

**The Merchant Shipping (Passenger Ships) (Bailiwick of
Guernsey) Regulations, 2013**

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| <i>Made by the Public Services Department</i> | <i>11th December, 2012</i> |
| <i>Made by the General Services Committee</i> | <i>19th December, 2012</i> |
| <i>Made by the Harbours and Pilotage Committee</i> | <i>4th January, 2013</i> |
| <i>Coming into operation</i> | <i>4th February, 2013</i> |

THE STATES OF GUERNSEY PUBLIC SERVICES DEPARTMENT, THE STATES OF ALDERNEY GENERAL SERVICES COMMITTEE, and THE CHIEF PLEAS OF SARK HARBOURS AND PILOTAGE COMMITTEE, in exercise of the powers conferred on them by sections 45, 46, 80, 81, 286 and 289 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^a, and all other powers enabling them in that behalf, hereby make the following Regulations:-

PART I

SAFETY CERTIFICATES AND EXEMPTIONS

General restriction on passenger ships.

1. No ship may carry more than 12 passengers on a voyage that starts and ends within the Bailiwick unless -

^a Order in Council No. VIII of 2004; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (a) a Passenger Ship Safety Certificate (a "Certificate") has been issued in respect of it by the Department under these Regulations,
- (b) the Department has issued an exemption in respect of it under these Regulations (an "Exemption"), or
- (c) it is a tender or lifeboat transferring passengers to or from a cruise liner that is in Guernsey waters for under 72 hours.

Ships in respect of which a Certificate may be issued.

2. (1) The Department may issue a Certificate in respect of a ship if

- (a) it is a Guernsey ship, and
- (b) a certificate of survey complying with paragraph (2) has been issued in respect of it.

- (2) A certificate of survey complies with this paragraph if it –

- (a) records that the ship was surveyed against the relevant United Kingdom construction standards, and
- (b) is issued by the MCA, or by a Classification Society or Certifying Authority approved for this purpose by the Department.

Certificates: restrictions and conditions, etc.

3. (1) Subject to paragraph (2), a Certificate may contain such restrictions and conditions governing the use of the ship in respect of which it is

issued and the number of passengers that may be carried, and relating (directly or indirectly) to safety and health, as the Department thinks fit, including (for the avoidance of doubt) provisions relating to any matter referred to in section 80(5) of the Law.

(2) Without prejudice to the generality of the foregoing, such restrictions and conditions may relate to -

- (a) the crew to be carried by the ship (and for the avoidance of doubt different requirements may be made in this regard in respect of different times of day, times of year, and weather conditions),
- (b) the carriage of passengers during the hours of darkness,
- (c) the carriage of passengers in specified weather conditions,
- (d) the stowage of cargo and luggage,
- (e) restrictions on, or the prohibition of, the towing of other craft,
- (f) requirements to notify a specified person or persons of damage to the ship or specified events,
- (g) the carriage, and maintenance, of navigational, life-saving, fire-fighting and other types of equipment,
- (h) permitted areas of operation,

- (i) requirements to relay specified information (including, but not limited to, passenger and crew numbers) within a specified period or periods to specified persons, and
- (j) restrictions on the carriage of dangerous and other specified types of goods, and in this regard reference may be made to the requirements of the IMDG Code.

Certificates to be displayed.

4. A Certificate issued in respect of a ship must be displayed on board that ship in a prominent position in the public area.

Validity, variation, suspension and cancellation of Certificates.

5. (1) A Certificate shall be issued for a period of one year, or such shorter period as the Department thinks fit; and a person to whom a Certificate has been issued may apply to the Department to renew it at any time within six weeks before its expiry.

(2) A Certificate may be varied by the Department at any time, both as regards the period of its validity and its terms.

(3) If the Department has reason to believe that a restriction, condition, or other provision contained in a Certificate has been contravened, or otherwise has reason to believe that a ship is or may be unsafe to carry passengers, it may suspend or cancel a Certificate.

(4) The suspension of a Certificate under paragraph (3) must be for a specified period of up to three months; and the Department may provide that the suspension shall be lifted before the end of that period if it is satisfied that a specified action or actions has been taken in respect of the ship in question.

(5) The variation, suspension and cancellation of a Certificate

shall be made by notice in writing.

(6) For the avoidance of doubt, paragraphs (3) and (4) are without prejudice to the provisions of Part V (Offences).

Ships in respect of which an Exemption may be issued.

6. The Department may issue an Exemption in respect of a ship if –
- (a) it is not a Guernsey ship, and
 - (b) the Department is satisfied that it conforms to standards equivalent to the relevant United Kingdom construction standards.

Provisions relating to Exemptions.

7. (1) An Exemption–
- (a) must be in writing,
 - (b) may be in respect of a specified period of time not exceeding one year, or may be in respect of one or more specified journeys,
 - (c) may contain such conditions and restrictions as the Department thinks appropriate, as if it were a Certificate, and
 - (d) may be varied, suspended (for any period) or cancelled at any time by the Department at its absolute discretion; and for the avoidance of doubt, no appeal lies against a decision to vary or cancel an Exemption.

(2) The variation, suspension and cancellation of an Exemption shall be made by notice in writing.

Application forms, renewals and fees.

8. (1) An application for a Certificate or an Exemption, or for the renewal of a Certificate, shall be in such form and require the provision of such information as the Department may from time to time direct.

(2) An Exemption may not be renewed, and an application for an Exemption for a ship in respect of which an Exemption has previously been issued may not be made until four weeks after the expiry of that previous Exemption.

(3) There shall be payable on the application for the issue of a Certificate or an Exemption, or the renewal of a Certificate, a fee in the sum of £25.

PART II
LOCAL CREWING LICENCES

Local crewing licences.

9. (1) Subject to the provisions of this and the following regulation, the Department may continue to issue Man-in-Charge licences and Engineer licences, subject to –

- (a) the passing of such examinations,
- (b) the completion of such forms,
- (c) the provision of such information,
- (d) the satisfaction of such other criteria,

as it may from time to time direct.

(2) A licence issued under paragraph (1) is referred to in these Regulations as a "**local crewing licence**", and the holder of such a licence may be referred to as a locally qualified Man-in-Charge or a locally qualified Engineer, as the case may be.

(3) A local crewing licence may contain such conditions and restrictions as the Department thinks fit.

Local crewing licences: fees.

10. (1) The fees set out in paragraph (2) shall be payable before –

- (a) an examination may be taken, and
- (b) a local crewing licence may be issued,

and for the avoidance of doubt, fees paid in respect of the taking of an examination shall not be refunded if the examination is failed.

(2) The fees referred to in paragraph (1) are –

- (a) £200 in respect of the taking of a Man-in-Charge examination,
- (b) £100 in respect of the taking of an Engineer examination, and
- (c) £25 in respect of the issue of a local crewing licence.

Validity, variation, suspension and cancellation of local crewing licences.

11. (1) A local crewing licence shall be issued for a period of one year, or such shorter period as the Department thinks fit.

(2) A local crewing licence may be varied by the Department at any time, both as regards the period of its validity and its terms.

(3) If the Department has reason to believe that a restriction or condition contained in a local crewing licence has been contravened, or that it is otherwise necessary in the interests of safety, it may vary the period of a local crewing licence's validity, or its terms, or suspend or cancel it.

(4) The suspension of a local crewing licence under paragraph (3) may be for any period; and the Department may provide that the suspension shall be lifted before the end of that period if it is satisfied that the interests of safety no longer require its suspension.

(5) For the avoidance of doubt, paragraphs (3) and (4) are without prejudice to the provisions of Part V (Offences).

PART III

GENERAL SAFETY PROVISIONS

General safety provisions governing passenger ships.

12. (1) The provisions of this Part apply to each ship in respect of which a Certificate or Exemption has been issued under these Regulations.

(2) The ship must carry and properly maintain an automatic identification system (AIS) and radar, each of which must comply with the standards set out in the Safety Code, and a chart plotter of a type that is approved by the Department from time to time.

(3) The master of the ship must maintain a log in a form approved by the Harbourmaster in which shall be recorded -

- (a) the date and time of departure and arrival of each voyage and the number of persons on board,
- (b) the time at which Guernsey Coastguard was informed of the proposed departure or the arrival of the ship,
- (c) the time and the cause of any stoppages which may take place on the voyage,
- (d) the time of and the reason for any deviation from the most safe direct route between the port of departure and the destination which had been notified to Guernsey Coastguard before the commencement of the voyage, and
- (e) any other matter relevant to the safe navigation of the vessel, and
- (f) any other matter relevant to the safety of passengers.

(4) The master must produce to the Harbourmaster on request the log maintained under this regulation.

(5) The ship must at all times be kept clean and free from refuse.

Continuing responsibilities of the master and owner.

13. (1) The owner and the master of the ship must ensure that -

- (a) the structure of the ship is maintained in a satisfactory condition fit for the purpose for which the ship is intended; and

- (b) the requirements of regulation 12,

are and continue to be met.

(2) The owner and the master of the ship must ensure that after any survey of the ship has been completed no change, except by way of direct replacement, is made to the ship or to any of the machinery, arrangements, appliances, systems, equipment or other matters covered by the survey of the ship, without the approval of a surveyor appointed for this purpose by the Department or by an organisation approved under regulation 2(2)(b).

