

BILLET D'ÉTAT No. I, 2016

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PROJET DE LOI

ENTITLED

The Firearms (Guernsey) (Amendment) Law, 2016

THE STATES, in pursuance of their Resolution of the 29th November, 2006^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendments to the principal Law.

1. The principal Law is amended as follows.
2. For the title of the principal Law, substitute "The Firearms and Weapons (Guernsey) Law, 1998".
3. In section 5 of the principal Law –
 - (a) in the heading, for "imitation", substitute "convertible imitation", and
 - (b) in subsection (1), immediately after "Ordinance", insert "or regulation".
4. Immediately after section 5 of the principal Law, insert the heading

^a Article X of Billet d'État No. XVIII of 2006.

and sections set out in Schedule 1 to this Law.

5. In section 6(1) of the principal Law, between paragraphs (e) and (f), insert the following paragraph –

"(ea) any air weapon which uses, or is designed or adapted for use with, a self-contained gas cartridge system,".

6. In section 16 of the principal Law –

(a) in subsection (1), for "thirty days", substitute "the maximum allowable period",

(b) between subsections (1) and (2), insert the following subsection –

"(1A) There shall be payable –

(a) on the grant or renewal of a visitor's temporary permit,

(b) on the replacement of any such permit which has been lost or destroyed, and

(c) on the variation of any such permit (otherwise than when it is replaced at the same time),

the fee prescribed for each of these purposes.",

(c) in subsection (3) –

- (i) between paragraphs (a) and (b) of subsection (3), insert the following paragraph –

"(aa) the expression "**country**" includes territory,"
and

- (ii) substitute the full stop at the end of paragraph (b) with a comma, and immediately after that paragraph, insert the following paragraph –

"(ba) the expression "**maximum allowable period**"
means –

- (i) in the case of a person who is ordinarily resident in Sark, 90 days, and
- (ii) in any other case, 30 days."

7. For section 20 of the principal Law, substitute the following section–

"Carrying firearm or air weapon in a public place.

20. (1) Subject to subsection (2) and sections 20A and 23B, a person commits an offence if, without lawful authority or reasonable excuse (the proof whereof lies on him) he has with him in a public place –

- (a) a firearm or air weapon (whether loaded or not), or
- (b) an imitation firearm.

(2) The Department may by regulations provide for defences or exceptions to, or exemptions from, the offence under subsection (1)."

8. In the heading of section 20A and in section 20A(1) of the principal Law, delete "loaded" wherever it occurs.

9. In section 22 of the principal Law –

(a) in subsection (2), for the words "The States may by Ordinance provide" and paragraph (a), substitute the following –

"The Department may make regulations –

(a) for approving or regulating (in any manner the Department thinks fit) the use of any place as a range for the firing of firearms," and

(b) repeal subsection (3).

10. Between sections 23 and 24, insert the sections set out in Schedule 2 to this Law.

11. For section 25, substitute the following section –

"Acquisition and possession of firearms or weapons by minors.

25. (1) It is an offence for a person under the age of eighteen years to purchase or hire any firearm, air weapon, imitation firearm, regulated weapon or ammunition.

(2) It is an offence for a person under the age of eighteen years to have in his possession any firearm, air weapon, imitation firearm, regulated weapon or ammunition, except –

- (a) in relation to any firearm or ammunition, in circumstances where that person is entitled under section 14(2) to have possession of it without holding a firearm certificate, or
 - (b) in relation to a shot gun, where that person uses the shot gun under the authority, and in accordance with the conditions, of a restricted shot gun certificate or a shot gun training certificate issued by the Chief Officer under section 31(2).
- (3) This section is subject to section 26A."

12. In section 26 of the principal Law –

- (a) in the heading, for "firearms", substitute "firearms or weapons",
- (b) in subsection (1), for "firearm", substitute "firearm, air weapon, imitation firearm, regulated weapon",
- (c) for subsection (2), substitute the following subsection –

"(2) It is an offence to make a gift of, lend or part with possession of, any firearm, air weapon, imitation firearm, regulated weapon or ammunition to a person under the age of eighteen years except –

- (a) in circumstances where that person is entitled under section 14(2) to have possession of it without holding a firearm certificate, or
- (b) in relation to a shot gun, in circumstances where that person uses the shot gun under the authority, and in accordance with the conditions, of a restricted shot gun certificate or a shot gun training certificate issued by the Chief Officer under section 31(2).", and
- (d) between subsections (3) and (4), insert the following subsection –

"(3A) Subsections (1) to (3) are subject to section 26A.".

13. Between sections 26 and 27 of the principal Law, insert the following section –

"Defences, exceptions and exemptions for sections 25 and 26.

26A. The Department may by regulations provide for defences or exceptions to, or exemptions from, the offence under section 25(1) or (2) or the offence under section 26(1), (2) or (3).".

14. In section 29 of the principal Law, between subsections (3) and (4), insert the following subsection –

"(3A) Where the applicant for the grant of a shot gun certificate is the holder of a firearm certificate he may elect that the period of validity of the shot gun certificate shall expire on the date of expiration of the firearm certificate; and the fee payable under section 35 in respect of such shot gun certificate shall be reduced accordingly.".

15. In section 30(1) of the principal Law, delete "or" at the end of paragraph (a) of the proviso, and immediately after that paragraph insert the following paragraph –

"(aa) to a person, unless the Chief Officer has conducted a security inspection of the place where the firearm would be kept, and is satisfied that the firearm would be kept safely and securely in that place,".

16. In section 31 of the principal Law –

(a) for subsection (1), substitute the following subsections–

"(1) Subject to subsection (1A), a shot gun certificate shall be granted or, as the case may be, renewed by the Chief Officer if –

(a) the Chief Officer is satisfied that the applicant has a good reason for having in his possession, or for purchasing or acquiring, a shot gun, and

(b) the Chief Officer has conducted a security inspection of the place where the shot gun would be kept and is satisfied that the firearm would be kept safely and securely in that place.

(1A) The Chief Officer shall not grant or renew a shot gun certificate if he has reason to believe that the applicant –

- (a) is prohibited by this Law from possessing a shot gun,
- (b) cannot be permitted to possess a shot gun without danger to the public safety or to the peace,
- (c) has not attained the age of eighteen years, or
- (d) is not covered by a policy of insurance in respect of the use of a shot gun to which the application relates.", and

- (b) in subsection (2), for "(1)(c)", substitute "(1A)(c)".

17. In section 35 of the principal Law –

- (a) in subsection (1), delete "and" at the end of paragraph (b), and immediately after that paragraph, insert the following paragraph –

"(ba) on the completion of a security visit to determine whether the firearm or shotgun would be kept securely and safely in a place, and",

- (b) repeal subsection (4).

18. In section 46(1) of the principal Law, immediately after "20A", insert ", 23B".

19. In section 48(b) of the principal Law, for "firearm", substitute "firearm, air weapon, imitation firearm, regulated weapon".

20. In section 49 of the principal Law –

(a) In subsection (1) –

(i) for paragraph (a), substitute the following paragraph –

"(a) of having a firearm or air weapon (with or without ammunition), or an imitation firearm with him in a public place, or", and

(ii) in the words following paragraph (b), for "firearm", substitute "firearm, air weapon or imitation firearm", and

(b) in subsections (2), (3) and (4), for "a firearm" wherever it occurs, substitute "any firearm, air weapon or imitation firearm".

21. For section 50A of the principal Law, substitute the following section–

"Production of licence or permit to carry shot gun or air weapon in a public place.

50A. (1) A police officer may demand, from any person whom he believes to have with him in a public place a shot gun or an air weapon –

- (a) the production of his licence under section 20A, in the case of a shot gun, or
- (b) the production of his permit under section 23B, in the case of an air weapon.

(2) If a person upon whom a demand is made under this section fails to produce the licence or permit to the police officer, the police officer may seize and detain the shot gun or air weapon concerned, and any ammunition, and may require the person to declare to him immediately his name and address.

(3) If under this section a person is required to declare to a police officer his name and address, it is an offence for him to refuse to declare it or to fail to give his true name and address."

22. In section 54 of the principal Law –

- (a) in the heading, immediately after "firearms", insert ", etc.",
- (b) in subsection (1)(b) and (c), for "firearm" wherever it occurs, substitute "firearm, air weapon, imitation firearm or regulated weapon",
- (c) in the words following subsection (1)(c) and in subsections (3) and (4), for "firearm" wherever it occurs, substitute "firearm, air weapon, imitation firearm, regulated weapon", and

- (d) in subsection (4), delete "or the Court of the Seneschal".

23. For section 55 of the principal Law, substitute the sections set out in Schedule 3 to this Law.

24. In section 58(3) of the principal Law –

- (a) insert the following definitions in the appropriate alphabetical order –

"antique firearm" means any firearm manufactured before 1870, except a centrefire firearm,

"centrefire firearm" means a firearm designed for or adapted to the use of centrefire cartridges which are fired by the striking of a hammer or firing pin upon the cap or primer at the centre of the base,

"Department" means the States of Guernsey Home Department,

"Island" means the island of Guernsey, Herm or Jethou,

"realistic imitation firearm" has the meaning given by section 5B, and

"regulated weapon" means a weapon declared to be a regulated weapon by Ordinance made by the States, ", and

- (b) for the definition of "**prescribed**", substitute the following definition –

"prescribed" –

- (a) in relation to any fee, means a fee prescribed by regulations of the Department made under section 1(1) of the Fees, Charges and Penalties (Guernsey) Law, 2007, and
- (b) in any other case, means prescribed by regulations made by the Department under this Law, ".

25. Repeal section 60(4) of the principal Law.

26. In section 62 of the principal Law, for subsection (1), substitute the following subsection –

"(1) This Law may be cited as the Firearms and Weapons (Guernsey) Law, 1998."

27. In the table in Part I of Schedule 2 to the principal Law –

- (a) insert the following entries (other than the column headings, which are included for reference only) in the appropriate order –

"Section of this Law creating offence"	General nature of offence	Mode of prosecution	Punishment	Additional provisions
S. 5A(1)	Manufacturing, modifying, selling or importing realistic imitation firearm	Summary or on indictment	6 months or a fine of level 4; or both	Paragraph 5 of Part II of this Schedule applies
S. 23A(1)	Firing an air weapon beyond premises	Summary or on indictment	3 months or a fine of level 4; or both	
S. 23B(7)	Making false statement in order to obtain permit to carry and use air weapon in public place	(a) Summary (b) On indictment	2 years or a fine of level 4 or both 3 years or a fine; or both	
S. 23B(10)	Failure to deliver up permit	Summary	A fine of level 3	
S. 23B(11)	Failure to surrender permit on revocation	Summary	A fine of level 2,"	

and

(b) amend the entries in the table as set out below -

Entry for	Amendment to words in the second column
S. 9(3)	For "s. 6", substitute "S.9".

Entry for	Amendment to words in the second column
S. 20	For the words in this column, substitute "Carrying firearm, air weapon or imitation firearm in public place".
S. 20A(7)	Delete the word "loaded".
S. 22(3)	Delete this entry.
S. 25(1) and (2)	For "firearm" wherever it occurs, substitute "firearm, air weapon, imitation firearm, regulated weapon or ammunition".
S. 26(1)	For "a firearm", substitute "firearm, air weapon, imitation firearm, regulated weapon or ammunition".
S. 26(2)	For the words in this column, substitute "Supplying firearm, air weapon, imitation firearm, regulated weapon or ammunition to person under 18".
S. 49(2)	For "firearm", substitute "firearm, air weapon, imitation firearm".
S. 55(3)	Delete this entry.

28. In Part II of Schedule 2 to the principal Law, for paragraph 5, substitute the following paragraph –

"5. The court by which a person is convicted of an offence under section 5A(1) or 26(3) may make such order as it thinks fit as to the forfeiture or disposal of the realistic imitation firearm, shot gun or ammunition in respect of which the offence was committed."

Interpretation.

29. (1) In this Law, unless the context requires otherwise –

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

"**the principal Law**" means the Firearms (Guernsey) Law,

1998^b, and

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

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

Repeals.

30. The following enactments are repealed –

- (a) Ordonnance relative aux Armes à Air Comprimé (Le 13 Juillet, 1912)^c,
- (b) Ordonnance relative aux Armes à Air Comprimé (Le 25 Mars, 1939)^d,
- (c) the Firearms Ordinance 1987^e,
- (d) the Fort Le Marchant Rifle Range (Firing on Sunday 15th May 1988) Ordinance, 1988^f,

^b Ordres en Conseil Vol. XXXVIII, p. 324; as amended by Order in Council No. II of 2000; Recueil d'Ordonnances Tome XXIX, p. 406. See also Orders in Council No. I of 2003 and No. VII of 2008.

^c Recueil d'Ordonnances Tome V, p. 229.

^d Recueil d'Ordonnances Tome IX, p. 21.

^e Recueil d'Ordonnances Tome XXIV, p. 106; as amended by Tome XXIX, pp. 205 and 406; Ordres en Conseil Vol. XXXI, p. 278.

^f Recueil d'Ordonnances Tome XXIV, p. 274.

(e) the Firearms (Fees) Ordinance, 2000^g,

Consequential amendments to Fees, Charges and Penalties (Guernsey) Law, 2007.

31. (1) Part A of the Schedule to the Fees, Charges and Penalties (Guernsey) Law, 2007^h is amended by substituting, for the entry relating to the Firearms (Guernsey) Law, 1998, the following entry –

"Firearms and Weapons (Guernsey) Law, 1998	<p>Fees payable in respect of grant, renewal, replacement or variation of –</p> <p>(a) firearm certificate,</p> <p>(b) shot gun certificate,</p> <p>(c) visitor's temporary permit,</p> <p>(d) licence to have shot gun in a public place, or</p> <p>(e) permit to use air weapon in a public place for vermin control.</p> <p>Fees payable for security visits in relation to grant or renewal of firearm or shotgun certificate.</p> <p>Fees payable on registration of person as firearms dealer or grant of new certificate of registration.</p>	Home Department"
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(2) The amendment made by subsection (1) shall be deemed to

^g Recueil d'Ordonnances Tome XXVIII, p. 317.

^h Order in Council No. VII of 2008; as amended by Ordinance No. VII of 2008.

have been made by Ordinance of the States under section 1(2) of the Fees, Charges and Penalties (Guernsey) Law, 2007.

Transitional and savings.

32. (1) Unless the context requires otherwise, any enactment or document referring to the Firearms (Guernsey) Law, 1998 is to be construed as referring, or including a reference, to the Firearms and Weapons (Guernsey) Law, 1998, so far as may be necessary for preserving the effect of the enactment or document.

(2) Any enactment or document referring to an enactment repealed by section 31 of this Law, so far as may be necessary for preserving the effect of the enactment or document, is to be construed as referring, or as including a reference, to –

- (a) the corresponding provisions of the principal Law, as amended by this Law, or
- (b) corresponding regulations made by the Department under the principal Law, as amended by this Law,

as the case may require.

(3) Both subsections (1) and (2) apply to any enactment or document, whether made or passed before or after the commencement of this Law.

Citation.

33. This Law may be cited as the Firearms (Guernsey) (Amendment) Law, 2016.

Commencement.

34. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE 1
HEADING AND SECTIONS TO BE INSERTED IMMEDIATELY AFTER
SECTION 5 OF PRINCIPAL LAW

Section 4

"General restrictions on imitation firearms"

Manufacture, import and sale of realistic imitation firearm.

5A. (1) Subject to subsections (2) and (3), a person commits an offence if –

- (a) he manufactures a realistic imitation firearm,
- (b) he modifies an imitation firearm so that it becomes a realistic imitation firearm,
- (c) he sells a realistic imitation firearm, or
- (d) he imports a realistic imitation firearm into the Island or causes one to be imported into the Island.

(2) It is a defence for a person charged with an offence under subsection (1) to show that the conduct was for the purpose only of making the imitation firearm in question available for one or more of the following purposes –

- (a) the purposes of a museum or gallery,
- (b) the purposes of theatrical performances and of rehearsals for such performances,

- (c) the production of films,
- (d) the production of programmes,
- (e) the organisation and holding of historical re-enactments organised and held by persons specified or described for the purposes of this section by regulations made by the Department, and
- (f) any other purposes prescribed by regulations made by the Department.

(3) The Department may by regulations provide for further defences or exceptions to, or exemptions from, the offence under subsection (1).

(4) In this section –

"**film**" has the meaning given by section 6 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005,

"**historical re-enactment**" means any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past,

"**museum or gallery**" includes any institution which –

- (a) has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest, and
- (b) gives the public access to it.

"programme" –

- (a) means any programme (with or without sounds) which—
 - (i) is produced wholly or partly to be seen on television or any kind of broadcast or electronic media, and
 - (ii) consists of moving or still images or of those things and text, and
- (b) includes an advertisement, and

"realistic imitation firearm" has the meaning given by section 5B.

Meaning of "realistic imitation firearm".

5B. (1) In section 5A, **"realistic imitation firearm"** means an imitation firearm which –

- (a) has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm, and
- (b) is neither a de-activated firearm nor an antique firearm.

(2) For the purposes of this section, an imitation firearm is not (except by virtue of subsection (3)(b)) to be regarded as distinguishable from a real firearm for any practical purpose if it could be so distinguished only –

- (a) by an expert,
- (b) on a close examination, or
- (c) as a result of an attempt to load or to fire it.

(3) In determining for the purposes of this section whether an imitation firearm is distinguishable from a real firearm –

- (a) the matters that must be taken into account include any differences between the size, shape and principal colour of the imitation firearm and the size, shape and colour in which the real firearm is manufactured, and
- (b) the imitation is to be regarded as distinguishable if its size, shape or principal colour is unrealistic for a real firearm.

(4) The Department may by regulations provide that, for the purposes of subsection (3)(b) –

- (a) the size of an imitation firearm is to be regarded as unrealistic for a real firearm only if the imitation firearm has dimensions that are less than the dimensions specified in the regulations, and
- (b) a colour is to be regarded as unrealistic for a real firearm only if it is a colour specified in the regulations.

(5) In this section –

"**colour**" is to be construed in accordance with subsection (6),

"**de-activated firearm**" means a firearm that has been de-activated within the meaning of section 8,

"**modern firearm**" means any firearm other than one the appearance of which would tend to identify it as having a design and mechanism of a sort first dating from before the year 1870, and

"**real firearm**" means –

- (a) a firearm of an actual make or model of modern firearm (whether existing or discontinued), or
- (b) something falling within a description which could be used for identifying, by reference to their appearance, the firearms falling within a category of actual modern firearms which, even though they include firearms of different makes or models (whether existing or discontinued) or both, all have the same or a similar appearance.

(6) References in this section, in relation to an imitation firearm or a real firearm, to its colour include references to its being made of transparent material."

SCHEDULE 2
SECTIONS TO BE INSERTED BETWEEN SECTIONS 23 AND 24 OF
PRINCIPAL LAW

Section 10

"Firing an air weapon beyond premises."

23A. (1) Subject to subsection (2) and section 23B, a person commits an offence if –

- (a) he has with him an air weapon on any premises, and
- (b) he uses it for firing a missile beyond those premises.

(2) In proceedings against a person for an offence under subsection (1), it is a defence for him to show that the only premises into or across which the missile was fired were premises the occupier of which had consented to the firing of the missile (whether specifically or by way of a general consent).

Carriage and use of air weapons in public places for vermin control.

23B. (1) A person does not commit an offence under section 20 or 23A by reason of having an air weapon with him in a public place, or using it to fire a missile in a public place, if he does so –

- (a) for the purposes of destroying or controlling vermin, and
- (b) under the authority, and in accordance with the conditions, of a permit granted to him under this section by the Chief Officer.

(2) A permit granted under this section by the Chief Officer –

- (a) shall state the name and address of the person to whom it is granted and shall bear a photograph of that person,
- (b) shall be granted for such period not exceeding three years as the Chief Officer thinks fit and shall specify the date upon which it will, unless revoked earlier, cease to be valid, and
- (c) may be granted subject to such conditions (including, without limitation, conditions as to the locations, occasions, circumstances and purposes for which the permit is valid) as the Chief Officer considers to be necessary or expedient, whether on grounds of public safety or otherwise; and the Chief Officer may from time to time by notice in writing vary or rescind any condition subject to which a permit was granted or impose any new condition.

(3) An application for a permit shall be made to the Chief Officer in such form, and shall be accompanied by such documents, information and particulars, as the Chief Officer may require.

(4) A permit shall be granted by the Chief Officer if he is satisfied that the applicant –

- (a) is over 18 years of age,

- (b) wishes to obtain the permit for the purposes of destroying or controlling vermin,
 - (c) can demonstrate proven knowledge and experience of applying the best practice in relation to safe use of the air weapon concerned, and
 - (d) has adequate public liability insurance for the activity authorised by the permit.
- (5) A permit shall cease to be valid –
 - (a) on the date specified therein, or
 - (b) if the Chief Officer revokes it.
- (6) A permit may be revoked by the Chief Officer if he is satisfied that –
 - (a) any requirement of subsection (4)(a) to (d) is not or is no longer complied with or would not be complied with if an application for such a permit were then being made,
 - (b) any condition of the permit is contravened,
 - (c) the holder is prohibited by this Law from possessing an air weapon, or

- (d) the holder cannot be permitted to possess an air weapon without danger to the public safety or the peace.

(7) It is an offence for a person to make any statement which he knows to be false for the purpose of procuring, whether for himself or for another person, the grant or variation of a permit.

(8) There shall be payable –

- (a) on the grant of a permit,
- (b) on the replacement of a permit which has been lost or destroyed, and
- (c) on the variation of any permit (otherwise than when it is replaced at the same time),

the fee prescribed for the purpose.

(9) Where the Chief Officer by notice in writing varies or rescinds any condition subject to which a permit was granted or imposes any new condition, he may by notice require the holder to deliver up the permit to him within such period as may be specified in the notice for the purpose of amending the conditions of the permit.

(10) Where the Chief Officer, pursuant to subsection (9), requires the holder of a permit to produce the permit, it is an offence for that holder to fail to deliver up that permit within the specified period.

(11) Where a permit is revoked by the Chief Officer, he shall by notice in writing require the holder to surrender the permit within such period from the date of the notice as may be specified therein, and it is an offence for the holder to fail to do so within the period so specified:

Provided that, if an appeal is brought against the revocation, this subsection shall not apply to that revocation unless the appeal is abandoned or dismissed, and shall then apply with the substitution, for the reference to the date of the notice, of a reference to the date on which the appeal was abandoned or dismissed.

(12) References in this section to the grant of a permit include references to the renewal thereof."

SCHEDULE 3
SECTIONS TO BE INSERTED IN SUBSTITUTION OF SECTION 55 OF
PRINCIPAL LAW

Section 23

"General provisions as to Ordinances.

55. (1) An Ordinance made by the States under this Law –
- (a) may prescribe –
 - (i) anything which under any provision of this Law may be prescribed by Ordinance, and
 - (ii) any incidental and supplementary matters for which the States deem it necessary or expedient for the purposes of any such Ordinance to prescribe,
 - (b) may be amended or repealed by a subsequent Ordinance, and
 - (c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to prescribed exceptions, or in relation to any prescribed cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases, or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions, or
 - (iv) different provision for different classes, descriptions and categories of –
 - (A) firearms, weapons, ammunition or other things,
 - (B) persons, or
 - (C) circumstances.
- (3) Without prejudice to the generality of subsections (1) and (2),

an Ordinance under this Law may empower the Department, any other department of the States, any other body or authority (including, without limitation, any court in the Island), or any person to grant an approval, a consent or permission of any kind, in relation to any matter for which an Ordinance may be made under this Law.

General provisions as to regulations.

