

ORDER IN COUNCIL

**VIII
2003**

ratifying a Projet de Loi

ENTITLED

The Gambling (Sark) Law, 2002

(Registered on the Records of the Island of Guernsey
on the 14th April, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 14th day of April, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare and Michael John Tanguy, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court a copy of an Order of Her Majesty in Council dated the 27th day of February, 2003, approving and ratifying a Projet de Loi of the Chief Pleas of Sark entitled “The Gambling (Sark) Law, 2002”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island.
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Seneschal of Sark for registration on the records of that Islands.

At the Court at Buckingham Palace

The 27th day of February, 2003

PRESENT,

The Queen's Most Excellent Majesty in Council

THE FOLLOWING, report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"IN ACCORDANCE WITH YOUR MAJESTY'S General Order of Reference of the 22nd day of February 1952 the Committee have considered a Petition of the Chief Pleas of the Island of Sark:"

"That, in pursuance of their Resolution of 6th October, 1999, the Chief Pleas of the Island of Sark at a meeting on 2nd October, 2002 approved a Projet de Loi entitled "The Gambling (Sark) Law, 2002" That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction "The Gambling (Sark) Law, 2002" and to order that it shall have force of law in the Island of Sark."

"THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it."

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Sark; and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

A. K. Galloway

LAW NOT YET IN FORCE

PROJET DE LOI

ENTITLED

The Gambling (Sark) Law, 2002

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PROJET DE LOI

ENTITLED

The Gambling (Sark) Law, 2002

THE CHIEF PLEAS, in pursuance of their Resolution of the 6th day of October, 1999, 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

REGULATION OF GAMBLING

Lawfulness of gambling

General prohibition of gambling.

1. (1) Except as may be provided by the provisions of this Law or any Ordinance made under this Part, all forms of gambling are unlawful.

(2) A person shall not organise or in any way take part in unlawful gambling.

Power of Chief Pleas to make Ordinances in relation to gambling.

2. Subject to the provisions of this Part, Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient for making lawful such forms of gambling as may be specified in any such Ordinance, for regulating any such form of gambling and for matters ancillary thereto, for

prohibiting or regulating any form of advertising or publicity relating to any form of gambling and, without prejudice to the generality of the foregoing, they may, in particular, make provision in any such Ordinance for all or any of the following matters-

- (a) empowering the Commission or the Committee by regulations to prescribe conditions for the better conduct and control of, and for matters of administration in connection with, any form of gambling made lawful by Ordinance;
- (b) the fees and other charges to be made by Chief Pleas for the purposes of any such Ordinance;
- (c) the imposition of penalties in respect of any offence under this Part, being a contravention of any provision of any Ordinance made under this Part (provided that such penalties shall not exceed the penalties prescribed in section 9(1));
- (d) the licensing by the Commission or the Committee of persons to organise any form of gambling made lawful by Ordinance;
- (e) the investigation by the Commission or the Committee into the suitability of any applicant for, or holder of, a licence for the organisation of gambling, including the fees and other charges to be made by the Commission or the Committee for such investigation;
- (f) the grant, renewal, suspension or revocation by the Commission or the Committee of licences for the organisation of gambling;

- (g) the taking of steps by the Commission or the Committee falling short of suspension or revocation, which may include the imposition of financial penalties, in respect of any contravention of the terms of a licence for the organisation of gambling:

Provided that any financial penalty imposed shall not exceed the penalties prescribed by section 9(1);

- (h) enabling any applicant for, or holder of, a licence for the organisation of gambling to appeal from any decision of the Commission or the Committee refusing to grant or renew, suspending or revoking, or involving the taking of steps under paragraph (g) in respect of the contravention of the terms of, any such licence; and
- (h) generally for carrying this Part into effect.

Security given in respect of gambling deemed to have been given for illegal consideration.

3. Any note, bill, bond, charge or other security or conveyance whatsoever given, granted, drawn or entered into or executed by any person whatsoever where the whole or any part of the consideration for any such security or conveyance shall be for money or money's worth won in any gambling transaction, or for reimbursing or repaying any money knowingly lent or advanced for such gambling to any person gambling at such time and place shall be deemed to have been made, drawn, accepted, given or executed for an illegal consideration.

Gambling contracts to be void.

4. (1) Any contract or agreement, whether verbal or written, by way of gambling shall be void, and no action shall be brought or maintained for recovering any money or money's worth alleged to have been won in any gambling transaction, or any money or money's worth deposited in the hands of any person to await the event on which any gamble has been made:

Provided that this subsection shall not apply to any contribution or subscription, or agreement to contribute or subscribe, for or towards any plate, prize or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise.

(2) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement made void by subsection (1) or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or agreement, or in respect of any service in relation to any such contract or agreement, shall be void, and no action shall be brought or maintained to recover such sum of money.

Sales by lottery not actionable.

5. No action shall be brought or maintained to recover any land, goods or other thing whatsoever sold by means of any game, lottery or other means depending on, or to be determined by, chance or lot.

Gambling with strangers

Prohibition on gambling transactions with strangers.

6. (1) Subject to the provisions of subsection (2), no person shall, whether as principal or as servant or agent of any other person-

- (a) conduct any business in the course of which any gambling transaction is negotiated or entered into

with, or on behalf of, a stranger;

- (b) permit a stranger to participate in any form of gambling lawfully conducted, organised or promoted by that person or that other person, as the case may be.

(2) The provisions of subsection (1) shall not apply to-

- (a) the laying-off, by a person carrying on the business of bookmaker in Sark, of bets lawfully negotiated or entered into by him;
- (b) bets (including bets made by way of pool betting) negotiated or entered into by a stranger concerning the result of any form of race lawfully run in Sark;
- (c) the distribution by a licensed pool agent on behalf of a registered pool promoter who is the principal of such agent to persons in Sark relating to a pool betting competition promoted by such registered pool promoter, or to the collection by such agent of completed entry forms and entry fees from persons in Sark and despatch of such forms and fees to such registered promoter; or
- (d) a person authorised under and acting in accordance with an Ordinance made pursuant to subsection (3).

(3) Chief Pleas may by Ordinance prescribe circumstances in

which, conditions subject to which, the description of strangers with whom and the forms of gambling in relation to which a person may be authorised to engage in the activities described in subsection (1).

(4) Section 2 shall apply for the purposes of an Ordinance made under subsection (3) as if the reference in paragraph (a) to "any form of gambling made lawful by Ordinance" were a reference to "any gambling transactions with a stranger permitted by Ordinance".

(5) In this section "**stranger**" means a person who is not actually present in the Bailiwick, or, in the case of a lottery promoted by the States of Guernsey and the States of Jersey, is not actually present in the Channel Islands, and includes a body corporate whether incorporated in the Bailiwick or elsewhere.

Offences and penalties

Cheating to be an offence.

7. Any person who, by means of any fraud or unlawful device or practice in any gambling transaction, wins from any other person for himself or for any other person any money or money's worth, shall be guilty of an offence and shall be liable-

- (a) on summary conviction, to a fine not exceeding level 4 on the Sark uniform scale, or to imprisonment for a term not exceeding 6 months, or to both; and
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding five years, or to both.

Prohibition on inciting young persons to gamble.

8. (1) No person shall for the purpose of earning commission, reward or other profit send or cause to be sent, to a young person any circular, notice, advertisement, letter, telegram or other document which invites, or may reasonably be implied to invite the young person receiving it to enter or take any share or interest in any gambling transaction, or to apply to any person or at any place, with a view to obtaining advice or information for the purposes of gambling, or for information as to any race, fight, game, sport or other contingency on which any form of gambling is generally carried on.

(2) If any such circular, notice, advertisement, letter, telegram or other document as aforesaid, names or refers to anyone as a person to whom payment may be made, or from whom advice or information may be obtained, for the purpose of, or in relation to, gambling, the person so named or referred to shall be deemed to have sent, or caused to be sent, such document as aforesaid, unless he proves that he has not consented to be so named, and that he was not in any way party to, and was wholly ignorant of, the sending of such document.

(3) If any circular, notice, advertisement, letter, telegram or other document as aforesaid is sent to any person at any college, school or other place of education, and the person to whom such document is sent is a young person, the person sending the document, or causing it to be sent, shall be deemed to have known that the person to whom it was sent was a young person, unless he proves that he has reasonable grounds for believing such person to be eighteen years of age or over.

General offence and penalties.

9. (1) A person who contravenes any provision of this Part, or of any Ordinance made thereunder, shall be guilty of an offence under this Part and,

save where otherwise provided by this Part or by the Ordinance, shall be liable-

- (a) in the case of a first offence, to a fine not exceeding level 4 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 not exceeding twice level 4 on the Sark uniform scale, or to both imprisonment for a term not exceeding 12 months, or to both.
- (2) Where an offence under this Part is committed-
- (a) by a servant or agent of any other person; or
 - (b) except in a case to which sub-paragraph (c) applies, on any premises by a person other than the occupier or person having the management of the premises; or
 - (c) at or in connection with any event or any form of gambling by a person other than the person promoting, organising or conducting the event or the gambling;

the principal, or the occupier or the person having the management of the premises, or the person promoting, organising or conducting the event or the gambling, as the case may require, shall also be guilty of that offence:

(3) The court by which any person is convicted under this Part may order anything produced to the court and shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such

other manner as the court may order.

Offences by bodies corporate.

10. (1) Where an offence under this Part 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 that 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.

Defence of due diligence.

11. (1) In any proceedings for an offence under this Part, it shall, subject to subsection (1), 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.

Police powers and the obtaining of search warrants

Powers of officers of police.

12. (1) Where any officer of police has reasonable grounds for suspecting that any provision of this Part or of any Ordinance made thereunder is being, or has been, or is about to be, contravened in any place to which members of the public resort or have access, he may enter such place and may-

- (a) seize and remove any document, money or valuable thing, instrument or other thing whatsoever found in such place which he has reasonable cause for believing may be required as evidence for the purposes of proceedings in respect of any such contravention; and
- (b) arrest and, subject to subsection (2), search any person found on the premises whom he has reasonable cause to believe to be committing, or to have committed, any such contravention.

(2) A person arrested by virtue of subsection (1)(b) shall be searched only by a person of the same sex as the person arrested.

(3) A person shall not wilfully delay or obstruct an officer of police in the exercise of his powers under subsection (1), or fail to produce, when required by the officer of police to do so, or conceal or attempt to conceal, any document, money or valuable thing, instrument or other thing to which subsection

(1)(a) relates.

Powers of the Seneschal to grant warrant for entry in places to which the public does not have the right of access.

13. (1) If the Seneschal is satisfied by information on oath given by an officer of police that there is reasonable ground to believe that in any place to which the public does not have the right of access, any provision of this Part or of any Ordinance made thereunder is being, or has been, or is about to be, contravened, he may grant a warrant under his hand, by virtue whereof it shall be lawful for any officer of police who is named in the warrant at any time or times within one month from the date thereof, to enter, if need by force, any place specified in the warrant and there to do all or any of the acts set out in section 12(1)(a) and (b).

(2) A person arrested by virtue of subsection (1) shall be searched only by a person of the same sex as the person arrested.

(3) A person shall not wilfully delay or obstruct an officer of police in the exercise of his powers under subsection (1), or fail to produce, when required by the officer of police so to do, or conceal or attempt to conceal any document, money or valuable thing, instrument or other thing whatsoever to which section 12(1)(a) relates.

Savings in respect of Part I

Savings in respect of Part I.

14. (1) Nothing in this Part or in any Ordinance made thereunder shall apply to securities issued by the Chief Pleas, the States of Guernsey, the States of Alderney or by authority of Her Majesty's Government in the United Kingdom by reason of any use or proposed use of chance to select particular securities for

special benefits, if the terms of the issue provide that the amount subscribed is to be repayable in full in the case of all securities.

(2) Nothing in this Part or in any Ordinance made thereunder shall be taken to apply to the disposal by lot of any land, goods or other thing whatsoever under and in accordance with the law whether customary or enacted, of the Island of Sark.

(3) For the avoidance of doubt, nothing in this Part or in any Ordinance made thereunder shall be taken to render unlawful, void or unenforceable any otherwise lawful contract-

- (a) which is entered into by one or more of the parties thereto by the way of business, and
- (b) the making or performance of which by any party thereto involves-
 - (i) dealing in any way with an investment; or
 - (ii) making arrangements for another person to do deal in any way with an investment; or
 - (iii) offering or agreeing to deal, or to make such arrangements in relation to an investment.

(4) For the purpose of subsection (3) of this section "**investment**" means any corporeal or incorporeal property or right in the nature of an investment, whether or not a controlled investment within the meaning of the Protection of

Investors (Bailiwick of Guernsey) Law, 1987^a, and specifically includes all instruments, transactions, rights and interests of a type for the time being described in the First Schedule to this Law.

(5) Chief Pleas may from time to time by Ordinance amend the First Schedule to this Law so as to add any investment to, delete any investment from, or vary the description of any investment within, that Schedule.

PART II

SARK GAMBLING CONTROL COMMISSION

Establishment of Sark Gambling Control Commission, functions and status

Sark Gambling Control Commission.

15. (1) There is established by, and in accordance with this Law, a body known as the Sark Gambling Control Commission (" **the Commission**").

(2) The Commission is a body corporate with perpetual succession and a common seal, and is capable of suing and being sued in its corporate name.

(3) The provisions of the Second Schedule to this Law shall have effect with respect to the Commission.

Functions of the Commission.

16. (1) The Commission shall carry out such functions relating to the

^a Ordres en Conseil Vol. XXX, pp. 281 and 243; Orders in Council No. XII of 1995; No. II of 1997; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333 and Ordinance No. X of 1998.

supervision, control and regulation of gambling and any form of gambling, as Chief Pleas may from time to time assign to the Commission by Ordinance.

(2) In the carrying out of any functions assigned to it pursuant to subsection (1), the Commission may take into account any matter which it considers appropriate, but shall have particular regard to ensure that any form of lawful gambling is conducted honestly and fairly in accordance with, where reasonably possible and relevant, standards that are applied to similar forms of lawful gambling in the United Kingdom.

Status of the Commission.

17. (1) The Commission is not a committee of Chief Pleas, or a servant or agent of Chief Pleas, and, except to the extent that this Law or any other enactment otherwise provides-

(a) is not subject to any rule of law relating to committees of Chief Pleas;

(b) does not have any right or privilege vested in committees of Chief Pleas.

(2) The Commission may consult and co-operate with any committee of Chief Pleas in relation to any matter relating to gambling within Sark.

Information, reports, guidance and directions for Commission

Provision of information to the General Purposes and Finance Committee.

18. Without prejudice to the generality of section 17(2), but subject to section 34, the Commission shall, when requested in writing by the Committee, furnish the Committee, to the best of the Commission's ability, with such

information as the Committee may require in relation to gambling within Sark or elsewhere.

Annual reports.

19. (1) The Commission shall, as soon as practicable in each year, make a report to the Committee on its activities during the preceding year; and the President of the Committee shall, as soon as practicable, submit that report for consideration by Chief Pleas.

(2) The annual report made pursuant to subsection (1) may refer to any aspect of the Commission's functions and in particular-

- (a) may set out or refer to any guidance given to the Commission under section 20(1)(a) during the preceding year; and
- (b) shall set out any directions given to the Commission under section 20(1)(b) during the preceding year.

Guidance and directions.

20. (1) The Committee may, after consulting the Commission, give to the Commission -

- (a) written guidance of a general character; and
- (b) written directions of a general character,

concerning the policies to be followed by the Commission in relation to the supervision, control and regulation of gambling in Sark and the manner in which any function of the Commission is to be carried out.

(2) It is the duty of the Commission, in carrying out any of its functions -

- (a) to take into account any guidance given under paragraph (a) of subsection (1); and
- (b) to act in accordance with any directions given under paragraph (b) of subsection (1).

(3) The Commission shall not be deemed to have acted unreasonably or beyond its powers in the carrying out of any of its functions by reason only that it has complied with its duty under subsection (2).

Powers of Commission

General powers of the Commission.

21. (1) The Commission may do anything which appears to it to be conducive to the carrying out of its functions or to be incidental to their proper discharge.

(2) Without prejudice to the generality of subsection (1) the Commission may, in connection with the carrying out of its functions -

- (a) obtain information relating to gambling in Sark and the supervision, control and regulation of similar forms of gambling carried on outside Sark;
- (b) consult or seek the advice of such persons or bodies as it considers appropriate; and

- (c) publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit.

(3) This section relates only to the capacity of the Commission as a body corporate and does not authorise the disregard by the Commission of any enactment or rule of law.

Contractual powers.

22. (1) The Commission may enter into a contract, or make an arrangement with, any person for the provision of any service or any facility to facilitate the carrying out of the Commission's functions and may expend money generally for the proper purposes of the Commission.

(2) The power conferred by subsection (1) includes the power -

(a) to open, operate and close banking accounts in the name of the Commission;

(b) to enter into, and pay any premium in respect of, contracts of insurance insuring the Commission, any member of the Commission, or any officer or servant of the Commission against -

(i) any risk to the Commission's property; or

(ii) any risk arising in connection with the carrying out of the Commission's functions, including, without prejudice to the generality of the

foregoing, the risk of a claim against the Commission in respect of any description of civil liability.

Powers as to property.

23. (1) The Commission has all such powers in relation to the acquisition, use and disposal of property (whether realty or personalty) as are conducive to the carrying out of its functions.

(2) Without prejudice to the generality of subsection (1), the Commission may -

- (a) acquire any land or building, or an interest in any land or building, by purchase, lease, sublease, easement or otherwise;
- (b) deal generally with, and dispose of, by sale, lease, sublease, easement or otherwise, any land or building or an interest in any land or building;
- (c) acquire any furniture, equipment or other personalty, by purchase, hire, bailment or otherwise; and
- (d) deal generally with, and dispose of, by sale, hire, bailment or otherwise, any furniture, equipment or other personalty.

Appointment, remuneration etc. of staff.

24. (1) The Commission may appoint such officers and servants as it considers necessary for carrying out its functions.

(2) An appointment under subsection (1) may be made on such terms as to remuneration, expenses, pensions and other conditions of service as the Commission thinks fit.

(3) The Commission may establish and maintain such schemes, or make such other arrangements, as it thinks fit for the payment of pensions and other benefits in respect of its officers and servants.

Funding and financial matters

The Commission's funds.

25. The funds and resources of the Commission are-

- (a) any grant paid to the Commission under section 27;
- (b) any money borrowed by the Commission in accordance with section 28; and
- (c) any other money or property, and any income and profits derived from such money or property, as is lawfully vested in the Commission through the exercise of its powers under this Part.

Fees and charges.

26. There shall be payable to Chief Pleas in connection with the carrying out of any function of the Commission, fees of such amounts, by such persons and in such manner, as may be specified by Ordinance.

Grants to the Commission.

27. (1) In respect of each year Chief Pleas may make grants of sums of money to the Commission towards the expenses of the Commission in carrying out its functions.

(2) The amount of any grant under subsection (1) shall be determined by Chief Pleas following consultation carried out on its behalf by the Committee; and in determining the amount the Committee shall have regard to -

- (a) the results of that consultation; and
- (b) the extent, if any, to which the Commission's estimated expenditure in any year is likely to exceed its estimated funds and resources from other sources in that year.

Borrowing by the Commission.

28. (1) For the purpose of assisting the Commission to carry out its functions, Chief Pleas may make advances of sums of money to the Commission.

(2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission under this section shall not at any time exceed such sum as Chief Pleas may from time to time by Resolution determine.

(3) No advance shall be made under this section except on such terms (as to repayment, payment of interest or otherwise) as Chief Pleas may from time to time by Resolution determine.

(4) The Commission shall not borrow money except in accordance with this section.

Investment of surplus funds.

29. The Commission may invest any of its funds which are not immediately required in any investment approved for the purpose by the Committee in writing.

Accounts and audit.

