

# ORDER IN COUNCIL

**X  
2012**

ratifying a Projet de Loi

ENTITLED

## **The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012**

(Registered on the Records of the Island of Guernsey  
on the 27th July, 2012.)



---

2012

## ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

27<sup>th</sup> day of July, 2012 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Stephen Edward Francis Le Poidevin, Esquire, Susan Mowbray, John Ferguson, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, David Percy Langley Hodgetts LVO, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

Judge Finch having this day placed before the Court an Order of Her Majesty in Council dated 10<sup>th</sup> July, 2012 approving and ratifying a Projet de Loi entitled “The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:

1. That the said Order be registered on the records of this Island;  
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands respectively.

S M SIMMONDS  
Her Majesty’s Deputy Greffier



*At the Court at Windsor Castle*

THE 10th DAY OF JULY 2012

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 6th March 2012, the States of Deliberation at a meeting on 6th March 2012 approved a *Projet de Loi* entitled the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 18th April 2012 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 18th April 2012 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Sark. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012, and to order that it shall have force of law in the Bailiwick of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Richard Tilbrook*

# PROJET DE LOI

ENTITLED

## **The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012**

ARRANGEMENT OF SECTIONS

### **PART I PROHIBITION OF UNLICENSED FISHING**

1. Prohibition of fishing without a licence.
2. General provisions as to licences.
3. Matters to be taken into account and duty to consult.
4. Provision of information.
5. Regulations as to licences and charges for licences.

### **PART II BRITISH SEA-FISHERY OFFICERS**

6. Powers of British sea-fishery officers for enforcement of Law.
7. Powers of entry, search and seizure.
8. Exclusion of liability of British sea-fishery officers.

### **PART III PROCEEDINGS, ETC**

9. Penalties.
10. Offences in relation to British sea-fishery officers.
11. False statements.
12. Supplementary provisions in relation to criminal proceedings.
13. Offences committed by bodies corporate.
14. Offences committed by unincorporated bodies.
15. Evidence.
16. Jurisdiction of court to try offences.

PART IV  
APPEALS

17. Right of appeal.

PART V  
MISCELLANEOUS

18. Exclusion of territorial seas adjacent to Alderney and Sark.
19. Interpretation.
20. Repeal.
21. Savings and transitional provisions.
22. General provisions as to Ordinances and regulations.
23. Extent.
24. Citation.
25. Commencement.

# PROJET DE LOI

ENTITLED

## **The Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012**

**THE STATES**, in pursuance of their Resolution of the 6<sup>th</sup> day of March, 2012<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### PROHIBITION OF UNLICENSED FISHING

##### **Prohibition of fishing without a licence.**

1. (1) Subject to subsection (2), fishing for any sea fish within Bailiwick fishery limits by British fishing boats is prohibited unless authorised by a licence granted by the States of Guernsey Commerce and Employment Department ("**the Department**") and for the time being in force.

(2) The prohibition in subsection (1) does not apply to fishing -

(a) for salmon or migratory trout,

(b) by any vessel used wholly for the purpose of conveying persons wishing to fish for pleasure,

---

<sup>a</sup> Article I of Billet d'État No. V of 2012.

- (c) for common eels (*Anguilla anguilla*) by any vessel whose length is not more than 10 metres,
  - (d) by any vessel whose length is not more than 10 metres and which does not have an engine to power it.
- (3) The Department may by regulation amend subsection (2).
- (4) Nothing in subsection (1) -
- (a) restricts the carrying on of any operations which, under the authority of the Department, are conducted for the purpose of scientific investigation or for the purpose of transplanting sea fish from one fishing ground to another, or
  - (b) restricts the landing of sea fish caught in the course of any such operations.
- (5) Subsection (4) has effect in addition to, and not in derogation from, any express saving or exemption provided by or under this Law or any other enactment.
- (6) The Department may make regulations in respect of applications for authority under subsection (4), and any such regulations may include provision as to -
- (a) the manner in which, and time before which, any such application is to be made, and

- (b) the charging of a reasonable fee by the Department for dealing with an application (and section 5(4) applies with appropriate modifications in relation to regulations under this paragraph as it applies in relation to regulations under section 5(3)).