55A. (1) Regulations made by the Department under this Law—

- (a) may be amended or repealed by subsequent regulations, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power to make regulations under this Law may be exercised —

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to prescribed exceptions, or in relation to any prescribed cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised —
 - (i) the full provision to which the power extends or any lesser provision (whether by way of

exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases, or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions, or
- (iv) different provision for different classes, descriptions and categories of –
 - (A) firearms, weapons, ammunition or other things,
 - (B) persons, or
 - (C) circumstances.

(3) Without prejudice to the generality of subsections (1) and (2), regulations under this Law may –

- (a) subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) empower the Department, any other department of the States, any other body or authority (including, without limitation, any court in the Island), or any person to grant an approval, a consent or permission of any kind,

in relation to any matter for which regulations may be made under this Law, and

- (c) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law.

(4) Regulations under this Law may not –

- (a) provide for offences to be triable only on indictment, or

- (b) authorise the imposition –

- (i) on summary conviction, of a term of imprisonment exceeding 3 months or a fine exceeding level 4 of the uniform scale within the meaning of section 1 of the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, or

- (ii) on conviction on indictment, of a term of imprisonment exceeding 2 years or a fine exceeding twice level 5 of the uniform scale within the meaning of section 1 of the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989.

(5) Subject to subsection (6), regulations made under this Law shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations

(6) Subsection (5) does not apply to regulations prescribing a form for the purposes of any of sections 10(1), 12(2), 15(1)(c), 29(1), 30(2), 31(3) or 36(1) or (5)(b).".

The Social Insurance (Guernsey) (Amendment) Law, 2016

THE STATES, in pursuance of their Resolution of the 8th April, 2015^a have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Amendment of the Social Insurance (Guernsey) Law, 1978.

1. (1) The Social Insurance (Guernsey) Law, 1978^b ("**the Law**") is amended as follows.

(2) In the Sixth Schedule to the Law -

(a) for the meaning of "Pensionable age" in the second column substitute "The age specified in column 2 of the table at the end of this Schedule opposite the age category specified in column 1 of the table in which the person's date of birth falls.", and

(b) at the end insert the following table -

"Table for purposes of establishing pensionable age"	
Age categories	Pensionable age
Person born before 1 st January, 1955	65 years
Person born on or after 1 st January, 1955 and before 1 st November, 1955	65 years and 2 months
Person born on or after 1 st November, 1955 and before 1 st September, 1956	65 years and 4 months
Person born on or after 1 st September, 1956 and before 1 st July, 1957	65 years and 6 months
Person born on or after 1 st July, 1957 and before 1 st May, 1958	65 years and 8 months
Person born on or after 1 st May, 1958 and	65 years and 10 months

^a Article I.13 of Billet d'État No. IV of 2015.

^b Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; Vol. XXXIV, p. 510.; Vol. XXXV(1), p. 161; Vol. XXXVI, pp. 123 and 343; Vol. XXXIX, p. 107; Vol. XL, p. 351; Vol. XLI, p. 267; Vol. XLII (2), p. 1230 and Vol. XLIII, p. 813; Order in Council No. XI of 2004 and No. XVIII of 2007; Recueil d'Ordonnances Tome XXVI, p. 177; Tome XXXIII, p. 666; Ordinance No. XVII of 2011; No. XXXVIII of 2012 and No. XXX of 2013.

before 1 st March, 1959	
Person born on or after 1 st March, 1959 and before 1 st January, 1960	66 years
Person born on or after 1 st January, 1960 and before 1 st November, 1960	66 years and 2 months
Person born on or after 1 st November, 1960 and before 1 st September, 1961	66 years and 4 months
Person born on or after 1 st September, 1961 and before 1 st July, 1962	66 years and 6 months
Person born on or after 1 st July, 1962 and before 1 st May, 1963	66 years and 8 months
Person born on or after 1 st May, 1963 and before 1 st March, 1964	66 years and 10 months
Person born on or after 1 st March, 1964 and before 1 st January, 1965	67 years
Person born on or after 1 st January, 1965 and before 1 st November, 1965	67 years and 2 months
Person born on or after 1 st November, 1965 and before 1 st September, 1966	67 years and 4 months
Person born on or after 1 st September, 1966 and before 1 st July, 1967	67 years and 6 months
Person born on or after 1 st July, 1967 and before 1 st May, 1968	67 years and 8 months
Person born on or after 1 st May, 1968 and before 1 st March, 1969	67 years and 10 months
Person born on or after 1 st March, 1969 and before 1 st January, 1970	68 years
Person born on or after 1 st January, 1970 and before 1 st November, 1970	68 years and 2 months
Person born on or after 1 st November, 1970 and before 1 st September, 1971	68 years and 4 months
Person born on or after 1 st September, 1971 and before 1 st July, 1972	68 years and 6 months
Person born on or after 1 st July, 1972 and before 1 st May, 1973	68 years and 8 months
Person born on or after 1 st May, 1973 and before 1 st March, 1974	68 years and 10 months
Person born on or after 1 st March, 1974 and before 1 st January, 1975	69 years
Person born on or after 1 st January 1975 and before 1 st November 1975	69 years and 2 months
Person born on or after 1 st November, 1975 and before 1 st September, 1976	69 years and 4 months
Person born on or after 1 st September, 1976 and before 1 st July, 1977	69 years and 6 months
Person born on or after 1 st July, 1977 and before 1 st May, 1978	69 years and 8 months
Person born on or after 1 st May, 1978 and before 1 st March, 1979	69 years and 10 months
Person born on or after 1 st March, 1979	70 years"

Amendment of Health Service (Benefit) Ordinance, 1990.

2. (1) The Health Service (Benefit) Ordinance, 1990^c ("the Ordinance") is amended as follows.

(2) In section 3(2)(a) of the Ordinance, for "the age of 65 years" substitute "pensionable age".

(3) In section 9(1) of the Ordinance, immediately after the definition of "**nurse prescriber**" insert the following definition -

"**pensionable age**" has the meaning given by section 121(1) of the Social Insurance (Guernsey) Law, 1978,."

Interpretation.

3. (1) The Interpretation (Guernsey) Law, 1948^d shall apply to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

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

Citation.

4. This Law may be cited as the Social Insurance (Guernsey) (Amendment) Law, 2016.

^c Recueil d'Ordonnances Tome XXV, pp. 191 and 310; also see Ordinance No. XXXIV of 2013; there are other amendments not relevant to this Law.

^d Ordres en Conseil Vol. XIII, p. 355.

The Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016

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The Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolutions of the 27th April, 2006^a and the 26th February, 2014^b, and in exercise of the powers conferred on them by sections 1 to 3 of the Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010^c, hereby Order:-

PART I DESIGNATION OF AUTHORITIES

Designation and functions of Management Authority.

1. (1) The States of Guernsey Commerce and Employment Department ("**the Department**") is designated as the Management Authority for the Bailiwick of Guernsey for the purposes of the Convention on International Trade in Endangered Species of Wild Fauna and Flora^d ("**the Convention**").

(2) The functions of the Department as Management Authority are to -

- (a) carry out the functions conferred upon the Department under the following sections of this Ordinance,
- (b) co-operate with other relevant authorities to implement this Ordinance and any other enactment applying in the Bailiwick relating to the conservation of specimens,

^a Article X of Billet d'État No. VIII of 2006.

^b Article V of Billet d'État No. III of 2014.

^c Order in Council No. III of 2011.

^d Signed at Washington DC on the 3rd March, 1973; the United Kingdom ratified the Convention on the 2nd August, 1976 and it came into force on the 31st October, 1976.

- (c) maintain records of trade in Annex A to C specimens required to be regulated under this Ordinance and prepare –
 - (i) an annual report concerning such trade, and
 - (ii) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention under this Ordinance,

and submit the reports to the appropriate authority in the United Kingdom by the prescribed date,
- (d) advise the States of Guernsey, States of Alderney and Chief Pleas of Sark on action to be taken for the implementation of the Convention,
- (e) communicate with the competent Management Authority for the United Kingdom, the Convention Secretariat (through the competent Management Authority for the United Kingdom) and other relevant authorities on scientific, administrative and enforcement issues in relation to the implementation of the Convention, and
- (f) carry out such other functions as are recommended to be carried out by the Management Authority under any relevant resolutions of the Conference of the Parties.

Designation and functions of Scientific Authorities.

2. (1) The Department shall, from time to time, designate in writing such persons as it considers appropriate as Scientific Authorities for the Bailiwick of Guernsey for the purposes of the Convention.

(2) In making an appointment under subsection (1) the Department must have regard to the desirability of appointing a person who has relevant expertise in relation to the functions of the Scientific Authority under this Ordinance.

(3) The Department may designate different persons in relation to different specimens or classes of specimen under this section.

(4) A person designated under this section shall, in respect of the specimens or classes of specimen in relation to which the person is designated -

- (a) carry out the functions of the Scientific Authority under the following sections of this Ordinance,
- (b) monitor the export permits granted under this Ordinance, and exports taking place, of species of specimens listed in Annex B,
- (c) when the person considers that the population of a species monitored under paragraph (b) is such that measures should be taken to limit the issuing of export permits under this Ordinance relating to such species, advise the Management Authority of suitable measures to limit the issue of such export permits,
- (d) advise the Department on the disposal of specimens seized and forfeited under this Ordinance,
- (e) advise the Department on any matter the person considers relevant in relation to the protection or conservation of specimens, and
- (f) carry out such other functions as are recommended to be carried out by the Scientific Authority under any relevant resolutions of the Conference of the Parties.

PART II
REGULATION OF TRADE

Prohibition on import of Annex A or B specimens except under import permit.

3. (1) A person must not import an Annex A or B specimen unless it is imported -

- (a) under and in accordance with an import permit issued by the Department under this section, and
- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and import permit are presented to a customs officer for inspection together with such other documentation as the Department may specify in writing under this subsection.

(3) The Department must not issue an import permit in relation to a specimen under this section unless -

- (a) the applicant has provided a copy of a valid -
 - (i) export permit, or
 - (ii) re-export certificate,

in relation to the specimen issued by the relevant authority in the country from which the specimen is to be imported, and
- (b) in the case of an Annex A specimen, the Scientific Authority has advised the Department in writing that-
 - (i) the import of the specimen would not have a

harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species,

- (ii) the import of the specimen is for a purpose which is not detrimental to the survival of the species in question, and
- (iii) the Scientific Authority is satisfied that the intended accommodation for a live specimen, at the place of destination, is adequately equipped for the proper housing and care of the specimen,
- (c) in the case of an Annex A specimen, the Department is satisfied that the specimen is not to be used for primarily commercial purposes following import, and
- (d) where the import is of an Annex A specimen from a country not Party to the Convention, the Department has complied with section 10.

(4) In determining whether or not a specimen is to be used for primarily commercial purposes following import, the Department must have regard to any relevant resolutions of the Conference of the Parties.

Prohibition on introduction from the sea of Annex A or B specimens except under introduction from the sea certificate.

4. (1) A person must not introduce from the sea an Annex A or B specimen unless it is introduced -

- (a) under and in accordance with an introduction from the sea certificate issued by the Department under this section, and

- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and introduction from the sea certificate are presented to a customs officer for inspection together with such other documentation as the Department may specify in writing under this subsection.

(3) The Department must not issue an introduction from the sea certificate in relation to a specimen under this section unless -

- (a) the Scientific Authority has advised the Department in writing that -
 - (i) the introduction from the sea of the specimen would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, and
 - (ii) the introduction from the sea of the specimen is for a purpose which is not detrimental to the survival of the species in question,
- (b) in the case of the introduction from the sea of an Annex A specimen, the Department is satisfied that -
 - (i) the specimen is not to be used for primarily commercial purposes following introduction, and
 - (ii) in the case of a live specimen, the intended accommodation at the place of destination is adequately equipped for the proper housing and care of the specimen, and

- (c) the Department is satisfied that the specimen will be prepared and transported so as to minimize the risk of injury, damage to health or cruel treatment.

(4) In determining whether or not a specimen is to be used for primarily commercial purposes following introduction from the sea, the Department must have regard to any relevant resolutions of the Conference of the Parties.

Prohibition on import of Annex C or D specimens except under import notification.

5. (1) A person must not import an Annex C or D specimen unless it is imported -

- (a) at a specified port or airport, and
- (b) in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and an import notification are presented to a customs officer for inspection together with -

- (a) in the case of an Annex C specimen -
 - (i) where the export is from a country mentioned in Annex C in relation to the species concerned, evidence in writing, by means of an export permit issued in accordance with the Convention by a relevant authority, that the specimen has been obtained in accordance with the law of that country on the conservation and protection of the species concerned,
 - (ii) where the export is from a country not mentioned in Annex C in relation to the

species concerned or is a re-export from any country -

(A) an export permit,

(B) a re-export certificate, or

(C) a certificate of origin,

issued in accordance with the Convention by a relevant authority, and

(iii) such other documentation as the Department may specify in writing under this subsection, and

(b) in the case of an Annex D specimen, such other documentation as the Department may specify in writing under this paragraph.

Prohibition on export of Annex A, B or C specimens except under export permit.

6. (1) A person must not export an Annex A, B or C specimen unless it is exported -

(a) under and in accordance with an export permit issued by the Department under this section, and

(b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and export permit are presented to a customs officer for inspection together with such other documentation as the Department may specify in writing under this subsection.

(3) The Department must not issue an export permit in relation to a specimen under this section unless -

- (a) in the case of an Annex A specimen, the applicant has provided a copy of a valid import permit in relation to the specimen issued by the relevant authority in the country to which the specimen is to be exported,
- (b) the Scientific Authority has advised the Department in writing that the export of the specimen or its capture or collection from the wild in the Bailiwick would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species,
- (c) the Department is satisfied, on production by the applicant of evidence in writing, that -
 - (i) the specimen has been obtained in accordance with the law of the Bailiwick in relation to the conservation and protection of the species in question,
 - (ii) in the case of a live specimen, the specimen will be prepared and transported so as to minimize the risk of injury, damage to health or cruel treatment, and
 - (iii) the export of the specimen will not exceed any export quota for that specimen, from time to time in force and established by -
 - (A) the Conference of the Parties, or
 - (B) the Department, and

- (d) where the export of an Annex A specimen is to a country which is not a Party to the Convention, the Department has complied with section 10.

Prohibition on re-export of Annex A, B or C specimens except under re-export certificate.

7. (1) A person must not re-export an Annex A, B or C specimen unless it is re-exported -

- (a) under and in accordance with a re-export certificate issued by the Department under this section, and
- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and re-export certificate are presented to a customs officer for inspection together with such other documentation as the Department may specify in writing under this subsection.

(3) The Department must not issue a re-export certificate in relation to a specimen under this section unless -

- (a) in the case of an Annex A specimen, the applicant has provided a copy of a valid import permit in relation to the specimen issued by the relevant authority in the country to which the specimen is to be re-exported,
- (b) in the case of a live specimen, the Department is satisfied, on production by the applicant of evidence in writing, that the specimen will be prepared and transported so as to minimize the risk of injury, damage to health or cruel treatment,
- (c) the Department is satisfied, on production by the applicant of evidence in writing, that -

- (i) the specimen was imported in accordance with this Ordinance,
- (ii) where imported on or after the 31st October, 1976 and before the entry into force of this Ordinance -
 - (A) where imported into Guernsey, the specimen was imported in compliance with the relevant order, from time to time in force, under the Import and Export (Control) (Guernsey) Law, 1946^e,
 - (B) where imported into Alderney, the specimen was imported in compliance with the relevant order, from time to time in force, under the Import and Export (Control) Alderney Law, 1946^f, or
- (iii) the specimen was legally imported before the 31st October, 1976, and
- (d) where the re-export is of an Annex A specimen to a country which is not a Party to the Convention, the

^e Ordres en Conseil Vol. XII, p. 332; as amended by Ordres en Conseil Vol. XXIII, p. 573, Vol. XXXIII p. 246 and Order in Council No. XIV of 2007, Recueil d'Ordonnances Tome XXIX, p. 406. The Law is applied to the Island of Herm by Recueil d'Ordonnances Tome IX, p. 247. See also Ordres en Conseil Vol. XXVII, p. 172 and Order in Council No. IX of 2014.

^f Ordres en Conseil Vol. XII, p. 367 as amended by Ordres en Conseil Vol. XXXI, pp. 306 and 396 and Order in Council No. XIV of 2007.

Department has complied with section 10.

Offences and penalties for contraventions of this Part.

8. (1) A person who contravenes section 3(1), 4(1), 5(1), 6(1) or 7(1) is guilty of an offence and liable -

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

(2) A person who knowingly falsifies or alters any permit, certificate or label is guilty of an offence and is liable -

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

(3) A person who knowingly uses a permit, certificate, label or import notification for any specimen other than that for which it was issued is guilty of an offence and is liable -

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

(4) A holder of a permit or certificate or person registered under this Ordinance commits an offence if the holder or person registered, as the case may be, contravenes the terms or conditions of a permit, certificate or registration and is liable -

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

(5) In subsection (2) and (3) -

"label" means -

- (a) a label referred to in section 14(b), or
- (b) any other label issued or approved by the Department or a relevant authority, and

"permit or certificate" means -

- (a) a permit or certificate issued or deemed to be issued by the Department under this Ordinance, or
- (b) a permit or certificate issued by a relevant authority.

PART III

TRADE WITH COUNTRIES THAT ARE NOT PARTY TO THE CONVENTION

Permits or certificates issued by non Parties.

9. A permit or certificate issued by a competent authority of a country not Party to the Convention must not be accepted as valid for the purposes of this Ordinance unless it includes -

- (a) the name and stamp of the competent authority and is signed by an authorised signatory of that authority,
- (b) sufficient identification of a specimen to meet the requirements of the Convention,
- (c) certification of the origin of the specimen, including where the specimen is to be imported, the export permit number from the country of origin,
- (d) subject to paragraph (e), in the case of an import of an Annex A or B specimen certification from –
 - (i) the relevant Scientific Authority or competent Scientific Authority in the country of origin that the export of the specimen will not be detrimental to the survival of the relevant species, and
 - (ii) the relevant authority in the country of origin that the specimen was obtained in accordance with the law of that country,
- (e) in the case of an import of an Annex A or B specimen which has been re-exported, certification by the relevant authority of the country of re-export that the relevant authority of the country of origin has issued an export permit or comparable document which meets the requirements of the Convention, and
- (f) in the case of an import of a live Annex A or B specimen, certification by the relevant authority of

the country of export or re-export that the specimen will be transported so as to minimise the risk of injury, damage to health or cruel treatment.

Restrictions on trade in Annex A specimens with countries not Party to the Convention.

10. (1) The Department must not issue a permit or certificate under this Ordinance authorising trade in an Annex A specimen, which is of wild origin, with a country not Party to the Convention unless -

- (a) the Scientific Authority has advised it in writing that -
 - (i) the trade would benefit the conservation of the relevant species, or
 - (ii) the trade would benefit the welfare of the specimen, and
- (b) it has first consulted the Convention Secretariat through the competent Management Authority for the United Kingdom.

(2) The Department must not issue an import permit under this Ordinance authorising the import of an Annex A specimen, which in the case of an animal was bred in captivity or in the case of a plant was artificially propagated, with a country not Party to the Convention unless -

- (a) the Department has first consulted the Convention Secretariat through the competent Management Authority for the United Kingdom, and
- (b) the Convention Secretariat, through the competent Management Authority for the United Kingdom, has indicated in writing that it considers that the same would be consistent with the Convention.

PART IV
EXEMPTIONS AND MODIFICATIONS

Specimens in transit.

11. Part II does not apply to a specimen which is in transit or being transhipped through the Bailiwick provided that the specimen is accompanied by a valid export permit or re-export certificate issued by the relevant authority.

Pre-Convention specimens.

12. (1) Part II does not apply to a specimen provided that the Department -

- (a) in the case of an export or re-export -
 - (i) is satisfied that a specimen was acquired before the date on which the provisions of the Convention became applicable to such a specimen, and
 - (ii) has issued a pre-Convention certificate under this section to that effect,
- (b) in the case of an import, is satisfied that the relevant authority of the country from which the specimen is to be imported -
 - (i) is satisfied that the specimen was acquired before the date on which the provisions of the Convention became applicable to such a specimen, and
 - (ii) has issued a pre-Convention certificate to that effect.

(2) For the purposes of subsection (1) -

- (a) the date on which the provisions of the Convention became applicable to a specimen is the date on which the species was first included in the Appendices to the Convention, and
 - (b) the date on which a specimen is acquired is the date the specimen was known -
 - (i) to be removed from the wild,
 - (ii) in the case of an animal, born in captivity or, in the case of a plant, artificially propagated in a controlled environment, or
 - (iii) where the date in subparagraph (i) or (ii) is unknown or cannot be proved in writing, any subsequent date which can be proved in writing on which it was first possessed by a person.
- (3) In this section a "**pre-convention Certificate**" means a certificate -
- (a) certifying the matters in subsection (1)(a)(i) or (b)(i), and
 - (b) complying with any relevant resolutions of the Conference of the Parties.

Personal and household effects.

13. (1) Part II does not apply to trade in personal and household effects -

- (a) where carried out in accordance with such requirements, and

- (b) subject to such exceptions and other matters,

as the Department may by Regulations provide.

(2) Any requirements, exceptions and other matters provided for by Regulations of the Department under subsection (1) must be consistent with the Convention.

Non-commercial loan, donation or exchange between registered scientific institutions.

14. Part II does not apply to the non-commercial loan, donation or exchange of herbarium specimens or other preserved, dried or embedded museum specimens or live plant material provided that -

- (a) such loan, donation or exchange is between registered scientific institutions under and in accordance with that registration, and
- (b) the specimen, or container used to transport the specimen, bears a label -
 - (i) issued or approved by -
 - (A) the Department, or
 - (B) a relevant authority, and
 - (ii) meeting such requirements as may be prescribed.

Specimens born and bred in captivity or artificially propagated.

15. (1) For the purposes of this Ordinance, an Annex A specimen which was-

- (a) in the case of an animal, bred in captivity, or

- (b) in the case of a plant, artificially propagated,

for commercial purposes is deemed to be an Annex B specimen.

(2) Where a specimen is, in the case of an animal, bred in captivity or, in the case of a plant, artificially propagated, for purposes other than commercial purposes a certificate certifying that the animal was so bred in captivity or the plant so artificially propagated may be -

- (a) issued by the Department, in the case of an export or re-export, or

- (b) provided by the applicant, in the case of an import,

instead of an export permit or re-export certificate for the purposes of sections 3(3)(a), 5(2), 6(1)(a) or 7(1)(a).

- (3) For the avoidance of doubt -

- (a) the certificate must be provided by the person to whom the export permit or re-export certificate would have been issued, and

- (b) subsection (1) applies whether or not the purpose of the export, re-export or import is for commercial purposes.

(4) In determining whether or not to issue a certificate under this section the Department must consult with the Scientific Authority.

Further exemptions and modifications.

16. The Department may by Regulations provide, insofar as it is consistent with the Convention -

- (a) for such amendments to this Part,

- (b) for such further exemptions from Part II, and
- (c) for Part II to apply to trade in specified specimens with such modifications,

as it considers necessary or expedient.

PART V PERMITS, CERTIFICATES AND REGISTRATIONS

Application of this Part.

17. This Part applies, subject to any express provision to the contrary, in relation to any -

- (a) permit or certificate which may be issued, or
- (b) registration which may be made,

under this Ordinance.

Application for a permit, certificate or registration.

18. (1) An application for a permit, certificate or for registration must -

- (a) be made to the Department in such form and manner as the Department specifies in writing,
- (b) in the case of an application for a permit, specify -
 - (i) whether it is for an import permit or an export permit, and
 - (ii) the specimen to which the application relates,
- (c) in the case of an application for a certificate, specify -

- (i) the class of certificate to which the application relates, and
- (ii) in the case of an application for a re-export certificate, a certificate issued under Part IV or an introduction from the sea certificate, the specimen to which it relates,
- (d) be accompanied by such other information as the Department specifies in writing for the type of application in question, and
- (e) be accompanied by the fee prescribed under section 56.

(2) The Department is not obliged to consider an application for a permit, certificate or for registration unless the application complies with subsection (1) in all respects.

(3) A person may not make a retrospective application for a permit or certificate except in such circumstances, and subject to such conditions, as the Department may by Regulations provide.

Determination of application.

19. (1) The Department may -

- (a) upon receipt of an application in relation to a permit, certificate or for registration, request the applicant to supply such further information in writing as the Department may reasonably consider necessary to determine the application in question, and
- (b) in determining the application, consider such matters as it considers appropriate for the application in question.

- (2) The Department may -
 - (a) grant an application for a permit, certificate or registration -
 - (i) either unconditionally or subject to conditions,
 - (ii) in the case of an application for a permit, in respect of all, or one or more, of the specimens specified under section 18(1)(b), and
 - (iii) in the case of an application for a certificate, in respect of all, or one or more, of the specimens specified under section 18(1)(c), or
 - (b) refuse an application for a permit, certificate or registration.
- (3) For the avoidance of doubt, a separate permit or certificate is required for each consignment of specimens.
- (4) The Department must notify the applicant of its decision on an application for a permit, certificate or registration as soon as possible after it has made its decision.
- (5) A notification under subsection (4) must -
 - (a) where the application is granted -
 - (i) specify the specimen in respect of which it is granted,
 - (ii) where it is granted subject to conditions, include the reasons for each condition

imposed,

- (b) where the application is granted in respect of some, but not all, of the specimens specified under section 18(1)(b) or 18(1)(c), as the case may be, state the reasons for refusing the application in respect of the remainder,
- (c) where the application is refused, include the reasons for the refusal, and
- (d) include details of the right of appeal under section 45.

Permit, certificate or registration conditions.

20. The Department may attach to a permit, certificate or registration such conditions as it considers appropriate.

Form and duration etc. of certificate or permit.

21. (1) A permit or certificate must be in such form as the Department may specify in writing.

(2) A permit comes into force on the date on which it is issued.

(3) An export permit or a re-export certificate remains in force, unless it is earlier revoked, for 6 months from the date on which it is issued.

(4) An import permit remains in force, unless it is earlier revoked, for 12 months from the date on which it is issued.

(5) Subject to subsection (3) and to the provisions of any Regulations made under section 28(b), a certificate remains in force until -

- (a) the certificate is revoked, or
- (b) where relevant, the expiration of the period of validity (however expressed) specified in the

certificate.

(6) Any copy of a permit or certificate must be marked clearly as such and no such copy may be used in place of the original except to the extent endorsed on the copy.

Variation or transfer of permit, certificate or registration.

22. (1) The Department may vary a permit, certificate or registration by -

- (a) imposing an additional condition,
- (b) rescinding, or altering the terms of, an existing condition,
- (c) in the case of a permit, the deletion or addition of a specimen within the consignment, or
- (d) in the case of a certificate, the addition or deletion of a description of specimens,

either on application made by the holder of the permit, certificate or registration under subsection (3) or, subject to section 24, of its own volition where it considers such variation is necessary or expedient.

(2) A permit or certificate may not be transferred to another person.

(3) An application for the variation of a permit or certificate or registration must be -

- (a) made to the Department -
 - (i) in such form and manner, and
 - (ii) accompanied by such information,

as the Department may specify in writing for the type of application in question, and

(b) accompanied by the fee prescribed under section 56.

(4) The Department is not obliged to consider an application for a variation of a permit, certificate or registration unless it complies with subsection (3) in all respects.

(5) The Department may, upon receipt of an application under this section, request the applicant to supply such further information in writing as the Department may reasonably consider necessary to determine the application.

(6) The Department must notify the applicant of its decision on an application under this section as soon as possible after it has made its decision and where the notification is of a refusal of the application such notification must include -

(a) the reasons for the refusal, and

(b) details of the right of appeal under section 45.

Suspension or revocation of permit, certificate or registration.

23. (1) The Department may, subject to section 24, suspend or revoke a permit, certificate or registration where -

(a) there is a contravention of a term or condition of the permit, certificate or registration,

(b) it is satisfied that any information given for the purposes of the application in relation to a permit, certificate or registration was in any material respect false or misleading,

(c) the holder of the permit or certificate or person

registered, as the case may be, or any employee of, or person acting under a contract for services with, such a person is convicted of an offence -

- (i) under this Ordinance, or
 - (ii) the law of any other country relating to the conservation of specimens,
- (d) it is satisfied that the holder of the permit or certificate is not able to make reasonable provision to minimise the risk of injury, damage to the health or cruel treatment of any live specimen included in a consignment specified in the permit, or
- (e) it is advised by the Scientific Authority that it is desirable to do so to assist in -
- (i) the survival of specimens of a particular species, or
 - (ii) the survival, health or welfare of a live specimen.

Notification of proposed variation, suspension or revocation of permit, certificate or registration.

24. (1) Where the Department proposes to -

- (a) vary the conditions of a permit, certificate or registration of its own volition, or
- (b) suspend or revoke a permit, certificate or registration,

it must notify the licensee of the matters in subsection (2).

(2) The matters referred to in subsection (1) are -

- (a) the proposed variation, suspension or revocation or and the reasons for the same, and
- (b) that the person to whom the permit or certificate was issued or the person to whom the registration was granted, as the case may be, has a period of not less than 28 days from the date of the notification to make representations in writing to the Department on the proposed variation, suspension or revocation.

(3) The Department must take into account any representations made under subsection (2).

(4) Where the Department, having taken into account any representations made under subsection (2), decides to confirm its decision to vary, suspend or revoke the permit, certificate or registration, it must notify the person to whom the permit or certificate was issued or the person to whom the registration was granted, as the case may be, of -

- (a) such decision and the reasons for the same,
- (b) the date on which the decision will take effect which shall be a date after the expiry of the period referred to in subsection (2)(b), and
- (c) the right of appeal under section 45.

Lost, defaced or damaged permit or certificate.

25. (1) The holder of a permit or certificate may apply to the Department for the issue of a permit or certificate to replace one which has been lost, defaced or damaged.

(2) An application under subsection (1) must be -

- (a) made in such form and manner, and accompanied by such information, as the Department may specify in writing for the type of application in question, and
- (b) accompanied by the fee prescribed under section 56.

(3) The Department is not obliged to consider an application under subsection (1) unless the application complies with subsection (2) in all respects.

(4) The Department may, upon receipt of an application under this section, request the applicant to supply such further information in writing as the Department may reasonably consider necessary to determine the application.

(5) The Department may issue a permit or certificate to replace the lost, defaced or damaged permit or certificate.

Retention and revocation of used permit or certificate.

26. The Department must retain any permit or certificate which -

- (a) is issued by a relevant authority,
- (b) relates to a specimen which has been imported, and
- (c) was provided to the Department because it was required under this Ordinance to accompany the import of the specimen,

and the Department must, at the same time, revoke any corresponding import permit issued by it.

Validity of permit or certificate.

27. (1) For the avoidance of doubt, a permit, certificate or other document issued by a relevant authority, and any document issued by the Department on the basis of the same, is not valid for the purposes of this Ordinance if -

- (a) it was issued in contravention of the law of the country of the relevant authority,
- (b) it does not comply substantially with the requirements of the Convention, or
- (c) any condition subject to which it was issued has not been complied with.

(2) Subsection (1) is without prejudice to the other circumstances which may render the permit invalid.

Regulations relating to permits, certificates and other documents.

28. The Department may by Regulations -

- (a) amend this Part, or
- (b) make such further provision in relation to the matters set out in this Part,

as it considers necessary or expedient to implement the Convention or any relevant resolutions of the Conference of the Parties.

PART VI
COMMERCIAL ACTIVITIES ETC.

Control of commercial activities.

29. (1) This section applies to an Annex A or B specimen which has been -

- (a) imported in contravention of section 3(1),
- (b) introduced from the sea in contravention of section 4(1), or

(c) otherwise acquired unlawfully.

(2) A person who, without reasonable excuse -

(a) buys or offers to buy,

(b) acquires for commercial purposes,

(c) displays to the public for commercial purposes,

(d) uses for commercial gain,

(e) sells, keeps for sale or offers for sale, or

(f) transports for sale,

a specimen to which this section applies is guilty of an offence.

(3) A person is not guilty of an offence under subsection (2) if the person can prove that at the time the alleged offence was committed the person had no reason to believe that the specimen was an Annex A or, as the case may be, Annex B specimen.

(4) A person is not guilty of an offence under subsection (2) if the person proves -

(a) that at the time when the specimen first came into the person's possession the person made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported, introduced from the sea or otherwise acquired unlawfully, as the case may be, as mentioned in subsection (1), and

(b) that at the time the alleged offence was committed, the person had no reason to believe that the specimen

was so imported, introduced from the sea or otherwise acquired unlawfully.

(5) Without prejudice to the generality of subsection (4), a person is taken to have made such enquiries as are mentioned there if that person produces to the court a statement which was furnished by the person from whom that person obtained possession of the specimen ("**the supplier**"), which was signed by the supplier or by a person authorised by him, and which states that -

- (a) the supplier made enquiries at the time the specimen came into the supplier's possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully, and
- (b) the supplier had no reason to believe at the time the supplier relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired unlawfully.

(6) A person guilty of an offence under subsection (2) shall be liable -

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

(7) The Department may by Regulations provide for exemptions from subsection (2).

Possession of specimens.

30. (1) A person who possesses or controls, without lawful authority or reasonable excuse, a specimen which that person knows, or ought reasonably to

be expected to know, has been -

- (a) imported or introduced from the sea in contravention of this Ordinance, or
- (b) otherwise acquired unlawfully,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable -

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

Organising or facilitating unlawful trade in specimens outside the Bailiwick.

31. (1) A person must not, subject to subsection (2), organise, or otherwise facilitate, in or from the Bailiwick -

- (a) trade in, or
- (b) the transport or movement of,

a specimen between countries outside the Bailiwick.

(2) Subsection (1) does not apply to trade in or the transport or movement of -

- (a) specimens between Member States of the European Community carried out in accordance with the EU Regulation, or

- (b) Annex A, B or C specimens between other countries outside the Bailiwick carried out in accordance with the Convention.
- (3) A person who contravenes subsection (1) is guilty of an offence and liable -
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.
- (4) In this section "**trade**" has the meaning in section 57 except that for references to "the Bailiwick" in the definitions of "**import**", "**introduction from the sea**" or "**export**" there is substituted references to the relevant country outside the Bailiwick.

PART VII

REGISTRATION

Register of scientific institutions.

- 32.** (1) The Department must prepare and maintain a register of registered scientific institutions registered under this Part for the purposes of section 14(a).
- (2) An entry of an institution in the register must include -
 - (a) the period of validity of the registration,
 - (b) the type of loan, donation or exchange in respect of which the institution is registered,
 - (c) the descriptions of specimens in respect of which the

institution is registered, and

- (d) the conditions of registration,

and may include such other information and documents as the Department considers appropriate.

(3) For the avoidance of doubt, an entry of a registered scientific institution in the register authorises a loan, donation or exchange by -

- (a) the registered scientific institution, or
- (b) where acting for and on behalf of the registered scientific institution -
 - (i) any officer or employee of that institution, or
 - (ii) where provided for by the conditions of registration, any person acting as an agent for, under a contract for services with or otherwise acting under the supervision of, that institution.

(4) The register may be prepared and maintained in electronic form.

(5) The register must be kept at the principal office of the Department and made available for inspection by the public free of charge at all reasonable times.

(6) The Department must provide copies of any information or document on the register to any person upon written request and payment of a reasonable fee.

Other registers.

33. (1) The Department may by Regulations make such provision as

it considers necessary or expedient in relation to the registration by the Department of -

- (a) persons -
 - (i) carrying on trade in Annex A or B specimens,
 - (ii) in the case of an animal, breeding a specimen in captivity,
 - (iii) in the case of a plant, artificially propagating a specimen,
- (b) pre-Convention specimens located in the Bailiwick, and
- (c) such other matters as it considers necessary or expedient to register to facilitate compliance with the Convention.

(2) The Department may by Regulations -

- (a) provide for pre-conditions for registration under this Part, or
- (b) impose such requirements as it considers necessary or expedient on persons registered under this Ordinance to facilitate compliance with the Convention including, without limitation, the keeping of records by such persons in relation to the matters in respect of which such persons are registered.

(3) A person registered under this Ordinance who, without reasonable excuse, fails to comply with any requirement imposed by Regulations under subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the uniform scale.

Application for registration.

34. (1) The Department must consult with the Scientific Authority before determining an application for registration under this Part.

(2) The Department must not register a person, pre-Convention specimen or other matter under this Part unless it is satisfied that any relevant pre-conditions for registration on the register in question prescribed under section 33 have been met.

Period of validity of registration.

35. A registration under this Ordinance is valid for such period as is specified in the grant of registration subject to any suspension or revocation of the registration under section 23.

PART VIII
ENFORCEMENT

Proof of lawful import, introduction from the sea, export or re-export.

36. (1) Where any specimen -

- (a) is being imported, introduced from the sea, exported or re-exported,
- (b) has been imported, introduced from the sea or brought to any place for the purpose of being exported or re-exported,

a customs officer may require any person possessing or having control of that specimen to furnish proof that its importation, introduction from the sea, export or re-export is or was not unlawful under this Ordinance.

(2) Until such proof is furnished the specimen is liable to detention under the Customs and Excise (General Provisions) (Bailiwick of

Guernsey) Law, 1972^g and if such proof is not furnished to the satisfaction of the Chief Officer of Customs and Excise the specimen is liable to forfeiture under that Law.

Authorised Persons.

37. (1) A person may be authorised in writing by the Minister, or Deputy Minister, of the Department to perform any of the functions of an Authorised Person under this Ordinance.

(2) A person purporting to carry out the functions of an Authorised Person under this Ordinance must, upon request, produce evidence of his authority.

(3) An Authorised Person must keep a written record of any exercise of a power under section 38, 39, or 41 or under a warrant issued under section 40.

(4) For the avoidance of doubt, the States Veterinary Officer may be appointed as an Authorised Person.

Inspection in connection with permits, certificates or registration.

38. (1) An Authorised Person may, subject to section 39, carry out an inspection of premises -

- (a) to check compliance with the terms or conditions of a permit, certificate or registration, or
- (b) where an Authorised Person has reasonable cause to believe that an Annex A or B specimen is being kept on those premises, to ascertain whether the premises is being used for an activity set out in section 29(2).

^g Ordres en Conseil Vol. XXIII, p. 573 as amended by Vol. XXIV, p. 87, Vol. XXXI, p. 278, Vol. XXXIII, p. 217, Order in Council No. X of 2004, No. XIV of 2007, No. II of 2010, No. XV of 2012, Recueils d'Ordonnances Tome XXIX p. 406 and Tome XXXII, p. 668 and to which there are other amendments not relevant to this Ordinance.

(2) An Authorised Person may require the holder of a permit or certificate or a person registered under this Ordinance to produce for inspection any records which that person is required to keep under a permit, certificate or registration.

(3) Where records which a person is so required to keep are stored in electronic form, the power under subsection (2) includes power to require the records to be made available for inspection in a visible and legible form or in a form from which they can readily be produced in a visible and legible form.

(4) An Authorised Person may, subject to section 39, carry out an inspection of any premises for the purpose and at the time set out in subsection (5), where -

- (a) an application has been made under this Ordinance for a permit, certificate or registration or the variation of the same, and
- (b) the premises are to be used in connection with the trade or activity in respect of which the application is made.

(5) An inspection under subsection (4) may be carried out at any reasonable time before the determination of an application for a permit, certificate or registration or a variation of the same for the purpose of ascertaining whether or not that application should be granted.

Powers of entry onto premises and to stop and detain vehicles etc.

39. (1) Subject to subsections (3) and (6), an Authorised Person or a police officer may enter any premises at any reasonable time where that person or officer has reasonable grounds to suspect that -

- (a) an offence under this Ordinance has been, or is being, committed, for the purpose of investigating that offence, or

- (b) there is any specimen on the premises which has been, or is being, imported or introduced from the Sea in contravention of this Ordinance or otherwise acquired unlawfully.

(2) Subject to subsections (3) and (6), an Authorised Person may enter any premises at any reasonable time for the purpose of -

- (a) considering any application in relation to a permit, certificate or registration made under this Ordinance,
- (b) carrying out an inspection under section 38,
- (c) deciding whether and in what manner any functions of an Authorised Person or the Department under this Ordinance ought to be exercised,
- (d) exercising any other function conferred on an Authorised Person or the Department under this Ordinance.

(3) The powers of entry under subsections (1) and (2) are not exercisable (other than in a case of emergency) -

- (a) unless the Authorised Person or the police officer gives to the owner or occupier of the premises concerned at least 24 hours' notice of his intention to enter the premises, and
- (b) in the case of any premises, or any part of premises, used as a dwelling except under and in accordance with the authority of a warrant issued by the Bailiff, within the meaning of section 40, under and in accordance with that section.

(4) The powers of entry under subsections (1) and (2) include a power -

- (a) for an Authorised Person or police officer to take with him such persons, equipment and materials as that Authorised Person or police officer reasonably considers necessary for the purpose for which the power of entry is being exercised, and
- (b) for such persons to exercise any power that may be exercised by the Authorised Person or police officer, for the purpose for which the Authorised Person or police officer entered, provided that any such person is in the company, and under the supervision, of the Authorised Person or police officer exercising the power of entry.

(5) A police officer or an Authorised Person (if accompanied by a police officer in uniform) may -

- (a) stop and detain a vehicle for the purpose of the exercise of a power under any of sections 38 or 41 or subsections (1) or (2), and
- (b) detain that vehicle for as long as reasonably required for the exercise of the power concerned.

(6) The powers in this section do not authorise a police officer or an Authorised Person to enter any premises, or to stop and detain a vehicle, by force.

Warrant to enter premises.

40. (1) If the Bailiff is satisfied by information on oath supplied by -

- (a) an Authorised Person, that there are reasonable grounds for entering any premises for any purpose

for which an Authorised Person has a right to enter premises under this Part, the Bailiff may grant a warrant to an Authorised Person, or

- (b) a police officer, that there are reasonable grounds for entering any premises for any purpose for which a police officer has a right to enter premises under this Part, the Bailiff may grant a warrant to a police officer.

(2) A warrant granted under subsection (1) authorises an Authorised Person or a police officer at any time within one month of the date of the grant -

- (a) to enter the premises, and
- (b) to exercise in respect of the premises (and any specimen, container containing a specimen or other thing found in or on the premises), all such powers as that Authorised Person or police officer may exercise under this Part,

for the purposes indicated in subsection (1).

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied that any of the following four conditions is met.

(4) The first condition is that the whole of the premises is used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises is not used as a dwelling and that each of the following applies to the occupier of the premises -

- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,
 - (b) the occupier has failed to allow entry to the premises on being requested to do so by an Authorised Person or a police officer, and
 - (c) the occupier has been informed of the decision to apply for a warrant.
- (6) The third condition is that -
- (a) the premises are unoccupied or the occupier is absent, and
 - (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because -

- (a) it would defeat the object of entering the premises, or
- (b) entry is required as a matter of urgency.

(8) An Authorised Person or a police officer executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of PPACE^h apply in relation to the issue of a warrant under this section to an Authorised Person as they apply in relation to the issue of a warrant to

^h Ordres en Conseil Vol. XLIII (2), p. 617 as amended by Order in Council No. XVI of 2009, No. XV of 2011, Recueil d'Ordonnances Tome XXIX, p. 406 and Ordinance No. XXIX of 2011 and No. XX of 2015.

a police officer.

(10) The following additional requirements shall apply in relation to a warrant, or application for a warrant, issued or made under this section -

- (a) an application for a warrant under this section and a warrant issued under this section must identify, in so far as is practicable, any specimen sought, and
- (b) the endorsement required to be made on a warrant under section 11(9) of PPACE must state whether any specimens sought were found and whether any of the same, other than those which were sought, were seized.

(11) For the purposes of this section, "**the Bailiff**" means –

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

Supplementary functions.

41. (1) This section applies to a person exercising a power under section 38 or 39 or under a warrant issued under section 40.

(2) A person exercising a power to which this section applies may, where it is reasonably necessary for the purpose for which that person has exercised the power -

- (a) inspect a specimen, a container containing a specimen or any other thing (including a document or record in any form),
- (b) take a sample from a specimen, container containing a specimen or other thing,
- (c) take copies of a document or record (in whichever form it is held),
- (d) take a photograph of anything,
- (e) open or break open a container or other thing containing a specimen,
- (f) subject to subsection (6), seize and take into possession or detain a specimen, a container containing a specimen or other thing which that person reasonably believes to be evidence of the commission of an offence under this Ordinance relevant to the purpose for which the power is exercised.

(3) A person who takes a sample from a specimen, under subsection (2)(b), must give a part of the sample, or a similar sample, to the owner or other person who appears entitled to be in possession of the specimen if –

- (a) the person taking the sample is requested to do so by such owner or other person, and
- (b) in all the circumstances it is reasonably practicable to do so.

(4) Section 16(1) and (2) (record of thing seized) of PPACE apply in relation to an Authorised Person who seizes and takes into possession a

specimen, a container containing a specimen or other thing under subsection (2)(f) as it applies in relation to the exercise of a power of seizure by a police officer.

(5) Any specimen, container containing a specimen or other thing which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(f) may, subject to the following provisions of this Ordinance, be retained so long as is necessary in all the circumstances and in particular -

- (a) for use as evidence at a trial for a relevant offence, or
- (b) for forensic examination or for investigation in connection with an offence,

except that nothing may be retained for such a purpose where a photograph or a copy would be sufficient.

(6) Subsection (2)(f) does not include power to seize anything which the person exercising the power has reasonable grounds for believing to be an item subject to legal professional privilege within the meaning of section 24 of PPACE.

Supplementary provisions.

42. (1) When an Authorised Person or a police officer exercises any power under section 41(2), in relation to a live specimen, other than with the knowledge of the owner or other person appearing to be entitled to possession of the specimen, the Authorised Person or police officer must take all reasonable measures to notify the owner, or other person appearing to be entitled to possession of the specimen, of the same including notifying them of the name and address of any place to which a specimen is removed.

(2) Any expenses reasonably incurred by an Authorised Person or a police officer in consequence of acting under section 41(2) in seizing, taking into possession, transporting and caring for a specimen are recoverable by the States from the owner, or other person appearing to be entitled to possession of the specimen, as a civil debt.

Statutory powers to make requirements.

43. (1) Where an Authorised Person reasonably suspects that an offence under the Ordinance has been, or is being, committed, in relation to any specimen, the Authorised Person may require the owner of a specimen or other person appearing to be entitled to possession of it to comply with any of the requirements indicated in subsection (2).

(2) The requirements for the purpose of subsection (1) are -

- (a) to make available for inspection by an Authorised Person any specimen, container containing a specimen or other thing in relation to which an Authorised Person suspects that the offence has been committed,
- (b) to furnish an Authorised Person with such information, including records and other documents, relating to the specimen as the Authorised Person may reasonably require, and
- (c) to answer such questions relating to the specimen as the Authorised Person may reasonably ask.

(3) Any specimen, container containing a specimen or other thing provided or made available to an Authorised Person in compliance with a requirement under this section may be seized by an Authorised Person.

