

ORDINANCE
OF THE STATES OF DELIBERATION

ENTITLED

The Milk (Control) (Guernsey) Ordinance, 2016 *

[CONSOLIDATED TEXT]

NOTE

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* No. VII of 2016; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

**ORDINANCE
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(Made on 16th February, 2016.)

The Milk (Control) (Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolutions of the 25th September, 2014^a and the 2nd October, 2015^b, and in exercise of the powers conferred upon them by sections 2, 8 and 11 of the Milk and Milk Products (Guernsey) Law, 1955^c, and of all other powers enabling them in that behalf, hereby order: –

PART I

DEFINITION OF MILK

Definition of milk.

1. (1) For the purposes of this Ordinance, milk has the meaning in the Law except that it does not include milk of a description listed in subsection (2).

(2) The descriptions of milk referred to in subsection (1) are –

(a) partly dehydrated milk of any description including, without limitation –

(i) partly dehydrated milk with an admixture of sucrose, and

(ii) partly dehydrated milk which is offered, exposed or kept for sale as condensed or

^a Article IX of Billet d'État No. XX of 2014.

^b Article XX of Billet d'État No. XVI of 2015.

^c Ordres en Conseil Vol. XVI, p. 193 as amended by Ordres en Conseil Vol. XIX, p. 134, Vol. XXXI, p. 19, Ordinance No. XX of 2001 and Ordinance No. XXXIII of 2003.

evaporated milk,

- (b) flavoured milk, and
- (c) milk which is both produced, and offered, exposed or kept for sale, for consumption by an animal other than man.

(3) In this section –

"flavoured milk" means a milk, other than partly dehydrated milk, to which –

- (a) sweetening or colouring, and
- (b) an artificial or natural flavouring,

has been added and which is both produced, and offered, exposed or kept for sale, as a flavoured milk.

PART II

SUPPLY OF MILK TO THE BOARD

Supply of milk to [the Board].

2. (1) Subject to the following provisions of this Ordinance, an owner of cows ("**a farmer**") must supply all the milk produced from the cows to [the Board] by –

- (a) making it available for collection from the premises where it was produced or other premises where it is stored, or

- (b) delivering it to –
 - (i) the States Dairy, or
 - (ii) such other place as may from time to time be agreed in writing with [the Board].

(2) [The Board] may enter into an agreement in writing with a farmer as to the terms and conditions of the supply of milk in accordance with this section provided that such terms and conditions are consistent with any provision under the Law.

(3) The property and risk in milk supplied to [the Board] in accordance with this section passes to [the Board] at the time when it is collected or delivered in accordance with this section.

NOTE

In section 2 and the heading to Part II, the words "T/the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Exceptions from supply.

3. (1) Despite section 2, a farmer may retain out of milk produced from the farmer's cows such quantity of milk as may be required for –

- (a) where the farmer is an individual, household consumption in the farmer's household,
- (b) supply by the farmer by way of a gift,

- (c) supply to an employee of the farmer, who is employed in relation to the care and supervision of the farmer's cows, for household consumption in the employee's household,
- (d) feeding calves owned by the farmer, or
- (e) the manufacture of a milk product by the farmer provided that prior written approval is obtained from [the Board] for –
 - (i) the manufacture of the milk product, and
 - (ii) the quantity of milk that can be retained for such manufacturing purposes.

(2) Milk retained by a farmer for a purpose specified in subsection (1) must be used only for that purpose.

NOTE

In section 3, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Notification of failure of industry test etc. to farmers.

4. (1) This section applies to milk supplied to [the Board] in accordance with section 2.

(2) Where milk –

- (a) fails a specified test, or
- (b) is subject to investigation under an enactment relating to food, food hygiene or public health,

[the Board] must notify the farmer by whom, or on whose behalf, the milk was supplied, of the same in accordance with subsection (3).

(3) A notification under subsection (2) must be sent by [the Board] to the farmer within 48 hours of –

- (a) the receipt by [the Board] of the test results indicating a failure of the specified test, or
- (b) [the Board] being first aware of the investigation,

as the case may be, and must include such information as [the Board] considers is reasonably required, and can reasonably be disclosed to the farmer, in relation to the specified test or investigation.

