

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. IV of 2014

**The European Communities (Implementation of Council  
Regulation on Nutrition and Health Claims) (Sark)  
Ordinance, 2014**

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# **The European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Sark) Ordinance, 2014**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 2<sup>nd</sup> October, 2013, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>a</sup>, hereby order:-

## **Application of Council Regulation.**

1. (1) The Council Regulation has full force and effect in the Island subject to subsection (2), the modifications set out in Schedule 1 and the other provisions of this Ordinance.

(2) For the avoidance of doubt, a nutrition claim or health claim is exempt from the Council Regulation to the extent that the claim is made only in relation to food –

(a) sold to a person located outside the EU market, and

(b) the final destination of which is a place outside the EU market.

(3) In subsection (2), "**EU market**" –

(a) means the Member States of the European Union, and

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<sup>a</sup> Ordres en Conseil Vol. XXXV(1), p. 65.

- (b) for the avoidance of doubt, includes the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

**Offences.**

2. (1) Subject to the derogation contained in article 1(3) of the Council Regulation and to the transitional provisions in article 28 of the Council Regulation as modified by the provisions of Schedule 1, a person who contravenes or fails to comply with any of the following provisions of the Council Regulation is guilty of an offence –

- (a) article 3,
- (b) article 4(3),
- (c) article 6(2),
- (d) article 7,
- (e) article 8(1),
- (f) article 9,
- (g) article 10(1), (2) or (3),
- (h) article 12, or
- (i) article 14(2).

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

- (a) on summary conviction to a fine not exceeding level 4 on the uniform scale, to imprisonment for a term not exceeding 1 month, or both, and
- (b) on conviction on indictment to a fine, to imprisonment for a term not exceeding 2 years, or both.

(3) Where a body corporate is guilty of an offence under subsection (1), and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar 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.

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

**Application of provisions of 1970 Law to Sark.**

3. (1) The provisions of the 1970 Law specified in Schedule 2 have effect in the Island for the purposes of this Ordinance as they have effect in the Islands of Guernsey, Herm and Jethou, subject to the modifications set out in that schedule.

(2) In construing an expression used in any provision of the 1970 Law applied by subsection (1), if there is a conflict between a construction favoured by section 54 of that Law and a construction favoured by section 5 or 6 of this Ordinance, the latter construction is to prevail.

**Enforcement.**

4. The Committee is responsible for administering and enforcing this Ordinance.

**Extended meaning of 'sale', etc.**

5. (1) In this Ordinance, "sell" includes –
- (a) possess for sale, and
  - (b) offer, expose, or advertise for sale.
- (2) For the purposes of this Ordinance –
- (a) the supply of food, otherwise than on sale, in the course of a business, and
  - (b) any other thing which is done with respect to food and is specified in an order made by the Committee,

is deemed to be a sale of the food, and references to purchasers and purchasing are to be construed accordingly.

- (3) This Ordinance applies –
- (a) in relation to any food which is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the food were, or had been, exposed for sale by each person concerned in the organisation of the entertainment,

- (b) in relation to any food which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or given away, as if the food were, or had been, exposed for sale by the person offering or giving away the food, and
- (c) in relation to any food which is exposed or deposited in any premises for the purpose of being so offered or given away as mentioned in paragraph (a) or (b), as if the food were, or had been, exposed for sale by the occupier of the premises,

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

**Interpretation.**

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

"**the 1970 Law**" means the Food and Drugs (Guernsey) Law, 1970<sup>b</sup>,

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<sup>b</sup> Ordres en Conseil Vol. XXII, p. 412; as amended by Ordres en Conseil Vol. XXIV, p. 273; Ordres en Conseil Vol. XXV, p. 378; Ordres en Conseil Vol. XXIX, p. 329; Ordres en Conseil Vol. XXXI, p. 278; Ordres en Conseil Vol. XXXVI, p. 235; Ordres en Conseil Vol. XXXVI, p. 648; Recueil d'Ordonnances Tome XXIX, p. 406; the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Guernsey) Ordinance, 2014 and the European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014. See also Recueil d'Ordonnances Tome XXVII, p. 2 and G.S.I. No. 9 of 1996.

"**Committee**" means the Public Health Committee of the Chief Pleas of Sark,

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

"**Council Regulation**" means Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods<sup>c</sup>,

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

"**Island**" means the Island of Sark, including the territorial waters adjacent to it,

"**person**" includes any body or authority,

"**sell**" has the meaning given by section 5, and "**sale**" and "**sold**" are to be construed accordingly,

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

"**this Ordinance**" includes any provision of the Council Regulation given effect and modified by this Ordinance, and

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<sup>c</sup> OJ L 12, 18.1.2007, p. 3.

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Sark) Law, 1989<sup>d</sup>.

(2) Unless the context requires otherwise, any other expression used in this Ordinance has the meaning given by the Council Regulation.

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

**Extent.**

7. This Ordinance has effect in the Island.

**Citation.**

8. This Ordinance may be cited as the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Sark) Ordinance, 2014.

**Commencement.**

9. This Ordinance shall come into force on the 1<sup>st</sup> April, 2014.

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<sup>d</sup> Ordres en Conseil Vol. XXXI, p. 320.

