

PROJET DE LOI

ENTITLED

The Regulation of Production of Alcoholic Products (Sark) Law, 2012 *

[CONSOLIDATED TEXT]

NOTE

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* No. VIII of 2013; as amended by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015 (Sark Ordinance No. II of 2015); the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018 (Sark Ordinance No. XIII of 2018). See also the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 (Ordres en Conseil Vol. XXIII, p. 573); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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The Regulation of Production of Alcoholic Products (Sark) Law, 2012

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 6th October 2010 and 3rd October, 2012 have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

PART I

PROHIBITION ON PRODUCTION AND MANUFACTURE EXCEPT UNDER LICENCE

Prohibition on production or manufacture.

1. Subject to the provisions of this Law, no person shall produce or manufacture an alcoholic product except under the authority, and in accordance with the conditions, of a production licence.

Application for production licence.

2. (1) A person wishing to apply for a production licence shall apply to the Committee in writing.

(2) An application under this section shall –

(a) contain a description of –

(i) the production or manufacturing process which

the applicant proposes to carry out or cause to be carried out, and

- (ii) the premises and equipment intended to be used by him for that purpose,
- (b) be accompanied by such fee as the Committee may by regulations prescribe, and
- (c) comply with any other requirements as to the form, manner and content of such application and any other information and documents to accompany such application as the Committee may by regulations prescribe,

and the Committee need not consider any purported application which does not comply with this subsection in every respect.

- (3) The Committee may require an applicant to –
 - (a) supply such information,
 - (b) produce such articles, and
 - (c) permit such investigations, examinations and tests,

as in the Committee's opinion may be necessary or expedient to enable it to determine the application.

(4) If the Committee carries out any investigation, examination or test under subsection (3), the Committee may require the applicant to pay a fee to the

Committee towards the reasonable expenses of that investigation, examination or test.

(5) An application under this section may be withdrawn by notice to the Committee at any time before it is determined.

(6) If the applicant does not comply fully with a requirement under subsection (3) or (4), the Committee may refuse to proceed with its consideration of the application.

NOTE

The following Regulations have been made under section 2:

Regulation of Production of Alcoholic Products (Sark) Regulations, 2017.

Publicity for applications.

3. (1) If so directed in writing by the Committee, an applicant for a licence shall cause a notice to be published –

- (a) in such form,
- (b) in such manner, and
- (c) for such period, commencing with the date of publication of the notice,

as the Committee may by resolution determine.

(2) The Committee shall, subject to subsection (3), make available for public inspection at such place, during such days and times and in such manner, as it may by resolution determine –

- (a) a copy of the applicant's notice required under subsection (1),
- (b) a copy of the application, and
- (c) a copy of any documents referred to in, or submitted in support of, the application,

and shall continue to make such documents so available until the application is withdrawn by the applicant or determined by the Committee.

(3) The Committee may, upon written request from the applicant, withhold information from the documents required to be made available for public inspection under subsection (2), if the Committee considers that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

Determination of applications.

4. (1) The Committee must, in determining an application for a licence, have regard to –

- (a) the need to protect human health,
- (b) the cumulative effects of the production or manufacturing process to which the application relates having particular regard to –
 - (i) the effects on human health,
 - (ii) the effects on the environment, and

(iii) the effects on the provision of any public services, and

(c) any objections, or other matters raised in relation, to the application and notified to the Committee, whether as a result of any publicity under section 3 or following consultation under section 5.

(2) The Committee may, in determining an application for a licence, take into account any matter which it considers appropriate.

Consultation.

5. (1) Before deciding whether or not to grant an application under section 2 the Committee may consult such person in relation to such matter arising in relation to that application as it thinks fit.

(2) The Committee must give the applicant opportunity to make representations to the Committee on any consultation responses made by any person consulted under subsection (1).

(3) The Committee may require in writing that any person consulted under subsection (1), makes representations to the Committee within a period of not less than 14 days starting from the date on which the Committee consulted that person.

