

# BILLET D'ÉTAT No. XI, 2007

28<sup>th</sup> March, 2007

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	<i>Page</i>
Projet de Loi entitled “The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007”	1
Projet de Loi entitled “The Disclosure (Bailiwick of Guernsey) Law, 2007”	11
Projet de Loi entitled “The Mansell Trust (Guernsey) Law, 2007”	49
The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007	52
The Registered Plant Breeders’ Rights (Bailiwick of Guernsey) Ordinance, 2007	56
The Prevention of Corruption (Bailiwick of Guernsey) Law 2003 (Amendment) Ordinance, 2007	120
The Social Security (Reciprocal Agreement with The Netherlands) Ordinance, 2007	122
The Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2007	124
The Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2007	125

# PROJET DE LOI

ENTITLED

## **The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007**

**THE STATES**, in pursuance of their Resolution of the 1<sup>st</sup> June, 2006<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Amendment of Regulation of Utilities Law.**

1. The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, as amended<sup>b</sup> ("the Law of 2001"), is further amended as follows.

2. After section 3(1) of the Law of 2001 insert the following subsections-

"(1A) The States may, on the recommendation of the Commerce and Employment Department made after consultation with the Director General, and without prejudice to the provisions of subsection (1), by Ordinance give the Director General directions of a strategic or general nature including, without limitation, directions concerning the priorities to be taken into account by him in the exercise of his functions and powers in

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<sup>a</sup> Article XIV of Billet d'État No. X of 2006.

<sup>b</sup> Order in Council No. XI of 2001; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

respect of any utility service.

(1B) References in this Law, however expressed, to States' Directions include references to directions under subsection (1A).".

3. In section 3(2) of the Law of 2001 the expression "under subsection (1)" is repealed.

4. For section 4(2) of the Law of 2001 substitute the following subsection -

"(2) The Director General shall exercise his functions and powers with fairness, impartiality and independence and in a manner which is -

- (a) timely, transparent, objective and, subject to the exception set out in section 3(1), consistent with States' Directions and the provisions of this Law and any relevant Sector Law,
- (b) proportionate to the Bailiwick's circumstances, and
- (c) accountable, consistent and targeted only at cases in respect of which action on his part is necessary."

5. For section 13(2)(a) of the Law of 2001 substitute the following paragraph -

"(a) shall be audited annually by auditors appointed by the States on the recommendation of the Public Accounts Committee, and".

6. After section 13 of the Law of 2001 insert the following sections -

**"Audit and Remuneration Committee.**

**13A.** (1) The Director General shall establish a committee to be called the Audit and Remuneration Committee for the Office of the Director General ("**the Audit Committee**").

(2) Subject to subsections (3) and (4), the Director General shall determine the constitution of the Audit Committee and such rules of procedure for it as he considers necessary or expedient; and the constitution and rules may, without limitation, make provision in respect of -

- (a) the number of members of the Audit Committee,
- (b) the terms of office and voting rights of members,
- (c) the appointment of the chairman and his alternate,
- (d) the quorum and other matters of procedure at meetings, and
- (e) the resignation and termination of office of members, and casual vacancies in office.

(3) One member of the Audit Committee, who may be a member of the States of Deliberation, shall be appointed by, and may only be removed by, the Commerce and Employment Department.

(4) The other members of the Audit Committee, who may not be members of the States of Deliberation -

(a) shall be appointed by the Commerce and Employment Department on the recommendation of the Director General, and

(b) may only be removed by the Commerce and Employment Department, with or without any such recommendation.

(5) The functions and powers of the Audit Committee are -

(a) to oversee the internal controls in place in the Office of Director General,

(b) to review the remuneration of the officers and servants of the Office of Director General (other than the Director General himself) and to seek the advice of the Public Sector Remuneration Committee on such remuneration,

(c) to bring any matter of concern to the attention of any interested party (including, without

limitation, the Commerce and Employment Department and Public Accounts Committee), and

- (d) to exercise such other functions and powers as may be assigned by the Director General.

**Access to records, etc, of Office of Director General.**

**13B.** (1) The Director General shall, if given reasonable notice, and at all reasonable times during ordinary business hours, give any permitted person access to -

- (a) the premises,
- (b) the records, accounts and other documents, and
- (c) the officers and servants,

of the Office of the Director General.

(2) Permitted persons are members, officers, servants and other representatives of the Public Accounts Committee or the States Internal Audit service.

(3) Access under subsection (1) -

- (a) is subject to such reasonable restrictions as the Director General may impose, and
- (b) is to be given only to the extent necessary to

enable the Public Accounts Committee or (as the case may be) the States Internal Audit service to exercise their respective functions, powers and mandates -

- (i) under or in relation to this Law or any Sector Law, or
- (ii) in relation to the Office of the Director General.

(4) The duty to give access under subsection (1) includes -

- (a) in the case of premises, a duty to permit entry and inspection,
- (b) in the case of documents, a duty -
  - (i) to produce them and to permit their inspection, copying and removal, and
  - (ii) to give an explanation of them or, if documents are missing, of their whereabouts,
- (c) in the case of officers and servants, a duty -
  - (i) to allow a permitted person to ask them questions,

- (ii) to require them to answer such questions, and
- (iii) to require them to accord a permitted person all reasonable assistance and facilities for the purposes of his visit."

7. Immediately before section 18(1)(b) of the Law of 2001 insert the following paragraph <sup>c</sup> -

"(a) in making any statement or providing any information or document to the Public Accounts Committee, the Audit Committee or the States Internal Audit service, or any member, officer, servant or other representative of theirs, when acting in the exercise of their respective functions and powers -

- (i) under or in relation to this Law or any Sector Law, or
- (ii) in relation to the Office of the Director General,".

8. In section 18(1)(c) of the Law of 2001 for the words "for the purpose of exercising his functions and powers" substitute "or by any person or body

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<sup>c</sup> The original section 18(1)(a) of the Law of 2001 was repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.



mentioned in paragraph (a) for the purpose of exercising their respective functions and powers".

9. In section 22(1) of the Law of 2001 -

(a) immediately before the definition of "Bailiff"<sup>d</sup> insert the following definition -

"**Audit Committee**" means the Audit and Remuneration Committee for the Office of the Director General established under section 13A,"

(b) for the definition of "**States' Directions**" substitute the following -

"**States' Directions**" means -

(a) directions given to the Director General by Resolution of the States under section 3(1), and

(b) directions given to the Director General by Ordinance of the States under section 3(1A),".

10. After section 22 of the Law of 2001 insert the following section -

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<sup>d</sup> The definition of "Bailiff" was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

**"Power to amend Law by Ordinance.**

**22A.** (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

(3) An Ordinance under subsection (1) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law. "

**11.** In section 23(3) of the Law of 2001 after "15(8)" insert "or 22A".

**12.** For paragraph 4 of the Schedule substitute the following -

**"Appointment of Deputy Director General.**

**4.** Without prejudice to paragraph 3, the Director General may appoint any of his officers or servants as Deputy Director General with full authority to exercise his functions and powers -

- (a) during any period in which he is temporarily unavailable, or
- (b) in the event of his office falling vacant, during the period of the vacancy, but only pending the appointment of a new Director General,

and the provisions of paragraphs 3(2) and 3(3) apply in relation to an appointment under this paragraph as they apply to an arrangement under

paragraph 3(1)."

**Citation.**

**13.** This Law may be cited as the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007.

# PROJET DE LOI

ENTITLED

## **The Disclosure (Bailiwick of Guernsey) Law, 2007**

### ARRANGEMENT OF SECTIONS

#### PART I

##### DISCLOSURE BY FINANCIAL SERVICES BUSINESSES

1. Failure to disclose knowledge or suspicion etc. of money laundering - financial services businesses.
2. Failure to disclose knowledge or suspicion etc. of money laundering - nominated officers in financial services businesses.
3. Tipping-off
4. Penalties.

#### PART II

##### DISCLOSURE OF INFORMATION BY AUTHORISED PERSONS

5. Disclosure of information to police officer by authorised persons.
6. Interpretation of Part II.

#### PART III

##### DISCLOSURE OF INFORMATION BY POLICE OFFICERS

7. Disclosure of information by police officers.

#### PART IV

##### DISCLOSURE OF INFORMATION BY AND TO ADMINISTRATOR OF INCOME TAX

8. Disclosure of information by Administrator of Income Tax.
9. Disclosure of information to Administrator of Income Tax by relevant officer.

#### PART V

##### POWER TO PRESCRIBE FORM AND MANNER OF AND OTHER MATTERS CONCERNING DISCLOSURES

10. Power to prescribe form and manner of, and other matters concerning, disclosures.

PART VI  
MISCELLANEOUS AMENDMENTS

11. Amendment of definition of "officer of police" in Fiduciaries Law.
12. Amendment of Terrorism and Crime Law.
13. Amendment of Drug Trafficking Law.

PART VII  
GENERAL

14. Power to amend law relating to disclosure of information by Ordinance.
15. Power of Commission to make rules and issue guidance.
16. Ordinances, regulations, rules and guidance.
17. Interpretation.
18. Part IV not to apply to Sark.
19. Citation.
20. Commencement.

# PROJET DE LOI

ENTITLED

## **The Disclosure (Bailiwick of Guernsey) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 31<sup>st</sup> May 2002<sup>a</sup>, 28<sup>th</sup> September 2005<sup>b</sup> and 27<sup>th</sup> July 2006<sup>c</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### DISCLOSURE OF INFORMATION BY FINANCIAL SERVICES BUSINESSES

#### **Failure to disclose knowledge or suspicion etc. of money laundering - financial services businesses.**

1. (1) A person commits an offence if each of the following conditions is satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

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<sup>a</sup> Article VI of Billet d'État No. IX of 2002.

<sup>b</sup> Article XI of Billet d'État No. XIV of 2005.

<sup>c</sup> Article XXIV of Billet d'État No. XIII of 2006

that another person is engaged in money laundering.

- (3) The second condition is that the information or other matter -
  - (a) on which his knowledge or suspicion is based, or
  - (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the trade or business of a financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter -

- (a) to a nominated officer or a police officer,
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 10.

(6) But a person does not commit an offence under this section if

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- (a) he has a reasonable excuse for not disclosing the information or other matter,

(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances, or

(c) subsection (7) applies to him.

(7) This subsection applies to a person if -

(a) he does not know or suspect that another person is engaged in money laundering, and

(b) he has not been provided by his employer with such training as is specified in regulations made under section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>d</sup>.

(8) In deciding whether a person committed an offence under this section the Court must consider whether he followed any relevant rules or guidance which were at the time concerned -

(a) made or issued by the Commission under section 15 or any other enactment, and

(b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which -

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<sup>d</sup> Order in Council No. VIII of 1999.



- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(10) For the purposes of a disclosure to a nominated officer -

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in the course of the trade or business of which the person carries out a function (whether or not for gain or reward), and
- (b) references to employment are to be construed accordingly.

(11) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or

- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(12) But subsection (11) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

(13) A disclosure to a nominated officer or to a police officer is not to be taken to breach any restriction on the disclosure of information (however imposed).

**Failure to disclose knowledge or suspicion etc. of money laundering - nominated officers in financial services businesses.**

2. (1) A person who is a nominated officer under section 1(9)(a) commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter -

- (a) on which his knowledge or suspicion is based, or
- (b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 1.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter -

(a) to a police officer,

(b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 10.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which was at the time concerned -

(a) made or issued by the Commission under section 15 or any other enactment, and

(b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) A disclosure to a police officer is not to be taken to breach any restriction on the disclosure of information (however imposed).

