



Jersey

## GAMBLING COMMISSION (JERSEY) LAW 2010

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Jersey

## GAMBLING COMMISSION (JERSEY) LAW 2010

**A LAW** to establish a Gambling Commission to supervise and regulate the conduct of gambling, and for related matters

*Adopted by the States*

*2nd December 2009*

*Sanctioned by Order of Her Majesty in Council*

*21st July 2010*

*Registered by the Royal Court*

*6th August 2010*

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### PART 1

#### INTERPRETATION

##### 1 Interpretation

(1) In this Law, unless the context otherwise requires –

“Chairman” means the person appointed as such under Schedule 1;

“Commission” means the Jersey Gambling Commission established by Article 2;

“Commissioner” means a person appointed as such under Schedule 1, and includes the Chairman;

“financial year” means the period beginning with the day on which this Law comes into force and ending with the 31st day of December next following, and each subsequent period of 12 months ending with the 31st day of December in each year;

“gambling” has the same meaning as in the Gambling (Jersey) Law 1964<sup>1</sup>;

“Minister” means the Minister for Economic Development;

“social responsibility function” means the Commission’s function under Article 9.

- (2) In this Law, unless the context otherwise requires, “gambling services” means services –
  - (a) provided in Jersey or from within Jersey;
  - (b) performed in the course of a business; and
  - (c) consisting wholly or mainly of –
    - (i) gambling with another person,
    - (ii) facilitating gambling by other persons, or
    - (iii) any other activity for which a licence, permit, approval, certificate, registration or other permission is required under the Gambling (Jersey) Law 1964.
- (3) For the purpose of this Law a person is a provider of gambling services if that person provides services that are gambling services.
- (4) For the purpose of this Law a person is a consumer of gambling services if that person –
  - (a) in Jersey or from within Jersey, engages in –
    - (i) gambling with a provider of gambling services, or
    - (ii) gambling that is facilitated by a provider of gambling services; and
  - (b) does so otherwise than in the course of a business.

## **PART 2**

### **ESTABLISHMENT AND GENERAL FUNCTIONS OF COMMISSION**

#### **2 Establishment of Gambling Commission**

- (1) There is to be a body corporate known as the Jersey Gambling Commission.
- (2) The Commission has perpetual succession and is to consist of not less than 2 and not more than 5 Commissioners, including the Chairman.
- (3) The Commission is independent of the Minister and of the States.
- (4) Paragraph (3) is subject to –
  - (a) any provision of this Law, and in particular Article 5; and
  - (b) any obligation to comply with any conditions lawfully attached to any funding accepted by the Commission from the States.
- (5) Schedule 1 makes further provision in relation to the Commission.

#### **3 General functions and powers of Commission**

- (1) The functions of the Commission are –
  - (a) the general supervision of gambling, including in particular –

- (i) supervision of providers of gambling services, and
    - (ii) investigation of whether any person is complying with, contravening, or committing an offence under an enactment relating to gambling; and
  - (b) any other function conferred on or transferred to the Commission under this Law or any other enactment.
- (2) The States may by Regulations –
- (a) transfer to the Commission any function under any other enactment, to the extent that the function relates to gambling; and
  - (b) amend this or any other enactment in order to give effect to any transfer of functions to the Commission under sub-paragraph (a) or Schedule 2.
- (3) The Commission may exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity, so far as is –
- (a) reasonably necessary or expedient for or incidental to any of its functions;
  - (b) possible for a body corporate; and
  - (c) not prohibited by any enactment.
- (4) Without prejudice to the generality of paragraph (3), the Commission may in its corporate name –
- (a) sue and be sued;
  - (b) enter into contracts; and
  - (c) acquire, hold and dispose of property.
- (5) The Commission must ensure that it carries out its functions in a way that does not give rise to, or maintain, unnecessary burdens.

#### **4 Guiding principles**

The Commission must, in the performance of all of its functions, have regard to the principles that any gambling services provided –

- (a) should be conducted responsibly and with safeguards necessary to protect children and vulnerable people;
- (b) should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime; and
- (c) should be verifiably fair to consumers of those services.

#### **5 Guidance and direction by the Minister**

- (1) The Minister may give to the Commission, in writing, guidance or general directions in respect of –

- (a) the policies to be followed by the Commission in relation to the supervision or regulation of gambling services; and
  - (b) the manner in which any function of the Commission is to be carried out.
- (2) The Minister may give to the Commission, in writing, specific directions as to the determination under Article 11(4)(c) of the manner in which gross win is to be calculated.
- (3) The Commission must –
- (a) act in accordance with any general directions given under paragraph (1) and any specific directions given under paragraph (2); and
  - (b) in discharging its functions, have regard to any guidance given under that paragraph.
- (4) The Minister must not give guidance or general directions unless he or she –
- (a) has first consulted the Commission; and
  - (b) considers that the giving of that guidance or direction –
    - (i) is necessary in the public interest, and
    - (ii) will not unduly affect the Commission's independence.
- (5) The Minister must not give –
- (a) guidance or general directions as to exercise of the Commission's functions in respect of any particular person; or
  - (b) general directions as to when or how the Commission is to perform its social responsibility function.

### **PART 3**

#### **GOOD PRACTICE, ADVICE AND CO-OPERATION**

##### **6 Good practice and codes of practice**

- (1) The Commission must promote –
- (a) the following of good practice by providers of gambling services, being practice that appears to the Commission to be desirable having regard to the guiding principles set out in Article 4; and
  - (b) in particular, the observance of the requirements of enactments relating to gambling.
- (2) The Commission may approve one or more codes of practice to further any aspect of its duty under paragraph (1).
- (3) A code may be approved whether it has been prepared by or on behalf of the Commission or issued by another person (whether in relation to Jersey or not), and may take the form of a code issued by another person with deletions, amendments or additions made by the Commission.
- (4) The Commission –

- (a) must, subject to any Order under paragraph (12)(b), ensure that any approved code is published in a manner that the Commission thinks likely to bring it to the attention of those whose activities it concerns; and
  - (b) may in addition cause copies of an approved code to be put on sale to the public at any price that the Commission considers to be reasonable.
- (5) An approved code –
  - (a) may refer to technical standards issued by another person (whether in relation to Jersey or not), and may apply those standards subject to deletions, amendments and additions made by the Commission;
  - (b) may make different provision for different cases or circumstances;
  - (c) must state when it comes into force; and
  - (d) may be revised or revoked by the Commission.
- (6) Subject to paragraphs (7) to (11), a person's failure to follow a provision in an approved code does not of itself render any person liable to proceedings of any kind or invalidate any transaction.
- (7) An approved code is admissible in evidence in any proceedings if it appears to the court or tribunal conducting the proceedings to be relevant to a question arising in the proceedings, and that code is to be taken into account in determining that question.
- (8) In proceedings where it is alleged that a person has contravened a requirement of an enactment relating to gambling –
  - (a) proof of a failure to comply with a provision of an approved code purporting to promote the observance of that requirement may be relied on as tending to establish contravention of the requirement; and
  - (b) proof of compliance with that provision may be relied on as tending to establish that the requirement has not been contravened.
- (9) Paragraph (6) is subject to any provision of an enactment relating to gambling that makes an exception to an offence dependent on compliance with an approved code.
- (10) A copy, certified in writing on behalf of the Commission to be an accurate copy of all or part of an approved code, is admissible in evidence in all legal proceedings as of equal validity with the original and as evidence of any fact stated in it of which direct oral evidence would be admissible.
- (11) Where a document purports on its face to be a copy of all or part of an approved code, certified in accordance with paragraph (10), it is not necessary for the purposes of paragraph (10) to prove the official position or handwriting of the person signing on behalf of the Commission.
- (12) The Minister –
  - (a) must by Order require the Commission to consult in a specified manner before it approves a code; and

- (b) may by Order –
  - (i) prescribe any aspect of the manner in which an approved code must be published, and
  - (ii) impose any other requirement on the Commission in relation to approval of codes.
- (13) The Commission must take account of an approved code in performing any of its functions to which the code is relevant, and particularly when considering an application for, or the revocation of any licence, permit, approval, certificate, registration or other permission.
- (14) The Commission must –
  - (a) in exercising its powers under this Article and performing its duty under Article 3(5) in relation to those powers, particularly take account of any burden that may be caused by any unnecessary inconsistency between a provision of an approved code and any similar provision in any other jurisdiction in which providers of gambling services also operate;
  - (b) keep under review its exercise of its powers under this Article, and in particular keep under review the provisions of any approved code or of any technical standards referred to in such a code; and
  - (c) specify, in its report on its operations prepared under Article 18(1)(b), the results of action taken under sub-paragraphs (a) and (b).

## **7 Information and advice**

- (1) The Commission must arrange for the giving, in such form and manner as the Commission considers appropriate, of such information and advice as it may appear to the Commission expedient to give to the public, or to any persons, about –
  - (a) the operation of enactments relating to gambling;
  - (b) good practice as promoted under Article 6; and
  - (c) other matters within the scope of the Commission's functions.
- (2) The Commission must give advice to the Minister about –
  - (a) the incidence of gambling;
  - (b) the manner in which gambling is carried on;
  - (c) the effects of gambling;
  - (d) the regulation of gambling; and
  - (e) any need for the introduction, amendment or replacement of any enactment that relates to gambling, including any amendment to this Law.
- (3) Advice under paragraph (2) must be given –
  - (a) in response to a request from the Minister; and
  - (b) on such other occasions as the Commission thinks appropriate.



- (4) The Minister must request the advice of the Commission when preparing any draft enactment relating to gambling, including any amendment to this Law.
- (5) In carrying out its functions under this Article the Commission must in particular aim to secure –
  - (a) the education of persons who may be involved in gambling as to –
    - (i) the rights of consumers of gambling services,
    - (ii) the duties of providers of gambling services, and
    - (iii) the steps to be taken for enforcing those rights or complying with those duties;
  - (b) the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, providers of gambling services; and
  - (c) the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters, as those are affected by gambling.

## **8 Cooperation with overseas authorities**

- (1) For the purpose of this Article an overseas authority is a person or body discharging any function under the law of and in relation to a country or territory outside Jersey, if that function –
  - (a) is the same as or similar to a function of the Commission in relation to Jersey; or
  - (b) otherwise consists of investigating or prosecuting an offence related to gambling under the law of that country or territory.
- (2) The Commission may, to cooperate with an overseas authority, exercise any approved power in Jersey –
  - (a) as if the enactment conferring the power extended to the country or territory of that overseas authority; or
  - (b) as if any act complained of by that authority had taken place in Jersey.
- (3) In paragraph (2) “approved power” means a power of the Commission, under this Law or any other enactment, in respect of which –
  - (a) an enactment designates the power as an approved power for the purpose of this Article; or
  - (b) the Attorney General has approved the exercise of the power by virtue of this Article in a particular case.
- (4) An approved power cannot be exercised by virtue of paragraph (2) unless the Commission is satisfied that –
  - (a) its exercise has been requested by the overseas authority; and
  - (b) the request was made only for the purpose of obtaining assistance for that authority in the exercise of one or more of its functions mentioned in paragraph (1).

- (5) Paragraph (6) applies when –
- (a) the Commission is deciding whether to exercise a power by virtue of this Article; or
  - (b) the Attorney General is deciding whether to approve the exercise of a power by virtue of this Article.
- (6) The Commission and the Attorney General may take the following factors (among others) into account –
- (a) whether corresponding assistance would be given in that country or territory to the Commission;
  - (b) whether the case concerns the possible breach of a law, or other requirement, that has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized by Jersey;
  - (c) the seriousness of the case and its importance in Jersey;
  - (d) whether the overseas authority will pay some or all of the Commission's fees or costs of exercising the power;
  - (e) whether the overseas authority will comply with any conditions that the Commission may impose on its assistance;
  - (f) whether the assistance could be obtained by other means; and
  - (g) whether it is otherwise appropriate in the public interest to give the assistance sought.
- (7) The exercise of a power under any provision is no less an exercise of that power under that provision because it is exercised by virtue of this Article, and this Law (and any other law that applies when a power is exercised directly under that provision) applies also when that power is exercised by virtue of this Article.
- (8) An approved power may be exercised by virtue of paragraph (2) –
- (a) notwithstanding that there may be no grounds in any events within Jersey for the exercise the power otherwise than by virtue of this Article;
  - (b) notwithstanding that the exercise may not be necessary or expedient for or incidental to any of the Commission's own functions;
  - (c) without prejudice to any power of the Commission under Article 3(3) to assist any person or body, including an overseas authority, when reasonably necessary or expedient for or incidental to any of the Commission's own functions; and
  - (d) as if the exercise of the power by virtue of this Article is a function of the Commission for the purpose of Article 3(3).

## **PART 4**

### **SOCIAL RESPONSIBILITY**

#### **9 Social responsibility function**

- (1) The Commission must take the action it considers appropriate to –
-

- (a) protect children and other vulnerable persons from addiction to gambling and from other forms of harm associated with gambling;
  - (b) make assistance available to persons who are or may be affected by problems related to excessive gambling; and
  - (c) otherwise avoid and reduce problems related to gambling.
- (2) Without prejudice to the generality of paragraph (1), the action that may be taken –
- (a) includes funding, coordinating and otherwise promoting action by others; and
  - (b) may be by way of research, education, information, prevention, treatment, counselling or other measures.
- (3) The Commission's power to fund action by others includes the power –
- (a) to give grants, loans or any other form of financial assistance; and
  - (b) to attach to the funding any terms or conditions, including as to repayment with or without interest.

#### **10 Social responsibility fund**

- (1) The Commission must establish and maintain a social responsibility fund, accounted for separately from its general funds.
- (2) The Commission must pay into the fund –
  - (a) any money raised through a social responsibility levy under Article 11;
  - (b) any fee received for a service performed or item supplied under its social responsibility function; and
  - (c) any donation or grant that it believes was intended wholly or primarily to assist in the discharge of the social responsibility function.
- (3) The Commission may pay into the fund any other money.
- (4) The Commission must not make any payment out of the fund for any purpose other than to perform its social responsibility function.
- (5) The Commission may use any other of its funds and resources to perform its social responsibility function.
- (6) Where a salary or other expense is partly used for the social responsibility function and partly for another function, paragraphs (1) and (4) do not prevent the Commission paying out of the fund the proportion of that expense that properly reflects the use for the social responsibility function, as long as that payment is separately accounted for.

#### **11 Social responsibility levy**

- (1) The Commission may determine that a social responsibility levy is to be paid to the Commission in relation to a financial year.

- (2) Articles 12 and 13 and the following provisions of this Article (other than paragraph (5)) apply in relation to a financial year if the Commission makes a determination under paragraph (1) in relation to that year.
- (3) In this Article, and in Articles 12 and 13 –
- “relevant activity” means an activity –
- (a) that is related to the provision of a gambling service, and
  - (b) for which a relevant permission is required by any enactment;
- “relevant permission” means a licence, permit, approval, certificate, registration or other permission that –
- (a) is given by the Commission, and
  - (b) is of a type determined for the levy by the Commission under paragraph (4)(a);
- “relevant person” means a person who, at any point during the financial year, is required to hold a relevant permission in connection with a relevant activity.
- (4) The Commission must determine –
- (a) the types of relevant permission for the levy;
  - (b) the date by which declarations must be made under paragraph (8), which must not be sooner than 1 month, nor later than 12 months, after the end of the financial year;
  - (c) the manner in which gross win is to be calculated for the purposes of the levy, including the principles under which gross win is to be –
    - (i) identified as relating to a relevant activity, and
    - (ii) attributed to a relevant person in respect of a relevant activity; and
  - (d) the rate of the levy, which –
    - (i) must be a percentage, to be applied to the gross win for the financial year so as to produce the amount of the levy,
    - (ii) may differ in relation to, or exempt, different types of relevant activity or relevant permission or different means by which gambling services are provided; and
    - (iii) must not be more than 1 per cent.
- (5) The States may by Regulations substitute a different maximum percentage for that in paragraph (4)(d)(iii).
- (6) The Commission must publish its determinations under paragraph (4) in such a way as it considers will be likely to bring them to the attention of relevant persons.
- (7) The Commission must, in addition, announce the levy by a notice in the Gazette setting out –
- (a) the date by which declarations must be made by relevant persons;
  - (b) in general terms, the types of relevant permission; and