(4) The Committee may require in writing that the applicant makes representations under subsection (2) within a period of not less than 14 days starting from the date on which it gave the applicant the opportunity to make such representations.

Grant or refusal of licence.

6. The Committee may, upon receipt of an application under section 2 from a person wishing to be licensed to carry out any production or manufacturing process –

- (a) grant the application unconditionally,
- (b) grant the production licence subject to such conditions as the Committee thinks fit, or
- (c) refuse the application.

Period of validity of licence.

7. A production licence may provide –

- (a) that it is to expire unless the production or manufacturing process which it authorises is begun within a specified period, and
- (b) that it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).

Conditions of licence.

8. The conditions that may be attached to a licence under section 6(b) may, without limitation, relate to –

- (a) the type of production or manufacturing process,
- (b) the dates and times, or periods, during which the production or manufacturing process may be carried out,

- (c) the premises in or at which the production or manufacturing process may be carried out or caused to be carried out,
- (d) the material or substance to be used in, or which is to be subjected to, the production or manufacturing process in question, and
- (e) the records or returns that must be kept or made by the licensee and the persons to whom copies of those records or returns must be provided.

Variation, revocation or suspension of licence and conditions.

9. (1) The Committee may vary a production licence and any conditions thereof on application by the holder of the licence or for other good cause.

(2) The Committee may, revoke or suspend a production licence and any conditions thereof if it appears to the Committee that there has been a contravention of its terms or conditions or of any provision of, or made under, this Law.

Surrender of production licence.

10. (1) A production licence may be surrendered by its holder to the Committee.

(2) An application to surrender a production licence shall be made to the Committee in writing and shall comply with any requirements the Committee may by regulations prescribe as to –

- (a) the form and manner of such application,

(b) the information and documents to accompany such application, and

(c) the fees to accompany such application,

and the Committee need not consider any purported application which does not comply with this subsection in every respect.

(3) Upon receipt of an application made in accordance with subsection (2) the Committee may require an applicant to –

(a) supply such information,

(b) produce such articles, and

(c) permit such investigations, examinations and tests,

as, in the Committee's opinion, may be necessary or expedient to enable it to determine the application.

(4) If the Committee carries out any investigation, examination or test under subsection (3), the Committee may require the applicant to pay a fee to the Committee towards the reasonable expenses of that investigation, examination or test.

(5) If the applicant does not comply fully with a requirement under subsection (3) or (4), the Committee may refuse to proceed with its consideration of the application.

NOTE

The following Regulations have been made under section 10:

Regulation of Production of Alcoholic Products (Sark) Regulations, 2017.

Effect of licence.

11. The grant of a licence under this Law does not absolve its holder from the need to obtain any other licence, permission or consent required, or from any obligation imposed on him, by or under any other enactment for the time being in force.

Power to exempt by Ordinance.

12. The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in order to exempt any production or manufacturing process from the prohibition under section 1.

NOTE

The following Ordinance has been made under section 12:

Regulation of Production of Alcoholic Products (Commencement and Exemptions) (Sark) Ordinance, 2018.

PART II

POWER TO MAKE ORDINANCES CONCERNING INVESTIGATION

Power to make Ordinances concerning investigation.

13. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient relating to the investigation of the production or manufacture of any alcoholic product and for matters ancillary thereto.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for, or

concerning, all or any of the following matters –

- (a) the obtaining of information and documents –
 - (i) by the Committee, or
 - (ii) any person authorised by the Committee,from such person as may be specified in an Ordinance,
- (b) the appointment of a person to investigate and report to the Committee on the suitability of –
 - (i) any applicant for, or holder of, a production licence to produce or manufacture any alcoholic product, or
 - (ii) any premises, equipment, material or substance used, or intended to be used, by any person for, or in connection with, the production or manufacture of any alcoholic product,
- (c) the powers that may be exercised by any person appointed to investigate and report to the Committee under this Part,
- (d) the granting of a warrant by the Court of the Seneschal,
- (e) the powers that may be exercised under a warrant granted under this Part and the persons who may exercise the powers,

