

Island of



Guernsey

# Ordinance of the States

**XIV**  
**2002**

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Made ..... 25th September, 2002.

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## **The Sunday Trading Ordinance, 2002**

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**THE STATES**, in pursuance of their Resolutions of the 11<sup>th</sup> November, 1999<sup>a</sup> and 27<sup>th</sup> March 2002<sup>b</sup>, and in exercise of the powers conferred on them by sections 1, 2, 3 and 4 of the Sunday Trading (Guernsey) Law, 1973<sup>c</sup>, hereby order:-

### PART I

#### PROHIBITION ON OPENING SHOP ON A SUNDAY

##### **Prohibition on opening shop on a Sunday.**

1. (1) Subject to subsection (2), a person shall not cause or permit a shop to be open for the serving of customers on a Sunday.

(2) Subsection (1) shall not apply in respect of a shop -

(a) which is a licensed shop; or

(b) which is not a licensed shop, but which is open solely for an exempt purpose.

(3) For the purposes of this Ordinance, unless the context otherwise requires -

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<sup>a</sup> Article VII of Billet d'État XVIII of 1999.

<sup>b</sup> Article V of Billet d'État IV of 2002.

<sup>c</sup> Ordres en Conseil Vol. XXIV, p. 48.

"**licensed shop**" means a shop in respect of which there is in force a licence granted under Part II; and

"**exempt purpose**" means a purpose specified in the first Schedule to this Ordinance.

**Extension of provisions of Ordinance to retail trading elsewhere than in shops.**

2. The provisions of this Ordinance shall extend to any place where a retail trade or business is carried on, as if that place were a shop.

PART II

LICENSING OF SHOPS FOR SUNDAY OPENING

**Sunday opening licence.**

3. (1) Where, upon application made in accordance with Part III -
- (a) the Constables and Douzaine of the Parish in which a shop is situated; or
  - (b) in the case of a mobile shop, the Constables and Douzaine of the Parish in which the proprietor of the mobile shop resides,

are satisfied, in accordance with the assessment and determination procedure under Part IV, that the shop is of a type falling within one of the descriptions of categories of shop set out in paragraphs A to M of the second Schedule ("**a statutory category**"), they shall grant a licence ("**a Sunday opening licence**") authorising that shop to be open for the serving of customers on a Sunday.

- (2) A Sunday opening licence -

- (a) shall be granted subject to the specified conditions;
- (b) shall remain valid for the period 1 January to 31 December in each year, or such shorter period, ending on 31 December, as is specified in the licence; and
- (c) shall specify the statutory category of the shop to which the licence relates.

(3) For the purposes of this Ordinance, unless the context otherwise requires -

**"mobile shop"** means a motor vehicle or moveable structure, where that vehicle or structure is used for the purposes of carrying on any retail trade or business;

**"moveable structure"** means any structure which is capable of being moved from one place to another, whether by being towed or by being transported on a motor vehicle or trailer; and

**"the specified conditions"** means the conditions (if any) specified in the second Schedule, to which a Sunday opening licence granted in respect of a shop of a type falling within the relevant statutory category, is subject.

#### **Special event licence.**

4. (1) Where a special event is to be held on a Sunday, the Constables and Douzaine of the Parish in which the special event is to be held, may, upon application made in accordance with Part III, grant a licence ("**a special event licence**") authorising a shop situated within that Parish, or a specified area of

that Parish, to be open -

- (a) for the serving of customers on such Sunday as is specified in the licence; and
- (b) for such purposes as appear to them to be appropriate.

(2) A special event licence may contain such conditions as appear to the Constables and Douzaine to be appropriate, having regard to -

- (a) the nature of the special event;
- (b) the location of the special event;
- (c) the period during which the special event is held; and
- (d) the circumstances of the Parish or part of the Parish in which the special event is held.

(3) For the purposes of this Ordinance -

a "**special event**" means an event or social occasion which is promoted for the purposes of-

- (a) raising money for a qualifying organisation; or
- (b) celebrating or commemorating an event or occasion of special historic or cultural significance; and

a "**qualifying organisation**" means a club, institution, organisation

or association of persons (or a branch of such a club, institution, organisation or association) established for -

- (a) charitable purposes;
- (b) the purposes of participation in or support of historic, sporting, recreational or cultural activities; or
- (c) other lawful purposes not involving those of personal gain or business or commercial purposes.

**Emergency licence.**

5. (1) In emergency circumstances, the Constables and Douzaine of a Parish may, upon application made in accordance with Part III, grant a licence ("**an emergency licence**") authorising -

- (a) any shop or category of shops situated within; or
- (b) any mobile shop, the proprietor of which resides in,

the Parish to be open for the serving of customers on such Sunday as is specified in the licence, for such purposes and subject to such conditions as appear to them to be appropriate.

(2) In this Ordinance, the expression "**emergency circumstances**" means unforeseen circumstances including, by way of example and not limitation, any form of natural disaster rendering it necessary or desirable for the inhabitants of a Parish urgently to obtain goods or items from a shop.

**Licence register.**

6. (1) When issuing a licence under this Ordinance, the Constables and Douzaine of a Parish shall cause a copy of the licence to be sent to such person as may be nominated for the purpose by the President of the Board.

(2) The Board shall maintain a register of licences containing -

(a) in the case of a Sunday opening licence -

(i) the address of the shop in respect of which the licence is granted; or

(ii) where the licence is granted in respect of a mobile shop, the name and address of the proprietor of the mobile shop; and

(iii) the statutory category specified in the licence;

(b) in the case of a special event licence, the name and address of the person making application for the licence under Part III;

(c) in the case of an emergency licence -

(i) the address of the shop in respect of which the licence is granted; or

(ii) a description of the category of shops in respect of which the licence is granted;

and

- (d) a copy of every licence granted under the provisions of this Ordinance.

(3) The Board shall provide facilities for making the information contained in the entries in the register of licences maintained under subsection (2) available for inspection by members of the public at such reasonable times during such business days as it may from time to time determine.

**Variation of licences.**

7. The Constables and Douzaine of a Parish may vary -

- (a) the terms;
- (b) the conditions; or
- (c) both the terms and conditions,

of a licence (other than a Sunday opening licence) which they have granted.

**Revocation and suspension of licences.**

8. The Constables and Douzaine of a Parish may revoke or suspend a licence which they have granted where -

- (a) there is a breach of any condition subject to which the licence is issued;
- (b) a shop to which the licence relates, is open for the serving of customers on a Sunday for a purpose other than any purpose

specified in the licence; or

- (c) in the case of a Sunday opening licence, the shop to which the licence relates ceases to be a shop of a type falling within the statutory category specified in the licence.

**Form and issue of licences.**

**9.** (1) A licence granted under this Part shall be -

- (a) in writing;
- (b) dated with the date of issue; and
- (c) issued by the Constables of a Parish on behalf of themselves and the Douzaine of the Parish.

(2) Subject to the requirements for a licence under subsection (1), regulations may make provision as respects the form and contents of a licence granted under this Part.

**PART III**

**LICENCE APPLICATIONS**

**Application for a Sunday opening licence.**

**10.** (1) An application for a Sunday opening licence shall be submitted -

- (a) to the Constables and Douzaine of the Parish in which a shop is situated; or

- (b) in the case of a mobile shop, to the Constables and Douzaine of the Parish in which the proprietor of that shop resides,

at least 28 days prior to the date upon which the applicant wishes the licence to be issued.

(2) An application under subsection (1) -

- (a) shall be made in such form; and
- (b) shall be accompanied by such fee (except in the case of an application for a Category E Sunday opening licence, where no fee shall be payable) payable in such manner,

as regulations may provide.

(3) In subsection (2)(b), the expression "**a Category E Sunday opening licence**" means a Sunday opening licence in respect of which the statutory category, within which the shop referred to in the application for the licence would fall if the application were granted, would be specified under section 3(2)(c) as statutory category E.

#### **Application for a special event licence.**

**11.** (1) An application for a special event licence shall be submitted to the Constables and Douzaine of the Parish in which the special event is to be held at least 28 days prior to the date upon which the applicant wishes the licence to be issued.

- (2) An application under subsection (1) -
  - (a) shall be made in such form; and
  - (b) shall be accompanied by such fee (except in the case of an application for a licence in respect of a special event which is a special event under section 4(3)(a), where no fee shall be payable) payable in such manner,

as regulations may provide.

**Application for an emergency licence.**

12. (1) An application for an emergency licence shall be submitted -

- (a) to the Constables and Douzaine of the Parish in which a shop is situated; or
- (b) in the case of a mobile shop, to the Constables and Douzaine of the Parish in which the proprietor of that shop resides.

(2) An application under subsection (1) shall be in such form as the Constables and Douzaine of the Parish to which it is to be submitted may determine and may include the following particulars -

- (a) the full name and address of the applicant;
- (b) a description of the shop or category of shops in respect of which the application is made;

- (c) an indication of the Sunday or Sundays upon which the applicant wishes the shop, or category of shops, in respect of which the application is made, to be licensed for opening under section 5; and
- (d) a statement concerning the nature and anticipated duration of, the emergency circumstances in respect of which the application is made.

PART IV  
ASSESSMENT AND DETERMINATION OF APPLICATIONS FOR SUNDAY  
OPENING LICENCES

**Inspection of shops.**

13. Following the receipt of an application for a Sunday opening licence, properly completed and submitted in accordance with section 10 -

- (a) the Dean of the Douzaine (or his nominee); and
- (b) one of the Constables,

of the Parish to which the application for the licence is submitted, shall, as soon as is reasonably practicable, inspect the shop to which the application relates, in the presence of the applicant or his representative, so as to ascertain whether or not the shop falls within the statutory category indicated in the application.

**Reports.**

14. (1) The persons carrying out an inspection under section 13 ("the inspectors") shall make a written report of their inspection, which report shall

include -

- (a) any relevant comments or representations made by or on behalf of the applicant in support of the application for a Sunday opening licence;
- (b) their conclusions as to whether or not the shop in question falls within the statutory category indicated in the application; and
- (c) the reasons for their conclusions.

(2) A copy of a report under subsection (1) shall be sent by the inspectors -

- (a) to the applicant; and
- (b) to such person as may be nominated for the purpose by the President of the Board.

(3) Following receipt of a report, the person nominated by the President of the Board under subsection (2)(b) shall examine it and send it, together with any comments which he wishes to make concerning its contents, to the Constables of the relevant Parish.

(4) Regulations may specify the written format in which a report under subsection (1) shall be compiled and presented.

**Assessment and determination.**

**15.** (1) Following the receipt of a report under this Part, the

Constables and Douzaine of a Parish shall, on the basis of -

- (a) the contents of the report;
- (b) any comments on the report made by the person nominated by the President of the Board under section 14(2)(b);
- (c) any inspection which a Constable or any member of the Douzaine may himself have made of the shop in question;
- (d) any relevant comments or representations made by or on behalf of the applicant, which are not mentioned in the report; and
- (e) any other matters which they deem relevant,

assess the application to which the report relates and determine whether or not, in their opinion, the shop referred to in the report is a shop of a type falling within the statutory category indicated in the application.

(2) An application for a Sunday opening licence shall be granted or refused, in accordance with section 16, on the basis of the results of the assessment and determination under subsection (1).

## PART V

### DECISIONS OF THE CONSTABLES AND DOUZAINES

#### **Decisions of the Constables and Douzaines.**

16. (1) The Constables and Douzaine of a Parish shall (and, in the case of an application for a Sunday opening licence, subject to section 15(2)) dispose of any application under Part III, as soon as reasonably practicable following its submission, by -

- (a) granting; or
- (b) refusing to grant,

a licence under Part II.

(2) The Constables and Douzaine of a Parish shall -

- (a) make and retain a written record of the reasons for a decision taken by them under the provisions of this Ordinance; and
- (b) cause a copy of the record of the reasons for a decision of a type specified in the first column of the Table below to be served -
  - (i) in accordance with the provisions of the second column of the Table; and
  - (ii) upon such person as may be nominated for the purpose by the President of the Board.

TABLE

<b>Decision</b>	<b>Service</b>
1. The refusal to grant a licence.	Upon the applicant for the licence.
2. The grant of a licence subject to conditions (other than specified conditions).	Upon the applicant for the licence.
3. The variation of the terms or conditions, or both the terms and conditions, of a licence under section 7.	Upon the applicant for the licence.
4. The revocation or suspension of a licence under section 8.	(a) In the case of a special event licence or an emergency licence, upon the applicant for that licence;  (b) In the case of a Sunday opening licence, by leaving or sending by post a copy to the shop in respect of which the licence has been granted.

PART VI  
APPEALS

**Establishment of the Sunday Trading Appeals Tribunal.**

17. (1) There is established a tribunal called the Sunday Trading Appeals Tribunal ("**the Tribunal**") which shall carry out the functions and exercise the powers conferred by section 18.

(2) The third Schedule to this Ordinance shall have effect in relation to the Tribunal.

**Right of appeal.**

18. (1) A person aggrieved by a decision -
- (a) of the Constables and Douzaine of a Parish made in the carrying out or exercise of their functions and powers, being a decision -
    - (i) of a type referred to in the first column of the Table in section 16(2);
    - (ii) to refuse to issue a notice under sections 28 or 29, following receipt of a written request to do so; or
    - (iii) to rescind, revoke, amend or vary a notice issued under section 28 or 29; or
  - (b) of the Tourist Board made in the carrying out or exercise of its functions and powers, being a decision -
    - (i) to refuse to issue a notice under section 30, following receipt of a written request to do so; or
    - (ii) to rescind, revoke, amend or vary a notice issued under section 30,

may appeal against the decision to the Tribunal on any of the grounds set out in subsection (2).

- (2) The grounds of an appeal under this section shall be -

- (a) that the decision was ultra vires or that another error of law has been made;
  - (b) that a material error as to the facts has been made;
  - (c) that there was a material procedural error; or
  - (d) that there was some other material irregularity, including unreasonableness, bad faith or lack of proportionality.
- (3) An appeal under this section shall be instituted -
- (a) within a period of 28 days (or such longer period as the Tribunal may for good cause allow) immediately following the date of the decision in question;
  - (b) by written notice served on the Clerk to the Tribunal stating the grounds and material facts on which the appellant relies; and
  - (c) upon payment to the Board of such sum as regulations may provide.
- (4) On an appeal under this section, the Tribunal may -
- (a) dismiss the appeal; or
  - (b) quash the decision of the Constables and Douzaine or

the Tourist Board, as the case may be.

(5) Where the Tribunal quashes the decision of the Constables and Douzaine or the Tourist Board under subsection (4)(b), it may -

- (a) remit the matter to the Constables and Douzaine or the Tourist Board with a direction to reconsider it and reach a decision in accordance with the findings of the Tribunal; and
- (b) if it thinks fit, order that any sum paid under subsection (3)(c) be refunded to the person making the appeal.

(6) The effect of a decision to which an appeal under this section relates shall not be suspended in consequence of the bringing of the appeal, except where -

- (a) the Constables and Douzaine of the Parish against whose decision the appeal is brought;
- (b) the Tourist Board, in respect of an appeal brought against a decision which it has made; or
- (b) the Tribunal,

order otherwise.

(7) The Constables and Douzaine of a Parish or the Tourist Board may, in respect of an appeal brought against a decision which they have or it has

made, where that appeal under this section is not determined by the Tribunal within a period of three months immediately following the date of the notice by which the appeal was instituted, apply to the Tribunal, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and upon hearing such an application the Tribunal may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Tribunal may direct); or
- (b) make such other order as the Tribunal considers just.

**Appeals from Tribunal to Royal Court.**

19. (1) A person aggrieved by a decision of the Tribunal on a question of law may, subject to the provisions of subsections (2) and (3), appeal therefrom to the Royal Court -

- (a) within a period of 28 days (or such longer period as the Royal Court may for good cause allow) immediately following the date of the decision in question; and
- (b) in such manner as may be prescribed by order of the Royal Court.

(2) No decision of the Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the appeal from presenting his case fairly before the Tribunal.

(3) This section does not confer a right of appeal on a question of

law which has been referred to the Royal Court under section 20.

(4) An appeal from a decision of the Royal Court made on an appeal under this section shall, with leave of the Royal Court or the Court of Appeal, lie to the Court of Appeal.

**Reference of points of law to Royal Court.**

20. (1) A question of law arising in connection with the hearing and determination by the Tribunal of an appeal may, if the Tribunal thinks fit, be referred for decision to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) An appeal from a decision of the Royal Court made on a reference under this section shall, with leave of the Royal Court or the Court of Appeal, lie to the Court of Appeal.

PART VII  
OFFENCES

**Contravention of section 1.**

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

- (a) on conviction on indictment to a fine not exceeding £50,000; or
- (b) on summary conviction, to a fine not exceeding level 5 on the uniform scale.

**Opening licensed shop in breach of a condition of licence or for unlawful**

**purpose.**

22. (1) A person who causes or permits a licensed shop to be open on a Sunday for the serving of customers -

- (a) otherwise than in accordance with the conditions, subject to which the licence relating to that shop is granted; or
- (b) for a purpose other than that for which the licence is granted,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable -

- (a) on conviction on indictment to a fine not exceeding £25,000; or
- (b) on summary conviction, to a fine not exceeding level 4 on the uniform scale.

**Offences in relation to licence applications.**

23. (1) A person who in or in connection with an application for a licence under this Ordinance -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) recklessly makes a statement, dishonestly or

otherwise, which is false, deceptive or misleading in a material particular;

- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both.

**Offences in relation to hearings, etc. before Tribunal.**

24. (1) A person who -

- (a) in proceedings before the Tribunal or in making any statement or providing any information or document to the Tribunal or any member thereof when acting in the exercise or purported exercise of their functions under this Ordinance -
  - (i) makes a statement which he knows or has

reasonable cause to believe to be false, deceptive or misleading in a material particular;

- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
  - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
  - (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;
- (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend;
- (c) on attending before the Tribunal as a witness, fails, when legally required to do so -
- (i) to take the oath or affirmation;
  - (ii) to produce any document in his possession, custody or power; or

- (iii) to answer any question put to him;
- (d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court; or
- (e) discloses, except for the purposes of legal proceedings or with other lawful excuse, any matter which came to his knowledge by reason of his being present before the Tribunal when the Tribunal was sitting in camera;

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both.

**Offences by bodies corporate.**

**25.** (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be 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.

**Aiding and abetting, etc.**

26. A person who aids, abets, counsels or procures the commission by another person of an offence under this Ordinance shall be guilty of the like offence and may be proceeded against and punished accordingly.

**Defence of due diligence.**

27. In any proceeding for an offence under this Ordinance, it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VIII  
MISCELLANEOUS

**Designation of area as tourist or recreational area.**

28. (1) The Constables and Douzaine of a Parish may, by notice in writing, designate any area or premises, within the Parish, consisting of -

- (a) hotel premises (including associated grounds and gardens); or
- (b) a shopping or recreational complex, which they regard as being of special interest to tourists or other visitors,

as a tourist or recreational area, for the purposes of this Ordinance.

(2) The Constables and Douzaine shall as soon as reasonably practicable cause a copy of a notice made under subsection (1) -

- (a) to be published in La Gazette Officielle; and
- (b) to be sent to such person as may be nominated for the purpose by the President of the Board.

**Designation of area as place of particular interest.**

29. (1) The Constables and Douzaine of a Parish may, by notice in writing, designate any area or premises, within the Parish, consisting of -

- (a) an art gallery; or
- (b) premises or land which they regard as being of particular educational or historic interest,

as a place of particular interest, for the purposes of this Ordinance.

(2) The Constables and Douzaine shall as soon as reasonably practicable cause a copy of a notice made under subsection (1) -

- (a) to be published in La Gazette Officielle; and
- (b) to be sent to such person as may be nominated for the purpose by the President of the Board.

**Designation of Sunday when cruise ship is visiting Guernsey.**

30. (1) The Tourist Board may, by notice in writing, designate a Sunday, upon which a cruise ship is due to visit Guernsey, as a Sunday when a shop -

- (a) of a type falling within statutory category K; and

- (b) in respect of which a Sunday opening licence is in force,

may be open for the serving of customers in accordance with the provisions of this Ordinance.

(2) The Tourist Board shall as soon as reasonably practicable cause a copy of a notice made under subsection (1) -

- (a) to be published in La Gazette Officielle; and
- (b) to be sent to such person as may be nominated for the purpose by the President of the Board.

**Powers to vary etc. notices made under sections 28, 29 and 30.**

31. The power to issue a notice under section 28, 29 or 30 includes a power to rescind, revoke, amend or vary the notice.

**Service of documents.**

32. An application, notice or other document which, under this Ordinance, is to be submitted or given to or served on -

- (a) the Constables and Douzaine of a Parish, may be submitted, given or served by leaving it at, or by sending it by post addressed to the Constables of the Parish at, the offices of the Douzaine;

- (b) the Board, may be submitted, given or served by leaving it at, or by sending it by post addressed to the President of the Board at, the Board's offices;
- (c) any person, may be submitted, given or served by delivering it to him, or by leaving it at, or by sending it by post addressed to him at -
  - (i) his usual or last known place of work or residence; or
  - (ii) the address notified in any application, notice or other document by that person.

**Regulations.**

33. (1) Any power conferred by this Ordinance to make any order, regulations or rules -

- (a) may, in the case of any order (other than an order which may be made by the Royal Court) or regulations, be exercised by the Board;
- (b) may be exercised in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and
- (c) may be exercised 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.

(2) Without prejudice to any specific provision of this Ordinance, any order, regulations or rules under this Ordinance may be amended or repealed by a subsequent order, regulations or rules hereunder and may contain such consequential, incidental, supplemental or transitional provision as appears to the Royal Court or the Board, as the case may be, to be expedient.

(3) Any orders (other than orders of the Royal Court) or regulations made under this Ordinance 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 a new order or new regulations.

**Interpretation.**

**34.** (1) In this Ordinance, unless the context otherwise requires -

"**Appendix**" means the appendix to the second Schedule to this Ordinance;

**"applicant"** means an applicant for a licence;

**"bank premises"** means premises or part of any premises occupied by an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>d</sup>;

**"a beach shop"** has the meaning given by paragraph F(2) of the second Schedule;

**"Board"** means the States Board of Industry;

**"body corporate"** means a body of persons incorporated with or without limited liability in any part of the world;

**"business day"** has the meaning given by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>e</sup>;

**"Clerk to the Tribunal"** means the clerk appointed under paragraph 7 of the third Schedule to this Ordinance;

**"customary shop opening hours"** means the periods of time between 9 o'clock in the morning and 5 o'clock in the afternoon on a business day;

**"drinks"** does not include intoxicating liquor;

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<sup>d</sup> Order in Council No. XIII of 1994.

<sup>e</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; No. XIV of 1994 and No. IX of 2001.

"**emergency circumstances**" has the meaning given by section 5(2);

"**emergency licence**" has the meaning given by section 5(1);

"**exempt purpose**" has the meaning given by section 1(2);

"**floor area**" means the internal area of the floor of so much of a shop as consists of or is comprised within a building (but excluding any part of the shop which, in the course of the trade or business carried on upon or from that shop during the customary opening hours, is used neither for the serving of customers nor for the display of goods);

"**fuel**" includes petrol, diesel oil and liquid petroleum gas;

"**Guernsey**" means the Islands of Guernsey, Herm and Jethou;

"**the inspectors**" has the meaning given by section 14;

"**an instrument**" means any order (including any order of the Royal Court), regulations, rules or other subsidiary legislative instrument;

"**intoxicating liquor**" has the meaning given by section 112(1) of the Liquor Licensing Ordinance, 1993<sup>f</sup>;

"**a licence**" means a licence granted under a provision of this Ordinance;

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<sup>f</sup> Recueil d'Ordonnances Tome XXVI, p. 197 and No. XVI of 1998.

**"licensed shop"** has the meaning given by section 1(3);

**"mobile shop"** has the meaning given by section 3(3);

**"moveable structure"** has the meaning given by section 3(3);

**"predominant"**, as used in the expression **"predominant range of goods or items"** appearing in the second Schedule to this Ordinance, means predominant by reference to -

- (a) the number of the goods or items in; and
- (b) where the expression appears in paragraphs A, B, D, F, J, K, L, and M of that schedule, the floor area dedicated to,

the range of goods or items in question and not to the value of the sales of such goods or items over any particular period;

**"qualifying organisation"** has the meaning given by section 4(3);

**"Royal Court"** means the Royal Court of Guernsey sitting as an Ordinary Court;

**"shop"** has the meaning given by section 6 of the Sunday Trading (Guernsey) Law, 1973 (namely, that it includes any premises where any retail trade or business is carried on) and includes bank premises and a mobile shop;

**"a small shop"** means a shop where the floor area does not exceed 400 square metres;

"**special event**" has the meaning given by section 4(3)

"**special event licence**" has the meaning given by section 4(1);

"**specified conditions**" has the meaning given by section 3(3);

"**the States**" means the States of Guernsey;

"**statutory category**" has the meaning given by section 3(1);

"**Sunday opening licence**" has the meaning given by section 3(1);

"**Tourist Board**" means the States Tourist Board; and

"**Tribunal**" has the meaning given by section 17(1).

(2) Any reference in this Ordinance to an enactment or instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) In this Ordinance 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.

(4) Unless the context otherwise requires-

(a) a reference in this Ordinance 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 Ordinance which is so numbered or lettered; and

- (b) a reference in a provision of this Ordinance 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.

(5) For the purposes of this Ordinance, Herm and Jethou are deemed to be parts of the Parish of Saint Peter Port.

**Transitional provision.**

35. Regulations may make such transitional provision as the Board deems necessary or desirable for the proper operation of the provisions of this Ordinance and any regulations made thereunder.

**Power to amend Appendix.**

36. The provisions of the Appendix may be amended, augmented, substituted or repealed by way of regulations.

**Repeals.**

37. The Sunday Trading (Implementation) Ordinance, 1974<sup>g</sup> is repealed.

**Extent.**

38. This Ordinance shall have effect in the Islands of Guernsey, Herm and Jethou.

**Citation.**

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<sup>g</sup> Recueil d'Ordonnances Tome XIX, p. 263.

39. This Ordinance may be cited as the Sunday Trading Ordinance, 2002.

**Commencement.**

40. The provisions of this Ordinance shall come into force as follows -

- (a) Parts II, III, IV, V and VI and Parts VII and VIII (other than sections 21, 22, 25, 26 and 37), shall come into force on the 25th September 2002, provided that no licence shall have effect before the 1st January 2003; and
- (b) Part I and sections 21, 22, 25, 26 and 37 shall come into force on the 1st January 2003.

**FIRST SCHEDULE**  
**EXEMPT PURPOSES**

**Door to door deliveries.**

1. The facilitating of the door to door delivery of -
  - (a) newspapers, periodicals or magazines;
  - (b) dairy products; or
  - (c) heating fuels.

**Sale of freshly caught fish.**

2. The sale by fishermen of freshly caught fish (including shellfish).

**Sale of farm etc. produce.**

3. The sale at a farm, growing property, allotment or similar place, of produce produced thereon.

**Sale of meals or refreshments.**

4. The sale of meals or refreshments.

**Hairdressers and barbers.**

5. The carrying on of the business of a hairdresser or barber.

**Automated banking services.**

6. The provision of banking services by an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994, by means of mechanical or electronic devices acting in response to instructions

supplied by an individual.

**Sale of fuel and lubricants where Category B Sunday opening licence is in force.**

7. The sale, despatch or delivery of fuel or lubricants from petrol filling station premises which incorporate a shop in respect of which there is in force a Category B Sunday opening licence.

(2) For the purposes of this paragraph, "**a Category B Sunday opening licence**" means a Sunday opening licence in respect of which the statutory category within which the shop falls is specified under section 3(2)(c) as statutory category B.

**SECOND SCHEDULE**  
**THE STATUTORY CATEGORIES**

**Category A – Suppliers of victuals etc. to ships and aircraft.**

**A.** A shop upon or from which is carried on a trade or business -

(a) involving the sale or delivery of -

(i) victuals, stores or other necessaries required by any person for a ship or an aircraft; or

(ii) fuel or lubricants to the owner or other person in charge of a boat or aircraft for the purposes of that ship or aircraft,

during, or during a substantial part of, customary shop opening hours; and

(b) where the predominant range of goods or items offered for sale, despatch or delivery upon or from that shop -

(i) in the course of the trade or business;

(ii) during, or during a substantial part of, customary shop opening hours,

is a range consisting of one or more of the type or types of the goods or items referred to in subparagraphs (a)(i) and (ii).

**Category B – Small Convenience Grocery Stores.**

**B.** A small shop upon or from which is carried on a trade or business -

(a) involving the sale of food, drinks, cleaning materials or toiletries during, or during a substantial part of, customary shop opening hours; and

(b) where the predominant range of goods or items offered for sale from that shop -

(i) in the course of the trade or business;

(ii) during, or during a substantial part of, customary shop opening hours,

is a range consisting of one or more of the type or types of the goods or items referred to in subparagraph (a).

**Category C- Fuel Outlets.**

**C.** (1) A shop upon or from which is carried on the trade or business of a retail fuel supplier during, or during a substantial part of, customary shop opening hours.

(2) A Sunday opening licence granted in respect of a shop by virtue of section 3 and subparagraph (1), is granted subject to the condition that the shop to which the licence relates is open solely for the serving of customers on a Sunday in connection with the sale, despatch or delivery of fuel or lubricants.

**Category D – Newsagents.**

**D.** A shop upon or from which is carried on a trade or business -

- (a) involving the sale of newspapers, magazines, periodicals, books or stationery during, or during a substantial part of, customary shop opening hours; and
- (b) where the predominant range of goods or items offered for sale from that shop -
  - (i) in the course of the trade or business;
  - (ii) during, or during a substantial part of, customary shop opening hours,

is a range consisting of one or more of the type or types of the goods or items referred to in subparagraph (a).

**Category E – Authorised Pharmacist.**

**E.** (1) A shop upon or from which is carried on the trade or business of an authorised pharmacist.

(2) A Sunday opening licence granted in respect of a shop by virtue of section 3 and subparagraph (1), is granted subject to the following conditions -

- (a) that the shop is open for the serving of customers on a Sunday for a period of no longer than one hour during the Sunday in question; and

(b) where the trade or business of the authorised pharmacist is carried on in a shop consisting of a building having more than one floor, that only the floor, upon which that part of the trade or business involving the dispensing of medicines is carried on, is open for the serving of customers on a Sunday.

(3) For the purpose of this paragraph -

"authorised pharmacist" means a person authorised to practise as a pharmacist within the law for the time being in force; and

"dispensing" has the meaning given by section 42(1) of the Poisons and Pharmacy Ordinance, 1970<sup>h</sup>.

**Category F – Beach shops.**

F. (1) A beach shop upon or from which is carried on a trade or business -

(a) involving the sale of -

(i) food or drinks;

(ii) items for use in connection with any outdoor recreational activity undertaken or pursued in the vicinity of that shop; or

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<sup>h</sup> Recueil d'Ordonnances Tome XVI, p. 236; Tome XVII, p. 121; Tome XIX, pp. 73 and 195; Tome XX, p. 342; Tome XXI, p.13; Tome XXII, p. 355 and Tome XXIV, pp. 79 and 238.

(iii) souvenirs for, or items of a type likely to be of particular interest to tourists visiting, or other visitors to the vicinity of that shop,

during, or during a substantial part of, customary shop opening hours; and

(b) where the predominant range of goods or items offered for sale from that shop -

(i) in the course of the trade or business;

(ii) during, or during a substantial part of, customary shop opening hours,

is a range consisting of one or more of the type or types of the goods or items referred to in subparagraphs (a)(i), (ii) and (iii).

(2) In subparagraph (1) the expression, "**a beach shop**" means a shop located upon, or in the immediate vicinity of, a beach or a cliff.

**Category G - Small shops within a designated tourist or recreational area.**

**G.** A small shop located within an area designated under section 28.

**Category H - Shops within a place of particular interest.**

**H.** (1) A shop within a place designated under section 29.

(2) A Sunday opening licence granted in respect of a shop by virtue of section 3 and subparagraph (1), is granted subject to the condition that,

except in relation to food and drink, goods or items offered for sale upon or from the shop shall -

- (a) have a close thematic connection with; or
- (b) be of a type likely to be of particular interest to tourists or other visitors to,

the place designated under section 29.

**Category I - A shop within airport or harbour terminal buildings.**

- I.** A shop located within an airport or harbour terminal building.

**Category J - Mobile shops.**

**J.** A mobile shop which is used for the purposes of carrying on a trade or business -

- (a) involving the offering for retail sale of -
  - (i) food or drinks;
  - (ii) items for use in connection with any outdoor recreational activity; or
  - (iii) souvenirs for, or items of a type likely to be of particular interest,

to tourists visiting, or other visitors to, the vicinity in which the mobile shop is located for the purposes of the carrying on of the trade or business; and

- (b) where the predominant range of goods or items sold from that shop is a range consisting of one or more of the type or types of the goods or items referred to in subparagraphs (a)(i), (ii) and (iii).

**Category K - Souvenir Shops (Cruise ships)**

**K.** (1) A shop which is likely to be visited by passengers from a cruise ship which is visiting Guernsey and upon or from which is carried on a trade or business -

- (a) involving the sale of -
  - (i) food or drinks;
  - (ii) items for use in connection with any recreational activity undertaken or pursued in or in the vicinity of that shop; or
  - (iii) souvenirs for, or items of a type likely to be of particular interest to tourists visiting, or other visitors to the vicinity of that shop;
- (b) where the predominant range of goods or items sold from that shop in the course of the trade or business, is a range consisting of one or more of the type or types of the goods or items referred to in subparagraphs (a)(i), (ii) and (iii).

(2) A Sunday opening licence granted in respect of a shop by virtue of section 3 and subparagraph (1), is granted subject to the condition that the shop shall not be open for the serving of customers on a Sunday, other than a Sunday designated for the purposes under section 30.

**Category L - Plant and Garden Centres.**

L. (1) A shop upon or from which is carried on a trade or business -

(a) involving the sale of one or more of the type or types of the goods or items described in Part 1 of the Appendix during, or during a substantial part of, customary shop opening hours;

(b) where the predominant range of goods or items offered for sale from that shop -

(i) in the course of the trade or business;

(ii) during, or during a substantial part of, customary shop opening hours,

is a range consisting of one or more of the type or types of the goods or items described in paragraph 1 of Part 1 of the Appendix; and

(c) where, if in the course of the trade or business, giftware is offered for sale from that shop, the floor area from which that giftware is offered for sale is a single and discrete floor area not exceeding 100 square metres.

(2) A Sunday opening licence granted in respect of a shop by virtue of section 3 and subparagraph (1), is granted subject to the following conditions -

(a) that the only type or types of goods or items offered for sale or sold from the shop on a Sunday are -

(i) one or more of the type or types of the goods or items described in the Appendix; or

(ii) one or more of the type or types of the goods or items described in the Appendix and food or drinks, and

(b) that the shop is not used as a venue at which to hold any fair, social occasion or similar event other than one associated with gardening or activities linked with the countryside.

(3) In this paragraph the expressions -

"**giftware**" means the goods or items described in Part 3 of the Appendix; and

"**the Appendix**" means the appendix to this Schedule.

**Category M - Miscellaneous Small Shops.**

**M.** A small shop upon or from which is carried on a trade or business -

- (a) involving the sale of -
- (i) food or drinks;
  - (ii) items for use in connection with any recreational activity undertaken or pursued in or in the vicinity of the shop, provided that the shop is located in the vicinity of a beach or cliff;
  - (iii) souvenirs for, or items of a type likely to be of particular interest to tourists visiting, or other visitors to the vicinity of that shop; or
  - (iv) newspapers, magazines, periodicals, books or stationery,

during, or during a substantial part of, customary shop opening hours; and

- (b) where the predominant range of goods or items sold from that shop in the course of the trade or business, is a range consisting of one or more of the type or types of the goods or items referred to in subparagraphs (a)(i), (ii), (iii) and (iv).

**APPENDIX TO SECOND SCHEDULE**

**Part 1**

1. All types of living plants, flowers, fruit, vegetables, seeds and bulbs.
2. Growing media and mulches of all types including peat, composts and barks.
3. Fertilisers and plant protection products.
4. Lawn care products.
5. Garden tools, equipment for gardening and irrigation equipment.
6. Plant containers and garden ornaments.
7. Garden related books.
8. Garden ponds and products for aquatic gardens.

**Part 2**

1. Clothing specifically designed -
  - (a) for use when gardening (including by way of example and not limitation - Wellington boots and gardening gloves); or
  - (b) to protect the user when -
    - (i) applying gardening products (including by way of example and not limitation - herbicides, insecticides or fertilisers); or
    - (ii) using garden tools or machinery.

2. Furniture designed for use in a garden or conservatory and associated coverings.
3. Garden machinery.
4. Greenhouses and equipment associated with greenhouse use.
5. Timber garden sheds with a floor area no greater than 6 square metres and a height no greater than 3 metres.
6. Materials necessary for the construction of patio flooring, garden paths, fences, rockeries or pergolas (including outdoor surfacing materials such as artificial lawn material).
7. Plant windbreak materials, plant supports and plant protection materials.
8. Treatments for timber products used in the garden, path and patio cleaners.
9. Swimming pools, spa pools and pool care products and associated care and maintenance products.
10. Greenhouse and garden conservatory heaters, barbeques, equipment for the use of the barbeque and fuel for the same.
11. Conservatories and gazebos.
12. Pets, pet care products, pet accessories and pet food
13. Garden lighting, plant lighting and associated electrical equipment.
14. Books, videos, compact discs, digital versatile discs, computer software, magazines and audio tapes related to any of the goods or items described in paragraphs 1 to 6 and 8 of Part 1 and paragraphs 1 to 13 of Part 2 of this Appendix.

### **Part 3**

1. Flower vases.
2. Candles, candlesticks and candleholders.
3. Picnic-ware, cutlery and tableware designed primarily for the purpose of outdoor use.
4. Calendars, diaries, cards, gift wrapping materials and souvenirs.

5. Garden and outdoor toys and outdoor garden games.
6. Arts and crafts products (including by way of example and not limitation) dried flowers, cones, artificial plants and flowers, fruit and vegetables, needle ware and tapestries.
7. Christmas decorations and wrapping paper.

**THIRD SCHEDULE**  
**THE SUNDAY TRADING APPEALS TRIBUNAL**

**Constitution of Tribunal.**

1. The Tribunal shall consist of three members of the Board appointed by the President of the Board in accordance with paragraph 2.

**Appointment of Tribunal.**

2. Where an appeal against a decision of the Constables and Douzaine of a Parish or the Tourist Board is instituted by notice in accordance with section 18, the Clerk to the Tribunal shall send a copy of the notice to the President of the Board, who shall -

- (a) appoint the three members of the Board who are to hear and determine the appeal; and
- (b) nominate one of the three members so appointed to chair the Tribunal,

and for the avoidance of doubt, the President of the Board may so appoint and nominate himself.

**Voting in hearings of Tribunal.**

3. (1) Each member of the Tribunal shall, subject to subparagraph (2), have one vote, and the decisions of the Tribunal shall be taken by a simple majority.

- (2) The person chairing the Tribunal shall not have a vote except

where there is an equality of votes, in which case he shall have a casting vote.

**Rules as to procedure of Tribunal.**

4. (1) The Board may by order prescribe rules of procedure making such provision as the Board thinks fit in relation to -

- (a) the hearing, investigation, settlement and determination by the Tribunal of appeals;
- (b) the proceedings and powers of the Tribunal including, without limitation, provision as to -
  - (i) procedure (including the method of pleading, the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given); and
  - (ii) the powers of the Tribunal in respect of the costs of a hearing (including provision as to the payment of costs on a full or partial indemnity basis, the giving of security for costs and the taxation of costs);
- (c) the summoning of witnesses, the service of documents and otherwise as to the giving of evidence;
- (d) the carrying out by the Tribunal of any of its functions under this Ordinance; and
- (e) ancillary matters.

(2) Rules of procedure under subparagraph (1) may, without limitation -

- (a) regulate procedure in connection with matters preparatory to hearings (including the publication of notice of hearings) and subsequent to hearings (including the publication, interpretation and enforcement of decisions and reasons for decisions), as well as in connection with the conduct of hearings;
- (b) make provision for the striking out of appeals (or of any claim or application in an appeal); and
- (c) make provision as to the representation, and joining, of parties.

(3) For the purposes of this paragraph, the expression "**costs of a hearing**" shall (without prejudice to the generality of the expression) include -

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs;
- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding or conduct of the hearing and the determination of the appeal (including, without limitation, any costs, fees and expenses incurred by the States pursuant to paragraphs 6 and 7); and

(c) the costs, fees, expenses and allowances of the Tribunal and the members thereof.

(4) The provisions of subparagraph (3) do not apply in relation to the Royal Court and are accordingly without prejudice to the power of the Royal Court to make orders as to the costs of an appeal or reference to it under section 19 or 20 of this Ordinance.

(5) The Tribunal shall, subject to the provisions of paragraph 3, and subject also to the provisions of any rules of procedure made by the Board under this paragraph, determine its own procedure.

**Hearings of Tribunal to be in public.**

5. (1) A hearing and every part of a hearing before the Tribunal shall be held in public unless the Tribunal directs otherwise.

(2) The Tribunal may at any time exclude any person from a hearing or any part thereof.

**Allowances and expenses of Tribunal members.**

6. There shall be paid to the members of the Tribunal such allowances as the Board may determine together with the travelling and other expenses incurred by them in connection with the exercise of their functions under this Ordinance.

**Appointment of Clerk to the Tribunal.**

7. The President of the Board shall -

(a) appoint a Clerk to the Tribunal on such terms and conditions and with such functions; and

(b) provide such other officers and facilities;

as he thinks fit.