

The European Communities (Implementation of Food and Feed Controls) (Guernsey) Ordinance, 2016

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The European Communities (Implementation of Food and Feed Controls) (Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 26th May, 2011^a, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b, section 1 of the Alderney (Application of Legislation) Law, 1948^c, Article 71 of the Reform (Guernsey) Law, 1948^d and all other powers enabling them in that behalf, hereby order:-

PART I PRELIMINARY

Designated Community provisions to have effect.

1. (1) The designated Community provisions specified in **Schedule 1** have effect in Guernsey subject to the provisions of this Ordinance.

^a Article VI of Billet d'État No. VIII of 2011.

^b Ordres en Conseil Vol. XXXV(1), p. 65.

^c Ordres en Conseil Vol. XIII, p. 448; as amended by Vol. XXIV, p. 210; Vol. XXIX, p. 299; Vol. XXX, p. 224; Vol. XXXVII, p. 251.

^d Ordres en Conseil Vol. XIII, p. 288; Vol. XIV, p. 407; Vol. XV, p. 279; Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, pp. 84 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, p. 164; Vol. XXXII, p. 41; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, pp. 150 and 295; Vol. XLIII(1) p. 387; No. III of 2004; Nos. II and XX of 2007; Nos. XIII and XXII of 2008; No. VII of 2010; also amended by Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 126; and Ordinance No. XXXII of 2011.

(2) For the avoidance of doubt, unless the context requires otherwise, a function conferred on a competent authority or competent authorities by a designated Community provision is deemed to be a function conferred on the Department.

PART II

REGISTRATION OF FOOD BUSINESSES AND FEED BUSINESSES

Food businesses to be registered.

2. A person who operates a food business is guilty of an offence unless—
- (a) the person's name,
 - (b) the nature of the food business, and
 - (c) the name and address of the premises in or from which the food business is operated,

is registered in the food business register.

Feed businesses to be registered.

3. A person who operates a feed business is guilty of an offence unless—
- (a) the person's name,
 - (b) the nature of the feed business, and
 - (c) the name and address of the premises in or from which the feed business is operated,

is registered in the feed business register.

Applications for registration.

4. (1) Any person who operates a food business may apply to the Department for registration in the food business register.

(2) Any person who operates a feed business may apply to the Department for registration in the feed business register.

(3) Any registered person may apply to the Department to amend the registration of the person's food business or feed business.

(4) An application under subsection (1), (2) or (3) –

(a) must be in the form and manner, and include any information, required by the Department, and

(b) must be accompanied by the prescribed fee.

(5) On receiving an application under subsection (1) or (2) made in accordance with subsection (4), the Department may register the food business or feed business by entering, in the relevant register –

(a) the name and address of the applicant,

(b) the nature of the food business or feed business, and

(c) the name and address of the premises in or from which the food business or feed business is operated.

(6) On receiving an application under subsection (3) made in accordance with subsection (4), the Department may amend the registration concerned by entering any relevant amendments in the relevant register.

(7) The Department must not consider an application if –

- (a) it does not include all the information sought by the Department, or
- (b) it is not accompanied by the prescribed fee.

Grounds for refusal, variation, suspension or revocation of registration.

5. (1) The Department may refuse an application made under **section 4** or vary, suspend or revoke a registration for any reason it considers appropriate.

(2) Without limiting the Department's discretion under subsection (1), the Department may refuse an application made under **section 4**, or vary, suspend or revoke a registration, if it is satisfied that –

- (a) any applicable Community provision or relevant Ordinance has not been, is not being or will not be, complied with,
- (b) the person concerned has committed an offence under the law of any country or territory, whether that person has been convicted or not, relating to food, feed, animal or public health or welfare, or the environment,

- (c) information required in relation to an application has not been furnished, or information that is false, deceptive or misleading in a material respect has been furnished in relation to an application,
- (d) the premises to which an application under **section 4**, or the registration, relates is not a fit and proper premises to be registered,
- (e) the person concerned is not a fit and proper person to be registered,
- (f) a registered person has ceased to carry out the activity to which the registration relates on the premises to which the registration relates,
- (g) the person concerned, having been given 14 days to do so, fails to pay a fee payable under this Ordinance, or
- (h) it is necessary for the protection of human health, animal health or welfare, or the environment, or
- (i) it is necessary, ancillary or supplementary for any applicable Community provision to have full effect.

(3) For the purpose of determining whether or not there are any grounds for refusing an application made under **section 4** or for varying, suspending or revoking a registration, the Department may at any time —

- (a) seek and receive any information from any person (whether in Guernsey or elsewhere) as the Department considers appropriate, and
 - (b) take into account any information obtained from any source.
- (4) A refusal, variation, suspension or revocation under this section must be made in accordance with **section 6 or 7**.
- (5) In subsection (2) and **sections 6 and 7**, "the person concerned" means –
- (a) in the case of refusal of an application, the applicant, and
 - (b) in the case of a variation, suspension or revocation, the registered person.

Fast-track refusal, variation, suspension or revocation.

6. (1) The Department may make a refusal, variation, suspension or revocation on a ground specified in **section 5(2)(h) or (i)** with effect immediately or from any time specified by the Department, by giving written notice to the person concerned.

(2) Following a refusal, variation, suspension or revocation in accordance with subsection (1), the Department must–

- (a) give the person concerned written notice –

(i) of the refusal, variation, suspension or revocation and the reasons for it,

(ii) stating that the person concerned may make representations in relation to the refusal, variation, suspension or revocation to the Department within 14 days of the notice,

and

(b) consider any representation duly made by the person concerned.

(3) After considering any representations duly made by the person concerned, the Department may confirm, modify or annul the refusal, variation, suspension or revocation by giving the person concerned written notice –

(a) of the Department's decision and the reasons for it, and

(c) where the refusal, variation, suspension or revocation is confirmed or modified by the Department, stating that the person concerned may appeal the refusal, variation, suspension or revocation under **section 57** of this Ordinance.

Standard procedure for refusal, variation, suspension or revocation of approval.

7. (1) Where the Department proposes to make a refusal, variation, suspension or revocation on any ground other than a ground specified in **section 5(2)(h) or (i)**, the Department must –

(a) give the person concerned written notice –

- (i) of the proposal and the reasons for it,
- (ii) stating that the person concerned may make representations in relation to the proposal to the Department within 14 days of the notice,

and

- (b) consider any representation duly made by the person concerned.

(2) After considering any representations duly made by the person concerned, the Department may decide whether or not to make a refusal, variation, suspension or revocation by giving the person concerned written notice –

- (a) of the Department's decision and the reasons for it, and
- (d) in the case of any refusal, variation, suspension or revocation, stating that the person concerned may appeal it under **section 57** of this Ordinance.

Department to maintain public register of food businesses and feed businesses.

8. The Department must maintain and make available to the public, in a manner and form the Department considers appropriate, a register for the purposes of

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- (a) article 6 of Regulation 852/2004, and
- (b) article 9 of Regulation 183/2005.

General duties of registered persons.

9. (1) A registered person must –
- (a) maintain any records required by **section 38**, in the prescribed manner and form for a period of three years,
 - (b) on request by an authorised officer, produce for inspection any such records, and
 - (c) make any prescribed information returns in the prescribed form and manner and at the prescribed times.
- (2) A person who contravenes subsection (1) is guilty of an offence.

PART III

APPROVAL OF FOOD BUSINESSES AND FEED BUSINESSES

Certain food and feed businesses to be approved.

10. A person is guilty of an offence who operates any premises as –
- (a) a food business to which article 4(2) of Regulation 853/2004 applies, other than under and in accordance with a food business approval, or
 - (b) a feed business to which article 10 of Regulation 183/2005 applies, other than under and in accordance with a feed business approval.

Exemption for producers engaged in direct supply to consumers.

11. (1) Subject to subsection (2), section 10(a) does not apply to a producer engaged in the supply of primary products only to –

- (a) final consumers, or
- (b) a food business operator located in the Bailiwick that supplies the primary products only to final consumers.

(2) The exemption in subsection (1) does not apply in relation to the supply of primary products where any of the final consumers mentioned in subsection (1)(a) or (b) are located outside the Bailiwick, unless –

- (a) the producer meets the conditions specified in Schedule 2, and
- (b) in any case where subsection (1)(b) applies, the food business operator concerned is the operator of retail premises.

(3) Article 1(3)(c), (d) and (e) of Regulation 853/2004 has no effect to exempt a person operating a food business from section 10(a) except as provided by subsections (1) and (2).

Applications for approval.

12. (1) Any person who operates a food business or feed business may apply to the Department for a food business approval or feed business approval, respectively.

(2) Any holder of a food business approval or feed business approval may apply to the Department to amend the approval.

(3) An application under subsection (1) or (2) –

- (a) must be in the form and manner, and include any information, required by the Department, and
- (b) must be accompanied by the prescribed fee.

(4) On receiving an application under subsection (1) made in accordance with subsection (3), the Department may, subject to any conditions specified by the Department –

- (a) grant a food business approval for the purposes of article 4 of Regulation 853/2004, or
- (b) grant a feed business approval for the purposes of article 10 of Regulation 183/2005.

(5) On receiving an application under subsection (2) made in accordance with subsection (3), the Department may amend the food business approval or feed business approval concerned by –

- (a) issuing an amended certificate of approval to the holder, and
- (b) entering any relevant amendments in the relevant register.

(6) The Department may, in exceptional circumstances, for good and sufficient reason make an approval valid for a limited period.

(7) The Department must not consider an application if –

- (a) it does not include all the information sought by the Department, or
- (b) it is not accompanied by the prescribed fee.

Certificates of approval.

13. Upon granting an approval, the Department must issue a certificate to the holder of the approval ("**certificate of approval**") specifying –

- (b) the name of the holder of the approval,
- (c) the address of the premises to which the approval relates,
- (d) whether it is a food business approval or a feed business approval,
- (e) the nature of the activity to which the approval relates,
- (f) the conditions to which the approval is subject,
- (g) the period of validity (if any) of the approval,
- (h) a unique reference number that identifies the food business or feed business, and

- (i) the address of the Department.

Grounds for refusal, variation, suspension or revocation of approval.

14. (1) The Department may refuse an application made under **section 12** or vary, suspend or revoke an approval, for any reason it considers appropriate.

(2) Without limiting the Department's discretion under subsection (1), the Department may refuse an application made under **section 12**, or vary, suspend or revoke an approval, if it is satisfied that –

- (a) any applicable Community provision or relevant Ordinance has not been, is not being or will not be complied with,
- (b) the person concerned has committed an offence under the law of any country or territory, whether that person has been convicted or not, relating to food, feed, animal or public health or welfare, or the environment,
- (c) the person concerned has failed to comply with a condition of the approval,
- (d) information required in relation to an application has not been furnished, or information that is false, deceptive or misleading in a material respect has been furnished in relation to an application,
- (e) the premises to which the application or approval relates is not a fit and proper premises to be approved,

- (f) the person concerned is not a fit and proper person to be approved,
- (g) the holder of the approval has ceased to carry out the activity to which that approval relates on the premises to which that approval relates,
- (h) the person concerned, having been given 28 days to do so, fails to pay a fee payable under this Ordinance,
- (i) it is necessary for the protection of human health, animal health or welfare, or the environment, or
- (j) it is necessary, ancillary or supplementary for any applicable Community provision to have full effect.

(3) For the purpose of determining whether or not there are any grounds for refusing an application made under **section 12** or varying, suspending or revoking an approval, the Department may at any time —

- (a) seek and receive any information from any person (whether in Guernsey or elsewhere) as the Department considers appropriate, and
- (b) take into account any information obtained from any source.

(4) A refusal, variation, suspension or revocation under this section must be made in accordance with **section 6 or 7**; but for the purposes of this

subsection, the references in **section 6(1) and 7(1)** to a ground specified in **section 5(2)(h) or (i)** have effect as if they were references to a ground specified in **section 14(2)(i) or (j)**.

Effect of suspension, revocation or expiry of approval.

15. (1) Upon suspension of an approval under this Ordinance, both the approval and the registration of the person and premises suspended have no effect for the duration of the suspension as notified to that person.

(2) Upon revocation of an approval under this Ordinance, or upon expiry of the approval, both the approval and the registration of the person and premises who or which was formerly approved has no effect.

Surrender of certificates.

16. (1) A holder of an approval must surrender to the Department the certificate of approval issued to the holder within 14 days of any of the following –

- (a) expiry of the approval,
- (b) receiving written notice of suspension or revocation of the approval under this Ordinance,
- (c) receiving a written request from the Department to return the certificate for the purposes of amendment or variation, or
- (e) receiving an amended or varied certificate of approval from the Department.

(2) A person who contravenes subsection (1) is guilty of an offence.

(3) A holder of an approval may at any time surrender to the Department the certificate of approval issued to the holder.

(4) Upon surrender of a certificate —

(a) the approval signified by the certificate (other than a certificate surrendered for the purposes of amendment or variation) ceases to have effect when the certificate is received by the registration authorised officer, but

(b) this Ordinance continues to apply, for the purpose of enabling the holder of the approval to be investigated or otherwise dealt with for a matter arising before the surrender, as if the certificate had not been surrendered.

(5) Upon the expiry of any period of suspension, the Department must return to the holder of the approval any certificate surrendered to the Department as a result of the suspension.

Department to maintain public register of approved food businesses and approved feed businesses.

17. The Department must maintain and make available to the public, in any manner and form the Department considers appropriate —

(a) a register of approved food businesses, and

(b) a register of approved feed businesses.

General duties of holders.

18. (1) A holder of an approval must –
- (a) comply with all conditions of the approval,
 - (b) maintain any records required as a condition of the approval, or required by section 38, in the prescribed manner and form for a period of three years,
 - (c) on request by an authorised officer, produce for inspection any such records,
 - (d) make any prescribed information returns in the prescribed form and manner and at the prescribed times, and
 - (e) during business hours, prominently display the certificate of approval on the premises to which the approval relates.
- (2) A person who contravenes subsection (1) is guilty of an offence.

PART IV

DUTIES RELATING TO FOOD, FEED AND RELATED OPERATIONS

Specific duties relating to feed

Undesirable substances in feedingstuffs.

19. (1) A person must not import, export, put into circulation, manufacture, incorporate in a feedingstuff, feed to an animal or have in the person's possession or under the person's control a product unless —

- (a) it is of sound merchantable quality, and
- (b) if the product is mentioned in column (2) of Annex I to Directive No. 2002/32/EC, the amount of an undesirable substance mentioned in column (1) of that Annex in relation to that product does not exceed the level specified in column (3) in relation to that product.

(2) A person must not, for dilution purposes, mix a product that does not comply with subsection (1) with another product or a further quantity of the same product.

(3) Subsection (1) does not apply to a complementary feedingstuff taking into account the proportion of the complementary product prescribed for use in a daily ration.

(4) Annex I to Directive No. 2002/32/EC is to be construed and has effect as if each maximum level referred to in footnotes (1), (3) and (4) is prescribed as a maximum level for the relevant product in Annex I, for the purposes of subsection (1)(b).

(5) A person must not have in the person's possession or the person's control, sell or supply an animal to which a product has been administered in contravention of subsection (1).

(6) A person who imports, exports, puts into circulation, manufactures or incorporates in a feedingstuff a product, must maintain a record of each transaction relating to a product or a feedingstuff in the prescribed manner and form for eight years and make the record available on request to an authorised officer.

(7) A person who contravenes subsection (1), (2), (5) or (6) is guilty of an offence.

(8) In this section, "**product**" means a product intended for animal feed, including an additive, feedingstuff or premixture.

(9) Subject to subsection (8), any word or expression used in this section and also used in Directive No. 2002/32/EC has the same meaning as it has in the Directive.

Notice of import of feed.

20. (1) A person must not import an animal feed unless the person has given notice to the Department in the prescribed form and manner, at least 5 working days before the animal feed is imported, of —

- (a) the nature and quantity of the animal feed,
- (b) the place where it is intended to land the animal feed in Guernsey,
- (c) the date and time that the animal feed is to be imported into Guernsey, and

the animal feed is imported into Guernsey in accordance with the notice.

(2) A person who gives notice under subsection (1) must notify the Department in writing of any change of circumstances relating to the importation or proposed importation of the animal feed to which the notice relates –

(a) within 24 hours of becoming aware of the change, and

(b) at least 24 hours before the product enters Guernsey.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence.

Duties or obligations in relation or supplementary to Regulation 178/2002

Importation of food or feed.

21. (1) A person is guilty of an offence who imports food or feed in contravention of article 11 of Regulation 178/2002.

(2) For the avoidance of doubt, article 11 of Regulation 178/2002 has effect as modified by article 10 of Regulation 852/2004.

Unsafe food or feed.

22. (1) A person is guilty of an offence who –

(a) places unsafe food on the market in contravention of article 14,

(b) places unsafe feed on the market or feeds it to an animal

in contravention of article 15, or

- (c) otherwise contravenes article 14 or 15,

of Regulation 178/2002.

- (2) A person is guilty of an offence who –

- (a) uses any substance as an ingredient in the preparation of food,
- (b) abstracts any constituent from food,
- (c) subjects food to any other process or treatment, or
- (d) does or omits any other thing,

to make food unsafe, with intent that the food be sold for human consumption in that state.

Labelling, advertising and presentation.

- 23. (1) A person is guilty of an offence who –

- (a) in relation to the labelling, advertising or presentation of food, contravenes article 16, or
- (b) otherwise misleads consumers in contravention of article 16,

of Regulation 178/2002.

(2) A person is guilty of an offence who sells to any person any food for human consumption which is not of the nature, substance, or quality of the food demanded by the latter person, to the prejudice or other disadvantage of that latter person.

Requirements of food law and verification.

24. A food business operator or feed business operator is guilty of an offence who –

- (a) fails to ensure that a food or feed satisfies the relevant requirements of food law,
- (b) fails to carry out the necessary verification, or
- (c) does or omits any other thing,

in contravention of article 17 of Regulation 178/2002.

Identification, traceability and other information requirements.

25. (1) A food business operator or feed business operator is guilty of an offence who –

- (a) fails to identify a person from whom the operator has been supplied with food, feed, a food producing animal or a substance intended to be or expected to be incorporated into food or feed,
- (b) fails to have in place systems and procedures (including documentation) to allow information on provenance and

destination of foods or feeds to be made available to the Department on demand,

- (c) fails to provide the Department with information on provenance or destination of a food or feed on demand,
- (d) fails to identify a person to whom a product marketed by the operator has been supplied,
- (e) fails to have in place systems and procedures to identify persons to whom products marketed by the operator have been supplied,
- (f) fails to adequately label or identify food or feed for the purposes of traceability through relevant documentation or information,
- (g) places food on the market, or
- (h) does or omits any other thing,

in contravention of article 18 of Regulation 178/2002.

(2) Without limiting the generality of subsection (1), a food business operator or feed business operator is guilty of an offence who fails –

- (a) to make available information in relation to food of non-animal origin, except sprouts and seeds intended for the production of sprouts, in accordance with **Schedule 3**,

- (b) to keep information in relation to food of non-animal origin, except sprouts and seeds intended for the production of sprouts, for the duration specified in **Schedule 3**,
- (c) to make available information in relation to food of animal origin in accordance with **Schedule 4**,
- (d) to update information in relation to food of animal origin in accordance with **Schedule 4**,
- (e) to keep information in relation to food of animal origin available for the duration specified in **Schedule 4**,
- (f) to make available information in relation to sprouts or seeds intended for the production of sprouts in accordance with **Schedule 5**,
- (g) to transmit information in relation to sprouts or seeds intended for the production of sprouts in accordance with **Schedule 5**,
- (h) to update information in relation to sprouts or seeds intended for the production of sprouts in accordance with **Schedule 5**, or
- (i) to keep information in relation to sprouts or seeds intended for the production of sprouts for the duration specified in **Schedule 5**.

Withdrawal and recall.

26. (1) A food business operator or feed business operator is guilty of an offence who fails –

- (a) to initiate procedures to withdraw a food or feed from the market,
- (b) to ensure that a food or feed is withdrawn from the market,
- (c) to inform the Department of the initiation of procedures to withdraw a food or feed from the market,
- (d) to collaborate with the Department,
- (e) to effectively and accurately inform consumers or users of the reasons for withdrawal of a food or feed from the market, or
- (f) to recall products from consumers or users,

in contravention of article 19 or 20 of Regulation 178/2002.

(2) A food business operator or feed business operator responsible for retail or distribution activities that do not affect the packaging, labelling, safety or integrity of a food, is guilty of an offence who fails –

- (a) to initiate procedures to withdraw a food or feed from the market,

- (b) to ensure that a food or feed is withdrawn from the market,
- (c) to pass on relevant information necessary to trace a food or feed, or
- (d) to cooperate in action taken by producers, processors, manufacturers or the Department,

in contravention of article 19(2) or article 20(2) of Regulation 178/2002.

(3) A food business operator or feed business operator is guilty of an offence who –

- (a) fails to immediately inform the Department of any grounds for believing that -
 - (i) a food which it has placed on the market may be injurious to human health, or
 - (ii) a feed which it placed on the market may not satisfy the feed safety requirements,
- (b) fails to inform the Department of the action taken to prevent –
 - (i) risks to the final consumer, or
 - (ii) risk arising from the use of feed, or

- (c) prevents or discourages any person from cooperating with the Department,

in contravention of article 19(3) or article 20(3) of Regulation 178/2002.

(4) A food business operator or feed business operator is guilty of an offence who fails or refuses to collaborate with the Department on action taken to avoid or reduce risks posed by a food or feed, in contravention of article 19(4) or article 20(4) of Regulation 178/2002.

(5) A food business operator or feed business operator is guilty of an offence who fails in any other way to respond to an actual or potential breach of food safety requirements or feed safety requirements, in contravention of article 19 or article 20 of Regulation 178/2002.

(6) Nothing in subsections (2) to (5) limits the generality of subsection (1).

(7) For the avoidance of doubt, where the Department has reasonable grounds to suspect that a food business operator or feed business operator should be taking measures pursuant to article 19 or article 20 of Regulation 178/2002, but is failing to do so, the Department may issue a compliance notice to the operator under **section 52**.

Exports and re-exports.

27. (1) A person is guilty of an offence who exports or re-exports food or feed which does not comply with the relevant requirements of food law, unless the non-compliance is permitted in accordance with article 12 of Regulation 178/2002.

(2) For the avoidance of doubt, article 12 of Regulation 178/2002

has effect as modified by article 11 of Regulation 852/2004.

Duties in relation to other Community provisions

Contravention of Regulation 852/2004 (hygiene of foodstuffs).

28. (1) A food business operator is guilty of an offence who —
- (a) fails to ensure that all stages of production, processing and distribution comply with article 3,
 - (b) contravenes the general hygiene requirements referred to in article 4(1) or (2),
 - (c) fails to adopt specific hygiene measures, in contravention of article 4(3),
 - (d) fails to use appropriate sampling and analytical methods, in contravention of article 4(5),
 - (e) fails to put in place, implement and maintain procedures based on the HACCP principles, in contravention of article 5(1),
 - (f) fails to provide the Department with evidence, in contravention of article 5(4)(a),
 - (g) fails to ensure that documents comply with article 5(4)(b),

- (h) fails to retain documents or records, in contravention of article 5(4)(c),
- (i) fails to co-operate with the Department, in contravention of article 6(1),
- (j) fails to make notification or ensure that the Department has up to date information, in contravention of article 6(2),
- (k) fails to ensure that premises are approved, in contravention of article 6(3), or
- (l) otherwise contravenes any provision (mentioned in this subsection),

of Regulation 852/2004.

- (2) A food business operator is guilty of an offence who –
 - (a) having adopted a specific hygiene measure referred to in article 4(3) of Regulation 852/2004, fails to comply with that measure,
 - (b) contravenes a criteria, requirement or target referred to in article 4(4) of Regulation 852/2004 that is adopted in accordance with article 14 (3) of that Regulation,
 - (c) having adopted a principle referred to in any of subparagraphs (a) to (g) of article 5(2) of Regulation

852/2004, fails to comply with the principle,

- (d) contravenes a detailed arrangement referred to in article 5(5) of Regulation 852/2004, or
- (d) otherwise contravenes a provision of Regulation 852/2004 mentioned in this subsection.

Contravention of Regulation 853/2004 (hygiene rules for food of animal origin).

29. A food business operator is guilty of an offence who —

- (a) subject to articles 8, 9 and 10 of Commission Regulation 1162/2009, fails to comply with a relevant provision, in contravention of article 3(1),
- (b) uses a substance in contravention of article 3(2) or in a manner prohibited by article 3(2),
- (c) places a product of animal origin on the market in contravention of article 4(1) or 5(1),
- (d) operates in contravention of article 4(2) or (3),
- (e) fails to co-operate with the Department, or operates, in contravention of article 4(4),
- (f) removes a health mark, in contravention of article 5(3),
- (g) imports a product of animal origin in contravention of article 6,

- (h) fails to ensure that certificates or other documents accompany a consignment of products of animal origin, in contravention of article 7(1),
- (i) fails to comply with any applicable implementing measure or transitional arrangement, in contravention of article 9, or
- (j) otherwise contravenes a provision (mentioned in this subsection),

of Regulation 853/2004.

Contravention of Regulation 854/2004 (products of animal origin for human consumption).

30. A person is guilty of an offence who —

- (a) imports a product of animal origin in contravention of article 11 or 12,
- (b) imports a live bivalve mollusc, echinoderm, tunicate, or marine gastropod in contravention of article 13,
- (c) imports a product of animal origin in contravention of article 14,
- (d) imports a fishery product in contravention of article 15, or

- (e) otherwise contravenes a provision (mentioned in this subsection),

of Regulation 854/2004.

Contravention of Regulation 183/2005 (feed hygiene).

- 31.** (1) A feed business operator is guilty of an offence who –
- (a) fails to comply with any requirement of article 4 or 5,
 - (b) fails to put in place, implement or maintain procedures based on the HACCP principles in contravention of article 6(1),
 - (c) fails to review procedures or make necessary changes in contravention of article 6(3),
 - (d) fails to comply with evidential or documentary requirements, in contravention of article 7(1),
 - (e) fails to submit proof of cover by financial guarantees, in contravention of article 8(2),
 - (f) fails to co-operate with the Department, in contravention of article 9(1),
 - (g) fails to notify, or provide up to date information to, the Department, in contravention of article 9(2),
 - (h) fails to ensure that a feed business is approved, in

contravention of article 10,

- (i) operates in contravention of article 11,
- (j) fails to submit a declaration, in contravention of article 17(2),
- (k) fails to make a declaration, in contravention of article 18(3) (except that for the date "1 January 2008" in that article, substitute "1 January 2018"), *[the intention is to give applicants a transitional period of 2 years to make the requisite declaration – assuming we can bring this Ordinance into force on 1 January 2016]*
- (l) imports feed in contravention of article 23,
- (m) produces feed for export, in contravention of article 25,
or
- (n) otherwise contravenes a provision (mentioned in this subsection),

of Regulation 183/2005.

- (2) A feed business operator is guilty of an offence who —
 - (a) contravenes a criteria or target referred to in article 5(3) of Regulation 183/2005 that is adopted in accordance with article 31 (2) of that Regulation,

- (b) contravenes a measure referred to in article 6(5) of Regulation 183/2005 that is adopted in accordance with article 31(2) of that Regulation,
- (c) contravenes an arrangement referred to in article 7(3) of Regulation 183/2005 that is adopted in accordance with article 31(2) of that Regulation, or
- (d) otherwise contravenes a provision mentioned in this subsection.

Contravention of Regulation 2073/2005 (microbiological criteria for foodstuffs).

32. A food business operator is guilty of an offence who —

- (a) contravenes any requirement of article 3,
- (b) fails to perform testing, in contravention of article 4,
- (c) contravenes the sampling and testing requirements of article 5,
- (d) contravenes the labelling requirements of article 6,
- (e) fails to take measures or corrective or other actions, in contravention of article 7(1),
- (f) fails to recall or withdraw or recall any product or foodstuffs, or deals with a product, in contravention of article 7(2),

- (g) fails to take actions, in contravention of article 7(4),
- (h) fails to analyse trends or take appropriate actions, in contravention of article 9, or
- (i) otherwise contravenes a provision (mentioned in this subsection),

of Regulation 2073/2005.

Contravention of Regulation 2074/2005 (miscellaneous measures and controls).

33. A food business operator is guilty of an offence who –

- (a) contravenes any requirement concerning food chain information referred to in article 1,
- (b) contravenes any requirement concerning fishery products referred to in article 2, or
- (c) otherwise contravenes any requirement mentioned in article 1 or 2 ,

of Regulation 2074/2005.

Contravention of Regulation 2075/2005 (*Trichinella* in meat).

34. A food business operator is guilty of an offence who –

- (a) fails to sample carcasses in accordance with article 2,
- (b) deals with a carcass, other parts of an animal, or animal

waste or animal by-products in contravention of article 4,

- (c) applies the health mark in contravention of article 4(3),
- (d) uses a method of detection in contravention of article 6(1),
- (e) fails to forward a positive sample, in contravention of article 6(2),
- (f) fails to inform the Department, in contravention of article 9, or
- (g) otherwise contravenes a provision (mentioned in this subsection),

of Regulation 2075/2005.

Contravention of Commission Regulation 669/2009 (imports of feed or food of non-animal origin).

35. (1) The designated points of entry in respect of all products for the purposes of article 5 of Commission Regulation 669/2009 are –

- (a) St. Peter Port Harbour,
- (b) St. Sampson's Harbour, and
- (c) La Villiaze Airport.

(2) A feed business operator or food business operator is guilty of an offence who contravenes —

- (a) article 6, which relates to prior notification of consignments,
- (b) article 7, which relates to common entry documents,
- (a) article 10, which relates to release of consignments for free circulation,
- (b) article 11, which relates to making available resources, logistics and equipment, or
- (c) article 12, which relates to splitting of consignments,

of Commission Regulation 669/2009.

Contravention of Regulation 767/2009 (placing on the market and use of feed).

36. (1) A person is guilty of an offence who places feed on the market or uses feed in contravention of the requirements of article 4(1) of Regulation 767/2009.

(2) A feed business operator is guilty of an offence who –

- (a) places feed on the market or uses feed in contravention of the requirements of article 4(2),
- (b) contravenes the obligations referred to in article 5(1) or (2),

- (c) places on the market feed that consists of or contains a material the use of which for animal nutrition purposes is restricted or prohibited, in contravention of article 6(1),
- (d) has in the person's possession, uses or places on the market, any feed materials or complementary feed that contains a feed additive in excess of the quantities specified in article 8,
- (e) places on the market or uses feed intended for particular nutritional purposes, in contravention of article 9,
- (f) places on the market feed that is labelled or presented other than as provided in article 11 or Annex II,
- (g) being the person responsible for labelling, fails to ensure that neither the labelling nor the presentation of feed materials, compound feed or other feed contravenes article 12 or 13(3),
- (h) causes or permits claims to be made on the labelling in contravention of article 13(1) or (2),
- (i) presents labelling particulars other than as provided for in article 14,
- (j) places a feed material on the market without the label showing the indications and particulars specified in

articles 15 and 16,

- (k) places a compound feed on the market without the label showing the indications and particulars specified in articles 15 and 17,
- (l) places feed intended for particular nutritional purposes on the market without the label showing the indications and particulars specified in articles 15, 16, 17 and 18,
- (m) places pet food on the market unless labelled in accordance with articles 15, 16, 17, 18 and 19,
- (n) has in the person's possession or under the person's control, feed falling within Annex VIII which does not bear the labelling particulars required by Annex VIII, in contravention of article 20,
- (o) places a feed material or compound feed on the market with voluntary labelling which does not comply with article 22,
- (p) places a feed material or compound feed on the market other than in a package or container that complies with article 23,
- (q) fails to notify a feed material that is not listed in the Community Catalogue as required by article 24(6), or
- (r) otherwise contravenes a provision (mentioned in this

subsection),

of Regulation 767/2009.

Temperature control requirements.

37. (1) **Schedule 6** has effect.

(2) Subject to paragraphs 4(1), 5, 7 and 9 of **Schedule 6**, a person who contravenes paragraph 2(1) or (3), 4(2), 6 or 8(2) of that schedule is guilty of an offence.

Records required by certain designated Community provisions.

38. A person who is required to maintain a record under Regulation 178/2002, Regulation 852/2004, Regulation 853/2004, Regulation 854/2004 or Regulation 183/2005 must –

- (a) maintain the record in the prescribed manner and form for a period of three years (unless otherwise specified by the Regulation concerned or any provision of this Ordinance), and
- (b) on request, make it available to the Department.

PART V

ADMINISTRATION AND ENFORCEMENT

Authorised officers, designated laboratories and approved examiners

Department to appoint authorised officers.

39. (1) The Department may in writing appoint any officer it considers appropriate as an authorised officer for the purposes of this Ordinance or any other relevant Ordinance.

(2) Section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^e has effect in relation to the functions of the Department under this Ordinance as if the reference to "any officer responsible to that Committee" in section 4(1)(a) of that Law includes a reference to any authorised officer (whether or not the authorised officer is responsible to the Department).

(3) In subsection (1), "**officer**" means employee of the States.

Policy Council to designate laboratories and approve examiners.

40. (1) The Policy Council may by notice in writing published in any manner it considers fit —

- (a) designate a laboratory as a laboratory at which samples taken under a relevant Ordinance may be analysed, and
- (b) approve a person, or a class of persons any member of which, may, at a designated laboratory, engage in analysis and complete official certificates as an examiner for the purposes of a relevant Ordinance.

(2) A designation or approval under subsection (1) is subject to any

^e Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

conditions or limitations specified by the Policy Council by notice in writing published in any manner it considers fit.

