

## **STATUTORY INSTRUMENTS LAID BEFORE THE STATES**

The States of Deliberation have the power to annul the Statutory Instruments detailed below.

No. 114 of 2019

### **THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO. 7) REGULATIONS, 2019**

In pursuance of sections 10 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 26<sup>th</sup> November, 2019 are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations add a number of drugs to the list of drugs that may be prescribed as pharmaceutical benefit.

These Regulations come into force on the 27<sup>th</sup> November, 2019.

No. 115 of 2019

### **THE DATA PROTECTION (GENERAL PROVISIONS) (BAILIWICK OF GUERNSEY) (AMENDMENT NO. 2) REGULATIONS 2019**

In pursuance of sections 40 and 109 of, and paragraphs 1(2) and 2 of Schedule 4 to, the Data Protection (Bailiwick of Guernsey) Law, 2017, The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment No. 2) Regulations 2019, made by the Committee *for* Home Affairs on 28th October 2019, is laid before the States.

#### **EXPLANATORY NOTE**

These Regulations amend the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018 ("the principal Regulations").

Regulation 1 of these Regulations amends regulations 2 (registration fees), 6 (registered controllers and processors to pay annual levies) and 17 (transitional exemptions from registration) of the principal Regulations in relation to exemptions for controllers and processors that prior to the commencement of the Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law") would not have been required to be notified (registered) ("previously exempt persons").

Currently, those regulations exempt these previously exempt persons from the duty to be registered under the Law as well as from the requirement to pay a registration fee (if registered) and the annual levy and late payment penalties. This exemption was to expire on the 1<sup>st</sup> January, 2020.

This amendment continues the exemption until the 1<sup>st</sup> January, 2021.

Regulations 2 and 3 of these Regulations are the citation and commencement provisions respectively.

These Regulations come into force on the 1<sup>st</sup> January, 2020.

No. 121 of 2019

### **THE BOARDING PERMIT FEES (2) ORDER, 2019**

In pursuance of section 17 of the Tourist Law, 1948, as amended, "The Boarding Permit Fees (2) Order 2019", made by the Committee *for* Economic Development on the 5<sup>th</sup> December 2019, is laid before the States.

#### **EXPLANATORY NOTE**

This Order prescribes the fees payable by an applicant for a boarding permit valid during the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021 and replaces "The Boarding Permit Fees Order, 2019".

The Order comes into force on 1st April 2020.

No. 122 of 2019

### **THE INCOME TAX (GUERNSEY) (VALUATION OF BENEFITS IN KIND) (AMENDMENT) REGULATIONS, 2019**

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Guernsey) (Valuation of Benefits in Kind) (Amendment) Regulations, 2019" made by the Policy & Resources Committee on 5<sup>th</sup> December, 2019, are laid before the States.

#### **EXPLANATORY MEMORANDUM**

These Regulations amend the Income Tax (Guernsey) (Valuation of Benefits in Kind) Regulations, 2010 by increasing the value of the benefits from motor vehicles and accommodation benefits for the specified categories of taxpayer (for example, proprietary directors and proprietary employees) in a hotel or guesthouse for the years of charge 2020, 2021 and 2022 (and, unless further provision is made, any subsequent year).

No. 123 of 2019

**THE INCOME TAX (PENSION AMENDMENTS) (GUERNSEY) REGULATIONS, 2019**

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Pension Amendments) (Guernsey) Regulations, 2019" made by the Policy & Resources Committee on 22<sup>nd</sup> October, 2019, are laid before the States.

**EXPLANATORY MEMORANDUM**

These Regulations amend sections 153A(1) and 157CA to provide that the limit for triviality payments from pension schemes, retirement annuity schemes or retirement annuity trust schemes for members aged 50 or over is £50,000 per scheme and not £50,000 in aggregate over all pension schemes or annuity schemes attributable to an individual.

These Regulations come into force on the 1<sup>st</sup> day of January, 2020.

No. 126 of 2019

**The Health Service (Medical Appliances) (Amendment) Regulations, 2019**

In pursuance of sections 18 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 13<sup>th</sup> December, 2019 are laid before the States.