**Tipping-off.**

3. (1) A person is guilty of an offence if -

(a) he knows, or suspects, that -

(i) a required disclosure has been made to a police officer, or a nominated officer, under section 1 or 2, or

(ii) any information or other matter concerning the required disclosure has been communicated to a police officer, or nominated officer, whether or not in the form and manner (if any) prescribed for the purposes under section 10, and

(b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the making of the required disclosure under paragraph (a)(i), or communication of the information or other matter under paragraph (a)(ii).

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter -

(a) to, or to a representative of, a client of his in

connection with the giving by the adviser of legal advice to the client, or

- (b) to any person -
  - (i) in contemplation of, or in connection with, legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that he did not know or suspect that the disclosure under paragraph (b) of that subsection was likely to be prejudicial in the way mentioned in that paragraph.

(5) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct.

#### **Penalties.**

- 4. A person guilty of an offence under section 1, 2 or 3 is liable -
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the uniform scale or to both, or

- (b) on conviction or indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

## PART II

### DISCLOSURE OF INFORMATION BY AUTHORISED PERSONS

#### **Disclosure of information to police officer by authorised person.**

5. (1) An authorised person may disclose to a police officer any information held by a government department if the disclosure is made for the purpose of -

- (a) any criminal investigation whatever which is being or may be carried out, whether in the Bailiwick or elsewhere,
- (b) any criminal proceedings whatever which have been or may be initiated, whether in the Bailiwick or elsewhere,
- (c) the initiation or bringing to an end of any such investigation or proceedings, or
- (d) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(2) Subsection (1) does not apply to any information that is in the possession of the Administrator of Income Tax.

(3) No disclosure of information shall be made by virtue of this section unless the authorised person who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section.

(5) The information that may be disclosed by virtue of this section includes information obtained before this Law came into force.

(6) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

### **Interpretation of Part II.**

6. In this Part-

**"authorised person"** means -

(a) in Guernsey, a person employed in a department of the States of Guernsey who is authorised by -

(i) the chief officer of the department, or

(ii) in the event that the department has no chief officer, the Chief Executive of the States of Guernsey,

to make disclosures under this Law,

(b) in Alderney, the Clerk to the States of Alderney, and

- (c) in Sark, a person appointed by the Chief Pleas of Sark to make disclosures under this Law,

**"department of the States of Guernsey"** means any department or committee (however called or titled) of the States of Guernsey, and includes the Policy Council, and

**"government department"** means -

- (a) in Guernsey, any department of the States of Guernsey,
- (b) in Alderney, any Committee of the States of Alderney, and
- (c) in Sark, any Committee of the Chief Pleas of Sark.

### PART III

#### DISCLOSURE OF INFORMATION BY POLICE OFFICERS

**Disclosure of information by police officers.**

7. (1) Subject to subsection (4), information obtained by a police officer -

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the officer's functions,



may be disclosed to any other person if the disclosure is for any purposes set out in subsection (2).

- (2) The purposes are any of the following -
  - (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the Bailiwick or elsewhere,
  - (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country or territory outside the Bailiwick,
  - (c) the carrying out -
    - (i) by the Commission, or
    - (ii) by a body in another country or territory, which carries out any similar function to the Commission,of its functions,
  - (d) the carrying out of any functions of any intelligence service, or
  - (e) the carrying out of any function which appears to the Home Department to be a function of a public nature and which it designates as such by order.

- (3) A disclosure under this section does not breach -
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
  
- (4) Nothing in this section authorises -
  - (a) a disclosure, in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001, of personal data which are not exempt from those provisions,
  - (b) a disclosure which is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>e</sup>, or
  - (c) a disclosure in contravention of section 8(5).

PART IV  
DISCLOSURE OF INFORMATION BY AND TO ADMINISTRATOR OF  
INCOME TAX

**Disclosure of information by Administrator of Income Tax.**

- 8.** (1) This section applies to information which is held by or on

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<sup>e</sup> Order in Council No. XXX of 2003.

behalf of the Administrator of Income Tax including information obtained before the coming into force of this section.

(2) No obligation of confidentiality or other restriction on the disclosure of information imposed under any enactment, or otherwise, prevents the disclosure to a police officer in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made for the purpose of -

- (a) facilitating the carrying out of the functions of any intelligence service,
- (b) any criminal investigation whatever which is being, or may be carried out, whether in the Bailiwick or elsewhere,
- (c) any criminal proceedings whatever which have been, or may be initiated, whether in the Bailiwick or elsewhere,
- (d) the initiation, or bringing to an end, of any such investigation or proceedings, or
- (e) facilitating a determination of whether any such investigation, or proceedings, should be initiated or brought to an end.

(3) No obligation of confidentiality or other restriction on the disclosure of information imposed under any enactment, or otherwise, prevents the disclosure to the Commission, or a body in another country or territory which

carries out any similar function to the Commission, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made for the purpose of enabling -

- (a) the Commission, or
- (b) a body in another country or territory, which carries out any similar function to the Commission,

to carry out its functions.

(4) No disclosure of information to which this section applies shall be made under this section unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(5) Information to which this section applies shall not be disclosed to -

- (a) a police officer,
- (b) the Commission, or
- (c) a body in another country or territory, which carries out any similar function to the Commission,

by virtue of this section except by the Administrator or Assistant Administrator of Income Tax.

(6) Information obtained by means of a disclosure authorised by

subsection (2) or (3) shall not be further disclosed by a police officer or the Commission except -

- (a) for a purpose mentioned in those subsections, and
- (b) with the consent of the Administrator or Assistant Administrator of Income Tax.

(7) A consent for the purposes of subsection (6) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(8) Nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>f</sup>, of personal data which are not exempt from those provisions.

(9) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section.

**Disclosure of information to Administrator of Income Tax by relevant officer.**

9. (1) A relevant officer may disclose to the Administrator of Income Tax any information in his possession which he reasonably believes may assist the Administrator to carry out his functions.

(2) The information that may be disclosed under this section includes information obtained before this Law came into force.

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<sup>f</sup> Order in Council No. V of 2001.

(3) No disclosure of information shall be made under this section unless the relevant officer who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this section shall be taken to prejudice any power to disclose information which exists apart from this section.

(5) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).

(6) For the purposes of this section "**a relevant officer**" means -

- (a) Her Majesty's Procureur,
- (b) a member of the salaried police force of the Island of Guernsey who holds the rank of inspector or above,
- (c) a member of any police force which may be established by the States of Alderney who holds the rank of inspector or above, or
- (d) a customs officer of the grade of senior investigation officer or above.

#### PART V

#### POWER TO PRESCRIBE FORM AND MANNER OF AND OTHER MATTERS CONCERNING DISCLOSURES

Power to prescribe form and manner of, and other matters concerning, disclosures.

**10.** (1) The Home Department may by regulations prescribe -

- (a) the form and manner in which a disclosure under section 1 or 2 must be made, and
- (b) such other matters as are reasonably necessary to enable any person to whom a disclosure is made under this Law, or any other enactment, to obtain additional information.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning

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- (a) the period of time within which any additional information must be supplied by the discloser following its request,
- (b) the form and manner in which any such request must be made, and
- (c) the creation, trial (summarily or on indictment) and punishment of offences, provided that the penalties for punishment for any such offences shall not exceed those prescribed under section 4.

(3) A disclosure made in pursuance of a request made under regulations under subsection (1) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(4) For the purposes of this section -

**"additional information"** -

(a) means information which is reasonably necessary to enable the person to whom any disclosure is made to decide -

(i) where the disclosure concerns money laundering, whether to start a money laundering investigation, or

(ii) where the disclosure concerns any other matter, whether to pass the information on so that a decision may be made as to whether to start a criminal investigation in the Bailiwick or elsewhere, and

(b) includes financial, administrative and law enforcement information,

**"a money laundering investigation"** is an investigation into whether a person has engaged in money laundering, and

**"discloser"** means the person making a disclosure under any provision referred to in subsection (1)(a).

## PART VI

### MISCELLANEOUS AMENDMENTS



**Amendment of definition of "officer of police" in Fiduciaries Law.**

11. In section 58(1) of the Fiduciaries Law immediately after paragraph (c) of the definition of "officer of police", insert -

" and

- (d) includes an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972;".

**Amendment of Terrorism and Crime Law.**

12. (1) In sections 12(1)(a) and 15(2) of the Terrorism and Crime Law immediately after "sections 8 to 11", insert "or has attempted or conspired to commit, or incited, aided, abetted, counselled or procured the commission of, such an offence".

(2) In section 15(4) of the Terrorism and Crime Law for "as soon as is practicable after it comes to him", substitute -

" -

- (a) as soon as is practicable after it comes to him,  
and
- (b) in the form and manner (if any) prescribed for the purposes of this section by regulations under section 15A".
- (3) Immediately after section 15 of the Terrorism and Crime

Law, insert -

**"Power to prescribe form and manner of, and other matters concerning, disclosures.**

**15A.** (1) The Home Department may by regulations prescribe –

- (a) the form and manner in which a disclosure under section 15 must be made, and
- (b) such other matters as are reasonably necessary to enable any person to whom any disclosure is made under this Law to obtain additional information.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning -

- (a) the period of time within which any additional information must be supplied by the discloser following its request,
- (b) the form and manner in which any such request must be made, and
- (c) the creation, trial (summarily or on indictment) and punishment of offences, provided that the penalties for punishment for any such offences shall not exceed those prescribed under section 15(11).

(3) A disclosure made in pursuance of a request under regulations made under subsection (1) is not to be taken to breach any restriction on the disclosure of information (however imposed).

(4) For the purposes of this section -

**"additional information"** -

(a) means information which is reasonably necessary to enable a police officer to decide -

(i) whether to start an investigation to establish whether any person is guilty of an offence under any of sections 8 to 11, or

(ii) where the disclosure concerns any other matter, whether to pass the information on so that a decision may be made as to whether to start a criminal investigation in the Bailiwick or elsewhere, and

(b) includes financial, administrative and law enforcement information, and

**"discloser"** means the person making a disclosure under any provision of this Law. "

(4) Immediately after section 16 of the Terrorism and Crime

Law, insert -

**"Interpretation for purposes of disclosures to nominated officer under sections 15(7) and 16(5).**

**16A.** For the purposes of a disclosure to a nominated officer under section 15(7) or 16(5) -

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in the course of the business of which the person carries out a function (whether or not for gain or reward), and
- (b) references to employment are to be construed accordingly."

**Amendment of Drug Trafficking Law.**

**13.** (1) For section 60 of the Drug Trafficking Law, substitute -

**"Failure to disclose knowledge or suspicion etc. of drug money laundering - non financial services businesses.**

**60.** (1) A person commits an offence if each of the following conditions is satisfied.

- (2) The first condition is that he -
  - (a) knows or suspects, or
  - (b) has reasonable grounds for knowing or suspecting,

that another person is engaged in drug money laundering.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based,  
or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of a trade, profession, business or employment, other than the business of, or employment by, a financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter to a police officer.

(6) But a person does not commit an offence under this section if -

(a) the person was in employment at the time in question, and he disclosed the information or other matter in question to the appropriate person in accordance with any procedure established by his employer for the making of

such disclosures,

- (b) he has some other reasonable excuse for not disclosing the information or other matter, or
- (c) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the Court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007, or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.

(10) A disclosure to a police officer is not to be taken to breach any restriction on the disclosure of information (however imposed).

(11) In this section "**drug money laundering**" is any act which -

(a) constitutes an offence under section 57, 58 or 59,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the

Bailiwick."

(2) In section 61(3)(a) of the Drug Trafficking Law, for "60(5)", substitute, "60(6)(a)".

(3) In section 69(1) of the Drug Trafficking Law, after the definition of "**defendant**" insert -

"**financial services business**" has the same meaning as it has for the purpose of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;".