(3) Whenever an accident occurs to, or a defect is discovered in the ship, and the safety of the ship is affected thereby, the owner and the master must report that accident or defect at the earliest opportunity to the Department and the body that issued the certificate of survey in respect of the ship.

PART IV

INTERNAL REVIEWS AND APPEALS

Internal review.

14. (1) A person aggrieved by any of the following decisions of the Department may request the Chief Officer to review it -

- (a) a decision to cancel a Certificate or local crewing licence,
- (b) a decision to impose restrictions or conditions in a Certificate or local crewing licence,
- (c) a decision to suspend a Certificate, or

(d) a decision to issue a Certificate for a period shorter than a year.

(2) A request under this regulation must be made within 28 days of the decision concerned.

(3) The only grounds for a review under this regulation are that –

(a) the decision was ultra vires or there was some other error of law;

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(4) Upon receiving a request the Chief Officer may, if he considers it appropriate stay the decision concerned pending his review.

(5) Subject to paragraph (6), within 28 days of receiving a request the Chief Officer must determine the review by either or both –

(a) confirming the decision in whole or in part,

(b) setting the decision aside in whole or in part, and remitting the matter to the Department with such directions as he thinks fit, and

he must give notice in writing to the aggrieved person stating his decision and the reasons for it.

(6) The Chief Officer may refuse to consider a request if he considers it to be frivolous or vexatious, or to have been made outside the 28 day period specified in paragraph (2).

(7) The Chief Officer may delegate his functions under this regulation to another officer in the Department who had no involvement in the making of the decision concerned; and the Chief Officer must so delegate those functions if he had any involvement in the making of that decision himself.

Appeals.

15. (1) A person aggrieved by a decision of the Department described in regulation 14(1) may appeal to the Court if he has made a request under that regulation that the Chief Officer review it, and the Chief Officer (or an officer delegated by him under regulation 14(7)) has -

- (a) determined that review by confirming the decision in whole or in part, or
- (b) refused to consider the request under regulation 14(6).

(2) The grounds of an appeal under this regulation are those grounds set out in regulation 14(3).

(3) An appeal under this regulation shall be instituted -

- (a) within a period of 14 days immediately following the date of the notice of the decision, and

- (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.
- (4) On an appeal under this regulation the appellant shall have the final right of reply.
- (5) On an appeal under this regulation the Court may -
 - (a) set the decision of the Department aside and, if the Court considers it appropriate to do so, remit the matter to the Department with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

PART V

OFFENCES

Breaches of conditions, etc.

16. (1) Where a Certificate or Exemption has been issued in respect of a ship, and there has been a contravention of or failure to comply with -

- (a) a condition, restriction or other provision in the Certificate or Exemption (as the case may be), or
- (b) any provision of Part III,

then -

- (i) the master and owner of the ship, and

- (ii) any other person who contravened or failed to comply with, or who caused the contravention of or failure to comply with (as the case may be) the relevant provision,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(2) A person who breaches a restriction or condition in a local crewing licence issued to him is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(3) It shall be a defence for a person charged with an offence under paragraph (1) to show that he took all reasonable steps to avoid the offence being committed.

Drink and drugs.

17. (1) This regulation applies to the master and crew of a ship in respect of which a Certificate or Exemption has been issued (in this regulation, "**the ship**").

(2) It is an offence for a person to whom this regulation applies to be on board the ship when it is under way and has one or more passengers on board, when that person is unfit to fulfil his duties as master or crew member (as the case may be) through drink or drugs.

(3) For the purposes of paragraph (2) of this regulation, a person shall be taken to be unfit to fulfil his duties at any time when his ability to fulfil those duties properly is impaired.

(4) For the avoidance of doubt, in this regulation "**crew**" includes, but is not limited to, persons who hold a local crewing licence.

(5) Subject to paragraph (6), a person who commits an offence under this regulation is liable on summary conviction to a month's imprisonment, or a fine, or both.

(6) The master of a ship who commits an offence under this regulation is liable on summary conviction to three months' imprisonment, or a fine, or both.

Failure to surrender documents.

18. (1) The Department may require that a Certificate, Exemption or local crewing licence, which has expired or has been suspended or cancelled, is to be surrendered within such time and in such manner as it may direct, by notice in writing made to -

- (a) the owner, charterer or master of the ship in respect of which the Certificate or exemption has been issued, or
- (b) the person to whom the local crewing licence has been issued,

as the case may be.

(2) It is an offence for a person to fail to surrender a Certificate, Exemption or local crewing licence within the time and in such manner specified, where required to do so under this regulation.

(3) It shall be a defence for a person charged with an offence under paragraph (2) to show that the Certificate, Exemption or local crewing licence in question is not, and was not at the time he received the notice in writing in question under paragraph (1), in his possession or in his control.

