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## The Alderney eGambling Ordinance, 2009

### ARRANGEMENT OF SECTIONS

#### *Lawfulness of eGambling*

1. Lawful eGambling.....	3
2. eGambling with strangers.....	4
3. Activities outside Alderney.....	4

#### *Licensing and certification* 5

4. Applications.....	5
5. Grounds for refusing applications.....	6
6. Application costs.....	7
7. Grant and duration of licences and certificates.....	7
8. Fees for licences and certificates.....	8
9. Licences and certificates personal to holder.....	8
10. Licence or certificate conditions.....	9
11. Surrender of licence or certificate.....	9
12. Suspension, revocation and other sanctions.....	9
13. Register of licences and certificates.....	10

#### *Operational requirements* 11

14. Internal controls.....	11
15. Gambling equipment.....	12
16. Evaluation and testing costs.....	13
17. Associates providing core services.....	14
18. Foreign Gambling Associates.....	14
19. Key individuals.....	15
20. Exercise of Temporary eGambling licence.....	15
21. Investigations.....	15
22. General compliance matters.....	16

#### *Miscellaneous and general provisions* 18

23. Appeals.....	18
24. Offences.....	18
25. Offences by bodies corporate.....	19

26. Accessories and abettors. ....	20
27. General provisions as to regulations. ....	20
28. Giving notices. ....	21
29. Right to prohibit gambling and to refuse transactions. ....	22
30. Interpretation. ....	22
31. Repeals, savings and transitional provisions. ....	27
32. Citation. ....	27
33. Commencement. ....	27

**SCHEDULE 1**

REPEALS.....	28
--------------	----

**SCHEDULE 2**

SAVINGS AND TRANSITIONAL PROVISIONS .....	29
1. General .....	29
2. Transition from full eGambling licence to new categories of eGambling licence.....	29
3. Transition from former associate certificate to Category 2 eGambling licence or foreign gambling associate certificate.....	31
4. Transition from former associate certificate to Category 2 eGambling licence.....	31
5. Transition from former associate certificate to foreign gambling associate certificate .....	32
6. Continuation of certificates .....	33
7. Fees payable during transition .....	33
8. Transition plans .....	34
9. Interpretation of this Schedule .....	34

**SCHEDULE 3**

FEES.....	35
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## The Alderney eGambling Ordinance, 2009

**THE STATES OF ALDERNEY**, in pursuance of their Resolution of the 21st day of October, 2009, and in exercise of the powers conferred upon them by sections 6 and 10(3) of the Gambling (Alderney) Law, 1999, as amended<sup>1</sup>, hereby order:-

### *Lawfulness of eGambling*

#### **Lawful eGambling.**

**1.** (1) Subject to subsection (2), effecting a gambling transaction shall not be unlawful gambling if the transaction is not effected by, with or through a young person and is –

- (a) organized or promoted by or with the holder of a Category 1 eGambling licence; or
- (b) effected by or with the holder of a Category 2 eGambling licence or a foreign gambling associate certificate,

and, every person organizing, promoting or effecting a gambling transaction not made lawful by this subsection shall be guilty of an offence.

- (2) The gambling referred to in subsection (1) shall only be lawful if —
  - (a) the eGambling licence or certificate has not lapsed or been surrendered, suspended or revoked;
  - (b) the eGambling licensee or certificate holder is acting in accordance with the Law, this Ordinance, regulations made under this Ordinance, and any general or special conditions that apply to the eGambling licence or certificate; and
  - (c) the transaction is effected at —
    - (i) approved premises controlled by the holder of a hosting certificate; or

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<sup>1</sup>

Order in Council No. XIV of 1999; No. XXVII of 2001; Ordinance No. XVI of 2003.

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- (ii) premises that the Commission is satisfied, in accordance with the regulations made by the Commission under this sub-paragraph, are suitable and secure.

(3) A Category 1 eGambling licensee may exercise its eGambling licence only if, before transferring to or allowing a customer to gamble with or through, any entity other than the holder of a –

- (a) Category 2 eGambling licence; or
- (b) foreign gambling associate certificate,

the customer is notified and warned in the manner specified in the eGambling licensee's approved internal control system, that –

- (i) the proposed gambling is to be conducted outside of the jurisdiction of Alderney;
- (ii) the proposed gambling is to be conducted with an entity whose gambling systems are not regulated or monitored by the Commission; and
- (iii) the Commission is not obliged to act upon any complaints received regarding such gambling.

### **eGambling with strangers.**

2. Notwithstanding section 10(1) of the Law, an eGambling licensee and/or a foreign gambling associate certificate holder complying with any conditions attached to its eGambling licence or certificate and acting in accordance with the provisions of this Ordinance and of regulations made under this Ordinance is thereby authorised to conduct a business in the course of which a gambling transaction is negotiated or entered into with, or on behalf of, a stranger and to permit a stranger to participate in any form of gambling lawfully conducted, organised or promoted by that licensee.

### **Activities outside Alderney.**

3. For the avoidance of doubt, an eGambling licensee or a foreign gambling associate certificate holder does not organise or in any way take part in unlawful gambling for the purposes of section 5(2) of the Law by–

- (a) exercising its eGambling licence or foreign gambling associate certificate, as the case may be, at, or from, premises situated outside Alderney and Guernsey; or
- (b) in the case of a Category 1 eGambling licensee, and subject always to section 1(3), making arrangements in accordance with its approved internal control system for a customer to gamble with a person in a place outside of Alderney and Guernsey.

*Licensing and certification*

**Applications.**

4. (1) A person who wishes to obtain –
- (a) a Category 1 eGambling licence;
  - (b) a Category 2 eGambling licence;
  - (c) a Temporary eGambling licence;
  - (d) a key individual certificate;
  - (e) a core services associate certificate;
  - (f) a foreign gambling associate certificate; or
  - (g) a hosting certificate,

shall make application in that behalf to the Commission.

(2) The Commission shall by regulations make provision in respect of an application under subsection (1) and, without prejudice to the generality of the foregoing, it shall, in particular, prescribe –

- (a) its form;
- (b) the information which it shall contain and the means by which further information may be sought;
- (c) the form, if any, in which it shall be publicised in order to invite representations with regard to it;
- (d) the means by which it may be withdrawn prior to determination;
- (e) the manner in which it shall be –

- (i) investigated and assessed by servants or agents of the Commission;
- (ii) determined; and
- (iii) the outcome notified to the applicant.

(3) The Commission shall by regulations make provision for the manner in which –

- (a) an eGambling licensee or a certificate holder may apply to the Commission to supplement, vary or remove any details contained in the eGambling licence or certificate in question; and
- (b) such an application shall be processed and determined.

(4) An application may be made under this section by a promoter on behalf of a company that has not yet been incorporated if the Commission is satisfied that appropriate steps are being or will be taken in order for such a company to be incorporated as an Alderney company.

#### **Grounds for refusing applications.**

**5.** (1) The Commission may only grant a Category 1 eGambling licence or a Category 2 eGambling licence, to an Alderney company.

(2) The Commission shall refuse the grant of the eGambling licence or certificate for which application has been made under section 4 if it is not satisfied that –

- (a) the applicant is a fit and proper person to hold that licence or certificate;
- (b) where applicable, any associate of the applicant is a fit and proper person to be associated with the operations proposed by the applicant;
- (c) in the case of an applicant for a Temporary eGambling licence, the applicant is licensed or properly licensed in another jurisdiction to conduct eGambling operations.

(3) The Commission shall prescribe by regulations the matters it shall or may take into account in deciding whether –

- (a) an applicant or, as the case may be, an associate is a fit and proper person;
- (b) an applicant for a Temporary eGambling licence is licensed or properly licensed in another jurisdiction to conduct eGambling operations,

for the purposes of subsection (2).

(4) The Commission may only grant a Temporary eGambling licence to a foreign company.

**Application costs.**

6. (1) A person making an application under section 4 shall pay to the Commission the reasonable costs associated with processing, investigating and determining that application.

(2) The Commission shall by regulations make provision for the manner in which –

- (a) monies shall be deposited from time to time by, or on behalf of, an applicant;
- (b) any surplus monies deposited with the Commission and not utilised by it for the purposes of subsection (1) shall be retained or, as the case may be repaid; and
- (c) information concerning the costs incurred by the Commission shall be provided.

**Grant and duration of licences and certificates.**

7. (1) If the Commission grants an application made under section 4, it shall promptly issue to the applicant the eGambling licence or the certificate sought in a form prescribed by regulations which, unless surrendered, lapsed, suspended or revoked under this Ordinance or in accordance with regulations made under this Ordinance, shall be valid from the date specified thereon as directed by the Commission for an indefinite period.

(2) The Commission may in regulations made under this Ordinance specify the provisions and conditions that apply to different categories of eGambling licence and certificates.

**Fees for licences and certificates.**

**8.** (1) Subject to subsections (2) and (3), the fees specified in column 4 of Schedule 3 to this Ordinance and corresponding to the type and description of eGambling licence or certificate specified in columns 2 and 3 respectively of Schedule 3 shall be paid by an eGambling licensee or certificate holder to the Commission as agent for the States –

- (a) within seven days of the Commission issuing the licence or certificate; and
- (b) in advance of each anniversary of the date of validity specified on the licence or certificate in accordance with section 7,

and if such fee is not paid within the periods set out above in paragraphs (a) and (b), the eGambling licence or certificate shall, without prejudice to section 12, be suspended.

(2) If the Commission determines that –

- (a) an eGambling licensee or certificate holder has constructed a mechanism in order to reduce the fee payable by it under this Ordinance; and
- (b) either of the conditions specified in subsection (3) are satisfied,

the Commission may specify the fee payable under this Ordinance without reference to Schedule 3, provided that such a fee shall not exceed the maximum fee set out in Schedule 3.

(3) The conditions for the purposes of subsection (2)(b) are –

- (a) an eGambling licensee or certificate holder is so closely related to another entity; or
- (b) the net gaming yield revealed by an eGambling licensee is not an accurate reflection of its net gaming receipts in any period.

**Licences and certificates personal to holder.**

**9.** An eGambling licence or any certificate issued by the Commission under section 7 of this Ordinance is not capable of being assigned and cannot be transferred by the eGambling licensee or certificate holder.



**Licence or certificate conditions.**

**10.** (1) The Commission may attach to an eGambling licence or a certificate issued by it under section 7 of this Ordinance such conditions as it considers necessary, expedient or desirable –

- (a) for the proper conduct of eGambling; or
- (b) in the public interest.

(2) The Commission shall by regulations make provision for the manner in which a condition may be added to an eGambling licence or a certificate and thereafter varied or rescinded.

**Surrender of licence or certificate.**

**11.** An eGambling licensee or a certificate holder may at any time surrender the licence or certificate held in the manner prescribed by regulations of the Commission made under this section.