## PART VII GENERAL

### Power to amend law relating to disclosure of information by Ordinance.

**14.** (1) Subject to subsection (3), the States may by Ordinance amend this Law and any other enactment, or any rule of law (including customary or common law), which relates to or concerns, whether directly or indirectly, the disclosure of information.

(2) Without prejudice to the generality of subsection (1) and any other provisions of this Law, an Ordinance under this Law -

(a) may, for the avoidance of doubt -

(i) create new offences, and

(ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common



law, and

- (b) may make provision as to -
  - (i) the disclosure of information to any person including -
    - (aa) a police officer, or
    - (bb) the Administrator of Income Tax, and
  - (ii) the form and manner in which any disclosure must be made.

- (3) The power under subsection (1) shall -
  - (a) where it is exercised in respect of Alderney, be exercised following consultation with the Policy and Finance Committee of the States of Alderney, and
  - (b) where it is exercised in respect of Sark, be exercised following consultation with the General Purposes and Finance Committee of the Chief Pleas of Sark.

**Power for Commission to make rules and issue guidance.**

**15.** (1) The Commission may make rules, and issue guidance, for the purposes of this Law, or any other enactment or any rule of law (including customary or common law), which relates to or concerns, whether directly or indirectly -

- (a) the disclosure of information, or
- (b) money laundering.

(2) Without prejudice to the generality of the power under subsection (1), rules and guidance made, or issued, thereunder may make provision for, or concerning -

- (a) the policies, procedures and controls which are to be established by financial services businesses for the purposes of the disclosure of information,
- (b) the nomination of any person as a nominated officer for the purposes of Part I, and
- (c) the circumstances in which any information, or other matter, disclosed under section 1 or 2, or any other enactment, shall, or may also, be disclosed to the Commission.

**Ordinances, regulations, rules and guidance.**

16. (1) Any Ordinance, regulations, rules or guidance enacted, made, or issued, under any provision of this Law -

- (a) may be amended or repealed by a subsequent Ordinance, regulations, rules or guidance, and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Law to enact, make or issue an Ordinance, regulations, rules or guidance, may be exercised -

(a) in relation to all cases to which the power extends, 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 enact or make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any less provision (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 but for different purposes, and

(iii) any such provision either unconditionally or subject to specified conditions.

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

**Interpretation.**

17. (1) In this Law, unless the context requires otherwise -

"**Administrator of Income Tax**" means the Administrator referred to in section 205 of the Income Tax (Guernsey) Law, 1975<sup>g</sup> and includes the Assistant Administrator,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>h</sup>,

"**conduct**" includes acts, omissions and statements,

"**criminal conduct**" means any conduct which -

- (a) constitutes one or more criminal offences under the law of any part of the Bailiwick, or

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<sup>g</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, VIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V and VI of 2005; the Income Tax (Residence) (Guernsey) (Amendment) Law, 2005; the Income Tax (Guernsey) (Amendment) Law, 2005; and the Income Tax (Surcharges and Supplements) (Guernsey) (Amendment) Law, 2005. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2004.

<sup>h</sup> Ordres en Conseil Vol. XXX, p. 243; Orders in Council No. XX of 1991; No. XIII of 1994; No. II of 1997; No. I of 1998; and No. XVII of 2002.

(b) is, or corresponds to, conduct which, if it all took place in any part of the Bailiwick would constitute one or more offences under the law of that part of the Bailiwick,

**"criminal investigation"** means an investigation of any criminal conduct including an investigation of alleged or suspected criminal conduct or an investigation of whether criminal conduct has taken place,

**"criminal proceedings"** shall not include legal proceedings outside the Bailiwick unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent, consists of criminal conduct,

**"customs officer"** means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>i</sup>,

**"Drug Trafficking Law"** means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>j</sup>,

**"Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>k</sup>,

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<sup>i</sup> Ordres en Conseil Vol. XXIII, p.573, and XIII of 1991.

<sup>j</sup> Order in Council No. VII of 2000.

<sup>k</sup> Order in Council No. 1 of 2001.

**"financial services business"** has the same meaning as it has for the purpose of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

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

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

**"information"** includes documents,

**"intelligence service"** has the same meaning as in section 67 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,

**"money laundering"** is any act which -

- (a) constitutes an offence under section 38, 39 or 40 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),
- (d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or

- (e) would constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

**"police officer"** means -

- (a) in relation to Guernsey, Herm and Jethou -
  - (i) a member of the salaried police force of the Island of Guernsey, and
  - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney -
  - (i) a member of the salaried police force of the Island of Guernsey,
  - (ii) a member of any police force which may be established by the States of Alderney, and
  - (iii) within the limits of his jurisdiction, a member of the Alderney Special Constabulary appointed pursuant to section 47 of the Government of

Alderney Law, 2004<sup>l</sup>, and

- (c) in relation to Sark -
  - (i) the Constable,
  - (ii) the Vingtenier, and
  - (iii) a member of the salaried police force of the Island of Guernsey, and
- (d) includes a customs officer,

**"Terrorism and Crime Law"** means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>m</sup>, and

**"uniform scale"** means the scale of fines designated by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>n</sup>.

(2) The provisions of the Interpretation (Guernsey) Law, 1948<sup>o</sup> shall apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without

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

<sup>m</sup> Order in Council No. XVI of 2002.

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

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



modification) extended or applied.

**Part IV not to apply to Sark.**

18. Part IV does not apply to Sark.

**Citation.**

19. This Law may be cited as the Disclosure (Bailiwick of Guernsey) Law, 2007.

**Commencement.**

20. This Law shall come into force on such day as the Home Department may by order made under this section appoint; and different dates may be appointed for different provisions of this Law and for different purposes.

# PROJET DE LOI

ENTITLED

## **The Mansell Trust (Guernsey) Law, 2007**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> October, 2006<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

### **Dissolution of the Mansell Trust and use of trust property.**

1. On the date of the commencement of this Law -
  - (a) the Mansell Trust shall be dissolved,
  - (b) any trust property accruing to the present trustees, less any expenses and outgoings properly incurred, shall be paid to the Friends of St Julian's in such manner as the present trustees think fit,
  - (c) upon payment of the trust property, the present trustees shall be discharged and absolved from all obligations and liabilities in respect of the Mansell Trust and in respect of the trust property (other than any obligation or liability subsisting at the date of the commencement of this Law), and

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<sup>a</sup> Article XIV of Billet d'État No. XVII of 2006.

- (d) upon receipt of the trust property, the Friends of St Julian's shall apply the same in accordance with their constitution and to their charitable objects and purposes.

**Interpretation .**

2. (1) In this Law -

**"the Friends of St Julian's"** means member number 045 of the Association of Guernsey Charities, (formerly known as "Friends of St Julian's Hostel or Friends of St Julian's House") and recognised as exempt from income tax by the Administrator of Income Tax, Guernsey, under the provisions of section 40(k) of the Income Tax (Guernsey) Law 1975,

**"the Mansell Trust"** means the trust created by deed of trust dated 30<sup>th</sup> April, 1929 pursuant to the will dated 15<sup>th</sup> May, 1925 and codicil thereto dated 15<sup>th</sup> July, 1927 of Emma Carolina Mansell and following agreement between the States and the sole surviving executor of that will, Herbert Arthur Gliddon, the purpose of the trust being for the "special benefit of the inmates for the time being of the Hospital of the town and the parish of St Peter Port and the Country Hospital, the Town and Country Asylums, or such general Asylum as may in the future be erected in substitution for the present Town and Country asylums, and the Childrens Home in such a manner and in such proportions in accordance with the premises as the Trustees shall from time to time in their discretion think fit.",

**"the present trustees"** means the present trustees of the Mansell Trust, that is to say, the persons holding the office of Minister of the States Public Services Department and Minister of the States Health and Social Services Department, respectively, and

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

**"the trust property"** means all the property (whether capital or income) subject to the trusts of the Mansell Trust.

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

**Citation.**

3. This Law may be cited as the Mansell Trust (Guernsey) Law, 2007.

**Commencement.**

4. This Law shall come into force on the 28<sup>th</sup> day after the day of its registration on the records of the Island of Guernsey.

## **The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007**

**THE STATES**, in pursuance of their Resolution of the 1<sup>st</sup> June, 2006<sup>a</sup>, and in exercise of the powers conferred on them by sections 14(9), 15(8) and 23 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Law of 2001.**

1. The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, as amended<sup>b</sup> ("**the Law of 2001**") is further amended as follows.

2. In section 14 of the Law of 2001 subsections (1) to (8) are repealed.

3. In section 15(1) of the Law of 2001 for "the Utility Appeals Tribunal" substitute "the Royal Court".

4. In section 15(4)(a) of the Law of 2001 for "14 days" substitute "28 days".

5. In section 15(5), (6) and (7) of the Law of 2001 for "the Utility Appeals Tribunal" and "the Tribunal" substitute "the Royal Court".

6. After section 15(7) of the Law of 2001 insert the following subsection-

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<sup>a</sup> Article XIV of Billet d'État No. X of 2006.

<sup>b</sup> Order in Council No. XI of 2001; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

"(7A) For the purposes of determining an appeal under this section, the Royal Court -

(a) may appoint one or more assessors to assist it, and

(b) is properly constituted by the Bailiff sitting unaccompanied by the Jurats."

7. For section 16 of the Law of 2001 substitute the following -

**"Appeals from Royal Court to Court of Appeal.**

16. (1) A person aggrieved by a decision of the Royal Court on an appeal under section 15 may, with leave of the Royal Court or Court of Appeal, appeal to the Court of Appeal on a question of law.

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

8. Section 17 of the Law of 2001 is repealed.

9. Section 18(1)(a) of the Law of 2001 is repealed.

10. In section 22(1) of the Law of 2001 -

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

- (a) immediately before the definition of "Bailiwick" insert the following definition -

**"Bailiff"** means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,"

- (b) in the definition of "consult" repeal ", 14(1)",
- (c) in the definition of "Royal Court" after "an Ordinary Court" insert ", constituted (for the purposes of an appeal under section 15) in accordance with section 15(7A)",
- (d) the definitions of "Utility Appeals Panel" and "Utility Appeals Tribunal" are repealed.

11. In section 22(6) of the Law of 2001 repeal ", 14(1)".

12. Section 23(1)(c)(iii) of the Law of 2001 is repealed.

13. Section 24(1)(f) of the Law of 2001 is repealed.

14. In section 24(5) of the Law of 2001 the words "or the Utility Appeals Tribunal" are repealed.

15. In paragraph 7 of the Schedule to the Law of 2001 for "the Utility Appeals Tribunal" substitute "the Royal Court".

**Repeal.**

16. The Regulation of Utilities (Utility Appeals Tribunal) Ordinance,

2001<sup>d</sup> is repealed.

**Savings provision for extant appeals.**

17. (1) An appeal to the Utility Appeals Tribunal instituted by summons in accordance with section 15 of the Law of 2001 before the date of commencement of this Ordinance shall be determined by the Tribunal in all respects as if this Ordinance had not been enacted.

(2) Accordingly, the repeals and amendments effected by this Ordinance do not have effect in relation to any such appeal.

(3) The Utility Appeals Tribunal means the Tribunal appointed under section 14(5) of the Law of 2001.

**Citation.**

18. This Ordinance may be cited as the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

**Commencement.**

19. This Ordinance shall come into force on the 28<sup>th</sup> March, 2007.

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<sup>d</sup> Ordinance No. XXXIII of 2001.