30. (1) The Commission shall -
- (a) keep proper accounts and proper records in relation to those accounts; and
 - (b) prepare in respect of each year a statement of accounts giving a true and fair view of the state of affairs of the Commission.
- (2) The accounts of the Commission shall be -
- (a) audited by auditors appointed by Chief Pleas; and
 - (b) laid before Chief Pleas, in the same manner as the accounts of a committee of Chief Pleas.

Miscellaneous provisions relating to Commission

Delegation to members and officers.

31. (1) The Commission may, by an instrument in writing under its common seal, delegate to any of its members or officers named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except -

- (a) this power of delegation;
- (b) its duty to make an annual report to the Committee; or
- (c) so much of any of its functions as require the Commission to consider representations concerning a decision which it proposes to take.

(2) A function delegated under this section may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, shall, for the purposes of this Part, be deemed to have been carried out by the Commission.

(3) A delegation under this section is revocable by the Commission at will and does not prevent the carrying out of a function by the Commission.

Execution of documents.

32. Any deed, instrument, contract or other document shall be deemed to have been duly executed by or on behalf of the Commission, and shall be effective in law to bind the Commission, if it is -

- (a) sealed with the common seal of the Commission; and
- (b) signed by a member or officer of the Commission to whom the Commission has delegated, under section 31, authority to affix the Commission's common seal.

Presumption of authenticity of documents.

33. Any document purporting to be issued by the Commission and to be signed by a member or officer of the Commission on behalf of the Commission shall be deemed to be such a document unless the contrary is shown.

Confidentiality.

34. (1) Any information from which an individual or body can be identified which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and servants.

(2) No such information as is referred to in sub-section (1) shall be disclosed, without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure is expressly authorised or required by or under any relevant enactment or appears to the Commission to be necessary -

- (a) to enable the Commission to carry out any of its functions;
- (b) in the interests of the prevention, detection or investigation of crime within or outside Sark;
- (c) in connection with the discharge of any international obligation to which Sark is subject;
- (d) to assist, in the interests of the public, any authority which appears to the Commission to carry out in a place outside Sark functions corresponding to those of the Commission;

- (e) to assist any prosecuting authority with the prosecution of criminal offences within or outside Sark; or
- (f) to comply with the directions of the Royal Court or the Court of the Seneschal.

(3) Without prejudice to subsections (1) and (2), any information communicated to the Commission by a committee of Chief Pleas shall be regarded as confidential, if that committee of Chief Pleas so requests, by the Commission and by its members, officers and servants; and no such information shall be disclosed except in compliance with the directions of the Royal Court or the Court of the Seneschal.

(4) A person who discloses information, or who causes or permits the disclosure of information, in contravention of this section is guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; or
- (b) on summary conviction, to a fine not exceeding level 3 on the uniform scale.

Communications by auditors and others to Commission.

35. (1) No duty, to which an auditor, employee or agent of any person licensed to organise any form of gambling -

- (a) made lawful by any relevant enactment, and

- (b) which is supervised, controlled or regulated by the Commission pursuant to section 16,

is subject, is contravened by reason of his communication in good faith to the Commission, whether or not in response to a request by it, of any information or opinion on a matter to which this section applies and which is relevant to any function of the Commission under this Part or an Ordinance made thereunder.

(2) This section applies to any matter of which an auditor, employee or agent becomes aware in his capacity as auditor, employee or agent and which relates to the business or affairs of a person licensed to organise any form of gambling or any associated body of such person.

(3) This section applies in relation to the auditor, employee or agent of a person formerly licensed to organise any form of gambling made lawful by any relevant enactment, as it applies to a person currently so licensed.

(4) In this section "**associated body**" means a person whom the Commission reasonably believes to be associated with the operations of a person licensed to organise any form of gambling made lawful by any relevant enactment.

Liability of members, officers and servants.

36. No member, officer or servant of the Commission is personally liable in any civil proceedings in respect of anything done or omitted to be done in the discharge or purported discharge of any function or duty of the Commission under any relevant enactment, unless the thing is done or omitted to be done in bad faith.

PART III

GENERAL

Interpretation, General Provisions as to Ordinances, etc.,

Interpretation.

37. (1) In this Law, unless the context otherwise requires,-

"Bailiwick" means the Bailiwick of Guernsey;

"bookmaker" means any person who whether on his own account or as servant or agent to any other person-

- (a) carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pool betting operations; or
- (b) by way of business in any manner holds himself out, or permits himself to be held out, as a person who receives or negotiates bets or conducts such operations, so, however, that a person shall not be deemed to be a bookmaker by reason only of the fact that he operates, or is employed in operating, a totalisator;

but does not include a licensed pool agent;

"Channel Islands" means the Bailiwicks of Guernsey and Jersey;

"Chief Pleas" means the Chief Pleas of Sark;

"Commission" means the Sark Gambling Control Commission;

"Committee" means the Sark General Purposes and Finance Committee;

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"function" includes a duty and a power and the carrying out of functions includes the performance of duties and the exercise of powers;

"gambling" includes all forms of betting, gaming and wagering and any lottery and the expression **"gamble"** shall be construed accordingly;

"game of chance" includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include any athletic game or sport;

"gaming" means the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not, but does not include the making of bets by way of pool betting;

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

"Island of Sark" includes its dependencies;

"lawful gambling" means any form of gambling made lawful by Ordinance under section 2;

"licensed pool agent" means a person who, in accordance with the

provisions of an Ordinance made under section 2, is authorised by way of business to distribute, collect or despatch within the Island of Sark entry forms and entry fees relating to a pool betting competition promoted in the United Kingdom by a registered pool promoter;

"money" includes a cheque, banknote, currency note, postal order or money order;

"officer of police" means the Constable, the Vingtenier, Assistant Constable or a member of the salaried police force of the Island of Guernsey;

"pool betting" means bets made by a number of persons-

- (a) on terms that the winnings of such of those persons as are winners shall be, or be a share of, or be determined by reference to, the stake money paid or agreed to be paid by those persons; whether the bets are made by means of a totalisator, or by filling up and returning coupons or other printed forms, or otherwise;
- (b) on terms that the winnings of such of those persons as are winners shall be, or shall include, an amount (not determined by reference to the stake money paid or agreed to be paid by those persons) which is divisible in any proportions among such of those persons as are winners; or
- (c) on the basis that the winners or their winnings shall, to

any extent, be at the discretion of the promoter or some other person;

"premises" includes any place, whether enclosed or not;

"registered pool promoter" means a person who is a registered pools promoter for the purposes of the Betting Gaming and Lotteries Act 1963^b;

"relevant enactment" means -

- (a) this Law;
- (b) any Ordinance made under this Law; and
- (c) such other enactment as Chief Pleas may by Ordinance designate for the purposes of this Law;

"Royal Court" means the Royal Court of Guernsey;

"Sark uniform scale" has the same meaning as in the Uniform Scale of Fines (Sark) Law, 1989^c;

"totalisator" means the contrivance for betting known as the totalisator or pari-mutuel, or any other machine or instrument of betting of

^b An Act of Parliament (1963 c. 2).

^c Ordres en Conseil Vol. XXXI, p. 320.

the like nature, whether mechanically operated or not;

"winnings" includes winnings of any kind and any reference to the amount or to the payment of any winnings shall be construed accordingly; and

"young person" means a person who has not attained the age of eighteen years.

(2) Unless the context requires otherwise, any reference in this Law to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^d shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in Guernsey.

(4) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

(5) Unless the context otherwise requires-

- (a) a reference in this Law to a numbered or lettered Part, section, subsection, paragraph or Schedule is a reference to the Part, section, subsection or paragraph of, or Schedule to, this Law which is so numbered or lettered; and

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

- (b) a reference in a provision of this Law to a numbered or lettered subsection or paragraph is a reference to the subsection or paragraph of that provision which is so numbered or lettered.

Amendment by Ordinance.

38. Chief Pleas may by Ordinance amend any of the provisions of this Law.

General provisions as to Ordinances.

39. (1) An Ordinance under this Law may -

- (a) be amended or repealed by a subsequent Ordinance thereunder; and
- (b) contain such consequential, incidental, supplementary and transitional provision as may appear to Chief Pleas to be necessary or expedient.

