

No. 50

The Merchant Shipping (Commercial Vessels) (Safety and Crewing) (Guernsey and Sark) Regulations, 2019

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The Merchant Shipping (Commercial Vessels) (Safety and Crewing) (Guernsey and Sark) Regulations, 2019

Made by the States' Trading Supervisory Board , 2019

Made by the Harbours & Shipping Committee , 2019

Coming into operation 1st May, 2019

THE STATES OF GUERNSEY STATES' TRADING SUPERVISORY BOARD, and THE HARBOURS & SHIPPING COMMITTEE OF THE CHIEF PLEAS OF SARK, in exercise of the powers conferred on them by sections 45, 80, 81 and 289 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^a and all other powers enabling them in that behalf, hereby order:-

PART 1

THE CODE, AND GENERAL SAFETY PROVISIONS

Application and construction of the Code.

1. (1) The provisions of the Code entitled "The Small Commercial Vessels Code for Guernsey and Sark" as published by the Board from time to time (referred to in these regulations as "**the Code**") shall apply to –

(a) the vessels, and

(b) the crew of the vessels,

^a Order in Council No. VIII of 2004; as amended Order in Council No. I of 2000; No. XIII of 2010; No. VIII of 2015; Ordinance No. XXXIII of 2003; No. XXXV of 2009; No. LIV of 2012; and No. IX of 2016.

specified in paragraph (3) within the territorial seas adjacent to Guernsey and Sark, and these regulations and the Code generally shall be construed accordingly.

(2) Without prejudice to the generality of the foregoing the Board may enter into agreements with the MCA and Certifying Authorities for the purpose, *inter alia*, of making provision to clarify how the Code shall be construed and applied, generally or in particular cases; and where such an agreement has been entered into, references in these regulations to the Code shall be construed accordingly.

(3) Subject to paragraph (4), the vessels referred to in paragraph (1) are vessels of less than 24 metres length that are –

- (a) commercial vessels operating from a harbour in Guernsey or Sark, other than vessels operating solely within the territorial waters adjacent to the island of Sark,
- (b) vessels operated by or on behalf of the States of Guernsey and the Chief Pleas of Sark (which expression includes, for the purposes of this Regulation, vessels operated by and on behalf of the salaried police force of the Island of Guernsey, and Customs and Excise), and

(4) The Code does not apply in respect of –

- (a) vessels holding an International Passenger Vessel Safety Certificate issued under the International

Convention on the Safety at Sea, 1974, as amended from time to time (SOLAS), and

(b) such other categories of vessel as may be specified for this purpose in section 1.1 (Application) of the Code.

(5) Vessels to which the Code applies are referred to in these Regulations as "Code vessels".

Equivalent provisions.

2. (1) Where the Code requires that a particular fitting, material, appliance or apparatus or type thereof shall be fitted or carried in a vessel, or that any particular provision shall be made, the Board shall (after consultation with the MCA where the Board considers such consultation to be appropriate) permit any other fitting, material, appliance or apparatus or type thereof to be fitted or carried or any other provision to be made in that vessel if it is satisfied by trial thereof or otherwise that such other fitting, material, appliance or apparatus or type thereof or provision is at least as effective as that required by the Code.

(2) For the purposes of the Code, the results of a verification or test shall be accepted if the verification or test is carried out -

(a) in accordance with the Code or with a code of practice, specification or technical description of an EEA State offering equivalent levels of safety, suitability and fitness for the purpose; and

(b) by a body or laboratory of an EEA State offering suitable and satisfactory guarantees of technical and

professional competence and independence.

Code certificates.

3. On an application being made to it that complies with the provisions of regulation 34 and Schedule 2, the Board shall issue a certificate in respect of a vessel if it is satisfied that -

- (a) it is a Code vessel, and
- (b) there is compliance with those parts of the Code which apply in respect of the vessel, including, for the avoidance of doubt, any parts relating to the carrying out of a satisfactory survey of the vessel,

and such a certificate is referred to in these regulations as a "Code certificate".

General restriction in respect of commercial vessels, etc.

4. A Code vessel shall not proceed on any voyage which starts in Guernsey or Sark unless a Code certificate has been issued in respect of it, and is currently in force.

Restriction in respect of passenger vessels.

5. (1) No person shall be carried for payment on a vessel on any voyage which starts in Guernsey or Sark unless –

- (a) the vessel in question is a tender or lifeboat transferring passengers to or from a cruise ship that is in Guernsey waters for under 72 hours,

- (b) an Exemption has been issued in respect of the vessel under regulation 12, or
- (c) it is a Code vessel, and a Code certificate has been issued in respect of it by the Board, and is currently in force.

