

## ADDENDUM

### **Late Filed Ordinance etc. for the Christmas Meeting of Chief Pleas – 21<sup>st</sup> January 2015**

1. As per Note 1 to the Agenda for the above mentioned Meeting please find enclosed the Ordinance to accompany the Report at Item 7.
2. After the Meeting papers had been enveloped for circulation it was found that the Ordinance at Item 8 of the Agenda was the wrong version, the correct version is enclosed. The Medical Committee also found that there were two small but significant errors in the Report and have taken the opportunity to reissue an amended version, also enclosed. Please destroy the earlier versions of the Ordinance and Report. (Note: Conseillers and others who collected their papers from the Committee Office prior to and after Christmas already have the correct versions.)
3. Make typographical amendments as follows:
  - a. Item 17. Line 3, after 'Performance' insert 'closed bracket'.
  - b. Item 19. Delete Report title and replace with "**Sea Fisheries Annual Report**".

8 January 2015

Lt Col RJ Guille MBE  
President of Chief Pleas

Note 1. The government website has been updated to incorporate the new material in accordance with paragraphs 1 and 2 above.

Anyone wishing to see the Addendum 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 Secretary. The Addendum, Agenda, Reports and Supporting Papers may also be seen on the Sark Government Website at [www.sark.gov.gg](http://www.sark.gov.gg)

### **MEDICAL COMMITTEE**

**Report with proposition to Christmas Chief Pleas, 21<sup>st</sup> January 2015**

### **TOBACCO LICENSING**

As approved by Chief Pleas at Midsummer 2014, legislation has been made under the provisions of the Reform (Sark) Law. Sark's legislation at this time allows a young person age **16** to buy tobacco products. The Committee felt this should be brought into line with the UK and other jurisdictions in the Bailiwick and be raised to **18** years of age.

The Medical Committee has consulted with businesses and residents on the sale and supply of tobacco and tobacco products; the Committee had a response from twelve people all of whom supported the raising of the age which allows a young person to buy tobacco products. The Ordinance was available to all residents and a copy was given to all businesses that had any connection with the sale of tobacco.

#### **Part I of the Ordinance** –

- prohibits the sale or supply of tobacco products to persons under the age of 18 years;
- it is a defence for the defendant to prove that he or she had taken reasonable steps to establish the age of the person to whom the tobacco products were sold or supplied. *This new prohibition would continue the prohibition currently contained in the Sale and Supply of Tobacco Products (Sark) Ordinance, 2011.*

#### **Part II of the Ordinance** –

- sets out a licensing regime for the sale of tobacco products, which would be administered by the Court of the Seneschal;
- defines the licence required for the sale of tobacco products and fees for applications are set out in Schedule 1;
- identifies the fee for a retail licence or indirect sales licence as £40;
- identifies the fee for an application for a wholesale licence as £150;
- specifies the grounds for refusing, suspending, revoking or varying a licence;
- sets out the duties of licensees and responsible persons (*those who are to manage the conduct of corporate licences*).

*General conditions of licences are set out in Schedule 2.*

*Appeals against licensing decisions may be made to the Royal Court of Guernsey.*

#### **Part III of the Ordinance** –

- sets out miscellaneous and general provisions;
- creates offences relating to obstruction and the provision of false, deceptive or misleading information;
- requires information acquired under the Ordinance to be kept confidential, subject to a few exceptions;

- provides for a maximum penalty of a Level 4 fine (currently £5,000), or imprisonment for up to one month, upon summary conviction for an offence under the Ordinance.
- repeals the Sale and Supply of Tobacco Products (Sark) Ordinance, 2011.
- includes transitional provisions for businesses selling tobacco products before the new licensing regime for tobacco products comes into force;
- gives existing retailers two months to make a licence application, during which time they are deemed to hold a licence, until such time as their application is granted or finally refused, taking into account the possibility of appeal;
- exempts cruise vessels, passenger vessels sheltering in an emergency and vessels not carrying passengers for reward, from the provisions of this Ordinance.

**"Tobacco product"** is defined to mean tobacco or products containing tobacco, smoking mixtures intended as a substitute for tobacco, and cigarette paper.

**Proposition -**

**That Chief Pleas approve The Sale and Supply of Tobacco Products (Sark) Ordinance 2015 which has a commencement date on Sark for 1<sup>st</sup> February 2015.**

**Conseiller Diane Baker  
Chairman, Medical Committee**

# **The Sale and Supply of Tobacco Products (Sark) Ordinance, 2015**

## ARRANGEMENT OF SECTIONS

### PART I

#### PROHIBITION OF SALE OR SUPPLY TO UNDER-AGED PERSONS

1. Prohibition of sale or supply to persons under 18 years of age.

### PART II

#### LICENSING

##### *Prohibition of unlicensed sales*

2. Sale of tobacco products to be licensed.

##### *Licences and renewals*

3. Applications for licences or renewals.
4. Grant of licences.
5. Features of licences.
6. Renewals.

##### *Refusal of licences, etc.*

7. Circumstances in which applications must be refused.
8. Procedure for refusals.

##### *Responsible persons*

9. Applications for approval.

10. Approval of responsible person.
11. Refusal of approval.
12. Application of this Ordinance to responsible persons.
13. Procedure where responsible person ceases to act.