(4) In this section and section 5 –

"failure" in relation to a test means a failure to meet criteria specified by [the Board] from time to time in writing for the passing of a specified test and related expressions are construed accordingly,

"investigation" includes seizure, removal, detention, sampling, examination, inspection, investigation or other regulatory or enforcement action (however worded) including any notice or order except that it does not include any action which does not prevent or delay milk being processed and used for human consumption, and

"**specified test**" means a test specified by [the Board] from time to time in writing, having regard to current best practice for the testing of milk, for the purpose of the testing of milk supplied to [the Board] and such tests may, without limitation, include tests for or in relation to –

- (a) antibiotic levels,
- (b) foreign bodies,
- (c) water content,
- (d) total bacteria count, and
- (e) somatic cell count.

(5) [The Board] must give all farmers reasonable prior notice of a test or criteria, or of any changes to a test or criteria, specified under this section.

NOTE

In section 4, the words "T/the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Prices payable for milk to farmers.

5. (1) [The Board] may pay nothing or a reduced price, for milk supplied to it in accordance with this Ordinance which –

- (a) has failed a specified test, or

- (b) is subject to investigation under an enactment relating to food, food hygiene or public health,

(2) For the purposes of subsection (1), [the Board] must agree in writing with a farmer the following matters –

- (a) the specific circumstances in which [the Board] may pay nothing or a reduced price, for milk, and
- (b) where relevant, the level of reduced price which is payable.

NOTE

In section 5, the words "T/the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

PART III

CONTROL OF DISTRIBUTION ETC.

Control of purchases and sales etc. of milk produced in Guernsey.

6. (1) A person listed in subsection (2) must not buy or otherwise obtain milk produced in Guernsey, in the course of the business referred to in that subsection, from any person other than –

- (a) [the Board], or
- (b) a registered distributor,

except under and in accordance with a written exemption of [the Board] and any

conditions attached to it.

- (2) The persons referred to in subsection (1) are –
 - (a) a person carrying on the business of a shop,
 - (b) a caterer or manufacturer, and
 - (c) a person carrying on the business of a residential establishment.

(3) A person, other than [the Board] or a registered distributor, must not sell or supply milk produced in Guernsey to –

- (a) a person carrying on the business of a shop,
- (b) a caterer or manufacturer, or
- (c) a person carrying on the business of a residential establishment,

for use in the course of the relevant business referred to in this subsection, except under and in accordance with a written exemption of [the Board] and any conditions attached to it.

NOTE

In section 6, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Control of sales etc. of milk produced in Guernsey to registered distributors.

7. A person, other than [the Board], must not sell or supply milk produced in Guernsey to a registered distributor, for use in the course of distribution, except under and in accordance with a written exemption of [the Board] and any conditions attached to it.

NOTE

In section 7, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Control of purchases and sales etc. by any person of imported milk.

8. (1) A person must not buy, or otherwise obtain milk, which has not been produced in Guernsey, from a person other than –

- (a) [the Board], or
- (b) a registered distributor,

except under and in accordance with a written exemption of [the Board] and any conditions attached to it.

(2) For the avoidance of doubt –

- (a) subsection (1) does not apply to [the Board] which may buy or obtain milk which has not been produced in Guernsey where it considers it necessary or expedient to do so, and
- (b) a written exemption under subsection (1) or (3) may

also exempt a person buying, or otherwise obtaining, milk from a person exempted under that subsection.

(3) A person, other than [the Board], must not sell or supply milk, which has not been produced in Guernsey, in the course of a business except under and in accordance with a written exemption of [the Board] and any conditions attached to it.

NOTE

In section 8, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Definition of distributor.

