

Island of



Guernsey

Ordinance of the States

VIII
2014

Made 26th February, 2014

Coming into Operation 1st April, 2014

European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014

The European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014

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SCHEDULE 1: Particulars and requirements for marking or labelling of food supplements

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The European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014

THE STATES, in pursuance of their Resolution of the 27th May, 2011^a, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b and all other powers enabling them, hereby order:-

Purpose of this Ordinance.

1. The purpose of this Ordinance is to implement in respect of the Island certain provisions in the Food Supplements Directive.

Application.

2. (1) Subject to subsections (2) and (3), this Ordinance applies to food supplements sold as foodstuffs and presented as such.

(2) Nothing in this Ordinance applies to -

(a) the sale of a medicinal product, or

(b) the sale of a food supplement, to the extent that -

(i) the food supplement is sold only to a person located outside the EU market, and

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

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

- (ii) the final destination of the food supplement is a place outside the EU market.

(3) In subsection (2) -

"EU market" -

- (a) means the Member States of the European Union, and
- (b) for the avoidance of doubt, includes the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man, and

"medicinal product" has the meaning given by section 133(1) of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008^c.

Requirement for prepackaging.

3. A person who sells any food supplement to the ultimate consumer is guilty of an offence unless the food supplement is prepacked.

Restriction on vitamins and minerals that may be used in the manufacture of food supplements.

4. (1) A person who sells any food supplement in the manufacture of which a vitamin or mineral has been used is guilty of an offence unless that

^c Order in Council No. V of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 540.

vitamin or mineral -

(a) is listed in Annex I to the Food Supplements Directive,
and

(b) is in a form which -

(i) is listed in Annex II to the Food Supplements
Directive, and

(ii) meets the relevant purity criteria.

(2) The relevant purity criteria for the purposes of subsection
(1)(b)(ii) are -

(a) the purity criteria, if any, specified by a Community
provision for the use of the substance in question in the
manufacture of food for purposes other than those
covered by the Food Supplements Directive, or

(b) in the absence of such purity criteria, generally
acceptable purity criteria for the substance in question
recommended by international bodies.

Restriction on sale relating to name.

5. A person who sells a food supplement which is ready for delivery to the ultimate consumer or to a catering establishment is guilty of an offence unless the name under which the food supplement is sold is "food supplement".

Restriction on sale relating to mention of balanced and varied diet.

6. A person who sells any food supplement which is ready for delivery to the ultimate consumer or to a catering establishment is guilty of an offence if the labelling, presentation or advertising of that food supplement includes any mention, express or implied, that a balanced and varied diet cannot provide appropriate quantities of nutrients in general.

Requirement to mark or label prepacked food supplements.

7. (1) Subject to subsection (3), a person is guilty of an offence who sells any food supplement which -

- (a) is ready for delivery to the ultimate consumer, or
- (b) is ready for delivery to a catering establishment and is prepacked,

unless the particulars specified in Schedule 1 appear in accordance with the requirements of that schedule -

- (i) on the packaging,
- (ii) on a label attached to the packaging, or
- (iii) on a label which is clearly visible through the packaging.

(2) Subsection (3) applies where -

- (a) the sale is otherwise than to the ultimate consumer,

- (b) it can be guaranteed that commercial documents relating to the food supplement -
 - (i) accompany the food supplement to which they relate, or
 - (ii) were sent before, or at the same time as, delivery of the food supplement, and
- (c) the particulars required by article 3 of the 1995 Order in relation to food are marked or labelled on the outermost packaging in which that food supplement is sold.

(3) Where this subsection applies, the particulars specified in Schedule 1 may alternatively appear, in accordance with the requirements of that schedule, only on the commercial documents referred to in subsection (2)(b).

Requirement to mark or label non-prepacked food supplements.

8. (1) Subject to subsection (2), a person is guilty of an offence who sells any food supplement which is ready for delivery to a catering establishment and is not prepacked, unless the particulars specified in Schedule 1 appear in accordance with the requirements of that schedule -

- (a) on a label attached to the food supplement, or
- (b) on a ticket or notice which is readily discernible by the intending purchaser at the place where he chooses the food supplement.

(2) Where it can be guaranteed that commercial documents relating to the food supplement -

- (a) accompany the food supplement to which they relate,
or
- (b) were sent before, or at the same time as, delivery of the food supplement,

the particulars specified in Schedule 1 may alternatively appear, in accordance with the requirements of that schedule, only on those commercial documents.

Penalties and proceedings.

