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# **The Trade Marks (Bailiwick of Guernsey) Ordinance, 2006**

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# The Trade Marks (Bailiwick of Guernsey) Ordinance, 2006

THE STATES, in pursuance of their Resolution of the 27<sup>th</sup> November, 2002<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

## PART I REGISTERED TRADE MARKS

### *Introductory*

#### **Trade marks.**

1. (1) In this Ordinance a "**trade mark**" means any sign capable of being represented graphically which is capable of distinguishing the goods or services of one undertaking from those of other undertakings.

(2) A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

(3) References in this Ordinance to a trade mark include, unless the context requires otherwise, references to a collective mark (see section 49) or a certification mark (see section 50).

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<sup>a</sup> Article XIX of Billet d'État No. XXIII of 2002.

<sup>b</sup> Order in Council No. XIV of 2004.

**Registered trade marks.**

2. (1) A registered trade mark is a property right obtained by the registration of the trade mark in accordance with the provisions of this Ordinance in the Register of Trade Marks ("**the Register**").

The proprietor of a registered trade mark has the rights and remedies provided by this Ordinance.

(2) No proceedings lie to prevent or recover damages for the infringement of an unregistered trade mark as such, but nothing in this Ordinance affects the law relating to passing off.

*Grounds for refusal of registration*

**Absolute grounds for refusal of registration.**

3. (1) The following shall not be registered -
- (a) signs which do not satisfy the requirements of section 1(1),
  - (b) trade marks which are devoid of any distinctive character,
  - (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,



- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade,

but a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.

(2) A sign shall not be registered as a trade mark if it consists exclusively of -

- (a) the shape which results from the nature of the goods themselves,
- (b) the shape of goods which is necessary to obtain a technical result, or
- (c) the shape which gives substantial value to the goods.

(3) A trade mark shall not be registered if it is -

- (a) contrary to public policy or to accepted principles of morality, or
- (b) of such a nature as to deceive the public (for example, as to the nature, quality or geographical origin of the goods or service).

(4) A trade mark shall not be registered if or to the extent that its use is prohibited in the Bailiwick by any enactment or rule of law or by any provision of Community law having effect in the Bailiwick (whether by virtue of the European Communities (Bailiwick of Guernsey) Law, 1973<sup>c</sup> or otherwise).

(5) A trade mark shall not be registered in the cases specified, or referred to, in section 4 (specially protected emblems).

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

**Specially protected emblems.**

4. (1) A trade mark which consists of or contains -
- (a) the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it,
  - (b) a representation of the Royal crown or any of the Royal flags,
  - (c) a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof, or
  - (d) words, letters or devices likely to lead persons to think that the applicant has or has recently had Royal

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<sup>c</sup> Ordres en Conseil Vol. XXIV, p. 87.

patronage or authorisation,

shall not be registered unless it appears to the Registrar of Intellectual Property ("**the Registrar**") that consent has been given by or on behalf of Her Majesty or, as the case may be, the relevant member of the Royal family.

(2) A trade mark which consists of or contains a representation of-

- (a) the national union flag of the United Kingdom (commonly known as the Union Jack), or
- (b) the flag of England, Wales, Scotland, Northern Ireland, the Isle of Man, any of the islands of the Bailiwick or the Island of Jersey,

shall not be registered if it appears to the Registrar that the use of the trade mark would be misleading or grossly offensive, and provision may be made by regulations of the States of Guernsey Commerce and Employment Department ("**the Department**") identifying the flags to which paragraph (b) applies.

(3) A trade mark shall not be registered in the cases specified in section 57 (national emblems, etc, of Convention countries) or section 58 (emblems, etc, of certain international organisations).

(4) Provision may be made by regulations of the Department prohibiting, in such cases as may be prescribed, the registration of a trade mark which consists of or contains -

- (a) arms to which a person is entitled by virtue of a grant

of arms by the Crown, or

- (b) insignia so nearly resembling such arms as to be likely to be mistaken for them,

unless it appears to the Registrar that consent has been given by or on behalf of that person; and, where such a mark is registered, nothing in this Ordinance shall be construed as authorising its use in any way contrary to the laws of arms.

(5) A trade mark which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc (Protection) Act 1995<sup>d</sup> shall not be registered unless it appears to the Registrar -

- (a) that the application is made by the person for the time being appointed under section 1(2) of that Act (power of Secretary of State to appoint a person as the proprietor of the Olympics association right), or
- (b) that consent has been given by or on behalf of the person mentioned in paragraph (a).

**Relative grounds for refusal of registration.**

5. (1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(2) A trade mark shall not be registered if because -

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<sup>d</sup> An Act of Parliament (1995 c. 32).

- (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or
- (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(3) A trade mark which is identical with or similar to an earlier trade mark shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the Bailiwick (or, in the case of a Community trade mark or international trade mark (EC), in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

(4) A trade mark shall not be registered if, or to the extent that, its use in the Bailiwick is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or
- (b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a), in particular by virtue of the law of copyright, unregistered design

right or registered designs.

A person thus entitled to prevent the use of a trade mark is referred to in this Ordinance as the proprietor of an "**earlier right**" in relation to the trade mark.

(5) Nothing in this section prevents the registration of a trade mark where the proprietor of the earlier trade mark or other earlier right consents to the registration.

(6) In determining whether or not the registration of a trade mark is prohibited by this section, the Registrar may rely on the declaration made by the applicant under section 32(2) in all respects and, accordingly, need not enquire further as to whether the registration of the trade mark is prohibited by this section and, in particular, need not carry out any search of earlier trade marks.

**Meaning of "earlier trade mark".**

6. (1) In this Ordinance an "**earlier trade mark**" means -
- (a) a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,
  - (b) a Community trade mark or international trade mark (EC) which has a valid claim to seniority from an earlier registered trade mark or international trade mark (UK),

- (c) a registered trade mark or international trade mark (UK) which -
  - (i) has been converted from a Community trade mark or international trade mark (EC) which itself had a valid claim to seniority within paragraph (b) from an earlier trade mark, and
  - (ii) accordingly has the same claim to seniority, or
- (d) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention or the WTO Agreement as a well known trade mark.

(2) References in this Ordinance to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.

(3) A trade mark within subsection (1)(a) or (b) whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry unless there was no bona fide use of the mark during the two years immediately preceding the expiry.

**Raising of relative grounds in opposition proceedings in case of non-use.**

7. (1) This section applies where -

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the Registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if -

- (a) within the period of five years ending with the date of publication of the application, the earlier trade mark has been put to genuine use in the Bailiwick by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes -

- (a) use of a trade mark includes use in a form differing in



elements which do not alter the distinctive character of the mark in the form in which it was registered, and

- (b) use in the Bailiwick includes affixing the trade mark to goods or to the packaging of goods in the Bailiwick solely for export purposes.

(5) In relation to a Community trade mark, any reference in subsection (3) or (4) to the Bailiwick shall be construed as a reference to the European Community.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(7) Nothing in this section affects -

- (a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal) or section 5(4) (relative grounds of refusal on the basis of an earlier right), or
- (b) the making of an application for a declaration of invalidity under section 47(2) (application on relative grounds where no consent to registration).

**Raising of relative grounds in case of honest concurrent use.**

8. (1) This section applies where, on an application for the registration of a trade mark, it appears to the Registrar -

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

but the applicant shows to the satisfaction of the Registrar that there has been honest concurrent use of the trade mark for which registration is sought.

(2) In that case, the Registrar shall not refuse the application by reason of the earlier trade mark or other earlier right unless objection on that ground is raised in opposition proceedings by the proprietor of that earlier trade mark or other earlier right.

(3) For the purposes of this section "**honest concurrent use**" means such use in the Bailiwick, by the applicant or with his consent, as would formerly have amounted, in the United Kingdom, to honest concurrent use for the purposes of section 12(2) of the Trade Marks Act 1938<sup>e</sup>.

- (4) Nothing in this section affects -
- (a) the refusal of registration on the grounds mentioned in section 3 (absolute grounds for refusal), or
  - (b) the making of an application for a declaration of

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<sup>e</sup> An Act of Parliament (1938 c. 22).

invalidity under section 47(2) (application on relative grounds where no consent to registration).

(5) This section does not apply when there are regulations in force under section 9.

**Power to require that relative grounds be raised in opposition proceedings.**

9. (1) The Department may by regulations provide that in any case a trade mark shall not be refused registration on a ground mentioned in section 5 (relative grounds for refusal) unless objection on that ground is raised in opposition proceedings by the proprietor of the earlier trade mark or other earlier right.

(2) The regulations may make such consequential provision as appears to the Department appropriate -

(a) with respect to the carrying out by the Registrar of searches of earlier trade marks, and

(b) as to the persons by whom an application for a declaration of invalidity may be made on the grounds specified in section 47(2) (relative grounds).

(3) Regulations making such provision as is mentioned in subsection (2)(a) may direct that so much of section 37 (examination of application) as authorises a search to be carried out shall cease to have effect.

(4) Regulations making such provision as is mentioned in subsection (2)(b) may provide that so much of section 47(8) as provides that any person may make an application for a declaration of invalidity shall have effect subject to the provisions of the regulations.

*Effects of registered trade mark*

**Rights conferred by registered trade mark.**

**10.** (1) The proprietor of a registered trade mark has exclusive rights in the trade mark which are infringed by use of the trade mark in the Bailiwick without his consent.

The acts amounting to infringement, if done without the consent of the proprietor, are specified in section 11.

(2) References in this Ordinance to the infringement of a registered trade mark are to any such infringement of the rights of the proprietor.

(3) The rights of the proprietor have effect from the date of registration (which in accordance with section 40(3) is the date of filing of the application for registration), but -

- (a) no infringement proceedings may be begun before the date on which the trade mark is in fact registered, and
- (b) no offence under section 89 (unauthorised use of trade mark, etc, in relation to goods) is committed by anything done before the date of publication of the registration.

**Infringement of registered trade mark.**

**11.** (1) A person infringes a registered trade mark if he uses in the course of trade a sign which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered.

(2) A person infringes a registered trade mark if he uses in the course of trade a sign where, because -

- (a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered, or
- (b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trade mark.

(3) A person infringes a registered trade mark if he uses in the course of trade, in relation to goods or services, a sign which is identical with or similar to the trade mark where the trade mark has a reputation in the Bailiwick and the use of the sign, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark.

(4) For the purposes of this section a persons uses a sign if, in particular, he -

- (a) affixes it to goods or the packaging thereof,
- (b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the sign, or offers or supplies services under the sign,

- (c) imports or exports goods under the sign, or
- (d) uses the sign on business papers or in advertising.

(5) A person who applies a registered trade mark to material intended to be used for labelling or packaging goods, as a business paper, or for advertising goods or services, shall be treated as a party to any use of the material which infringes the registered trade mark if, when he applied the mark, he knew or had reason to believe that the application of the mark was not duly authorised by the proprietor or a licensee.

(6) Nothing in the preceding provisions of this section shall be construed as preventing the use of a registered trade mark by any person for the purpose of identifying goods or services as those of the proprietor or a licensee.

However, any such use otherwise than in accordance with honest practices in industrial or commercial matters shall be treated as infringing the registered trade mark if the use without due cause takes unfair advantage of, or is detrimental to, the distinctive character or repute of the trade mark.

**Limits on effect of registered trade mark.**

12. (1) A registered trade mark is not infringed by the use of another registered trade mark in relation to goods or services for which the latter is registered, but see section 47(11) (effect of declaration of invalidity of registration).

- (2) A registered trade mark is not infringed by -
  - (a) the use by a person of his own name or address,
  - (b) the use of indications concerning the kind, quality,

quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services, or

- (c) the use of the trade mark where it is necessary to indicate the intended purpose of a product or service (in particular, as accessories or spare parts),

provided that the use is in accordance with honest practices in industrial or commercial matters.

(3) A registered trade mark is not infringed by the use in the course of trade in a particular locality of an earlier right which applies only in that locality.

For this purpose an "**earlier right**" means an unregistered trade mark or other sign continuously used in relation to goods or services by a person or a predecessor in title of his from a date prior to whichever is the earlier of -

- (a) the use of the first-mentioned trade mark in relation to those goods or services by the proprietor or a predecessor in title of his, or
- (b) the registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor or a predecessor in title of his,

and an earlier right shall be regarded as applying in a locality if, or to the extent that, its use in that locality is protected by virtue of any rule of law (in particular,

the law of passing off).

**Exhaustion of rights conferred by registered trade mark.**

13. (1) A registered trade mark is not infringed by the use of the trade mark in relation to goods which have been put on the market in the Bailiwick or the EEA under that trade mark by the proprietor or with his consent.

(2) Subsection (1) does not apply where there exist legitimate reasons for the proprietor to oppose further dealings in the goods (in particular, where the condition of the goods has been changed or impaired after they have been put on the market).

**Registration subject to disclaimer or limitation.**

14. (1) An applicant for registration of a trade mark, or the proprietor of a registered trade mark, may -

- (a) disclaim any right to the exclusive use of any specified element of the trade mark, or
- (b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation,

and where the registration of a trade mark is subject to a disclaimer or limitation, the rights conferred by section 10 (rights conferred by registered trade mark) are restricted accordingly.

(2) Provision may be made by regulations of the Department as to the publication and entry in the Register of a disclaimer or limitation.

However, if regulations are not so made, the Registrar may make



such publication and entries as he thinks fit.

*Infringement proceedings*

**Action for infringement.**

15. (1) An infringement of a registered trade mark is actionable by the proprietor of the trade mark.

(2) In an action for infringement all such relief by way of damages, injunctions, accounts or otherwise is available to him as is available in respect of the infringement of any other property right.

**Order for erasure, etc, of offending sign.**

16. (1) Where a person is found to have infringed a registered trade mark, the court may make an order requiring him -

- (a) to cause the offending sign to be erased, removed or obliterated from any infringing goods, materials or articles in his possession, custody or control, or
- (b) if it is not reasonably practicable for the offending sign to be erased, removed or obliterated, to secure the destruction of the infringing goods, material or articles in question.

(2) If an order under subsection (1) is not complied with, or if it appears to the court likely that such an order would not be complied with, the court may order that the infringing goods, material or articles be delivered to such person as the court may direct for erasure, removal or obliteration of the sign, or for destruction, as the case may be.

**Order for delivery up of infringing goods, material or articles.**

17. (1) The proprietor of a registered trade mark may apply to the court for an order for the delivery up to him, or such other person as the court may direct, of any infringing goods, material or articles which a person has in his possession, custody or control in the course of a business.

(2) An application shall not be made after the end of the period specified in section 19 (period after which remedy of delivery up not available), and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 20 (order as to disposal of infringing goods, etc).

(3) A person to whom any infringing goods, material or articles are delivered up in pursuance of an order under this section shall, if an order under section 20 is not made, retain them pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section affects any other power of the court.

**Meaning of "infringing goods, material or articles".**

18. (1) In this Ordinance the expressions "**infringing goods**", "**infringing material**" and "**infringing articles**" shall be construed as follows.

(2) Goods are "**infringing goods**", in relation to a registered trade mark, if they or their packaging bear a sign identical or similar to that mark and -

(a) the application of the sign to the goods or their packaging was an infringement of the registered trade mark,

- (b) the goods are proposed to be imported into the Bailiwick and the application of the sign in the Bailiwick to them or their packaging would be an infringement of the registered trade mark, or
- (c) the sign has otherwise been used in relation to the goods in such a way as to infringe the registered trade mark.

(3) Nothing in subsection (2) shall be construed as affecting the importation of goods which may lawfully be imported into the Bailiwick by virtue of an enforceable Community right.

(4) Material is "**infringing material**" in relation to a registered trade mark if it bears a sign identical or similar to that mark and either -

- (a) it is used for labelling or packaging goods, as a business paper, or for advertising goods or services, in such a way as to infringe the registered trade mark, or
- (b) it is intended to be so used and such use would infringe the registered trade mark.

(5) "**Infringing articles**", in relation to a registered trade mark, means articles -

- (a) which are specifically designed or adapted for making copies of a sign identical or similar to that mark, and

- (b) which a person has in his possession, custody or control, knowing or having reason to believe that they have been or are to be used to produce infringing goods or material.

**Period after which remedy of delivery up not available.**

**19.** (1) An application for an order under section 17 (order for delivery up of infringing goods, material or articles) may not be made after the end of the period of six years beginning on -

- (a) in the case of infringing goods, the date on which the trade mark was applied to the goods or their packaging,
- (b) in the case of infringing material, the date on which the trade mark was applied to the material, or
- (c) in the case of infringing articles, the date on which they were made,

except as mentioned in the following provisions.

(2) If during the whole or part of that period the proprietor of the registered trade mark -

- (a) is a minor or under legal disability, or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply for an order,

an application may be made at any time before the end of the period of six years beginning on the date on which he ceased to be a minor or under legal disability or, as the case may be, could with reasonable diligence have discovered those facts.

**Order as to disposal of infringing goods, material or articles.**

20. (1) Where infringing goods, material or articles have been delivered up in pursuance of an order under section 17, an application may be made to the magistrate's court -

- (a) for an order that they be destroyed or forfeited to such person as the magistrate's court may think fit, or
- (b) for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the magistrate's court shall consider whether other remedies available in an action for infringement of the registered trade mark would be adequate to compensate the proprietor and any licensee and protect their interests.

(3) The magistrate's court may make such order as it thinks just as to the service of notice on persons having an interest in the goods, material or articles, and any such person is entitled -

- (a) to appear in proceedings for an order under this section, whether or not he was served with notice, and
- (b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of

an appeal may be given or, if before the end of that period notice of appeal is duly given, until final disposal of the proceedings on the appeal.

(4) Where there is more than one person interested in the goods, material or articles, the magistrate's court shall make such order as it thinks just and may (in particular) direct that the thing be sold, or otherwise dealt with, and the proceeds divided.

(5) If the magistrate's court decides that no order should be made under this section, the person in whose possession, custody or control the goods, material or articles were before being delivered up is entitled to their return.

(6) References in this section to a person having an interest in goods, material or articles include any person in whose favour an order could be made under this section or under section 141 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005, section 44 of the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005 or section 20 of the Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005 (which make similar provision in relation to infringement of copyright, rights in performances and unregistered design right).

(7) In this section the "**magistrate's court**" means the court which made the order under section 17 or, if that court is no longer seised of the matter -

- (a) the Court of Alderney, where the application is to be made in Alderney,
- (b) the Court of the Seneschal, where the application is to be made in Sark,

- (c) the Magistrate's Court in Guernsey, in any other case.

**Remedy for groundless threats of infringement proceedings.**

21. (1) Where a person threatens another with proceedings for infringement of a registered trade mark other than -

- (a) the application of the mark to goods or their packaging,
- (b) the importation of goods to which, or to the packaging of which, the mark has been applied, or
- (c) the supply of services under the mark,

any person aggrieved may bring proceedings for relief under this section.

(2) The relief which may be applied for is any of the following -

- (a) a declaration that the threats are unjustifiable,
- (b) an injunction against the continuance of the threats, and
- (c) damages in respect of any loss he has sustained by the threats,

and the plaintiff is entitled to such relief unless the defendant shows that the acts in respect of which proceedings were threatened constitute (or if done would constitute) an infringement of the registered trade mark concerned.

(3) If that is shown by the defendant, the plaintiff is nevertheless entitled to relief if he shows that the registration of the trade mark is invalid or liable to be revoked in a relevant respect.

(4) The mere notification that a trade mark is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this section.

*Registered trade mark as object of property*

**Nature of registered trade mark.**

22. A registered trade mark is personal or movable property.

**Co-ownership of registered trade mark.**

23. (1) Where a registered trade mark is granted to two or more persons jointly, each of them is entitled, subject to any agreement to the contrary, to an equal undivided share in the registered trade mark.

(2) The following provisions apply where two or more persons are co-proprietors of a registered trade mark, by virtue of subsection (1) or otherwise.

(3) Subject to any agreement to the contrary, each co-proprietor is entitled, by himself or his agents, to do for his own benefit and without the consent of or the need to account to the other or others, any act which would otherwise amount to an infringement of the registered trade mark.

(4) One co-proprietor may not without the consent of the other or others -



- (a) grant a licence to use the registered trade mark, or
- (b) assign or charge his share in the registered trade mark.

(5) Infringement proceedings may be brought by any co-proprietor, but he may not, without the leave of the court, proceed with the action unless the other, or each of the others, is either joined as a plaintiff or added as a defendant.

A co-proprietor who is thus added as a defendant shall not be made liable for any costs in the action unless he takes part in the proceedings.

Nothing in this subsection affects the granting of interlocutory relief on the application of a single co-proprietor.

(6) Nothing in this section affects the mutual rights and obligations of trustees or personal representatives, or their rights and obligations as such.

**Assignment, etc of registered trade mark.**

**24.** (1) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or movable property.

It is so transmissible either in connection with the goodwill of a business or independently.

(2) An assignment or other transmission of a registered trade mark may be partial, that is, limited so as to apply -

- (a) in relation to some but not all of the goods or services for which the trade mark is registered, or
- (b) in relation to use of the trade mark in a particular manner or a particular locality.

(3) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.

(4) The above provisions apply to assignment by way of security as in relation to any other assignment.

(5) A registered trade mark may be the subject of a charge in the same way as other personal property.

(6) Nothing in this Ordinance shall be construed as affecting the assignment or other transmission of an unregistered trade mark as part of the goodwill of a business.

**Registration of transactions affecting registered trade mark.**

25. (1) On an application being made to the Registrar by -
- (a) a person claiming to be entitled to an interest in or under a registered trade mark by virtue of a registrable transaction, or
  - (b) any other person claiming to be affected by such a transaction,

the Registrar shall enter such particulars of the transaction in the Register as he thinks necessary or as may be prescribed.

(2) The following are registrable transactions -

- (a) an assignment of a registered trade mark or any right in it,
- (b) the grant of a licence under a registered trade mark,
- (c) the making by personal representatives of an assent in relation to a registered trade mark or any right in or under it,
- (d) an order of a court or other competent authority transferring a registered trade mark or any right in or under it.

(3) Until an application has been made for registration of the particulars of a registrable transaction -

- (a) the transaction is ineffective as against a person acquiring a conflicting interest in or under the registered trade mark in ignorance of it, and
- (b) a person claiming to be a licensee by virtue of the transaction does not have the protection of section 30 or 31 (rights and remedies of licensee in relation to infringement).

(4) Where a person becomes the proprietor or a licensee of a registered trade mark by virtue of a registrable transaction, then unless -

- (a) an application for registration of the particulars of the transaction is made before the end of the period of six months beginning with its date, or
- (b) the court is satisfied that it was not practicable for such an application to be made before the end of that period and that an application was made as soon as practicable thereafter,

he is not entitled to damages or an account of profits in respect of any infringement of the registered trade mark occurring after the date of the transaction and before the particulars of the transaction are registered.

(5) Provision may be made by regulations of the Department as to-

- (a) the amendment of registered particulars relating to a licence so as to reflect any alteration of the terms of the licence, and
- (b) the removal of such particulars from the Register -
  - (i) where it appears from the registered particulars that the licence was granted for a fixed period and that period has expired, or
  - (ii) where no such period is indicated and, after

such period as the Registrar may think fit or as may be prescribed, the Registrar has notified the parties of his intention to remove the particulars from the Register.

However, if regulations are not so made, the Registrar may make such amendments to the Register as he thinks fit.

**Trusts and rights.**

26. (1) No notice of any trust (express, implied or constructive) may be entered in the Register, and the Registrar is not affected by any such notice.

(2) Subject to the provisions of this Ordinance, rights in respect of a registered trade mark may be enforced in like manner as in respect of other personal or movable property.

**Application for registration of trade mark as an object of property.**

27. (1) The provisions of sections 22 to 26 (which relate to a registered trade mark as an object of property) apply, with the necessary modifications, in relation to an application for the registration of a trade mark as in relation to a registered trade mark.

(2) In section 23 (co-ownership of registered trade mark) as it applies in relation to an application for registration the reference in subsection (1) to the granting of the registration shall be construed as a reference to the making of the application.

(3) In section 25 (registration of transactions affecting registered trade marks) as it applies in relation to a transaction affecting an application for the registration of a trade mark, the references to the entry of particulars in the

Register, and to the making of an application to register particulars, shall be construed as references to the giving of notice to the Registrar of those particulars.

### *Licensing*

#### **Licensing of registered trade mark.**

28. (1) A licence to use a registered trade mark may be general or limited.

A limited licence may, in particular, apply -

- (a) in relation to some but not all of the goods or services for which the trade mark is registered, or
- (b) in relation to use of the trade mark in a particular manner or a particular locality.

(2) A licence is not effective unless it is in writing signed by or on behalf of the grantor.

(3) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest.

References in this Ordinance to doing anything with, or without, the consent of the proprietor of a registered trade mark shall be construed accordingly.

(4) Where the licence so provides, a sub-licence may be granted by the licensee, and references in this Ordinance to a licence or licensee include a sub-licence or sub-licensee.

**Exclusive licences.**

29. (1) In this Ordinance an "**exclusive licence**" means a licence (whether general or limited) authorising the licensee to the exclusion of all other persons, including the persons granting the licence, to use a registered trade mark in the manner authorised by the licence.

The expression "**exclusive licensee**" shall be construed accordingly.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

**General provisions as to rights of licensees in case of infringement.**

30. (1) This section has effect with respect to the rights of a licensee in relation to infringement of a registered trade mark.

However, the provisions of this section do not apply where or to the extent that, by virtue of section 31(1) (exclusive licensee having rights and remedies of assignee), the licensee has a right to bring proceedings in his own name.

(2) A licensee is entitled, unless his licence, or any licence through which his interest is derived, provides otherwise, to call on the proprietor of the registered trade mark to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor -

(a) refuses to do so, or

(b) fails to do so within two months after being called

upon,

the licensee may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by a licensee by virtue of this section, the licensee may not, without the leave of the court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a defendant.

This does not affect the granting of interlocutory relief on an application by a licensee alone.

(5) A proprietor who is added as a defendant as mentioned in subsection (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.

(6) In infringement proceedings brought by the proprietor of a registered trade mark any loss suffered or likely to be suffered by licensees shall be taken into account, and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of licensees.

(7) The provisions of this section apply in relation to an exclusive licensee if or to the extent that he has, by virtue of section 31(1), the rights and remedies of an assignee as if he were the proprietor of the registered trade mark.

**Exclusive licensee having rights and remedies of assignee.**

**31.** (1) An exclusive licence may provide that the licensee shall have, to such extent as may be provided by the licence, the same rights and remedies in



respect of matters occurring after the grant of the licence as if the licence had been an assignment.

Where or to the extent that such provision is made, the licensee is entitled, subject to the provisions of the licence and to the following provisions of this section, to bring infringement proceedings, against any person other than the proprietor, in his own name.

(2) Any such rights and remedies of an exclusive licensee are concurrent with those of the proprietor of the registered trade mark, and references to the proprietor of a registered trade mark in the provisions of this Ordinance relating to infringement shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the proprietor of the registered trade mark.

(4) Where proceedings for infringement of a registered trade mark brought by the proprietor or an exclusive licensee relate wholly or partly to an infringement in respect of which they have concurrent rights of action, the proprietor or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

This does not affect the granting of interlocutory relief on an application by a proprietor or exclusive licensee alone.

(5) A person who is added as a defendant as mentioned in subsection (4) shall not be made liable for any costs in the action unless he takes

part in the proceedings.

(6) Where an action for infringement of a registered trade mark is brought which relates wholly or partly to an infringement in respect of which the proprietor and an exclusive licensee have or had concurrent rights of action -

- (a) the court shall in assessing damages take into account -
  - (i) the terms of the licence, and
  - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement,
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement, and
- (c) the court shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.

The provisions of this subsection apply whether or not the proprietor and the exclusive licensee are both parties to the action; and, if they are not both parties, the court may give such directions as it thinks fit as to the extent to which the party to the proceedings is to hold the proceeds of any pecuniary remedy on behalf of the other.

(7) The proprietor of a registered trade mark shall notify any

exclusive licensee who has a concurrent right of action before applying for an order under section 17 (order for delivery up), and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

(8) The provisions of subsections (4) to (7) have effect subject to any agreement to the contrary between the exclusive licensee and the proprietor.

*Application for registered trade mark*

**Application for registration.**

32. (1) An application for registration of a trade mark shall be made to the Registrar.

(2) The application shall contain -

- (a) a request for registration of the trade mark,
- (b) the name and address of the applicant,
- (c) a statement of the goods or services in relation to which it is sought to register the trade mark,
- (d) a representation of the trade mark, and
- (e) a declaration by the applicant that the registration of the trade mark is not prohibited by section 5 (relative grounds for refusal of registration).

(3) The application shall state that the trade mark is being used,

by the applicant or with his consent, in relation to those goods or services, or that he has a bona fide intention that it should be so used.

(4) The application shall be subject to payment of the appropriate fee.

**Date of filing.**

33. (1) The date of filing of an application for registration of a trade mark is the date on which documents containing everything required by section 32(2) are furnished to the Registrar by the applicant.

If the documents are furnished on different days, the date of filing is the last of those days.

(2) References in this Ordinance to the date of application for registration are to the date of filing of the application.

**Classification of trade marks.**

34. (1) Goods and services may be classified for the purposes of the registration of trade marks according to a prescribed system of classification.

(2) Any question arising as to the class within which any goods or services fall shall be determined by the Registrar.

*Priority*

**Claim to priority of Convention application.**

35. (1) A person who has duly filed an application for protection of a trade mark in a Convention country (a "**Convention application**"), or his successor in title, has a right to priority, for the purposes of registering the same trade mark

under this Ordinance for some or all of the same goods or services, for a period of six months from the date of filing of the first such application.

(2) If the application for registration under this Ordinance is made within that six month period -

- (a) the relevant date for the purposes of establishing which rights take precedence is the date of filing of the first Convention application, and
- (b) the registrability of the trade mark is not affected by any use of the mark in the Bailiwick in the period between that date and the date of the application under this Ordinance.

(3) Any filing which in a Convention country is equivalent to a regular national filing, under its domestic legislation or an international agreement, shall be treated as giving rise to the right of priority.

A "**regular national filing**" means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent fate of the application.

(4) A subsequent application concerning the same subject as the first Convention application, filed in the same Convention country, shall be considered the first Convention application (of which the filing date is the starting date of the period of priority), if at the time of the subsequent application -

- (a) the previous application has been withdrawn, abandoned or refused, without having been laid open to

public inspection and without leaving any rights outstanding, and

- (b) it has not yet served as a basis for claiming a right of priority.

The previous application may not thereafter serve as a basis for claiming a right of priority.

(5) Provision may be made by regulations of the Department as to the manner of claiming a right to priority on the basis of a Convention application.

(6) A right to priority arising as a result of a Convention application may be assigned or otherwise transmitted, either with the application or independently.

The reference in subsection (1) to the applicant's successor in title shall be construed accordingly.

**Claim to priority from other relevant overseas application.**

36. (1) The Department may by regulation make provision for conferring on a person who has duly filed an application for protection of a trade mark in -

- (a) the Bailiwick of Jersey or a colony, or
- (b) any country in relation to which Her Majesty's Government in the United Kingdom have entered into a treaty, convention, arrangement or engagement for the reciprocal protection of trade marks,

a right to priority, for the purpose of registering the same trade mark under this Ordinance for some or all of the same goods or services, for a specified period from the date of filing of that application.

(2) Regulations under this section may make provision corresponding to that made by section 35 in relation to Convention countries or such other provision as appears to the Department to be appropriate.

*Registration procedure*

**Examination of application.**

37. (1) The Registrar shall examine whether an application for registration of a trade mark satisfies the requirements of this Ordinance (including any requirements imposed by regulations of the Department).

(2) For that purpose he may, without prejudice to the provisions of section 5(6) (right of Registrar to rely on declaration made by applicant), carry out a search of earlier trade marks.

(3) If it appears to the Registrar that the requirements for registration are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to amend the application.

(4) If the applicant fails to satisfy the Registrar that those requirements are met, or to amend the application so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse to accept the application.

(5) If it appears to the Registrar that the requirements for registration are met, he shall accept the application.

**Publication, opposition proceedings and observations.**

38. (1) When an application for registration has been accepted, the Registrar shall cause the application to be published in such manner as he thinks fit or as may be prescribed.

(2) Any person may, within such time from the date of the publication of the application as may be specified by the Registrar in the publication or as may be prescribed, give notice to the Registrar of opposition to the registration.

The notice shall be given in writing in such manner as the Registrar thinks fit or as may be prescribed, and shall include a statement of the grounds of opposition.

(3) Where an application has been published, any person may, at any time before the registration of the trade mark, make observations in writing to the Registrar as to whether the trade mark should be registered, and the Registrar shall inform the applicant of any such observations.

A person who makes observations does not thereby become a party to the proceedings on the application.

**Withdrawal, restriction or amendment of application.**

39. (1) The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

If the application has been published, the withdrawal or restriction



shall also be published.

(2) In other respects, an application may be amended, at the request of the applicant, only by correcting -

- (a) the name or address of the applicant,
- (b) errors of wording or of copying, or
- (c) obvious mistakes,

and then only where the correction does not substantially affect the identity of the trade mark or extend the goods or services covered by the application.

(3) Provision may be made by regulations of the Department -

- (a) allowing the making of any amendment which affects the representation of the trade mark or the goods or services covered by the application,
- (b) for the publication of any such amendment, and
- (c) for the making of objections by any person claiming to be affected by it.

**Registration.**

**40.** (1) Where an application has been accepted and -

- (a) no notice of opposition is given within the period referred to in section 38(2), or

- (b) all opposition proceedings are withdrawn or decided in favour of the applicant,

the Registrar shall register the trade mark in the Register, unless it appears to him having regard to matters coming to his notice since the application was accepted that the registration requirements, other than those mentioned in section 5(1), (2) or (3), were not met at that time.

(2) A trade mark shall not be registered unless the appropriate fee for the registration is paid within such period as the Registrar may require or as may be prescribed.

If the fee is not paid within that period, the application shall be deemed to be withdrawn.

(3) A trade mark when registered shall be registered as of the date of filing of the application for registration, and that date shall be deemed for the purposes of this Ordinance to be the date of registration.

(4) On the registration of a trade mark the Registrar shall -

- (a) publish the registration in such manner as he thinks fit or as may be prescribed, and
- (b) issue to the applicant a certificate of registration.

**Registration: supplementary provisions.**

**41.** (1) Provision may be made by regulations of the Department as to-

- (a) the division of an application for the registration of a trade mark into several applications,
- (b) the merging of separate applications or registrations,
- (c) the registration of a series of trade marks.

(2) A series of trade marks means a number of trade marks which resemble each other as to their material particulars and differ only as to matters of a non-distinctive character not substantially affecting the identity of the trade mark.

(3) Regulations of the Department under this section may include provision as to -

- (a) the circumstances in which, and conditions subject to which, division, merger or registration of a series is permitted, and
- (b) the purposes for which an application to which the regulations apply is to be treated as a single application and those for which it is to be treated as a number of separate applications.

**Duration of registration.**

42. (1) A trade mark shall be registered for a period of ten years from the date of registration.

(2) Registration may be renewed in accordance with section 43 for further periods of ten years.

**Renewal of registration.**

43. (1) The registration of a trade mark may, subject to payment of the appropriate fee, be renewed at the request of the proprietor.

(2) The Registrar may, in accordance with the provisions of any regulations of the Department in that behalf, inform the proprietor of a registered trade mark, before the expiry of the registration, of the date of expiry and the manner in which the registration may be renewed.

(3) A request for renewal must be made, and the appropriate renewal fee paid, before the expiry of the registration.

Failing this, the request may be made and the fee paid within a period of six months or such longer period as may be prescribed, in which case the appropriate additional renewal fee must also be paid within that period.

(4) Renewal shall take effect from the expiry of the previous registration.

(5) If the registration is not renewed in accordance with the above provisions, the Registrar shall remove the trade mark from the Register.

Provision may be made by regulations of the Department for the restoration of the registration of a trade mark which has been removed from the Register, subject to such conditions (if any) as may be prescribed.

(6) The renewal or restoration of the registration of a trade mark shall be published in such manner as the Registrar thinks fit or as may be prescribed.

**Alteration of registered trade mark.**

44. (1) A registered trade mark shall not be altered in the Register, during the period of registration or on renewal.

(2) Nevertheless, the Registrar may, at the request of the proprietor, allow the alteration of a registered trade mark where the mark includes the proprietor's name or address and the alteration is limited to alteration of that name or address and does not substantially affect the identity of the mark.

(3) Provision may be made by regulations of the Department for the publication of any such alteration and the making of objections by any person claiming to be affected by it.

**Surrender of registered trade mark.**

45. (1) A registered trade mark may be surrendered by the proprietor in respect of some or all of the goods or services for which it is registered.

(2) Provision may be made by regulations of the Department -

- (a) as to the manner and effect of a surrender, and
- (b) for protecting the interests of other persons having a right in the registered trade mark.

**Revocation of registration.**

46. (1) The registration of a trade mark may be revoked on any of the following grounds -

- (a) that, within the period of five years following the date

of completion of the registration procedure, it has not been put to genuine use in the Bailiwick by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use,

- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use,
- (c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered,
- (d) that, in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the Bailiwick includes affixing the trade mark to goods or to the packaging of goods in the Bailiwick solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in paragraph (a) or (b) of subsection (1) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made.

However, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made either to the Registrar or to the Ordinary Court, except that -

- (a) if proceedings concerning the trade mark in question are pending in a court in the Bailiwick, the application must be made to the Ordinary Court, and
- (b) if in any other case the application is made to the Registrar, he may at any stage refer the application to the Ordinary Court.

(5) Where grounds for revocation exist in respect of some only of the goods or services for which the trade mark is registered, revocation shall relate only to those goods or services.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from -

- (a) the date of the application for revocation, or
- (b) if the Registrar or Ordinary Court is satisfied that the grounds for revocation existed at an earlier date, that

date.

**Grounds for invalidity of registration.**

47. (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground -

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(3) But the registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless -

- (a) the registration procedure for the earlier trade mark was completed within the period of five years ending



with the date of the application for the declaration,

- (b) the registration procedure for the earlier trade mark was not completed before that date, or
- (c) the use conditions are met.

(4) The use conditions are met if -

- (a) within the period of five years ending with the date of the application for the declaration the earlier trade mark has been put to genuine use in the Bailiwick by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) it has not been so used, but there are proper reasons for non-use.

(5) For these purposes -

- (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and
- (b) use in the Bailiwick includes affixing the trade mark to goods or to the packaging of goods in the Bailiwick solely for export purposes.

(6) In relation to a Community trade mark, any reference in subsection (4) or (5) to the Bailiwick shall be construed as a reference to the

European Community.

(7) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(8) An application for a declaration of invalidity may be made by any person, and may be made either to the Registrar or to the Ordinary Court, except that -

- (a) if proceedings concerning the trade mark in question are pending in a court in the Bailiwick, the application must be made to the Ordinary Court, and
- (b) if in any other case the application is made to the Registrar, he may at any stage refer the application to the Ordinary Court.

(9) In the case of bad faith in the registration of a trade mark, the Registrar himself may apply to the Ordinary Court for a declaration of the invalidity of the registration.

(10) Where the grounds of invalidity exist in respect of some only of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid only as regards those goods or services.

(11) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made, but this shall not affect transactions past and closed.

**Effect of acquiescence.**

**48.** (1) Where the proprietor of an earlier trade mark or other earlier right has acquiesced for a continuous period of five years in the use of a registered trade mark in the Bailiwick, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other right -

- (a) to apply for a declaration that the registration of the later trade mark is invalid, or
- (b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,

unless the registration of the later trade mark was applied for in bad faith.

(2) Where subsection (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark or, as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark or right may no longer be invoked against his later trade mark.

*Collective marks*

**Collective marks.**

**49.** (1) A collective mark is a mark distinguishing the goods or services of members of the association which is the proprietor of the mark from those of other undertakings.

(2) The provisions of this Ordinance apply to collective marks subject to the provisions of Schedule 1.

*Certification marks*

**Certification marks.**

50. (1) A certification mark is a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.

(2) The provisions of this Ordinance apply to certification marks subject to the provisions of Schedule 2.

PART II

COMMUNITY TRADE MARKS AND INTERNATIONAL MATTERS

*Community trade marks, etc*

**Meaning of "Community trade mark".**

51. In this Ordinance -

"**Community Trade Mark**" has the meaning given by Article 1(1) of the Community Trade Mark Regulation, and

"**Community Trade Mark Regulation**" means Council Regulation (EC) No. 40/94 of 20<sup>th</sup> December 1993 on the Community trade mark.

**Power to make provision as to Community Trade Mark Regulation.**

52. (1) The Department may by regulation make such provision as it thinks fit for giving effect in the Bailiwick to, and otherwise in connection with the

operation in the Bailiwick of, the Community Trade Mark Regulation.

- (2) Provision may, in particular, be made with respect to -
- (a) the making of applications for Community trade marks by way of the office of the Registrar,
  - (b) the procedures for determining a posteriori the invalidity, or liability to revocation, of the registration of a trade mark from which a Community trade mark claims seniority,
  - (c) the conversion of a Community trade mark, or an application for a Community trade mark, into an application for registration under this Ordinance,
  - (d) the designation of courts in the Bailiwick having jurisdiction over proceedings arising out of the Community Trade Mark Regulation.

(3) Without prejudice to the generality of subsection (1), provision may be made by regulations under this section -

- (a) applying in relation to a Community trade mark the provisions of -
  - (i) section 21 (remedy for groundless threats of infringement proceedings),
  - (ii) sections 86 to 88 (importation of infringing

goods, material or articles),

(iii) sections 89 to 92 (offences), and

(b) making in relation to the list of professional representatives maintained in pursuance of Article 89 of the Community Trade Mark Regulation, and persons on that list, provision corresponding to that made by, or capable of being made under, sections 82 to 85 in relation to the register of trade mark agents and registered trade mark agents.

*Madrid Protocol: international registration*

**Madrid Protocol.**

**53.** In this Ordinance -

**"Madrid Protocol"** means the Protocol relating to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27<sup>th</sup> June 1989,

**"International Bureau"** has the meaning given by Article 2(1) of that Protocol,

**"international trade mark (EC)"** means a trade mark which is entitled to protection in the European Community under that Protocol, and

**"international trade mark (UK)"** means a trade mark which is entitled to protection in the United Kingdom under that Protocol.

**Power to make provision giving effect to Madrid Protocol.**

54. (1) The Department may by regulation make such provision as it thinks fit for giving effect in the Bailiwick to, and otherwise in connection with the operation in the Bailiwick of, the provisions of the Madrid Protocol.

- (2) Provision may, in particular, be made in respect of -
- (a) the making of applications for international registrations by way of the office of the Registrar as office of origin,
  - (b) the procedures to be followed where the basic Bailiwick application or registration fails or ceases to be in force,
  - (c) the procedures to be followed where the Registrar receives from the International Bureau a request for extension of protection to the Bailiwick,
  - (d) the effects of a successful request for extension of protection to the Bailiwick,
  - (e) the transformation of an application for an international registration, or an international registration, into a national application for registration,
  - (f) the communication of information to the International Bureau,

- (g) the payment of fees and amounts prescribed in respect of applications for international registrations, extensions of protection and renewals.

(3) Without prejudice to the generality of subsection (1), provision may be made by regulations of the Department applying in relation to an international trade mark (UK) the provisions of -

- (a) section 21 (remedy for groundless threats of infringement proceedings),
- (b) sections 86 to 88 (importation of infringing goods, material or articles), and
- (c) sections 89 to 92 (offences).

*Paris Convention: supplementary provisions*

**Paris Convention.**

**55.** (1) In this Ordinance -

- (a) "**Convention Country**" means a country, other than the Bailiwick, which is a party to the Paris Convention,
- (b) "**Paris Convention**" means the Paris Convention for the Protection of Industrial Property of 20<sup>th</sup> March 1883, and
- (c) "**WTO Agreement**" means the Agreement establishing



the World Trade Organisation signed at Marrakesh on 15<sup>th</sup> April 1994.

(2) The Department may by regulations make such amendments to this Ordinance as appear to it appropriate in consequence of any revision or amendment of the Paris Convention or the WTO Agreement after the commencement of this Ordinance.

**Protection of well-known trade marks: Article 6bis.**

56. (1) References in this Ordinance to a trade mark which is entitled to protection under the Paris Convention or the WTO Agreement as a well-known trade mark are to a mark which is well-known in the Bailiwick as being the mark of a person who -

- (a) is a national of a Convention country, or
- (b) is domiciled in, or has a real and effective industrial or commercial establishment in, a Convention country,

whether or not that person carries on business, or has any goodwill, in the Bailiwick; and references to the proprietor of such a mark shall be construed accordingly.

(2) The proprietor of a trade mark which is entitled to protection under the Paris Convention or the WTO Agreement as a well-known trade mark is entitled to restrain by injunction the use in the Bailiwick of a trade mark which, or the essential part of which, is identical or similar to his mark, in relation to identical or similar goods or services, where the use is likely to cause confusion.

This right is subject to section 48 (effect of acquiescence by

proprietor of earlier trade mark).

(3) Nothing in subsection (2) affects the continuation of any bona fide use of a trade mark begun before the commencement of this section.

**National emblems, etc of Convention countries: Article 6ter.**

57. (1) A trade mark which consists of or contains the flag of a Convention country shall not be registered without the authorisation of the competent authorities of that country, unless it appears to the Registrar that use of the flag in the manner proposed is permitted without such authorisation.

(2) A trade mark which consists of or contains the armorial bearings or any other state emblem of a Convention country which is protected under the Paris Convention or the WTO Agreement shall not be registered without the authorisation of the competent authorities of that country.

(3) A trade mark which consists of or contains an official sign or hallmark adopted by a Convention country and indicating control and warranty shall not, where the sign or hallmark is protected under the Paris Convention or the WTO Agreement, be registered in relation to goods or services of the same or a similar kind as those in relation to which it indicates control and warranty without the authorisation of the competent authorities of the country concerned.

(4) The provisions of this section as to national flags and other state emblems, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.

(5) Nothing in this section prevents the registration of a trade mark on the application of a national of a country who is authorised to make use of

a state emblem, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(6) Where by virtue of this section the authorisation of the competent authorities of a Convention country is or would be required for the registration of a trade mark, those authorities are entitled to restrain by injunction any use of the mark in the Bailiwick without their authorisation.

**Emblems, etc of certain international organisations: Article 6ter.**

58. (1) This section applies to -

- (a) the armorial bearings, flags or other emblems, and
- (b) the abbreviations and names,

of international intergovernmental organisations of which one or more Convention countries are members.

(2) A trade mark which consists of or contains any such emblem, abbreviation or name which is protected under the Paris Convention or the WTO Agreement shall not be registered without the authorisation of the international organisation concerned, unless it appears to the Registrar that the use of the emblem, abbreviation or name in the manner proposed -

- (a) is not such as to suggest to the public that a connection exists between the organisation and the trade mark, or
- (b) is not likely to mislead the public as to the existence of a connection between the user and the organisation.

(3) The provisions of this section as to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.

(4) Where by virtue of this section the authorisation of an international organisation is or would be required for the registration of a trade mark, that organisation is entitled to restrain by injunction any use of the mark in the Bailiwick without its authorisation.

(5) Nothing in this section affects the rights of a person whose bona fide use of the trade mark in question began before 4<sup>th</sup> January 1962 (when the relevant provisions of the Paris Convention entered into force in the United Kingdom).

**Notification under Article 6ter of the Convention.**

**59.** (1) For the purposes of section 57 state emblems of a Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention only if, or to the extent that-

- (a) the country in question has notified the United Kingdom in accordance with Article 6ter(3) of the Convention that it desires to protect that emblem, sign or hallmark,
- (b) the notification remains in force, and
- (c) the United Kingdom has not objected to it in accordance with Article 6ter(4) or any such objection has been withdrawn.

(2) For the purposes of section 58 the emblems, abbreviations and names of an international organisation shall be regarded as protected under the Paris Convention only if, or to the extent that-

- (a) the organisation in question has notified the United Kingdom in accordance with Article 6*ter*(3) of the Convention that it desires to protect that emblem, abbreviation or name,
- (b) the notification remains in force, and
- (c) the United Kingdom has not objected to it in accordance with Article 6*ter*(4) or any such objection has been withdrawn.

(3) Notification under Article 6*ter*(3) of the Paris Convention shall have effect only in relation to applications for registration made more than two months after the receipt of the notification.

(4) The Registrar may keep and make available for public inspection by any person, at all reasonable hours and free of charge, a list of -

- (a) the state emblems and official signs or hallmarks, and
- (b) the emblems, abbreviations and names of international organisations,

which are for the time being protected under the Paris Convention by virtue of notification under Article 6*ter*(3).

(5) Any reference in this section to Article 6*ter* of the Paris Convention shall be construed as including a reference to that Article as applied by the WTO Agreement.

**Acts of agent or representative: Article 6*septies*.**

60. (1) The following provisions apply where an application for registration of a trade mark is made by a person who is an agent or representative of a person who is the proprietor of the mark in a Convention country.

(2) If the proprietor opposes the application, registration shall be refused.

(3) If the application (not being so opposed) is granted, the proprietor may -

(a) apply for a declaration of the invalidity of the registration, or

(b) apply for the rectification of the Register so as to substitute his name as the proprietor of the registered trade mark.

(4) The proprietor may (notwithstanding the rights conferred by this Ordinance in relation to a registered trade mark) by injunction restrain any use of the trade mark in the Bailiwick which is not authorised by him.

(5) Subsections (2), (3) and (4) do not apply if, or to the extent that, the agent or representative justifies his action.

(6) An application under subsection (3)(a) or (b) must be made

within three years of the proprietor becoming aware of the registration; and no injunction shall be granted under subsection (4) in respect of a use in which the proprietor has acquiesced for a continuous period of three years or more.

PART III  
ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS

*The Register of Trade Marks*

**The Register.**

**61.** (1) The Registrar shall establish and maintain a Register of Trade Marks ("**the Register**").

References in this Ordinance to registration (in particular, in the expression "**registered trade mark**") are, unless the context otherwise requires, to registration in the Register.

(2) There shall be entered in the Register in accordance with this Ordinance -

- (a) registered trade marks,
- (b) such particulars as may be prescribed or as the Registrar may think fit of registrable transactions affecting a registered trade mark, and
- (c) such other matters relating to registered trade marks as may be prescribed or as the Registrar may think fit.

(3) The Register shall be kept in such manner as the Registrar

may determine or as may be prescribed, and need not be kept in documentary form.

(4) The Registrar (in accordance with any regulations made by the Department) shall in particular make arrangements for -

- (a) public inspection of the Register, and
- (b) subject to payment of the appropriate fee, the supply of certified or uncertified copies or extracts of entries in the Register.

**Rectification of Register.**

62. (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the Register, but an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.

(2) An application for rectification may be made either to the Registrar or to the Ordinary Court, except that -

- (a) if proceedings concerning the trade mark in question are pending in a court in the Bailiwick, the application must be made to the Ordinary Court, and
- (b) if in any other case the application is made to the Registrar, he may at any stage refer the application to the Ordinary Court.

(3) Except where the Registrar or the Ordinary Court directs otherwise, the effect of rectification of the Register is that the error or omission in



question shall be deemed never to have been made.

(4) The Registrar may, on the application of the proprietor of a registered trade mark, or a licensee, made in such manner as the Registrar may require or as may be prescribed, enter any change in the applicant's name or address as recorded in the Register.

(5) The Registrar may remove from the Register matter appearing to him to have ceased to have effect.

**Adaptation of entries to new classification.**

63. (1) Provision may be made by regulations of the Department empowering the Registrar to do such things as he considers necessary to implement any new, amended or substituted classification of goods or services for the purposes of the registration of trade marks.

(2) Provision may in particular be made for the amendment of existing entries on the Register so as to accord with the new classification.

(3) Any such power of amendment shall not be exercised so as to extend the rights conferred by the registration, except where it appears to the Registrar that compliance with this requirement would involve undue complexity and that any extension would not be substantial and would not adversely affect the rights of any person.

(4) The regulations may empower the Registrar -

(a) to require the proprietor of a registered trade mark, within such time as may be prescribed, to file a proposal for amendment of the Register, and

(b) to cancel or refuse to renew the registration of the trade mark in the event of his failing to do so.

(5) Any such proposal shall be advertised, and may be opposed, in such manner as the Registrar may require or as may be prescribed.

*Powers and duties of Registrar*

**Power to require use of forms.**

64. (1) The Registrar may require the use of such forms as he may direct for any purpose relating to the registration of a trade mark or any other proceedings before him under this Ordinance.

(2) The forms, and any directions of the Registrar as to their use, shall be published in such manner as he thinks fit or as may be prescribed.

**Information about applications and registered trade marks.**

65. (1) After publication of an application for registration of a trade mark, the Registrar shall on request provide a person with such information and permit him to inspect such documents relating to the application, or to any registered trade mark resulting from it, as may be specified in the request, subject however to any prescribed restrictions.

Any request must be made in such manner as the Registrar may require or as may be prescribed and must be accompanied by the appropriate fee.

(2) Before publication of an application for registration of a trade mark, documents or information constituting or relating to the application shall not be published by the Registrar or communicated by him to any person except -

- (a) in such cases and to such extent as may be prescribed,  
or
- (b) with the consent of the applicant,

but subject as follows.

(3) Where a person has been notified that an application for registration of a trade mark has been made, and that the applicant will if the application is granted bring proceedings against him in respect of acts done after publication of the application, he may make a request under subsection (1) notwithstanding that the application has not been published, and that subsection shall apply accordingly.

**Costs and security for costs.**

66. Provision may be made by regulations of the Department empowering the Registrar, in such cases as may be prescribed, to require a party to proceedings before him to pay his reasonable costs or to give security for costs in relation to proceedings before the Registrar under this Ordinance or proceedings on appeal, and as to the consequences if the costs are not paid or security is not given.

**Evidence before Registrar.**

67. Provision may be made by regulations of the Department -

- (a) as to the giving of evidence in proceedings before the Registrar under this Ordinance by affidavit,
- (b) conferring on the Registrar for the purposes of such proceedings powers as regards the administration of

the oath, the examination of witnesses on oath, the discovery and production of documents and the summoning and attendance of witnesses.

**Exclusion of liability in respect of official acts.**

68. (1) The Registrar shall not be taken to warrant the validity of the registration of a trade mark under this Ordinance or under any treaty, convention, arrangement or engagement extending to the Bailiwick.

(2) The Registrar is not subject to any liability by reason of, or in connection with, any examination required or authorised by this Ordinance, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent on such examination.

(3) No proceedings lie against an officer of the Registrar in respect of any matter for which, by virtue of this section, the Registrar is not liable.

(4) The provisions of this section are in addition to and not in derogation from the provisions of the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005 excluding the liability of the States, the Registrar and other persons in respect of anything done or omitted to be done in the discharge or purported discharge of their respective functions.

**Registrar's annual report.**

69. The Registrar shall, in his annual report under the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005, if so required by the Department, include a report on the execution of this Ordinance, including the discharge of his functions under the Madrid Protocol.

*Legal proceedings and appeals*

**Registration to be prima facie evidence of validity.**

70. In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the Register) the registration of a person as proprietor of a trade mark is prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.

**Certificate of validity of contested registration.**

71. (1) If in proceedings before a court in the Bailiwick the validity of the registration of a trade mark is contested and it is found by the court that the trade mark is validly registered, the court may give a certificate to that effect.

(2) If the court gives such a certificate and in subsequent proceedings before a court in the Bailiwick -

- (a) the validity of the registration is again questioned, and
- (b) the proprietor obtains a final order or judgment in his favour,

he is entitled to his costs on an indemnity basis unless the court directs otherwise.

This subsection does not extend to the costs of an appeal in any such proceedings.

**Registrar's appearance in proceedings involving the Register.**

72. (1) In proceedings before the Ordinary Court involving an application for -

- (a) the revocation of the registration of a trade mark,

- (b) a declaration of the invalidity of the registration of a trade mark, or
- (c) the rectification of the Register,

the Registrar is entitled to appear and to be heard, and shall appear if so directed by the Ordinary Court.

(2) Unless otherwise directed by the Ordinary Court, the Registrar may instead of appearing submit to the Court a statement in writing signed by him, giving particulars of -

- (a) any proceedings before him in relation to the matter in issue,
- (b) the grounds of any decision given by him affecting it,
- (c) the practice of the office of Registrar in like cases, and
- (d) such matters relevant to the issues and within his knowledge as Registrar as he thinks fit,

and the statement shall be deemed to form part of the evidence in the proceedings.

(3) Anything which the Registrar is or may be authorised or required to do under this section may be done on his behalf by a duly authorised officer.

**The Ordinary Court.**

73. In this Ordinance, unless the context requires otherwise, "**the Ordinary Court**" means the Royal Court sitting as an Ordinary Court; and, for the purposes of this Ordinance, the Ordinary Court -

- (a) has, in relation to functions conferred on it by this Ordinance, jurisdiction throughout the Bailiwick,
- (b) is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (c) may appoint one or more assessors to assist it in the determination of the matter before it.

**Appeals from Registrar.**

74. (1) An appeal to the Ordinary Court lies from any decision of the Registrar under this Ordinance, except as otherwise expressly provided by regulations of the Department.

For this purpose "**decision**" includes any act of the Registrar in exercise of a discretion vested in him by or under this Ordinance.

(2) The grounds of an appeal under this section are that the Registrar's decision was ultra vires, unreasonable in law or wrong.

(3) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the Registrar's decision (or such other period as the Ordinary Court may in any particular case direct), and

- (b) by summons served on the Registrar stating the grounds and material facts on which the appellant relies.

(4) The Registrar may, where an appeal under this section has been instituted, apply to the Ordinary Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and, on hearing the application, the Ordinary Court may -

- (a) dismiss the appeal or dismiss the Registrar's application (in either case on such terms and conditions as the Ordinary Court may direct), or
- (b) make such other order as the Ordinary Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Ordinary Court or to the provisions of rule 36(2) of the Royal Court Civil Rules, 1989<sup>f</sup>.

- (5) On an appeal under this section the Ordinary Court may -
  - (a) set the decision of the Registrar aside and, if the Ordinary Court considers it appropriate to do so, remit the matter to him with such directions as the Ordinary Court thinks fit, or

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<sup>f</sup> O.R.C. No. VII of 1989.



- (b) confirm the decision of the Registrar, in whole or in part.

(6) An appeal from a decision of the Ordinary Court made on an appeal under this section lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>g</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(8) This section does not confer a right of appeal on a question which has been determined by the Ordinary Court on an application by the Registrar for directions, or for a determination of a question of fact, law or procedure, under section 6 of the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005.

**Power of Department to make regulations.**

75. (1) The Department may make regulations -
- (a) for the purposes of any provision of this Ordinance authorising the making of regulations with respect to any matter, and
  - (b) for prescribing anything authorised or required by any provision of this Ordinance to be prescribed,

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<sup>g</sup> Ordres en Conseil Vol. XVIII, p. 315.

and generally for regulating practice and procedure under this Ordinance.

- (2) Provision may, in particular, be made -
- (a) as to the manner of filing of applications and other documents,
  - (b) requiring and regulating the translation of documents and the filing and authentication of any translation,
  - (c) as to the service of documents,
  - (d) authorising the rectification of irregularities of procedure,
  - (e) prescribing time limits for anything required to be done in connection with any proceeding under this Ordinance,
  - (f) providing for the extension of any time limit so prescribed, or specified by the Registrar, whether or not it has already expired.

However, if regulations are not so made, the Registrar may adopt such practice and procedure as he thinks fit as to the matters in respect of which regulations may be made.

**Fees.**

76. (1) There shall be paid in respect of applications and registration and other matters under this Ordinance -

- (a) such fees as may be prescribed by regulations of the Department, or
- (b) if no fee is prescribed in respect of a particular matter, such fee as may be determined by the Registrar after consultation with the Department.

(2) The Department by regulation or (if regulations are not made) the Registrar may make provision under subsection (1) as to -

- (a) the payment of a single fee in respect of two or more matters, and
- (b) the circumstances (if any) in which a fee may be repaid or remitted.

**Trade marks - publication.**

77. Provision may be made by regulations of the Department for the publication by the Registrar in La Gazette Officielle or in some other manner of particulars of any application for the registration of a trade mark (including a representation of the mark) and such other information relating to trade marks as may be prescribed or as the Registrar thinks fit (but if regulations are not so made then the Registrar may make publication in such manner as he thinks fit).

**Matters to be taken into account.**

78. In exercising their respective functions under this Ordinance, the Ordinary Court and the Registrar shall, where appropriate, have regard to -

- (a) the Paris Union and WIPO Joint Recommendation

concerning provisions on the Protection of Well-known Marks 1999,

- (b) the Paris Union and WIPO Joint Recommendation concerning Trade Mark Licences 2000, and
- (c) the Paris Union and WIPO Joint Recommendation concerning provisions on the Protection of Marks and other Industrial Property Signs on the Internet 2001.

In this section "**WIPO**" means the World Intellectual Property Organisation.

**Power to release Registrar from proceedings.**

**79.** (1) If the Registrar is a party to any proceedings before the Ordinary Court in which there is in issue any question which falls to be determined as between -

- (a) the proprietor of a registered trade mark or an applicant for the registration of a trade mark, and
- (b) any other person (for example, the proprietor of an earlier trade mark or earlier right),

the Registrar may apply to the Ordinary Court to be released from the proceedings so far as they relate to the determination of that question.

(2) On an application under this section by the Registrar the Ordinary Court may -

- (a) subject to such terms and conditions and to such extent as it thinks fit, order that he be released, and
- (b) make such order as to the costs of the determination of the application and of the question in issue as it thinks fit in consequence of his release (including, without limitation, an order that he shall be awarded his costs and shall not be liable for the costs of any other party).

(3) The reference in subsection (1) to proceedings before the Ordinary Court includes, without limitation -

- (a) proceedings on an application under section 46 for revocation of the registration of a trade mark,
- (b) proceedings on an application under section 47 for a declaration that the registration of a trade mark is invalid,
- (c) proceedings on an application under section 62 for the rectification of the Register, and
- (d) proceedings on an appeal under section 74.

(4) The powers conferred on the Ordinary Court by this section are without prejudice to its powers otherwise arising.

*Trade mark agents*

**Recognition of agents.**

80. Except as otherwise provided by regulations of the Department, any act required or authorised by this Ordinance to be done by or in relation to a person in connection with the registration of a trade mark, or any procedure relating to a registered trade mark, may be done by or in relation to an agent authorised by that person orally or in writing.

**Register of trade mark agents.**

81. (1) The Department may make regulations requiring the keeping of a register of persons who act as agent for others for the purpose of applying for or obtaining the registration of trade marks; and in this Ordinance a "**registered trade mark agent**" means a person whose name is entered in the register kept pursuant to regulations under this section.

The register shall be known as "**the register of trade mark agents**".

(2) The regulations may contain such provision as the Department thinks fit regulating the registration of persons, and may in particular -

- (a) require the payment of such fees as may be prescribed, and
- (b) authorise in prescribed cases the erasure from the register of the name of any person registered in it, or the suspension of a person's registration.

(3) The regulations may delegate the keeping of the register to another person, and may confer on that person -

- (a) power to make rules -

- (i) in respect of the payment of fees, in the cases and subject to the limits prescribed by the regulations, and
  - (ii) in respect of any other matter which could be provided for by the regulations, and
- (b) such other functions, including disciplinary functions, as may be prescribed by the regulations.

**Unregistered persons not to be described as registered trade mark agents.**

82. (1) An individual who is not a registered trade mark agent shall not -

- (a) carry on a business (otherwise than in partnership) under any name or other description which contains the words "registered trade mark agent", or
  - (b) in the course of a business otherwise describe or hold himself out, or permit himself to be described or held out, as a registered trade mark agent.
- (2) A partnership shall not -
- (a) carry on a business under any name or other description which contains the words "registered trade mark agent", or
  - (b) in the course of a business otherwise describe or hold itself out, or permit itself to be described or held out,

as a firm of registered trade mark agents,

unless all the partners are registered trade mark agents or the partnership satisfies such conditions as may be prescribed for the purposes of this section.

- (3) A body corporate shall not -
- (a) carry on a business (otherwise than in partnership) under any name or other description which contains the words "registered trade mark agent", or
  - (b) in the course of a business otherwise describe or hold itself out, or permit itself to be described or held out, as a registered trade mark agent,

unless all the directors of the body corporate are registered trade mark agents or the body satisfies such conditions as may be prescribed for the purposes of this section.

(4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) The provisions of this section have effect only if regulations have been made under section 81(1) requiring the keeping of the register of trade mark agents.

**Power to prescribe conditions, etc, for mixed partnerships and bodies corporate.**

**83.** (1) The Department may make regulations prescribing the conditions to be satisfied for the purposes of section 82 (persons entitled to be



described as registered trade mark agents) -

- (a) in relation to a partnership where not all the partners are qualified persons, or
- (b) in relation to a body corporate where not all the directors are qualified persons,

and imposing requirements to be complied with by such partnerships or bodies corporate.

(2) The regulations may, in particular -

- (a) prescribe conditions as to the number or proportion of partners or directors who must be qualified persons,
- (b) impose requirements as to -
  - (i) the identification of qualified and unqualified persons in professional advertisements, circulars or letters issued by or with the consent of the partnership or body corporate and which relate to its business, and
  - (ii) the manner in which a partnership or body corporate is to organise its affairs so as to secure that qualified persons exercise a sufficient degree of control over the activities of unqualified persons.

(3) Contravention of a requirement imposed by the regulations is an offence for which a person is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(4) In this section "**qualified person**" means a registered trade mark agent.

**Privilege for communications with registered trade mark agents.**

**84.** (1) This section applies to communications as to any matter relating to the protection of any design or trade mark, or as to any matter involving passing off.

(2) Any such communication -

(a) between a person and his trade mark agent, or

(b) for the purpose of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing his trade mark agent,

is privileged from disclosure in legal proceedings in the same way as a communication between a person and his Advocate or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing his Advocate.

(3) In subsection (2) a "**trade mark agent**" means -

(a) a registered trade mark agent,

(b) a partnership entitled to describe itself as a firm of

registered trade mark agents, or

- (c) a body corporate entitled to describe itself as a registered trade mark agent.

**Power of Registrar to refuse to deal with certain agents.**

85. (1) The Department may make regulations authorising the Registrar to refuse to recognise as agent in respect of any business under this Ordinance -

- (a) a person who has been convicted of an offence under section 82 (unregistered persons describing themselves as registered trade mark agents),
- (b) an individual whose name has been erased from and not restored to, or who is suspended from, the register of trade mark agents on the ground of misconduct,
- (c) a person who is found by the Registrar to have been guilty of such conduct as would, in the case of an individual registered in the register of trade mark agents, render him liable to have his name erased from the register on the ground of misconduct,
- (d) a partnership or body corporate of which one of the partners or directors is a person whom the Registrar could refuse to recognise under paragraph (a), (b) or (c).

- (2) The regulations may contain such incidental and

supplementary provision as appears to the Department to be appropriate and may, in particular, prescribe circumstances in which a person is or is not to be taken to have been guilty of misconduct.

*Importation of infringing goods, material or articles*

**Infringing goods, material or articles may be treated as prohibited goods.**

86. (1) The proprietor of a registered trade mark or a licensee may give notice in writing to the Chief Officer of Customs and Excise -

- (a) that he is the proprietor or, as the case may be, a licensee of the registered trade mark,
- (b) that, at a time and place specified in the notice, goods which are, in relation to that registered trade mark, infringing goods, material or articles are expected to arrive in the Bailiwick -
  - (i) from outside the EEA, or
  - (ii) from within the EEA but not having been entered for free circulation, and
- (c) that he requests the Chief Officer of Customs and Excise to treat them as prohibited goods.

(2) When a notice is in force under this section the importation of the goods to which the notice relates, otherwise than by a person for his private and domestic use, is prohibited, but a person is not by reason of the prohibition liable to any penalty other than forfeiture of the goods.

(3) This section does not apply to goods placed in, or expected to be placed in, one of the situations referred to in Article 1(1), in respect of which an application may be made under Article 5(1), of Council Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

**Power of Home Department to make regulations.**

87. (1) The States of Guernsey Home Department may make regulations prescribing the form in which notice is to be given under section 86 and requiring a person giving notice -

- (a) to furnish the Chief Officer of Customs and Excise with such evidence as may be specified in the regulations, either on giving notice or when the goods are imported, or at both those times, and
- (b) to comply with such other conditions as may be specified in the regulations.

(2) The regulations may, in particular, require a person giving such a notice -

- (a) to pay such fees in respect of the notice as may be specified by the regulations,
- (b) to give such security as may be so specified in respect of any liability or expense which the Chief Officer of Customs and Excise may incur in consequence of the

notice by reason of the detention of any goods or anything done to goods detained, and

- (c) to indemnify the Chief Officer of Customs and Excise against any such liability or expense, whether security has been given or not.

**Power of Chief Officer of Customs and Excise to disclose information.**

88. Where information relating to infringing goods, material or articles has been obtained by the Chief Officer of Customs and Excise for the purposes of, or in connection with, the exercise of his functions in relation to imported goods, he may authorise the disclosure of that information for the purpose of facilitating the exercise by any person of any function in connection with the investigation or prosecution of an offence under section 89 (unauthorised use of trade mark, etc, in relation to goods).

*Offences*

**Unauthorised use of trade mark, etc, in relation to goods.**

89. (1) A person commits an offence who, with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor -

- (a) applies to goods or their packaging a sign identical to, or likely to be mistaken for, a registered trade mark,
- (b) sells or lets for hire, offers or exposes for sale or hire or distributes goods which bear, or the packaging of which bears, such a sign, or

- (c) has in his possession, custody or control in the course of a business any such goods with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(2) A person commits an offence who, with a view to gain for himself or another, or with intent to cause loss to another, and without the consent of the proprietor-

- (a) applies a sign identical to, or likely to be mistaken for, a registered trade mark to material intended to be used-

- (i) for labelling or packaging goods,

- (ii) as a business paper in relation to goods, or

- (iii) for advertising goods, or

- (b) uses in the course of a business material bearing such a sign for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods, or

- (c) has in his possession, custody or control in the course of a business any such material with a view to the doing of anything, by himself or another, which would be an offence under paragraph (b).

(3) A person commits an offence who, with a view to gain for himself or another, or with intent to cause loss to another, and without the consent

of the proprietor -

- (a) makes an article specifically designed or adapted for making copies of a sign identical to, or likely to be mistaken for, a registered trade mark, or
- (b) has such an article in his possession, custody or control in the course of a business,

knowing or having reason to believe that it has been, or is to be, used to produce goods, or material for labelling or packaging goods, as a business paper in relation to goods, or for advertising goods.

(4) A person does not commit an offence under this section unless-

- (a) the goods are goods in respect of which the trade mark is registered, or
- (b) the trade mark has a reputation in the Bailiwick and the use of the sign takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the trade mark.

(5) It is a defence for a person charged with an offence under this section to show that he believed on reasonable grounds that the use of the sign in the manner in which it was used, or was to be used, was not an infringement of the registered trade mark.

(6) A person guilty of an offence under this section is liable -



- (a) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years, or a fine, or both.

**Search warrants.**

90. (1) Where the Bailiff is satisfied by information on oath given by an officer of police that there are reasonable grounds for believing -

- (a) that an offence under section 89 (unauthorised use of trade mark, etc, in relation to goods) has been or is about to be committed in any premises, and
- (b) that evidence that such an offence has been or is about to be committed is in those premises,

he may issue a warrant authorising an officer of police to enter and search the premises, using such reasonable force as is necessary.

(2) The power conferred by subsection (1) does not extend to authorising a search for items or material of the kinds mentioned in section 9(2) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>h</sup> (certain classes of personal or confidential material).

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<sup>h</sup> Order in Council No. XXIII of 2003.

(3) A warrant under subsection (1) -

- (a) may authorise persons to accompany any officer of police executing the warrant, and
- (b) remains in force for a period of 28 days beginning on the date of its issue.

(4) In executing a warrant issued under subsection (1) an officer of police may seize any article if he reasonably believes that it is evidence that an offence under section 89 has been or is about to be committed.

(5) In this section -

**"Bailiff"** means -

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
- (b) where the warrant is to be executed in Sark, the Seneschal or his deputy, and
- (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,

**"premises"** includes land, buildings, fixed or moveable structures, vehicles, vessels, aircraft and hovercraft.

**Falsification of Register, etc.**

91. (1) It is an offence for a person to make, or cause to be made, a false entry in the Register, knowing or having reason to believe that it is false.

(2) It is an offence for a person -

(a) to make or cause to be made anything falsely purporting to be a copy of an entry in the Register, or

(b) to produce or tender or cause to be produced or tendered in evidence any such thing,

knowing or having reason to believe that it is false.

(3) A person guilty of an offence under this section is liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both,

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the uniform scale, or both.

**Falsely representing trade mark as registered.**

92. (1) It is an offence for a person -

(a) falsely to represent that a mark is a registered trade mark, or

(b) to make a false representation as to the goods or services for which a trade mark is registered,

knowing or having reason to believe that the representation is false.

(2) For the purposes of this section, the use in the Bailiwick in relation to a trade mark -

- (a) of the word "registered", or
- (b) of any other word or symbol importing a reference (express or implied) to registration,

shall be deemed to be a representation as to registration under this Ordinance unless it is shown that the reference is to registration elsewhere than in the Bailiwick and that the trade mark is in fact so registered for the goods or services in question.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

*Forfeiture of counterfeit goods, etc*

**Forfeiture.**

93. (1) Where there has come into the possession of any person in connection with the investigation or prosecution of a relevant offence -

- (a) goods which, or the packaging of which, bears a sign identical to or likely to be mistaken for a registered trade mark,
- (b) material bearing such a sign and intended to be used for labelling or packaging goods, as a business paper

in relation to goods, or for advertising goods, or

- (c) articles specifically designed or adapted for making copies of such a sign,

that person may apply under this section for an order for the forfeiture of the goods, material or articles.

(2) An application under this section may be made -

- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the goods, material or articles, to that court,
- (b) where no application for the forfeiture of the goods, material or articles has been made under paragraph (a), by way of complaint to the magistrate's court.

(3) On an application under this section the court shall make an order for the forfeiture of any goods, material or articles only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles.

(4) A court may infer for the purposes of this section that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) A person aggrieved by an order made under this section by the court, or by a decision of the court not to make such an order, may appeal

against the order or decision as against a conviction by that court of an offence or, as the case may be, as against an acquittal by that court of an offence (and as if the person aggrieved were the prosecutor).

(6) Subject to subsection (7), where any goods, material or articles are forfeited under this section, they shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this section the court may, if it considers it appropriate to do so, direct that the goods, material or articles to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person -

- (a) causes the offending sign to be erased, removed or obliterated, and
- (b) complies with any order to pay costs which has been made against him in the proceedings for the order for forfeiture.

(8) For the purposes of this section -

**"magistrate's court"** means -

- (a) where the application for the forfeiture of the goods, material or articles is to be made in Alderney, the Court of Alderney,
- (b) where the application is to be made in Sark, the Court of the Seneschal, and

- (c) in any other case, the Magistrate's Court in Guernsey,

"**relevant offence**" means-

- (a) an offence under section 89 (unauthorised use of trade mark, etc, in relation to goods), or
- (b) any offence involving dishonesty or deception.

### PART III

#### MISCELLANEOUS AND GENERAL PROVISIONS

##### *Miscellaneous*

##### **Unauthorised use of Royal arms, etc.**

94. (1) A person shall not without the authority of Her Majesty's Receiver-General use in connection with any business the Royal arms (or arms so closely resembling the Royal arms as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal arms.

(2) A person shall not without the authority of Her Majesty's Receiver-General or of a member of the Royal family use in connection with any business any device, emblem or title in such a manner as to be calculated to lead to the belief that he is employed by, or supplies goods or services to, Her Majesty or that member of the Royal family.

(3) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the

uniform scale.

(4) Contravention of subsection (1) or (2) may be restrained by injunction in proceedings brought by -

- (a) any person who is authorised to use the arms, device, emblem or title in question, or
- (b) any person authorised by Her Majesty's Receiver-General to take such proceedings.

(5) Nothing in this section affects any right of the proprietor of a trade mark containing any such arms, device, emblem or title to use that trade mark.

**Burden of proving use of trade mark.**

95. If in any civil proceedings under this Ordinance a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.

**Offences committed by partnerships and bodies corporate.**

96. (1) Proceedings for an offence under this Ordinance alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners, but without prejudice to any liability of the partners under subsection (3).

(2) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

(3) Where an offence under this Ordinance is committed by a



partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner or any person purporting to act in that capacity, he as well as the partnership is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

**Accessories and abettors.**

97. A person who aids, abets, counsels, commands or procures the commission of an offence under this Ordinance is guilty of the offence and may be proceeded against and punished as a principal offender.

**Interpretation.**

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

"appropriate" fee means -

- (a) the fee prescribed by regulations of the Department under section 76, or
- (b) if no fee is prescribed in respect of a particular matter, the fee determined by the Registrar after consultation with the Department,

**"Bailiff"** (except in section 90, which relates to the granting of search warrants) means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff or Juge Délégué,

**"Bailiwick"** means the Bailiwick of Guernsey, and includes the territorial waters adjacent thereto,

**"business"** includes a trade or profession,

**"certification mark"** : see section 50(1),

**"collective mark"** : see section 49(1),

**"commencement" (of this Ordinance)** : see section 106,

**"Community trade mark"** : see section 51,

**"Community Trade Mark Regulation"** : see section 51,

**"contravention"** includes failure to comply,

**"Convention country"** : see section 55(1)(a),

**"copy"** or **"extract"**, in relation to an entry in the Register which is not in documentary form, means a copy or extract in a visible and legible form in which it can be taken away,

**"country"** includes a territory,

**"customs laws"** and **"excise laws"** mean those provisions of the

Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>i</sup>, and any other enactment for the time being in force, relating to customs or, as the case may be, excise,

**"date of application"** : see section 33(2),

**"date of filing"** : see section 33(1),

**"date of registration"** : see section 40(3),

**"Department"** means the States of Guernsey Commerce and Employment Department,

**"director"**, in relation to a body corporate whose affairs are managed by its members, means any member of the body,

**"earlier right"** : see section 5(4),

**"earlier trade mark"** : see section 6,

**"EEA"** means the European Economic Area,

**"enactment"** includes any Law, Ordinance, Act of Parliament and Order in Council, and any subordinate legislation made thereunder,

**"enforceable Community right"** means a right to which section 2(1)

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<sup>i</sup> Order in Council Vol. XXIII, p. 573.

of the European Communities (Bailiwick of Guernsey) Law, 1973<sup>j</sup> applies,

**"exclusive" licence and licensee** : see section 29(1),

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"Her Majesty's Receiver-General"** includes Her Majesty's Deputy Receiver-General,

**"infringement" (of registered trade mark)** : see sections 10(1) and (2) and 11,

**"infringement proceedings"**, in relation to a registered trade mark, includes proceedings under section 17 (order for delivery up of infringing goods, etc),

**"infringing articles"** : see section 18,

**"infringing goods"** : see section 18,

**"infringing material"** : see section 18,

**"International Bureau"** : see section 53,

**"international trade mark (EC)"** : see section 53,

**"international trade mark (UK)"** : see section 53,

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<sup>j</sup> Ordres en Conseil Vol. XXIV, p. 87.

**"Madrid Protocol"** : see section 53,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey and -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004, and
- (c) in relation to Sark, the Constable and the Vingtenier,

**"opposition proceedings"** : see section 38,

**"Ordinary Court"** means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 73,

**"Paris Convention"** : see section 55(1)(b),

**"prescribed"** means prescribed by regulations of the Department,

**"proceedings"** before the Registrar means the consideration and determination by him of any question or issue falling to be considered and determined by him in the course of carrying out any function or exercising any discretion conferred on him by or under this Ordinance,

**"protected under the Paris Convention"** (emblems, etc, of international organisations) : see section 58,

**"protected under the Paris Convention"** (state emblems and official signs or hallmarks) : see section 57,

**"protected under the Paris Convention"** (well-known trade marks) : see section 56,

**"publish"** means make available to the public, and references to **"publication"** -

- (a) in relation to an application for registration, are to publication under section 38(1), and
- (b) in relation to registration, are to publication under section 40(4),

**"Register"** means the Register of Trade Marks established under section 61,

**"register of trade mark agents"** means the register kept pursuant to regulations under section 81,

**"registered trade mark"** means a trade mark entered in the Register,

**"registered trade mark agent"** means a person whose name is entered in the register of trade mark agents,

**"registrable transaction"** : see section 25(2),

**"Registrar"** means the Registrar of Intellectual Property appointed under the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005,

**"registration"** (and related expressions) : see section 61(1),

**"regulations"** means regulations made by the Department under this Ordinance,

**"States"** means the States of Guernsey,

**"the 1922 Law"** : see section 100(2),

**"trade"** includes any business or profession,

**"trade mark"** : see section 1(1),

**"trade mark" (including collective mark or certification mark)** : see section 1(3),

**"uniform scale"** means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>k</sup>,

**"use" (of trade mark or sign)** : see section 11(4) and subsection (2) of this section,

"well-known trade mark" (under Paris Convention) : see section 56(1),

"WIPO" : see section 78,

"WTO Agreement" : see section 55(1)(c),

and other words or expressions which are defined in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>l</sup> have the same meanings as in that Law.

(2) References in this Ordinance to "use" (or any particular description of use) of a trade mark, or of a sign identical with, similar to, or likely to be mistaken for a trade mark, include use (or that description of use) otherwise than by means of a graphic representation.

(3) References in this Ordinance to an enactment or Community instrument are references thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

(4) The Interpretation (Guernsey) Law, 1948<sup>m</sup> applies to the interpretation of this Ordinance throughout the Bailiwick.

**Saving for forfeited goods.**

99. Nothing in this Ordinance affects the right of the States or any person

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<sup>k</sup> Ordres en Conseil Vol. XXXI, p. 278.

<sup>l</sup> Order in Council No. XIV of 2004.



deriving title directly or indirectly from the States to sell or use products forfeited under the customs Laws or excise Laws.

**Repeals, and savings for trade marks registered under 1922 Law.**

**100.** (1) The Law entitled "Loi pour empêcher l'usage à Guernesey, sans autorité, des Armoiries Royales" of 1913<sup>n</sup> is repealed.

(2) Part IV of the Law entitled "Loi ayant rapport aux Patentes, Dessins et Marques de Fabrique" of 1922<sup>o</sup> (comprising sections 38 to 50 of that Law), and all other provisions of that Law so far as they relate to trade marks, are repealed.

That Law is referred to in this section as "**the 1922 Law**".

(3) A trade mark which immediately before the commencement of this Ordinance was registered in the Register of Trade Marks kept under section 38 of the 1922 Law, and any other entry made in that Register, shall on the commencement of this Ordinance be deemed to be a trade mark registered, or an entry made, in the Register of Trade Marks established under this Ordinance; and any interests, limitations, terms and conditions subject to which the trade mark was registered under the 1922 Law shall apply in respect of the deemed registration under this subsection.

(4) A person who immediately before the commencement of this Ordinance was registered in the Register of Trade Marks kept under section 38 of the 1922 Law as proprietor of a trade mark so registered shall on the

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

<sup>n</sup> Ordres en Conseil Vol. V, p. 5.

commencement of this Ordinance be deemed to be a person registered as proprietor of that trade mark in the Register of Trade Marks established under this Ordinance; and any interests, limitations, terms and conditions subject to which he was registered under the 1922 Law shall apply in respect of his deemed registration under this subsection.

- (5) For the purposes of giving effect to subsections (3) and (4) -
  - (a) the Registrar shall replicate, in the Register of Trade Marks established under this Ordinance, all extant entries made in the Register kept under section 38 of the 1922 Law, and
  - (b) the deemed registrations effected by those subsections shall have effect from the date of commencement of this Ordinance.

(6) Any reference in any enactment, statutory instrument or rule of court (however expressed) to -

- (a) a trade mark entered in the Register of Trade Marks kept under section 38 of the 1922 Law, or
- (b) a person registered in that Register as proprietor of such a trade mark,

shall be construed after the date of commencement of this Ordinance as a reference to (as the case may require) -

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<sup>o</sup> Ordres en Conseil Vol. VII, p. 1.

- (i) a trade mark registered in the Register of Trade Marks established under this Ordinance, or
- (ii) a person so registered as proprietor of such a trade mark.

(7) Any reference, however expressed, in any enactment, statutory instrument or rule of court to Part IV of the 1922 Law or any provision thereof shall, unless the context requires otherwise, be construed as a reference to this Ordinance or (as the case may be) to the corresponding provision of this Ordinance.

(8) References in this section however expressed to the registration of a trade mark in the Register of Trade Marks kept under section 38 of the 1922 Law are references to the entry on that Register of the certificate under the seal of the Patent Office to the effect that the trade mark has been registered in England.

(9) The term of a trade mark which, immediately before the commencement of this Ordinance, was registered in the Register of Trade Marks kept under section 38 of the 1922 Law shall not be extended or curtailed by reason of the operation of this section.

**General provisions as to subordinate legislation.**

**101.** (1) Regulations under this Ordinance made by a Department of the States of Guernsey -

- (a) may be amended or repealed by subsequent regulations hereunder,

- (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as may appear to be necessary or expedient, and
- (c) may contain provision making consequential amendments to this Ordinance.

(2) Any power to make regulations conferred by this Ordinance on a Department of the States of Guernsey may be exercised -

- (a) 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,
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Ordinance made by a Department of the States of Guernsey shall be laid before a meeting of the States of Deliberation as soon as possible after being made; and, if at that or the next meeting the States of Deliberation resolve to annul the regulations, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(4) In this section, except in subsections (1)(c) and (3), references to regulations under this Ordinance made by a Department of the States of Guernsey include references to rules hereunder.

**Territorial waters.**

**102.** For the purposes of this Ordinance the territorial waters adjacent to the Bailiwick shall be treated as part of the Bailiwick.

**Guernsey ships.**

**103.** (1) This Ordinance applies to things done on a Guernsey ship as it applies to things done in the Bailiwick.

(2) In this section "**Guernsey ship**" means a ship registered in Guernsey under the Merchant Shipping Act 1894<sup>P</sup>.

**Citation.**

**104.** This Ordinance may be cited as the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006.

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<sup>P</sup> An Act of Parliament (57 & 58 Vict. c. 60).

**Extent.**

**105.** This Ordinance has effect throughout the Bailiwick.

**Commencement.**

**106.** This Ordinance shall come into force on the 1<sup>st</sup> March, 2006.

## SCHEDULE 1

Section 49

## COLLECTIVE MARKS

**General.**

1. The provisions of this Ordinance apply to collective marks subject to the following provisions.

**Signs of which a collective mark may consist.**

2. In relation to a collective mark the reference in section 1(1) (signs of which a trade mark may consist) to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as a reference to distinguishing goods or services of members of the association which is the proprietor of the mark from those of other undertakings.

**Indication of geographical origin.**

3. (1) Notwithstanding section 3(1)(c), a collective mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.

(2) However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name).

**Mark not to be misleading as to character or significance.**

4. (1) A collective mark shall not be registered if the public is liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a collective mark.

(2) The Registrar may accordingly require that a mark in respect of which application is made for registration includes some indication that it is a collective mark.

Notwithstanding section 39(2), an application may be amended so as to comply with any such requirement.

**Regulations governing use of collective mark.**

5. (1) An applicant for registration of a collective mark must file with the Registrar regulations governing the use of the mark.

(2) The regulations must specify -

- (a) the persons authorised to use the mark,
- (b) the conditions of membership of the association, and
- (c) where they exist, the conditions of use of the mark, including any sanctions against misuse.

Further requirements with which the regulations have to comply may be imposed by regulations of the Department.

**Approval of regulations by Registrar.**

6. (1) A collective mark shall not be registered unless the regulations governing the use of the mark -

- (a) comply with paragraph 5(2) and any further requirements imposed by regulations of the Department, and



(b) are not contrary to public policy or to accepted principles of morality.

(2) Before the end of the period specified by the Registrar or prescribed by regulations of the Department after the date of the application for registration of a collective mark, the applicant must file the regulations with the Registrar and pay the appropriate fee.

If he does not do so, the application shall be deemed to be withdrawn.

**Action by Registrar.**

7. (1) The Registrar shall consider whether the requirements mentioned in paragraph 6(1) are met.

(2) If it appears to the Registrar that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period as the Registrar may specify, to make representations or to file amended regulations.

(3) If the applicant fails to satisfy the Registrar that those requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse the application.

(4) If it appears to the Registrar that those requirements, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 38 (publication, opposition proceedings and observations).

**Publication of regulations.**

8. The regulations shall be published and notice of opposition may be given, and observations may be made, relating to the matters mentioned in paragraph 6(1).

This is an addition to any other grounds on which the application may be opposed or observations made.

**Regulations to be open to inspection.**

9. The regulations governing the use of a registered collective mark shall be open to public inspection in the same way as the Register.

**Amendment of regulations.**

10. (1) An amendment of the regulations governing the use of a registered collective mark is not effective unless and until the amended regulations are filed with the Registrar and accepted by him.

(2) Before accepting any amended regulations the Registrar may, in any case where it appears to him expedient to do so, cause them to be published.

(3) If he does so, notice of opposition may be given, and observations may be made, relating to the matters mentioned in paragraph 6(1).

**Infringement: rights of authorised users.**

11. The following provisions apply in relation to an authorised user of a registered collective mark as in relation to a licensee of a trade mark -

- (a) section 11(5) (definition of infringement: unauthorised application of mark to certain material),

- (b) section 20(2) (order as to disposal of infringing goods, material or articles: adequacy of other remedies),
- (c) section 86 (prohibition of importation of infringing goods, material or articles: request to Chief Officer of Customs and Excise).

**12.** (1) The following provisions which correspond to the provisions of section 30 (general provisions as to rights of licensees in case of infringement) have effect as regards the rights of an authorised user in relation to infringement of a registered collective mark.

(2) An authorised user is entitled, subject to any agreement to the contrary between him and the proprietor, to call on the proprietor to take infringement proceedings in respect of any matter which affects his interests.

(3) If the proprietor -

- (a) refuses to do so, or
- (b) fails to do so within two months after being called upon,

the authorised user may bring the proceedings in his own name as if he were the proprietor.

(4) Where infringement proceedings are brought by virtue of this paragraph, the authorised user may not, without the leave of the court, proceed with the action unless the proprietor is either joined as a plaintiff or added as a

defendant.

This does not affect the granting of interlocutory relief on an application by an authorised user alone.

(5) A proprietor who is added as a defendant as mentioned in subparagraph (4) shall not be made liable for any costs in the action unless he takes part in the proceedings.

(6) In infringement proceedings brought by the proprietor of a registered collective mark any loss suffered or likely to be suffered by authorised users shall be taken into account, and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

**Grounds for revocation of registration.**

13. Apart from the grounds of revocation provided for in section 46, the registration of a collective mark may be revoked on the ground -

- (a) that the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in paragraph 4(1),
- (b) that the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark, or
- (c) that an amendment of the regulations has been made so that the regulations -

- (i) no longer comply with paragraph 5(2) and any further conditions imposed by regulations of the Department, or
- (ii) are contrary to public policy or to accepted principles of morality.

**Grounds for invalidity of registration.**

**14.** Apart from the grounds of invalidity provided for in section 47, the registration of a collective mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4(1) or 6(1).

## SCHEDULE 2

Section 50

## CERTIFICATION MARKS

**General.**

1. The provisions of this Ordinance apply to certification marks subject to the following provisions.

**Signs of which a certification mark may consist.**

2. In relation to a certification mark the reference in section 1(1) (signs of which a trade mark may consist) to distinguishing goods or services of one undertaking from those of other undertakings shall be construed as a reference to distinguishing goods or services which are certified from those which are not.

**Indication of geographical origin.**

3. (1) Notwithstanding section 3(1)(c), a certification mark may be registered which consists of signs or indications which may serve, in trade, to designate the geographical origin of the goods or services.

(2) However, the proprietor of such a mark is not entitled to prohibit the use of the signs or indications in accordance with honest practices in industrial or commercial matters (in particular, by a person who is entitled to use a geographical name).

**Nature of proprietor's business.**

4. A certification mark shall not be registered if the proprietor carries on a business involving the supply of goods or services of the kind certified.

**Mark not to be misleading as to character or significance.**

5. (1) A certification mark shall not be registered if the public is

liable to be misled as regards the character or significance of the mark, in particular if it is likely to be taken to be something other than a certification mark.

(2) The Registrar may accordingly require that a mark in respect of which application is made for registration includes some indication that it is a certification mark.

Notwithstanding section 39(2), an application may be amended so as to comply with any such requirement.

**Regulations governing use of certification mark.**

6. (1) An applicant for registration of a certification mark must file with the Registrar regulations governing the use of the mark.

- (2) The regulations must indicate -
- (a) who is authorised to use the mark,
  - (b) the characteristics to be certified by the mark,
  - (c) how the certifying body is to test those characteristics and to supervise the use of the mark,
  - (d) the fees (if any) to be paid in connection with the operation of the mark, and
  - (e) the procedures for resolving disputes.

Further requirements with which the regulations have to comply may be imposed by regulations of the Department.

**Approval of regulations, etc.**

7. (1) A certification mark shall not be registered unless -
- (a) the regulations governing the use of the mark -
    - (i) comply with paragraph 6(2) and any further requirements imposed by regulations of the Department, and
    - (ii) are not contrary to public policy or to accepted principles of morality, and
  - (b) the applicant is competent to certify the goods or services for which the mark is to be registered.

(2) Before the end of the period specified by the Registrar or prescribed by regulations of the Department after the date of the application for registration of a certification mark, the applicant must file the regulations with the Registrar and pay the appropriate fee.

If he does not do so, the application shall be deemed to be withdrawn.

**Action by Registrar.**

8. (1) The Registrar shall consider whether the requirements mentioned in paragraph 7(1) are met.

(2) If it appears to the Registrar that those requirements are not met, he shall inform the applicant and give him an opportunity, within such period



as the Registrar may specify, to make representations or to file amended regulations.

(3) If the applicant fails to satisfy the Registrar that those requirements are met, or to file regulations amended so as to meet them, or fails to respond before the end of the specified period, the Registrar shall refuse the application.

(4) If it appears to the Registrar that those requirements, and the other requirements for registration, are met, he shall accept the application and shall proceed in accordance with section 38 (publication, opposition proceedings and observations).

**Publication of regulations.**

9. The regulations shall be published and notice of opposition may be given, and observations may be made, relating to the matters mentioned in paragraph 7(1).

This is an addition to any other grounds on which the application may be opposed or observations made.

**Regulations to be open to inspection.**

10. The regulations governing the use of a registered certification mark shall be open to public inspection in the same way as the Register.

**Amendment of regulations.**

11. (1) An amendment of the regulations governing the use of a registered certification mark is not effective unless and until the amended regulations are filed with the Registrar and accepted by him.

(2) Before accepting any amended regulations the Registrar may, in any case where it appears to him expedient to do so, cause them to be published.

(3) If he does so, notice of opposition may be given, and observations may be made, relating to the matters mentioned in paragraph 7(1).

**Consent to assignment of registered certification mark.**

12. The assignment or other transmission of a registered certification mark is not effective without the consent of the Registrar.

**Infringement: rights of authorised users**

13. The following provisions apply in relation to an authorised user of a registered certification mark as in relation to a licensee of a trade mark -

- (a) section 11(5) (definition of infringement: unauthorised application of mark to certain material),
- (b) section 20(2) (order as to disposal of infringing goods, material or articles: adequacy of other remedies),
- (c) section 86 (prohibition of importation of infringing goods, material or articles: request to Chief Officer of Customs and Excise).

14. In infringement proceedings brought by the proprietor of a registered certification mark any loss suffered or likely to be suffered by authorised users shall be taken into account, and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of such users.

**Grounds for revocation of registration.**

15. Apart from the grounds of revocation provided for in section 46, the registration of a certification mark may be revoked on the ground that -

- (a) the proprietor has begun to carry on such a business as is mentioned in paragraph 4,
- (b) the manner in which the mark has been used by the proprietor has caused it to become liable to mislead the public in the manner referred to in paragraph 5(1),
- (c) the proprietor has failed to observe, or to secure the observance of, the regulations governing the use of the mark,
- (d) that an amendment of the regulations has been made so that the regulations -
  - (i) no longer comply with paragraph 6(2) and any further conditions imposed by regulations of the Department, or
  - (ii) are contrary to public policy or to accepted principles of morality, or
- (e) that the proprietor is no longer competent to certify the goods or services for which the mark is registered.

**Grounds for invalidity of registration.**

16. Apart from the grounds of invalidity provided for in section 47, the

registration of a certification mark may be declared invalid on the ground that the mark was registered in breach of the provisions of paragraph 4, 5(1) or 7(1).

**The European Court of Human Rights**  
**(Privileges and Immunities)**  
**(Bailiwick of Guernsey) Ordinance, 2006**

THE STATES, in pursuance of their Resolution of the 27<sup>th</sup> March, 2002<sup>a</sup>, and in exercise of the powers conferred upon them by sections 1 and 3 of the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004<sup>b</sup>, hereby order:-

**European Court of Human Rights - privileges and immunities.**

1. (1) The international agreements specified in section 2 have force of law in the Bailiwick of Guernsey for the purpose of conferring the privileges and immunities to be enjoyed by or in relation to -

- (a) the European Court of Human Rights,
- (b) its judges and their families,
- (c) its registry, registrars, deputy registrars and other staff members,
- (d) persons taking part in proceedings instituted before the Court as parties, their representatives and advisers, and
- (e) witnesses and experts called upon by the Court and other persons invited by the President of the Court to

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<sup>a</sup> Article III of Billet d'État No. IV of 2002.

<sup>b</sup> Order in Council No. XII of 2005.

take part in proceedings.

(2) The provisions of this Ordinance have effect notwithstanding any rule of law or any other enactment from time to time in force.

**Agreements to have force of law in Bailiwick.**

2. The international agreements referred to in section 1 are -

- (a) Article 18 of the General Agreement on Privileges and Immunities of the Council of Europe<sup>c</sup> (reproduced at schedule 1 to this Ordinance),
- (b) the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe<sup>d</sup> (reproduced at schedule 2 to this Ordinance), and
- (c) the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights<sup>e</sup> (reproduced in schedule 3 to this Ordinance).

**Interpretation.**

3. (1) References in this Ordinance to the international agreements specified in section 2 are references thereto as from time to time amended, but only if the amendment has been ratified by, or otherwise has effect in the law of, the United Kingdom.

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<sup>c</sup> Signed at Paris on the 2<sup>nd</sup> September, 1949.

<sup>d</sup> Signed by the United Kingdom on the 27<sup>th</sup> October, 1999.

<sup>e</sup> Signed by the United Kingdom on the 27<sup>th</sup> October, 1999.

(2) Expressions used in this Law have the same meanings as in the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004.

(3) The Interpretation (Guernsey) Law, 1948<sup>f</sup> applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

**Extent.**

4. This Ordinance applies throughout the Bailiwick of Guernsey.

**Citation.**

5. This Ordinance may be cited as the European Court of Human Rights (Privileges and Immunities) (Bailiwick of Guernsey) Ordinance, 2006.

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

SCHEDULE 1

ARTICLE 18 OF THE GENERAL AGREEMENT ON PRIVILEGES AND IMMUNITIES  
OF THE COUNCIL OF EUROPE

**"Article 18**

Officials of the Council of Europe shall:

- a. be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity and within the limit of their authority;
- b. be exempt from taxation on the salaries and emoluments paid to them by the Council of Europe;
- c. be immune, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;
- d. be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank forming part of diplomatic missions to the government concerned;
- e. be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- f. have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question, and to re-export the same free of duty to their country of domicile."



## SCHEDULE 2

SIXTH PROTOCOL TO THE GENERAL AGREEMENT ON PRIVILEGES AND IMMUNITIES  
OF THE COUNCIL OF EUROPE

"The member States of the Council of Europe, signatories hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Having regard to Protocol No. 11 to the Convention, restructuring the control machinery established thereby, signed at Strasbourg on 11 May 1994 (hereinafter referred to as "Protocol No. 11 to the Convention"), which establishes a permanent European Court of Human Rights (hereinafter referred to as "the Court") to replace the European Commission and Court of Human Rights;

Also having regard to Article 51 of the Convention which specifies that judges are entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder;

Recalling the General Agreement on Privileges and Immunities of the Council of Europe, signed at Paris on 2 September 1949, (hereinafter referred to as "the General Agreement"), and its Second, Fourth and Fifth Protocols;

Considering that a new Protocol to the General Agreement is advisable to accord privileges and immunities to the judges of the Court,

Have agreed as follows:

**Article 1**

In addition to the privileges and immunities specified in Article 18 of the General Agreement, judges shall be accorded in respect of themselves, their spouses and minor children the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

**Article 2**

For the purposes of this Protocol, the term "judges" means judges elected in accordance with Article 22 of the Convention as well as any *ad hoc* judge appointed by a State Party concerned in pursuance of Article 27, paragraph 2, of the Convention.

**Article 3**

In order to secure for the judges complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

**Article 4**

Privileges and immunities are accorded to judges not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The plenary Court alone shall be competent to waive the immunity of judges; it has not only the right, but is under a duty, to waive the immunity of a judge in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the

immunity is accorded.

#### **Article 5**

1. The provisions of Articles 1, 3 and 4 of this Protocol shall apply to the Registrar of the Court and a Deputy Registrar formally notified as Acting Registrar to the States Parties to the Convention.
2. The provisions of Article 3 of this Protocol and Article 18 of the General Agreement shall apply to a Deputy Registrar of the Court.
3. The privileges and immunities referred to in paragraphs 1 and 2 of this Article are accorded to the Registrar and a Deputy Registrar not for the personal benefit of the individuals themselves but to facilitate the discharge of their duties. The plenary Court alone shall be competent to waive the immunity of its Registrar and a Deputy Registrar; it has not only the right, but is under a duty, to waive such immunity in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.
4. The Secretary General of the Council of Europe shall be competent to waive, with the agreement of the President of the Court, the immunity of other staff members of the registry in accordance with the provisions of Article 19 of the General Agreement and having due regard to the considerations set out in paragraph 3.

#### **Article 6**

1. Documents and papers of the Court, judges and registry, in so far as they

relate to the business of the Court, shall be inviolable.

2. The official correspondence and other official communications of the Court, judges and the registry may not be held up or subjected to censorship.

#### **Article 7**

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the General Agreement, which may express their consent to be bound by:
  - a. signature without reservation as to ratification, acceptance or approval; or
  - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 8**

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three Parties to the General Agreement have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7 or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.
2. As regards any State Party to the General Agreement which shall

subsequently sign this Protocol without reservation in respect of ratification, acceptance or approval or which shall ratify, accept or approve it, this Protocol shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification, acceptance or approval.

#### **Article 9**

1. Any State may, at the time of its signature without reservation in respect of ratification, of its ratification or at any time thereafter, declare, by notification addressed to the Secretary General of the Council of Europe, that the present Protocol shall extend to all or any of the territories for whose international relations it is responsible and where the Convention and its Protocols apply.
2. The Protocol shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. Any declaration made pursuant to paragraph 1 may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of one month after the receipt of notification by the Secretary General.

#### **Article 10**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 8 and 9;
- d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 5<sup>th</sup> day of March 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe."

## SCHEDULE 3

EUROPEAN AGREEMENT RELATING TO PERSONS PARTICIPATING IN PROCEEDINGS  
OF THE EUROPEAN COURT OF HUMAN RIGHTS

"The member States of the Council of Europe, signatories hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Recalling the European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights, signed at London on 6 May 1969;

Having regard to Protocol No. 11 to the Convention, restructuring the control machinery established thereby, signed at Strasbourg on 11 May 1994 (hereinafter referred to as "Protocol No. 11 to the Convention"), which establishes a permanent European Court of Human Rights (hereinafter referred to as "the Court") to replace the European Commission and Court of Human Rights;

Considering, in the light of this development, that it is advisable for the better fulfilment of the purposes of the Convention that persons taking part in proceedings before the Court be accorded certain immunities and facilities by a new Agreement, the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (hereinafter referred to as "this Agreement"),  
Have agreed as follows:

**Article 1**

1. The persons to whom this Agreement applies are:
  - a any persons taking part in proceedings instituted before the Court as parties, their representatives and advisers;
  - b witnesses and experts called upon by the Court and other persons invited by the President of the Court to take part in proceedings.
2. For the purposes of this Agreement, the term "Court" shall include committees, chambers, a panel of the Grand Chamber, the Grand Chamber and the judges. The term "taking part in proceedings" shall include making communications with a view to a complaint against a State Party to the Convention.
3. If in the course of the exercise by the Committee of Ministers of its functions under Article 46, paragraph 2, of the Convention, any person mentioned in paragraph 1 above is called upon to appear before, or to submit written statements to the Committee of Ministers, the provisions of this Agreement shall apply in relation to him.

**Article 2**

1. The persons referred to in paragraph 1 of Article 1 of this Agreement shall have immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted by them before or to the Court.



2. This immunity does not apply to communication outside the Court of any such statements, documents or evidence submitted to the Court.

### **Article 3**

1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Court.
2. As regards persons under detention, the exercise of this right shall in particular imply that:
  - a their correspondence shall be despatched and delivered without undue delay and without alteration;
  - b such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Court;
  - c such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Court, or any proceedings resulting therefrom.
3. In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.

### **Article 4**

1. **a** The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement.
  - b** No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
2. **a** Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.
  - b** Any Contracting Party may, at the time of signature, ratification, acceptance or approval of this Agreement, declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.
3. The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.
4. The provisions of paragraphs 1 and 2 of this Article shall cease to apply when the person concerned has had, for a period of fifteen consecutive days from the date when his presence is no longer required by the Court, the

opportunity of returning to the country from which his journey commenced.

5. Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this Article and those resulting from a Council of Europe convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this Article shall prevail.

## **Article 5**

1. Immunities and facilities are accorded to the persons referred to in paragraph 1 of Article 1 of this Agreement solely in order to ensure for them the freedom of speech and the independence necessary for the discharge of their functions, tasks or duties, or the exercise of their rights in relation to the Court.
2.
  - a The Court shall alone be competent to waive, in whole or in part, the immunity provided for in paragraph 1 of Article 2 of this Agreement; it has not only the right but the duty to waive immunity in any case where, in its opinion, such immunity would impede the course of justice and waiver in whole or in part would not prejudice the purpose defined in paragraph 1 of this Article.
  - b The immunity may be waived by the Court, either *ex officio* or at the request of any Contracting Party or of any person concerned.
  - c Decisions waiving immunity or refusing the waiver shall be accompanied by a statement of reasons.
3. If a Contracting Party certifies that waiver of the immunity provided for in

paragraph 1 of Article 2 of this Agreement is necessary for the purpose of proceedings in respect of an offence against national security, the Court shall waive immunity to the extent specified in the certificate.

4. In the event of the discovery of a fact which might, by its nature, have a decisive influence and which at the time of the decision refusing waiver of immunity was unknown to the author of the request, the latter may make a new request to the Court.

### **Article 6**

Nothing in this Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention or its protocols.

### **Article 7**

1. This Agreement shall be open for signature by the member States of the Council of Europe, which may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or
  - b signature, subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### **Article 8**

1. This Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Agreement in accordance with the provisions of Article 7 or on the date of entry into force of Protocol No. 11 to the Convention, whichever is the later.
2. In respect of any member State which subsequently expresses its consent to be bound by it, this Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of such signature or of the deposit of the instrument of ratification, acceptance or approval.

#### **Article 9**

1. Any Contracting State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Agreement to any territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
2. This Agreement shall enter into force for any territory or territories specified in a declaration made pursuant to paragraph 1 on the first day of the month following the expiration of one month after the date of receipt of the declaration by the Secretary General.
3. Any declaration made pursuant to paragraph 1 may, in respect of any territory mentioned in such declaration, be withdrawn according to the

procedure laid down for denunciation in Article 10 of this Agreement.

#### **Article 10**

1. This Agreement shall remain in force indefinitely.
2. Any Contracting Party may, insofar as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. Such denunciation shall not have the effect of releasing the Contracting Parties concerned from any obligation which may have arisen under this Agreement in relation to any person referred to in paragraph 1 of Article 1.

#### **Article 11**

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a** any signature;
- b** the deposit of any instrument of ratification, acceptance or approval;
- c** any date of entry into force of this Agreement in accordance with Articles 8 and 9 thereof;
- d** any other act, notification or communication relating to this Agreement.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Strasbourg, this 5<sup>th</sup> day of March 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.".

**The Birds and Animal Health (Miscellaneous Provisions)  
(Amendment) Ordinance, 2005**

**THE STATES LEGISLATION SELECT COMMITTEE**, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup> and all other powers enabling the States in that behalf and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>b</sup>, hereby orders:-

**Amendment of the Protection of Wild Birds Ordinance, 1949.**

1. For section 4A (actions pursuant to directions under Ordinance of 1985) of the Protection of Wild Birds Ordinance 1949<sup>c</sup> substitute -

**"Actions pursuant to 1985 and 1996 Ordinances.**

**4A.** Nothing in the preceding provisions of this Ordinance shall be construed as rendering unlawful anything done in good faith -

- (a) pursuant to the Animal Health Ordinance, 1996<sup>d</sup>, or

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<sup>a</sup> Order in Council No. III of 1994.

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

<sup>c</sup> Recueil d'Ordonnances Tome XI, p. 306; amended by Tome XIII, p. 251, Tome XIV, p. 102, Tome XIX p. 338, Tome XXII p. 136 and Tome XXIII, p. 258.

<sup>d</sup> Ordinance No. XI of 1996; amended by Ordinance No. XXXII of 2003 and Guernsey S.I. 2002 No. 56.



- (b) in the execution or purported execution of a direction given under section 2 of the Control of Birds Ordinance, 1985<sup>e</sup>."

**Amendment of the Control of Birds Ordinance, 1985.**

- 2. (1) The Control of Birds Ordinance, 1985 is amended as follows.
  - (2) In section 1 (application of Ordinance) -
    - (a) at the end of paragraphs (a) and (b) omit "or",
    - (b) after paragraph (c) add -
      - "or,
      - (d) to prevent the spread of any disease to which birds are susceptible," and
      - (c) for the words from "to control the numbers of birds" to the end substitute "to achieve the control set out in Section 1A".
  - (3) After section 1 add -

**"Controlling numbers of birds.**

- 1A. The control referred to in section 1 is to control the numbers congregating in -

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<sup>e</sup> Recueil d'Ordonnances Tome XXIII, p. 258.

(a) any place of any birds which reasonably appear to be wild birds or of any species or class of such birds, or

(b) any public place of any birds or of any species or class of birds."

(4) For each reference in section 2 to "public place" substitute "place".

(5) At the beginning of section 3 (publication of notice of direction) insert "Subject to section 3A,".

(6) After section 3 (publication of notice of direction) insert -

**"Special provisions in the event of a serious threat to public or bird health or to public hygiene or safety.**

**3A.** (1) Where a direction is issued under section 2 in the circumstances set out in section 1(d) and the Department considers that there is a serious threat to public or bird health or a direction is issued in any other circumstances where the Department considers there is such a threat or a serious threat to public hygiene or safety then -

(a) the Department must as soon as reasonably possible after the issue of that direction put a notice in La Gazette Officielle which must -

(i) specify the direction and the disease or other circumstances in question and the reasons why it considers there to be a

relevant serious threat, and

- (ii) set out the special provisions applicable under this section,
- (b) the Department may, instead of complying with the provisions of section 3, place a notice in La Gazette Officielle, which may form part of the same notice as that referred to in paragraph (a), as soon as possible after the first date on which the direction was executed setting out -
  - (i) the matters in section 3(a), and
  - (ii) requiring the owner of any bird which has been or is to be destroyed to apply to the Department in writing for compensation, with written proof of such ownership, within 21 days of the date of that notice, and
- (c) where the Department decides to publish a notice in accordance with paragraph (b) -
  - (i) the owner of a bird who complies with the requirements of this section is entitled to compensation from the Department of £25 per bird or its market value immediately before destruction, whichever is less, from

which shall be deducted the amount, if any, received or credited to the account of the owner in respect of the value of its carcase, and

- (ii) the provisions of sections 8(3) to (6) of the Animal Health Ordinance, 1996 shall apply for the purposes of assessing compensation under this section as they apply to compensation to be assessed under that Ordinance except that they shall apply as if the valuation were required to be carried out as soon as reasonably possible after the destruction of the bird.

(2) The Department may from time to time by order increase the maximum amount of compensation set out in subsection (1)(c)(i).".

(7) In section 4 (effect of direction) -

- (a) at the beginning insert "Subject to section 4A,", and
- (b) for the words "conditions of sections 2(3) and 3 have been complied with" substitute "relevant requirements of sections 2(3) to 3A are complied with".

(8) After section 4 (effect of direction) insert -

**"Right of entry.**

**4A.** (1) An officer or servant of the Department authorised in writing by it may, subject to the provisions of this section, enter any land at any reasonable time for the purpose of considering whether and in what manner to exercise the Department's direction making powers under section 2 or in connection with the execution of any such direction.

(2) A person authorised under subsection (1) -

- (a) must, if so required, produce his written authorisation before entering any land,
- (b) is not entitled to demand admission as of right to any land which is occupied unless, other than in the case of an emergency, 24 hours written notice has been given to the occupier,
- (c) may, if necessary, be accompanied by a police officer, who may use reasonable force to restrain any person obstructing or threatening to obstruct the officer or servant of the Department, and
- (d) may take with him such other persons as may be necessary for carrying out the purposes for which he has entered."

(9) In section 5 (obstruction) for the words from "on summary conviction" to the end substitute "on conviction, to a fine not exceeding level 4 on the uniform scale".

(10) In section 6(1) (interpretation) -

(a) before the definition of "public place" insert -

" **place**" shall be construed in sections 2 and 3, in relation to a bird which reasonably appears to be a wild bird, to refer to "any place" and, in relation to any other bird, to refer to "any public place", " and

(b) after the definition of "public place" add -

" **wild bird**" means any bird in a wild or feral state and includes any bird which reasonably appears to have been abandoned, " .

**Amendment of the Animal Health Ordinance, 1996.**

3. (1) The Animal Health Ordinance, 1996<sup>f</sup> is amended as follows.

(2) In section 1(4)(a) (notifiable animal diseases), after the words "any disease from," add "the list of compulsory slaughter diseases in the left hand column of Part 1 of Schedule 1 or".

(3) In section 5 (positive reaction to compulsory slaughter disease tests), at the beginning insert "Subject to section 6A,".

(4) In section 6 (inconclusive reaction to compulsory slaughter

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<sup>f</sup> Ordinance No. XI of 1996 as amended by Ordinance No. XXXII of 2003 and Guernsey S.I. 2002 No. 56.

disease tests) at the beginning add "Subject to section 6A, " .

(5) After section 6 (inconclusive reaction to compulsory slaughter disease tests) insert -

**"Special provisions in the event of a serious threat to public or animal health.**

**6A.** Where the Department reasonably considers that there is a serious threat to animal or public health arising from a compulsory slaughter disease then -

- (a) it must as soon as reasonably possible after it has made that decision put a notice in La Gazette Officielle to that effect which must -
  - (i) specify the compulsory slaughter disease in question and the reasons why it considers there to be a serious threat, and
  - (ii) set out the special provisions applicable under this section,
- (b) notwithstanding sections 5(a) and 8, an animal may be slaughtered before it has been valued in accordance with section 8 and Schedule 2 but that valuation must be carried out, on the basis of all reasonably available information, as soon as reasonably possible after its slaughter,
- (c) the Department may decide to treat an animal which is

an inconclusive reactor in respect of a test conducted under section 3, for the compulsory slaughter disease in question, as though it had reacted positively to that test, and

(d) where the Department decides to treat an animal as set out in paragraph (c), then -

(i) the Department may decide to carry out one or more of the actions specified in section 5 as though the animal had reacted positively to the test,

(ii) it may, for the avoidance of doubt -

(A) declare any premises on which that animal is, or has in the last 60 days been present, to be infected premises in accordance with section 9, and

(B) declare any area in which that animal is, or has in the last 60 days, been present to be an infected area in accordance with section 14, and

(iii) the relevant provisions of sections 17 and 18 shall apply to that animal."

(6) In Part 1 of Schedule 1 (notifiable animal diseases - compulsory slaughter diseases), after the row relating to "Aujeszky's Disease"



insert a new row as follows -

"Avian Influenza

Birds" .

**Interpretation.**

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

**Citation.**

5. This Ordinance may be cited as the Birds and Animal Health (Miscellaneous Provisions) (Amendment) Ordinance, 2005.

**Commencement.**

6. This Ordinance shall come into force on the 17<sup>th</sup> October, 2005.