

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Food Safety (Live Bivalve Molluscs and Other Shellfish)**

**Ordinance, 1996 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XX of 1996 (Recueil d'Ordonnances Tome XXVII, p. 88); as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Ordinance has been repealed by the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016 (No. XXI of 2016).

# ORDINANCE OF THE STATES OF DELIBERATION

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## **The Food Safety (Live Bivalve Molluscs and Other Shellfish) Ordinance, 1996**

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REPEALED

*(Made on 31st July, 1996.)*

## **The Food Safety (Live Bivalve Molluscs and Other Shellfish) Ordinance, 1996**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of September, 1995<sup>a</sup>, in exercise of the powers conferred on them by section 2 of the Prevention of Pollution (Guernsey) Law, 1989<sup>b</sup>, and sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>c</sup>, and in exercise of all other powers enabling them in that behalf, hereby order: –

### *Designation of areas*

#### **Designated shellfish waters.**

1. (1) The Board shall designate coastal and brackish waters which, in its opinion, need protection or improvement in order to support shellfish life and growth, (referred to in this Ordinance as "**designated shellfish waters**").

(2) The Board may at any time designate additional coastal and brackish waters as designated shellfish waters in accordance with subsection (1).

(3) The Board shall regulate discharges of pollutants into or in the vicinity of designated shellfish waters and, in doing so, may make orders by way of statutory instrument prohibiting such discharges except under the authority of and in accordance with the conditions of a permit granted by the Board.

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**a** Article XVIII of Billet d'État No. XX of 1995.

**b** Order in Council No. XXV of 1989.

**c** Order in Council No. III of 1994.

(4) The Board shall establish a programme in accordance with Article 6 of and the Annex to the Shellfish Waters Directive for the periodic taking and analysis of samples from the designated shellfish waters in order to ascertain whether the quality standards laid down therein are being met.

(5) Where the sampling referred to in subsection (4) demonstrates that the quality of the designated shellfish water has fallen below the standards laid down in the Shellfish Waters Directive, the Board may suspend the designation of designated shellfish water for such time as it thinks fit or take any other steps which it considers appropriate in the circumstances.

**Designated production areas.**

2. (1) The Board shall designate sea waters and brackish waters from which live bivalve molluscs and other shellfish shall be taken in accordance with the requirements of this Ordinance, (referred to in this Ordinance as "**designated production areas**"), and shall specify as respects each area of water so designated its location and boundaries and whether it is –

- (a) a class A area from which such molluscs and shellfish can be gathered for direct human consumption provided they satisfy the requirements specified in Chapter V,
- (b) a class B area from which such molluscs and shellfish can be gathered but only placed on the market for human consumption, where appropriate, after treatment in a purification centre, relaying or heat treatment by an approved process in an establishment approved for the purposes of the Food Safety (Fishery Products) Ordinance, 1996<sup>d</sup> provided –

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<sup>d</sup> Ordinance No. XIX of 1996.

- (i) the conditions in paragraph 1(b) of Chapter I,  
and
  - (ii) the requirements specified in Chapter V,  
  
are satisfied,
- (c) a class C area from which such molluscs and shellfish can be gathered but placed on the market for human consumption, where appropriate, only after a relaying period of at least two months (whether or not such relaying is combined with purification), intensive purification or heat treatment by an approved process in an establishment approved for the purposes of the Food Safety (Fishery Products) Ordinance, 1996 provided –
- (i) the conditions in paragraph 1(c) of Chapter I,  
and
  - (ii) the requirements specified in Chapter V,  
  
are satisfied,

and any such designation may be subject to any limitation, condition or restriction as the Board thinks fit.

- (2) The Board shall designate as a relaying area any area which –
  - (a) fulfils the conditions required for designation as a class A or class B area specified in subsection (1)(a) and (b),

and

- (b) in its opinion is suitable for the relaying of live bivalve molluscs, taking into account any additional conditions as specified in Chapter III,

and, where the Board determines that specified conditions relating to the matters mentioned in Chapter III should be complied with in operating the relaying area, it shall make that designation subject to those conditions.

- (3) The Board shall maintain and publish –
  - (a) a list of designated production areas, and
  - (b) a list of any areas which it has designated as suitable for relaying,

and amendments to either list shall be published from time to time.

