
STATES OF JERSEY



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

**Presented to the States on 19th December 2012
by the Minister for Economic Development**

STATES GREFFE

REPORT

Background

The Minister for Economic Development made a statement in the Assembly on 4th December 2012. This explained the decision to update the existing joint Channel Islands Sea Transport position. It prepared the ground for Condor Ferries to apply for a new permit for car and passenger ferry services and for compliance with the EU Regulation relating to passenger rights.

The issues

The EU Regulation comes into effect on 18th December 2012 and it should become part of the permit conditions as soon as possible thereafter.

Furthermore, the current permit expires on 31st December 2013. It is important for the company to be given a deadline by which to apply and for a decision to be made in good order so that there is a clear continuity of service.

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.

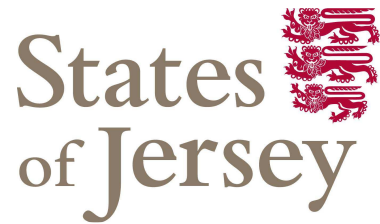
Conclusion

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.

12th December 2012

**Economic Development
Department**

Ground Floor
Cyril Le Marquand House
St. Helier
Jersey, JE4 8UL
Tel: +44 (0)1534 440667



Group Chief Executive and Harbour Master
Ports of Jersey
The Airport
St. Peter
JE1 1BY

12 December 2012

Dear Harbour Master,

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

1. Updated Policy

I have agreed a new joint policy statement with Guernsey concerning car and passenger ferry services. To take account of the EU Regulation referred to below I have also updated the policy referred to in Regulation 5(6)(a) of the Harbours (Jersey) Regulations 1962. The policy notice attached regarding the issue of permits thus replaces that issued on 30 April 2008.

2. Expiry of the current car ferry permit for Condor Ferries

The permit expires on 31 December 2013. 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 ensure continuity of services I should like you to set a date not later than 31 January 2013 by which Condor Ferries as the incumbent operator must make a fresh application.

3. EU Regulation 1177/2010 (rights of passengers when travelling by sea, etc.)

The Regulation comes into force on 18 December 2012 and it has been incorporated into the updated policy. Operators are legally bound by the Regulation for services that arrive in or depart from France or the UK. Condor Ferries have agreed to implement the same standards on inter-Island voyages.

Compliance should now be a condition of current and future permits. The Regulation will in that way have similar legal force as it does in the EU. A breach of a permit condition carries a penalty up to a level 4 (£5,000) fine for each infringement and the UK draft legislation is proposing an equivalent maximum fine.

The Regulation brings in new standards of assistance, compensation, re-imburement and re-routing in the event of delays and cancellation. Information on these and other passenger rights have to be effectively promulgated by the ferry and terminal operators. We are expecting ferry operators to do this.

The duties of terminal operators do not have the force of the EU law in Jersey. Nevertheless, I understand that you have matters in hand to ensure compliance in St. Helier. The effective display of the Regulation, the entitlements conferred and the mechanisms for passengers to make complaints are especially important in this regard.

Complaints Procedures – In the first instance these should be made to the relevant terminal or ferry operator. In the UK the Passenger Shipping Association will be available as the next tier and any passenger arriving or departing the UK may refer a matter to them. In Jersey the current practice, where individuals forward matters to me after failing to resolve matters with the relevant terminal or ferry operator, can continue in the short term but this is being reviewed.

Yours sincerely,

Senator Alan Maclean
Minister for Economic Development

cc:
Jersey Non-Exec Director
Managing Director (elect), Condor Ferries

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 2 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. 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.

6. 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.

7. 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.

8. 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.

9. 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.....

Guernsey and Jersey Joint Policy Statement on Sea Links

The Jersey and Guernsey Governments agreed a Joint Policy Statement on Sea Links in early 2008 that provided for car and foot passenger ferry operations through to 31 December 2013. Because it is time-limited that statement has been under review together with the memoranda of understanding currently in place with the incumbent service operator. The joint policy statement is not intended to create any third party legal rights.

Detailed discussions have been undertaken during the last year and, for a variety of reasons, new long-term memoranda of understanding with the incumbent operator are not considered appropriate at the present time. However, to ensure continued provision of effective roll-on/roll-off (RoRo) passenger, car, and freight services in the short-medium term, unless there is demonstrable market or operator deficiency, neither administration will pro-actively seek new operators on any existing route in the period prior to 31 December 2018.

Particular factors taken into consideration in adopting this policy decision include the introduction of the International Maritime Organisation and EU regulations on sulphur emissions by ships that will come into effect in 2015 that will necessitate expensive engine modifications to its traditional Ro/Pax and Ro/Ro freight ships. In addition, new ship designs include vessels driven by LPG (liquid petroleum gas) and the best type of replacement high speed vessels, at this stage, is far from clear.

This presents an opportunity for the two Island governments to restate their joint resolve to provide a co-ordinated and effective approach to sea transport whilst accepting that no long-term solution is currently available but needs to be considered. During the 5 year period between 2013 and 2018 the Jersey and Guernsey governments will continue to develop a co-ordinated and effective approach to sea transport that will lead to a fully integrated long-term policy and strategy position. Thus, 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 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.”

The appropriateness of this aspiration was tested via the pan-Island consultation on sea links that was conducted during the latter part of 2010 which revealed broad support for the Islands' aims.

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. Unrealistically 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 matters to a minimum. This would only be reviewed if there were material market or operator failure to meet the policy aims of this statement.

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. That operator also provides year-round reliable fast ferry services on the southern route to France. However, should a new application be received for services to and from the UK and/or France, there will be value in assessing the effect that additional competition and expanded capacity could have on the northern and/or southern routes and whether or not a potential new operator could provide an acceptable level of services, (i.e. a standard of service that meets the Islands' agreed 'common aspiration', as stated above), in the event that it became the sole operator and/or its impact upon long-term service provision.

Whilst the Islands' basic policy position, as described above, concerns RoRo services for cars and foot passengers, as a consequence of reviewing the Joint Policy Statement, Guernsey has deemed it appropriate to include within the Statement the provision of RoRo freight ferry services for the Island that should be of sufficient quality and frequency to meet the needs of its residents and the business community. Jersey endorses that position. However, it does not seek to have a new explicit agreement on freight which is already managed through permits issued by the Harbour Master and which appears to operate effectively.

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

- In the medium-term RoRo passenger car ferry services will not be subject to a tender process.
- The administrations in Guernsey and Jersey will work with any prospective operator to ensure that the Islands' sea transport (car ferry) needs will continue to be adequately served. Remedies will be sought for identified deficiencies.
- Unless there is demonstrable and material market or operator deficiency generally, with this joint policy statement, or with the memoranda of understanding, neither administration will pro-actively seek new operators on any existing RoRo route in the period prior to 31 December 2018. However the option to do either of these things or to run a tender process will be retained and exercised in the event of such deficiency. Notwithstanding the underlying policy regarding a tender process, the Islands and the incumbent operator will formally review and make recommendations on the extension, or otherwise, of arrangements beyond 31 December 2018 no later than 31 December 2016.

- 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 tenders for services would be taken by the two Islands together. If, to achieve the policy aims, a tender process was believed necessary on any particular route, the incumbent operator would be given 18 months' notice of the intention to tender, except where there was a significant threat to adequate service which demanded a shorter timescale.

In the case of Guernsey, the preceding 5 points of agreement will also apply to the provision of RoRo freight ferry services.

The EU Regulation 1177/2010 on Sea Passenger Rights comes into force on 18 December 2012 and will afford a better degree of protection to passengers in respect of certain aspects of the service they receive. Compensation for delayed or cancelled services will in particular be more readily available than at present. In addition to the requirements placed upon the operator by these provisions the Islands believe that, in respect of car and foot passenger 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 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 further develop local competition law or 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 Passenger Shipping Association.

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 or a memoranda of understanding. 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 –