**The Registered Plant Breeders' Rights  
(Bailiwick of Guernsey) Ordinance, 2007**

ARRANGEMENT OF SECTIONS

PART I

PLANT BREEDERS' RIGHTS & REGISTER OF PLANT BREEDERS' RIGHTS

1. Plant breeders' rights.
2. Register of Plant Breeders' Rights.
3. Evidence of entries in Register.

PART II

REGISTRATION

4. Entitlement to registration.
5. Applications for registration.
6. Registration of plant breeders' rights in Register.
7. Certificate and date of registration.
8. Revocation or suspension of registration.
9. Registration of assignments etc.
10. Notice of Registrar's decision to refuse registration, etc.

PART III

MODIFICATION & CORRECTION BY REGISTRAR

11. Modification of registration.
12. Power to correct clerical errors.

PART IV

APPEALS AND RECTIFICATION

13. Right of appeal to Royal Court.
14. Rectification of Register by order of Royal Court.

PART V

RIGHTS ETC. OF PROPRIETOR OF PLANT BREEDERS' RIGHTS

15. Rights given by registration in respect of protected varieties.
16. Rights given by registration in respect of dependent varieties.
17. General exceptions to rights.
18. Exceptions for farm saved seed.
19. Exhaustion of rights.
20. Duration and nature of rights.
21. Remedies for infringement.

22. Presumptions in proceedings related to harvested material.
23. Presumptions in proceedings related to products made from harvested material.
24. Disclosure of information obtained under section 22 or 23.
25. Maintenance of protected variety.
26. Compulsory licences.
27. Duty to use registered name.
28. Improper use of registered name.
29. Assignments, etc.

#### PART VI CROWN OR STATES USE OF PLANT BREEDERS' RIGHTS

30. Crown or States use of plant breeders' rights.
31. Settlement of terms for Crown or States use.
32. Rights of third parties in case of Crown or States use.
33. Crown or States use: compensation for loss of profit.
34. Special provisions for Crown or States use during emergency.
35. References of disputes relating to Crown or States use.

#### PART VII OFFENCES

36. False representations as to rights.
37. Falsification of Register, etc.
38. Offences committed by bodies corporate and partnerships, etc.

#### PART VIII GENERAL PROVISIONS

39. Reference collections of plant material.
40. Inspection of plant material.
41. Information as to existence of plant breeders' rights.
42. Interpretation.
43. General provisions as to subordinate legislation.
44. Saving for forfeited goods.
45. Territorial waters.
46. Guernsey ships.
47. Citation.
48. Extent.
49. Commencement.

Schedule - Qualifying variety.

## **The Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007**

**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>, sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>c</sup>, and all other powers enabling them in that behalf, hereby order:-

### PART I

#### PLANT BREEDERS' RIGHTS & REGISTER OF PLANT BREEDERS' RIGHTS

##### **Plant breeders' rights.**

1. "Plant breeders' rights" are property rights which, upon registration under this Ordinance, subsist in varieties of all plant genera and species in accordance with this Ordinance.

##### **Register of Plant Breeders' Rights.**

2. (1) The Registrar of Intellectual Property ("**the Registrar**") shall establish and maintain a register to be called the Register of Plant Breeder's Rights in which, subject to the provisions of this Ordinance, persons may be registered as the proprietors of plant breeders' rights.

(2) The Register of Plant Breeders' Rights need not be kept in documentary form.

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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.

<sup>c</sup> Order in Council No. III of 1994.

- (3) The Register of Plant Breeders' Rights shall contain -
- (a) the names and addresses of persons registered in it as the proprietors of plant breeders' rights,
  - (b) the date on which persons were so registered,
  - (c) the name of the variety in relation to which the plant breeders' rights subsist,
  - (d) notices of assignments and transmissions of plant breeders' rights,
  - (e) details of any limitations subject to which plant breeders' rights are registered in it, and
  - (f) such other matters as may be prescribed, or as the Registrar may think fit.

(4) Subject to such circumstances as may be prescribed, in which the Registrar may impose a prohibition or restriction on the publication or communication of information appearing on, or relating to, any entry on the Register of Plant Breeders' Rights -

- (a) the Register of Plant Breeders' Rights shall be open for public inspection, and
  - (b) the Registrar shall, on payment of the appropriate fee, supply copies and extracts (certified or uncertified) of any entry in it.
- (5) No notice of any trust, whether express, implied or

constructive, shall be entered in the Register of Plant Breeders' Rights, and the Registrar is not affected by any such notice.

**Evidence of entries in Register.**

3. (1) The Register of Plant Breeders' Rights is prima facie evidence of anything required or authorised to be entered in it.

(2) A copy or extract of an entry in the Register of Plant Breeders' Rights supplied under section 2(4)(b) and purporting to be a certified copy or extract is admissible in evidence without further proof and without production of the original.

PART II  
REGISTRATION

**Entitlement to registration.**

4. (1) Only the overseas registered proprietor of overseas plant breeders' rights may be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights, and in this Ordinance -

- (a) "**overseas plant breeders' rights**" means plant breeders' rights granted, or registered, in a designated country in accordance with the laws relating to the grant, or registration, of plant breeders' rights in force there,
- (b) the "**overseas registered proprietor**" of overseas plant breeders' rights means the person registered in a designated country as the registered proprietor of those rights in accordance with the laws described in paragraph (a), and

- (c) a "**designated country**" means a country designated for the purposes of this Ordinance by regulations of the Department.

(2) Regulations of the Department under this section may also designate, for the purposes of this Ordinance, any office which is responsible, elsewhere than in the Bailiwick, for the grant, or registration, of plant breeders' rights; and references in this Ordinance (however expressed) -

- (a) to a designated country, include references to an office which is so designated,
- (b) to the grant or registration, or being registered or granted, in a designated country, include references to the grant or registration, or being registered or granted, by such an office in accordance with the laws relating to the grant, or registration, of plant breeders' rights which govern that office, and
- (c) to the laws relating to the grant, or registration, of plant breeders' rights in force in a designated country, include references to the laws relating to the grant, or registration, of plant breeders' rights which govern that office,

and the provisions of this Ordinance shall be construed accordingly with such modifications as may be necessary.

**Applications for registration.**

5. (1) A person wishing to be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall apply in that behalf to the Registrar.

(2) An application for registration shall be made in such form and manner as the Registrar may determine and shall be accompanied by -

- (a) such information and documents as the Registrar may reasonably require for the purpose of determining the application,
- (b) the appropriate fee,
- (c) a specimen of plant material representing the variety to which the application relates, and
- (d) anything else prescribed by regulations of the Department under this subsection.

(3) On receipt of an application for registration and at any time thereafter the Registrar may by notice in writing require the applicant to provide such additional information, documents and specimens as the Registrar may reasonably require for the purpose of determining the application.

(4) Any information, document or specimen to be provided to the Registrar under this section shall be in such form, and authenticated in such manner, as the Registrar may require.

(5) The Registrar's requirements under subsections (2), (3) and (4) may differ as between different applications.

(6) An application for registration may be withdrawn by notice in writing to the Registrar at any time before it is determined.

(7) The Registrar -

- (a) shall refuse an application for registration which is not accompanied by the appropriate fee, and
- (b) may refuse an application for registration which is otherwise not made in accordance with the provisions of this Ordinance.

**Registration of plant breeders' rights in Register.**

6. (1) The Registrar shall, on receipt of an application under section 5 from a person wishing to be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights, grant the application if, and only if, he is satisfied that -

- (a) the plant breeders' rights are overseas plant breeders' rights,
- (b) the applicant is the overseas registered proprietor of those rights, and
- (c) the variety, to which the application relates, is a qualifying variety in accordance with the schedule to this Ordinance.

(2) The registration shall include the entry on the Register of Plant Breeders' Rights of any limitation which attaches to the rights in the designated country concerned and which has been made under the laws relating to plant breeders' rights in force in that country.

(3) Where the Registrar decides -

- (a) to refuse an application for registration in the Register



of Plant Breeders' Rights, or

- (b) otherwise than with the consent of the applicant, to include an entry in the registration of a limitation,

he shall serve notice in writing of the decision on the applicant in accordance with the provisions of section 10.

**Certificate and date of registration.**

7. (1) The Registrar shall, on registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights, issue a certificate of registration.

(2) The Registrar may -

- (a) if satisfied that the certificate of registration has been lost or destroyed, and in any other case in which he thinks it expedient, and

- (b) on payment of the appropriate fee,

furnish copies of the certificate.

(3) The registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights has effect on and from the date of registration.

**Revocation or suspension of registration.**

8. (1) The Registrar shall revoke or suspend the registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights -

(a) if, subject to the provisions of subsections (2) and (3), it appears to the Registrar that -

(i) the grant, or registration, of the rights in the designated country concerned has been declared to be invalid or null and void, cancelled, or suspended under the laws relating to the grant, or registration, of plant breeders' rights in force there, or

(ii) the overseas plant breeders' rights have expired in that country by reason of a failure to extend the duration of the rights under those laws,

(b) if it appears to the Registrar that, otherwise than as mentioned in paragraph (a) -

(i) the rights are not, or are no longer, overseas plant breeders' rights, or

(ii) the person is not, or is no longer, the overseas registered proprietor of those rights, or

(c) if that person applies to the Registrar for his registration to be revoked or suspended (and the provisions of section 5 apply to an application under this paragraph as they apply to an application for registration).

(2) If in the designated country concerned an appeal is instituted against -

- (a) a declaration that the grant, or registration, of plant breeders' rights is invalid or null and void,
- (b) the cancellation of the grant, or registration, of plant breeders' rights, or
- (c) the suspension of the grant, or registration, of plant breeders' rights,

the Registrar shall not under subsection (1)(a)(i) revoke or suspend the registration of a person as the proprietor of those rights before the appeal is finally determined.

(3) If, in the designated country concerned, an application is made under the laws relating to the grant, or registration, of plant breeders' rights in force there for -

- (a) the extension of overseas plant breeders' rights, or
- (b) an order for the restoration of overseas plant breeders' rights,

the Registrar shall not under subsection (1)(a)(ii) revoke or suspend the registration of a person as the proprietor of those rights unless and until the application is refused (and, if proceedings are instituted against the refusal, before the proceedings are finally disposed of).

(4) A decision of the Registrar to revoke or suspend a registration, other than on the application of the person registered as proprietor, shall not have effect until the end of the period within which, under section 13, an appeal can be brought against the revocation or suspension or, if an appeal is brought within that period, and unless the Royal Court orders otherwise, until the appeal is finally disposed of.

(5) Where the Registrar decides, other than on the application of the person registered as proprietor, to revoke or suspend a registration, the Registrar shall serve notice in writing of the decision on that person in accordance with the provisions of section 10.

(6) A registration which is revoked shall be treated as being invalid ab initio or from such later date as the Registrar may direct.

(7) For the duration of any suspension under this section, the person who is the proprietor of the plant breeders' rights concerned shall not enjoy the rights under sections 15 and 16.

(8) The Registrar shall terminate a suspension under this section if it appears to the Registrar that the suspension of the rights in the designated country concerned has been terminated under the laws relating to the grant, or registration, of plant breeders' rights in force there.

#### **Registration of assignments, etc.**

9. (1) Where a person becomes entitled -

- (a) to plant breeders' rights registered in the Register of Plant Breeders' Rights or to a share in such rights by assignment, transmission or operation of law, or
- (b) to any other interest in such rights as mortgagee, licensee or otherwise,

he may apply to the Registrar for registration in the Register of Plant Breeders' Rights of -

- (i) his title as proprietor or co-proprietor or, as the

case may be, or

(ii) notice of his interest.

(2) The provisions of section 5 apply to an application under subsection (1) as they apply to an application for registration.

(3) An application under subsection (1) for registration of the title or interest of a person becoming entitled to plant breeders' rights, or a share or other interest in such rights, by or by virtue of an assignment, mortgage, licence or other instrument, may be made by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(4) Where an application is made under subsection (1) for registration of the title or interest of any person, the Registrar shall -

(a) where the applicant has become entitled to the rights or a share therein by assignment, transmission or operation of law, and if the Registrar is satisfied that that person's title is registered in respect of the rights in the designated country concerned under the laws relating to the grant, or registration, of plant breeders rights in force there -

(i) register him in the Register of Plant Breeders' Rights as proprietor or co-proprietor of the rights, and

(ii) enter in the Register particulars of the instrument or event by which he derives title, or

(b) in any other case, enter in the Register -

- (i) notice of his entitlement or interest, and
- (ii) particulars of the instrument or event by which he derives title or, as the case may be, by which the interest is created.

(5) Except for the purposes of an application for rectification of the Register of Plant Breeders' Rights under section 12, a document in respect of which no entry is made in the Register of Plant Breeders' Rights under subsection (4) shall not be admitted in any court as evidence of the title of any person to plant breeders' rights registered in the Register of Plant Breeders' Rights, or to any share or other interest in such rights, unless the court directs otherwise.

(6) Where the Registrar decides, other than on the application of the person registered as proprietor in the Register of Plant Breeders' Rights, to enter any right, title or interest in the Register of Plant Breeders' Rights under this section, the Registrar shall serve notice in writing of the decision on that person in accordance with the provisions of section 10.

**Notice of Registrar's decision to refuse registration, etc.**

**10.** Notice of a decision of the Registrar -

- (a) to refuse an application for registration in the Register of Plant Breeders' Rights,
- (b) other than with the consent of the applicant, to include an entry in a registration of a limitation, or
- (c) other than on the application of the person registered as proprietor in the Register of Plant Breeders' Rights -

- (i) to revoke, suspend or modify a registration, or
- (ii) to enter any right, title or interest in the Register under section 9,

shall state the grounds of the Registrar's decision and give particulars of the right of appeal conferred by section 13.

### PART III MODIFICATION & CORRECTION BY REGISTRAR

#### **Modification of registration.**

11. (1) The Registrar may, on the application of a person registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights or of his own motion, modify the registration in order to replicate -

- (a) the grant, or registration, of the rights in the designated country concerned, or
- (b) any modification, correction or rectification made to the grant, or registration, of the rights in that country,

under the laws relating to the grant, or registration, of plant breeders' rights in force there.

(2) The provisions of section 5 apply to an application under this section as they apply to an application for registration.

(3) Unless the Registrar directs otherwise, a modification of a registration made under this section has effect on and from the date of the original grant, or registration.

(4) The modifications of a registration which may be made under this section include (without prejudice to the generality of the Registrar's powers) the entry on the Register of Plant Breeders' Rights of a limitation in order to replicate any limitation which attaches to the grant, or registration, of the rights in the designated country concerned and which has been made under the laws relating to the grant, or registration, of plant breeders' rights in force in that country.

(5) Where the Registrar decides, other than on the application of the person registered as proprietor, to modify a registration, the Registrar shall serve notice in writing of the decision on that person in accordance with the provisions of section 10.

**Power to correct clerical errors.**

12. (1) The Registrar may correct any error in the Register of Plant Breeders' Rights or in an application for registration.

(2) A correction may be made under this section -

- (a) on a request in writing, and on payment of the appropriate fee, by the person registered as proprietor or by the applicant for registration (as the case may be), or
- (b) of the Registrar's own motion.

(3) Where the Registrar proposes to make a correction otherwise than on a request under subsection (2), he shall -

- (a) give notice of the proposal to the person registered as proprietor or to the applicant for registration (as the case may be), and



- (b) give them an opportunity to be heard before making the correction.

PART IV  
APPEALS AND RECTIFICATION

**Right of appeal to Royal Court.**

13. (1) If the Registrar decides -

- (a) to refuse an application for registration in the Register of Plant Breeders' Rights,
- (b) other than with the consent of the applicant, to include an entry in a registration of a limitation, or
- (c) other than on the application of the person registered as proprietor -
  - (i) to revoke, suspend or modify a registration, or
  - (ii) to enter any right, title or interest in the Register of Plant Breeders' Rights,

then the applicant for registration or, as the case may be, the person registered as proprietor may appeal against the decision to the Royal Court; and, for the purposes of this Ordinance -

- (A) "**the Royal Court**" means the Royal Court sitting as an Ordinary Court,
- (B) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats,

(C) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto, and

(D) the Royal Court has, in relation to functions conferred on it by this Ordinance, jurisdiction throughout the Bailiwick.

(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 notice of the Registrar's decision, 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 Royal 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 Royal Court may -

(a) dismiss the appeal or dismiss the Registrar's application (in either case on such terms and conditions as the Royal Court may direct), or

(b) make such other order as the Royal Court considers just,

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

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

(6) An appeal from a decision of the Royal Court made on an appeal under this section lies, with leave of the Royal 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>e</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 Royal 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)

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

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

Ordinance, 2005<sup>f</sup>.

**Rectification of Register by order of Royal Court.**

14. (1) The Royal Court may, subject to subsection (3), on the application of any person aggrieved, order the Registrar to rectify the Register of Plant Breeders' Rights by making, revoking, suspending or modifying any entry therein in accordance with the provisions of section 6, 8, 9 or 11.

(2) In proceedings under this section the Royal Court may determine any question which it is necessary or expedient to decide in connection with the rectification of the Register of Plant Breeders' Rights.

(3) A copy of an application for an order under this section shall be served on the Registrar not less than 7 days (or such other period as the Royal Court may, in its absolute discretion, direct) before the day of the hearing, and the Registrar is entitled to appear and be heard on the application and shall appear if so ordered by the Royal Court.

(4) A copy of an order of the Royal Court under this section shall be served on the Registrar who shall, on receipt thereof, rectify the Register of Plant Breeders' Rights accordingly.

(5) A rectification of the Register of Plant Breeders' Rights under this section has effect as follows -

- (a) an entry made has effect on and from the date on which it should have been made,
- (b) an entry modified has effect as if originally made in its modified form,

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<sup>f</sup> Ordinance No. XXIX of 2005.

- (c) an entry revoked shall be deemed never to have had effect, and
- (d) an entry suspended shall be suspended from the date of the order of the Royal Court under this section,

unless the Royal Court directs otherwise in any particular case.

(6) The orders which may be made by the Royal Court under this section include (without prejudice to the generality of the Royal Court's powers) an order for the entry on the Register of Plant Breeders' Rights of a limitation in order to replicate any limitation which attaches to the grant, or registration, of the rights in the designated country concerned and which has been made under the laws relating to the grant, or registration, of plant breeders' rights in force in that country.

## PART V

### RIGHTS ETC., OF PROPRIETOR OF PLANT BREEDERS' RIGHTS

#### **Rights given by registration in respect of protected varieties.**

15. (1) Subject to subsection (6), the registration of a person as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights entitles him to prevent anyone doing any of the following acts as respects the propagating material of the protected variety without his authority, namely -

- (a) production or reproduction (multiplication),
- (b) conditioning for the purpose of propagation,
- (c) offering for sale,

- (d) selling or other marketing,
- (e) exporting,
- (f) importing,
- (g) stocking for any of the purposes mentioned in paragraphs (a) to (f), and
- (h) any other act prescribed for the purposes of this provision.

(2) The person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights may give authority for the purposes of subsection (1) with or without conditions.

(3) The rights conferred on a person, who is registered as the proprietor of plant breeders' rights by subsections (1) and (2), shall also apply as respects harvested material obtained through the unauthorised use of propagating material of the protected variety, unless he has had a reasonable opportunity before the harvested material is obtained to exercise his rights in relation to the unauthorised use of the propagating material.

(4) In the case of a variety of a prescribed description, the rights conferred on a person who is registered as the proprietor of plant breeders' rights by subsections (1) and (2), shall also apply as respects any product which -

- (a) is made directly from harvested material in relation to which subsection (3) applies, and
- (b) is of a prescribed description,

unless subsection (5) applies.

(5) This subsection applies if, before the product was made, any act mentioned in subsection (1) was done as respects the harvested material from which the product was made and either -

- (a) the act was done with the authority of the person who is registered as the proprietor of the plant breeders' rights in the Register of Plant Breeders' Rights, or
- (b) the person who is registered as the proprietor of the plant breeders' rights had a reasonable opportunity to exercise them in relation to the doing of the act.

(6) The right conferred by subsection (1) is subject to any limitation attaching to the registration in question.

(7) In this section references to "**harvested material**" include entire plants and parts of plants.

**Rights given by registration in respect of dependent varieties.**

16. (1) A person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall have, in relation to any variety which is dependent on the protected variety, the same rights as he has under section 15 in relation to the protected variety.

(2) For the purposes of this section, one variety is dependent on another if -

- (a) its nature is such that repeated production of the variety is not possible without repeated use of the other variety, or

- (b) it is essentially derived from the other variety and the other variety is not itself essentially derived from a third variety.

(3) For the purposes of subsection (2), a variety shall be deemed to be essentially derived from another variety ("**the initial variety**") if -

- (a) it is predominantly derived from -
  - (i) the initial variety, or
  - (ii) a variety that is itself predominantly derived from the initial variety,

while retaining the expression of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety,

- (b) it is clearly distinguishable from the initial variety by one or more characteristics which are capable of a precise description, and
- (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics the genotype or combination of genotypes of the initial variety.

(4) For the purposes of subsection (3), derivation may, for example, be by -

- (a) the selection of -



- (i) a natural or induced mutant,
  - (ii) a somaclonal variant, or
  - (iii) a variant individual from plants of the initial variety,
- (b) backcrossing,
  - (c) transformation by genetic engineering.

(5) Subsection (1) shall not apply where the existence of the dependent variety was common knowledge immediately before the coming into force of this Ordinance.

**General exceptions to rights.**

17. The rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall not extend to any act done -

- (a) for private and non-commercial purposes,
- (b) for experimental purposes, or
- (c) for the purpose of breeding another variety.

**Exceptions for farm saved seed.**

18. (1) Subject to subsection (2), the rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall not extend to the use by a farmer for propagating purposes in

the field, on his own holding, of the product of the harvest which he has obtained by planting on his own holding propagating material of -

- (a) the protected variety, or
- (b) a variety which is essentially derived from the protected variety.

(2) Subsection (1) only applies if the material is of a variety which is of a species or group prescribed for the purposes of this subsection.

(3) If a farmer's use of material is excepted from the rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights by subsection (1), he shall, at the time of the use, become liable to pay the proprietor of the rights equitable remuneration, which shall be sensibly lower than the amount charged for the production of propagating material of the same variety in the same area with the proprietor's authority.

(4) Subsection (3) shall not apply to a farmer who is a small farmer.

(5) Subsection (3) shall not apply if -

- (a) before the day on which this Part of this Ordinance comes into force, the farmer has, in relation to the variety concerned, engaged in use of the kind to which subsection (1) applies, and
- (b) no remuneration was payable in respect of that use.

(6) The Department may by order provide that, on such date as may be specified in the order, subsection (5) shall cease to have effect in relation to a variety so specified, or varieties of a species or group so specified.

(7) The Department may by regulations -

(a) make provision enabling -

(i) persons who are registered as proprietors of plant breeders' rights in the Register of Plant Breeders' Rights to require farmers or seed processors, and

(ii) farmers or seed processors to require persons who are registered as proprietors of plant breeders' rights in the Register of Plant Breeders' Rights,

to supply such information as may be prescribed, being information the supply of which the Department considers necessary for the purposes of this section,

(b) make provision restricting the circumstances in which the product of a harvest of a variety which is subject to plant breeders' rights may be moved, for the purpose of being processed for planting, from the holding on which it was obtained, and

(c) make provision for the purpose of enabling the Department to monitor the operation of any provision of this section or regulations under this section.