- (f) the costs, fees and expenses of any investigation and the persons to whom, and by whom, the costs fees and expenses are to be paid, or are payable,
 - (g) legal professional privilege, liens and duties of confidentiality,
 - (h) subject to subsection (3), the creation, trial (summarily or on indictment) and punishment of offences involving or relating to –
 - (i) a failure to comply with any requirement imposed on any person under this Part,
 - (ii) the obstruction, or failure to comply with any requirement, of a person appointed to investigate and report to the Committee under this Part,
 - (iii) the obstruction, or failure to comply with any requirement, of a person exercising or purporting to exercise any power conferred by a warrant granted under this Part, and
 - (iv) the falsification, concealment, destruction or other disposal of documents,
- (3) An Ordinance under subsection (2)(h) may not –
- (a) provide for offences to be triable only on indictment,

- (b) authorise the imposition, on summary conviction of an offence, of –
 - (i) a term of imprisonment exceeding 1 month or
 - (ii) a fine exceeding level 5 on the Sark uniform scale, or
- (c) authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding two years.

PART III
APPEALS

Appeal to Court of the Seneschal against decisions of Committee.

- 14.** (1) A person aggrieved by a decision of the Committee –
- (a) to refuse an application by him for a licence,
 - (b) to impose a condition on a licence granted to him,
 - (c) to vary or refuse to vary the terms or conditions of a licence granted to him,
 - (d) to suspend or revoke his licence, or
 - (e) to refuse to accept the surrender of his licence,

may appeal to the Court of the Seneschal against the decision.

- (2) The grounds of an appeal under this section shall be that –
- (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.

- (3) An appeal under this section shall be instituted –
- (a) within a period of 28 days immediately following the date of the notice of the Committee's decision, and
 - (b) by summons served on the Chairman of the Committee stating the grounds and material facts on which the appellant relies.

(4) The Committee may, where an appeal under this section has been instituted, apply to the Court of the Seneschal, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may

direct), or

- (b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Court.

- (5) On an appeal under this section the Court of the Seneschal may

—

- (a) set the decision of the Committee aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Court thinks fit, or

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

(6) On an appeal under this section against a decision described in subsections (1)(b) to (d) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation or variation of the term, condition or notice in question pending the determination of the appeal.

Appeal to the Court of Appeal on question of law.

15. (1) An appeal from a decision of the Royal Court, made on an appeal from the Court of the Seneschal relating to a matter under this Law shall, with leave of the Royal Court or Court of Appeal, lie to the Court of Appeal on a question of law.

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

- (a) within a period of 28 days immediately following the

date of the decision of the Royal Court, and

(b) in such manner as rules of court may provide.

(3) Section 21 of the Court of Appeal (Guernsey) Law, 1961^a ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

PART IV OFFENCES

Contravention of section 1.

16. (1) A person who contravenes section 1 shall be guilty of an offence and shall be liable –

- (a) in the case of a first offence, to a fine not exceeding level 5 on the Sark uniform scale, or to imprisonment for a term not exceeding six months, or to both, and
- (b) in the case of a second or subsequent offence under the same provision, to a fine or to imprisonment for a term not exceeding 5 years, or to both.

(2) The court by which any person is convicted under this section, or any Ordinance made under this Law, may order anything produced to the court and shown to the satisfaction of the court to relate to the offence, including for the avoidance of doubt, any equipment used, or intended to be used, for the production or manufacture of any alcoholic product, to be forfeited and either destroyed or dealt

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

with in such other manner as the court may order.

Offences committed by bodies corporate and partnerships, etc.

17. (1) Where an offence under section 16(1), or any Ordinance made under this Law, is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Proceedings for an offence under section 16(1), or any Ordinance made under this Law, alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners, but without prejudice to any liability of the partners under subsection (5).

(4) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

(5) Where an offence under section 3(1), or any Ordinance made under this Law, is committed by a partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any partner or any person purporting to act in that capacity, he as well as the partnership is guilty of the offence and may be proceeded against and punished accordingly.

Defence of due diligence.

18. (1) In any proceedings for an offence under section 16(1), or any Ordinance made under this Law, it shall, subject to subsection (2), be a defence for the person charged to prove that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person shall not, without the leave of the court, be entitled to rely on that defence unless –

- (a) at least seven clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

PART V

POWER TO CHARGE IMPÔT BY ORDINANCE

Power to charge impôt by Ordinance.

19. (1) The Chief Pleas may by Ordinance –

- (a) charge impôt –
 - (i) upon such alcoholic product produced under the authority of a licence granted under section 1,

- (ii) at such rate,
- (iii) payable by such person,
- (iv) calculated –
 - (A) in such manner, and
 - (B) upon, or by reference to, such substance or thing,
- (v) collectable by such person, and
- (vi) subject to such reliefs and drawbacks and other matters, and
- (b) create such powers enabling the efficient and fair assessment, imposition and collection of any impôt so charged,

as may be specified in the Ordinance.

- (2) Impôt under this Law –
 - (a) shall be payable to, and
 - (b) may be recovered in the same manner as a civil debt due to,

the Chief Pleas.

NOTE

In accordance with the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, section 1(5), with effect from 1st October, 2004, any reference in this enactment to "impôt" shall be construed as a reference to excise duty.

Power to create offences involving impôt.

20. (1) Subject to subsection (2), the Chief Pleas may by Ordinance, make provision in relation to –

(a) the creation, trial (summarily or on indictment) and punishment of offences involving or relating to –

(i) the evasion of any liability for impôt, and

(ii) the obtaining of any amount by way of drawback, allowance, relief or repayment of any impôt which is not lawfully payable or allowable, and

(b) the forfeiture of any alcoholic product to which an offence relates.

(2) An Ordinance under subsection (1) may not –

(a) provide for offences to be triable only on indictment,

(b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment exceeding 1 month or a fine exceeding level 4 on the Sark uniform scale, or

a term of imprisonment exceeding 1 month in default of payment of a fine, or

- (c) authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding two years.

PART VI MISCELLANEOUS

General provisions as to Ordinances and regulations.

- 21. (1) Any Ordinance or regulation made under this Law –
 - (a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance or regulation under this Law may be exercised –
 - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and

- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Interpretation.

22. (1) In this Law –

"alcoholic product" includes –

- (a) any intoxicating liquor, and
- (b) any product, substance or thing incorporating any intoxicating liquor,

"Chief Pleas" means the Chief Pleas of Sark,

"Committee" means the [Sark Policy and Finance Committee] of the Chief Pleas,

"Court of Appeal" means the court established by the Court of

Appeal (Guernsey) Law, 1961,

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

"intoxicating liquor" has the meaning given by section 52(1) of the Liquor Licensing (General Provisions) (Sark) Ordinance, 1979^b,

"person" includes any body or authority,

"police officer" means a member of the salaried police force of the Island of Guernsey and includes the Constable and the Vingtenier,

"production licence" means a licence granted under section 6,

"public services" means services which are provided, or paid for, by the Chief Pleas,

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

(2) The Chief Pleas may by Ordinance amend subsection (1).

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law.

(4) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

^b Folio No. 57.

^c Ordres en Conseil Vol. XIII, p. 355.

extended or applied.

NOTES

In section 22, the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 3, with effect from 10th October, 2018.¹

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 1, with effect from 10th October, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.²

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Citation.

23. This Law may be cited as the Regulation of Production of Alcoholic Products (Sark) Law, 2012.

Commencement.

24. This Law shall come into force on the day appointed by Ordinance of the Chief Pleas; and different dates may be appointed for different provisions and for different purposes.

NOTE

The Law was brought into force on 30th January, 2018 by the Regulation of Production of Alcoholic Products (Commencement and Exemptions) (Sark) Ordinance, 2018, section 6(1), save for sections 1 and 16(1), brought into force on 1st May, 2018 by section 6(2) of the same Ordinance.

¹ These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015, section 2, Schedule, with effect from 21st January, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015, section 1, Schedule, with effect from 21st January, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance