

Island of



Guernsey

## Ordinance of the States

**LI  
2014**

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Made ..... 26th November, 2014

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## **The Tobacco Products (Guernsey) Ordinance, 2014**



# The Tobacco Products (Guernsey) Ordinance, 2014

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## **The Tobacco Products (Guernsey) Ordinance, 2014**

**THE STATES**, in pursuance of their Resolutions of 12<sup>th</sup> March, 2008<sup>a</sup>, 1<sup>st</sup> July, 2010<sup>b</sup>, 29<sup>th</sup> November, 2012<sup>c</sup> and 1<sup>st</sup> August, 2014<sup>d</sup> and in exercise of the powers conferred on them by sections 1, 2, 3 and 5(1) of the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010<sup>e</sup>, and all other powers in that behalf, hereby order:-

### PART I PRELIMINARY

#### **Object of this Ordinance.**

1. (1) The object of this Ordinance is to reduce the prevalence of smoking and any other use of tobacco products, especially amongst children.

(2) The object of this Ordinance is to be attained by means including the following -

- (a) licensing the sale and supply of tobacco products,
- (b) prohibiting or restricting the display of tobacco products and prices and advertisements of tobacco products in tobacco-licensed premises,

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<sup>a</sup> Article XIII of Billet d'État No. III of 2008.

<sup>b</sup> Article VI of Billet d'État No. XV of 2010.

<sup>c</sup> Article VIII of Billet d'État No. XXIII of 2012.

<sup>d</sup> Article XIV of Billet d'État No XVI of 2014.

<sup>e</sup> Order in Council No. IV of 2012.

- (c) prohibiting vending machines for tobacco products,
- (d) prohibiting the sale and supply of tobacco products to children,
- (e) prohibiting the sale and supply of tobacco products for oral use, and
- (f) prohibiting the commercial importation and sale of cigarettes in packets containing fewer than 20 cigarettes.

**Deemed tobacco products.**

2. (1) Each of the following is deemed to be a "**tobacco product**" for the purposes of the Law and this Ordinance -

- (a) any cigarette paper,
- (b) any cigarette tube,
- (c) any cigarette filter,
- (d) any apparatus for making cigarettes,
- (e) any cigarette holder, and
- (f) any pipe for smoking tobacco products.

(2) Subsection (1) is subject to any express provision to the contrary in this Ordinance.

PART II  
LICENSING

*Prohibition of unlicensed sales*

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

3. 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 sale licence.

*Licences and renewals*

**Applications for licences or renewals.**

4. (1) Any individual or body corporate may apply to the licensing officer for a licence or renewal of a licence.

- (2) An application -
  - (a) must include the prescribed fee, paid to the Department,
  - (b) in the case of an application by a body corporate, must include an application under section 10 for the approval of a responsible person, and

- (c) must be made in the form and manner and include any information prescribed by regulations made by the Department or specified by the licensing officer.
- (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 licensing officer in that officer's discretion.

**Grant of licences.**

5. (1) Subject to a refusal under section 8, on receipt of an application for a licence made in accordance with section 4, the licensing officer 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 ("**wholesale licence**"), or
- (c) by way of indirect sale ("**indirect sale 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) If the licensing officer grants a licence subject to special conditions, the licensing officer must give the applicant -

- (a) written notice of the reasons for those conditions, and
- (b) a copy of section 21.

(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.**

6. (1) A licence -

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

- (c) must be in the form and include any information prescribed by regulations made by the Department or specified by the licensing officer.
- (2) A licence is at all times subject to the conditions specified in Schedule 1.
- (3) A licence cannot be transferred to another person.
- (4) Unless renewed in accordance with this Ordinance, a licence expires on the anniversary of the date on which it is granted.

**Renewals.**

7. (1) Subject to a refusal under section 8, on receipt of an application for renewal made in accordance with section 4, the licensing officer must -

- (a) renew the licence, and
- (b) endorse the date of renewal on the licence.

(2) If the licensing officer renews a licence subject to special conditions, the licensing officer must give the applicant -

- (a) written notice of the reasons for those conditions, and
- (b) a copy of section 21.

(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.**

8. (1) An application for a licence or renewal must be refused if the licensing officer is satisfied that any of the following disqualifications apply -

- (a) the applicant is a child,
- (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 licensing officer that the applicant's operations would comply with the provisions of -
  - (i) the Tobacco Advertising (Guernsey) Law, 1997<sup>f</sup>, and
  - (ii) this Ordinance,
- (b) in the case of an applicant that is a body corporate, the licensing officer does not 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 licensing officer may -

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

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<sup>f</sup> Ordres en Conseil Vol. XXXVII, p. 313; amended by Recueil d'Ordonnances Tome XXIX, p. 406.

- (4) In this section, "**disqualifying offence**" means -
- (a) a relevant offence,
  - (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.**

9. (1) Where the licensing officer proposes to refuse an application for a licence or renewal, the officer 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 licensing officer in respect of the proposed refusal.

(2) A person given notice under subsection (1) may write to the licensing officer 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 licensing officer in that officer's discretion.

(3) In determining whether to proceed with the refusal, the licensing officer -

- (a) must consider any submission made in accordance with subsection (2), and
- (b) may consider any other information the officer considers relevant.