(2) Any power conferred upon Chief Pleas by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Repeal of 1899 Resolution and Ordinance.

40. The Resolution and Ordinance forbidding gaming ("lieu de jeux") made by Chief Pleas at their Michaelmas meeting held on the 3rd of October 1899 and all amendments^e thereto are repealed.

Citation.

41. This Law may be cited as the Gambling (Sark) Law, 2002.

Commencement.

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

^e Amendments to the 1899 Resolution and Ordinance were made on 14th November 1922; 18th January 1928 and 28th July 1987.

FIRST SCHEDULE

Lawful investments not constituting gambling

Without prejudice to the generality of section 14(4) of this Law the following are within the scope of "**investments**" for the purposes of this Law-

- (a) shares in the share capital of a body corporate or an unincorporated body;
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments creating or acknowledging indebtedness of a body corporate, an unincorporated body, the Chief Pleas, a government or other public body or organisation;
- (c) units or other interests in a collective investment scheme, closed-ended limited partnership, or closed-ended unit trust;
- (d) rights under a contract of insurance;
- (e) rights under a contract for the deposit of a sum of money to be repaid with or without interest or premium;
- (f) rights under a contract for credit secured on land;
- (g) rights under a contract for differences, or under any other contract the purpose or intended purpose of which is to obtain a profit or avoid a loss by reference to fluctuations in the

value or price of property of any description or in an index or other factor designated for that purpose in the contract;

- (h) rights under a contract for the sale of any property (including currency) under which delivery is to be made at a future date and at a price agreed when the contract is made;
- (i) options to acquire or dispose of any property;
- (j) warrants, certificates or other instruments conferring ownership, subscription, acquisition disposal, underwriting or conversion rights in respect of investments described in this Schedule;
- (k) other rights to, and other interests in, investments described in this Schedule.

SECOND SCHEDULE

**Provisions having effect with respect to the Sark Gambling Control
Commission**

1. The Commission shall consist of a Chairman and 3 other members appointed by Chief Pleas upon the recommendation of the Committee.
2. The Chairman and other members of the Commission shall hold office for a period of five years (or such other shorter period as may be agreed between Chief Pleas and any member appointed to the Commission) and vacate office as such in accordance with the terms of their appointments.
3. A person who ceases to hold office as a member of the Commission, or ceases to hold office as Chairman, shall be eligible for reappointment.
4. The Commission shall pay to the Chairman and other members of the Commission such remuneration, allowances and expenses as the Committee may from time to time by resolution determine.
5. Every member of the Commission shall, before discharging any function under this Law, take an oath or make an affirmation before the Royal Court or the Court of the Seneschal in the terms set out at the foot of this part of the Schedule or in words to the like effect.
6. Where the members of the Commission meet together so as to transact any business -
 - (a) decisions shall be made and other matters determined or resolved by

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a majority of the members attending and voting in favour of the decision or matter in question;

(b) each member has one vote; and

(c) in the event of an equality of votes, the Chairman has a second or casting vote.

7. The Commission may, if it thinks fit, transact any business by the circulation of papers to all of the members of the Commission, and a resolution in writing approved in writing by a majority of the members of the Commission shall be as valid and effectual as if passed at a meeting of the Commission by the votes of the members so approving the resolution.

8. The validity of any proceedings of the Commission shall not be affected by any vacancy among the members of the Commission or by any defect in the appointment of any such member.

9. The Commission shall keep proper minutes of its proceedings, including minutes of any business transacted as permitted by paragraph 7 of this Schedule.

10. Subject to this Law, the Commission shall have power to make rules to regulate its own procedure.

Oath/Affirmation of office

"You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge your functions as a member of the Sark Gambling Control Commission in

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accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the discharge of those functions; and that you will not disclose any information received by you in the discharge of those functions which to your knowledge may directly lead to the identification of any person, save to persons engaged in the discharge of those functions; pursuant to an express power conferred by or under the Gambling (Sark) Law, 2002; or in any other case required by law."

LAW NOT YET IN FORCE