**EXPLANATORY NOTE**

These Regulations further amend the Health Service (Medical Appliances) Regulations, 1990, as amended, by increasing the charges payable to authorised appliance suppliers in Guernsey and Alderney by persons supplied with Part I, II or III medical appliances, who are not exempt from such charges. The increased charges amount to £4.10 for each appliance.

These Regulations come into force on the 1<sup>st</sup> day of January, 2020.

No. 127 of 2019

**The Social Insurance (Benefits) (Amendment) Regulations, 2019**

In pursuance of sections 15, 20, 39, 67 and 116 of the Social Insurance (Guernsey) Law, 1978, made by the Committee *for* Employment & Social Security on 13<sup>th</sup> December, 2019 are laid before the States.

**EXPLANATORY NOTE**

These Regulations replace the schedules to the Social Insurance (Benefits) Regulations, 2003, and prescribe the reduced rates of benefit payable from 6<sup>th</sup> January, 2020 to claimants who do not satisfy the conditions for entitlement to payment of the maximum rate of benefit.

These Regulations also provide for the payment of old age pension to a prisoner over pensionable age for the last 18 weeks of that prisoner's sentence or detention. The payment will be made directly to a prisoner when they are released from prison.

These Regulations come into force on the 1<sup>st</sup> January, 2020, except for Regulation 2, which comes into force on the 6<sup>th</sup> January, 2020.

No. 128 of 2019

**The Health Service (Payment of Authorised Appliance Suppliers) (Amendment) Regulations, 2019**

In pursuance of sections 19 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 13<sup>th</sup> December, 2019 are laid before the States.

EXPLANATORY NOTE

These Regulations set out the payments which may be made out of the Guernsey Health Service Fund for the supply of medical appliances.

These Regulations come into force on the 1<sup>st</sup> January, 2020

No. 129 of 2019

**The Health Service (Payment of Authorised Suppliers) (Amendment) Regulations, 2019**

In pursuance of sections 14 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 13<sup>th</sup> December, 2019 are laid before the States.

EXPLANATORY NOTE

These Regulations set out the payments which may be made to pharmacists out of the Guernsey Health Service Fund, for the supply of pharmaceutical items.

These Regulations come into force on 1<sup>st</sup> January, 2020.

## **ORDINANCES LAID BEFORE THE STATES**

### **THE DOCUMENT DUTY (AMENDMENT) ORDINANCE, 2019**

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Document Duty (Amendment) Ordinance, 2019", made by the Policy & Resources Committee on the 10<sup>th</sup> December, 2019, is laid before the States.

#### **EXPLANATORY MEMORANDUM**

The object of the Ordinance is to extend, to Alderney, the rates of document duty on conveyances and bonds currently applicable in Guernsey.

By way of background, Alderney continues to be governed by the Document Duty Law, 1973 and Document Duty Ordinance, 2003, both repealed in Guernsey by the Document Duty (Guernsey) Law, 2017. When the new 2019 rates of document duty were enacted for Guernsey by ordinances made under the Document Duty (Guernsey) Law, 2017 and the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017, those rates were applied to Alderney conveyances without the necessary modifications being made to the Alderney legislation. This Ordinance therefore makes the necessary modifications to the Document Duty Ordinance, 2003, thus equalising the rates of duty between the two islands with effect from the commencement of the draft Ordinance.

The Ordinance was approved by the Legislation Review Panel on the 9<sup>th</sup> December, 2019 and made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948. Under the proviso to the said Article 66A(1), the States of Deliberation have the power to annul the Ordinance.

### **THE EUROPEAN COMMUNITIES (OFFICIAL CONTROLS) (IMPLEMENTATION AND GENERAL PROVISIONS) (GUERNSEY) ORDINANCE, 2019**

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019", made by the Policy & Resources Committee on the 10<sup>th</sup> December, 2019, is laid before the States.

#### **EXPLANATORY MEMORANDUM**

##### **Introduction**

This Ordinance implements the EU's Official Controls Regulation ("OCR") and makes general provision in respect of the taking and enforcement of official action by competent authorities. Whilst not a Member State, Guernsey has EU obligations arising out of its Protocol 3 relationship with the EU, read together with Regulation 706/73. It is against that background that this Ordinance has been drafted.

The OCR forms a core part of the EU's *Smarter Rules for Safer Food* programme, which is designed to safeguard public health, plant health, and animal health & welfare. In particular, the OCR brings together disparate rules into a single Regulation - rules that govern how competent authorities across the EU protect sanitary and phytosanitary standards (both at the border and within Union territory) by preventative and remedial official action. To a large extent, the OCR regime extends rules or principles applicable to food & feed to the rest of the agri-food chain and offers more targeted, risk-based controls "from farm to fork".

The OCR is a horizontal piece of legislation operating with and alongside subject-specific regimes concerning Food & Feed (already in force), Plant Health (also coming into force on 14th December 2019) and Animal Health (coming into force in 2021). In many ways, the Ordinance weaves together the EU OCR and related framework into our own domestic context. It does not seek to alter our existing domestic structures (see section 1(1) which makes designations in accordance with Committee mandates) or otherwise affect functions of Committees (see sections 1(2) and 2). What it does do, however, is make general provision to ensure Committees ("Designated Authorities" for the purpose of the Ordinance) have the powers they need to act as competent authorities (Part II).

Likewise, the Ordinance also provides core investigatory powers (Part III) and enforcement powers (Part IV) to enable effective official action to be taken. These provisions draw heavily on existing provisions in our Food & Feed legislation, but have been distilled so that they can be applied across the agri-food chain more broadly. In reality, officials will continue to act largely under subject-specific legislation, which is achieved by the designations in respect of Committees in section 1(1) and the corresponding deemed designations of officers in section 3(5).

The OCR and this Ordinance will come into force on 14th December 2019.

## **The Ordinance**

### **Part I**

Section 1 designates various Committees as competent authorities for the purposes of the OCR in accordance with the distribution of functions under existing mandates ("Designated Authorities"), whilst section 2 confirms that existing functions of Committees are not limited by the OCR. An Order-making power to alter these designations has been given to the Policy & Resources Committee due to the cross-cutting nature of the OCR framework.

### **Part II**

This Part concerns the broader functions of Designated Authorities, such as the power to appoint staff and authorise certain of them as "Designated Officers", being those persons who can exercise the investigatory and enforcement powers under the later Parts of the Ordinance (section 3). Certain officers authorised by other pieces are deemed to be Designated Officers (section 3(5)) and this list can be added to by Order of the Policy & Resources Committee or a designated Committee. General functions of Designated

Authorities are also provided (section 4) – such the duty maintain proper confidentiality or the power to maintain registers – as well as the ability to issue or take into account policies and guidance (section 5). It is likely that, in many cases, policies produced by UK authorities will be relied on.

Section 6 largely repeats provisions in the OCR, but are included for clarity and given the importance of proper record-keeping.

Audit, which may be internal or external, is an important feature of the OCR and must be performed with due independence and impartiality. The Director of Environmental Health and Pollution Regulation has, therefore, been given responsibility for arranging this (section 7).

The OCR provides for various fees to be charged at the EU border and otherwise, so a fee-making power for designated Committees has been included (section 8); elsewhere in the Ordinance, the ability to recover reasonable expenses is included.

Information-sharing is also a key feature of the OCR, whether by way of preventative or enforcement action, so relevant provision has been made for this in section 9.

Finally, section 10 is a standard clause to exclude liability for designated Committees and their officers.

### Part III

This Part concerns how official controls and other official activities are to be performed. Section 11 largely reproduces a provision of the OCR, but is included for clarity and due to its importance.

Moreover, section 12 proceeds to detail the powers of entry and search that Designated Officers need to be able to do their work. This is supplemented by section 13 which details how a warrant to support entry and search may be obtained.

### Part IV

Part IV concerns enforcement, of which notices (section 14) play a significant role. The categories of notice that may be served relate to: i) requests for information; ii) the taking of preventative action; and, iii) the taking of remedial action. Additionally, a notice made by a Designated Authority may demarcate an area in which prohibitions and restrictions may be put in place to protect Guernsey's biosecurity. Section 15 clarifies that a Designated Officer may take further action in the case of non-compliance with a notice.

Section 16 makes special provision in respect of disclosure of information by the Committee *for* Home Affairs because of the potential need for information-sharing with law enforcement agencies.

Standard provisions about notices and service of notices are included in sections 17 and 18, whilst section 19 details the appeals procedure; additional categories of decision which can be appealed may be prescribed by Order of a designated Committee

Sections 20 to 26 (together with Schedule 1) provide for offences, whilst sections 27 and 28 make standard provision about offences committed by incorporated and unincorporated bodies. Penalties are provided for in section 29. A power is included in section 29(4) for Schedule 1 to be amended by Order. This is necessary because these provisions are likely to change over time and because the EU has yet to complete all the delegated and implementing legislation under the OCR. Due to the cross-cutting nature of the OCR, the power has again been vested in the Policy & Resources Committee.

## Part V

This Part contains final provisions comprising Interpretation (section 30), Transitional Provisions (section 31 and Schedule 2), and extent, citation and commencement (sections 32 and 33). Again, and for the same reasons, the Policy & Resources Committee has been given a power to amend definitions and also the transitional provisions in Schedule 2.

### Schedule 1

This is based on a draft list of offences covered by the UK regime. Only those implementing and delegated acts completed by the EU have been included. In due course, the subject-specific regimes will make corresponding provision. For this reason, and due to the absence of an EU border in Guernsey, these offences are unlikely to arise often, if at all.

### Schedule 2

This Schedule makes transitional provision in respect of official activities undertaken under the regime in place prior to the coming into force of the OCR. As this is the single Ordinance coming into force on 14th December 2019, the transitional provisions relate to a wider set of legislation than just the OCR and includes, for instance, the Plant Health Regulation, so as to ensure no lacunae arise.

The Ordinance was approved by the Legislation Review Panel on the 9<sup>th</sup> December, 2019, and made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948, on 10<sup>th</sup> December 2019. Under the proviso to the said Article 66A(1), the States of Deliberation have the power to annul the Ordinance.

## **THE REFORM (GUERNSEY) LAW, 1948 (AMENDMENT) (NO. 2) ORDINANCE, 2019**

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Reform (Guernsey) Law, 1948 (Amendment) (No. 2)



Ordinance, 2019", made by the Policy & Resources Committee on the 10<sup>th</sup> December, 2019, is laid before the States.

#### EXPLANATORY MEMORANDUM

This Ordinance was made by the Policy & Resources Committee on 10 December 2019 under Article 66A of the Reform (Guernsey) Law, 1948 ("the Reform Law"), and in exercise of the Ordinance-making power at Article 54(5) of the Reform Law. Its effect is to amend the Reform Law to enable parochial elections to be held in circumstances where vacancies have occurred because an insufficient number of candidates were nominated to fill vacancies created by the expiry of terms of office.

The Ordinance introduces (by way of an amendment to Article 54(4) and a consequential amendment to Article 59(3)) a regulation-making power to enable the States' Assembly & Constitution Committee to provide for specified elections of Constables and Douzeniers to be held on dates different from those "end of term" dates in November specified in Article 54(5). The power also allows for such regulations to make consequential provision modifying the effect of other related provisions in Part V of the Law, such as those concerned with the notice which has to be given by the Parish of elections.

The Ordinance was made in the context of several Parishes wishing to hold elections on an urgent basis to fill parochial offices not filled in the parochial November "end of term" elections; no existing mechanism in the Reform Law has been identified to enable such elections (which are not elections to fill casual vacancies) lawfully to be held. The regulation-making power approach gives flexibility, and allows for similar provision to be made in the future, if necessary, in other cases.

The Ordinance was approved by the Legislation Review Panel on the 9<sup>th</sup> December, 2019 and made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948. Under the proviso to the said Article 66A(1), the States of Deliberation have the power to annul the Ordinance.

The full text of the legislation can be found at:

<http://www.guernseylegalresources.gg/article/90621/Statutory-Instruments>