

ISLAND OF SARK

EXTRAORDINARY MEETING of the CHIEF PLEAS to be held on THURSDAY 25TH AUGUST 2016 at 7.00 PM in the ASSEMBLY ROOM.

AGENDA

1. MATTERS ARISING from the Midsummer Meeting held on the 6th July, adjourned and completed on 13th July 2016.
2. QUESTIONS Not Related to the Business of the Day.
3. To CONSIDER a Report from the POLICY and PERFORMANCE COMMITTEE entitled **“The Liquor Licensing (Amendment) (Sark) Ordinance, 2016”** and to Approve the Ordinance entitled **“The Liquor Licensing (Amendment) (Sark) Ordinance, 2016”** (copies enclosed).

Ordinance Laid Before Chief Pleas

“The Libya (Restrictive Measures) (Sark) (No. 2) Ordinance, 2016”

3rd August 2016

Lt Col RJ Guille MBE
President of Chief Pleas

NOTES:

This Meeting has been called in accordance with Rule of Procedure 1 (1) (c).

Anyone wishing to see any of the Reports and Supporting Papers may do so at the Committee Offices, Monday – Thursday, between 2.30pm and 5.00pm and at other times when the offices are open; copies may be obtained from the Committee Office. The Agenda, Reports and Supporting Papers may also be seen on the Sark Government Website at www.sark.gov.gg

POLICY AND PERFORMANCE COMMITTEE

Report with proposition to the Extraordinary Chief Pleas, 25th August 2016

**THE LIQUOR LICENSING (AMENDMENT) (SARK)
ORDINANCE 2016**

At Item 14 of Midsummer Chief Pleas 2016, members of Chief Pleas considered and approved 12 propositions regarding amendments to The Liquor Licensing (General Provisions) (Sark) Ordinance 1979. The propositions were made in direct response to recent island wide consultation on Liquor Licensing carried out by the Policy Development Team (PDT), the full summary of which was presented at the Midsummer meeting.

Proposition 1 was as follows:

*To direct the Policy and Performance Committee to instruct the Law Officers of the Crown to draft an amendment to The Liquor Licensing (General Provisions) (Sark) Ordinance 1979 to the SECOND SCHEDULE of Permitted Hours Part II **Sundays** to allow discretionary hours from 10 am till 10 pm for Public Houses during summer and winter.*

This proposition relates to the sale of alcohol without food in Public Houses on Sundays and reflects the wish of the majority of those who returned questionnaires that the Law be changed to allow this to happen.

Proposition 2 was as follows:

*To direct the Policy and Performance Committee to instruct the Law Officers of the Crown to draft an amendment to The Liquor Licensing (General Provisions) (Sark) Ordinance 1979 to the SECOND SCHEDULE of Permitted Hours Part II **Sundays** to allow discretionary hours from 10 am till 10 pm for Off Licences during summer and winter.*

This proposition was included because if the Public Houses choose to open on Sundays, residents and visitors might also expect to be able to purchase off sales on Sundays.

Propositions 3 to 8 simplified the Permitted Hours, making them consistent across all the categories, and all days of the week, in response to those members of the public who felt that the current Permitted Hours were confusing and did not cater well for some of our visitors. The implementation of these propositions will result in a common understanding that alcohol can be purchased daily from 10am whether it's from a public house, hotel, restaurant or guest house. Propositions 3 to 8 referred only to the sale of alcohol with food, as consistent with the Schedules, and they only amended the permitted commencement times.

Proposition 9 was as follows:

To direct the Policy and Performance Committee to instruct the Law Officers of the Crown to draft an amendment to The Liquor Licensing (General Provisions) (Sark) Ordinance 1979 to remove the restriction on off licences being granted only to Hotels and Public House licence holders.

This proposition arose from the response to the questionnaire in which a clear majority expressed that they were in favour of removing the phrase in the ordinance which restricts off licences being granted only to hotels and public houses. This proposition enables shops or other liquor licence holders to apply for an off licence if they wish.

There were three further propositions in the Midsummer report, relating to; increased penalties awarded to Licensees who behave irresponsibly (Proposition 10) the ability to be able to purchase alcohol without food at restaurants and cafes (Proposition 11) and a full review of the 1979 Ordinance in order to make it fit for purpose and better aligned with the views which were expressed during the consultation (Proposition 12).

Although Propositions 10, 11 and 12 were approved at Midsummer Chief Pleas, they each require much more deliberation within the PDT and advice from Law Officers. We aim to bring further reports with propositions to Chief Pleas regarding the implementation of these changes in due course.

The amendments necessary to implement Propositions 1 to 9 have now been drafted, see attached Liquor Licensing (Sark) (Amendment) Ordinance 2016, with the proposition to approve it.

Proposition –

That Chief Pleas approves The Liquor Licensing (Amendment) (Sark) Ordinance, 2016

**Conseiller Karen Adams
Policy and Performance Committee
(Leader, Liquor Licencing Policy Development Team)**

The Liquor Licensing (Sark) (Amendment) Ordinance, 2016

THE CHIEF PLEAS OF SARK, in exercise of the powers conferred on them by sections 37 and 40 of the Reform (Sark) Law, 2008^a, and in pursuance of their Resolution of the 13th day of July 2016, hereby order:-

Amendments to General Provisions Ordinance.

1. The Liquor Licensing (General Provisions) (Sark) Ordinance, 1979, as amended^b, is further amended as follows.
 2. In section 9(2) of that Ordinance –
 - (a) for the colon immediately following "this Ordinance", substitute a full stop, and
 - (b) delete the proviso beginning with "Provided".
 3. For the Second Schedule to that Ordinance, substitute the schedule set out in the Schedule to this Ordinance.

Citation and commencement.

^a Order in Council No. V of 2008; there are amendments not relevant to this Ordinance.

^b As amended by the Liquor Licensing (General Provisions) (Amendment) (Sark) Ordinance, 1980; the Liquor Licensing (General Provisions) (Amendment) (Sark) Ordinance, 1981; the Liquor Licensing (General Provisions) (Amendment) (Sark) Ordinance, 1984; the Liquor Licensing (General Provisions) (Amendment) (Sark) Ordinance, 1989; the Liquor Licensing (Amendment) (Sark) Ordinance, 1994; the Liquor Licensing (Amendment) (Sark) Ordinance, 1996; the Liquor Licensing (Amendment) (Sark) Ordinance, 2006.

4. This Ordinance may be cited as the Liquor Licensing (Sark) (Amendment) Ordinance, 2016 and shall come into force on the 26th August, 2016.

SCHEDULE

Section 3

“SECOND SCHEDULE

Section twenty-one

PERMITTED HOURS

PART I

Weekdays other than Sundays

Category of licence	Period	Obligatory Hours	Discretionary hours
1. Hotel	Summer and winter	None	10 am to 11.45 pm
		Provided that during any of the aforesaid permitted hours the intoxicating liquor may only be served with a meal	
2. Public House	Summer	10 am to 10 pm	10 pm to 11 pm
	Winter	10 am to 2 pm 6 pm to 10 pm	2 pm to 6 pm
	Good Friday	None	10 am to 11 pm
	Christmas day	None	10 am to 10 pm
3. Off-Licence	Summer and winter	None	10 am to 10 pm
4. Restaurant and guest house	Summer and winter	None	10 am to 11.45 pm
		Provided that during any of the aforesaid permitted hours the intoxicating liquor may only be served with a meal	
5. Club	Summer and winter	None	10 am to 11.45 pm

PART II

Sundays

Category	Period	Obligatory Hours	Discretionary Hours
Hotel	Summer and winter	None	10 am to 11.45 pm
		Provided that during any of the aforesaid permitted hours the intoxicating liquor may only be served with a meal	
Public House	Summer and winter	None	10 am to 10 pm
Off-Licence	Summer and winter	None	10 am to 10 pm
Restaurant and guest house	Summer and winter	None	10 am to 11.45 pm
		Provided that during any of the aforesaid permitted hours the intoxicating liquor may only be served with a meal	
Club	Summer and winter	No permitted hours"	

The Libya (Restrictive Measures) (Sark) (No. 2) Ordinance, 2016

THE POLICY AND PERFORMANCE COMMITTEE, in exercise of the powers conferred on the Chief Pleas by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, as amended, and on the Committee by section 41 of the Reform (Sark) Law, 2008^b, as amended, hereby orders:-

Application and infringement of EU Regulation.

1. (1) Subject to the modifications in section 2, Council Regulation (EU) 2016/44 of the 18th January 2016^c concerning restrictive measures in view of the situation in Libya ("**the EU Regulation**") has full force and effect in Sark.

(2) A person who contravenes, or causes or permits any contravention of, any of the prohibitions in or requirements of the EU Regulation is guilty of an offence.

^a Ordres en Conseil Vol. XXXV(1), p. 65. The functions of the General Purposes and Advisory Committee under this Law were transferred to the Policy and Performance Committee by Ordinance of the Chief Pleas No. VI of 2015.

^b Orders in Council Nos. V, VII and XXVII of 2008; No. XIV of 2010; and No. XI of 2014. The functions of the General Purposes and Advisory Committee under this Law were transferred to the Policy and Performance Committee by Ordinance of the Chief Pleas No. VI of 2015.

^c OJ L 12, 19.1.2016, p. 1

Modification of EU Regulation.

2. The modifications referred to in section 1 are as follows -
- (a) Articles 22 and 23 shall not apply,
 - (b) a reference to the competent authority of a Member State shall be construed so as to include the Committee,
 - (c) a reference to the competent customs authority of a Member State shall be construed so as to include the Chief Revenue Officer,
 - (d) a reference to the obligation of a competent authority of a Member State, or Member State, to consult, inform or notify shall be construed as an obligation on the part of the Committee to consult, inform or notify one of Her Majesty's Principal Secretaries of State,
 - (e) a reference to the obligation of any natural or legal person, entity or body to transmit information to the Commission shall be construed as an obligation to transmit such information to the Committee,
 - (f) a reference to a Member State shall be construed so as to include Sark,
 - (g) a reference to the Union shall be construed so as to include Sark,
 - (h) a reference to a vessel under the jurisdiction, or flying the flag, of a Member State shall be construed so as to

include a Guernsey ship and a Guernsey fishing vessel,

(i) a reference to an aircraft under the jurisdiction of a Member State shall be construed so as to include an aircraft registered on the Register of Aircraft established under the Aviation Registry (Guernsey) Law, 2013^d,

(j) a reference to -

(i) the territories of Member States, or

(ii) the territory of the Union and its airspace,

shall be construed so as to include Sark, its airspace and the territorial waters adjacent thereto,

(k) a reference to the provision of prohibited services by nationals of Member States to designated vessels includes the provision of prohibited services by any person who is ordinarily resident in Sark to designated vessels, and

(l) the inclusion of any natural or legal person, entity or body in any list provided for by the EU Regulation shall be subject to any annulment of the EU Regulation in its application to that person, entity or body by the Court of Justice of the European Union and having effect in the European Union for the time being.

^d Order in Council No. XIII of 2013; Ordinance No. XI of 2014.

Appeals against decisions of Committee.

3. (1) A person aggrieved by a decision of the Committee made under the EU Regulation may appeal to the Ordinary Court against that decision on the grounds 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.

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

- (a) within a period of 28 days immediately following the date of the decision of the Committee (or such other period as the Ordinary Court may in any particular case direct), and
- (b) by summons served on the President stating the grounds and material facts on which the appellant relies.

(3) The President may, where an appeal under this section has been instituted, apply to the Ordinary Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and, on hearing

the application, the Court may -

- (a) dismiss the appeal or dismiss the President's application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007^e.

- (4) On an appeal under this section the Ordinary Court may -
 - (a) set the decision of the Committee aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

(5) On an appeal under this section the Ordinary Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

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

^e O.R.C. No. IV of 2007; amended by No. II of 2008.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961^f ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Powers to obtain information.

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Committee, of information and documents for the purpose of ensuring compliance with the EU Regulation.

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Committee in the exercise of any power to request or demand the provision of information, or the co-operation of any person, under any article of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

7. (1) A person guilty of an offence under -
- (a) section 1(2), 5 or 6, or
 - (b) paragraph 2(b) or (c) of the Schedule,

^f Ordres en Conseil Vol. XVIII, p. 315.

is 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 three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

Offences by legal persons and unincorporated bodies.

8. (1) Where a legal person is guilty of an offence under this Ordinance, and the offence 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, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

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

(2) Where the affairs of a legal person are managed by its

members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Ordinance 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),

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

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

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

Certain provisions of Customs and Excise Law applicable.

9. (1) Section 55 of the Customs and Excise (General Provisions)

(Bailiwick of Guernsey) Law, 1972^g applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, fines, penalties and proceedings for offences under this Ordinance as they apply to offences, fines, penalties and proceedings for offences under the customs Laws or excise Laws.

Interpretation.

10. (1) In this Ordinance, except where the context requires otherwise-

"advocate" means an advocate of the Royal Court of Guernsey,

"Bailiff" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,

"Chief Revenue Officer" has the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"Committee" means the States of Guernsey Policy & Resources Committee

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

"Court of Appeal" means the court established by the Court of Appeal (Guernsey) Law, 1961,

^g Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.

"customs Laws" and **"excise Laws"** mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"enactment" includes a Law, an Ordinance and any subordinate legislation,

"foundation official" has the same meaning as it does under the Foundations (Guernsey) Law, 2012^h,

"Guernsey fishing vessel" and **"Guernsey ship"** have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002ⁱ,

"Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^j,

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

"President" means the President of the Committee,

"prohibited services" means bunkering or ship supply services, or any other servicing of vessels, including the provision of fuel or supplies,

^h Order in Council No. I of 2013.

ⁱ Ordres en Conseil Vol. XLIV(2), p. 1; Order in Council No. XIII of 2010; No. VIII of 2015; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 624; Ordinance No. LIV of 2012.

^j Order in Council No. XXII of 2008.

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"uniform scale of fines" means the scale of fines from time to time in force under the Uniform Scale of Fines (Sark) Law, 1989^k,

and other terms used in this Ordinance and the EU Regulation shall have the same respective meanings as in the EU Regulation.

(2) A reference in this Ordinance to an enactment or to the EU Regulation is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Repeals.

11. The Libya (Restrictive Measures) (Sark) Ordinance, 2011^l, the Libya (Restrictive Measures) (Sark) (Amendment) Ordinance, 2011^m, the Libya (Restrictive Measures) (Sark) (Amendment) (No.2) Ordinance, 2011ⁿ, the Libya (Restrictive Measures) (Sark) (Amendment) Ordinance, 2013^o and the Libya (Restrictive Measures) (Sark) Ordinance, 2016 are repealed.

^k Ordres en Conseil Vol. XXXI, p. 320.

^l Folio No. 194.

^m Folio No. 196.

ⁿ Folio No. 209.

^o Folio No. 232.

Citation.

12. This Ordinance may be cited as the Libya (Restrictive Measures) (Sark) (No. 2) Ordinance, 2016.

Commencement.

13. This Ordinance shall come into force on the 3rd August, 2016.

SCHEDULE

Section 4

INFORMATION

1. (1) The Committee (or any person authorised by it for that purpose either generally or in a particular case) may request any person to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Committee (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body

corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, tampers with, falsifies, secretes, removes or otherwise disposes of any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request or order made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent

for the purposes of this item but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in right of Sark ,
- (c) on the authority of the Committee, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.