(3) For the avoidance of doubt –

- (a) a laboratory may be designated under subsection (1)(a) even if it is not located in Guernsey,
- (b) a person may be approved as an examiner under subsection (1)(b) even if the person –
 - (i) is not located in Guernsey, or
 - (ii) is not engaging, and will not engage, in Guernsey, in analysis for the purposes of a relevant Ordinance.

Powers of entry, search, etc.

General powers of entry, search, etc.

41. (1) This section applies to premises ("**searchable premises**") if an authorised officer suspects that –

- (a) any risk good has been or may be present on those premises,
- (b) any risk good is or has been produced, manufactured, imported, processed, stored, transported, distributed, traded or otherwise dealt with on those premises,

- (c) a sample taken from a risk good is or has been processed, stored, analysed or otherwise dealt with on those premises,
 - (d) those premises are registered or approved, are the subject of an application under **section 4** or **section 12**, or are required to be registered or approved,
 - (e) those premises are ancillary to premises that are registered or approved, subject to an application under **section 4** or **section 12**, or required to be registered or approved,
 - (f) any document relating to a risk good referred to in paragraph (a), (b) or (c) is, was or may be present on those premises, or
 - (g) an offence under a relevant Ordinance is being or has been committed on or in relation to those premises.
- (2) Subject to **section 43**, an authorised officer may at any reasonable time, for any purpose specified in subsection (3), exercise any power specified in subsection (4) or (5) on or in relation to any searchable premises.

(3) Subsection (2) refers to the following purposes –

- (a) establishing whether any conditions of a registration or an approval –

- (i) are or have been breached, or
 - (ii) are or continue to be satisfied,
- (b) establishing whether there are any grounds for the Department to exercise any of its powers under **section 52 or 53**,
- (c) exercising or performing any of the Department's functions under a relevant Ordinance,
- (d) establishing whether any offence under a relevant Ordinance is being or has been committed on or in relation to those premises,
- (e) detecting or investigating an alleged offence under a relevant Ordinance,
- (f) seizing and securing anything which the authorised officer has reason to believe may be required as evidence in proceedings for an offence under a relevant Ordinance,
- (g) protection of human health, animal health or welfare or the environment, or
- (h) giving full effect to any applicable Community provision.
- (4) Subsection (2) refers to the following powers –

- (a) with the assistance of a police authorised officer, stop a person, vehicle, vessel or container,
- (b) enter any searchable premises,
- (c) search the premises and examine, test or inspect anything at the premises, opening it (or breaking it open) as the authorised officer considers necessary or expedient,
- (d) photograph, film or otherwise record anything at the premises,
- (e) measure or cause to be measured anything at the premises (including taking readings of values recorded by measuring instruments at those premises),
- (f) require the production of any equipment, facilities, vehicle, label used on food, packaging of food, any other materials used in the advertising or presentation of food, any document, or any other thing,
- (g) take copies of or extracts from any label used on food, any packaging of a food, any other materials used in the advertising or presentation of food, or any document (including, in the case of information in a non-legible form, a copy of or an extract from that information in a legible form),

- (h) if anything at the premises cannot be conveniently removed, secure it against interference,
- (i) purchase or take, without payment, samples of any risk good or any other thing and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as the authorised officer considers necessary or expedient,
- (j) mark or otherwise identify any sample taken under subparagraph (i) or any risk good or other thing,
- (k) seize any risk good, equipment, facilities, vehicle, document, or other thing, which is at the premises and detain it for as long as the authorised officer considers necessary,
- (l) require any person to give the authorised officer any information, which may include (without limiting the generality of this paragraph) –
 - (i) information regarding the ownership, identity or origin of, or any other information regarding, any risk good,
 - (ii) any information regarding the premises, or
 - (iii) the name and address of any person, including a person to whom a risk good is being delivered or who is causing it to be delivered, and

- (m) require any person to afford the authorised officer any other facilities or assistance that the authorised officer considers necessary or expedient, including in relation to any documents or other information provided to the authorised officer.

(5) Without limiting the generality of subsection (4), subsection (2) also refers to the following powers –

- (a) inspect any records (in whatever form they are held) relating to a feed business or food business, and
- (b) where any such records are stored in electronic form –
 - (i) inspect and check the operation of any computer or other electronic equipment or device and any associated apparatus or material which is or has been in use in connection with those records,
 - (ii) require any person having charge of, or otherwise concerned with the operation of, the equipment, device, apparatus or material to afford the authorised officer such assistance as the authorised officer may reasonably require, or
 - (iii) require the records to be produced in a form in which they may be taken away.

- (6) Neither subsection (4) nor subsection (5) applies to, or in

relation to, any items subject to legal professional privilege.

(7) Nothing in this section is to be construed as authorising any purchase or sale of drugs in contravention of the Misuse of Drugs (Bailiwick of

Guernsey) Law, 1974^f or any Ordinance or Order made under that Law or the Misuse of Drugs (Amendment) (Bailiwick of Guernsey) Law, 2000^g.

(8) The provisions of **Schedule 7** have effect whenever an authorised officer purchases or takes without payment a sample of a food with the intention of having it analysed.

Safeguards for general powers of entry, search, etc.

42. (1) An authorised officer entering any premises under **section 41** must, if the occupier or any person who appears to be in charge of those premises is present –

- (a) identify himself to the occupier or that person, and
- (b) produce to the occupier or that person documentary evidence that that authorised officer is an authorised

^f Ordres en Conseil Vol. XXIV, p. 273; as amended by Vol. XXVIII, p. 307; Vol. XXXI, pp. 47 and 278; Vol. XXXIII, p. 217; Vol. XXXIV, p. 172; Vol. XXXVI, p. 396; Vol. XL, pp. 34 and 131; Order in Council No. IV of 2006; No. XIII of 2006; Recueil d'Ordonnances Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; Tome XXV, pp. 38 and 325; Tome XXIX, p. 406; Ordinances No. XLIII of 2010 and No. XXV of 2011; G.S.I. No. 19 of 1997; G.S.I. No. 5 of 2004; G.S.I. No. 42 of 2006; G.S.I. No. 20 of 2008; G.S.I. No. 22 of 2010; G.S.I. No. 33 of 2010; G.S.I. No. 82 of 2010; G.S.I. No. 44 of 2012; G.S.I. No 54 of 2013; see also Recueil d'Ordonnances Tome XXVII, p. 247; Ordres en Conseil Vol. XXIX, p. 207.

^g Ordres en Conseil Vol. XL, p. 34.

officer.

(2) If neither the occupier nor any person who appears to be in charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer –

- (a) must leave the premises as effectively secured against trespassers as that authorised officer found them, and
- (b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under **section 41** of this Ordinance, including that authorised officer's name, an address at which that authorised officer may be contacted and a copy of the documentary evidence referred to in subsection (1)(b).

(3) An authorised officer who takes samples without payment, or seizes anything, under **section 41(4)** must leave with the occupier or person in charge of the premises (if present) or leave on the premises (if the occupier or person in charge is not present) a statement stating –

- (a) particulars of what has been taken or seized, and
- (b) that the authorised officer has taken or seized it.

Entry to dwellings restricted.

43. An authorised officer must not enter a dwelling under **section 41**, except –

- (a) with the consent of the occupier or a person who

appears to the authorised officer to be in charge of those premises, or

- (b) under and in accordance with a warrant issued under **section 44**.

Warrant to enter dwellings, etc.

Warrants for entry, etc.

44. (1) On application by an authorised officer in accordance with **section 45**, the Bailiff may, in accordance with **sections 45 and 46**, issue a warrant authorising an authorised officer to enter and search any premises (including a dwelling), if the Bailiff is satisfied that there are reasonable grounds for believing –

- (a) that an offence under a relevant Ordinance is about to be committed, is being committed or has been committed on or in relation to those premises,
- (b) that there is material on those premises which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
- (c) that the material is likely to be relevant evidence,
- (d) that the material does not consist of or include items subject to legal professional privilege, and
- (e) that at least one of the conditions specified in subsection (2) is satisfied.

- (2) The conditions referred to in subsection (1)(e) are –
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (b) that it is not practicable to communicate with any person entitled to grant access to the evidence,
 - (c) that entry to the premises will not be granted unless a warrant is produced, or
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless an authorised officer arriving at the premises can secure immediate entry to them.

(3) In this section, "**relevant evidence**", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

Procedure for search warrants.

45. (1) An application for a warrant –
- (a) must be made and supported by information in writing, and
 - (b) must state –
 - (i) that the warrant would be issued under **section 44** of this Ordinance,

- (ii) the ground on which the authorised officer makes the application,
 - (iii) the premises which it is desired to enter and search, and
 - (iv) so far as is practicable, the things to be sought.
- (2) The Bailiff must hear the application in private and *ex parte*.
- (3) The authorised officer making the application must answer on oath any question that that authorised officer is asked by the person hearing the application.

Requirements of search warrants.

46. (1) A warrant authorises entry only on one occasion.
- (2) A warrant –
- (a) must state the person who applied for it, the date on which it is issued, and the premises to be searched,
 - (b) must state that it is issued under **section 44** of this Ordinance, and
 - (c) so far as is practicable, must identify the things to be sought.
- (3) Her Majesty's Greffier must ensure that two copies are made of each warrant, and that those copies are clearly certified as copies.

Execution of warrants.

47. (1) Any authorised officer may execute a warrant to enter premises.

(2) An authorised officer executing a warrant may exercise any power specified in **section 41(4) or (5)** on or in relation to those premises (subject to **section 41(6), (7) and (8)**), if the authorised officer considers it reasonably necessary for the purpose for which the warrant was issued.

(3) An authorised officer executing a warrant –

- (a) must be accompanied by a police authorised officer,
- (b) must do so at a reasonable hour, and
- (c) must do so within one month from the date of its issue.

(4) Subsection (3)(b) does not apply if it appears to the authorised officer executing the warrant that the purpose of the search may be frustrated by making an entry at a reasonable hour.

Safeguards for warranted entry, search, etc.

48. (1) An authorised officer executing a warrant to enter any premises under **section 47** must, if the occupier or any person who appears to be in charge of those premises is present –

- (a) identify himself to the occupier or that person, and
- (b) produce the warrant to the occupier or that person.

(2) If neither the occupier nor any person who appears to be in charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer –

- (a) must leave the premises as effectively secured against trespassers as that authorised officer found them, and
- (b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under **section 47** of this Ordinance, including that authorised officer's name and an address at which that authorised officer may be contacted and a copy of the warrant.

(3) An authorised officer who takes any samples or seizes anything under **section 47(2)** must leave with the occupier or person in charge of the premises (if present) or leave on the premises (if the occupier or person in charge is not present), a statement stating–

- (a) particulars of what has been taken or seized, and
- (b) that the authorised officer has taken or seized it.

Endorsement, return and inspection of warrants.

49. (1) An authorised officer executing a warrant must, after executing it, make an endorsement on it stating –

- (a) whether the things sought were found, and

- (b) whether any things, other than things which were sought, were seized.

(2) A warrant which has been executed, or which has not been executed within the time allowed for its execution, must be returned to Her Majesty's Greffier.

(3) Her Majesty's Greffier must retain a warrant which is returned for 12 months beginning on the date of its return.

(4) If, during the period for which a warrant is to be retained under subsection (3), the occupier of the premises to which it relates asks to inspect it, Her Majesty's Greffier must allow that occupier to do so.

Miscellaneous powers

Persons exercising powers may bring other persons and things.

50. An authorised officer entering any premises under **section 41 or 47** may bring onto the premises any person or equipment, material or other thing to assist the authorised officer in the exercise of that authorised officer's powers under this Ordinance.

Detention and storage of seized property.

51. (1) Subject to subsection (2), an authorised officer must detain, store and dispose of any seized property in accordance with the provisions of **Schedule 8**.

(2) Any seized property must be returned to the person whom the Department determines to be its owner, within 40 days of being seized under this

Ordinance, unless –

- (a) an authorised officer has applied for an order in respect of that property under **section 54 or 55** and the court has not made any order on the application,
- (b) an authorised officer has obtained the consent of the owner to the continued detention, or the sale, destruction or other disposal, of that property, or
- (c) a court orders otherwise.

(3) Subject to subsection (4), any proceeds of a sale or disposal of seized property under this Ordinance must be paid to the owner of the property as soon as may be after such sale or disposal and after the person has satisfied the Department that that person is the owner of that property.

(4) The costs of a sale or disposal of seized property under this Ordinance may be recovered by the Department –

- (a) as a civil debt due by the owner to the Department,
- (b) by deducting the costs from any sum due by the Department to the owner, or
- (c) in any other prescribed manner.

Powers of the Department

Compliance notices.

52. (1) The Department may issue to a person specified in subsection (2) a written notice ("**compliance notice**") in the prescribed form making a direction of a kind specified in subsection (3) if the Department has reasonable grounds to believe that —

- (a) any food fails to comply with the relevant provisions of Regulation 178/2002,
- (b) any applicable Community provision or relevant Ordinance has not been, is not being or will not be complied with,
- (c) any food or feed is unsafe, whether or not it conforms with applicable Community provisions or provisions of a relevant Ordinance applicable to that food or feed,
- (d) the notice and direction is necessary, ancillary or supplementary for any applicable Community provision or relevant Ordinance to have full effect, or
- (e) the notice and direction is necessary for the protection of human health, animal health or welfare or the environment.

(2) Subsection (1) refers to the following persons —

- (a) a feed business operator,
- (b) a food business operator,

- (c) an owner, or a person who appears to be in charge, possession or control, of any premises at which a feed business or food business is carried out, or
 - (d) an owner, or a person who appears to be in charge, possession or control, of any risk good.
- (3) Subsection (1) refers to a direction that –
 - (a) any food or feed must be withdrawn from the market,
 - (b) any risk good must be moved or relocated to a place and in a manner, stored in a specified place and in a manner, or otherwise dealt with or disposed of in a manner, specified in the notice,
 - (c) alterations specified in the notice must be made to premises specified in the notice or to specified operations at those premises,
 - (d) a specified type or level of sampling and analysis must be undertaken for a period specified in the notice,
 - (e) a measure within the meaning of article 54(2) of Regulation 882/2004 must be taken as specified in the notice,
 - (f) a specified operation or activity must or must not be carried out on premises specified in the notice,

- (g) a specified operation or activity may be carried out on premises specified in the notice only under and in accordance with terms and conditions specified in the notice,
 - (h) specified processes, treatments or equipment must or must not be used for the purposes of any feed business, any food business, or any feed business or food business of a kind or description specified in the notice, or
 - (i) specified processes, treatment or equipment may be used for the purposes of any feed business, any food business, or any feed business or food business of a kind or description specified in the notice, only under and in accordance with terms and conditions specified in the notice.
- (4) A direction in a compliance notice –
- (a) may include requirements or conditions prohibiting, restricting or otherwise controlling the use, processing or movement of a risk good as may be specified in the direction,
 - (b) may require the person to whom the notice is issued to choose between one or more of requirements specified in that notice, and
 - (c) may at any time be amended or withdrawn by a further

notice in writing issued under this section, and the earlier compliance notice has effect subject to such amendment or withdrawal.

(5) A compliance notice must state –

- (a) the Department's opinion in relation to the relevant matter in subsection 1(a) to (e) forming the basis of the notice,
- (b) a time limit within which any direction in the notice is to be complied with (for the avoidance of doubt, a compliance notice may require prompt or immediate compliance with a direction),
- (c) that the notice is issued under **section 52** of this Ordinance, and
- (d) that an appeal against the notice may be made under **section 58** of this Ordinance.

(6) A person to whom a compliance notice is issued must comply with directions in the notice, subject to –

- (a) any temporary suspension or modification of the effect of the notice under **section 58(5)**,
- (b) any modifications made to the notice under **section 58(6)(a)**, or

(c) annulment of the notice under **section 58(6)(b)**.

(7) The costs of any action required by directions in a compliance notice must be borne by the person to whom the notice is issued.

(8) A person who contravenes subsection (6) is guilty of an offence.

Emergency notices.

53. (1) The Department may, by issuing to a person specified in subsection (4) a written notice ("**emergency notice**") in the prescribed form, take any or all of the actions specified in subsection (5), if the Department has reasonable grounds to believe that condition A or condition B is satisfied.

(2) Condition A is that –

(a) the person has failed to comply with a direction in a compliance notice issued to that person within the time specified for compliance in the compliance notice,

(b) either –

(i) no appeal has been made against the compliance notice within the appeal period specified in **section 58(3)**, or

(ii) an appeal has been made within the appeal period and the Royal Court has confirmed the relevant direction in the compliance notice, and

- (c) it is necessary for the Department to secure immediate compliance with the compliance notice for the protection of human health, animal health or welfare or the environment.

(3) Condition B is that it is necessary for the Department to issue the emergency notice to avoid imminent risk of injury to human health.

(4) Subsection (1) refers to the following persons –

- (a) a feed business operator,
- (b) a food business operator,
- (c) an owner, or a person who appears to be in charge, possession or control, of any premises at which a feed business or food business is carried out, or
- (d) an owner, or a person who appears to be in charge, possession or control, of any risk good.

(5) Subsection (1) refers to the following actions –

- (a) seize and detain any risk good (unless it is already in the custody of an authorised officer or the Department),
- (b) deal with and dispose of the risk good in any manner the Department considers appropriate, and
- (c) prohibit premises specified in the emergency notice

from being used for the purposes of any feed business, any food business, or any feed business or food business of a kind or description specified in that notice.

- (6) An emergency notice must specify –
- (a) in the case of an action taken under subsection (5)(a) or (b), that the risk good is being seized, and will be dealt with or disposed of in the manner specified in the notice, under **section 53** of this Ordinance,
 - (b) in the case of a prohibition issued under subsection (5)(c), that the prohibition is being issued under **section 53** of this Ordinance, and
 - (c) in any case, that an appeal against the notice may be made under **section 58** of this Ordinance.

(7) As soon as practicable after issuing an emergency notice containing a prohibition under subsection (5)(c), the Department must affix a copy of the notice in a conspicuous position on such premises used for the purposes of that business as the Department considers appropriate.

(8) Where an emergency notice is issued containing a prohibition under subsection (5)(c) –

- (a) any person to whom the notice is issued who contravenes the prohibition, and
- (b) any other person who knowingly contravenes the

prohibition,

is guilty of an offence.

Orders of the Magistrate's Court

Order for continued detention, return, disposal etc. of seized property.

54. (1) On the application of an authorised officer or a person who claims any seized property, the Magistrate's Court may make –

- (a) an order for the delivery of the property to the person appearing to the court to be its owner,
- (a) an order for the continued detention of the property by the authorised officer,
- (b) an order for the destruction or other disposal of the property by the authorised officer, or
- (c) any other order that the court thinks fit in relation to that property.

(2) An order under this section has effect despite any provision to the contrary in **section 51** or **Schedule 8**.

Order for destruction or other disposal of food or feed.

55. (1) Where -

- (a) an authorised officer or the Department has seized any

food or feed under this Ordinance, or

- (b) the Department has, by issuing a compliance notice, directed the withdrawal from the market of any food or feed,

an authorised officer may apply to the Magistrate's Court for an order under this section.

(2) Upon or as soon as practicable after making an application, the authorised officer must give notice in writing of the application to –

- (a) where subsection (1)(a) applies, the person who appears to the authorised officer to be the owner of the food or feed, or
- (b) where subsection (1)(b) applies, the person on whom the compliance notice was served.

(3) On an application, if the Magistrate's Court is satisfied of any of the matters specified in subsection (4), the court may make –

- (a) an order directing that the food or feed be destroyed or otherwise disposed of by an authorised officer, after such period, not exceeding 14 days, as may be specified in the order, or
- (b) any other order that the court thinks fit in relation to that food or feed.

(4) Subsection (3) refers to the following matters –

- (a) the food or feed is unsafe, or
- (b) the food or feed fails to comply with a relevant provision of Regulation 178/2002 or any other relevant provision of Regulation 178/2002,
- (c) a food business operator or feed business operator has failed to take measures in respect of the food or feed which the operator ought to have taken under article 19 or 20 of Regulation 178/2002.

(5) An order under this section has effect despite any provision to the contrary in **section 51** or **Schedule 8**.

General provision

Other powers not limited.

56. For the avoidance of doubt, the powers conferred by any provision of this Part are in addition to any other powers conferred by or under any other enactment or any rule of customary or common law.

PART VI

APPEALS

Appeals against registration, approval or certification decisions.

57. (1) This section applies to a decision of the Department –

- (a) to refuse an application for registration, or to vary, suspend or revoke a registration, in accordance with section 6 or 7,
 - (b) to refuse an application for approval, or to vary, suspend or revoke a registration, in accordance with section 6 or 7 as given effect by section 14(4),
 - (c) that the Department is not satisfied that an operator or manager has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to a feed business or food business in terms of section 71(4)(a), for the purposes of section 71(5)(b).
- (2) A person given written notice of a decision to which this section applies may appeal the decision to the Royal Court in accordance with this section.
- (3) The grounds of an appeal are that –
- (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable, having regard to any applicable Community provision or relevant Ordinance,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.
- (4) An appeal must be made –
 - (a) within the period of 28 days immediately following the date on which the notice of the decision was received by the appellant, and
 - (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.
- (5) Where an appeal has been made, the Department may apply to the Royal Court by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the court may–
 - (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the court may direct), or
 - (b) make such other order as the court considers just.
- (6) On the application of the appellant, the Royal Court may, on such terms as the court thinks just, suspend or modify the effect of the decision appealed pending the determination of the appeal.
- (7) Upon determining an appeal, the court may –
 - (a) confirm the decision, with or without modification, or

- (b) annul the decision.

(8) The provisions of subsection (4) are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^h.

Appeals against compliance or emergency notices.

58. (1) A person to whom a compliance notice or emergency notice is issued may appeal the notice to the Royal Court under this section, even if the person has complied with any direction, requirement or prohibition in the notice.

(2) The grounds of an appeal are that –

- (a) all or any part of the notice was *ultra vires* or there was some other error of law,
- (b) all or any part of the notice was unreasonable, having regard to Regulation 178/2002, Regulation 852/2004, Regulation 853/2004, Regulation 854/2004, Regulation 882/2004, Regulation 183/2005, the objectives of Directive No. 2002/32/EC, or a relevant Ordinance,
- (c) the notice was issued in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the

^h Order No. IV of 2007, as amended by Order No. II of 2008.

procedure.

(3) An appeal must be made –

- (a) within the period of 28 days immediately following the date on which the notice was received by the appellant, and
- (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.

(4) Where an appeal has been made, the Department may apply to the Royal Court by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the court may–

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the court may direct), or
- (b) make such other order as the court considers just.

(5) On the application of the appellant, the Royal Court may, on such terms as the court thinks just, suspend or modify the effect of the notice appealed pending the determination of the appeal.

(6) Upon determining an appeal, the court may –

- (a) confirm the notice, with or without modification,

- (b) annul the notice, in the case of a compliance notice, or
- (c) repudiate the notice, in the case of an emergency notice.

(7) If the court modifies, annuls or repudiates a notice under subsection (6), the court may, on the application of the appellant, order the Department to compensate the appellant for any loss suffered by that appellant as a result of the notice or complying with the notice (other than the costs of the appeal), if the court considers it necessary to do so in the interests of fairness and justice.

(8) The compensation payable under subsection (7) to any one person, or in respect of any one compliance notice or emergency notice, must not exceed the sum of £1,000,000 (one million pounds) in aggregate.

(9) The provisions of subsection (4) are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007ⁱ.

(10) The provisions of subsection (7) are without prejudice to provisions of the Royal Court Civil Rules, 2007 concerning costs.

PART VII REGULATIONS

Regulations to implement applicable Community provisions.

59. (1) Despite the repeal of the former Law by this Ordinance, section 47A of the former Law has effect as if it were a provision of this Ordinance, subject

ⁱ Order No. IV of 2007, as amended by Order No. II of 2008.

to the following modifications –

- (a) delete subsection (3) of that section,
- (b) a reference to the former Law is to be regarded as a reference to this Ordinance,
- (c) a reference to order or any order is to be regarded as a reference to regulation or any regulation, respectively, and
- (d) a reference to any Community obligation is to be regarded as a reference to any applicable Community provision.

(2) Without limiting the generality of section 47A of the former Law as continued in effect by subsection (1) of this section, the Department may make regulations to put in place interim protective measures with regard to food of the kind provided for by article 54 of Regulation 178/2002.

(3) In exercising its powers under subsection (2), the Department must take into account the precautionary principle set out in article 7 of Regulation 178/2002.

Regulations as to composition of food, etc.

60. Despite the repeal of the former Law by this Ordinance, section 4 of the former Law (except subsection (4) and the proviso at the end of that subsection) has effect as if it were a provision of this Ordinance, subject to the following modifications –

- (a) a reference to the Island is to be regarded as a reference to Guernsey,
- (b) a reference to order or any order is to be regarded as a reference to regulation or any regulation, respectively, and
- (c) a reference to any Community obligation is to be regarded as a reference to any applicable Community provision.

Regulations as to labelling and description of food.

61. Despite the repeal of the former Law by this Ordinance, section 7 of the former Law has effect as if it were a provision of this Ordinance, subject to the following modifications –

- (a) in subsection (1) of that section, delete "Without prejudice to the provisions of the last foregoing section," and
- (b) a reference to order or any order is to be regarded as a reference to regulation or any regulation, respectively.

Regulations as to food hygiene.

62. Despite the repeal of the former Law by this Ordinance, section 13 of the former Law has effect as if it were a provision of this Ordinance, subject to the following modifications –

- (a) in subsection (2) of that section, delete paragraph (f),

- (b) in subsection (2)(h), for "food unfit for human consumption", substitute "unsafe food",
- (c) delete subsections (4) to (6) of that section, and
- (d) a reference to order or any order is to be regarded as a reference to regulation or any regulation, respectively.

Regulations may provide for appeals and create offences.

63. (1) Regulations made under this Ordinance may provide for an appeal to the Royal Court against any decision of an authorised officer, the Department or any other person, under the regulations.

(2) Regulations made under this Ordinance may, subject to subsection (3), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences.

(3) Regulations made under this Ordinance may not –

- (a) provide for offences to be triable only on indictment, or
- (b) authorise the imposition, on conviction of an offence, of a term of imprisonment exceeding 6 months or a fine exceeding level 5 on the uniform scale.

Regulations may impose charges and fees.

64. (1) The Department may by regulations prescribe any or all of the following –

- (a) an annual fee or charge in respect of a registration,

approval, authorisation or certificate which is in force for a definite or indefinite period of more than 12 months,

- (b) a fee or charge for the purposes of any regulations made under this Ordinance, or
- (c) a fee or charge in respect of the performance of any function of authorised officers or the Department under a relevant Ordinance or a designated Community provision.

(2) A fee or charge prescribed under this section is payable by the person specified in the regulations for this purpose, and may be recovered by the Department –

- (a) as a civil debt due to the Department by the person,
- (b) by deducting the fee or charge from any sum due to that person by the Department, or
- (c) in any other prescribed manner.

Regulations may amend or substitute certain provisions and Schedules.

65. The Department may by regulations amend or substitute –

- (a) section 11, 77 or 78,
- (b) any provision of this Ordinance relating to the taking, testing, analysis, examination or inspection of samples,

or

(c) any Schedule to this Ordinance, except **Schedule 9, 11 or 12**, or

(d) any period for the giving of notices, making of applications, submissions or appeals, or the doing of any other thing, specified in any of the following provisions

—

(i) section 5(2)(g),

(ii) section 6(2)(a)(ii),

(iii) section 7(1)(a)(ii),

(iv) section 14(2)(h),

(v) section 16(1),

(vi) section 20(1),

(vii) section 51(2),

(viii) section 55(3)(a),

(ix) section 57(4)(a),

(x) section 58(3)(a),

- (xi) section 71(5) and (5)(a), or
- (xii) paragraph 3 of **Schedule 7**.

General provisions as to regulations.

66. (1) Any regulation made under this Ordinance—
- (a) may be amended or revoked by a regulation subsequently made under this Ordinance, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.
- (2) A power conferred by any provision of 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 conditions specified in the
subordinate legislation.

(3) Any regulation made under this Ordinance must be laid before
a meeting of the States as soon as possible after being made; and, if at that or the next
meeting the States resolve that the regulation be annulled, then it ceases to have
effect, but without prejudice to anything done under it or to the making of new
regulations.

PART VIII

OFFENCES AND PROCEEDINGS

Modification of Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 in Guernsey.

67. The provisions of the Forgery and Counterfeiting (Bailiwick of
Guernsey) Law, 2006^j have effect in Guernsey as if –

- (a) in section 5(5) of that Law, immediately after paragraph
(o), the word "and" and the following paragraph were
inserted–

"(p) anything specified in section 8(1A).",

^j Order in Council No. II of 2010. See also Ordres en Conseil Vol. XXIX, p. 207.

- (b) in section 8(1) of that Law, for "subsection (2)", "subsections (1A) and (2)" were substituted,
- (c) immediately following section 8(1) of that Law, the following subsection were inserted –

"(1A) In this Part of this Law, "**instrument**" includes–

- (a) a document or record referred to in article 5(2)(g) or (4), or Part III of Annex I to, Regulation 852/2004,
- (b) a health mark or identification mark referred to in article 5 of Regulation 853/2004,
- (c) documentation or certification referred to in article 6(4) of Regulation 853/2004,
- (d) a certificate or document referred to in article 7 of Regulation 853/2004, or
- (e) an entry in the food business register or feed business register, an approval, a record purporting to be maintained under **section 38 of the Food and Feed Ordinance**, a written requirement of an authorised officer under that Ordinance, a compliance notice, or an official certificate or any other certificate or

document purporting to be issued, granted or given under any provision of that Ordinance.", and

- (d) for section 8(4), the following subsection were substituted –

"(4) In this section –

"approval", "authorised officer", "compliance notice", "document", "feed business register", "food business register", "official certificate", "Regulation 852/2004" and "Regulation 853/2004" have the respective meanings given by **section 87(1)** of the Food and Feed Ordinance,

"the Food and Feed Ordinance" means the European Communities (Implementation of Food and Feed Controls) (Guernsey) Ordinance, 2016, and

"postal licensee" means a person authorised by licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001 to provide postal services."

Obstruction, etc. or provision of false, deceptive or misleading information.

68. (1) A person is guilty of an offence who –

- (a) intentionally obstructs an authorised officer or the Department acting in the exercise of the authorised officer's or the Department's functions under this Ordinance,

- (b) without reasonable excuse, fails to comply with any requirement made or prohibition issued by an authorised officer acting in the exercise of the authorised officer's functions under this Ordinance,
- (c) removes, tampers or otherwise interferes with any thing secured against interference or any sample purchased or taken under this Ordinance, or
- (d) tampers with any substance or thing with the result that a sample purchased or taken without payment under this Ordinance does not correctly represent the substance sampled.

(2) A person is guilty of an offence if –

- (a) for the purposes of or in connection with an application made under this Ordinance,
- (b) in purported compliance with any condition of a registration or an approval,
- (c) in purported compliance with any requirement imposed under, or otherwise for the purposes of, this Ordinance, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which the person intends, or could reasonably be expected to know, that the information

would or might be used by any person for the purpose of exercising that person's functions under this Ordinance,

the person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

Penalties and bodies corporate.

69. (1) A person guilty of an offence under any provision of this Ordinance is liable to the penalty specified for the offence in **Schedule 9.**

(2) A person convicted of an offence under this Ordinance is also

liable to pay to the Department all expenses reasonably incurred by the Department in relation to the storage of any seized property that was used in, the subject of, or otherwise involved in, the commission of the offence; and –

- (a) the Department may recover the expenses for which that person is liable as a civil debt owed by that person to the Department, and
- (b) this paragraph applies whether or not the seized property is forfeited to the States under any enactment, but a person is not liable to pay expenses incurred on and from the day on which the thing is so forfeited.

(3) Where a body corporate is guilty of an offence under this Ordinance, and the offence 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 authorised officer of the body corporate, or any person purporting to act in any such capacity, that authorised officer or other person, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if that member were a director of the body corporate.

(5) For the avoidance of doubt, a person guilty of an offence (committed in Guernsey) under any provision of the Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006, as modified by section 67 of this Ordinance, is liable to the penalty specified for the offence in that Law as so modified.

Convicting court may order forfeiture, suspension or prohibition.

70. (1) Where a person is convicted of an offence under a relevant Ordinance by or before a court, the court may, in addition to imposing any other penalty, make an order for any or all of the following purposes –

- (a) to forfeit to the States anything that was used in, the subject of or otherwise involved in the commission of the offence,
- (b) in any case where the convicted person is a registered person or the holder of an approval, to suspend any registration or approval held by that person –
 - (i) in the case of a summary conviction, for a period not exceeding three months, and
 - (ii) in the case of a conviction on indictment, for a period not exceeding one year, and
- (c) in any case where the convicted person is an operator or manager and the conditions specified in subsection (3) are satisfied, to impose a prohibition specified in **section 71(1)**.

(2) The court may make an order under subsection (1)(a)—

- (a) regardless whether the thing to be forfeited is seized property, and

- (b) in the case of seized property, regardless whether the property has been returned to its owner.

(3) A court must not make an order under subsection (1)(c) unless the court is satisfied that –

- (a) the operator or manager is being convicted of an offence under a provision of this Ordinance which provides for–
 - (i) requiring, prohibiting or regulating the use of any process or treatment in the preparation of feed or food, or
 - (ii) securing the observance of conditions and practices in connection with the carrying out of commercial operations involving or with respect to feed or food or sources of the feed or food, and
- (b) the health risk condition is fulfilled with respect to the feed business or food business.

(4) The health risk condition is fulfilled with respect to any feed business or food business if any of the following involves risk of injury to human health -

- (a) the use for the purposes of the business of any process or treatment,
- (b) the construction of any premises used for the purposes

of the business,

- (c) the use of any equipment for the purpose of the business, or
- (d) the state or condition of any premises or equipment used for the purposes of the business.

