

ORDINANCE OF THE CHIEF PLEAS

ENTITLED

The Scallops (Sark) Ordinance, 1998 *

[CONSOLIDATED TEXT]

NOTE

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* No. 111; as amended by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017 (Sark Ordinance No. I of 2017). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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(Approved by Chief Pleas on 21st January, 1998.)

The Scallops (Sark) Ordinance, 1998

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 21st day of January, 1998, hereby order: –

Interpretation.

1. (1) In this Ordinance, except where the context requires otherwise –

"close season" means the period commencing on the 20th October in each year and ending on the 20th March next following, both days inclusive,

"the Committee" means the Sark [Agriculture, Environment, Sea Fisheries & Pilotage Committee],

"the Constable" includes the Vingtenier, the Assistant Constable (Sea Fisheries) and any duly authorised member of the salaried police force of the Island of Guernsey,

"contravention" includes failure to comply, and related expressions shall be construed accordingly,

"Court" means the Court of the Seneschal,

"licence" means a licence granted by the Committee under section 5,

"preserved" means cooked, pickled or deep-frozen,

"scallop" means the species "*Pecten Maximus*", commonly known as the scallop,

"the Island" means the Island of Sark and includes the islets and rocks and the territorial waters adjacent thereto.

(2) The Interpretation (Guernsey) Law, 1948^a shall apply to the interpretation of this Ordinance as it applies in Guernsey to the interpretation of an enactment.

NOTES

In section 1, the words in square brackets in the definition of the expression "the Committee" were substituted by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 2, Schedule 1, paragraph 2, with effect from 14th January, 2017.

The functions, rights and liabilities of the Sea Fisheries Committee and of its Chairman arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Agriculture, Environment, Sea Fisheries & Pilotage Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) Ordinance, 2017, section 1, Schedule 1, paragraph 2, with effect from 14th January, 2017, subject to the savings and transitional provisions in section 3 of the 2017 Ordinance.

In accordance with the provisions of the Police Force (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.

Close season for scallops.

2. A person shall not in the Island take, have in his possession, buy, sell or offer for sale any scallops, other than preserved scallops, during the period commencing on the 20th October in each year and ending on the 20th March next following, both days inclusive (such period being hereinafter referred to as "**the close season'**):

PROVIDED that any person found to be in possession of, or buying, selling or offering for sale any scallop between the 20th October and the 23rd October, both days inclusive, shall be deemed not to have contravened the provisions of this section if he is able to prove that the scallop was not taken on or after the 20th October.

Scallops not to be taken outside close season except under licence.

3. A person shall not in the Island take any scallop at any time not

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

falling within the close season except under the authority of, and in accordance with the terms and conditions of, a licence granted by the Committee under section 5.

Restrictions on possession, etc, of scallops outside close season.

4. (1) A person shall not in the Island have in his possession, buy, sell or offer for sale any scallops, other than preserved scallops, at any time not falling within the close season where, by virtue of the provisions of this Ordinance, the scallops were unlawfully taken.

(2) The provisions of subsection (1) are subject to those of the proviso to section 2.

Licences for the taking of scallops.

5. (1) The Committee may, if it thinks fit, and upon receipt of such particulars and fee as it may require, grant any person a licence authorising him to take scallops from the territorial waters at any time not falling within the close season; and the Committee may grant different classes of licence.

(2) The Committee may require a different fee in respect of applications for different classes of licence, the amount of any such fee being approved by the Chief Pleas.

(3) A licence may be granted under subsection (1) subject to such conditions as the Committee thinks fit, including, without prejudice to the generality of the foregoing, conditions as to –

- (a) the duration of the licence,
- (b) the portion of the territorial waters to which the licence relates,
- (c) the periods during which scallops may be taken,
- (d) the quantity and size of scallops which may be taken (whether within a specified period or generally),

- (e) the use to which scallops taken may be put, the maintenance of records of the date, place and quantity of scallops taken and of such other matters as the Committee may require,

and different conditions may be applied in respect of different licences and different classes of licence.

(4) The Committee may if it thinks fit from time to time vary the conditions applicable to a licence or a class of licence, and where the Committee varies any condition applicable to a class of licence it shall forthwith notify licence holders in writing of the variation.

(5) The Committee may suspend or revoke a licence in any case where –

- (a) any condition applicable to the licence is contravened, or
- (b) it appears to the Committee to be necessary or expedient to do so,

and where the Committee suspends or revokes a licence other than upon a contravention of any condition applicable to the licence it may, if it considers it appropriate, refund the whole or part of any fee paid in respect of the licence.

(6) The Committee shall exercise its powers under this Ordinance in the manner which it considers will best promote the conservation of the Island's scallop stock and in the best interests of the Island's fishing industry as a whole.

Exceptions for scientific research.

6. Notwithstanding any provision of this Ordinance, the Committee may, in writing, authorise a person to take or have in his possession scallops for the purposes of scientific research.

Powers of Constable.

7. The Constable may –
- (a) detain any person who has committed, or whom he has reasonable cause to suspect of having committed, an offence under any provision of this Ordinance,
 - (b) stop, board, enter and search any boat or vehicle used or suspected of being used in taking or conveying scallops,
 - (c) enter and search any premises used or suspected of being used by way of trade for carrying on any business in connection with the treatment, storage or sale of scallops,
 - (d) search for and examine any scallop and any net, implement, substance, diving apparel or equipment or other apparatus whatsoever used or suspected of being used in taking or conveying scallops, in any place, whether on board a boat, in a vehicle or elsewhere, and whether in a receptacle or not,
 - (e) require production of a licence by a licence holder,
 - (f) require production of any records maintained by a licence holder in accordance with any condition applicable to the licence and take copies of those records or remove those records for the purpose of copying them,
 - (g) seize any scallop which he has reasonable cause to suspect –
 - (i) has been taken, bought, sold or offered for sale by any person, or

- (ii) any person has in his possession,

in contravention of any provision of this Ordinance,
- (h) seize any net, implement, substance, diving apparel or equipment or other apparatus whatsoever, or any vessel, which he has reasonable cause to suspect has been used or is being used in or in connection with the commission of an offence under any provision of this Ordinance.

Offences.

8. A person who –

- (a) contravenes or attempts to contravene any provision of this Ordinance, or
- (b) without reasonable excuse (proof whereof shall lie on him) resists, obstructs or hinders the Constable in the exercise or purported exercise of the powers conferred on him by any provision of this Ordinance,

shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the Sark uniform scale of fines, to imprisonment for a term not exceeding one month or to both.

(2) The Court may, in addition to any penalty specified in subsection (1), order the seizure, forfeiture, destruction or other disposal of –

- (a) the scallops to which the offence related, and
- (b) any diving equipment or apparatus, net, implement, apparel, equipment or other apparatus whatsoever used in or in connection with the commission of the offence.

(3) Any proceeds realised by a disposal under subsection (2) shall be paid to the Chief Pleas.

Offences involving the use of a boat.

9. Where an offence is committed under this Ordinance involving the use of a boat, every person who, at the time of the commission of the offence, was on board the boat, or was the master, owner or charterer of the boat, shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly 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.

Offences by bodies corporate.

10. Where an offence is committed under this Ordinance by a body corporate and 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 similar officer of the body corporate or any person purporting to act in such capacity, he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

Exemption of liability.

11. The Constable and any person assisting the Constable in the lawful exercise of his powers shall not be liable to any civil or criminal proceedings for anything done in the exercise or purported exercise of any power conferred on him by this Ordinance if the Court is satisfied that the act was done in good faith and with reasonable skill and care and that there were reasonable grounds for doing it.

Amendments of section 6 and section 8 of the Fishing (Sark) Ordinance, 1996.

12. (1) In section 6 of the Fishing (Sark) Ordinance, 1996 the following subsection (3A) shall be inserted after subsection (3) –

"(3A) The preceding provisions of this section shall not apply to the taking of scallops under the authority of, and in accordance with the terms and conditions of, a licence granted under section 4 of the Scallops (Sark) Ordinance, 1998."

(2) For section 8(1)(a) of the Fishing (Sark) Ordinance, 1996

substitute the following –

"(a) subject to subsection (2), shuck on board any boat within the said territorial waters any molluscan shellfish,".

Citation.

13. This Ordinance may be cited as the Scallops (Sark) Ordinance, 1998.

Extent.

14. This Ordinance shall have effect in the Island.

Commencement.

15. This Ordinance shall come into effect on the 1st March, 1998.