

ORDINANCE  
OF THE STATES OF ALDERNEY

ENTITLED

**The Fishing (Alderney) (Amendment) Ordinance, 1980 \***

[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. The authoritative text of the enactment and of the amending instruments may be obtained from the Greffier, The Court of Alderney, Queen Elizabeth II Street, Alderney, GY9 3TB.*

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\* Alderney Ordinance No. I of 1980; as amended by the Uniform Scale of Fines (Alderney) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 306); the Fishing (Amendment) (Alderney) Ordinance, 1988 (Alderney Ordinance No. XIV of 1988); the States Committees (Transfer of Functions) (Alderney) Ordinance, 1997 (Alderney Ordinance No. II of 1997). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Fishing (Conservation of Small Cetaceans) (Alderney) Ordinance, 2000 (Alderney Ordinance No. I of 2000).

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ARRANGEMENT OF SECTIONS

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*(Made on the 5th March, 1980.)*

## **The Fishing (Alderney) (Amendment) Ordinance, 1980**

**THE STATES**, in pursuance of their Resolution of the 5<sup>th</sup> day of March, nineteen hundred and eighty hereby order: –

### **Control of deposit of certain molluscan shellfish.**

**1.** (1) A person shall not deposit in any part of the territorial waters adjacent to this Island or on the foreshore of this Island any molluscan shellfish taken either –

- (a) from any shellfish bed outside the aforesaid territorial waters or foreshore, or
- (b) from any shellfish bed in any area within the aforesaid territorial waters or foreshore as the Committee may, from time to time, by order prescribe where the Committee is satisfied that for the purposes of preventing the spread of disease or pests carried by shellfish it is expedient to make such order,

otherwise than under and in accordance with a licence granted to such person by the Committee under the provisions of this section.

(2) For the purposes of subsection (1) of this section a person shall be taken to deposit shellfish in the territorial waters of this Island if he causes the shellfish to enter those waters, and the reference in that subsection to depositing shellfish on the foreshore of this Island includes a reference to throwing down, dropping or otherwise discharging the shellfish on that foreshore; and if a person discharges in any part of the territorial waters adjacent to this Island or on the

foreshore of this Island any effluent water in which molluscan shellfish have been placed or kept such person shall, for the purposes of the said subsection (1), be taken to have deposited shellfish.

(3) Any person desirous of obtaining a licence under this section shall make application in that behalf to the Committee which shall be in such form and shall be accompanied by such information as the Committee may, from time to time, require.

(4) Upon receipt of an application made in accordance with the provisions of the last preceding subsection for the grant of a licence, the Committee may –

- (a) grant or refuse to grant the licence, or
- (b) grant the licence subject to such conditions as the Committee may think it necessary or expedient to impose.

(5) The Committee may at any time revoke a licence granted under this section and may from time to time revoke or vary any condition attached to such licence.

(6) Every order made under subsection (1) of this section shall be laid before a meeting of the States as soon as may be after the making thereof and if, at that meeting or at the next subsequent meeting, the States resolve that the order be annulled the order shall cease to have effect but without prejudice to anything done thereunder or to the making by the Committee of any new order.

**Notice of refusal to grant a licence and notice of conditions.**

2. Where the Committee refuses to grant a licence under the provisions

of the last preceding section to any person or grants such a licence subject to conditions, notice in writing of such refusal or grant setting out the reasons therefor and signed by the Chairman of the Committee shall be served, as soon as may be, on the applicant for the licence.

**Service of notice.**

3. Any notice which may be served for the purposes of this Ordinance shall be validly served on any person, if delivered to him, left, or sent by registered post or by recorded delivery service to him, at his usual or last known place of abode.

**Appeals.**

4. (1) Any person aggrieved by any decision of the Committee under the provisions of section one of this Ordinance may appeal therefrom to the Court on the grounds that the decision of the Committee was ultra vires or was an unreasonable exercise of its powers.

(2) Any appeal under this section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and which shall be served upon the Chairman of the Committee to show cause why the decision appealed from shall not be set aside or varied.

(3) On any appeal under this section the burden of satisfying the Court that the decision of the Committee which is the subject of the appeal is intra vires or reasonable shall be discharged by the Committee and the Committee shall be entitled to a final right of reply.

(4) The decision of the Court on any appeal under this section shall be final and conclusive.

**[Access to and fishing in territorial waters.**

4A. (1) Subject to the provisions of subsection (4) of this section a

foreign fishing boat shall not enter any part of the territorial waters adjacent to this Island except for a purpose recognised by international law or by any convention for the time being in force in this Island between Her Majesty's Government in the United Kingdom and the government of the country to which the boat belongs; and any such boat which enters those waters for such a purpose –

(a) shall return outside those waters as soon as the purpose has been fulfilled, and

(b) shall not fish or attempt to fish while within those waters.

(2) Subject to the provisions of subsection (4) of this section a foreign fishing boat shall not fish or attempt to fish within any part of the territorial waters adjacent to this Island.

(3) Subject to the provisions of subsection (4) of this section at any time when a foreign fishing boat is within any part of the territorial waters adjacent to this Island, then its fishing gear shall be stowed securely and in such a manner that it shall not be capable of being used for fishing.

