

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. II of 2019

The Transfrontier Shipment of Waste (Sark)

Ordinance, 2019

ARRANGEMENT OF SECTIONS

PART I

MODIFIED EU REGULATION EFFECTIVE IN SARK ETC.

1. Modified EU Regulation to have effect in Sark.
2. Legislation relating to transboundary shipments of waste.
3. Competent authorities of dispatch and destination.
4. Competent authority of transit.

PART II

APPLICATION FOR A FINANCIAL GUARANTEE OR EQUIVALENT INSURANCE

5. Financial guarantees or equivalent insurance.

PART III

ENFORCEMENT POWERS

6. Take-back etc. of waste.
7. Powers to seize waste.
8. Seizure procedures.
9. Powers of entry.
10. Warrant to enter premises.
11. Supplementary functions.
12. Powers to require information.
13. Powers of officers of customs and excise.

PART IV

MISCELLANEOUS PROVISIONS

14. Objections to shipments under waste import and export plan.
15. Registration of dealers and brokers.

PART V

OFFENCES AND PENALTIES

16. Offences: contravention of modified EU Regulation or Ordinance.
17. Offences: obstruction and false information etc.
18. Offences due to default of another.
19. Criminal liability of directors etc.
20. Criminal proceedings against unincorporated bodies.
21. Defences.
22. Penalties.

PART VI
GENERAL PROVISIONS

23. Form and method of service of documents.
24. Interpretation.
25. Repeal, transitional provisions and savings.
26. Extent.
27. Citation.
28. Commencement.

SCHEDULE: Modifications, exceptions and adaptations to the EU Regulation.

The Transfrontier Shipment of Waste (Sark) Ordinance, 2019

THE CHIEF PLEAS OF SARK, in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, hereby order:-

PART I

MODIFIED EU REGULATION EFFECTIVE IN SARK ETC.

Modified EU Regulation to have effect in Sark.

1. Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14th June, 2006 on shipments of waste^b shall have full force and effect in

^a Ordres en Conseil Vol. XXXV(1), p. 65 ; as amended by Ordinance No. IX of 2016.

^b OJ L 190, 12.7.2006, p.1 as amended by Commission Regulation (EC) No. 1379/2007 of 26th November 2007, Commission Regulation (EC) No. 669/2008 of 15th July 2008, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11th March 2009, Commission Regulation (EC) No. 308/2009 of 15th April 2009, Directive 2009/31/EC of the European Parliament and of the Council of 23rd April 2009, Commission Regulation (EU) No. 413/2010 of 12th May 2010, Commission Regulation (EU) No. 664/2011 of 11th July 2011, Commission Regulation (EU) No. 135/2012 of 16th February 2012, Commission Regulation (EU) No. 255/2013 of 20th March 2013, Commission Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20th November, 2013, Regulation (EC) No. 660/2014 of the European Parliament and of the Council of 15th May, 2014, Commission Regulation (EU) No. 1234 of 18th November, 2014 and Commission Regulation EU 2015/2002 of 10th November, 2015.

Sark subject to the adaptations, exceptions and modifications set out in the Schedule^c ("**modified EU Regulation**").

Legislation relating to transboundary shipments of waste.

2. (1) For the avoidance of doubt, the modified EU Regulation provides only for –

- (a) the functions of the competent authorities in relation to Sark, and
- (b) the obligations on persons in relation to exports from, imports into and transits through Sark,

and implements the requirements of the Basel Convention and the OECD Decision in relation to Sark which provide for international, standard, control procedures for transboundary shipments of waste; it does not confer functions on other competent authorities whose functions are conferred under the legislation referred to in subsection (2).

(2) For the avoidance of doubt, exports from, imports into and transits through Sark are also subject to the provisions of any relevant national legislation, including functions conferred on competent authorities, relating to transfrontier shipments of waste of the other countries of dispatch, destination and transit from, to or through which a shipment of waste is planned or takes place

^c To assist the reader, an informal document has been produced showing how the EU Regulation will apply in Sark; it is marked up to show the modifications made by this Ordinance as at the date the Ordinance comes into force and is available from the Office of the Director of Environmental Health and Pollution Regulation and from the Chief Pleas of Sark.

including, without limitation –

- (a) in relation to shipments from, to or through Guernsey or Alderney, the provisions of any Ordinance, relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ,
- (b) in relation to shipments from, to or through the European Union, the EU Regulation which implements the Basel Convention and the OECD Decision in the European Union,
- (c) in relation to shipments, from, to or through a country which is a party to the Basel Convention other than those set out in paragraph (a) or (b), national legislation which implements the requirements set out in the Basel Convention for a system of prior written notification and consent to shipments, and
- (d) in relation to shipments of waste for recovery, from, to or through a country to whom the OECD Decision applies, other than those set out in paragraph (a) or (b), national legislation which implements the OECD Decision.

Competent authorities of dispatch and destination.

3. The Director is the –

(a) competent authority of dispatch^d, and

(b) competent authority of destination^e,

in relation to Sark, on behalf of the Chief Pleas, for the purposes of the modified EU Regulation.

Competent authority of transit.

4. The Director, acting on behalf of the Environment Agency, is the competent authority of transit^f in relation to Sark, on behalf of the Chief Pleas, for the purposes of the modified EU Regulation.

PART II

APPLICATION FOR A FINANCIAL GUARANTEE OR EQUIVALENT
INSURANCE

Financial guarantees or equivalent insurance.

5. (1) The following procedure applies to an application for an approval of a financial guarantee or equivalent insurance, in relation to the export of waste from Sark, for the purposes of the modified EU Regulation -

^d For exports from Sark.

^e For imports into Sark.

^f For transits through Sark.

- (a) the notifier must apply to the Director (as the competent authority of dispatch) for approval of a financial guarantee or equivalent insurance, and
 - (b) the Director must issue a decision within 60 working days after the receipt of the application.
- (2) For the purposes of the modified EU Regulation, the notifier must supply –
 - (a) the financial guarantee or equivalent insurance, or
 - (b) evidence of that guarantee or insurance or a declaration certifying its existence,

as part of the notification document at the time of notification or, with the consent of the competent authority of dispatch (the Director in the case of exports from Sark) at any time before the waste is shipped.

PART III ENFORCEMENT POWERS

Take-back etc. of waste.

6. (1) Where the Director is the competent authority of dispatch and receives notification from another competent authority that a shipment cannot be completed as intended, the Director may serve a notice on the notifier of the shipment requiring the notifier to act in accordance with the relevant requirements

of the modified EU Regulation, relating to take-back of such shipments, within a specified time.

(2) Where the Director is the competent authority of dispatch and receives notification from another competent authority of an illegal shipment the Director may serve a notice on the notifier of the shipment (or if it is not notifiable waste, the person who arranged the shipment) requiring that person to act in accordance with the relevant requirements of the modified EU Regulation, relating to take-back of such shipments, within a specified time.

(3) Where the Director is the competent authority of destination and receives notification from another competent authority of an illegal shipment, the Director may serve a notice on the consignee of the shipment requiring the consignee to act in accordance with the relevant requirements of the modified EU Regulation, relating to take-back of illegal shipments which are the responsibility of the consignee, within a specified time.

(4) Where the Director, acting under the modified EU Regulation, brings back waste into Sark, the Director may recover or dispose of the waste as the Director sees fit at the notifier's expense.

Powers to seize waste.

7. (1) This section applies if the Director has reasonable grounds to suspect that –

(a) the provisions of the modified EU Regulation or this Ordinance are not being, have not been or are not likely to be complied with in respect of any waste, or

- (b) the shipment, recovery or disposal of any waste cannot be completed in accordance with the notification and movement documents or the contract between the notifier and consignee.
- (2) The Director may do any of the following –
- (a) seize that waste,
 - (b) serve a notice on any person who appears to the Director to be in control of such waste –
 - (i) requiring that person to send the waste to any place specified in the notice, or
 - (ii) prohibiting or restricting the movement of that waste.

Seizure procedures.

8. (1) If the Director seizes any waste under section 7, the Director must give to the person in control of it a notice (a "**seizure notice**") –

- (a) giving the grounds for seizing it, and
- (b) setting out the rights under this section to make a claim, and the address for the service of the claim.

(2) If the Director is not immediately able to remove any waste seized under section 7, the Director may mark it in any way the Director sees fit and serve a notice on the person in control of it, identifying it and prohibiting its removal from the premises until it is collected by, or under the direction of, the Director.

(3) If it appears that the waste seized is –

- (a) waste from a shipment that cannot be completed as intended, as referred to in the modified EU Regulation, or
- (b) an illegal shipment, as referred to in the modified EU Regulation,

and the Director is not the competent authority with responsibility for take-back under the modified EU Regulation, the Director must store it pending action by the competent authority with such responsibility.

(4) If the owner of the waste claims that the waste was not liable to seizure, the owner may, within 28 days of the seizure, notify the owner's claim to the Director at the address specified in the seizure notice, setting out the grounds in full.

(5) If a notification of a claim is not received within 28 days, the Director must take such steps as the Director considers appropriate to ensure the recovery or disposal of the waste and for these purposes may serve a notice on the notifier requiring the notifier to recover or dispose of the waste in the manner, and within the time period, specified in the notice.

(6) If a notification of a claim is received within 28 days, the Director must either return the waste or apply to the Court of the Seneschal for an order for the confirmation of the notice and the recovery or disposal of the waste and, if the Court confirms the notice, the Court must order its recovery or disposal.

Powers of entry.

9. (1) The Director may, subject to subsection (2), enter any premises at any reasonable time –

- (a) to determine whether any provision of the modified EU Regulation, this Ordinance or a notice served under the modified EU Regulation or this Ordinance is being, or has been, complied with,
- (b) to exercise or perform one or more of the Director's functions under the modified EU Regulation or this Ordinance,
- (c) to determine whether and, if so, how such a function should be exercised or performed, or
- (d) where the Director has reasonable grounds to suspect that an offence under this Ordinance has been committed, for the purpose of investigating that offence.

(2) The power of entry under subsection (1) shall not be exercisable (other than in a case of emergency) -

- (a) unless the Director gives to the owner or occupier of the premises concerned at least 24 hours' notice of the Director'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 Seneschal under and in accordance with section 10.
- (3) The power of entry under subsection (1) includes a power -
- (a) for the Director to take onto the premises such persons, equipment and materials as the Director reasonably considers necessary for the purpose for which the power of entry is being exercised, and
 - (b) for such persons to exercise any power that may be exercised by the Director, for the purpose for which the Director entered, provided that any such person is in the company, and under the supervision, of the Director.

Warrant to enter premises.

10. (1) If the Seneschal is satisfied by information on oath supplied by the Director, that there are reasonable grounds for entering any premises for any purpose for which the Director has a right to enter premises under this Part, the Seneschal may grant a warrant to the Director.

(2) A warrant granted under subsection (1) shall authorise the Director 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 waste, equipment, substance or other thing found in or on the premises), all such powers as the Director may exercise under this Part,

for the purposes indicated in subsection (1).

(3) The Seneschal shall not issue a warrant under subsection (1) unless the Seneschal is satisfied that any 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 to the occupier of the premises -

- (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 the Director, 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) The Director 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 the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law,

2003⁸ ("PPACE") shall apply in relation to the issue of a warrant under this section to the Director as they apply in relation to the issue of a warrant to a police officer.

(10) The following additional requirements shall apply in relation to a warrant, or application for a warrant, issued or made under this section -

- (a) an application for a warrant under this section and a warrant issued under this section must identify, in so far as is practicable, any waste sought, and
- (b) the endorsement required to be made on a warrant under section 11(9) of PPACE must state whether any waste sought was found and whether any waste, other than that sought, was seized.

Supplementary functions.

11. (1) This section applies where the Director is exercising a power of entry under section 9 or under a warrant issued under section 10.

(2) The Director exercising a power to which this section applies

may, where it is reasonably necessary for the purpose for which the Director has exercised the power -

⁸ Order in Council No. XXIII of 2003; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; and No. IX of 2016.

- (a) inspect any waste, equipment, substance or other thing (including a document or record in any form),
- (b) carry out a measurement or test on any waste, equipment, substance or other thing,
- (c) take a sample from any waste, equipment, substance or other thing,
- (d) use a mark, microchip or other method to identify any waste, equipment, substance or other thing,
- (e) take copies of a document or record (in whichever form it is held),
- (f) take a photograph of anything, or
- (g) subject to subsections (5) and (6), seize and take into possession or detain any waste, equipment, substance or other thing which the Director reasonably believes to be evidence of the commission of an offence under this Ordinance relevant to the purpose for which the power is exercised.

(3) Section 16(1) and (2) (record of thing seized) of PPACE shall apply in relation to the seizure and taking into possession by the Director of anything under subsection (2)(g) as it applies in relation to the exercise of a power of seizure by a police officer.

(4) Anything which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(g) 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 a relevant offence,
- (b) for forensic examination or for investigation in connection with an offence, or
- (c) for use in connection with the enforcement of the requirements of a notice served under this Ordinance,

except that nothing may be retained for such a purpose where a photograph or a copy would be sufficient.

(5) Subsection (2)(g) 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.

(6) For the avoidance of doubt, the seizure of anything which is waste for the purposes of the powers in sections 7 and 8 is also subject to the provisions of those sections.

Powers to require information.

12. (1) Where the Director reasonably suspects that an offence under this Ordinance has been, or is being, committed in relation to any waste the Director may require the notifier, consignee or any other person who appears to the Director to be in control of such waste to comply with any of the requirements indicated in subsection (2).

(2) The requirements for the purpose of subsection (1) are -

- (a) to furnish the Director with such information, including records and other documents, relating to the waste as the Director may reasonably require, and
- (b) to answer such questions relating to the waste as the Director may reasonably ask.

(3) A statement made by a person in response to a requirement imposed under this section or otherwise under this Ordinance or the modified EU Regulation -

- (a) may be used in evidence against that person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against that 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 17(2) or (3),
 - (B) some other offence where, in giving evidence, the person 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.

Powers of officers of customs and excise.

13. (1) On a request made to an officer of customs and excise by the Director for the purpose of facilitating the exercise of any function conferred on the Director by the modified EU Regulation or this Ordinance, an officer of customs and excise may detain, for not more than 5 working days, any waste specified in the request which has been brought into Sark or is to be dispatched from Sark.

(2) Anything detained under this section shall be dealt with during the period of its detention in such manner as the States of Guernsey Committee for Home Affairs, on behalf of the Chief Pleas of Sark, may direct.

(3) Without prejudice to the provisions of the Customs and Excise

(General Provisions) (Bailiwick of Guernsey) Law, 1972^h, the master of every ship and the commander of every aircraft which arrives in Sark from a port or place outside Sark must declare to an officer of customs and excise -

- (a) any waste carried in that ship or aircraft, and
- (b) all waste which is to be unloaded from that ship or aircraft in Sark,

and such an officer may, for the purpose of enabling the officer to determine whether or not any such waste is being carried and, if so, any fact or circumstance in connection with the waste and the carriage of the waste, require the master or commander -

- (i) to answer any question put to the master or commander by the officer, and
- (ii) to produce any document or information in the master or commander's custody, possession or power as the officer may reasonably require.

(4) Expressions used in subsection (3) shall, to the extent that a meaning is not assigned to them by this Ordinance, have the meanings given by the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

^h Ordres en Conseil Vol. XXIII, p. 573, as amended by Ordres en Conseil Vol. XXXIII, p. 217 and Ordinance No. IX of 2016. There are other amendments not relevant to this Ordinance.

PART IV
MISCELLANEOUS PROVISIONS

Objections to shipments under waste import and export plan.

14. (1) The Sark Douzaine, acting on the advice of the Director, must prepare and submit to the Chief Pleas for approval a management plan for the importation and exportation of waste ("**the plan**") which must contain the Chief Pleas' policies in relation to the import and export of waste for recovery or disposal.

(2) For the purpose of ensuring environmentally sound management of waste and preventing movements of waste which are not in accordance with the plan, the Director must, within the applicable time limit specified in the modified EU Regulation, object to any shipment of waste notified under the modified EU Regulation which the plan indicates should not be imported into or exported from Sark.

(3) The Sark Douzaine, acting on the advice of the Director, must take into account relevant obligations under the Basel Convention and the OECD Decision in preparing the plan.

(4) This section is without prejudice to the provisions of the modified EU Regulation which provide that the Director may raise reasoned objections to waste shipments on one or more of the additional grounds set out in that Regulation.

Registration of dealers and brokers.

15. (1) The Director must establish and maintain a register of

establishments and undertakings in Sark which arrange as dealer or broker for the disposal or recovery of waste.

(2) The register must be available for public inspection during ordinary office hours.

(3) The register must contain the following information in relation to each such establishment or undertaking registering with the Director under this section -

- (a) the name of the establishment or undertaking,
- (b) the address of its principal place of business, and
- (c) the address of any place at or from which it carries on business.

(4) No establishment or undertaking may register with the Director under this section unless it conforms to such standards and complies with such terms and conditions as the Director may, in the Director's absolute discretion, think fit.

(5) An establishment or undertaking not registered with the Director under this section is not a registered dealer or registered broker, in relation to Sark, for the purposes of the modified EU Regulation.

PART V

OFFENCES AND PENALTIES

Offences: contravention of modified EU Regulation or Ordinance.

16. (1) A person who contravenes a provision of the modified EU Regulation or of this Ordinance is guilty of an offence.

(2) A person who contravenes a condition of a consent laid down by the Director or other requirement imposed by the Director under the modified EU Regulation is guilty of an offence.

(3) Any person (other than the Director or a person acting under the direction of the Director) who removes waste referred to in section 8(2) from the premises is guilty of an offence.

(4) A person who contravenes a prohibition, restriction or other requirement of a notice served by the Director on that person under section 6, 7 or 8(5) is guilty of an offence.

Offences: obstruction and false information etc.

17. (1) A person who without reasonable excuse, proof of which lies on that person, obstructs or fails to give all reasonable assistance to -

(a) the Director, a person acting under the direction of the Director under section 8 or taken onto premises by the Director under section 9(3) in the exercise or purported exercise of that person's functions under this Ordinance, or

(b) an officer of customs and excise in the exercise or

purported exercise of that officer's functions under section 13,

is guilty of an offence.

(2) A person who in purported compliance with any provision of, or requirement under, this Ordinance or the modified EU Regulation -

- (a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(3) A person who, without reasonable excuse, proof of which lies on that person, fails to comply with –

- (a) a requirement imposed by the Director under section 12, or
- (b) a requirement imposed by an officer of customs and excise under section 13(3)(i) or (ii),

is guilty of an offence.

Offences due to default of another.

18. Where the commission by any person of an offence under this Ordinance is due to the act or default of another person, the latter is guilty of the offence and may be proceeded against and punished accordingly, whether or not proceedings are taken against the former.

Criminal liability of directors etc.

19. (1) Where an offence under this Ordinance is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, controller, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal

personality, any general partner,

- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraph (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

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

(3) In this section –

"body corporate" means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

"foundation" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012ⁱ, or
- (b) an equivalent or similar body created or established

ⁱ Order in Council No. I of 2013; as amended by Order in Council No. VI of 2017; and Ordinance No. IX of 2016.

under the law of another jurisdiction (however named), and

"foundation official" means –

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

"general partner" means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of **"limited partnership"**, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995^j, and

^j Ordres en Conseil Vol. XXXVI, p. 264 ; as amended by Ordres en Conseil Vol. XXXVI, p.571; Order in Council No. IV of 2001; No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. No. 51 of 2016.

- (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership corresponds to that of a general partner described in paragraph (a) of this definition.
- (4) In this section and in section 20 "**limited partnership**" means -
- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
 - (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which -
 - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
 - (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the

business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

20. (1) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Ordinance must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013^k, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

Defences.

21. (1) In proceedings against a person for an offence under this Ordinance, it is a defence for that person to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) In proceedings against a person for an offence under section 16(2), in respect of the contravention of a condition of a consent laid down by the Director under the modified EU Regulation, it is a defence for that person to show

^k Order in Council No. VI of 2014; as amended by Order in Council No. VI of 2017; Ordinance No. XII of 2015; and No. IX of 2016.

that they were not reasonably able to comply with the condition concerned by reason of an emergency.

Penalties.

22. A person guilty of an offence under this Ordinance is liable -
- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both, or
 - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

PART VI
GENERAL PROVISIONS

Form and method of service of documents.

23. (1) The forms and methods of service provided for below are subject to the provisions of the modified EU Regulation in relation to –
- (a) the forms and methods for submitting information and documents which are required to be submitted under that Regulation, and
 - (b) standard forms provided for certain documents, including notification and movement documents, under that Regulation.

(2) Where a document is to be given or served under, or for the purposes, of the modified EU Regulation or this Ordinance, it may be given or served on –

- (a) an individual, by being delivered to that individual, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Sark or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) an unincorporated body, by being given to or served on any partner, member, manager or officer of the body in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Sark or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey.

(3) In subsection (2) –

(a) 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.

(4) If a person notifies the Director of an address for service within Sark 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.

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

(a) by being published by the Director in such manner and for such period as the Director thinks fit, or

(b) by being published in the official notice boxes and in the Sark Gazette Officielle published on the website of the Sark Gazette Officielle,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(6) Subsections (2) to (5) are without prejudice to any other lawful method of service.

(7) Notwithstanding the provisions of subsections (2) to (6) and (9) 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 Director under or for the purposes of this Ordinance is deemed to have been given or served until it is received.

(8) If a person upon whom a document is to be served under this Ordinance is a minor or person under legal disability, the document must be served on that person's guardian; and if there is no guardian, the party wishing to effect service may apply to the Court of the Seneschal for the appointment of a person to act as guardian for the purposes of this Ordinance.

(9) 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 fourth day after the day of posting, or

(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.

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

(11) The provisions of this section are subject to any contrary provision under this Ordinance.

Interpretation.

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

"**Basel Convention**" means the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal^l,

"**Court of the Seneschal**" means the Court of the Seneschal of Sark,

"**country**" means a country or territory,

"**Director**" means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Environmental Pollution (Guernsey) Law, 2004^m,

^l 1673 U.N.T.S. 126.

^m Order in Council No. XIII of 2004; as amended by Orders in Council No. XIII of 2010; No. XVI of 2015; Ordinance No. XXXIII of 2003; Nos. XXXVIII and XLIX of 2006; No. XIII of 2007; No. XVIII of 2010; No. V of 2011; and No. IX of 2016.

"**Environment Agency**" means the body established by section 1 of the Environment Act 1995ⁿ,

"**the EU Regulation**" means the Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14th June, 2006 on shipments of waste,

"**the modified EU Regulation**" means the EU Regulation as modified by section 1,

"**notifiable waste**" means waste that is subject to the prior written notification and consent procedures of Title II of the modified EU Regulation under any provision of that Regulation,

"**notice**" means notice in writing,

"**OECD Decision**" means Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations,

"**officer of customs and excise**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"**the plan**": see section 14(1),

ⁿ An Act of Parliament (1990 c.25).

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

"**premises**" includes –

- (a) any land, vehicle or aircraft,
- (b) any ship within the meaning of section 294 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^o, and
- (c) any other place (whether enclosed or not),

"**Sark**" includes all other islands, islets and rocks around the coast of Sark, whether or not attached at low water and the territorial waters adjacent to Sark,

"**the Seneschal**" means the Seneschal of Sark appointed under section 6(1) of the Reform (Sark) Law, 2008^P and includes –

- (a) the Deputy Seneschal appointed under section 7, and

^o Order in Council No. VIII of 2004 to which there are amendments not relevant to this Ordinance.

^P Order in Council No. V of 2008; as amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; and Sark Ordinances Nos. II and No. VI of 2015; and No. XI of 2017.

(b) a Lieutenant Seneschal appointed under section 8,

of that Law,

"seizure notice": see section 8(1),

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

"waste" has the meaning given by the modified EU Regulation except that for the purposes of the powers in sections 7, 8, 12(1) and (2) and 13(1) it includes –

(a) anything which the Director has reasonable grounds to suspect is waste, and

(b) the container in which the waste or thing is carried,

"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^r,

^q Ordres en Conseil Vol. XXXI, p. 320; for the current scale of fines see the Uniform Scale of Fines (Sark) (Amendment) Ordinance, 2006.

^r Ordres en Conseil Vol. XVII, p. 384; as amended by Ordres en Conseil Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367; Ordinance No. XXXIII of 2003; No. IX of 2016; Ordinance No. XXIV of 2017; Alderney Ordinance No. VII of 2017; and Sark Ordinance No. XII of 2017.

and other expressions used in this Ordinance have the meanings in the modified EU Regulation.

(2) Any reference in this Ordinance to an enactment, subordinate legislation or Community provision (within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994) or to the OECD Decision is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

Repeal, transitional provisions and savings.

25. (1) The Transfrontier Shipment of Waste (Sark) Ordinance, 2001^s is repealed.

(2) Despite subsection (1) –

(a) this Ordinance does not apply in relation to any shipment of waste that has been notified, and for which the competent authority of destination has given acknowledgement, before 18th January, 2019, and

(b) the Transfrontier Shipment of Waste (Sark) Ordinance, 2001, including the Regulation set out in the Schedule to that Ordinance, continues to apply in

^s Folio 120 of the Chief Pleas of Sark; as amended by Order in Council No. XIII of 2010; and Ordinance No. IX of 2016.

relation to such a shipment as if it had not been repealed.

Extent.

26. This Ordinance extends to Sark.

Citation.

27. This Ordinance may be cited as the Transfrontier Shipment of Waste (Sark) Ordinance, 2019.

Commencement.

28. This Ordinance shall come into force on the 18th January, 2019.

SCHEDULE

Section 1

MODIFICATIONS, EXCEPTIONS AND ADAPTATIONS TO THE EU REGULATION

PART I GENERAL MODIFICATIONS

Application of EU Regulation.

1. (1) The EU Regulation is modified so that it applies only to shipments of waste –

- (a) imported into Sark,
- (b) exported from Sark, or
- (c) in transit through Sark.

(2) In this paragraph and paragraph 2, the terms "imported", "exported" and "transit" are to be construed in accordance with the corresponding definitions of "import", "export" and "transit" in Article 2 of the EU Regulation as modified by this Ordinance.

(3) Paragraphs 19 and 20 of this Schedule substitute Articles 41 and 43 of the EU Regulation to prohibit the import into Sark of waste destined for disposal or recovery so that the other provisions of the EU Regulation, insofar as they relate to the imports of waste are to be read subject to those prohibitions and

are not to be construed as inferring that consent may be granted for such shipments.

Functions of competent authorities.

2. (1) The EU Regulation is modified, subject to paragraph 1(3) and the following provisions of this Schedule, so that references to -

- (a) the competent authority of destination or the competent authority of destination in the Community (however worded) are to be read as referring to the Director, on behalf of the Chief Pleas, in relation to shipments of waste imported into Sark,
- (b) the competent authority of dispatch or the competent authority of dispatch in the Community (however worded) are to be read as referring to the Director, on behalf of the Chief Pleas, in relation to shipments of waste exported from Sark,
- (c) the competent authority of transit or the first and last competent authority of transit in the Community (however worded) are to be read as referring to the Director, acting on behalf of the Environment Agency, in relation to shipments of waste in transit through Sark,
- (d) the competent authority with jurisdiction over the area where the waste was discovered (however worded) are to be read as referring to the Director, on

behalf of the Chief Pleas, in relation to waste discovered in Sark, or

- (e) the competent authority concerned or the competent authorities (however worded) are to be read as including the Director,

except that references under items (a) and (d) are not to be read as referring to the Director, in relation to shipments of waste imported into Sark, to the extent they can apply only in relation to legal imports of waste (for example functions in relation to pre-consents and the legal carrying out of recovery or disposal operations in Sark) as the import of waste destined for disposal or recovery into Sark is prohibited as referred to in paragraph 1(3).

(2) References to competent authorities, other than the Director, are to be read (subject to the following provisions of this Schedule) as referring to the required procedure in relation to controls on shipments of waste under the modified EU Regulation, including where relevant the notification and obtaining of the consent of all competent authorities concerned, and not as purporting to confer or impose a function on those other competent authorities under this Ordinance who will act in accordance with relevant national legislation applying to waste shipments, for example the EU Regulation in the European Union.

General modifications.

3. (1) The following general modifications apply throughout the EU Regulation, unless the context requires otherwise, subject to paragraph 1(3) and the following provisions of this Schedule –

- (a) references to "the Community", except where referred to in the title to EU legislation, are to be read as references to "Sark",
- (b) references to "Community legislation", other than in Article 1(3)(e), are to be read as references to "Sark legislation",
- (c) references to "third countries" and to "a third country" are to be read as references to "countries outside Sark" and "a country outside Sark" respectively,
- (d) except in Article 49(2), references to obligations imposed on, or to actions of, facilities (however worded) are to be read as being imposed on, or carried out by, operators of facilities and references to the permit of a facility are to be read as a reference to the permit of the operator of a facility,
- (e) references to "the competent authority in the country of the customs office", "the competent authority of the country of the customs office in which the waste is detained" (however worded) are to be read as references to "the Director",
- (f) references to "its area of jurisdiction", "its area of jurisdiction or elsewhere within the country of dispatch", "the area of jurisdiction of the competent

authority of dispatch" and "their jurisdiction" are to be read as references to "Sark",

- (g) references to shipments of waste originating from or discovered within "a Member State" or "that Member State" (however worded) are construed as references to shipments originating or discovered in Sark,
- (h) references to "international conventions concluded by the Member State(s) concerned or the Community" are to be read as references to "international conventions the UK's ratification of which is extended to Sark",
- (i) references to "the objecting country" are to be read as references to "Sark",
- (j) references to "Community and national provisions concerning liability" are to be read as references to "the provisions of any other enactment concerning liability",
- (k) references to "shipped through Member States" are to be read as references to "shipped through Sark",
- (l) references to "the customs office of export and the customs office of exit from the Community", "the customs office of exit from the Community" or "the

customs office of entry into the Community (however worded) are to be read as references to "an officer of customs and excise",

- (m) references to "licensed new waste producer" or "licensed collector" are to be read as references to "new waste producer" or "collector" respectively, and
- (n) references to compliance with or anything being done in accordance with the requirements of an Article of the modified EU Regulation (however worded) are to be read as referring to compliance with the equivalent national legislation where referring to a person involved in carrying on an activity in relation to a shipment of waste outside Sark (for example, the EU Regulation where referring to an activity being carried on in an EU country).

(2) References in the modified EU Regulation to persons involved in shipments of waste, or the subsequent recovery or disposal of the same, who are not carrying on an activity in relation to such shipments in Sark ("third country persons"), including references to operators of facilities to which shipments of waste from Sark may be exported for recovery or disposal, are retained to the extent necessary to clarify the context of functions conferred or imposed on persons carrying on activities in Sark under the EU Regulation; such references are not to be read as purporting to confer or impose a function on third country persons under this Ordinance who will be subject to relevant national legislation applying to shipments of waste, for example the EU Regulation in the European Union.

General disapplications.

4. The following provisions of the EU Regulation do not apply as it has effect in Sark –

- (a) in Title II, Article 21 (public access to notifications), Article 30 (border area agreements) and Chapter 6 (shipments within the Community with transits via third countries),
- (b) Title III (Shipments exclusively within Member States),
- (c) in Title IV, Article 40 (exports to overseas countries or territories),
- (d) in Title V, Article 45 (procedural requirements for imports from a non-OECD Decision country party to the Basel Convention or from other areas during situations of crisis or war) and Chapter 3 (general provisions),
- (e) in Title VII, Article 50 (enforcement in member states) and Articles 53 to 64, and
- (f) Annex IX (additional questionnaire for reports by Member States pursuant to Article 51(2)).

PART II
MODIFICATIONS OF PARTICULAR PROVISIONS

Modifications of particular provisions.

5. In its application to Sark the provisions of the EU Regulation are further modified as set out in the following provisions of this Schedule.

Title I: Scope and definitions.

6. In Title I (scope and definitions) –

- (a) Articles 1(2)(a), (3)(g), 1(5), Articles 2(26), (28) and (29) and subparagraphs (b) and (f) of Article 2(34) are omitted,
- (b) in Article 1(3)(e) for "Community legislation" substitute "European Community legislation",
- (c) in Article 1(3)(i) for "Member State" substitute "Member State of the European Union",
- (d) in the definition of "competent authority" in Article 2(18) –
 - (i) in subparagraph (a), after the words "Member States" insert "of the European Union" and after the words "in accordance with article 53" insert "of this Regulation as it applies in the European Union", and

(ii) in subparagraph (b), after the words "non-Member State" insert "of the European Union",

(e) after the definition of "country of transit" in Article 2(24) insert –

"24A. 'Sark' includes all other islands, islets and rocks around the coast of Sark, whether or not attached at low water and the territorial waters adjacent to Sark;

"24B. 'country' includes a territory;

24C. 'Director' means the Director of Environmental Health and Pollution Regulation appointed under section 4 of the Environmental Pollution (Guernsey) Law, 2004;

24D. 'registered' means registered by the Director under section 15 of the Transfrontier Shipment of Waste (Sark) Ordinance, 2019;"

(f) for Article 2(27) substitute –

"27. 'officer of customs and excise' means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972;"

and

- (g) in the definition of "illegal shipment" in Article 2(35) –
 - (i) in subparagraph (e), for "Community or international rules" substitute "Sark law or any relevant international agreements the UK's ratification of which is extended to Sark", and
 - (ii) in subparagraph (f), for "and 43" substitute "or 43".

Heading to Title II and Article 3 (overall procedural framework).

- 7. (1) For the heading to Title II substitute –

"WASTE SHIPMENTS-COMMON PROVISIONS".

- (2) In Article 3 (overall procedural framework) –
 - (a) in paragraph (1), after the words "provisions of this Title" insert "subject to the adaptations and additions in Articles 35, 38, 42, 44, 47 and 48 in relation to particular categories of shipment", and
 - (b) in paragraphs (2)(b) and (3) for "Article 58" substitute "Article 58 as it applies in the European Union".

Articles 6 (financial guarantee).

8. In Article 6 (financial guarantee) –

- (a) in paragraph (4), the second subparagraph is omitted,
- (b) in paragraph (7), for "The competent authority within the Community which has approved the financial guarantee or equivalent insurance" substitute –

"Where the Director has approved the financial guarantee or equivalent insurance, the Director",

- (c) in the second subparagraph of paragraph (8), for "The financial guarantee or equivalent insurance shall be released when the competent authority concerned" substitute –

"The Director shall release a financial guarantee or equivalent insurance approved by the Director when the Director", and

- (d) paragraph (9) is omitted.

Article 9 (consents by competent authorities etc.).

9. In Article 9(9) (consents by competent authorities etc.), after "transmitted by" insert "the Director by".

Articles 11 (objections to shipments of waste destined for disposal) and 12 (objections to shipments of waste destined for recovery).

10. (1) In Article 11 (objections to shipments of waste destined for disposal) –

(a) subparagraphs (a), (e), (g) and (h) of paragraph (1) and paragraphs (3) and (6) are omitted,

(b) in paragraph (1) –

(i) for "in accordance with the Treaty" substitute "must do so where required under section 14 of the Transfrontier Shipment of Waste (Sark) Ordinance, 2019",

(ii) in subparagraph (b), for "national legislation" substitute "Sark legislation",

(iii) in subparagraph (c) –

(A) after "convicted of" insert "an offence in relation to",

(B) for "in accordance with national legislation" substitute "and in this paragraph **offence**" includes an offence under the law of another jurisdiction which would be an offence in Sark if the conduct, activity

or omission constituting the offence
occurred in Sark, and

(2) In Article 12 (objections to shipments of waste destined for
recovery) –

(a) subparagraphs (a) and (c), the whole of the
disapplication following subparagraph (c),
subparagraphs (i) and (k) of paragraph (1) and
paragraphs (5) and (6) are omitted, and

(b) in paragraph (1) –

(i) for "in accordance with the Treaty" substitute
"must do so where required under section 14
of the Transfrontier Shipment of Waste (Sark)
Ordinance, 2019",

(ii) in subparagraph (b), for "national legislation"
substitute "Sark legislation",

(iii) in subparagraph (d) -

(A) after "convicted of" insert "an offence
in relation to",

(B) for "in accordance with national
legislation" substitute "and in this

paragraph "offence" includes an offence under the law of another jurisdiction which would be an offence in Sark if the conduct, activity or omission constituting the offence occurred in Sark", and

- (iv) in subparagraph (j), the words "(also in cases where temporary derogations are granted)" are omitted.

Article 14 (pre-consented recovery facilities).

11. In Article 14 (pre-consented recovery facilities), in the last subparagraph of paragraph (5), after "The total time needed" insert "by the Director to receive further information or documentation from the notifier".

Article 15 (additional provisions etc.).

12. In Article 15 (additional provisions regarding interim recovery and disposal operations) subparagraph (f)(i) is omitted.

Chapter 2 (general information requirements) and chapter 3 (general requirements).

13. (1) In Article 18 (waste to be accompanied by certain information)–

- (a) in paragraph (1)(a), for "the country of dispatch" substitute "Sark" and after "who arranges the shipment" insert ", in the case of an export",

- (b) in paragraph (1)(b), after "shall be signed" insert ", in the case of exports," and after "and the consignee" insert ", in the case of imports,"
 - (c) paragraph (3) is omitted, and
 - (d) in paragraph (4), for "required by Community and national legislation" substitute "required under Sark law".
- (2) In Article 20 (keeping of documents and information) –
- (a) in paragraph (1), for "by the competent authorities, the notifier, the consignee and the facility which receives the waste" substitute "by the Director, the notifier, the consignee and the operator of the facility which receives the waste", and
 - (b) in paragraphs (1) and (2), for "shall be kept in the Community" substitute "shall be kept".

Article 22 (take-back where a shipment cannot be completed etc.).

14. In Article 22(8) (take-back when a shipment cannot be completed as intended), for the references to "the country of dispatch" substitute "Sark, where it is the country of dispatch,".

Article 24 (take-back when a shipment is illegal).

15. (1) In Article 24 (take-back when a shipment is illegal) –
- (a) in paragraph (6), after "subsidiary obligation of" insert "Sark, where it is", and
 - (b) in paragraph (8), after "shipments are returned" insert "from Sark".

Chapter 5 (general administrative provisions).

16. (1) In Article 26 (format of the communications), paragraph (4) is omitted.

(2) In Article 28(1) (disagreement on classification issues), for "Community or international law" substitute "international law".

(3) In Article 29 (administrative costs), at the beginning insert "The Director may charge" and the words "may be charged" are omitted.

Title IV, Chapter 1 (exports of waste for disposal).

17. (1) In Article 34 –
- (a) for the heading substitute –

**"Export prohibited except to EFTA countries,
Member States of the EU, Guernsey or Jersey",**
 - (b) in paragraph (2), for "which are also Parties to the

Basel Convention" substitute "or Member States of the European Union which are also Parties to the Basel Convention or in Guernsey or Jersey", and

(c) in paragraph (3) –

(i) for "Party to the Basel Convention" substitute "or a Member State of the European Union Party to the Basel Convention or to Guernsey or Jersey", and

(ii) in subparagraph (a) after "EFTA country" insert ", Member State of the European Union, Guernsey or Jersey".

(2) In Article 35 –

(a) for the heading substitute –

"Procedures when exporting to EFTA countries, Member States of the EU, Guernsey or Jersey",

(b) in paragraph (1), for "Parties to the Basel Convention" substitute "or Member States of the European Union which are also Parties to the Basel Convention or in Guernsey or Jersey",

(c) in paragraph (2), after "adaptations" insert "and

additions",

- (d) in paragraph (2)(a), for "shall have 60 days" substitute—

"shall have –

- (i) in the case of a competent authority of a Member State of the European Union 30 days in accordance with the EU Regulation,
- (ii) in the case of a competent authority of Guernsey or Alderney, 30 days in accordance with any Ordinance relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or
- (iii) in the case of a competent authority of another country, 60 days, or such other period provided for in accordance with relevant national legislation in the country of transit, ",

(e) in paragraph (2)(b) –

(i) for "not earlier than 61 days" substitute –

"not earlier than -

(i) 30 days, where the country of transit is a Member State of the European Union in accordance with the EU Regulation;

(ii) 30 days, where the country of transit is Guernsey or Alderney, in accordance with any Ordinance relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or

(iii) 61 days, where the country of transit is another country, or such other period provided for in accordance with relevant national legislation in the country of transit,".

(ii) in the last sentence, for "61 day time limit"

substitute "relevant time limit ",

- (f) in paragraph (3) subparagraphs (a), (b) and (d) are omitted, and
- (g) in paragraph (6), for all the words from "inform the competent authority in the country" to the end of the paragraph substitute "inform the Director."

Title IV, Chapters 2 (exports of waste for recovery) and 3 (general provisions).

18. (1) In Article 36 (exports prohibition) –

(a) in paragraphs (3) and (5) for references to "Member States" and "the Member State concerned" substitute "the Director", and

(b) in paragraph (5) –

(i) for the second and third sentences substitute –

"The Director shall notify such cases to the United Kingdom before the end of each calendar year for forwarding to the Secretariat of the Basel Convention", and

(ii) the last sentence is omitted.

(2) In Article 37 (procedures when exporting waste listed in

Annex III or IIIA) –

(a) for paragraphs (1) to (3) substitute -

- "1. Export for recovery of waste listed in Annex III or IIIA, which is not prohibited under Article 36, to countries to which the OECD Decision does not apply shall be governed by the procedures set out in the Annex to Commission Regulation (EC) No. 1418/2007 of 29th November, 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply.

2. Where it is indicated in the Annex to Commission Regulation (EC) No. 1418/2007 that a country, with regard to certain shipments of waste, does not prohibit them or apply the procedure of prior written notification and consent as described in article 35 of this Regulation, article 18 of this Regulation shall apply *mutatis mutandis* to such shipments.

3. The references to the procedures of the EU Regulation in the Annex to Commission Regulation (EC) No. 1418/2007 shall be construed as referring to those procedures as set out in this modified EU Regulation.", and
 - (b) in paragraph (5), for "paragraph 1(b) of this Article" substitute "a procedure of prior written notification and consent as described in Article 35".
- (3) In Article 38 (exports of waste listed in Annexes III, IIIA etc.) –
 - (a) in paragraph (2) –
 - (i) after "adaptations" insert " and additions", and
 - (ii) in subparagraph (c) for "Article 9" substitute "Title II",
 - (b) in paragraph (3)(a), for "the competent authorities of dispatch and, where appropriate, transit in the Community shall send a stamped copy of their decisions" substitute –

"the Director shall send a stamped copy of the
Director's decision",
 - (c) in paragraph (5)(a), for "shall have 60 days"

substitute–

"shall have –

(i) in the case of a competent authority of a Member State of the European Union, 30 days in accordance with the EU Regulation; or

(ii) in the case of a competent authority of another country, 60 days, or such other period provided for in accordance with relevant national legislation in the country of transit;"

(d) in paragraph (5)(b) –

(i) for "not earlier than 61 days" substitute -

"not earlier than -

(i) in the case of a competent authority of a Member State of the European Union, 30 days in accordance with the EU Regulation; or

(ii) in the case of a competent authority of another country, 61 days or such

other period provided for in accordance with relevant national legislation in the country of transit", and

(ii) in the last sentence, for "61 day time limit" substitute "relevant time limit",

(e) in paragraph (6), after "is exported" insert "from Sark", and

(f) in paragraph (7), for all the words from "inform the competent authority in the country" to the end of the paragraph substitute "inform the Director.".

Title V, Chapter 1 (imports of waste for disposal).

19. (1) For Article 41 substitute –

"Article 41

Imports prohibited

1. Imports into Sark of waste destined for disposal shall be prohibited.".

(2) Article 42 is applied to Sark, with the following modifications, only insofar as it is applied by Article 47 (transit through Sark of waste destined for disposal) -

(a) for the heading substitute –

**"Procedural requirements applying to transit
shipments under Article 47",**

(b) in paragraph (1), for "Where waste is imported into the Community and destined for disposal from countries Parties to the Basel Convention" substitute "Where waste destined for disposal is shipped through Sark",

(c) in paragraph (2) –

(i) after "adaptations" insert "and additions",

(ii) in subparagraph (a) –

(A) for "the competent authority"
substitute "any competent authority",

(B) for "shall have 60 days" substitute –

"shall have –

(i) in the case of a competent authority of a Member State of the European Union, 30 days in accordance with the EU Regulation,

(ii) in the case of a competent authority of Guernsey or Alderney, 30 days in accordance with any Ordinance relating to transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or

(iii) in the case of a competent authority of another country, 60 days, or such other period provided for in accordance with relevant national legislation in the country of transit," and

(iii) the word "and" is omitted at the end of

subparagraph (a) and subparagraph (b) is omitted,

(d) in paragraph (3) subparagraph (a) is omitted, and

(e) in paragraph (5) for subparagraph (a) substitute –

"(a) inform the competent authority of dispatch outside Sark; and".

Title V, Chapter 2 (imports of waste for recovery).

20. (1) For Article 43 substitute –

"Article 43

Imports prohibited

1. Imports into Sark of waste destined for recovery shall be prohibited."

(2) Article 44 is applied to Sark, with the following modifications, only insofar as it is applied by Article 48 (transit through Sark of waste destined for recovery) –

(a) for the heading substitute -

"Procedural requirements applying to transit shipments under Article 48",

(b) in paragraph (1), for "Where waste destined for

recovery is imported into the Community" substitute "Where waste destined for recovery is shipped through Sark",

- (c) in paragraph (2) –
 - (i) for "in accordance with Article 9" substitute "in accordance with Title II",
 - (ii) subparagraph (c) is omitted, and
- (d) for paragraph (5)(a), substitute –
 - "(a) inform the competent authority of dispatch outside Sark; and "

Title VI, Transit of Waste.

21. (1) In Article 47(a) and 48(2)(a) after "a copy of the acknowledgement" insert "of receipt of notification to the notifier".

(2) In Article 48, for each reference to "Member States" substitute "Sark".

Title VII, Other provisions.

22. (1) In Article 49 (protection of the environment) –

- (a) in paragraph (1), the last sentence is omitted,

- (b) in paragraph (2)(a) and the penultimate subparagraph of paragraph (2), for "third country of destination" substitute "country of destination", and
 - (c) in paragraph (3)(a), for "could harm the environment" to the end of the paragraph substitute "could harm the environment, throughout the period of shipment, including recovery or disposal in the country of destination."
- (2) In Article 51 –
- (a) for the Title substitute –

"Reports",
 - (b) in paragraph (1), for the words from "which in accordance with Article 13(3) of the Basel Convention" to the end of the paragraph substitute "which the Chief Pleas of Sark have drawn up, after consulting with the Director, in accordance with Article 13(3) of the Basel Convention.",
 - (c) paragraphs (2) and (4) are omitted, and
 - (d) in paragraph (3), for the words "paragraphs 1 and 2" substitute "paragraph 1".

- (3) In Article 51 and 52, references to –
- (a) "Member State", "Member States" or "each Member State" are read as references to "the Chief Pleas of Sark", and
 - (b) "the Commission" are read as references to "the United Kingdom".
- (4) In Article 52, after the words "in liaison with the" insert "Director and".

Annexes to the EU Regulation.

23. (1) In paragraph 27 of Part IV of Annex IC (specific instructions for completing the notification and movement documents) for "the European Union" substitute "Sark".

(2) In Annex II (information and documentation related to notification) –

(a) in the last subparagraph of paragraph (5) of Part 1, for "in accordance with Articles 4 and 5 of that Directive" substitute "in accordance with relevant national legislation", and

(b) for paragraph 2 of Part 3 substitute –

"2. Copy of the permit issued for the recovery or

disposal facility in accordance with relevant national legislation."

(3) In Annex III B (additional green listed waste etc.) –

(a) in the heading omit "as referred to in Article 58(1)(b)",
and

(b) paragraph 3 is omitted.

(4) In Annex V (waste subject to the export prohibition in Article 8), paragraph 1 of the introductory notes is omitted.