## SCHEDULE 1

Sections 1(1) and 2(1)

### MODIFICATIONS TO THE COUNCIL REGULATION

<b>Provision of Council Regulation</b>	<b>Modifications</b>
Article 1	In paragraph 4, delete the text beginning with the words "The application shall be sent".  Omit paragraph 5.
Article 13	Omit paragraphs 2 to 5.
Articles 15 to 27	Omit these articles.
Article 28	See "Modifications to article 28" below.

#### **Modifications to article 28**

1. The provisions specified in Column 1 of the table below are modified as set out in Column 2 in the case of a nutrition claim or health claim made only in relation to food –
  - (a) sold to a person located within the Bailiwick of Guernsey or Bailiwick of Jersey, and
  - (b) the final destination of which is within the Bailiwick of Guernsey or Bailiwick of Jersey.
2. For the purposes of these modifications, "**commencement date**" means the date specified in section 9 for this Ordinance to come into force.

<b>Column 1: Provision</b>	<b>Column 2: Modifications</b>
Article 28(1)	<p>For "date of application of this Regulation", substitute "27<sup>th</sup> May, 2011".</p> <p>For "31 July 2009", substitute "the second anniversary of the commencement date".</p>
Article 28(2)	<p>For "1 January 2005", substitute "27<sup>th</sup> May, 2011".</p> <p>For "19 January 2022", substitute "the fifteenth anniversary of the commencement date".</p>
Article 28(3)	<p>For "a member State", substitute "the Bailiwick of Guernsey or the Bailiwick of Jersey".</p> <p>For "1 January 2006", substitute "27<sup>th</sup> May, 2011".</p> <p>For "national provisions", substitute "the provisions of any enactment".</p> <p>For "19 January 2010", substitute "the third anniversary of the commencement date".</p>
Article 28(4)	(no modifications)
Article 28(5)	Omit this provision.
Article 28(6)	(no modifications)

## SCHEDULE 2

### Section 3

#### PROVISIONS OF THE 1970 LAW GIVEN EFFECT SUBJECT TO MODIFICATIONS

The provisions of the 1970 Law specified in column 1 of the table below have effect for the purposes of this Ordinance subject to the modifications specified in column 2 of that table and the following modifications –

- (a) unless the context requires otherwise, any reference in the 1970 Law to the 1970 Law or to provisions of that Law in general is to be construed as a reference to this Ordinance or (as the case may require) to provisions of this Ordinance in general, and
- (b) any reference in the 1970 Law to an order made under the 1970 Law is deemed to be omitted.

<b>Column 1: Provision of 1970 Law</b>	<b>Column 2: Modifications</b>
Sections 26, 27, 28 and 29	(no modifications)
Section 31	Any reference to the Bailiff is to be construed as a reference to the Seneschal of Sark.  Any reference to the Department is to be construed as a reference to

<b>Column 1: Provision of 1970 Law</b>	<b>Column 2: Modifications</b>
	<p>the Committee.</p> <p>Immediately after subsection (3), insert the following subsections–</p> <p style="padding-left: 40px;">"(3A) An authorised officer entering premises by virtue of this section, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in electronic form –</p> <p style="padding-left: 80px;">(a) may have access to, and inspect and check the operation of, any computer or other electronic equipment or device and any associated apparatus or material which is or has been in use in connection with the records, and</p> <p style="padding-left: 80px;">(b) may require any person having charge of, or otherwise concerned with the operation of, the equipment, device, apparatus or material to afford him such assistance as he may reasonably require.</p> <p style="padding-left: 40px;">(3B) An authorised officer exercising any power conferred by subsection (3A) may –</p>

<b>Column 1: Provision of 1970 Law</b>	<b>Column 2: Modifications</b>
	<p>(a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any provision of the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Sark) Ordinance, 2014, and</p> <p>(b) where the records are stored in electronic form, may require the records to be produced in a form in which they may be taken away."</p>
Section 34	In subsection (3), immediately after the word "request", insert the words "or require".
Sections 36, 37, 38(1) and (2), 39 and 40	(no modifications)
Section 41	In subsection (1), for the words "section 1, 2, 6 or 8", substitute the words "any provision of the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Sark) Ordinance, 2014".
Section 42	(no modifications)

<b>Column 1: Provision of 1970 Law</b>	<b>Column 2: Modifications</b>
Section 48	The reference to the States is to be construed as a reference to the Chief Pleas of Sark.
Sections 51 and 52	Any reference to the Department is to be construed as a reference to the Committee.
Section 53	(no modifications)
Section 54	<p>This provision is to be given effect to the extent necessary to give effect to the other provisions given effect in this Schedule.</p> <p>In the definition of "<b>business</b>", the reference to the States is to be construed as a reference to the States of Guernsey, the States of Alderney and the Chief Pleas of Sark.</p> <p>In the definition of "<b>the Department</b>," immediately after "States", insert "of Guernsey".</p> <p>For the definition of "<b>the Island</b>", substitute the following definition—</p> <p style="text-align: center;">" "<b>the Island</b>" means the Island of Sark, including the territorial waters adjacent to it, ".</p>