

PORTS ORDINANCE 2010

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PORTS ORDINANCE 2010

An Ordinance to provide for the control and protection of ports and port precincts of the
Sovereign Base Areas and for other related matters.

G. E. STACEY
ADMINISTRATOR

14th December 2010.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. Short title

This Ordinance may be cited as the Ports Ordinance 2010.

2. Interpretation

(1) In this Ordinance—

“buoy” includes any floating light, mark or sign used as an aid to navigation;

“the Crown” means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas;

“explosives” does not include explosives which are part of distress or other signalling equipment;

“firearm” does not include a firearm which is part of the distress or signalling equipment of a vessel;

“property” means movable, immovable or any other property whatsoever;

“vehicle” means any vehicle other than a vessel.

(2) In this Ordinance, unless the context otherwise requires, “vessel” includes any ship, boat, water craft, hulk, raft, pontoon, bathing stage, timber or any other floating structure.

3. Declaration of ports

(1) The Administrator may, by order published in the Gazette, declare any place in the Areas and any navigable channel leading into such place to be a port.

- (2) Nothing in this Ordinance permits the declaration of any place in the Areas to be a port for the purpose of establishing a commercial sea port.

4. Power to make regulations

- (1) The Administrator may make regulations for the safety, security and conservancy of a port and, without prejudice to the generality of the foregoing, for all or any of the following purposes in a port—
- (a) for regulating the use of pontoons, stagings, quays, jetties, piers, walkways, bridges, slipways, landing places, berthing heads, boat lifts, mooring posts, buildings, parking places and other works and facilities;
 - (b) for regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods;
 - (c) for preventing damage or injury to any vessel, goods, vehicle, plant, machinery, property or persons;
 - (d) for regulating, preventing or licensing the conduct of all persons in vessels or otherwise, not being members of the Sovereign Base Areas Police or officers or servants of the Crown whilst in the exercise of their duties as such;
 - (e) for regulating the placing, laying down, maintenance and use of moorings and for prescribing the patterns and specifications of moorings;
 - (f) for preventing or removing obstructions or impediments;
 - (g) for regulating the launching of vessels;
 - (h) for regulating or prohibiting the mooring, beaching or anchoring and keeping of vessels;
 - (i) for regulating or preventing the use ashore or on board any vessel of fires, lights or any other equipment, tools or appliances which involve a risk of fire and for the prevention of smoking;
 - (j) for regulating the removal or disposal of rubbish (including ballast, earth or clay or other refuse) and sewage from vessels;
 - (k) for preventing the disposal of rubbish and sewage from vessels;
 - (l) for prohibiting the use of or regulating the movement, speed and parking of vehicles;
 - (m) for requiring the use of effectual silencers and the general control of noise on vessels;
 - (n) for regulating vessels in the port and their entry into and departure from the port and, without prejudice to the generality of the foregoing, for prescribing rules for regulating the speed and manner of navigation and the lights and signals to be exhibited or made by, or for the benefit of, such vessels;
 - (o) for regulating the embarkation of persons into, or their disembarkation from, vessels;
 - (p) for regulating the holding of regattas and other public events in the port;
 - (q) for prescribing the lights and signals to be exhibited or made—
 - (i) by vessels aground;
 - (ii) by devices used for marking obstructions;
 - (iii) for assisting the navigation of vessels at the entrance to any dock or at any wharf, pier or other work;
 - (r) for prescribing means of communication;
 - (s) for preventing nuisances;
 - (t) for preventing or regulating the discharge by land or sea of any material or thing;
 - (u) for regulating or preventing fishing for marine creatures of any type and by whatever means from any vessel, pier, jetty, wharf, or installation or structure of any kind; and
 - (v) for regulating or preventing aquaplaning, jet skiing, water skiing, kite surfing, diving or other recreational activities.
- (2) Regulations may provide that the Fiscal Officer may give directions about any matter to which the regulation relates.
- (3) Regulations may provide that a person contravening them commits an offence and is liable to a fine of €5,000 or 2 years imprisonment or both.

5. Directions to vessels

- (1) The Fiscal Officer may give directions for any of the following purposes—
 - (a) prohibiting the mooring of vessels in any particular part of the port;
 - (b) regulating or requiring the movement, mooring or unmooring of a vessel;
 - (c) for allocating berths and berthing facilities;
 - (d) for requiring vessels to keep specified distances away from particular parts of the port or from particular vessels or classes of vessel;
 - (e) for regulating the manner in which a vessel takes in or discharges passengers, cargo, fuel, water or ship's stores otherwise than at a quay or pier; or
 - (f) for removing unserviceable vessels or other obstructions from the port.
- (2) Directions may—
 - (a) apply to all ships or all ships of a description specified in the direction (subject to any exceptions specified);
 - (b) be given in any such manner and to such persons as the Fiscal Officer thinks fit.
- (3) A person to whom a direction is given under subsection (1) must comply with that direction.
- (4) A person who contravenes subsection (3) commits an offence and liable to 6 months imprisonment or a fine of €2,000 or both.

6. Directions by Fiscal Officer concerning dangerous vessels

- (1) Without prejudice to the powers contained in Part 2 of the Merchant Shipping (Safety Regulation and Seamen) Ordinance^(a), the Fiscal Officer may give directions prohibiting the entry into, or requiring the removal from, a port of any vessel if the condition of that vessel or the nature or condition of anything it contains is such that its presence in the port might involve—
 - (a) grave and imminent danger to the safety of any person or property; or
 - (b) grave and imminent risk that the vessel may, by sinking or foundering in the port, prevent or seriously prejudice the use of the port by other vessels.
- (2) The directions referred to in subsection (1) may be given as respects the vessel in question—
 - (a) to the owner of the vessel, or to any person in possession of the vessel;
 - (b) to the master of the vessel; or
 - (c) to any salvor in possession of the vessel, or to any person who is the servant or agent of any salvor in possession of the vessel, and who is in charge of the salvage operation.
- (3) A person to whom a direction is given under subsection (1) must comply with that direction.
- (4) In determining whether to give any directions under subsection (1) in any particular case, the Fiscal Officer is to have regard to all the circumstances of that case and, in particular, to the safety of any person or vessel (whether that person or vessel is in or outside the port and including the vessel in question).
- (5) Directions may be given under subsection (1) in such manner as the Fiscal Officer thinks fit.
- (6) The Fiscal Officer is to inform the person to whom directions under subsection (1) are given of the grounds for giving the directions at the time that those directions are given.
- (7) A person who contravenes subsection (3) commits an offence and is liable to 2 years imprisonment or a fine of €50,000 or both.

7. Pilotage directions

- (1) The Fiscal Officer may make a direction (a “pilotage direction”) that pilotage is to be compulsory for ships navigating in any port or part of a port.
- (2) A pilotage direction is only to be made if the Fiscal Officer considers that the interests of safety require such a direction to be made.
- (3) A pilotage direction—
 - (a) may, subject to subsection (4), apply to all ships or all ships of a description specified in the direction (subject to any exceptions specified);

- (b) is to specify the area and circumstances in which it applies;
 - (c) may specify the circumstances in which a pilot in charge of a ship to which it applies is to be accompanied by an assistant who is also a pilot; and
 - (d) may contain such supplementary provisions as the Fiscal Officer considers appropriate.
- (4) A pilotage direction may not apply to ships of less than 20 metres in length or to fishing boats of which the registered length is less than 47.5 metres.
 - (5) The master of a ship to whom a direction is given under subsection (1) must comply with that direction.
 - (6) A person who contravenes subsection (5) commits an offence and is liable to imprisonment for 1 year or a fine of €5,000 or both.

8. Liability for ships under compulsory pilotage

The fact that a vessel is being navigated in a port in circumstances in which pilotage is compulsory does not affect any liability of the owner or master of the ship for any loss or damage caused by the ship or by the manner in which it is navigated.

9. Provision of information to pilot

- (1) A pilot may require the master of any vessel which is being piloted to declare its draught, length and beam, and to provide the pilot with any other information relating to the ship or its cargo as the pilot specifies and is necessary for the ship to be piloted.
- (2) The master of a vessel must bring to the notice of a pilot any defects in, and any matter peculiar to, the ship and its machinery and equipment of which the master knows and which might materially affect the navigation of the ship.
- (3) The master of a vessel commits an offence if the master—
 - (a) refuses to comply with a request made under subsection (1); or
 - (b) makes a statement which is false in a material particular in answer to such a request, knowing it to be false or being reckless as to whether it is false, or fails without reasonable excuse to correct such a statement made by another person in answer to such a request, although knowing it to be false; or
 - (c) without reasonable excuse contravenes subsection (2).
- (4) A person who commits an offence under this section is liable to a fine—
 - (a) in the case of an offence under subsection (3)(b), of €5,000; and
 - (b) in any other case, of €2,500.

10. Boarding facilities for pilots

- (1) The master of a vessel navigating in a port in circumstances in which pilotage is compulsory must ensure that there are adequate facilities to ensure that a pilot can embark and disembark safely from the vessel.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable to 6 months imprisonment or a fine of €2,000 or both.

11. Pilot not to be taken beyond port

- (1) The master of a vessel must not, without reasonable excuse, take a pilot beyond the port without the consent of the pilot.
- (2) A person who fails to comply with subsection (1) commits an offence and liable to 6 months imprisonment or a fine of €2,000 or both.

12. Interference with navigational marks

- (1) Except with the permission of the Fiscal Officer, a person must not interfere with any radar head, light, beacon, sea-mark, tideboard, tide gauge buoy, sign or notice within a port.
- (2) A person who contravenes subsection (1) commits an offence and is liable to imprisonment for 1 year or a fine of €5,000 or both.

13. Powers of the Fiscal Officer and other persons

- (1) The Fiscal Officer may moor, unmoor, anchor or remove any vessel in a port if the vessel

has been moored, unmoored or anchored contrary to regulations made under this Ordinance or contrary to any directions applicable to that vessel.

- (2) The Fiscal Officer may recover the cost of exercising the functions described in subsection (1) from the owner of the vessel.
- (3) The Fiscal Officer, a customs officer or a police officer may without warrant—
 - (a) search any vessel if there are reasonable grounds for believing that firearms, weapons, ammunition or explosives are kept on that vessel contrary to regulations made under this Ordinance;
 - (b) confiscate any firearms, weapons, ammunition or explosives found on a vessel contrary to regulations made under this Ordinance.
- (4) The Fiscal Officer may remove any wreck, obstruction, nuisance or hazard from the port at the risk and expense of the owner.
- (5) The Fiscal Officer may detain any wreck, obstruction, nuisance or hazard recovered in exercising the function under subsection (4) and if, notwithstanding section 33 of the Wrecks Ordinance^(b), the owner fails to pay the expenses of removal within 30 days of being notified by the Fiscal Officer that such expenses are payable—
 - (a) the Fiscal Officer may sell by public auction the wreck, obstruction, nuisance or hazard;
 - (b) the proceeds of sale, after deduction of the expenses of removal and sale, are to be paid to the owner; and
 - (c) the owner continues to be liable for any expense which remains unpaid following the sale.
- (6) A person must not obstruct the Fiscal Officer, a customs officer or a police officer acting in accordance with this section.
- (7) A person who contravenes subsection (6) commits an offence and is liable to a fine of €2,000 or to imprisonment for a term of 6 months or both.

14. Criminal offences

If an offence under this Ordinance, committed by a body corporate, is committed with the consent or the connivance of, or is attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, that officer as well as the body corporate commits that offence and is liable to be punished as provided for by this Ordinance.

15. Application to the Crown

This Ordinance does not bind the Crown or a person employed by or in the service of the Crown while discharging duties except insofar as its provisions expressly impose duties or confer powers on the Chief Officer, the Fiscal Officer, police officers and customs officers.

16. Repeals

- (1) Sections 15 and 16 of the Port Regulation Ordinance^(c) are repealed.
- (2) The Ports Ordinance 1982^(d) is repealed.

17. Commencement

This Ordinance comes into force on 1 February 2011.

Notes

- (a) Cap 292 Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (b) Cap 298 Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (c) Cap 294 Statute Laws of Cyprus revised edition 1959, as applied to and adapted in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom) and the Laws (Adaptation and Interpretation) (Consolidation and Extension) Ordinance 1968 (5/68).
- (d) Ordinance 13/82.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Ports Ordinance 2010 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So when a section or part of a section does not seem to require any explanation or comment, none is given.

Particular points

3. The Ordinance repeals and replaces the Ports Ordinance 1982.
4. Section 3 of the Ordinance gives the Administrator the power to designate any place within the Areas to be a port. However, this power does not extend to designating any place within the areas to be a port for the purpose of establishing a commercial seaport. Section 4 gives the Chief Officer the power to make regulations for the safety, security and conservancy of a port.
5. The Fiscal Officer may give directions in relation to a port in respect of a number of matters. These include:
 - Directions in respect of the navigation of ships (section 5);
 - Directions concerning dangerous vessels (section 6); and
 - Directions concerning pilotage (section 7).
6. A direction given under section 6 may prohibit the entry of a ship into a port or require its removal. Such a direction is without prejudice to section 5 of the Merchant Shipping (Safety Regulation and Seamen) Ordinance which permits the detention of a ship where it is unsafe for the ship to proceed to sea without danger to human life.
7. Sections 8 to 11 are also concerned with pilotage. Section 8 makes clear that the owner or master of a ship continue to be liable for the conduct of that vessel even when navigated under compulsory pilotage. Section 9 imposes a duty on the master to provide the pilot with information about the vessel (to enable the vessel to be safely navigated), and section 10 specifies that the pilot must be provided with proper boarding facilities. Section 11 provides that a pilot must not be taken out of the port without his consent. The term “master” is defined in the Interpretation Ordinance (Cap 1) as being the person (other than a pilot or harbour master) having for the time being control or charge of a vessel.
8. Section 12 makes it an offence to interfere with navigation marks within the port. Section 13 gives the Fiscal Officer, customs officers and the police certain powers to deal with hazards within a port.
9. The functions conferred on the Fiscal Officer by this Ordinance may be delegated to other persons under the Delegation of Functions (Internal) Ordinance 2009 (Ordinance 32/09).