(4) Nothing in this section shall affect the operation of any order for the time being in force in this Island made under section 2(1) of the Fishery Limits Act 1976 designating any country outside the United Kingdom, the Channel Islands and the Isle of Man and, in relation to it, areas within any part of the territorial waters adjacent to this Island being part of the British fishery limits in which, and descriptions of fish for which, fishing boats registered in that country may fish.]

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**NOTE**

*Section 4A was inserted by the Fishing (Amendment) (Alderney) Ordinance,*

*1988, section 1(a), with effect from 16th December, 1988.*

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**Powers of Inspection.**

5. (1) An officer of police may –
- (a) detain any person who has committed, or whom he has reasonable cause to suspect of having committed, an offence under any of the provisions of this Ordinance or of the Fishing Ordinances or any order made or any licence granted thereunder,
  - (b) stop, board and enter and search any boat or vehicle used in taking or conveying fish,
  - (c) enter and search any premises used by way of trade for carrying on any business in connection with the treatment, storage or sale of fish,
  - (d) search for and examine any fish, any equipment or other apparatus whatsoever used in taking or conveying fish, or any matter the deposit of which is prohibited or regulated under any of the provisions of this Ordinance or of the Fishing Ordinances or any order made or any licence granted thereunder, in any place, whether on board a boat, in a vehicle or elsewhere, and whether in a receptacle or not,
  - (e) seize any fish which he has reasonable cause to suspect has been landed, taken, bought, sold, offered for sale or is possessed in contravention of any of the provisions of this Ordinance or of the Fishing Ordinances or any

order made or any licence granted thereunder,

- (f) seize any equipment or other apparatus whatsoever which he has reasonable cause to suspect has been used or carried or is being used or carried in contravention of any of the provisions of this Ordinance or of the Fishing Ordinances or any order made or any licence granted thereunder.

(2) The powers conferred in paragraphs (b), (c), (d), (e) and (f) of the last preceding subsection may be exercised by any person authorised in that behalf by the Committee, on production of his authority, if so required.

(3) Any person who obstructs an officer of police or a person authorised as aforesaid in the exercise of any of his powers under subsections (1) or (2) of this section shall be guilty of an offence under this Ordinance.

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**NOTE**

*In accordance with the provisions of the Fishing (Conservation of Small Cetaceans) (Alderney) Ordinance, 2000, respectively section 2(a) and section 2(b), with effect from 1st March, 2000, the references herein to, first, "fish" and, second, "licence" shall be deemed to include references to, respectively, "small cetaceans and basking sharks" and "a licence under the 2000 Ordinance".*

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**Offences and penalties.**

6. (1) Any person who contravenes or attempts to contravene any of the provisions of this Ordinance or of the Fishing Ordinances or any order made or any of the conditions of any licence granted thereunder shall be guilty of an offence under this Ordinance.

(2) Where a person has been convicted of an offence under this

Ordinance or the Fishing Ordinances involving the use of a fishing boat, every person who, the time of the commission of the offence, was on board such boat or was the master, the owner or the charterer (if any) of such boat, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(3) Any person guilty of an offence under this Ordinance or the Fishing Ordinances shall be liable, on conviction, to a fine not exceeding [level 4 on the Alderney uniform scale] or imprisonment for a term not exceeding three months or to both such fine and imprisonment and the Court may, in addition, order the seizure, destruction or other disposal of the fish, net or any diving apparel or other equipment whatsoever to which the conviction relates at the expense of the convicted person.

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**NOTES**

*In section 6, the words and figure in square brackets in subsection (3) were substituted by the Uniform Scale of Fines (Alderney) Law, 1989, section 2(2), with effect from 1st October, 1989.<sup>1</sup>*

*In accordance with the provisions of the Fishing (Conservation of Small Cetaceans) (Alderney) Ordinance, 2000, respectively section 2(a) and section 2(b), with effect from 1st March, 2000, the references herein to, first, "fish" and, second, "licence" shall be deemed to include references to, respectively, "small cetaceans and basking sharks" and "a licence under the 2000 Ordinance".*

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**Offences by bodies corporate.**

7. Where an offence under this Ordinance or the Fishing Ordinances which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable

to be proceeded against and punished accordingly.

**Interpretation.**

8. (1) In this Ordinance and in the Fishing Ordinances, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

**"the Committee"** means the Committee appointed by the States for the purposes of this Ordinance,

**"the Court"** means the Court of Alderney,

**"fish"** means fish of any kind found in the sea, whether alive or dead, including shellfish, and any part of any such fish and the expression **"fishing"** shall be construed accordingly,

**"fishing boat"** means a vessel of whatever size, and in whatever way propelled, which is for the time being used in fishing,

**"the Fishing Ordinances"** means the Alderney Control of Fishing, etc. Ordinance, 1957 and the Fishing (Alderney) Ordinance, 1967,

[ **"foreign fishing boat"** means a fishing boat which is not –

- (a) registered in the United Kingdom, the Channel Islands or the Isle of Man, or
- (b) exempted from registration by regulations under section 373 of the Merchant Shipping Act 1894, or
- (c) owned wholly by a person who is (within the meaning

of the Merchant Shipping Act 1894) qualified to own a British ship,]

**"this Island"** means any of the Islands of Alderney, Burhou, Little Burhou and the Casquets and includes the islets and rocks and the territorial waters adjacent thereto,

**"molluscan shellfish"** means molluscan shellfish [or] any kind, whether alive or dead, and includes any part of a molluscan shellfish and any, or any part of any brood, ware, half-ware, spat or spawn of such shellfish and the shell or any part of the shell thereof,

**"net"** means any net (not being a purse-seine net or a ring net) constructed to take fish whilst being towed or hauled through the sea, whether on or near the bottom of the sea or otherwise, by or from a fishing boat,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey or a member of any police force which may be established by the States of Alderney,

**"shellfish"** includes crustaceans and molluscs of any kind and any spat or spawn of shellfish,

**"shellfish bed"** means any bed or ground in which shellfish are usually found or which is used for the propagation or cultivation of shellfish,

**"submarine breathing apparatus"** includes the apparatus commonly known as a **"snorkel"** and any other diving device whatsoever,

**"vehicle"** means a mechanically propelled vehicle intended or adapted for use on a public highway and includes a trailer drawn thereby, an animal

drawn vehicle, a hand drawn vehicle, a bicycle and a tricycle,

"vessel" includes any ship or boat or any other description of vessel used in navigation.

(2) Any reference in this Ordinance to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced extended or applied by or under any other enactment including this Ordinance.

(3) The Interpretation (Guernsey) Law, [1958]<sup>a</sup>, shall apply to the interpretation of this Ordinance as it applies to the interpretation of a Guernsey enactment.

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#### NOTES

*In section 8, the definition of the expression "foreign fishing boat" in subsection (1) was inserted by the Fishing (Amendment) (Alderney) Ordinance, 1988, section 1(c), with effect from 16th December, 1988.*

*The functions of the Committee under this Ordinance were transferred to the General Services Committee by the States Committees (Transfer of Functions) (Alderney) Ordinance, 1997, section 2, Schedule 2, Part II, paragraph 17, with effect from 2nd April, 1997, subject to the savings and transitional provisions in section 3 of the 1997 Ordinance.*

*In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.*

*Section 373 of the Merchant Shipping Act 1894, as it applies to the Bailiwick of Guernsey, has since been repealed by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296, Schedule 10, Part I, with effect from 1st February, 2009, subject to, first, the savings and transitional provisions in section 296 of, and Schedule 11 to, the 2002 Law and, second, the savings in*

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<sup>a</sup> Ordres en Conseil Vol. XIII, p. 355.

*section 4 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009.*

*The Merchant Shipping Act 1894, in so far as it applies to the Bailiwick of Guernsey, is prospectively repealed by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 296, Schedule 10, Part I, save for –*

- (i) Part I, sections 371, 373, 374, 487–491, 503(2), 724–727, 745 of, and the First, Second and Third Schedules to, the Act, repealed by the aforesaid section 296, Schedule 10, Part I, as brought into force by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2009, section 2(a), with effect from 1st February, 2009 and subject to, first, the savings and transitional provisions in section 296(3) of, and Schedule 11 to, the 2002 Law and, second, the savings provisions in section 4 of the 2009 Ordinance;*
- (ii) Part II of the Act (excluding sections 251-258), repealed by the aforesaid section 296, Schedule 10, Part I, as brought into force by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2013, section 2(a), with effect from 4th February, 2013 and subject to, first, the savings and transitional provisions in section 296(3) of, and Schedule 11 to, the 2002 Law and, second, the savings in section 5 of the 2013 Ordinance; and*
- (iii) Part VIII of the Act, repealed by the aforesaid section 296, Schedule 10, Part I, as brought into force by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2012, section 2(a), with effect from 1st October, 2012 and subject to, first, the savings and transitional provisions in section 296(3) of, and Schedule 11 to, the 2002 Law and, second, the savings in section 3 of the 2012 Ordinance.*

*In the printed version of this section,*

*the word in square brackets in the definition of the expression "molluscan shellfish" in subsection (1) shown, incorrectly, as "or" should read "of";*

*the date in square brackets in subsection (3) shown, incorrectly, as "1958" should read "1948".*

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### **Repeals.**

**9.** Section three of the Alderney Control of Fishing etc. Ordinance, 1957 and sections two, three and five of the Fishing (Alderney) Ordinance, 1967, are

hereby repealed.

**Construction.**

10. This Ordinance and the Fishing Ordinances shall be construed as one.

**Citation.**

11. This Ordinance may be cited as the Fishing (Alderney) (Amendment) Ordinance, 1980.

**Collective title.**

12. This Ordinance and the Fishing Ordinances may be cited together as the Fishing (Alderney) Ordinances, 1957 to 1980.

**Commencement.**

13. This Ordinance shall come into force on the 6<sup>th</sup> day of March, nineteen hundred and eighty.

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**1** These words were previously substituted by the Fishing (Amendment) (Alderney) Ordinance, 1988, section 1(b), with effect from 16th December, 1988.