

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. IX of 2019

The European Communities (Food and Feed Controls)

(Sark) Ordinance, 2019

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The European Communities (Food and Feed Controls) (Sark) Ordinance, 2019

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 16th January, 2019, and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, sections 10 and 37 of the Reform (Sark) Law, 2008^b, and all other powers enabling them in that behalf, hereby order:-

PART I PRELIMINARY

Designated Community provisions to have effect.

1. (1) The designated Community provisions in Schedule 1 have effect in Sark subject to the provisions of this Ordinance.

(2) For the avoidance of doubt, unless the context requires otherwise, a function conferred on a competent authority or competent authorities by a designated Community provision is deemed to be a function conferred on the Guernsey Committee.

^a Ordres en Conseil Vol. XXXV (1), p. 65. See also Ordinance No. XIX of 2014.

^b 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. IX of 2017; Sark Ordinance Nos. II and VI of 2015; Sark Ordinance No. XI of 2017; Sark Ordinance No. XIII of 2018.

PART II
REGISTRATION OF FOOD BUSINESSES AND FEED BUSINESSES

Food businesses to be registered.

2. A person who operates a food business is guilty of an offence unless the following are registered in the food business register –

- (a) the person's name,
- (b) the nature of the food business, and
- (c) the name and address of the premises in or from which the food business is operated.

Feed businesses to be registered.

3. A person who operates a feed business is guilty of an offence unless the following are registered in the feed business register –

- (a) the person's name,
- (b) the nature of the feed business, and
- (c) the name and address of the premises in or from which the feed business is operated.

Applications for registration.

4. (1) Any person who operates or proposes to operate a food business may apply to the Guernsey Committee for registration in the food business register.

(2) Any person who operates or proposes to operate a feed business may apply to the Guernsey Committee for registration in the feed business register.

(3) Any registered person may apply to the Guernsey Committee to amend the registration of the person's food business or feed business.

(4) An application under subsection (1), (2) or (3) –

(a) must be in the form and manner, and include any information, required by the Guernsey Committee, and

(b) must be accompanied by the prescribed fee.

(5) On receiving an application under subsection (1) or (2) made in accordance with subsection (4), the Guernsey Committee may register the food business or feed business by entering, in the relevant register–

(a) the name and address of the applicant,

(b) the nature of the food business or feed business, and

(c) the name and address of the premises in or from which the food business or feed business is operated.

(6) On receiving an application under subsection (3) made in accordance with subsection (4), the Guernsey Committee may amend the registration concerned by entering any relevant amendments in the relevant

register.

- (7) The Guernsey Committee must not consider an application if–
 - (a) it does not include all the information sought by the Guernsey Committee, or
 - (b) it is not accompanied by the prescribed fee.

Grounds for refusal, variation, suspension or revocation of registration.

5. (1) The Guernsey Committee may refuse an application made under section 4 or vary, suspend or revoke a registration for any reason it considers appropriate.

(2) Without limiting the Guernsey Committee's discretion under subsection (1), the Guernsey Committee may refuse an application made under section 4, or vary, suspend or revoke a registration, if it is satisfied that –

- (a) any applicable Community provision or provision of this Ordinance has not been, is not being or will not be, complied with,
- (b) the person concerned is under investigation for or has been convicted of an offence under the law of any country or territory, relating to food or feed,
- (c) information required in relation to an application has not been furnished, or information that is false,

deceptive or misleading in a material respect has been furnished in relation to an application,

- (d) the premises to which an application under section 4, or the registration, relates are not fit and proper premises to be registered,
- (e) the person concerned is not a fit and proper person to be registered,
- (f) a registered person has ceased to carry out the activity to which the registration relates on the premises to which the registration relates,
- (g) the person concerned, having been given 14 days to do so, fails to pay a fee payable under this Ordinance,
- (h) it is necessary for the protection of human life or health, or
- (i) it is necessary, ancillary or supplementary for any applicable Community provision to have full effect.

(3) For the purpose of determining whether or not there are any grounds for refusing an application made under section 4 or for varying, suspending or revoking a registration, the Guernsey Committee may at any time –

- (a) seek and receive any information from any person (whether in Sark or elsewhere) as the Guernsey Committee considers appropriate, and
- (b) take into account any information obtained from any source.

(4) A refusal, variation, suspension or revocation under this section must be made in accordance with section 6 or 7.

(5) In subsection (2) and sections 6 and 7, "**the person concerned**" means –

- (a) in the case of refusal of an application, the applicant, and
- (b) in the case of a variation, suspension or revocation, the registered person.

Fast-track refusal, variation, suspension or revocation.

6. (1) The Guernsey Committee may make a refusal, variation, suspension or revocation on a ground specified in section 5(2)(h) or (i) with effect immediately or from any time specified by the Guernsey Committee, by giving written notice to the person concerned.

(2) Following a refusal, variation, suspension or revocation in accordance with subsection (1), the Guernsey Committee must–

- (a) give the person concerned written notice –

(i) of the refusal, variation, suspension or revocation and the reasons for it,

(ii) stating that the person concerned may make representations in relation to the refusal, variation, suspension or revocation to the Guernsey Committee within 14 days of the notice, and

(b) consider any representation duly made by the person concerned.

(3) After considering any representations duly made by the person concerned, the Guernsey Committee may confirm, modify or annul the refusal, variation, suspension or revocation by giving the person concerned written notice –

(a) of the Guernsey Committee's decision and the reasons for it, and

(c) where the refusal, variation, suspension or revocation is confirmed or modified by the Guernsey Committee, stating that the person concerned may appeal the refusal, variation, suspension or revocation under section 60.

Standard procedure for refusal, variation, suspension or revocation.

7. (1) Where the Guernsey Committee proposes to make a refusal, variation, suspension or revocation on any ground other than a ground specified in section 5(2)(h) or (i), the Guernsey Committee must –

- (a) give the person concerned written notice –
 - (i) of the proposal and the reasons for it,
 - (ii) stating that the person concerned may make representations in relation to the proposal to the Guernsey Committee within 14 days of the notice, and
- (b) consider any representation duly made by the person concerned.

(2) After considering any representations duly made by the person concerned, the Guernsey Committee may decide whether or not to make a refusal, variation, suspension or revocation by giving the person concerned written notice –

- (a) of the Guernsey Committee's decision and the reasons for it, and
- (b) in the case of any refusal, variation, suspension or revocation, stating that the person concerned may appeal it under section 60.

Committee to maintain public register of food and feed businesses.

8. The Guernsey Committee must maintain and make available to the public, in a manner and form the Guernsey Committee considers appropriate, a register for the purposes of –

- (a) article 6 of Regulation 852/2004, and
- (b) article 9 of Regulation 183/2005.

General duties of registered persons.

9. (1) A registered person must –

- (a) maintain any records required by section 37, in a legible form that can easily be copied or printed or in any other prescribed manner and form, for a period of three years,
- (b) on request by an authorised officer, produce for inspection any such records, and
- (c) make any prescribed information returns in the prescribed form and manner and at the prescribed times.

(2) A person who contravenes subsection (1) is guilty of an offence.

PART III

APPROVAL OF FOOD BUSINESSES AND FEED BUSINESSES

Certain food and feed businesses to be approved.

10. (1) A person must not operate any premises as a food business to which article 4(2) of Regulation 853/2004 applies except –

(a) under and in accordance with a food business approval, or

(b) where exempt under section 11(1).

(2) A person must not operate any premises as a relevant feed business except under and in accordance with a feed business approval.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence.

(4) In subsection (2), "**relevant feed business**" means a feed business to which article 10 of Regulation 183/2005 applies, that is engaged in –

(a) the manufacture of feed additives, products, premixtures or compound feeding stuffs described in article 10(1)(a), (b) or (c) of Regulation 183/2005, or

(b) the supply of feed for consumption by animals that are not in the Islands.

Exemption for food producers supplying to consumers in the Islands.

11. (1) A producer engaged in the supply of products of animal origin is exempt from section 10(1) where those products are supplied only –

- (a) to final consumers in the Islands, or
- (b) to a food business operator in the Islands that supplies the primary products only to final consumers in the Islands.

(2) Article 1(3)(c), (d) and (e) of Regulation 853/2004 have no effect to exempt a person operating a food business from section 10(1) except as provided by subsection (1).

Applications for approval.

12. (1) Any person who operates or proposes to operate a food business or feed business may apply to the Guernsey Committee for a food business approval or feed business approval, respectively.

(2) Any holder of a food business approval or feed business approval may apply to the Guernsey Committee to amend the approval.

(3) An application under subsection (1) or (2) –

- (a) must be in the form and manner, and include any information, required by the Guernsey Committee, and
- (b) must be accompanied by the prescribed fee.

(4) On receiving an application under subsection (1) made in accordance with subsection (3), the Guernsey Committee may, subject to any conditions specified by the Guernsey Committee –

- (a) grant a food business approval for the purposes of article 4 of Regulation 853/2004, or
- (b) grant a feed business approval for the purposes of article 10 of Regulation 183/2005.

(5) On receiving an application under subsection (2) made in accordance with subsection (3), the Guernsey Committee may amend the food business approval or feed business approval concerned by –

- (a) issuing an amended certificate of approval to the holder, and
- (b) entering any relevant amendments in the relevant register.

(6) The Guernsey Committee may, in exceptional circumstances, for good and sufficient reason make an approval valid for a limited period.

(7) The Guernsey Committee must not consider an application if–

- (a) it does not include all the information sought by the Guernsey Committee, or

- (b) it is not accompanied by the prescribed fee.

Certificates of approval.

13. Upon granting an approval, the Guernsey Committee must give a certificate to the holder of the approval ("**certificate of approval**") specifying–

- (a) the name of the holder of the approval,
- (b) the address of the premises to which the approval relates,
- (c) whether it is a food business approval or a feed business approval,
- (d) the nature of the activity to which the approval relates,
- (e) the conditions to which the approval is subject,
- (f) the period of validity (if any) of the approval,
- (g) a unique reference number that identifies the food business or feed business, and
- (h) the address of the Guernsey Committee.

Grounds for refusal, variation, suspension or revocation of approval.

14. (1) The Guernsey Committee may refuse an application made under section 12 or vary, suspend or revoke an approval, for any reason it considers appropriate.

(2) Without limiting the Guernsey Committee's discretion under subsection (1), the Guernsey Committee may refuse an application made under section 12, or vary, suspend or revoke an approval, if it is satisfied that –

- (a) any applicable Community provision or any provision of this Ordinance has not been, is not being or will not be complied with,
- (b) the person concerned has committed an offence under the law of any country or territory, whether that person has been convicted or not, relating to food or feed,
- (c) the person concerned has failed to comply with a condition of the approval,
- (d) information required in relation to an application has not been furnished, or information that is false, deceptive or misleading in a material respect has been furnished in relation to an application,
- (e) the premises to which the application or approval relates is not a fit and proper premises to be approved,
- (f) the person concerned is not a fit and proper person to be approved,

- (g) the holder of the approval has ceased to carry out the activity to which that approval relates on the premises to which that approval relates,
- (h) the person concerned, having been given 28 days to do so, fails to pay a fee payable under this Ordinance,
- (i) it is necessary for the protection of human life or health, or
- (j) it is necessary, ancillary or supplementary for any applicable Community provision to have full effect.

(3) For the purpose of determining whether or not there are any grounds for refusing an application made under section 12 or varying, suspending or revoking an approval, the Guernsey Committee may at any time —

- (a) seek and receive any information from any person (whether in Sark or elsewhere) as the Guernsey Committee considers appropriate, and
- (b) take into account any information obtained from any source.

(4) A refusal, variation, suspension or revocation under this section must be made in accordance with section 6 or 7; but for the purposes of this subsection, the references in section 6(1) and 7(1) to a ground specified in section 5(2)(h) or (i) have effect as if they were references to a ground specified in section 14(2)(i) or (j).

(5) In subsection (2), and in sections 6 and 7 in their application to a refusal, variation, suspension or revocation under this section, "**the person concerned**" means –

- (a) in the case of refusal of an application made under section 12, the applicant, and
- (b) in the case of a variation, suspension or revocation of an approval, the holder of the approval.

Effect of suspension, revocation or expiry of approval.

15. (1) Upon suspension of an approval under this Ordinance, both the approval and the registration of the person and premises suspended have no effect for the duration of the suspension as notified to that person.

(2) Upon revocation of an approval under this Ordinance, or upon expiry of the approval, both the approval and the registration of the person and premises who or which was formerly approved has no effect.

Surrender of certificates.

16. (1) A holder of an approval must surrender to the Guernsey Committee the certificate of approval given to the holder within 14 days of any of the following –

- (a) expiry of the approval,
- (b) receiving written notice of suspension or revocation of the approval under this Ordinance,

- (c) receiving a written request from the Guernsey Committee to return the certificate for the purposes of amendment or variation, or
 - (e) receiving an amended or varied certificate of approval from the Guernsey Committee.
- (2) A person who contravenes subsection (1) is guilty of an offence.
- (3) A holder of an approval may at any time surrender to the Guernsey Committee the certificate of approval given to the holder.
- (4) Upon surrender of a certificate –
- (a) the approval signified by the certificate (other than a certificate surrendered for the purposes of amendment or variation) ceases to have effect when the certificate is received by the registration authorised officer, but
 - (b) this Ordinance continues to apply, for the purpose of enabling the holder of the approval to be investigated or otherwise dealt with for a matter arising before the surrender, as if the certificate had not been surrendered.

(5) Upon the expiry of any period of suspension, the Guernsey Committee must return to the holder of the approval any certificate surrendered to the Guernsey Committee as a result of the suspension.

Committee to maintain public register of approved food or feed businesses.

17. The Guernsey Committee must maintain and make available to the public, in any manner and form the Guernsey Committee considers appropriate –

- (a) a register of approved food businesses, and
- (b) a register of approved feed businesses.

General duties of holders.

18. (1) A holder of an approval must –

- (a) comply with all conditions of the approval,
- (b) maintain any records required as a condition of the approval, or required by section 37, in a legible form that can easily be copied or printed or in any other prescribed manner and form, for a period of three years,
- (c) on request by an authorised officer, produce for inspection any such records,
- (d) make any prescribed information returns in the prescribed form and manner and at the prescribed times, and

(e) during business hours, prominently display the certificate of approval on the premises to which the approval relates.

(2) A person who contravenes subsection (1) is guilty of an offence.

PART IV

DUTIES RELATING TO FOOD, FEED AND RELATED OPERATIONS

Specific duties relating to feed

Undesirable substances in feedingstuffs.

19. (1) A person must not import, export, put into circulation, manufacture, incorporate in a feedingstuff, feed to an animal or have in the person's possession or under the person's control any feed unless —

(a) it is of sound merchantable quality, and

(b) if the feed is mentioned in column (2) of Annex I to Directive No. 2002/32/EC, the amount of an undesirable substance mentioned in column (1) of that Annex in relation to that feed does not exceed the level specified in column (3) in relation to that feed.

(2) A person must not, for dilution purposes, mix a feed that does not comply with subsection (1) with another feed or a further quantity of the same feed.

(3) Subsection (1) does not apply to a complementary feedingstuff taking into account the proportion of the complementary feed prescribed for use in a daily ration.

(4) Annex I to Directive No. 2002/32/EC is to be construed and has effect as if each maximum level referred to in footnotes (1), (3) and (4) is prescribed as a maximum level for the relevant feed in Annex I, for the purposes of subsection (1)(b).

(5) A person must not have in the person's possession or the person's control, sell or supply an animal to which a feed has been administered in contravention of subsection (1).

(6) A person who imports, exports, puts into circulation, manufactures or incorporates in a feedingstuff any feed, must maintain a record of each transaction relating to the feed and feedingstuff, in a legible form that can easily be copied or printed or in any other prescribed manner and form, for eight years and make the record available on request to an authorised officer.

(7) A person who contravenes subsection (1), (2), (5) or (6) is guilty of an offence.

(8) Subject to section 87, any word or expression used in this section and also used in Directive No. 2002/32/EC has the same meaning it has in the Directive.

Notice of feed importation.

20. (1) A person must not import any feed unless the person has

given notice to the Guernsey Committee in the prescribed form and manner, at least 5 working days before the feed is imported, of –

- (a) the nature and quantity of the feed,
- (b) the place where it is intended to land the feed in Sark,
- (c) the date and time that the feed is to be imported into Sark, and

the feed is imported into Sark in accordance with the notice.

(2) A person who gives notice under subsection (1) must notify the Guernsey Committee in writing of any change of circumstances relating to the importation or proposed importation of the feed to which the notice relates –

- (a) within 24 hours of becoming aware of the change, and
- (b) at least 24 hours before the feed enters Sark.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence.

Duties in relation or supplementary to Regulation 178/2002

Importation of food or feed.

21. (1) A person who imports food or feed in contravention of article 11 of Regulation 178/2002 is guilty of an offence.

(2) For the avoidance of doubt, article 11 of Regulation 178/2002 has effect as modified by article 10 of Regulation 852/2004.

Unsafe food or feed.

22. (1) A person is guilty of an offence if the person –
- (a) places unsafe food on the market in contravention of article 14 of Regulation 178/2002,
 - (b) places unsafe feed on the market or feeds it to an animal in contravention of article 15 of Regulation 178/2002, or
 - (c) otherwise contravenes article 14 or 15 of Regulation 178/2002.
- (2) A person is guilty of an offence if the person –
- (a) uses any substance as an ingredient in the preparation of food,
 - (b) abstracts any constituent from food,
 - (c) subjects food to any other process or treatment, or
 - (d) does or omits any other thing,

to make food unsafe, with intent that the food be sold for human consumption in that state.

Labelling, advertising and presentation.

23. (1) A person is guilty of an offence if the person –

- (a) contravenes article 16 of Regulation 178/2002 in relation to the labelling, advertising or presentation of food, or
- (b) otherwise misleads consumers in contravention of article 16 of Regulation 178/2002.

(2) A person who sells to any person any food for human consumption which is not of the nature, substance, or quality of the food demanded by the latter person, to the prejudice or other disadvantage of that latter person, is guilty of an offence.

Requirements of food law and verification.

24. A food business operator or feed business operator is guilty of an offence if the operator, in contravention of article 17 of Regulation 178/2002–

- (a) fails to ensure that a food or feed satisfies the relevant requirements of food law,
- (b) fails to carry out the necessary verification, or
- (c) does or omits any other thing.

Identification, traceability and other information requirements.

25. (1) A food business operator or feed business operator is guilty of an offence if the operator, in contravention of article 18 of Regulation 178/2002 –

- (a) fails to identify a person from whom the operator has been supplied with food, feed, a food producing animal or a substance intended to be or expected to be incorporated into food or feed,
- (b) fails to have in place systems and procedures (including documentation) to allow information on provenance and destination of foods or feeds to be made available to the Guernsey Committee on demand,
- (c) fails to provide the Guernsey Committee with information on provenance or destination of a food or feed on demand,
- (d) fails to identify a person to whom a product marketed by the operator has been supplied,
- (e) fails to have in place systems and procedures to identify persons to whom products marketed by the operator have been supplied,
- (f) fails to adequately label or identify food or feed for the purposes of traceability through relevant documentation or information,
- (g) places food on the market, or

(h) does or omits any other thing.

(2) Without limiting the generality of subsection (1), a food business operator or feed business operator is guilty of an offence if the operator fails –

- (a) to make available information in relation to food of non-animal origin, except sprouts and seeds intended for the production of sprouts, in accordance with Schedule 2,
- (b) to keep information in relation to food of non-animal origin, except sprouts and seeds intended for the production of sprouts, for the duration specified in Schedule 2,
- (c) to make available information in relation to food of animal origin in accordance with Schedule 3,
- (d) to update information in relation to food of animal origin in accordance with Schedule 3,
- (e) to keep information in relation to food of animal origin available for the duration specified in Schedule 3,
- (f) to make available information in relation to sprouts or seeds intended for the production of sprouts in accordance with Schedule 4,

- (g) to transmit information in relation to sprouts or seeds intended for the production of sprouts in accordance with Schedule 4,
- (h) to update information in relation to sprouts or seeds intended for the production of sprouts in accordance with Schedule 4, or
- (i) to keep information in relation to sprouts or seeds intended for the production of sprouts for the duration specified in Schedule 4.

Withdrawal and recall.

26. (1) A food business operator or feed business operator is guilty of an offence if the operator, in contravention of article 19 or 20 of Regulation 178/2002, fails –

- (a) to initiate procedures to withdraw a food or feed from the market,
- (b) to ensure that a food or feed is withdrawn from the market,
- (c) to inform the Guernsey Committee of the initiation of procedures to withdraw a food or feed from the market,
- (d) to collaborate with the Guernsey Committee,

- (e) to effectively and accurately inform consumers or users of the reasons for withdrawal of a food or feed from the market, or
- (f) to recall products from consumers or users.

(2) A food business operator or feed business operator responsible for retail or distribution activities that do not affect the packaging, labelling, safety or integrity of a food is guilty of an offence if the operator, in contravention of article 19(2) or 20(2) of Regulation 178/2002, fails –

- (a) to initiate procedures to withdraw a food or feed from the market,
- (b) to ensure that a food or feed is withdrawn from the market,
- (c) to pass on relevant information necessary to trace a food or feed, or
- (d) to cooperate in action taken by producers, processors, manufacturers or the Guernsey Committee.

(3) A food business operator or feed business operator is guilty of an offence if the operator, in contravention of article 19(3) or 20(3) of Regulation 178/2002 –

- (a) fails to immediately inform the Guernsey Committee of any grounds for believing that -

- (i) a food which it has placed on the market may be injurious to human health, or
 - (ii) a feed which it placed on the market may not satisfy the feed safety requirements,
- (b) fails to inform the Guernsey Committee of the action taken to prevent –
 - (i) risks to the final consumer, or
 - (ii) risk arising from the use of feed, or
- (c) prevents or discourages any person from cooperating with the Guernsey Committee.

(4) A food business operator or feed business operator is guilty of an offence if the operator fails or refuses to collaborate with the Guernsey Committee on action taken to avoid or reduce risks posed by a food or feed, in contravention of article 19(4) or 20(4) of Regulation 178/2002.

(5) A food business operator or feed business operator is guilty of an offence if the operator fails in any other way to respond to an actual or potential breach of food safety requirements or feed safety requirements, in contravention of article 19 or 20 of Regulation 178/2002.

(6) Nothing in subsections (2) to (5) limits the generality of subsection (1).

(7) For the avoidance of doubt, where the Guernsey Committee has reasonable grounds to suspect that a food business operator or feed business operator should be taking measures pursuant to article 19 or article 20 of Regulation 178/2002, but is failing to do so, the Guernsey Committee may give the operator an improvement notice under section 51 or a remedial action notice under section 54.

Exports and re-exports.

27. (1) A person who exports or re-exports food or feed which does not comply with the relevant requirements of food law is guilty of an offence unless the non-compliance is permitted in accordance with article 12 of Regulation 178/2002.

(2) For the avoidance of doubt, article 12 of Regulation 178/2002 has effect as modified by article 11 of Regulation 852/2004.

Duties in relation to other Community provisions

Contravention of Regulation 852/2004 (hygiene of foodstuffs).

28. (1) A food business operator is guilty of an offence if the operator—

- (a) fails to ensure that all stages of production, processing and distribution comply with article 3 of Regulation 852/2004,
- (b) contravenes the general hygiene requirements referred to in article 4(1) or (2) of Regulation 852/2004,

- (c) fails to adopt specific hygiene measures, in contravention of article 4(3) of Regulation 852/2004,
- (d) fails to use appropriate sampling and analytical methods, in contravention of article 4(5) of Regulation 852/2004,
- (e) fails to put in place, implement and maintain procedures based on the HACCP principles, in contravention of article 5(1) of Regulation 852/2004,
- (f) fails to provide the Guernsey Committee with evidence, in contravention of article 5(4)(a) of Regulation 852/2004,
- (g) fails to ensure that documents comply with article 5(4)(b) of Regulation 852/2004,
- (h) fails to retain documents or records, in contravention of article 5(4)(c) of Regulation 852/2004,
- (i) fails to co-operate with the Guernsey Committee, in contravention of article 6(1) of Regulation 852/2004,
- (j) fails to make notification or ensure that the Guernsey Committee has up to date information, in contravention of article 6(2) of Regulation 852/2004,
- (k) fails to ensure that premises are approved, in

contravention of article 6(3) of Regulation 852/2004, or

- (l) otherwise contravenes any provision of Regulation 852/2004 mentioned in this subsection.
- (2) A food business operator is guilty of an offence if the operator—
- (a) having adopted a specific hygiene measure referred to in article 4(3) of Regulation 852/2004, fails to comply with that measure,
 - (b) contravenes a criteria, requirement or target referred to in article 4(4) of Regulation 852/2004 that is adopted in accordance with article 14 (3) of that Regulation,
 - (c) having adopted a principle referred to in any of subparagraphs (a) to (g) of article 5(2) of Regulation 852/2004, fails to comply with the principle,
 - (d) contravenes a detailed arrangement referred to in article 5(5) of Regulation 852/2004, or
 - (d) otherwise contravenes a provision of Regulation 852/2004 mentioned in this subsection.

Contravention of Regulation 853/2004 (hygiene rules for food of animal origin).

29. A food business operator is guilty of an offence if the operator—

- (a) fails to comply with a relevant provision of Annex II or III to Regulation 853/2004, in contravention of article 3(1) of that Regulation,
- (b) uses a substance in contravention of article 3(2) of Regulation 853/2004 or in a manner prohibited by that article,
- (c) places a product of animal origin on the market in contravention of article 4(1) or 5(1) of Regulation 853/2004,
- (d) operates in contravention of article 4(2) or (3) of Regulation 853/2004,
- (e) fails to co-operate with the Guernsey Committee, or operates, in contravention of article 4(4) of Regulation 853/2004,
- (f) applies an identification mark to a product of animal origin, in contravention of article 5(2) of Regulation 853/2004,
- (g) removes a health mark, in contravention of article 5(3) of Regulation 853/2004,
- (h) imports a product of animal origin in contravention of article 6 of Regulation 853/2004,

- (i) fails to ensure that certificates or other documents accompany a consignment of products of animal origin, in contravention of article 7(1) of Regulation 853/2004,
- (j) fails to comply with any applicable implementing measure or transitional arrangement, in contravention of article 9 of Regulation 853/2004, or
- (k) otherwise contravenes a provision of Regulation 853/2004 mentioned in this subsection.

Contravention of Regulation 854/2004 (products of animal origin for human consumption).

30. A person is guilty of an offence if the person –

- (a) imports a product of animal origin in contravention of article 11, 12 or 14 of Regulation 854/2004,
- (b) imports a live bivalve mollusc, echinoderm, tunicate, or marine gastropod in contravention of article 13 of Regulation 854/2004,
- (c) imports a fishery product in contravention of article 15 of Regulation 854/2004, or
- (d) otherwise contravenes a provision of Regulation 854/2004 mentioned in this subsection.

Contravention of Regulation 183/2005 (feed hygiene).

31. (1) A feed business operator is guilty of an offence if the operator–

- (a) fails to comply with any requirement of article 4 or 5 of Regulation 183/2005,
- (b) fails to put in place, implement or maintain procedures based on the HACCP principles in contravention of article 6(1) of Regulation 183/2005,
- (c) fails to review procedures or make necessary changes in contravention of article 6(3) of Regulation 183/2005,
- (d) fails to comply with evidential or documentary requirements, in contravention of article 7(1) of Regulation 183/2005,
- (e) fails to submit proof of cover by financial guarantees, in contravention of article 8(2) of Regulation 183/2005,
- (f) fails to co-operate with the Guernsey Committee, in contravention of article 9(1) of Regulation 183/2005,
- (g) fails to notify, or provide up to date information to, the Guernsey Committee, in contravention of article 9(2) of Regulation 183/2005,
- (h) fails to ensure that a feed business is approved, in

contravention of article 10 of Regulation 183/2005,

- (i) operates in contravention of article 11 of Regulation 183/2005,
- (j) fails to submit a declaration, in contravention of article 17(2) of Regulation 183/2005,
- (k) imports feed in contravention of article 23 of Regulation 183/2005,
- (l) produces feed for export, in contravention of article 25 of Regulation 183/2005, or
- (m) otherwise contravenes a provision of Regulation 183/2005 mentioned in this subsection.

(2) A feed business operator is guilty of an offence if the operator—

- (a) contravenes a criteria or target referred to in article 5(3) of Regulation 183/2005 that is adopted in accordance with article 31 (2) of that Regulation,
- (b) contravenes a measure referred to in article 6(5) of Regulation 183/2005 that is adopted in accordance with article 31(2) of that Regulation,
- (c) contravenes an arrangement referred to in article 7(3)

of Regulation 183/2005 that is adopted in accordance with article 31(2) of that Regulation, or

- (d) otherwise contravenes a provision of Regulation 183/2005 mentioned in this subsection.

Contravention of Regulation 2073/2005 (microbiological criteria for foodstuffs).

32. A food business operator is guilty of an offence if the operator —

- (a) contravenes any requirement of article 3 of Regulation 2073/2005,
- (b) fails to perform testing, in contravention of article 4 of Regulation 2073/2005,
- (c) contravenes the sampling and testing requirements of article 5 of Regulation 2073/2005,
- (d) contravenes the labelling requirements of article 6 of Regulation 2073/2005,
- (e) fails to take measures or corrective or other actions, in contravention of article 7(1) of Regulation 2073/2005,
- (f) fails to recall or withdraw or recall any product or foodstuffs, or deals with a product, in contravention of article 7(2) of Regulation 2073/2005,
- (g) fails to take actions, in contravention of article 7(4) of

Regulation 2073/2005,

- (h) fails to analyse trends or take appropriate actions, in contravention of article 9 of Regulation 2073/2005, or
- (i) otherwise contravenes a provision of Regulation 2073/2005 mentioned in this subsection.

Contravention of Regulation 2015/1375 (*Trichinella* in meat).

33. A food business operator is guilty of an offence if the operator –

- (a) fails to sample carcasses in accordance with article 2 of Regulation 2015/1375,
- (b) deals with a carcass, other parts of an animal, or animal waste or animal by-products in contravention of article 4 of Regulation 2015/1375,
- (c) applies the health mark in contravention of article 4(3) of Regulation 2015/1375,
- (d) uses a method of detection in contravention of article 6(1) of Regulation 2015/1375,
- (e) fails to forward a positive sample, in contravention of article 6(2) of Regulation 2015/1375,
- (f) fails to inform the Guernsey Committee, in contravention of article 9 of Regulation 2015/1375, or

- (g) otherwise contravenes a provision of Regulation 2015/1375 mentioned in this subsection.

Contravention of Commission Regulation 669/2009 (imports of feed or food of non-animal origin).

34. (1) The Guernsey Committee may by regulations designate one or more points of entry in Sark in respect of products for the purposes of article 5 of Commission Regulation 669/2009.

(2) Where one or more points of entry are designated under subsection (1), a feed business operator or food business operator is guilty of an offence if the operator contravenes any of the following provisions in respect of any such point of entry –

- (a) article 6 of Commission Regulation 669/2009, which relates to prior notification of consignments,
- (b) article 7 of Commission Regulation 669/2009, which relates to common entry documents,
- (c) article 10 of Commission Regulation 669/2009, which relates to release of consignments for free circulation,
- (d) article 11 of Commission Regulation 669/2009, which relates to making available resources, logistics and equipment, or
- (e) article 12 of Commission Regulation 669/2009, which

relates to splitting of consignments.

Contravention of Regulation 767/2009 (placing on the market and use of feed).

35. (1) A person who places feed on the market or uses feed in contravention of the requirements of article 4(1) of Regulation 767/2009 is guilty of an offence.

(2) A feed business operator is guilty of an offence if the operator—

(a) places feed on the market or uses feed in contravention of the requirements of article 4(2) of Regulation 767/2009,

(b) contravenes the obligations referred to in article 5(1) or (2) of Regulation 767/2009,

(c) places on the market feed that consists of or contains a material the use of which for animal nutrition purposes is restricted or prohibited, in contravention of article 6(1) of Regulation 767/2009,

(d) has in the person's possession, uses or places on the market, any feed materials or complementary feed that contains a feed additive in excess of the quantities specified in article 8 of Regulation 767/2009,

(e) places on the market or uses feed intended for particular nutritional purposes, in contravention of

article 9 of Regulation 767/2009,

- (f) places on the market feed that is labelled or presented other than as provided in article 11 of or Annex II to Regulation 767/2009,
- (g) being the person responsible for labelling, fails to ensure that neither the labelling nor the presentation of feed materials, compound feed or other feed contravenes article 12 or 13(3) of Regulation 767/2009,
- (h) causes or permits claims to be made on the labelling in contravention of article 13(1) or (2) of Regulation 767/2009,
- (i) presents labelling particulars other than as provided for in article 14 of Regulation 767/2009,
- (j) places a feed material on the market without the label showing the indications and particulars specified in articles 15 and 16 of Regulation 767/2009,
- (k) places a compound feed on the market without the label showing the indications and particulars specified in articles 15 and 17 of Regulation 767/2009,
- (l) places feed intended for particular nutritional purposes on the market without the label showing the indications and particulars specified in articles 15, 16,

17 and 18 of Regulation 767/2009,

- (m) places pet food on the market unless labelled in accordance with articles 15, 16, 17, 18 and 19 of Regulation 767/2009,
- (n) has in the person's possession or under the person's control, feed falling within Annex VIII to Regulation 767/2009 which does not bear the labelling particulars required by that annex, in contravention of article 20 of Regulation 767/2009,
- (o) places a feed material or compound feed on the market with voluntary labelling which does not comply with article 22 of Regulation 767/2009,
- (p) places a feed material or compound feed on the market other than in a package or container that complies with article 23 of Regulation 767/2009,
- (q) fails to notify a feed material that is not listed in the Community Catalogue as required by article 24(6) of Regulation 767/2009, or
- (r) otherwise contravenes a provision of Regulation 767/2009 mentioned in this subsection.

Temperature control requirements.

36. (1) Schedule 5 has effect.

(2) Subject to paragraphs 4(1), 5, 7 and 9 of Schedule 5, a person who contravenes paragraph 2(1) or (3), 4(2), 6 or 8(2) of that schedule is guilty of an offence.

Records required by certain designated Community provisions.

37. A person who is required to maintain a record under Regulation 178/2002, Regulation 852/2004, Regulation 853/2004, Regulation 854/2004 or Regulation 183/2005 must –

- (a) maintain the record, in an electronic form where the record is legible and can easily be printed or in any other prescribed manner and form, for a period of three years (unless otherwise specified by the Regulation concerned or any provision of this Ordinance), and
- (b) on request, make it available to the Guernsey Committee.

PART V

ADMINISTRATION AND ENFORCEMENT

Authorised officers

Authorised officers and delegations.

38. (1) The following persons are authorised officers for the purposes of this Ordinance –

- (a) any person appointed by the Guernsey Committee as

an authorised officer for the purposes of the Guernsey Ordinance or this Ordinance, and

(b) the States of Guernsey Veterinary Officer.

(2) Section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^c has effect in relation to the functions of the Guernsey Committee under this Ordinance as if the reference to "any officer responsible to that Committee" in section 4(1)(a) of that Law includes a reference to any authorised officer, whether or not the authorised officer is responsible to the Guernsey Committee.

Powers of entry, search, etc.

General powers of entry, search, etc.

39. (1) This section applies to premises ("**searchable premises**") if an authorised officer suspects that –

- (a) any risk good has been or may be present on those premises,
- (b) any risk good is or has been produced, manufactured, imported, processed, stored, transported, distributed, traded or otherwise dealt with on those premises,

^c Ordres en Conseil Vol. XXXIII, p. 478; as amended by Ordinances No. XXXIII of 2003 and No. IX of 2016.

- (c) a sample taken from a risk good is or has been processed, stored, analysed or otherwise dealt with on those premises,
- (d) those premises are registered or approved, are the subject of an application under section 4 or section 12, or are required to be registered or approved,
- (e) those premises are ancillary to premises that are registered or approved, subject to an application under section 4 or section 12, or required to be registered or approved,
- (f) any document relating to a risk good referred to in paragraph (a), (b) or (c) is, was or may be present on those premises, or
- (g) an offence under this Ordinance is being or has been committed on or in relation to those premises.

(2) Subject to section 41, an authorised officer may at any reasonable time, for any purpose specified in subsection (3), exercise any power specified in subsection (4) or (5) on or in relation to any searchable premises.

(3) Subsection (2) refers to the following purposes –

- (a) establishing whether any conditions of a registration or an approval –

- (i) are or have been breached, or
 - (ii) are or continue to be satisfied,
- (b) establishing whether there are any grounds for the officer to exercise any of the officer's powers under sections 51 to 57,
 - (c) exercising or performing any of the Guernsey Committee's functions under this Ordinance,
 - (d) establishing whether any offence under this Ordinance is being or has been committed on or in relation to those premises,
 - (e) detecting or investigating an alleged offence under this Ordinance,
 - (f) seizing and securing anything which the authorised officer has reason to believe may be required as evidence in proceedings for an offence under this Ordinance,
 - (g) protection of human life or health, or
 - (h) giving full effect to any applicable Community provision.
- (4) Subsection (2) refers to the following powers –

- (a) with the assistance of a police officer, stop a person, vehicle, vessel or container,
- (b) enter any searchable premises,
- (c) search the premises and examine, test or inspect anything at the premises, opening it (or breaking it open) as the authorised officer considers necessary or expedient,
- (d) photograph, film or otherwise record anything at the premises,
- (e) measure or cause to be measured anything at the premises (including taking readings of values recorded by measuring instruments at those premises),
- (f) require the production of any equipment, facilities, vehicle, label used on food, packaging of food, any other materials used in the advertising or presentation of food, any document, or any other thing,
- (g) take copies of or extracts from any label used on food, any packaging of a food, any other materials used in the advertising or presentation of food, or any document (including, in the case of information in a non-legible form, a copy of or an extract from that information in a legible form),

- (h) if anything at the premises cannot be conveniently removed, secure it against interference,
- (i) purchase or take, without payment, samples of any risk good or any other thing and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as the authorised officer considers necessary or expedient,
- (j) mark or otherwise identify any sample taken under subparagraph (i) or any risk good or other thing,
- (k) seize any risk good, equipment, facilities, vehicle, document, or other thing, which is at the premises and detain it for as long as the authorised officer considers necessary,
- (l) require any person to give the authorised officer any information, which may include (without limiting the generality of this paragraph) –
 - (i) information regarding the ownership, identity or origin of, or any other information regarding, any risk good,
 - (ii) any information regarding the premises, or

- (iii) the name and address of any person, including a person to whom a risk good is being delivered or who is causing it to be delivered, and
- (m) require any person to afford the authorised officer any other facilities or assistance that the authorised officer considers necessary or expedient, including in relation to any documents or other information provided to the authorised officer.

(5) Without limiting the generality of subsection (4), subsection (2) also refers to the following powers –

- (a) inspect any records (in whatever form they are held) relating to a feed business or food business, and
- (b) where any such records are stored in electronic form –
 - (i) inspect and check the operation of any computer or other electronic equipment or device and any associated apparatus or material which is or has been in use in connection with those records,
 - (ii) require any person having charge of, or otherwise concerned with the operation of, the equipment, device, apparatus or material to afford the authorised officer such assistance as the authorised officer may reasonably require,

or

- (iii) require the records to be produced in a form in which they may be taken away.

(6) Neither subsection (4) nor subsection (5) applies to, or in relation to, any items subject to legal professional privilege.

(7) Nothing in this section is to be construed as authorising any purchase or sale of drugs in contravention of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^d or any Ordinance or Order made under that Law or the Misuse of Drugs (Amendment) (Bailiwick of Guernsey) Law, 2000^e.

(8) The provisions of Schedule 6 have effect whenever an authorised officer purchases or takes without payment a sample of a food with the intention of having it analysed.

Safeguards for general powers of entry, search, etc.

40. (1) An authorised officer entering any premises under section 39

^d Ordres en Conseil Vol. XXIV, p. 273; as amended by Vol. XXVIII, p. 307; Vol. XXXI, pp. 47 and 278; Vol. XXXIII, p. 217; Vol. XXXIV, p. 172; Vol. XXXVI, p. 396; Vol. XL, pp. 34 and 131; Order in Council No. IV of 2006; No. XIII of 2006; Recueil d'Ordonnances Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; Tome XXV, pp. 38 and 325; Tome XXIX, p. 406; Ordinances No. XLIII of 2010 and No. XXV of 2011; G.S.I. No. 19 of 1997; G.S.I. No. 5 of 2004; G.S.I. No. 42 of 2006; G.S.I. No. 20 of 2008; G.S.I. No. 22 of 2010; G.S.I. No. 33 of 2010; G.S.I. No. 82 of 2010; G.S.I. No. 44 of 2012; G.S.I. No. 54 of 2013; G.S.I. No. 79 of 2014; G.S.I. No. 93 of 2015; see also Recueil d'Ordonnances Tome XXVII, p. 247; Ordres en Conseil Vol. XXIX, p. 207.

^e Ordres en Conseil Vol. XL, p. 34.

must, if the owner or occupier of those premises is present –

- (a) identify himself to the owner or occupier, and
- (b) produce to the owner or occupier documentary evidence that that authorised officer is an authorised officer.

(2) If the owner or occupier of those premises is not present at the time the authorised officer leaves those premises, the authorised officer –

- (a) must leave the premises as effectively secured against trespassers as that authorised officer found them, and
- (b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under section 39, including that authorised officer's name, an address at which that authorised officer may be contacted and a copy of the documentary evidence referred to in subsection (1)(b).

(3) An authorised officer who takes samples without payment, or seizes anything, under section 39(4) must leave with the owner or occupier of the premises (if present) or leave on the premises (if the owner or occupier is not present) a statement stating –

- (a) particulars of what has been taken or seized, and
- (b) that the authorised officer has taken or seized it.

Entry to dwellings restricted.

41. An authorised officer must not enter a dwelling under section 39, except –

- (a) with the consent of the owner or occupier of those premises, or
- (b) by giving the owner or occupier of those premises at least 24 hours' prior written notice of the entry, or
- (c) under and in accordance with a warrant issued under section 42.

Warrant to enter dwellings, etc.

Warrants for entry, etc.

42. (1) On application by an authorised officer in accordance with section 43, the Seneschal may, in accordance with sections 43 and 44, issue a warrant authorising an authorised officer to enter and search any premises (including a dwelling), if the Seneschal is satisfied that there are reasonable grounds for believing –

- (a) that an offence under this Ordinance is about to be committed, is being committed or has been committed on or in relation to those premises,
- (b) that there is material on those premises which is likely to be of substantial value (whether by itself or together

with other material) to the investigation of the offence,

- (c) that the material is likely to be relevant evidence,
- (d) that the material does not consist of or include items subject to legal professional privilege, and
- (e) that at least one of the conditions specified in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1)(e) are –

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
- (b) that it is not practicable to communicate with any person entitled to grant access to the evidence,
- (c) that entry to the premises will not be granted unless a warrant is produced, or
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless an authorised officer arriving at the premises can secure immediate entry to them.

(3) In this section, "**relevant evidence**", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

Procedure for search warrants.

43. (1) An application for a warrant –
- (a) must be made and supported by information in writing, and
 - (b) must state –
 - (i) that the warrant would be issued under section 42,
 - (ii) the ground on which the authorised officer makes the application,
 - (iii) the premises which it is desired to enter and search, and
 - (iv) so far as is practicable, the things to be sought.
- (2) The Seneschal must hear the application in private and *ex parte*.
- (3) The authorised officer making the application must answer on oath any question that that authorised officer is asked by the person hearing the application.

Requirements of search warrants.

44. (1) A warrant authorises entry only on one occasion.

- (2) A warrant –
 - (a) must state the person who applied for it, the date on which it is issued, and the premises to be searched,
 - (b) must state that it is issued under section 42, and
 - (c) so far as is practicable, must identify the things to be sought.

(3) The Greffier must ensure that two copies are made of each warrant, and that those copies are clearly certified as copies.

Execution of warrants.

45. (1) Any authorised officer may execute a warrant to enter premises.

(2) An authorised officer executing a warrant may exercise any power specified in section 39(4) or (5) on or in relation to those premises (subject to section 39(6), (7) and (8)), if the authorised officer considers it reasonably necessary for the purpose for which the warrant was issued.

- (3) An authorised officer executing a warrant –
 - (a) must be accompanied by a police officer,
 - (b) must do so at a reasonable hour, and

(c) must do so within one month from the date of its issue.

(4) Subsection (3)(b) does not apply if it appears to the authorised officer executing the warrant that the purpose of the search may be frustrated by making an entry at a reasonable hour.

Safeguards for warranted entry, search, etc.

46. (1) An authorised officer executing a warrant to enter any premises under section 45 must, if the owner or occupier of those premises is present –

(a) identify himself to the owner or occupier, and

(b) produce the warrant to the owner or occupier.

(2) If the owner or occupier is not present at the time the authorised officer leaves those premises, the authorised officer –

(a) must leave the premises as effectively secured against trespassers as that authorised officer found them, and

(b) must leave in a prominent place on those premises written notice that those premises have been entered and searched under section 45, including that authorised officer's name and an address at which that authorised officer may be contacted and a copy of the warrant.

(3) An authorised officer who takes any samples or seizes

anything under section 45(2) must leave with the owner or occupier of the premises (if present) or leave on the premises (if the owner or occupier is not present), a statement stating –

- (a) particulars of what has been taken or seized, and
- (b) that the authorised officer has taken or seized it.

Endorsement, return and inspection of warrants.

47. (1) An authorised officer executing a warrant must, after executing it, make an endorsement on it stating –

- (a) whether the things sought were found, and
- (b) whether any things, other than things which were sought, were seized.

(2) A warrant which has been executed, or which has not been executed within the time allowed for its execution, must be returned to the Greffier.

(3) The Greffier must retain a warrant which is returned for 12 months beginning on the date of its return.

(4) If, during the period for which a warrant is to be retained under subsection (3), the owner or occupier of the premises to which it relates asks to inspect it, the Greffier must allow that owner or occupier to do so.

Miscellaneous powers

Persons exercising powers may bring other persons and things.

48. (1) An authorised officer entering any premises under section 39 or 45 may bring onto the premises any person, equipment, material or other thing to assist the authorised officer in the exercise of that authorised officer's powers under this Ordinance.

(2) For the avoidance of doubt, any person brought onto the premises by an authorised officer under subsection (1) may exercise any of the powers of an authorised officer under this Ordinance under the direction and supervision of an authorised officer.

Detention, storage and disposal of seized property.

49. (1) All seized property must be detained, stored and disposed of by the Guernsey Committee in accordance with Schedule 7.

(2) Subject to subsection (3)(b) and any order of a competent court to the contrary, any proceeds of a sale or disposal of seized property under this Ordinance must be paid to the owner of the property as soon as practicable after the person has satisfied the Guernsey Committee that that person is the owner of that property.

(3) The costs and expenses of any sale or disposal of seized property under this Ordinance may be recovered by the Guernsey Committee—

- (a) as a civil debt owed to the Guernsey Committee by the owner of the property, or

- (b) by deducting the costs from any sum due by the Guernsey Committee to the owner.

Enforcement powers

Interpretation of this section and sections 51 to 57.

50. (1) In this section and sections 51 to 57 –

"**business**" means food business or feed business, and

"**operator**" means a food business operator or feed business operator.

(2) For the purposes of sections 51 to 57, unless the context requires otherwise, the health risk condition is fulfilled with respect to any business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely –

- (a) the use for the purposes of the business of any process or treatment,
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment, machinery, plant or other thing, and
- (c) the state or condition of any premises or equipment, machinery, plant or other thing used for the purposes of the business.

(3) For the purposes of sections 51 to 57, where the health risk condition is fulfilled with respect to any business, the appropriate prohibition is –

- (a) in a case falling within subsection (2)(a), a prohibition on the use of the process or treatment for the purposes of the business,
- (b) in a case falling within subsection (2)(b), a prohibition on the use of the premises or equipment, machinery, plant or other thing for the purposes of the business or any other business of the same class or description, and
- (c) in a case falling within subsection (2)(c), a prohibition on the use of the premises or equipment, machinery, plant or other thing for the purposes of any business.

Improvement notices.

51. (1) If an authorised officer has reasonable grounds for believing that an operator is failing to comply with an applicable Community provision or a provision of this Ordinance, the officer may by a notice given to that person (in this Ordinance referred to as an "**improvement notice**")—

- (a) state the officer's grounds for believing that the operator is failing to comply with the applicable Community provision or a provision of this Ordinance,
- (b) specify the matters which constitute the operator's failure to comply,

- (c) specify the measures which, in the officer's opinion, the operator must take in order to secure compliance, and
- (d) require the operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) An improvement notice must specify that an appeal against the notice may be made under section 61.

(3) Any person who fails to comply with an improvement notice commits an offence.

Prohibition orders.

52. (1) If —

- (a) an operator is convicted of an offence under this Ordinance, and
- (b) the court by or before which the operator is so convicted is satisfied that the health risk condition is fulfilled with respect to the business concerned,

the court must by an order impose the appropriate prohibition.

(2) If —

- (a) an operator is convicted of an offence under this

Ordinance, and

- (b) the court by or before which the operator is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by an order, impose a prohibition on the operator participating in the management of any business, or any business of a class or description specified in the order.

(3) As soon as practicable after the making of an order under subsection (1) or (2) (in this Ordinance referred to as a "**prohibition order**"), the Guernsey Committee must—

- (a) give a copy of the order to the operator, and
- (b) in the case of an order made under subsection (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as the Guernsey Committee considers appropriate,

and any person who knowingly contravenes such an order commits an offence.

(4) A prohibition order ceases to have effect—

- (a) in the case of an order made under subsection (1), on the issue by the Guernsey Committee of a certificate to the effect that it is satisfied that the operator has taken sufficient measures to secure that the health risk

condition is no longer fulfilled with respect to the business, and

- (b) in the case of an order made under subsection (2), on the giving by the court of a direction to that effect.

(5) The Guernsey Committee must issue a certificate under subsection (4)(a) within three days of it being satisfied as mentioned in that subsection; and on an application by the operator for such a certificate, the Guernsey Committee must—

- (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied, and
- (b) if the Guernsey Committee determines that it is not so satisfied, give notice to the operator of the reasons for that determination.

(6) The court must give a direction under subsection (4)(b) if, on an application by the operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the operator since the making of the order; but no such application may be entertained if it is made—

- (a) within six months of the making of the prohibition order, or
- (b) within three months of the making by the operator of a

previous application for such a direction.

(7) Where the Seneschal makes an order under section 53(3) with respect to any business, subsection (1) applies as if the operator had been convicted by the Seneschal of an offence under this Ordinance.

Emergency prohibition notices and orders.

53. (1) For the purposes of this section, the health risk condition is fulfilled with respect to any business only if there is an imminent risk of injury to health.

(2) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any business, the officer may by a notice given to the operator of the business (in this Ordinance referred to as an "**emergency prohibition notice**") impose the appropriate prohibition.

(3) If the Seneschal is satisfied, on the application of an authorised officer, that the health risk condition is fulfilled with respect to any business, the Seneschal must, by an order (in this Ordinance referred to as an "**emergency prohibition order**"), impose the appropriate prohibition.

(4) An authorised officer may not apply for an emergency prohibition order unless, at least one day before the date of the application, the officer has given notice to the operator concerned of the intention to apply for the order.

(5) As soon as practicable after the service of an emergency prohibition notice, an authorised officer must affix a copy of the notice in a conspicuous position on such premises used for the purposes of the business as the

officer considers appropriate, and any person who knowingly contravenes such a notice commits an offence.

(6) As soon as practicable after the making of an emergency prohibition order, an authorised officer must—

- (a) give a copy of the order to the operator concerned, and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as the officer considers appropriate,

and any person who knowingly contravenes such an order commits an offence.

(7) An emergency prohibition notice ceases to have effect—

- (a) if no application for an emergency prohibition order is made within the period of three days beginning with the service of the notice, at the end of that period, or
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) An emergency prohibition notice or an emergency prohibition order ceases to have effect on the issue by the Guernsey Committee of a certificate to the effect that it is satisfied that the operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business.

(9) The Guernsey Committee must issue a certificate under subsection (8) within three days of it being satisfied as mentioned in that subsection; and on an application by the operator for such a certificate, the Guernsey Committee must—

- (a) determine as soon as is reasonably practicable and in any event within 14 days whether or not the Guernsey Committee is so satisfied, and
- (b) if the Guernsey Committee determines that it is not so satisfied, give notice to the operator of the reasons for that determination.

(10) Where an emergency prohibition notice is given to an operator, the Guernsey Committee must compensate the operator in respect of any loss suffered by reason of complying with the notice unless—

- (a) an application for an emergency prohibition order is made within the period of three days beginning with the service of the notice, and
- (b) the Seneschal declares himself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the business at the time when the notice was given.

(11) For the purposes of subsection (10), on application by the operator or the Guernsey Committee, the Royal Court must determine any dispute arising as to the fact of loss or as to the amount of compensation.

(12) The maximum compensation payable under subsection (10) to any one person, or in respect of any one emergency prohibition notice, is £1,000,000 (one million pounds) in aggregate.

Remedial action notices.

54. (1) Where it appears to an authorised officer that –

- (a) any requirement of an applicable Community provision or any provision of this Ordinance is being breached, or
- (b) an inspection under this Ordinance is being hampered,

on or in relation to any relevant premises, the officer may, by a notice in writing (in this Ordinance referred to as a "**remedial action notice**") given to the operator of the food or feed business –

- (c) prohibit the use of any equipment, machinery, plant or other thing or any part of the premises specified in the notice,
- (d) impose conditions upon or prohibit the carrying out of any process or treatment, or
- (e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

(2) A remedial action notice must be given as soon as practicable and must state –

(a) why it is being given, and

(b) that an appeal against the notice may be made under section 61.

(3) If it is given under subsection (1)(a), a remedial action notice must specify the breach and the action needed to remedy it.

(4) An authorised officer must, as soon as satisfied that the action needed to remedy the breach has been taken, withdraw the notice by a further notice in writing given to the operator.

(5) Any person who fails to comply with a remedial action notice commits an offence.

(6) In subsection (1) and section 55(1), "**relevant premises**" means any premises –

(a) operated as a food business and requiring a food business approval under section 10(1), or

(b) operated as a relevant feed business and requiring a feed business approval under section 10(2).

Detention notices.

55. (1) An authorised officer may, at any relevant premises, by a notice

in writing (in this Ordinance referred to as a "**detention notice**") given to the operator of the food or feed business concerned require the detention of any animal, food or feed for the purpose of examination (including the taking of samples).

(2) An authorised officer must, as soon as satisfied that the animal, food or feed need no longer be detained, withdraw the notice by a further notice in writing given to the operator.

(3) Any person who fails to comply with a detention notice commits an offence.

Inspection and seizure of suspected food.

56. (1) An authorised officer may at all reasonable times inspect any food intended for human consumption which—

- (a) has been sold or is offered or exposed for sale,
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale,
- (c) is otherwise placed on the market within the meaning of Regulation 178/2002,

and subsections (3) to (9) below apply where, on such an inspection, it appears to the authorised officer that any food is unsafe within the meaning of article 14 of Regulation 178/2002.

(2) The following provisions also apply where, otherwise than on

such an inspection, it appears to an authorised officer that any food is likely to cause food poisoning or any disease communicable to human beings.

- (3) The authorised officer may either –
 - (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it –
 - (i) is not to be used for human consumption, and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice, or
 - (b) seize the food and remove it in order to have it dealt with by the Seneschal,

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above is guilty of an offence.

(4) Where the authorised officer exercises the powers conferred by subsection (3)(a), the officer must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the officer is satisfied that the food is safe (within the meaning of article 14 of Regulation 178/2002) and –

- (a) if the officer is so satisfied, must forthwith withdraw the notice,

- (b) if the officer is not so satisfied, must seize the food and remove it in order to have it dealt with by the Seneschal.

(5) Where an authorised officer exercises the powers conferred by subsection (3)(b) or (4)(b) above, the officer must inform the person in charge of the food of the officer's intention to have it dealt with by the Seneschal; and any person, who under this Ordinance might be liable to a prosecution in respect of the food, is entitled to be heard and to call witnesses if the person attends before the Seneschal when the food is dealt with by the Seneschal.

(6) If it appears to the Seneschal, on the basis of such evidence as the Seneschal considers appropriate in the circumstances, that any food falling to be dealt with by the Seneschal under this section is unsafe within the meaning of article 14 of Regulation 178/2002, the Seneschal must condemn the food and order —

- (a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(7) If a notice under subsection (3)(a) above is withdrawn, or if the the Seneschal refuses to condemn the food when the Seneschal deals with it, the Guernsey Committee must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) For the purposes of subsection (7), on application by the owner of the food or the Guernsey Committee, the Royal Court must determine any dispute arising as to the fact of depreciation in the value of the food or as to the amount of compensation.

(9) The maximum compensation payable under subsection (7) to any one person, or in respect of any one notice, is £1,000,000 (one million pounds) in aggregate.

Food which has not been produced, etc. in accordance with an applicable Community provision or this Ordinance.

57. (1) On an inspection of any food, an authorised officer may certify that it has not been produced, manufactured, imported, processed, stored, transported, distributed, traded or otherwise dealt with in compliance with an applicable Community provision or this Ordinance.

(2) Where any food is certified as mentioned in subsection (1), it must be treated for the purposes of section 56 as unsafe within the meaning of article 14 of Regulation 178/2002.

(3) Where any food is certified as mentioned in subsection (1) is part of a batch, lot or consignment of food of the same class or description, all the food in the batch, lot or consignment must, until it is proved to have been produced, manufactured, imported, processed, stored, transported, distributed, traded or otherwise dealt with in compliance with the applicable Community provision or this Ordinance, be treated for the purposes of subsection (2) as having been so certified.

Seneschal's orders relating to seized property.

58. (1) This section applies to seized property.

(2) The Guernsey Committee or the owner of any property to which this section applies may make an application to the Seneschal ("**primary application**") for –

- (a) an order for the delivery of the property to its owner,
- (b) an order for the seizure and detention, or continued detention, of the property by the Guernsey Committee,
- (c) an order to dispose of the property in a manner specified by the Seneschal, or
- (d) any other order that the Seneschal thinks fit in relation to the property.

(3) A primary application must be made by a summons –

- (a) stating the order sought and the grounds and material facts on which the applicant relies, and
- (b) served in accordance with subsection (4) at least 14 days before the application is heard by the Seneschal.

(4) The summons must be served –

- (a) where the applicant is the Guernsey Committee, on the owner of the property, and
- (b) where the applicant is the owner of the property, on the Guernsey Committee.

(5) The respondent of a primary application may apply to the Seneschal, by summons served on the applicant, for an order to dismiss the primary application for want of prosecution; and on hearing an application under this subsection ("**secondary application**") the Seneschal may –

- (a) dismiss the primary application or the secondary application (in either case on such terms and conditions as the Seneschal may direct), or
- (b) make any order that the Seneschal considers just.

(6) Despite subsections (3) and (4)(a), if the Guernsey Committee is unable to identify the owner of the property after making reasonable enquiries, the Guernsey Committee may make a primary application *ex parte* and directly to the Seneschal.

(7) The Seneschal may hear and determine a primary application; and where an *ex parte* application is made under subsection (6) the Seneschal may hear and determine the application *ex parte*.

(8) On hearing and determining a primary application, the Seneschal may make any order of a kind specified in subsection (2)(a) to (d).

(9) Without limiting the Seneschal's powers under subsection (8), the Seneschal may make an order under that subsection directing that any food or feed the subject of a primary application be destroyed or otherwise disposed of by an authorised officer within the time specified in the order, if the Seneschal is satisfied that–

- (a) the food or feed fails to comply with any of the relevant provision of Regulation 178/2002, or
- (b) the food or feed is unsafe, whether or not it conforms with applicable Community provisions or any applicable provisions of this Ordinance, or
- (c) a food business operator or feed business operator has failed to take measures in respect of the food or feed which the operator ought to have taken under article 19 or 20 of Regulation 178/2002.

(10) An order under this section has effect despite any provision to the contrary in Schedule 7.

(11) For the avoidance of doubt, an application under this section is to be regarded as a civil matter in which the Seneschal has jurisdiction for the purposes of the Reform (Sark) Law, 2008.

General provision

Other powers not limited.

59. For the avoidance of doubt, the powers conferred by any provision of

this Part are in addition to any other powers conferred by or under any other enactment or any rule of customary or common law.

PART VI
APPEALS

Appeals against registration or approval decisions.

60. (1) This section applies to a decision of the Guernsey Committee—
- (a) to refuse an application for registration, or to vary, suspend or revoke a registration, in accordance with section 6 or 7, or
 - (b) to refuse an application for approval, or to vary, suspend or revoke a registration, in accordance with section 6 or 7 as given effect by section 14(4).
- (2) A person given written notice of a decision to which this section applies may appeal the decision to the Seneschal in accordance with this section.
- (3) The grounds of an appeal are that –
- (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable, having regard to any applicable Community provision and any other relevant matter,

- (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.

(4) An appeal must be made –

- (a) within the period of 28 days immediately following the date on which the notice of the decision was received by the appellant, and
- (b) by summons served on the Guernsey Committee stating the grounds and material facts on which the appellant relies.

(5) Where an appeal has been made, the Guernsey Committee may apply to the Seneschal by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the Seneschal may–

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Seneschal may direct), or
- (b) make such other order as the Seneschal considers just.

(6) The provisions of subsection (5) are without prejudice to the inherent powers or the rules of the Seneschal.

(7) On the application of the appellant, the Seneschal may, on such terms as the Seneschal thinks just, suspend or modify the effect of the decision appealed pending the determination of the appeal.

(8) Upon determining an appeal, the Seneschal may –

- (a) confirm the decision, with or without modification, or
- (b) annul the decision.

Appeals against disposal, improvement or remedial action notices.

61. (1) A person to whom a disposal notice, an improvement notice or a remedial action notice is given may appeal the notice to the Seneschal under this section, even if –

- (a) the person has complied with any requirement or prohibition in the notice, or
- (b) any action notified in the notice has been taken and completed.

(2) The grounds of an appeal are that –

- (a) all or any part of the notice was *ultra vires* or there was some other error of law,

- (b) all or any part of the notice was unreasonable, having regard to Regulation 178/2002, Regulation 852/2004, Regulation 853/2004, Regulation 854/2004, Regulation 882/2004, Regulation 183/2005, Directive No. 2002/32/EC and any other relevant matter,
- (c) the notice was given 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 must be made –

- (a) within the period of 28 days immediately following the date on which the notice was received by the appellant, and
- (b) by summons served on the Guernsey Committee stating the grounds and material facts on which the appellant relies.

(4) Where an appeal has been made, the Guernsey Committee may apply to the Seneschal by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the Seneschal may–

- (a) dismiss the appeal or dismiss the application (in either

case on such terms and conditions as the Seneschal may direct), or

(b) make such other order as the Seneschal considers just.

(5) The provisions of subsection (4) are without prejudice to the inherent powers or rules of the Seneschal.

(6) On the application of the appellant, the Seneschal may, on such terms as the Seneschal thinks just, suspend or modify the effect of the notice appealed pending the determination of the appeal.

(7) Upon determining an appeal, the Seneschal may –

(a) confirm the notice, with or without modification, or

(b) annul or repudiate the notice.

(8) If the Seneschal modifies, annuls or repudiates a notice under subsection (7), the Seneschal may, on the application of the appellant, order the Guernsey Committee to compensate the appellant for any loss suffered by the appellant as a result of any actions notified in the notice or as a result of complying with the notice (other than the costs of the appeal), if the Seneschal considers it necessary to do so in the interests of fairness and justice.

(9) The compensation payable under subsection (8) to any one person, or in respect of any one notice, must not exceed the sum of £1,000,000 (one million pounds) in aggregate.

(10) The provisions of subsection (8) are without prejudice to any rules of the Seneschal concerning costs.

(11) In this section, unless the context requires otherwise "**the notice**" includes any requirement in a notice and any action notified in the notice.

PART VII
REGULATIONS

Regulations to implement applicable Community provisions or as to composition, labelling, description or hygiene of food.

62. (1) The Guernsey Committee may make regulations –
- (a) for the purpose of implementing any applicable Community provision relating to food in Sark, with or without modifications, or
 - (b) as to the composition, labelling, description or hygiene of food.
- (2) Without limiting the generality of subsection (1), these regulations –
- (a) may provide for the applicable Community provision to be administered, executed and enforced under this Ordinance, and
 - (b) may apply any provisions of this Ordinance in relation to the applicable Community provision with any

modifications.

(3) Without limiting the generality of subsection (1), the Guernsey Committee may make regulations to put in place interim protective measures with regard to food of the kind provided for by article 54 of Regulation 178/2002.

(4) In exercising its powers under subsection (3), the Guernsey Committee must take into account the precautionary principle set out in article 7 of Regulation 178/2002.

Emergency control regulations.

63. (1) If it appears to the Guernsey Committee that the carrying out or omission of any operation or activity with respect to food, feed or other risk good involves or may involve imminent risk of injury to human health, the Guernsey Committee may make regulations ("**emergency control regulations**") to prohibit, regulate or require the carrying out of the operation or activity with respect to the food, feed or other risk good.

(2) The Guernsey Committee may consent, either unconditionally or subject to any condition that the Guernsey Committee considers appropriate, to the doing in a particular case of anything prohibited by an emergency control regulation.

(3) A person who contravenes any emergency control regulation is guilty of an offence.

(4) In proceedings for an offence under subsection (3), it is a defence for the defendant to prove –

- (a) that consent had been given under subsection (2) to the contravention of the emergency control regulation, and
- (b) that any condition subject to which that consent was given was complied with.

(5) If, as a result of a person contravening any emergency control regulation, the Guernsey Committee determines on reasonable grounds that it is necessary to carry out any work or do anything else in order to avoid imminent risk of injury to human health, the Guernsey Committee may recover from the person any expenses reasonably incurred by the Guernsey Committee as a civil debt owed to the Guernsey Committee by that person.

(6) Any regulations made under this section expires on the date that is 4 calendar months following the date on which the regulations come into force, unless extended (for up to 4 calendar months at a time) by a resolution of the Chief Pleas of Sark.

Regulations may provide for appeals and create offences.

64. (1) Regulations made under this Ordinance may provide for an appeal to the Seneschal against any decision of an authorised officer, the Guernsey Committee or any other person.

(2) Regulations made under this Ordinance may, subject to subsection (3), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences.

(3) Regulations made under this Ordinance may not –

- (a) provide for offences to be triable only on indictment, or
- (b) authorise the imposition, on conviction of an offence, of a term of imprisonment exceeding 6 months or a fine exceeding level 5 on the Sark uniform scale.

Regulations may impose charges and fees.

65. (1) The Guernsey Committee may by regulations prescribe any or all of the following –

- (a) an annual fee or charge in respect of a registration, approval, authorisation or certificate which is in force for a definite or indefinite period of more than 12 months,
- (b) a fee or charge for the purposes of any regulations made under this Ordinance, or
- (c) a fee or charge in respect of the performance of any function of authorised officers or the Guernsey Committee under this Ordinance or a designated Community provision.

(2) A fee or charge prescribed under this section is payable by the person specified in the regulations for this purpose, and may be recovered by the Guernsey Committee –

- (a) as a civil debt owed to the Guernsey Committee by the person,
- (b) by deducting the fee or charge from any sum due to that person by the Guernsey Committee, or
- (c) in any other prescribed manner.

Regulations may amend or substitute certain provisions and Schedules.

66. The Guernsey Committee may by regulations amend or substitute –

- (a) section 11, 76 or 77,
- (b) any provision of this Ordinance relating to the taking, testing, analysis, examination or inspection of samples,
- (c) any Schedule to this Ordinance except Schedule 8, or
- (d) any period for the giving of notices, making of applications, submissions or appeals, or the doing of any other thing, specified in any provision of this Ordinance.

General provisions as to regulations.

67. (1) Despite any other provision of this Ordinance, the Guernsey Committee must not make any regulations –

- (a) to prescribe a fee or charge under section 65, unless the Sark Committee has approved the fee or (as the case

may be) charge, or

- (b) to prescribe any other matter or for any other purpose under this Ordinance, except after consultation with the Sark Committee.

(2) The Sark Committee must not withhold its approval for a fee or charge under subsection (1)(a) if the Guernsey Committee is able to demonstrate that the proposed fee or (as the case may be) charge does not or is not likely to exceed the costs and expenditures that can reasonably be attributed to the provision of any service or performance of any function in respect of which the fee or charge is proposed to be prescribed.

(3) In calculating or estimating those costs and expenditures, the Guernsey Committee may include a reasonable share of costs and expenditures that are referable only indirectly to the provision of the service or performance of the function.

(4) Any regulation made under this Ordinance—

- (a) may be amended or revoked by a regulation subsequently made under this Ordinance, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(5) A power conferred by any provision of this Ordinance to make regulations may be exercised—

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any conditions specified in the subordinate legislation.

(6) Any regulation made under this Ordinance must be laid before a meeting of the Chief Pleas of Sark as soon as possible after being made; and, if at that or the next meeting the Chief Pleas of Sark resolve that the regulation be annulled, then it ceases to have effect, but without prejudice to anything done under it or to the making of new regulations.

(7) In this section, "**the Sark Committee**" means the Agriculture,

PART VIII
OFFENCES AND PROCEEDINGS

Obstruction, etc. or provision of false, deceptive or misleading information.

68. (1) A person is guilty of an offence if the person –
- (a) intentionally obstructs an authorised officer or the Guernsey Committee acting in the exercise of the authorised officer's or the Guernsey Committee's functions under this Ordinance,
 - (b) without reasonable excuse, fails to comply with any requirement made by an authorised officer acting in the exercise of the authorised officer's functions under this Ordinance,
 - (c) removes, tampers or otherwise interferes with any thing secured against interference or any sample purchased or taken under this Ordinance, or
 - (d) tampers with any substance or thing with the result that a sample purchased or taken without payment under this Ordinance does not correctly represent the substance sampled.
- (2) A person is guilty of an offence if –

- (a) for the purposes of or in connection with an application made under this Ordinance,
- (b) in purported compliance with any condition of a registration or an approval,
- (c) in purported compliance with any requirement imposed under, or otherwise for the purposes of, this Ordinance, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which the person intends, or could reasonably be expected to know, that the information would or might be used by any person for the purpose of exercising that person's functions under this Ordinance,

the person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information which is false, deceptive or misleading in a material particular.

Criminal liability of directors etc.

69. (1) Where an offence under this Law 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, 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 paragraphs (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, 2012^f, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation

^f Order in Council No. I of 2013; as amended by No. VI of 2017; Ordinances No. IX of 2016 and XXVII of 2018.

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[§], and
- (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 correspond to that of a general partner described in paragraph (a) of this definition.

- (4) In this section and section 70, **"limited partnership"** means-

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

- (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.

70. (1) Where an offence under this Law 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 Law 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 Law 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^h, 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).

Penalties and expenses.

71. (1) A person guilty of an offence under any provision of this Ordinance is liable to the penalty specified for the offence in Schedule 8.

(2) A person convicted of an offence under this Ordinance must pay to the Guernsey Committee all expenses reasonably incurred by the Guernsey Committee in relation to the storage of any seized property that was used in, the subject of, or otherwise involved in, the commission of the offence; and –

- (a) the Guernsey Committee may recover those expenses as a civil debt owed to that committee by that person, and
- (b) this paragraph applies whether or not the seized property is forfeited to the Chief Pleas of Sark or States of Guernsey under any enactment, but a person is not liable to pay expenses incurred on and from the day on

^h Order in Council No. VI of 2014; as amended by No. VI of 2017; Ordinance No. XII of 2015; No. IX of 2016; No. XXVII of 2018.

which the thing is so forfeited.

Exception for claims made in accordance with Regulation 1924/2006.

72. (1) Nothing in Parts II to IV prohibits or restricts a claim made in accordance with the conditions of Regulation 1924/2006.

(2) In this section –

"**claim**" has the meaning given to it by Regulation 1924/2006, and

"**Regulation 1924/2006**" 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 foodsⁱ.

Defence of due diligence.

73. (1) Subject to subsection (3), in proceedings for an offence under this Ordinance, it is a defence for the defendant ("A") to prove both –

- (a) that commission of the offence was due to a mistake or the reliance on information supplied to A, or to the act or default of another person, an accident or some other cause beyond A's control, and
- (b) that A exercised due diligence and took all reasonable precautions to avoid commission of the offence.

ⁱ OJ L 12, 18.1.2007, p. 3.

(2) If reliance on the defence provided by subsection (1) involves the allegation that the commission of the offence was due to reliance on information supplied by another person or to the act or default of another person, A is not, without leave of the court, entitled to rely on that defence unless, not less than 7 working days before the hearing, A has served on the prosecutor written notice providing information identifying, or assisting in the identification of, that other person.

(3) Subsection (1) does not apply to an offence under section 68.

Defence of publication in the course of business.

74. In proceedings for an offence under this Ordinance or any regulations made thereunder consisting of the advertisement for sale of any food, it is a defence for the defendant ("A") to prove –

- (a) that A is a person whose business it is to publish or arrange for the publication of advertisements, and
- (b) that A received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this Ordinance or any regulations made thereunder.

Derogations or transitional measures.

75. In proceedings for an offence under this Ordinance, it is a defence for the defendant ("A") to prove that A acted in accordance with a derogation or transitional measure laid down by an applicable Community provision relevant to the subject of the offence alleged to have been committed.

Results of analysis not to be adduced unless samples divided.

76. (1) In proceedings for an offence under this Ordinance, the result of any test, examination or analysis of, or report on a sample of food purchased or taken without payment under this Ordinance, must not be adduced unless –

- (a) before the proceedings were instituted the sample was divided as specified in paragraph 4 or 5 of Schedule 6, and
- (b) the part, package or container retained by the authorised officer is produced at the trial.

(2) Notwithstanding subsection (1), in proceedings for an offence under this Ordinance arising out of a consumer complaint, in relation to a single sample of food which can neither be divided into parts in accordance with paragraph 4 of Schedule 6, nor divided into lots in accordance with paragraph 5 of Schedule 6, the result of any test, examination or analysis of the sample may be adduced where the sample has, before trial of the proceedings, been made reasonably available to the defendant, or the defendant's agent, for inspection and supplementary expert examination.

Evidence of certificates, etc.

77. (1) In proceedings for an offence under this Ordinance, a certificate purported to be signed by a person employed at a designated laboratory where a sample purchased or taken without payment under this Ordinance is analysed stating the capacity in which the person is employed and stating –

- (a) that the person received a sample,

- (b) that, for the period specified in the certificate, the person had the sample in that person's possession,
- (c) that the person gave the sample to another person named in the certificate, or
- (d) that the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner, specified in the certificate,

is (without proof of the signature of the person or that that person is employed at the laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(2) In proceedings for an offence under this Ordinance, an official certificate purporting to be signed by an approved examiner is (without proof of the signature of the examiner or that that examiner is employed at a designated laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(3) A certificate purporting to be signed by an authorised officer and to certify that on a specific day or days or during the whole of a specified period—

- (a) a particular person or particular premises did not stand registered in the feed business register or the food business register,
- (b) the registration of a person or premises in the feed business register or the food business register is suspended or has been revoked,
- (c) a person was or was not the holder of an approval,
- (d) any premises were or were not approved under section 12, or
- (e) that a particular approval or registration was subject to a particular condition or conditions,

is, without proof of the signature of the person purporting to sign the certificate or that that person is an authorised officer, evidence, unless the contrary is shown, of the matters stated in the certificate.

(4) In proceedings for an offence under this Ordinance, the court may, if it considers that the interests of justice so require, direct that oral evidence of any matter stated in a certificate under paragraph (1), (2) or (3) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(5) In proceedings for an offence under this Ordinance, evidence of a Community provision may be given by production of a copy of the provision certified by an authorised officer to be a copy of the provision, and it is not

necessary to prove the signature of the authorised officer or that that authorised officer is an authorised officer.

PART IX
GENERAL PROVISIONS

Committee may publish and take into account policies and guidance.

78. The Guernsey Committee may make available to the public, in a manner and form the Guernsey Committee considers appropriate, any policies and guidance it intends to take into account in exercising its functions under this Ordinance.

Confidentiality.

79. (1) Subject to subsection (3), a person who –
- (a) under or for the purposes of this Ordinance receives any information relating to the business or other affairs of any person, or
 - (b) obtains any such document or information directly or indirectly from a person who has so received it,

must not disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses any information in contravention of subsection (1) is guilty of an offence.

(3) Subsection (1) does not preclude -

- (a) the disclosure of information -
 - (i) which at the time of disclosure is or has already been made available to the public from other sources, or
 - (ii) which is in the form of a summary or collection so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting an authorised person to discharge the authorised person's functions under this Ordinance or any other enactment,
- (c) where, in order to enable or assist an authorised person to discharge the authorised person's functions under this Ordinance or any other enactment, that authorised person considers it necessary to seek advice from a qualified person on any matter of law or accountancy or any other matter requiring the exercise of professional skill, the disclosure by that authorised person to the qualified person of such information as appears to that authorised person to be necessary to ensure that that qualified person is properly informed as to the matters on which that qualified person's advice is sought,

- (d) the disclosure of information by an authorised officer or the Guernsey Committee for the purpose of assisting, in the public interest, any authority appearing to the authorised officer or the Guernsey Committee to exercise, in a place outside Sark, functions corresponding to those of an authorised officer or the Guernsey Committee,
- (e) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Ordinance or any other enactment,
- (f) the disclosure of information which is authorised or required by or under this Ordinance or any other enactment,
- (g) the disclosure of information –
 - (i) for the purposes of the investigation, prevention or detection of offences or the apprehension or prosecution of offenders, or
 - (ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,
- (h) the disclosure of information in connection with any other proceedings arising out of this Ordinance,

- (i) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of the professional functions of any person,
 - (j) the disclosure of information in connection with the discharge of any international obligation to which the Islands may from time to time be subject, or
 - (k) the disclosure of information to comply with an order of a court.
- (4) In this section, "**authorised person**" means –
- (a) the Guernsey Committee,
 - (b) an authorised officer, or
 - (c) an approved examiner.

Protection from self-incrimination.

80. A statement made by a person in response to a requirement imposed by or under this Ordinance ("**the statement concerned**") –

- (a) may be used in evidence against the person in proceedings other than criminal proceedings, and

- (b) may not be used in evidence against the person in criminal proceedings except -
 - (i) where evidence relating to the statement concerned is adduced, or a question relating to the statement concerned is asked, in the proceedings by or on behalf of that person,
 - (ii) in proceedings for an offence under section 68(2),
 - (iii) in proceedings for perjury or perverting the course of justice, or
 - (iv) in proceedings where, in giving evidence, that person makes a statement inconsistent with the statement concerned, but in this case the statement concerned is only admissible to the extent necessary to establish the inconsistency.

Apportionment of structural expenditure.

- 81. (1) This section applies where -
 - (a) any improvement notice, remedial action notice or order or regulations made under this Ordinance requires or necessitates structural alterations to be made to any premises owned or occupied by a person ("A"),

- (b) A has incurred, or is about to incur, expenditure in securing compliance with the notice, order or regulations, and
 - (c) A claims that the whole or any part of the expenditure should be borne by any other person ("B") who has an interest in the premises.
- (2) Where this section applies –
- (a) A may apply to the Seneschal for an order under this subsection,
 - (b) the Seneschal may make any order concerning the expenditure or its apportionment as appears to the Seneschal to be just and equitable, having regard to all the circumstances of the case including the terms of any contract between A and B, and
 - (c) any order made under this subsection may direct that any such contract ceases to have effect insofar as it is inconsistent with the terms of the order.

Temporary continuance of registration or approval on death, etc.

82. (1) This section applies where an individual is registered as a food business operator or feed business operator or holds an approval, and –
- (a) the individual dies,

- (b) a declaration of insolvency has been made against the individual or the individual's affairs have been declared in a state of "désastre" at a meeting of arresting creditors held before a Commissioner of the Royal Court, the Court of Alderney or the Seneschal,
- (c) an interim vesting order has been made against the individual in respect of any real property in the Islands, or
- (d) the individual becomes a person who lacks capacity to carry on the food business or feed business.

(2) In subsection (1)(d), the reference to a person who lacks capacity to carry on the business includes a person for whom a guardian has been appointed by any court and in relation to whom the guardian has power for the purposes of this Part.

(3) Where this section applies, the registration or (as the case may be) approval continues to have effect for the benefit of the individual's legal personal representative, the individual's widow or widower, or any other member of the individual's family, until the expiration of –

- (a) two months following the relevant event in subsection (1), or
- (b) such longer period (not exceeding six months following the relevant event in subsection (1)) as the Guernsey Committee may allow.

Service of documents.

83. (1) A person ("A") who is to give or serve a document under or for the purposes of this Ordinance may give the document to or serve the document on –

- (a) an individual ("P"), by delivering it to P, or by leaving the document at, or sending the document by post or transmitting the document to, P's usual or last known place of abode,
- (b) a body corporate, by leaving the document at, or sending the document by post or transmitting the document to, its registered office or any place of business of the body corporate in Sark,
- (c) a limited partnership –
 - (i) by leaving the document at, or sending the document by post or transmitting the document to the partnership's registered office, or
 - (ii) by delivering the document to any general partner thereof, or by leaving the document at or sending the document by post or transmitting the document to, the general partner's address shown in the Register of Limited Partnerships established and

maintained under section 7 of the Limited Partnerships (Guernsey) Law, 1995,

(d) an unincorporated body, by giving the document to or serving the document on any partner, member, manager or officer thereof in accordance with paragraph (a), or by leaving the document at or sending the document by post or transmitting the document to any place of business of the body in Sark, and

(e) a Guernsey foundation –

(i) by leaving the document at or sending the document by post to the foundation's registered office, or

(ii) by delivering the document to any councillor thereof, or by leaving the document at or sending the document by post to his address shown in the Register of Foundations established and maintained under paragraph 4 of Schedule 1 to the Foundations (Guernsey) Law, 2012.

(2) A document required or authorised under this Ordinance to be given to or served on the operator of a food business or feed business or the owner or occupier of, or any person having an interest in, any premises, is deemed to have been duly served or given if it is –

- (a) addressed to that person either by name or by referring to the operator of the business or, as the case may require, the owner, occupier or person having the relevant interest in, the premises concerned, and
- (b) either given or served in accordance with subsection (1) or affixed conspicuously to, or to some object on, the premises on or from which the business is carried out, or as the case may require, the premises concerned.

(3) In subsection (1) –

"by post" means by recorded delivery service or ordinary letter post,

"Guernsey foundation" means a foundation created under the Foundations (Guernsey) Law, 2012, and

"transmit" means transmit 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 to be regarded as served when it is received.

(4) If P is a child or person under a legal disability, the document is to be given or served on P's guardian; and if there is no guardian, A may apply to the Seneschal or the Royal Court for the appointment of a person to act as guardian for the purposes of this Ordinance.

(5) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance to have been received on the third day after the day of posting, excluding any day which is not a working day.

(6) The sending of a document by post is proved by showing the date of posting, the address thereon and the fact of prepayment.

(7) If A does not know and cannot reasonably ascertain, the name of any person to whom A desires to give or on whom A desires to serve a document, A may address the document by description instead of by name.

Extended meaning of "sale", "sell" and "place on the market".

84. (1) In this Ordinance, "sale", "sell" and "place on the market" have the extended meanings provided by subsections (2) to (5).

(2) "Sell" includes -

- (a) possess for sale, and
- (b) offer, expose, or advertise for sale.

(3) The following is deemed to be a sale of food or feed –

- (a) the supply of the food or feed, otherwise than by sale, in the course of a business,
- (b) the supply of the food or feed, otherwise than by sale, at, in, or from any place where food or feed is supplied in the course of a business,

- (c) any other thing which is done with respect to the food or feed that is prescribed to be so deemed in any regulation made by the Guernsey Committee.
- (4) This Ordinance applies–
- (a) in relation to any food or feed 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 or feed were, or had been, exposed for sale by each person concerned in the organisation of the entertainment,
 - (b) in relation to any food or feed 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 or feed were, or had been, exposed for sale by the person offering or giving away the food or feed, and
 - (c) in relation to any food or feed 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 or feed were, or had been, exposed for sale by the person who exposed or deposited the food or feed in those premises,

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

(5) For the avoidance of doubt, to "**place on the market**", in relation to any food or feed, includes sell the food or feed.

Meaning of "the protection of human life or health".

85. In this Ordinance, a reference to the protection of human life or health includes a reference to the prevention, control or eradication of any disease or contamination of feed or food.

Presumptions relating to human consumption.

86. For the purposes of this Ordinance and any regulations made under it–

- (a) any thing commonly used for human consumption, if sold or offered, exposed or kept for sale, must be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale, for human consumption,
- (b) any thing commonly used for human consumption which is found on premises used for the preparation, storage, or sale of the thing and any thing commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, must be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for

human consumption,

- (c) any substance capable of being used in the composition or preparation of any thing commonly used for human consumption which is found on premises on which that thing is prepared must, until the contrary is proved, be presumed to be intended for such use.

Interpretation.

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

"**Alderney**" means the Island of Alderney, including the territorial waters adjacent to this island,

"**applicable Community provision**", in relation to any matter, means-

- (a) any designated Community provision,
- (b) any other Community provision, to the extent that the provision is given effect in Sark by this Ordinance or any other enactment, or
- (c) any other Community provision that is directly applicable in Sark,

that is relevant to the matter,

"**approval**" means a food business approval or feed business approval

granted by the Guernsey Committee under Part III,

"approved examiner" means a person qualified to be a food analyst, public analyst or food examiner under the Food Safety (Sampling and Qualifications) (England) Regulations 2013,

"authorised officer" has the meaning given by section 38(1),

"certificate of approval" means a certificate of approval given under section 13,

"Commission Regulation 669/2009" means Commission Regulation (EC) No. 669/2009 of 24 July 2009^j as amended by Commission Regulation (EC) No. 212/2010 of 12 March 2010^k, Commission Regulation (EC) No. 1161/2009 of 30 November 2009^l, Commission Regulation 1162/2009 and Commission Regulation (EU) No. 365/2010 of 28 April 2010^m,

"Commission Regulation 1162/2009" means Commission Regulation (EC) No. 1162/2009 of 30 November 2009ⁿ (as amended by Commission Regulation (EC) No. 1666/2006 of 6 November 2006^o, Commission

^j O.J. L 194 of 25.7.2009, p. 11.

^k O.J. L 65 of 13.3.2010, p. 16.

^l O.J. L 314 of 1.12.2009, p. 8.

^m O.J. L 107 of 29.4.2010, p. 9.

ⁿ O.J. No. L 314, 1.12.2009, p. 10.

^o O.J. No. L 320, 18.11.2006, p. 47

Regulation (EC) No.1246/2007 of 24 October 2007^P, Commission Regulation (EC) No. 1020/2008 of 17 October 2008^q, Commission Regulation (EC) No. 1021/2008 of 17 October 2008^r, and Commission Regulation (EC) No. 1023/2008 of 17 October 2008^s),

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

"**contravene**" includes fail to comply with,

"**Court of Alderney**" means the Court of Alderney constituted in accordance with the Government of Alderney Law, 2004,

"**designated Community provision**" means a Community provision listed in Schedule 1,

"**designated laboratory**" means an official feed and food control laboratory appointed by the Food Standards Agency of the United Kingdom,

^P O.J. No. L 281, 25.10.2007, p. 21.

^q O.J. No. L 277, 18.10.2008, p. 8.

^r O.J. No. L 277, 18.10.2008, p. 15.

^s O.J. No. L 277, 18.10.2008, p. 21.

"**Directive No. 2002/32/EC**" means Directive No. 2002/32/EC, of the European Parliament and of the Council of 7 May 2002^t as amended by Commission Directive 2003/57/EC of 17 June 2003^u, Commission Directive No. 2003/100/EC of 31 October 2003^v, Commission Directive No. 2005/8/EC of 27 January 2005^w, Commission Directive No. 2005/86/EC of 5 December 2005^x, Commission Directive No. 2005/87/EC of 5 December 2005^y, Commission Directive No. 2006/13/EC of 3 February 2006^z, Commission Directive No. 2006/77/EC of 29 September 2006^{aa}, Commission Directive No. 2008/76/EC of 25 July 2008^{bb}, Commission Directive No. 2009/8/EC of 10 February 2009^{cc}, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009^{dd} and Commission Regulation (EU) No. 574/2011 of 16 June 2011^{ee},

t	O.J. No. L140, 30.05.2002, p. 10.
u	O.J. No. L151, 19.06.2003, p. 38.
v	O.J. No. L285, 01.11.2003, p. 33.
w	O.J. No. L 27, 29.01.2005, p. 44.
x	O.J. No. L318, 06.12.2005, p. 16.
y	O.J. No. L318, 06.12.2005, p. 19.
z	O.J. No. L 32, 04.02.2006, p. 44.
aa	O.J. No. L271, 30.09.2006, p. 53.
bb	O.J. No. L198, 26.07.2008, p. 37.
cc	O.J. No. L 40, 11.02.2009, p. 19.
dd	O.J. No. L 87, 31.3.2009, p. 109.
ee	O.J. No. L 159, 17.6.2011, p. 7.

"disposal notice" means a notice given under paragraph 4(b) of Schedule 7,

"dispose of", in relation to any risk good or other thing, includes sell, slaughter (in the case of an animal) or destroy,

"document" –

- (a) means anything in which information of any description is recorded, and
- (b) includes any record (in whatever form it is held),

"export" means export from Sark to any place other than –

- (a) Guernsey, or
- (b) a prescribed island, territory or country,

"feed" has the meaning given by article 3(4) of Regulation 178/2002,

"feed business" –

- (a) means any undertaking whether for profit or not and whether public or private, carrying out any operation of production, manufacture, processing, storage, transport, distribution or other forms of transfer of feed, and

- (b) includes any producer producing, processing or storing feed for feeding to animals on the producer's own holding,

"feed business approval" means an approval granted under section 12(4)(b),

"feed business operator" –

- (a) means any person who operates a feed business, and
- (b) includes any person registered under this Ordinance as the operator of a feed business,

"feed business register" means the register kept by the Guernsey Committee under section 8(b),

"food" has the meaning given by article 2 of Regulation 178/2002,

"food business" means any undertaking, whether for profit or not, whether public or private, carrying out any activity related to any stage of production, processing, distribution or any other form of transfer of food –

- (a) and includes –
 - (i) a seasonal or sporadic activity,
 - (ii) importation or exportation of food, or

- (iii) an activity related to any stage from and including primary production up to and including sale or supply to the final consumer, but
- (b) excludes an activity undertaken for fewer than five days (whether consecutive or not) in any period of five consecutive weeks,

"food business approval" means an approval granted under section 12(4)(a),

"food business operator" –

- (a) means any person who operates a food business, and
- (b) includes any person registered under this Ordinance as the operator of a food business,

"food business register" means the register kept by the Guernsey Committee under section 8(a),

"food of animal origin" includes both unprocessed products and processed products, as defined in article 2(1) of Regulation 852/2004,

"food of non-animal origin" includes food containing both products of plant origin and processed products of animal origin,

"Greffier" –

- (a) means the Greffier appointed under section 49 of the Reform (Sark) Law, 2008, and
- (b) includes any person performing the Greffier's duties or exercising the Greffier's powers by virtue of that provision,

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

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

"the Guernsey Ordinance" means the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016^{ff},

"import" means import into Sark from any place other than–

- (a) Guernsey, or
- (b) a prescribed island, territory or country,

"information" includes any document, statement or evidence, regardless of the manner or form in which it is kept or given,

"injury to human health" includes any impairment, whether

permanent or temporary, to human health,

"the Islands" means the territory comprised of –

- (a) Sark,
- (b) Guernsey, and
- (c) if declared by regulations made by the Guernsey Committee to be part of the Islands for the purposes of this Ordinance, Alderney,

"official certificate" means a certificate completed by an approved examiner,

"operation or activity" includes any feed business, food business or feed business or food business of a specified kind or description,

"owner", in relation to any thing, includes –

- (a) a person entitled to the proceeds of a sale or disposal of the thing,
- (b) a person who is entitled to possession of the thing, or, in the case of any thing that is seized property, who would, but for the seizure, be entitled to possession of

ff Ordinance of the States of Guernsey No. XXI of 2016; as amended by G.S.I. No. 36 of 2019.

that thing,

- (c) other than in relation to seized property, any other person who is in charge or control of the thing, and
- (d) any person who, after reasonable enquiry, is believed to be a person described in any of paragraphs (a) to (c),

"owner or occupier", in relation to any premises, includes –

- (a) a person entitled to the proceeds of a sale or disposal of the premises,
- (b) the occupier of the premises,
- (c) any other person who is in charge or control of the premises, and
- (d) any person who, after reasonable enquiry, is believed to be a person described in any of paragraphs (a) to (c),

"police officer" means –

- (a) the Constable (appointed under section 52 of the Reform (Sark) Law, 2008), the Vingtenier or the Assistant Constable of Sark,
- (b) a member of the salaried police force of the Island of Guernsey, or

- (c) a special constable appointed under section 542 of the Reform (Sark) Law, 2008, within the limits of the special constable's jurisdiction,

"premises" includes any place and any vehicle, vessel, aircraft, offshore installation, tent or moveable structure,

"prescribed" means prescribed by regulations made by the Guernsey Committee,

"the protection of human life or health" has the meaning given by section 85,

"registered person" means any person who is registered as the operator of a food business or a feed business,

"registration" means registration on the food business register or feed business register under Part II,

"Regulation 178/2002" means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002^{gg} as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council of 22 July 2003^{hh}, Commission Regulation (EC) No. 575/2006 of 7

^{gg} O.J. No. L 31, 01.02.2002, p. 1.

^{hh} O.J. No. L 245, 29.09.2003, p. 4.

April 2006ⁱⁱ, Commission Regulation (EC) No. 202/2008 of 4 March 2008^{jj}, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009^{kk}, and Commission Implementing Regulation (EU) No. 931/2011 of 19 September 2011^{ll},

"**Regulation 852/2004**" means Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004^{mm} as amended by Commission Regulation (EC) No. 1019/2008 of 17 October 2008ⁿⁿ and Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009^{oo},

"**Regulation 853/2004**" means Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004^{pp} as amended by Commission Regulation (EC) No. 2074/2005, Commission Regulation (EC) No. 1662/2006 of 6 November 2006^{qq}, Council Regulation (EC) No. 1791/2006

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- ii O.J. No. L 100, 08.04.2006, p. 3.
jj O.J. No. L 60, 5.3.2008, p. 17.
kk O.J. No. L 188, 18.7.2009, p. 14.
ll O.J. No. L 242, 20.9.2011, p. 2.
mm O.J. No. L 226, 25.6.2004, p. 3.
nn O.J. No. L 277, 18.10.2008, p. 7.
oo O.J. No. L 87, 31.3.2009, p. 109.
pp O.J. No. L 226, 25.6.2004, p. 22.
qq O.J. No. L 320, 18.11.2006, p. 1.

of 20 November 2006^{rr}, Commission Regulation (EC) No. 1243/2007 of 24 October 2007^{ss}, Commission Regulation (EC) No. 1020/2008 of 17 October 2008^{tt}, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009^{uu}, Commission Regulation (EC) No. 1161/2009 of 30 November 2009^{vv}, Commission Regulation (EU) No. 558/2010 of 24 June 2010^{ww}, Commission Regulation (EU) No. 150/2011 of 18 February 2011^{xx}, Commission Regulation (EU) No. 1276/2011 of 8 December 2011^{yy} and Commission Regulation (EU) No. 16/2012 of 11 January 2012^{zz},

"**Regulation 854/2004**" means Regulation (EC) No. 854/2004 of the European Parliament and of the Council of 29 April 2004^{aaa} as amended by Regulation 882/2004, Commission Regulation (EC) No. 2074/2005, Commission Regulation (EC) No. 1663/2006 of 6 November 2006^{bbb}, Council

rr	O.J. No. L 363, 20.12.2006, p.1.
ss	O.J. No. L 281, 25.10.2007, p. 8.
tt	O.J. No. L 277, 18.10.2008, p. 8.
uu	O.J. No. L 87, 31.3.2009, p. 109.
vv	O.J. No. L 314, 1.12.2009, p. 8.
ww	O.J. No. L 159, 25.6.2010, p. 18.
xx	O.J. No. L 46, 19.2.2011, p. 14.
yy	O.J. No. L 327, 9.12.2011, p. 39.
zz	O.J. No. L 8, 12.1.2012, p. 29.
aaa	O.J. No. L 226, 25.6.2004, p. 83.
bbb	O.J. No. L 320, 18.11.2006, p. 11.

Regulation (EC) No. 1791/2006 of 20 November 2006^{ccc}, Commission Regulation (EC) No. 1021/2008 of 17 October 2008^{ddd}, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11 March 2009^{eee}, Commission Regulation (EU) No. 505/2010 of 14 June 2010^{fff}, Commission Regulation (EU) No. 151/2011 of 18 February 2011^{ggg} and Commission Implementing Regulation (EU) No. 739/2011 of 27 July 2011^{hhh},

"**Regulation 882/2004**" means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004ⁱⁱⁱ as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008^{jjj}, Commission Regulation (EC) No. 1029/2008 of 20 October 2008^{kkk}, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009^{lll}, Commission Regulation (EU) No. 208/2011 of 2 March 2011^{mmm} and

ccc	O.J. No. L 363, 20.12.2006, p. 1.
ddd	O.J. No. L 277, 18.10.2008, p. 15.
eee	O.J. No. L 87, 31.3.2009, p. 109.
fff	O.J. No. L 149, 15.6.2010, p. 1.
ggg	O.J. No. L 46, 19.2.2011, p. 17.
hhh	O.J. No. L 196, 28.7.2011, p. 3.
iii	O.J. No. L 191, 28.05.2004, p. 1.
jjj	O.J. No. L 97, 9.4.2008, p. 85.
kkk	O.J. No. L 278, 21.10.2008, p. 6.
lll	O.J. No. L 188, 18.7.2009, p. 14.
mmm	O.J. No. L 58, 3.3.2011, p. 29.

Commission Regulation (EU) No. 880/2011 of 2 September 2011ⁿⁿⁿ,

"**Regulation 183/2005**" means Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005^{ooo} as amended by Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009^{ppp} and Commission Regulation (EU) No 225/2012 of 15 March 2012^{qqq},

"**Regulation 2073/2005**" means Commission Regulation (EC) No. 2073/2005 of 15 November 2005^{rrr} (as amended by Commission Regulation (EC) No. 1441/2007 of 5 December 2007^{sss}),

"**Regulation 2074/2005**" means Commission Regulation (EC) No. 2074/2005 of 5 December 2005^{ttt} (as amended by Commission Regulation (EC) No. 1664/2006 of 6 November 2006^{uuu}, Commission Regulation (EC) No. 1022/2008 of 31 August 2007^{vvv} and Commission Regulation (EC) No.

nnn	O.J. No. L 228, 3.9.2011, p. 8.
ooo	O.J. No. L 35, 08.02.2005, p. 1.
ppp	O.J. No. L 87, 31.3.2009, p. 109.
qqq	OJ L 77, 16.3.2012, p. 1.
rrr	O.J. No. L 338, 22.12.2005, p. 1.
sss	O.J. No. L 322, 07.12.2007, p. 12.
ttt	O.J. No. L 338, 22.12.2005, p. 27.
uuu	O.J. No. L 320, 18.11.2006, p. 13.
vvv	O.J. No. L 230, 01.09.2007; p. 6.

1244/2007 of 24 October 2007^{www}),

"**Regulation 767/2009**" means Regulation (EC) No. 767/2009 of the European Parliament and of the Council of 13 July 2009^{xxx} as amended by Commission Regulation (EU) No. 454/2010 of 26 May 2010^{yyy}, Commission Regulation (EU) No. 568/2010 of 29 June 2010^{zzz} and Commission Regulation (EU) No. 939/2010 of 20 October 2010^{aaaa},

"**Regulation 2015/1375**" means Commission Implementing Regulation (EU) 2015/1375 of 10 August 2015 laying down specific rules on official controls for *Trichinella* in meat (Codification),

"**relevant provisions of Regulation 178/2002**" means articles 12, 14, 16, 17, 18 and 19 of the EC Regulation, insofar as they relate to food, feed or any other relevant thing,

"**risk good**" means –

- (a) any animal, feed, feed additive or food, or

^{www} O.J. No. L 281, 25.10.2007, p. 12.

^{xxx} O.J. L 229, 1.9.2009, p. 1.

^{yyy} O.J. L128, 27.5.2010, p. 1.

^{zzz} O.J. L163, 30.6.2010, p. 30.

^{aaaa} O.J. L277, 21.10.2010, p. 4.

- (b) any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, any animal, feed, feed additive or food,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of any appeal, or any application for an order, under this Ordinance the court may appoint one or more assessors to assist it in the determination of any matter before it,

"Sark" –

- (a) means the Island of Sark,
- (b) includes its dependencies, and
- (c) includes the territorial waters adjacent to the Island of Sark and its dependencies,

"Sark uniform scale" has meaning given by the Uniform Scale of Fines (Sark) Law, 1989^{bbbb},

"searchable premises" has the meaning given by section 39(1),

"seized property" –

^{bbbb} Ordres en Conseil Vol. XXXI, p. 320.

- (a) means any property seized by an authorised officer or the Guernsey Committee under any provision of this Ordinance, but
- (b) excludes –
 - (i) any property sold, destroyed or otherwise disposed of in accordance with this Ordinance, and
 - (ii) any sample purchased or taken by an authorised officer with the intention of having it analysed,

"the Seneschal" means the Court of the Seneschal,

"sprouts" means the product obtained from the germination of seeds and their development in water or another medium, harvested before the development of true leaves and which is intended to be eaten whole, including the seed,

"States of Guernsey Veterinary Officer" means the States of Guernsey Veterinary Officer or, in case of his absence or incapacity, any recognised veterinary surgeon (within the meaning given by section 8 of the Veterinary Surgery and Animal Welfare Ordinance, 1987^{cccc}) for the time

^{cccc} Recueil d'Ordonnances Tome XXIV, p. 51; as amended by Ordres en Conseil Vol. XXXI, p. 278. This Ordinance is applied, with modifications, to Alderney by Alderney Ordinance No. XVIII of 1994.

being performing the functions of that office,

"**thing**" includes any article, substance or liquid,

"**this Ordinance**" includes any regulation made under this Ordinance,

"**unsafe**" –

- (a) in relation to food, has the meaning given by article 14 of Regulation 178/2002, and
- (b) in relation to feed, has the meaning given by article 15 of Regulation 178/2002,

and cognate expressions are to be given corresponding meanings.

(2) Unless the context requires otherwise, an expression used in this Ordinance (other than in section 19) that is also used in a designated Community provision has, in this Ordinance, the same meaning as in the designated Community provision in which it is used.

(3) Unless the context requires otherwise, where a Community provision is referred to or otherwise given effect by any provision of this Ordinance, both the Community provision and the provision of this Ordinance are to be construed as if –

- (a) a reference to a Member State of the European Union includes a reference to the Islands and any prescribed

country or territory,

- (b) a reference to a competent authority or competent authorities, or a reference to a public authority or public authorities, includes a reference to the Committee and any competent authority of a prescribed country or territory
- (c) a reference to placing any thing on the market includes a reference to placing the thing on the market in the Islands or any prescribed country or territory,
- (d) a reference to the Community or the European Union includes a reference to the Islands and any prescribed country or territory, and
- (e) a reference to Community law or Community legislation is a reference to applicable Community provisions.

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

Index of defined expressions.

88. In this Ordinance, the expressions listed below are defined by the provisions specified.

Expression	Interpretation Provision
Alderney	Section 87(1)
Applicable Community provision	Section 87(1)
Approval	Section 87(1)
Approved examiner	Section 87(1)
Authorised officer	Section 87(1)
Authorised person	Section 79(4)
Batch	Paragraph 1 of Schedule 4
Body corporate	Section 69(3)
Business	Section 50(1)
By post	Section 83(3)
Certificate of approval	Sections 13 and 87(1)
Claim	Section 72(2)
Commission Regulation 669/2009	Section 87(1)
Commission Regulation 1162/2009	Section 87(1)
The Community	Section 87(3)
Community law or Community legislation	Section 87(3)
Community provision	Section 87(1)
Competent authority	Section 87(3)
Contravene	Section 87(1)
Court of Alderney	Section 87(1)
Designated Community provision	Section 87(1)
Designated laboratory	Section 87(1)
Detention notice	Section 55(1)
Directive No. 2002/32/EC	Section 87(1)
Disposal notice	Section 87(1) and paragraph 4(b) of Schedule 7
Dispose of	Section 87(1)
Document	Section 87(1)
Emergency control regulations	Section 63(1)
Emergency prohibition notice	Section 53(2)
Emergency prohibition order	Section 53(3)
Entertainment	Section 84(4)
European Union	Section 87(3)
Export	Section 87(1)
Feed	Section 87(1)
Feed business	Section 87(1)
Feed business approval	Section 87(1)
Feed business operator	Section 87(1)
Feed business register	Section 87(1)
Food	Section 87(1)

Expression	Interpretation Provision
Food business	Section 87(1)
Food business approval	Section 87(1)
Food business operator	Section 87(1)
Food business register	Section 87(1)
Food of animal origin	Section 87(1)
Food of non-animal origin	Section 87(1)
Food premises	Paragraph 10 of Schedule 5
Foundation	Section 69(3)
Foundation official	Section 69(3)
General partner	Section 69(3)
Greffier	Section 87(1)
Guernsey	Section 87(1)
the Guernsey Committee	Section 87(1)
the Guernsey Ordinance	Section 87(1)
Guernsey foundation	Section 83(3)
Import	Section 87(1)
Improvement notice	Section 51(1)
Indirect sale	Paragraph 10 of Schedule 5
Information	Section 87(1)
Injury to human health	Section 87(1)
The Islands	Section 87(1)
Limited liability partnership	Section 70(4)
Limited partnership	Section 69(4)
Member State of the European Union	Section 87(3)
The notice	Section 61(11)
Official certificate	Section 87(1)
Operation or activity	Section 87(1)
Operator	Section 50(1)
Owner (in relation to any thing)	Section 87(1)
Owner or occupier (in relation to premises)	Section 87(1)
The person concerned	Sections 5(5) and 14(5)
Place on the market	Section 84 and 87(3)(c)
Police officer	Section 87(1)
Premises	Section 87(1)
Prescribed	Section 87(1)
Primary application	Section 58(2)
Prohibition order	Section 52(3)
The protection of human life or health	Section 85
Recommended temperature	Paragraph 10 of Schedule 5
Registered person	Section 87(1)

Expression	Interpretation Provision
Registration	Section 87(1)
Regulation 1906/90	Paragraph 10 of Schedule 5
Regulation 1907/90	Paragraph 10 of Schedule 5
Regulation 178/2002	Section 87(1)
Regulation 852/2004	Section 87(1)
Regulation 853/2004	Section 87(1)
Regulation 854/2004	Section 87(1)
Regulation 882/2004	Section 87(1)
Regulation 183/2005	Section 87(1)
Regulation 2073/2005	Section 87(1)
Regulation 2074/2005	Section 87(1)
Regulation 1924/2006	Section 72(2)
Regulation 767/2009	Section 87(1)
Regulation 1169/2011	Paragraph 10 of Schedule 5
Regulation 2015/1375	Section 87(1)
Relevant evidence	Section 42(3)
Relevant feed business	Section 10(4)
Relevant premises	Section 54(6)
Relevant provisions of Regulation 178/2002	Section 87(1)
Remedial action notice	Section 54(1)
Risk good	Section 87(1)
Royal Court	Section 87(1)
Sale	Section 84
Sark	Section 87(1)
The Sark Committee	Section 67(7)
Sark uniform scale	Section 87(1)
Searchable premises	Sections 39(1) and 87(1)
Secondary application	Section 58(5)
Seized property	Section 87(1)
The Seneschal	Section 87(1)
Sell	Section 84
Shelf life	Paragraph 10 of Schedule 5
Sprouts	Section 87(1)
The statement concerned	Section 80
States of Guernsey Veterinary Officer	Section 87(1)
Thing	Section 87(1)
This Ordinance	Section 87(1)
Transmit	Section 83(3)
Unsafe	Section 87(1)

Consequential amendments.

89. The Catering (Sark) Law, 1988^{dddd} is amended in the manner specified in Schedule 9.

Transitional and savings.

90. The provisions of Schedule 10 have effect.

Extent.

91. This Ordinance has effect in Sark.

Citation.

92. This Ordinance may be cited as the European Communities (Food and Feed Controls) (Sark) Ordinance, 2019.

Commencement.

93. This Ordinance shall come into force on a date specified by regulations made by the Guernsey Committee; and different dates may be specified for different provisions and for different purposes.

^{dddd} Ordres en Conseil Vol. XXXI, p. 68; as amended by Vol. XXXI, p. 320; the Catering (Transfer of Functions) (Sark) Ordinance, 1992 (No. 99); Sark Ordinance No. I of 2017; see also Order in Council No. XII of 2014.

SCHEDULE 1
DESIGNATED COMMUNITY PROVISIONS GIVEN EFFECT

Section 1(1)

1. Regulation 178/2002.
2. Regulation 852/2004.
3. Regulation 853/2004.
4. Regulation 854/2004.
5. Regulation 882/2004.
6. Regulation 183/2005.
7. Commission Regulation 2073/2005.
8. Commission Regulation 2074/2005.
9. Regulation 2015/1375.
10. Commission Regulation 669/2009.
11. Regulation 767/2009.
12. Commission Regulation 1162/2009.

SCHEDULE 2
TRACEABILITY INFORMATION – FOOD OF NON-ANIMAL
ORIGIN (EXCEPT SPROUTS AND SEEDS INTENDED FOR
THE PRODUCTION OF SPROUTS)

Section 25(2)(a) and (b)

1. This Schedule applies to food of non-animal origin, including food containing both products of plant origin and processed products of animal origin, but does not apply to sprouts and seeds intended for the production of sprouts.

2. The food business operator must, as a minimum, keep the following information –
 - (a) in relation to food supplied to the food business operator –
 - (i) name of supplier,
 - (ii) address of supplier,
 - (iii) nature of products supplied, and
 - (iv) date of transaction/delivery,

 - (b) in relation to food supplied by the food business operator to another business –
 - (i) name of customer,

- (ii) address of customer,
- (iii) nature of products supplied, and
- (iv) date of transaction/delivery.

3. The food business operator must keep the information referred to in paragraph 2 at least until it can be reasonably assumed that the food has been consumed.

SCHEDULE 3
TRACEABILITY INFORMATION – FOOD OF ANIMAL
ORIGIN

Section 25(2)(c), (d) and (e)

1. This Schedule applies to food of animal origin, which includes both unprocessed products and processed products, as defined in article 2(1) of Regulation 852/2004.

2. The food business operator must, as a minimum, keep the following information concerning consignments of food –
 - (a) an accurate description of the food,

 - (b) the volume or quantity of the food,

 - (c) the name and address of the food business operator from which the food has been dispatched,

 - (d) the name and address of the consignor (owner), if different from the food business operator, from which the food has been dispatched,

 - (e) the name and address of the food business operator to whom the food is dispatched,

 - (f) the name and address of the consignee (owner), if different from the food business operator, to whom the food is dispatched,

- (g) a reference identifying the lot, batch or consignment, as appropriate,
and
 - (h) the date of dispatch.
3. The information referred to in paragraph 2 must be updated on a daily basis.
 4. The information referred to in paragraph 2 must be kept available at least until it can be reasonably assumed that the food has been consumed.
 5. The information referred to in paragraph 2 must be made clearly and unequivocally available to and retrievable by the food business operator to whom the food is supplied, in addition to any information required under applicable Community provisions concerning the traceability of food of animal origin.
 6. The information referred to in paragraph 2 must be provided, on demand, to an authorised officer, without undue delay, in addition to any information required under applicable Community provisions concerning the traceability of food of animal origin.

SCHEDULE 4
TRACEABILITY INFORMATION – SPROUTS AND SEEDS
INTENDED FOR THE PRODUCTION OF SPROUTS

Section 25(2)(f), (g), (h) and (i)

1. In this Schedule, "**batch**" means a quantity of sprouts or seeds intended for the production of sprouts, with the same taxonomic name, which is dispatched from the same premises to the same destination on the same day. One or more batches can make up a consignment. However, seeds with a different taxonomic name, which are mixed in the same packaging and intended to be germinated together and sprouts thereof are also considered as one batch.
2. This Schedule applies to batches of sprouts and seeds intended for the production of sprouts but does not apply to sprouts after they have undergone a treatment which eliminates microbiological hazards in a manner compatible with Community provisions.
3. The food business operator must, as a minimum, keep the following information –
 - (a) an accurate description of the seeds or sprouts, including the taxonomic name of the plant,
 - (b) the volume or quantity of the seeds or sprouts supplied,
 - (c) where the seeds or sprouts had been dispatched from another food business operator, the name and address of –

- (i) the food business operator from which the seeds or sprouts have been dispatched, and
 - (ii) the consignor (owner) if different from the food business operator from which the seeds or sprouts have been dispatched,
- (d) the name and address of the food business operator to whom the seeds or sprouts are dispatched,
- (e) the name and address of the consignee (owner), if different from the food business operator to whom the seeds or sprouts are dispatched,
- (f) a reference identifying the batch as appropriate, and
- (g) the date of dispatch.
4. The food business operator ("A") must ensure that the information needed to comply with paragraph 3 is transmitted to any food business operator to whom A supplies the seeds or sprouts.
5. The information referred to in paragraph 3 may be kept on record and transmitted in any appropriate form, provided that it is easily retrievable by the food business operator to whom the seeds or sprouts are supplied.
6. The food business operator must transmit the relevant information referred to in paragraph 3 on a daily basis.

7. The food business operator must update the records referred to in paragraph 3 on a daily basis and keep them available for a sufficient time after the sprouts can be assumed to have been consumed.

8. The food business operator must provide the information referred to in paragraph 3, on demand, to an authorised officer, without undue delay.

SCHEDULE 5
TEMPERATURE CONTROL REQUIREMENTS

Section 36

1. **Application of this Schedule.**

This Schedule does not apply in relation to –

- (a) any food business operation to which Regulation 853/2004 applies, or
- (b) any food business operation carried out on a vessel or aircraft.

2. **Chill holding requirements.**

(1) Subject to subparagraph (2) and paragraph 3, no person may keep any food–

- (a) which is likely to support the growth of pathogenic micro-organisms or the formation of toxins, and
- (b) with respect to which any commercial operation is being carried out,

at or in food premises at a temperature above 8°C.

(2) Subparagraph (1) does not apply in relation to any food which, as part of an indirect sale, is being conveyed to the final consumer.

(3) Subject to paragraph 3, no person may supply any food by indirect sale which –

(a) is likely to support the growth of pathogenic micro-organisms or the formation of toxins, and

(b) is being or has been conveyed by post or by a private or common carrier to the final consumer,

at a temperature which has given rise to or is likely to give rise to a risk to human health.

3. **General exemptions from the chill holding requirements.**

Neither subparagraph (1) nor (3) of paragraph 2 applies in relation to –

(a) food which –

(i) has been cooked or reheated,

(ii) is for service or on display for sale, and

(iii) needs to be kept at or above 63°C in order to control the growth of pathogenic micro-organisms or the formation of toxins,

(b) food which, for the duration of its shelf life may be kept at ambient temperatures with no risk to human health,

(c) food which is being or has been subjected to a process such as dehydration or canning intended to prevent the growth of pathogenic micro-organisms at ambient temperatures, but not where –

- (i) after or by virtue of that process the food was contained in a hermetically sealed container, and
 - (ii) that container has been opened,
- (d) food which must be ripened or matured at ambient temperatures, but not when the process of ripening or maturation is completed, or
- (e) raw food intended for further processing (including cooking) before human consumption, but only if that processing, if undertaken correctly, will render that food fit for human consumption.

4. **Upward variation of the 8 degrees centigrade temperature by manufacturers etc.**

(1) In any proceedings for an offence of contravening paragraph 2(1), it is a defence for the defendant to prove that –

(a) a food business responsible for manufacturing, preparing or processing the food, including, where relevant, the defendant, has recommended that it is kept –

(i) at or below a specified temperature between 8°C and ambient temperatures, and

(ii) for a period not exceeding a specified shelf life,

(b) that recommendation has, unless the defendant is that food business, been communicated to the defendant either by means of a label on

the packaging of the food or by means of some other appropriate form of written instruction,

(c) the food was not kept by the defendant at a temperature above the specified temperature, and

(d) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded.

(2) A food business responsible for manufacturing, preparing or processing food must not recommend that any food is kept –

(a) at or below a specified temperature between 8°C and ambient temperatures, and

(b) for a period not exceeding a specified shelf life,

unless that recommendation is supported by a well-founded scientific assessment of the safety of the food at the specified temperature.

5. **Chill holding tolerance periods.**

(1) In any proceedings for an offence of contravening paragraph 2(1), it is a defence for the defendant to prove that the food –

(a) was for service or on display for sale,

(b) had not previously been kept for service or on display for sale at a temperature above 8°C or, where a recommendation has been made pursuant to paragraph 4(1), the recommended temperature, and

- (c) had been kept for service or on display for sale for a period of less than four hours.
- (2) In any proceedings for an offence of contravening paragraph 2(1), it is a defence for the defendant to prove that the food –
- (a) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety, and was being transferred –
 - (i) from premises at which the food was going to be kept at or below 8°C or, in appropriate circumstances, the recommended temperature, to a vehicle used for the purposes of a food business, or
 - (ii) to such premises from such a vehicle, or
 - (b) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as –
 - (i) to accommodate the practicalities of handling during and after processing or preparation,
 - (ii) the defrosting of equipment, or
 - (iii) temporary breakdown of equipment.

6. **Hot holding requirements.**

No person may, in the course of the activities of a food business, keep at or in food premises at a temperature below 63°C any food which –

- (a) has been cooked or reheated,
- (b) is for service or on display for sale, and
- (c) needs to be kept at or above 63°C in order to control the growth of pathogenic micro-organisms or the formation of toxins.

7. **Hot holding defences.**

(1) In any proceedings for an offence of contravening paragraph 6, it is a defence for the defendant to prove that –

- (a) a well-founded scientific assessment of the safety of the food at temperatures below 63°C has concluded that there is no risk to human health if, after cooking or reheating, the food is held for service or on display for sale –
 - (i) at a holding temperature which is below 63°C, and
 - (ii) for a period not exceeding any period of time specified in that scientific assessment, and
- (b) at the time of the commission of the alleged offence, the food was held in a manner which was justified in the light of that scientific assessment.

- (2) In any proceedings for an offence of contravening paragraph 6, it is a defence for the defendant to prove that the food –
- (a) had been kept for service or on display for sale for a period of less than two hours, and
 - (b) had not previously been kept for service or on display for sale by that person.

8. **Reheating of food.**

- (1) This paragraph applies to food which has been heated in the course of a food business operation.
- (2) A person who reheats food to which this paragraph applies before that food is served for immediate consumption or exposed for sale must, when reheating that food, raise it to a temperature of not less than 75°C.

9. **Reheating defences.**

In any proceedings for an offence of contravening paragraph 8(2), it is a defence for the defendant to prove that the food could not have been raised to a temperature of not less than 75°C without a deterioration of its qualities.

10. **Interpretation.**

In this Schedule –

"**food premises**" means any premises in or from which a food business is operated,

"indirect sale", in relation to food –

- (a) means sale of the food to the final consumer, where the seller (or the seller's employee or agent) and the buyer are not in the same place at the time of the sale, and
- (b) includes a sale made by way of internet, electronic mail, telephone, facsimile or mail order,

"recommended temperature" means a specified temperature which has been recommended in accordance with subparagraph (1)(a)(i) of paragraph 4,

"Regulation 1906/90" means Council Regulation (EEC) No 1906/90^{eeee} on certain marketing standards for poultry as last amended by Council Regulation (EC) No 1101/98^{ffff} amending Regulation (EEC) No 1906/90 on certain marketing standards for poultry meat,

"Regulation 1907/90" means Council Regulation (EEC) No 1907/90^{gggg} on certain marketing standards for eggs as last amended by Council Regulation (EC) No 2052/2003^{hhhh} amending Regulation (EEC) No 1907/90 on certain marketing standards for eggs,

^{eeee} O.J. No. L 173, 6.7.1990, p. 1.

^{ffff} O.J. No. L 157, 30.5.1998, p. 12.

^{gggg} O.J. No. L 173, 6.7.1990, p. 5.

^{hhhh} O.J. No. L 305, 22.11.2003, p. 1.

"**Regulation 1169/2011**" means Regulation (EU) No 1169/2011ⁱⁱⁱ of the European Parliament and of the Council on the provision of food information to consumers, and

"**shelf life**" means –

- (a) in relation to food for which a date of minimum durability is required in accordance with Article 9(1)(f) of Regulation 1169/2011, as read with Article 24(1) and (2) of that Regulation, the period up to and including the required date of minimum durability,
- (b) in relation to food for which a "use by" date is required in accordance with Article 9(1)(f) of Regulation 1169/2011, as read with Article 24(1) and (2) of that Regulation, the period up to and including the required "use by" date, and
- (c) in relation to food which is not required to bear an indication of minimum durability or a "use by" date, the period for which the food can be expected to remain fit for sale if it is kept in a manner which is consistent with food safety.

ⁱⁱⁱ O.J. No. L 304, 22.11.2011, p. 18.

SCHEDULE 6
SAMPLING AND RELATED POWERS AND DUTIES

Section 39(8)

1. This Schedule applies where an authorised officer purchases or takes without payment a sample of food under this Ordinance with the intention of having the sample analysed.
2. The authorised officer must, after purchasing or taking the sample, promptly notify the food business operator, or the person in apparent charge or control of the food, of that authorised officer's intention of having the sample analysed.
3. Where an authorised officer purchases or takes without payment a sample of food which is suspected by the authorised officer -
 - (a) to be unsafe, or
 - (b) to fail to comply with the provisions of this Ordinance applicable to such a food or with the relevant provisions of Regulation 178/2002,the authorised officer may, by notice in writing to the food business operator, or person in apparent charge or control of such food, prohibit the removal of the food except to any place which may be specified in the notice, during such period as may be specified in the notice, but not exceeding 15 days from the date of the taking of the sample.

4. If the division of a sample is reasonably practicable, the authorised officer must divide the sample into three approximately equal parts (enforcement, trade (defence) and referee), each of which that authorised officer must mark in such a way as to identify it as a part of the sample taken. The authorised officer must, in the presence of the food business operator, or person in apparent charge or control of the food –

(a) mark, seal and fasten each part in a manner that its nature permits, and in such a way that the integrity of the sample is not compromised,

(b) forward one part to the approved examiner in a designated laboratory for analysis,

(c) give or send one part to the food business operator (or person in apparent charge or control of the food), and

(d) retain the third part.

5. If a sample consists of food contained in unopened containers and its division into parts -

(a) is not reasonably practicable, or

(b) might affect the composition or impede the proper analysis of the sample,

the authorised officer may divide the containers into three lots and deal with each lot as if it were a sample of the kind mentioned in paragraph 4.

6. The approved examiner or a person under that examiner's direction must analyse as soon as possible any sample of a food submitted to that examiner by an authorised officer and that examiner must certify to the authorised officer, the result of such analysis in the form of an official certificate.

7. Where a sample of food is submitted for analysis by an approved examiner, the Guernsey Committee must draw up a report in accordance with article 9 of Regulation 882/2004, and where the certificate given in accordance with paragraph 6 indicates that there has been non-compliance with the relevant provisions of Regulation 178/2002, the Guernsey Committee must, as soon as practicable, provide the food business operator with a copy of the report.

SCHEDULE 7

DETENTION, STORAGE AND DISPOSAL OF SEIZED PROPERTY

Section 49(1)

1. The Guernsey Committee may store seized property in any manner and place it considers appropriate before the seized property is disposed of in accordance with this Ordinance.
2. Any person who appears to the Guernsey Committee to be the owner of the property must be given reasonable access to that property.
3. Any seized property must be returned to its owner within 40 days of its seizure under this Ordinance, except –
 - (a) to the extent that the owner of the property has consented to the continued detention, sale, destruction or other disposal, of the property,
 - (b) to the extent that an authorised officer believes, on reasonable grounds, that the property is evidence in an offence under this Ordinance which the officer is investigating, and that it is necessary to retain that property for the investigation or potential or ongoing proceedings for the offence,
 - (c) where the Guernsey Committee has disposed of the property under paragraph 4,
 - (d) where the Guernsey Committee has applied for an order in respect of

the property under section 58 but the Seneschal has not made an order in respect of that property, or

(e) where a competent court has ordered otherwise.

4. Where, for any reason it is not practicable for the Guernsey Committee to apply to the Seneschal for an order under section 58(8) (for example, because the seized property is perishable, its storage involves unreasonable expense or inconvenience, or the cost and expense of making an application outweighs the likely value of the property) –

(a) the Guernsey Committee may dispose of that property in any manner the Guernsey Committee considers appropriate, including, for the avoidance of doubt, by destroying that property, but

(b) as soon as practicable after disposing of the property, the Guernsey Committee must give written notice of the disposal ("**disposal notice**") to the owner of the property or any person who appears to be the owner of the property (whether at the time of the disposal or any subsequent time).

SCHEDULE 8
PENALTIES FOR OFFENCES

Section 71(1)

Penalty	Provision of this Ordinance creating the offence
<p>(a) Upon summary conviction, imprisonment for a term not exceeding one month, a fine not exceeding level 4 on the Sark uniform scale, or both, and</p> <p>(b) upon conviction on indictment, imprisonment for a term not exceeding 2 years, a fine not exceeding twice level 5 on the Sark uniform scale, or both.</p>	<p>Section 51(3), section 52(3), section 53(5) or (6), section 54(5), section 55(3), section 56(3) or section 63(3).</p>
<p>Upon summary conviction or conviction on indictment, a fine not exceeding level 4 on the Sark uniform scale.</p>	<p>Section 16(2). Section 23(1) or (2). Section 79(2).</p>
<p>Upon summary conviction or conviction on indictment, imprisonment for a term not exceeding one month, a fine not exceeding level 4 on the Sark uniform scale, or both.</p>	<p>Any other provision.</p>

SCHEDULE 9

CONSEQUENTIAL AMENDMENTS TO CATERING (SARK) LAW, 1988

Section 89

Provision	Amendment
Section 7	<p>At the end of paragraph (b)(iii), delete "and".</p> <p>At the end of paragraph (c), for the full stop, substitute ", and".</p> <p>Immediately after paragraph (c), insert the following paragraph –</p> <p>"(d) evidence that the applicant is registered under the Food Ordinance as the operator of a food business in respect of the premises."</p>
Section 10(1)	<p>In the subparagraphs immediately following paragraph (b) –</p> <p>(a) in subparagraph (iv), immediately after "this Law", insert "or the Food Ordinance", and</p> <p>(b) immediately after subparagraph (v), insert the following subparagraph –</p> <p>"(va) whether the applicant for, or holder of, the catering permit is duly registered under the Food Ordinance as the operator of a food business in respect of the premises,".</p>
Section 20(1)	<p>Insert in the appropriate alphabetical order, the following definition–</p> <p>""the Food Ordinance" means the European Communities (Food and Feed Controls) (Sark) Ordinance, 2019,".</p>

SCHEDULE 10
TRANSITIONAL AND SAVINGS PROVISIONS

Section 90

1. Subject to paragraph 2, where, immediately before the commencement of this Ordinance, any person operates a food business or feed business –
 - (a) the person, the food or feed business and any premises in or from which that business is so operated are deemed to be registered in the food business register or (as the case may require) feed business register, and
 - (b) that person is deemed to be the person registered as the operator of that food business or feed business under this Ordinance, and
 - (c) in the case of a food business, if it requires a food business approval under this Ordinance, the person is deemed to hold a food business approval in respect of the food business and any premises in or from which the business is so operated.

2. Where, immediately before the commencement of this Ordinance, any person operates a food business under a production licence granted under the Regulation of Production of Alcoholic Products (Sark) Law, 2012^{jjj}, a catering permit granted under the Catering (Sark) Law, 1988 or a hawker's

^{jjj} Order in Council No. VIII of 2013; as amended by Ordinance No. II of 2015; Ordinance No. XIII of 2018.

licence granted under the Itinerant Hawkers Ordinance^{kkkk} or any other licence or permit granted or issued under any enactment –

- (a) the person, the food business and the premises to which the licence or (as the case may be) permit relates are deemed to be registered in the food business register for so long as that licence or (as the case may be) permit remains valid and in force,
- (b) that person is deemed to be the person registered as the operator of that food business under this Ordinance for so long as that licence or (as the case may be) permit remains valid and in force, and
- (c) if that food business requires a food business approval under this Ordinance, that person is deemed to hold a food business approval under this Ordinance in respect of that food business and the premises to which that licence (or as the case may be) permit relates, for so long as that licence or (as the case may be) permit remains valid and in force.

3. Both paragraphs 1 and 2 cease to have effect on the 1st January, 2020.

^{kkkk} Made by the Chief Pleas at its Michaelmas Meeting on the 8th November, 1939.