(4) The Board shall send a copy of the lists, and of any amendments to either, to any person of whom it is aware who, in its view, is directly affected by this Ordinance, and take such further action as it considers sufficient to bring the relevant part of such lists to the attention of any harvester, handler, and operator of either a purification centre or dispatch centre.

**Areas unsuitable for production or harvesting.**

3. The Board may at any time designate any area as an area unsuitable for production or harvesting of live bivalve molluscs or other shellfish where, for health reasons, it considers it necessary to do so.

**Alterations to designated areas.**

4. (1) Subject to subsection (3), the Board may at any time –
- (a) vary any boundary of any area designated under section 2 or 3,
  - (b) impose limitations, restrictions or conditions on the use of any area designated under section 2 or 3, or
  - (c) alter the class of any area within a designated production area,

for such period as it thinks fit, and shall communicate such amendment to persons who appear to be affected.

- (2) Subject to subsection (3), the Board may at any time –
- (a) if the area is no longer suitable for the gathering of live bivalve molluscs and other shellfish in accordance with the requirements of section 2(1), revoke the designation of a designated production area,
  - (b) if the area is no longer suitable for the relaying of live bivalve molluscs in accordance with the requirements of section 2(3), revoke the designation of a relaying area.

(3) Before exercising the power conferred by subsection (1) or (2), the Board shall invite written representations from any gatherer or handler of whom it is aware and who appears to it to be likely to be affected by the exercise of that power.

**Liaison with [Committee for Economic Development].**

5. In sections 1 to 4, whenever the Board is obliged to act or empowered to exercise its discretion, it shall do so in liaison with the [Committee for Economic Development].

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**NOTES**

*In section 5, the words "Committee for Economic Development", wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>1</sup>*

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*Dispatch centres and purification centres*

**Approval of dispatch centres and purification centres.**

6. (1) Subject to the provisions of this Ordinance, any person who intends to operate a dispatch centre or purification centre shall, before doing so, apply to the Board for approval of that centre.

(2) An application pursuant to subsection (1) shall be –

- (a) made in writing, and
- (b) accompanied by such supplementary information, documents, plans and diagrams as are necessary to enable the Board to determine the application having

regard to the matters specified in the relevant Sections of Chapter IV.

(3) An approval in respect of a dispatch centre may only be granted if the Board is satisfied that it meets such of the conditions set out in Sections I, II and IV of Chapter IV as apply to it.

(4) An approval in respect of a purification centre may only be granted if the Board is satisfied that it meets such of the conditions specified in Sections I, II and III of Chapter IV as apply to it.

(5) An approval for the purposes of this section may be granted subject to limitations as to the particular activities approved and the intensity of use, and, in the case of a purification centre for whose operation the Board has specified particular conditions mentioned in Section III of Chapter IV, the Board shall give its approval subject to those conditions.

(6) The Board shall give written notification to each person who makes an application in accordance with subsection (1) of the result of the application and, in the case of a refusal, the reasons for that refusal.

(7) If such an application is approved, the Board shall –

- (a) designate the dispatch centre or purification centre by a unique approval number, and
- (b) enter those details in the relevant part of a list maintained by it for that purpose.

**Supplementary provisions about approvals.**

7. (1) Before finally determining an application, the Board may, in

writing, request an applicant to provide supplementary written information to enable it properly to determine the application.

(2) A person may at any time apply to the Board to vary the terms or limitations of any approval granted to him, and the Board may vary any such terms or limitations as it thinks fit.

(3) If the Board discovers that the conditions for approval in respect of a dispatch centre or a purification centre specified in section 6 are no longer being met, it shall suspend the centre's approval on such terms and for such period as it thinks fit.

**Restriction on the operation of dispatch and purification centres.**

8. (1) No person shall operate any dispatch centre or purification centre unless it has been approved by the Board and the requirements of the approval and the applicable conditions of Chapter IV are complied with.

(2) The proprietor of each dispatch centre or purification centre shall ensure that –

(a) the requirements of the approval and the applicable provisions of Chapter IV are complied with,

(b) representative numbers of samples for laboratory examination are regularly taken and analysed in laboratories which meet the requirements of Chapter IV,

(c) the results of the laboratory examinations referred to in paragraph (b) are recorded in an historical record which, in relation to each area from which live bivalve

molluscs or other shellfish come, gives details of the health quality of such molluscs and shellfish from that area both before and after handling at the centre, and

- (d) free access to all parts of the centre and relevant documentation relating thereto is accorded to the Board.