(5) The court may make any order it considers appropriate to give effect to an order made under subsection (1).

(6) In this section and **section 71** –

"manager" means any person who is entrusted by an operator with the day to day running of all or any part of the feed business or food business, and

"operator" means a feed business operator or food business operator.

Prohibition orders.

71. (1) **Section 70(1)(c)** refers to the following prohibitions –

- (a) in a case falling within **section 70(4)(a)**, a prohibition on the use of the process or treatment for the purposes of the feed business or food business,
- (b) in a case falling within **section 70(4)(b) or (c)**, a prohibition on the use of the premises or equipment for the purposes of the feed business or food business or

any other feed business or food business of the same class or description,

- (c) in a case falling within **section 70(4)(d)**, a prohibition on the use of the premises or equipment for the purposes of any feed business or food business, and
- (d) in any case where the court considers it appropriate in all the circumstances of the case, a prohibition on the convicted operator or manager participating in the operation or management of any feed business or food business, or any feed business or food business of a class or description specified in the order.

(2) As soon as practicable after the making of an order under **section 70(1)(c)** containing a prohibition specified in subsection (1) (a "**prohibition order**"), the Department must -

- (a) serve a copy of the order on the convicted operator or manager, and
- (b) in the case of a prohibition specified by subsection (1)(a), (b) or (c), affix a copy of the order in a conspicuous position on such premises used for the purposes of the feed business or food business as the Department considers appropriate.

(3) Where a prohibition order is made containing a prohibition specified in subsection (1) –

- (a) any person on whom the order is served who contravenes the prohibition, and
- (b) any other person who knowingly contravenes the prohibition,

is guilty of an offence.

(4) A prohibition order ceases to have effect –

- (a) in the case of an order containing a prohibition specified in subsection (1)(a), (b) or (c), on the issue by the Department of a certificate to the effect that the Department is satisfied that the operator or manager concerned has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business,
- (b) in the case of an order under subsection (1)(d) above, on the giving by the court of a direction to that effect.

(5) The Department must issue a certificate under subsection (4)(a) within three days of the Department being satisfied as mentioned in that paragraph; and on an application by an operator or a manager for such a certificate, the Department must –

- (a) decide, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied, and
- (b) if the Department decides that it is not so satisfied, give

the operator or manager written notice of the decision and the reasons for it, and stating that the decision may be appealed under **section 57** of this Ordinance.

(6) The court must give a direction under subsection (4)(b) above if, on an application by the operator or manager to whom the prohibition order applies, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of that operator or manager since the making of the order; but no such application is to be entertained if it is made -

- (a) within six months after the making of the prohibition order, or
- (b) within three months after the making by the operator or manager concerned of a previous application for such a direction.

Exception for claims made in accordance with Regulation 1924/2006.

72. (1) Nothing in Parts II to IV of this Ordinance prohibits or restricts a claim made in accordance with the conditions of Regulation 1924/2006.

(2) In this section -

"**claim**" has the meaning given to it by Regulation 1924/2006, and

"**Regulation 1924/2006**" means Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20

December 2006 on nutrition and health claims made on foods^k, as given effect and modified by the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Guernsey) Ordinance, 2014^l.

Exception for food supplements.

73. Nothing in in Parts II to IV of this Ordinance regulates the composition, manufacturing specifications, presentation or labelling of a food supplement to which the European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014^m applies.

Defence of due diligence.

74. (1) Subject to subsection (3), it is a defence in proceedings for an offence under a relevant Ordinance for a person ("**the defendant**") charged with the offence to prove both of the following –

- (a) that commission of the offence was due to a mistake or the reliance on information supplied to the defendant, or to the act or default of another person, an accident or some other cause beyond the defendant's control, and
- (b) that the defendant exercised due diligence and took all reasonable precautions to avoid commission of the offence.

^d OJ L 12, 18.1.2007, p. 3.

^l Ordinance No. VII of 2014.

^m Ordinance No. VIII of 2014.

(2) If reliance on the defence provided by subsection (1) involves the allegation that the commission of the offence was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless, not less than 7 working days before the hearing, the defendant has served on the prosecutor written notice providing information identifying, or assisting in the identification of, that other person.

(3) Subsection (1) does not apply to –

- (a) an offence under any provision of the Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006, as given effect by section 67 of this Ordinance, or
- (b) an offence under section 68 of this Ordinance.

Defence of publication in the course of business.

75. Despite the repeal of the former Law by this Ordinance, section 42 of the former Law continues to have effect as if it were a provision of this Ordinance, but for "this Law or any Order", substitute "this or any other relevant Ordinance".

Derogations or transitional measures.

76. In proceedings for an offence under a relevant Ordinance, it is a defence for the defendant to show that that defendant acted in accordance with a derogation or transitional measure laid down by an applicable Community provision relevant to the subject of the offence alleged to have been committed.

Results of analysis not to be adduced unless samples divided.

77. (1) In proceedings for an offence under a relevant Ordinance, the result of any test, examination or analysis of, or report on a sample of food purchased

or taken without payment under this Ordinance, must not be adduced unless –

- (a) before the proceedings were instituted the sample was divided as specified in paragraph 4 or 5 of Schedule 7, and
- (b) the part, package or container retained by the authorised officer is produced at the trial.

(2) Notwithstanding subsection (1), in proceedings for an offence under a relevant Ordinance arising out of a consumer complaint, in relation to a single sample of food which can neither be divided into parts in accordance with paragraph 4 of Schedule 7, nor divided into lots in accordance with paragraph 5 of Schedule 7, the result of any test, examination or analysis of the sample may be adduced where the sample has, before trial of the proceedings, been made reasonably available to the defendant, or the defendant's agent, for inspection and supplementary expert examination.

Evidence of certificates, etc.

78. (1) In proceedings for an offence under a relevant Ordinance, a certificate purported to be signed by a person employed at a designated laboratory where a sample purchased or taken without payment under this Ordinance is analysed stating the capacity in which the person is employed and stating —

- (a) that the person received a sample,
- (b) that, for the period specified in the certificate, the person had the sample in that person's possession,

- (c) that the person gave the sample to another person named in the certificate, or
- (d) that the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner, specified in the certificate,

is (without proof of the signature of the person or that that person is employed at the laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(2) In proceedings for an offence under a relevant Ordinance, an official certificate purporting to be signed by an approved examiner is (without proof of the signature of the examiner or that that examiner is employed at a designated laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(3) A certificate purporting to be signed by an authorised officer and to certify that on a specific day or days or during the whole of a specified period –

- (a) a particular person or particular premises did not stand registered in the feed business register or the food business register,
- (b) the registration of a person or premises in the feed business register or the food business register is suspended or has been revoked,
- (c) a person was or was not the holder of an approval,

- (d) any premises were or were not approved under **section 12**, or
- (e) that a particular approval or registration was subject to a particular condition or conditions,

is, without proof of the signature of the person purporting to sign the certificate or that that person is an authorised officer, evidence, unless the contrary is shown, of the matters stated in the certificate.

(4) In proceedings for an offence under a relevant Ordinance, the court may, if it considers that the interests of justice so require, direct that oral evidence of any matter stated in a certificate under paragraph (1), (2) or (3) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(5) In proceedings for an offence under a relevant Ordinance, evidence of a Community provision may be given by production of a copy of the provision certified by an authorised officer to be a copy of the provision, and it is not necessary to prove the signature of the authorised officer or that that authorised officer is an authorised officer.

PART IX

GENERAL PROVISIONS

Confidentiality.

79. (1) Subject to subsection (3), a person who –

- (a) under or for the purposes of this Ordinance receives any information relating to the business or other affairs of any person, or
- (b) obtains any such document or information directly or indirectly from a person who has so received it,

must not disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses any information in contravention of subsection (1) is guilty of an offence.

(3) Subsection (1) does not preclude -

- (a) the disclosure of information -
 - (i) which at the time of disclosure is or has already been made available to the public from other sources, or
 - (ii) which is in the form of a summary or collection so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting an authorised person to discharge the

authorised person's functions under this Ordinance or any other enactment,

- (c) where, in order to enable or assist an authorised person to discharge the authorised person's functions under this Ordinance or any other enactment, that authorised person considers it necessary to seek advice from a qualified person on any matter of law or accountancy or any other matter requiring the exercise of professional skill, the disclosure by that authorised person to the qualified person of such information as appears to that authorised person to be necessary to ensure that that qualified person is properly informed as to the matters on which that qualified person's advice is sought,
- (d) the disclosure of information by an authorised officer or the Department for the purpose of assisting, in the public interest, any authority appearing to the authorised officer or the Department to exercise, in a place outside Guernsey, functions corresponding to those of an authorised officer or the Department,
- (e) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Ordinance or any other enactment,
- (f) the disclosure of information which is authorised or required by or under this Ordinance or any other enactment,

- (g) the disclosure of information -
 - (i) for the purposes of the investigation, prevention or detection of offences or the apprehension or prosecution of offenders, or
 - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,
- (i) the disclosure of information in connection with any other proceedings arising out of this Ordinance,
- (j) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of the professional functions of any person,
- (k) the disclosure of information in connection with the discharge of any international obligation to which Guernsey may from time to time be subject, or
- (l) the disclosure of information to comply with an order of a court.

(4) In this section, "**authorised person**" means –

- (a) the Department,
- (b) an authorised officer, or

- (c) an approved examiner.

Protection from self-incrimination.

80. A statement made by a person in response to a requirement imposed by or under this Ordinance ("**the statement concerned**") -

- (a) may be used in evidence against the person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against the person in criminal proceedings except -
 - (i) where evidence relating to the statement concerned is adduced, or a question relating to the statement concerned is asked, in the proceedings by or on behalf of that person,
 - (ii) in proceedings for an offence under **section 68(2)**,
 - (iii) in proceedings for perjury or perverting the course of justice, or
 - (iv) in proceedings where, in giving evidence, that person makes a statement inconsistent with the statement concerned, but in this case the statement concerned is only admissible to the extent necessary to establish the inconsistency.

Apportionment of structural expenditure.

81. (1) This section applies where –

- (a) a compliance notice or prohibition notice, or any regulations made under this Ordinance, requires or necessitates structural alterations to be made to any premises owned or occupied by a person ("**A**"),
- (b) A has incurred, or is about to incur, expenditure in securing compliance with the compliance notice, prohibition notice or regulations, and
- (c) A claims that the whole or any part of the expenditure should be borne by any other person ("**B**") who has an interest in the premises.

(2) Where this section applies –

- (a) A may apply to the Royal Court for an order under this subsection,
- (b) the Royal Court may make any order concerning the the expenditure or its apportionment as appears to the Royal Court, having regard to all the circumstances of the case, including the terms of any contract between A and B, to be just and equitable, and
- (c) any order made under this subsection may direct that any such contract ceases to have effect insofar as it is inconsistent with the terms of the order.

Temporary continuance of registration or approval on death, etc.

82. (1) This section applies where an individual is registered as a food business operator or feed business operator or holds an approval, and -

- (a) the individual dies,
- (b) a declaration of insolvency has been made against the individual or the individual's affairs have been declared in a state of "désastre" at a meeting of arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (c) an interim vesting order has been made against the individual in respect of any real property in the Bailiwick of Guernsey,
- (d) otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding-up, a liquidator (provisional or otherwise) has been appointed to act in relation to the individual's estate or affairs, or
- (e) the individual becomes a person who lacks capacity to carry on the food business or feed business.

(2) In subsection (1)(e), the reference to a person who lacks capacity to carry on the business includes a person for whom a guardian has been appointed by the Royal Court and in relation to whom the guardian has power for the purposes of this Part.

(3) Where this section applies, the registration or (as the case may be) approval continues to have effect for the benefit of the individual's legal personal representative, the individual's widow or widower, or any other member of the individual's family, until the expiration of –

- (a) two months following the relevant event in subsection (1), or
- (b) such longer period (not exceeding six months following the relevant event in subsection (1)) as the Department may allow.

Service of documents.

83. (1) Any document to be given or served under, or for the purposes, of a relevant Ordinance may be given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,

- (d) on an unincorporated body, by being given to or served on any partner, member, manager or authorised officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) on the Department or an authorised officer, by being left at, or sent by post or transmitted to, the principal offices of the Department in Guernsey.

(2) In subsection (1) –

- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
- (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

(3) If a person notifies the Department or an authorised officer of an address for service within Guernsey for the purposes of a relevant Ordinance, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served –

- (a) by being published by the Department in such manner and for such period as it thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of subsections (1) to (5) and (8) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Department or an authorised officer under or for the purposes of this Ordinance is to be regarded as having been given or served until it is received.

(7) If a person upon whom a document is to be served under this Ordinance is a child or person under legal disability, the document must be served on the person's guardian; and if there is no guardian, the party wishing to effect service may apply to the court for the appointment of a person to act as guardian for the purposes of this Ordinance.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(9) Service of a document sent by post is to be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section "**document**" does not include a summons.

(11) The provisions of this section are subject to any contrary provision under this Ordinance.

Extended meaning of "sale" and "place on the market".

84. (1) Subsections (2) to (5) have effect for the purposes of this Ordinance.

(2) "**Sell**" includes -

- (a) possess for sale, and
- (b) offer, expose, or advertise for sale.

(3) The following is deemed to be a sale of food or feed –

- (a) the supply of the food or feed, otherwise than by sale, in

the course of a business,

- (b) the supply of the food or feed, otherwise than by sale, at, in, or from any place where food or feed is supplied in the course of a business,
- (c) any other thing which is done with respect to the food or feed that is prescribed to be so deemed in any regulation made by the Department.

(4) This Ordinance applies—

- (a) in relation to any food or feed which is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the food or feed were, or had been, exposed for sale by each person concerned in the organisation of the entertainment,
- (b) in relation to any food or feed which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or given away, as if the food or feed were, or had been, exposed for sale by the person offering or giving away the food or feed, and
- (c) in relation to any food or feed which is exposed or deposited in any premises for the purpose of being so offered or given away as mentioned in paragraph (a) or (b), as if the food or feed were, or had been, exposed for sale by the occupier of the premises,

and in this subsection "**entertainment**" includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

(5) For the avoidance of doubt, to "**place on the market**", in relation to any food or feed, includes sell the food or feed.

Meaning of "protection of human health, animal health or welfare, or the environment".

85. In this Ordinance, a reference to the protection of human health, animal health or welfare, or the environment, includes a reference to the prevention, control or eradication of any disease or contamination of feed or food.

Presumptions relating to human consumption.

86. Despite the repeal of the former Law by this Ordinance, section 39 of the former Law continues to have effect as if it were a provision of this Ordinance, but in that section, for "this Law and of any order", substitute "this Ordinance and of any regulation".

Interpretation.

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

"**applicable Community provision**", in relation to any matter, means

—

- (a) any designated Community provision,
- (b) any other Community provision, to the extent that the provision is given effect in Guernsey by a relevant Ordinance or any other enactment, or

- (c) any other Community provision that is directly applicable in Guernsey,

that is relevant to the matter,

"approval" means a food business approval or feed business approval granted by the Department under Part III of this Ordinance,

"approved examiner" means a person approved under **section 40(1)(b)**,

"authorised officer" means a person appointed as an authorised officer under **section 39**,

"Bailiwick" means the Bailiwick of Guernsey,

"certificate of approval" means a certificate of approval issued under **section 13**,

"Commission Regulation 669/2009" means Commission Regulation (EC) No. 669/2009 of 24 July 2009ⁿ as amended by Commission Regulation (EC) No. 212/2010 of 12 March 2010^o, Commission Regulation (EC) No. 1161/2009 of 30 November 2009^p, Commission Regulation 1162/2009 and

ⁿ O.J. L 194 of 25.7.2009, p. 11.

^o O.J. L 65 of 13.3.2010, p. 16.

Commission Regulation (EU) No. 365/2010 of 28 April 2010^q,

"Commission Regulation 1162/2009" means Commission Regulation (EC) No. 1162/2009 of 30 November 2009^r (as amended by Commission Regulation (EC) No. 1666/2006 of 6 November 2006^s, Commission Regulation (EC) No.1246/2007 of 24 October 2007^t, Commission Regulation (EC) No. 1020/2008 of 17 October 2008^u, Commission Regulation (EC) No. 1021/2008 of 17 October 2008^v, and Commission Regulation (EC) No. 1023/2008 of 17 October 2008^w),

"Community provision" has the meaning given by section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994,

"compliance notice" means a notice issued under **section 52**, and includes any modification made to the notice under **section 58(6)(a)**,

"contravene" includes fail to comply with,

"Department" means the States of Guernsey Health and Social Services Department,

- p** O.J. L 314 of 1.12.2009, p. 8.
q O.J. L 107 of 29.4.2010, p. 9.
r O.J. No. L 314, 1.12.2009, p. 10.
s O.J. No. L 320, 18.11.2006, p. 47
t O.J. No. L 281, 25.10.2007, p. 21.
u O.J. No. L 277, 18.10.2008, p. 8.
v O.J. No. L 277, 18.10.2008, p. 15.
w O.J. No. L 277, 18.10.2008, p. 21.