9. For the purposes of this Ordinance "**distributor**" means a person who sells and delivers milk in the course of a business except for—

- (a) the sale and delivery of milk by, or on behalf of, a farmer to –
 - (i) [the Board], or
 - (ii) any person to whom a farmer may supply milk under section 3(1),
- (b) the sale and delivery of milk by [the Board],
- (c) the subsequent sale and delivery of milk by a person carrying on the business of a shop, as part of a home delivery service carried on by that person, following the

prior sale and delivery of the milk to the shop premises,
or

- (d) the sale and delivery of milk to a beneficiary under any scheme, for the time being in force, provided by the States for the supply of milk (whether free of cost or at a reduced price),

and "**distribution**" and other related expressions are construed accordingly.

NOTE

In section 9, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

PART IV
APPEALS

Appeals against decisions.

- 10.** (1) A person aggrieved by a decision of [the Board] –
 - (a) to refuse to give an approval requested by that person under section 3(1)(e),
 - (b) to amend or withdraw an approval issued to that person under section 3(1)(e),
 - (c) to amend or withdraw an exemption issued in respect of that person, or in respect of a class of persons of which they form part, under section 6, 7 or 8,

may appeal to the Royal 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 Board]'s decision, and
 - (b) by summons served on the [President] of [the Board], stating the grounds and material facts on which the appellant relies.

(4) [The Board] may, where an appeal under this section has been instituted, apply to the Royal 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 Royal 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 Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^d.

- (5) On an appeal under this section the Royal Court may –
 - (a) set the decision of [the Board] aside and, if the Royal Court considers it appropriate to do so, remit the matter to [the Board] with such directions as the Royal 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 Board] the Royal Court may, on the application of the appellant, and on such terms as the Royal 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 Royal Court may appoint one or more assessors to assist it in the determination of any matter before it.

- (8) An appeal from a decision of the Royal Court under this

^d O.R.C. No. IV of 2007 as amended by O.R.C. No. II of 2008.

section 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.

NOTE

In section 10, the words "T/the Board" and "President" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 12 and section 2, Schedule 1, paragraph 1(e), Schedule 2, Part 1, paragraph 4, with effect from 1st May, 2016.

PART V
ENFORCEMENT PROVISIONS

Powers of entry and inspection of premises.

11. (1) An Authorised Person may, subject to subsections (4) and (6), at any reasonable time enter and inspect any premises –

- (a) in which milk is produced, kept otherwise than for household consumption or sold, or
- (b) which are otherwise used in connection with the distribution of milk.

(2) An Authorised Person may, subject to subsections (4) and (6) enter any premises at any reasonable time for the purpose of –

- (a) where the Authorised Person has reasonable grounds to suspect that an offence under the Law has been or is being committed, investigating that offence,
- (b) considering an application or request in relation an approval or exemption under this Ordinance,
- (c) deciding whether and in what manner any function of [the Board] under the Law ought to be exercised, or
- (d) exercising any function conferred on [the Board] under the Law.

(3) An Authorised Person purporting to enter and inspect or enter premises under this section must, upon request, produce evidence of their authority.

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

- (a) unless the Authorised Person gives to the owner or occupier of the premises concerned at least 24 hours' notice of the Authorised Person's 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 under and in accordance with section 12.

(5) The powers of entry under subsections (1) and (2) include a power –

- (a) for an Authorised Person to be accompanied by such persons, and to bring such equipment and materials as the Authorised Person reasonably considers necessary for the purpose for which the power of entry is being exercised, and
 - (b) for any person accompanying an Authorised Person to exercise any power that may be exercised by the Authorised Person, for the purpose for which the Authorised Person entered, provided that any such person is in the company, and under the supervision, of the Authorised Person exercising the power of entry.
- (6) The powers in this section do not authorise an Authorised Person to enter any premises by force.

NOTE

In section 11, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Warrant to enter premises.

12. (1) If the Bailiff is satisfied by information on oath supplied by 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 section 11, he may grant a warrant to an Authorised Person.

(2) A warrant granted under subsection (1) authorises an Authorised Person 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 milk, milk product, equipment, substance or other thing found in or on the premises), all such powers as he 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 one or more 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 –

- (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, 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 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^e 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 a police officer.