**General provisions as to licences.**

2. (1) A licence shall be granted to the owner or charterer in respect of a named vessel and may authorise fishing generally or may confer limited authority by reference to, in particular -

- (a) the area within which fishing is authorised,
- (b) the periods, times or particular voyages during which fishing is authorised,
- (c) the descriptions and quantities of fish which may be taken, or
- (d) the method of sea fishing.

(2) A licence may authorise fishing unconditionally or subject to such conditions as may appear to the Department to be necessary or expedient for the regulation of sea fishing (including conditions which do not relate directly to fishing), and in particular a licence may contain conditions -

- (a) as to the landing of fish or parts of fish taken under the authority of the licence (including specifying the ports at which the catch is to be landed), or

(b) as to the use to which the fish taken may be put.

(3) The conditions subject to which a licence may be granted include conditions imposed for the purposes of -

(a) conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas, or

(b) conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.

(4) The conditions subject to which a licence may be granted may differ as between different vessels or between vessels of different descriptions.

(5) The licensing powers conferred on the Department by this Law may be exercised so as to limit the number of fishing boats, or of any class of fishing boats, engaged in fishing in any area, or in fishing in any area for any description of fish, to such extent as may appear to the Department to be necessary or expedient for the regulation of sea fishing.

(6) A licence under this section -

(a) may be varied from time to time, and

(b) may be revoked or suspended if it appears to the

Department -

- (i) to be necessary or expedient for the regulation of sea fishing, or
- (ii) to be appropriate in a case where there is an offence under this Law or any other enactment relating to the regulation of sea fishing.

(7) Where a condition of a licence prohibits fishing in a specified area for a specified description of sea fish, there must, except so far as the conditions of the licence provide otherwise, be returned to the sea forthwith -

- (a) any fish of that description taken on board a fishing boat in contravention of the condition, and
- (b) any fish of that description taken on board a fishing boat in that area in the course of fishing for sea fish of a different description,

but, where the condition applies only to fishing by a specified method or during a specified period or by boats of a specified description, paragraph (b) applies only if the fish are caught by that method, during that period or by a boat of that description.

(8) If a licence is varied, revoked or suspended the Department may, if it considers it appropriate in all the circumstances of the case, refund the whole or any part of any charge made for the licence.

**Matters to be taken into account and duty to consult.**

3. (1) In deciding whether or not to grant a licence the Department shall take into account any relevant factor, including (without limitation) -

(a) the record of the applicant in fishing in Bailiwick fishery limits, whether during any particular period or otherwise,

(b) whether the vessel in respect of which the application is made is registered -

(i) in the Bailiwick,

(ii) in Jersey or the Isle of Man, or

(ii) in the UK under Part II of the Merchant Shipping Act 1995<sup>b</sup>,

or was so registered during any particular period,

(c) the terms of any fisheries management agreement or memorandum of understanding for the time being in force and made between all or any of the following parties and/or any other persons or bodies -

(i) the Department, the General Services Committee of the States of Alderney and the

---

<sup>b</sup> An Act of Parliament (1995 c. 21).

Sea Fisheries Committee of the Chief Pleas of Sark,

- (ii) the Department for the Environment, Food and Rural Affairs and the devolved administrations of Scotland, Wales and Northern Ireland,
  - (iii) the Marine Management Organisation,
  - (iv) the authorities of Jersey and of the Isle of Man,
- (d) the provisions of any enactment, subordinate legislation or enforceable Community restriction relating to sea fishing having effect within the Bailiwick.

(2) Before the Department grants, varies (whether by imposing, varying or rescinding any condition of the licence or otherwise), revokes or suspends a licence, it shall consult the Bailiwick Fisheries Management Commission ("**the Commission**").