9. (1) A person guilty of an offence under this Ordinance is liable on summary conviction or conviction on indictment to a fine not exceeding level 4 on the uniform scale.

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

(3) Where the affairs of a body corporate are managed by its members, subsection (2) 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.

10. (1) The provisions of the 1970 Law specified in Schedule 2 have effect for the purposes of this Ordinance 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 14 or 15 of this Ordinance, the latter construction is to prevail.

Enforcement.

11. The Department is responsible for administering and enforcing this Ordinance.

Consequential amendments to 1970 Law.

12. The 1970 Law is amended as follows -

- (a) immediately after section 47A of that Law, insert the following section -

"Exemption for food supplements.

47B. Nothing in this Law or any subordinate legislation made under it shall be construed to regulate the composition, manufacturing specifications, presentation or labelling of a food supplement to which the European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014 applies.", and

- (b) for the definition of "**States Analyst**" in section 54(1) of that Law, substitute the following definition -

""the States Analyst" means the States Analyst for the time being appointed by the States of Guernsey Policy Council and includes, where such person is appointed in writing by the Policy Council to discharge all or any relevant functions of the States Analyst, a person who is a public analyst or a food examiner for the purposes of the Food Safety Act 1990,".

Transitional provisions.

13. Before the second anniversary of the commencement date, nothing in this Ordinance applies to the sale of a food supplement to the extent that -

- (a) the food supplement is sold only to a person located within the Bailiwick of Guernsey or Bailiwick of Jersey, and
- (b) the final destination of the food supplement is a place within the Bailiwick of Guernsey or Bailiwick of Jersey.

Extended meaning of "sale", etc.

14. (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 a food supplement, otherwise than on sale, in the course of a business, and
 - (b) any other thing which is done with respect to a food supplement and is specified in an order made by the Department,

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

- (3) This Ordinance applies -
- (a) in relation to any food supplement 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 supplement were, or had been, exposed for sale by each person concerned in the organisation of the entertainment,
 - (b) in relation to any food supplement 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 supplement were, or had been, exposed for sale by the person offering or giving away the food supplement, and
 - (c) in relation to any food supplement 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 supplement 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.

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

"**the 1970 Law**" means the Food and Drugs (Guernsey) Law, 1970^d,

"**the 1995 Order**" means the Food and Drugs (Labelling of Food) Order, 1995^e,

"**advertisement**" includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound, and "**advertise**" is to be construed accordingly,

^d 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. See also Recueil d'Ordonnances Tome XXVII, p. 2; G.S.I. No. 9 of 1996.

^e G.S.I. No. 2 of 1995.

"**catering establishment**" means a restaurant, canteen, club, public house, school, hospital or other establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation,

"**commencement date**" means the date specified in section 18 for this Ordinance to come into force,

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

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

"**Directive 90/496**" means Council Directive 90/496/EEC on nutrition labelling for foodstuffs as amended by Commission Directive 2008/100/EC amending Council Directive 90/496/EEC on nutrition labelling for foodstuffs as regards recommended daily allowances, energy conversion factors and definitions^f,

"**dose form**" means a form such as capsules, pastilles, tablets, pills and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles, and other similar forms of liquids or powders designed to be taken in measured small unit quantities,

^f OJ L 276, 6.10.90, p. 40.

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

"food supplement" means a foodstuff -

- (a) the purpose of which is to supplement the normal diet,
- (b) which is a concentrated source of nutrients or other substances with a nutritional or physiological effect, alone or in combination, and
- (c) which is sold in dose form,

"Food Supplements Directive" means Directive 2002/46/EC of the European Parliament and of the Council of 10th June 2002 on the approximation of the laws of the Member States relating to food supplements^g,

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

"person" includes any body or authority,

"preparation" includes manufacture and any form of processing or treatment, and **"prepared"** is to be construed accordingly,

"Regulation (EU) No 1169/2011" means Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October

^g OJ L 183, 12.7.2002, p. 51.

2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004^h,

"**sell**" has the meaning given by section 14, 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,

"**ultimate consumer**" means any person who purchases otherwise than -

- (a) for the purpose of resale,
- (b) for the purposes of a catering establishment, or
- (c) for the purposes of a manufacturing business, and

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

^h OJ L 304, 22.11.2011, p. 18.

1989ⁱ.

(2) A food supplement is to be regarded as prepacked for the purposes of this Ordinance if -

- (a) it is ready for sale to the ultimate consumer or to a catering establishment, and
- (b) it is put into packaging before being offered for sale in such a way that the food supplement cannot be altered without opening or changing the packaging.

(3) Unless the context requires otherwise, any other expression used in this Ordinance has the meaning given by the Food Supplements Directive.

(4) 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.

(5) Without limiting the effect of subsection (4), on and from 13 December 2014, paragraph 2(e) of Schedule 1 is to be construed in the following manner -

- (a) a reference to a vitamin or mineral listed in the Annex to Directive 90/496 is to be construed as a reference to a vitamin or mineral listed in paragraph 1 of Part A of Annex XIII to Regulation (EU) No 1169/2011, and

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

- (b) a reference to the relevant recommended daily allowance specified in the Annex to Directive 90/496 is to be construed as a reference to the nutrient reference values specified in paragraph 1 of Part A of Annex XIII to Regulation (EU) No 1169/2011.

Extent.

- 16. This Ordinance has effect in the Island.

Citation.

- 17. This Ordinance may be cited as the European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014.

Commencement.

- 18. This Ordinance shall come into force on the 1st April, 2014.

SCHEDULE 1

PARTICULARS AND REQUIREMENTS FOR MARKING OR LABELLING OF FOOD SUPPLEMENTS

Sections 7 and 8

1. Sections 7(1) and (3) and 8(1) and (2) refer to the following particulars -
 - (a) the name of the category of any vitamin or mineral or other substance with a nutritional or physiological effect which characterises the product or an indication of the nature of that vitamin or mineral or other substance,
 - (b) the portion of the product recommended for daily consumption,
 - (c) a warning not to exceed the stated recommended daily dose,
 - (d) a statement to the effect that food supplements should not be used as a substitute for a varied diet,
 - (e) a statement to the effect that the product should be stored out of the reach of young children, and
 - (f) the amount of any vitamin or mineral or other substance with a nutritional or physiological effect which is present in the product.
2. The particulars specified in paragraph 1(f) must -
 - (a) be given in numerical form,

- (b) in the case of a vitamin or mineral listed in Annex I to the Food Supplements Directive, be given using the relevant unit specified in brackets after the name of that vitamin or mineral,
 - (c) be the amount per portion of the product as recommended for daily consumption on the labelling of the product,
 - (d) be an average amount based on the manufacturer's analysis of the product, and
 - (e) in the case of a vitamin or mineral listed in the Annex to Directive 90/496, be expressed also as a percentage (which may also be given in graphical form) of the relevant recommended daily allowance specified in that Annex.
3. The particulars specified in paragraph 1 must be marked or labelled in relation to the food supplement in such a way that they are -
- (a) easy to understand,
 - (b) clearly legible,
 - (c) indelible,
 - (d) not hidden, obscured or interrupted by any other written or pictorial matter, and
 - (e) when a food supplement is sold to the ultimate consumer, located in a conspicuous place that is easily visible.

SCHEDULE 2

PROVISIONS OF THE 1970 LAW GIVEN EFFECT SUBJECT TO MODIFICATIONS

Section 10

The provisions of the 1970 Law specified in column 1 of the table below have effect for the purposes of this Ordinance subject to any modifications specified in column 2 of that table and to 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,
- (b) any reference in the 1970 Law to an order made under the 1970 Law is deemed to be omitted, and
- (c) for the avoidance of doubt, any reference in the 1970 Law to food includes a reference to a food supplement.

Column 1: Provision of 1970 Law	Column 2: Modifications
Sections 5, 26, 27, 28 and 29	(no modifications)
Section 31	Immediately after subsection (3), insert the following subsections -

Column 1: Provision of 1970 Law	Column 2: Modifications
	<p data-bbox="300 405 949 555">"(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> <ul style="list-style-type: none"> <li data-bbox="505 611 949 839">(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 <li data-bbox="505 895 949 1082">(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 data-bbox="300 1137 949 1206">(3B) An authorised officer exercising any power conferred by subsection (3A) may -</p> <ul style="list-style-type: none"> <li data-bbox="505 1262 949 1369">(a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any

Column 1: Provision of 1970 Law	Column 2: Modifications
	<p>provision of the European Communities (Implementation of Food Supplements Directive) (Guernsey) 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 33	(no modifications)
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 Food Supplements Directive) (Guernsey) Ordinance, 2014" .
Sections 42, 48, 51, 52 and 53	(no modifications)

Column 1: Provision of 1970 Law	Column 2: 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 "business", 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>For the definition of "the Island", substitute the following definition-</p> <p style="text-align: center;">"the Island" means the Islands of Guernsey, Herm and Jethou, including the territorial waters adjacent to these islands,".</p>

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