(4) On determining the application, the licensing officer must give the applicant -

- (a) written notice of that officer's decision, and
- (b) if the licensing officer decides to refuse the application-
  - (i) written notice of that officer's reasons, and
  - (ii) a copy of section 21.

(5) The Department 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.**

10. (1) A body corporate may apply to the licensing officer 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 (where the individual is to substitute the responsible person endorsed on the licence).

(2) An application for approval -

- (a) must include the prescribed fee, paid to the Department, and
- (b) must be made in the form and manner and include any information prescribed by regulations made by the Department or specified by the licensing officer.

**Approval of responsible person.**

11. Subject to a refusal under the provisions given effect by section 12, on an application made in accordance with section 10, the licensing officer must -

- (a) approve 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.**

12. (1) Section 8(1), (3) and (4) has 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 9(1) to (5) 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 9(1) and (4).

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

13. (1) Subject to section 14, 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.**

14. (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 licensing officer written notice of that person ceasing to manage the conduct of the licence either before the event or no later than 14 days following that 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 15(1)(d) 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 licensing officer 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 licensing officer 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 licensing officer considers necessary to enable an application for substitution of the responsible person to be made and determined in accordance with sections 10 to 12.

(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.**

- 15.** (1) A licensee must -
- (a) comply with the conditions of the licence held by the licensee,
  - (b) keep prescribed records in the prescribed form and manner for the prescribed period,
  - (c) on request by an authorised officer, produce the licence and any such records for inspection, and

- (d) promptly give written notice to the licensing officer 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)(d), "**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.**

16. (1) A licensee must give written notice to the licensing officer 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 licensing officer is satisfied that the licence has been lost or destroyed, that officer may issue a duplicate licence on payment of a prescribed fee.

**Return of licences.**

17. (1) A licensee must return to the licensing officer 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 licensing officer,
- (d) the licensee receiving a written request from the licensing officer to return the licence for the purposes of endorsement or variation under this Ordinance, or
- (e) the licensee receiving a varied licence from the licensing officer.

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

(3) A licensee may at any time return to the licensing officer 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 licensing officer, 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.**

**18.** (1) This section applies in respect of a licence where the licensing officer 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 8(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 -
  - (i) the Tobacco Advertising (Guernsey) Law, 1997, or
  - (ii) 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 licensing officer may suspend, revoke or vary the licence in accordance with subsections (4) to (7).

(4) Where the licensing officer proposes to suspend, revoke or vary a licence, that officer 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 licensing officer in respect of the proposed action.

(5) The licensee may write to the licensing officer 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 licensing officer in that officer's discretion.

(6) Following consideration of any submission made in accordance with subsection (5) and any other information the licensing officer considers relevant, that officer 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 whether the particular action was notified to the licensee under subsection (4).

- (7) The licensing officer must give the licensee -
  - (a) written notice of that officer's decision, and
  - (b) if the licensing officer 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 21.

**Licensee may apply for variation.**

19. (1) The licensing officer 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 prescribed fee, paid to the Department.
  - (b) must be made in the form and manner and include any information prescribed by regulations made by the Department or specified by the licensing officer.

**Licensing officer to maintain register of licences.**

20. (1) The licensing officer must maintain and make available to the public a register of licences, including prescribed particulars, kept in any manner and form that officer considers appropriate.

(2) Upon payment of a reasonable charge, the licensing officer may provide to any person a copy of the register.

*Reviews and appeals***Review of licensing decisions.**

21. (1) This section applies to the following decisions of the licensing officer ("**original decisions**") -

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

(2) An interested person may apply to the Department to review an original decision under this section.

(3) An application for review -

- (a) must be made within 14 days of the applicant receiving written notice of the original decision,
- (b) must be made in the form and manner specified by the Department and must include any information which the applicant believes would assist that applicant's case, and
- (c) must be served by giving written notice of it to the licensing officer.

(4) Within 14 days of being served with an application for review or within any further period allowed by the Department in its discretion, the licensing officer must respond in writing to the Department with any information which that officer believes the Department should consider.

(5) Within 28 days of receiving the written response from the licensing officer, the Department must -

- (a) consider any information submitted under subsection (3) or (4) and take into account any other information the Department considers relevant,
- (b) hear any oral submissions that the applicant or the licensing officer wishes to make to the Department,
- (c) determine the application by -

- (i) confirming or varying the original decision under review, or
  - (ii) revoking the original decision and substituting the Department's decision for it,
- (d) give the applicant, any other interested person and the licensing officer written notice of the Department's decision under paragraph (c) and the reasons for it, and
- (e) give the applicant and any other interested person a copy of section 22.
- (6) In determining an application for review, the Department may-
- (a) make any decision that the licensing officer is authorised to make under this Ordinance in relation to the matter, and
  - (b) give any direction it considers appropriate to the licensing officer in order to give effect to the Department's decision.
- (7) On request by the applicant, the Department may in exceptional circumstances and on such terms as it considers appropriate, suspend or modify the effect of the original decision pending determination of a review of that decision, by giving written notice and directions to the licensing officer.

(8) A decision of the Department under this section has effect as if it were a decision of the licensing officer, but for the avoidance of doubt -

- (a) the Department's decision is not reviewable under this section, and
- (b) neither the procedures for refusing an application under sections 9 and 12(2), nor the procedures for suspending, revoking or varying a licence under section 18, apply to the Department's decision.

(9) In this section and section 22 -

"**interested person**", in relation to an original decision, means any person given written notice of the original decision under this Ordinance, and

"**original decision**" means a decision to which this section applies.

**Appeal to Royal Court.**

22. (1) A review decision may be appealed to the Royal Court under this section by -

- (a) the person who applied for the review, or
- (b) any other interested person.

(2) The grounds of an appeal are that -

- (a) the review decision was *ultra vires* or there was some other error of law,
- (b) the review decision was unreasonable,
- (c) the review 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 immediately following the date of the notice of the review decision under section 21(5)(d), and
- (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.

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

- (a) dismiss the appeal or dismiss the 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.

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

(6) On an appeal, the Court may -

(a) set the review decision aside in whole or in part and remit the appealed review decision to the Department with such directions as the Court thinks fit, or

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

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

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

(9) In this section -

"**the 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 Court may appoint one or more assessors to assist it in the determination of any

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

matter before it, and

"**review decision**" means a decision of the Department under section 21(5)(c) following a review of an original decision.

*Miscellaneous*

**Delegations by Department or licensing officer.**

23. Section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>h</sup> has effect in relation to the functions of the Department and the licensing officer under this Ordinance as if -

- (a) the reference to "any officer responsible to that Committee" in section 4(1)(a) of that Law includes a reference to any employee of the States of Guernsey (whether or not that employee is responsible to the Department), and
- (b) the office of licensing officer is a public office for the purposes of section 4(1)(b) of that Law.

**Regulations may amend licence conditions and period for notices, applications, etc.**

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

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<sup>h</sup> Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

(2) The Department 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 4(3)(a),
- (b) section 9(1)(b),
- (c) section 14(2),
- (d) section 16(1),
- (e) section 17(1),
- (f) section 18(4)(b),
- (g) section 21(3)(a), (4) or (5), or
- (h) section 22(3)(a).

PART III  
FURTHER PROHIBITIONS AND CONTROLS

*Displays and advertisements*

**Prohibition of display of tobacco products, prices and tobacco advertisements.**

25. (1) Subject to subsection (2), a person is guilty of an offence who, in the course of business, displays in any tobacco-licensed premises -

- (a) tobacco products,
  - (b) prices of tobacco products, or
  - (c) an advertisement of tobacco products.
- (2) The Department may make regulations -
- (a) authorising any displays, and
  - (b) providing for exceptions and defences to, and exemptions from, the offence under subsection (1).

**Regulation of advertisements, etc.**

26. (1) The Department may make regulations -
- (a) prohibiting or regulating -
    - (i) the advertisement of tobacco products, and
    - (ii) any activity, practice, act or omission, related to or in any way associated with the advertisement of tobacco products, and
  - (b) providing for exceptions and defences to, and exemptions from, any offence under the Tobacco Advertising (Guernsey) Law, 1997.
- (2) Regulations under subsection (1) -

- (a) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences, and
- (b) may empower the Department, any other department of the States, any other body or authority (including, without limitation, any court in Guernsey), or any person to issue codes or guidance in relation to any matter for which regulations may be made under that subsection.

*Sale and supply*

**Prohibition of sale or supply to children.**

27. (1) A person is guilty of an offence who sells or supplies a tobacco product to a child.

(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 that 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.

**Prohibition of sale or supply of tobacco products for oral use.**

28. (1) A person is guilty of an offence who sells or supplies a tobacco product for oral use.

(2) In this section, "**tobacco product for oral use**" means any tobacco product which is -

(a) intended for oral use, unless it is intended to be smoked or chewed, and

(b) either -

(i) in powder or particulate form or any combination of these forms, whether presented in sachet portions or porous sachets or in any other way, or

(ii) presented in a form resembling a food product.

**Prohibition of retail sale of cigarettes except in packets of 20 or more.**

29. A person is guilty of an offence who sells cigarettes by retail sale other than in a packet containing 20 cigarettes or more.

**Prohibition of vending machines for tobacco products.**

30. (1) The person in charge of any premises where a vending machine for tobacco products is available for use is guilty of an offence.

(2) The Department may make regulations providing for exceptions and defences to, and exemptions from, the offence under subsection (1).

(3) In this section, "**person in charge**" -

- (a) in relation to any tobacco-licensed premises, means the licensee of those tobacco-licensed premises,
- (b) in relation to any licensed premises within the meaning of section 101(1) of the Liquor Licensing Ordinance, 2006<sup>i</sup>, that are not tobacco-licensed premises, means the person who holds the liquor licence for those premises under that Ordinance, and
- (c) in relation to any other premises, means the occupier of those premises and any other person who has the management or control of those premises.

*Importation*

**Prohibition of importation of cigarettes except in packets of 20 or more.**

31. A person is guilty of an offence who, in the course of business, imports cigarettes in a packet containing fewer than 20 cigarettes.

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<sup>i</sup> Recueil d'Ordonnances Tome XXXI, p. 157; as amended by Ordinance No. XXIV of 2010; G.S.I. No. 54 of 2010; No. 10 of 2011; No. 20 of 2012 and No. 9 of 2013.

PART IV  
ENFORCEMENT AND PENALTIES

*Authorised officers and licensing officer*

**Department to authorise officers and appoint licensing officer.**

32. (1) The Department may in writing -
- (a) appoint an officer to be both the licensing officer and an authorised officer, and
  - (b) appoint other officers as authorised officers.
- (2) In subsection (1), "**officer**" means employee of the States.

*Powers of entry, search, etc.*

**General powers of entry, search, etc.**

33. (1) Subject to section 35, an authorised officer may at any reasonable time -
- (a) enter any premises specified in subsection (2) for a purpose specified in subsection (3), and
  - (b) exercise the power specified in subsection (4) on or in relation to those premises.
- (2) Subsection (1)(a) refers to the following premises -
- (a) tobacco-licensed premises,

- (b) premises at which the authorised officer has reasonable grounds for believing that -
  - (i) any trade, business or activity connected with the importation, sale, supply or advertisement of tobacco products is or has been carried on,
  - (ii) any document, product or other thing relating to any such trade, business or activity is kept, or
  - (iii) a relevant offence is about to be committed, is being committed or has been committed.
  
- (3) Subsection (1)(a) refers to the following purposes -
  - (a) establishing whether any prohibition, restriction, requirement or condition imposed by or under a relevant enactment is being, or has been, complied with,
  - (b) ascertaining whether there is or has been, on or in connection with those premises, a contravention of a relevant enactment, and
  - (c) detecting or investigating an alleged relevant offence.
  
- (4) Subsection (1)(b) refers to the power to do all or any of the following -

- (a) search the premises and examine anything at the premises, opening it (or breaking it open) as the officer considers necessary,
- (b) photograph, film or otherwise record anything at the premises,
- (c) measure or cause to be measured anything at the premises,
- (d) require the production of any document, product or other thing, and inspect it,
- (e) take copies of or extracts from any document,
- (f) if anything at the premises cannot be conveniently removed, secure it against interference,
- (g) require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer considers necessary, and
- (h) seize any document, product or other thing, which is at the premises and retain it for as long as the officer considers necessary.

(5) Subsection (4) does not apply to, or in relation to, any items subject to legal professional privilege.

**Safeguards for general powers of entry, search, etc.**

34. (1) An authorised officer entering any premises under section 33 must, if the occupier or any person who appears to be in charge of those premises is present -

- (a) identify himself to the occupier or that person, and
- (b) produce to the occupier or that person documentary evidence that that officer is an authorised officer.

(2) If neither the occupier nor any person who appears to be in charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer -

- (a) must leave the premises as effectively secured against trespassers as that officer found them, and
- (b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under section 33 of this Ordinance, including that officer's name and an address at which that officer may be contacted and a copy of the documentary evidence referred to in subsection (1)(b).

(3) An authorised officer who seizes anything under section 33 must leave with the occupier or person in charge of the premises (if present) or on the premises (if the occupier or person in charge is not present), a statement stating-

- (a) particulars of what has been taken, and

- (b) that the officer has seized it.

**Entry to dwellings restricted.**

35. An authorised officer must not enter a dwelling under section 33, except -

- (a) with the consent of the occupier or a person who appears to the authorised officer to be in charge of those premises, or
- (b) under and in accordance with a warrant issued under section 36.

*Warrant to enter dwellings, etc.*

**Warrants for entry, etc.**

36. (1) On application by an authorised officer in accordance with section 37, the Bailiff may, in accordance with sections 37 and 38, issue a warrant authorising an authorised officer to enter and search any premises (including a dwelling), if the Bailiff is satisfied that there are reasonable grounds for believing -

- (a) that a relevant offence is about to be committed, is being committed or has been committed on or in relation to those premises,
- (b) that there is material on those premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
- (c) that the material is likely to be relevant evidence,

- (d) that the material does not consist of or include items subject to legal professional privilege, and
  - (e) that at least one of the conditions specified in subsection (2) is satisfied.
- (2) The conditions referred to in subsection (1)(e) are -
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (b) that it is not practicable to communicate with any person entitled to grant access to the evidence,
  - (c) that entry to the premises will not be granted unless a warrant is produced, or
  - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an authorised officer arriving at the premises can secure immediate entry to them.
- (3) In this section, "**relevant evidence**", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

**Procedure for search warrants.**

37. (1) An application for a warrant -
- (a) must be made in writing,

- (b) must be supported by information in writing, and
- (c) must state -
  - (i) that the warrant would be issued under section 36 of this Ordinance,
  - (ii) the ground on which the authorised officer makes the application,
  - (iii) the premises which it is desired to enter and search, and
  - (iv) so far as is practicable, the things to be sought.
- (2) The Bailiff must hear the application in private and *ex parte*.
- (3) The authorised officer making the application must answer on oath any question that that officer is asked by the person hearing the application.

**Requirements of search warrants.**

38. (1) A warrant authorises entry only on one occasion.
- (2) A warrant -
- (a) must state the person who applied for it, the date on which it is issued, and the premises to be searched,
  - (b) must state that it is issued under section 36 of this

Ordinance, and

- (c) so far as is practicable, must identify the things to be sought.

(3) Her Majesty's Greffier must ensure that two copies are made of each warrant, and that those copies are clearly certified as copies.

**Execution of warrants.**

39. (1) Any authorised officer may execute a warrant to enter premises.

(2) An authorised officer executing a warrant may exercise all or any of the powers specified in section 33(4) on or in relation to those premises (subject to section 33(5)), if the officer considers it reasonably necessary for the purpose for which the warrant was issued.

