

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

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

[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. VII of 2014; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Ordinance is prospectively amended by the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016 (No. ** of 2016).

(Made on 26th February, 2014.)

The European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (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: –

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

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

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

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

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 twice level 5 on the uniform scale, to imprisonment for a term not exceeding 2 years, 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.

3. (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 6 or 7 of this Ordinance, the latter construction is to prevail.

Enforcement.

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

NOTE

In section 4, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Consequential amendment of 1970 Law.

5. The 1970 Law is amended by inserting, immediately after section 7 of that Law, the following section –

"Nutrition and health claims complying with Council Regulation.

7A. (1) Nothing in section 6 or in any Order made under

section 7 shall operate to prohibit or, as the case may be, restrict a claim made in accordance with the conditions of the Council Regulation.

(2) In this section –

"claim" has the meaning given to it by the Council Regulation, and

"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, as given effect and modified by the European Communities (Implementation of Council Regulation on Nutrition and Health Claims) (Guernsey) Ordinance, 2014."

Extended meaning of "sale", etc.

6. (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.

NOTE

In section 6, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

Interpretation.

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

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

^c 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

"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^d,

"[Committee]" means the States of Guernsey [Committee for Health & Social Care],

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

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

"person" includes any body or authority,

"sell" has the meaning given by section 6, 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

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

Tome XXIX, p. 406; the European Communities (Implementation of Food Supplements Directive) (Guernsey) Ordinance, 2014. See also Recueil d'Ordonnances Tome XXVII, p. 2; G.S.I. No. 9 of 1996.

^d OJ L 12, 18.1.2007, p. 3.

1989^e.

(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.

NOTES

In section 7, the words, first, "Committee" and, second, "Committee for Health & Social Care" in square brackets in the definition of the expression "Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 6 and section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

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.

Extent.

8. This Ordinance has effect in the Island.

Citation.

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

Commencement.

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

^e 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.

SCHEDULE 1 Sections 1(1) and 2(1)
MODIFICATIONS TO THE COUNCIL REGULATION

Provision of Council Regulation	Modifications
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 10 for this Ordinance to come into force, and

"resolution date" means 27th May, 2011.

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

	<p>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>(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>(3B) An authorised officer exercising any power conferred by subsection (3A) may –</p> <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) (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 34	In subsection (3), immediately after the word "request",

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	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) (Guernsey) Ordinance, 2014".
Sections 42, 48, 51, 52 and 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 "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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