*Monitoring*

**Monitoring by the Board.**

- 9. The Board shall perform the functions specified in Chapter VI.

*Placing on the market*

**Placing live bivalve molluscs and other shellfish on the market.**

10. (1) Subject to subsections (2) to (6), no person shall place on the market for immediate human consumption any live bivalve molluscs or other shellfish, unless –

- (a) they originate from a production area which –
  - (i) has been designated a class A area, a class B area or a class C area in accordance with section 2, and any condition or limitation specified in Chapter I in relation to that class of area has been complied with,
  - (ii) if they were imported for relaying, was of at least the same standard as an area designated as a class B area or a class C area in accordance

with section 2(1)(b) or (c),

- (b) they have been harvested, kept and transported to any approved dispatch centre, approved purification centre or approved relaying area to which they were thereafter transferred, in accordance with the requirements of Chapter II, and they are accompanied by a valid movement document or a valid permanent transport authorisation,
- (c) they have, where necessary, been relaid in accordance with Chapter III,
- (d) they have been handled hygienically,
- (e) they have, where appropriate, been purified or subjected to intensive purification at a purification centre which has been approved in accordance with this Ordinance,
- (f) they satisfy the requirements specified in Chapter V,
- (g) the health controls specified in Chapter VI have been carried out by the Board,
- (h) if wrapped, any wrapping is in accordance with Chapter VII,
- (i) they have been stored and transported under satisfactory conditions of hygiene and in particular in accordance with the requirements specified in Chapters

VIII and IX,

- (j) they comprise or form part of a consignment which bears a health mark which is in accordance with the requirements specified in Chapter X, and
- (k) if they are imported molluscs or shellfish, prior to importation such of the requirements specified in sections 11 and 12 as are applicable to his case are satisfied in relation to those molluscs or shellfish which he places on the market.

(2) For the purpose of subsection (1), compliance with any law passed by the legislature of any of the other British Islands which is intended to give effect to the results to be achieved by the corresponding provisions of the Council Directive in so far as it applies to those territories shall be accepted as compliance with the provisions of this Ordinance or the Council Directive, as the case may be, referred to therein.

(3) Subsection (1)(a) shall not apply to –

- (a) pectinidae and halliotidae which are not aquaculture products, or
- (b) any imported live bivalve molluscs or other shellfish, unless they were taken from sea waters or brackish waters within the Islands' fishing limits.

(4) Subsection (1)(b) and (c) shall not apply to imported live bivalve molluscs or other shellfish, unless their country of dispatch is part of the British Islands.

(5) Subsection (1)(c) and (e) shall not apply to other shellfish, and subsection (1)(b) shall only apply to other shellfish in so far as it relates to harvesting and transportation to an approved dispatch centre.

(6) Subsection (1)(b), (i) and (j) shall not apply to consignments of live bivalve molluscs and other shellfish solely to be placed on the market within the Islands.

*Imports*

**General restriction on importing live bivalve molluscs or other shellfish.**

**11.** (1) Subject to subsection (2), no person shall import any live bivalve molluscs or other shellfish which are for human consumption, unless –

- (a) they are products in respect of which –
  - (i) unless sub-paragraph (ii) applies, all applicable requirements of the Council Directive are satisfied, or
  - (ii) if they originate in a third country, in the opinion of the Board all applicable requirements at least as stringent as those specified in this Ordinance are satisfied, and
- (b) any additional conditions imposed under section 12 are satisfied,

in relation to those molluscs or shellfish which he imports.

(2) Subsection (1) shall not apply to a person importing a private consignment –

- (a) from a country or territory within the European Community, unless that consignment is a consignment of trade samples which weighs more than 10 kilograms, or
- (b) from any country or territory, if that consignment weighs 1 kilogram or less.

**Additional conditions in relation to certain third country imports.**

**12.** (1) Subject to subsection (3), no person shall import any live bivalve molluscs or other shellfish which are for human consumption –

- (a) from a third country,
- (b) from a country or territory within the European Community if those molluscs or shellfish do not originate from within the European Economic Area, unless those products were in free circulation in that country or territory within the European Community, or
- (c) from an EEA State which is not also a member State, unless those molluscs or shellfish originate from within the European Economic Area,

unless the conditions specified in subsection (2) are satisfied in relation to those molluscs or shellfish which he imports.