(3) An authorised officer executing a warrant -

- (a) must be accompanied by a police officer,
- (b) must do so at a reasonable hour, and
- (c) must do so within one month from the date of its issue.

(4) Subsection (3)(b) does not apply if it appears to the authorised officer executing the warrant that the purpose of the search may be frustrated by making an entry at a reasonable hour.

**Safeguards for warranted entry, search, etc.**

40. (1) An authorised officer executing a warrant to enter any premises under section 39 must, if the occupier or any person who appears to be in charge of those premises is present -

- (a) identify himself to the occupier or that person, and
- (b) produce the warrant to the occupier or that person.

(2) If neither the occupier nor any person who appears to be in charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer -

- (a) must leave the premises as effectively secured against trespassers as that officer found them, and
- (b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under section 39 of this Ordinance, including that officer's name and an address at which that officer may be contacted and a copy of the warrant.

(3) An authorised officer who seizes anything under section 39(2) must leave with the occupier or person in charge of the premises (if present) or on the premises (if the occupier or person in charge is not present), a statement stating-

- (a) particulars of what has been taken, and
- (b) that the officer has seized it.

**Endorsement, return and inspection of warrants.**

41. (1) After executing a warrant, an authorised officer must make an endorsement on it stating -

- (a) whether the things sought were found, and
- (b) whether any things, other than things which were sought, were seized.

(2) A warrant which has been executed, or which has not been executed within the time allowed for its execution, must be returned to Her Majesty's Greffier.

(3) Her Majesty's Greffier must retain a warrant which is returned for 12 months beginning on the date of its return.

(4) If, during the period for which a warrant is to be retained under subsection (3), the occupier of the premises to which it relates asks to inspect it, Her Majesty's Greffier must allow that occupier to do so.

*Miscellaneous powers*

**Persons exercising powers may bring other persons.**

42. An authorised officer entering any premises under section 33 or 39 may bring onto the premises any person or thing that the officer considers necessary.

**Storage and disposal of seized property.**

43. (1) An authorised officer may store any seized property subject to the provisions of Schedule 2.

(2) Schedule 2 has effect in relation to any seized property.

(3) On the application of an authorised officer or any person who claims the seized property, the Magistrate's Court may, notwithstanding any provision to the contrary in Schedule 2 -

(a) make an order for the delivery of the property to the person appearing to the court to be the owner of it,  
or

(b) make any other order that the court thinks fit in respect of the property, for example an order for the forfeiture or destruction of the property.

**Other powers not limited.**

44. For the avoidance of doubt, the powers conferred by sections 33, 36, 39, 42 and 43 are in addition to any other powers conferred by or under any other enactment or any rule of customary or common law.

*Obstruction, penalties, etc.*

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

45. (1) A person is guilty of an offence who -

(a) intentionally obstructs an authorised officer who is

acting in the exercise of the officer's functions under this Ordinance,

- (b) without reasonable cause fails to comply with any requirement made by an authorised officer who is acting in the exercise of the officer's functions under this Ordinance, or
- (c) removes, tampers or otherwise interferes with a thing secured against interference under section 33 or 39(2).

(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.

**Penalties and proceedings.**

46. (1) A person guilty of an offence under this Ordinance is liable -
- (a) in the case of an offence under regulations made under section 26(1), to the penalties provided for the offence in those regulations, and

- (b) in the case of any other offence, to the penalties specified for the offence in Schedule 3.

(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 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 his functions of management as if the member were a director of the body corporate.

**Court may order forfeitures or suspension.**

47. (1) Where a person is convicted of an offence under this Ordinance, the court may, in addition to imposing the penalties specified in section 46(1), order the forfeiture to the States of anything that was used in, the subject of or otherwise involved in the commission of the offence.

(2) Where a licensee is convicted of an offence under this Ordinance, the court may order any licence held by the person to be suspended -

- (a) in the case of a person convicted summarily of an offence, for a period not exceeding three months, and
- (b) in the case of a person convicted of an offence on

indictment, for a period not exceeding one year,

and the licence ceases to have effect during that period.

- (3) The court may make a forfeiture order under subsection (1) -
  - (a) regardless whether the thing to be forfeited is seized property, and
  - (b) in the case of seized property, regardless whether the property has been returned to the person entitled to possession of that property.
- (4) The court may make any order it considers appropriate to give effect to a forfeiture order made under subsection (1).

PART V  
GENERAL

**What constitutes reasonable steps to establish age.**

**48.** (1) This section applies where any provision of this Ordinance requires a person ("A") to take, or to establish that the person has taken, reasonable steps to establish the age of another person ("B"), in order to establish an exception or a defence to, or an exemption from, an offence.

- (2) Where this section applies, A is to be treated as having taken such steps in relation to B if, and only if -
  - (a) A was shown a document purporting to be a document of a prescribed kind, and

(b) that document would have convinced a reasonable person as to B's age.

(3) This section is subject to any express provision to the contrary in regulations made under this Ordinance.

(4) For the avoidance of doubt, in subsection (1), "**this Ordinance**" includes any regulations made under this Ordinance.

**Confidentiality.**

49. (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 Guernsey.

