

ORDINANCE OF THE STATES: I of 2024

The Alderney eGambling (Amendment) Ordinance, 2024

<i>Made</i>	<i>13 March 2024</i>
<i>Coming into force</i>	<i>13 March 2024</i>

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 13th day of March, 2024, and in exercise of the powers conferred upon them by sections 6 and 10(3) of the Gambling (Alderney) Law, 1999^a, and all other powers enabling them in that behalf, hereby order:-

Amendment of the 2009 Ordinance.

1. The Alderney eGambling Ordinance, 2009^b ("the principal Ordinance") is amended as follows.

Insertion of section 22B.

2. Immediately after section 22A of the principal Ordinance, insert the following cross-heading and section –

"Information gathering and sharing

Information gathering and sharing.

22B. Schedule 5 (Information gathering and sharing) has effect."

^a Ordres en Conseil Vol. XXXIX, p.374; this enactment has been amended.

^b Alderney Ordinance No. X of 2009; this enactment has been amended.

Amendment of section 24.

3. In section 24 of the principal Ordinance -

- (a) in subsection (1)(b), for "by", substitute "under this Ordinance or",
- (b) immediately after subsection (2), insert the following subsections –

"(2A) A person who, without reasonable excuse, fails to co-operate with the Commission in its exercise or purported exercise of any function under Schedule 5 shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

(2B) Without limiting the generality of subsection (2A), each of the following is to be regarded as a failure to co-operate with the Commission within the meaning of subsection (2A) –

- (a) declining to reach agreement as to the making, timing or scope of a site visit under paragraph 2 of Schedule 5,
- (b) failing to provide any information or document or to answer any question in response to a requirement made under paragraph 1, 6 or 7 of Schedule 5.", and
- (c) in subsection (5), immediately after "subsection", insert ", or any provision of Schedule 4 (Money laundering and terrorist financing)",.

Amendment of section 30.

4. In section 30(1) of the principal Ordinance, for the definition of "**terrorist financing**", substitute the following definition -

"**terrorist financing**" has the meaning given in section 79(1) of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,".

Amendment of Schedule 4.

5. In paragraph 15(1) of Schedule 4 to the principal Ordinance, in the definition of "**relevant enactments**", for paragraphs (a) to (f), substitute the following paragraphs –

(a) the Sanctions (Bailiwick of Guernsey) Law, 2018, including any regulations made under it,

(b) UK enactments within the meaning of, and as implemented by, the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020,".

Insertion of new Schedule 5.

6. After Schedule 4 to the principal Ordinance, insert the schedule set out in the Schedule to this Ordinance.

Consequential amendment to Alderney eGambling Regulations, 2009.

7. (1) The Alderney eGambling Regulations, 2009^c are amended as follows.

(2) In regulation 233(2) of those regulations, revoke subparagraph (a).

^c A.S.I. No. 1 of 2010; this enactment has been amended.

(3) For the avoidance of doubt, the Alderney eGambling Regulations, 2009 may be amended by regulations made by the Commission as if the amendment made by subsections (1) and (2) were made by regulations made by the Commission.

Consequential amendment to Alderney eGambling (Proliferation Financing etc.) Regulations, 2024.

8. (1) The Alderney eGambling (Proliferation Financing etc.) Regulations, 2024^d are amended as follows.

(2) In regulation 1 of those regulations, revoke paragraph (5).

(3) For the avoidance of doubt, the Alderney eGambling (Proliferation Financing etc.) Regulations, 2024 may be amended by regulations made by the Commission as if the amendment made by subsections (1) and (2) were made by regulations made by the Commission.

Citation.

9. This Ordinance may be cited as the Alderney eGambling (Amendment) Ordinance, 2024.

Commencement.

10. This Ordinance shall come into force on 13th March, 2024.

^d A.S.I. No. __ of 2024.

SCHEDULE

Section 6

SCHEDULE TO BE INSERTED AFTER SCHEDULE 4 TO THE PRINCIPAL
ORDINANCE

"SCHEDULE 5

Section 22B

INFORMATION GATHERING AND SHARING

Power of Commission to require and obtain information.

1. (1) The Commission may, by notice in writing served on a designated person, require the person to provide the Commission in such form and manner, at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as may reasonably be required by the Commission for the performance of its functions.

(2) Without limiting subparagraph (1), the Commission may, by notice in writing served on a designated person –

- (a) require the person to produce, in such form and manner, within such time and at such place as may be specified in the notice, such information of such description as may be so specified, for the purposes of the Commission inspecting it,
- (b) require the person to furnish to the Commission such information or information of such description as may be specified in the notice or as the Commission may otherwise specify, either forthwith or within such time, and at such place, and in such form and manner, as may

be so specified, for the purposes of the Commission inspecting it,

being information reasonably required by the Commission for the performance of its functions.

(3) Where under subparagraph (2) the Commission has power to require the production of any information from a person, the Commission has the like power to require the production of that information from any person who appears to be in possession of it.

(4) The powers conferred by this paragraph to require a person to produce any information comprised in documents include the power –

- (a) if the documents are produced, to take copies of them or extracts from them, in circumstances where the Commission is satisfied that the taking of such copies or extracts is necessary for the proper exercise by the Commission of its functions, and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are.

(5) The powers conferred by this paragraph to require a person to provide any information include the power to require the person to attend at such time and place as may be required and to give an explanation of and to answer questions relating to any matters in relation to which the production of the information may be required.

Site visits with notice and with agreement.

2. (1) The Commission may, at such times, intervals and places as it considers appropriate, and –

- (a) with a view to the performance of its functions,
- (b) for the regulation, good conduct and control of eGambling, or
- (c) in pursuit of the licensing objectives,

make arrangements with any designated person for the making, in such manner and for such purposes as may be mutually agreed, of site visits to the offices of the designated person (or any person acting for or on behalf of the designated person) for the purpose of ascertaining whether or not the designated person is complying with a relevant provision.

(2) Site visits may take place at any or all of the premises where the activities of the designated person are conducted or records are maintained by the designated person, and are not limited to premises in Alderney.

Site visits with notice and without agreement.

3. The Commission may on request, and with 48 hours' notice given before 4.00 p.m. on a business day, enter any premises in Alderney owned, leased or otherwise controlled or occupied by a designated person.

Site visits without notice and where suspicion of documents being removed etc.

4. If the Commission has grounds to suspect that a site visit made under paragraph 2 or 3 would result in any document being removed, tampered with, falsified or destroyed, the Commission may enter any premises in Alderney owned, leased or otherwise controlled or occupied by a designated person on request but without notice.

Use of the rights of entry in paragraphs 3 and 4.

5. Except in cases of urgency, the right of entry conferred by paragraph 3 or 4 may only be exercised between 9.00 a.m. and 4.00 p.m. on a business day.

Requirement for information during site visits.

6. If the Commission exercises the right of entry under paragraph 2, 3 or 4, the Commission may require the officers, servants or agents of the designated person to do all or any of the following –

- (a) to produce for examination (whether at the premises of the designated person, at the offices of the Commission or at any other premises) any documents held by them,
- (b) to produce copies of any document in a legible form for the Commission to take away,
- (c) to answer questions for the purpose of verifying compliance with a relevant provision.

Power of Chairman of the Court to grant a warrant.

7. (1) The Chairman of the Court may grant a warrant if satisfied by information on oath, given by an officer of police or any person authorised by the Commission, that there are reasonable grounds for suspecting –

- (a) that a requirement under paragraph 1 or 6 has not been complied with,
- (b) that any information or document furnished pursuant to such a requirement is false, misleading, inaccurate or incomplete, or
- (c) that if such a requirement were made –

- (i) it would not be complied with,
- (ii) any document to which it would relate would be removed, tampered with, falsified or destroyed, or
- (iii) the making of the requirement or any attempt to enforce it might significantly prejudice any inquiry to which the requirement would relate.

(2) A warrant under this section authorises any officer of police, together with any other person named or described in the warrant (including, without limitation, any person authorised by the Commission) to do all or any of the following–

- (a) enter any premises specified in the warrant using such force as may be reasonably necessary,
- (b) search the premises and, in relation to any documents or other information appearing to be relevant for the purpose of establishing whether a designated person has complied with a relevant provision, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) take copies of or extracts from any such documents or other information,
- (d) require any person named in, or of a class or description specified in, the warrant –

- (i) to answer any questions relevant to establishing whether a designated person has complied with a relevant provision,
- (ii) to state to the best of that person's knowledge and belief the whereabouts of any documents or other information described in item (b),
- (iii) to make an explanation of any such documents or other information.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any document or other information of which possession is taken under the powers conferred by a warrant under this paragraph may be retained—

- (a) for a period of four months or such longer period as the Chairman of the Court may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents or other information are relevant are commenced against any person, until the conclusion of those proceedings.

Legal privilege.

8. Nothing in this Schedule compels the production or divulgence of an item subject to legal professional privilege (within the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an

Advocate or other legal adviser may be required to give the name and address (including an electronic address) of a client.

Lien.

9. Where a person claims a lien on a document, its production pursuant to a requirement under any provision of this Schedule is without prejudice to the person's lien.

Existing confidentiality obligations.

10. A requirement imposed under paragraph 1 or 6, or under a warrant granted under paragraph 7, has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure, or by any other act or omission, pursuant to such a requirement.

Use of statements.

11. A statement made by a person ("P") under paragraph 1(5), 6(c) or 7(2)(d) –

- (a) may be used in evidence against P in proceedings other than criminal proceedings, and
- (b) must not be used in evidence against P in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of P, or
 - (ii) in proceedings for –

- (A) an offence under section 24(1)(b) or (2A) (offence of providing false information etc. or failing to provide information),
- (B) some other offence where, in giving evidence, P makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
- (C) perjury, or
- (D) perverting the course of justice.

Failure to co-operate, etc.

12. (1) Where a designated person fails to co-operate with the Commission in its exercise or purported exercise of any function under this Schedule, that failure may be taken into account by the Commission in deciding whether and in what manner to exercise any function under the Law (including any other function under this Schedule).

(2) Without limiting the generality of subparagraph (1), each of the following is to be regarded as a failure to co-operate with the Commission within the meaning of that subparagraph –

- (a) declining to reach agreement with the Commission as to the making, timing or scope of a site visit,
- (b) failing to provide any information or document or to answer any question in response to a requirement made under paragraph 1 or 6, or under a warrant granted under paragraph 7.

(3) Nothing in this paragraph limits the effect of section 24(2A) and (2B).

Co-operation with relevant supervisory authorities.

13. The Commission shall take such steps as it considers appropriate to co-operate with any relevant supervisory authority, and co-operation under this paragraph may, without limitation, take the form of sharing with the relevant supervisory authority, or gathering, any information which the Commission may lawfully disclose or obtain.

Investigations in support of relevant supervisory authorities.

14. (1) Without limiting the generality of paragraph 13, the Commission may exercise a relevant power conferred on the Commission under any provision of the Law at the request of a relevant supervisory authority (the "**requesting authority**") –

- (a) in relation to an eGambling licensee or a certificate holder, and
- (b) with the prior authority of one Commissioner, in relation to a person who is neither,

for the purpose of enabling or assisting the requesting authority to perform any of that authority's functions, where the Commission considers this to be in the interests of one or more of the licensing objectives; and that provision of the Law shall have effect accordingly.

(2) In deciding whether or not to exercise any power by virtue of subparagraph (1), the Commission shall take into account in particular –

- (a) whether in the jurisdiction of the requesting authority (except where the requesting authority is a self-

regulatory organisation), corresponding assistance would be given to the Commission,

- (b) whether the case concerns the breach of a law or other requirement which has no close parallel in Alderney or involves the assertion of a jurisdiction not recognised by the United Kingdom,
- (c) the seriousness of the case and its importance to persons in Alderney,
- (d) whether the disclosure of information to or co-operation with the requesting authority would, in the Commission's view, lead to disproportionate injury, loss or damage to the persons subject to the exercise of the powers in question, and
- (e) whether it is otherwise necessary or desirable in the interests of the licensing objectives to give the assistance sought.

(3) The Commission may decide that it will not exercise any power by virtue of subparagraph (1) unless the requesting authority undertakes to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(4) Where the Commission decides to exercise any power by virtue of subparagraph (1), it may permit, or it may direct any duly authorised officer of the Commission to permit, a representative of the requesting authority to attend, and take part in, any interview conducted in the course of the exercise of the power.

(5) A direction shall not be given under subparagraph (4) unless in

the opinion of the Commission any information obtained by the requesting authority as a result of the interview will be subject to safeguards as to confidentiality equivalent to those contained in paragraph 15 of this Schedule.

(6) The Commission may prepare a statement of its policy in respect of the conduct of interviews in relation to which a direction is given under subparagraph (4).

(7) A statement of policy under subparagraph (6) shall be published in such manner as the Commission considers best calculated to bring it to the attention of persons likely to be affected by it and the public in general.

(8) No direction may be given under subparagraph (4) before the statement of policy is published.

(9) In this paragraph –

"relevant power" means any power –

- (a) to make site visits,
- (b) to require the provision, production and verification of information and reports and other documents,
- (c) to take copies of or extracts from documents and require an explanation of them or a statement of their whereabouts,
- (d) to appoint or require the appointment of officers,
- (e) to put questions and require explanations,

- (f) to conduct investigations and make reports, and
- (g) to require the attendance or assistance of any person,

and any other power specified, or of a class or description specified, by regulations made by the Commission, and

"requesting authority": see subparagraph (1).

Commission's duty of confidentiality.

15. (1) Subject to subparagraph (2), the Commission shall take reasonable steps to ensure the confidentiality and security of any relevant information.

(2) The Commission may disclose relevant information to another person if the disclosure is –

- (a) of information which at the time of the disclosure is or has already been made available to the public from other sources, including (for the avoidance of doubt) information on the register of licences and certificates maintained under section 13 that is available for public inspection,
- (b) of information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (c) to enable the discharge of the Commission's functions (including, where the Commission considers it necessary to seek advice relating to the exercise of those functions from a qualified person on any matter of law,

accountancy or valuation or other matter requiring the exercise of professional skill, for the purpose of ensuring that the qualified person is properly informed on all matters on which that person's advice is sought),

- (d) in connection with any proceedings under the Law,
- (e) to comply with an order of a court, or
- (f) for any of the purposes set out in subparagraph (3).

(3) The purposes mentioned in subparagraph (2)(f) are –

- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in Alderney or any other country or territory,
- (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the law of Alderney or any other country or territory,
- (c) the conduct of any civil forfeiture investigation within the meaning of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or any proceedings under that Law or under corresponding legislation in force in a country outside the Bailiwick,
- (d) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,

- (e) the prevention, detection or investigation of contraventions of international sanctions measures that have been given effect within the Bailiwick,
- (f) assisting or enabling any of the following to carry out their respective functions –
 - (i) His Majesty's Procureur,
 - (ii) His Majesty's Sheriff,
 - (iii) His Majesty's Sergeant,
 - (iv) the Greffier,
 - (v) the Financial Intelligence Unit,
 - (vi) the Director of the Economic and Financial Crime Bureau,
 - (vii) the Guernsey Financial Services Commission,
 - (viii) the Director of the Revenue Service,
 - (ix) the Data Protection Authority, and
 - (x) any of the Registrars,
- (g) assisting or enabling any person within the Bailiwick, whose functions include any of the matters set out in item (d) or (e), to carry out those functions,

- (h) assisting or enabling any person in another country or territory, with functions similar to those set out in item (d) or (e), to carry out those functions,
- (i) assisting or enabling any person exercising, in a place outside the Bailiwick, functions equivalent to those of the Commission, to carry out those functions,
- (j) assisting or enabling any person exercising, in a place outside the Bailiwick, functions equivalent to those of the Guernsey Financial Services Commission, to carry out those functions,
- (k) assessing, or assisting any person within the Bailiwick to assess, the risks of money laundering or terrorist financing,
- (l) assisting or enabling a relevant supervisory authority not mentioned in items (f) to (j) to carry out the authority's functions, and
- (m) pursuing the licensing objectives.

(4) The Commission may by regulations substitute or amend the list of purposes in subparagraph (3).

(5) Nothing in this paragraph limits any power of the Commission, which exists apart from this paragraph, to disclose any information.

(6) In this paragraph –

"the Greffier" has the meaning given by the Government of Alderney Law, 2004,

"the Registrars" means –

- (a) the Registrar under the Companies (Alderney) Law, 1994,
- (b) the Registrar of Companies under the Companies (Guernsey) Law, 2008,
- (c) the Registrar of Foundations under the Foundations (Guernsey) Law, 2012,
- (d) the Registrar of Limited Liability Partnerships under the Limited Liability Partnerships (Guernsey) Law, 2013,
- (e) the Registrar of Beneficial Ownership under the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (f) the Registrar of Beneficial Ownership of Legal Persons under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
- (g) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and
- (h) any other person specified by regulations made by the Commission, and

"relevant information" means any information obtained by the Commission –

- (a) under the Law, or
- (b) in connection with the carrying out of any of the Commission's functions.

Exercise of the Commission's powers.

16. For the avoidance of doubt –

- (a) the Commission may authorise any Commissioner or servant or agent of the Commission to exercise any of its functions under this Schedule, and
- (b) a reference to the Commission in this Schedule includes a reference to any Commissioner, or servant or agent of the Commission, acting with the authority of the Commission.

Relationship with other duties, powers, etc.

17. Nothing in this Schedule limits any other provision of the Law setting out –

- (a) the duties or powers of the Commission, or
- (b) the duties or obligations of any eGambling licensee, certificate holder or associated party of either.

Interpretation.

18. In this Schedule –

"associated party", in relation to any person, means –

- (a) any person who is a partner of that person,

- (b) any body of which that person is a controller,
- (c) any body of which that person is a director,
- (d) where that person is a company –
 - (i) a holding company or subsidiary or related company of that person,
 - (ii) a subsidiary or related company of a holding company of that person,
 - (iii) a holding company of a subsidiary of that person,
or
 - (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power (whether in general meeting or otherwise),

and where, under the above provisions, any person or entity is an associated party in relation to another person or entity, then that other person or entity is an associated party in relation to that first-mentioned person or entity,

"**Commissioner**" means the Chairman or any other member of the Commission,

"**controller**" has the meaning given by Schedule 1 to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,

"designated person" means –

- (a) any eGambling licensee,
- (b) any certificate holder, or
- (c) any associated party of an eGambling licensee or a certificate holder,

"holding company" has the meaning given by Schedule 3 to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,

"the Law" –

- (a) means the Gambling (Alderney) Law, 1999, and
- (b) includes this Ordinance, and any regulations made under the Law mentioned in paragraph (a) or this Ordinance,

"person", for the avoidance of doubt, includes a body or authority,

"related company" has the meaning given by Schedule 1 to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,

"relevant provision" means –

- (a) any provision of the Law, or

- (b) any notice, instruction, guidance or other similar instrument made by the Commission,

"relevant supervisory authority" means –

- (a) any person that appears to the Commission to exercise in Alderney or any other country or territory functions relating to the prevention, detection, investigation or prosecution of crime,
- (b) any person mentioned in paragraph 15(3)(f) to (j),
- (c) any international organisation, that is to say, any organisation, community or body –
 - (i) of which the United Kingdom or any other sovereign power is a member, or
 - (ii) which is established under any international agreement,
- (d) a self-regulatory organisation, or
- (e) any other person prescribed by regulations made by the Commission, and

"subsidiary" or **"subsidiary company"** has the meaning given by Schedule 3 to the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020."

DAVID KNIGHT
Alderney Greffier

Alderney legislation is available online at
www.guernseylegalresources.gg