

REVISED LICENSING FRAMEWORK

**1 The Licence Holder**

- 1.1 Licences will be held by all wholesalers and retailers of tobacco including indirect sellers (where the seller and purchaser are not in the same place at the same time – e.g. telephone and internet sales). Indirect sale is included to ensure ‘future proofing’ of the system.
- 1.2 It will be a requirement of wholesalers obtaining a licence, to provide the Regulator, on request, with a current and complete list of all the parties to which it supplies. The wholesalers have agreed to provide the list voluntarily. It is recognised that some parties, to which the wholesalers supply, have multiple outlets. Furthermore, the licensed wholesaler could only supply licensed retailers. Licensing wholesalers would also effectively help spread the financial burden on retailers created by the licensing regime. Most importantly, such joint licensing would increase public health outcomes not least through increased protection of minors.
- 1.3 Each licence would apply to individual premises and the licence would also stipulate the contact details for the licence holder or a person responsible for those premises. The advantage of this approach is that the location of all tobacco-related premises is known to the Regulator. Furthermore, this approach more directly provides a link between the fee structure and the nature of enforcement (inspections are based on the number and size of premises, not the number of owners). Checks to ensure compliance with the legislative provisions concerning display and advertising would be undertaken as part of the licence inspection. Visits to premises by the Regulator will be supportive and advisory in approach and will follow the Regulatory Policy. Education will be provided, free of charge, by the Regulator in advance of implementation of the scheme. This may be in partnership with trade organisations.
- 1.4 The licence may be held by either an individual or a body corporate (with 2 or more designated responsible persons nominated by the body corporate). The licence holder or the body corporate will be responsible for compliance with tobacco control legislation. The licence would authorise the sale or supply of tobacco products by the licensee, or servant or agent of the licensee (provided, from the date of 1<sup>st</sup> January 2015, they were aged 18 or over (and before that date persons under the age of 18 may be authorised to sell or supply tobacco products provided they are under the supervision of the licence holder)). Each licence can authorise the sale/supply at retail and/or wholesale premises or by indirect sales. Provision will be made for retail sale from mobile and temporary premises.

**2 The Application Process**

2.1 To be made using an approved form issued by the Department. Information to include:-

- If the applicant is an individual, the name of the applicant and proof of identity
- If the applicant is a body corporate, proof of incorporation, the names of the persons who act on behalf of the body corporate.
- Postal address of applicant
- Physical address of the premises, or the address where any mobile will be kept
- Type of proposed sale/supply – retail and/or wholesale or indirect with subcategories of retail to cover mobile or temporary
- For retail sales, information about the location of the area where tobacco products will be displayed and how it will be sealed off from under 18s
- Any other information or evidence the Department requires for proper consideration of the application

### **3 Fees – to be debated by the States**

3.1 Fees may be prescribed by regulation.

3.2 The fees would be set by the HSSD Board to ensure the costs of administration of the scheme are covered.

### **4 Criteria for granting of licence**

4.1 The Department *must grant the licence unless* one of the following disqualifications applies:

- Applicant (if an individual) has not reached 18 years of age
- Applicant has been refused or disqualified from holding a licence anytime within the 2 year period before the application was made
- Applicant holds a licence that has been suspended
- Applicant has been convicted of an offence under this Ordinance or a relevant law anytime within the 2 year period before the application was made
- Applicant is the subject of a pending charge anywhere in the world for an offence involving fraud or dishonesty
- The information or evidence provided is insufficient to assure the Department that the applicant's operations would comply with the tobacco control laws
- Any other disqualifications prescribed by regulations

### **5 To whom do the disqualifications apply?**

5.1 The disqualifications apply to the applicant if the applicant is an individual. If the applicant is a body corporate, the disqualifications apply to the body corporate.

### **6 Authority to seek and disclose personal data**

- 6.1 For the purpose of determining whether or not a person is disqualified, the Department may seek, receive and disclose information.

## **7 Advance notice of proposed refusal**

- 7.1 The applicant would be notified in advance of any proposed refusal and allowed to make representations.

