

# STATES OF JERSEY



## DRAFT LIQUOR LICENSING (JERSEY) LAW 201-

---

Lodged au Greffe on 24th October 2017  
by the Minister for Economic Development, Tourism, Sport and Culture

---

STATES GREFFE





Jersey

## **DRAFT LIQUOR LICENSING (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Assistant Minister for Economic Development, Tourism, Sport and Culture has made the following statement –

In the view of the Assistant Minister for Economic Development, Tourism, Sport and Culture, the provisions of the Draft Liquor Licensing (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Connétable S.W. Pallett of St. Brelade**

*Assistant Minister for Economic Development, Tourism, Sport and Culture*

Dated: 20th October 2017

## REPORT

---

### NOTE –

The Draft Liquor Licensing (Jersey) Law 201- was originally lodged *au Greffe* on 7th June 2017 as *Projet* number [P.54/2017](#).

This draft Law has been withdrawn and re-lodged unamended – with the unamended accompanying report below – so as to give the Economic Affairs Scrutiny Panel the additional time it needs to complete the review it began in January 2017.

---

The existing Licensing (Jersey) Law 1974 has been criticised in various quarters and for various reasons. Those criticisms have included, but are by no means limited to, the following –

- its complexity – to the extent that prospective licensees may require specialist legal advice to understand it
- the lack of policy guidance the existing Law offers to the Licensing Assembly as to when applications should be granted and lack of provision for an overarching plan
- inequity in the level of licence fees charged to different types of licensed premises
- inflexibility in the defined licence categories, such that licensees may require multiple licences to legitimise their business model.

Development of a draft Law to address these and other issues has, in recent years, been overseen by the cross-ministerial Shadow Alcohol Licensing Policy Group (“the Shadow ALPG”), which comprises –

Senator P.F. Routier, M.B.E., Assistant Chief Minister (*Chair*)

Senator A.K.F. Green, M.B.E., Minister for Health and Social Services

Connétable A.S. Crowcroft of St. Helier

Connétable S.W. Pallett of St. Brelade, Assistant Minister for Economic Development, Tourism, Sport and Culture

Connétable M.P.S. Le Troquer of St. Martin, Comité des Connétables representative – rural parishes

Deputy K.L. Moore of St. Peter, Minister for Home Affairs.

This draft Law is the product of the Shadow ALPG’s work and following significant consultation with the Public, the industry and across government over the previous decade. It establishes a framework for a modern, streamlined system that will maintain effective control of the sale and consumption of alcoholic beverages whilst addressing the longstanding criticisms of the 1974 Law. In so doing, it answers 3 fundamental questions –

1. What should be the core objectives of the new Law?
2. Who should set detailed liquor licensing policy?
3. How should liquor licence applications be determined in future?

Other questions regarding the shape of a new system to replace the existing 7 licence categories, the level of training that staff in licensed premises will require, and a number of other technical matters will be addressed in draft Regulations, the development of which will be progressed subject to the adoption of this new Law by the States.

### **Policy Objectives**

The new draft Law will provide for the control of the sale and consumption of alcoholic beverages in accordance with 5 statutory licensing objectives, which will be equally weighted –

- to help reduce alcohol-related crime and disorder
- to better secure public safety
- to help prevent public nuisance
- to help protect children from alcohol-related harm
- to better protect and improve public health.

These 5 objectives will serve as points of reference for those charged with setting and implementing detailed licensing policy. In setting these objectives, the States will not be ignoring the valued role that businesses operated by responsible liquor licence-holders play in the Island's economy. New and existing businesses that refrain from trading in a manner that runs counter to these 5 licensing objectives will continue to be supported.

The 5 objectives are similar to those that apply in Scotland, which are themselves developed from the 4 applied in England and Wales in accordance with the Licensing Act 2003. England and Wales continue to operate without applying a public health licensing objective.

The new Law will put the existing Shadow ALPG on a statutory footing and formally charge the Group with developing detailed licensing policy. The Group will –

- oversee development of the Statement of Licensing Policy (“SLP”) on behalf of the Council of Ministers,
- evaluate the success of the SLP from time to time, and
- recommend changes to the SLP as necessary.

States Members will have the final say on the content of the SLP, as each draft SLP will be debated by the States Assembly. Any States Member will therefore have the option to propose amendments to the SLP as they see fit. It is anticipated that the first draft SLP will be lodged at the same time as the draft Regulations (see the section below entitled ‘**Licence Categories**’). Once approved, the SLP will set out sound principles and practical guidance to a new Licensing Authority regarding the issuing of all alcohol licences and associated conditions of licence.

Other Ministers will be invited to attend meetings of the ALPG when appropriate, with relevant departmental policy officers providing advice and support as required.

The ALPG will be empowered to approve supplementary guidance. Such guidance would be designed to aid interpretation of one or more elements of the SLP. This power will not allow the ALPG to make material changes to the SLP without recourse to the States.

## **A new Licensing Authority**

The Law will establish a new States-appointed Licensing Authority to determine liquor licence applications, thereby replacing the Assembly of Lieutenant-Governor, Bailiff and Jurats.

The new Licensing Authority will comprise 7 States Members, to be appointed by the States Assembly, and 3 professional members to serve as Chair and Vice-Chairs. The Chair and Vice-Chairs will be appointed by the States on the recommendation of the ALPG and following a selection process to be overseen by the Appointments Commission. It is anticipated that the professional members will have a background in a senior decision-making role and/or experience of the licensed trade, albeit with no current financial interests or close connections in the trade.

The Licensing Authority will make use of existing government resources to the fullest possible extent. Further detail regarding resource implications is offered later in this report.

## **Licence Categories**

No final decision has been taken on the categories of licence that will be available to businesses in the new regime. This work, together with the development of fee systems and the provisions for training and accreditation, will inform the development of draft Regulations that will be subject to a full consultation process later in 2017. The success criteria for a new licence scheme are –

- Current business models are not invalidated and no businesses are forced into making changes to their operations by virtue of the new legislation.
- There is no material increase in the capacity for the sale of alcohol by virtue of the new legislation.
- Each business requires only one licence.

The final form of the licence scheme is expected to have broadly the same number of licence categories as the current system.

In order to offer an appropriate degree of flexibility to the industry, the Law makes provision for the operation of temporary and provisional licences, as well as special permissions. Temporary licences will regulate the serving of alcohol at events to be held at a location where an ordinary premises licence is not in force. Provisional licences will be maintained, so as to offer comfort to investors in new businesses that a full licence will be granted subject to completion of specified works. Special permits will allow for temporary variations to the terms of premises licences.

The new draft Law allows for the designation, via the SLP, of certain geographical areas as special areas. Different rules can then be applied by the Licensing Authority to premises that are the subject of licence applications within the special area. This is a variation of the power in the current Law that allows locations such as Fort Regent and the Harbour to have special rules applied, and recognises that the States may in future wish to allow different rules to apply in specific areas. These rule could be more permissive or more restrictive as the need arises.

## **The application process**

The Law has been constructed with a view to putting the administration processes online as soon as possible, including the application and payment processes.

Licence fees will continue to be charged at the point of filing the initial application or renewal. Statutory consultees may also seek to charge fees sufficient to recover costs arising from the production of reports. The existing provision for licence fees to be refunded to unsuccessful applicants will not be carried over, on the basis that the act of

submitting the application will have triggered administrative processes that generate cost.

Applications will continue to be accompanied by reports obtained from the States of Jersey Police, the Fire and Rescue Service and Environmental Health, detailing the opinion of those services on the proposed licence. The intention, however, is for these reports to be requested automatically at the initial stages of an online application, instead of at the mid-point of the process at the request of the relevant Connétable. Under the present system, parish administrations carry the burden of securing consultee reports.

While the new application process will remove one administrative burden from the parishes, public consultation will continue to be facilitated at Parish Assembly level. The principal difference will be that, having had statutory consultee reports provided from the outset, the parishes should be better placed to consult their parishioners promptly. The Connétable will continue to have the power to order additional inspections and will continue to report the view of his or her parish in writing. That report will, however, be redirected to the new Licensing Authority.

### **Determination of applications**

Applications that are deemed non-contentious will be dealt with administratively. What this means in practice is that if the application is not at variance with the terms of the SLP, and if objections to the application have not been received, then an applicant can ordinarily expect their application to be approved at administrative level and in accordance with powers to be delegated by the Licensing Authority. This will offer the industry a welcome measure of certainty and the prospect of a significantly faster decision.

Applications that fall outside the above scenario will be directly determined by a Panel drawn from 3 members of the Licensing Authority. Two of the 7 States Members serving on the Authority and either the Chair or a Vice-Chair will be selected on a rolling basis to constitute each Licensing Panel. These Licensing Panels will be convened on a monthly basis (excepting traditional holiday periods), which should, in turn, result in even the more controversial applications being capable of determination in a materially shorter timeframe than is currently possible.

Dates of Licensing Panel meetings for the forthcoming year will be published by the Licensing Authority in advance. Licensing Panel meetings to consider applications will be open to the Public by default. Extraordinary Panel meetings may be scheduled as required to deal with any matters arising outside of the normal application cycle, although the monthly frequency should make this unnecessary in all but exceptional cases. An example of a potential matter arising would be a police request to review a liquor licence.

In determining licence applications, the Licensing Authority will refer to the SLP for guidance on such matters as –

- the desirability of applying specific categories of licence
- special considerations that should apply to specific business models (e.g. nightclubs)
- areas of the Island that might warrant special consideration in terms of the cumulative impact of licensed premises
- how and if the treatment of licences should vary across parishes
- how breaches of licence should be determined.

Persons afforded the opportunity to address the existing Licensing Assembly will still be able to address the Licensing Panel meeting before a decision is reached. In addition, representatives of the States of Jersey Police, the Fire and Rescue Service and Environmental Health will gain the statutory right to make oral representations.

Detailed procedures for the Authority will be devised in due course and will cover such matters as conflicts of interest. It is not anticipated that a Licensing Authority member would consider applications in cases where that member is personally acquainted with any of the parties in their case or their witnesses, or has commented adversely on the integrity of any of them. The question of whether a States Member should take part in the determination of an application in their own electoral district will be considered with reference to the rules applied by the Planning Committee.

A reconsideration process has also been provided for. Unsuccessful applicants would have the option of having their application reviewed by a separate Appeals Panel of the Licensing Authority. Appeals Panels will comprise not less than 4 members (including the Chair or Vice-Chair) not involved in determining the original application. The grounds for reconsideration would be that the original decision of the Licensing Panel erred in law, that it was unreasonable or that it did not accord with the SLP. The ultimate appeal will nevertheless remain with the Royal Court.

### **Granting of Licences**

Successful applications will no longer generate a hard copy liquor licence. Instead, the intention is to make each liquor licence publicly available via [www.gov.je](http://www.gov.je), so that anyone can view the terms and conditions of each licence without first having to attend the relevant premises or make daytime enquiries with the Judicial Greffe. Police Officers in particular should benefit from having the opportunity to review the precise wording of specific licences before conducting checks or otherwise attending particular licensed premises. This increase in transparency will also negate the need for certain offences relating to hard copy licences to be carried over to the new Law.

Nothing will prevent a licence holder printing off a copy of their licence and displaying their licence, should they wish to maintain the tradition.

### **Duration of Licences**

Once granted, a liquor licence will remain valid until such time as it is surrendered or is replaced by a new licence (e.g. upon the sale of the premises to a new owner), or until the Licensing Authority sees fit to suspend or revoke the licence. While it will also be possible to invalidate a licence by failing to pay the required annual fee, the Licensing Authority administration will assume responsibility for sending reminders. As such, a licensee should find it harder to invalidate their licence by mistake.

The Licensing Authority will be empowered to review a premises licence unilaterally or at the request of the parties listed at Article 14(2) and on the grounds listed at Article 14(3). It shall have the power to vary, suspend or, ultimately, to revoke a premises licence.

### **Designated Licensees**

As is currently the case, applicants for a liquor licence will be able either to apply to run their own premises or to have a manager recognised as the ‘designated licensee.’

Only persons having achieved a suitable industry qualification provided by an accredited training provider (accredited status having been awarded by the Minister for Economic Development, Tourism, Sport and Culture) will be capable of serving as designated licensee. In addition, anyone substituting for the designated licensee when the relevant premises are operating and when the designated licensee is not present will also need to possess a similar qualification.



Designated licensees in certain classes of premises may be obliged to employ door supervisors. Those door supervisors will also require a qualification provided by an accredited training provider.

### **Offences and Enforcement**

Although a majority of the offences contained in the 1974 Law have been carried over to the new draft Law, the opportunity to eliminate certain offences by design has been taken. As government will assume responsibility for making copies of liquor licences freely available to the Public, and as the new Law will herald the introduction of a register of permanent and temporary designated licensees in charge of premises at any one time, there will no longer be a need to maintain the offences of failing to display a licence or failing to display the name of the licence holder above the front door of premises.

From an enforcement perspective, the principal change will be the introduction of a new power for the States of Jersey Police and the Honorary Police to close premises temporarily in broadly similar circumstances to those which already apply within the UK.

### **Collective responsibility under Standing Order 21(3A)**

The Council of Ministers has a single position on this proposition, excluding the provisions concerning the composition of the Licensing Authority, where the Chief Minister has agreed that the Minister for External Relations can differ. As such, all Ministers excepting the Minister for External Relations, and the Assistant Ministers for Economic Development, Tourism, Sport and Culture, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

### **Financial and manpower implications**

Benchmarking the administration costs of the proposed new liquor licensing system against that of the existing system is not straightforward, primarily because the costs arising from the existing 1974 Law are not fully visible. This is a consequence of the honorary nature of the Jurats – who play an important role in the existing system – and the current distribution administrative processes, and associated income, across the Bailiff's Chambers, Judicial Greffe, the Treasury and Resources Department and elsewhere. The draft Law, which will see administration centralised in the Economic Development, Tourism, Sport and Culture Department, will have revenue implications for several other departments., These resource implications will need to be resolved in consultation with the Treasury and Resources Department in due course.

Under the new system, it is anticipated that a budget of £40,000 per annum will cover the cost of the Licensing Authority (i.e. remunerating the professional members for the work they undertake). Provision of appropriate administrative support within the Department for Economic Development, Tourism, Sport and Culture is expected to require a further budget of £60,000 per annum. A one-off sum not exceeding £100,000 will be sought from the restructuring provision to cover the procurement and implementation of online administration systems, which will help minimise administrative costs over the longer term. Efforts will be made to re-use systems already being procured or in development in other departments, so as to minimise the funding required from the restructuring provision.

The intention is for the above costs to be borne by industry through the setting of a revised fee structure, the nature of which will be set out in draft Regulations. These draft Regulations would be devised and consulted upon following the adoption of this draft Law. In setting fees, the States can expect that due account will be taken of the best available data on sales volumes achieved by the on-licensed and off-licensed trades.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on Draft Liquor Licensing (Jersey) Law 201-**

These Notes have been prepared in respect of the Draft Liquor Licensing (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The draft Law will repeal and replace the Licensing (Jersey) Law 1974. It makes new provision for the control of the sale and consumption of intoxicating liquor and to provide for the abolition of the Assembly of the Governor, Bailiff and Jurats. Its provisions include a prohibition on selling intoxicating liquor, unless a premises licence or temporary premises licence has been granted in respect of the area from which Liquor is sold; and the licensed premises are operated by a designated licensee. The draft Law makes new provision for the grant of licences to sell intoxicating liquor and for the approval of designated licensees by the new Liquor Licensing Authority (the “**Authority**”).

The draft Law engages various Articles of the ECHR, which are addressed in turn.

**Article 6 ECHR – The right to a fair trial**

Article 6(1) ECHR provides –

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

Article 6(1) ECHR requires that those who face a determination of their ‘civil rights and obligations’ must be entitled to a ‘fair and public hearing ... by an independent and impartial tribunal’. The guarantees afforded by Article 6 ECHR will only be relevant to the extent that an act or a decision is determinative of a ‘civil right’ or ‘obligation’.

The draft Law contains a number of provisions that require the Authority and other public authorities to make decisions affecting a person’s ability to work for or carry on a business. For example –

- The draft Law requires that those who wish to selling intoxicating liquor, or to work as a designated licensee, must have a licence and approval to do so.<sup>1</sup>

---

<sup>1</sup> Articles 9, 15 and 27 of the draft Law.

- Under Part 3 of the draft Law, the Authority has the power to impose conditions on a licence; or to vary conditions on, suspend or cancel a licence after a review.

The right to engage in a business is a civil right and, *inter alia*, a power to grant or refuse an application for a licence, or place conditions on a licence, will attract Article 6(1) ECHR protection. A decision by the Authority as to whether a person is a fit or proper person to be registered as a designated licensee is also likely to be determinative of a civil right.

Notwithstanding the provision for the redetermination of decisions in Articles 4(11) and 42 of the draft Law, the Authority's decision-making processes in respect of licences and approvals do not afford the procedural guarantees required by Article 6 ECHR of an independent and impartial tribunal. However, the Authority's decisions may be appealed to the Royal Court under Article 43. The right of appeal to an independent and impartial judicial body that provides sufficient procedural safeguards to comply with Article 6(1) ECHR and that has the ability, among other things, to quash the impugned decision or to remit the case for a new decision is sufficient to ensure that the process of determining civil rights and obligations under the draft Law is compatible, as a whole, with Article 6 ECHR.

The draft Law provides that an appeal must be brought within the period of 28 days following the date the person receives notice of the decision, or within such further time as the court allows. Limiting the period within which a complaint can be brought in this manner is, in principle, compatible with Article 6 ECHR, however any limitation period must pursue a legitimate aim and be proportionate. It is common to include a 28 day time limit in respect of appeals of this nature and this pursues the legitimate aim of ensuring complaints about administrative decisions are dealt with expeditiously and efficiently. Including this time limit will be proportionate to that legitimate aim for the purposes of Article 6 ECHR.

For these reasons the draft Law is compatible with Article 6 ECHR.

## **Article 8 – The right to respect for private life**

Article 8 ECHR provides –

*“Everyone has the right to respect for his private and family life, his home and his correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

Article 8 ECHR is engaged by –

- The Connétable's powers to arrange for premises to be inspected in Article 7 of the draft Law.
- The powers to enter premises afforded to the police and fire service by Article 22 of the draft Law.

The provisions in Article 15 of the draft Law enabling the Assembly, by Regulations, to make provision for the States of Jersey Police to disclose certain information about an applicant's previous convictions and Parish Hall cautions for licensing purposes.

The application of Article 8 ECHR to these aspects of the draft Law is considered in more detail below.

### **Inspection and entry onto premises**

Article 7 of the draft Law would provide the Connétable with the power to authorise a competent person to carry out an inspection of premises to which an application for a premises licence relates. A competent person may, at any reasonable time and with the consent of the owner or occupier of the premises, enter and inspect premises and prepare a report for the Connétable.

Article 22(1) of the draft Law would provide a police officer with the power to enter licensed premises at any reasonable time, make enquiries and take steps to ensure the draft Law is being complied with. Article 22(2) would also enable a police officer to enter licensed premises or other premises in which the police officer has reason to believe that an offence under the draft Law has been committed, make enquiries and take steps to ensure the provisions of the draft Law are being complied with.

Article 22(3) would enable a member of the Fire and Rescue Service (a “**Fireman**”), at any reasonable time, to enter and inspect licensed premises or adjacent premises, and make such enquiries and take such steps as the member thinks necessary, if the Fireman has reason to believe the licensed premises are at risk of fire or might be put at risk by an adjacent property.

The Article 8 ECHR right to home life applies to private dwellings and has also been held to extend to business premises. As licensed premises may include premises that are used exclusively as business premises or premises that are for a mixture of domestic and business use, it is likely that the exercise of these powers will engage the right in Article 8 ECHR.

Any interference with the Article 8(1) ECHR right must be justified under Article 8(2) ECHR, meaning it must be –

- in accordance with the law;
- in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; and
- necessary in a democratic society.

In order to be necessary, a pressing social need for the interference should be identified, and there should be relevant and sufficient reasons to justify the interference at issue. So it is important that the draft Law provides a framework for decision-making that will help ensure that interferences are proportionate to a legitimate aim and that they will be supported by sufficiently persuasive reasons.

The nature of interference constituted by the powers in Articles 7 and 22 of the draft Law would be in accordance with the law, as it will have a clear basis in domestic law that is sufficiently precise and accessible.

Powers to enter and inspect premises to ensure they are suitable for the sale of intoxicating liquor, and to make enquires or take steps to ensure the draft Law is complied with and that fire risks are mitigated pursue legitimate aims expressed in Article 8(2) ECHR.

With regard to whether such powers are necessary in a democratic society, it is important to consider both whether there is a pressing social need for these powers and whether there are procedural safeguards in place to mitigate the risk that the exercise of these powers will interfere with a person’s private life.

Looking specifically at whether the power in Article 7 of the draft Law is proportionate, there is a pressing social need to ensure that premises are suitable for the sale of intoxicating liquor. There are safeguards placed on this power so that the power to enter and inspect premises may only be exercised by a competent person, at reasonable times and with the permission of the owner. These safeguards on the power are sufficient to ensure a fair balance is struck between the public interest in such inspections taking place and the Article 8 ECHR rights of an owner or occupier of relevant premises. The power in Article 7 is therefore proportionate and compatible with Article 8 ECHR.

As to whether the powers in Article 22 of the draft Law are proportionate, there is a pressing social need to ensure that the draft Law is complied with. It is relevant to note that the powers of a police officer may be used without a warrant, but that unless there is reason to believe that an offence has been committed, they may only be used at a reasonable time and at licensed premises.

The limits on the powers of a Police Officer are sufficient to ensure a fair balance is struck between the public interest in enforcing the draft Law and the Article 8 ECHR rights of an owner or occupier of relevant premises. The powers of a Police Officer to enter and inspect premises and take steps to ensure compliance with the draft Law are therefore proportionate and compatible with Article 8 of the ECHR.

As to whether the powers of a Fireman in Article 22 of the draft Law are proportionate, there is a clear public interest in ensuring that any significant risk of fire is appropriately mitigated. It is relevant to note that the powers of a Fireman may be used without a warrant, but that they may only be used at a reasonable time and at licensed premises or adjacent premises if the Fireman has reason to believe that the licensed premises are at risk of fire. These safeguards on the power of a Fireman are sufficient to ensure a fair balance is struck between the public interest and the Article 8 ECHR rights of an owner or occupier of any relevant premises.

#### **Disclosure of criminal records information**

Article 15(1) of the draft Law provides that in respect of any premises licence there must be an individual approved by the Authority who is the designated licensee and responsible for the operation of the licensed premises.

Pursuant to Article 13 of the Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 (the “**2002 Regulations**”), Article 10 of the Rehabilitation of Offenders (Jersey) Law 2001 currently has no application to questions asked to, among other things, to assess a person’s suitability to be registered as a manager of licensed premises. A person who applies to be registered as a manager of licensed premises may therefore be asked about his previous convictions, offences, conduct or circumstances and is required to provide an answer that includes reference to any spent as well as unspent convictions.

Questions about past convictions and Parish Hall cautions are currently asked of applicants for registration as a manager of licensed premises. It is intended that such questions should continue to be asked on application forms for approval under Article 15 of the draft Law to ensure that persons who are responsible for the operation of licensed premises are fit and proper persons to carry out this role. To this end, amendments will be required, in due course, to the 2002 Regulations to update the exemptions from rehabilitation in view of repeal and replacement of the 1974 Law.

To verify the answers to questions about past convictions put to a potential designated licensee, it will continue to be possible for the Authority to require applicants for approval to produce a Basic Disclosure Certificate, which may be prepared by the

Disclosure and Barring Service or Disclosure Scotland under the Police Act 1997, which has been extended to Jersey.

However, a Basic Disclosure Certificate will only include the details of any unspent convictions for offences that are sufficiently serious to be added to the Police National Computer and will not include Parish Hall cautions. As a range of offending that may be relevant to licensing applications will be dealt with at the Parish Hall, there is a risk that without access to further information relevant factors bearing on an individual's fitness for approval as a designated licensee may not come to the attention of the Authority. This may put public safety at risk.

Therefore, a power has been included in Article 15(11) and (12) for the States, by Regulations, to create an express statutory gateway that would permit the disclosure of relevant information from 2 sets of data (the "**data sets**"), both of which are held by the States of Jersey Police. These data sets are the list of Parish Hall appearances and the record of Jersey Court appearances. The Assembly would be empowered to make Regulations that would allow the States of Jersey Police to disclose information from these data sets to the individual who wishes to be approved as a designated licensee. If Regulations are made, then that individual would be required by Article 15(4)(d) to disclose the information disclosed by the Police to the Authority in order to proceed with an application for approval as a designated licensee.

The States of Jersey Police is the "data controller" for these data sets pursuant to the Data Protection (Jersey) Law 2005 (the "**2005 Law**") and is responsible for ensuring that the data sets are managed in compliance with the 2005 Law and the requirements of the ECHR.

Both the storage of information relating to an individual's private life, and the release of such information, come within the scope of the protection afforded by Article 8(1) ECHR for a person's private life. Further, although data contained in criminal records are, in one sense, public information, their systematic storage means that they are available for disclosure long after the event when everyone other than the person concerned is likely to have forgotten about the incident concerned. In addition, as cautions are administered in private, the details of them may not have been in the public domain in the first place. Therefore, as a conviction or caution recedes into the past, it becomes a part of the person's private life that will attract the protection of Article 8(1) ECHR.

The disclosure of information from these data sets may therefore engage the Article 8(1) ECHR right to privacy. The information in the data sets amounts to sensitive personal data pursuant to Article 2 of the 2005 Law. As data controller in respect of these data sets, the States of Jersey Police is required by Article 4(4) of the 2005 Law to process this data in accordance with the 8 data protection principles in Schedule 1 to the 2005 Law.

The first data protection principle requires that personal data shall be processed "fairly" and "lawfully" and, in particular, shall not be processed unless, in the case of sensitive personal data, both a Schedule 2 and Schedule 3 condition are met.

To satisfy the lawfulness requirement, a public authority must have a power to process the data and must comply with all relevant legal obligations, including the ECHR, as public authorities are obliged to act compatibly with the ECHR by the Human Rights (Jersey) Law 2000 (the "**2000 Law**").

To be compatible with Article 8 of the ECHR, the disclosure of criminal records for purposes that are not policing purposes must take place in accordance with domestic law that provides adequate safeguards against abuse and that ensures that the necessity

for the interference is capable of being adequately examined. Further, it is essential to ensure that in practice the disclosure of information in any particular case is proportionate and in this context that means that only information that it is necessary to disclose to inform the Authority's decision whether to approve a person as the designated licensee should be disclosed.

For present purposes, it is clear that the provision in Article 15(4)(d) of the draft Law and any Regulations made pursuant to Article 15(11) and (12) of the draft Law have the potential to interfere with the Article 8(1) ECHR rights of individuals who wish to be approved as a designated licensee. However, if the States Assembly exercises its discretion to make Regulations, then it is also required to put in place a number of safeguards on the exercise of this power. In particular, the Assembly is also required to specify –

- the form in which a request for a disclosure may be made;
- the form in which a disclosure may be made;
- the criteria for determining which information is relevant, or is not relevant, to be included in the disclosure; and
- a procedure for challenging the accuracy or relevance of any disclosure made.

The States should only exercise the power provided by Article 15(11) and (12) if, and to the extent that this is compatible with the ECHR. However, the requirement to put in place these safeguards provides additional assurance that this power will only be exercised in a manner that ensures any interference with Article 8(1) ECHR rights is in accordance with Regulations that provide appropriate safeguards and that the interference in any particular case is proportionate for the purposes of Article 8(2) ECHR.

For these reasons the provisions of the draft Law are compatible with Article 8 ECHR.

### **Article 1 of the First Protocol of the ECHR (“A1P1”) – Right to Property**

A1P1 provides –

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except as provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

There are a number of provisions and features of the draft Law that engage A1P1. As already noted above, it is clear that a person who wishes to sell intoxicating liquor will need an appropriate licence from the Authority; and that a person who wishes to act as a designated licensee will need to be approved by the Authority under the draft Law. The economic benefit deriving from a licence or approval to carry on a particular economic activity constitutes a ‘possession’ for the purposes of A1P1. So, to the extent that an economic benefit derives from a licence or approval issued under the draft Law, there is the potential for A1P1 to be engaged.

The licensing and approval system provided for in Parts 2 and 3 of the draft Law, which include the power to refuse a licence or approval, to impose conditions on a licence and powers to suspend or cancel a licence or approval may amount to a control on the use of a possession protected by A1P1.



For a measure constituting a control of use to be justified, it must be in accordance with law and for 'the general interest'. The measure must also be proportionate to the aim pursued. States have a considerable margin of appreciation in determining the existence of a general public interest and in implementing measures designed to meet it. Controls on the sale of alcohol pursue a general interest in ensuring that intoxicating liquor is sold in a safe environment and in the protection of public health. The controls in the draft Law therefore pursue a general interest.

A1P1 requires that measures that interfere with A1P1 rights in the general interest are employed in 'accordance with the law'. In my view the draft Law is sufficiently precise and accessible to conclude that the draft Law would satisfy this requirement. Further, the implementation of a licensing and approval regime is proportionate to the general interest.

The draft Law is therefore also compatible with A1P1.

## Explanatory Note

---

This Law repeals and replaces the Licensing (Jersey) Law 1974 to make provision for the control of the sale and consumption of intoxicating liquor and to provide for the abolition of the Assembly of the Governor, Bailiff and Jurats which was responsible for issuing licenses for the sale of intoxicating liquor under the Licensing (Jersey) Law 1974.

*Part 1* of the Law comprises *Article 1* which sets out definitions for certain terms used in the Law.

*Part 2* of the Law comprises *Articles 2 to 5* which provide for licensing matters.

*Article 2(1)* specifies 3 categories of licences which are provided for in the Law as follows –

- (a) a premises licence that permits the sale of intoxicating liquor from premises or a designated area within premises;
- (b) a temporary premises licence that permits the sale of intoxicating liquor, for a particular period specified in the temporary premises licence, from premises or a designated area within premises in respect of which there is no premises licence in place; and
- (c) a provisional premises licence in respect of premises or a designated area within premises –
  - (i) that requires construction, renovation or adaptation for the sale of intoxicating liquor; and
  - (ii) for which a premises licence will be required for the sale of intoxicating liquor.

*Article 2(2)* empowers the States by Regulations to create categories of licences other than those specified in *Article 2(1)* and to create classes of licences within a category of licence. Additionally, the States may by Regulations impose general conditions regarding a category or class of licence including the permitted hours (as defined in *Article 1*) for a category or class of licence and may provide further procedures in respect of any category or class of licence.

*Article 3* provides for the establishment of the Alcohol and Licensing Policy Group for the purpose of advising the Council of Ministers on the development of policy regarding the sale of intoxicating liquor. The Alcohol and Licensing Policy Group comprises the Chief Minister as the chairperson, the Minister for Economic Development Tourism, Sport and Culture, the Minister for Home Affairs, the Minister for Health and Social Services, the Connétable of St. Helier and another member of the Comité des Connétables nominated by the Comité des Connétables. In carrying out its functions, the Alcohol and Licensing Policy Group must have regard to the key licensing objectives which are to help reduce alcohol related crime; to better secure public safety; to help prevent public nuisance; to help protect of children from alcohol related harm and to better protect and improve public health.

*Article 4* provides for the establishment, composition, functions and procedures of the Licensing Authority. The purpose of the Licensing Authority is to regulate the sale of intoxicating liquor. The main function of the Licensing Authority is to determine applications for licences and special permits. For the purpose of determining an application for a licence or reviewing, varying, suspending or revoking a licence, the Licensing Authority is required to sit as a panel of 3 members comprising the chairperson or a deputy chairperson and 2 members who are members of the States

(*Article 4(10)*). For the purpose of redetermination of an initial decision (as defined in *Article 1*), the Licensing Authority is required to sit as a review panel of 4 members comprising 3 members of the Licensing Authority, who were not members of the panel who made the initial decision and the chairperson or a deputy chairperson if he or she did not preside over the initial decision (*Article 4(11)*). The Licensing Authority has the power to delegate to a States' employee any of the Licensing Authority's functions, except the redetermination of an initial decision under *Article 42*.

*Article 5* requires the Alcohol and Licensing Policy Group, after consultation first with the Medical Officer of Health and then with the Council of Ministers, to prepare a statement of licensing policy for the purpose of putting on public record the policy as to how the key licensing objectives should be advanced. The statement of licensing policy must include criteria for consideration of new licences with reference to the key licensing objectives; criteria for assessing what generally constitutes a fit and proper person to hold a licence; a list of geographical areas designated as special areas in respect of which *Article 16* applies; a list of the variations, or types of variations, of the terms of a licence which are to be processed as minor variations or major variations under *Article 18* and a process for fast-tracking applications for minor variations of the terms of a licence and any other matter that is relevant to the purpose of the Alcohol and Licensing Policy Group specified in *Article 3(1)*. Provision is also made for supplementary policy guidelines to be issued by the Licensing Authority.

*Part 3* of the Law comprises *Articles 6 to 21* which provide for premises licences.

*Article 6* makes provision for an application for a premises licence to be made by a person who is the owner or lessee of the premises or the designated area within premises that is the subject of the application. An application for a premises licence must be submitted to the Licensing Authority, must be made in the form approved by the Licensing Authority and must specify certain details relating to the identity of the applicant and the premises. The application must also be accompanied by reports obtained by the applicant from the States Police Force, Fire and Rescue Service and department of the States responsible for environmental health detailing their opinion on the suitability of the premises or designated area within premises for the proposed activity; the prescribed application fee and any other information the Licensing Authority requires for determining the application.

Under *Article 6(3)*, the States Police Force, Fire and Rescue Service and department of the States responsible for environmental health may inspect the premises to which the application for a premises licence relates before a report that the applicant is required to send with the application is given to the applicant.

By *Article 6(4)*, the Licensing Authority is required to give notice in writing of an application for a premises licence to the Minister, Chief Officer of the States Police Force, Chief Fire Officer, Medical Officer of Health, Director of Environmental Health and Connétable of the parish concerned and to publish notice of the application in the Jersey Gazette.

*Article 7* provides for the Connétable of the parish concerned to authorize a competent person to carry out an inspection of the premises to which an application relates and to prepare and submit a report to the Connétable detailing whether the premises is considered suitable for the premises licence applied for and informing the Connétable of any matter relevant to the health and safety of persons using, or in the vicinity of, those premises. The report may contain such other information as may be requested by the Connétable on any matter relevant to the application and the Connétable must submit any report obtained to the parish assembly. The expenses reasonably incurred

by the Connétable in carrying out an inspection and preparing the report shall be charged to, and payable by, the applicant.

*Article 8* provides for an application for a premises licence to be considered by the parish assembly of the parish concerned before being considered by the Licensing Authority. The parish assembly is required to make a recommendation to the Licensing Authority as to whether or not the application for the premises licence should be granted. If a parish assembly is convened for no other purpose than to consider one or more applications for premises licences, the cost of convening the parish assembly, including the notification, will be chargeable to, and payable by, the applicants and shared equally by the applicants. The Licensing Authority must submit a copy of the record of the parish assembly's recommendation to the applicant, Minister, Chief Officer of the States Police Force, Chief Fire Officer, Medical Officer of Health and Director of Environmental Health.

*Article 9* provides for an application for a premises licence to be determined by the Licensing Authority and specifies the persons who may address the Licensing Authority and the matters that the Licensing Authority is required to have regard to when an application for a premises licence is being considered. The Licensing Authority has the power to grant the premises licence, refuse to grant the premises licence, grant a premises licence for an area different from that for which the application is made, or grant a premises licence of a different class to that for which the application is made. In addition to any general conditions imposed by Regulations made under *Article 2(2)(b)*, the Licensing Authority may attach to any premises licence such conditions as, having regard to all the circumstances of the case, the Licensing Authority thinks fit. The Licensing Authority is required to give notice in writing of its decision to the applicant and, in the case of a refusal or the grant of a premises licence for an area different from that for which the application is made, or of a different class to that for which the application is made, is required to give reasons for its decision and notice to the applicant of the applicant's right to redetermination under *Article 42*. Where a premises licence is granted, the Licensing Authority must issue the premises licence to the applicant in the prescribed form on payment of the prescribed premises licence fee.

*Article 10* provides for the duration of a premises licence.

*Article 11* requires the Licensing Authority to publish every premises licence in such manner as it deems appropriate and to make such premises licence available for inspection electronically from the date the premises licence comes into force. The Licensing Authority must, on request, supply a certified hard copy of a premises licence to the holder of the premises licence on payment of the prescribed fee.

*Article 12* entitles the holder of a premises licence, the designated licensee (as defined in *Article 1*) or the holder's employee or agent to refuse to admit to, or remove from, the licensed premises any person who is drunk, violent, quarrelsome or disorderly or any person whose presence on the licensed premises would subject the holder of the premises licence to a penalty under the Law. A police officer must, at the request of the holder of a premises licence, the designated licensee or the holder's employee or agent, help to remove from the licensed premises any person liable to be removed from the licensed premises and the police officer may use such force as is reasonably necessary for the purpose. A failure or refusal by a person to leave the licensed premises on being requested to leave is an offence for which a fine of up to level 2 on the standard scale may be imposed.

*Article 13* gives the holder of a premises licence or the designated licensee the power to close the licensed premises at any time, for any reason and for any period.

*Article 14* provides for the review, variation, suspension or revocation of a premises licence. The Licensing Authority has the power to review a premises licence on its own volition or on the recommendation of the Connétable of the parish concerned, the States Police Force, the Fire and Rescue Service, the Attorney General or the Minister responsible for environmental health in respect of the discharge of his or her functions relating to environmental health. The grounds for reviewing a premises licence are set out in *Article 14(3)* and the Licensing Authority may accept or reject a recommendation for review of a premises licence. The Licensing Authority has the power, before convening a panel under *Article 4(10)* for the review of a premises licence, to request the opinion of the Connétable of the parish concerned and if, the Connétable's opinion is sought, the Licensing Authority must provide the Connétable with necessary background material to enable the Connétable to express an informed opinion. The Licensing Authority may, after a review, vary the conditions of the premises licence or suspend or revoke the premises licence. The Licensing Authority must give notice in writing of its decision to the holder of the premises licence and must in the notice give reasons for its decision and notice to the holder of the holder's right to redetermination.

*Article 15* requires that there must be an individual approved by the Licensing Authority who is the designated licensee responsible for the operation of the premises licence. The Licensing Authority may approve an individual (even if that individual is the holder of the premises licence) as the designated licensee. An individual is eligible to be appointed as a designated licensee if he or she is the holder of a certificate issued by an accredited person (as defined in *Article 1*) for the purpose of being a designated licensee. Additionally, the Licensing Authority must be satisfied that the person is a fit and proper person to be a designated licensee. Provision is made for periods of absence by the designated licensee and for changing the designated licensee.

*Article 15* also gives the States the power by Regulations make such provision as they consider necessary or expedient to permit the States Police Force to disclose to an individual, information held by the States Police Force regarding the individual's character including information regarding the individual's appearances at any Parish hall inquiry, court appearances and convictions for the purpose of an application for approval of the individual to be appointed as the designated licensee.

Under *Article 16*, on the grant of a premises licence in respect of premises or a designated area within premises in a special area, the Licensing Authority may, in respect of that premises licence, vary any of the general conditions imposed by Regulations made under *Article 2(2)(b)*. The list of special areas would be contained in the statement of licensing policy in accordance with *Article 5(2)(c)*.

*Article 17* requires a holder of a premises licence to pay the prescribed annual fee on or before the prescribed date in each year and any prescribed additional fee for late payment of the prescribed annual licence fee by the prescribed late payment date.

*Article 18* provides for the variation of a premises licence on the application of a holder of a premises licence except where the variation is for a change of the holder of the premises licence or the location of licensed premises (in which case an application must be made for a new premises licence).

*Article 19* provides for the surrender of a premises licence by submitting a notice in writing to the Licensing Authority together with any certified hard copy of the premises licence received or, if it is not possible to submit the certified hard copy of the premises licence to the Licensing Authority, an explanation as to why the premises licence has not been submitted.

*Article 20* makes provision for a temporary premises licence in respect of any premises in which an event is being held and in respect of which there is no premises licence. The temporary premises licence permits the sale of intoxicating liquor and is only valid for the period specified in the temporary premises licence. *Article 20* also gives the States the power by Regulations to make further provision for temporary premises licences.

*Article 21* provides for a provisional premises licence in respect of any premises intended to be constructed, renovated or adapted, or in the course of construction, renovation or adaptation, for the purposes of selling intoxicating liquor. The provisional premises licence is valid for a period of 2 years. When the work in respect of a provisional premises licence has been completed, the Licensing Authority is required to grant a premises licence to the holder of the temporary premises licence if satisfied that the holder complied with the terms of the provisional premises licence. *Article 21* also gives the States the power by Regulations to make further provision for provisional premises licences.

*Part 4* of the Law comprises *Articles 22 to 26* which introduce enforcement measures.

*Article 22* provides a police officer and a member of the Fire and Rescue Service with powers of entry in respect of licensed premises and other premises.

Under *Article 23*, a closure order in respect of any licensed premises may be made by a States police officer of the rank of inspector or higher, any other States police officer with the approval of a States police officer of the rank of inspector or higher, or a Centenier of the parish concerned, if he or she reasonably believes that there is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the licensed premises and that such closure is necessary in the interests of public safety. A closure order is an order requiring the licensed premises to be closed and prohibiting the operation of the licensed premises and the offer for sale or sale of intoxicating liquor in the licensed premises for a period not exceeding 24 hours or any further period of extension beginning with the coming into force of the closure order (*Article 23(11)*). A States police officer or a Centenier who issues a closure order is required to give notice in writing of the closure order and any relevant details of the service of the order to the Minister for Home Affairs who must determine whether, in the interest of public safety, the closure order should continue in force or be extended for a further period not exceeding 7 days or be revoked.

*Article 24* clarifies that –

- (a) evidence that a transaction in the nature of a sale of intoxicating liquor took place would, in any proceedings relating to an offence under the Law, be evidence of the sale of the liquor without proof that money passed;
- (b) evidence that consumption of intoxicating liquor was about to take place would, in any proceedings relating to an offence under the Law, be evidence of the consumption of intoxicating liquor without proof of actual consumption; and
- (c) evidence that any person, other than the occupier of the licensed premises or a person employed in the licensed premises, consumed or intended to consume intoxicating liquor in the premises would be evidence that the liquor was sold by or on behalf of the holder of the licence to that person.

Under *Article 25*, at the request of the Attorney General, the Licensing Authority or a Connétable is required to provide the Attorney General with certain documents which relate to a licence. *Article 25* also provides that where the Attorney General is of the opinion that any matter relating to a licence should be referred to the Licensing

Authority, the Attorney General may submit such matter to the Licensing Authority and the Licensing Authority may review the licence in accordance with *Article 14*.

*Article 26* requires that a Connétable keeps a register in which shall be entered particulars of every conviction relating to licensed premises in his or her parish and submits such particulars to the Licensing Authority as soon as practicable and as otherwise requested by the Licensing Authority.

*Part 5* of the Law comprises *Article 27 to 38* which make provision for offences and penalties.

*Article 27* prohibits the sale of intoxicating liquor unless there is a valid premises licence or temporary premises licence in place for the premises or the area within premises from which the intoxicating liquor is being offered for sale or is being sold and the licensed premises is operated by a designated licensee. The prohibition is subject to the exemptions under *Article 39* and special permits under *Article 40*. The penalty for an offence under *Article 27* is imprisonment for a term of 12 months and a fine.

*Article 28* prohibits the serving or delivering of intoxicating liquor to, or for consumption by, a person under 18 years, subject to certain exceptions. The penalty for an offence under *Article 28* is imprisonment for a term of 12 months and a fine.

*Article 29* provides for a holder of a licence, who either by himself or herself, or by any employee or agent, contravenes any condition or restriction on or subject to which the licence was granted, or sells intoxicating liquor otherwise than as he or she is authorized by the licence, to be guilty of an offence.

*Article 30* provides for a person who purchases, on any licensed premises, any intoxicating liquor outside the hours during which such liquor may be sold to the person on the licensed premises to be guilty of an offence and liable to a fine of level 2 on the standard scale.

*Article 31* provides for a person who takes from any licensed premises intoxicating liquor sold for consumption on the premises to be guilty of an offence and liable to a fine of level 2 on the standard scale.

*Article 32* provides for a person who is found drunk or disorderly on any licensed premises to be guilty of an offence.

*Article 33* provides for a person who wilfully obstructs or interferes with a member of the Fire and Rescue Service in the exercise of any of his or her powers under *Article 22(3)* to be guilty of an offence.

*Article 34* provides for a person to be guilty of an offence if the person, for any purpose under the Law, knowingly makes any statement or gives any information which is false in a material particular, or produces any declaration or certificate knowing the same to be false in a material particular.

*Article 35* provides a general penalty of imprisonment for a term of 6 months and a fine of level 3 on the standard scale where a person is guilty of an offence under the Law for which no special penalty is provided.

*Article 36* protects the holder of a licence from conviction if he or she proves that the offence was committed as a result of a false statement having been made by some other person to him or her, or his or her employee or agent, and that it was reasonable in the circumstances for the holder of the licence not to suspect that the statement was false. A person who, by making a false statement, renders the holder of a licence liable to proceedings for an offence against the Law is guilty of an offence and liable to a

fine of level 3 on the standard scale, whether or not the holder of the licence is convicted of the offence.

*Article 37* makes provision for the criminal liability of the designated licensee and the employee or agent of the holder of a licence where the holder is liable for an offence that was committed by the designated licensee or the employee or agent of the holder.

*Article 38* makes provision for the criminal liability of partners, directors and other officers of partnerships with separate legal personality and bodies corporate.

*Part 6* of the Law comprises *Articles 39 to 52* which are miscellaneous provisions.

*Article 39* provides exemptions so that it is not unlawful in certain specified circumstances for medicines containing alcohol to be sold by medical practitioners or persons lawfully carrying on retail pharmacy business, or for intoxicating liquor to be sold by auction or by an agent to the holder of a premises licence or on an aircraft or a vessel.

Under *Article 40*, a special permit may be granted by the Licensing Authority for the purpose of varying any term of a premises licence; authorizing the holder of the premises licence to sell intoxicating liquor by retail for consumption on the licensed premises and to keep the licensed premises open during the hours specified in the special permit; or authorizing the holder of the premises licence to sell intoxicating liquor by retail at an event during the hours and at the place specified in the special permit for consumption during those hours and at that place. A special permit may also be granted to all holders of premises licences falling within a particular class of premises licence permitting them to benefit, over a period not exceeding 7 days, from extended opening hours to be specified in the special permit.

*Article 41* gives the Minister the power, after consultation with the Alcohol Licensing Policy Group, to accredit a person to provide training, examination and certification to the door staff of licensed premises, employees of a holder of a licence and the holder of a licence. An accredited person is required to keep an up to date record of the persons who been certified and upon request to provide the record to the Licensing Authority, the Connetable of the parish concerned and States Police Force. An accredited person may charge fees for training, examination and certification.

*Article 42* entitles an applicant for a licence or special permit or a holder of a licence or special permit who is aggrieved by an initial decision (a decision of the Licensing Authority that is not a redetermination under *Article 42*) to make a request to the Licensing Authority for a redetermination of that initial decision. A redetermination of an initial decision may be heard by a review panel referred to in *Article 4(11)*. A request for redetermination must be submitted to Licensing Authority within 21 days after the date of the initial decision and must contain the applicant's name and address for correspondence; the reference number of the application in question and the grounds on which the request is made, including where relevant, the reasons why the applicant disagrees with the initial decision and with any reasons for the initial decision. The review panel must determine the request as soon as reasonably practicable after the request is submitted and must give the applicant notice in writing of its decision and the reasons for its determination. The decision of the review panel must be substituted for the initial decision of the Licensing Authority and *Article 43* will apply to such a decision of the Licensing Authority.

*Article 43* entitles an applicant for a licence or special permit or a holder of a licence or special permit who is aggrieved by any closure decision of a police officer, the Centenier or the Minister for Home Affairs under *Article 23* or by a decision on redetermination under *Article 42* to appeal to the Royal Court ("Court" as defined in *Article 1*) against that decision. An appeal may be brought within 28 days after the



applicant for, or a holder of, a licence or special permit is notified of the decision in writing or within such further time as the Court allows. The Court is required to consider the submissions made to the Licensing Authority as well as any further submissions from parties who have the right or duty to address the Licensing Authority, parish assembly or the Licensing Authority.

*Article 44* provides for Court to appoint the Viscount as the holder of a licence or for the Licensing Authority to have the power to assign the licence to any other fit and proper person where the holder of the licence who is an individual dies, has certain incapacities or becomes bankrupt or otherwise insolvent.

*Article 45* provides for the limitation of liability of the Licensing Authority, any member of the Licensing Authority or any person who is, or is acting as, an officer, employee or agent of the Licensing Authority or who is performing any duty or exercising any power on behalf of the Licensing Authority or under the control of the Licensing Authority. The limitation of liability does not apply 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.

*Article 46* gives the States the power to make Regulations for the purposes of carrying the Law into effect. The Regulations may provide for the charging of fees by the States Police Force, Fire and Rescue Service or department of the States responsible for environmental health for reports required under the Law or the Regulations and the amount of such fees; create offences for contravention of the Regulations and specify penalties for such offences not exceeding imprisonment for 2 years and a fine; and make such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient for the purposes of the Regulations.

*Article 47* gives the Minister the power by Order to make provisions prescribing any matter that is to be prescribed under the Law; as to the manner of filing of applications and other documents; and specifying the fees to be charged in connection with an application for the grant of a licence.

*Article 48* confirms the powers conferred upon the States by the Loi (1833) Sur La Conduite des Taverniers, to amend legislation relating to the conduct of taverners, the sale of wines and liquors and the grant of licences and provides that, accordingly, the States may by Regulations make such amendments to the Liquor Licensing (Jersey) Law 201- as may from time to time be deemed expedient.

*Article 49* provides that the power to make Rules of Court under the Royal Court (Jersey) Law 1948 includes a power to make Rules for the purposes of the Law.

*Article 50* provides for the repeal of the Licensing (Jersey) Law 1974 and abolishes the Assembly of Governor, Bailiff and Jurats because they would no longer be responsible for issuing licenses for the sale of intoxicating liquor.

*Article 51* provides for consequential amendments to be made to the enactments specified in the Schedule.

*Article 52* provides for the Law to be cited as the Liquor Licensing (Jersey) Law 201- and provides that it shall come into force on such day or days as the States may by Act appoint.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £200, level 2 is £1000, level 3 is £10,000.





Jersey

## DRAFT LIQUOR LICENSING (JERSEY) LAW 201-

### Arrangement

#### Article

<b>PART 1</b>	<b>29</b>
INTERPRETATION	29
1 Interpretation .....	29
<b>PART 2</b>	<b>31</b>
LICENSING	31
2 Categories of licences.....	31
3 Establishment of Alcohol and Licensing Policy Group .....	32
4 Establishment, composition, functions and procedures of Licensing Authority .....	32
5 Statement of licensing policy .....	35
<b>PART 3</b>	<b>36</b>
PREMISES LICENCES	36
6 Application for a premises licence .....	36
7 Connétable's powers of inspection .....	37
8 Consideration of applications by parish assembly .....	37
9 Grant or refusal of premises licence.....	38
10 Duration of premises licence.....	39
11 Public access to premises licence.....	40
12 Rights to exclude persons from licensed premises.....	40
13 Closing of licensed premises.....	40
14 Review, variation, suspension or revocation of a premises licence .....	40
15 Designated licensee .....	42
16 Licensing Authority's powers on grant of premises licence in a special area .....	44
17 Fees .....	44
18 Variation of premises licence .....	44
19 Surrender of premises licence .....	45
20 Temporary premises licence.....	45
21 Provisional premises licence .....	45

<b>PART 4</b>	<b>46</b>
<hr/>	
ENFORCEMENT	46
22 Power to enter premises .....	46
23 Closure order.....	46
24 Proof of sale or consumption of intoxicating liquor .....	48
25 Obligation to provide the Attorney General with information and submission of matters by the Attorney General.....	48
26 Duty of Connétable to report convictions.....	49
<b>PART 5</b>	<b>49</b>
<hr/>	
OFFENCES AND PENALTIES	49
27 Prohibition on selling intoxicating liquor .....	49
28 Serving or delivering intoxicating liquor to or for consumption by persons under 18 .....	49
29 Non-compliance with terms of licence .....	50
30 Purchase of intoxicating liquor outside hours.....	51
31 Removal of intoxicating liquor sold for consumption on licensed premises .....	51
32 Drunk or disorderly behaviour on licensed premises.....	51
33 Obstruction of fire officer .....	51
34 False statement or information.....	51
35 General penalty .....	51
36 False statements made to licence holders .....	51
37 Criminal liability of the designated licensee, employees, agents.....	52
38 Criminal liability of partners, directors and other officers.....	52
<b>PART 6</b>	<b>52</b>
<hr/>	
MISCELLANEOUS	52
39 Exemptions .....	52
40 Special permits.....	53
41 Accreditation.....	54
42 Redetermination.....	54
43 Appeal.....	55
44 Death, incapacity, bankruptcy etc. of holder of licence.....	56
45 Limitation of liability.....	56
46 Regulations .....	56
47 Orders.....	57
48 Power of States to amend Law.....	57
49 Rules of Court.....	57
50 Repeal of Licensing (Jersey) Law 1974 and abolition of Assembly of Governor, Bailiff and Jurats.....	57
51 Enactments amended .....	57
52 Citation and commencement.....	57
<b>SCHEDULE</b>	<b>58</b>
<hr/>	
ENACTMENTS AMENDED	58



Jersey

## DRAFT LIQUOR LICENSING (JERSEY) LAW 201-

A LAW to make provision for the control of the sale and consumption of intoxicating liquor and the abolition of the Assembly of Governor, Bailiff and Jurats, and for connected purposes.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

### PART 1

#### INTERPRETATION

##### 1 Interpretation

In this Law unless the context otherwise requires –

“accredited person” means a person accredited under Article 41(1);

“Alcohol and Licensing Policy Group” means the body established under Article 3(1);

“authorized person” means a person authorized by a designated licensee under Article 15(3);

“cider” includes perry;

“Court” means the Royal Court;

“designated area within premises” means an area, within premises, designated, or to be designated, by the owner or lessee for the sale of intoxicating liquor;

“designated licensee” shall be construed in accordance with Article 15;

“employee” has the meaning given by Article 1(A)(b) of the Employment (Jersey) Law 2003<sup>1</sup>;

“Fire and Rescue Service” has the meaning given by Article 1 of the Fire and Rescue Service (Jersey) Law 2011<sup>2</sup>;

“initial decision” means a decision of the Licensing Authority made under any provision of this Law other than Article 42;

“intoxicating liquor” means wine, beer, cider and any other liquor with an alcoholic content, intended for human consumption, but excludes –

- (a) any liquor where the alcoholic content is less than 1.2% volume of ethyl alcohol as determined in accordance with Article 2 of the Customs and Excise (Jersey) Law 1999<sup>3</sup>; and
- (b) liqueur confectionery;

“Jersey Appointments Commission” means the Commission established by Article 17(1) of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>4</sup>;

“licence” means a licence granted under this Law;

“licensed premises” means premises, or a designated area within premises, in respect of which a premises licence, provisional premises licence, temporary premises licence or special permit is in force;

“Licensing Authority” means the Licensing Authority established under Article 4(1);

“Medical Officer of Health” means the “Inspecteur Médical” appointed under Article 10 of the Loi (1934) sur la Santé Publique<sup>5</sup> or a medical practitioner acting under the Medical Officer of Health’s direction for the purposes of this Law;

“medical practitioner” means a person registered as a medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960<sup>6</sup>;

“Minister” means the Minister for Economic Development, Tourism, Sport and Culture;

“ownership” includes ownership by transfer of shares and “owner” shall be construed accordingly;

“parish assembly” has the meaning given by Article 1(1) of the Rates (Jersey) Law 2005<sup>7</sup>;

“parish concerned”, in relation to any licence or application for a licence, means the parish in which the premises to which the licence or application relates are situated;

“permitted hours” in relation to any licence, means the hours during which intoxicating liquor may be sold in relation to the category or class of that licence;

“premises” includes any place;

“premises licence” shall be construed in accordance with Article 2(1)(a);

“prescribed” means prescribed by an Order made by the Minister;

“provisional premises licence” shall be construed in accordance with Article 2(1)(c);

“sell” includes offer or agree to sell or expose for sale;

“special permit” shall be construed in accordance with Article 40;

“special area” means a geographical area designated as such in the statement of licensing policy under Article 5(2)(c);

“States Police Force” has the meaning given by Article 1 of the States of Jersey Police Force Law 2012<sup>8</sup>;

“States police officer” means a police officer in States Police Force;

“States’ employee” has the meaning given by Article 1 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>9</sup>;

“temporary premises licence” shall be construed in accordance with Article 2(1)(b).

## **PART 2**

### **LICENSING**

#### **2 Categories of licences**

- (1) For the purpose of this Law there shall be the following categories of licences –
  - (a) a premises licence granted under Article 9, that permits the sale of intoxicating liquor from premises or a designated area within premises;
  - (b) a temporary premises licence, to which Article 20 applies, that permits the sale of intoxicating liquor, for a particular period specified in the temporary premises licence, from premises or a designated area within premises in respect of which there is no premises licence in place; and
  - (c) a provisional premises licence, to which Article 21 applies, in respect of premises or a designated area within premises –
    - (i) that requires construction, renovation or adaptation for the sale of intoxicating liquor, and
    - (ii) for which a premises licence will be required for the sale of intoxicating liquor.
- (2) The States may by Regulations –
  - (a) create –
    - (i) categories of licences, other than those specified in paragraph (1), in respect of the sale of intoxicating liquor,
    - (ii) classes of licences within a category specified in paragraph (1) or created under clause (i);
  - (b) impose general conditions regarding a category or class of licence including the permitted hours for a category or class of licence;
  - (c) provide further procedures in respect of any category or class of licence.

### **3 Establishment of Alcohol and Licensing Policy Group**

- (1) There shall be established a body, to be known as the Alcohol and Licensing Policy Group, for the purpose of advising the Council of Ministers on the development of policy regarding the sale of intoxicating liquor.
- (2) The Alcohol and Licensing Policy Group shall comprise –
  - (a) the Chief Minister as the chairperson;
  - (b) the Minister;
  - (c) the Minister for Home Affairs;
  - (d) the Minister for Health and Social Services;
  - (e) the Connétable of St. Helier; and
  - (f) a member of the Comité des Connétables (other than the Connétable of St. Helier) nominated by the Comité des Connétables.
- (3) The quorum for meetings of the Alcohol and Licensing Policy Group shall be 4 members including the chairperson.
- (4) The Alcohol and Licensing Policy Group shall, in carrying out its functions under this Law, have regard to the following key licensing objectives, which shall be equally weighted –
  - (a) to help reduce alcohol related crime;
  - (b) to better secure public safety;
  - (c) to help prevent public nuisance;
  - (d) to help protect children from alcohol related harm; and
  - (e) to better protect and improve public health.
- (5) The States may by Regulations amend the key licensing objectives specified in paragraph (4).

### **4 Establishment, composition, functions and procedures of Licensing Authority**

- (1) There shall be established a body, to be known as the Licensing Authority, for the purpose of regulating the sale of intoxicating liquor.
- (2) The Licensing Authority shall comprise –
  - (a) subject to paragraph (5), 7 members of the States who –
    - (i) are not –
      - (A) Ministers,
      - (B) members of the Alcohol and Licensing Policy Group, and
      - (C) Assistant Ministers appointed as such pursuant to Article 25 of the States of Jersey Law 2005<sup>10</sup> by the Chief Minister or any other Minister mentioned in Article 3(2); and
    - (ii) shall be appointed by the States; and



- 
- (b) subject to paragraph (3), 3 lay members –
    - (i) who are not members of the States,
    - (ii) who do not have direct or immediate family connections to the liquor trade, and
    - (iii) one of whom shall be appointed as the chairperson and the other 2 as the deputy chairpersons.
  - (3) The 3 lay members referred to in paragraph (2)(b) shall be appointed –
    - (a) by the States on the recommendation of the Chief Minister in his or her capacity as chairperson of the Alcohol and Licensing Policy Group and following a recruitment process overseen by the Alcohol and Licensing Policy Group;
    - (b) for a maximum of 2 four-year terms of office.
  - (4) In overseeing the recruitment process referred to in paragraph (3), the Alcohol and Licensing Policy Group shall consult with, and follow relevant guidance issued by, the Jersey Appointments Commission.
  - (5) The term of office of the members of the Licensing Authority who are members of the States shall end at the beginning of the 1st meeting of a reconstituted States Assembly following an ordinary election, unless a member has resigned or has otherwise ceased to hold office.
  - (6) The Licensing Authority shall have the following functions –
    - (a) to determine applications for licences or special permits;
    - (b) such other functions as are conferred on it by this Law or any other enactment.
  - (7) Subject to the other provisions of this Law, the Licensing Authority may regulate its own procedures.
  - (8) The Licensing Authority shall meet at least 8 times per year for the purpose of carrying out its functions under paragraph (6) and shall, before the end of each calendar year, publish, in such a manner as it deems appropriate, a schedule of its meeting dates for the subsequent year.
  - (9) Notwithstanding paragraph (8), the Licensing Authority may convene extraordinary meetings as it deems necessary to deal with matters arising in respect of its functions.
  - (10) For the purpose of determining an application for a licence or reviewing, varying, suspending or revoking a licence under this Law, the Licensing Authority shall sit as a panel of 3 members comprising –
    - (a) the chairperson or a deputy chairperson of the Licensing Authority as the chairperson of the panel; and
    - (b) 2 other members of the Licensing Authority who are members of the States.
  - (11) For the purpose of redetermination of an initial decision under Article 42, the Licensing Authority shall sit as a review panel of 4 members comprising –
    - (a) the chairperson or a deputy chairperson of the Licensing Authority if he or she did not preside over the initial decision; and

- 
- (b) 3 members of the Licensing Authority who were not members of the panel who made the initial decision.
- (12) The quorum for a meeting of the Licensing Authority, other than when the Licensing Authority is sitting as a panel under paragraph (10) or (11), shall be 5 members including the chairperson or a deputy chairperson.
- (13) Notwithstanding any other provision of this Law, the Licensing Authority may, in writing, delegate to a States' employee any of the Licensing Authority's functions, except the redetermination of an initial decision under Article 42.
- (14) Where a member of the Licensing Authority has any direct or indirect personal interest in the outcome of the deliberations of the Licensing Authority in relation to any matter –
- (a) the member shall disclose the nature of his or her interest at a meeting of the Licensing Authority in person or by means of a notice in writing brought to the attention of the Licensing Authority;
  - (b) the disclosure shall be recorded in the minutes of the Licensing Authority; and
  - (c) the member shall withdraw from any deliberations of the Licensing Authority in relation to that matter and not vote upon it.
- (15) For the purposes of paragraph (14), a general notice given by a member of the Authority that he or she is a member or director of a particular entity and is to be regarded as interested in any matter concerning that entity is sufficient disclosure in relation to any such matter.
- (16) At a meeting of the Licensing Authority –
- (a) the chairperson or, in his or her absence, a deputy chairperson, shall preside;
  - (b) each member shall have one vote on each matter for deliberation;
  - (c) in the event of an equality in the votes, the chairperson of the meeting shall have a casting vote; and
  - (d) a member shall be treated as being present in a meeting of the Licensing Authority if, during the meeting, either by way of a telephone, live television link, video link or otherwise, the member is able to hear all the other members in the meeting and to be heard by all the other members in the meeting.
- (17) A decision is a valid decision of the Licensing Authority, even though it was not passed at a meeting of the Licensing Authority, if –
- (a) notice of the proposed decision was given to all members; and
  - (b) it is signed or assented to by a majority of members.
- (18) The Licensing Authority shall keep accurate minutes of its proceedings, including minutes of any business transacted in accordance with paragraph (17).
- (19) The Minister shall pay to the lay members of the Licensing Authority –
- (a) such remuneration as the Minister may determine; and

- (b) reasonable out of pocket or other expenses occasioned in the course of carrying out their duties.

## **5 Statement of licensing policy**

- (1) The Alcohol and Licensing Policy Group shall, after consultation first with the Medical Officer of Health and then with the Council of Ministers, prepare, from time to time as the Alcohol and Licensing Policy Group sees fit, a statement of licensing policy for the purpose of putting on public record the policy as to how the key licensing objectives specified in Article 3(4) should be advanced.
- (2) The statement of licensing policy must include –
  - (a) criteria for consideration of licences with reference to the key licensing objectives specified in Article 3(4);
  - (b) criteria for assessing what generally constitutes a fit and proper person to hold a licence;
  - (c) a list of geographical areas designated as special areas in respect of which Article 16 applies;
  - (d) a list of the variations or types of variations of the terms of a licence which are to be processed as minor variations or major variations, as the case may be, under Article 18 and a process for fast-tracking applications for minor variations of the terms of a licence; and
  - (e) any other matter that is relevant to the purpose of the Alcohol and Licensing Policy Group specified in Article 3(1).
- (3) The Alcohol and Licensing Policy Group may establish one or more sub-groups to assist with the development of the statement of licensing policy and may appoint any member of the Alcohol and Licensing Policy Group to any such sub-group.
- (4) The Council of Ministers shall ensure that the first statement of licensing policy prepared under paragraph (1) and any subsequent revisions of the statement of licensing policy are lodged *au Greffe* for the approval of the States.
- (5) The Alcohol and Licensing Policy Group may, with the approval of the Council of Ministers under paragraph (6), issue supplementary policy guidelines, if in its opinion such supplementary policy guidelines are necessary or expedient.
- (6) Where the Alcohol and Licensing Policy Group requests the approval of the Council of Ministers for issuing supplementary policy guidelines, the Council of Ministers may approve the supplementary policy guidelines and, if it does so, shall present the supplementary policy guidelines to the States.

---

### PART 3

#### PREMISES LICENCES

#### 6 Application for a premises licence

- (1) An application for a premises licence may be made by a person who is the owner or lessee of the premises or designated area within premises that is the subject of the application.
- (2) An application for a premises licence shall –
  - (a) be submitted to the Licensing Authority;
  - (b) be made in the form approved by the Licensing Authority;
  - (c) in the case of an application made by –
    - (i) an individual, specify the individual's full name, previous names, if any, date and place of birth, current address and any previous addresses in the 3 years immediately preceding the date of the application, or
    - (ii) a person other than an individual, specify –
      - (A) the person's name and address,
      - (B) date of the person's registration or formation, if any,
      - (C) the address of the person's registered office or principal place of business in Jersey, if any, and
      - (D) the name and address of the person's representative in Jersey, if any;
  - (d) specify the name and address of the individual who is being proposed for approval as the designated licensee under Article 15;
  - (e) identify the premises or the designated area within premises to which the application relates by stating the name, address and boundaries of the premises or designated area within premises and by being accompanied by a plan showing the boundaries of the premises or designated area within premises, proof of ownership of, or copy of the lease for, the premises or designated area within premises;
  - (f) be accompanied by reports in the prescribed form obtained by the applicant from the States Police Force, the Fire and Rescue Service and the department of the States responsible for environmental health detailing their opinion on the suitability of the premises or designated area within premises for the proposed activity;
  - (g) be accompanied by the prescribed application fee; and
  - (h) be accompanied by any other information that the Licensing Authority requires for determining the application.
- (3) The States Police Force, the Fire and Rescue Service and the department of the States responsible for environmental health may, at any reasonable time and with the consent of the owner or occupier of the premises to which an application for a premises licence relates, enter and inspect the premises before a report is given to the applicant under paragraph (2)(f).

- (4) The Licensing Authority shall, as soon as practicable after receipt of an application under paragraph (1) –
  - (a) give notice in writing of the application to the Minister, Chief Officer of the States Police Force, Chief Fire Officer, Medical Officer of Health and Director of Environmental Health;
  - (b) give notice in writing of the application together with a copy of the application, the reports referred to in paragraph (2)(f) and the information referred to in paragraph (2)(h), if any, to the Connétable of the parish concerned; and
  - (c) cause notice of an application to be published in the Jersey Gazette.

## **7 Connétable's powers of inspection**

- (1) Subject to paragraph (2), the Connétable of the parish concerned may authorize a competent person to carry out an inspection of premises to which an application for a premises licence relates and to prepare and submit a report to the Connétable –
  - (a) detailing whether the premises is considered suitable for the premises licence applied for; and
  - (b) informing the Connétable of any matter relevant to the health and safety of persons using, or in the vicinity of, those premises.
- (2) A competent person referred to in paragraph (1) may, at any reasonable time and with the consent of the owner or occupier of the premises to which an application for a premises licence relates, enter and inspect the premises or designated area within premises before a report is given to the applicant under paragraph (1).
- (3) A report under paragraph (1) may contain such other information as may be requested by the Connétable on any matter relevant to the application.
- (4) The Connétable shall submit any report obtained under paragraph (1) to the parish assembly.
- (5) The expenses reasonably incurred by the Connétable of the parish concerned in carrying out an inspection and preparing a report under paragraph (1) shall be charged to, and payable by, the applicant.

## **8 Consideration of applications by parish assembly**

- (1) An application for a premises licence must, before being considered by the Licensing Authority, be considered by the parish assembly of the parish concerned, and the parish assembly shall make a recommendation to the Licensing Authority as to whether or not the application should be granted.
- (2) The convening notice for the parish assembly of the parish concerned to consider an application for a premises licence shall contain particulars of the name of the applicant, the address of the premises to which the application relates and the category and class of licence, if any, for which application is made.

- (3) The following persons may appear and be heard by the parish assembly of the parish concerned in relation to an application for a premises licence –
  - (a) the applicant for the premises licence or person representing the applicant;
  - (b) any member of the parish assembly, either personally or by a person representing the member.
- (4) If neither the applicant nor the person representing the applicant appears before the parish assembly of the parish concerned under paragraph (3), consideration of the application shall be deferred.
- (5) The parish assembly of the parish concerned shall prepare a record of its recommendation in respect of the premises licence and the Connétable of the parish shall submit a copy of the record to the Licensing Authority together with copies of any report submitted to the Connétable under Article 7(1).
- (6) If a parish assembly is convened for no other purpose than to consider one or more applications for premises licences, the cost of convening the parish assembly, including the notification, shall be chargeable to, and payable by, the applicants and shall be shared equally by the applicants.
- (7) An applicant is liable to contribute under paragraph (6) whether or not the applicant appears before the parish assembly.
- (8) The Licensing Authority shall submit a copy of the record of the parish assembly's recommendation received under paragraph (5) to the applicant, Minister, Chief Officer of the States Police Force, Chief Fire Officer, Medical Officer of Health and Director of Environmental Health.
- (9) In paragraph (3)(b) "member of the parish assembly" shall be construed in accordance with Article 23 of the Rates (Jersey) Law 2005<sup>11</sup>.

## **9 Grant or refusal of premises licence**

- (1) An application for a premises licence shall be determined by the Licensing Authority after the application has been considered by the parish assembly and the Licensing Authority has received the copy of the record of the recommendation of the parish assembly of the parish concerned submitted under Article 8(5).
- (2) When an application for a premises licence is being considered by the Licensing Authority the following persons may address the Licensing Authority –
  - (a) the applicant for the premises licence or a person representing the applicant;
  - (b) any person having previously expressed an opinion at the parish assembly regarding that application;
  - (c) the Connétable of the parish concerned;
  - (d) a representative of the States Police Force;
  - (e) a representative of the Fire and Rescue Service;
  - (f) Attorney General;

- (g) the Medical Officer of Health; or
  - (h) the Minister responsible for environmental health in respect of the discharge of his or her functions relating to environmental health.
- (3) In determining an application for a premises licence, the Licensing Authority shall –
- (a) consider the nature of the business conducted or to be conducted and the suitability of the premises or designated area within premises for the conduct of that business;
  - (b) have regard to the statement of licensing policy referred to in Article 5; and
  - (c) have regard to the reports provided by the States Police Force, Fire and Rescue Service and department of the States responsible for environmental health referred to in Article 6(2)(f) and the record of the recommendation of the parish assembly of the parish concerned referred to in paragraph (1).
- (4) If, after consideration of the matters referred to in paragraph (3), the Licensing Authority –
- (a) is satisfied that the premises licence applied for may be granted, the Licensing Authority shall grant the premises licence; or
  - (b) is not satisfied that the licence applied for may be granted, the Licensing Authority may –
    - (i) refuse to grant the premises licence,
    - (ii) grant a premises licence for an area different from that for which the application is made, or
    - (iii) grant a premises licence of a different class to that for which the application is made,

and in addition to any general conditions imposed by Regulations made under Article 2(2)(b), may attach to any premises licence granted such conditions as, having regard to all the circumstances of the case, the Licensing Authority thinks fit.

- (5) The Licensing Authority shall give notice in writing of its decision under paragraph (4) to the applicant and, in the case of a decision under paragraph (4)(b) or attachment of any conditions under paragraph (4), shall in the notice give reasons for its decision and notice to the applicant of the applicant's right to a redetermination under Article 42.
- (6) Where a premises licence is granted under this Article, the Licensing Authority shall issue the premises licence to the applicant in the prescribed form on payment of the prescribed premises licence fee.

## **10 Duration of premises licence**

A premises licence shall take effect on the date on which it is granted and shall remain valid unless –

- (a) the premises licence is suspended or revoked under Article 14;

- (b) the holder of the premises licence fails to pay the prescribed annual fee and any prescribed additional fee for late payment by the dates referred to in Article 17;
- (c) the premises licence is surrendered under Article 19; or
- (d) a new premises licence is granted to replace the premises licence.

### **11 Public access to premises licence**

- (1) The Licensing Authority shall publish every premises licence in such manner as it deems appropriate and shall make such premises licence available for inspection electronically by any person from the date the premises licence comes into force.
- (2) The Licensing Authority shall, on request, supply a certified hard copy of the premises licence to the holder of a premises licence on payment of the prescribed fee.

### **12 Rights to exclude persons from licensed premises**

- (1) The holder of a premises licence, the designated licensee or the holder's employee or agent may refuse to admit to, and may remove from, the licensed premises any person who is drunk, violent, quarrelsome or disorderly or any person whose presence on the licensed premises would subject the holder of the premises licence to a penalty under this Law.
- (2) A police officer shall, at the request of the holder of a premises licence, the designated licensee or the holder's employee or agent, help to remove from the licensed premises any person liable to be removed from the licensed premises under this Article, and may use such force as is reasonably necessary for the purpose.
- (3) A person who, on being requested under this Article by the holder of a premises licence, the designated licensee, the holder's employee or agent or any police officer to leave the licensed premises, refuses or fails to do so shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

### **13 Closing of licensed premises**

The holder of a premises licence or the designated licensee may close the licensed premises at any time, for any reason and for any period.

### **14 Review, variation, suspension or revocation of a premises licence**

- (1) The Licensing Authority may review a premises licence on its own volition or on the recommendation of a party specified in paragraph (2).
- (2) The following parties may recommend the review of a premises licence under paragraph (1) –
  - (a) the Connétable of the parish concerned;
  - (b) the States Police Force;



- (c) the Fire and Rescue Service;
  - (d) the Attorney General; or
  - (e) the Minister responsible for environmental health in respect of the discharge of his or her functions relating to environmental health.
- (3) The Licensing Authority may review a premises licence if –
- (a) it has reasonable grounds to suspect that –
    - (i) the holder of the premises licence is operating the premises licence in such a manner as to be in contravention of any condition of the premises licence,
    - (ii) the holder of the premises licence or the designated licensee in respect of the premises licence was convicted of an offence during the application process or after the premises licence was granted,
    - (iii) the holder of the premises licence or the designated licensee in respect of the premises licence has failed to inform the Licensing Authority of any fact that is in its opinion relevant to the premises licence, including any convictions of the holder of the premises licence,
    - (iv) a closure order has been issued under Article 23 in respect of the licensed premises; or
  - (b) it otherwise considers a review to be in the public interest.
- (4) The Licensing Authority may accept or reject a recommendation for review of a premises licence made under paragraph (2).
- (5) The Licensing Authority may, before convening a panel under Article 4(10) for the review of a premises licence, request the opinion of the Connétable of the parish concerned and, if the Connétable's opinion is sought, the Licensing Authority shall provide the Connétable with necessary background material to enable the Connétable to express an informed opinion.
- (6) In reviewing a premises licence under this Article, the Licensing Authority shall be entitled in its absolute discretion to hear any person, either personally or by a representative, in connection with the matter under consideration.
- (7) In reviewing a premises licence under this Article, the Licensing Authority shall have regard to –
- (a) the manner of operation of the licensed premises since the premises licence was granted;
  - (b) the evidence provided –
    - (i) in respect of a recommendation for review,
    - (ii) by any party as may be requested by the Licensing Authority; and
  - (c) the manner of the operation of other licensed premises held by the same person.
- (8) If after a review under this Article, the Licensing Authority, having regards to any of the grounds referred to in paragraph (3), determines that

the premises licence is not being operated in an appropriate manner, the Licensing Authority may –

- (a) vary the conditions of the premises licence;
  - (b) suspend the premises licence for such time as the Licensing Authority thinks fit; or
  - (c) revoke the premises licence.
- (9) The Licensing Authority shall give notice in writing of its decision under paragraph (8) to the holder of the premises licence and shall, in the notice, give reasons for its decision and notice to the holder of the holder's right to a redetermination under Article 42.

## 15 Designated licensee

- (1) In respect of any premises licence there must be an individual approved by the Licensing Authority who is the designated licensee responsible for the operation of the licensed premises.
- (2) An individual (even if that individual is the holder of the premises licence) is eligible to be a designated licensee if the individual is the holder of a certificate issued by an accredited person for that purpose under Article 41(3).
- (3) Subject to paragraph (4), where it becomes necessary to appoint a designated licensee, the holder of the premises licence shall make an application to the Licensing Authority for the approval of the appointment of an individual as the designated licensee in the form approved by the Licensing Authority.
- (4) An application made under paragraph (3) shall –
  - (a) identify the applicant and the premises or designated area within premises to which the application relates;
  - (b) specify the name of the outgoing designated licensee, if any, and the name and address of the individual to be approved for appointment as the designated licensee;
  - (c) be accompanied by a certified copy of the certificate referred to in paragraph (2);
  - (d) be accompanied by such information as may, pursuant to Regulations made under paragraph (11), be disclosed by the States Police Force to the individual to be approved for appointment as the designated licensee; and
  - (e) be accompanied by any other information as may be prescribed,and shall be submitted to Licensing Authority together with the prescribed fee.
- (5) The Licensing Authority shall, after consideration of an application made under paragraph (3) –
  - (a) if the individual is the holder of a certificate issued by an accredited person for that purpose under Article 41(3) and the Licensing Authority, having regard to the information submitted under paragraph (4)(d), is satisfied that the individual is a fit and

proper person to be appointed as a designated licensee, grant approval for the individual to be appointed as a designated licensee; or

- (b) if the individual is not the holder of a certificate issued by an accredited person for that purpose under Article 41(3) or is not a fit and proper person to be appointed as a designated licensee, refuse to grant approval for the individual to be appointed as a designated licensee.
- (6) The Licensing Authority shall –
- (a) give notice in writing of its decision under paragraph (5); and
  - (b) where the Licensing Authority refuses to grant approval for an individual to be appointed as a designated licensee under paragraph (5)(b), in the notice referred to in sub-paragraph (a), give reasons for that decision, specify a period within which the applicant may propose another individual for approval for appointment as the designated licensee and inform the applicant of the applicant's right to a redetermination under Article 42.
- (7) A designated licensee shall take all reasonable precautions to ensure that the licensed premises for which he or she is responsible is operated in accordance with this Law.
- (8) Subject to paragraph (9), the designated licensee shall not be required to be on the licensed premises when intoxicating liquor is being sold, but shall authorize another individual to perform the designated licensee's functions during any period that the designated licensee is not on the licensed premises provided that the other individual is the holder of a certificate issued by an accredited person for that purpose under Article 41(3).
- (9) If, during any period that a licensed premises is open –
- (a) the designated licensee will be or is likely to be absent from the licensed premises, subject to paragraph (10), for more than 30 days in any continuous period of 12 months; or
  - (b) the designated licensee will be or is likely to be absent from the licensed premises and the holder of the premises licence is unable to authorize another individual in accordance with paragraph (8),
- the holder of the premises licence shall immediately notify the Licensing Authority of the absence and make an application for approval of a designated licensee under paragraph (3).
- (10) Absences totalling not more than 2 days in any week during which the designated licensee is in Jersey and available to return to the premises, if necessary, shall not be counted towards the 30 days referred to in paragraph (9)(a).
- (11) The States may by Regulations make such provision as they consider necessary or expedient to permit the States Police Force to disclose to an individual, information held by the States Police Force regarding the individual's character including information regarding the individual's appearances at any Parish hall inquiry, court appearances and convictions

for the purpose of an application for approval of the individual to be appointed as the designated licensee under paragraph (3).

- (12) Without prejudice to the generality of paragraph (11), Regulations made under that paragraph shall specify –
- (a) the form in which a request for a disclosure may be made;
  - (b) the form in which a disclosure may be made;
  - (c) the criteria for determining which information is relevant, or is not relevant, to be included in the disclosure; and
  - (d) a procedure for challenging the accuracy or relevance of any disclosure made.

#### **16 Licensing Authority’s powers on grant of premises licence in a special area**

- (1) On the grant of a premises licence in respect of premises or a designated area within premises in a special area, the Licensing Authority may, in respect of that premises licence, vary any of the general conditions relating to premises licences imposed by Regulations made under Article 2(2)(b).
- (2) Before granting a premises licence in respect of premises or a designated area within premises in a special area, the Licensing Authority shall have regard to any recommendations made by the Minister.

#### **17 Fees**

- (1) A holder of a premises licence shall pay the prescribed annual licence fee on or before the prescribed date in each year and any prescribed additional fee for late payment of the prescribed annual licence fee by the prescribed late payment date.
- (2) Where a holder of a premises licence fails to comply with paragraph (1), the premises licence shall expire and, in accordance with Article 10, shall not be valid.

#### **18 Variation of premises licence**

- (1) A holder of a premises licence may, in the form approved by the Licensing Authority, make an application to the Licensing Authority to vary the terms of the premises licence, except where the variation is for a change of the holder of the premises licence or the location of the licensed premises.
- (2) The process for determining an application made under paragraph (1) for a variation of the terms of a premises licence, if the Licensing Authority, in accordance with the statement of licensing policy, is satisfied that the variation required is –
  - (a) a minor variation, shall be the process provided in the statement of licensing policy for fast-tracking such applications for minor variations under Article 5(2)(d); or

- (b) a major variation, shall be the same as that provided under this Part for determining an application for a premises licence.
- (3) Where a change of the holder of a premises licence or the location of the licensed premises is required, the holder of the premises licence shall apply for a new premises licence in accordance with this Part.
- (4) Where the terms of a licence are varied under this Article, the holder of premises the licence shall pay the prescribed licence variation fee.

## **19 Surrender of premises licence**

A holder of a premises licence may surrender the premises licence by submitting a notice in writing to the Licensing Authority together with –

- (a) any certified hard copy of the premises licence received under Article 11(2); or
- (b) if it is not possible to submit the certified hard copy of the premises licence to the Licensing Authority under paragraph (a), an explanation as to why the certified hard copy of the premises licence has not been submitted.

## **20 Temporary premises licence**

- (1) A person may make an application for a temporary premises licence in respect of premises or a designated area within premises –
  - (a) in which an event is being held; and
  - (b) in respect of which there is no premises licence.
- (2) Subject to paragraph (3), the provisions of this Part except Articles 10, 17 and 21 shall apply in respect of a temporary premises licence as if it were a premises licence.
- (3) A temporary premises licence shall, subject to its variation, suspension, or revocation under Article 14, or its surrender under Article 19, be valid for the period specified in the temporary premises licence and shall expire at the end of that period unless extended by the Licensing Authority on application made to it by the holder of the temporary premises licence.
- (4) The fee payable on the grant of a temporary premises licence shall be prescribed.
- (5) The States may by Regulations make further provision for a temporary premises licence.

## **21 Provisional premises licence**

- (1) A person may apply for a provisional premises licence in respect of any premises intended to be constructed, renovated or adapted, or in the course of construction, renovation or adaptation, for the purposes of selling intoxicating liquor.

- (2) Subject to paragraph (3), the provisions of this Part except Articles 10, 12, 13, 17 and 20 shall apply in respect of a provisional premises licence as if it were a premises licence.
- (3) A provisional premises licence shall, subject to its variation, suspension or revocation under Article 14, or its surrender under Article 19, be valid for a period of 2 years from the date on which it granted.
- (4) The fee payable on the grant of a provisional premises licence shall be prescribed.
- (5) When the work of construction, renovation or adaptation of premises in respect of a provisional premises licence has been completed, the Licensing Authority shall, where satisfied that the holder of the premises licence has complied with the terms of the provisional premises licence, grant a premises licence in respect of the premises in accordance with Article 9(5) and (6).
- (6) The States may by Regulations make further provision for provisional premises licences.

## **PART 4**

### **ENFORCEMENT**

#### **22 Power to enter premises**

- (1) A police officer may, at any reasonable time, enter any licensed premises and make such enquiries and take such steps as the police officer thinks necessary in order to ensure that the provisions of this Law are being complied with.
- (2) A police officer may enter any licensed premises or other premises in which the police officer has reason to believe that an offence against this Law is being or has been committed and may inspect and make such enquiries and take such steps as the police officer thinks necessary in order to ensure that the provisions of this Law are being complied with.
- (3) A member of the Fire and Rescue Service may, at any reasonable time, enter and inspect any licensed premises or other premises adjacent to licensed premises, and make such enquiries and take such steps as the member thinks necessary, if the member has reason to believe that the licensed premises is at risk of a fire, or might be put at risk of a fire in the event of a fire in the adjacent property.

#### **23 Closure order**

- (1) A closure order in respect of any licensed premises may be made by –
  - (a) a States police officer of the rank of inspector or higher or any other States police officer with the approval of a States police officer of the rank of inspector or higher; or
  - (b) a Centenier of the parish concerned,

if he or she reasonably believes that there is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the licensed premises and that the closure of the licensed premises is necessary in the interests of public safety.

- (2) In determining whether to make a closure order in respect of any premises, a States police officer or a Centenier of the parish concerned shall have regard, in particular, to the conduct of each appropriate person in relation to the disorder.
- (3) A States police officer intending to make a closure order shall, as far as is reasonably practicable, give notice of that intention to a Centenier of the parish concerned and a Centenier intending to make a closure order shall give notice of that intention to the States Police Force.
- (4) A closure order must –
  - (a) be served in writing on the holder of the licence, the designated licensee or an authorized person, or in their absence, any employee of the holder of the licence;
  - (b) specify the licensed premises to which it relates;
  - (c) specify the period for which the licensed premises is to be closed;
  - (d) specify the grounds on which the closure order is made.
- (5) A closure order in respect of any licensed premises comes into force at the time the States police officer or Centenier making the closure order serves it on the person referred to in paragraph (4)(a).
- (6) A States police officer or a Centenier who issues a closure order may, by notice in writing to the holder of the licence, the designated licensee or the authorized person, revoke the closure order before its expiry if the States police officer or Centenier determines that the closure is no longer necessary in the interests of public safety.
- (7) A States police officer revoking a closure order under paragraph (6) shall, as far as is reasonably practicable, give notice of the revocation to a Centenier of the parish concerned and a Centenier revoking a closure order under paragraph (6) shall give notice of the revocation to the States Police Force.
- (8) A holder of a licence, a designated licensee or an authorized person who permits the licensed premises to be open in contravention of a closure order is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (9) A police officer or a Centenier who issues a closure order shall give notice in writing of the closure order and any relevant details of the service of the order to the Minister for Home Affairs who shall determine whether, in the interest of public safety, the closure order should continue in force or be extended by Minister for Home Affairs for a further period not exceeding 7 days or revoked.
- (10) Where a closure order is extended for a further period or revoked under paragraph (9) the Minister shall serve notice of the extension or revocation to the holder of the licence, the designated licensee or an

authorized person, or in their absence, any employee of the holder of the licence.

(11) In this Article –

“appropriate person” means the holder of the licence, the designated licensee, an authorized person and an employee of the holder of the licence;

“closure order” means an order requiring the licensed premises specified in the order to be closed and prohibiting the operation of the licensed premises and the offer for sale or sale of intoxicating liquor in the licensed premises for a period not exceeding 24 hours or any further period of extension under paragraph (9) beginning with the coming into force of the closure order.

## **24 Proof of sale or consumption of intoxicating liquor**

- (1) Evidence that a transaction in the nature of a sale of intoxicating liquor took place shall, in any proceedings relating to an offence under this Law, be evidence of the sale of the liquor without proof that money passed.
- (2) Evidence that consumption of intoxicating liquor was about to take place shall, in any proceedings relating to an offence under this Law, be evidence of the consumption of intoxicating liquor without proof of actual consumption.
- (3) Evidence that any person, other than the occupier of the licensed premises or a person employed in the licensed premises, consumed or intended to consume intoxicating liquor in the licensed premises shall be evidence that the liquor was sold by or on behalf of the holder of the licence to that person.

## **25 Obligation to provide the Attorney General with information and submission of matters by the Attorney General**

- (1) The Licensing Authority shall, at the request of the Attorney General, provide the Attorney General with any of the following documents –
  - (a) a list of applications for licences;
  - (b) any application for a licence; or
  - (c) any report provided by an applicant in respect of a licence;
  - (d) a copy of any licence;
  - (e) any written communication between a holder of a licence and the Licensing Authority; or
  - (f) any application for approval of a designated licensee.
- (2) A Connétable shall, at the request of the Attorney General, provide the Attorney General with any of the following documents –
  - (a) any report commissioned by the Connétable in respect of an application for a licence; or
  - (b) the recommendation of the Connétable in respect of any application for a licence.



- (3) Where the Attorney General is of the opinion that any matter relating to a licence should be referred to the Licensing Authority, the Attorney General may submit such matter to the Licensing Authority and the Licensing Authority may review the licence in accordance with Article 14.

## **26 Duty of Connétable to report convictions**

A Connétable shall keep a register of the particulars of every conviction relating to licensed premises in his or her parish and shall submit such particulars to the Licensing Authority as soon as practicable and as otherwise requested by the Licensing Authority.

## **PART 5**

### **OFFENCES AND PENALTIES**

## **27 Prohibition on selling intoxicating liquor**

- (1) Subject to Articles 39 and 40, a person shall not sell intoxicating liquor unless –
  - (a) there is a valid premises licence or temporary premises licence in place for the premises or the area within the premises from which the intoxicating liquor is being offered for sale or is being sold; and
  - (b) the licensed premises is operated by an individual who is a designated licensee.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term of 12 months and to a fine.
- (3) On conviction of any person for an offence under this Article, the court before which the person is sentenced may order all intoxicating liquor found in that person's possession and the container containing the intoxicating liquor to be forfeited.
- (4) For the purposes of this Article, a person who by way of business stores intoxicating liquor for subsequent delivery within Jersey following the placing of an order with that person or with the consignor of the intoxicating liquor or the person's agent, shall be deemed to sell intoxicating liquor.

## **28 Serving or delivering intoxicating liquor to or for consumption by persons under 18**

- (1) Subject to paragraph (5), the holder of a licence shall not on the licensed premises sell intoxicating liquor to a person under the age of 18 years or allow a person under that age to consume intoxicating liquor on the licensed premises.

- 
- (2) Subject to paragraph (5), a person under the age of 18 years shall not on the licensed premises buy intoxicating liquor or consume intoxicating liquor on such licensed premises.
  - (3) Subject to paragraph (5), a person shall not on any licensed premises buy or attempt to buy intoxicating liquor on behalf of a person under the age of 18 years unless the person who buys or attempts to buy the intoxicating liquor –
    - (a) is a parent or guardian of the person under the age of 18 years; or
    - (b) has attained the age of 18 years and has the consent of the parent or guardian of the person under the age of 18 years to purchase the liquor on behalf of the person under the age of 18 years.
  - (4) Subject to paragraph (5), a person shall not buy or attempt to buy intoxicating liquor for consumption on any licensed premises by a person under the age of 18 years.
  - (5) Paragraphs (1), (2), (3) and (4) shall not prohibit the serving of intoxicating liquor to a person under the age of 18 years in such circumstances as may be specified in a premises licence.
  - (6) Subject to paragraph (8), the holder of a licence shall not deliver, or allow any person to deliver, to a person under the age of 18 years intoxicating liquor sold on the licensed premises for consumption off the licensed premises except where the delivery is made at the residence or working place of the purchaser.
  - (7) Subject to paragraph (8), a person shall not send a person under the age of 18 years for the purpose of obtaining intoxicating liquor sold or to be sold on any licensed premises for consumption off the licensed premises, whether the liquor is to be obtained from the licensed premises or other premises from which it is delivered in pursuance of the sale.
  - (8) Paragraphs (6) and (7) shall not apply where the person under the age of 18 years is a member of the family, or is an employee, of the holder of the licence and is employed to deliver intoxicating liquor and is acting in that capacity.
  - (9) A person who contravenes paragraph (1), (2), (3), (4), (6) or (7) shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.
  - (10) In any proceedings for an offence under this Article, it shall be a defence for the defendant to prove that the defendant did not know, and could not with reasonable enquiry have ascertained, that the person was under the age of 18 years.

## **29 Non-compliance with terms of licence**

A holder of a licence, who either by himself or herself, or by any employee or agent, contravenes any condition or restriction on or subject to which the licence was granted, or sells intoxicating liquor otherwise than as he or she is authorized by the licence, shall be guilty of an offence.

**30 Purchase of intoxicating liquor outside hours**

A person who purchases, on any licensed premises, any intoxicating liquor outside the hours during which such liquor may under the provisions of this Law be sold to the person on the licensed premises shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

**31 Removal of intoxicating liquor sold for consumption on licensed premises**

A person who takes from any licensed premises intoxicating liquor sold for consumption on the premises shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

**32 Drunk or disorderly behaviour on licensed premises**

A person who is found drunk or disorderly on any licensed premises shall be guilty of an offence.

**33 Obstruction of fire officer**

A person who wilfully obstructs or interferes with a member of the Fire and Rescue Service in the exercise of any of his or her powers under Article 22(3) shall be guilty of an offence.

**34 False statement or information**

A person who for any purpose under this Law knowingly makes any statement or gives any information which is false in a material particular, or produces any declaration or certificate knowing the same to be false in a material particular, shall be guilty of an offence.

**35 General penalty**

Any person guilty of an offence against this Law for which no special penalty is provided shall be liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.

**36 False statements made to licence holders**

- (1) Where proceedings for an offence against this Law are taken against the holder of a licence, he or she shall not be liable to conviction if he or she proves that the offence was committed as a result of a false statement having been made by some other person to him or her, or his or her employee or agent, and that it was reasonable in the circumstances for the holder of the licence not to suspect that the statement was false.
- (2) A person who, by making a false statement, renders the holder of a licence liable to proceedings for an offence against this Law, shall, whether or not the holder of the licence is convicted of the offence, be guilty of an offence and liable to a fine of level 3 on the standard scale.

**37 Criminal liability of the designated licensee, employees, agents**

Where an offence for which the holder of a licence is liable under this Law has been committed by –

- (a) the designated licensee; or
- (b) the holder's employee or agent,

the designated licensee, employee or agent, as well as the holder of the licence, as the case may be, shall also be guilty of the offence and liable in the same manner as the holder of the licence to the penalty provided for that offence.

**38 Criminal liability of partners, directors and other officers**

- (1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate, is proved to have been committed with the consent or connivance of –

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

## PART 6

### MISCELLANEOUS

**39 Exemptions**

Nothing in this Law shall make unlawful –

- (a) the sale of medicines containing alcohol by –
  - (i) medical practitioners, or
  - (ii) persons lawfully carrying on retail pharmacy businesses within the meaning of Article 68(3) of the Medicines (Jersey) Law 1995<sup>12</sup>;
- (b) the sale by auction of intoxicating liquor by an auctioneer established in Jersey, so long as the liquor is not the property of the auctioneer and has not been imported into Jersey for the purpose of being sold by auction;
- (c) the sale of intoxicating liquor to the holder of a premises licence by a person, or the agent of a person, who has no place of business within Jersey;
- (d) the sale of intoxicating liquor on an aircraft that is engaged in transporting passengers to and from Jersey whilst in flight;

- (e) the sale of intoxicating liquor on a vessel that is engaged in transporting passengers to and from Jersey whilst outside of the harbour;
- (f) the sale of intoxicating liquor on an aircraft or vessel for consumption on board the aircraft or vessel if the aircraft or vessel is employed for the carriage of passengers and is being flown or navigated from a place in Jersey to another such place or from and to the same place in Jersey on the same day; or
- (g) the sale of intoxicating liquor on an aircraft or a vessel for consumption on board the aircraft or vessel that is transiting through Jersey's airspace and territorial seas whilst engaged in transporting passengers to and from places outside of Jersey.

#### **40 Special permits**

- (1) If having regard to the statement of licensing policy referred to in Article 5 the Licensing Authority thinks fit, it may in accordance with paragraphs (4) and (5) –
  - (a) grant to a holder of a premises licence who makes an application to the Licensing Authority a special permit –
    - (i) varying any term of the premises licence,
    - (ii) authorizing the holder of the premises licence to sell intoxicating liquor by retail for consumption on the licensed premises and to keep the licensed premises open during the hours (being hours outside the hours authorized by the premises licence) specified in the special permit, or
    - (iii) authorizing the holder of the premises licence to sell intoxicating liquor by retail at an event during the hours and at the place specified in the special permit for consumption during those hours and at that place; or
  - (b) grant to all holders of premises licences falling within a particular class of premises licence a special permit authorizing them to benefit, over a period not exceeding 7 days, from extended opening hours to be specified in the special permit.
- (2) An application for a special permit under paragraph (1)(a) shall be in the form approved by the Licensing Authority.
- (3) Where an application is made by the holder of a premises licence, the person who will be responsible for the event shall be specified in the application.
- (4) Where the Licensing Authority –
  - (a) is satisfied that it may grant the special permit applied for, the Licensing Authority may grant the special permit; or
  - (b) is not satisfied that it is appropriate to grant the special permit applied for, the Licensing Authority shall refuse to grant the special permit.
- (5) A special permit under this Article may be granted subject to such conditions and restrictions as the Licensing Authority may think fit.

- (6) The Licensing Authority shall give notice in writing of its decision under paragraph (4) to the applicant and, in the case of a decision under paragraph (4)(b), shall, in the notice, give reasons for its decision and inform the applicant of the applicant's right to a redetermination under Article 42.
- (7) Where a special permit is granted under this Article, the Licensing Authority shall issue the special permit to the applicant on payment of the prescribed special permit fee.
- (8) If the person to whom a special permit has been granted under this Article contravenes any condition or restriction subject to which the special permit was granted, the person shall be guilty of an offence.

#### **41 Accreditation**

- (1) The Minister may, after consultation with the Alcohol Licensing Policy Group, accredit a person to provide training, examination and certification for –
  - (a) the door staff of licensed premises;
  - (b) the employees of the holder of a licence; or
  - (c) the holder of a licence.
- (2) An accreditation under paragraph (1) shall be in writing and shall specify the type of training, examination and certification that the accredited person may provide.
- (3) An accredited person shall issue a certificate to a person who has received training or passed an examination.
- (4) An accredited person shall keep an up to date record of the persons who have been issued a certificate under paragraph (3) and shall provide such record to the Licensing Authority, the Connétable of each parish and the States Police Force.
- (5) An accredited person may charge fees for training, examination and certification.
- (6) The States may make Regulations to provide for further matters concerning accreditation of persons referred to in paragraph (1).
- (7) In this Article “door staff of licensed premises” means a person responsible for security, protection and screening the suitability of people entering licensed premises, or for conflict management on licensed premises.

#### **42 Redetermination**

- (1) An applicant for a licence or special permit or a holder of a licence or special permit who is aggrieved by an initial decision may make a request for a redetermination of the initial decision by the Licensing Authority.
- (2) A redetermination of an initial decision shall be heard by a review panel referred to in Article 4(11).

- (3) A request for redetermination under paragraph (1) must be submitted to the Licensing Authority within 21 days after the date of the initial decision and must contain –
  - (a) the applicant's name and address for correspondence;
  - (b) the reference number of the application which was the subject of the initial decision in question; and
  - (c) the grounds on which the request is made including, where relevant, the reasons why the applicant disagrees with the initial decision or with any reasons for the initial decision.
- (4) The review panel referred to in paragraph (2) shall redetermine the initial decision as soon as reasonably practicable after a request is submitted under paragraph (3) and the Licensing Authority shall give notice in writing to the applicant of the decision on redetermination and the reasons for the decision.
- (5) The decision on redetermination referred to in paragraph (4) shall be substituted for the initial decision of the Licensing Authority.

#### **43 Appeal**

- (1) An applicant for a licence or special permit or a holder of a licence or special permit who is aggrieved by –
  - (a) any decision of a police officer, a Centenier or the Minister for Home Affairs made under Article 23; or
  - (b) a decision on redetermination under Article 42,may appeal to the Court against that decision.
- (2) An appeal under this Article may be brought within 28 days after the date the applicant for, or a holder of, the licence or special permit is notified of the decision in writing, or within such further time as the Court allows.
- (3) An appeal under this Article may be made only on the ground that the decision of the Authority, the Commission or other person was unreasonable having regard to all the circumstances of the case.
- (4) The Court shall consider the submissions made to the Licensing Authority as well as any further submissions from parties who have exercised the right or duty to address the Licensing Authority or parish assembly under this Law in respect of the decision against which the appeal is brought, as the case may be.
- (5) On hearing an appeal under this Article against a decision referred to in paragraph (1), the Court may –
  - (a) confirm the decision wholly or in part;
  - (b) vary the decision;
  - (c) quash the decision wholly or in part;
  - (d) remit the decision, wholly or in part, to the person who made the decision for it to be retaken; or
  - (e) make such other order as it thinks fit.

**44 Death, incapacity, bankruptcy etc. of holder of licence**

Where –

- (a) the holder of a licence who is an individual –
  - (i) dies or appoints an attorney without whom the holder of the licence may not transact in matters real or personal,
  - (ii) has a curator appointed to manage and administer the property and affairs of the holder of the licence, or
  - (iii) becomes incapable, by reason of physical or mental illness or disability or from any other cause, of having responsibility for the licensed premises; or
- (b) the holder of the licence becomes bankrupt or otherwise insolvent,

the Court may appoint the Viscount as the holder of the licence or, if no such appointment is made by Court, the Licensing Authority may assign the licence to any other fit and proper person.

**45 Limitation of liability**

- (1) A person or body to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorized by or under, this Law or any other enactment unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to the Licensing Authority, any member of the Licensing Authority or any person who is, or is acting as, an officer, employee or agent of the Licensing Authority or who is performing any duty or exercising any power on behalf of the Licensing Authority or under the control of the Licensing Authority.
- (3) The limitation of liability under this Article does not apply 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>13</sup>.

**46 Regulations**

- (1) The States may by Regulations make any provision as the States think fit for the purposes of carrying this Law into effect.
- (2) Without prejudice to the generality of paragraph (1), Regulations made under this Article may –
  - (a) provide for the charging of fees by the States Police Force, the Fire and Rescue Service and the department of the States responsible for environmental health for reports required under this Law or the Regulations and for the amount of such fees;
  - (b) create offences for contravention of the Regulations and specify penalties for such offences not exceeding imprisonment for 2 years and a fine;



- (c) make such consequential, incidental, supplementary and transitional provisions as may appear to be necessary or expedient, including provisions making amendments to any other enactment as appear to the States to be expedient –
  - (i) for the general purposes, or any particular purpose, of this Law,
  - (ii) in consequence of any provision made by or under this Law, or
  - (iii) for giving full effect to this Law or any provision of it.

#### **47 Orders**

The Minister may by Order make provision –

- (a) prescribing any matter that is to be prescribed under this Law;
- (b) as to the manner of filing of applications and other documents.

#### **48 Power of States to amend Law**

- (1) The powers conferred upon the States by the Loi (1833) Sur La Conduite des Taverniers<sup>14</sup>, to amend legislation relating to the conduct of taverners, the sale of wines and liquors and the grant of licences are confirmed and, accordingly, the States may by Regulations make such amendments to this Law as may from time to time be deemed expedient.
- (2) The power to make Regulations under this Article shall not be affected by any other power to make Regulations under this Law.

#### **49 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948<sup>15</sup> shall include a power to make Rules for the purposes of this Law.

#### **50 Repeal of Licensing (Jersey) Law 1974 and abolition of Assembly of Governor, Bailiff and Jurats**

- (1) The Licensing (Jersey) Law 1974<sup>16</sup> is repealed.
- (2) The Assembly of Governor, Bailiff and Jurats is abolished.

#### **51 Enactments amended**

The enactments specified in the first column of the table in the Schedule shall be amended as specified in the second column of that table.

#### **52 Citation and commencement**

This Law may be cited as the Liquor Licensing (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

**SCHEDULE**

(Article 51)

**ENACTMENTS AMENDED**

<b>Name of enactment</b>	<b>Amendment</b>
Children (Jersey) Law 2002 <sup>17</sup>	In Article 50(2)(b) for the words “Licensing (Jersey) Law 1974” there shall be substituted the words “Liquor Licensing (Jersey) Law 201- <sup>18</sup> ”.
Control of Housing and Work (Jersey) Law 2012 <sup>19</sup>	In Article 22, in the definition “intoxicating liquor” for the words “Licensing (Jersey) Law 1974” there shall be substituted the words “Liquor Licensing (Jersey) Law 201- <sup>20</sup> ”.
Food Safety (Jersey) Law 1966 <sup>21</sup>	In Article 33(7), for the words “Licensing (Jersey) Law 1974” there shall be substituted the words “Liquor Licensing (Jersey) Law 201- <sup>22</sup> ”.
Liquor (Restrictions on Consumption) (Jersey) Law 2005 <sup>23</sup>	In Article 1(1), in the definitions “liquor” and “public place” for the words “Article 1(1) of the Licensing (Jersey) Law 1974” there shall be substituted the words “Article 1 of the Liquor Licensing (Jersey) Law 201- <sup>24</sup> ”.
Licensed Premises (Exclusion of Certain Persons) (Jersey) Law 1998 <sup>25</sup>	In Article 1, for the definition “licensed premises” there shall be substituted the following definition – “ ‘licensed premises’ has the meaning given by Article 1 of Liquor Licensing (Jersey) Law 201- <sup>26</sup> ”.
Loi (1921) sur l’Assemblée des Gouverneur, Bailli et Jurés (Transfert de Pouvoirs, etc.) <sup>27</sup>	Article 5 shall be repealed.
Places of Refreshment (Jersey) Law 1967 <sup>28</sup>	In Article 3(a), for the words “Licensing (Jersey) Law 1974” there shall be substituted the words “Liquor Licensing (Jersey) Law 201- <sup>29</sup> ”.
Price Indicators (Jersey) Regulations 2008 <sup>30</sup>	In Regulation 2(3)(a), for the words “premises licensed under the Licensing (Jersey) Law 1974” there shall be substituted the words “licensed premises within the meaning of the Liquor Licensing (Jersey) Law 201- <sup>31</sup> ”.
Rehabilitation of Offenders (Exceptions) (Jersey) Regulations 2002 <sup>32</sup>	For Regulation 13 there shall be substituted the following Regulation – “ <b>13 Liquor licensing</b> (1) Article 10(1) of the Law shall not apply when a question is asked in

	<p>order to assess the suitability of the person to whom the question relates –</p> <p>(a) to be granted a licence under the 201- Law; or</p> <p>(b) to be a designated licensee under the 201- Law.</p> <p>(2) Article 7 of the Law shall not apply to any proceedings in respect of –</p> <p>(a) the refusal of, imposition of conditions upon or variation of any licence or in respect of the grant of a licence of a category or class different from that applied for under the 201- Law; or</p> <p>(b) the refusal of approval of a person as a designated licensee under the 201- Law.</p> <p>(3) In this Regulation, ‘201- Law’ means the Liquor Licensing (Jersey) Law 201-<sup>33</sup> and ‘licence’ and ‘designated licensee’ have the same meaning as in that Law.”.</p>
Restriction on Smoking (Jersey) Law 1973 <sup>34</sup>	<p>In Article A1 –</p> <p>(a) the definition “1974 Law” shall be deleted;</p> <p>(b) after the definition “2005 Law” there shall be inserted the following definition – “ ‘201- Law’ means the Liquor Licensing (Jersey) Law 201-<sup>35</sup>;”;</p> <p>(c) in the definitions “licence” and “licensed premises” for the word “1974” there shall be substituted the word “201-”.</p>
Royal Court (Jersey) Law 1948 <sup>36</sup>	Article 3(l) shall be deleted and Article 21 shall be repealed.
Shops (Regulation of Opening) (Jersey) Regulations 2011 <sup>37</sup>	In Schedule 1, in paragraph 1 for the words “an on-licence granted under the Licensing (Jersey) Law 1974” there shall be substituted the words “a premises licence granted under the Liquor Licensing (Jersey) Law 201- <sup>38</sup> ”.
Stamp Duties and Fees (Jersey) Law 1998 <sup>39</sup>	In the Schedule, item 28 shall be deleted.
Weights and Measures (Jersey) Law 1967 <sup>40</sup>	1. In Article 1(1), in the definition “intoxicating liquor” for the words “Licensing (Jersey) Law 1974” there shall be substituted the words “Liquor Licensing

	<p>(Jersey) Law 201-41”.</p> <p>2. In Part 6 of Schedule 3, in paragraph 5 for the words “of the fifth category is held under the Licensing (Jersey) Law 1974” there shall be substituted the words “under the Liquor Licensing (Jersey) Law 201-”.</p>
<p>Weights and Measures (Measuring Instruments) (Intoxicating Liquor) (Jersey) Order 1975<sup>42</sup></p>	<p>In Article 1 –</p> <p>(a) before the definition “Law” there shall be inserted the following definition – “ ‘designated licensee has the meaning given by Article 1 of the Liquor Licensing (Jersey) Law 201-<sup>43</sup>;”;</p> <p>(b) for the definition “licensed premises” there shall be substituted the following definition – “ ‘licensed premises’ has the meaning given by Article 1 of the Liquor Licensing (Jersey) Law 201-;”;</p> <p>(c) in the definition “manager”, for the words “the licensee,” there shall be substituted the words “the holder of the licence or designated licensee,”.</p>

---

1	<i>chapter 05.255</i>
2	<i>chapter 23.175</i>
3	<i>chapter 24.660</i>
4	<i>chapter 16.325</i>
5	<i>chapter 20.875</i>
6	<i>chapter 20.600</i>
7	<i>chapter 24.950</i>
8	<i>chapter 23.820</i>
9	<i>chapter 16.325</i>
10	<i>chapter 16.800</i>
11	<i>chapter 24.950</i>
12	<i>chapter 20.625</i>
13	<i>chapter 15.350</i>
14	<i>L.1/1833</i>
15	<i>chapter 07.770</i>
16	<i>L.21/1974 (chapter 11.450)</i>
17	<i>chapter 12.200</i>
18	<i>P.103/2017</i>
19	<i>chapter 18.150</i>
20	<i>P.103/2017</i>
21	<i>chapter 20.225</i>
22	<i>P.103/2017</i>
23	<i>chapter 23.245</i>
24	<i>P.103/2017</i>
25	<i>chapter 08.660</i>
26	<i>P.103/2017</i>
27	<i>chapter 16.050</i>
28	<i>chapter 11.600</i>
29	<i>P.103/2017</i>
30	<i>chapter 05.610.50</i>
31	<i>P.103/2017</i>
32	<i>chapter 08.840.50</i>
33	<i>P.103/2017</i>
34	<i>chapter 20.825</i>
35	<i>P.103/2017</i>
36	<i>chapter 07.770</i>
37	<i>chapter 05.775.50</i>
38	<i>P.103/2017</i>
39	<i>chapter 24.960</i>
40	<i>chapter 05.925</i>
41	<i>P.103/2017</i>
42	<i>chapter 05.925.45</i>
43	<i>P.103/2017</i>