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

**Protection from self-incrimination.**

**50.** A statement made by a person in response to a requirement imposed by or under this Ordinance ("**the statement concerned**") -

- (a) may be used in evidence against the person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against the person in criminal proceedings except -
  - (i) where evidence relating to the statement concerned is adduced, or a question relating to the statement concerned is asked, in the proceedings by or on behalf of that person,
  - (ii) in proceedings for an offence under section 45(2),

- (iii) in proceedings for perjury or perverting the course of justice, or
- (iv) in proceedings where, in giving evidence, that person makes a statement inconsistent with the statement concerned, but in this case the statement concerned is only admissible to the extent necessary to establish the inconsistency.

**General provisions as to regulations.**

51. (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 Department 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.

**Repeals.**

52. The following enactments are repealed -

- (a) the Sale of Tobacco (Amendment) Ordinance, 2004<sup>j</sup>,
- (b) the Sale of Tobacco (Amendment) Ordinance, 1997<sup>k</sup>,
- (c) the Ordinance entitled "Ordonnance portant défense de vendre ou de donner aux Mineurs du tabac, des cigares, des cigarettes ou du papier à cigarettes" of 6<sup>th</sup>

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<sup>j</sup> Recueil d'Ordonnances Tome XXIX, p. 437.

<sup>k</sup> Recueil d'Ordonnances Tome XXVII, p. 158.

October, 1913<sup>1</sup>, and

- (d) for the avoidance of doubt, the Ordinance entitled "Ordonnance relative à la vente de Tabac"<sup>m</sup>.

**Consequential amendments to Tobacco Advertising (Guernsey) Law, 1997.**

53. (1) The Tobacco Advertising (Guernsey) Law, 1997 is amended in the following manner.

(2) In section 1(2) of that Law, for paragraph (d), substitute the following paragraph -

"(d) any display excepted or exempted from the offence in subsection (1) by regulations made under section 26(1)(b) of the Tobacco Products (Guernsey) Ordinance, 2014."

(3) Repeal section 3(1)(b) and (4)(b) of that Law.

**Transitional provisions for existing sellers.**

54. (1) This section applies to any person who sells tobacco products in the course of a business immediately before the general commencement date (an "existing seller").

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<sup>1</sup> Recueil d'Ordonnances Tome V, p. 225; as amended by Ordres en Conseil Vol. XXXI, p. 278 and Recueil d'Ordonnances Tome XXXI, p. 542.

<sup>m</sup> Recueil d'Ordonnances Tome V, p. 227; as amended by Ordres en Conseil Vol. XXXI, p. 278 and Recueil d'Ordonnances Tome XXXI, p. 542.

- (2) Subject to subsection (4), an existing seller -
- (a) is deemed to have been granted on the general commencement date -
    - (i) in the case of an existing seller who sells tobacco products by retail sale immediately before the general commencement date, a retail licence subject to the conditions specified in Schedule 1,
    - (ii) in the case of an existing seller who sells tobacco products by wholesale immediately before the general commencement date, a wholesale licence subject to the conditions specified in Schedule 1, and
    - (iii) in the case of an existing seller who sells tobacco products by indirect sale (within the meaning of section 5(4)) immediately before the general commencement date, an indirect sale licence subject to the conditions specified in Schedule 1,
  - (b) is to be treated as a licensee for the purposes of this Ordinance, and
  - (c) in the case of a corporate body, is deemed to have been granted on the general 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 4 on or before that date, or

(b) where the existing seller has made an application for a licence in accordance with section 4 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 applying for a review of the refusal under section 21, if no application for review is made,

(B) where an application for review is duly made, the date on which the application

is finally determined or withdrawn, or, if an appeal against the review decision is made within the period for appeal specified in section 22, the date on which the appeal is finally determined or withdrawn.

- (5) For the purposes of subsection (4)(b)(ii)(B) -
- (a) an application for review is finally determined if the application is determined by the Department and the period for appeal under section 22 expires without any appeal being made against the review decision, and
  - (b) an appeal against a review decision is finally determined if the appeal and any further appeal is finally determined.

- (6) In this section -

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

**"general commencement date"** means the 1<sup>st</sup> December, 2014,

**"last application date"** means the 2<sup>nd</sup> February, 2015, and

**"review decision"** has the meaning given by section 22(9).

**Interpretation.**

55. (1) In this Ordinance, unless the context requires otherwise -

"**adult**" means an individual who is of or over the age of 18 years,

"**advertisement**" has the meaning given to it by section 4 of the Law,

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

"**authorised officer**" means the licensing officer and any other officer appointed as an authorised officer under section 32(1),

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

"**child**" means an individual below the age of 18 years,

"**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,

"**display**" includes cause to be displayed,

"**document**" -

- (a) means anything in which information of any description is recorded, and

(b) includes any record (in whatever form it is held),

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

"**Guernsey**" means the islands of Guernsey, Herm and Jethou,

"**indirect sale licence**" means a licence authorising indirect sale of tobacco products within the meaning of section 5(4),

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

"**items subject to legal professional privilege**" has the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>n</sup>,

"**the Law**" means the Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010,

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

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

"**licensing officer**" means the officer appointed under section 32(1) to be the licensing officer,

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<sup>n</sup> Ordres en Conseil Vol. XLIII(2), p. 617; as amended by Order in Council No. XVI of 2009 and No. XV of 2011; Recueil d'Ordonnances Tome XXIX, p. 406, Tome XXXIII, p. 617 and Ordinance No. XXIX of 2011.

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

"**packet**", in relation to cigarettes –

- (a) means any box, package, container, wrapping or other receptacle which contains the cigarettes, and
- (b) where any such receptacle is or is to be contained in another receptacle, includes each such receptacle, but
- (c) excludes any additional transparent outer wrapping which may be discarded on opening,

"**police officer**" means a member of the salaried police force of the Island of Guernsey and a member of the special constabulary of the Island of Guernsey (within the limits of the member's jurisdiction),

"**prescribed**" means prescribed by regulations made by the Department,

"**reasonable steps**", in relation to one person establishing the age of another, has the meaning given by section 48,

"**relevant enactment**" means -

- (a) this Ordinance,
- (b) the Tobacco Advertising (Guernsey) Law, 1997,

- (c) the Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005<sup>o</sup>,
- (d) the Smoking (Prohibited Buildings and Vehicles) Ordinance, 1971<sup>P</sup>,
- (e) the Notice of Smoking in Public Places Ordinance, 2004<sup>q</sup>, or
- (f) any Ordinance or subordinate legislation made under an enactment referred to in any of paragraphs (a) to (e),

"**relevant offence**" means any offence under a relevant enactment,

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

"**responsible person**", subject to section 14, means an individual approved under Part II to manage the conduct of a corporate licence,

"**retail licence**" means a licence authorising retail sale of tobacco products,

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

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<sup>o</sup> Order in Council No. V of 2006.

<sup>P</sup> Recueil d'Ordonnances Tome XVII, p. 337.

<sup>q</sup> Recueil d'Ordonnances Tome XXIX, p. 435.

"**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,

**"seized property"** means any thing seized by an authorised officer under section 33 or 39(2),

**"special conditions"** means any conditions specified on a licence by the licensing officer under paragraph 10 of Schedule 1,

**"specified"** means specified by the licensing officer and notified in any manner that the licensing officer considers appropriate,

**"the States"** means the States of Guernsey,

**"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) doing any of the things specified in paragraph (a) by way or by use of a vending machine or other device,

**"tobacco product"** has the meaning given by section 5 of the Law and includes anything deemed to be a tobacco product by section 2 of this Ordinance,

**"tobacco-licensed premises"** means premises licensed under Part II,

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>r</sup>,

**"vending machine for tobacco products"** means an automatic machine for the sale or supply of tobacco products (regardless of whether the machine also dispenses other products),

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

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<sup>r</sup> Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXXI, p. 542; Ordinance No. XXIX of 2013.

"**warrant**" means a warrant issued under section 36,

"**wholesale**", 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,

"**wholesale licence**" means a licence authorising wholesale of tobacco products, and

cognate expressions have a corresponding meaning.

(2) Any other expression has the same meaning as in the Law unless the context requires otherwise.

(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.

**Index of defined expressions.**

56. In this Ordinance, the expressions listed below are defined by the provisions specified.

<b>Expression</b>	<b>Interpretation Provision</b>
adult	Section 55(1)
advertisement	Section 55(1)
approval	Section 55(1)
authorised officer	Section 55(1)
buyer	Section 55(1)
child	Section 55(1)
contravene	Section 55(1)
corporate licence	Section 55(1)
corporate licensee	Section 55(1)
cruise vessel	Section 58(3)

<b>Expression</b>	<b>Interpretation Provision</b>
display	Section 55(1)
disqualifying offence	Section 8(4)
document	Section 55(1)
existing seller	Section 54(6)
function	Section 55(1)
general commencement date	Section 54(6)
Guernsey	Section 55(1)
indirect sale	Section 5(4)
indirect sale licence	Section 55(1)
interested person	Section 21(9)
items subject to legal professional privilege	Section 55(1)
the Law	Section 55(1)
last application date	Section 54(6)
licence	Section 55(1)
licensee	Section 55(1)
licensing officer	Section 55(1)
this Ordinance	Section 55(1)
officer	Section 32(2)
original decision	Section 21(9)
packet	Section 55(1)
passenger	Section 58(3)
police officer	Section 55(1)
prescribed	Section 55(1)
reasonable steps	Sections 48 and 55(1)
relevant enactment	Section 55(1)
relevant evidence	Section 36(3)
relevant offence	Section 55(1)
renewal	Section 55(1)
responsible person	Section 55(1)
retail licence	Section 55(1)
retail licensee	Section 55(1)
retail sale	Section 55(1)
review decision	Section 22(9)
sale	Section 55(1)
seized property	Section 55(1)
special conditions	Section 55(1)
specified	Section 55(1)
the States	Section 55(1)
supply	Section 55(1)
tobacco product	Section 55(1)
tobacco-licensed premises	Section 55(1)
uniform scale	Section 55(1)

<b>Expression</b>	<b>Interpretation Provision</b>
vending machine for tobacco products	Section 55(1)
vessel	Section 55(1)
warrant	Section 55(1)
wholesale	Section 55(1)
wholesale licence	Section 55(1)

**Extent.**

57. Subject to section 58, this Ordinance has effect in the Islands of Guernsey, Herm and Jethou, and the territorial waters adjacent to these Islands.

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

58. (1) Nothing in this Ordinance prohibits or restricts -

- (a) the sale, supply or possession of tobacco products,
- (b) the display of tobacco products, prices of tobacco products or advertisements of tobacco products,
- (c) vending machines for tobacco products, or
- (d) the importation of tobacco products in connection with 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 within the territorial waters adjacent to the Islands of Guernsey, Herm and Jethou which enters those territorial waters from a place outside those territorial waters,

- (b) a vessel carrying passengers for reward which is sheltering in the territorial waters adjacent to the Island of Guernsey, Herm and Jethou due to any emergency whatsoever, or
  - (c) a vessel which is not carrying any passengers for reward within the territorial waters adjacent to Islands of Guernsey, Herm and Jethou on passage from or to a place in any of the Islands of Guernsey, Herm or Jethou or in those territorial waters, to or from a place outside the Islands or outside those territorial waters.
- (3) In subsection (2) -

"**cruise vessel**" means a vessel which enters a port or the territorial waters adjacent to the Islands of Guernsey, Herm and Jethou solely for the purpose of enabling passengers thereon to visit any of the said Islands 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,

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

**Citation.**

59. This Ordinance may be cited as the Tobacco Products (Guernsey) Ordinance, 2014.

**Commencement of the Law and this Ordinance.**

60. (1) The Law and this Ordinance (except Part III and sections 52

and 53) shall come into force on the 1<sup>st</sup> December, 2014.

(2) Part III and sections 52 and 53 of this Ordinance shall come into force on the 1<sup>st</sup> June, 2015.

SCHEDULE 1<sup>s</sup>  
CONDITIONS OF LICENCES

Sections 6(2) and 54(2)(a)

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) the Tobacco Advertising (Guernsey) Law, 1997, and
  - (c) 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 a 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>s</sup> Note: this schedule may be amended, repealed or replaced by regulations made under section 24.

5. No child may sell tobacco products at or from tobacco-licensed premises unless the child is acting under the supervision of -
  - (a) the licensee (if an individual), or
  - (b) an adult employee or adult agent of the licensee.
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 sale 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 licensee must pay any fee payable under the Tobacco Products (Guernsey) Ordinance, 2014.
10. A licensee must comply with any other conditions specified by the licensing officer on the licence.

## SCHEDULE 2

## PROVISIONS FOR STORAGE AND DISPOSAL OF SEIZED PROPERTY

## Section 43

1. An authorised officer may store seized property in any manner and place the officer considers appropriate, before the seized property is disposed of in accordance with this Ordinance.
2. Any person who appears to an authorised officer to be the person who would, but for the seizure, be entitled to possession of the seized property must be given reasonable access to that property.
3. Where the seized property is perishable or its storage involves unreasonable expense or inconvenience, and -
  - (a) the Department is unaware of any person who would, but for the seizure, be entitled to possession of the seized property,
  - (b) no person has claimed the property within the period of three months after it was seized under this Ordinance, and
  - (c) there is no order to the contrary by a competent court,the Department may, in the case of a tobacco product, destroy that property, and in any other case, destroy, sell or otherwise dispose of that property in any manner the Department considers appropriate.
4. A person convicted of a relevant offence is liable to pay to the States (through the Department) all expenses reasonably incurred in relation to the storage of any seized property that was used in, the subject of, or otherwise

involved in, the commission of the offence; and -

- (a) the States may recover the expenses for which that person is liable as a civil debt owed by that person to the States, and
- (b) this paragraph applies whether or not the seized property is forfeited to the States under any enactment, but a person is not liable to pay expenses incurred on and from the day on which the thing is so forfeited.

**SCHEDULE 3**  
**PENALTIES FOR OFFENCES**

Section 46(1)(b)

<b>Provisions creating offence</b>	<b>General summary of offence</b>	<b>Penalties</b>
<b>Section 3</b>	Unlicensed sale of tobacco products	Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the uniform scale, or both.
<b>Section 15(2)</b>	Failure of licensee to comply with conditions, keep prescribed records, produce licence or records, or give written notice of material change in conduct of licence, etc.	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.
<b>Section 17(2)</b>	Failure to return licence to licensing officer as required by section 17(1)	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.
<b>Section 25(1)</b>	Displaying tobacco products, prices of tobacco products or advertisement of tobacco products in tobacco-licensed premises	Upon summary conviction or conviction on indictment, a fine not exceeding level 5 on the uniform scale, and a further fine of such amount, not exceeding level 2 on the uniform scale, as the Court may impose on convicting the person, in respect of each day on

<b>Provisions creating offence</b>	<b>General summary of offence</b>	<b>Penalties</b>
		which the offence continues to be committed by that person, whether before or after the date of conviction.
<b>Section 27(1)</b>	Sale or supply of tobacco product to child	Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the uniform scale, or both.
<b>Section 28(1)</b>	Sale or supply of tobacco product for oral use	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.
<b>Section 29</b>	Sale of cigarettes by retail sale other than in a packet of 20 cigarettes or more	Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the uniform scale, or both.
<b>Section 30(1)</b>	Being the person in charge of premises where a vending machine for tobacco products is available for use	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.
<b>Section 31</b>	Importation of cigarettes, in the course of business, in a packet containing fewer than 20 cigarettes	Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the uniform scale, or both.

<b>Provisions creating offence</b>	<b>General summary of offence</b>	<b>Penalties</b>
<b>Section 45(1)</b>	Obstruction, failure to comply with requirement, or tampering, etc.	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.
<b>Section 45(2)</b>	Provision of false, misleading or deceptive information	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.
<b>Section 49(3)</b>	Breach of duty of confidentiality	Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.

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