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The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018

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The Transfrontier Shipment of Waste (Guernsey)

Ordinance, 2018

THE STATES, in pursuance of their Resolutions of the 26th September, 2013^a and the 25th October, 2018^b and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c, hereby order:-

PART I

MODIFIED EU REGULATION EFFECTIVE IN GUERNSEY ETC.

Modified EU Regulation to have effect in Guernsey.

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

^a Article IX of Billet d'État No. XVIII of 2013.

^b Article XI of Billet d'État No. XXIII of 2018.

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

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

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

Legislation relating to transboundary shipments of waste.

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

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

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

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

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

including, without limitation –

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

Competent authorities of dispatch and destination.

3. The Director is the –

- (a) competent authority of dispatch^f, and
- (b) competent authority of destination^g,

in relation to Guernsey for the purposes of the modified EU Regulation.

Competent authority of transit.

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

PART II

APPLICATION FOR A FINANCIAL GUARANTEE OR EQUIVALENT
INSURANCE

Financial guarantees or equivalent insurance.

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

- (a) the notifier must apply to the Director (as the competent authority of dispatch) for approval of a financial guarantee or equivalent insurance, and
- (b) the Director must issue a decision within 60 working

^f For exports from Guernsey.

^g For imports into Guernsey.

^h For transits through Guernsey.

days after the receipt of the application.

(2) The following procedure applies to an application for a review of the amount of cover of a financial guarantee or equivalent insurance and the approval of the additional financial guarantee or equivalent insurance, in relation to the import of waste into Guernsey, in accordance with the modified EU Regulation –

(a) the notifier or the consignee, if authorised in writing by the notifier, may apply to the Director (as the competent authority of destination) for a review of the amount of cover and approval of a financial guarantee or equivalent insurance, and

(b) the Director must issue a decision within 60 working days after the receipt of an application.

(3) For the purposes of the modified EU Regulation, the notifier must supply–

(a) the financial guarantee or equivalent insurance, or

(b) evidence of that guarantee or insurance or a declaration certifying its existence,

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

ENFORCEMENT POWERS

Take-back etc. of waste.

6. (1) Where the Director is the competent authority of dispatch and receives notification from another competent authority that a shipment cannot be completed as intended, the Director may serve a notice on the notifier of the shipment requiring the notifier to act in accordance with the relevant requirements of the modified EU Regulation, relating to take-back of such shipments, within a specified time.

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

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

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

Powers to seize waste.

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

- (a) the provisions of the modified EU Regulation or this Ordinance are not being, have not been or are not likely to be complied with in respect of any waste, or
- (b) the shipment, recovery or disposal of any waste cannot be completed in accordance with the notification and movement documents or the contract between the notifier and consignee.

(2) The Director may do any of the following –

- (a) seize that waste,
- (b) serve a notice on any person who appears to the Director to be in control of such waste –
 - (i) requiring that person to send the waste to any place specified in the notice, or
 - (ii) prohibiting or restricting the movement of that waste.

Seizure procedures.

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

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

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

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

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

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

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

(5) If a notification of a claim is not received within 28 days, the Director must take such steps as the Director considers appropriate to ensure the

recovery or disposal of the waste and for these purposes may serve a notice on the notifier requiring the notifier to recover or dispose of the waste in the manner, and within the time period, specified in the notice.

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

Powers of entry.

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

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

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

- (a) unless the Director gives to the owner or occupier of the premises concerned at least 24 hours' notice of the Director's intention to enter the premises, and
- (b) in the case of any premises, or any part of premises, used as a dwelling except under and in accordance with the authority of a warrant issued by the Bailiff under and in accordance with section 10.

(3) The power of entry under subsection (1) includes a power -

- (a) for the Director to take onto the premises such persons, equipment and materials as the Director reasonably considers necessary for the purpose for which the power of entry is being exercised, and
- (b) for such persons to exercise any power that may be exercised by the Director, for the purpose for which the Director entered, provided that any such person is in the company, and under the supervision, of the Director.

Warrant to enter premises.

10. (1) If the Bailiff is satisfied by information on oath supplied by the Director, that there are reasonable grounds for entering any premises for any

purpose for which the Director has a right to enter premises under this Part, the Bailiff may grant a warrant to the Director.