(2) A Code certificate that permits a vessel's operation as a passenger vessel carrying 12 passengers or fewer is referred to in these regulations as a "Code Compliance Certificate".

(3) A Code certificate that permits a vessel carry more than 12 passengers is referred to in these regulations as a "Code Compliance Passenger Vessel Certificate".

(4) A person is carried for payment for the purposes of these regulations if, other than as a member of the crew of the vessel, he travels –

- (a) in a vessel let for hire or reward to him or another person, or
- (b) as a passenger for hire or reward.

Code certificates: restrictions and conditions, etc.

6. (1) Subject to paragraph (2), a Code certificate may contain such restrictions and conditions governing the use of the vessel 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 Board thinks fit, including (for the avoidance of doubt) –

- (a) provisions relating to any matter referred to in section 80(5) of the Law, and
- (b) in the case of a Code Compliance Passenger Vessel Certificate, compliance with the requirements of the Code entitled "The Safety Management Code for Domestic Passenger Ships in the Bailiwick of Guernsey", as published from time to time by Guernsey Harbours.

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

- (a) the crew to be carried by the vessel (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) in the case of a Code Compliance Passenger Vessel Certificate, the carriage of passengers during the hours of darkness and in specified weather conditions,
- (c) the stowage of cargo and luggage,
- (d) restrictions on, or the prohibition of, the towing of other craft,
- (e) requirements to notify a specified person or persons of

damage to the vessel or specified events,

- (f) the carriage, and maintenance, of navigational, life-saving, fire-fighting and other types of equipment,
- (g) permitted areas of operation,
- (h) requirements to relay specified information (including, but not limited to, passenger and crew numbers) within a specified period or periods to specified persons, and
- (i) 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.

Continuing responsibilities of the master and owner.

7. (1) The owner and the master of a vessel in respect of which a Code certificate has been issued must ensure that –

- (a) the structure of the vessel is maintained in a satisfactory condition fit for the purpose for which the vessel is intended, and
- (b) and in the case of a vessel in respect of which a Code Compliance Passenger Vessel Certificate has been issued, the requirements of regulation 13 are and continue to be met.

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

No material change to vessel after survey without prior approval.

8. Following the completion of a survey of a vessel in respect of which a Code certificate has been issued, the owner and master of the vessel must ensure that no material change is made to the vessel, its machinery or equipment without the prior approval of the Certifying Authority.

Validity, variation, etc. of Code certificates.

9. (1) A Code Compliance Certificate shall be issued for a period of five years, or such shorter period as the Board thinks fit.

(2) A Code Compliance Passenger Vessel Certificate shall be issued for a period of one year, or such shorter period as the Board thinks fit.

(3) A person to whom a Code certificate has been issued may apply to the Board to renew it at any time within six weeks before its expiry.

(4) A Code certificate may be varied by the Board at any time, both as regards the period of its validity and its terms.

(5) If the Board has reason to believe that a restriction, condition, or other provision contained in a Code certificate has been contravened, or has reason to believe that a vessel is or may be unsafe, it may suspend or cancel that Code certificate.

(6) The suspension of a Code certificate under paragraph (5) must be for a specified period of up to three months; and the Board 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 vessel in question.

(7) The variation, suspension and cancellation of a Code certificate shall be made by notice in writing.

(8) For the avoidance of doubt, paragraphs (5) and (6) are without prejudice to the provisions of Part 4 (Offences).

Code Compliance Passenger Vessel certificates to be displayed.

10. A Code Compliance Passenger Vessel Certificate must be displayed on board the vessel in respect of which it has been issued in a prominent position in the public area.

General safety provisions governing larger passenger ships.

11. (1) The provisions of this regulation apply to each ship in respect of which –

- (a) a Code Compliance Passenger Vessel Certificate, or
- (b) an Exemption permitting it to carry more than 12 passengers,

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 Board 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,
- (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 refuse must be disposed of in a timely manner and in accordance with the ship's garbage management plan.

Ships in respect of which an Exemption may be issued.

12. On an application being made to it that complies with the provisions of regulation 34 and Schedule 2, the Board may issue an Exemption in respect of a ship if –

- (a) it is not a Guernsey ship, and
- (b) the Board is satisfied that it conforms to standards equivalent to the relevant United Kingdom construction standards.

Provisions relating to Exemptions.

13. (1) An Exemption–

- (a) must be in writing,
- (b) may be in respect of a specified period of time not exceeding six weeks, or may be in respect of one or more specified journeys,
- (c) may contain such conditions and restrictions as the Board thinks appropriate, as if it were a Certificate, and
- (d) may be varied, suspended (for any period) or cancelled at any time by the Board 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.

PART 2

CREWING LICENCES AND MANNING REQUIREMENTS

Local crewing licences.

14. (1) The Board may issue, and renew, the following types of licence and certificate in respect of the crewing of vessels in respect of which these regulations apply –

- (a) a Boatmaster's Licence,
- (b) an Engineer's Licence, and
- (c) a Competent Crew Certificate,

subject to -

- (i) the passing of such examinations,
- (ii) the completion of such forms,
- (iii) the provision of such information, and
- (iv) the satisfaction of such other criteria,

as it may from time to time direct, and to the payment of the fees set out in regulation 16.

(2) A licence or certificate issued or renewed 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 Master, a locally qualified Engineer, or locally qualified Competent Crew, as the case may be.

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

Local crewing licences: application fees.

15. The fees set out in Schedule 1 shall be payable before -

- (a) an examination of a type referred to in regulation 14(1)(i) may be taken,
- (b) a local crewing licence may be renewed,

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.

Validity, variation, etc. of local crewing licences.

16. (1) A local crewing licence shall be issued for a period of five years, or such shorter period as the Board thinks fit; and a person to whom a local crewing licence has been issued may apply to the Board to renew it at any time within six weeks before its expiry.

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

(3) If the Board 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 Board 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 4 (Offences).

Manning requirements.

17. (1) Subject to paragraph (2), the manning requirements set out in Annex 1 of the Code shall have effect as regards vessels in respect of which these regulations apply, and no such vessel shall proceed on a voyage which starts in the Bailiwick unless the requirements relating to that vessel and that voyage set out in that Annex are met.

(2) The Harbourmaster may, where he considers it necessary in the interests of safety, impose manning requirements different from those set out in Annex 1 of the Code –

(a) in respect of any vessel,

- (b) in respect of one or more specified voyages, or types of voyage, made by any vessel,

and, for the avoidance of doubt, where manning requirements are imposed under this paragraph, the vessel in question shall not proceed on a voyage which starts in the Bailiwick unless those requirements are met.

(3) For the avoidance of doubt the power of the Harbourmaster at paragraph (2) is without prejudice to the power of the Board at section 46 of the Law.

PART 3

INTERNAL REVIEWS AND APPEALS

Internal review.

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

- (a) a decision to cancel a Code certificate or local crewing licence,
- (b) a decision to impose restrictions or conditions in a Code certificate or local crewing licence,
- (c) a decision to suspend a Code certificate or local crewing licence,
- (d) a decision to issue a Code Compliance Certificate or local crewing licence for a period shorter than five years, or

(e) a decision to issue a Code Compliance Passenger Vessel Certificate for a period shorter than one years.

(2) A person aggrieved by a decision of the Harbourmaster under regulation 17(2) may request the Chief Officer to review it.

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

(4) 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.

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

(6) 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 Board 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.

(7) 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 (3).

(8) The Chief Officer may delegate his functions under this regulation to another officer in the Board 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.

19. (1) A person aggrieved by a decision described in regulation 18(1) or (2) 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 18(8)) has -

- (a) determined that review by confirming the decision in whole or in part, or
- (b) refused to consider the request under regulation 18(7).

(2) The grounds of an appeal under this regulation are those grounds set out in regulation 18(4).

(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 determination or refusal, and

(b) by summons served on the Board 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 Board aside and, if the Court considers it appropriate to do so, remit the matter to the Board with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

PART 4 OFFENCES

Operating a commercial vessel without a Code certificate.

20. Where a vessel proceeds on a voyage that starts in Guernsey or Sark

without a Code certificate having been issued in respect of it, in breach of the prohibition set out in regulation 4, then the master and the owner of the vessel are each guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding three months, or a fine, or both.

Operating a passenger vessel without a Code compliance passenger vessel certificate or Exemption.

21. Where a vessel carries one or more passengers for reward on a voyage that starts in the Bailiwick in breach of the prohibition set out in regulation 5, then the master and the owner of the vessel are each guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or a fine, or both.

Breaches of conditions, etc in Code certificate or Exemption.

22. (1) Where a Code certificate has been issued in respect of a vessel, and there has been a contravention of or failure to comply with a condition, restriction or other provision in the certificate then –

- (i) the master and owner of the vessel, 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) Where a Code Compliance Passenger Vessel Certificate or

Exemption has been issued in respect of a vessel, and there has been a contravention of or failure to comply with a condition, restriction or other provision in the certificate or Exemption (as the case may be) then –

- (i) the master and owner of the vessel, 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 term of imprisonment not exceeding six months, or to a fine, or both.

(3) 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.

(4) It shall be a defence for a person charged with an offence under paragraph (1) or (2) to show that he took all reasonable steps to avoid the offence being committed.

Material change to vessel after survey without approval.

23. Where a material change is made to a vessel in contravention of the prohibition set out in regulation 8, then the master and the owner of the vessel are each guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding three months, or a fine, or both.

Failure to comply with manning requirements.

24. (1) Subject to paragraph (2), where a vessel proceeds on a voyage that starts in Guernsey or Sark in breach of the manning requirements applying in respect of that vessel and that voyage under regulation 17(1) and Schedule 1, or regulation 17(2), as the case may be, then the master and the owner of the vessel are each guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding three months, or a fine, or both.

(2) Where a vessel carries one or more passengers for reward on a voyage that starts in the Bailiwick in breach of the manning requirements applying in respect of that vessel and that voyage under regulation 17(1) and Schedule 1, or regulation 17(2), as the case may be, then the master and the owner of the vessel are each guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding two years, or a fine, or both.

Drink and drugs.

25. (1) It is an offence for the master or the member of the crew of a vessel to be on board the vessel when it is under way, when that person is unfit to fulfil his duties as master or crew member (as the case may be) through drink or drugs.

(2) For the purposes of paragraph (1) and regulation 26(1), 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.

(3) For the avoidance of doubt, in this regulation and regulation 26 "crew" includes, but is not limited to, persons who hold a local crewing licence.

(4) Subject to paragraph (5), a person who commits an offence

under this regulation is liable on summary conviction to a term of imprisonment not exceeding one month, or a fine, or both.

(5) The master of a vessel who commits an offence under this regulation is liable on summary conviction to a term of imprisonment not exceeding three months, or a fine, or both.

Drink and drugs: passenger vessels.

26. (1) It is an offence for the master or the member of the crew of a vessel carrying one or more passengers for payment to be on board the vessel when it is under way, when that person is unfit to fulfil his duties as master or crew member (as the case may be) through drink or drugs.

(2) Subject to paragraph (3), a person who commits an offence under this regulation is liable on summary conviction to a term of imprisonment not exceeding three months, or a fine, or both.

(3) The master of a vessel who commits an offence under this regulation is liable on summary conviction to a term of imprisonment not exceeding one year, or a fine, or both.

False, deceptive or misleading statements.

27. (1) A person commits an offence if –
- (a) for the purpose of or in connection with an application under these regulations,
 - (b) in purported compliance with any requirement of a document issued under these regulations,

- (c) in purported compliance with a requirement imposed under, or otherwise for the purposes of these regulations,
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which that person intends, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of exercising functions conferred under these regulations,

that person does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly

causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

Failure to surrender documents.

28. (1) The Board may require that a Code certificate, Exemption or a 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 vessel 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 Code 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 Code 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 fine not exceeding level 5 on the uniform scale.

Offences by legal persons and unincorporated bodies.

29. (1) Where a legal person is guilty of an offence under these regulations, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person,
or

(b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under these regulations is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under these regulations is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under these regulations must be paid from the funds of that body.

Offences tried before the Court of the Seneschal.

30. In relation to offences tried before the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated in this Part and in section 35 are

applicable notwithstanding the provisions of section 11 of the Reform (Sark) Law, 2008^b.

PART 5
TRANSITIONAL AND SAVING PROVISIONS

Transitional and saving provisions: general.

31. (1) Subject to the provisions of this Part, anything done or having effect as if done under or for the purposes of any provision repealed or revoked by these regulations has effect as if done under or for the purposes of any corresponding provision of these regulations.

(2) Where a person commits an offence under a provision repealed by these regulations –

(a) before Commencement, or

(b) partly before and partly after Commencement,

he shall be charged and proceeded against under that provision as if it had not been repealed.

(3) Regulations 20 and 21 shall not apply during the period of six months beginning on the day these Regulations come into force.

^b Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. IX of 2017; Sark Ordinances Nos. II and VI of 2015; No. XI of 2017; and No. XIII of 2018.

Documents issued under 2013 Regulations.

32. (1) The provisions of this regulation are subject to, and shall be read consistently with, the relevant provisions of the Code.

(2) Passenger Ship Safety Certificates and Exemptions issued under the the Merchant Shipping (Passenger Ships) (Bailiwick of Guernsey Regulations, 2013^c ("the 2013 Regulations")) shall continue to have effect as if they were Code Compliance Passenger Vessel Certificates and Exemptions issued under these regulations.

(3) A Man-in-Charge licence issued under the 2013 Regulations shall continue to have effect as if it were a Boatmaster's Licence issued under these regulations.

(4) An Engineer's licence issued under the 2013 Regulations shall continue to have effect as if it were an Engineer's Licence issued under these regulations.

Internal Reviews and Appeals under 2013 Regulations.

33. (1) In any case where, on Commencement, a request for a review made under regulation 14 of the 2013 Regulations has been made but not determined, it shall be determined as if it had been made under regulation 18 of these regulations.

(2) In any case where, on Commencement, an appeal has been made under regulation 15 of the 2013 Regulations has been made but not

^c G.S.I. No. 3 of 2013; as amended by G.S.I. No. 12 of 2013.

determined, it shall be determined as if it had been made under regulation 20 of these regulations.

PART 6
GENERAL AND FINAL

Code certificates and Exemptions: application forms, renewals and fees.

34. (1) An application for a Code certificate or an Exemption, or for the renewal of a Code certificate or exemption, shall be in such form and require the provision of such information as the Board 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 Code certificate or an Exemption, and on the application for the renewal of a Code certificate, a fee that accords with the provisions of Schedule 2.

Powers of entry and inspection.

35. (1) The Board may appoint officers to exercise functions under these Regulations.

(2) The power to appoint officers under subsection (1) shall in respect of Sark, be exercised following consultation with the Finance and Resources Committee of the Chief Pleas of Sark; but a failure to comply with this paragraph shall not invalidate or otherwise affect any such appointment made under that paragraph.

(3) An officer appointed under paragraph (1) shall, if so required, produce some duly authenticated document showing his authority so to act.

(4) If it appears to an officer that any person with whom the officer is dealing while acting for the purposes of these Regulations does not know that he is an officer so acting, he shall identify himself as such to that person.

(5) An officer may, at any reasonable time -

(a) require the production by a relevant person of any documents that may be relevant to ascertaining whether an offence under these Regulations has been committed,

(b) inspect and examine those documents and to copy any material part of them,

(c) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of them, and

(d) require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether these Regulations are being or have been complied with.

(6) An officer has power for the performance of his duties at all reasonable times to enter a vessel or any premises, other than a vessel or premises used as a dwelling, in order to exercise any power conferred on him by paragraph (5).

(7) The powers conferred by paragraphs (5) and (6) include power, on reasonable written notice, to require a relevant person -

- (a) to produce any documents mentioned in paragraph (5)(a) to an officer at such time and place as may be specified in the notice, or
- (b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in paragraphs (5)(c) and (d).

(8) A statement made by a person in response to a requirement imposed by or under this paragraph -

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except -
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(B) perjury, or

(C) perverting the course of justice.

(9) Nothing in this regulation shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(10) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(11) A requirement imposed by or under this regulation shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(12) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence, and is

liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both.

(13) In this regulation "**relevant person**" means any person whom an officer has reasonable cause to believe to be the owner or master of a vessel to which these Regulations apply.

Revocations.

36. The following statutory instruments are revoked –

- (a) the Boats (Guernsey) Regulations, 1990^d,
- (b) the Boats (Guernsey) (Amendment) Regulations, 1991^e,
- (c) the Boats (Amendment) (Guernsey) Regulations, 1993^f,
- (d) the Merchant Shipping (Passenger Ships) (Bailiwick of Guernsey) Regulations, 2013, and
- (e) the Merchant Shipping (Passenger Ships) (Bailiwick of Guernsey) (Amendment) Regulations, 2013.

Interpretation.

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

G.S.I. No 1 of 1990.

G.S.I. No 41 of 1991

G.S.I. No 18 of 1993

"**the Board**" means the States' Trading Supervisory Board,

"**Certifying Authority**" means a Certifying Authority for the purposes of the Merchant Shipping (Tonnage) (Bailiwick of Guernsey) Regulations, 2009^g,

"**Chief Officer**" means the Chief Officer of the Board or such other person as the Board may appoint for this purpose,

"**the Code**": see regulation 1(1),

"**Commencement**" means the date of the coming into force of these regulations,

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

"**cruise ship**" 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,

"**EEA Agreement**" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993,

"**EEA State**" means a State which is a contracting party to the EEA Agreement,

"**fishing vessel**" has the meaning given in section 294 of the Law,

"**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,

the "**length**" of a vessel means its length measured between perpendiculars taken at extremities of the deepest subdivision load waterline or freeboard mark, as appropriate,

"**the MCA**" means the Maritime and Coastguard Agency of the United Kingdom,

"**pilot boat**" has the same meaning as in the Pilotage Ordinance, 1967^h,

^h Recueil d'Ordonnances Tome XV, p. 50; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XVIII, p. 19; Tome XVIII, p. 24; Tome XVIII, p. 143; Tome XX, p. 161; Tome XX, p. 158; Tome XXIII, p. 34; Tome XXIV, p. 1; Tome XXVI, p. 118; Ordinance No. XXXIII of 2003; No. XII of 2012; No. IX of 2015; and No. IX of 2016.

"**pleasure vessel**": see regulation 38,

"**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 1998ⁱ relating to ships in Classes VI and VI(A) (as defined in those Regulations), and
- (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,

"**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,

"**seagoing commercial vessel**" means a vessel, other than a pleasure vessel or a fishing vessel, which navigates in waters other than exclusively inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply,

"vessel" includes anything made for the conveyance by water of persons or property, except a personal watercraft, a sailboard and a surfboard, and

"voyage" includes an excursion, and shall be taken to commence when a vessel leaves its berth or anchorage at a port.

(2) Unless the context otherwise requires, expressions used in these Regulations that are not defined in subsection (1) shall where they are defined in the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, have the same meaning as in that Law.

Meaning of "pleasure vessel"

38. (1) Subject to paragraphs (4) and (5), for the purposes of these regulations a "pleasure vessel" is a vessel of a type described in paragraph (2), (3) or (6).

(2) The first type of pleasure vessel is a vessel –

(a) wholly owned by an individual and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or

(b) wholly owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

which is on a voyage or excursion in respect of which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a

contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion.

(3) The second type of pleasure vessel is a vessel wholly owned by or on behalf of an unincorporated association formed for the purposes of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that unincorporated association or their immediate families, and for the use of which any charges levied are paid into the funds of, and applied for the general use of, that unincorporated association.

(4) A vessel does not fall within paragraph (2) or (3) if payments other than those mentioned in those paragraphs are made by or on behalf of the users of the vessel, other than the owner of the vessel.

(5) In paragraphs (2) and (3) "**immediate family**" means, in relation to an individual, the spouse or civil partner of the individual, and a sibling, ancestor or lineal descendant of that individual or of that individual's spouse or civil partner.

(6) The third type of pleasure vessel is a vessel described as a pleasure vessel, or as a non-commercial vessel, in the register of ships of its flag state, whether or not it falls within either paragraph (2) or (3).

Extent

39. These Regulations have effect in Guernsey and Sark and the territorial waters adjacent thereto.

Citation.

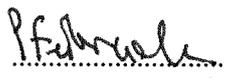
40. These Regulations may be cited as the Merchant Shipping

(Commercial Vessels) (Safety and Crewing) (Guernsey and Sark) Regulations, 2019.

Commencement.

41. These Regulations shall come into force on 1st May 2019.

Dated this 26th day of *March*, 2019.



P.T.R. FERBRACHE

President

For and on behalf of the States' Trading Supervisory Board



S. WILLIAMS

Chairman

For and on behalf of the Harbours & Shipping Committee

SCHEDULE 1

LOCAL CREWING LICENCES: FEES

Type of document	Examination Fee	Renewal Fee
Boatmaster Licence (Grade 1)	£272	£27
Boatmaster Licence (Grade 2)	£116	£27
Boat Engineer Licence	£116	£27
Competent Crew Certificate	£27	£27

SCHEDULE 2

CERTIFICATES AND EXEMPTIONS: FEES

Type of document applied for	Initial issue Fee	Renewal Fee
Code Compliance Certificate	£27	£27
Code Compliance Passenger Vessel Certificate	£27	£27
Exemption	£27	£27

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to a new Small Commercial Vessels Code for Guernsey and Sark, and make provision in relation to that Code. They also make provision in relation to the issue of local crewing licences, and make it an offence, *inter alia*, to operate a commercial vessel without the appropriate certificate issued under the Code.

They have effect in Guernsey and Sark and came into effect on 1st May 2019.