(2) The conditions referred to in subsection (1) are that a person

importing live bivalve molluscs or other shellfish in circumstances where –

- (a) those molluscs or shellfish originate in a third country in respect of which the Commission has adopted approved import conditions, and
- (b) those approved import conditions relate to those molluscs or shellfish,

shall import those molluscs or shellfish in accordance with those approved import conditions.

(3) Subsection (1) shall not apply to a person importing a private consignment, if that consignment weighs 1 kilogram or less.

*Appeals and offences*

**Appeals.**

13. (1) A person aggrieved by any decision of the Board under any of the provisions of this Ordinance may appeal therefrom to the Court on the grounds that the decision of the Board was *ultra vires* or was an unreasonable exercise of its powers.

(2) An appeal under this section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and which shall be served upon [the President] of the Board within a period of two months immediately following the date of the notice giving the decision of the Board.

(3) On an appeal under this section the appellant shall have the burden of proof and the final right of reply.

(4) An appeal on a question of law shall lie to the Court of Appeal from any decision of the Court under this section within such period and in such manner as may be prescribed by Order of the Royal Court.

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**NOTE**

*In section 13, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.<sup>2</sup>*

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**Offences.**

**14.** (1) If any person contravenes any provision of this Ordinance specified in subsection (2) he shall be guilty of an offence.

(2) The provisions of this Ordinance referred to in subsection (1) are sections 7(1), 9(1), 11(1), 12(1), 17(7), 18(1) and 18(2).

(3) A person guilty of an offence against this Ordinance shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding three months or to both.

**Offences by bodies corporate.**

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

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

**Defence of due diligence.**

**16.** (1) In any proceedings for an offence under this Ordinance, it shall, subject to subsection (2), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless

–

- (a) at least seven clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

*General provisions*

**Powers of entry.**

**17.** (1) An authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any premises, ship or aircraft at all reasonable hours –

- (a) for the purpose of ascertaining whether there is or has

been on, or in connection with, the premises, ship or aircraft any contravention of the provisions of this Ordinance, and

- (b) generally for the purpose of the performance by the Board of its functions under this Ordinance.

PROVIDED THAT admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

- (2) If the Bailiff is satisfied by information on oath –
  - (a) that there is a reasonable ground for entry in or on to any premises, ship or aircraft for any such purpose as aforesaid, and
  - (b) is also satisfied either –
    - (i) that admission to the premises, ship or aircraft has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier, or
    - (ii) that an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the premises, ship or aircraft are unoccupied or the occupier is temporarily absent,

the Bailiff may grant a warrant authorising the Board by any authorised officer to

enter the premises, ship or aircraft, if need be by reasonable force.

(3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises, ship or aircraft which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them.

(4) Every warrant granted under this section shall continue in force for a period of one month.

(5) An authorised officer entering premises, a ship or aircraft by virtue of this section, or of a warrant issued thereunder, may inspect any records (in whatever form they are held) relating to any provision of this Ordinance and the Council Directive, as the case may be, and, where any such records are kept by means of a computer –

(a) may have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records, and

(b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

(6) Any authorised officer exercising any power conferred by subsection (5) may –

(a) seize and detain any records which he has reason to

believe may be required as evidence in proceedings under any of the provisions of this Ordinance, and

- (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(7) No person who enters any premises, ship or aircraft by virtue of this section, or of a warrant issued thereunder, shall disclose to any person any information obtained by him in the premises, ship or aircraft with regard to any trade secret, unless such disclosure is made in the performance of his duty.

**Obstruction etc. of officers.**

**18.** (1) No person shall –

- (a) intentionally obstruct any person acting in the execution of this Ordinance, or
- (b) without reasonable cause, fail to give to any person acting in the execution of this Ordinance any assistance or information which that person may reasonably require of him for the performance of his functions under this Ordinance.

(2) No person shall, in purported compliance with any such requirement as is mentioned in subsection (1)(b) –

- (a) furnish information which he knows to be false or misleading in a material particular, or
- (b) recklessly furnish information which is false or

misleading in a material particular.

