

Island of Guernsey

Ordinance of the States **XI**

1978

Made 31st May, 1978.
Came into Operation ... 31st May, 1978.

The Fishing (Escallops) (Licensing of Diver) Ordinance, 1978

ARRANGEMENT OF SECTIONS

Section

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SCHEDULE:

Fees payable in respect of the grant or renewal of licence.

The Fishing (Escallops) (Licensing of Diver) Ordinance, 1978

THE STATES, in pursuance of their Resolution of the twenty-ninth day of March, nineteen hundred and seventy-eight, hereby order:—

1. Subject to the succeeding provisions of this Ordinance, a person shall not take by diving any scallop in the territorial waters adjacent to the Islands of Guernsey, Herm and Jethou (hereinafter referred to as “the controlled waters”) unless such person is the holder of a licence granted under the provisions of the next succeeding section authorising him to take by diving scallops:

Prohibition on the taking by diving of scallops without licence.

Provided that it shall not be an offence for a person to take by diving any scallop without complying with the provisions of this section if such person can prove that he did not take by diving such scallop—

- (i) during any period in which, or within any part of the controlled waters in which, the taking of scallops is prohibited by any enactment for the time being in force in this Island relating to fishing; and
- (ii) otherwise than—
 - (a) while using an apparatus known as a “snorkel”; and
 - (b) for consumption by himself or a member of his household.

2. (1) Any person desirous of obtaining a licence to take by diving scallops shall make application in that behalf to the Committee and such application shall be in such form and accompanied by such information as the Committee may, from time to time, require.

Licences for the taking by diving of scallops.

(2) The Committee may upon receipt of an application under the provisions of the last preceding subsection—

- (a) grant the licence applied for; or
- (b) refuse to grant such licence; or
- (c) grant such licence subject to such conditions as the Committee may consider it necessary or expedient to impose.

(3) Any person who is the holder of a licence granted under the provisions of this section shall not take by diving any scallop in the controlled waters otherwise than under and in accordance with such licence.

Factors to be taken into account by the Committee.

3. (1) In deciding whether or not, in the exercise of its powers under the provisions of the last preceding section, to grant the licence applied for the Committee shall take into account the welfare of the fishing industry in this Island and of the persons engaged in it and the experience and fitness as a diver of the person making the application.

(2) Nothing in the last preceding subsection contained shall be taken to preclude the Committee in deciding whether or not, in the exercise of its powers under the provisions of the last preceding section, to grant the licence applied for from taking into account such other factors as the Committee may, from time to time, deem necessary or expedient.

Period of validity and extent of licences.

4. (1) Subject to the provisions of the next succeeding subsection and unless suspended or forfeited under the provisions of section fourteen of this Ordinance a licence granted under the provisions of section two of this Ordinance shall be valid until the thirty-first day of March next following the date of such grant and thereafter, upon being renewed

in pursuance of the provisions of section five of this Ordinance, shall be valid during the period commencing on the first day of April in any year and ending on the thirty-first day of March next following, both dates inclusive.

(2) A licence granted under the provisions of section two of this Ordinance shall not be deemed to be valid under this Ordinance for the taking by diving of any scallop during any period in which, or within any part of the controlled waters in which, the taking of scallops is prohibited by any enactment for the time being in force in this Island relating to fishing and any person who is the holder of a licence granted under the provisions of the said section two shall not take by diving any scallop during any such period, or within any such part of the controlled waters, as is prohibited under any such enactment.

5. (1) A licence granted in pursuance of the provisions of section two of this Ordinance may be renewed in any year by the Committee for the period specified in the last preceding section upon an application being made to it in that behalf on or before the thirty-first day of March of that year.

Renewal of
licences.

(2) The provisions of this Ordinance with respect to an application for a licence under section two of this Ordinance, to the grant or refusal of such licence and to the factors to be taken into account by the Committee under section three of this Ordinance shall apply to an application for the renewal of a licence under the provisions of the last preceding subsection.

6. There shall be paid in advance to the Treasurer of the States in respect of the grant or renewal of any

Fees for
licences.

licence under this Ordinance the fee set out in relation thereto in the Schedule to this Ordinance.

Records and information.

7. (1) Every person who is the holder of a licence granted under section two of this Ordinance shall keep for such period as shall, from time to time, be determined by the Committee, a record in writing in such form and containing such particulars relating to the exercise by such person of his licence under this Ordinance, as the Committee may, from time to time require, and every such record shall at all times be open to inspection by any person authorised in writing in that behalf by the Committee, on production of his authority if so required.

(2) Any person who is the holder of a licence granted under section two of this Ordinance shall, if so required by notice in writing by the Committee, furnish to the Committee or to such person as may be specified in such notice, within such time as shall be specified in such notice, a true statement of all or such of the particulars required to be kept under the provisions of the last preceding subsection as regards such date or dates or such period or periods as shall be specified in such notice.

Require-
ments as to
production
of licences.

8. An officer of police or any person authorised in writing in that behalf by the Committee, on production of his authority if so required, may require any person whom he reasonably suspects of preparing to take or having taken by diving any scallop in the controlled waters—

- (a) to give his name and address; and
- (b) where such person is the holder of a licence granted under the provisions of section two of this Ordinance, to produce his licence;

and if he fails so to give such information and, where the provisions of paragraph (b) of this section are applicable, in addition fails to produce his licence, he shall be guilty of an offence:

Provided that where the provisions of paragraph (b) of this section are applicable, if such person within seven days after the date on which the production of his licence was so required produces the licence in person at the Police Station, he shall not be convicted of an offence under this subsection by reason only of failure to produce his licence to the officer of police or to such authorised person, as the case may be.

9. Where the Committee refuses to grant a licence under any of the provisions of this Ordinance 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 President of the Committee shall be served, as soon as may be, on the applicant for the licence.

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

10. 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.

Service of notices.

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

Appeals.

(2) An 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 President of the Committee to show cause why the decision appealed from should not be set aside or varied.

(3) On any appeal under this section the burden of satisfying the Royal 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 Royal Court on any appeal under this section shall be final and conclusive.

Powers of
officers of
police and of
authorised
persons.

12. (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 any licence granted thereunder;
- (b) stop, board and enter and search any boat or vehicle reasonably suspected by him of being used in the taking or conveying of any escallop;
- (c) enter and search any premises used for carrying on any business in connection with the treatment, storage or sale of any escallop;
- (d) search for and examine any escallop, any equipment or other apparatus whatsoever used in the taking or conveying of any escallop, in any place, whether on board a boat, in a vehicle or elsewhere, and whether in a receptacle or not;
- (e) seize any escallop which he has reasonable cause to suspect has been taken in contravention of any of the provisions of this

Ordinance or any licence granted thereunder;

- (f) seize any equipment or other apparatus whatsoever which he has reasonable cause to suspect has been used or is being used in contravention of any of the provisions of this Ordinance 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.

13. If any person—

Offences.

- (a) does any act in contravention of any of the provisions of this Ordinance or of the conditions of any licence granted thereunder; or
- (b) fails to do any act which he is required to do under the terms of any notice served or of the conditions of any of the provisions of this Ordinance or under any licence granted thereunder; or
- (c) in connection with any application for the grant or renewal of a licence under any of the provisions of this Ordinance, knowingly makes any false statement or recklessly makes any statement which is false in a material particular or produces or furnishes any information which he knows or believes to be false; or
- (d) knowingly fails to produce any licence or keep any record or furnish any information which he is required to produce or keep

or furnish under any of the provisions of this Ordinance; or

- (e) wilfully obstructs any officer of police or any person duly authorised by the Committee in the exercise of any of their powers under any of the provisions of this Ordinance;

he shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment and the Court may, in addition, order the seizure, destruction or other disposal of the escallop and of any equipment or other apparatus whatsoever used in connection with the taking of such escallop to which the conviction relates at the expense of the convicted person.

Power of
the Royal
Court to
order forfeit-
ure etc. of
licence.

14. Where a person who is the holder of a licence granted under the provisions of section two of this Ordinance has been convicted of an offence under any of the provisions of this Ordinance the Royal Court may, upon an application in that behalf by Her Majesty's Procureur made not later than six months from the date of such conviction—

- (a) suspend, vary or order the forfeiture of his licence;
- (b) order that such person shall not be authorised to obtain any licence under this Ordinance for an indefinite period or for such period as the Royal Court may in such order prescribe;

and in such a case Her Majesty's Procureur shall summon the person named in the application to appear before the Royal Court to show cause why

his licence should not be suspended, varied or forfeited and to show cause why the Royal Court should not order that he should not be authorised to obtain any licence under this Ordinance.

15. (1) In this Ordinance, except where the context otherwise requires, the following expressions have the meanings respectively assigned to them, that is to say:—

Interpreta-
tion.

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

“the Committee” means the States Sea Fisheries Committee;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“officer of police” means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;

“submarine breathing apparatus” includes the apparatus commonly known as a “snorkel” and any other diving device whatsoever;

“taking by diving” in relation to any scallop means to gain possession or control of such scallop by a person while he is totally submerged and breathing with the aid of submarine breathing apparatus or wearing a diving suit, a face visor, a mask or goggles and the expression “the taking by diving”, “taken by diving”, “diver” and “diving” shall be construed accordingly;

“this Island” means any of the Islands of Guernsey, Herm and Jethou and includes the islets

and rocks and the territorial waters adjacent thereto;

“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.

Exemptions. 16. The provisions of this Ordinance shall not apply—

- (a) to a servant or agent of the Committee when acting for or on behalf of the Committee;
- (b) to any act done for the purpose of scientific investigation or for re-stocking the controlled waters with any scallop by a person approved by the Committee.

Savings. 17. The provisions of this Ordinance shall not in any way affect the operation of any enactment for the time being in force in this Island relating to fishing except in so far as inconsistent with this Ordinance and the provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any such other enactment.

Repeals. 18. The Fishing by Diving (Licensing) Ordinance, 1975(a) and the Fishing by Diving (Licensing) (Amendment) Ordinance, 1976(b), are hereby repealed.

19. This Ordinance shall have effect in the Islands Extent.
of Guernsey, Herm and Jethou.

20. This Ordinance may be cited as the Fishing Citation.
(Escallops) (Licensing of Diver) Ordinance, 1978.

SCHEDULE Section six

Fees payable in respect of the grant or renewal of
licence

Licence for taking by diving of escallops

Grant of licence	£1
Renewal of licence	£1

R. H. VIDELO,
Her Majesty's Greffier.

(a) Recueil d'Ordonnances Tome XX, p. 1.
(b) Recueil d'Ordonnances Tome XX, p. 441.