**Suspension, revocation and other sanctions.**

**12.** (1) The Commission may take action under this section where –

- (a) an eGambling licensee or a certificate holder is no longer a fit and proper person to hold the eGambling licence or certificate in question;
- (b) an associate of an eGambling licensee or a certificate holder is not, or is no longer, a fit and proper person to be associated with the operations of the licensee or certificate holder;
- (c) an eGambling licensee or a certificate holder has contravened –
  - (i) a provision of this Ordinance or of regulations made under this Ordinance; or
  - (ii) a condition attached to the eGambling licence or certificate in question; or
- (d) a Temporary eGambling licensee is no longer licensed or properly licensed in another jurisdiction to conduct eGambling operations.

(2) The Commission shall prescribe by regulations the matters it shall or may take into account in deciding whether –

- (a) an eGambling licensee or a certificate holder or, as the case may be, an associate is a fit and proper person; and
- (b) a Temporary eGambling licensee is licensed or properly licensed in another jurisdiction to conduct eGambling operations,

for the purposes of subsection (1).

(3) Where subsection (1) applies, the Commission may –

- (a) issue a direction to rectify;
- (b) issue a written caution;
- (c) impose a financial penalty not exceeding £25,000, which may take immediate effect or be suspended for such period as may be directed, during which it can be activated should subsection (1) again apply;
- (d) suspend the validity of the eGambling licence or certificate;
- (e) revoke the eGambling licence or withdraw the certificate.

(4) In respect of any one incident, the Commission may combine two or more of the actions specified in paragraphs (a) to (d) of subsection (3).

(5) The Commission shall by regulations make provision for the procedure it will adopt prior to taking action under this section, which shall include (without limitation) providing an opportunity for the eGambling licensee or certificate holder to make representations and the consequences of any action being taken.

### **Register of licences and certificates.**

**13.** (1) The Commission shall maintain a register, in such bound or loose-leaf paper format as it thinks fit and kept solely for that purpose, of all eGambling licences and certificates issued by it under this Ordinance and shall note therein any changes affecting an eGambling licence or a certificate.

(2) The Commission shall make the register available at its offices for inspection by members of the public, but only by prior appointment.

(3) The Commission may also publish the register or any extract therefrom in electronic form.

*Operational requirements*

**Internal controls.**

**14.** (1) An eGambling licensee or foreign gambling associate certificate holder may exercise its eGambling licence or foreign gambling associate certificate only if –

- (a) it has obtained approval of its internal control system by the Commission; and
- (b) it conducts its business of organizing, promoting or effecting gambling transactions, as the case may be, under and in accordance with that system.

(2) An eGambling licensee or foreign gambling associate certificate holder who wishes to obtain approval of –

- (a) its internal control system; or
- (b) a change to its approved internal control system,

shall make application in that behalf to the Commission.

(3) The Commission shall by regulations make provision in respect of an application under subsection (2) and, without prejudice to the generality of the foregoing, it shall, in particular, prescribe –

- (a) its form;
- (b) the matters on which information shall be provided and the means by which further information, where appropriate, may be sought;
- (c) the manner in which it shall be –
  - (i) assessed by servants or agents of the Commission carrying out an evaluation of the proposed internal controls;
  - (ii) determined; and

(iii) the outcome notified to the eGambling licensee or foreign gambling associate certificate holder.

(4) Subsections (1), (2) and (3) do not apply to a Temporary eGambling licensee.

(5) In accordance with regulations made by the Commission under this subsection, a Temporary eGambling licensee must, at all times whilst operating under its licence, satisfy the Commission that the internal control system it utilises provides a safe, secure and fair system for the conduct of gambling.

(6) In accordance with regulations made by the Commission under this subsection, the Commission may give an eGambling licensee or a foreign gambling associate certificate holder a direction to change its approved internal control system.

### **Gambling equipment.**

**15.** (1) An eGambling licensee may exercise its eGambling licence only if it has obtained approval by the Commission of the gambling equipment it utilises to conduct its business of facilitating or effecting gambling transactions, including gambling equipment supplied to it by an associate.

(2) A foreign gambling associate certificate holder may not operate under its certificate unless it has obtained approval by the Commission of the gambling equipment it utilises to effect gambling transactions, including gambling equipment supplied to it by an associate.

(3) An eGambling licensee or a foreign gambling associate certificate holder that wants to obtain approval of such gambling equipment shall make application in that behalf to the Commission.

(4) An application by an eGambling licensee under subsection (3) may be made in conjunction with an application under section 14(2).

(5) The Commission shall by regulations make provision in respect of an application under subsection (3) and, without prejudice to the generality of the foregoing, it shall, in particular, prescribe –

- (a) its form;
- (b) the information which it shall contain and the means by which further information may be sought;

- (c) the manner in which it shall be –
  - (i) assessed by servants or agents of the Commission carrying out an evaluation of the gambling equipment in question;
  - (ii) determined; and
  - (iii) the outcome notified to the eGambling licensee or foreign gambling associate certificate holder.

(6) The holder of a core services associate certificate who wishes to obtain approval in principle of any gambling equipment belonging to it intended for future use by an eGambling licensee or a foreign gambling associate certificate holder may make application in that behalf to the Commission in the manner prescribed by regulations made by the Commission under this subsection as if it were an application by an eGambling licensee.

(7) If the Commission grants an application under subsection (6), a description of the gambling equipment so approved in principle shall be endorsed on the core services associate certificate in question in accordance with regulations made under this subsection.

(8) Subsections (1) to (7) do not apply to a Temporary eGambling licensee.

(9) In accordance with regulations made by the Commission under this subsection, a Temporary eGambling licensee must, at all times whilst operating under its eGambling licence, satisfy the Commission that the gambling equipment it utilises to conduct its business of facilitating or effecting gambling transactions is safe, secure and fair.