## **8 Licence Conditions**

- Compliance with tobacco control laws and all licence conditions
- Payment of any fee payable under this Ordinance or any associated regulations
- Holder must not authorise or allow the sale or supply of tobacco products other than
  - (a) at premises specified on the licence, and
  - (b) in accordance with the terms and conditions of the licence
- Retail tobacco sellers to be allowed to sell tobacco products from the designated display area.
- Wholesale tobacco sellers must not sell or supply to anyone other than a tobacco licence holder. It is recognised that some wholesalers may also engage in retail. This will be provided for on their licence.
- Current licence or copy of licence must be prominently displayed at each licensed premises
- Holder (or former holder) must keep records prescribed by regulations, for a prescribed period of time
- Sale or supply of tobacco products at the licensed premises will be the responsibility of the licence holder
- Provision of any information prescribed by regulations, either on request by the Department or an authorised officer
- Holder must promptly notify any material change to the Department, and apply for variation of licence. This applies to –
  - change of licence holder
  - change of place at which products will be displayed
  - any other change that affects or is likely to affect the holder's ability to comply with licence conditions, this Ordinance or any relevant laws
  - any change of a kind prescribed by regulations

## **9 Transferability**

- 9.1 The licence cannot be transferred to another person (and cannot be amended to apply to different premises)

## **10 Renewals**

10.1 Licences to be renewed annually, subject to any disqualifications and payment of any prescribed fee.

## **11 Replacement licences**

11.1 Lost or destroyed licences must be reported. Replacement licences will be issued by the Department on payment of a small fee.

## **12 Surrender of licence**

- Expired or revoked licences must be returned to the Department
- Holder who ceases to carry on business that is licensed must surrender the licence
- Holder may surrender the licence at any time

## **13 Fees payable**

13.1 The level of licence fees should be set to enable full cost recovery. Those costs will be associated with –

- the administration of the licensing regime
- the enforcement of the licensing regime including inspections
- the provision of licensing related information directed to customers and the community
- the provision of information to applicants and licensees to ensure their continued and future compliance

13.2 The fees payable shall constitute an application fee and licence issue fee on making an application for a licence or making an application for renewal. If the application is refused the application fee is non-refundable however the licence issue fee will be refunded.

13.3 Fees payable are to be prescribed by regulations. It is anticipated that different fees will be prescribed for –

- application for first licence
- application for licence renewal
- application for licence variation
- grant of licence (licence issue)
- renewal of licence
- variation of licence

## **14 Suspension and revocation**

16.1 Subject to giving the holder advance notice and opportunity to make representations, the Department would be able to suspend or revoke a licence on the grounds that it has reasonable cause to believe that –

- any of the disqualifications apply in respect of the holder
- any condition of the licence has been breached by the holder
- the licence was granted on the basis of false, misleading or incomplete information

## **15 Appeals**

15.1 Appeals are allowed against the decision of the Regulator to refuse a licence or variation of conditions, suspension or revocation.

15.2 It is proposed that appeals against the decision of the Regulator will be heard by an Internal Review Panel appointed by HSSD – usually the Chief Officer and two Directors. If the applicant does not accept the decision of the Internal Review Panel, then they may proceed to the Royal Court subject to consultation with the Bailiff.

## **16 Register of licences**

16.1 The Department will keep a public register of licences, including

- Type of licence
- Name of holder
- Address of licensed premises
- Identifying number of licence
- Day on which licence is issued
- Conditions of the licence
- Any suspension or revocation, or variation of conditions
- Any surrender of licence
- Any change of name of holder
- Any change to the list of responsible persons
- The licence ceasing to be valid for any reason including expiry
- Any other particulars prescribed by regulations

16.2 The register will also include details of enforcement action.

## **17 Administration**

17.1 To be administered by the Office of Environmental Health and Pollution Regulation (OEHPR), acting under authorisation by the Department.

## **18 Powers of Enforcement**

18.1 Appropriate powers of entry, inspection, search and seizure to be part of the licensing regime; with requirements for a warrant to enter a dwelling house. Any action will follow the OEHPR Regulatory Policy and with appropriate safeguards.

## **19 Offences**

19.1 Offences will be created for breaching any provision of the Ordinance or breaching any condition of a licence, as well as standard matters such as obstruction, providing misleading information, assisting or attempting the commission of an offence.

19.2 Provision will also be made for the directors and other officers of a body corporate to be individually liable for the actions of the body corporate under certain circumstances.

## **20 Penalties for offences**

20.1 Various penalties will be provided for the different offences and will be set in the Ordinance, as agreed with the Law Officers.

## **21 Other powers of the Court on conviction of a licence holder**

- May attach any condition or restriction to a licence held by the holder
- May suspend or revoke a licence
- May disqualify the holder from holding any licence for a specified period or permanently
- May order forfeiture and disposal of any tobacco product or other thing –
  - (a) seized by an authorised officer under the Ordinance, or
  - (b) used in, the subject of, or otherwise involved in the commission of the offence.