(10) A person must not, without reasonable excuse, fail to give an Authorised Person exercising a warrant under this section such assistance as the Authorised Person may reasonably require for the execution of the warrant.

Supplementary functions.

13. (1) This section applies to an Authorised Person exercising a power under section 11 or under a warrant issued under section 12.

^e Order in Council No. XXIII of 2003 as amended by Order in Council No. XVI of 2009 and the Police Powers and Criminal Evidence (Bailiwick of Guernsey) (Amendment) Ordinance, 2011.

(2) An Authorised Person exercising a power to which this section applies may, where it is reasonably necessary for the purpose for which the Authorised Person has exercised the power –

- (a) inspect milk, a milk product, equipment, a substance or any other thing (including a document or record in any form),
- (b) carry out a measurement or test on milk, a milk product, equipment, a substance or any other thing,
- (c) take a sample of milk, a milk product, equipment or a substance or any other thing,
- (d) use a mark or other method to identify milk, a milk product, equipment, substance or any other thing,
- (e) require any person to produce any document or record (in whichever form it is held) in a legible form, give them such information, or afford them such facilities or assistance, as the Authorised Person considers necessary,
- (f) take copies of a document or record (in whichever form it is held),
- (g) take a photograph of anything, or
- (h) subject to subsection (5), seize and take into possession any milk, milk product, equipment, substance or other

thing which the Authorised Person reasonably believes to be evidence of the commission of an offence under the Law relevant to the purpose for which the power is exercised.

(3) Section 16(1) and (2) (record of thing seized) of PPACE apply in relation to an Authorised Person who seizes and takes into possession any milk or other thing under subsection (2)(h) as it applies in relation to the exercise of a power of seizure by a police officer.

(4) Any milk or other thing which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(h) 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 an offence under the Law, 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.

(5) Subsection (2)(h) 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.

Statutory powers to make requirements.

14. (1) Where an Authorised Person reasonably suspects that an

offence under the Law has been, or is being, committed in relation to any milk or milk product, he may require –

- (a) the farmer who owns the cows from which the milk or milk product was produced, or
- (b) a registered distributor or a person to whom an approval has been given or in respect of whom an exemption has been issued (whether as a person or part of a class of persons) under this Ordinance,

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 –
 - (i) milk or milk product, or
 - (ii) equipment, substance or other thing used in relation to milk or a milk product or distribution or any matter which is required to be approved or which may be exempted under this Ordinance,

in relation to which an Authorised Person suspects that the offence has been committed,

- (b) to furnish an Authorised Person with any documents or records (in whichever form they are held) in a legible

form relating to milk, a milk product or distribution or any matter which is required to be approved or may be exempted under this Ordinance as the Authorised Person may reasonably require, and

- (c) to answer such questions relating to milk, a milk product or distribution or other matter which is required to be approved or may be exempted under this Ordinance as the Authorised Person may reasonably ask.

(3) Any milk, milk product, equipment, substance 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 and any documents or records may be copied by an Authorised Person.

(4) Where milk, a milk product, equipment, substance or other thing is seized under subsection (3), the provisions of section 13(3) to (5) apply to such a seizure as they apply to a seizure made under section 13(2)(h).

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

- (a) may be used in evidence against the person in proceedings other than criminal proceedings,
- (b) may not be used in evidence against the person 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 7 of the Law in relation to a contravention of section 4(2) of the Law or section 17 of this Ordinance,
 - (B) some other offence where, in giving evidence, he 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.

(6) A person must not, without reasonable excuse, fail to comply with a requirement imposed on them under this section.

PART VI

MISCELLANEOUS AND GENERAL PROVISIONS

General functions of [Board].

15. [The Board] must –

- (a) take all reasonable measures necessary to ensure that milk required to be supplied by a farmer under section 2 is so supplied, and

- (b) in accordance with section 3 of the Law, otherwise give effect to the provisions of this Ordinance.

NOTE

In section 15 and the marginal note thereto, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Register of registered distributors.

16. (1) [The Board] must prepare and maintain, in such form as [the Board] may determine, a register containing the names and business addresses of all persons who, for the time being, have entered into an extant commercial agreement with [the Board] for the distribution of milk.

(2) [The Board] must make the appropriate entries and deletions to be made in the register as soon as reasonably practicable after the execution and termination of the relevant commercial agreements with [the Board].

(3) A registered distributor must notify any change of their business address to [the Board] within a period of fourteen days beginning with the date on which the change takes effect.

NOTE

In section 16, the words "T/the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

False, deceptive and misleading statements etc.

17. In addition to the requirements set out in section 4 of the Law, a person must not do any of the following in circumstances in which they intend, or could reasonably be expected to know, that a statement, information or document provided by them would or might be relied upon or otherwise used by any person for the purpose of exercising that person's functions conferred under the Law –

- (a) make a statement which they know or have reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly make a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produce or furnish, or cause or permit to be produced or furnished, any information or document which they know or have reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produce or furnish or recklessly cause or permit to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

Penalties for offences.

18. (1) A person who commits an offence by virtue of section 7 of the Law in relation to a contravention of section 2(1), 6, 7 or 8 of this Ordinance is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5

on the uniform scale, or to both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or both.

(2) A person who commits an offence by virtue of section 7 of the Law in relation to a contravention of –

- (a) section 4, 5 or 6 of the Law, or
- (b) any provision of this Ordinance not mentioned in subsection (1),

is liable on conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

Service of documents.

19. (1) In addition to the provisions relating to service of notices under section 10 of the Law, 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 transmitted to, his usual or last known place of abode,
- (b) on a company, by being transmitted to, its registered office,
- (c) on an overseas company, by being transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office or last known registered or principal

office elsewhere,

- (d) on an unincorporated body, by being transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) on [the Board], by being left at, or sent by post or transmitted to, the principal offices of [the Board] in Guernsey.

(2) If a person notifies [the Board] of an address for service within Guernsey for the purposes of this Ordinance, any document to be given to or served on that person may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section or section 10 of the Law, the document may be served –

- (a) by being published by [the Board] 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.

(4) Subsections (1) to (3) are without prejudice to section 20(5)

and to any other lawful method of service.

(5) Despite the provisions of subsections (1) to (4) and (6) of this section 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 Board] under or for the purposes of this Ordinance is deemed to have been given or served until it is received.

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

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

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

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

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

(8) In this section –

(a) "**document**" does not include a summons,

(b) 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.

NOTE

In section 19, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Exemptions.

20. (1) This section applies to an exemption issued under this Ordinance by [the Board].

(2) An exemption may be –

- (a) issued to a person or a class of persons,
- (b) issued unconditionally or subject to conditions (including, without limitation, conditions limiting the period the exemption is effective), and
- (c) amended or withdrawn by [the Board] in writing.

(3) Before [the Board] amends or withdraws an exemption, other than at the request of the person or class of persons to whom it was issued, it must –

- (a) by notice give the person, or class of persons, in question the opportunity to make written

representations to [the Board] on the amendment or withdrawal, and

- (b) take into account any such written representations received.

(4) Where [the Board] amends or withdraws an exemption other than at the request of the person, or class of persons, in respect of whom the exemption was issued it must notify the person, or class of persons, in question of the decision, the reasons for the same and of the right of appeal under section 10.

(5) An exemption, notice or notification under this section in relation to a class of persons may be issued or effected by [the Board] publishing the exemption, notice or notification in such manner as [the Board] considers appropriate to bring it to the attention of the persons likely to be affected by it.

NOTE

In section 20, the words "the Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Interpretation.

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

"Authorised Person" means a person authorised in writing by [the Board] to perform the functions, or any of the functions, of an authorised person under this Ordinance,

"Bailiff" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"business" includes –

- (a) any economic activity, trade or profession, whether or not carried on for profit, and
- (b) where not already falling within paragraph (a), the carrying on of the activity of running a club or residential establishment or of providing a canteen,

"buy" includes offer or agree to buy,

"canteen" includes the canteen of an office, a school, college of further education, prison or hospital or similar establishment,

"caterer" means a person carrying on business as –

- (a) a restaurateur, publican, refreshment contractor, proprietor of a café, canteen, kiosk or of any other place of refreshment (including a vehicle or a fixed or mobile stall) open to the public, or
- (b) a proprietor of a club or of premises (not being self-catering tourist accommodation) in respect of which a current boarding permit is in effect granted under section 3 of the Tourist Law, 1948^f,

where, food is prepared, in the course of that business, to be ready for

^f Ordres en Conseil Vol. XIII, p. 329 as amended by Ordres en Conseil Vol. XXI, p. 104, Vol. XXVIII, p. 275, Vol. XXXI p. 278, Vol. XXXVIII, p. 307 and Recueil d'Ordonnances Tome XVIII, p. 20 and Tome XXIX, p. 406.

consumption by the final consumer without further preparation, and related expressions are construed accordingly,

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

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

"[the Board]" means the States [States' Trading Supervisory Board],

"distributor" and related expressions: see section 9,

"employee" means an individual who has entered into or who works under a contract of employment,

"enactment" includes a Law, an Ordinance or any subordinate legislation and any Community instrument within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973^h and includes any provision or portion of a Law, an Ordinance, any subordinate legislation or such Community instrument,

"farmer": see section 2(1),

"final consumer" means a person who buys otherwise than for –

^g Ordres en Conseil Vol. XVIII, p. 315 as amended by Order in Council No. III of 2012 and Ordinance No. XXXIII of 2003.

^h Ordres en Conseil Vol. XXIV, p. 87 as amended by Ordres en Conseil Vol. XXVII p. 242, Vol. XXIX pp. 127 and 419, Vol. XXXI p. 278, Order in Council No. XXV of 2002, Recueil d'Ordonnances Tome XXVI, p. 316, Tome XXVIII, p. 79, Ordinance No. XVIII of 2003, No. II of 2007 and No. XIX of 2014.

- (a) the purpose of resale,
- (b) use in the course of catering,
- (c) use in the course of manufacturing, or
- (d) use for the purposes of a residential establishment,

"household consumption" means consumption by a person as a member of, or guest in, a household,

"the Law" means the Milk and Milk Products (Guernsey) Law, 1955,

"manufacturer" means a person, other than a caterer or a person carrying on the business of a residential establishment, who in the course of their business, uses milk in the composition, manufacture or preparation of any other article,

"milk": see section 1(1),

"nursing home" has the meaning in section 18(1) of the Nursing and Residential Homes (Guernsey) Law, 1976ⁱ except that it includes any such home managed by, or on behalf of, the States,

"notice" means notice in writing,

"notify" means notify in writing and related expressions are construed

ⁱ Ordres en Conseil Vol. XXVI, p. 71 to which there are amendments not relevant to this Ordinance.

accordingly,

"obtain" includes offer or agree to obtain,

"person" includes –

- (a) an individual,
- (b) a body corporate,
- (c) any other legal person, and
- (d) an unincorporated body of persons,

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

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

"premises" includes –

- (a) any land or vehicle, and
- (b) any other place whether enclosed or not,

^j Order in Council No. XXIII of 2003 as amended by Order in Council No. XVI of 2009, No. XV of 2011 and Ordinance No. XXXIII of 2003, XXXIII of 2009 and Ordinance No. XXIX of 2011.

"proprietor" means the owner or person otherwise in control,

"publican" means a person who owns or manages a public house or an inn,

"registered distributor" means a person who has entered into an extant commercial agreement with [the Board] for the distribution of milk,

"residential establishment" means a hospital, nursing home, premises owned or operated by the States [Committee for Health & Social Care] for the accommodation of children, residential home or other similar establishment,

"residential home" has the meaning in section 18(1) of the Nursing and Residential Homes (Guernsey) Law, 1976 except that it includes any such home managed by, or on behalf of, the States,

"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 sitting alone,

"sell" includes offer or agree to sell or expose for sale and related expressions are construed accordingly,

"shop" means a business including the retail or wholesale sale, or other disposal, of milk for consumption by the final consumer,

"the States" means the States of Guernsey,

"the States Dairy" means the dairy operated by [the Board] on behalf of the States,

"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,

"supply" includes offer or agree to supply,

"under the Law" for the avoidance of doubt, includes under this Ordinance and under any document issued under this Ordinance,

"under this Ordinance" for the avoidance of doubt, includes under any document issued under this Ordinance,

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

"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^l,

and other expressions used in this Ordinance and defined in the Law have the same meaning as in the Law.

(2) Any reference in this Ordinance to an enactment is a reference

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

^l Ordres en Conseil Vol. XVII, p. 384; as amended by Vol. XXIV, p. 84; and Vol. XXXIV, p. 504.

thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

NOTES

In section 21,

the words, first, "the Board" and, second, "States' Trading Supervisory Board" in square brackets in the definition of the expression "the Board" in subsection (1) and, third, the words "the Board" in square brackets, wherever else occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 12, section 2, Schedule 1, paragraph 1(e), Schedule 2, Part 1, paragraph 4 and section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016;

the words in square brackets in the definition of the expression "residential establishment" 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.

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 States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(e), Schedule 2, Part 1, paragraph 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

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.

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The European Communities (Bailiwick of Guernsey) Law, 1973 has since been repealed by the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, section 1, with effect from 11 p.m. on 31st December, 2020, subject to

the saving in section 2 of the 2018 Law.

Transitional provision.

22. A written approval given by [the Board] under section 3(1)(e) of the Milk (Control) (Guernsey) Ordinance, 1958^m which is in force immediately before the commencement date is deemed to be a written approval given under section 3(1)(e) of this Ordinance.

NOTE

In section 22, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Repeals.

23. The Ordinances set out in the Schedule are repealed.

Citation and commencement.

24. (1) This Ordinance may be cited as the Milk (Control) (Guernsey) Ordinance, 2016 and shall come into force on the 1st March, 2016.

^m Recueil d'Ordonnances Tome XII, p. 23 as amended by Ordres en Conseil Vol. XXXI, pp. 19 and 278 and Recueil d'Ordonnances Tome XIII, pp. 84, 251 and 259, Tome XIV, pp. 28 and 277, Tome XVII, p. 1, Tome XXI p. 427, Tome XXII pp. 453 and 473, Tome XXIV p. 17, Tome XXVII, p. 51, Tome XXVIII p. 433, Tome XXIX, p. 406 and Ordinance No. III of 2010.

SCHEDULE

Section 23

REPEALS

The Milk (Control) (Guernsey) Ordinance, 1958.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1962ⁿ.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1964^o.

The Milk (Contributions from Milk Producers) (Repeal) Ordinance, 1966^p.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1966^q.

The Milk (Control) (Guernsey) Ordinance, 1967^r.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1971^s.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1980^t.

The Milk (Control) (Increase in Fines) (Guernsey) Ordinance, 1983^u.

ⁿ Recueil d'Ordonnances Tome XIII, p. 84 to which there are amendments not relevant to this Ordinance.

^o Recueil d'Ordonnances Tome XIV, p. 28 to which there are amendments not relevant to this Ordinance.

^p Recueil d'Ordonnances Tome XIV, p. 277.

^q Recueil d'Ordonnances Tome XIV, p. 277.

^r Recueil d'Ordonnances Tome XV p. 200.

^s Recueil d'Ordonnances Tome XVII, p. 1.

^t Recueil d'Ordonnances Tome XXI, p. 427.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1983^V.

The Milk (Control) (Amendment) (Guernsey) Ordinance, 1996^W.

The Milk (Control) (Guernsey) (Amendment) Ordinance, 2010^X.

^U Recueil d'Ordonnances Tome XXII, p. 453 to which there are amendments not relevant to this Ordinance.

^V Recueil d'Ordonnances Tome XXII, p. 473 to which there are amendments not relevant to this Ordinance.

^W Recueil d'Ordonnances Tome XXVII, p. 51.

^X Ordinance No. III of 2010.