(2) A warrant granted under subsection (1) shall authorise the Director at any time within one month of the date of the grant -

- (a) to enter the premises, and
- (b) to exercise in respect of the premises (and any waste, equipment, substance or other thing found in or on the premises), all such powers as the Director may exercise under this Part,

for the purposes indicated in subsection (1).

(3) The Bailiff shall not issue a warrant under subsection (1) unless the Bailiff is satisfied that any of the following four conditions is met.

(4) The first condition is that the whole of the premises is used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises is not used as a dwelling and that each of the following applies to the occupier of the premises -

- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,

(b) the occupier has failed to allow entry to the premises on being requested to do so by the Director, and

(c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that -

(a) the premises are unoccupied or the occupier is absent, and

(b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because -

(a) it would defeat the object of entering the premises, or

(b) entry is required as a matter of urgency.

(8) The Director executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law,

2003ⁱ ("PPACE") shall apply in relation to the issue of a warrant under this section to the Director as they apply in relation to the issue of a warrant to a police officer.

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

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

Supplementary functions.

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

(2) The Director exercising a power to which this section applies may, where it is reasonably necessary for the purpose for which the Director has exercised the power -

- (a) inspect any waste, equipment, substance or other thing (including a document or record in any form),

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

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

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

(4) Anything which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(g) may, subject to the

following provisions of this Ordinance, be retained so long as is necessary in all the circumstances and in particular -

- (a) for use as evidence at a trial for a relevant offence,
- (b) for forensic examination or for investigation in connection with an offence, or
- (c) for use in connection with the enforcement of the requirements of a notice served under this Ordinance,

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

(5) Subsection (2)(g) does not include power to seize anything which the person exercising the power has reasonable grounds for believing to be an item subject to legal professional privilege within the meaning of section 24 of PPACE.

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

Powers to require information.

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

- (2) The requirements for the purpose of subsection (1) are -
- (a) to furnish the Director with such information, including records and other documents, relating to the waste as the Director may reasonably require, and
 - (b) to answer such questions relating to the waste as the Director may reasonably ask.

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

- (a) may be used in evidence against that person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against that person in criminal proceedings except -
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for -
 - (A) an offence under section 17(2) or (3),
 - (B) some other offence where, in giving

evidence, the person makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

Powers of officers of customs and excise.

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

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

(3) Without prejudice to the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^j, the master of every ship and the commander of every aircraft which arrives in Guernsey from a port or place outside Guernsey must declare to an officer of customs and excise -

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

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

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

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

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

PART IV
MISCELLANEOUS PROVISIONS

Objections to shipments under waste import and export plan.

14. (1) The Committee for the Environment & Infrastructure must prepare and submit to the States for approval a management plan for the importation and exportation of waste ("**the plan**") which must contain the States policies in relation to the import and export of waste for recovery or disposal.

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

(3) The Committee for the Environment & Infrastructure must take into account relevant obligations under the Basel Convention and the OECD Decision in preparing the plan.

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

Registration of dealers and brokers.

15. (1) The Director must establish and maintain a register of establishments and undertakings in Guernsey which arrange as dealer or broker for the disposal or recovery of waste.

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

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

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

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

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

PART V
OFFENCES AND PENALTIES

Offences: contravention of modified EU Regulation or Ordinance.

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

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

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

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

Offences: obstruction and false information etc.

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

- (a) the Director, a person acting under the direction of the Director under section 8 or taken onto premises by the Director under section 9(3) in the exercise or purported exercise of that person's functions under this Ordinance, or
- (b) an officer of customs and excise in the exercise or purported exercise of that officer's functions under section 13,

is guilty of an offence.

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

- (a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or

misleading in a material particular,

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

is guilty of an offence.

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

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

is guilty of an offence.

Offences due to default of another.

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

Criminal liability of directors etc.

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

- (a) in the case of a body corporate, any director, controller, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraph (a) to (c),

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

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's

functions of management as if the member were a director.

(3) In this section –

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

"**foundation**" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012^k, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named), and

"**foundation official**" means –

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

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

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, 1995¹, 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 corresponds to that of a general partner described in paragraph (a) of this definition.
- (4) In this section and in section 20 "**limited partnership**" means -
- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
 - (b) an arrangement entered into under the laws of a

¹ Ordres en Conseil Vol. XXXVI, p. 264 ; as amended by Ordres en Conseil Vol. XXXVI, p.571; Order in Council No. IV of 2001; No. X of 2007;No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. No. 51 of 2016.

jurisdiction outside Guernsey between two or more persons, under which -

- (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

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

- (a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,

- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

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

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

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

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

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013^m, or

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

- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

Defences.

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

(2) In proceedings against a person for an offence under section 16(2), in respect of the contravention of a condition of a consent laid down by the Director under the modified EU Regulation, it is a defence for that person to show that they were not reasonably able to comply with the condition concerned by reason of an emergency.

Penalties.

22. A person guilty of an offence under this Ordinance is liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both, or
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

PART VI
GENERAL PROVISIONS

Form and method of service of documents.

23. (1) The forms and methods of service provided for below are subject to the provisions of the modified EU Regulation in relation to –

- (a) the forms and methods for submitting information and documents which are required to be submitted under that Regulation, and
- (b) standard forms provided for certain documents, including notification and movement documents, under that Regulation.

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

- (a) an individual, by being delivered to that individual, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,

- (d) an unincorporated body, by being given to or served on any partner, member, manager or officer of the body in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or
 - (e) the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey.
- (3) In subsection (2) –
- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
 - (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document is regarded as served when it is received.
- (4) If a person notifies the Director of an address for service within Guernsey for the purposes of this Ordinance, any document to be given to or served on that person may be given or served by being left at, or sent by post or transmitted to, that address.

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

- (a) by being published by the Director in such manner and for such period as the Director thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

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

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

(7) Notwithstanding the provisions of subsections (2) to (6) and (9) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Director under or for the purposes of this Ordinance is deemed to have been given or served until it is received.

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

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

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

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

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

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

Interpretation.

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

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

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

"**Committee for the Environment & Infrastructure**" means the States

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

of Guernsey Committee for the Environment & Infrastructure,

"**contravention**" includes failure to comply and related expressions are construed accordingly,

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

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

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

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

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

"**Guernsey**" includes Herm and Jethou and all other islands, islets and rocks around the coast of Guernsey, whether or not attached at low water

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

^P An Act of Parliament (1990 c.25).

and the territorial waters adjacent to Guernsey,

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

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

"notice" means notice in writing,

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

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

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

"police officer" means a member of the salaried police force of the Island of Guernsey and, within the limits of that member's jurisdiction, a member of the special constabulary of the Island of Guernsey,

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

"premises" includes –

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

"**Royal Court**" means the Royal Court sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

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

"**States**" means the States of Guernsey,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect but does not include an Ordinance,

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

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

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

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

- (a) anything which the Director has reasonable grounds to suspect is waste, and
- (b) the container in which the waste or thing is carried,

"**working day**" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958⁵,

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

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

⁵ Ordres en Conseil Vol. XVII, p. 384; as amended by Ordres en Conseil Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367; Ordinance No. XXXIII of 2003; No. IX of 2016; Ordinance No. XXIV of 2017; Alderney Ordinance No. VII of 2017; and Sark Ordinance No. XII of 2017.

Repeal, transitional provisions and savings.

25. (1) The Transfrontier Shipment of Waste Ordinance, 2002^t is repealed.

(2) Despite subsection (1) –

(a) this Ordinance does not apply in relation to any shipment of waste that has been notified, and for which the competent authority of destination has given acknowledgement, before 31st October, 2018, and

(b) the Transfrontier Shipment of Waste Ordinance, 2002, including the Regulation set out in the Schedule to that Ordinance, continues to apply in relation to such a shipment as if it had not been repealed.

Extent.

26. This Ordinance extends to Guernsey.

Citation.

27. This Ordinance may be cited as the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018.

Commencement.

28. This Ordinance shall come into force on the 31st October, 2018.

^t Ordinance No. I of 2002; as amended by Order in Council No. XIII of 2010; Ordinance No. XXXIII of 2003; and No. IX of 2016.

SCHEDULE

Section 1

MODIFICATIONS, EXCEPTIONS AND ADAPTATIONS TO THE EU
REGULATIONPART I
GENERAL MODIFICATIONS**Application of EU Regulation.**

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

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

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

Functions of competent authorities.

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

- (a) the competent authority of destination or the

competent authority of destination in the Community (however worded) are to be read as referring to the Director in relation to shipments of waste imported into Guernsey,

- (b) the competent authority of dispatch or the competent authority of dispatch in the Community (however worded) are to be read as referring to the Director in relation to shipments of waste exported from Guernsey,
- (c) the competent authority of transit or the first and last competent authority of transit in the Community (however worded) are to be read as referring to the Director, acting on behalf of the Environment Agency, in relation to shipments of waste in transit through Guernsey,
- (d) the competent authority with jurisdiction over the area where the waste was discovered (however worded) are to be read as referring to the Director in relation to waste discovered in Guernsey, or
- (e) the competent authority concerned or the competent authorities (however worded) are to be read as including the Director.

(2) References to competent authorities, other than the Director, are to be read (subject to the following provisions of this Schedule) as referring to the

required procedure in relation to controls on shipments of waste under the EU Regulation, including where relevant the notification and obtaining of the consent of all competent authorities concerned, and not as purporting to confer or impose a function on those other competent authorities under this Ordinance who will act in accordance with relevant national legislation applying to waste shipments, for example the EU Regulation in the European Union.

General modifications.

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

- (a) references to "the Community", except where referred to in the title to EU legislation, are to be read as references to "Guernsey",
- (b) references to "Community legislation", other than in Article 1(3)(e), are to be read as references to "Guernsey legislation",
- (c) references to "third countries" and to "a third country" are to be read as references to "countries outside Guernsey" and "a country outside Guernsey" respectively,
- (d) except in Article 49(2), references to obligations imposed on, or to actions of, facilities (however worded) are to be read as being imposed on, or carried out by, operators of facilities and references to

the permit of a facility are to be read as a reference to the permit of the operator of a facility,

- (e) references to "the competent authority in the country of the customs office", "the competent authority of the country of the customs office in which the waste is detained" (however worded) are to be read as references to "the Director",
- (f) references to "its area of jurisdiction", "its area of jurisdiction or elsewhere within the country of dispatch", "the area of jurisdiction of the competent authority of dispatch" and "their jurisdiction" are to be read as references to "Guernsey",
- (g) references to shipments of waste originating from or discovered within "a Member State" or "that Member State" (however worded) are construed as references to shipments originating or discovered in Guernsey,
- (h) references to "international conventions concluded by the Member State(s) concerned or the Community" are to be read as references to "international conventions the UK's ratification of which is extended to Guernsey",
- (i) references to "the objecting country" are to be read as references to "Guernsey",

- (j) references to "Community and national provisions concerning liability" are to be read as references to "the provisions of any other enactment concerning liability",
- (k) references to "shipped through Member States" are to be read as references to "shipped through Guernsey",
- (l) references to "the customs office of export and the customs office of exit from the Community", "the customs office of exit from the Community" or "the customs office of entry into the Community" (however worded) are to be read as references to "an officer of customs and excise", and
- (m) references to compliance with or anything being done in accordance with the requirements of an Article of the modified EU Regulation (however worded) are to be read as referring to compliance with the equivalent national legislation where referring to a person involved in carrying on an activity in relation to a shipment of waste outside Guernsey (for example, the EU Regulation where referring to an activity being carried on in an EU country).

(2) References in the modified EU Regulation to persons involved in shipments of waste, or the subsequent recovery or disposal of the same, who are not carrying on an activity in relation to such shipments in Guernsey ("third country persons"), including references to operators of facilities to which shipments of waste

from Guernsey may be exported for recovery or disposal, are retained to the extent necessary to clarify the context of functions conferred or imposed on persons carrying on activities in Guernsey under the modified EU Regulation; such references are not to be read as purporting to confer or impose a function on third country persons under this Ordinance who will be subject to relevant national legislation applying to shipments of waste, for example the EU Regulation in the European Union.

General disapplications.

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

- (a) in Title II, Article 21 (public access to notifications), Article 30 (border area agreements) and Chapter 6 (shipments within the Community with transits via third countries),
- (b) Title III (Shipments exclusively within Member States),
- (c) in Title IV, Article 40 (exports to overseas countries or territories),
- (d) in Title V, Article 45 (procedural requirements for imports from a non-OECD Decision country party to the Basel Convention or from other areas during situations of crisis or war) and Chapter 3 (general provisions),

- (e) in Title VII, Article 50 (enforcement in member states) and Articles 53 to 64, and
- (f) Annex IX (additional questionnaire for reports by Member States pursuant to Article 51(2)).

PART II

MODIFICATIONS OF PARTICULAR PROVISIONS

Modifications of particular provisions.

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

Title I: Scope and definitions.

6. In Title I (scope and definitions) –
- (a) Articles 1(2)(a), (3)(g), 1(5), Articles 2(26), (28) and (29) and subparagraphs (b) and (f) of Article 2(34) are omitted,
 - (b) in Article 1(3)(e) for "Community legislation" substitute "European Community legislation",
 - (c) in Article 1(3)(i) for "Member State" substitute "Member State of the European Union",
 - (d) in the definition of "competent authority" in Article 2(18) –

- (i) in subparagraph (a), after the words "Member States" insert "of the European Union" and after the words "in accordance with article 53" insert "of this Regulation as it applies in the European Union", and
- (ii) in subparagraph (b), after the words "non-Member State" insert "of the European Union",
- (e) after the definition of "country of transit" in Article 2(24) insert –

"24A. 'country' includes a territory;

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

24C. 'Guernsey' includes Herm and Jethou and all other islands, islets and rocks around the coast of Guernsey, whether or not attached at low water and the territorial waters adjacent to Guernsey;

24D. 'licensed' means licensed by the Director under section 15 of the Environmental Pollution (Guernsey) Law, 2004;

24E.'registered' means registered by the Director under section 15 of the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018;"

(f) for Article 2(27) substitute –

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

and

(g) in the definition of "illegal shipment" in Article 2(35) –

(i) in subparagraph (e), for "Community or international rules" substitute "Guernsey law or any relevant international agreements the UK's ratification of which is extended to Guernsey", and

(ii) in subparagraph (f), for "and 43" substitute "or 43".

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

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

"WASTE SHIPMENTS -COMMON PROVISIONS".

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

Articles 6 (financial guarantee).

8. In Article 6 (financial guarantee) –
- (a) in paragraph (7), for "The competent authority within the Community which has approved the financial guarantee or equivalent insurance" substitute –

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

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

- (c) paragraph (9) is omitted.

Article 9 (consents by competent authorities etc.).

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

Articles 10 (conditions for a shipment), 11 (objections to shipments of waste destined for disposal) and 12 (objections to shipments of waste destined for recovery).

10. (1) In Article 10(5) (conditions for a shipment) after "receives the waste" insert "in Guernsey".

(2) In Article 11 (objections to shipments of waste destined for disposal) –

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

- (b) in paragraph (1) –

- (i) for "in accordance with the Treaty" substitute "must do so where required under section 14 of the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018",

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

(iii) in subparagraph (c) –

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

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

(iv) in subparagraph (e), for "the Member State" substitute "Guernsey".

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

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

(b) in paragraph (1) –

(i) for "in accordance with the Treaty" substitute "must do so where required under section 14

of the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018",

- (ii) in subparagraph (b), for "national legislation" substitute "Guernsey legislation",
- (iii) in subparagraph (d) -
 - (A) after "convicted of" insert "an offence in relation to",
 - (B) for "in accordance with national legislation" substitute "and in this paragraph "offence" includes an offence under the law of another jurisdiction which would be an offence in Guernsey if the conduct, activity or omission constituting the offence occurred in Guernsey", and
- (iv) in subparagraph (j), the words "(also in cases where temporary derogations are granted)" are omitted.

Article 14 (pre-consented recovery facilities).

11. In Article 14 (pre-consented recovery facilities) –

- (a) in paragraph (3), for "shall inform the Commission and, where appropriate, the

OECD Secretariat of" substitute "the Director shall inform, where appropriate, the OECD Secretariat (through one of Her Majesty's Principal Secretaries of State) of', and

- (b) in the last subparagraph of paragraph (5), after "The total time needed" insert "by the Director to receive further information or documentation from the notifier".

Articles 15 (additional provisions etc.) and 16 (requirements following consent to a shipment).

12. (1) In Article 15 (additional provisions regarding interim recovery and disposal operations) –

- (a) at the beginning of subparagraph (c), insert "Where the interim recovery or disposal operation is carried out in Guernsey,";
- (b) in subparagraph (d), after "disposal operation" insert "carried out in Guernsey,";
- (c) in subparagraph (e) –
 - (i) after the first reference to "an interim recovery or disposal operation" insert "in Guernsey", and
 - (ii) for "it shall obtain" substitute "the operator of

the facility in Guernsey shall obtain", and

- (d) in subparagraph (f)(i) "or in another Member State" is omitted.
- (2) In Article 16 (requirements following consent to shipment) –
- (a) in subparagraph (c), for the last sentence substitute "Where waste is received in Guernsey, the movement document shall be retained by the operator of a facility which receives the waste.",
 - (b) in subparagraph (d), after "within three days of receipt of the waste" insert "in Guernsey", and
 - (c) in subparagraph (e) –
 - (i) after "disposal operation" insert "in Guernsey", and
 - (ii) in the last subparagraph, after "facility" insert "in Guernsey."

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

13. (1) In Article 18 (waste to be accompanied by certain information)–
- (a) in paragraph (1)(a), for "the country of dispatch"

substitute "Guernsey" and after "who arranges the shipment" insert ", in the case of an export",

- (b) in paragraph (1)(b), after "shall be signed" insert ", in the case of exports," and after "and the consignee" insert ", in the case of imports",
- (c) paragraph (3) is omitted, and
- (d) in paragraph (4), for "required by Community and national legislation" substitute "required under Guernsey law".

(2) In Article 20 (keeping of documents and information) –

- (a) in paragraph (1), for "by the competent authorities, the notifier, the consignee and the facility which receives the waste" substitute "by the Director, the notifier, the consignee and the operator of the facility in Guernsey which receives the waste", and
- (b) in paragraph (2), after "facility" insert "in Guernsey".

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

14. In Article 22 (take-back when a shipment cannot be completed as intended) –

- (a) in paragraph (1), after "recovery or disposal facility" insert "in Guernsey", and

- (b) in paragraph (8) for the references to "the country of dispatch" substitute "Guernsey, where it is the country of dispatch,".

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

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

Chapter 5 (general administrative provisions).

- 16. (1) In Article 26 (format of the communications), paragraph (4) is omitted.
 - (2) In Article 28(1) (disagreement on classification issues), for "Community or international law" substitute "international law".
 - (3) In Article 29 (administrative costs), at the beginning insert "The Director may charge" and the words "may be charged" are omitted.

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

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

**"Export prohibited except to EFTA countries,
Member States of the EU or Jersey",**

- (b) in paragraph (2), for "which are also Parties to the Basel Convention" substitute "or Member States of the European Union which are also Parties to the Basel Convention or in Jersey", and
 - (c) in paragraph (3) –
 - (i) for "Party to the Basel Convention" substitute "or a Member State of the European Union Party to the Basel Convention or to Jersey", and
 - (ii) in subparagraph (a) after "EFTA country" insert ", Member State of the European Union or Jersey".
- (2) In Article 35 –
- (a) for the heading substitute –

**"Procedures when exporting to EFTA countries,
Member States of the EU or Jersey",**
 - (b) in paragraph (1), for "Parties to the Basel Convention" substitute "or Member States of the European Union which are also Parties to the Basel Convention or in

Jersey",

- (c) in paragraph (2), after "adaptations" insert "and additions",
- (d) in paragraph (2)(a), for "shall have 60 days" substitute–

"shall have –

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

legislation in the country of transit",

(e) in paragraph (2)(b) –

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

"not earlier than -

- (i) 30 days, where the country of transit is a Member State of the European Union, in accordance with the EU Regulation;
- (ii) 30 days, where the country of transit is Alderney or Sark in accordance with any Ordinance, relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or
- (iii) 61 days, where the country of transit is another country, or such other period provided for in accordance with relevant national legislation in the country of transit,".

- (ii) in the last sentence, for "61 day time limit" substitute "relevant time limit",
- (f) in paragraph (3) subparagraphs (a), (b) and (d) are omitted, and
- (g) in paragraph (6), for all the words from "inform the competent authority in the country" to the end of the paragraph substitute "inform the Director".

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

18. (1) In Article 36 (exports prohibition) –
- (a) in paragraphs (3) and (5) for references to "Member States" and "the Member State concerned" substitute "the Director", and
 - (b) in paragraph (5) –
 - (i) for the second and third sentences substitute –

"The Director shall notify such cases to the United Kingdom before the end of each calendar year for forwarding to the Secretariat of the Basel Convention", and
 - (ii) the last sentence is omitted.
- (2) In Article 37 (procedures when exporting waste listed in

Annex III or IIIA) –

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

- "1. Export for recovery of waste listed in Annex III or IIIA, which is not prohibited under Article 36, to countries to which the OECD Decision does not apply shall be governed by the procedures set out in the Annex to Commission Regulation (EC) No. 1418/2007 of 29th November, 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply.
2. Where it is indicated in the Annex to Commission Regulation (EC) No. 1418/2007 that a country, with regard to certain shipments of waste, does not prohibit them or apply the procedure of prior written notification and consent as described in article 35 of this Regulation, article 18 of this Regulation shall apply *mutatis mutandis* to such shipments.
3. The references to the procedures of the EU

Regulation in the Annex to Commission Regulation (EC) No. 1418/2007 shall be construed as referring to those procedures as set out in this modified EU Regulation.", and

- (b) in paragraph (5), for "paragraph 1(b) of this Article" substitute "a procedure of prior written notification and consent as described in Article 35".
- (3) In Article 38 (exports of waste listed in Annexes III, IIIA etc.) –
- (a) in paragraph (2) –
 - (i) after "adaptations" insert " and additions", and
 - (ii) in subparagraph (c) for "Article 9" substitute "Title II",
 - (b) in paragraph (3)(a), for "the competent authorities of dispatch and, where appropriate, transit in the Community shall send a stamped copy of their decisions" substitute –

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

"shall have –

- (i) in the case of a competent authority of a Member State of the European Union, 30 days in accordance with the EU Regulation; or
- (ii) in the case of a competent authority of another country, 60 days, or such other period provided for in accordance with relevant national legislation in the country of transit;"

(d) in paragraph (5)(b) –

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

"not earlier than -

- (i) in the case of a competent authority of a Member State of the European Union, 30 days in accordance with the EU Regulation; or
- (ii) in the case of a competent authority of another country, 61 days or such other period provided for in accordance with relevant national legislation in the country of transit,"

and

- (ii) in the last sentence, for "61 day time limit" substitute "relevant time limit",
- (e) in paragraph (6), after "is exported" insert "from Guernsey", and
- (f) in paragraph (7), for all the words from "inform the competent authority in the country" to the end of the paragraph substitute "inform the Director."

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

19. (1) For Article 41 substitute –

"Article 41

Imports prohibited except from Alderney, Sark or Jersey

1. Imports into Guernsey of waste destined for disposal shall be prohibited except those from Alderney, Sark or Jersey."

- (2) In Article 42 –

- (a) for the heading substitute –
"Procedural requirements for imports from Alderney, Sark or Jersey",
- (b) in paragraph (1), for "countries Parties to the Basel Convention" substitute "Alderney, Sark or Jersey",

- (c) in paragraph (2) –
 - (i) after "adaptations" insert "and additions",
 - (ii) in subparagraph (a), for "shall have 60 days" substitute –

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

and

- (iii) the word "and" is omitted at the end of subparagraph (a) and subparagraph (b) is omitted,
- (d) in paragraph (3) subparagraph (a) is omitted, and
- (e) in paragraph (5) for subparagraph (a) substitute –
 - "(a) inform the competent authority of dispatch outside Guernsey; and".

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

- 20. (1) For Article 43 substitute –

"Article 43

Imports prohibited except from Alderney, Sark or Jersey or another OECD Decision country

1. Imports into Guernsey of waste destined for recovery shall be prohibited except those from Alderney, Sark or Jersey or another OECD Decision country."

- (2) In Article 44 –
 - (a) for the heading substitute -

"Procedural requirements for imports from Alderney, Sark or Jersey or another OECD Decision

country",

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

Title VI, Transit of Waste.

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

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

Title VII, Other provisions.

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

- (a) in paragraph (1), the last sentence is omitted,
- (b) in paragraph (2)(a) and the penultimate subparagraph of paragraph (2), for "third country of destination" substitute "country of destination", and

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

"Reports",
 - (b) in paragraph (1), for the words from "which in accordance with Article 13(3) of the Basel Convention" to the end of the paragraph substitute "which the States of Guernsey have drawn up in accordance with Article 13(3) of the Basel Convention.",
 - (c) paragraphs (2) and (4) are omitted, and
 - (d) in paragraph (3), for the words "paragraphs 1 and 2" substitute "paragraph 1".
- (3) In Articles 51 and 52, references to –
- (a) "Member State", "Member States" or "each Member State" are read as references to "the States of Guernsey", and

- (b) "the Commission" are read as references to "the United Kingdom".

Annexes to the EU Regulation.

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

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

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

- (b) for paragraph 2 of Part 3 substitute –

"2. Copy of the permit issued for the recovery or disposal facility in accordance with relevant national legislation."

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

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

- (b) paragraph 3 is omitted.

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

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