"designated Community provision" means a Community provision listed in **Schedule 1**,

"designated laboratory" means a laboratory designated under **section 40(1)(a)**,

"Directive No. 2002/32/EC" means Directive No. 2002/32/EC, of the European Parliament and of the Council of 7 May 2002^x as amended by Commission Directive 2003/57/EC of 17 June 2003^y, Commission Directive No. 2003/100/EC of 31 October 2003^z, Commission Directive No. 2005/8/EC of 27 January 2005^{aa}, Commission Directive No. 2005/86/EC of 5 December 2005^{bb}, Commission Directive No. 2005/87/EC of 5 December 2005^{cc}, Commission Directive No. 2006/13/EC of 3 February 2006^{dd}, Commission Directive No. 2006/77/EC of 29 September 2006^{ee}, Commission Directive No. 2008/76/EC of 25 July 2008^{ff}, Commission Directive No. 2009/8/EC of 10 February 2009^{gg}, Regulation (EC) No. 219/2009 of the European

x	O.J. No. L140, 30.05.2002, p. 10.
y	O.J. No. L151, 19.06.2003, p. 38.
z	O.J. No. L285, 01.11.2003, p. 33.
aa	O.J. No. L 27, 29.01.2005, p. 44.
bb	O.J. No. L318, 06.12.2005, p. 16.
cc	O.J. No. L318, 06.12.2005, p. 19.
dd	O.J. No. L 32, 04.02.2006, p. 44.
ee	O.J. No. L271, 30.09.2006, p. 53.
ff	O.J. No. L198, 26.07.2008, p. 37.
gg	O.J. No. L 40, 11.02.2009, p. 19.

Parliament and of the Council of 11 March 2009^{hh} and Commission Regulation (EU) No. 574/2011 of 16 June 2011ⁱⁱ,

"dispose of", in relation to any risk good or other thing, includes sell, slaughter (in the case of an animal) or destroy,

"document" –

- (a) means anything in which information of any description is recorded, and
- (b) includes any record (in whatever form it is held),

"emergency notice" means a notice issued under **section 53**, and includes any modification made to the notice under **section 58(6)(a)**,

"enactment" means any Law, Ordinance or subordinate legislation,

"export" means export from Guernsey to any place outside Guernsey *(pending agreement by Sark and Alderney to implement these controls)*,

"feed" has the meaning given by article 3(4) of Regulation 178/2002,

"feed business" –

- (a) means any undertaking whether for profit or not and

^{hh} O.J. No. L 87, 31.3.2009, p. 109.

ⁱⁱ O.J. No. L 159, 17.6.2011, p. 7.

whether public or private, carrying out any operation of production, manufacture, processing, storage, transport, distribution or other forms of transfer of feed, and

- (b) includes any producer producing, processing or storing feed for feeding to animals on the producer's own holding,

"feed business approval" means an approval granted under **section 12(4)(b)**,

"feed business operator" –

- (a) means any person who operates a feed business, and
- (b) includes any person registered under this Ordinance as the operator of a feed business,

"feed business register" means the register kept by the Department under **section 8(b)**,

"food" has the meaning given by article 2 of Regulation 178/2002,

"food business" means any undertaking, whether for profit or not, whether public or private, carrying out any activity related to any stage of production, processing, distribution or any other form of transfer of food –

- (a) and includes –
 - (i) a seasonal or sporadic activity,

- (ii) importation or exportation of food, or
 - (iii) an activity related to any stage from and including primary production up to and including sale or supply to the final consumer, but
- (b) excludes an activity undertaken for fewer than five days (whether consecutive or not) in any period of five consecutive weeks,

"food business approval" means an approval granted under **section 12(4)(a)**,

"food business operator" –

- (a) means any person who operates a food business, and
- (b) includes any person registered under this Ordinance as the operator of a food business,

"food business register" means the register kept by the Department under **section 8(a)**,

"food of animal origin" includes both unprocessed products and processed products, as defined in article 2(1) of Regulation 852/2004,

"food of non-animal origin" includes food containing both products of plant origin and processed products of animal origin,

"**former Law**" means the Food and Drugs (Guernsey) Law, 1970^{jj},

"**function**" includes any power or duty,

"**Guernsey**" means the Islands of Guernsey, Herm and Jethou, including the territorial waters adjacent to these islands,

"**import**" means import into Guernsey from any place outside **the Bailiwick**,

"**information**" includes any document, statement or evidence, regardless of the manner or form in which it is kept or given,

"**injury to human health**" includes any impairment, whether permanent or temporary, to human health,

"**official certificate**" means a certificate completed by an approved examiner in the form set out in **Schedule 10**,

"**owner**", in relation to any premises or thing, includes –

- (a) a person entitled to the proceeds of a sale or disposal of the premises or thing, or
- (b) a person entitled to possession of the premises or thing

^{jj} Ordres en Conseil Vol. XXII, p. 412; as amended by Ordres en Conseil Vol. XXIV, p. 273; Ordres en Conseil Vol. XXV, p. 378; Ordres en Conseil Vol. XXIX, p. 329; Ordres en Conseil Vol. XXXI, p. 278; Ordres en Conseil Vol. XXXVI, p. 235; Ordres en Conseil Vol. XXXVI, p. 648; Recueil d'Ordonnances Tome XXIX, p. 406;

or, in the case of seized property, who would, but for the seizure, be entitled to possession of the property,

"place on the market" has the extended meaning given by [section 84](#),

"police officer" means a member of the salaried police force of the Island of Guernsey or a member of the special constabulary of the Island of Guernsey (within the limits of the member's jurisdiction),

"prescribed" means prescribed by regulations made by the Department,

"premises" includes any place and any vehicle, vessel, aircraft, offshore installation, tent or moveable structure,

"prohibition order" means an order made under [section 70\(1\)\(c\)](#) containing a prohibition specified in [section 71\(1\)](#),

"protection of human health, animal health or welfare or the environment" has the meaning given by [section 85](#),

"registered person" means any person who is registered as the operator of a food business or a feed business,

"registration" means registration on the food business register or feed business register under Part II of this Ordinance,

"Regulation 178/2002" means Regulation (EC) No. 178/2002 of the

Ordinance No. VIII of 2014. See also Recueil d'Ordonnances Tome XXVII, p. 2;

European Parliament and of the Council of 28 January 2002^{kk} as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council of 22 July 2003^{ll}, Commission Regulation (EC) No. 575/2006 of 7 April 2006^{mm}, Commission Regulation (EC) No. 202/2008 of 4 March 2008ⁿⁿ, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009^{oo}, and Commission Implementing Regulation (EU) No. 931/2011 of 19 September 2011^{pp},

"Regulation 852/2004" means Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004^{qq} as amended by Commission Regulation (EC) No. 1019/2008 of 17 October 2008^{rr} and Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009^{ss},

"Regulation 853/2004" means Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004^{tt} as amended by Commission Regulation (EC) No. 2074/2005, Commission Regulation (EC)

G.S.I. No. 9 of 1996.

- kk** O.J. No. L 31, 01.02.2002, p. 1.
- ll** O.J. No. L 245, 29.09.2003, p. 4.
- mm** O.J. No. L 100, 08.04.2006, p. 3.
- nn** O.J. No. L 60, 5.3.2008, p. 17.
- oo** O.J. No. L 188, 18.7.2009, p. 14.
- pp** O.J. No. L 242, 20.9.2011, p. 2.
- qq** O.J. No. L 226, 25.6.2004, p. 3.
- rr** O.J. No. L 277, 18.10.2008, p. 7.
- ss** O.J. No. L 87, 31.3.2009, p. 109.
- tt** O.J. No. L 226, 25.6.2004, p. 22.

No. 1662/2006 of 6 November 2006^{uu}, Council Regulation (EC) No. 1791/2006 of 20 November 2006^{vv}, Commission Regulation (EC) No. 1243/2007 of 24 October 2007^{ww}, Commission Regulation (EC) No. 1020/2008 of 17 October 2008^{xx}, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009^{yy}, Commission Regulation (EC) No. 1161/2009 of 30 November 2009^{zz}, Commission Regulation (EU) No. 558/2010 of 24 June 2010^{aaa}, Commission Regulation (EU) No. 150/2011 of 18 February 2011^{bbb}, Commission Regulation (EU) No. 1276/2011 of 8 December 2011^{ccc} and Commission Regulation (EU) No. 16/2012 of 11 January 2012^{ddd},

"Regulation 854/2004" means Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004^{eee} as amended by Regulation 882/2004, Commission Regulation (EC) No. 2074/2005, Commission Regulation (EC) No. 1663/2006 of 6 November 2006^{fff}, Council

uu	O.J. No. L 320, 18.11.2006, p. 1.
vv	O.J. No. L 363, 20.12.2006, p.1.
ww	O.J. No. L 281, 25.10.2007, p. 8.
xx	O.J. No. L 277, 18.10.2008, p. 8.
yy	O.J. No. L 87, 31.3.2009, p. 109.
zz	O.J. No. L 314, 1.12.2009, p. 8.
aaa	O.J. No. L 159, 25.6.2010, p. 18.
bbb	O.J. No. L 46, 19.2.2011, p. 14.
ccc	O.J. No. L 327, 9.12.2011, p. 39.
ddd	O.J. No. L 8, 12.1.2012, p. 29.
eee	O.J. No. L 226, 25.6.2004, p. 83.
fff	O.J. No. L 320, 18.11.2006, p. 11.

Regulation (EC) No. 1791/2006 of 20 November 2006^{ggg}, Commission Regulation (EC) No. 1021/2008 of 17 October 2008^{hhh}, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009ⁱⁱⁱ, Commission Regulation (EU) No. 505/2010 of 14 June 2010^{jjj}, Commission Regulation (EU) No. 151/2011 of 18 February 2011^{kkk} and Commission Implementing Regulation (EU) No. 739/2011 of 27 July 2011^{lll},

"Regulation 882/2004" means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004^{mmm} as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008ⁿⁿⁿ, Commission Regulation (EC) No. 1029/2008 of 20 October 2008^{ooo}, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009^{ppp}, Commission Regulation (EU) No. 208/2011 of 2 March 2011^{qqq} and Commission Regulation (EU) No. 880/2011 of 2 September 2011^{rrr},

"Regulation 183/2005" means Regulation (EC) No 183/2005 of the

ggg	O.J. No. L 363, 20.12.2006, p. 1.
hhh	O.J. No. L 277, 18.10.2008, p. 15.
iii	O.J. No. L 87, 31.3.2009, p. 109.
jjj	O.J. No. L 149, 15.6.2010, p. 1.
kkk	O.J. No. L 46, 19.2.2011, p. 17.
lll	O.J. No. L 196, 28.7.2011, p. 3.
mmm	O.J. No. L 191, 28.05.2004, p. 1.
nnn	O.J. No. L 97, 9.4.2008, p. 85.
ooo	O.J. No. L 278, 21.10.2008, p. 6.
ppp	O.J. No. L 188, 18.7.2009, p. 14.
qqq	O.J. No. L 58, 3.3.2011, p. 29.

European Parliament and of the Council of 12 January 2005^{sss} as amended by Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009^{ttt} and Commission Regulation (EU) No 225/2012 of 15 March 2012^{uuu},

"Regulation 2073/2005" means Commission Regulation (EC) No. 2073/2005 of 15 November 2005^{vvv} (as amended by Commission Regulation (EC) No. 1441/2007 of 5 December 2007^{www}),

"Regulation 2074/2005" means Commission Regulation (EC) No. 2074/2005 of 5 December 2005^{xxx} (as amended by Commission Regulation (EC) No. 1664/2006 of 6 November 2006^{yyy}, Commission Regulation (EC) No. 1022/2008 of 31 August 2007^{zzz} and Commission Regulation (EC) No. 1244/2007 of 24 October 2007^{aaaa}),

"Regulation 2075/2005" means Commission Regulation (EC) No. 2075/2005 of 5 December 2005^{bbbb}, (as amended by Commission Regulation

rrr	O.J. No. L 228, 3.9.2011, p. 8.
sss	O.J. No. L 35, 08.02.2005, p. 1.
ttt	O.J. No. L 87, 31.3.2009, p. 109.
uuu	OJ L 77, 16.3.2012, p. 1.
vvv	O.J. No. L 338, 22.12.2005, p. 1.
www	O.J. No. L 322, 07.12.2007, p. 12.
xxx	O.J. No. L 338, 22.12.2005, p. 27.
yyy	O.J. No. L 320, 18.11.2006, p. 13.
zzz	O.J. No. L 230, 01.09.2007; p. 6.
aaaa	O.J. No. L 281, 25.10.2007, p. 12.
bbbb	O.J. No. L 338, 22.12.2005, p. 60.

(EC) No. 1665/2006 of 6 November 2006^{cccc} and Commission Regulation (EC) No. 1245/2007 of 24 October 2007^{dddd}),

"Regulation 767/2009" means Regulation (EC) No. 767/2009 of the European Parliament and of the Council of 13 July 2009^{eeee} as amended by Commission Regulation (EU) No. 454/2010 of 26 May 2010^{ffff}, Commission Regulation (EU) No. 568/2010 of 29 June 2010^{gggg} and Commission Regulation (EU) No. 939/2010 of 20 October 2010^{hhhh},

"relevant Ordinance" means any provision of –

- (a) the European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014,
- (b) the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Guernsey) Ordinance, 2014, or
- (c) this Ordinance,

"relevant provisions of Regulation 178/2002" means articles 12, 14, 16, 17, 18 and 19 of the EC Regulation, insofar as they relate to food or any

cccc	O.J. No. L 320, 18.11.2006, p. 46.
dddd	O.J. No. L 281, 25.10.2007, p. 19.
eeee	O.J. L 229, 1.9.2009, p. 1.
ffff	O.J. L128, 27.5.2010, p. 1.
gggg	O.J. L163, 30.6.2010, p. 30.
hhhh	O.J. L277, 21.10.2010, p. 4.

other relevant thing,

"risk good" means –

- (a) any animal, feed, feed additive or food, or
- (b) any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, any animal, feed, feed additive or food,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of any appeal, or any application for an order, under this Ordinance the Court may appoint one or more assessors to assist it in the determination of any matter before it,

"searchable premises" has the meaning given by [section 41\(1\)](#),

"seized property" –

- (a) means any property seized by an authorised officer or the Department under any provision of this Ordinance, but
- (b) excludes –
 - (i) any property sold, destroyed or otherwise disposed of in accordance with this Ordinance, and

- (ii) any sample purchased or taken by an authorised officer with the intention of having it analysed,

"sell" has the extended meaning given by **section 84**,

"**sprouts**" means the product obtained from the germination of seeds and their development in water or another medium, harvested before the development of true leaves and which is intended to be eaten whole, including the seed,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"**thing**" includes any article, substance or liquid,

"**this Ordinance**" includes any regulation made under this Ordinance,

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989ⁱⁱⁱ,

and a cognate expression is to be given a corresponding meaning.

(2) Unless the context requires otherwise, an expression used in a designated Community provision that is also used in this Ordinance has, in this Ordinance (other than in **section 19**), the same meaning as in the designated Community provision in which it occurs.

ⁱⁱⁱ Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009 and Recueil d'Ordonnances Tome XXXI, p. 542.

(3) Unless the context requires otherwise, where a Community provision is referred to or otherwise given effect by any provision of this Ordinance, both the Community provision and the provision of this Ordinance are to be construed as if –

- (a) a reference to a Member State of the European Union includes a reference to Guernsey,
- (b) a reference to a competent authority or competent authorities, or a reference to a public authority or public authorities, is a reference to the Department,
- (c) a reference to placing any thing on the market includes a reference to placing the thing on the market in the Bailiwick of Guernsey, Bailiwick of Jersey or Isle of Man,
- (d) a reference to the Community or the European Union includes a reference to the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man, and
- (e) a reference to Community law or Community legislation is a reference to applicable Community provisions.

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

Index of defined expressions.