*Duties of licensees*

14. General duties of licensee.
15. Replacement licences.
16. Return of licences.

*Suspension, revocation, variation, etc.*

17. Suspension, revocation or variation of licence.
18. Licensee may apply for variation.
19. Court to maintain register of licences.

*Appeals*

20. Appeal to Royal Court.

PART III

MISCELLANEOUS AND GENERAL

21. Obstruction or provision of false, deceptive or misleading information.
22. Confidentiality.
23. Penalties and proceedings.
24. Regulations may amend licence conditions and periods, etc.
25. General provisions as to regulations.
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28. Transitional provisions for existing sellers.

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30. Exemption for certain vessels in territorial waters.
31. Citation.
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SCHEDULE 1 Fees payable under this Ordinance.

SCHEDULE 2 Conditions of Licences.

# **The Sale and Supply of Tobacco Products (Sark) Ordinance, 2015**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 4<sup>th</sup> May, 2011, and in exercise of the powers conferred on them by sections 12, 37 and 40 of the Reform (Sark) Law, 2008<sup>a</sup> and all other powers in that behalf, hereby order:-

## **PART I PROHIBITION OF SALE OR SUPPLY TO UNDER-AGED PERSONS**

### **Prohibition of sale or supply to persons under 18 years of age.**

1. (1) A person is guilty of an offence who sells or supplies any tobacco product to a person under the age of 18 years.

(2) In any proceedings for an offence under subsection (1), it is a defence to prove that the defendant –

- (a) believed the person to whom the defendant sold or supplied the tobacco product to be of or over 18 years of age, and
- (b) had taken reasonable steps to establish the age of the person concerned.

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<sup>a</sup> Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008, No. XIV of 2010, No. XII of 2011 and No. XI of 2014.

PART II  
LICENSING

*Prohibition of unlicensed sales*

**Sale of tobacco products to be licensed.**

2. A person is guilty of an offence who sells a tobacco product except under the authority of, and in accordance with –

- (a) a retail licence,
- (b) a wholesale licence, or
- (c) an indirect sales licence,

granted under this Ordinance.

*Licences and renewals*

**Applications for licences or renewals.**

3. (1) Any individual or body corporate may apply to the Court for a licence or renewal of a licence.

- (2) An application –
  - (a) must include the licence application fee specified in Schedule 1 for the application concerned, paid to the Chief Pleas,



- (b) in the case of an application by a body corporate, must include an application under section 9 for the approval of a responsible person, and
  - (c) must be made in the form and manner and include any information prescribed by regulations or required by the Court.
- (3) An application for renewal of a licence must be made –
- (a) no later than 28 days before the day on which the licence is due to expire, or
  - (b) within any further period allowed by the Court in its discretion.

**Grant of licences.**

4. (1) Subject to section 7, on receipt of an application for a licence made in accordance with section 3, the Court must grant a licence to the applicant authorising the applicant, and any employee or agent of that applicant acting on that applicant's behalf, to sell tobacco products at or from premises specified on the licence —

- (a) by way of retail sale ("**retail licence**"),
- (b) by way of wholesale sale ("**wholesale licence**"), or
- (c) by way of indirect sale ("**indirect sales licence**").

(2) A licence may be granted which consists of a combination of more than one type of licence mentioned in subsection (1), but no more than one of each type of licence mentioned in subsection (1) may be granted in respect of the same premises.

(3) For the avoidance of doubt, the Court may grant a licence subject to special conditions, but if it does so, the Court must give the applicant –

- (a) written notice of the reasons for those conditions, and
- (b) a copy of section 20.

(4) In this section, "**indirect sale**", in relation to a tobacco product –

- (a) means sale of the product to a person who buys it otherwise than for the purpose of selling or supplying it in the course of a business carried on by that person, where the seller (or the seller's employee or agent) and the buyer are not in the same place at the time of the sale, and
- (b) includes a sale made by way of internet, electronic mail, telephone, facsimile or mail order.

**Features of licences.**

5. (1) A licence —

- (a) must specify the name (if any) and address of the premises to which it applies,

- (b) must specify the name and principal business address of the licensee,
  - (c) in the case of a licence granted to a body corporate, must be endorsed with the name and date of birth of the responsible person, and
  - (d) must be in the form and include any other information prescribed by regulations or required by the Court.
- (2) A licence is at all times subject to the conditions specified in Schedule 2.
- (3) A licence cannot be transferred to another person.
- (4) A licence expires on the anniversary of the date on which it is granted, unless renewed in accordance with this Ordinance.