(8) Regulations under subsection (7)(a) may include provision imposing obligations of confidence in relation to information supplied by virtue of the regulations.

(9) Sections 16(3) and (4) shall apply for the purposes of subsection (1)(b) as they apply for the purposes of section 16(2).

(10) For the purposes of subsection (3), remuneration shall be taken to be sensibly lower if it would be taken to be sensibly lower within the meaning of Article 14(3) fourth indent of the Council Regulation.

(11) In this section, references to a farmer's own holding are to any land which he actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account.

(12) The Department may by order amend this section as it thinks fit for the purpose of securing that it corresponds with the provisions for the time being of the law relating to Community plant variety rights about farm saved seed.

(13) For the purposes of this section -

**"in the field"** includes in a glasshouse, and

**"small farmer"** means such class, or description, of farmer as may be prescribed.

**Exhaustion of rights.**

**19.** (1) The rights of a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights shall not extend to any act concerning material of a variety if the material -

- (a) has been sold or otherwise marketed in the Bailiwick by, or with the consent of, the proprietor of the rights, or
  - (b) is derived from material which has been so sold or otherwise marketed.
- (2) Subsection (1) shall not apply where the act involves -
- (a) further propagation of the variety, or
  - (b) the export of material which enables propagation of the variety to a non-qualifying country, otherwise than for the purposes of final consumption.
- (3) For the purposes of subsection (2)(b), a "**non-qualifying country**" is one which does not provide for the protection of varieties of the genus or species to which the variety belongs.
- (4) In this section, "**material**", in relation to a variety, means -
- (a) any kind of propagating material of the variety,
  - (b) harvested material of the variety, including entire plants and parts of plants, and
  - (c) any product made directly from material falling within paragraph (b).

**Duration and nature of rights.**

**20.** (1) The rights of a person registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights subsist as long as the

registration subsists.

(2) The rights in plant breeders' rights registered in the Register of Plant Breeders' Rights are personal or movable property.

(3) The rights in plant breeders' rights registered in the Register of Plant Breeders' Rights are transferable by assignment, testamentary disposition or operation of law as personal or movable property.

**Remedies for infringement.**

21. (1) The person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights may commence proceedings in the Royal Court for any infringement of those rights.

(2) In any proceedings for the infringement of plant breeders' rights which are registered in the Register of Plant Breeders' Rights, all such relief by way of damages, injunction, account or otherwise shall be available as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

**Presumptions in proceedings related to harvested material.**

22. (1) This section applies to any proceedings for the infringement of plant breeders' rights which are registered in the Register of Plant Breeders' Rights, as respects harvested material.

(2) If, in any proceedings to which this section applies, the proprietor of the plant breeders' rights proves, in relation to any of the material to which the proceedings relate -

- (a) that it has been the subject of an information notice given to the defendant by or on behalf of the proprietor, and

- (b) that the defendant has not, within the prescribed time after the service of the notice, supplied the proprietor with the information about it requested in the notice,

then, as regards the material in relation to which the proprietor proves that to be the case, the presumptions mentioned in subsection (3) shall apply, unless the contrary is proved or the defendant shows that he had a reasonable excuse for not supplying the information.

- (3) The presumptions are -

- (a) that the material was obtained through unauthorised use of the propagating material, and
- (b) that the proprietor did not have a reasonable opportunity before the material was obtained to exercise his rights in relation to the unauthorised use of the propagating material.

- (4) The reference in subsection (2) to an information notice is to a notice which -

- (a) is in the prescribed form,
- (b) specifies the material to which it relates,
- (c) contains, in relation to that material, a request for the supply of the prescribed information, but no other, information, and
- (d) contains such other particulars as may be prescribed.

**Presumptions in proceedings related to products made from harvested material.**

23. (1) This section applies to any proceedings for the infringement of plant breeders' rights which are registered in the Register of Plant Breeders' Rights, as respects any product made directly from harvested material.

(2) If, in any proceedings to which this section applies, the proprietor of the plant breeders' rights proves, in relation to any product to which the proceedings relate -

- (a) that it has been the subject of an information notice given to the defendant by or on behalf of the proprietor, and
- (b) that the defendant has not, within the prescribed time after the service of the notice, supplied the proprietor with the information about it requested in the notice,

then, as regards the product in relation to which the proprietor proves that to be the case, the presumptions mentioned in subsection (3) below shall apply, unless the contrary is proved or the defendant shows that he had a reasonable excuse for not supplying the information.

(3) The presumptions are -

- (a) that the harvested material from which the product was made was obtained through unauthorised use of propagating material,
- (b) that the proprietor did not have a reasonable opportunity before the harvested material was obtained to exercise his rights in relation to the unauthorised use



of the propagating material, and

- (c) that no relevant act was done, before the product was made, as respects the harvested material from which it was made.

(4) An act is relevant for the purposes of subsection (3)(c) if it is mentioned in section 15(1) and is -

- (a) done with the authority of the proprietor, or
- (b) one in relation to the doing of which he has a reasonable opportunity to exercise his rights.

(5) The reference in subsection (2) to an information notice is to a notice which -

- (a) is in the prescribed form,
- (b) specifies the product to which it relates,
- (c) contains, in relation to that product, a request for the supply of the prescribed information, but no other, information, and
- (d) contains such other particulars as may be prescribed.

**Disclosure of information obtained under section 22 or 23.**

24. (1) If a person who is registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights obtains information pursuant to a notice given for the purposes of section 22 or 23, he shall owe an

obligation of confidence in respect of the information to the person who supplied it.

(2) Subsection (1) shall not have effect to restrict disclosure of information -

(a) for the purposes of, or in connection with, establishing whether plant breeders' rights registered in the Register of Plant Breeders' Rights have been infringed, or

(b) for the purposes of, or in connection with, any proceedings for the infringement of plant breeders' rights so registered.

#### **Maintenance of protected variety.**

25. (1) The person who is registered as the proprietor of any plant breeders' rights in the Register of Plant Breeders' Rights shall ensure that, throughout the period for which the registration of the rights has effect, he is in a position to produce to the Registrar propagating material which is capable of producing the protected variety.

(2) The person who is registered as the proprietor of any plant breeders' rights in the Register of Plant Breeders' Rights shall give to the Registrar, within such time as he may specify, all such information and facilities as he may request for the purpose of satisfying himself that the proprietor is fulfilling his duty under subsection (1) above.

(3) The facilities to be given under subsection (2) above include facilities for the inspection by or on behalf of the Registrar of the measures taken for the preservation of the protected variety.

#### **Compulsory licences.**

26. (1) Subject to subsection (2) and (3) below, if the Royal Court is satisfied on application that the person who is registered as the proprietor of any plant breeders' rights in the Register of Plant Breeders' Rights -

- (a) has unreasonably refused to grant a licence to the applicant, or
- (b) has imposed or put forward unreasonable terms in granting, or offering to grant, a licence to the applicant,

it may grant to the applicant in the form of a licence under this section any such rights as might have been granted by the proprietor.

(2) The Royal Court shall not grant an application for a licence under this section unless it is satisfied -

- (a) that it is necessary to do so for the purpose of securing that the variety to which the application relates-
  - (i) is available to the public at reasonable prices,
  - (ii) is widely distributed, or
  - (iii) is maintained in quality,
- (b) that the applicant is financially and otherwise in a position to exploit in a competent and businesslike manner the rights to be conferred on him, and
- (c) that the applicant intends so to exploit those rights.

(3) A licence under this section shall not be an exclusive licence.

(4) A licence under this section shall be on such terms as the Royal Court thinks fit and, in particular, may include -

(a) terms as to the remuneration payable to the proprietor of the plant breeders' rights, and

(b) terms obliging the proprietor of the plant breeders' rights to make propagating material available to the holder of the licence.

(5) In deciding on what terms to grant an application for a licence under this section, the Royal Court shall have regard to the desirability of securing -

(a) that the variety to which the application relates -

(i) is available to the public at reasonable prices,

(ii) is widely distributed, and

(iii) is maintained in quality, and

(b) that there is reasonable remuneration for the proprietor of the plant breeders' rights to which the application relates.

(6) An application for a licence under this section may be granted whether or not the proprietor of the plant breeders' rights to which the application relates has granted licences to the applicant or any other person.

(7) If and so far as any agreement purports to bind any person not

to apply for a licence under this section, it shall be void.

- (8) If -
- (a) a licence under this section is granted as respects a variety of a species or group in relation to which a period is specified for the purposes of this provision by regulations made by the Department, and
  - (b) the grant takes place before a period of that length has passed since the date of grant of the application for registration of plant breeders' rights to which the licence relates in the Register of Plant Breeders' Rights,

the licence shall not have effect until a period of that length has passed since that date.

(9) The Royal Court may, at any time, on the application of any person, extend, limit or in any other respect vary a licence under this section, or revoke it.

**Duty to use registered name.**

27. (1) Where a name is registered on the Register of Plant Breeders' Rights in respect of a variety, a person may not use any other name in selling, offering for sale or otherwise marketing propagating material therefrom.

(2) Subsection (1) shall have effect in relation to any variety from the date on which an application under section 5 is granted in respect of that variety and shall continue to apply after the period for which the grant has effect.

(3) Subsection (1) shall not preclude the use of any trade mark or

trade name (whether registered under the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006<sup>g</sup> or not) if -

- (a) that mark or name and the registered name are juxtaposed, and
- (b) the registered name is easily recognisable.

(4) A person who contravenes subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(5) In any proceedings for an offence under subsection (4), it shall be a defence to prove that the accused took all reasonable precautions against committing the offence and had not at the time of the offence any reason to suspect that he was committing an offence.

**Improper use of registered name.**

28. (1) If any person uses the registered name of a protected variety in offering for sale, selling or otherwise marketing material of a different variety within the same class, the use of the name shall be a wrong actionable in proceedings by the proprietor of the plant breeders' rights.

(2) Subsection (1) shall also apply to the use of a name so nearly resembling the registered name as to be likely to deceive or cause confusion.

(3) In any proceedings under this section, it shall be a defence to a claim for damages to prove that the defendant took all reasonable precautions against committing the wrong and had not, when using the name, any reason to suspect that it was wrongful.

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<sup>g</sup> Ordinance No. I of 2006.

- (4) In this section "**class**" means any prescribed class.

**Assignments, etc.**

**29.** Subject to any rights vested in any other person of which notice is entered in the Register of Plant Breeders' Rights, the person registered as proprietor of plant breeders' rights in the Register of Plant Breeders' Rights may -

- (a) assign, grant licences under or otherwise deal with the rights, and
- (b) give effectual receipts for any consideration for any such assignment, licence or dealing.

PART VI

CROWN OR STATES USE OF PLANT BREEDERS' RIGHTS

**Crown or States use of plant breeders' rights.**

**30.** (1) The States or any department thereof, any government department of the United Kingdom and any person authorised in writing by any department of the States or any such government department may, without the licence of the person registered as proprietor of plant breeders' rights in the Register of Plant Breeders' Rights and without infringing the plant breeder's rights -

- (a) do anything for the purpose of supplying products for the services of the Crown or the States, or
- (b) dispose of products no longer required for the services of the Crown or the States.

(2) In this section "**the States**" includes the States of Guernsey, the States of Alderney and the Chief Pleas of Sark.

(3) References in this Ordinance to "**the services of the Crown or the States**" are to -

- (a) the defence of the British Islands,
- (b) foreign defence purposes, and
- (c) health service purposes.

(4) The reference to the supply of products for "**foreign defence purposes**" is to their supply for -

- (a) the defence of a country outside the British Islands in pursuance of an agreement or arrangement to which the government of that country and Her Majesty's Government in the United Kingdom are parties, or
- (b) use by armed forces operating in pursuance of a resolution of the United Nations or one of its organs.

(5) The reference to the supply of products for "**health service purposes**" are to their supply for the purpose of providing medical, pharmaceutical, physiotherapy and other services in respect of which benefit is for the time being provided under the Health Service (Benefit) (Guernsey) Law, 1990<sup>h</sup>.

(6) In this Ordinance -

"**Crown or States use**", in relation to plant breeders' rights registered in the Register of Plant Breeders' Rights, means the doing of anything by virtue of this section which would otherwise be an infringement of those

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<sup>h</sup> Ordres en Conseil Vol. XXXII, p. 192.



rights, and

"**the department concerned**", in relation to that use, means the department of the States, or the government department of the United Kingdom, by whom or on whose authority the act was done.

(7) The authority of a department of the States, or a government department of the United Kingdom, in respect of Crown or States use of plant breeders' rights registered in the Register of Plant Breeders' Rights may be given to a person either before or after the use and whether or not he is authorised, directly or indirectly, by the proprietor of the rights to do anything in relation to the rights.

(8) A person acquiring anything sold in the exercise of powers conferred by this section, and any person claiming under him, may deal with it in the same manner as if the plant breeders' right were held on behalf of the Crown or (as the case may be) the States.

**Settlement of terms for Crown or States use.**

31. (1) Where Crown or States use is made of plant breeders' rights registered in the Register of Plant Breeders' Rights, the department concerned shall

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(a) notify the proprietor of the rights as soon as practicable, and

(b) give him such information as to the extent of the use as he may from time to time require,

unless it appears to the department that it would be contrary to the public interest to do so or the identity of the proprietor cannot be ascertained on reasonable inquiry.

(2) Crown or States use of plant breeders' rights registered in the

Register of Plant Breeders' Rights shall be on such terms as, either before or after the use, may be agreed between the department concerned and the proprietor of the rights or, in default of agreement, determined by the Royal Court.

(3) Where the identity of the proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights cannot be ascertained on reasonable inquiry, the department concerned may apply to the Royal Court which may order that no royalty or other sum shall be payable in respect of Crown or States use of the rights until the owner agrees terms with the department concerned or refers the matter to the Royal Court for determination.

**Rights of third parties in case of Crown or States use.**

32. (1) The provisions of any licence, assignment or agreement made between the proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights (or anyone deriving title from him or from whom he derives title) and any person other than a department of the States or a government department of the United Kingdom are of no effect in relation to Crown or States use of any plant breeders' rights registered in the Register of Plant Breeders' Rights, or any act incidental to Crown or States use, so far as they -

- (a) restrict or regulate anything done in relation to the rights, the use of any protected variety or the use of any variety which is dependent on a protected variety, or
- (b) provide for the making of payments in respect of, or calculated by reference to, that use,

and the doing of any of the acts as respects the propagating material of the protected variety described in section 15(1), shall be deemed not to be an infringement of the rights.

(2) Where an exclusive licence is in force in respect of plant breeders' rights registered in the Register of Plant Breeders' Rights -

(a) if the licence was granted for royalties -

(i) any agreement between the proprietor of the rights and a department of the States or government department of the United Kingdom under section 31 ("Settlement of terms for Crown or States use") requires the consent of the licensee, and

(ii) the licensee is entitled to recover from the proprietor such part of the payment for Crown or States use as may be agreed between them or, in default of agreement, determined by the Royal Court,

(b) if the licence was granted otherwise than for royalties -

(i) section 31 applies in relation to anything done which but for section 30 ("Crown or States use of plant breeders' rights") and subsection (1) would be an infringement of the rights of the licensee with the substitution for references to the proprietor of the rights of references to the licensee, and

(ii) section 31 does not apply in relation to anything done by the licensee by virtue of an authority given under section 30.

(3) Where plant breeders' rights registered in the Register of Plant Breeders' Rights have been assigned to the proprietor of those rights in consideration of royalties -

- (a) section 31 applies in relation to Crown or States use of the rights as if the references to the proprietor included the assignor, and any payment for Crown or States use shall be divided between them in such proportion as may be agreed or, in default of agreement, determined by the Royal Court, and
- (b) section 31 applies in relation to any act incidental to Crown or States use as it applies in relation to Crown or States use of the rights.

(4) In this section -

**"act incidental to Crown or States use"** means anything done for the services of the Crown or the States to the order of a department of the States or a government department of the United Kingdom by the proprietor in respect of plant breeders' rights registered in the Register of Plant Breeders' Rights,

**"payment for Crown or States use"** means the amount payable by the department concerned by virtue of section 31, and

**"royalties"** includes any benefit determined by reference to the use of the rights.

**Crown or States use: compensation for loss of profit.**

33. (1) Where Crown or States use is made of plant breeders' rights registered in the Register of Plant Breeders' Rights, the department concerned shall

pay -

- (a) to the proprietor of the rights, or
- (b) if there is an exclusive licence in force in respect of the rights, to the exclusive licensee,

compensation for any loss resulting from his not being awarded a contract to supply the products on the basis of the exercise by the proprietor or licensee of the rights.

(2) Compensation is payable only to the extent that any contract could have been fulfilled from the proprietor's, or licensee's, as the case may be, existing manufacturing capacity, but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract.

(3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing capacity was under-used.

(4) No compensation is payable in respect of any failure to secure contracts for the supply of products made in exercise of plant breeders' rights registered in the Register of Plant Breeders' Rights otherwise than for the services of the Crown or the States.

(5) The amount payable shall, if not agreed between the proprietor or licensee and the department concerned, be determined by the Royal Court on a reference under section 35, and is in addition to any amount payable under section 31 or 32.

**Special provisions for Crown or States use during emergency.**

34. (1) During a period of emergency the powers exercisable in relation to plant breeders' rights registered in the Register of Plant Breeders' Rights

by virtue of section 30 ("Crown or States use of plant breeders' rights") include power to do any act which would otherwise be an infringement of the rights for any purpose which appears to the department concerned necessary or expedient -

- (a) for the efficient prosecution of any war in which Her Majesty may be engaged,
- (b) for the maintenance of supplies and services essential to the life of the community,
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community,
- (d) for promoting the productivity of industry, commerce, agriculture and fisheries,
- (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade,
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community, or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any country outside the Bailiwick which is in grave distress as the result of war.

(2) References in this Ordinance to the services of the Crown or the States include, as respects a period of emergency, those purposes, and

references to "**Crown or States use**" include any act which would apart from this section be an infringement of plant breeders' rights registered in the Register of Plant Breeders' Rights.

(3) In this section "**period of emergency**" means a period during which an order made by the Emergency Powers Authority under the Emergency Powers (Bailiwick of Guernsey) Law, 1965<sup>i</sup> declaring a state of emergency to exist remains in force.

**References of disputes relating to Crown or States use.**

35. (1) A dispute as to any matter which falls to be determined by the Royal Court in default of agreement under -

- (a) section 31 ("Settlement of terms for Crown or States use"),
- (b) section 32 ("Rights of third parties in cases of Crown or States use"), or
- (c) section 33 ("Crown or States use: compensation for loss of profit"),

may be referred to the Royal Court by any party to the dispute.

(2) In determining a dispute between a department of the States or a government department of the United Kingdom and any person as to the terms for Crown and States use of plant breeders' rights registered in the Register of Plant Breeders' Rights, the Royal Court shall have regard to -

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<sup>i</sup> Ordres en Conseil Vol. XX, p. 6; amended by Vol. XXXI, p. 154; No. XIV of 2001; No. VII of 2005; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

- (a) any sums which that person or a person from whom he derives title has received or is entitled to receive, directly or indirectly, from a department of the States or government department of the United Kingdom in respect of the use of the rights, and
- (b) whether that person or a person from whom he derives title has in the Royal Court's opinion without reasonable cause failed to comply with a request of the department of the States or government department of the United Kingdom for the use of the rights on reasonable terms.

(3) One of two or more co-proprietors of plant breeders' rights registered in the Register of Plant Breeders' Rights may, without the concurrence of the others, refer a dispute to the Royal Court under this section, but shall not do so unless the others are made parties, and none of those others is liable for any costs unless he takes part in the proceedings.

(4) Where the consent of an exclusive licensee is required by section 32(2)(a)(i) to the settlement by agreement of the terms for Crown or States use of plant breeders' rights registered in the Register of Plant Breeders' Rights, a determination by the Royal Court of the amount of any payment to be made for that use is of no effect unless the licensee has been notified of the reference and given an opportunity to be heard.

(5) On the reference of a dispute as to the amount recoverable as mentioned in section 32(2)(a)(ii) (right of exclusive licensee to recover part of amount payable to proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights) the Royal Court shall determine what is just having regard to any expenditure incurred by the licensee -



- (a) in developing the protected variety, or
- (b) in making payments to the proprietor in consideration of the licence (other than royalties or other payments determined by reference to the use of the rights).

PART VII  
OFFENCES

**False representations as to rights.**

36. (1) If, in relation to any variety, a person falsely represents that -

- (a) he is entitled to exercise plant breeders' rights which are registered in the Register of Plant Breeders' Rights, or
- (b) any rights derived from such rights,

and he knows that the representation is false, or makes it recklessly, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(2) It is immaterial for the purposes of subsection (1) whether or not the variety to which the representation relates is the subject of plant breeders' rights which are registered in the Register of Plant Breeders' Rights.

(3) If a person, when the rights in plant breeders' rights registered in the Register of Plant Breeders' Rights have ceased to subsist, represents (expressly or by implication) that a variety is still subject to those rights, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the uniform scale.

**Falsification of Register, etc.**

37. (1) If a person makes, or causes or permits to be made, a false entry in the Register of Plant Breeders' Rights, knowing or having reason to believe that it is false, he is guilty of an offence.

(2) If a person -

- (a) makes or causes or permits to be made anything falsely purporting to be a copy of or extract from an entry in the Register of Plant Breeders' Rights, or
- (b) produces or tenders or causes or permits to be produced or tendered in evidence any such thing,

knowing or having reason to believe that it is false, he is guilty of an offence.

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

- (a) on summary conviction, to imprisonment for a term not exceeding 3 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 two years, or a fine, or both.

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

38. (1) 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, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of

the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) 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 (5).

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

(5) 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, any 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.

## PART VIII

### GENERAL PROVISIONS

#### **Reference collections of plant material.**

39. (1) The Registrar may establish and maintain reference collections of plant material.

(2) For the avoidance of doubt, the Registrar may by means of grants of such amounts as he may determine defray or contribute towards the expenses incurred by any other person in maintaining any reference collection of plant material.

**Inspection of plant material.**

40. (1) Subject to the following provisions of this section, when plant breeders' rights are registered in the Register of Plant Breeders' Rights, any specimen of plant material provided to the Registrar under section 3(2)(c) shall, on and from the day of registration, be open to public inspection at the office of the Registrar (or such other place as the Registrar may determine).

(2) Where an application for the registration of plant breeders' rights in the Register of Plant Breeders' Rights is abandoned or refused, no specimen filed in support of the application shall be open to public inspection.

(3) Where it appears to the Registrar that any specimen provided to the Registrar under this Ordinance is one in respect of which, in the designated country concerned, public inspection is prohibited or restricted under the laws relating to the registration of plant breeders' rights in force there, the Registrar may impose an equivalent prohibition or restriction on the public inspection of that specimen.

**Information as to existence of plant breeders' rights.**

41. On the request of a person furnishing such information as may enable the Registrar to identify the plant breeders' rights, and on payment of the appropriate fee, the Registrar shall -

- (a) inform him whether the rights are registered in the Register of Plant Breeders' Rights, and
- (b) state the date of registration and the name and address of the person registered as proprietor in the Register of Plant Breeders' Rights.

**Interpretation.**

**42.** (1) In this Ordinance, unless the context requires otherwise, the following words and expressions shall be construed in accordance with this subsection or the other provisions of this Ordinance referred to against them in this subsection -

**"appropriate fee"** means the fee determined by the Registrar after consultation with the Department,

**"Bailiff"** means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff and Juge Délégué,

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

**"certified"**, in relation to a copy or extract of an entry in the Register of Plant Breeders' Rights, means a copy or extract signed by the Registrar and sealed with his official seal,

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

**"Community instrument"** has the meaning given by section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973<sup>j</sup>,

**"Council Regulation"** means Council Regulation (EC) No 2100/94 of 27<sup>th</sup> July 1994 on Community plant variety rights, and references to particular provisions of the Council Regulation shall be construed as references to those provisions, or provisions of any Community instrument

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<sup>j</sup> Ordres en Conseil Vol. XXIV, p. 87; Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419 and No. XXV of 2002; Ordinance No. XIX of 1994; No. XVII of 1998; No. XLVII of 2001, and No. XVIII of 2003.

replacing them, as amended from time to time,

**"Court of Appeal"** means the court established by the Court of Appeal (Guernsey) Law, 1961,

**"country"** includes any territory,

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

**"a department"** of the States means any department, council or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, however called,

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

**"designated country"** : see sections 4(1)(c) and 4(2),

**"designated country concerned"** means, in relation to plant breeders' rights registered in the Register of Plant Breeders' Rights, the designated country in which the relevant overseas plant breeders' rights are registered under the laws relating to the grant, or registration, of plant breeders' rights in force there,

**"government department"** of the United Kingdom includes any Northern Ireland department, any part of the Scottish Administration and any committee of the National Assembly for Wales,

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

**"holding"** : see section 18(13),

**"in the field"** : see section 18(13),

**"laws"** include rules, practice and procedures,

**"limitation"** in relation to the registration of plant breeders' rights, means any limitation, restriction, term or condition subject to which the rights are granted, or registered, in the Register of Plant Breeders' Rights or, as the context may require, in the designated country concerned,

**"name"** includes any designation,

**"office"** includes any authority or body responsible for the grant, or registration, of plant breeders' rights,

**"oversea plant breeders' rights"** : see section 4(1)(a),

**"oversea registered proprietor"** : see section 4(1)(b),

**"plant breeders' rights"** : see section 1,

**"prescribed"** means prescribed by regulations,

**"proprietor"** means the person who is registered as the proprietor of plant breeders' rights registered in the Register of Plant Breeders' Rights,

**"protected variety"** means, in relation to any plant breeders' rights registered in the Register of Plant Breeders' Rights, the variety in relation to which the rights subsist,

"**qualifying variety**" : see section 6(2) and the schedule to this Ordinance,

"**registered name**" means the name of any variety registered in the Register of Plant Breeders' Rights,

"**Register of Plant Breeders' Rights**" means the Register established under section 2 in which persons are registered as proprietors of plant breeders' rights,

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

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

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 13(1),

"**the services of the Crown or the States**" : see section 30(3),

"**small farmer**" : see section 18(13)

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

"**uniform scale**" means the uniform scale of fines from time to time specified under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>1</sup>,

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<sup>1</sup> Ordres en Conseil Vol. XXXI, p. 278.



"variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be -

- (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- (b) distinguished from any other plant grouping by the expression of at least one of those characteristics, and
- (c) considered as a unit with regard to its suitability for being propagated unchanged,

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

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

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

**General provisions as to subordinate legislation.**

**43.** (1) Regulations under this Ordinance -

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

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

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

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 conferred by this Ordinance to make regulations 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 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.

**Saving for forfeited goods.**

44. Nothing in this Ordinance affects the right of the States or any person deriving title directly or indirectly from the States to sell or use products forfeited under the customs Laws or excise Laws.

**Territorial waters.**

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

**Guernsey ships.**

46. (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>0</sup>.

**Citation.**

47. This Ordinance may be cited as the Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007.

**Extent.**

48. This Ordinance has effect throughout the Bailiwick.

**Commencement.**

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<sup>0</sup> An Act of Parliament (57 & 58 Vict. c. 60).

- 49.** This Ordinance shall come into force on the 28<sup>th</sup> March 2007.

## SCHEDULE

Section 6

## QUALIFYING VARIETY

**Criteria for establishing whether a variety is a qualifying variety.**

1. A variety is a qualifying variety if it is -

- (a) distinct,
- (b) uniform,
- (c) stable, and
- (d) new,

and the following provisions of this Schedule have effect for the purpose of determining whether these criteria are met; provided that the criteria relating to novelty -

- (i) do not apply in relation to any variety in relation to which overseas plant variety rights have been registered in a designated country before the commencement of this Ordinance, and
- (ii) in relation to any other variety, shall apply at the discretion of the Registrar.

**Distinctness.**

2. The variety shall be deemed to be distinct if it is clearly distinguishable by one or more characteristics which are capable of a precise

description from any other variety whose existence is a matter of common knowledge at the time of the application.

**Uniformity.**

3. The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in those characteristics which are included in the examination for distinctness.

**Stability.**

4. The variety shall be deemed to be stable if those characteristics which are included in the examination for distinctness, as well as any others used for the variety description, remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

**Novelty.**

5. (1) The following provisions of this paragraph are subject to the proviso in paragraph 1.

(2) The variety shall be deemed to be new if no sale or other disposal of propagating or harvested material of the variety for the purposes of exploiting the variety has, with the consent of the applicant, taken place -

(a) in the Bailiwick, earlier than one year, and

(b) elsewhere than in the Bailiwick, earlier than -

(i) 4 years, or

(ii) in the case of trees or vines, 6 years,

before the date of the application.

(3) For the purposes of sub-paragraph (2), there shall be disregarded any sale or other disposal to which subparagraph (4), (5), (7) or (8) applies.

(4) This sub-paragraph applies to any sale or other disposal of a stock of material of the variety to a person who at the time of the sale or other disposal is, or who subsequently becomes, entitled to be registered as the proprietor of plant breeders' rights in the Register of Plant Breeders' Rights in respect of the variety.

(5) This subparagraph applies to -

- (a) any sale or other disposal of propagating material of the variety to a person as part of qualifying arrangements, and
- (b) any sale or other disposal to the applicant, by a person who uses the propagating material of the variety under any such arrangements, of the material produced directly or indirectly from the use.

(6) For the purposes of subparagraph (5), "**qualifying arrangements**" are arrangements under which -

- (a) a person uses propagating material of the variety under the applicant's control for the purpose of increasing the applicant's stock, or of carrying out tests or trials, and
- (b) the whole of the material produced, directly or indirectly, from the material becomes or remains the property of the applicant.

(7) This subparagraph applies to any sale or other disposal of material of the variety, other than propagating material, produced in the course of -

- (a) the breeding of the variety,
- (b) increasing the applicant's stock of material of the variety, or
- (c) carrying out tests or trials of the variety.

(8) This subparagraph applies to any disposal of material of the variety, otherwise than by way of sale, at an exhibition or for the purposes of display at an exhibition.

(9) For the purposes of subparagraph (2), any sale or other disposal of propagating or harvested material of a variety for the purposes of exploiting the variety shall, if the variety is related to another variety, be treated as being also a sale or other disposal of propagating or harvested material of the other variety for the purposes of exploiting that variety.

(10) For the purposes of subparagraph (9), a variety is related to another if its nature is such that repeated production of the variety is not possible without repeated use of the other variety.



## **The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 (Amendment) Ordinance, 2007**

**THE STATES**, in pursuance of their Resolution of the 27th September, 2006<sup>a</sup>, and in exercise of the powers conferred on them by section 2(2) of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment to 2003 Law.**

1. Section 2 of the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 is amended by inserting, immediately after section 2(1)(a)(vii), the following additional paragraph-

“(viiA) an arbitrator or umpire appointed by, or by virtue of, an arbitration agreement within the meaning of the Arbitration (Guernsey) Laws, 1982 and 1986<sup>c</sup> or the Arbitration (Alderney) Law, 1983 and 1986<sup>d</sup>,”.

### **Interpretation.**

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

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<sup>a</sup> Article XIII of Billet d'État No. XVI of 2006.

<sup>b</sup> Ordres en Conseil No. I of 2004.

<sup>c</sup> Ordres en Conseil, Vol. XXVII, p. 525; Vol. XXIX, p. 178.

<sup>d</sup> Ordres en Conseil, Vol. XXVIII, p. 236; Vol. XXIX, p. 171.

(2) 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 applied.

**Extent.**

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation.**

4. This Ordinance may be cited as the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 (Amendment) Ordinance, 2007.

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

## **The Social Security (Reciprocal Agreement with The Netherlands) Ordinance, 2007**

**THE STATES**, in exercise of the powers conferred upon them by section 113 of the Social Insurance (Guernsey) Law, 1978, as amended<sup>a</sup> and all other powers enabling them, hereby orders:

### **Convention to have effect.**

1. (1) The Convention on Social Security between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of The Netherlands, signed at the Hague on the 21<sup>st</sup> December, 2005<sup>b</sup>, shall have full force and effect.

(2) The Social Insurance (Guernsey) Law, 1978, as amended, shall have effect subject to such modifications as may be required for the purpose of giving effect to the Convention.

### **Interpretation.**

2. (1) The Interpretation (Guernsey) Law, 1948<sup>c</sup>, shall apply to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney,

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<sup>a</sup> Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; No. XII of 1993; Ordinance No. XIV of 1993 (Tome XXVI, p. 177); No. V of 1994; No's. VI and XIII of 1995; No. I of 1998; No. VI of 1999 No. X of 2000; No. IX of 2001; No. XXIII of 2002 (the Long-term Care Insurance (Guernsey) Law, 2002); No. XXIV of 2003; No. XI of 2004; and Ordinance No. XX of 2003.

<sup>b</sup> The Convention was presented to Parliament by Command of Her Majesty in March 2006 (Command Paper 6765).

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

Herm and Jethou.

(2) Unless the context otherwise requires, references in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

**Extent.**

3. This Ordinance shall apply to the Islands of Guernsey, Alderney, Herm and Jethou.

**Citation.**

4. This Ordinance may be cited as the Social Security (Reciprocal Agreement with The Netherlands) Ordinance, 2007.

**Commencement.**

5. This Ordinance shall come into force on the 28<sup>th</sup> day of March 2007; provided that if the Convention is not in force on that day, this Ordinance shall come into force on the day that the Convention enters into force.

**The Criminal Justice (Miscellaneous Provisions)  
(Bailiwick of Guernsey) Law, 2006  
(Commencement) Ordinance, 2007**

**THE STATES**, in exercise of the powers conferred on them by section 21 of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006<sup>a</sup>, hereby order:-

**Commencement of Law.**

1. The Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 shall come into force on the 28<sup>th</sup> March, 2007.

**Citation.**

2. This Ordinance may be cited as the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2007.

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<sup>a</sup> Order in Council No. of 2006.

**The Criminal Justice (Attempts, Conspiracy and  
Jurisdiction) (Bailiwick of Guernsey) Law, 2006  
(Commencement) Ordinance, 2007**

**THE STATES**, in exercise of the powers conferred on them by section 24 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006<sup>a</sup>, hereby order:-

**Commencement of Law.**

1. The Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006 shall come into force on the 28<sup>th</sup> March, 2007.

**Citation.**

2. This Ordinance may be cited as the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2007.

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<sup>a</sup> Order in Council No. of 2006.