88. In this Ordinance, the expressions listed below are defined by the provisions specified.

Expression	Interpretation Provision
Applicable Community provision	Section 87(1)
Approval	Section 87(1)
Approved examiner	Section 87(1)
Authorised officer	Section 87(1)
Bailiwick	Section 87(1)
Batch	Paragraph 1 of Schedule 5
By post	Section 83(2)
Certificate of approval	Section 87(1)
Claim	Section 72(2)
Commission Regulation 669/2009	Section 87(1)
Commission Regulation 1162/2009	Section 87(1)
Community	Section 87(3)
Community law or Community legislation	Section 87(3)
Community provision	Section 87(1)
Competent authority	Section 87(3)
Compliance notice	Section 87(1)
Contravene	Section 87(1)
Department	Section 87(1)
Designated animal	Paragraph 4 of Schedule 2
Designated community provision	Section 87(1)

Expression	Interpretation Provision
Designated laboratory	Section 87(1)
Directive No. 2002/32/EC	Section 87(1)
Dispose of	Section 87(1)
Document	Sections 83(10) and 87(1)
Emergency notice	Section 87(1)
Enactment	Section 87(1)
European Union	Section 87(3)
Export	Section 87(1)
Feed	Section 87(1)
Feed business	Section 87(1)
Feed business approval	Section 87(1)
Feed business operator	Section 87(1)
Feed business register	Section 87(1)
Food	Section 87(1)
Food business	Section 87(1)
Food business approval	Section 87(1)
Food business operator	Section 87(1)
Food business register	Section 87(1)
Food of animal origin	Section 87(1)
Food of non-animal origin	Section 87(1)
Food premises	Paragraph 10 of Schedule 6
Former Law	Section 87(1)

Expression	Interpretation Provision
Function	Section 87(1)
Guernsey	Section 87(1)
Human consumption	Section 86
Import	Section 87(1)
Indirect sale	Paragraph 10 of Schedule 6
Information	Section 87(1)
Injury to human health	Section 87(1)
Manager	Section 70(7)
Member State of the European Union	Section 87(3)
Officer	Section 39(3)
Official certificate	Section 87(1)
Operator	Section 70(7)
Owner	Section 87(1)
The person concerned	Section 5(5)
Place on the market	Sections 84 and 87(1) and (3)
Police officer	Section 87(1)
Prescribed	Section 87(1)
Premises	Section 87(1)
Product	Section 19(8)
Prohibition order	Section 87(1)
Protection of human health, animal health or welfare or the environment	Sections 85 and 87(1)

Expression	Interpretation Provision
Recommended temperature	Paragraph 10 of Schedule 6
Registered person	Section 87(1)
Registration	Section 87(1)
Regulation 1906/90	Paragraph 10 of Schedule 6
Regulation 1907/90	Paragraph 10 of Schedule 6
Regulation 178/2002	Section 87(1)
Regulation 852/2004	Section 87(1)
Regulation 853/2004	Section 87(1)
Regulation 854/2004	Section 87(1)
Regulation 882/2004	Section 87(1)
Regulation 183/2005	Section 87(1)
Regulation 2073/2005	Section 87(1)
Regulation 2074/2005	Section 87(1)
Regulation 2075/2005	Section 87(1)
Regulation 1924/2006	Section 72(2)
Regulation 767/2009	Section 87(1)
Regulation 1169/2011	Paragraph 10 of Schedule 6
Relevant evidence	Section 44(3)
Relevant Ordinance	Section 87(1)
Relevant provisions of Regulation 178/2002	Section 87(1)
Risk good	Section 87(1)

Expression	Interpretation Provision
Royal Court	Section 87(1)
Searchable premises	Sections 41(1) and 87(1)
Seized property	Section 87(1)
Sell	Sections 84 and 87(1)
Shelf life	Paragraph 10 of Schedule 6
Sprouts	Section 87(1)
Subordinate legislation	Section 87(1)
Thing	Section 87(1)
This Ordinance	Section 87(1)
Transmitted	Section 83(2)
Uniform scale	Section 87(1)

Relationship with other enactments.

89. *[to come – following consultation]*

Repeals and revocations.

90. The enactments specified in Schedule 1¹ are repealed or (as the case may require) revoked.

Consequential amendments.

91. The enactments specified in Schedule 1² are amended in the manner specified in the schedule.

Transitional and savings.

92. The provisions of Schedule 1³ have effect.

Ordinance binds the Crown.

93. This Ordinance binds the Crown.

Extent.

94. This Ordinance has effect in the Islands of Guernsey, Herm and Jethou, including the territorial waters adjacent to these islands.

Citation.

95. This Ordinance may be cited as the European Communities (Implementation of Food and Feed Controls) (Guernsey) Ordinance, 2016.

Commencement.

96. This Ordinance shall come into force on the 1st _____, 2016.

SCHEDULE 1

DESIGNATED COMMUNITY PROVISIONS GIVEN EFFECT IN GUERNSEY

Section 1(1)

1. Regulation 178/2002.
2. Regulation 852/2004.
3. Regulation 853/2004.
4. Regulation 854/2004.
5. Regulation 882/2004.
6. Regulation 183/2005.
7. Commission Regulation 2073/2005.
8. Commission Regulation 2074/2005.
9. Commission Regulation 2075/2005.
10. Commission Regulation 669/2009.
11. Regulation 767/2009.
12. Commission Regulation 1162/2009.

SCHEDULE 2

CONDITIONS OF EXEMPTION WHERE PRIMARY PRODUCTS SUPPLIED TO CONSUMERS OUTSIDE THE BAILIWICK

Section 11(2)(a)

1. Paragraphs 2 and 3 set out the conditions referred to in section 11(2)(a).
2. The total amount of primary product supplied by the producer (regardless whether the final consumers are located outside the Bailiwick or not) must not typically exceed any amount specified in column 2, 3 or 4 of the table below.

Description of producer	Amount in a day	Amount in a week	Amount in a calendar year
A producer engaged solely in the direct supply of poultry and lagomorphs slaughtered on a farm.		Primary products from an aggregate of 1000 birds and lagomorphs slaughtered on the farm.	Primary products from an aggregate of 10, 000 birds and lagomorphs slaughtered on the farm.
A producer engaged solely in the direct supply of primary products from the slaughter of any designated animal.		<p>Primary products from an aggregate of 30 livestock units.</p> <p>In the case of wild game or wild game meat, an aggregate of 2 livestock units.</p>	<p>Primary products from an aggregate of 300 livestock units.</p> <p>In the case of wild game or wild game meat, an aggregate of 10 livestock units.</p>

Description of producer	Amount in a day	Amount in a week	Amount in a calendar year
A hunter engaged solely in the direct supply of wild game or wild game meat.		An aggregate of 2 livestock units.	An aggregate of 10 livestock units.
Any other producer engaged solely in the direct supply of primary products.	0 pints of raw drinking milk. 0 eggs.	0 pints of raw drinking milk. 0 eggs. An aggregate of 1 tonne of any meat preparation, meat and meat products.	0 pints of raw drinking milk. 0 eggs. An aggregate of 1 tonne of any fish, shellfish and fishery products.

3. The producer must –

- (a) keep a record in adequate form to show the number of animals received into, and the amounts of primary product despatched from, that producer's premises during each day, week or calendar year, as relevant to the limits specified in paragraph 1 for the primary product,
- (b) retain the record for a period of one year, and
- (c) make the record available to an authorised officer on request.

4. In this Schedule, "**designated animal**" means any bovine animal, pig, sheep,

goat, ratite or deer.

5. In this Schedule –

- (a) 1 livestock unit is the equivalent of a bovine aged 24 months or more, a suckler cow, a dairy cow or a horse,
- (b) 0.6 livestock units is the equivalent of a bovine aged between 6 and 24 months,
- (c) 0.3 livestock units is the equivalent of a pig aged 12 months or more or a bovine aged under 6 months,
- (d) 0.2 livestock units is the equivalent of a pig aged less than 12 months or a red deer aged 12 months or more,
- (e) 0.15 livestock units is the equivalent of a sheep or goat, and
- (f) 0.1 livestock units is the equivalent of a ratite or a deer other than a deer referred to in subparagraph (d).

SCHEDULE 3
TRACEABILITY INFORMATION — FOOD OF NON-ANIMAL
ORIGIN (EXCEPT SPROUTS AND SEEDS INTENDED FOR
THE PRODUCTION OF SPROUTS)

Section 25(2)(a) and (b)

1. This Schedule applies to food of non-animal origin, including food containing both products of plant origin and processed products of animal origin, but does not apply to sprouts and seeds intended for the production of sprouts.
2. The food business operator must, as a minimum, keep the following information –
 - (a) in relation to food supplied to the food business operator –
 - (i) name of supplier,
 - (ii) address of supplier,
 - (iii) nature of products supplied, and
 - (iv) date of transaction/delivery,
 - (b) in relation to food supplied by the food business operator to another business –
 - (i) name of customer,

- (ii) address of customer,
 - (iii) nature of products supplied, and
 - (iv) date of transaction/delivery.
3. The food business operator must keep the information referred to in paragraph 2 at least until it can be reasonably assumed that the food has been consumed.

SCHEDULE 4
TRACEABILITY INFORMATION — FOOD OF ANIMAL
ORIGIN

Section 25(2)(c), (d) and (e)

1. This Schedule applies to food of animal origin, which includes both unprocessed products and processed products, as defined in article 2(1) of Regulation 852/2004.
2. The food business operator must, as a minimum, keep the following information concerning consignments of food –
 - (a) an accurate description of the food,
 - (b) the volume or quantity of the food,
 - (c) the name and address of the food business operator from which the food has been dispatched,
 - (d) the name and address of the consignor (owner), if different from the food business operator, from which the food has been dispatched,
 - (e) the name and address of the food business operator to whom the food is dispatched,
 - (f) the name and address of the consignee (owner), if different from the food business operator, to whom the food is dispatched,

- (g) a reference identifying the lot, batch or consignment, as appropriate,
and
 - (h) the date of dispatch.
- 3. The information referred to in paragraph 2 must be updated on a daily basis.
- 4. The information referred to in paragraph 2 must be kept available at least until it can be reasonably assumed that the food has been consumed.
- 5. The information referred to in paragraph 2 must be made clearly and unequivocally available to and retrievable by the food business operator to whom the food is supplied, in addition to any information required under applicable Community provisions concerning the traceability of food of animal origin.
- 6. The information referred to in paragraph 2 must be provided, on demand, to an authorised officer, without undue delay, in addition to any information required under applicable Community provisions concerning the traceability of food of animal origin.

SCHEDULE 5
TRACEABILITY INFORMATION — SPROUTS AND SEEDS
INTENDED FOR THE PRODUCTION OF SPROUTS

Section 25(2)(f), (g), (h) and (i)

1. In this Schedule, "**batch**" means a quantity of sprouts or seeds intended for the production of sprouts, with the same taxonomic name, which is dispatched from the same premises to the same destination on the same day. One or more batches can make up a consignment. However, seeds with a different taxonomic name, which are mixed in the same packaging and intended to be germinated together and sprouts thereof are also considered as one batch.
2. This Schedule applies to batches of sprouts and seeds intended for the production of sprouts but does not apply to sprouts after they have undergone a treatment which eliminates microbiological hazards in a manner compatible with Community provisions.
3. The food business operator must, as a minimum, keep the following information –
 - (a) an accurate description of the seeds or sprouts, including the taxonomic name of the plant,
 - (b) the volume or quantity of the seeds or sprouts supplied,
 - (c) where the seeds or sprouts had been dispatched from another food business operator, the name and address of –

- (i) the food business operator from which the seeds or sprouts have been dispatched, and
 - (ii) the consignor (owner) if different from the food business operator from which the seeds or sprouts have been dispatched,
 - (d) the name and address of the food business operator to whom the seeds or sprouts are dispatched,
 - (e) the name and address of the consignee (owner), if different from the food business operator to whom the seeds or sprouts are dispatched,
 - (f) a reference identifying the batch as appropriate, and
 - (g) the date of dispatch.
4. The food business operator ("A") must ensure that the information needed to comply with paragraph 3 is transmitted to any food business operator to whom A supplies the seeds or sprouts.
5. The information referred to in paragraph 3 may be kept on record and transmitted in any appropriate form, provided that it is easily retrievable by the food business operator to whom the seeds or sprouts are supplied.
6. The food business operator must transmit the relevant information referred to in paragraph 3 on a daily basis.
7. The food business operator must update the records referred to in paragraph 3 on a daily basis and keep them available for a sufficient time after the sprouts can be assumed to have been consumed.

8. The food business operator must provide the information referred to in paragraph 3, on demand, to an authorised officer, without undue delay.

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SCHEDULE 6

TEMPERATURE CONTROL REQUIREMENTS

Section 37

1. **Application of this Schedule.**

This Schedule does not apply in relation to –

- (a) any food business operation to which Regulation 853/2004 applies, or
- (b) any food business operation carried out on a vessel or aircraft.

2. **Chill holding requirements.**

- (1) Subject to subparagraph (2) and paragraph 3, no person may keep any food–
 - (a) which is likely to support the growth of pathogenic micro-organisms or the formation of toxins, and
 - (b) with respect to which any commercial operation is being carried out, at or in food premises at a temperature above 8°C.
- (2) Subparagraph (1) does not apply in relation to any food which, as part of an indirect sale, is being conveyed to the final consumer.
- (3) Subject to paragraph 3, no person may supply any food by indirect sale which –
 - (a) is likely to support the growth of pathogenic micro-organisms or the formation of toxins, and

- (b) is being or has been conveyed by post or by a private or common carrier to the final consumer,

at a temperature which has given rise to or is likely to give rise to a risk to health.

3. **General exemptions from the chill holding requirements.**

Neither subparagraph (1) nor (3) of paragraph 2 applies in relation to –

- (a) food which –
 - (i) has been cooked or reheated,
 - (ii) is for service or on display for sale, and
 - (iii) needs to be kept at or above 63°C in order to control the growth of pathogenic micro-organisms or the formation of toxins,
- (b) food which, for the duration of its shelf life may be kept at ambient temperatures with no risk to health,
- (c) food which is being or has been subjected to a process such as dehydration or canning intended to prevent the growth of pathogenic micro-organisms at ambient temperatures, but not where –
 - (i) after or by virtue of that process the food was contained in a hermetically sealed container, and
 - (ii) that container has been opened,

- (d) food which must be ripened or matured at ambient temperatures, but not when the process of ripening or maturation is completed,
- (e) raw food intended for further processing (including cooking) before human consumption, but only if that processing, if undertaken correctly, will render that food fit for human consumption,
- (f) food to which Regulation 1906/90 applies, or
- (g) food to which Regulation 1907/90 applied.

4. **Upward variation of the 8 degrees centigrade temperature by manufacturers etc.**

- (1) In any proceedings for an offence of contravening paragraph 2(1), it is a defence for the defendant to prove that –
 - (a) a food business responsible for manufacturing, preparing or processing the food, including, where relevant, the defendant, has recommended that it is kept –
 - (i) at or below a specified temperature between 8°C and ambient temperatures, and
 - (ii) for a period not exceeding a specified shelf life,
 - (b) that recommendation has, unless the defendant is that food business, been communicated to the defendant either by means of a label on the packaging of the food or by means of some other appropriate form of written instruction,

- (c) the food was not kept by the defendant at a temperature above the specified temperature, and
 - (d) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded.
- (2) A food business responsible for manufacturing, preparing or processing food must not recommend that any food is kept –
 - (a) at or below a specified temperature between 8°C and ambient temperatures, and
 - (b) for a period not exceeding a specified shelf life,unless that recommendation is supported by a well-founded scientific assessment of the safety of the food at the specified temperature.

5. Chill holding tolerance periods.

- (1) In any proceedings for an offence of contravening paragraph 2(1), it is a defence for the defendant to prove that the food –
 - (a) was for service or on display for sale,
 - (b) had not previously been kept for service or on display for sale at a temperature above 8°C or, where a recommendation has been made pursuant to paragraph 4(1), the recommended temperature, and
 - (c) had been kept for service or on display for sale for a period of less than four hours.

- (2) In any proceedings for an offence of contravening paragraph 2(1), it is a defence for the defendant to prove that the food –
- (a) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety, and
 - (i) was being transferred –
 - (A) from premises at which the food was going to be kept at or below 8°C or, in appropriate circumstances, the recommended temperature, to a vehicle used for the purposes of a food business, or
 - (B) to such premises from such a vehicle, or
 - (ii) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as –
 - (A) to accommodate the practicalities of handling during and after processing or preparation,
 - (B) the defrosting of equipment, or
 - (C) temporary breakdown of equipment.

6. **Hot holding requirements.**

No person may, in the course of the activities of a food business, keep at or in food premises at a temperature below 63°C any food which –

- (a) has been cooked or reheated,
- (b) is for service or on display for sale, and
- (c) needs to be kept at or above 63°C in order to control the growth of pathogenic micro-organisms or the formation of toxins.

7. Hot holding defences.

(1) In any proceedings for an offence of contravening paragraph 6, it is a defence for the defendant to prove that –

(a) a well-founded scientific assessment of the safety of the food at temperatures below 63°C has concluded that there is no risk to health if, after cooking or reheating, the food is held for service or on display for sale –

- (i) at a holding temperature which is below 63°C, and
- (ii) for a period not exceeding any period of time specified in that scientific assessment, and

(b) at the time of the commission of the alleged offence, the food was held in a manner which was justified in the light of that scientific assessment.

(2) In any proceedings for an offence of contravening paragraph 6, it is a defence for the defendant to prove that the food –

- (a) had been kept for service or on display for sale for a period of less than two hours, and
- (b) had not previously been kept for service or on display for sale by that person.

8. **Reheating of food.**

- (1) This paragraph applies to food which has been heated in the course of a food business operation.
- (2) A person who reheats food to which this paragraph applies before that food is served for immediate consumption or exposed for sale must, when reheating that food, raise it to a temperature of not less than 82°C.

9. **Reheating defences.**

In any proceedings for an offence of contravening paragraph 8(2), it is a defence for the defendant to prove that the food could not have been raised to a temperature of not less than 82°C without a deterioration of its qualities.

