

STATES OF JERSEY



SEA TRANSPORT POLICY: DIRECTION TO THE HARBOUR MASTER CONCERNING FERRY SERVICES

**Presented to the States on 27th May 2008
by the Minister for Economic Development**

STATES GREFFE

Economic Development Department

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Captain H. Le Cornu
Harbour Master
Maritime House
La Route de Port Elizabeth
St. Helier
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30 April 2008

Dear Harbour Master,

Harbours (Amendment No. 41) (Jersey) Regulations 200-

These will come into force on 6 May 2008. Accordingly I enclose the following:

1. Direction for the introduction of permits,
2. Policy notice regarding the issue of those permits,
3. Policy notice regarding the negotiation of agreements within the port, and
4. Draft policy understanding between Jersey and Guernsey.

I should like to draw your attention to item 7 of the policy notice regarding permits. This concerns the policy understanding between Jersey and Guernsey. That understanding has been presented to the States of Jersey and has my endorsement. It also has the endorsement of the Guernsey Policy Council. However, it remains in draft form in recognition of the fact that the document is to go to the States of Guernsey later this year. In the meantime, it is my wish that you should nevertheless adhere to both item 7 in respect of both the draft inter-island understanding and the duration of permits, to ensure the option to tender remains in accordance with the timescales agreed with Guernsey.

Yours sincerely,

Senator Philip Ozouf
Minister for Economic Development

Direction under Regulation 4(4) of the Harbours (Jersey) Regulations 1962

To the Harbour Master.

I, the Minister for Economic Development, acting in accordance with Regulation 4(4) of the Harbours (Jersey) Regulations 1962, direct you, acting in accordance with Regulation 4(1) of the Harbours (Jersey) Regulations, to designate – combined passenger and private vehicle ferry services (regardless of whether or not these include the carriage of freight), to be services in a harbour or in territorial waters that may not be provided except with and in accordance with a permit.

The designation is to be as follows:

- For existing relevant ferry services, a permit shall be required as soon as due process has been followed and in any case not later than 21 May 2008.
- For a proposed new relevant ferry service, or a variation to an existing service, a permit shall be required to be effective immediately you make the designation.

Minister for Economic Development

Date.....

Notice under Regulation 5(6)(a) of the Harbours (Jersey) Regulations 1962

To the Harbour Master.

I, the Minister for Economic Development, acting in accordance with Regulation 5(6)(a) of the Harbours (Jersey) Regulation 1962, advise you that the policy of the States on the issue of permits is as follows –

Combined passenger and private vehicle car ferry services

1. As far as is practicable, in granting or refusing permits or imposing terms, conditions and limitations, the Harbour Master shall aim to maintain and develop year round, long-term, reliable and robust passenger car ferry services. These services, (which must include a reasonable winter service) should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.

2. Providing the facilities are available at the times requested (and such availability will not be unreasonably withheld) permits shall be granted to all who apply to provide a service or make use of a facility and who can demonstrably meet reasonable and relevant terms, conditions and limitations and policy, safety and security criteria.

3. Policy considerations:

Regardless of whether the application for a permit is for the northern or southern routes, existing and potential operators who can demonstrate the capability to meet the criteria of year round, long-term, reliable and robust services, (which must include a reasonable winter service) may be offered permits of such duration that are designed to encourage route stability and public confidence. However, such permits are not to be issued on an exclusive basis.

The “northern route,” is defined as any service between St Helier and either Portsmouth, Poole or Weymouth, which may or may not be via Guernsey.

The northern route is of strategic importance to the Island because this is Jersey’s main freight supply and logistics link particularly when taken with changes in provisioning of the Island towards “just in time” methods of supply. It is also recognised that, in the roll on/roll off market, passenger and car ferry services are bundled with freight and that the northern route is currently operated as a network of routes, which may improve market stability.

On the northern route market stability and a reliable year round service has been achieved where the operator has provided a fast ferry and Ro/Pax service. It is believed that each type of service may be important to different segments of the market where the Ro/Pax service may be more important to the Island’s need for a year round service and the fast ferry service may be of more importance to the tourism industry. An applicant who offers a year round service, (which includes a reasonable winter service) using a traditional Ro/Pax vessel and a fast ferry service clearly meets these criteria. Other proposals may also do so, but they will need careful scrutiny.

The intention is that competition should be managed in passenger and car ferry markets in such a way as to provide sufficient year round reliable services that meets the needs of current and prospective transport users.

The “southern route” is important to the quality of life of Island residents and is defined as services between Jersey and St. Malo whether or not via Guernsey. The overarching requirement of the States is that there should be a year round service on this route and this must include reasonable winter frequencies.