(3) Nothing in subsection (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

**Interpretation.**

**19.** (1) In this Ordinance, unless the context otherwise requires –

**"approved import conditions"** means the conditions for the importation of fishery products which are laid down, from time to time, in any Decision of the Commission,

**"approved process"** means such process as is approved, from time to time, by the Commission for the treatment of bivalve molluscs and marine gastropods,

**"aquaculture products"** means –

- (a) all fishery products born or raised in controlled conditions until placed on the market as foodstuffs, and
- (b) all seawater fish, freshwater fish or crustaceans caught in their natural environment when juvenile and kept until they reach the desired commercial size for human consumption, other than fish or crustaceans of commercial size caught in their natural environment and kept alive to be sold at a later date, if they are merely kept alive without any attempt being made to increase their size or weight,

**"authorised officer"** means a person authorised by the Board in writing, either generally or specially, to act in matters of any specified kind or in any specified matter,

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

**"batch"** means a quantity of live bivalve molluscs or other shellfish collected from a production area and subsequently intended for delivery to an approved dispatch centre, purification centre, relaying area or processing plant,

**"bivalve molluscs"** means filter-feeding lamellibranch molluscs,

**"the Board"** means the States [Committee for Health & Social Care],

**"clean seawater"** means seawater or brackish water which is to be used under the conditions laid down in the Council Directive and which is free from microbiological contamination and toxic and objectionable substances occurring naturally or after discharge in the environment, including those listed in the Annex to the Shellfish Waters Directive, in such quantities as may adversely affect the health quality of bivalve molluscs or other shellfish or impair their taste,

**"the Commission"** means the Commission of the European Communities,

**"the competent authority"** means the Board,

**"conditioning"** means the storage of live bivalve molluscs, whose quality does not indicate the need for relaying or treatment in a purification

plant, in tanks or any other installation containing clean seawater or in natural sites to remove sand, mud or slime,

**"consignment"**, except in the expression **"private consignment"**, means a quantity of live bivalve molluscs or other shellfish handled in a dispatch centre or treated in a purification centre and subsequently intended for one or more customers,

**"the Council Directive"** means Council Directive 91/492/EEC<sup>e</sup> of 15<sup>th</sup> July, 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs,

**"the Court"** means the Royal Court sitting as an Ordinary Court,

**"the Court of Appeal"** means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961<sup>f</sup>,

**"dispatch centre"** means any approved on-shore or off-shore installation for the reception, conditioning, washing, cleaning, grading and wrapping of live bivalve molluscs or other shellfish fit for human consumption prior to their export, whether directly or indirectly, to an EEA State,

**"E. coli"** means faecal coliforms which also form indole from tryptophan at 44°C ± 0.2°C within 24 hours,

**"EEA Agreement"** means the Agreement on the European Economic

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<sup>e</sup> O.J. L268, 24.9.91, p. 1.

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

Area signed at Oporto on 2<sup>nd</sup> May, 1992<sup>g</sup> as adjusted by the Protocol signed at Brussels on 17<sup>th</sup> March, 1993<sup>h</sup> and "**the European Economic Area**" shall be construed accordingly,

**"EEA State"** means a State which is a Contracting Party to the EEA Agreement,

**"establishment"** means a dispatch centre, a purification centre or a processing plant,

**"faecal coliform"** means facultative, aerobic, gram-negative, non-spore-forming, cytochrome oxidase negative, rod-shaped bacteria that are able to ferment lactose with gas production in the presence of bile salts, or other surface active agents with similar growth-inhibiting properties at 44°C ± 0.2°C within at least 24 hours,

**"final consumer"** means a person who buys live bivalve molluscs or other shellfish –

- (a) for his own consumption or consumption by his partner, family or other person in a solely domestic context,
- (b) for direct transport to, and consumption on, premises either in his ownership or under his personal supervision or in the ownership or under the personal supervision of a person employed by him, or
- (c) for cooking on premises either in his ownership or

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**g** O.J. L1, 3.1.94, p. 3.

**h** O.J. L1, 3.1.94, p. 572.

under his personal supervision or in the ownership or under the personal supervision of a person employed by him for sale as take-away food for consumption off those premises,

**"fishery products"** means all seawater or freshwater animals or parts thereof, including their roes but excluding aquatic mammals, frogs and aquatic animals covered by Community Acts other than Council Directive 91/493/EEC<sup>i</sup>,

**"gatherer"** means any natural or legal person who collects live bivalve molluscs or other shellfish by any means from a harvesting area for the purpose of handling and placing on the market and **"gather"** shall be construed accordingly,

**"intensive purification"** means purification at an approved purification centre for a period and in accordance with such operating conditions as may have been approved by the Board,

**"the Islands"** means the Islands of Guernsey, Herm and Jethou,

**"marine biotoxins"** means poisonous substances accumulated by bivalve molluscs feeding on plankton containing toxin,

**"means of transport"** means those parts set aside for goods in motor vehicles, rail vehicles and aircraft, holds of vessels and containers for transport by land, sea or air,

**"other shellfish"** means echinoderms, tunicates and marine

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<sup>i</sup> O.J. L268, 24.9.91, p. 15.

gastropods,

**"placing on the market"** means, in relation to live bivalve molluscs or other shellfish for human consumption, whether raw or for the purpose of processing, the holding for sale, exposing for sale, displaying for sale, offering for sale, selling, consigning, delivering or any other associated activity of marketing,

**"pollutant"** means anything which has a deleterious effect on water or which adversely affects the actual or intended uses of water,

**"premises"** includes a building or part of a building, and any forecourt, yard or place of storage used in connection with a building or part of a building, a vehicle, and a stall or moveable structure,

**"private consignment"** means a quantity of live bivalve molluscs or other shellfish which are –

- (a) imported as trade samples, or
- (b) not being imported by way of trade, and which –
  - (i) form part of a traveller's personal luggage, or
  - (ii) have been sent to a person, other than a body of persons corporate or unincorporate, in the Islands,

**"production area"** means any sea, estuarine or lagoon area containing natural deposits of bivalve molluscs or other shellfish or sites used for cultivation of bivalve molluscs or other shellfish from which live bivalve

molluscs or other shellfish are taken,

**"purification centre"** means an approved establishment with tanks fed by naturally clean seawater or seawater which has been cleaned by appropriate treatment, in which live bivalve molluscs are placed for the time necessary to remove microbiological contamination, so making them fit for human consumption,

**"relaying"** means a transfer of live bivalve molluscs to an approved sea, lagoon or estuarine area under the supervision of the Board for the time necessary to remove contamination, but does not include transfers to areas more suitable for further growth or fattening,

**"relaying area"** means any sea, estuarine or lagoon area approved by the Board, with its boundaries clearly marked and indicated by buoys, posts or any other fixed means, and which is used exclusively for the natural purification of live bivalve molluscs,

**"shellfish"** means bivalve and gastropod molluscs,

**"the Shellfish Waters Directive"** means Council Directive 79/923/EEC<sup>j</sup> of 30<sup>th</sup> October, 1979 on the quality required of shellfish waters,

**"ship"** includes any vessel, boat or craft and any hover vehicle, that is to say, a vehicle designed to be supported on a cushion of air,

**"third country"** means any country or territory which is not part of the European Economic Area,

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<sup>j</sup> O.J. L281, 10.11.79, p. 47.

"wrapping" means an operation whereby live bivalve molluscs or other shellfish are placed in packaging material adequate for the purpose.

- (2) Unless the context otherwise requires, a reference –
- (a) to a numbered Chapter is to the Chapter in the Annex to the Council Directive bearing that number,
  - (b) to any other enactment (including a European Community Act) shall be construed as a reference to that enactment as repealed and replaced, amended or extended or applied by any other enactment, including this Ordinance.

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#### NOTES

*In section 19, the words in square brackets in the definition of the expression "the Board" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.<sup>3</sup>*

*The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>4</sup>*

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#### **Transitional arrangements.**

**20.** Approvals of dispatch centres and purification centres informally granted by the Board prior to this Ordinance coming into force shall remain valid for a period of one month following the date on which this Ordinance enters into force.

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**NOTE**

*In section 20, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.*

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**Extent.**

21. This Ordinance shall have effect in the Islands of Guernsey, Herm and Jethou.

**Citation.**

22. This Ordinance may be cited as the Food Safety (Live Bivalve Molluscs and Other Shellfish) Ordinance, 1996.

**Commencement.**

23. This Ordinance shall come into force on 1<sup>st</sup> October, 1996.

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**1** The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Sea Fisheries Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

**2** These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

**3** These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

**4** The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Board of Health

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and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

REPEALED