**Renewals.**

6. (1) Subject to section 7, on receipt of an application for renewal made in accordance with section 3, the Court must –
- (a) renew the licence, and
  - (b) endorse the date of renewal on the licence.
- (2) For the avoidance of doubt, the Court may renew a licence subject to special conditions, but if it does so, the Court must give the applicant –

- (a) written notice of the reasons for those conditions, and
- (b) a copy of section 20.

(3) A renewed licence expires on the anniversary of the date of its last renewal, unless further renewed in accordance with this Ordinance.

*Refusal of licences, etc.*

**Circumstances in which applications must be refused.**

7. (1) An application for a licence or renewal must be refused if the Court is satisfied that any of the following disqualifications apply –

- (a) the applicant is an individual under the age of 18 years,
- (b) the applicant holds a licence that is currently suspended,
- (c) the applicant is the subject of a pending charge for a disqualifying offence,
- (d) anytime within the previous 24 months –
  - (i) the applicant was convicted of a disqualifying offence, or
  - (ii) a licence held by the applicant was revoked,

- (e) the applicant is not a fit and proper person to be granted the licence or renewal, or
  - (f) the applicant does not meet any prescribed criteria.
- (2) An application for a licence or renewal must also be refused

if –

- (a) the information provided is insufficient to satisfy the Court that the applicant’s operations would comply with the provisions of this Ordinance,
  - (b) in the case of an applicant that is a body corporate, the Court refuses, under the provisions of this Ordinance given effect by section 11, to approve the individual designated by the body corporate to manage the conduct of its licence, or
  - (c) the application does not meet any prescribed criteria.
- (3) For the purpose of determining whether subsection (1) or (2) applies in any particular case for the purposes of any provision of this Ordinance, the Court may —

- (a) seek and receive any information from any person (whether in Sark or elsewhere) as the Court considers appropriate, and
- (b) take into account any information obtained from any source.

- (4) In this section, "**disqualifying offence**" means –
- (a) an offence under this Ordinance or the Sale and Supply of Tobacco Products (Sark) Ordinance, 2011,
  - (b) an offence under the law of any country or territory relating to the sale, supply, advertising, importation, exportation or licensing of tobacco products, or
  - (c) an offence involving fraud or dishonesty under the law of any country or territory.

**Procedure for refusals.**

8. (1) Where the Court proposes to refuse an application for a licence or renewal, the Court must give the applicant written notice of —

- (a) the grounds for the proposed refusal, and
- (b) the date (being 14 days or more after the date of the notice) by which a written submission may be made to the Court in respect of the proposed refusal.

(2) A person given notice under subsection (1) may write to the Court with any submission the person wishes to make (including any additional information) –

- (a) on or before the date specified in the notice under subsection 1(b), or

(b) within any further period allowed by the Court in its discretion.

(3) In determining whether to proceed with the refusal, the Court—

(a) must consider any submission made in accordance with subsection (2), and

(b) may consider any other information the Court considers relevant.

(4) On determining the application, the Court must give the applicant —

(a) written notice of its decision, and

(b) if the Court decides to refuse the application —

(i) written notice of the Court's reasons, and

(ii) a copy of section 20.

(5) The Committee may make regulations to provide for the refund of any fees paid in connection with an application in the event that the application is refused.

*Responsible persons*

**Applications for approval.**

9. (1) A body corporate may apply to the Court in accordance with subsection (2) for the approval of an individual to manage the conduct of –

- (a) a licence for which the body corporate is applying, or applying to renew, or
- (b) a licence which the body corporate holds.

(2) An application for approval –

- (a) must include the approval application fee specified in Schedule 1 for the application concerned, paid to the Chief Pleas, and
- (b) must be made in the form and manner and include any information prescribed by regulations or required by the Court.

**Approval of responsible person.**

10. Subject to section 11, on an application made in accordance with section 9, the Court must –

- (a) approve, as the responsible person, the person designated by the body corporate to manage the conduct of the licence, and



- (b) endorse upon the licence the name and date of birth of the responsible person.

**Refusal of approval.**

11. (1) Section 7(1), (3) and (4) have effect in relation to an application for approval as if –

- (a) the application for approval were an application for a licence or renewal, and
- (b) the individual designated by the body corporate to manage the conduct of the licence were the applicant.

(2) Section 8 has effect in relation to any refusal of an application for approval as if –

- (a) the application for approval were an application for a licence or renewal, and
- (b) the body corporate applying for the approval is the applicant to be given notice under section 8(1) and (4).

**Application of this Ordinance to responsible persons.**

12. (1) Subject to section 13, where a responsible person is endorsed upon a corporate licence –

- (a) the provisions of this Ordinance apply to the responsible person as if that person is the corporate licensee, and

- (b) the responsible person is to be treated as if that responsible person is the corporate licensee for the purposes of any proceedings taken and penalties enforced against that responsible person.

(2) Nothing in subsection (1) limits or affects the application of any provision of this Ordinance to the corporate licensee, and proceedings may be taken and penalties enforced against that corporate licensee whether or not taken or enforced against the responsible person.

**Procedure where responsible person ceases to act.**

**13.** (1) This section applies where a person endorsed as the responsible person ("**person concerned**") upon a corporate licence ceases, or proposes to cease, to manage the conduct of the licence.

(2) The person concerned must give the Court written notice of that person ceasing to manage the conduct of the licence either before the event or no later than 14 days following the event.

(3) Upon receipt of a written notice given under subsection (2) (whether or not within the time specified in that subsection) or under section 14(1)(c) of a responsible person ceasing to manage the conduct of a licence -

- (a) the person concerned ceases to be the responsible person for the licence, and
- (b) the Court must endorse the licence accordingly, but
- (c) this Ordinance continues to apply, for the purpose of enabling the person concerned to be investigated or

otherwise dealt with for a matter arising before the receipt of the written notice, as if the person concerned were still the responsible person for the licence.

(4) On application by a corporate licensee, the Court may grant to an individual designated by the licensee a temporary permission to manage the conduct of the licence for such period, not exceeding two months, as the Court considers necessary to enable an application for substitution of the responsible person to be made and determined in accordance with sections 9 to 11.

(5) A person granted temporary permission under subsection (4) is to be regarded as the responsible person for the licence during the period for which the temporary permission was granted.

#### *Duties of licensees*

#### **General duties of licensee.**

- 14.** (1) A licensee must –
- (a) comply with the conditions of the licence held by the licensee,
  - (b) on request by an officer of the Court or the Constable, produce the licence for inspection, and
  - (c) promptly give written notice to the Court of any material change in the conduct of the licence, and where appropriate, apply for a variation of that licence.

(2) A person who contravenes subsection (1) is guilty of an offence.

(3) In subsection (1)(c), "**material change in the conduct of the licence**" includes –

(a) in the case of a corporate licensee, the responsible person for the licence ceasing to manage the conduct of the licence,

(b) any other change that affects or might affect the ability of the licensee to comply with the licence conditions, and

(c) any other prescribed change or event.

#### **Replacement licences.**

**15.** (1) A licensee must give written notice to the Court of any loss or destruction of a licence held by the licensee within 14 days of the licensee becoming aware of it.

(2) If the Court is satisfied that the licence has been lost or destroyed, the Court may issue a duplicate licence on payment of the duplicate licence fee specified in Schedule 1.

#### **Return of licences.**

**16.** (1) A licensee must return to the Court the licence held by the licensee within 14 days of the following –

- (a) the licensee ceasing to carry out the activities authorised under that licence,
- (b) expiry of the licence,
- (c) the licensee receiving written notice of revocation of the licence by the Court,
- (d) the licensee receiving a written request from the Court to return the licence for the purposes of endorsement or variation under this Ordinance, or
- (e) the licensee receiving a varied licence from the Court.

(2) A person who contravenes subsection (1) is guilty of an offence.

(3) A licensee may at any time return to the Court the licence held by the licensee.

(4) Upon return of a licence —

- (a) the licence (other than a licence returned for the purposes of endorsement or variation) ceases to have effect when received by the Court, but
- (b) this Ordinance continues to apply, for the purpose of enabling the licensee to be investigated or otherwise dealt with for a matter arising before the return, as if the licence had not been returned.

*Suspension, revocation, variation, etc.*

**Suspension, revocation or variation of licence.**

17. (1) This section applies in respect of a licence where the Court has reasonable grounds to suspect that –

- (a) the licence was granted or renewed on the basis of false, deceptive, misleading or incomplete information,
- (b) the licensee has breached any condition of the licence,
- (c) one or more of the disqualifications specified in section 7(1) applies to the licensee, or
- (d) unless the licence were promptly suspended, revoked or varied, the conduct by the licensee of activities authorised under the licence would be likely to contravene a provision of this Ordinance.

(2) For the avoidance of doubt, in the case of a corporate licence, "licensee" in subsection (1) includes the responsible person.

(3) Where this section applies in respect of a licence, the Court may suspend, revoke or vary the licence in accordance with subsections (4) to (6).

(4) Where the Court proposes to suspend, revoke or vary a licence, the Court must give the licensee written notice of —

- (a) the proposed action and the reasons for it, and

- (b) the date (being 14 days or more after the date of the notice) by which a written submission may be made to the Court in respect of the proposed action.

(5) The licensee may write to the Court with any submission that licensee wishes to make (including any additional information) –

- (a) on or before the date specified in that notice under subsection (4)(b), or
- (b) within any further period allowed by the Court in its discretion.

(6) Following consideration of any submission made in accordance with subsection (5) and any other information the Court considers relevant, the Court must decide whether or not to suspend, revoke or vary the licence, and for the avoidance of doubt, may take any of those actions regardless of whether the particular action was notified to the licensee under subsection (4).

(7) The Court must give the licensee –

- (a) written notice of the Court's decision, and
- (b) if the Court decides to suspend, revoke or vary the licence –
  - (i) written notice of the suspension, revocation or variation and the reasons for it, and
  - (ii) a copy of section 20.

**Licensee may apply for variation.**

18. (1) The Court may at any time vary a licence on the application of the licensee made in accordance with subsection (2).

(2) An application –

(a) must include the variation application fee specified in Schedule 1, paid to Chief Pleas.

(b) must be made in the form and manner and include any information prescribed by regulations or required by the Court.

**Court to maintain register of licences.**

19. (1) The Court must maintain and make available to the public a register of licences kept in accordance with this section in any manner and form that the Court considers appropriate.

(2) The register of licences must include the information specified in subsection (3) in relation to –

(a) any licence in force for the time being, and

(b) any licence that, within the preceding 3 years –

(i) has been suspended, revoked or returned, or

(ii) has expired.

(3) Subsection (2) refers to the following information –



- (a) the name and principal business address of the licensee,
  - (b) the name (if any) and address of the premises to which the licence relates,
  - (c) the date on which the licence was granted or renewed,
  - (d) any special conditions subject to which the licence was issued or renewed,
  - (e) the particulars of any renewal, suspension, revocation, variation, expiry or return of the licence.
- (4) Upon payment of a reasonable charge, the Court may provide to any person a copy of the register of licences.

### *Appeals*

#### **Appeal to Royal Court.**

**20.** (1) Any person given written notice of a licensing decision under this Ordinance may appeal the decision to the Royal Court in accordance with this section.

- (2) The grounds of an appeal are 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.

(3) An appeal must be made –

- (a) within the period of 28 days, or such longer period as the Royal Court may (on application for reasonable cause) determine, immediately following the date of the written notice of the decision being given under this Ordinance, and
- (b) by summons served on the Court of the Seneschal stating the grounds and material facts on which the appellant relies.

(4) Where an appeal has been made, the Court of the Seneschal may apply to the Royal Court by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the Royal Court may –

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Royal Court may direct), or

(b) make such other order as the Royal Court considers just.

(5) The provisions of subsection (4) are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>b</sup>.

(6) On an appeal, the Royal Court may –

(a) set the licensing decision aside in whole or in part and remit that decision to the Court of the Seneschal with such directions as the Royal Court thinks fit, or

(b) confirm the licensing decision, in whole or in part.

(7) On the application of the appellant, the Royal Court may, on such terms as the Royal Court thinks just, suspend or modify the effect of the decision under appeal pending the determination of the appeal.

(8) An appeal from a decision of the Royal Court under this section lies to the Court of Appeal on a question of law.

(9) In this section –

**"licensing decision"** means a decision made by the Court of the Seneschal under this Ordinance –

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<sup>b</sup> Order No. IV of 2007, as amended by Order No. II of 2008.

- (a) to refuse an application for a licence or renewal,
- (b) to refuse an application for approval of a responsible person,
- (c) to refuse an application to vary a licence,
- (d) to grant a licence or renewal subject to any special conditions, or
- (e) to suspend, revoke or vary a licence, and

"**the Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Ordinary Court may appoint one or more assessors to assist it in the determination of any matter before it.

### PART III

#### MISCELLANEOUS AND GENERAL

**Obstruction or provision of false, deceptive or misleading information.**

**21.** (1) A person is guilty of an offence who intentionally obstructs any person in the exercise of the person's functions under this Ordinance.

(2) A person is guilty of an offence if -

- (a) for the purposes of or in connection with an

application made under this Ordinance,

- (b) in purported compliance with any condition of a licence granted under this Ordinance,
- (c) in purported compliance with any requirement imposed under, or otherwise for the purposes of, this Ordinance, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which the person intends, or could reasonably be expected to know, that the information would or might be used by any person for the purpose of exercising that person's functions under this Ordinance,

the person does any of the following -

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable

cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

**Confidentiality.**

22. (1) This section applies to any information from which an individual or body may be identified and which is acquired by a person in carrying out the person's functions under this Ordinance.

(2) A person mentioned in subsection (1) must not disclose any information to which this section applies without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure -

- (a) is expressly authorised or required by or under this Ordinance or any other enactment, or

- (b) appears to that person to be necessary -

- (i) to enable functions under this Ordinance to be carried out,

- (ii) in the interests of -

- (A) the investigation, detection or prevention

of offences, or

(B) the apprehension or prosecution of offenders, or

(iii) to comply with an order of a court of Sark.

(3) A person who contravenes subsection (2) is guilty of an offence.

**Penalties and proceedings.**

23. (1) A person guilty of an offence under this Ordinance is liable on summary conviction to a fine not exceeding level 4 on the Sark uniform scale, a term of imprisonment not exceeding one month, or both.

(2) Where a body corporate 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, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that officer or other person, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if that member were a director of the body corporate.

**Regulations may amend licence conditions and periods, etc..**

24. (1) The Committee may at any time by regulations amend, repeal or replace all or any part of Schedule 2.

(2) The Committee may at any time by regulations amend any period for the giving of notices, making of applications, submissions or appeals, or the doing of any other thing, specified in any of the following provisions –

- (a) section 3(3)(a),
- (b) section 8(1)(b),
- (c) section 13(2),
- (d) section 15(1),
- (e) section 16(1),
- (f) section 17(4)(b), or
- (g) section 20(3)(a).

**General provisions as to regulations.**

25. (1) Regulations made under this Ordinance -

- (a) may be amended or repealed by subsequent regulations made under this Ordinance, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as



may appear to the Committee to be necessary or expedient (including, without limitation, provision making consequential amendments to this Ordinance or any other enactment).

(2) Any power conferred by this Ordinance to make regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

**Interpretation.**

26. (1) In this Ordinance, unless the context requires otherwise –

"**approval**" means approval of an individual under Part II to manage the conduct of a corporate licence,

"**body corporate**" means a body corporate incorporated in any country or territory,

"**buyer**" means a person to or with whom a sale is made,

"**cigarettes**" includes cut tobacco rolled up in paper, tobacco leaf, or other material, in such form as to be capable of immediate use for oral smoking,

"**commencement date**" means the date specified in section 32 for this Ordinance to come into force,

"**the Committee**" means the Medical Committee of the Chief Pleas,

"**the Constable**" has the meaning given by section 65(1) of the Reform (Sark) Law, 2008,

"**contravene**", in relation to any provision, includes fail to comply with the provision,

"**corporate licence**" means a licence held by a body corporate,

"**corporate licensee**" means a body corporate that holds a licence,

"**the Court**" means the Court of the Seneschal,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**function**" includes any power or duty,

"**indirect sales licence**" means a licence granted under section 4 authorising indirect sales of tobacco products,

"**information**" includes any document, statement or evidence, regardless of the manner or form in which it is kept or given,

"**licence**" means a licence granted or renewed under Part II,

"**licensee**" means any person holding a licence,

"**person**" includes any unincorporated body,

"**prescribed**" means prescribed by regulations,

"**regulations**" means regulations made by the Committee,

"**renewal**" means renewal of a licence under Part II,

"**required by the Court**" means required by the Court and notified in any manner that the Court considers appropriate,

"**responsible person**", subject to section 13, means the individual approved under Part II to manage the conduct of a corporate licence,

"**retail licence**" means a licence granted under section 4 authorising retail sale of tobacco products,

"**retail licensee**" means a person who holds a retail licence,

"**retail sale**", in relation to a tobacco product, means sale of the product –

- (a) to a person who buys it otherwise than for the purpose of selling or supplying it in the course of a business carried on by that person, and
- (b) where the seller (or the seller's employee or agent) and the buyer are in the same place at the time of the sale,

"**sale**" includes -

- (a) selling for resale (including as a constituent part of another article),
- (b) offering or attempting to sell,
- (c) receiving for sale,
- (d) displaying or otherwise exposing for sale,
- (e) having in possession for sale,
- (f) agreeing for sale,

- (g) sending or delivering for sale,
- (h) causing or permitting to be sold, offered, or exposed for sale,
- (i) barter,
- (j) supplying the article concerned under an agreement, together with other articles or services or both, in consideration of an inclusive charge for the article and the other articles or services,
- (k) offering as a public prize or reward, or giving away for the purpose of advertisement or in the furtherance of any trade or business, and
- (l) every other method of disposition for valuable consideration,

**"special conditions"** means any conditions specified on a licence by the Court under paragraph 11 of Schedule 2,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

**"supply"** includes –

- (a) sell, give, exchange, distribute, convey, consign, deliver, furnish, or transfer possession of or title to, or

arrange, offer, or agree to do so, whether for a fee or other consideration or without charge,

- (b) have in one's possession for the purpose of doing any of the things specified in paragraph (a), and
- (c) do any of the things specified in paragraph (a) by way or by use of a vending machine or other device,

"**this Ordinance**" includes any regulations made under this Ordinance,

"**tobacco product**" means –

- (a) tobacco or any product containing tobacco, including cigarettes, cigars and pipe tobacco,
- (b) smoking mixtures intended as a substitute for tobacco, or
- (c) cigarette paper,

"**vessel**" means anything for the conveyance by water of human beings or property,

"**wholesale licence**" means a licence granted under section 4 authorising wholesale sales of tobacco products,

"**wholesale sale**", in relation to a tobacco product, means sale of the product to a person who buys it for the purpose of selling or supplying it in

the course of a business carried on by that person, and cognate expressions have a corresponding meaning.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of this Ordinance as it applies to the interpretation of a Guernsey enactment.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Repeal.**

27. The Sale and Supply of Tobacco Products (Sark) Ordinance, 2011 is repealed.

**Transitional provisions for existing sellers.**

28. (1) This section applies to any person who sells tobacco products in the course of a business immediately before the commencement date.

(2) Subject to subsection (4), an existing seller -

(a) is deemed to have been granted on the commencement date -

(i) in the case of an existing seller who sells tobacco products by retail sale immediately

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

before the commencement date, a retail licence subject to the conditions specified in Schedule 2,

(ii) in the case of an existing seller who sells tobacco products by wholesale immediately before the commencement date, a wholesale licence subject to the conditions specified in Schedule 2, and

(iii) in the case of an existing seller who sells tobacco products by indirect sale (within the meaning of section 4(4)) immediately before the commencement date, an indirect sales licence subject to the conditions specified in Schedule 2,

(b) is to be treated as a licensee for the purposes of this Ordinance, and

(c) in the case of a body corporate, is deemed to have been granted on the commencement date a corporate licence and is to be treated as a corporate licensee for the purposes of this Ordinance.

(3) Subject to subsection (4), in the case of an existing seller treated as a corporate licensee under subsection (2)(c), the manager or person in charge of the business of the corporate licensee in respect of the sale of tobacco products is to be treated as the responsible person for the corporate licensee for the purposes of this Ordinance.



- (4) Subsections (2) and (3) have effect until -
- (a) the last application date, if the existing seller has not made an application for a licence in accordance with section 3 on or before that date, or
  - (b) where the existing seller has made an application for a licence in accordance with section 3 on or before the last application date -
    - (i) the date on which the application is granted under this Ordinance, if the application is so granted, or
    - (ii) where the application is refused -
      - (A) the expiry of the period for appealing the refusal under section 20,
      - (B) where an appeal against the refusal is duly made, the date on which the appeal is finally determined or withdrawn.

(5) For the purposes of subsection (4)(b)(ii)(B), an appeal against a refusal is finally determined when the appeal and any further appeal is finally determined.

(6) In this section -

"**existing seller**" means a person to whom this section applies, and

"**last application date**" means the day which is 2 months following the commencement date.

**Extent.**

29. Subject to section 30, this Ordinance has effect throughout Sark and the territorial waters adjacent to Sark.

**Exemption for certain vessels in territorial waters.**

30. (1) Nothing in this Ordinance prohibits or restricts the sale or supply of tobacco products aboard any vessel described in subsection (2).

(2) Subsection (1) refers to the following vessels –

- (a) a cruise vessel in the territorial waters adjacent to Sark which entered those territorial waters from a place outside those territorial waters,
- (b) a vessel sheltering in the territorial waters adjacent to Sark due to any emergency whatsoever, or
- (c) a vessel (not carrying any passengers for reward) in the territorial waters adjacent to Sark, which is on passage -
  - (i) from a place in Sark or in those territorial waters, to a place outside Sark or outside those

territorial waters, or

- (ii) from a place outside Sark or outside those territorial waters, to a place in Sark or in those territorial waters.

- (3) In subsection (2) –

"**cruise vessel**" means a vessel which enters a port or the territorial waters adjacent to Sark solely for the purpose of enabling passengers thereon to visit Sark as part of the itinerary of a cruise or for the purpose of embarking or disembarking passengers beginning or ending a cruise in the vessel, and

"**passenger**" means any person carried on a vessel but does not include a member of the crew of the vessel.

**Citation.**

31. This Ordinance may be cited as the Sale and Supply of Tobacco Products (Sark) Ordinance, 2015.

**Commencement.**

32. This Ordinance comes into force on the 1<sup>st</sup> February, 2015.

**SCHEDULE 1**  
**FEES PAYABLE UNDER THIS ORDINANCE**

Sections 3(2)(a), 9(2)(a), 15(2) and 18(2)(a)

<b>Type of fee</b>	<b>Subject matter of fee</b>	<b>Amount</b>	<b>Provision of Ordinance</b>
Licence application fee	Application for retail licence or for renewal of retail licence	£40 in respect of each premises	Section 3(2)(a)
	Application for indirect sales licence or for renewal of indirect sales licence	£40 in respect of each premises	Section 3(2)(a)
	Application for wholesale licence or for renewal of wholesale licence	£150 in respect of each premises	Section 3(2)(a)
Approval application fee	Application for approval of responsible person submitted with an application for a corporate licence or an application to renew a corporate licence	Nil	Section 9(2)(a)
	Any other application for approval of a responsible person	£25	Section 9(2)(a)
Duplicate licence fee	All	£25	Section 15(2)

<b>Type of fee</b>	<b>Subject matter of fee</b>	<b>Amount</b>	<b>Provision of Ordinance</b>
Variation application fee	All	£25	Section 18(2)(a)

**SCHEDULE 2<sup>d</sup>**  
**CONDITIONS OF LICENCES**

Section 5(2)

1. A licensee must at all times comply with, and ensure that the licensee's employees and agents comply with –
  - (a) the conditions of the licence,
  - (b) this Ordinance.
2. A licensee is responsible for all sales of tobacco products from the premises specified in the licence.
3. A corporate licensee must ensure that the responsible person for the licence manages the general conduct of that licence.
4. A licensee is authorised to sell tobacco products under the licence only –
  - (a) at or from premises specified in the licence, and
  - (b) in accordance with the conditions of the licence.

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<sup>d</sup> This schedule may be amended, repealed or replaced by regulations made under section 24.

5. No person under the age of 18 years may sell tobacco products at or from premises specified in the licence unless the person is acting under the supervision of –
  - (a) the licensee (if an individual), or
  - (b) an employee or agent of the licensee who is aged 18 years or older.
6. A retail licence authorises the sale of tobacco products only in the area where tobacco products are held, as specified in the licence.
7. A wholesale licence authorises the sale of tobacco products only to a retail licensee or a holder of an indirect sales licence.
8. A retail licensee must display the following at the point-of-sale for tobacco products in the premises specified in the license, so that these are clearly visible to members of the public –
  - (a) the licence or a true copy of it, and
  - (b) a copy of this Schedule.
9. A wholesale licensee must keep records of any sale of tobacco products, including the date of of each sale, the name of the licensee to whom the sale is made, and the quantity and kind of tobacco products sold, for no less than 3 years from the date of each sale. The records must be kept in such a form and manner that, on request, they can easily be retrieved and made available in a legible form. The wholesale licensee must, on request, produce these records for inspection and copying by an officer of the Court or the Constable.

10. A licensee must pay any fee payable under the Sale and Supply of Tobacco Products (Sark) Ordinance, 2015.
11. A licensee must comply with any other conditions specified on the licence by the Court.



# **The Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015**

**THE CHIEF PLEAS**, in pursuance of their Resolutions of 1<sup>st</sup> October, 2014 and 21<sup>st</sup> January, 2015, and in exercise of the powers conferred upon them by section 1 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>a</sup> and all other powers enabling them in that behalf, hereby order:-

## **Transfer of functions.**

1. The functions, rights and liabilities of a committee named in column 2 of the Schedule and of its Chairman arising under or by virtue of any relevant enactment are transferred to and vested in, respectively, the committee named in relation to that committee in column 3 of the Schedule and its Chairman.

## **Amendment of statutory references.**

2. For any reference in any relevant enactment to a committee named in column 2 of the Schedule or its Chairman, however expressed, there is substituted a reference to the committee named in relation to that committee in column 3 of the Schedule or (as the case may be) its Chairman.

## **Savings and transitional provisions.**

3. Anything done before the date of the commencement of this Ordinance or in the process of being done on that date by or in relation to a committee named in column 2 of the Schedule or its Chairman, under or by virtue of any relevant enactment, shall have effect as if done or (as the case may be) may be continued by or in relation to the committee named in relation to that committee in column 3 of the Schedule or (as the case may be) its Chairman.

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<sup>a</sup> Ordres en Conseil Vol. XXXIII, p. 478.

**Interpretation.**

4. (1) In this Ordinance the expression "**relevant enactment**" means-

- (a) any Law, and any Act of Parliament extended to the Bailiwick, which is applicable only in Sark,
- (b) any Ordinance of the Chief Pleas of Sark, and
- (c) any subordinate legislation made by any committee of the Chief Pleas of Sark.

(2) The Interpretation (Guernsey) Law, 1948<sup>b</sup> shall apply to the interpretation of this Ordinance.

**Citation.**

5. This Ordinance may be cited as the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015.

**Commencement.**

6. This Ordinance shall come into force on 21<sup>st</sup> January, 2015.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE

Section 1

TRANSFER OF FUNCTIONS

	COMMITTEE FROM WHICH FUNCTIONS ARE TRANSFERRED	COMMITTEE TO WHICH FUNCTIONS ARE TRANSFERRED
(a)	Sark General Purposes and Advisory Committee.	Sark Policy and Performance Committee.
(b)	Sark Finance and Commerce Committee.	Sark Finance and Resources Committee.