10. **Interpretation.**

In this Schedule –

"food premises" means any premises in or from which a food business is operated,

"indirect sale", in relation to food -

(a) means sale of the food to the final consumer, where the seller (or the seller's employee or agent) and the buyer are not in the same place at the time of the sale, and

(b) includes a sale made by way of internet, electronic mail, telephone, facsimile or mail order,

"recommended temperature" means a specified temperature which has been recommended in accordance with subparagraph (1)(a)(i) of paragraph 4, and

"Regulation 1906/90" means Council Regulation (EEC) No 1906/90^{jjj} on certain marketing standards for poultry as last amended by Council Regulation (EC) No 1101/98^{kkkk} amending Regulation (EEC) No 1906/90 on certain marketing standards for poultry meat,

"Regulation 1907/90" means Council Regulation (EEC) No 1907/90^{lll} on certain marketing standards for eggs as last amended by Council Regulation (EC) No 2052/2003^{mmmm} amending Regulation (EEC) No 1907/90 on certain marketing standards for eggs,

"Regulation 1169/2011" means Regulation (EU) No 1169/2011ⁿⁿⁿⁿ of the European Parliament and of the Council on the provision of food information to consumers, and

^{jjj} O.J. No. L 173, 6.7.1990, p. 1.

^{kkkk} O.J. No. L 157, 30.5.1998, p. 12.

^{lll} O.J. No. L 173, 6.7.1990, p. 5.

^{mmmm} O.J. No. L 305, 22.11.2003, p. 1.

ⁿⁿⁿⁿ O.J. No. L 304, 22.11.2011, p. 18.

"shelf life" means –

- (a) in relation to food for which a date of minimum durability is required in accordance with Article 9(1)(f) of Regulation 1169/2011, as read with Article 24(1) and (2) of that Regulation, the period up to and including the required date of minimum durability,
- (b) in relation to food for which a "use by" date is required in accordance with Article 9(1)(f) of Regulation 1169/2011, as read with Article 24(1) and (2) of that Regulation, the period up to and including the required "use by" date, and
- (c) in relation to food which is not required to bear an indication of minimum durability or a "use by" date, the period for which the food can be expected to remain fit for sale if it is kept in a manner which is consistent with food safety.

SCHEDULE 7

SAMPLING AND RELATED POWERS AND DUTIES

Section 41(8)

1. This Schedule applies where an authorised officer purchases or takes without payment a sample of food under this Ordinance with the intention of having the sample analysed.
2. The authorised officer must, after purchasing or taking the sample, promptly notify the food business operator, or the person in apparent charge or control of the food, of that authorised officer's intention of having the sample analysed.
3. Where an authorised officer purchases or takes without payment a sample of food which is suspected by the authorised officer -
 - (a) to be unsafe, or
 - (b) to fail to comply with the provisions of this Ordinance applicable to such a food or with the relevant provisions of Regulation 178/2002,the authorised officer may, by notice in writing to the food business operator, or person in apparent charge or control of such food, prohibit the removal of the food except to any place which may be specified in the notice, during such period as may be specified in the notice, but not exceeding 15 days from the date of the taking of the sample.
4. If the division of a sample is reasonably practicable, the authorised officer must divide the sample into three approximately equal parts (enforcement,

trade (defence) and referee), each of which that authorised officer must mark in such a way as to identify it as a part of the sample taken. The authorised officer must, in the presence of the food business operator, or person in apparent charge or control of the food –

- (a) mark, seal and fasten each part in a manner that its nature permits, and in such a way that the integrity of the sample is not compromised,
- (b) forward one part to the approved examiner in a designated laboratory for analysis,
- (c) give or send one part to the food business operator (or person in apparent charge or control of the food), and
- (d) retain the third part.

5. If a sample consists of food contained in unopened containers and its division into parts -

- (a) is not reasonably practicable, or
- (b) might affect the composition or impede the proper analysis of the sample,

the authorised officer may divide the containers into three lots and deals with each lot as if it were a sample of the kind mentioned in paragraph 4.

6. The approved examiner or a person under that examiner's direction must analyse as soon as possible any sample of a food submitted to that examiner by

an authorised officer and that examiner must certify to the authorised officer, the result of such analysis in the form of an official certificate.

7. Where a sample of food is submitted for analysis by an approved examiner, the Department must draw up a report in accordance with article 9 of Regulation 882/2004, and where the certificate given in accordance with paragraph 6 indicates that there has been non-compliance with the relevant provisions of Regulation 178/2002, the Department must, as soon as practicable, provide the food business operator with a copy of the report.

SCHEDULE 8

DETENTION AND STORAGE OF SEIZED PROPERTY

Section 51(1)

1. An authorised officer may store seized property in any manner and place the authorised officer considers appropriate, before the seized property is disposed of in accordance with this Ordinance.
2. Any person who appears to an authorised officer to be the owner of the property must be given reasonable access to that property.
3. Where the seized property is perishable or its storage involves unreasonable expense or inconvenience, and –
 - (a) the Department is unaware of, or unable to contact, the owner of the property,
 - (b) no person has claimed the property within the period of three months after it was seized under this Ordinance, and
 - (c) there is no order to the contrary by a competent court,

an authorised officer may dispose of that property in any manner the authorised officer considers appropriate.

SCHEDULE 9
PENALTIES FOR OFFENCES

Section 69(1)

Penalty	Provision of this Ordinance creating the offence
Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding 2 years, a fine not exceeding twice level 5 on the uniform scale, or both.	Section 52(8). Section 53(8)(a) or (b). Section 71(3)(a) or (b).
Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the uniform scale.	Section 16(2). Section 23(1) or (2). Section 79(2).
Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding 6 months, a fine not exceeding level 5 on the uniform scale, or both.	Any other provision.

SCHEDULE 10

FORM OF OFFICIAL CERTIFICATE TO BE GIVEN BY AN APPROVED EXAMINER TO AN AUTHORISED OFFICER.

Section 87(1)

**European Communities (Implementation of Food and Feed Controls)
(Guernsey) Ordinance, 2016
Official certificate**

To(1).....

I, the undersigned(2).....

being an approved examiner for the purpose of the above Ordinance certify that on

the.....day of..... 20.....

a sample marked(3).....

Date.....

Number.....

Weight or Measure.....

was submitted to me by you and I certify that the sample was prepared and
analysed/examined by me or under my direction(4) and as a result I am of the opinion
that(5)

Observations:(6)

I further certify that the sample has undergone no change which would affect
my opinion/observations expressed above.

Certified by me this..... day of..... 20.....

at(7).....

Name in BLOCK LETTERS.....

Status.....

Signature.....

.....

Official Stamp

NOTES

- (1) *Insert the name and address of the person submitting the sample for analysis.*
- (2) *Insert description (e.g. Executive Analytical Chemist located at a Public Analyst's Laboratory).*
- (3) *Insert particulars of marking (e.g. name, date etc.) and the weight or measure (this may be left unanswered if the sample cannot be conveniently weighed or measured, or if the weight or measurement is not material to the result of analysis).*
- (4) *Indicate whether the approved examiner carried out the analysis in person, or whether it was carried out by another under the direction of the approved examiner.*
- (5) *Here the approved examiner should specify the result of the analysis, having regard to the provisions of the relevant legislation.*
- (6) *Here the approved examiner may insert, at the examiner's discretion, that examiner's opinion on whether the analysis indicates any addition, abstraction, deficiency or the presence of foreign matter or other defect and whether the composition or quality is thereby affected; any physical, chemical or other properties bearing on the composition or quality of the article; whether the article is injurious to health or unfit for human consumption; or whether and in what respect a label and description relating to the sample is incorrect or misleading; and that examiner may add such other observations as that examiner considers relevant.*

(7) *Insert the name and address of the laboratory carrying out the analysis or examination.*

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SCHEDULE 11

ENACTMENTS REPEALED OR REVOKED

Section 90

Laws

Food and Drugs (Guernsey) Law, 1970.

Food and Drugs (Amendment) (Guernsey) Law, 1975^{oooo}.

Food and Drugs (Amendment) (Guernsey) Law, 1995^{pppp}.

Food and Drugs (Amendment) (Guernsey) Law, 1996^{qqqq}.

Ordinances

Ordonnance dite "The Clean Milk Ordinance, 1945" of 8th December, 1945^{rrrr}.

Ice Cream (Heat Treatment) Ordinance, 1947^{ssss}.

Food and Drugs (Guernsey) Law, 1970 (Commencement) Ordinance, 1971^{tttt}.

Alderney (Application of Legislation) (Food and Drugs) Ordinance, 1971^{uuuu}.

Food and Drugs (Amendment) (Guernsey) Law, 1975 (Commencement) Ordinance, 1976^{vvvv}.

oooo Ordres en Conseil Vol. XXV, p. 378.

pppp Ordres en Conseil Vol. XXXVI, p. 235.

qqqq Ordres en Conseil Vol. XXXVI, p. 648.

rrrr Recueil d'Ordonnances Tome IX, p. 156.

ssss Recueil d'Ordonnances Tome IX, p. 198.

tttt Recueil d'Ordonnances Tome XVII, p. 75.

uuuu Recueil d'Ordonnances Tome XVII, p. 75.

vvvv Recueil d'Ordonnances Tome XX, p. 338.

Food and Drugs (Guernsey) Law, 1970 (Commencement) Ordinance, 1976^{www}.

Alderney (Application of Legislation) (Food and Drugs) (No. 2) Ordinance, 1976^{xxx}.

Food and Drugs (Amendment) (Guernsey) Law, 1995 (Commencement) Ordinance, 1996^{yyy}.

Alderney (Application of Legislation) (Food and Drugs) Ordinance, 1996^{zzz}.

Food and Drugs (Emergency Prohibition Notice) (Maximum Compensation) Ordinance, 1996^{aaaaa}.

Alderney (Application of Legislation) (Food and Drugs) Ordinance, 1997^{bbbbb}.

Alderney (Application of Legislation) (Food and Drugs) Ordinance, 2014^{cccc}.

Statutory Instruments

Food and Drugs (Certificate of Analysis) Order, 1976^{dddd}.

Food and Drugs (Food Hygiene) Order, 1976^{eeee}.

Food and Drugs (Preservatives in Food) Order, 1976^{ffff}.

^{www} Recueil d'Ordonnances Tome XX, p. 367.

^{xxx} Recueil d'Ordonnances Tome XX, p. 368.

^{yyy} Recueil d'Ordonnances Tome XXVII, p. 1.

^{zzz} Recueil d'Ordonnances Tome XXVII, p. 2.

^{aaaaa} Recueil d'Ordonnances Tome XXVII, p. 2.

^{bbbbb} Recueil d'Ordonnances Tome XXVII, p. 377.

^{cccc} Ordinance No. IX of 2014.

^{dddd} G.S.I. No. 11 of 1976.

^{eeee} G.S.I. No. 13 of 1976.

^{ffff} G.S.I. No. 33 of 1976.

Food and Drugs (Colouring Matter in Food) Order, 1976^{ggggg}.
Food and Drugs (Antioxidant in Food) Order, 1976^{hhhhh}.
Food and Drugs (Miscellaneous Additives in Food) Order, 1976ⁱⁱⁱⁱ.
Food and Drugs (Emulsifiers and Stabilisers in Food) Order, 1976^{jjjj}.
Food and Drugs (European Communities) (Wine) Order, 1976^{kkkkk}.
Food and Drugs (European Communities) (Wine) (Amendment) Order, 1977^{llll}.
The Food and Drugs (Labelling of Food) Order, 1995^{mmmmm}.
The Food and Drugs (Food Hygiene) (Amendment) Order, 1995ⁿⁿⁿⁿⁿ.
The Food and Drugs (Registration of Premises) Order, 1995^{ooooo}.
Food and Drugs (Slaughter and Deboning of Beef) Order, 1996^{ppppp}.
The Food and Drugs (Improvement and Prohibition – Prescribed Forms) Order,
1996^{qqqqq}.

^{ggggg} G.S.I. No. 34 of 1976.
^{hhhhh} G.S.I. No. 35 of 1976.
ⁱⁱⁱⁱ G.S.I. No. 36 of 1976.
^{jjjj} G.S.I. No. 37 of 1976.
^{kkkkk} G.S.I. No. 38 of 1976.
^{llll} G.S.I. No. 10 of 1977.
^{mmmmm} G.S.I. No. 2 of 1995.
ⁿⁿⁿⁿⁿ G.S.I. No. 3 of 1995.
^{ooooo} G.S.I. No. 37 of 1995.
^{ppppp} G.S.I. No. 8 of 1996.
^{qqqqq} G.S.I. No. 9 of 1996.

Food and Drugs (Food Hygiene) (Amendment) Order, 2007^{rrrrr}.

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^{rrrrr} G.S.I. No. 7 of 2007.

SCHEDULE 12

CONSEQUENTIAL AMENDMENTS

Section 91

Enactment	Provision	Amendment
The European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Guernsey) Ordinance, 2014	Sections 1(2) and (3), 3 and 5.	Repeal these provisions.
	Section 7(1)	Repeal the definition of " the 1970 Law ".
	Schedule 2	Repeal this schedule.
The European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014	Sections 2(2)(b), 10 and 12	Repeal these provisions.
	Section 2(3)	Repeal the definition of " EU market ".
	Section 15(1)	Repeal the definition of " the 1970 Law ".
	Schedule 2	Repeal this schedule.
Misuse of Drugs (Bailiwick of Guernsey) Law, 1974	Section 33(1)	Repeal this provision.
Public Health and Related	Entry relating to	Delete this entry.

Enactment	Provision	Amendment
Offences (Increase in Fines) (Guernsey) Law, 1986 ^{sssss}	the Food and Drugs (Guernsey) Law, 1970	
The Control of Poisonous Substances (Guernsey) Regulations, 2014 ^{ttttt}	Regulation 19(1)	For the definition of " food ", substitute the following definition – " " food " has the meaning given by section 87(1) of the European Communities (Implementation of Food and Feed Controls) (Guernsey) Ordinance, 2016.".
Milk (Control) (Guernsey) Ordinance, 1958 ^{uuuuu}	Section 15	Repeal this provision.

^{sssss} Ordres en Conseil Vol. XXIX, p. 329.

^{ttttt} G.S.I. No. 18 of 2014.

^{uuuuu} Recueil d'Ordonnances Tome XII, p. 23; amended by Tome XIII, p. 84; Tome XIV, pp. 28 and 277; Tome XVII, p. 1; Tome XXI, p. 427; Tome XXII, pp. 453 and 473; Tome XXVII, p. 51; Tome XXVIII, p. 433; Tome XXIV, p. 406; and Ordinance No. III of 2010.

Enactment	Provision	Amendment
	Section 16	Delete "and of the Clean Milk Ordinance, 1945".
Application of Existing Insular Legislation (Extension to Herm) Ordinance, 1948, of 13 th March, 1948 ^{vvvvv}	Schedule to the Ordinance	Repeal the entries relating to – (a) the Ordonnance dite "The Clean Milk Ordinance, 1945" of 8th December, 1945, and (b) the Ice Cream (Heat Treatment) Ordinance, 1947.
Alderney (Application of Legislation) Ordinance, 1948, of 30 th December, 1948 ^{wwwww}		Repeal the entry relating to the Ordonnance dite "The Clean Milk Ordinance, 1945" of 8th December, 1945.

To come - other legislation to be consequentially amended in consultation with other Departments and agencies (e.g. import and export control).

^{vvvvv} Recueil d'Ordonnances Tome IX, p. 247.

^{wwwww} Recueil d'Ordonnances Tome IX, p. 280.

SCHEDULE 13

TRANSITIONAL AND SAVINGS PROVISIONS

Section 92

1. Where, immediately before the commencement of this Ordinance, any premises are registered under the Food and Drugs (Registration of Premises) Order, 1995 to the proprietor of a food business being operated in or from those premises, upon the commencement of this Ordinance -
 - (a) the food business and those premises are deemed to be registered in the food business register under this Ordinance, and
 - (b) that proprietor is deemed to be the person registered as the operator of that food business under this Ordinance.
2. An application for registration made under the Food and Drugs (Registration of Premises) Order, 1995, which has not been determined before the commencement of this Ordinance is, upon the commencement of this Ordinance, to have no effect.
3. Where, immediately before the commencement of this Ordinance, a Department of the States of Guernsey -
 - (a) has granted an approval for any premises registered under the Food and Drugs (Registration of Premises) Order, 1995, and
 - (b) has issued those premises with an approved establishment number recognised by the Food Standards Agency in the United Kingdom,

upon the commencement of this Ordinance, the proprietor of the food business being operated in or from those premises, the food business and those premises are deemed to have been granted a food business approval under this Ordinance.

4. Unless the context requires otherwise, a reference to any provision of the former Law or any Ordinance or subordinate legislation made under it, in any enactment or document in force immediately before the commencement of this Ordinance, is, upon the commencement of this Ordinance, to be construed as a reference to any corresponding provision of this Ordinance (including, for the avoidance of doubt, any corresponding provision of regulations made under this Ordinance).