- (c) information as to how relevant persons may find the remaining details of the Commission's determinations under paragraph (4).
- (8) A relevant person must, by the date announced under paragraph 7(b), declare to the Commission –
  - (a) that person's gross win from relevant activities, calculated in the manner determined under paragraph (4)(c);
  - (b) any details required to establish which rates of levy are applicable to that person's gross win; and
  - (c) an address for service of a notice under paragraph (10), if none has already been supplied for that purpose in connection with a relevant permission.
- (9) The Commission –
  - (a) must determine the gross win, the rate and the levy payable in relation to each person who makes a declaration;
  - (b) may estimate the gross win, the rate and the levy payable in relation to a relevant person who has not made a declaration; and
  - (c) may impose an additional amount of levy, up to the amount estimated under sub-paragraph (b), on a relevant person who –
    - (i) throughout the financial year did not hold the relevant permission, and
    - (ii) has not, since the announcement of the levy, made himself or herself known to the Commission as a relevant person.
- (10) The Commission must serve, on each person in respect of whom a determination or estimate is made under paragraph (9), notice of the amount of the levy payable by the person for the financial year, including an indication as to how further details may be obtained of the calculation of the gross win, rate and amount.
- (11) The notice must be served –
  - (a) by giving it to the person or, if the person is a provider of gambling services when it is served, to a person employed or otherwise engaged in the provision of those services by that person;
  - (b) by delivering or posting it to an address for service, which is to be taken for the purposes of Article 7 of the Interpretation (Jersey) Law 1954<sup>2</sup> to be the person's proper address, being an address that was –
    - (i) supplied in connection with the person's relevant permission, or
    - (ii) declared under paragraph (8)(c); or
  - (c) by the means appearing to the Commission to be most likely to bring it to the person's attention, if –
    - (i) service under sub-paragraph (a) is not practicable, and
    - (ii) no address for service was supplied or declared as set out in sub-paragraph (b).

- (12) A levy must be paid by a person within 30 days after a notice is served on the person under paragraph (10).
- (13) The Minister may, by Order, make additional or alternative provision as to service of notices under this Article.

## **12 Appeal against levy**

- (1) A person on whom a notice is served under Article 11(10) may appeal to the Royal Court against the levy imposed by the notice.
- (2) A person may appeal within –
  - (a) the time allowed for payment of the levy under Article 11(12); or
  - (b) such further period as the Court thinks just and equitable in exceptional circumstances.
- (3) In determining an appeal the Court is not restricted to a consideration of questions of law or to any information that was before the Commission.
- (4) The Court may determine an appeal by –
  - (a) confirming the amount of the levy appealed against;
  - (b) declaring that no levy is payable by the person; or
  - (c) substituting for the amount of the levy appealed against any amount that the Commission could have imposed, whether more or less than the amount specified in the notice.
- (5) In determining an appeal the Court may make any additional orders that it thinks appropriate, including but not limited to –
  - (a) ancillary orders;
  - (b) orders as to the date by which an amount of the levy is to be paid; and
  - (c) orders as to costs.
- (6) If an appeal is made within the time allowed for payment of the levy under Article 11(12), the levy is not payable until the appeal is determined or until any later date ordered under paragraph (5)(b).

## **13 Enforcement of levy**

- (1) If a levy has not been paid within the time allowed under Article 11(12) or Article 12(6), the Commission may apply to the Royal Court for an order to enforce the payment of the levy as a debt due to the Commission.
- (2) On granting an application under paragraph (1), the Royal Court may make an order for the costs of, or incidental to, the application to be borne by all or any of the following –
  - (a) the person required to pay the levy;
  - (b) if the person required to pay the levy is a company or partnership providing gambling services, any shareholder or officer whose actions led to the application.
- (3) Paragraphs (4) and (5) apply to a relevant permission if its holder, without reasonable excuse –

- (a) has contravened Article 11(8); or
  - (b) has failed to pay the levy within the time allowed under Article 11(12) or Article 12(6).
- (4) The Commission may revoke the relevant permission after –
- (a) giving the holder 30 days notice of intention to do so; and
  - (b) considering any representations made by the holder.
- (5) If the enactment requiring the relevant permission makes provision for a review of or appeal against a revocation of that permission, that provision also applies to a revocation under paragraph (4), subject to any modification considered necessary by the body or court conducting the review or appeal.

## **PART 5**

### **OTHER FINANCIAL MATTERS**

#### **14 Supplementary payment collected by Commission on behalf of States**

- (1) The States may by Regulations require that a person taking a specified action must accompany that action with a supplementary payment to the Commission of a specified amount.
- (2) The actions that may be specified are –
  - (a) the making of an application to the Commission under any enactment;
  - (b) the provision to the Commission of any document required under any enactment;
  - (c) any other action taken under an enactment that states that the action is one in respect of which a supplementary payment may be made payable under this Article.
- (3) Regulations under paragraph (1) must not come into operation within 5 years from the commencement of this Law.
- (4) Until the Commission receives any supplementary payment due under paragraph (1) in relation to an application, document or action, it may treat that application as not having been made, that document as not having been provided, or that action as not having been taken.
- (5) The Commission must pay to the Treasurer of the States any amount received by it as a supplementary payment under paragraph (1).

#### **15 Fees, donations and borrowing**

- (1) Without prejudice to the other means by which the Commission may receive funds to enable it to perform its functions, the Commission may –
  - (a) contract to charge a fee for providing any service, information or other item in pursuance of any of its functions, if it is not obliged

to provide that service or item gratuitously to the person with whom it contracts;

- (b) accept a grant or donation, whether or not subject to conditions, but only if it considers that it can satisfactorily maintain its independence, integrity and reputation; and
  - (c) borrow, subject to paragraph (2).
- (2) The Minister may prescribe by Order either or both of –
- (a) a maximum amount up to which the Commission may borrow; and
  - (b) a requirement for the Commission to obtain approval before borrowing, in a manner specified and from a person specified in the Order (whether the Minister or any other person).

## **16 Reserve and investment**

The Commission may, in accordance with any guidelines set by the Minister for Treasury and Resources –

- (a) accumulate a reserve of such amount as it considers necessary; and
- (b) invest that reserve and any other of its funds and resources that are not immediately required for the performance of its functions.

## **17 Exemption from income tax**

The income of the Commission is not liable to income tax under the Income Tax (Jersey) Law 1961<sup>3</sup>.

## **18 Accounts, audit and reports**

- (1) The Commission must –
  - (a) keep proper accounts and proper records in relation to the accounts; and
  - (b) prepare accounts in respect of each financial year and a report on its operations during the year.
- (2) The accounts of the Commission must include separate accounts for the social responsibility fund.
- (3) The Minister must lay a copy of the accounts and report prepared by the Commission before the States not later than 7 months after the end of each financial year.
- (4) The accounts of the Commission must –
  - (a) be audited by auditors appointed in respect of each financial year by the Minister and qualified for appointment as auditors of a company by virtue of Article 113 of the Companies (Jersey) Law 1991<sup>4</sup>; and
  - (b) be prepared in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the Commission for the period and of the state of the Commission's affairs at the end of the period.



- (5) The Minister may, by Order, make additional provision as to the Commission's accounts.
- (6) This Article is without prejudice to any additional accounting requirements –
  - (a) imposed by any enactment; or
  - (b) agreed as a condition lawfully attached to any funding accepted by the Commission from the States.

## **PART 6**

### MISCELLANEOUS AND FINAL

#### **19 Amending Regulations**

The States may by Regulations amend Articles 8, 12 or 13 or Schedule 1.

#### **20 Amendment of the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002**

For Regulation 11 of the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002<sup>5</sup> there is substituted the following Regulation –

##### **“11 Gambling**

- (1) Article 7 of the Law shall not apply to any proceedings in respect of the refusal of, imposition of conditions upon or variation or revocation of any licence or certificate granted by or any registration by the Jersey Gambling Commission or by the Minister for Economic Development in relation to gambling.
- (2) Article 10(1) of the Law shall not apply when a question is asked in order to assess the suitability of the person to whom the question relates –
  - (a) for appointment as a Commissioner of the Jersey Gambling Commission;
  - (b) to hold any licence or certificate issued or to be registered by the Jersey Gambling Commission or by the Minister for Economic Development in relation to gambling; or
  - (c) for employment in any occupation for which any such licence, certificate or registration is required.
- (3) Article 10(1) and (2)(a) of the Law shall not apply to the disclosure of information under paragraph 7 of Schedule 1 to the Gambling Commission (Jersey) Law 2010<sup>6</sup>.
- (4) Article 10(2)(b) of the Law shall not apply to –
  - (a) the office of Commissioner of the Jersey Gambling Commission; or

(b) any occupation to which paragraph (2)(c) applies.”.

## **21 Transitional and savings provisions**

Schedule 2 makes transitional and savings provisions.

## **22 General provisions as to Regulations and Orders**

An Order or Regulations made under this Law may contain any transitional, consequential, incidental or supplementary provisions that appear to the Minister or the States to be necessary or expedient for the purposes of the Order or Regulations.

## **23 Citation and commencement**

This Law may be cited as the Gambling Commission (Jersey) Law 2010 and comes into force 28 days after it is registered.

**M.N. DE LA HAYE**

*Greffier of the States*

**SCHEDULE 1**

(Article 2)

**CONSTITUTION AND OPERATION OF COMMISSION****1 Appointment of Commissioners**

- (1) The Minister must, by instrument in writing, appoint Commissioners from among persons nominated by the Chairman.
- (2) The Chairman may nominate a person only if that person –
  - (a) is not a member of the States; and
  - (b) has applied to be appointed or re-appointed as a Commissioner and has complied with paragraph (4) in respect of the application.
- (3) In nominating persons, the Chairman must have regard to the desirability of securing that the Commission includes members who (between them) have experience in or knowledge of –
  - (a) provision or regulation of gambling services, or regulation of other activities that are regulated in a similar manner;
  - (b) action similar to the action to be taken under the social responsibility function;
  - (c) financial, legal or other aspects of management of bodies similar to the Commission; and
  - (d) social conditions in Jersey.
- (4) An applicant must provide with his or her application –
  - (a) a statement setting out the business dealings and assets of –
    - (i) the applicant,
    - (ii) any business partner of the applicant,
    - (iii) any spouse of the applicant or any person in a marriage-like relationship with the applicant (whether or not both persons are of different sexes), and
    - (iv) any child of the applicant or any person who has been adopted by the applicant; and
  - (b) an instrument authorizing the provision to the Minister of information as to whether the person has been charged with, or convicted of, an offence –
    - (i) under customary law or under any enactment, or
    - (ii) against any law of a country or territory outside Jersey.
- (5) The Minister must, in the instrument appointing a Commissioner, specify a period for that appointment of not less than 3 years (subject to paragraph 4) and not more than 5 years.

- (6) A person appointed as a Commissioner holds and vacates office in accordance with the terms of his or her appointment, subject to this Law.
- (7) The functions, powers, rights and obligations of the Commission are not affected by any vacancy in its membership.

## **2 Appointment of Chairman and Deputy Chairman**

- (1) The States must appoint the Chairman of the Commission from among Commissioners nominated by the Minister.
- (2) The Minister –
  - (a) must not nominate a Commissioner who is an employee of the Commission; and
  - (b) may nominate a serving Chairman for re-appointment.
- (3) Any discussion in the States regarding the appointment of the Chairman must take place *in camera*.
- (4) When appointing a Chairman the States must determine the period of the appointment, expiring before or on the same date as the person's appointment as a Commissioner.
- (5) A person appointed as a Chairman holds and vacates office in accordance with the terms of his or her appointment, subject to this Law.
- (6) The Chairman must appoint a Commissioner as Deputy Chairman, and that person is to be treated as the Chairman for the purposes of this Law when –
  - (a) the Chairman is unable to act through incapacity or absence; or
  - (b) there is a vacancy in the office of Chairman.

## **3 Remuneration and expenses of Commissioners**

- (1) The Commission must pay to the Commissioners –
  - (a) such remuneration as it may determine, subject to any maximum directed by the Minister; and
  - (b) reasonable out of pocket expenses occasioned in the course of carrying out their duties.
- (2) Any maximum remuneration directed by the Minister after the appointment of a Commissioner or the Chairman does not operate to reduce the remuneration determined by the Commission on the appointment of that Commissioner or Chairman, but does limit any subsequent increase.
- (3) If a Commissioner is an employee of the Commission, that person must be remunerated as an employee and paragraph (1) does not apply.

## **4 Cessation of office as Commissioner**

- (1) A person ceases to be a Commissioner if –

- (a) he or she resigns from office by giving not less than one month's notice in writing to the Minister;
  - (b) the Minister terminates his or her appointment under paragraph (2); or
  - (c) his or her appointment expires under paragraph (3).
- (2) The Minister may terminate the appointment of a Commissioner, other than the Chairman, after –
- (a) consulting the Chairman; and
  - (b) satisfying himself or herself that the Commissioner –
    - (i) has been absent from meetings of the Commission for a period longer than 2 consecutive months without the permission of the Commission,
    - (ii) has become bankrupt,
    - (iii) is incapacitated by physical or mental illness, or
    - (iv) is otherwise unable or unfit to discharge the functions of a Commissioner.
- (3) A person's appointment as Commissioner expires if –
- (a) the period for which the person was appointed expires without re-appointment;
  - (b) the person becomes a member of the States;
  - (c) the person ceases to be an employee of the Commission, if he or she was an employee of the Commission when appointed as a Commissioner;
  - (d) the person's appointment as Chairman is terminated under paragraph 5(2); or
  - (e) the person completes 10 years (whether consecutive or in aggregate) of service as a Commissioner, unless he or she is an employee of the Commission.
- (4) An employee of the Commission who is a Commissioner does not cease to be such an employee merely by virtue of ceasing to be a Commissioner.

## **5 Cessation of office as Chairman**

- (1) A person ceases to be the Chairman if –
- (a) he or she resigns from office as Chairman by giving not less than one month's notice in writing to the Minister;
  - (b) his or her appointment as Chairman is terminated under paragraph (2); or
  - (c) his or her appointment as Chairman expires under paragraph (5).
- (2) The appointment of a person as Chairman may be terminated by the States on the recommendation of the Minister.

- (3) Any discussion in the States regarding the termination of the appointment of a Chairman under paragraph (2) must take place *in camera*.
- (4) The Minister may only recommend the termination of the appointment of a Chairman if the Minister is satisfied that the Chairman –
  - (a) has been absent from meetings of the Commission for a period longer than 6 consecutive months without the permission of the Commission;
  - (b) has become bankrupt;
  - (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of the Chairman.
- (5) A person's appointment as Chairman expires if –
  - (a) the period for which he or she was appointed expires without re-appointment; or
  - (b) the person ceases to be a Commissioner.

## **6 Procedure at meetings**

- (1) Except as otherwise provided in this Law, the Commission may determine its own proceedings.
- (2) The quorum for the Commission is a majority of the Commissioners.
- (3) At a meeting of the Commission –
  - (a) the Chairman is to preside as chairman of the meeting, but if he or she is not present the Commissioners present must elect one of their number to preside;
  - (b) each Commissioner has one vote on each matter for deliberation; and
  - (c) if a vote is tied, it is to be taken to have been lost.
- (4) A resolution is a valid resolution of the Commission, even though it was not passed at a meeting of the Commission, if –
  - (a) it is signed or assented to by a majority of Commissioners; and
  - (b) proper notice of the proposed resolution was given to all Commissioners.
- (5) The Commission must keep proper minutes of its proceedings, including minutes of any business transacted in accordance with paragraph (4).

## **7 Disclosure of interest and criminal charges**

- (1) If a Commissioner has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter –
  - (a) the Commissioner must disclose the nature of the interest at a meeting of the Commission in person or by means of a written notice brought to the attention of the Commission;

- (b) the disclosure must be recorded in the minutes of the Commission; and
  - (c) the Commissioner must withdraw from any deliberations of the Commission in relation to that matter and must not vote upon it.
- (2) A Commissioner may disclose the nature of an interest for the purpose of sub-paragraph (1)(a) by giving a general notice that he or she should be regarded as interested in any matter concerning a particular organization, partnership or body corporate, the members or directors of which include –
  - (a) that Commissioner; or
  - (b) a person through whom that Commissioner has an indirect interest.
- (3) In paragraphs (1) and (2) the references to an indirect interest include an interest through a person mentioned in paragraph 1(4)(a).
- (4) A Commissioner must notify the Minister as soon as practicable after being charged or convicted of an offence –
  - (a) under customary law or under any enactment; or
  - (b) against any law of a country or territory outside Jersey.

## **8 Appointment and remuneration of employees and agents of Commission**

- (1) Without prejudice to the generality of Article 3, the Commission may employ the employees that it considers necessary or expedient for carrying out its functions.
- (2) The Commission may not enter into or offer to enter into a contract of employment with a person who was a Commissioner immediately before that contract is entered into or offered.
- (3) In respect of its employees the Commission may, as it thinks fit –
  - (a) determine terms as to remuneration, expenses, pensions and other conditions of service; and
  - (b) establish and maintain schemes, or make any other arrangements, for the payment of pensions and other benefits.
- (4) In relation to a matter referred to in paragraph (3), a Commissioner who is an employee of the Commission –
  - (a) must not vote; and
  - (b) is to be disregarded for the purpose of calculating the quorum for the Commission.
- (5) The Commission may –
  - (a) appoint the agents that it considers necessary or expedient for carrying out its functions; and
  - (b) determine the terms that it thinks fit as to the remuneration and expenses of those agents.

**9 Committees and delegation**

- (1) The Commission may authorize the transaction of its business by committees, established by the Commission, that consist of Commissioners alone or together with employees or agents of the Commission.
- (2) The Commission may delegate any of its functions under this or any other enactment wholly or partly to –
  - (a) the Chairman;
  - (b) one or more Commissioners;
  - (c) an employee of the Commission; or
  - (d) a committee authorized under paragraph (1).
- (3) Nothing in this paragraph authorizes the Commission to delegate this power of delegation.
- (4) The delegation of a function under this paragraph –
  - (a) does not prevent the performance of that function by the Commission itself; and
  - (b) may be amended or revoked by the Commission.

**10 Seal**

- (1) As a body corporate, the Commission may have and use a common seal.
- (2) The application of the seal is to be authenticated by the signature of a person authorized (generally or specifically) by the Commission for the purpose.
- (3) If a document purports to be duly executed under the seal, that document is to be –
  - (a) received in evidence; and
  - (b) taken to be duly executed, unless the contrary is proved.

**11 Limitation of liability**

- (1) Except as any enactment or contract provides to the contrary, neither the Minister nor the States are liable for any act or omission, or debt or other obligation, of the Commission.
- (2) A protected person is not liable in damages to a regulated person for any act in the exercise or purported exercise of any relevant function in respect of that regulated person.
- (3) Paragraph (2) does not apply –
  - (a) if it is shown that the act was in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000<sup>7</sup>.
- (4) In paragraph (2) –



- (a) a relevant function is a power, duty or other function exercised or performed under this Law or under any other enactment relating to gambling;
- (b) a protected person is –
  - (i) the Commission,
  - (ii) a Commissioner,
  - (iii) the States,
  - (iv) a Minister,
  - (v) a person who exercises the relevant function as an employee, agent or delegate of another person who is a protected person, or
  - (vi) any other person exercising a relevant function, if any enactment provides that this paragraph is to apply to that person when exercising that function; and
- (c) a regulated person is –
  - (i) an applicant for or holder of any licence, permit, approval, certificate, registration or other permission granted under a relevant function, or
  - (ii) a person in respect of whom the Commission conducts any investigation as to that person's compliance with any requirement of or under any enactment relating to gambling.

**SCHEDULE 2**

(Article 21)

**TRANSITIONAL AND SAVINGS PROVISIONS****1 Shadow Commission taken to be appointed as Commission**

- (1) A person who was, immediately before this paragraph comes into force, a Shadow Commissioner appointed by a decision of the Minister dated 14 December 2006 is to be taken to have been, on the day this paragraph comes into force, appointed to be a Commissioner under paragraph 1 of Schedule 1.
- (2) A person who was, immediately before this paragraph comes into force, the Shadow Chairman appointed by a decision of the Minister dated 14 December 2006, is to be taken to have been, on the day this paragraph comes into force, appointed to be a Commissioner, and the Chairman, under paragraphs 1 and 2 of Schedule 1 respectively.
- (3) Subject to paragraphs 4 and 5 of Schedule 1, a person taken to be appointed a Commissioner or the Chairman under sub-paragraph (1) or (2) is to be taken to have been appointed to that office for a period ending 5 years after the day this paragraph comes into force.

**2 Transfer to Commission of certain staff**

- (1) In this paragraph –
  - “applicable person” means any person who was, immediately before the coming into force of this paragraph, employed by the States Employment Board for purposes which include –
    - (a) providing administrative support to the Shadow Commission, or
    - (b) enforcing the Gambling (Jersey) Law 1964;
  - “employment transfer date” means the thirtieth day after the day on which this paragraph comes into force; and
  - “relevant collective agreement” means a collective agreement made –
    - (a) before the employment transfer date,
    - (b) by or on behalf of the States,
    - (c) with a representative body, including a trade union, recognized by or on behalf of the States,
    - (d) in respect of any applicable person.
- (2) This paragraph does not apply to or in relation to any applicable person who has, at any time before the employment transfer date, given notice in writing to the States Employment Board that he or she refuses to be employed by the Commission.

- (3) On the employment transfer date an applicable person becomes an employee of the Commission, and the person's contract of employment has effect after the employment transfer date as if originally made between him or her and the Commission.
- (4) Without prejudice to the generality of sub-paragraph (3) –
  - (a) all the rights, powers, duties and liabilities of the States Employment Board or the States under or in connection with the contract, are transferred to the Commission on the employment transfer date; and
  - (b) any act before the employment transfer date, of or in relation to the States Employment Board or the States in respect of that contract or the applicable person, is to be treated as having been done by or in relation to the Commission.
- (5) After the employment transfer date any relevant collective agreement has effect, in its application in relation to the applicable person, as if originally made by or on behalf of the Commission with the representative body.
- (6) Accordingly after the employment transfer date any act is to be treated as if done by or in relation to the Commission if that act was done –
  - (a) under or in connection with the relevant collective agreement, in its application in relation to the applicable person;
  - (b) by or in relation to the States Employment Board; and
  - (c) before the employment transfer date.
- (7) If an applicable person was, immediately before the employment transfer date, a member of any scheme made under the Public Employees (Retirement) (Jersey) Law 1967<sup>8</sup> –
  - (a) he or she continues after the employment transfer date to be a member of the scheme on the same terms; and
  - (b) despite any provision to the contrary in that Law or any other enactment, on the employment transfer date the Commission becomes his or her employer for the purposes of that scheme, in place of the States Employment Board.
- (8) This paragraph does not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of or sentenced for any offence.

### **3 Transfer to Commission of functions of Gambling Licensing Authority and certain other functions**

- (1) The Gambling Licensing Authority, established by the Gambling (Licensing Provisions) (Jersey) Regulations 1965<sup>9</sup>, is abolished and its functions under those Regulations are transferred to the Commission.
- (2) The functions of the Judicial Greffier and the Treasurer of the States under the Gambling (Licensing Provisions) (Jersey) Regulations 1965 are transferred to the Commission.

- (3) The functions of the Minister under Regulations or Orders made under the Gambling (Jersey) Law 1965 are transferred to the Commission, other than –
- (a) functions under the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975<sup>10</sup> and the Gambling (Channel Islands Lottery) (Jersey) Order 1997<sup>11</sup>; and
  - (b) any power to make an Order.

#### **4 General consequences of transfer of functions**

- (1) In this paragraph, and in paragraphs 5 and 6, unless the context otherwise requires –
- “former authority” means the Minister, the Judicial Greffier, the Treasurer of the States or the Gambling Licensing Authority;
- “transferred function” means a function of any of the former authorities transferred to the Commission by paragraph 3.
- (2) All rights, liabilities and obligations of the former authorities arising out of a transferred function become the rights, liabilities and obligations of the Commission.
- (3) Any agreement entered into by or on behalf of, or undertaking given to or to any person on behalf of, a former authority in connection with a transferred function has effect as if the Commission were the original party to it.
- (4) In an agreement or undertaking referred to in sub-paragraph (3) any reference to a former authority is to be construed as a reference to the Commission.
- (5) In any other document any reference to the Gambling Licensing Authority is to be read as a reference to the Commission.
- (6) Nothing done by a former authority under or in consequence of a transferred function is invalidated by the coming into force of this Law.
- (7) Anything commenced by a former authority under or in consequence of a transferred function may be carried on and completed by the Commission.
- (8) This Article operates in relation to rights, liabilities and obligations –
- (a) whether or not they would otherwise be capable of being transferred by the former authority; and
  - (b) without any instrument or other formality being required.

#### **5 Saving of licenses, permits etc. issued under transferred functions**

- (1) Any act falling within sub-paragraph (2) done by or on behalf of a former authority under a transferred function is to be taken to have been done by or on behalf of the Commission on the date when it was in fact done.
- (2) An act falls within this sub-paragraph if it is –

- (a) the grant, issue, making or giving of a licence, permit, approval, certificate, registration or other permission;
  - (b) the imposition of a condition, restriction or requirement;
  - (c) the refusal of an application; or
  - (d) the granting of an application subject to conditions.
- (3) Any application made to a former authority in respect of a transferred function which has not been finally determined or withdrawn is to be taken to have been made to the Commission on the date when it was in fact made.
- (4) Any legal proceedings instituted by or against a former authority in relation to a transferred function continue as if the Commission were instead a party to those proceedings.

## **6 Savings related to information**

- (1) Any information given or statement made to a former authority and every document deposited with a former authority under a transferred function –
- (a) must, on the transfer of that function, be passed by the former authority to the Commission;
  - (b) is to be treated as given or made to or deposited with the Commission on the date when it was in fact given or made to or deposited with the former authority; and
  - (c) is held by the Commission on the same terms as it was held by the former authority.
- (2) Any book, list, file or register required to be established and maintained, and any other record or document required to be kept by a former authority under a transferred function –
- (a) must, on the transfer of that function, be delivered to the Commission; and
  - (b) is to be taken to have been established, maintained or kept by the Commission.
- (3) Despite sub-paragraph (2), if the Commission is satisfied that the Minister has good cause to have access to any record or document delivered to the Commission by the Minister under that sub-paragraph, it must grant access to the Minister.

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- <sup>1</sup> *chapter 11.300*
  - <sup>2</sup> *chapter 15.360*
  - <sup>3</sup> *chapter 24.750*
  - <sup>4</sup> *chapter 13.125*
  - <sup>5</sup> *chapter 08.840.50*
  - <sup>6</sup> *L.11/2010*
  - <sup>7</sup> *chapter 15.350*
  - <sup>8</sup> *chapter 16.650*
  - <sup>9</sup> *chapter 11.300.60*
  - <sup>10</sup> *chapter 11.300.30*
  - <sup>11</sup> *chapter 11.300.20*