Services between St. Helier and other ports– where an application for such a service is made and there are reasonable grounds to believe that the proposed service should be considered as part of the northern route (because of the possible affect on the provision of year round reliable services)

then the policy considerations for the northern route should be taken into account.

4. In granting a permit, the Harbour Master shall set service level standards which include that an operator:
- maintains published information in the form of a Customer Charter, Terms and Conditions of Carriage or some other means that, as a minimum, include the effective management of passengers and their cars in the event of delayed, disrupted or cancelled sailings;
 - takes reasonable steps to assist small groups and families to sit together or if this is not possible it will advise the passengers at the time of booking;
 - provides facilities allowing access for the disabled on all vessels;
 - in the event that technical or severe weather problems with a vessel cause delays in excess of four hours, and without prejudice to any contractual arrangements between the carrier and a tour operator and customers, will entitle passengers to cancel their bookings with full refund of fare;
 - will endeavour to publish its following year's timetables as soon as possible but at any rate no later than the end of October of the preceding year. Prior to the publication of the timetables, customers will be able to reserve space on a passage on the nearest equivalent date and time, based on expected schedules (this is known as pre-registration).

Alternatively, the Company will maintain a rolling annual timetable so that at all times customers will be able to reserve space on a passage up to a year in advance.

- will have documented and published procedures setting out the arrangements for receiving and addressing passenger complaints and for the management of passengers in the event of delayed, disrupted or cancelled sailings;
 - undertakes passenger surveys on a regular basis to test the services delivered with the results of these surveys, together with a summary analysis of customer communications being made public;
 - ensures that its public fare pricing policy does not discriminate on the basis of origin of customer booking. This means, for example, that two passengers from different locations and travelling on the same vessel, who had booked at the same time for the same journey, will pay the same price. However, where a passenger books a package involving other services or via a tour operator then there may be a price difference;
 - submits any proposed increase in maximum public fare levels to the Minister for approval and provides commercial reasoning for such increases until such time as stable competition has emerged or it is proven that other effective constraints on pricing exist;
 - maintains and publishes a record of vessel performance against schedules.
5. An applicant unable or unwilling to offer a year-round service on the southern route or unable to fulfil all the policy considerations for the northern route shall not automatically be refused a permit. Such a refusal may be justified in terms of route vulnerability or other Island socio-economic requirements and the Harbour Master shall first seek the advice of the Minister who in turn may consult with the JCRA in order to determine if a transparent and non discriminatory solution can be found that would facilitate both additional competition and support the States objectives of year round reliable services.
6. Operators should be aware that applications, which do not conform fully to policy will take time to evaluate. In such cases it is reasonable to expect that a decision on an application may take longer than normal. Any delay will be solely to allow the Minister to take whatever steps are considered necessary to evaluate the impact of the application on service levels and to consult with other parties as appropriate.

7. Consideration of an application shall take account of any policy understanding between Jersey and Guernsey. In particular, there may be a need to coordinate the commencement and duration of permits to ensure that the option to tender services remains available within the timescales agreed between Jersey and Guernsey.

8. Where an applicant has materially failed to meet relevant policy considerations in relation to a previously operated service and has been unable or unwilling to remedy the deficiency in any subsequent period then this would normally be considered sufficient grounds for refusal. Nevertheless, the Harbour Master shall first seek the advice of the Minister who in turn may consult with the JCRA to determine if a transparent and non discriminatory solution can be found that would allow the permit to be granted and support States objectives of year round reliable services.

Minister for Economic Development

Date.....

Notice under Regulation 6(10)(a) of the Harbours (Jersey) Regulations 1962

To the Harbour Master.

I, the Minister for Economic Development, acting in accordance with Regulation 6(10)(a) of the Harbours (Jersey) Regulation 1962, advise you that the policy of the States on the negotiating of agreements is as follows –

1. Agreements are to be entered into as required as part of the normal commercial practice of port operations.
2. Agreements must be in accordance with any relevant States Financial Directions.
3. The designation, availability and existence of agreements shall in general be available to any person who requests access to that information. However, the Harbour Master is not required to publish details unless the Minister specifically requires him to do so under Regulation 6(3) of the Harbours (Jersey) Regulations 1962.
4. In accordance with Regulation 6(8) and insofar as proper commercial confidentiality will allow, the details of proposed agreements must be made available for comment to any person who is likely to be affected. Additionally, the agreements themselves must be made publicly available thereafter on request.
5. Any dispute between the parties may, in default of agreement between the parties, be referred to arbitration to be conducted in accordance with the Arbitration (Jersey) Law 1998, save that two arbitrators (one to be nominated by the Harbour Master and one by the other party) shall be appointed. No arbitrator or umpire shall be an officer, servant or agent of the parties and the proper charges of the arbitrators and any umpire shall be shared equally by the parties.
6. In accordance with Article 14 of the Arbitration (Jersey) Law 1998, available remedies include specific performance.
7. Arbitration is not available for any matter relating to the issue of Permits, the terms and conditions of which are governed by Regulation 5 of the Harbours (Jersey) Regulations 1962.