**Provision of information.**

4. The Department may require the master, owner and charterer (if any) of a vessel named in a licence to provide the Department with such information, in such form and manner, and within such time or at such times and intervals, as it may direct.

**Regulations as to licences and charges for licences.**

5. (1) The Department may by regulation make provision as to -

- (a) the manner in which a licence is to be granted or a variation, suspension or revocation effected,
- (b) the time when a licence or a variation, suspension or revocation has effect.

(2) Without prejudice to the generality of subsection (1), regulations thereunder may include provision -

- (a) for documents to be delivered, or notices to be given, to the nominees of persons to whom licences are granted,
- (b) for documents or notices to be treated as delivered or given if they are posted or otherwise communicated in accordance with the regulations,
- (c) for notices to be given by publication in newspapers or on websites,
- (d) as to the transitional effects of variations.

(3) The Department may by regulation prescribe charges for the granting of a licence.

(4) Regulations under subsection (3) may -

- (a) specify a maximum charge and different maxima in relation to different classes of licence,

- (b) make provision for no charge to be payable in such circumstances as may be specified in the regulations,
- (c) make provision for the amount of any charge to be specified in, or determined in accordance with the provisions of, the regulations, and
- (d) specify different charges, and make different provision, in relation to different classes of licence.

## PART II

### BRITISH SEA-FISHERY OFFICERS

#### **Powers of British sea-fishery officers for enforcement of Law.**

6. (1) For the purpose of enforcing the provisions of this Law a British sea-fishery officer may exercise the powers conferred by subsections (2) to (4) in relation to -

- (a) any British fishing boat within Bailiwick fishery limits,
- (b) any British fishing boat registered in the Bailiwick anywhere outside those limits.

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of, or disembarkation from, the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry, and ask any

question, which appears to him to be necessary for the purpose mentioned in subsection (1) and, in particular -

- (a) he may search for and examine, and may test, any equipment of the boat, including the satellite tracking device and the fishing gear, and may search for and examine any fish on the boat, and require persons on board the boat to do anything which appears to him to be necessary for facilitating such a search, examination or test,
- (b) he may require any person on board the boat to produce any document relating to -
  - (i) the boat or its equipment,
  - (ii) any fishing operations or other operations ancillary thereto, or
  - (iii) the persons on board,which is in his custody or possession,
- (c) he may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search,
- (d) he may -

- (i) inspect,
- (ii) take copies of, and
- (iii) retain in his possession while he completes any search, examination, inspection and test provided for under this section,

any such document produced to him or found on board,

- (e) without prejudice to paragraphs (c) and (d), he may require the master and any person for the time being in charge of the boat to render any such document on a computer system or navigation system into a visible and legible form, including requiring any such document to be produced in a form in which it may be taken away, and
- (f) where the boat is one in relation to which he has reason to suspect that an offence under this Law has been committed, he may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings for the offence,

but nothing in paragraph (f) permits any document required by law or by a condition of a licence to be carried on board the boat to be seized and detained except while the boat is detained in port.

(4) Where it appears to a British sea-fishery officer that an offence under this Law has at any time been committed within Bailiwick fishery limits, he may -

- (a) require the master of the boat in relation to which the offence was committed to take, or the officer may himself take, the boat and its crew to the port which appears to him to be the nearest convenient port, and
- (b) detain or require the master to detain the boat in the port,

and where a British sea-fishery officer detains or requires the detention of a boat he must serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a British sea-fishery officer.

(5) The powers which may be exercised by a British sea-fishery officer under this Law in respect of any fishing boat include power to -

- (a) require any person on board the boat to produce -
  - (i) any automatic recording equipment or transmitting equipment used or purported to be used in accordance with an enforceable Community restriction relating to sea fishing or a condition of a licence,
  - (ii) any record produced by means of such equipment, or partly by those means and partly

by other means,

- (b) search the boat for any such equipment or record, and require any person on board the boat to do anything which appears to the officer to be necessary to facilitate the search,
- (c) examine and take copies of any such record,
- (d) seize and detain any such equipment or record for the purpose of enabling that equipment or record, or any record that may be produced by means of that equipment, to be used as evidence in proceedings for any offence,

but nothing in this subsection permits anything required by law or by a condition of a licence to be carried on board the boat to be seized and detained except while the boat is detained in port.

**Powers of entry, search and seizure.**

7. (1) A British sea-fishery officer may seize -

- (a) any fish in respect of which an offence under this Law has been or is being committed where the fish are on the fishing boat with or upon which the offence was or is being committed or are in the ownership or custody of, or under the control of, the owner, master or charterer (if any) of the fishing boat, and
- (b) any net or other fishing gear used in contravention of

this Law or any licence.

(2) A British sea-fishery officer, a person authorised in that behalf by the Department in writing or a special constable may, for the purpose of ascertaining whether an offence under this Law has been committed -

(a) enter at any reasonable time any premises (other than a dwelling house) used for carrying on any business in connection with -

(i) the operation of fishing boats or activities connected therewith or ancillary thereto, or

(ii) the treatment, storage or sale of sea fish,

(b) require any person on the premises to produce any documents which are in his custody or possession relating to the catching, landing, sale or disposal of any sea fish, and

(c) take copies of any such document,

and, if he has reason to suspect that an offence under this Law has been committed, he may also -

(i) search the premises for any such document and require any person on the premises to do anything which appears to him to be necessary for facilitating the search, and

- (ii) seize and detain any such document produced to him or found on the premises for the purpose of enabling the document to be used as evidence in proceedings in relation to the offence.

**Exclusion of liability of British sea-fishery officers.**

8. (1) A British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable is not liable in any civil or criminal proceedings for anything done or omitted to be done in the exercise or purported exercise of the powers conferred on him by this Law if the court is satisfied that the thing was done or omitted to be done in good faith and that there were reasonable grounds for doing or omitting to do it.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>c</sup>.

**PART III  
PROCEEDINGS, ETC**

**Penalties.**

9. (1) Where a fishing boat is used in contravention of section 1(1), the master, owner and charterer (if any) are each guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,

---

<sup>c</sup> Ordres en Conseil Vol. XL p. 396 as amended by Order in Council No. 1 of 2005 and G.S.I. No. 27 of 2006.

- (b) on summary conviction, to a fine not exceeding £50,000.

(2) Where a licence condition is contravened, the master, owner and charterer (if any) of the vessel named in the licence are each guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding £50,000.

(3) A person who fails without reasonable excuse to comply with a requirement imposed under section 4 is guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

(4) Where section 2(7) is contravened in the case of any fishing boat, the master, owner and charterer (if any) are each guilty of an offence and liable -

- (a) on conviction on indictment, to a fine,
- (b) on summary conviction, to a fine not exceeding £50,000.

**Offences in relation to British sea-fishery officers.**

10. (1) A person who -

- (a) fails without reasonable excuse to comply with a requirement imposed by, or to answer a question asked by, a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable under this Law,
- (b) prevents or attempts to prevent another person from complying with any such requirement or answering any such question,
- (c) assaults a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable who is exercising any power conferred by this Law, or
- (d) wilfully obstructs a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable in the exercise of any such power,

is guilty of an offence and liable -

- (i) on conviction on indictment, to a fine, or
- (ii) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

and in the case of an assault under paragraph (c) the offender is liable, instead of or in addition to such a fine, to imprisonment for a term not exceeding two years on conviction on indictment or six months on summary conviction.

(2) Where a fine is imposed on the master, owner or charterer or a member of the crew of a fishing boat who is convicted of an offence under this section the court may by order authorise Her Majesty's Sheriff to seize, detain and sell the boat and its gear and catch and any property of the person convicted for the purpose of levying the amount of the fine.

(3) In subsection (2) "Her Majesty's Sheriff" means -

- (a) where the order referred to in that subsection is made by the Court of Alderney, the Greffier appointed under section 20 of the Government of Alderney Law, 2004<sup>d</sup>, and
- (b) where the order is made by the Court of the Seneschal, the Prévôt.

**False statements.**

**11.** A person who, for the purpose of obtaining a licence, or in purported compliance with a requirement imposed by or under this Law, or in response to a question asked under this Law -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in

---

<sup>d</sup> Order in Council No. III of 2005; amended by the Government of Alderney (Amendment) Law, 2010 (No. XXII of 2010).

a material particular,

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) 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
- (d) 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,

is guilty of an offence and liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both,
- (ii) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both.

**Supplementary provisions in relation to criminal proceedings.**

- 12.** (1) Subject to the following provisions of this section, the court

by or before which a person is convicted of an offence under section 9(1) or 9(2) may -

- (a) order that the owner or charterer (if any) of the vessel used to commit the offence or, as the case may be, the vessel named in the licence of which a condition is contravened, be disqualified for a specified period from holding a licence in respect of that vessel, and
- (b) order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(2) A person guilty of an offence under section 9(1) or 9(2) is liable, subject to subsection (3), on summary conviction to a fine not exceeding the value of the fish in respect of which the offence was committed.

(3) A person is not liable to a fine under subsection (2) in respect of an offence if, under subsection (1), the court orders the forfeiture of the fish in respect of which the offence was committed; and, where a fine is imposed under subsection (2) in respect of an offence, the court does not have power under subsection (1) to order the forfeiture of the fish in respect of which the offence was committed.

(4) Subject to subsection (3), any fine to which a person is liable under subsection (2) in respect of an offence is in addition to any other penalty (pecuniary or otherwise) to which he is liable in respect of that offence under this Law or any other enactment.

**Offences committed by bodies corporate.**

13. (1) Where an offence under this Law is committed by a body corporate 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) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person purporting to act in any such capacity,

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

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

**Offences committed by unincorporated bodies.**

14. (1) Where an offence under this Law 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),

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

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of the body.

**Evidence.**

**15.** (1) In any civil or criminal proceedings a written statement purporting to be a report made by a British sea-fishery officer, a person authorised by the Department under section 7(2) or a special constable on matters ascertained in the course of exercising his powers under this Law is admissible as evidence to the like extent as oral evidence to the like effect by him.

- (2) Where automatic recording equipment -
  - (a) is used or purported to be used in accordance with an enforceable Community restriction relating to sea fishing or a condition of a licence, or
  - (b) is used to record information transmitted or derived from equipment used or purported to be used in accordance with such a restriction or condition,

any record produced by means of the automatic recording equipment, or partly by those and partly by other means, is, in any proceedings for an offence under this Law, evidence of the matters appearing from the record.

(3) In any proceedings for an offence under this Law, any document which constitutes or contains -

- (a) an entry in any logbook kept, or purported to be kept, under an enforceable Community restriction relating to sea fishing or a condition of a licence, by the master of a vessel,
- (b) a declaration made, or purported to be made, under such a restriction or condition -
  - (i) as to fish landed, by the master of a vessel or by an agent,
  - (ii) as to trans-shipment, by the master of a vessel,
- (c) information provided, or purported to be provided -
  - (i) under an enforceable Community restriction relating to sea fishing or a condition of a licence, by the master, owner or charterer (if any) of a vessel or by an agent,
  - (ii) under a requirement imposed under section 4, by the master, owner or charterer (if any) of a vessel,

is admissible as evidence of the matters stated therein or appearing therefrom.

(4) Subsections (1), (2) and (3) are in addition to, and not in derogation from, any other enactment or rule of law relating to the reception or admissibility of documentary evidence.

**Jurisdiction of court to try offences.**

16. Proceedings for an offence under this Law may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the Bailiwick.

PART IV  
APPEALS

**Right of appeal.**

17. (1) A person aggrieved by a decision of the Department -
- (a) to refuse an application by him for a licence,
  - (b) to vary, suspend or revoke his licence, or
  - (c) to impose, vary or rescind any condition in respect of his licence,

may appeal to the Royal Court against the decision.

- (2) The grounds of an appeal under this section 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.

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

- (a) within a period of 28 days immediately following the date of the Department's decision, and
- (b) by summons served on the Minister of the Department stating the grounds and material facts on which the appellant relies.

(4) The Department may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing such an application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers

just,

and the provisions of this subsection are without prejudice to -

- (i) the inherent powers of the Royal Court, and
- (ii) the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>e</sup>.

(5) On an appeal under this section the Royal Court may -

- (a) set the decision of the Department aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Department with such directions as the Royal Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision described in subsection (1)(b) or (c), the Royal Court may, upon the application of the appellant, and on such terms as the Royal Court thinks just, order that the decision or any part of the decision shall not have effect pending the determination of the appeal.

(7) In this section "**the Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats.

---

<sup>e</sup> O.R.C. No. IV of 2007; amended by No. II of 2008.

(8) An appeal from a decision of the Royal Court made under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(9) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>f</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

## PART V MISCELLANEOUS

### Exclusion of territorial seas adjacent to Alderney and Sark.

**18.** (1) This Law does not apply to the territorial seas adjacent to Alderney and Sark.

(2) However, the States of Alderney and the Chief Pleas of Sark may respectively by Ordinance provide that this Law or any of its provisions shall extend to the territorial seas adjacent to Alderney or Sark (as the case may be) subject to such exceptions, adaptations and modifications as may be prescribed in the Ordinance.

(3) The expression "**the territorial seas adjacent to Alderney and Sark**" is a reference to those seas as they are delimited at the date of commencement of this Law (that is, notwithstanding any extension of the limits of the territorial seas that may occur after that date, they extend to a line not exceeding 3 miles from the baselines from which the breadth of the territorial seas adjacent to those islands is measured, but not, in the case of Sark, beyond a line every point of

---

<sup>f</sup> Ordres en Conseil Vol. XVIII, p. 315.

which is equidistant from the nearest points of such baselines and the corresponding baselines adjacent to Guernsey, Herm and Jethou).

**Interpretation.**

**19.** (1) In this Law, unless the context requires otherwise -

**"Bailiwick"** means the Bailiwick of Guernsey,

**"Bailiwick fishery limits"** means that part of British fishery limits not exceeding 12 miles from the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured, but not extending beyond the median line, and excluding the territorial seas adjacent to Alderney and Sark,

**"British fishery limits"** means British fishery limits set by or under section 1 of the Fishery Limits Act 1976<sup>g</sup>,

**"British fishing boat"** means a fishing boat which is -

- (a) registered in the Bailiwick,
- (b) registered in Jersey or the Isle of Man,
- (c) registered in the United Kingdom under Part II of the Merchant Shipping Act 1995<sup>h</sup>,

---

<sup>g</sup> An Act of Parliament (1976 c. 86); extended to the Bailiwick by United Kingdom S. I. 1989/2407.

<sup>h</sup> An Act of Parliament (1995 c. 21).

- (d) where the boat would otherwise be required to be registered in a place mentioned in paragraph (a), (b) or (c), exempted from registration by the laws of that place, or
- (e) British owned,

**"British owned"**, in relation to a fishing boat, means owned by a person who is for the purposes of Part II of the Merchant Shipping Act 1995 a person qualified to own a British ship, or owned by two or more persons any one of whom is for those purposes a person so qualified,

**"British sea-fishery officer"** means a person who is, by virtue of section 7 of the Sea Fisheries Act 1968<sup>i</sup>, a British sea-fishery officer (including, for the avoidance of doubt, a person appointed as a British sea-fisheries officer in relation to the Bailiwick by the States of Guernsey Policy Council),

**"Commission"** means the Bailiwick Fisheries Management Commission, and includes any successor body appointed by the Department, the General Services Committee of the States of Alderney and the Sea Fisheries Committee of the Chief Pleas of Sark, or by their respective governments,

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

---

<sup>i</sup> An Act of Parliament (1968 c. 77); extended to the Bailiwick of Guernsey by United Kingdom S. I. 1973/1319 as amended by S. I. 1989/2412.

**"Department"** means the States of Guernsey Commerce and Employment Department,

**"Department for the Environment, Food and Rural Affairs"** means the Department of Her Majesty's Government of that name and includes any other department in which the functions of that Department as to matters of mutual interest to Her Majesty's Government and the Bailiwick relating to fisheries are for the time being vested,

**"enactment"** includes an Act of Parliament, a Law, an Ordinance and any subordinate legislation,

**"enforceable Community restriction"** means a restriction or obligation to which section 2(1) of the European Communities Act 1972<sup>j</sup> applies,

**"fish"** means sea fish,

**"Fisheries Monitoring Centre"** means a fisheries monitoring centre established under article 3.7 of Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy<sup>k</sup>,

**"fishing boat"** means a vessel of whatever size and in whatever way propelled for the time being employed in sea fishing or any operations ancillary thereto,

---

<sup>j</sup> An Act of Parliament (1972 c. 68).

<sup>k</sup> O.J. No. L 261, 20.10.93, p. 1.

**"General Services Committee"** of the States of Alderney includes any committee of the States of Alderney for the time being performing the functions conferred by or under this Law on the said General Services Committee,

**"length"**, in relation to a vessel, means the length calculated and measured in accordance with the rules specified in Article 2(1) of Council Regulation (EEC) No. 2930/86 defining characteristics for vessels<sup>1</sup>,

**"licence"** means a licence granted by the Department under section 1,

**"master"** includes, in relation to any vessel, the person for the time being in command or charge of the vessel,

**"median line"** means a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured and the corresponding baselines of the Bailiwick of Jersey,

**"migratory trout"** means trout which migrate to or from the sea,

**"mile"** means an international nautical mile of 1852 metres,

**"required information"** means data relating to -

- (a) the fishing boat's identification,

---

<sup>1</sup> O.J. No. L 274, 25.9.86, p. 1.

- (b) the most recent geographical position of the fishing boat expressed in degrees and minutes of latitude and longitude within a margin of error of less than 500 metres and within a confidence interval of 99%, and
- (c) the date and time of the fixing of that position,

**"Royal Court"** : see section 17(7),

**"satellite tracking device"** means a device for sending required information to a Fisheries Monitoring Centre from a fishing boat via a satellite and land earth station,

**"salmon"** includes any fish of the salmon species,

**"sea fish"** means fish of any kind found in the sea, fresh or cured, including shellfish, and any parts of any such fish,

**"Sea Fisheries Committee"** of the Chief Pleas of Sark includes any committee of the Chief Pleas of Sark for the time being performing the functions conferred by or under this Law on the said Sea Fisheries Committee,

**"shellfish"** includes crustaceans and molluscs of any kind and any spat or spawn of shellfish,

**"special constable"** means -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special

constabulary of the Island of Guernsey,

- (b) in relation to Alderney -
  - (i) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004, and
  - (ii) any person authorised by the General Services Committee for the purposes of section 5 of the Fishing (Alderney) (Amendment) Ordinance, 1980,
  
- (c) in relation to Sark -
  - (i) within the limits of his jurisdiction, a special constable appointed by the Court of the Seneschal, and
  - (ii) the Constable, Assistant Constables and Vingtenier,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

**"territorial seas adjacent to Alderney and Sark"** : see section 18,

**"vessel"** includes any ship or boat or any other description of vessel used in navigation,

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>m</sup>.

(2) The States of Deliberation may by Ordinance, following consultation by the Department with the General Services Committee of the States of Alderney and the Sea Fisheries Committee of the Chief Pleas of Sark, amend subsection (1) by varying or removing any definition contained in it or adding a definition to it.

(3) In this Law any reference to a logbook, declaration, document or required information includes, in addition to a logbook, declaration, document or required information in writing -

- (a) any map, plan, graph or drawing,
- (b) any photograph,
- (c) any data, however reproduced, received by a Fisheries Monitoring Centre from a satellite tracking device,
- (d) any disc, tape, soundtrack or other device in which sounds or other data (not being visual aids) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced

---

<sup>m</sup> Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

therefrom, and

- (e) any film (including microfilm), negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom.

(4) The Interpretation (Guernsey) Law, 1948<sup>n</sup> applies to the interpretation of this Law throughout the Bailiwick.

(5) Any reference in this Law to any enactment, subordinate legislation, rule of court or Community instrument (within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973<sup>o</sup>) is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

### **Repeal.**

- 20. The Sea Fish Licensing (Guernsey) Ordinance, 2003<sup>p</sup> is repealed.

### **Savings and transitional provisions.**

21. (1) Any subordinate legislation made or other thing done under an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under this Law shall have effect, after the date of commencement of this Law, as if made or done under this Law.

- (2) Anything in the process of being done under an enactment

---

<sup>n</sup> Ordres en Conseil Vol. XIII, p. 355.

<sup>o</sup> Ordres en Conseil Vol. XXIV, p. 87.

<sup>p</sup> Recueil d'Ordonnances Tome XXIX, p. 253.

repealed by this Law on the date of commencement of this Law may, to the extent that the same is required or authorised to be done under this Law, be continued under this Law.

- (3) Any reference in an enactment (however expressed) to -
- (a) a British fishing boat licensed, under and within the meaning of an enactment repealed by this Law, to fish for sea fish within Bailiwick fishery limits or any part thereof, or
  - (b) a licence or licensed (or any related expression) under and within the meaning of an enactment repealed by this Law,

shall be construed after the date of commencement of this Law as a reference to (as the case may require) -

- (i) a British fishing boat licensed to fish for sea fish within Bailiwick fishery limits or any part thereof, or
- (ii) a licence or licensed (or the equivalent related expression),

under and within the meaning of this Law.

(4) A person who immediately before the commencement of this Law held a licence under and within the meaning of an enactment repealed by this Law shall on the commencement of this Law be deemed to hold a licence under and

within the meaning of this Law, the provisions of which shall apply accordingly; and any conditions, restrictions or obligations subject to which he was licensed under the repealed enactment shall apply in respect of the licence under this Law which he is deemed to hold by virtue of this subsection.

(5) A reference, however expressed, in any enactment to an enactment or a provision of an enactment repealed by this Law shall, unless the contrary intention appears, be construed as a reference to this Law or (as the case may be) the corresponding provision of this Law.

(6) This section is in addition to and not in derogation from section 19 of the Interpretation (Guernsey) Law, 1948.

**General provisions as to Ordinances and regulations.**

- 22.** (1) An Ordinance or regulations under this Law -
- (a) may be amended or repealed by a subsequent Ordinance or subsequent regulations, as the case may be, hereunder,
  - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to be necessary or expedient, and
  - (c) shall, in the case of regulations, be laid before a meeting of the States of Deliberation as soon as possible after being made; and if at that or the next meeting the States of Deliberation resolve that the regulations be annulled, the regulations shall cease to

have effect but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred by this Law to make an Ordinance or regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations of the Department under this Law shall be made after consultation with the General Services Committee of the States of Alderney and the Sea Fisheries Committee of the Chief Pleas of Sark.

**Extent.**

23. Subject to the provisions of section 18, this Law has effect throughout the Bailiwick.

**Citation.**

24. This Law may be cited as the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012.

**Commencement.**

25. This Law shall come into force on the day appointed by the States of Deliberation by Ordinance; and different days may be appointed for different provisions, different purposes and different areas of Bailiwick fishery limits.

S. M. SIMMONDS,  
Her Majesty's Deputy Greffier.

**Copies may be purchased from  
Her Majesty's Greffier, Royal Court House, Guernsey.**

**PRICE £6.50**

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE