
STATES OF JERSEY



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

Presented to the States on 17th July 2014
by the Minister for Economic Development

STATES GREFFE

REPORT

Background

The Minister for Economic Development made a statement in the States Assembly on 14th July 2014. This explained the decision to update the existing States Sea Transport Policy and the joint Channel Islands Sea Transport position. It prepared the ground for Condor Ferries to apply for a new permit for freight, car and passenger ferry services.

The issues

The updated policy will bring Ro/Ro freight, car and passenger services operating between Jersey and the United Kingdom within the scope of services that require a permit, and authorises a maximum 7 year duration for a permit, followed by a 3 year widening-down period if required.

These changes are to help ensure the long-term security of supply of Ro/Ro freight and combined passenger and private vehicle services.

Under Regulation 5(6)(a) of the Harbours (Jersey) Regulations 1962 and when dealing with any application for a permit, the Harbour Master must take account of the policy of the States as conveyed to him by the Minister.

Conclusion

The Minister has therefore decided to write to the Harbour Master so as to clarify the above points and to issue the revised policy as a formal notice in accordance with the legislation.

14th July 2014

**Economic Development
Department**

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Mr D Bannister
Group Chief Executive and Harbour
Master
Ports of Jersey
The Airport
St Peter
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14 July 2014

Dear Harbour Master,

Sea Transport Policy Notice - Permits issued under Regulation 5 of the Harbours (Jersey) Regulations 1962

1. Updated Policy

I have decided to update the Sea Transport Policy under which you may issue permits for Roll-on/Roll-off (Ro/Ro) sea shipping services. This also means I have agreed to amend the joint policy statement with Guernsey a draft of which is attached.

In particular the updated policy:

- Brings Ro/Ro freight services operating between the Islands and between Jersey and the United Kingdom within the scope of services that require a permit;
- Brings high speed passenger-only services operating between the Islands and the United Kingdom within the scope of services that require a permit; and
- Authorises a maximum seven-year duration for a permit, followed by a three-year wind down period if required.

These changes are to help ensure the long-term security of supply of Ro/Ro freight and combined passenger and private vehicle services. Therefore, the Direction attached to this letter replaces that issued on 30 April 2008 concerning the designation of services that require permits. Likewise, a policy notice is attached regarding the issue of permits and this replaces that issued on 12 December 2012.

2. The process of granting a new ferry permit

The process for granting a new permit involves publication of an application and the seeking of comments from those likely to be affected as laid down in Regulation 5(4)(a). There then needs to be a period of consideration before you make your decision.

This process will take time and to reduce any uncertainty I should like you to publish applications received and commence the process as soon as possible.

Yours sincerely,

Senator Alan Maclean
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 the provision of Ferry Services across all route sectors, as requiring a Permit, but specifically excluding:

- (a) Lo/Lo freight services;
 - (b) services to and from the Cotentin peninsula;
 - (c) inter-Island and Southern Route foot passenger only services;
 - (d) Southern Route Freight services, as far as these may be outside any Agreement.
- For existing services, a proposed service, or a variation to an existing service a permit shall be required as soon as due process has been followed.

Signed 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 –

Ferry Services to/from Jersey

1. For the avoidance of doubt, services that must be in accordance with this policy are those referred to in the accompanying Direction to the Harbour Master, dated 14 July 2014.

2. 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 services. These services (which must include a reasonable winter service), should be of sufficient quality and frequency to meet the Ro/Ro freight transport needs of the Island economy as well as the travel needs of Island residents, the business community and tourists.

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

4. Policy considerations:

Applicants must be prepared to offer services on both the Northern and Southern routes.

The Northern Route (currently serving Portsmouth, Poole and Weymouth, whether or not via Guernsey) is of strategic importance to the Islands because it is the Islands' main freight supply and logistics link, and is of particular importance given increasing reliance on "just in time" methods of provisions supply. The Northern Route is also of strategic importance to the Islands' visitor economy and local residents, i.e. what is in the main the 'leisure traveller'. The Northern Route is part of a network of services that extend from ports on the south coast of the UK Mainland to Guernsey, to Jersey and St. Malo. It has been successfully served by a combination of High-Speed Craft and conventional ferries, the latter including, as an essential requirement, a Ro/Pax vessel that provides weather-proofing.

The Southern Route (St. Malo) makes a substantial contribution to Jersey's visitor economy and a smaller, but nevertheless valuable contribution to Guernsey's, as well as providing local residents with excellent lifestyle and leisure opportunities. Car and foot passenger services are served by High-Speed Craft with heavy freight carryings being served by a conventional 'freight only' Ro/Ro vessel.

The Islands' needs will continue to be best served through a service network delivered via a combination of vessel types with the capability of providing the full service.

5. Duration of permits:

There is to be maximum 7 year duration for a permit, followed by a 3 year wind-down period if required.

6. In granting a permit, the Harbour Master shall have agreements and set passenger and private vehicle service level standards which are materially the same for all operators.

7. In granting a permit, the Harbour Master shall make it a condition that an operator maintains full compliance with EU Regulation 1177/2010 (concerning the rights of passengers when travelling by sea and inland waterways) on all routes, whether or not the voyage involves calling at an EU port. Contravention of an obligation under the Regulation is to be a breach of that condition.

8. Consideration of an application shall take account of any policy understanding between Jersey and Guernsey. In particular, there should be co-ordination of the commencement and duration of permits to ensure that the option to tender services remains available within the timescales agreed between Jersey and Guernsey.

Minister for Economic Development

Date

Guernsey & Jersey Joint Policy Statement on Sea Links Revised Policy

The Governments of Jersey and Guernsey have a common policy objective that governs the provision of Roll on/Roll Off (Ro/Ro) car, passenger and freight services:

“..to maintain and develop year-round, long-term, reliable, robust and reasonably priced roll on/roll off passenger, car and freight ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.”

In order to ensure continued provision of effective Ro/Ro car, passenger and freight services (“Ferry Services”) in the medium to long term, the Jersey and Guernsey Governments have agreed a revised Joint Policy position for the period to 2024. This revised policy will facilitate significant capital investment in the immediate replacement of the ageing fast ferries that service the Jersey–Guernsey–UK route and, in due course, future investment to replace the fast ferry currently servicing the southern (St. Malo) route.

The policy allows for the development of an agreement for the provision of ferry services in 2 phases:

1. An initial period of 7 years from the commencement of an agreement. This will represent an extension of approximately 2½ years from the current policy position announced in December 2012. This extension reflects the significant immediate capital investment that is to be made by the incumbent operator.
2. Should no agreement have been reached with the incumbent operator on the long-term provision of ferry services by the date of expiry of the initial 7 year agreement, an additional 3 year period, within which the Governments of Jersey and Guernsey will determine the manner in which the long-term provision of car passenger and freight services to the Islands will be met.

The Joint Policy Statement is not intended to create any third party legal rights or representations.

Background

In December 2012 the Governments of Jersey and Guernsey agreed a revised Joint Policy Statement on ferry services for the period to 31 December 2018. Throughout 2013 and 2014, the two Islands have continued in-depth discussions concerning a long-term agreement for Ro/Ro ferry services with the incumbent operator. These discussions identified an opportunity for a capital investment by the incumbent operator of some £50 million to procure a new ferry. The new vessel will replace the fast ferries currently operating on the UK routes with a new and larger high-speed fast ferry.

The immediate purchase of a new vessel delivers a more reliable and sustainable service and presents the opportunity for the governments of Jersey and Guernsey to restate their joint resolve to provide a co-ordinated and effective approach to sea transport. During the initial 7 year period the governments of Jersey and Guernsey will

maintain a co-ordinated and effective approach to sea transport policy and operations. During that period the governments of Jersey and Guernsey will continue to work closely to evaluate ferry service requirements to support the residents and the economic development of both Islands.

At the end of the first phase of the agreement, the governments of Jersey and Guernsey will have determined the manner in which the long-term provision of ferry services will be met. It is clear that, in the interests of both residents and broader economic prosperity of the Islands, a common policy position should be maintained.

Policy aims can, however, 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. Low fares and higher capacity may result from competition, but make it impossible to sustain the breadth of service in the long term, given local economies of scale. Both Islands recognise this inevitable, and to some extent insoluble, dilemma and on the other hand, the importance of such links to the Islands.

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 shipping operators and their customers, and not by government standing proxy for one party alone. Because of this, the current stance of the two Islands is that they will most effectively achieve their sea transport aims by establishing some overarching parameters and keeping regulatory interventions to a minimum. On the UK northern routes, a year-round reliable car and passenger service is currently being achieved by the incumbent operator offering a conventional Ro/Pax and fast ferry Ro/Ro service. The incumbent operator also provides year-round reliable fast ferry car and passenger services on the southern route to France.

The two Islands believe it is appropriate to include within the Statement the provision of Ro/Ro freight ferry services for the Island that are of sufficient quality, capacity and frequency to meet the needs of residents and to support economic sustainability and development. It is evident that the success of the Ro/Ro freight services is integral to the sustainability of the car and passenger ferry services. In part, car, passenger and freight services share common infrastructure (the conventional ferries), but it is clear that the profitability of freight services helps to sustain competitive car and passenger services which are valued by residents and vital to both Islands' tourism sectors.

For the avoidance of any doubt, should any new application be received for the provision of a Ro/Ro service network to and from the UK and France, the effect that such additional competition and capacity would have on the both the northern and/or southern routes will be jointly assessed by the governments of Guernsey and Jersey. In addition, the governments of Jersey and Guernsey will assess the operational and commercial capability and capacity of any a potential new operator to provide an acceptable level of services (i.e. a standard of service that meets the Islands' agreed common policy position).

In summary, the Chairman of the External Transport Group in Guernsey and the Minister for Economic Development in Jersey have agreed that:

- The administrations in Guernsey and Jersey will work with the incumbent operator to ensure that the Islands' sea transport needs will continue to be adequately served. Remedies will be sought for identified deficiencies.
- Unless there is demonstrable and material market change that the operator is unable to meet or operator deficiency generally (against the requirements of this Joint Policy Statement, or the Islands' supporting agreements), neither administration will pro-actively seek new operators on any existing Ro/Ro route in the initial 7 year period. However, the option to respond to either situation will be retained and exercised in the event of such deficiency. Notwithstanding the underlying policy, the Islands will formally review and make recommendations on the extension, or otherwise, of arrangements beyond the additional 3 year period, no later than the date of expiry of the initial 7 year agreement.
- Notwithstanding the above, an application from any new operator would be fully evaluated with particular regard to how the proposal might meet the policy aims of both Islands.
- Any decision whether or not to seek alternative service operators at the date of expiry of the initial 7 year agreement (or earlier in response to operator deficiency), will be a collective decision taken by the two Islands.
- If, to achieve the policy aims, seeking an alternative operator was believed necessary on any particular route, the incumbent operator would be given 36 months' notice of such intention, except where there was a significant threat to adequate service which demanded a shorter timescale.

The EU Regulation 1177/2010 on Sea Passenger Rights came into force on 18th December 2012 and affords protection of passengers in respect of certain aspects of the services they receive. In addition to the obligations placed upon the operator by these provisions, the Islands require that, in respect of Ro/Ro car, passenger and freight services, any operator 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 and publicise the results;
- Maintain and publish a record of vessel performance against schedules and publicise results;

- Seek comment and/or approval, as necessary, from the relevant administration for annual sailing schedules;
- Seek approval from the relevant administration for increases in maximum prices and to provide commercial reasoning for such increases.

The primary mechanisms that influence restrictions upon fare increases 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' current stance is to maintain the option to develop local competition law further, or to increase the use of competition regulatory authorities rather than direct government intervention should this prove necessary.

Customer complaints not successfully dealt with by the operators themselves will as far as possible be addressed by the appropriate bodies, such as local Trading Standards services and the UK's Voluntary Complaints Handling Body (the Cruise Lines International Association, CLIA UK and Ireland).

The mechanisms that each Island uses to manage the routes, control market access and administer the harbours will differ, and will be set out in individual Island agreements. However, the broad policy structure made explicit in these statements will be adhered to by both administrations.

States of Guernsey

States of Jersey

Chairman, External Transport Group

Minister for Economic Development

Dated –

Dated –