Minister for Economic Development

Date.....

DRAFT CHANNEL ISLAND PASSENGER CAR FERRY SEA TRANSPORT POLICY STATEMENT

Changes in the number and type of operators on the sea routes serving the Islands and with Service Level Agreements either due to expire or recently expired, an opportunity now presents itself for the two Island governments to state their joint resolve to provide a coordinated and effective approach to sea transport.

As a basic policy position, it is believed that, in the interests of the people of the Islands, the States of Guernsey and the States of Jersey should share a common aspiration: **“to maintain and develop year round, long-term, reliable, robust and reasonably priced passenger car ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.”**

However, policy aims can conflict with each other: A low priced fare may be bought with a consequently lower quality or less reliable service. The guarantee of a robust service (such as an all-weather conventional ship available at the same time as a fast ferry) comes at a price. Unrealistically low fares, high capacity and frequency may result from competition but be impossible to sustain in the long-term. Both Islands recognise this inevitable, and to some extent insoluble, dilemma.

Government can guide and oversee matters but there is always a limit to how much is achievable by overt intervention. A good level of service and reasonable fares are undoubtedly achieved by a strong relationship between the shipping operators and their customers and not by government standing proxy for one party alone. Because of this, the two Islands believe they will most effectively achieve their sea transport aims by establishing some overarching parameters and keeping regulatory matters to a minimum.

However, on the UK northern routes, a year round reliable service is currently being achieved by an operator offering both a conventional Ro/Pax and fast ferry services. Should a new application be received for services to and from the UK, there will be value in assessing the effect that additional competition and expanded capacity could have on the UK links and whether or not a potential new operator could provide an acceptable level of services in the event that they became the sole operator.

The Chairman of Guernsey’s External Transport Group and the Minister for Economic Development in Jersey have agreed that:

1. In the medium-term passenger car ferry operators will not be subject to a tender process.
2. The administrations in Guernsey and Jersey will work with existing operators to ensure as far as possible that the Islands’ sea transport needs are adequately served. Remedies will be sought for identified deficiencies.
3. Unless there is demonstrable market or operator failure, neither administration will pro-actively seek new operators on any existing route^[1] in the period prior to 31 December 2013 but the option to do either of these things or to run a tender process will be retained and exercised in the event of operator or market failure.
4. Notwithstanding the above, an application from any new operator will be fully evaluated with particular regard to how the proposal might meet the policy aims of both Islands.
5. The decision whether or not to seek tenders for services from 1 January 2014 will be taken by the two Islands together. If, to achieve the policy aims, a tender process is believed necessary on any particular route, incumbent operators will be given eighteen months notice of the intention to tender.
6. The Islands believe that all operators should:
 - maintain published information in the form of a Customer Charter, Terms and

Conditions of Carriage or some other means, which as a minimum will include the effective management of passengers and their cars in the event of delayed, disrupted or cancelled sailings and meet other requirements laid down by the two administrations;

- address all customer complaints openly, effectively and swiftly;
 - undertake passenger surveys on a regular basis to test the services delivered. The results of these surveys, together with a summary analysis of customer communications will be made public;
 - seek approval from the relevant administration for increases in maximum prices and to provide commercial reasoning for such increases until such time as stable competition has emerged or it is proven that other effective constraints on pricing exist;
 - maintain and publish a record of vessel performance against schedules.
7. The primary mechanisms that influence fares are the market and actual, or the threat of competition. Alternatively, the threat of entry, substitution to other modes of transport and consumer behaviour (choosing not to travel) may act as a sufficient constraint on prices where direct competition does not exist. The Islands will maintain the option to further develop local competition law or increase the use of competition regulatory authorities rather than direct government intervention should this prove necessary.
8. Customer complaints not successfully dealt with by the operators themselves will as far as possible be addressed by the appropriate bodies such as Trading Standards services.
9. The mechanisms that each Island uses to manage the routes, control market access and administer the harbours will differ. However, the broad policy structure made explicit in these statements will be adhered to by both administrations.

^[1] *Based on the situation in the summer of 2007, current operators in the passenger car ferry market are taken to be Condor and HD Ferries on the St. Malo and inter-Island routes and Condor alone on the routes to Portsmouth, Poole and Weymouth.*