



MEMORANDUM OF UNDERSTANDING

Between the

Jersey Gambling Commission
(the "Commission")

and the

Minister for Sustainable Economic Development
(the "Minister")

Gambling Commission (Jersey) Law 2010

1 Recitals

1.1 The Commission is the Island's gambling services regulator and was established under Article 2 of the Gambling Commission (Jersey) Law 2010 (the "Law") as a body corporate with perpetual succession.

1.2 The Minister is appointed by the States of Jersey and holds particular powers under Article 5 of the Law.

1.3 Whilst the Commission is an independent body, it is in practice accountable for its overall performance to the States of Jersey through the Minister.

2 Purpose of this Memorandum of Understanding

2.1 Article 5 of the Law provides that: "(1) The Minister may give to the Commission, in writing, guidance or general directions in respect of (a) the policies to be followed by the Commission in relation to the supervision or regulation of gambling services; and (b) the manner in which any function of the Commission is to be carried out. (2) The Minister may give to the Commission, in writing, specific directions as to the determination under Article 11(4)(c) of the manner in which gross win is to be calculated.

(3) The Commission must (a) act in accordance with any general directions given under paragraph (1) and any specific directions given under paragraph (2); and in discharging its functions, have regard to any guidance given under that paragraph.

2.2 The Commission and the Minister wish to enter into this Memorandum of Understanding to clarify certain matters concerning the use of the power granted to the Minister under Article 5 of the Law. This follows the example set by the Chief Minister and the Jersey Financial Services Commission to give clarity and process to matters requiring guidance or direction to the Commission to ensure it does not "affect the operational independence of the Commission and its carrying out of its regulatory obligations".

2.3 Articles 3 and 6 of the Law confer on the Commission certain functions. In the light of the example noted above, this Memorandum of Understanding focuses particularly on the Commission's responsibility for the supervision and development of gambling services in Jersey under the Gambling (Jersey) Law 2012.

2.4 This Memorandum of Understanding is also concerned with the arrangements whereby the Government and the Commission will work together to establish solid foundations for policy decision making.

3 Use of the powers granted under Article 5 of the Law

3.1 The Minister confirms that the powers granted under Article 5 of the Law would only be used when exceptional circumstances make it necessary to do so in the public interest, and that there is no intention to use the powers on a regular, or routine, basis.

3.2 The Minister recognises that the Commission, in exercising any of its functions, is required, under Article 4 of the Law, to have regard to certain "Guiding Principles". These are that any gambling services provided:

(a) should be conducted responsibly and with safeguards necessary to protect children and vulnerable people; (b) should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime; and (c) should be verifiably fair to consumers of those services.

3.3 The Minister confirms that, should it be necessary to exercise the power granted under Article 5 of the Law, they would do so in a manner which would be in accord with the Commission's obligations to have regard to the Guiding Principles listed in Article 4 of the Law when exercising any of its functions.

3.4 The Minister and the Commission agree to have regard to the best interests of Jersey, namely that:

3.4.1 the Commission should not compromise regulatory standards in order to allow a line of business which a section of the Industry might find attractive;

3.4.2 the Commission should have regard to the Strategic Plan for Jersey approved by the States of Jersey from time to time, and in particular its objectives in relation to jobs and economic growth;

3.4.3 the Commission should take full account of the costs and other burden of regulation recognising the international nature of the Island's gambling industry and the need to be competitive from the perspective of persons carrying on the business of gambling services and users of such services;

3.4.4 subject to the need to maintain regulatory standards, the Commission should assist in the development of business by resourcing and organising itself to provide timely responses to proposals from persons that are, or are seeking to, carry on the business of gambling services and by adopting a regulatory approach that is proportionate to the risks posed by the business concerned;

3.4.5 the Commission should be open to innovation by persons carrying on the business of gambling services.

3.5 Paragraph 3.4.4 above refers to the Commission's role in the development of business. The Minister agrees with the Commission that a distinction should be drawn between "development" in the context of regulatory legislation and "development" in the context of legislation supporting opportunities for business expansion.

A distinction can be drawn between regulatory legislation where the Commission is the initiator and Government and industry are consulted and business development legislation where the Government is the initiator (in many cases, after receiving recommendations or suggestions from Industry) and the Commission is consulted. The Commission's role in responding to Governmental development initiatives is as a facilitator through proportionate, pragmatic and flexible regulation.

4 The nature of guidance or direction

4.1 The Minister notes that under Article 5 of the Law they may only exercise the power to give to the Commission guidance or direction when it is necessary in the public interest.

4.2 The Minister confirms that any guidance as well as any direction given will be general in nature and will not be used so as to influence particular cases, e.g. to require the Commission to grant (or refuse) a regulatory consent in relation to a particular person.

4.3 Whilst not limiting their discretion, the Minister confirms that any guidance or direction given will generally relate to:

4.3.1 matters of public policy that the Minister considers that the Commission should take into account in carrying out its responsibilities in relation to the supervision and development of gambling services in Jersey;

4.3.2 matters relating to the economy, efficiency and effectiveness of the Commission;

4.3.3 matters relating to the accountability of the Commission; or

4.3.4 ensuring that the Commission adheres to what are generally accepted in Jersey and the United Kingdom as being principles of good corporate governance.

4.4 The Minister confirms that any guidance or direction of the type referred to in paragraph 4.3.1 above will not prejudice the operational independence of the Commission by dictating the specific manner in which the Commission should carry out its responsibilities in relation to the supervision and development of gambling services in Jersey.

4.5 The Minister recognises that Jersey is committed (whether by a decision of the States of Jersey, or one of the Ministers of the States, or otherwise), to complying with standards set by internationally recognised bodies (for example, on anti-money laundering provisions). The Minister notes that it is in the public interest to honour such commitments and they will not give any guidance or direction that could adversely affect the ability to do so.

5 Procedure for the use of the powers granted under Article 5

5.1 The Minister notes that Article 5 of the Law requires the Minister to consult the Commission before giving it guidance or direction.

5.2 The Minister recognises the importance of the Commission being given sufficient opportunity to comment on any proposed guidance or direction. To facilitate this, the Minister confirms that they will give the Commission a consultation period of at least two months. However, the Minister reserves the right to reduce the length of the consultation period should exceptional circumstances require it.

5.3 The Minister confirms that any guidance or direction would be given in writing to the Chairman of the Commission by means of a copy of the relevant Ministerial Decision, certified by the Greffier of the States as being a true copy of that Decision.

6 Publication of guidance or direction

6.1 The Minister recognises that they should be held publicly accountable in respect of any guidance or direction given to the Commission.

6.2 The Minister confirms that within three working days of any guidance or direction having been given to the Commission, they will publish in a manner calculated to bring it to the attention of the public a statement containing details of the guidance or direction and the reasons for giving it.

6.3 The Minister further confirms that such a statement shall be laid before the States of Jersey at the earliest practicable opportunity.

6.4 The Minister recognises that the Commission may wish to separately publicise the existence of any guidance or direction and agrees that the Commission may do so in any manner it sees fit.

7 General policy decision making

7.1 The Minister recognises that there is a need for Government and the Commission to have clear roles in policy decision making. There are policy areas where Government leads with the Commission providing input and areas where the Commission leads with operational independence. In between there are areas of policy to be discussed jointly.

7.2 The Minister accepts the need for Government and the Commission to work together to establish solid foundations for policy decision making to enable fast decision-making and inform more complex cases.

7.3 The Minister confirms that a series of structured meetings will be set up between Government and the Commission.

8 Amendments to this Memorandum of Understanding

8.1 This Memorandum of Understanding may be amended by the agreement, in writing, of both the Commission and the Minister.

9 Effective date

9.1 This Memorandum of Understanding will be effective from the date of its signing by the Commission and the Minister.

10 Publishing this Memorandum of Understanding

10.1 The Minister and/or the Commission will make a copy of this Memorandum of Understanding, or the text of it, publicly available.

Executed by the parties:

For the Commission:

Chairman

Date:

Minister for Sustainable Economic Development

Date: