

ORDINANCE OF THE CHIEF PLEAS

ENTITLED

The Harbours (Sark) (Amendment) Ordinance, 2012

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 29th day of August, 2012 and in exercise of the powers conferred upon them by sections 37 and 40 of the Reform (Sark) Law, 2008^a and of all other powers enabling them in that behalf, hereby order:-

Amendment of 2011 Ordinance.

1. (1) The Harbours (Sark) Ordinance, 2011 is amended as follows.

(2) At the end of section 1, insert the following subsections –

"(3) Without prejudice to the generality of the foregoing the Committee may give directions to the master, owner or operator of a vessel-

(a) to provide it, within a specified period, with specified information (including, but not limited to, sailing times) relating to voyages to and from La Maseline Harbour, Le Creux Harbour, the slipway between Le Creux and La Maseline, or Havre Gosselin ("the Harbours") by the vessel, and

^a Order in Council No. V of 2008; amended by No. VI of 2008 and No. XXVII of 2008

(b) in the case of a vessel licensed to carry more than 12 passengers operating to or from any of the Harbours –

(i) to provide passenger numbers and other specified passenger information within a specified period before entering or leaving the Harbours, and

(ii) to take such steps as the Committee considers necessary to protect the safety of passengers embarking or disembarking, or waiting to embark or disembark, the vessel within the Harbours.

(4) For the avoidance of doubt, directions under subsection (3) may specify conditions with which the master, owner, or operator must comply for the vessel to enter or leave the Harbours, to berth in the Harbours, or to embark or disembark passengers in the Harbours, as the case may be.

(5) The Committee may authorise the Harbourmaster to exercise some or all of its powers under subsection (3)."

(3) Immediately after section 1, insert the following sections -

"Parking of vessels and trailers.

1A. No person may, without the permission of the Harbourmaster, park a vessel or trailer on land within the Harbours.

Harbourmaster's power to direct.

1B. (1) The Harbourmaster may direct the master, owner or operator of a vessel in respect of whether, when and how the vessel may enter, leave and berth within the Harbours.

(2) The Harbourmaster may direct one or more persons, or all persons, not to enter one or more of the Harbours, or immediately to leave one or more of the Harbours (as the case may be), if in his opinion such a direction is necessary in the interests of safety; provided that such a direction must be withdrawn as soon as the Harbourmaster is satisfied that it is safe to do so.

(3) The Harbourmaster may direct the owner or person in charge of any vessel or trailer parked in contravention of section 1A to remove it, either immediately or within a specified period.

(4) The Harbourmaster may direct the master of any vessel to remove it, either immediately or within a specified period, from any place in the Harbours, or from within the approaches of Le Creux Harbour, in the interests of safety or if, in his opinion the vessel is causing an obstruction to navigation, or impeding the efficient operation of any of the Harbours.

(5) The Harbourmaster may direct the owner or person in charge of any tractor, trailer, vessel, or any other object or garbage left in any of the Harbours, or in the area between La Maseline Harbour and Le Creux Harbour extending up harbour hill and ending in a parallel line with the most western end of the water tanks situated on the south side of harbour hill, to remove it, either immediately or within a specified period, if in the opinion of the Harbourmaster it is –

(a) impeding the efficient operation of any of the

Harbours,

- (b) giving rise to a contravention of this Ordinance or any other enactment, or
- (c) an unacceptable risk to public safety,

or it is likely to do or be so if not removed."

(4) For section 5(1), substitute –

"(1) Any person aggrieved by a decision –

- (a) of the Committee or Harbourmaster to give directions under section 1(3)(b)(ii), or to specify conditions in such directions, or
- (b) of the Committee to refuse an application under section 4(1), or to impose a condition or conditions when granting such an application,

may appeal therefrom to the Court."

(5) In paragraph (b) of section 5(3), after "Committee" insert "or the Harbourmaster (as the case may be)", and for paragraph (a) of section 5(4), substitute –

- "(a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Committee or Harbourmaster (as the case may be) with such directions as the Court thinks fit, or"

(6) For section 7, substitute the following sections –

"Power to remove vessels, trailers etc.

7. (1) If a person to whom a direction has been issued under section 1B(3), (4) or (5) does not cause the removal of the vessel, trailer, tractor or other object or garbage in question within the period specified (if any), or otherwise within a reasonable time, the Harbourmaster may, subject to subsections (3) and (4), cause it to be removed.

(2) In the case of a vessel berthed, moored or anchored in contravention of section 3(a) or (b), the Harbourmaster may, subject to subsections (3) and (4), cause that vessel to be removed to and anchored, moored or berthed in such place and in such manner as the Harbourmaster thinks fit.

(3) The Harbourmaster may only cause a vessel, trailer, tractor or other object to be removed under subsection (1) or (2) after –

(a) notifying the person to whom the direction has been issued, or the master, operator or owner, as the case may be ("**the relevant person**"), of when the removal will take place and the place to which the vessel, tractor or other object will be moved, and

(b) affording the relevant person the opportunity to remove it himself.

(4) Subsection (3) does not apply where, in all the circumstances, it would not be reasonably practicable or otherwise appropriate for the relevant person to be notified before the removal or

afforded that opportunity; in which case that person must be notified of the removal and of the location of the vessel, tractor or object as soon as reasonably practicable thereafter.

Exclusion of liability in respect of power to remove.

7A. (1) Subject to subsection (2), no person is to be –

(a) liable in damages, or

(b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done under section 6 or 7, unless the relevant act or omission was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful under section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Charges for use of cranes and for harbour services.

7B. (1) There shall be payable –

(a) for the use of a crane (including the hiring of crane operators) at any of the Harbours, and

(b) in respect of harbour services provided by or on behalf of the Harbourmaster or the Committee,

charges at such rates as Chief Pleas may from time to time by resolution determine.

- (2) A resolution passed under subsection (1) may –
 - (a) determine different rates for different classes or descriptions of vessels, vehicles, trailers, containers or goods, for different facilities and for different circumstances generally,
 - (b) empower the Committee, in its absolute discretion in any particular case, to determine which of two or more alternative charges shall be payable,
 - (c) exempt any person or class of persons from all or any charges, and
 - (d) be varied or revoked by a subsequent resolution so passed.

- (3) In this section, "**harbour services**" means -
 - (a) the provision of assistance at the Harbours with the berthing and tying up of passenger boats, the embarkation and disembarkation of passengers, and the discharge, offloading and collection of cargo, and
 - (b) such other services relating to the use of the Harbours and their facilities as may be specified

by resolution of Chief Pleas from time to time.

(4) In this section and in section 7B, "**crane**" includes all equipment related to the normal use of a crane.

(5) In the absence of a resolution of Chief Pleas determining charges payable in respect of a service, the Committee may agree, or continue to agree (as the case may be) the charges to be paid for that service with users of that service.

Payment and recovery of charges.

7C. (1) Any charges payable pursuant to a resolution under section 7B(1) may be recovered as a civil debt due to Chief Pleas from the person by whom, or on whose behalf –

(a) use of the crane concerned, or

(b) provision of the harbour service concerned,

was requested, or from any agent of that person.

(2) For the avoidance of doubt, subsection (1) is without prejudice to the power of the Committee to recover expenses under section 8."

(7) In section 8, for "simple contract" substitute "civil" in both places, and in paragraph (a) of subsection (1), after "exercise by" and "conferred on" insert "it or" in both places.

(8) After section 8(2) insert the following subsection –

"(3) Without prejudice to subsection (1), the Committee

may recover as a civil debt, from a person to whom a direction has been issued under section 1B(3), (4) or (5), the amount of any expenses reasonably incurred by it arising, directly or indirectly, out of the removal of the vessel, trailer, tractor or other object or garbage in question under section 7(1).".

(9) After section 10, insert the following section –

"General Regulations.

10A. (1) The Committee may, by regulations made under this section, make any provision not inconsistent with this Ordinance as to the conduct of persons in the Harbours.

(2) Without prejudice to the generality of subsection (1), the Committee may by regulations make provision for the removal of articles and substances from any part or parts of one or more of the Harbours."

(10) In section 11(1) –

(a) immediately before paragraph (a) insert a new paragraph –

"(za) contravenes section 1A," and

(b) delete from "for the time being" to the end of the subsection.

(11) Immediately after section 11(1), insert the following subsections –

"(1A) A person who contravenes, or who otherwise fails to comply with, directions given or made under section 1(3) or 1B is guilty of an offence and liable, on conviction by the Court, to a fine not exceeding level 4 on the uniform scale, or to a term of imprisonment not exceeding one month, or to both.

(1B) A person who deposits garbage on land within the Harbours, other than in a receptacle provided for that purpose by the Harbourmaster or a Committee of Chief Pleas, is guilty of an offence and liable, on conviction by the Court, to a fine not exceeding level 1 on the uniform scale."

(12) After section 11, insert the following sections –

"General provisions as to regulations.

11A. Regulations made under this Ordinance –

- (a) may make different provision for different cases and circumstances,
- (b) may prohibit any act or omission without the permission of the Committee or the Harbourmaster,
- (c) must be laid before a meeting of Chief Pleas as soon as possible after being made; and if at that meeting or the next Chief Pleas resolve that the regulations be annulled, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations, and

- (d) may be varied or revoked by subsequent regulations so made.

Permissions, directions, and prohibitions.

11B. (1) Any permission, direction or prohibition of the Committee or the Harbourmaster under, or for the purposes of, any provision of this Ordinance may be –

- (a) given or imposed either generally or in relation to specified descriptions of objects, persons, cases or circumstances, or in relation to a particular object or person,
- (b) given or imposed either unconditionally or subject to such conditions as the Committee, or, as the case may be, the Harbourmaster, thinks fit,
- (c) withdrawn by the Committee or, as the case may be, by the Harbourmaster, at any time.

(2) Any such permission, direction or prohibition –

- (a) may be given, imposed or withdrawn in such manner as the Committee or, as the case may be, the Harbourmaster, considers appropriate, and
- (b) without prejudice to the foregoing, shall be conclusively presumed to have been so given, imposed or withdrawn if it is given, imposed or withdrawn in such manner as the Committee

may prescribe by regulations made under this section."

(13) In section 12, number the existing text (1), and at the appropriate place insert the following definition –

"**uniform scale**" means the uniform scale for the time being in force under the Uniform Scale of Fines (Sark) Law, 1989 (as amended);".

(14) At the end of section 12 insert the following subsection –

"(2) The Interpretation (Guernsey) Law, 1948 shall apply to the interpretation of this Ordinance as if it were an enactment in force in the Island of Guernsey."

Citation and commencement.

2. This Ordinance may be cited as the Harbours (Sark) (Amendment) Ordinance, 2012, and shall come into force on the 30th day of August, 2012.