#### **Evaluation and testing costs.**

**16.** (1) A person making an application under section 14 or 15 shall pay to the Commission the reasonable costs associated with evaluating and testing the proposed internal controls or, as the case may be, the software and processing and determining that application.

(2) The Commission shall by regulations make provision for the manner in which –

- (a) monies shall be deposited from time to time by, or on behalf of, an eGambling licensee or, as the case may be, an associate;

- (b) any surplus monies deposited with the Commission and not utilised by it for the purposes of subsection (1) shall be retained or, as the case may be, repaid; and
- (c) information concerning the costs incurred by the Commission shall be provided.

### **Associates providing core services**

**17.** (1) An eGambling licensee may exercise its eGambling licence, and a foreign gambling associate certificate holder may exercise its certificate, only if every business associate providing it with one or more core services as prescribed by regulations of the Commission made under this subsection holds a current core services associate certificate.

(2) Notwithstanding subsection (1), –

- (a) if within 21 days of first becoming an associate providing one or more core services to an eGambling licensee or foreign gambling associate certificate holder a person makes application for a core services associate certificate under section 4, until his application is determined by the Commission he shall be deemed to hold a core services associate certificate;
- (b) a Temporary eGambling licensee may lawfully exercise its eGambling licence without every associate, that provides it with one or more core services, holding a core services associate certificate, unless the Commission advises the Temporary eGambling licensee by way of written notice that it is not satisfied that every such associate is fit and proper to be an associate of the Temporary eGambling licensee.

### **Foreign Gambling Associates**

**18.** (1) The Commission may by regulations make provision generally for, or in relation to, the grant, use, effect and requirements of foreign gambling associate certificates.

(2) A foreign gambling associate certificate may be issued to an Alderney company that is a Category 1 eGambling licensee or a Category 2

eGambling licensee, but in no other circumstance shall a foreign gambling associate certificate be issued to an Alderney company.

(3) A foreign gambling associate certificate may not be issued to a natural person.

### **Key individuals.**

**19.** (1) An eGambling licensee or a foreign gambling associate certificate holder may exercise its eGambling licence or foreign gambling associate certificate only if every person –

- (a) performing functions identified by the licensee or certificate holder in its approved internal control system as those of a key individual; or
- (b) designated as a key individual by the Commission in accordance with regulations made under this paragraph,

holds a current key individual certificate.

(2) Notwithstanding subsection (1), if within 21 days of first becoming a key individual a person makes application for a key individual certificate under section 4, until his application is determined by the Commission he shall be deemed to hold a key individual certificate.

(3) A person who is a key individual and who does not, without reasonable excuse, hold a key individual certificate shall be guilty of an offence and liable, on conviction, to a fine not exceeding £25,000.

### **Exercise of Temporary eGambling licence.**

**20.** An eGambling licensee who holds a Temporary eGambling licence may exercise that licence only if all the requirements of the Law, this Ordinance, regulations made by the Commission under this section, and any conditions attached to the licence are satisfied.

### **Investigations.**

**21.** (1) The Commission may conduct such ordinary or special investigations as it considers necessary or expedient into –

- (a) an eGambling licensee and a foreign gambling associate certificate holder, including its operations, whether located in Alderney, Guernsey or elsewhere;
- (b) an associate of an eGambling licensee or a foreign gambling associate certificate holder, whether or not it holds a core services associate certificate, including the operations undertaken by it on behalf of the eGambling licensee or foreign gambling associate certificate holder, whether located in Alderney, Guernsey or elsewhere;
- (c) a holder of a hosting certificate, including its approved premises; or
- (d) a holder of a key individual certificate.

(2) If the Commission carries out an investigation under this section, the eGambling licensee or the certificate holder in question shall pay, or cause to be paid, to the Commission the reasonable costs incurred by the Commission associated with the carrying out of that investigation.

- (3) The Commission shall by regulations make provision for –
- (a) the conduct of an investigation, including the procedures to be adopted by it before, during and following an investigation; and
  - (b) the manner in which –
    - (i) payment shall be made;
    - (ii) any surplus monies deposited with the Commission and not utilised by it for the purpose of subsection (2) shall be retained, or as the case may be, repaid; and
    - (iii) information concerning the costs incurred by the Commission shall be provided.

### **General compliance matters.**

**22.** (1) The Commission may by regulations provide for anything necessary or expedient for the regulation, good conduct and control of eGambling.

(2) Without prejudice to the generality of subsection (1), the Commission shall make regulations to provide for the way in which –



- (a) a customer of an eGambling licensee is registered;
  - (b) a customer is informed by an eGambling licensee about the rules for effecting a gambling transaction;
  - (c) payment for a customer's gambling is received by, or on behalf of, an eGambling licensee;
  - (d) winnings accruing to a customer are returned by, or on behalf of, an eGambling licensee;
  - (e) an eGambling licensee and a foreign gambling associate certificate holder and, where appropriate, its associates are obliged to take steps to comply with applicable international measures in respect of money laundering and terrorist financing;
  - (f) a customer can impose limitations on his gambling activity with an eGambling licensee;
  - (g) a complaint by a customer of an eGambling licensee is handled;
  - (h) an eGambling licensee and a foreign gambling associate certificate holder shall keep, or cause to be kept, accounting and other records and provide, or arrange to provide, such records, reports and other information relating to its business to the Commission; and
  - (i) the operations of an eGambling licensee and a foreign gambling associate certificate holder are to be monitored by the Commission.
- (3) The Commission may –
- (a) establish and maintain a website to support the performance of its functions under this Ordinance and regulations made thereunder; and
  - (b) issue such written guidance as it considers appropriate for the purpose of providing information about compliance with the provisions of this Ordinance and regulations made thereunder.

*Miscellaneous and general provisions***Appeals.**

**23.** (1) Any person aggrieved by a decision of the Commission under this Ordinance or under regulations made under this Ordinance may, within 28 days immediately following the date of notification to him of the Commission's decision, appeal to the Court of Alderney against that decision on the grounds that it was *ultra vires* or was an unreasonable exercise of the powers of the Commission.

(2) An appeal under this section shall be instituted by way of summons served on the chairman of the Commission stating the grounds, and setting out the material facts, on which the appellant relies.

(3) On an appeal under this section, the appellant shall have the burden of proof and the final right of reply.

(4) On an appeal under this section, the Court of Alderney may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision against which the appeal is brought, pending the determination of the appeal in question.

(5) On an appeal under this section, the Court of Alderney may quash or confirm the decision of the Commission against which the appeal is brought, or may substitute any other decision which the Commission could have made.

(6) An appeal on a question of law shall lie from the Court of Alderney to the Royal Court of Guernsey and, for that purpose, Part II of the Court of Alderney (Appeals) Law, 1969<sup>2</sup> shall apply as if it were an appeal in a civil matter.

**Offences.**

**24.** (1) A person who, for the purpose of –

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<sup>2</sup>

Ordres en Conseil Vol. XXII, p. 192; amended by 1987/XVII

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- (a) obtaining the grant of a licence or certificate under this Ordinance, whether to himself or to some other person; or
- (b) satisfying a requirement imposed by regulations made under this Ordinance,

makes any declaration or statement or gives any information, or produces or makes any document, knowing the same to be false in a material particular shall be guilty of an offence.

(2) A person who, without the Commission's written authorisation, interferes in the conduct of a gambling transaction made lawful by this Ordinance shall be guilty of an offence and liable, on conviction, to a fine not exceeding £25,000.

(3) A customer of an eGambling licensee who fails to comply with the rules of a gambling transaction made lawful by this Ordinance as notified to him by the eGambling licensee shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

(4) A person who has not registered as a customer of an eGambling licensee but effects a gambling transaction with that licensee shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

(5) A person who contravenes any provision of regulations made under this Ordinance which is specified therein as a "money laundering offence" for the purposes of this subsection shall be guilty of an offence.

#### **Offences by bodies corporate.**

**25.** (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by 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.

**Accessories and abettors.**

26. Without prejudice to the generality of section 25, a person who knowingly and wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Ordinance shall be liable to be dealt with, tried and punished as a principal offender.

**General provisions as to regulations.**

27. (1) Regulations made by the Commission under this Ordinance –
- (a) may be amended or repealed by subsequent regulations hereunder;
  - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Commission to be necessary or expedient; and
  - (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.
- (2) Any powers conferred upon the Commission by this Ordinance to make regulations may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exemptions, or in relation to 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; or
    - (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Giving notices.**

**28.** (1) Any document other than a summons to be given under this Ordinance or under regulations made under this Ordinance may be given to –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode;
- (b) a company with a registered office in Alderney, by being left at, or sent by post or transmitted to, that office;
- (c) a company without a registered office in Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Alderney or, if there is no such place, its registered office or principal or last known principal place of business outside Alderney;
- (d) an unincorporated body, by being given to any partner, member, manager, director or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Alderney or, if there is no such place, its principal or last known principal place of business elsewhere;
- (e) the Commission or its chairman, by being left at, or sent by post or transmitted to, the offices of the Commission.

(2) Notwithstanding the provisions of subsection (1) and of any other rule of law in relation to the giving of documents, no document to be given to the Commission or its chairman under this Ordinance or under regulations made hereunder shall be deemed to have been given until it is received.

(3) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Ordinance to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting;
- (b) in the case of a document sent elsewhere, on the eighth day after the day of posting.

(4) In this section –

**"by post"** means by registered post, recorded delivery service or ordinary letter post; and

**"transmitted"** means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication; in which event the document shall be regarded as given when it is received.

### **Right to prohibit gambling and to refuse transactions.**

29. Nothing in this Ordinance or in any regulations made under this Ordinance shall be construed as requiring an eGambling licensee or any of its servants or agents to negotiate or enter into any gambling transaction.

### **Interpretation.**

30. (1) In this Ordinance, unless the context otherwise requires –

**"Alderney company"** means a company incorporated in Alderney and registered in the Register of Companies kept in accordance with the Companies (Alderney) Law, 1994;<sup>3</sup>

**"annualised net gaming yield"** shall be calculated by reference to regulations made by the Commission under this Ordinance;

**"applicant"** means a person making an application under section 4;

**"approved internal control system"** means an internal control system approved by the Commission in accordance with section 14, and includes an approved internal control system changed with the approval, or under the direction, of the Commission;

**"approved premises"** means premises approved by the Commission and specified on a hosting certificate at which an eGambling licensee's gambling equipment may be situated;

**"associate"** means a business associate or an executive associate;

**"associate certificate"** means –

- (a) a core services associate certificate issued under section 7 to an associate by which the Commission approves that associate during the currency of the certificate as being a

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<sup>3</sup>

Orders in Council No. XXXIV of 1994, I of 2001, XV of 2002.

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fit and proper person to be associated with the operations of an eGambling licensee or a foreign gambling associate certificate holder; and

- (b) a foreign gambling associate certificate issued under section 7;

**“business associate”** means a person who the Commission reasonably believes is or, as the case may be, will be associated with the ownership, management or performance of the operations of an eGambling licensee or a certificate holder, and includes (without limitation) –

- (a) a supplier of software;
- (b) a person who maintains a database of customer information;
- (c) a person involved in receiving payments from, and making payments to, customers; and
- (d) another company within the same group of companies;

**“Category 1 eGambling licensee”** means the holder of a Category 1 eGambling licence issued under section 7, and **“Category 1 eGambling licence”** has a corresponding meaning;

**“Category 2 eGambling licensee”** means the holder of a Category 2 eGambling licence issued under section 7, and **“Category 2 eGambling licence”** has a corresponding meaning;

**“certificate”** means, as the case may be, a core services associate certificate, a foreign gambling associate certificate, a hosting certificate or a key individual certificate;

**“certificate holder”** means, as the case may be, a person holding a core services associate certificate, a foreign gambling associate certificate, a hosting certificate or a key individual certificate;

**“conduct”** includes promote, organise, effect and operate;

**“controlled”** includes owned, leased and occupied under licence;

**“customer”** means a person who enters into an arrangement with a Category 1 eGambling licensee for the purpose of taking part in a gambling transaction;

**“direction to rectify”** means a notice to an eGambling licensee or a certificate holder containing –

- (a) a requirement that the eGambling licensee or certificate holder acts, or desists from acting, in a manner and within the period of time specified in the notice; and
- (b) a warning to the recipient of the consequences of failing to comply with the notice;

**“enactment”** means any Law, Ordinance or subordinate legislation;

**“executive associate”** means an executive officer of a company, partner or trustee, or another person identified in writing by the Commission who the Commission reasonably believes is or, as the case may be, will be associated with the ownership or management of the operations of an eGambling licensee or a certificate holder;

**“executive officer”**, of a company, means a person who is concerned with, or takes part in, the company’s management, whether or not the person is a director or the person’s position is given the name of executive officer;

**“eGambling”** means gambling where the gambling transaction with an eGambling licensee or foreign gambling associate certificate holder is effected remotely by a customer by means of a telecommunication device;

**“eGambling licence”** means a Category 1 eGambling licence, a Category 2 eGambling licence and a Temporary eGambling licence;

**“eGambling licensee”** means a person who holds an eGambling licence;

**“foreign company”** means a company that is not an Alderney company;

**“foreign gambling associate certificate”** means a certificate issued under section 7;

**“former associate certificate”** means a certificate issued to an associate under section 7 of the 2006 Ordinance;



**“full eGambling licence”** means an eGambling licence issued under section 7 of the 2006 Ordinance (by which the holder is permitted to conduct eGambling at any time);

**“gambling equipment”** means a machine or other device, whether electronic, electrical or mechanical, computer software, or another thing, used, or suitable for use, in eGambling;

**“gambling transaction”** means a transaction involving any form of betting, gaming and wagering and participation in any lottery;

**“Guernsey”** means the Island of Guernsey and includes Herm and Jethou;

**“hosting certificate”** means a certificate issued under section 7 to a person authorising it to accommodate gambling equipment in approved premises;

**“internal control system”** means a system of controls and administrative and accounting procedures used for the conduct of eGambling;

**“key individual”** means a person who –

- (a) occupies or acts in a position designated in an eGambling licensee’s or a foreign gambling associate certificate holder’s approved internal control system as a key position;
- (b) is an associate, or occupies or acts in a managerial position, or carries out managerial functions, or is in a position to control or exercise significant influence over the operations conducted under an eGambling licence or a foreign gambling associate certificate, designated by the Commission;

**“key individual certificate”** means a certificate issued under section 7 to a key individual enabling him to perform functions for, or on behalf of, an eGambling licensee or a foreign gambling associate certificate holder;

**“the Law”** means the Gambling (Alderney) Law, 1999, as amended<sup>4</sup>;

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<sup>4</sup> Order in Council No. XIV of 1999; No. XXVII of 2001; Ordinance No. XVI of 2003.

**“licensed activity”** means any gambling transaction organised, promoted or effected by an eGambling licensee in the exercise of its eGambling licence;

**“net gaming yield”** in relation to an eGambling licensee means the gross sum received by the eGambling licensee as a result of the licensed activity, after deduction of –

- (a) winnings and prizes paid or payable to a customer; and
- (b) such sums paid out by the eGambling licensee pursuant to contractual revenue sharing arrangements that the Commission considers to be *bona fide* and at arms length,

and shall be calculated by reference to regulations made by the Commission under this Ordinance;

**“ordinary investigation”** means a general investigation carried out periodically by the Commission in relation to an eGambling licensee’s operations and, where applicable, those parts of the operations undertaken by an associate;

**“promoter”** means a person who undertakes preparatory work, including, without limitation, making an application under this Ordinance, for the purpose of fostering the grant of an eGambling licence or certificate by the Commission to an entity which may lawfully hold that eGambling licence or certificate;

**“restricted use eGambling licence”** means an eGambling licence issued under section 7 of the 2006 Ordinance (by which the holder is only permitted to conduct eGambling in accordance with certain limitations imposed by it);

**“Temporary eGambling licence”** means an eGambling licence issued under section 7 by which the holder is only permitted to conduct eGambling in accordance with the limitations imposed by section 20;

**“special investigation”** means an investigation for a specific purpose arising outside the ambit of an ordinary investigation;

**“telecommunication device”** means –

- (a) a computer adapted for communicating by way of the internet or another communications network; or

- (b) a telephone; or
- (c) a television receiver adapted to allow the user to transmit information by way of a cable television network, a satellite or another communications network; or
- (d) any other electronic device or thing for communicating at a distance; and

“**2006 Ordinance**” means the Alderney eGambling Ordinance 2006, as amended<sup>5</sup>.

(2) Unless the context otherwise requires, a reference in this Ordinance to any enactment includes a reference to that enactment as amended, repealed and replaced, extended or applied by or under any enactment including this Ordinance.

(3) The Interpretation (Guernsey) Law, 1948<sup>6</sup> applies to the interpretation of this Ordinance as it applies to the interpretation of an enactment in force in Guernsey.

### **Repeals, savings and transitional provisions.**

**31.** (1) The enactments set out in Schedule 1 are hereby repealed.

(2) The savings and transitional provisions in Schedule 2 shall have effect.

### **Citation.**

**32.** This Ordinance may be cited as the Alderney eGambling Ordinance, 2009.

### **Commencement.**

**33.** This Ordinance shall come into force on 1 January 2010.

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<sup>5</sup> Ordinance No. VI of 2006, Ordinance No. XIII of 2007, Ordinance No. XI of 2008

<sup>6</sup> Ordres en Conseil Vol. XIII, p. 355.

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**SCHEDULE 1**

**REPEALS**

Alderney eGambling Ordinance, 2006<sup>7</sup>

Alderney eGambling (Amendment) Ordinance, 2007<sup>8</sup>

Alderney eGambling (Amendment) Ordinance, 2008<sup>9</sup>

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<sup>7</sup> Alderney Ordinance No. VI of 2006.

<sup>8</sup> Alderney Ordinance No. XIII of 2007.

<sup>9</sup> Alderney Ordinance No. XI of 2008.

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**SCHEDULE 2****SAVINGS AND TRANSITIONAL PROVISIONS****General**

1. This Schedule sets out the arrangements that will apply for the transition of certain aspects of the eGambling system established under the 2006 Ordinance to the new system established under this Ordinance, and the Alderney eGambling Regulations, 2009.

**Transition from full eGambling licence to new categories of eGambling licence**

2. (1) On the commencement date the full eGambling licence will no longer exist, so depending on what business it undertakes, a full eGambling licensee may want to become the holder of a Category 1 eGambling licence or a Category 2 eGambling licence, or both.

(2) The Commission is authorised to formulate and enter into a written transition plan with the full eGambling licensee, and such transition plan may contain terms to ensure a clear, gradual transition process that ensures continuity of operations.

(3) If the Commission and the full eGambling licensee agree on a transition plan to a new category of eGambling licence before the commencement date, then such a transition plan shall apply during the transition period stated in the plan, notwithstanding any contrary provision in the Ordinance or regulations made thereunder; and—

- (a) if the transition plan specifies that from a certain date the former full eGambling licensee is deemed to hold an eGambling licence or licences of any category, then such an eGambling licence or licences shall be granted and be of full force and effect according to the Law, this Ordinance, regulations made hereunder and the special conditions that may be applied;

- (b) if the transition plan specifies that the fees payable during the transitional period shall be less than those that would otherwise apply, the fees so specified shall be the only fees payable during that period.

(4) In the event that the Commission and the full eGambling licensee can not agree on a transition plan before the commencement date, then upon the commencement date –

- (a) the full eGambling licence shall be deemed to be a Category 1 eGambling licence and a Category 2 eGambling licence, and such licences shall expire on the fee renewal date;
- (b) if the full eGambling licensee wishes to continue to operate eGambling in Alderney after the expiry of the eGambling licence in accordance with item (a), it shall make an appropriate application as provided in the Ordinance and regulations made thereunder, and –
  - (i) such application may be made at any time after the approval date; and
  - (ii) if the Commission is satisfied that the full eGambling licensee is proceeding diligently with an application under the Ordinance and is a fit and proper entity to continue gambling under either a Category 1 eGambling licence or a Category 2 eGambling licence or both, then the Commission may by notice in writing and upon the payment of fees, that the Commission has determined (and which may include, without limitation, an adjustment to fees already paid), by the licensee, deem the former full eGambling licensee to be the holder of either a Category 1 eGambling licence or Category 2 eGambling licence or both.

(5) A restricted use eGambling licence shall on the commencement date be deemed to be a Temporary eGambling licence on the same terms and conditions and the Commission shall issue a licence accordingly, with fees payable –

- (a) at the rate applying before the commencement date, up until the fee renewal date; and

- (b) thereafter at the rate specified in Schedule 3.

**Transition from former associate certificate to Category 2 eGambling licence or foreign gambling associate certificate**

3. (1) If the activities that a former associate certificate holder proposes to undertake after the commencement date, in the opinion of the Commission, constitute in any part activities that only a Category 2 eGambling licensee or a foreign gambling associate certificate holder may undertake, then paragraphs 4 and 5 shall apply.

(2) If a transition plan is not agreed under paragraphs 4 or 5, then as from the commencement date the former associate certificate holder shall be restricted to activities that conform to a core services associate certificate as described in this Ordinance and regulations made thereunder, regardless of what activities it may have undertaken before that date.

**Transition from former associate certificate to Category 2 eGambling licence**

4. (1) If the Commission and the former associate certificate holder agree on a transition plan from former associate certificate to a Category 2 eGambling licence, then such a transition plan shall apply during the transition period stated in the plan, notwithstanding any contrary provision in this Ordinance or regulations made thereunder.

(2) The transition plan may include a procedure and timetable for the former associate certificate holder to –

- (a) form an Alderney company to become the holder of the Category 2 eGambling licence;
- (b) obtain approval of its internal control system in accordance with section 14 of this Ordinance;
- (c) obtain approval of the gambling equipment to be used by it in gambling activities associated with a Category 1 eGambling licensee in accordance with section 15 of this Ordinance;
- (d) obtain key individual certificates for the persons identified by it or the Commission in accordance with section 19 of this Ordinance;

- (e) ensure that its core services providers obtain a core services associate certificate in accordance with section 17 of this Ordinance,

and if the former associate certificate holder adheres to the transition plan, it shall be deemed to comply with the requirements set out under this Ordinance and the regulations made thereunder and to be eligible during the transition period described in the transition plan, to be the holder of a Category 2 eGambling licence.

(3) If the transition plan specifies that the fees payable during the transition period shall be less than those that would otherwise apply, or payable at different times, the fees specified shall be the only fees payable during that period.

#### **Transition from former associate certificate to foreign gambling associate certificate**

5. (1) If the Commission and the former associate certificate holder agree on a transition plan from former associate certificate to foreign gambling associate certificate, then such a transition plan shall apply during the transition period stated in the plan, notwithstanding any contrary provision in this Ordinance or regulations made thereunder.

(2) The transition plan may include a procedure and timetable for the former associate certificate holder to –

- (a) satisfy the requirements of section 14(6) of this Ordinance regarding approval of its internal control procedure;
- (b) attain key individual certificates for the persons identified by it or the Commission in accordance with section 19 of this Ordinance;
- (c) obtain approval of the gambling equipment to be used by it in gambling activities associated with a Category 1 eGambling licensee in accordance with section 15 of this Ordinance;
- (d) ensure that its core services providers obtain a core services associate certificate in accordance with section 17 of this Ordinance;



and if the former associate certificate holder adheres to the transition plan, it shall be deemed to comply with the requirements set out under this Ordinance and the regulations made thereunder and to be eligible during the transition period described in the transition plan, to be the holder of a foreign gambling associate certificate.

(3) If the transition plan specifies that the fees payable during the transition period shall be less than those that would otherwise apply, or payable at different times, the fees so specified shall be the only fees payable during that period.

### **Continuation of certificates**

6. (1) A former associate certificate in respect of which the Commission advises the former associate certificate holder that its activities conform with the permitted activities under a core services associate certificate, shall, on the commencement date, be deemed to be a core services associate certificate issued under this Ordinance.

(2) It is hereby provided that a —

- (a) hosting certificate, and
- (b) key individual certificate,

issued under the 2006 Ordinance shall remain of full force and effect after the commencement date.

### **Fees payable during transition**

7. (1) Any fee payable after the approval date (but prior to the commencement date) by a new applicant or for the annual renewal of an existing eGambling licence or certificate held under the 2006 Ordinance shall, if the equivalent fee under this Ordinance is to be less after the commencement date, be payable at such lesser rate.

(2) Any fee payable during the period between the commencement date and 31 March 2010 for the annual renewal of an existing eGambling licence or certificate shall, if the equivalent fee under this Ordinance is to be greater after the commencement date, be payable at the rate applicable before the commencement date.

(3) Subject always to any contrary provision set out in the transition plan, the fee payable for the renewal of a Category 1 eGambling licence for a full eGambling licensee which becomes a Category 1 eGambling licensee after the commencement date shall, notwithstanding Schedule 3, be no higher than that specified for the next band in column 2 of Schedule 3, above the band at which the Category 1 eGambling licensee last paid its Category 1 eGambling licence fee.

### **Transition plans**

8. (1) The Commission may make provision in regulations under this Ordinance to better define the form, composition, effect and limitations of the transition plans made under this Schedule.

(2) In the event of a dispute between the parties concerning the meaning or implementation of a transition plan, the Court of Alderney is empowered to hear and determine such a dispute and the decision of the court shall be binding between the Commission and the eGambling licensee or certificate holder as the case may be.

### **Interpretation of this Schedule**

9. In this Schedule, unless the contrary intention appears –

“**approval date**” means the date on which the States of Alderney approved this Ordinance;

“**commencement date**” means 1 January 2010;

“**fee renewal date**” means the anniversary of the date of validity specified on the licence; and

“**transition plan**” means the written agreement provided for in this Schedule that is made by the Commission and an eGambling licensee or certificate holder to organise matters relating to the transition between the eGambling system established under the 2006 Ordinance and the eGambling system established under this Ordinance.

Section 8**SCHEDULE 3****FEES**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>item</b>	<b>LICENCE OR CERTIFICATE</b>	<b>DESCRIPTION</b>	<b>FEE</b>
1	Category 1 eGambling licence	For a licensee with no previous licensable activity in Alderney, for its first year	£35,000
2	Category 1 eGambling licence (Band A)	i) For renewal by a licensee whose annualised net gaming yield is less than £1 million	£35,000
3	Category 1 eGambling licence (Band B)	ii) For renewal by a licensee whose annualised net gaming yield equals or exceeds £1 million but is less than £5 million	£70,000
4	Category 1 eGambling licence (Band C)	iii) For renewal by a licensee whose annualised net gaming yield equals or exceeds £5 million but is less than £7.5 million	£100,000
5	Category 1 eGambling licence (Band D)	iv) For renewal by a licensee whose annualised net gaming yield equals or exceeds £7.5 million	£140,000
6	Category 2 eGambling licence		£35,000
7	Temporary eGambling licence	Annual licence fee	£10,000
8	Core services associate certificate		£10,000
9	Foreign gambling associate certificate		£35,000
10	Hosting certificate		nil