(4) Where a specimen, container containing a specimen or other thing is seized under subsection (3) -

- (a) an Authorised Person may exercise any of the relevant powers in section 41(2)(b) to (e) in relation to that thing, and

- (b) the provisions of section 41(3) to (6) apply to such a thing as they apply to a thing seized under section 41(2)(f).

(5) A statement made by a person in response to a requirement imposed under this section -

- (a) may be used in evidence against him in proceedings other than criminal proceedings,
- (b) may not be used in evidence against him in criminal proceedings except -
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for -
 - (A) an offence under section 46,
 - (B) some other offence where, in giving evidence, that person makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.

Functions of a police officer under Part VIII.

44. For the avoidance of doubt, the functions of a police officer under this Part are without prejudice to any other functions conferred on a police officer by law.

PART IX
APPEALS AGAINST DECISIONS OF THE DEPARTMENT

Appeals against decisions.

45. (1) A person aggrieved by a decision of the Department -
- (a) to refuse an application by that person for a permit, certificate or for registration,
 - (b) to refuse an application by that person for the issue of a permit or certificate to replace one that has been lost, defaced or damaged,
 - (c) to impose a condition on a permit, certificate or registration granted to that person,
 - (d) to vary, or refuse to vary, the conditions of a permit, certificate or registration granted to that person,
 - (e) to suspend or revoke a permit, certificate or registration granted to that person, or
 - (f) of such other description as may be prescribed,

may appeal to the Court against the decision.

- (2) The grounds of an appeal under this section are that -
- (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (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.

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

- (a) within a period of 28 days immediately following the date of the notification of the Department's decision, and
- (b) by summons served on the Minister of the Department stating the grounds and material facts on which the appellant relies.

(4) The Department may where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal be dismissed 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,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007ⁱ or rule 51 of the Court of Alderney Civil Rules, 2005^j.

(5) On an appeal under this section the Court may -

ⁱ O.R.C. No. IV of 2007 as amended by O.R.C. No. II of 2008 and No. IV of 2009.

^j As amended by the Court of Alderney Civil (Amendment) Rules, 2015.

- (a) set the decision of the Department aside and, if the Court considers it appropriate to do so, remit the matter to the Department with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Department the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) For the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

(8) In this section "**the Court**" means -

- (a) where the person described in subsection (1) is -
 - (i) an Alderney company,
 - (ii) an individual ordinarily resident in Alderney,
or
 - (iii) not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Alderney,

the Court of Alderney,
- (b) where that person is -
 - (i) an individual ordinarily resident in Sark, or
 - (ii) not an Alderney company or a Guernsey

company but has its principal or prospective principal place of business in Sark,

the Court of the Seneschal, or

(c) in any other case, the Royal Court.

(9) An appeal from a decision of the Royal Court made under this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) lies to the Court of Appeal on a question of law and must be instituted –

(a) within a period of 14 days immediately following the date of the decision of the Royal Court, and

(b) by notice served on all parties to the proceedings in the course of which the order was made.

(10) In this section –

"Alderney company" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994^k, and

"Guernsey company" means a body corporate on the Register of Companies kept and maintained under section 496 of the Companies (Guernsey) Law, 2008^l.

PART X GENERAL OFFENCES AND PENALTIES

^k Ordres en Conseil Vol. XXXV (2), p. 777 to which there are amendments not relevant to this Ordinance.

^l Order in Council No. VIII of 2008 to which there are amendments not relevant to this Ordinance.

False, deceptive or misleading statements and obstruction etc.

46. (1) A person commits an offence if -
- (a) for the purposes of or in connection with an application under this Ordinance,
 - (b) in purported compliance with any requirement of a permit, certificate, or other document issued, or a registration made, under this Ordinance,
 - (c) in purported compliance with a 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 that person intends, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of exercising functions conferred under this Ordinance,

that 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 or document 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 or document which is false, deceptive or misleading in a material particular.

(2) A person who -

- (a) obstructs another person in the exercise of that other person's functions under this Ordinance,
- (b) fails, without reasonable excuse, to comply with a requirement imposed on him under section 43, or
- (c) fails, without reasonable excuse, to give any person executing a warrant issued under section 40 such assistance as that person may reasonably require for the execution of the warrant,

commits an offence.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

Offences committed by legal persons and unincorporated bodies.

47. (1) Where a legal person 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 –

- (a) any director, manager, secretary or other similar officer or any foundation official of the legal person,
- or

- (b) any person purporting to act in any such capacity,

that person as well as the legal person is guilty of an offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies to the acts and defaults of a member in connection with that member's functions of management as if that member were a director.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction in such proceedings must be paid from the funds of that body.

- (6) In this section, "**legal person**" includes any body corporate

and any other body of persons on which legal personality is conferred by any enactment.

Penalties for offences tried before the Court of Alderney or the Court of the Seneschal.

48. In relation to offences under this Ordinance tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by this Ordinance are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004^m and section 11 of the Reform (Sark) Law, 2008ⁿ.

Forfeiture orders.

49. (1) The court by which any person is convicted of an offence under this Ordinance -

- (a) must order the forfeiture of any specimen or other thing in respect of which the offence was committed, and
- (b) may order the forfeiture to the Department of any vehicle, ship, aircraft or other thing which was used to commit the offence.

(2) The court shall not make an order under subsection (1), where a person claiming to be the owner of the specimen or other thing or otherwise interested in it applies to be heard by the court, unless that person has been given an opportunity to show cause why the order should not be made.

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

^m Order in Council No. III of 2005 as amended by Order in Council No. XXII of 2010, No. XI of 2012 and No. V of 2014.

ⁿ Order in Council No. V of 2008 as amended by No. VI of 2008, No. XXVII of 2008, No. XIV of 2010, No. XII of 2011, No. XI of 2014, Sark Ordinance No. II of 2015 and No. VI of 2015.

against the order or decision as against a conviction or, as the case may be, as against an acquittal by that court of an offence.

(4) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(5) This section is without prejudice to the provisions of any other enactment relating to forfeiture.

(6) Where any specimen, vehicle, ship, aircraft or other thing is forfeited under this section it must be disposed of in accordance with such directions as the court may give.

(7) Without prejudice to the generality of subsection (6) the court may direct, in relation to a living specimen, that -

- (a) a living specimen be entrusted to the Department,
- (b) the specimen is returned to the country from which it was exported, at the expense of that country, or placed in such place as the Department considers appropriate having regard to the purposes of the Convention, after consultation by the Department with -
 - (i) the relevant authority in the country from which the specimen was exported, and
 - (ii) the Scientific Authority.

(8) In this section "**ship**" includes every description of vessel used in navigation.

Orders as to expenses.

50. (1) The court by which any person is convicted of an offence

under this Ordinance may order the offender to -

- (a) reimburse any reasonable expenses incurred in seizing, taking into possession, transporting and caring for a specimen after its seizure and before the date of conviction, and
- (b) where it makes a forfeiture order, reimburse the expenses of carrying out that order,

and the offender may appeal against such an order as against a conviction.

(2) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

PART XI

MISCELLANEOUS PROVISIONS

Specified port or airport.

51. (1) The following ports and airports are specified for the purposes of this Ordinance -

- (a) St Peter Port Harbour, Guernsey,
- (b) La Villiaze Airport, Guernsey,
- (c) Braye Harbour, Alderney,
- (d) Alderney Airport, and
- (e) such other port or airport, which is appointed and named by order under section 7 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 for the purposes of customs and excise, as

the Department may, from time to time, approve in writing.

(2) The Department may approve different ports or airports under subsection (1)(e) in relation to different specimens or classes of specimen.

Marking of specimens.

52. (1) An Authorised Person may mark any specimen, container, packaging, cage or other thing containing a specimen for the purposes of identifying it.

(2) The Department may by Regulations make such provision as it considers necessary or expedient in relation to the marking of specimens to facilitate their identification including, without limitation -

- (a) requiring the marking of specimens and any container or packaging containing specimens, and
- (b) setting out the manner in, and methods by, which particular species of specimen must be marked.

(3) A person who contravenes any requirements of Regulations made under subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the uniform scale.

(4) Any person, other than an Authorised Person, who without reasonable excuse, alters, obscures, defaces, adds to or removes a marking -

- (a) made by an Authorised Person under subsection (1),
or
- (b) required by Regulations under subsection (2),

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the uniform scale or to both.

(5) In this section, "**mark**" means an indelible imprint, lead seal or other suitable means of identifying a specimen designed in such a way as to render its imitation as difficult as possible.

Service of documents.

53. (1) Any document to be given or served under, or for the purposes, of this 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, his 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 the Bailiwick 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 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 the Bailiwick 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 Person, 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 is regarded as served when it is received.

(3) If a person notifies the Department or an Authorised Person of an address for service within the Bailiwick for the purposes of this 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 Person

under or for the purposes of this Ordinance shall be deemed to have 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 minor or person under legal disability, the document must be served on his 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 and in this subsection "**the Court**" means –

- (a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the Seneschal, or
- (b) in any other case, the Royal Court.

(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 fourth 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 shall 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.

General provisions as to Regulations and Orders.

54. (1) Regulations and Orders made under this Ordinance -

- (a) may be amended or revoked by subsequent Regulations or Orders hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Department to be necessary or expedient, and
- (c) must be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new Regulations or an Order.

(2) Any power conferred under this Ordinance to make Regulations or an Order 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, or

- (iii) any such provision either unconditionally or subject to any conditions specified in the Regulations or Order.

Exclusion of liability.

55. (1) The Department, the Scientific Authority and an Authorised Person are not -

- (a) liable in damages, or
- (b) in the case of an individual, personally liable in any civil proceedings,

in respect of anything done, or omitted to be done, in the discharge, or purported discharge, of their functions under this Ordinance, unless the thing was done, or omitted to be done, in bad faith.

(2) Subsection (1) only applies to anything done, or omitted to be done, after the commencement of the provision under this Ordinance under which the relevant function is conferred.

(3) Subsection (1) does not operate to prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000⁰.

Fees and charges.

56. (1) There shall be payable to the Department, such fees or charges of such amounts, by such persons and in such manner as may be prescribed in connection with -

- (a) the carrying out of any functions under this

⁰ Ordres en Conseil Vol. XL, p. 396 as amended by Order in Council No. I of 2005, Recueil d'Ordonnances Tome XXVIII, p. 493, Tome XXIX, p. 406, Tome XXXIII, p. 617, Ordinance No. XX of 2015 and G.S.I. No. 27 of 2006.

Ordinance,

- (b) the provision of any services by the Department or the Scientific Authority in connection with any of its functions under this Ordinance, and
- (c) the recovery of any reasonable costs associated with the administration and enforcement of this Ordinance or any subordinate legislation made under this Ordinance.

(2) Without prejudice to the generality of subsection (1), an Ordinance or Regulations under that subsection may provide for the charging of fees in connection with an application in relation to a permit, certificate or registration made under this Ordinance.

Interpretation.

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

"**acquired**" means, in relation to a specimen -

- (a) taken from the wild, or
- (b) the point at which, in the case of an animal, it was born in captivity or, in the case of a plant, artificially propagated,

"**acquired unlawfully**" means acquired contrary to the law of the Bailiwick relating to the conservation and protection of specimens,

"**Annex A**" means Annex A to the EU Regulation and "**Annex A specimen**" means a specimen falling within Annex A and related expressions are construed accordingly,

"**Annex B**" means Annex B to the EU Regulation and "**Annex B specimen**" means a specimen falling within Annex B and related expressions

are construed accordingly,

"Annex C" means Annex C to the EU Regulation and **"Annex C specimen"** means a specimen falling within Annex C and related expressions are construed accordingly,

"Annex D" means Annex D to the EU Regulation and **"Annex D specimen"** means a specimen falling within Annex D and related expressions are construed accordingly,

"Authorised Person" means a person appointed as such under section 37,

"the Bailiwick" means the Bailiwick of Guernsey,

"certificate", except in section 8(2) or (3), means a certificate issued by the Department under this Ordinance,

"Chief Officer of Customs and Excise" has the meaning in section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"contravention" includes failure to comply and related expressions are construed accordingly,

"competent authority", in relation to a country not Party to the Convention, means the competent authority for the import, export, re-export or introduction from the sea of specimens,

"competent Management Authority" means a person appointed in a country other than the Bailiwick as the Management Authority for the purposes of the Convention,

"competent Scientific Authority" means a person appointed in a country other than the Bailiwick as the Scientific Authority for the purposes

of the Convention,

"the Conference of the Parties" means the Conference of the Parties as referred to in Article XII of the Convention and related expressions are construed accordingly,

"the Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora,

"the Convention Secretariat" means the Secretariat of the Convention referred to in Article XII of the Convention,

"country" includes a territory,

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

"Court of the Seneschal" means the Court of the Seneschal of Sark,

"customs Laws" has the meaning in section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"customs officer" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"the EU Regulation" means Council Regulation (EC) No. 338/97 of the 9th December, 1996 on the protection of species of wild fauna and flora by regulating trade therein^Q,

"export", in relation to a specimen, means to take any specimen from the Bailiwick to any other place but does not include re-export and related

^P Ordres en Conseil Vol. XVIII, p. 315 as amended by Order in Council No. III of 2012 and Recueil d'Ordonnances Tome XXIX, p. 406.

^Q O.J. L 61, 3.3.1997, p.1.

expressions are construed accordingly,

"foundation official" has the meaning in the Foundations (Guernsey) Law, 2012^r,

"import", in relation to a specimen means -

- (a) to land, or attempt to land, the specimen in the Bailiwick, or
- (b) to bring the specimen into the Bailiwick,

but does not include the introduction from the sea of a specimen and related expressions are construed accordingly,

"import notification" means the notification in writing given by the importer, his agent or representative at the time of the import of an Annex C or D specimen on a form specified in writing by the Department,

"introduction from the sea" means -

- (a) the transport into the Bailiwick of any specimen which was taken in, and is transported into the Bailiwick directly from, the marine environment, and
- (b) where the marine environment is not under the jurisdiction of any country (including the air-space above the sea, the sea-bed and the subsoil beneath the sea),

"notice" means notice in writing,

"notify" means notify in writing,

^r

"**owner**" in relation to premises includes, where premises comprise land, a usufrutier,

"**permit**", except in section 8(2) or (3), means a permit issued by the Department under this Ordinance,

"**personal or household effects**" means dead specimens or parts and derivatives of specimens that are the belongings of a private individual and that form, or are intended to form, part of his normal personal property,

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

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

"**PPACE**" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003,

"**pre-Convention specimen**" means a specimen which was acquired before the date on which the provisions of the Convention became applicable to such a specimen and section 12(2) applies for the purposes of this definition,

"**premises**" includes -

- (a) any land, vehicle or aircraft,

- (b) any ship within the meaning of section 294 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^s, and
- (c) any other place (whether enclosed or not),

"prescribed" means prescribed by Regulations of the Department,

"re-export" means the export of any specimen that has previously been imported and related expressions are construed accordingly,

"registered scientific institution" means a scientist or scientific institution which -

- (a) is registered under section 32 as a registered scientific institution,
- (b) is registered by the competent Management Authority in a country in which that person is resident or located in relation to a loan, donation or exchange of a specimen falling within section 14, or
- (c) in the case of a person resident or located in a country not Party to the Convention -
 - (i) is registered by the competent authority in relation to a loan, donation or exchange of a specimen falling within section 14, and
 - (ii) such registration meets conditions for such registration which conform substantially to those required under the Convention and any

^s Order in Council No. VIII of 2004 to which there are amendments not relevant to this Ordinance.

relevant resolutions of the Conference of the Parties,

"registration" means a registration of a person under this Ordinance,

"relevant authority" means -

- (a) in relation to a country which is a Party to the Convention, the competent Management Authority, or
- (b) in relation to a country not Party to the Convention, the competent authority,

"relevant resolutions of the Conference of the Parties" means any relevant resolutions of the Conference of the Parties from time to time in force,

"relevant scientific authority" means a person appointed in a country not Party to the Convention to advise the competent authority in that country in relation to the conservation of specimens,

"Royal Court" means the Royal Court sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué sitting alone,

"Scientific Authority": see section 2,

"the Seneschal" means the Seneschal of Sark appointed under section 6(1) of the Reform (Sark) Law, 2008 and includes the Deputy Seneschal appointed under section 7 of that Law,

"specified port or airport" means a port or airport specified under section 51,

"**specimen**" has the meaning in the EU Regulation,

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

"**trade**" means import, introduction from the sea, export or re-export,

"**under this Ordinance**" includes under Regulations made under this Ordinance and related expressions are construed accordingly,

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

"**working day**" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^g,

and other expressions have the same meaning as in the Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010.

(2) For the purposes of this Ordinance, a specimen is taken to have been "**bred in captivity**" only if it was born, or otherwise produced, in a controlled environment of parents that mated or otherwise transmitted their gametes in a controlled environment and for the purposes of this subsection "**controlled environment**" has the meaning in relevant resolutions of the Conference of the Parties; and related expressions are construed accordingly.

(3) For the purposes of this Ordinance, a specimen which is a plant is taken to have been "**artificially propagated**" only if the plant has been grown by a person from seeds, cuttings, divisions, callus tissues or other plant

^f Ordres en Conseil Vol. XXXI, p. 278; for the current scale of fines see Recueil d'Ordonnances Tome XXXI, p. 542.

^g Ordres en Conseil Vol. XVII, p. 384 as amended by Vol. XXIV, p. 84, Vol. XXXIV, p. 504 and Vol. XXXV (1), p. 367.

tissues, spores or other propagules under controlled conditions and for the purpose of this subsection "**controlled environment**" has the meaning in relevant resolutions of the Conference of the Parties.

(4) For the purposes of this Ordinance a specimen is "**in transit or being transhipped**" if -

- (a) it is being transported between two countries other than the Bailiwick,
- (b) it is being transported to a named consignee,
- (c) any interruption of the specimen's movement between those countries arises only from arrangements necessitated by the transit or transhipment,
- (d) any transit or transhipment is in accordance with the customs Laws and excise Laws within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey), Law, 1972, and
- (e) whilst the specimen is on land, or is in a port or airport, in the Bailiwick it is within a specified port or airport,

and related expressions are construed accordingly,

(5) Any reference in this Ordinance to any expenses reasonably incurred in seizing, taking into possession, transporting and caring for a specimen is to be construed, for the avoidance of doubt, as including such expenses reasonably incurred in carrying out any veterinary treatment which is given to a live specimen in the course of the same.

(6) The Interpretation (Guernsey) Law, 1948^v applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(7) Any reference in this Ordinance to an owner or occupier of premises shall be construed, where premises comprise a vehicle, ship or aircraft as referring to the master, commander or other person in charge of the same.

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

Consequential amendments.

58. Schedule 1, which makes consequential amendments, has effect.

Transitional provisions.

59. Schedule 2, which makes transitional provisions, has effect.

Extent.

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

Citation.

61. This Ordinance may be cited as the Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016.

Commencement.

62. This Ordinance shall come into force on such day as the Department may by Order appoint and different days may be so appointed for different provisions of this Ordinance or for different purposes.

^v Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

Section 58

CONSEQUENTIAL AMENDMENTS

Amendment to the export control order.

1. Paragraph 4 of Schedule 4 (goods that cannot be exported without a licence) to the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010^w is omitted.

Amendment to the Guernsey import control order.

2. Paragraph 8 of Schedule 7 (goods that cannot be imported without a licence) to the Import (Control) (Guernsey) Order, 2010^x is omitted.

Amendment to the Alderney import control order.

3. Paragraph 8 of Schedule 8 (goods that cannot be imported without a licence) to the Import (Control) (Alderney) Order, 2010^y is omitted.

^w G.S.I. No. 38 of 2010 as amended by G.S.I. Nos. 67 of 2010, 9 and 24 of 2012, 48 of 2013 and 51 of 2015.

^x G.S.I. No. 39 of 2010 as amended by G.S.I. Nos. 68 of 2010, 8 and 23 of 2012, 47 of 2013, 45 and 70 of 2014 and 17 and 52 of 2015.

^y Alderney S.I. No. 3 of 2010 as amended by Alderney S.I. Nos. 4 of 2010, 1 and 3 of 2012, 6 of 2012, 6 of 2013 and 5 and 7 of 2014.

SCHEDULE 2

Section 59

TRANSITIONAL PROVISIONS

Export permits and certificates.

1. (1) An export permit relating to a specimen issued by the Department under paragraph 4 of Schedule 4 to the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010 and in force immediately before the commencement of this Ordinance, is deemed to be an export permit issued by the Department under section 6 of this Ordinance relating to that specimen.

(2) A re-export certificate relating to a specimen issued by the Department under paragraph 4 of Schedule 4 to the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010 and in force immediately before the commencement of this Ordinance, is deemed to be a re-export certificate issued by the Department under section 7 of this Ordinance relating to that specimen.

Import permits and certificates.

2. (1) An import permit relating to a specimen issued by the Department under paragraph 8 of Schedule 7 to the Import (Control) (Guernsey) Order, 2010 and in force immediately before the commencement of this Ordinance is deemed to be an import permit or, in the case of an introduction from the sea, an introduction from the sea certificate, issued by the Department under the relevant section of Part II of this Ordinance relating to that specimen.

(2) A licence in writing relating to a specimen granted under article 3 of the Import (Control) (Alderney) Order, 2010 by the States of Alderney Policy and Finance Committee and in force immediately before the commencement of this Ordinance is deemed to be an import permit or, in the case of an introduction from the sea, an introduction from the sea certificate, issued by the Department under the relevant section of Part II of this Ordinance relating to that specimen.

The Single Euro Payments Area (Guernsey) Ordinance, 2016

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PART II TITLE III OF PAYMENT SERVICES DIRECTIVE: TRANSPARENCY OF CONDITIONS AND INFORMATION REQUIREMENTS FOR PAYMENT SERVICES

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2. Scope of Part II.
3. Transactions to which Part II does not apply.
4. Derogation from information requirements for low-value payment instruments and electronic money.

CHAPTER 2 SINGLE PAYMENT TRANSACTIONS

5. Scope of Chapter 2.
6. Prior general information for single payment contracts.
7. Information for single payment contracts.
8. Information for the payer after receipt of payment order.
9. Information for the payee after execution.
10. Avoidance of duplication of information.

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11. Scope of Chapter 3.
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13. Information for framework contracts.
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15. Changes in conditions of framework contract.
16. Termination of framework contract.
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27. Consent and withdrawal of consent.
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29. Obligations of the payment service user in relation to payment instruments.
30. Obligations of the payment service provider in relation to payment instruments.
31. Notification of unauthorised or incorrectly executed payment transactions.
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33. Payment service provider's liability for unauthorised payment transactions.
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41. Payment transactions to a payment account.
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43. Value date and availability of funds.
44. Incorrect unique identifiers.
45. Non-execution or defective execution of payment transactions initiated by the payer.
46. Non-execution or defective execution of payment transactions initiated by the payee.
47. Liability of payment service provider for charges and interest.
48. Right of recourse.
49. Force majeure.

PART IV
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50. Object of Part IV.

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The Single Euro Payments Area (Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 24th June, 2015^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 and all other powers enabling them in that behalf, hereby order:-

PART I INTRODUCTORY

Implementation of Payment Services Directive and Regulation 260/2012.

1. This Ordinance implements -

- (a) Titles III and IV of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC^c ("**the Payment Services Directive**"), and
- (b) Article 5 of and the Annex to Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009^d ("**Regulation 260/2012**").

PART II

^a Article VII of Billet d'État No. XI of 2015.

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

^c OJ L 319, 5.12.2007, p. 1.

^d OJ L 94, 30.3.2012, p. 22; amended by Regulation (EU) 248/2104.

TITLE III OF PAYMENT SERVICES DIRECTIVE:
TRANSPARENCY OF CONDITIONS AND INFORMATION
REQUIREMENTS FOR PAYMENT SERVICES

CHAPTER 1
GENERAL RULES

Scope of Part II.

2. (1) This Part applies to a contract for payment services where -
- (a) the services are provided from an establishment maintained by a payment service provider in Guernsey, and
 - (b) the payment service providers of both the payer and the payee are located within the SEP statutory area.
- (2) Chapters 2 and 3 apply to payment services provided under a single payment service contract.
- (3) Chapters 3 and 4 apply to payment services provided under a framework contract.
- (4) Except where the payment service user is a consumer, the parties may agree that this Part shall not apply in whole or in part to a contract for payment services.

Transactions to which Part II does not apply.

3. This Part does not apply to -
- (a) payment transactions from a payer to a payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee,
 - (b) payment transactions carried out within a payment or

securities settlement system between -

- (i) payment service providers, and
 - (ii) settlement agents, central counterparties, clearing houses, central banks or other participants in the system,
- (c) payment transactions relating to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in paragraph (b) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments,
- (d) services, provided by technical service providers, which support the provision of payment services, without the providers entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, provision of information technology, provision of communication networks, and the provision and maintenance of terminals and devices used for payment services,
- (e) payment transactions carried out between payment service providers, their agents or their branches for their own account, or
- (f) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a payment service provider other than

an undertaking belonging to the same group.

Derogation from information requirements for low-value payment instruments and electronic money.

4. (1) This section applies in respect of payment instruments which, under the framework contract governing their use -

- (a) can be used only to execute individual payment transactions that do not exceed 30 euros or, in relation to payment transactions executed wholly within Guernsey, 60 euros, or
- (b) have a spending limit of 150 euros or, where payment transactions are to be executed wholly within Guernsey, 300 euros.

(2) Where this section applies -

- (a) sections 12, 13 and 17 do not apply and the payment service provider is required to provide the payer only with information about the main characteristics of the payment service, including -
 - (i) the way in which the payment instrument can be used,
 - (ii) the liability of the payer, as set out in section 34,
 - (iii) any charges levied,
 - (iv) any other material information the payer might need in order to take an informed decision, and
 - (v) an indication of where the information referred

to in section 13 is made available in an easily accessible manner,

- (b) if the parties so agree, sections 18 and 19 do not apply and instead -
 - (i) the payment service provider shall provide or make available a reference enabling the payment service user to identify -
 - (A) the payment transaction,
 - (B) the amount of the payment transaction,
 - (C) any charges payable in respect of the payment transaction, or
 - (ii) where several payment transactions of the same kind are made to the same payee, the payment service provider shall provide or make available to the payment service user information about the total amount of and any charges for the payment transactions, and
- (c) if the parties so agree, section 20(1) does not apply to information provided or made available in accordance with section 15.

CHAPTER 2
SINGLE PAYMENT TRANSACTIONS

Scope of Chapter 2.

5. This Chapter applies to single payment transactions not covered by a framework contract.

Prior general information for single payment contracts.

6. (1) A payment service provider shall make available to the payment service user the information specified in section 7, in the manner provided for in section 20, at either of the following times -

- (a) before the payment service user is bound by the single payment service contract, or
- (b) where the single payment service contract is concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph (a), immediately after the execution of the payment transaction.

(2) The payment service provider may also discharge the obligations under subsection (1) by supplying a copy of the draft single payment service contract or the draft payment order including the information specified in section 7.

Information for single payment contracts.

7. The information referred to in section 6 is -

- (a) the information or unique identifier that has to be provided by the payment service user in order for a payment order to be properly executed,
- (b) the maximum execution time for the payment service to be provided,
- (c) the charges payable by the payment service user to his payment service provider for the payment service and, where applicable, a breakdown of the amounts of the charges,
- (d) where applicable, the actual or reference exchange rate to be applied to the payment transaction, and

- (e) such of the information referred to in section 13 as is relevant to the single payment service contract in question.

Information for the payer after receipt of payment order.

8. (1) The payer's payment service provider shall, immediately after receipt of the payment order, and in the manner provided for in section 20, provide or make available to the payer the information referred to in subsection (2).

- (2) The information referred to in subsection (1) is -
 - (a) a reference enabling the payer to identify the payment transaction and, where appropriate, information relating to the payee,
 - (b) the amount of the payment transaction in the currency used in the payment order,
 - (c) the charges payable by the payer for the payment transaction and, where applicable, a breakdown of the amounts of the charges,
 - (d) where applicable, and when different from the rate referred to in section 7(d), the exchange rate used in the payment transaction by the payer's payment service provider or a reference thereto, and the amount of the payment transaction after the currency conversion, and
 - (e) the date of receipt of the payment order.

Information for the payee after execution.

9. (1) The payee's payment service provider shall, immediately after the execution of the payment transaction, and in the manner provided for in section 20, provide or make available to the payee the information referred to in subsection

(2).

- (2) The information referred to in subsection (1) is -
- (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer and any information transferred with the payment transaction,
 - (b) the amount of the payment transaction in the currency in which the funds are at the payee's disposal,
 - (c) the charges payable by the payee for the payment transaction and, where applicable, a breakdown of the amount of the charges,
 - (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion, and
 - (e) the credit value date.

Avoidance of duplication of information.

10. Where a payment order for a single payment transaction is transmitted by way of a payment instrument issued under a framework contract, the payment service provider in respect of that single payment transaction is not obliged under this Chapter to provide or make available information which has been or will be provided or made available to the payment service user under Chapter 3 by another payment service provider in respect of the framework contract.

CHAPTER 3
FRAMEWORK CONTRACTS

Scope of Chapter 3.

11. This Chapter applies to payment transactions covered by a framework contract.

Prior general information for framework contracts.

12. (1) A payment service provider shall provide to the payment service user the information specified in section 13, in the manner provided for in section 20, at either of the following times -

- (a) in good time before the payment service user is bound by the framework contract, or
- (b) where the framework contract is concluded at the request of the payment service user using a means of distance communication which does not enable the payment service provider to comply with paragraph (a), immediately after the conclusion of the contract.

(2) The payment service provider may also discharge the obligations under subsection (1) by supplying a copy of the draft framework contract including the information specified in section 13.

Information for framework contracts.

13. (1) The following information is to be provided about the payment service provider -

- (a) the name of the payment service provider,
- (b) the geographic address of the payment service provider's head office,
- (c) where applicable, the geographic address of the branch from which the payment service is offered,
- (d) any other address (including electronic mail address) relevant for communication with the payment service provider,

- (e) particulars of the payment service provider's regulator (that is, the Commission), and any reference, or registration number or equivalent means of identification, allocated by the regulator to the payment service provider.

(2) The following information is to be provided about use of the payment service -

- (a) a description of the main characteristics of the payment service to be provided,
- (b) a specification of the information or unique identifier that must be provided by the payment service user in order for a payment order to be properly executed,
- (c) the form and procedure for giving consent to the execution of a payment transaction and for the withdrawal of such consent in accordance with section 27,
- (d) a reference to the point in time of receipt of a payment order, as defined in section 37, and the cut-off time, if any, established by the payment service provider,
- (e) the maximum execution time for the payment services to be provided,
- (f) whether spending limits for the use of a payment instrument may be agreed in accordance with section 28(1).

(3) The following information is to be provided about charges, interest and exchange rates -

- (a) details of all charges payable by the payment service

user to the payment service provider for the provision of payment services and, where applicable, a breakdown of the amounts of any charges,

- (b) where applicable, details of the exchange rates to be applied or, if reference interest and exchange rates are to be used, the method of calculating the actual interest and the relevant date and index or base for determining such reference interest and exchange rates,
- (c) if agreed, the immediate application of changes in reference interest or exchange rates and information requirements relating to the changes in accordance with section 15(3).

(4) The following information is to be provided about communication -

- (a) the means of communication agreed between the parties for the transmission of information or notifications under this Ordinance including, where applicable, any technical requirements for the payment service user's equipment for the receipt of information or notifications,
- (b) the manner in which and frequency with which information under this Ordinance is to be provided or made available,
- (c) the language or languages in which the framework contract will be concluded and in which any information or notifications under this Ordinance will be communicated,
- (d) the payment service user's right to receive the terms of

the framework contract and information in accordance with section 14.

(5) The following information is to be provided about safeguards and corrective measures -

- (a) where applicable, a description of the steps that the payment service user is to take in order to keep safe a payment instrument and how to notify the payment service provider for the purposes of section 29(1)(b),
- (b) if agreed, the conditions under which the payment service provider proposes to reserve the right to stop or prevent the use of a payment instrument in accordance with section 28,
- (c) the payer's liability under section 34, including information on the relevant amount,
- (d) how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction in accordance with section 31, and the payment service provider's liability for unauthorised payment transactions in accordance with section 33,
- (e) the payment service provider's liability for the execution of payment transactions in accordance with section 45 or 46,
- (f) the conditions for refund in accordance with section 35.

(6) The following information is to be provided about changes to and termination of the framework contract -

- (a) if agreed, the proposed terms under which the payment service user shall be deemed to have accepted changes to the framework contract in accordance with section 15(2) if he does not, before the proposed date of their entry into force, notify the payment service provider that he does not accept them,
 - (b) the duration of the framework contract,
 - (c) the right of the payment service user to terminate the framework contract and any agreements relating to termination in accordance with section 16.
- (7) The following information is to be provided about redress -
- (a) any contractual clause on -
 - (i) the law applicable to the framework contract, and/or
 - (ii) the competent courts, and
 - (b) the out-of-court complaint and redress procedures available to the payment service user and the methods of obtaining access to them.

Provision of information during period of framework contract.

14. If the payment service user so requests at any time during the contractual relationship, the payment service provider shall provide, in the manner provided for in section 20 -

- (a) the contractual terms of the framework contract, and
- (b) the information specified in section 13.

Changes in conditions of framework contract.

15. (1) Subject to subsection (3), notice of any proposed changes to -

- (a) the existing terms of the framework contract, or
- (b) the information referred to in section 13,

shall be provided by the payment service provider to the payment service user, in the manner provided for in section 20, no later than 2 months before the date on which they are to take effect.

(2) If the framework contract so provides, changes described in subsection (1) shall be deemed to have been accepted by the payment service user if he does not, before the proposed date of their entry into force, notify the payment service provider that he does not accept them, provided that the payment service provider informs the payment service user that -

- (a) the payment service user will be deemed to have accepted the changes in those circumstances, and
- (b) the payment service user has the right to terminate the framework contract immediately and without charge before the proposed date of their entry into force.

(3) Changes in the interest or exchange rate used in payment transactions may be applied immediately and without notice where -

- (a) such a right is agreed upon in the framework contract and the changes are based on the reference interest or exchange rates on which information has been provided to the payment service user in accordance with section 13, or
- (b) the changes are more favourable to the payment service user.

(4) Changes in the interest or exchange rate used in payment

transactions shall be implemented and calculated in a neutral manner that does not discriminate against payment service users.

Termination of framework contract.

16. (1) The payment service user may, subject to subsection (2), terminate the framework contract at any time.

(2) If the parties have agreed on a period of notice not exceeding 1 month, the payment service user may terminate the framework contract by giving at least that period of notice.

(3) Subject to subsection (4), any charges for the termination of a framework contract under subsection (1) or (2) shall be appropriate and shall reasonably correspond to the payment service provider's actual costs of termination.

(4) If a framework contract is concluded for a fixed period of more than 12 months or for an indefinite period, the payment service provider may not, after the expiry of 12 months from the date of entry into force of the contract, charge the payment service user for the termination of the contract under subsection (1) or (2).

(5) If a framework contract concluded for an indefinite period so provides, the payment service provider may terminate the contract by giving, in the manner provided for in section 20, at least 2 months' notice or the period of notice provided for in the contract, whichever period of notice is the greater.

(6) Where charges for payment services are levied on a regular basis the charges shall be apportioned up until the time of the termination of the contract and any charges paid in advance shall be reimbursed proportionally.

(7) This section does not affect any right of a party to the framework contract to treat it, in accordance with the general law of contract, as unenforceable, void or discharged.

Information prior to execution of individual payment transactions.

17. Where an individual payment transaction under a framework contract

is initiated by the payer, the payer's payment service provider shall, on the payer's request for the payment transaction, inform the payer of -

- (a) the maximum execution time,
- (b) the charges payable by the payer in respect of the payment transaction, and
- (c) where applicable, a breakdown of the amounts of those charges.

Information for the payer on individual payment transactions.

18. (1) After the amount of an individual payment transaction is debited from the payer's payment account under a framework contract or, where the payer does not use a payment account, after receipt of the payment order, the payer's payment service provider shall, as soon as is reasonably practicable, and in the manner provided for in section 20, provide to the payer the information referred to in subsection (2).

- (2) The information referred to in subsection (1) is -
 - (a) a reference enabling the payer to identify each payment transaction and, where appropriate, information relating to the payee,
 - (b) the amount of the payment transaction in the currency in which the payer's payment account is debited or in the currency used for the payment order,
 - (c) the amount of any charges payable by the payer for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payer,
 - (d) where applicable, the exchange rate used in the payment transaction by the payer's payment service

provider and the amount of the payment transaction after that currency conversion, and

- (e) the debit value date or the date of receipt of the payment order.

(3) A framework contract may include a condition that the information referred to in subsection (2) is to be provided or made available periodically at least once a month and in an agreed manner which enables the payer to store and reproduce the information unchanged.

Information for the payee on individual payment transactions.

19. (1) After the execution of an individual payment transaction under a framework contract, the payee's payment service provider shall, as soon as is reasonably practicable, and in the manner provided for in section 20, provide to the payee the information referred to in subsection (2).

(2) The information referred to in subsection (1) is -

- (a) a reference enabling the payee to identify the payment transaction and, where appropriate, the payer, and any information transferred with the payment transaction,
- (b) the amount of the payment transaction in the currency in which the payee's payment account is credited,
- (c) the amount of any charges payable by the payee for the payment transaction and, where applicable, a breakdown thereof, or the interest payable by the payee,
- (d) where applicable, the exchange rate used in the payment transaction by the payee's payment service provider, and the amount of the payment transaction before that currency conversion, and

- (e) the credit value date.

(3) A framework contract may include a condition that the information referred to in subsection (2) is to be provided or made available periodically at least once a month and in an agreed manner which enables the payee to store and reproduce the information unchanged.

CHAPTER 4
COMMON PROVISIONS

Communication of information.

20. (1) Subject to section 4(2)(c), any information required to be provided or made available in accordance with section 7 or 13 shall be provided or made available -

- (a) in the case of single payment service contracts, in an easily accessible manner,
- (b) subject to subsection (2), on paper or on another durable medium,
- (c) in easily understandable words and in a clear and comprehensible form, and
- (d) in the English language or in any other language agreed between the parties.

(2) Subsection (1)(b) -

- (a) applies, in the case of a single payment service contract, only where the payment service user so requests, and
- (b) is subject, in the case of a framework contract, to any agreement in accordance with section 18(3) or 19(3) as to the manner in which information is to be provided

or made available.

Charges for information.

21. (1) The payment service provider shall not charge the payment service user for providing or making available information which is required to be provided or made available in accordance with section 7 or 13.

(2) The payment service provider and the payment service user may agree on charges for any information provided at the request of the payment service user where the information is -

- (a) additional to the information required to be provided or made available by this Part,
- (b) provided or made available more frequently than is required by this Part, or
- (c) transmitted by means of communication other than those specified in the framework contract.

(3) Any charges imposed pursuant to subsection (2) shall be appropriate and shall reasonably correspond to the payment service provider's actual costs.

Currency and currency conversion.

22. (1) Where a currency conversion service is, prior to the initiation of a payment transaction, offered -

- (a) at the point of sale, or
- (b) by the payee,

the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.

(2) A person who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(3) Subsection (2) does not apply to a person who, in relation to the payment transaction, is a payment service provider.

Information on additional charges or reductions.

23. (1) Where, for the use of a particular payment instrument, the payee requests a charge or offers a reduction he shall inform the payer thereof prior to the initiation of the payment transaction.

(2) A payee who fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(3) Subsection (2) does not apply to a person who, in relation to the payment transaction, is a payment service provider.

(4) Where, for the use of a particular payment instrument, a payment service provider or a third party requests a charge, he shall inform the payment service user thereof prior to the initiation of the payment transaction.

(5) A person who, being a third party referred to in subsection (4), fails to comply with that subsection is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

PART III

TITLE IV OF PAYMENT SERVICES DIRECTIVE:
RIGHTS AND OBLIGATIONS IN RELATION TO PROVISION
AND USE OF PAYMENT SERVICES

CHAPTER 1
COMMON PROVISIONS

Scope of Part III.

24. (1) This Part applies to a contract for payment services where -

- (a) the services are provided from an establishment maintained by a payment service provider in Guernsey, and
- (b) the payment service providers of both the payer and the payee are located within the SEP statutory area.

(2) Except where the payment service user is a consumer, the parties may agree that -

- (a) sections 25(1), 27(3) or (4), 32, 34, 35, 36, 39, 45, 46 and 47 shall not apply in whole or in part, and
- (b) a period different from that specified in section 31(1)(b) shall apply.

(3) This Part does not apply to any payment transaction or service specified in section 3.

Charges.

25. (1) The payment service provider may charge the payment service user for the fulfilment of any of its obligations under this Part only -

- (a) in accordance with section 38(3), 39(6) or 44(2)(b),
- (b) where agreed between the parties, and
- (c) where such charges are appropriate and reasonably correspond to the payment service provider's actual costs.

(2) Where a payment transaction does not involve any currency conversion, the payee's and payer's payment service providers shall respectively ensure that -

- (a) the payee pays any charges levied by his payment service provider, and
 - (b) the payer pays any charges levied by his payment service provider.
- (3) The payee's payment service provider shall not prevent the payee from -
- (a) requiring payment of a charge by, or
 - (b) offering a reduction to,

the payer for the use of a particular payment instrument.

Derogation from information requirements for low-value payment instruments and electronic money.

26. (1) This section applies in respect of payment instruments which, under the framework contract governing their use -

- (a) can be used only to execute individual payment transactions that do not exceed 30 euros or, in relation to payment transactions executed wholly within Guernsey, 60 euros, or
 - (b) have a spending limit of 150 euros, or where payment transactions are to be executed wholly within Guernsey, 300 euros.
- (2) Where this section applies the parties may agree that -
- (a) sections 29(1)(b), 30(1)(c), (d) and (e) and 34(3) do not apply where the payment instrument does not allow for the stopping or prevention of its use,

- (b) sections 32, 33 and 34(1) and (2) do not apply where the payment service provider is not in a position, for reasons intrinsic to the payment instrument (for example, if the payment instrument is used anonymously), to prove that a payment transaction was authorised,
- (c) notwithstanding section 38(1), the payment service provider is not required to notify the payment service user of the refusal of a payment order if the non-execution is apparent from the context,
- (d) notwithstanding section 39, the payer may not revoke the payment order under that section after transmitting the payment order or giving his consent to execute the payment transaction to the payee,
- (e) execution times other than those provided for by sections 41 and 42 apply.

CHAPTER 2

AUTHORISATION OF PAYMENT TRANSACTIONS

Consent and withdrawal of consent.

27. (1) A payment transaction shall only be regarded as having been authorised by the payer for the purposes of this Part if the payer has given his consent to -

- (a) the execution of the payment transaction, or
 - (b) the execution of a series of payment transactions of which that payment transaction forms part.
- (2) For the purposes of subsection (1), consent -

- (a) may be given -
 - (i) before, or,
 - (ii) if agreed between the payer and its payment service provider, after,

the execution of the payment transaction, and
- (b) shall be given -
 - (i) in the form, and
 - (ii) in accordance with the procedure,

agreed between the payer and his payment service provider.

(3) The payer may withdraw his consent to a payment transaction at any time before the point at which the payment order can no longer be revoked under section 39.

(4) Subject to section 39(3) to (5), the payer may withdraw his consent to the execution of a series of payment transactions at any time with the effect that any future payment transactions are not regarded as authorised for the purposes of this Part.

Limits on the use of payment instruments.

28. (1) Where a specific payment instrument is used for the purpose of giving consent to the execution of a payment transaction, the payer and his payment service provider may agree on spending limits for any payment transactions executed through that payment instrument.

(2) A framework contract may provide for the payment service provider to have the right to stop the use of a payment instrument on reasonable grounds relating to -

- (a) the security of the payment instrument,
- (b) the suspicion of unauthorised or fraudulent use of the payment instrument, or
- (c) in the case of a payment instrument with a credit line, a significantly increased risk that the payer may be unable to fulfil his liability to pay.

(3) Subject to subsections (4) and (5), the payment service provider shall, in the manner agreed between him and the payer and before carrying out any measures to stop the use of the payment instrument -

- (a) inform the payer that he intends to stop the use of the payment instrument, and
- (b) give his reasons for doing so.

(4) Subject to subsection (5), where the payment service provider is unable to inform the payer in accordance with subsection (3) before carrying out any measures to stop the use of the payment instrument, he shall do so immediately after.

(5) Subsections (3) and (4) do not apply where provision of the information in accordance with subsection (3) would compromise reasonable security measures or is otherwise unlawful.

(6) The payment service provider shall -

- (a) allow the use of the payment instrument, or
- (b) replace it with a new payment instrument,

as soon as practicable after the reasons for stopping its use cease to exist.

Obligations of the payment service user in relation to payment instruments.

29. (1) A payment service user to whom a payment instrument has been issued shall -

- (a) use the payment instrument in accordance with the terms and conditions governing its issue and use, and
- (b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

(2) The payment service user shall on receiving a payment instrument take all reasonable steps to keep its personalised security features safe.

Obligations of the payment service provider in relation to payment instruments.

30. (1) A payment service provider issuing a payment instrument shall -

- (a) ensure that the personalized security features of the payment instrument are not accessible to persons other than the payment service user to whom the payment instrument has been issued,
- (b) not send an unsolicited payment instrument, except where a payment instrument already issued to a payment service user is to be replaced,
- (c) ensure that appropriate means are available at all times to enable the payment service user -
 - (i) to notify the payment service provider in accordance with section 29(1)(b), or

- (ii) to request that the use of the payment instrument no longer be stopped and that section 28(6) apply,
- (d) on request, provide the payment service user at any time during a period of 18 months after the alleged date of a notification under section 29(1)(b) with the means to prove that such notification to the payment service provider was made, and
- (e) prevent any use of the payment instrument once notification has been made under section 29(1)(b).

(2) The payment service provider bears the risk of sending a payment instrument or any of its personalized security features to the payment service user.

(3) Nothing in subsection (1)(a) affects the obligations of the payment service user under section 29.

Notification of unauthorised or incorrectly executed payment transactions.

31. (1) A payment service user is entitled to redress under section 33, 45, 46 or 47 only if he notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.

(2) Where the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part II, the payment service user is nevertheless entitled to redress under section 33, 45, 46 or 47, notwithstanding that he has failed to notify the payment service provider in accordance with subsection (1).

Evidence on authentication and execution of payment transactions.

32. (1) Where a payment service user -

- (a) denies having authorised an executed payment transaction, or
- (b) claims that a payment transaction has not been correctly executed,

it shall be for the payment service provider to prove that the payment transaction was -

- (i) authenticated,
- (ii) accurately recorded,
- (iii) entered in the payment service provider's accounts, and
- (iv) not affected by a technical breakdown or some other deficiency.

(2) For the purposes of subsection (1)(i), "authenticated" means the use of any procedure by which a payment service provider is able to verify the use of a specific payment instrument, including its personalized security features.

(3) Where a payment service user denies having authorised an executed payment transaction, the use of a payment instrument recorded by the payment service provider shall not in itself necessarily be sufficient to prove that -

- (a) the payment transaction was authorised by the payer, or
- (b) the payer acted fraudulently or failed with intent or gross negligence to comply with section 29.

Payment service provider's liability for unauthorised payment transactions.

33. (1) Subject to section 31, where an executed payment transaction was not authorised in accordance with section 27(1), the payment service provider shall immediately -

- (a) refund the amount of the unauthorised payment transaction to the payer, and
- (b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place.

(2) This section is without prejudice to any further financial compensation that may be determined in accordance with the law applicable to the contract concluded between the payer and the payment service provider.

Payer's liability for unauthorised payment transactions.

34. (1) Subject to subsections (2) and (3), the payer shall be liable up to a maximum of £50 for any losses incurred in respect of an unauthorised payment transaction arising -

- (a) from the use of a lost or stolen payment instrument, or
- (b) where the payer has failed to keep the personalized security features of the payment instrument safe, from the misappropriation of the payment instrument.

(2) Notwithstanding subsection (1), the payer shall be liable for all losses incurred in respect of an unauthorised payment transaction where the payer -

- (a) has acted fraudulently, or
- (b) has with intent or gross negligence failed to comply with section 29.

(3) Except where the payer has acted fraudulently, the payer shall not be liable for any losses incurred in respect of an unauthorised payment transaction -

- (a) arising after notification under section 29(1)(b), or
- (b) where the payment service provider has failed at any time to provide appropriate means for notification in accordance with section 30(1)(c).

Refunds for payment transactions initiated by or through a payee.

35. (1) Subject to section 36, where the conditions in subsection (2) are satisfied the payer shall be entitled to a refund from his payment service provider of the full amount of any authorised payment transaction initiated by or through the payee.

(2) The conditions are that -

- (a) the authorisation did not specify the exact amount of the payment transaction when the authorisation was given in accordance with section 27, and
- (b) the amount of the payment transaction exceeded the amount that the payer could reasonably have expected taking into account the payer's previous spending pattern, the conditions of the framework contract and the circumstances of the case.

(3) The payer and payment service provider may agree in the framework contract that, in respect of direct debits, the conditions in subsection (2) need not be satisfied in order for the payer to be entitled to a refund.

(4) For the purposes of subsection (2)(b), the payer cannot rely on currency exchange fluctuations where the reference exchange rate provided under section 7(d) or 13(3)(b) was applied.

(5) The payer and payment service provider may agree in the framework contract that the right to a refund does not apply where -

- (a) the payer has given consent directly to the payment service provider for the payment transaction to be executed, and
- (b) if applicable, information on the payment transaction was provided or made available in an agreed manner to the payer for at least 4 weeks before the due date by the payment service provider or by the payee.

Requests for refunds for payment transactions initiated by or through a payee.

36. (1) The payer may request a refund from his payment service provider under section 35 only within a period of 8 weeks from the date on which the funds were debited.

(2) The payment service provider may require the payer to provide such information as is reasonably necessary to ascertain whether the conditions in section 35(2) are satisfied.

(3) Subject to subsection (4), the payment service provider shall either -

- (a) refund the full amount of the payment transaction, or
- (b) provide justification for refusing to refund the payment transaction, indicating the bodies to which the payer may refer the matter if the payer does not accept the justification provided.

(4) The payment service provider's right to refuse a refund by virtue of the expiry of the period of 8 weeks referred to in subsection (1) does not apply where the payer and payment service provider have, in accordance with section 35(3), agreed in the framework contract that, in respect of direct debits, the

conditions in section 35(2) need not be satisfied in order for the payer to be entitled to a refund.

(5) Any refund or justification for refusing a refund under subsection (3) shall be provided within 10 business days of receiving a request for a refund or, where applicable, within 10 business days of receiving any further information requested under subsection (2).

CHAPTER 3
EXECUTION OF PAYMENT TRANSACTIONS

Receipt of payment orders.

37. (1) Subject to subsections (2) to (5), for the purposes of this Ordinance the time of receipt of a payment order is the time at which the payment order, transmitted directly by the payer or indirectly by or through a payee, is received by the payer's payment service provider.

(2) If the time of receipt of a payment order does not fall on a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the first business day thereafter.

(3) The payment service provider may set a time towards the end of a business day after which any payment order received shall be deemed to have been received on the following business day.

(4) Where the payment service user initiating a payment order agrees with its payment service provider that execution of the payment order is to take place -

- (a) on a specific day,
- (b) on the last day of a certain period, or
- (c) on the day on which the payer has put funds at the disposal of its payment service provider,

the time of receipt for the purposes of section 41 shall be deemed to be the day so agreed.

(5) If the day agreed under subsection (4) is not a business day for the payer's payment service provider, the payment order shall be deemed to have been received on the first business day thereafter.

Refusal of payment orders.

38. (1) Subject to subsection (4), where a payment service provider refuses to execute a payment order, it shall notify the payment service user of -

- (a) the refusal,
- (b) if possible, the reasons for such refusal, and
- (c) where it is possible to provide reasons for the refusal and those reasons relate to factual matters, the procedure for rectifying any factual errors that led to the refusal.

(2) Any notification under subsection (1) shall be given or made available in an agreed manner and at the earliest opportunity, and in any event within the periods specified in section 41.

(3) The framework contract may provide for the payment service provider to charge the payment service user for such notification where the refusal is reasonably justified.

(4) The payment service provider is not required to notify the payment service user under subsection (1) where such notification would be otherwise unlawful.

(5) Where all the conditions set out in the payer's framework contract have been satisfied, the payment service provider shall not refuse to execute an authorised payment order irrespective of whether the payment order is

initiated by the payer or by or through a payee, unless such execution is otherwise unlawful.

(6) For the purposes of sections 41, 45 and 46, a payment order of which execution has been refused shall be deemed not to have been received.

Revocation of a payment order.

39. (1) Subject to subsections (2) to (5), a payment service user may not revoke a payment order after it has been received by the payer's payment service provider.

(2) In the case of a payment transaction initiated by or through the payee, the payer may not revoke the payment order after transmitting the payment order or giving his consent to execute the payment transaction to the payee.

(3) In the case of a direct debit, and without prejudice to refund rights, the payer may not revoke the payment order after the end of the business day preceding the day agreed for debiting the funds.

(4) Where a day is agreed under section 37(4), the payment service user may not revoke a payment order after the end of the business day preceding the agreed day.

(5) At any time after the time limits for revocation set out in subsections (1) to (4), the payment order only may be revoked if the revocation is -

- (a) agreed between the payment service user and his payment service provider, and
- (b) in the case of a payment transaction initiated by or through the payee, including in the case of a direct debit, also agreed with the payee.

(6) A framework contract may provide for the payment service provider to charge for revocation under this Ordinance.

Amounts transferred and amounts received.

40. (1) Subject to subsection (2), the payment service providers of the payer and payee shall ensure that -

- (a) the full amount of the payment transaction is transferred, and
- (b) no charges are deducted from the amount transferred.

(2) The payee and his payment service provider may agree that the payment service provider deduct his charges from the amount transferred before crediting it to the payee, provided that the full amount of the payment transaction and the amount of the charges are clearly stated in the information provided to the payee.

(3) If charges other than those provided for by subsection (2) are deducted from the amount transferred, in the case of a payment transaction initiated -

- (a) by the payer, the payer's payment service provider shall ensure that the payee nevertheless receives the full amount of the payment transaction, and
- (b) by the payee, the payee's payment service provider shall ensure that the payee nevertheless receives the full amount of the payment transaction.

Payment transactions to a payment account.

41. (1) Subject to subsections (2) and (3), the payer's payment service provider shall ensure that the amount of the payment transaction is credited to the payee's payment service provider's account by the end of the business day following the time of receipt of the payment order determined in accordance with section 37.

(2) Where a payment transaction is initiated by way of a paper payment order, the reference in subsection (1) to the end of the business day following the time of receipt of the payment order shall be treated as a reference to the end of the second business day following the time of receipt of the payment order determined in accordance with section 37.

(3) The payee's payment service provider shall value-date and credit the amount of the payment transaction to the payee's payment account following his receipt of the funds in accordance with section 43.

(4) The payee's payment service provider shall transmit a payment order initiated by or through the payee to the payer's payment service provider within the time limits agreed between the payee and his payment service provider, enabling settlement in respect of a direct debit to occur on the agreed due date.

Absence of payee's payment account with the payment service provider.

42. Where a payment service provider accepts funds on behalf of a payee who does not have a payment account with him, he shall make the funds available to the payee immediately after the funds have been credited to his account.

Value date and availability of funds.

43. (1) The credit value date for the payee's payment account shall be no later than the business day on which the amount of the payment transaction is credited to the account of the payee's payment service provider.

(2) The payee's payment service provider shall ensure that the amount of the payment transaction is at the payee's disposal immediately after that amount has been credited to that payment service provider's account.

(3) The debit value date for the payer's payment account shall be no earlier than the time at which the amount of the payment transaction is debited to that payment account.

Incorrect unique identifiers.

44. (1) Where a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier.

(2) Where the unique identifier provided by the payment service user is incorrect, the payment service provider shall not be liable under section 45 or 50 for non-execution or defective execution of the payment transaction, but the payment service provider -

- (a) shall make reasonable efforts to recover the funds involved in the payment transaction, and
- (b) may, if agreed in the framework contract, charge the payment service user for any such recovery.

(3) Where the payment service user provides information additional to that referred to in section 7(a) or section 13(2)(b), the payment service provider shall be liable only for the execution of payment transactions in accordance with the unique identifier provided by the payment service user.

Non-execution or defective execution of payment transactions initiated by the payer.

45. (1) This section applies where a payment order is initiated by the payer.

(2) Without prejudice to sections 31 and 44, the payer's payment service provider shall be liable to the payer for the correct execution of the payment transaction unless he can prove to the payer and, where relevant, to the payee's payment service provider, that the payee's payment service provider received the amount of the payment transaction in accordance with section 41(1) and (2).

(3) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payer, the payer's payment service provider shall, on request, and regardless of liability under this section,

make immediate efforts to trace the payment transaction and notify the payer of the outcome.

(4) Where the payer's payment service provider is liable under subsection (2), he shall without undue delay refund to the payer the amount of the non-executed or defective payment transaction and, where applicable, restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

(5) Where the payer's payment service provider proves, in accordance with subsection (2), that the payee's payment service provider received the amount of the payment transaction in accordance with section 41(1) and (2), the payee's payment service provider shall be liable to the payee for the correct execution of the payment transaction and shall -

- (a) immediately make available the amount of the payment transaction to the payee, and
- (b) where applicable, credit the corresponding amount to the payee's payment account.

Non-execution or defective execution of payment transactions initiated by the payee.

46. (1) This section applies where a payment order is initiated by or through the payee.

(2) Without prejudice to sections 31 and 44, the payee's payment service provider shall be liable to the payee for the correct transmission of the payment order to the payer's payment service provider in accordance with section 41(4).

(3) Where the payee's payment service provider is liable under subsection (2), it shall immediately re-transmit the payment order in question to the payer's payment service provider.

(4) In the case of a non-executed or defectively executed payment transaction where the payment order is initiated by the payee, the payee's payment service provider shall, on request, and regardless of liability under this section, make immediate efforts to trace the payment transaction and notify the payee of the outcome.

(5) Where the payee's payment service provider can prove to the payee and, where relevant, to the payer's payment service provider, that it is not liable under subsection (2) in respect of a non-executed or defectively executed payment transaction, the payer's payment service provider shall be liable to the payer and shall, as appropriate and without undue delay -

- (a) refund to the payer the amount of the payment transaction, and
- (b) restore the debited payment account to the state in which it would have been had the defective payment transaction not taken place.

Liability of payment service provider for charges and interest.

47. (1) In addition to any liability imposed by section 45 or 46, but without prejudice to sections 31 and 44, a payment service provider shall be liable to its payment service user for -

- (a) any charges for which the payment service user is responsible, and
- (b) any interest which the payment service user must pay,

as a consequence of the non-execution or defective execution of the payment transaction.

(2) This section is without prejudice to any additional financial compensation that may be determined in accordance with the law applicable to the contract concluded between the payment service user and the payment service provider.

Right of recourse.

48. Where the liability of a payment service provider under section 45 or 50 is attributable to another payment service provider or an intermediary, the other payment service provider or intermediary shall compensate the first-mentioned provider for any losses incurred or sums paid pursuant to that section.

Force majeure.

49. Notwithstanding the provisions of this Part -

- (a) a person shall not be liable for any contravention of a requirement imposed on it under this Part where the contravention is due to abnormal and unforeseeable circumstances beyond that person's control, the consequences of which would have been unavoidable despite all efforts to the contrary, and
- (b) a payment service provider shall not be liable for any contravention of a requirement imposed on it under this Part where the contravention is due to the obligations of the payment service provider under other provisions of Guernsey law.

PART IV
IMPLEMENTATION OF ARTICLE 5 OF AND ANNEX TO
REGULATION 260/2012

Object of Part IV.

50. The object of this Part is to make provision for the implementation of Article 5 of and the Annex to Regulation 260/2012.

Interpretation of Part IV.

51. In this Part -

"collection" means a part of a SEPA direct debit transaction starting from its initiation by the payee until its end through the normal debiting of the payer's payment account,

"ISO 20022 XML standard" means a standard for the development of electronic financial messages as defined by the International Organization for Standardization, encompassing the physical representation of the payment transactions in XML syntax, in accordance with business rules and implementation guidelines for schemes for payment transactions falling within the scope of this Part,

"large-value payment system" means a payment system the main purpose of which is to process, clear or settle single payment transactions of high priority and urgency, and primarily of large amount,

"mandate" means the expression of consent and authorisation given by the payer to the payee and (directly, or indirectly via the payee) to the payer's payment service provider to allow the payee to initiate a collection for debiting the payer's specified payment account and to allow the payer's payment service provider to comply with such instructions,

"microenterprise" means an enterprise which is a microenterprise within the meaning of Article 1, and Article 2(1) and (3) of the Annex, of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises^e,

"reference party" means a natural or legal person on behalf of whom a payer makes a payment or a payee receives a payment,

"retail payment system" means a payment system which is not a large-value payment system and the main purpose of which is to process, clear or settle SEPA credit transfers, or SEPA direct debits, which are

^e OJ L 124, 20.5.2003, p. 36.

generally bundled together for transmission and are primarily of small amount and low priority,

"settlement date" means a date on which obligations with respect to the transfer of funds are discharged between the payer's payment service provider and the payee's payment service provider.

Application of Part IV.

52. (1) This Part applies to SEPA credit transfer transactions and SEPA direct debit transactions where -

- (a) the payment service providers of both the payer and the payee are located within the SEP statutory area, or
- (b) the sole payment service provider involved in the transaction is located within the SEP statutory area.

(2) This Part does not apply to the following -

- (a) payment transactions carried out between or within payment service providers, their agents or their branches for their own account,
- (b) payment transactions processed and settled through a large-value payment system, other than SEPA direct debit payment transactions which the payer has not explicitly requested be routed via a large-value payment system,
- (c) payment transactions through a payment card or similar device, including cash withdrawals, unless the card or device is used only to generate the information required to make directly a SEPA credit transfer to, or a SEPA direct debit from, a payment account identified by BBAN or IBAN,

- (d) payment transactions by means of any telecommunication, digital or information technology device, unless the payment transaction results in a SEPA credit transfer to, or a SEPA direct debit from, a payment account identified by BBAN or IBAN,
- (e) transactions of money remittance as defined in Article 4(13) of the Payments Services Directive,
- (f) payment transactions transferring electronic money as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions^f, unless the transaction results in a SEPA credit transfer to, or a SEPA direct debit from, a payment account identified by BBAN or IBAN.

(3) Where payment schemes are based on payment transactions by SEPA credit transfers or SEPA direct debits but have additional optional features or services, this Part applies only to the underlying SEPA credit transfers or SEPA direct debits.

Requirements for credit transfer and direct debit transactions.

53. (1) Payment service providers shall carry out SEPA credit transfer transactions and SEPA direct debit transactions in accordance with the following requirements -

- (a) they shall use the payment account identifier specified in paragraph 1(a) of the Schedule for the identification of payment accounts regardless of the location of the payment service providers concerned,

^f OJ L 267, 10.10.2009, p. 7.

- (b) they shall use a message format specified in paragraph 1(b) of the Schedule when transmitting payment transactions to another payment service provider or via a retail payment system,
- (c) they shall ensure that payment service users use the payment account identifier specified in paragraph 1(a) of the Schedule for the identification of payment accounts, whether the payer's payment service provider and the payee's payment service provider, or the sole payment service provider in the payment transaction, are located in the same country or territory in the SEP statutory area or in different countries or territories in the SEP statutory area,
- (d) they shall ensure that where a payment service user that is not a consumer or a microenterprise initiates or receives individual credit transfers or individual direct debits which are not transmitted individually, but are bundled together for transmission, a message format specified in paragraph 1(b) of the Schedule is used.

(2) Without prejudice to subsection (1)(b), payment service providers shall, on the specific request of a payment service user, use a message format specified in paragraph 1(b) of the Schedule in relation to that payment service user.

(3) In relation to a SEPA credit transfer -

- (a) the payer's payment service provider shall ensure that the payer provides the data elements specified in paragraph 2(a) of the Schedule,

- (b) the payer's payment service provider shall provide the data elements specified in paragraph 2(b) of the Schedule to the payee's payment service provider, and
 - (c) the payee's payment service provider shall provide or make available to the payee the data elements specified in paragraph 2(d) of the Schedule.
- (4) In relation to a SEPA direct debit -
 - (a) the payee's payment service provider shall ensure that -
 - (i) the payee provides the data elements specified in paragraph 3(a) of the Schedule with the first SEPA direct debit or one-off SEPA direct debit and with each subsequent SEPA direct debit,
 - (ii) the payer gives consent both to the payee and to the payer's payment service provider (directly, or indirectly via the payee),
 - (iii) the mandates, together with later modifications or cancellation, are stored by the payee or by a third party on behalf of the payee,
 - (iv) the payee is informed of the obligation under subparagraph (iii) by the payment service provider in accordance with section 12,
 - (b) the payee's payment service provider shall provide the payer's payment service provider with the data elements specified in paragraph 3(b) of the Schedule,

- (c) the payer's payment service provider shall provide or make available to the payer the data elements specified in paragraph 3(c) of the Schedule,
- (d) the payer shall have the right to instruct his payment service provider to do any one or more of the following -
 - (i) to limit a SEPA direct debit collection to a certain amount or to a certain periodicity or both,
 - (ii) where a mandate under a payment scheme does not provide for the right to a refund, to verify each SEPA direct debit transaction, and to check whether, according to the mandate-related information, the amount and periodicity of the submitted SEPA direct debit transaction is equal to the amount and periodicity agreed in the mandate, before debiting the payer's payment account,
 - (iii) to block any SEPA direct debits to the payer's payment account or to block any SEPA direct debits initiated by one or more specified payees or to authorise SEPA direct debits only if initiated by one or more specified payees.

(5) However, where neither the payer nor the payee is a consumer, payment service providers are not required to comply with subsection (4)(d)(i), (ii) or (iii).

(6) The payer's payment service provider shall inform the payer of the rights specified in subsection (4)(d) in accordance with section 12.

(7) Upon the first SEPA direct debit transaction or a one-off SEPA direct debit transaction, and upon each subsequent SEPA direct debit transaction, the payee shall send the mandate-related information to his payment service provider and the payee's payment service provider shall transmit that mandate-related information to the payer's payment service provider with each SEPA direct debit transaction.

(8) In addition to the requirements referred to in subsection (1), a payee who accepts a SEPA credit transfer -

- (a) shall communicate to the payer his payment account identifier specified in paragraph 1(a) of the Schedule, and
- (b) where necessary, shall communicate to the payer, if the acceptance occurs before the 31st October, 2016, his payment service provider's BIC when a credit transfer is requested.

(9) Before the first SEPA direct debit transaction, a payer -

- (a) shall communicate to the payee his payment account identifier specified in paragraph 1(a) of the Schedule, and
- (b) where necessary, shall communicate to the payee, if the transaction occurs before the 31st October, 2016, his payment service provider's BIC.

(10) Where the framework agreement between the payer and the payer's payment service provider does not provide for the right to a refund, the payer's payment service provider shall, without prejudice to subsection (4)(a)(ii) and (iii), verify each direct debit transaction to check whether, according to the mandate-related information, the amount and periodicity of the submitted direct debit transaction is equal to the amount and periodicity agreed in the mandate, before debiting the payer's payment account.

(11) On and from the 31st October, 2016, payment service providers shall not require payment service users to indicate the BIC of the payment service provider of a payer or of the payment service provider of a payee.

(12) The payer's payment service provider and the payee's payment service provider shall not levy additional charges or other fees on the read-out process to automatically generate a mandate for those payment transactions which are initiated through or by means of a payment card at the point of sale and which result in a direct debit.

(13) This section is without prejudice to the provisions of the Data Protection (Bailiwick of Guernsey) Law, 2004^g.

Transitional provisions.

54. (1) Until the 31st October, 2016, payment service providers may provide payment service users with conversion services for national SEPA payment transactions enabling payment service users who are consumers to continue using a BBAN instead of the payment account identifier specified in paragraph 1(a) of the Schedule, on condition that interoperability is ensured by converting the payer's and the payee's BBAN technically and securely into their respective payment account identifiers specified in paragraph 1(a) of the Schedule.

(2) Those payment account identifiers shall be delivered to the initiating payment service user, where appropriate, before the payment is executed.

(3) In such a case payment service providers shall not levy any charges or other fees on the payment service user directly or indirectly linked to those conversion services.

(4) The Department may by regulation waive, until the 31st October, 2016, all or any of the following requirements -

^g Ordres en Conseil Vol. XLII(1), p. 51.

- (a) in the case of credit transfers, the technical requirements set out in section 49(1), (2), (3) and (8) and paragraphs 1 and 2 of the Schedule,
- (b) in the case of direct debits, the requirements set out in section 49(1), (2), (4), (5), (6), (7), (9), (10) and (12) and paragraphs 1 and 3 of the Schedule,

for those payment transactions generated using a payment card at the point of sale which result in a SEPA direct debit to and from a payment account identified by BBAN or IBAN.

(5) The Department may by regulation waive, until the 31st October, 2016, the specific requirement under section 49(1)(d) to use the message formats specified in paragraph 1(b) of the Schedule for payment service users who initiate or receive individual credit transfers or direct debits that are bundled together for transmission.

(6) Notwithstanding any such waiver, payment service providers shall comply with the requirements of section 49(1)(d) where a payment service user requests that the provider so comply.

(7) The Department may by regulation defer, until the 31st October, 2016, the requirements relating to the provision of a BIC for national SEPA payments in section 49(8), (9) and (11).

PART V ENFORCEMENT

Monitoring and enforcement - information seeking powers.

55. (1) The provisions of sections 25 (power to obtain information and documents), 26 (right of entry to obtain information and documents) and 27 (investigations by inspectors) of the Banking Law apply -

- (a) to payment service providers as they apply to licensed institutions within the meaning of that Law,

- (b) to payment service users as they apply to depositors or potential depositors of a licensed institution within the meaning of that Law,
- (c) in relation to such information as the Commission may reasonably require for the purpose of effectively monitoring or ensuring compliance with the requirements of this Ordinance or any regulation made under it as they apply in relation to such information as the Commission may reasonably require for the performance of its functions under that Law, and
- (d) as if section 25(11) of that Law also allowed the powers referred to in that section to be exercised if the Commission considers that it is desirable to do so in the interests of effectively monitoring or ensuring compliance with the requirements of this Ordinance or any regulation made under it.

(2) Sections 28 (investigation of suspected offences) and 29 (power of entry in cases of suspected offences) of the Banking Law apply in relation to an offence under this Ordinance or any regulation made under it as they apply in relation to an offence under section 1 or 21 of that Law.

(3) Sections 33A (rules of the Commission) and 36A (provision as to codes of practice, etc) of the Banking Law apply -

- (a) in relation to payment service providers and the carrying out of payment services as they apply in relation to licensed institutions and the carrying on or conduct of business regulated by that Law, and
- (b) for the purposes of effectively monitoring or ensuring compliance with the requirements of this Ordinance or

any regulation made under it as they apply for the purposes of that Law.

(4) Sections 43 (restrictions on disclosure of information), 44 (cases where disclosure is permitted), 45 (information supplied by relevant overseas authority), 47 (false or misleading information), 52 (verification of information), 53 (service of notices) and 55 (limitation of liability) of the Banking Law apply as if references to that Law included references to this Ordinance or any regulation made under it.

(5) Without prejudice to subsections (1) to (4), references in the Banking Law or in any other enactment to, or to any provision of, section 25, 26, 28 or 29 of the Banking Law shall be construed as including references to that section or provision as applied by this section.

Offences.

56. A payment service provider who, without reasonable excuse, contravenes or fails to comply with any provision of this Ordinance or any regulation made under it is guilty of an offence and liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the uniform scale, or to both, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Criminal proceedings against unincorporated bodies.

57. (1) Where an offence under this Ordinance or any regulation made under it is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner thereof,

- (b) in the case of any other unincorporated body, any director or other officer thereof who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance or any regulation made under it is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance or any regulation made under it shall be paid from the funds of that body.

Criminal liability of directors, etc.

58. (1) Where an offence under this Ordinance or any regulation made under it is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of

-

- (a) any director, liquidator, manager, secretary, receiver, administrator or other similar officer of the company, or
- (b) any person purporting to act in any such capacity,

he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

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

Defence of due diligence.

59. In any proceedings for an offence under this Ordinance or any regulation made under it it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VI
GENERAL PROVISIONS

Power to make regulations.

60. (1) The Department may by regulation -
- (a) amend this Ordinance, whether for the purpose of -
 - (i) implementing the Payment Services Directive or, as the case may be, Regulation 260/2012, as from time to time amended, re-enacted (with or without modification), extended or applied, or
 - (ii) extending its application to other classes or descriptions of payment services, payment transactions or payment service providers,
 - or otherwise, and
 - (b) make such other provision as they think fit for the purpose of giving effect to this Ordinance as from time to time amended.
- (2) Any regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations,
 - (b) may contain consequential, incidental, supplemental, transitional and ancillary provisions, and
 - (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under the regulation or to the making of new regulations.
- (3) Any power conferred by this Ordinance to make regulations may be exercised -
 - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
 - (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, and
 - (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

Supervision by Commission.

61. The Commission shall -

- (a) effectively monitor payment service providers, and
- (b) take the necessary measures for the purpose of ensuring compliance by payment service providers with the requirements of this Ordinance and any regulation made under it.

Interpretation.

62. (1) In this Ordinance, unless the contrary intention appears -

"agent" means a natural or legal person which acts on behalf of a payment institution in providing payment services,

"authentication" means the use of a procedure by which a payment service provider is able to verify the use of a specific payment instrument, including its personalised security features,

"Banking Law" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994^h,

"BBAN" means a payment account number identifier which uniquely identifies an individual payment account with a payment service provider and which can only be used for national SEPA payments,

"BIC" means business identifier code, being a code that unambiguously identifies a payment service provider, the elements of which are specified by ISO 13616 published by the International Organisation for Standardization,

^h Ordres en Conseil Vol. XXXV (1), p. 271; there are amendments not material to this Ordinance.

"branch" means a place of business of a payment service provider, other than its head office, which forms a legally dependent part of the payment service provider and which carries out directly all or any of the transactions inherent in its business,

"business day" means, in relation to a payment service provider, a day on which the payment service provider is open for business as required for the execution of a payment transaction,

"charge" means a charge levied by a payment service provider on the payment service user and directly or indirectly linked to a payment transaction,

"Commission" means the Guernsey Financial Services Commission,

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

"consumer" means a natural person who, in contracts for payment services, is acting for purposes other than a trade, business or profession,

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

"direct debit" means a payment service for debiting the payer's payment account where a payment transaction is initiated by the payee on the basis of consent given by the payer -

- (a) to the payee,
- (b) to the payee's payment service provider, or
- (c) to the payer's own payment service provider,

"durable medium" means any instrument -

- (a) which enables the payment service user to store information addressed personally to him in such a way as to be accessible for future reference for a period of time adequate for the purposes of the information, and
- (b) which allows the unchanged reproduction of the information stored,

"EPC" means the European Payments Council, being the *association internationale sans but lucratif* of that name constituted under Title III of the *"Loi sur les associations sans but lucratif, les associations internationales sans but lucratif et les fondations"* of the 27th June, of the Kingdom of Belgium,

"framework contract" means a payment service contract which governs the future execution of individual and successive payment transactions and which may contain the obligation and conditions for setting up a payment account,

"funds" means banknotes, coins, scriptural money or electronic money as defined in point 2 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit of and prudential supervision of the business of electronic money institutionsⁱ,

"group" means a group of undertakings which consists of a parent undertaking, its subsidiary undertakings and the entities in which the parent undertaking or its subsidiary undertakings have a holding, as well as undertakings linked to each other by a relationship referred to in

ⁱ OJ L 267, 10.10.2009, p. 7.

Article 12(1) of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts^J,

"Guernsey" includes Herm and Jethou,

"IBAN" means international bank account number, being an international payment account number identifier that uniquely identifies an individual account with a unique payment service provider, the elements of which are specified by ISO 13616 published by the International Organization for Standardisation,

"means of distance communication" means any means which, without the simultaneous physical presence of the payment service provider and the payment service user, may be used for the conclusion of a payment services contract between those parties,

"money remittance" means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payer or the payee, for the sole purpose of transferring a corresponding amount to a payee or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee,

"national SEPA payment" means an electronically processed payment transaction initiated by a payer, or by or through a payee, where the payer's payment service provider and the payee's payment service provider are located in Guernsey,

"payee" means a natural or legal person who is the intended recipient of funds which have been the subject of a payment transaction,

"payer" means a natural or legal person who holds a payment account and allows a payment order from that payment account or, where

^J OJ L 193, 18.7.1983, p. 1.

there is no payment account, a natural or legal person who gives a payment order,

"payment account" means an account held in the name of one or more payment service users which is used for the execution of payment transactions,

"payment instrument" means any -

- (a) personalised device, or
- (b) personalised set of procedures agreed between the payment service user and the payment service provider,

used by the payment service user in order to initiate a payment order,

"payment order" means an instruction by a payer or payee to his payment service provider requesting the execution of a payment transaction,

"payment scheme" means a single set of rules, practices, standards or implementation guidelines, or all or any of these, agreed between payment service providers for the execution of payment transactions within the SEP statutory area, and which is separated from any infrastructure or payment system that supports its operation,

"payment service" means any of the following activities, when carried out as a regular occupation or business activity -

- (a) the execution of payment transactions, including transfers of funds on a payment account with the user's payment service provider or with another payment service provider, including -
 - (i) the execution of direct debits, including one-off direct debits, and

- (ii) the execution of credit transfers, including standing orders,
- (b) the execution of payment transactions where the funds are covered by a credit line for a payment service user, including -
 - (i) the execution of direct debits, including one-off direct debits, and
 - (ii) the execution of credit transfers, including standing orders,

"payment service provider" means a licensed institution within the meaning of the Banking Law which -

- (a) is carrying out payment services in or from within Guernsey, or
- (b) being an institution the memorandum of which is registered in the Register of Companies within the meaning of the Companies (Guernsey) Law, 2008, is carrying out payment services in or from within any other place,

"payment service user" means a natural or legal person making use of a payment service in the capacity of either payer or payee, or both,

"Payment Services Directive" : see section 1(a),

"payment system" means a funds transfer system with formal and standardised arrangements and common rules for the processing, clearing or settlement of payment transactions,

"payment transaction" means an act -

- (a) initiated by a payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee, and
- (b) effected using a payment instrument governed by -
 - (i) the SEPA Credit Transfer Scheme Rulebook published by the EPC,
 - (ii) the SEPA Direct Debit Core Scheme Rulebook, or
 - (iii) the SEPA Direct Debit Business to Business Scheme Rulebook published by the EPC,

in each case as in force from time to time,

"reference exchange rate" means the exchange rate which is used as the basis for calculating any currency exchange and which is made available by the payment service provider or comes from a publicly available source,

"reference interest rate" means the interest rate which is used as the basis for calculating any interest to be applied and which comes from a publicly available source which can be verified by both parties to a payment service contract,

"Regulation 260/2012" : see section 1(b),

"SEPA" means the single euro payments area referred to in recital (4) of the Payment Services Directive, the geographical scope of which is laid down in the European Payments Council list of SEPA Scheme countries, for the time being in force,

"SEPA credit transfer" means a payment service for crediting a payee's payment account with a payment transaction or a series of payment

transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer,

"SEPA direct debit" means a payment service for debiting a payer's payment account where a payment transaction is initiated by the payee on the basis of the payer's consent given to the payee, to the payee's payment service provider or to the payer's own payment service provider,

"SEPA payment" means a payment transaction carried out within the SEP statutory area,

"SEP statutory area" means the area consisting of Guernsey, Jersey, the Isle of Man and SEPA,

"single payment service contract" has the same meaning as in the Payment Services Directive,

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

"unique identifier" means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction to identify unambiguously -

- (a) the other payment service user who is a party to the payment transaction, and/or
- (b) the other payment service user's payment account for the payment transaction,

"value date" means a reference time used by a payment service provider for the calculation of interest on the funds debited from or credited to a payment account,

and any other expressions used in this Ordinance which are also used in the Payment Services Directive or, as the case may be, Regulation 260/2012 shall have the same meanings as in, respectively, that Directive or Regulation.

(2) A reference in this Ordinance to an enactment or Community provision is, unless the contrary intention appears, a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Amendments.

63. (1) In section 24(1) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 after paragraph (h) of the definition of "prescribed Laws"^k insert the following paragraph -

"(ha) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(2) In Schedule 4 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987^l after paragraph 1(1)(f)(vi) insert the following item -

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(3) In Schedule 3 to the Banking Supervision (Bailiwick of Guernsey) Law, 1994^m after paragraph 3(2)(f)(vi) insert the following item -

^k Ordres en Conseil Vol. XXX, p. 243; the definition of the expression "prescribed Laws" was inserted by the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008 (Order in Council No. XIX of 2008).

^l Ordres en Conseil Vol. XXX, p. 281; Schedule 4 was substituted by the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 (Order in Council No. XVIII of 2008).

^m Ordres en Conseil Vol. XXXV, p. 271; Schedule 3 was substituted by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. 2008 No. 1).

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(4) In Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000ⁿ after paragraph 3(2)(f)(vi) insert the following item -

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(5) In Schedule 7 to the Insurance Business (Bailiwick of Guernsey) Law, 2002^o after paragraph 3(2)(f)(vi) insert the following item -

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(6) In Schedule 4 to the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^p after paragraph 3(2)(f)(vi) insert the following item -

"(via) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

ⁿ Ordres en Conseil Vol. XLI, p. 13; Schedule 1 was substituted by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. 2008 No. 3).

^o Ordres en Conseil Vol. XLII(2), p. 766; Schedule 7 was substituted by the Insurance Business (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. 2008 No. 4).

^p Ordres en Conseil Vol. XLII(2), p. 1022; Schedule 4 was substituted by the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. 2008 No. 2).

(7) In section 42(1) of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008^q after paragraph (g) of the definition of "prescribed Laws" insert the following paragraph -

"(ga) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

(8) In section 32(1) of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008^r after paragraph (l) of the definition of "relevant enactments" insert the following paragraph -

"(la) the Single Euro Payments Area (Guernsey) Ordinance, 2016,".

Extent.

64. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

Citation.

65. This Ordinance may be cited as the Single Euro Payments Area (Guernsey) Ordinance, 2016.

Commencement.

66. This Ordinance shall come into force on the 27th January, 2016.

^q No. XV of 2008; there are amendments not material to this Ordinance.

^r No. XII of 2009; there are amendments not material to this Ordinance.

SCHEDULE

Sections 49 and 54

TECHNICAL REQUIREMENTS

Credit transfer transactions and direct debit transactions: technical requirements.

1. In addition to the essential requirements set out in section 49, the following technical requirements apply to credit transfer transactions and direct debit transactions -

- (a) the payment account identifier referred to in section 49(1)(a) and (c) shall be an IBAN,
- (b) the standard for message format referred to in section 49(1)(b) and (d) shall be the ISO 2002 XML standard,
- (c) the remittance data field shall allow for 140 characters, except that payment schemes may allow for a higher number of characters unless the device used to remit information has technical limitations relating to the number of characters, in which case the technical limit of the device applies,
- (d) remittance reference information and all the other data elements provided in accordance with paragraphs 2 and 3 shall be passed in full and without alteration between payment service providers in the payment chain,
- (e) once the required data is available in electronic form payment transactions shall allow for fully automated, electronic processing in all process stages throughout the payment chain (end-to-end straight-through processing), enabling the entire payment process to be conducted electronically without the need for re-keying or manual intervention,

- (f) the processing required under subparagraph (e) shall also apply to exceptional handling of credit transfers and direct debit transactions, whenever possible,
- (g) payment schemes shall not set a minimum threshold for the amount of the payment transaction allowing for credit transfers or direct debits but are not required to process payment transactions with a zero amount,
- (h) payment schemes are not obliged to carry out credit transfers or direct debits exceeding the amount of 999,999,999.99 euros.

Credit transfer transactions: additional requirements.

2. In addition to the requirements referred to in paragraph 1, the following requirements shall apply to credit transfer transactions -

- (a) the data elements referred to in section 49(3)(a) are the following -
 - (i) the payer's name and/or the IBAN of the payer's payment account,
 - (ii) the amount of the credit transfer,
 - (iii) the IBAN of the payee's payment account,
 - (iv) where available, the payee's name,
 - (v) the remittance information (if any),
- (b) the data elements referred to in section 49(3)(b) are the following -
 - (i) the payer's name,

- (ii) the IBAN of the payer's payment account,
 - (iii) the amount of the credit transfer,
 - (iv) the IBAN of the payee's payment account,
 - (v) the remittance information (if any),
 - (vi) any payee identification code,
 - (vii) the name of any payee reference party,
 - (viii) the purpose of the credit transfer (if any),
 - (ix) the category (if any) of the purpose of the credit transfer,
- (c) in addition, the following mandatory data elements are to be provided by the payer's payment service provider to the payee's payment service provider -
- (i) the BIC of the payer's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (ii) the BIC of the payee's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (iii) the identification code of the payment scheme,
 - (iv) the settlement date of the credit transfer,
 - (v) the reference number of the credit transfer message of the payer's payment service provider,

- (d) the data elements referred to in section 49(3)(c) are the following -
 - (i) the payer's name,
 - (ii) the amount of the credit transfer,
 - (iii) the remittance information (if any).

Direct debit transactions: additional requirements.

3. In addition to the requirements referred to in paragraph 1, the following requirements shall apply to direct debit transactions -

- (a) the data elements referred to in section 49(4)(a)(i) are the following -
 - (i) the type of direct debit (recurrent, one-off, first, last or reversal),
 - (ii) the payee's name,
 - (iii) the IBAN of the payee's payment account to be credited for the collection,
 - (iv) where available, the payer's name,
 - (v) the IBAN of the payer's payment account to be debited for the collection,
 - (vi) the unique mandate reference,
 - (vii) where the payer's mandate is given on or after the date of commencement of this Ordinance, the date on which it was signed,
 - (viii) the amount of the collection,

- (ix) where the mandate has been taken over by a payee other than the payee who issued the mandate, the unique mandate reference as given by the original payee who issued the mandate,
- (x) the payee's identifier,
- (xi) where the mandate has been taken over by a payee other than the payee who issued the mandate, the identifier of the original payee who issued the mandate,
- (xii) the remittance information (if any) from the payee to the payer,
- (xiii) the purpose (if any) of the collection,
- (xiv) the category (if any) of the purpose of the collection,
- (b) the data elements referred to in section 49(4)(b) are the following -
 - (i) the BIC of the payee's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (ii) the BIC of the payer's payment service provider (if not agreed otherwise by the payment service providers involved in the payment transaction),
 - (iii) the payer reference party's name (if present in the dematerialised mandate),
 - (iv) the payer reference party's identification code (if present in the dematerialised mandate),

- (v) the payee reference party's name (if present in the dematerialised mandate),
- (vi) the payee reference party's identification code (if present in the dematerialised mandate),
- (vii) the identification code of the payment scheme,
- (viii) the settlement date of the collection,
- (ix) the payee's payment service provider's reference for the collection,
- (x) the type of mandate,
- (xi) the type of direct debit (recurrent, one-off, first, last or reversal),
- (xii) the payee's name,
- (xiii) the IBAN of the payee's payment account to be credited for the collection,
- (xiv) where available, the payer's name,
- (xv) the IBAN of the payer's payment account to be debited for the collection,
- (xvi) the unique mandate reference,
- (xvii) the date of signing of the mandate if the mandate is given by the payer on or after the date of commencement of this Ordinance,
- (xviii) the amount of the collection,

- (xix) the unique mandate reference as given by the original payee who issued the mandate (if the mandate has been taken over by a payee other than the payee who issued the mandate),
 - (xx) the payee's identifier,
 - (xxi) the identifier of the original payee who issued the mandate (if the mandate has been taken over by a payee other than the payee who issued the mandate),
 - (xxii) the remittance information (if any) from the payee to the payer,
- (c) the data elements referred to in section 49(4)(c) are the following -
- (i) the unique mandate reference,
 - (ii) the payee's identifier,
 - (iii) the payee's name,
 - (iv) the amount of the collection,
 - (v) the remittance information (if any),
 - (vi) the identification code of the payment scheme.

The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016

ARRANGEMENT OF SECTIONS

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2. Entitlement to additional maternity leave.
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The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolutions of the 21st February, 2012^a and the 29th July, 2015^b, and in exercise of the powers conferred on them by sections 1 and 2 of the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^c, and section 34A of the Employment Protection (Guernsey) Law, 1998^d, hereby order:-

PART 1 MATERNITY LEAVE

Entitlement to basic maternity leave.

1. (1) An employee is entitled to be absent from work on basic maternity leave as set out in this Ordinance if the conditions set out in subsection (2) are satisfied.

(2) The conditions are that at least three months before her due date, or if that is not reasonably practicable, as soon as reasonably practicable thereafter, she notifies her employer in writing of –

(a) her pregnancy,

(b) her due date,

^a Article VI of Billet d'État No. IV of 2012.

^b Article VIII of Billet d'État No. XIV of 2015.

^c Order in Council No. XIII of 2005.

^d Ordres en Conseil Vol. XXXVIII, p. 239; as amended by Vol. XLI, p. 605; Vol. XLII(1), p. 229; Order in Council No. 1 of 2006; Order in Council No.1 of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXX, p. 627.

- (c) the date on which she intends her maternity leave to start (which must be eight weeks or fewer before her due date), and
- (d) the date on which she intends her maternity leave to end.

(3) To satisfy the conditions at subsection (2)(a) and (b), an employee must, if requested by her employer, produce for his inspection a certificate from a doctor or midwife confirming her pregnancy and stating her due date.

Entitlement to additional maternity leave.

2. An employee is entitled to be absent from work on additional maternity leave as set out in this Ordinance if she is entitled to basic maternity leave under section 1 and she has, at the beginning of the eleventh week before her due date, been continuously employed for a period of not less than 15 months.

Compulsory maternity leave.

3. (1) An employer may not permit an employee to work during the period of two weeks commencing with the day on which her childbirth occurs ("**compulsory maternity leave period**").

(2) An employer who permits an employee to work during a compulsory maternity leave period in contravention of subsection (1) is guilty of an offence, and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Commencement of maternity leave periods.

4. (1) Subject to the provisions of this Ordinance, an employee may

be absent from work during a maternity leave period as defined in this section and section 5.

(2) An employee's period of basic maternity leave ("**basic maternity leave period**") commences on the earliest of –

- (a) the date which, in accordance with section 1(2)(c), she notified to her employer as the date on which she intends her basic maternity leave period to start,
- (b) where, after the notification in (a) has been made, her employer agrees at the employee's request to her starting her basic maternity leave period on another date, that other date, and
- (c) the first day after the beginning of the sixth week before the due date on which she is absent from work wholly or partly because of pregnancy.

(3) Where the employee's basic maternity leave period has not commenced by virtue of subsection (2) when childbirth occurs, her basic maternity leave period commences on the day on which childbirth occurs.

(4) An employee's period of additional maternity leave ("**additional maternity leave period**") commences on the day after her last day of basic maternity leave.

Duration of maternity leave periods.

5. (1) Subject to subsection (3), an employee's basic maternity leave period continues for the period of 12 weeks from its commencement, or until the end of the compulsory maternity leave period provided for in section 3 if later.

(2) Subject to subsection (3), where an employee is entitled to additional maternity leave, her additional maternity leave period continues until the end of the period of 26 weeks beginning with the commencement of her basic maternity leave period.

(3) Where the employee is dismissed after the commencement of a basic or additional maternity leave period but before the time when (apart from this section) that period would end, the period ends at the time of the dismissal.

"Keeping in touch" days.

6. (1) Subject to section 3 and the provisions of this section, on giving one month's notice to her employer, or, if that is not reasonably practicable, such notice as is reasonably practicable in the circumstances, an employee may return to work for a period not exceeding ten days, or for several periods not exceeding ten days in total, during a maternity leave period.

(2) An employee working pursuant to subsection (1) shall be taken to be entitled under her contract of employment to be paid at the same rate and to receive the same allowances as she was entitled to immediately before her maternity leave period commenced.

(3) For the avoidance of doubt, a period or periods of work under this section do not change the duration of an employee's maternity leave period.

Requirement to notify intention to return during a maternity leave period.

7. (1) An employee who intends to return to work earlier than the end of her basic maternity leave period or, where she is entitled to additional maternity leave, the end of her additional maternity leave period, shall give to her employer not less than 21 days' notice of the date on which she intends to return.

(2) If an employee attempts to return earlier than the end of a maternity leave period without complying with subsection (1), her employer is entitled to postpone her return to a date such as will secure, subject to subsection (3), that he has 21 days' notice of her return.

(3) An employer is not entitled under subsection (2) to postpone an employee's return to work to a date after the end of the relevant maternity leave period.

(4) If an employee whose return to work has been postponed under subsection (2) has been notified that she is not to return to work before the date to which her return was postponed, her employer is under no contractual obligation to pay her remuneration until the date to which her return was postponed if she returns to work before that date.

Requirement to notify intention to return after additional maternity leave.

8. (1) Where, not earlier than 21 days before the end of her basic maternity period, an employee who is entitled to additional maternity leave is requested in accordance with subsection (3) by her employer to notify him of –

- (a) the date on which childbirth occurred, and
- (b) whether she intends to return to work at the end of her additional maternity leave period,

the employee shall give the requested notification within 21 days of receiving the request.

(2) In so far as the provisions of the Sex Discrimination

(Employment) (Guernsey) Ordinance, 2005^e ("**the Sex Discrimination Ordinance**") and the Employment Protection (Guernsey) Law, 1998 ("**the Employment Protection Law**") protect an employee against dismissal, discrimination or other detriment for the reason that she took additional maternity leave, they do not apply in relation to an employee who has failed to notify her employer in accordance with subsection (1).

- (3) A request under subsection (1) shall be –
 - (a) made in writing, and
 - (b) accompanied by a statement in writing –
 - (i) explaining how the employee may determine, in accordance with section 5(2), the date on which her additional maternity leave period will end, and
 - (ii) warning of the consequence, under subsection (2), of failure to respond to the employer's request within 21 days of receiving it.

Redundancy during maternity leave.

9. (1) This section applies where, during an employee's basic or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.

(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract)

^e Recueil d'Ordonnances Tome XXX, p. 627.

alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with subsection (3) (and takes effect immediately on the ending of her employment under the previous contract).

(3) The new contract of employment must be such that –

- (a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and
- (b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under her previous contract.

(4) For the avoidance of doubt, where an employee enters into a new contract of employment offered under subsection (2), her continuity of employment within the meaning of the Employment Protection Law is not broken.

(5) If this section applies and subsection (2) is not complied with, section 9 of the Employment Protection Law (Dismissal on ground of pregnancy, childbirth or adoption, or maternity leave etc.) applies.

Right to return after maternity leave.

10. (1) Subject to subsection (2), an employee who takes maternity leave is entitled to return from that maternity leave to the job in which she was employed before her absence or, if it is not reasonably practicable for her employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in her circumstances.

- (2) Subsection (1) does not apply where section 9 applies.
- (3) An employee's right to return under subsection (1) is to return—
 - (a) on terms and conditions as to remuneration no less favourable than those which would have been applicable to her had she not been absent from work at any time since the commencement of her basic maternity leave period,
 - (b) with her seniority, pension rights and similar rights as they would have been if the period or periods of her employment prior to her maternity leave were continuous with her employment following her return to work, and
 - (c) otherwise on terms and conditions not less favourable than those which would have been applicable to her had she not been absent from work during her period of maternity leave.

PART 2

MATERNITY SUPPORT LEAVE

Entitlement to maternity support leave.

11. (1) Where an employee is entitled to basic maternity leave under section 1, her partner is entitled to maternity support leave, during which he or she may be absent from work, if the condition at subsection (2) is satisfied.

(2) The condition referred to in subsection (1) is that, at the beginning of the eleventh week before the employee's due date, her partner has been continuously employed for a period of not less than 15 months.

(3) Maternity support leave commences on the day childbirth occurs or, if the employee's partner so elects, on the day –

- (a) the employee is,
- (b) her baby is, or
- (c) both the employee and her baby are,

discharged from hospital; and it continues for the period of two weeks from its commencement.

(4) In this section, "**partner**" means (subject to subsection 5) the person nominated by the employee in writing as her partner for the purposes of this section.

(5) If the employee is –

- (a) married, or
- (b) unmarried and living with someone as part of a couple,

then her spouse or co-habitee (as the case may be) will be deemed to be her partner for the purposes of this section unless she nominates another person in writing.

PART 3

ADOPTION LEAVE AND ADOPTION SUPPORT LEAVE

Adoption leave and adoption support leave.

12. (1) The provisions of Parts 1 and 2, subject to the exceptions, adaptations and modifications specified in Schedule 1, apply to an employee who is adopting a child as they do to other employees.

(2) For the purposes of this Ordinance, an employee adopts a child if that child is aged 17 years or younger when placed with the employee for adoption.

PART 4
GENERAL PROVISIONS

Surrogacy.

13. (1) Subject to subsection (2), the Department may by regulations provide for the application of Parts 1 and 2 (subject to any modifications specified in the regulations) to –

- (a) an employee and her partner (within the meaning of section 11) who are the intended parents of a baby being born pursuant to a surrogacy arrangement as if the employee was the woman giving birth,
- (b) an employee who gives birth pursuant to a surrogacy arrangement.

(2) For the avoidance of doubt, section 3 applies to an employee who gives birth pursuant to a surrogacy arrangement.

(3) In this section, "**surrogacy arrangement**" has the meaning

given in section 109 of the Children (Guernsey and Alderney) Law, 2008^f.

Ante-natal care.

14. (1) Subject to subsection (2), an employee is entitled to time off during her working hours to attend appointments to receive ante-natal care, where the appointment is attended on the advice of a doctor, midwife, health visitor or district or community nurse, and an employer may not unreasonably refuse to allow an employee to attend such an appointment.

(2) An employee is not entitled to take time off under this section to keep an appointment unless, if her employer requests her to do so, she produces for his inspection –

- (a) a certificate from a doctor or midwife confirming her pregnancy, and
- (b) an appointment card or some other document showing that the appointment has been made.

(3) Subsection (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).

(4) In this Ordinance "**ante-natal care**" includes medical examinations, appointments with the employee's midwife, ante-natal classes, and parent craft classes; and for the purposes of this section, the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, she is required to be at work.

^f Order in Council No. XIV of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, pp.480 and 709.

Application of terms and conditions during maternity and adoption leave.

15. An employee who takes maternity leave or adoption leave –
- (a) is entitled, during the period of leave, to the benefit of her employer's implied obligation to her of trust and confidence and any terms and conditions of her employment relating to –
 - (i) notice of the termination of the employment contract by her employer,
 - (ii) compensation in the event of redundancy, and
 - (iii) disciplinary and grievance procedures,
 - (b) is bound, during that period, by her implied obligation of good faith and any terms and conditions of her employment relating to –
 - (i) notice of the termination of the employment contract by her,
 - (ii) disclosure of confidential information,
 - (iii) the acceptance of gifts or other benefits, and
 - (iv) her participation in any other business.

Contractual rights to maternity leave, etc.

16. (1) This section applies where an employee is entitled to –

- (a) basic maternity leave,
- (b) additional maternity leave,
- (c) maternity support leave, or
- (d) adoption leave,

(referred to in subsection (2) as a "statutory right") and also to a right which corresponds to that right and which arises under the employee's contract of employment or otherwise.

(2) In a case where this section applies –

- (a) the employee may not exercise the statutory right and the corresponding right separately but may, in taking the leave for which the two rights provide, take advantage of whichever right is, in any particular respect, the more favourable, and
- (b) the provisions of this Ordinance relating to the statutory right apply, subject to any modifications necessary to give effect to any more favourable contractual terms, to the exercise of the contractual right described in paragraph (a) as they apply to the exercise of the statutory right.

Detriments to employees taking maternity support leave and adoption support leave.

17. (1) An employee has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer on the ground

that the employee took, or sought to take, maternity support leave or adoption support leave.

(2) Subsection (1) does not apply where the detriment in question amounts to dismissal.

(3) An employee may make a complaint to the Tribunal that he has been subjected to a detriment in contravention of subsection (1) under section 16(1)(c) of the Employment Protection Law.

(4) In this section, "**the Tribunal**" means the Employment and Discrimination Tribunal established under section 2 of the Employment and Discrimination Tribunal (Guernsey) Ordinance, 2005^g.

"Keeping in touch" days and ante-natal care: non-discrimination notices.

18. (1) This section applies where the Department is satisfied that an employee's employer has –

- (a) unreasonably refused to permit her to return to work under section 6(1), or
- (b) unreasonably refused to permit her to take time off as required by section 14.

(2) Where this section applies, Part VI (Non-Discrimination Notices) of the Sex Discrimination Ordinance shall apply in respect of the refusal in question as if it were an act of discrimination prohibited by Part II of that Ordinance, and that Ordinance shall be construed accordingly.

^g Recueil d'Ordonnances Tome XXX, p. 606.

General provisions as to regulations.

19. (1) Regulations under this Ordinance -
- (a) may be amended or repealed by subsequent regulations hereunder,
 - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Department to be necessary or expedient, and
 - (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.
- (2) Any power conferred by this Ordinance to make regulations may be exercised -
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

Amendment of the Employment Protection Law.

20. The Employment Protection Law is amended as set out in Schedule 2.

Amendment of the Sex Discrimination Ordinance.

21. The Sex Discrimination Ordinance is amended as set out in Schedule 3.

Offences by legal persons and unincorporated bodies.

22. (1) Where a legal person is guilty of an offence under section 3, 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 -

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under section 3 is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under section 3 is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law must be paid from the funds of that body.

(6) In this section, "**legal person**" includes any body corporate and any other body of persons on which legal personality is conferred by any

enactment.

Interpretation.

23. (1) In this Ordinance -

"**associated employer**" has the same meaning as in the Employment Protection Law,

"**childbirth**" means the birth of a living child, or the birth of a child whether living or dead after 24 weeks of pregnancy,

"**continuously employed**" and "**contract of employment**" have the same meanings as in the Employment Protection Law,

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

"**district or community nurse**" has the same meaning as in the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^h,

"**doctor**" means a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987ⁱ,

"**due date**" means the date on which it is expected childbirth will occur,

"**employee**" and "**employer**" have the same meanings as in the

^h Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 540 and Ordinance No. XLI of 2013.

Employment Protection Law,

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

"foundation official" has the meaning given by the Foundations (Guernsey) Law, 2012^j,

"health visitor" has the same meaning as in the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008,

"midwife" means a registered midwife within the meaning of the Nurses, Midwives and Health Visitors Ordinance, 1987^k,

"redundancy" has the same meaning as in the Employment Protection Law,

"States" means the States of Deliberation,

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

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

ⁱ Recueil d'Ordonnances, Tome XXIV, pp. 79, 238; as amended by Ordres en Conseil Vol. XXXI, p. 278, and Recueil d'Ordonnances Tome XXIX, p. 406.

^j Order in Council No. I of 2013.

Extent.

24. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

Application.

25. (1) The provisions of Part 1 have effect only in relation to an employee whose due date is 7th August 2016 or later.

(2) The provisions of Part 2 have effect only in relation to the partner of an employee whose due date is 7th August 2016 or later.

(3) The provisions of Part 1, as those provisions have effect pursuant to Part 3 and Schedule 1, have effect only in relation to an employee whose expected placement date is 7th August 2016 or later.

(4) The provisions of Part 2, as those provisions have effect pursuant to Part 3 and Schedule 1, have effect only in relation to the partner of an employee whose expected placement date is 7th August 2016 or later.

(5) In subsection (2) "partner" has the meaning given in section 11, and in subsection (4) "partner" has the meaning given in section 11, as that provision has effect pursuant to Part 3 and Schedule 1.

(6) In subsections (3) and (4) "expected placement date" has the meaning given in section 1, as that provision has effect pursuant to Part 3 and Schedule 1.

Citation and Commencement.

26. This Ordinance may be cited as the Maternity Leave and Adoption

^k Recueil d'Ordonnances Tome XXIV, p. 238; as amended by Ordres en

Leave (Guernsey) Ordinance, 2016, and shall come into force on 1st April, 2016.

SCHEDULE 1
ADOPTION LEAVE

Section 12(1).

1. For the Part headings, substitute as appropriate –

"PART 1
ADOPTION LEAVE",

and

"PART 2
ADOPTION SUPPORT LEAVE".

2. For section 1, substitute –

"Entitlement to basic adoption leave.

1. (1) Subject to subsection (4) and section 1A, an employee intending to adopt a child is entitled to be absent from work on basic adoption leave as set out in this Ordinance if the conditions set out in subsection (2) are satisfied.

(2) The conditions are that the employee is the child's adopter, and that as soon as reasonably practicable she notifies her employer in writing of her intention to take basic adoption leave in respect of a child, specifying –

- (a) the date on which the child is expected to be placed with her for adoption (her "**expected placement date**"),

- (b) the date on which she intends her adoption leave to start, which must either be the date on which the child is placed with her for adoption, or a pre-determined date which must be no more than 14 days before her expected placement date, and no later than that date, and
- (c) the date on which she intends her adoption leave to end.

(3) Where the employer requests it, an employee must also provide her employer with evidence, in the form of one or more documents issued by the adoption agency that matched the employee with the child, of –

- (a) the date on which the employee was notified that she had been matched with the child, and
- (b) the date on which the adoption agency expects to place the child with the employee.

(4) An employee is not entitled to be absent from work on adoption leave if –

- (a) at the time of the intended adoption the employee already has parental responsibility (as defined in the Children (Guernsey and Alderney) Law, 2008) in respect of that child, or
- (b) subject to section 1A, the employee is adopting

the child other than through an adoption agency.

(5) In this Ordinance the "**adopter**" of a child means a person who has been matched with the child for adoption, or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter for the purposes of this Ordinance; and for those purposes, a person elects to be a child's adopter, in a case where the child is matched with her and another person jointly, if she and that person agree, at the time at which they are matched, that she and not the other person will be the adopter.

(6) In this Ordinance "**adoption agency**" includes the Health and Social Services Department and an adoption agency in Alderney, Jersey, the Isle of Man, the United Kingdom and the Republic of Ireland.

(7) For the avoidance of doubt, both male and female employees are entitled to adoption leave pursuant to the provisions of this Ordinance, which should be construed accordingly.

Entitlement to basic adoption leave: overseas adoptions.

1A. (1) Where an employee has adopted a child overseas, she is entitled to adoption leave in relation to that child only where the child was the subject of an overseas adoption for the purposes of the Adoption (Designation of Overseas Adoptions) Ordinance, 1979 ("the 1979 Ordinance"); and in such a case section 1 of this Ordinance applies with the modifications set out in subsections (2) and (3).

(2) In addition to the matters specified at section 1(2), the employee must also notify her employer of the fact that the adoption is an overseas adoption for the purposes of the 1979 Ordinance, and of the date

when the child entered, or is expected to enter, Guernsey.

(3) In addition to the matters specified at section 1(3), the employee must also, where the employer requests it, provide him with evidence, of the type specified in section 2(1) of the 1979 Ordinance, that the overseas adoption has been effected, and where that evidence comprises in whole or in part a document that is not in the English language, the employee must also provide a translation of that document that conforms with the relevant requirements of section 2(2) of that Ordinance."

3. In section 2, and 5 to 10 –

(a) whenever it appears (including in section headings) for "maternity leave" substitute "adoption leave", and for "a maternity leave period" substitute "an adoption leave period", and

(b) whenever it appears for "due date" substitute "expected placement date".

4. For section 3, substitute –

"Compulsory adoption leave.

3. (1) An employer may not permit an employee who is the adopter of a child to work during the period of two weeks commencing with the day on which the child is placed with her for adoption ("**compulsory adoption leave period**").

(2) An employer who permits an employee to work during a compulsory adoption leave period in contravention of subsection (1) is guilty of an offence, and liable on summary conviction to a fine not exceeding level 2 on the uniform scale."

5. For section 4, substitute –

"Commencement of adoption leave periods.

4. (1) Subject to the provisions of this Ordinance, an employee may be absent from work at any time during an adoption leave period as defined in this section and section 5.

(2) An employee's period of basic adoption leave ("**basic adoption leave period**") commences on the date which, in accordance with section 1(2)(b), she notifies to her employer as the date on which she intends her basic adoption leave period to start; or, where her employer thereafter agrees at the employee's request to the employee starting her basic adoption leave period on another date, on that other date.

(3) An employee's period of additional adoption leave ("**additional adoption leave period**") commences on the day after her last day of basic adoption leave."

6. In section 5(1), delete from ", or until" to the end of the subsection.
7. In section 8(1)(a), for "on which childbirth occurred", substitute "the child was placed with the employee for adoption".
8. In section 11 –
- (a) in the heading, for "maternity support leave" substitute "adoption support leave",
 - (b) in subsection (1) for "maternity leave" substitute "adoption leave" and for "maternity support leave" substitute "adoption support

leave",

(c) in subsection (2) for "due date" substitute "expected placement date",
and

(d) for subsection (3), substitute –

"(3) Adoption support leave commences on the day the child is placed with the employee for adoption and continues for a period of two weeks from its commencement.".

SCHEDULE 2

AMENDMENT OF THE EMPLOYMENT PROTECTION LAW

Section 20.

1. The Employment Protection (Guernsey) Law, 1998 is amended as follows.
2. For section 9, substitute –

"Dismissal on ground of pregnancy, childbirth or adoption, or maternity leave etc.

9. (1) Subject to the provisions of this section, the dismissal of an employee by an employer shall be regarded for the purposes of this Part of the Law as having been unfair if –

- (a) the reason for it (or, if more than one, the principal reason) is of a kind specified in subsection (4), or
- (b) the reason for it (or, if more than one, the principal reason) is that the employee is redundant, and section 9 of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 ("**the Maternity Leave Ordinance**") has not been complied with.

(2) Subsection (1)(b) does not apply in relation to an employee if –

- (a) it is not reasonably practicable for a reason other than redundancy for the employer or his successor to permit her to return to a job which

is both suitable for her and appropriate for her to do in the circumstances,

- (b) an associated employer offers her a job of that kind, and
- (c) she accepts or unreasonably refuses that offer.

(3) The dismissal of an employee by an employer shall also be regarded for the purposes of this Part of the Law as having been unfair if –

- (a) the reason (or, if more than one, the principal reason) for the dismissal is that the employee was redundant,
- (b) it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by the employee and who have not been dismissed by the employer, and
- (c) it is shown that the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was a reason of a kind specified in subsection (4).

(4) The reasons referred to in subsections (1)(a) and (3)(c) are –

- (a) that the employee was pregnant,
 - (b) any other reason associated with the employee's pregnancy except those reasons set out in subsection (5),
 - (c) that the employee has given birth to a living child, or has given birth to a child whether living or dead after 24 weeks of pregnancy,
 - (d) that the employee has adopted a child within the meaning of section 12 of the Maternity Leave Ordinance, or
 - (e) that the employee took or sought to take –
 - (i) maternity leave, adoption leave, maternity support leave or adoption support leave within the meaning of, and when entitled to do so under, the Maternity Leave Ordinance,
 - (ii) time off to attend an appointment to receive ante-natal care within the meaning of, and when entitled to do so under, section 14 of the Maternity Leave Ordinance.
- (5) The reasons referred to in subsection (4)(b) are –
- (a) that at the effective date of termination the

employee was or would have become, because of her pregnancy, incapable of adequately doing the work which she was employed to do,

- (b) that, because of her pregnancy, she could not do or would not have been able to continue after that date to do that work without contravention (either by her or employer) of a duty or restriction imposed by or under the law of Guernsey."

3. At the end of paragraph (d) of section 12(4) delete "or"; and in paragraph (e) of section 12(4), immediately after **"the 2009 Law"**), for "." substitute ", or" and after paragraph (e) insert –

"(f) the Maternity Leave Ordinance."

4. For paragraph (c) of section 16(1), substitute –

"(c) that he has been subjected to a detriment in contravention of section 15J, section 17 of the 2009 Law, or section 17 of the Maternity Leave Ordinance, or".

5. In section 30B, for the heading, substitute "Tribunal may join complaints."

6. In section 34(1), immediately after the definition of "independent trade union" insert the following definition –

"Maternity Leave Ordinance" means the Maternity Leave

and Adoption Leave (Guernsey) Ordinance, 2016 (see section 9(1)(b)),".

SCHEDULE 3
AMENDMENT OF THE SEX DISCRIMINATION ORDINANCE

Section 21.

1. The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 is amended as follows.

2. After section 10, insert -

"Discrimination relating to maternity leave, etc.

10A. A person shall not, in relation to employment by him at an establishment in Guernsey, discriminate against a woman who –

- (a) has given birth to a living child, or has given birth to a child whether living or dead after 24 weeks of pregnancy, or has adopted a child within the meaning of section 12 of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 ("**the Maternity Leave Ordinance**"),
- (b) has given notice to her employer of her intention to be absent from work on maternity leave or adoption leave under the Maternity Leave Ordinance, or
- (c) is returning to work at the end of a period of maternity leave or adoption leave under the Maternity Leave Ordinance.

(2) Subsection (1) also applies in respect of discrimination against a woman giving notice of her intention to attend an appointment to receive ante-natal care, where she is entitled to time off work to attend that

appointment under section 14 of the Maternity Leave Ordinance."

The Registered Plant Breeders' Rights (Bailiwick of Guernsey) (Amendment) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 27th November, 2002^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b, sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c, and all other powers enabling them in that behalf, hereby order: –

Amendment of 2007 Ordinance.

1. (1) Immediately after section 18(8) of the Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007^d, insert –

"(8A) A person who –

- (a) in response to a request made pursuant to regulations made under subsection (7) –
 - (i) intentionally fails to provide information,
 - (ii) refuses to provide information, or
 - (iii) knowingly or recklessly provides false information, or
- (b) without reasonable excuse, contravenes or fails to comply with regulations made under subsection (7)(b),

^a Article XIX of Billet d'État No. XXIII of 2002.

^b Order in Council No. XIV of 2004.

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

^d Ordinance No. IV of 2005; as amended by Order in Council No. XIV of 2012.

is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale."

Interpretation.

2. (1) In this Ordinance -

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

(2) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

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

Extent.

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

Citation.

4. This Ordinance may be cited as the Registered Plant Breeders' Rights (Bailiwick of Guernsey) (Amendment) Ordinance, 2016.

^e Ordres en Conseil Vol. XIII, p. 355.

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2016

THE STATES, in pursuance of their Resolution of the 31st July, 2015^a and in exercise of the powers conferred upon them by sections 52 and 66 of the Housing (Control of Occupation) (Guernsey) Law, 1994^b, hereby order:-

Addition of dwellings to Part A of Housing Register.

1. Subject to the provisions of this Ordinance, the Authority may inscribe in Part A of the Housing Register each of the dwellings to be known as "8 La Salerie Inn Apartments", "9 La Salerie Inn Apartments", and "10 La Salerie Inn Apartments", La Salerie, Saint Peter Port.

Applications to be made within 12 months.

2. An application to the Authority to inscribe each of the dwellings described in section 1 in Part A must be made within a period of 12 months immediately following the date of commencement of this Ordinance.

Condition to be satisfied by applicant.

3. The Authority shall not inscribe in Part A of the Housing Register any dwelling described in section 1 unless it is satisfied that another dwelling previously so inscribed has, at the instance of the applicant, been deleted from Part A.

Licences to lapse if inscription not effected within 12 months.

4. Should the owner of a dwelling described in section 1 fail, within a period of 12 months immediately following the date of commencement of this Ordinance, to make application to the Authority to inscribe the dwellings in Part A, or the Authority is unable to grant the application because it is not satisfied of the matter set out in section 3, any housing licence held in respect of the occupation of

^a Article XXII of Billet d'État No. XIV of 2015.

^b Ordres en Conseil Vol. XXXV(1), p. 75; amended by Ordres en Conseil Vol. XXXVIII, p. 193 and Vol. XLII(1), p. 34; Orders in Council No. VIII of 2007 and No. I of 2009; and Recueil d'Ordonnances Tome XXXIII, p. 100.

that dwelling and valid at the expiration of that period shall thereupon cease to be valid.

Interpretation.

5. Except where the context requires otherwise -

"**applicant**" means the owner of a dwelling who is making an application for inscription of that dwelling on Part A,

"**Part A**" means Part A of the Housing Register,

and other expressions used in this Ordinance have the same meanings as in the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended.

Citation.

6. This Ordinance may be cited as the Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2016.

Commencement.

7. This Ordinance shall come into force on the 1st February, 2016.

The Income Tax (Guernsey) (Approval of Agreement with Bulgaria) Ordinance, 2016

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975 as amended^a and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. The agreement providing for the obtaining, furnishing and exchanging of information in relation to tax made between the States of Guernsey and the Government of the Republic of Bulgaria, signed on the 20th May, 2015 and the 11th June, 2015 on behalf of Bulgaria and Guernsey respectively, is pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Bulgaria) Ordinance, 2016.

Commencement.

3. This Ordinance shall come into force on the 27th January, 2016.

^a Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005, and section 75C has subsequently been amended by Ordinance No. XVI of 2012; No. I of 2014; and No. XXXI of 2014.