(4) A person who is convicted of an offence under this regulation is liable on summary conviction to a a fine not exceeding level 5 on the uniform scale.

PART VI SUPPLEMENTAL

Transitional provisions.

19. (1) Notwithstanding the repeal of the Passenger Vessels (Bailiwick of Guernsey) Ordinance, 1970^b made by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2013, a passenger certificate issued by the Department before the date of the coming into force of these Regulations, and in force on that date, shall be treated as a Certificate issued under these Regulations, and valid as such until the date of expiry specified on its face.

(2) A Man-in-Charge licence or Engineer licence issued by the Department before the date of the coming into force of these Regulations, and in force on that date, shall be treated as an equivalent licence issued under these Regulations, and valid as such until the date of expiry specified on its face.

Definitions and interpretation.

20. (1) In these Regulations, unless the context otherwise requires -

"**the Bailiwick**" means the Bailiwick of Guernsey;

"**the Court**" means the Royal Court of Guernsey sitting as an Ordinary Court;

"**Chief Officer**" means the Chief Officer of the Department;

^b Recueil d'Ordonnances Tome XVI, p. 516; as amended by the Tome XIX, p. 268; Tome XXVI, p. 469; Tome XXIX, p. 406.

"cruise liner" means a passenger vessel, used commercially for pleasure cruises, that is not a Guernsey ship;

"darkness" means the time between one hour after sunset on any day and one hour before sunrise on the day next following;

"the Department" means the States of Guernsey Public Services Department;

"Guernsey ship" has the meaning given in section 80(4) of the Law;

"the IMDG Code" means the International Maritime Dangerous Goods Code issued by the International Maritime Organisation, as amended from time to time;

"the Law" means the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, as amended;

"the MCA" means the Maritime and Coastguard Agency of the United Kingdom;

"the relevant United Kingdom construction standards" means those provisions of -

- (a) the Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998^c relating to ships in Classes VI and VI(A) (as defined in those Regulations), and

^c UK S.I.1998 No. 2515

- (b) Merchant Shipping Notices issued by the MCA relating to construction, inspection and survey standards for ships in those Classes,

both as amended from time to time, and

"the Safety Code" means the Safety Code for Passenger Ships operating solely in UK categorised waters set out in Merchant Shipping Notice 1823 (M) issued by the MCA, as amended from time to time.

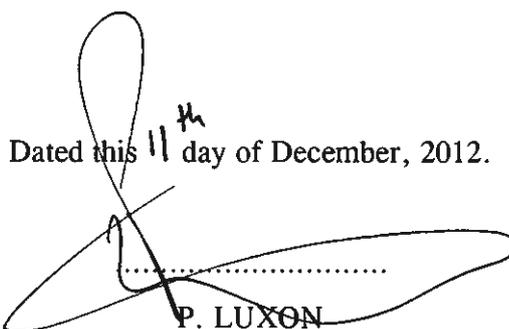
(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of these Regulations as if they were an enactment.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

21. These Regulations may be cited as the Merchant Shipping (Passenger Ships) (Bailiwick of Guernsey) Regulations, 2013 and shall come into force on 4th February, 2013.

Dated this 11th day of December, 2012.



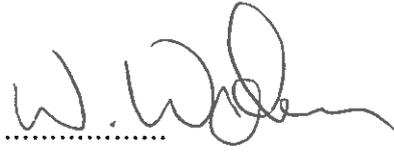
P. LUXON

Minister

For and on behalf of the Public Services Department

^d Ordres en Conseil Vol. XIII, p. 355.

Dated this 19th day of December, 2012.

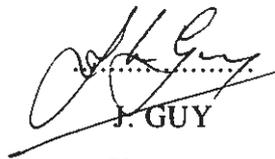
A handwritten signature in black ink, appearing to read 'W. Walden', written over a dotted line.

W. WALDEN

Chairman

For and on behalf of the General Services Committee of the States of Alderney

Dated this 4th day of January, 2013.

A handwritten signature in black ink, appearing to read 'J. Guy', written over a dotted line.

J. GUY

Chairman

For and on behalf of the Harbours and Pilotage Committee of the Chief Pleas of
Sark

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations are made under Part III (Masters and Seamen) and Part IV (Safety) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002. They introduce a modern regulatory regime governing the operation of passenger ships operating exclusively within the Bailiwick, imposing appropriate safety, manning and construction standards. They also contain provisions relating to local crewing licences, a system of internal reviews and appeals, and introduce several offences, including an offence relating to the master or a crew member of a passenger ship being unfit to fulfil his duties through drink or drugs.

These Regulations replace the Passenger Vessels (Bailiwick of Guernsey) Ordinance, 1970, which is repealed by the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2013.