functions of the Harbour Master –

- (a) the designation of a facility or service under Regulation 4(1);
- (b) the grant of a permit under Regulation 5;
- (c) the designation of a facility or a service under Regulation 6(1); and
- (d) the negotiation of an agreement under Regulation 6(7).

2 Performance of function by Harbour Master

The Harbour Master must perform a function to which this Schedule applies in a manner that is best calculated to ensure that, so far as is reasonably practicable and safe –

- (a) shipping services and facilities in the harbours and territorial waters; and
- (b) shipping services between Jersey and other jurisdictions,

are provided in a manner that achieves the objectives mentioned in paragraph 3.

3 Objectives

The objectives referred to in paragraph 2 are –

- (a) to protect and further the long-term interests of end-users of the services and facilities;
- (b) to satisfy all current and prospective demands for the services and facilities;
- (c) to promote competition, efficiency, economy and effectiveness in commercial activities connected with port and shipping services;
- (d) to impose a minimum of restriction on persons engaged in commercial activities connected with port and shipping services;
- (e) to ensure that persons engaged in commercial activities connected with port and shipping services have sufficient expertise and financial and other resources to conduct the activities.

4 Harbour Master not to show preference or to discriminate

The Harbour Master must not show undue preference or unfairly discriminate in exercising a function to which this Schedule applies.”.

13 Citation and commencement

- (1) These Regulations may be cited as the Harbours (Amendment No. 41) (Jersey) Regulations 2008.
- (2) They come into force 7 days after they are made.

M.N. DE LA HAYE

Greffier of the States

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- ¹ *chapter 19.060*
² *chapter 19.060.60*