

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

The European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019 *

[CONSOLIDATED TEXT]

NOTE

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* No. III of 2019; as amended by the Plant Health (Implementation) (Guernsey) Ordinance, 2020 (No. IX of 2020); the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020 (G.S.I. No. ** of 2020); the Organic Products (Brexit) (Bailiwick of Guernsey) Regulations, 2020 (G.S.I. No. ** of 2020). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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(Made on 10th December, 2019.)

**The European Communities (Official Controls)
(Implementation and General Provisions) (Guernsey)
Ordinance, 2019**

THE STATES POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, and in exercise of the powers conferred on the Committee by Article 66A(1) of the Reform (Guernsey) Law, 1948^b, hereby orders: –

PART I
PRELIMINARY

Designation of competent authorities.

1. (1) For the purposes of Article 4 of the OCR (designation of competent authorities), the following are designated as a competent authority in respect of the areas governed by rules listed in Article 1(2) of the OCR (subject matter and scope) ("**Designated Authority**") –

- (a) the States of Guernsey Committee for Health & Social Care in respect of points (a), (b) and (c),
- (b) the States of Guernsey Committee for the Environment & Infrastructure in respect of points (d), (e), (f), and (g),

^a Order in Council No. III of 1994; there are amendments not relevant to this Ordinance.

^b Ordres en Conseil Vol XIII, p. 288; amended by Order in Council No. XVII of 2015; there are other amendments not relevant to this Ordinance.

- (c) the States of Guernsey Committee for Employment & Social Security in respect of point (h), and
- (d) the States of Guernsey Committee for Economic Development in respect of points (i) and (j),

and references to points in this subsection are references to the points in Article 1(2).

(2) For the avoidance of doubt, the designations set out in subsection (1) are in addition to existing functions of Committees and do not alter or affect those functions.

(3) The States of Guernsey Policy & Resources Committee may by Order amend, substitute, insert or omit designations in subsection (1).

Other functions not limited.

2. For the avoidance of doubt, functions arising under the OCR and this Ordinance are in addition to any functions arising under any other enactment or any rule of customary or common law.

PART II

FUNCTIONS OF DESIGNATED AUTHORITIES

Appointment of staff and Designated Officers.

3. (1) A Committee designated by section 1(1) may, in respect of that designation, appoint staff to enable it to discharge its functions under the OCR and this Ordinance and to act on its behalf in relation to the performance of official controls and other official activities.

(2) A Committee designated by section 1(1) may, in respect of that

designation, appoint in writing officers or other individuals authorised to exercise functions under this Ordinance ("**Designated Officer**").

(3) Upon request, a Designated Officer must produce evidence of appointment under this section when exercising functions under this Ordinance.

(4) Section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^c has effect in relation to the functions of a Committee as if the reference to "any officer responsible to that Committee" in section 4(1)(a) of that Law includes a reference to any Designated Officer appointed by a Committee designated by section 1(1), whether or not the Designated Officer is in fact responsible to that Committee.

(5) The following are deemed to be Designated Officers for the purposes of this Ordinance –

- (a) the States Veterinary Officer, [...]
- (b) "authorised officers" appointed under section 39 of the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016^d[, and
- (c) "plant health officers" appointed under section 29(1) of the Plant Health (Implementation) (Guernsey) Ordinance, 2020 as official plant health officers,]
- [(d) "authorised officers" for the purposes of the Organic

^c Ordres en Conseil Vol. XXXIII, p. 478; amended by Recueil d'Ordonnances Tome XXIX, p. 406.

^d No. XXI of 2016; there are amendments not relevant to this Ordinance.

Products (Brexit) (Bailiwick of Guernsey) Regulations,
2020.]

(6) The States of Guernsey Policy & Resources Committee or any Committee designated by section 1(1) may by Order amend (which, for the avoidance of doubt, includes the substitution, insertion or omission of paragraphs) subsection (5).

NOTES

In section 3,

first, the word omitted in square brackets after subsection (5)(a) was repealed and, second, subsection (5)(c) and the word immediately after subsection (5)(b) were inserted by the Plant Health (Implementation) (Guernsey) Ordinance, 2020, respectively section 51(2)(a) and section 51(2)(b), with effect from 4th February, 2020;

paragraph (d) of subsection (5) was inserted by the Organic Products (Brexit) (Bailiwick of Guernsey) Regulations, 2020, regulation 24(2), with effect from 31st December, 2020.

General functions.

4. A Designated Authority –

- (a) must ensure that arrangements are in place –
 - (i) to maintain appropriate confidentiality in relation to the official controls and other official activities it undertakes, and
 - (ii) to enable the reporting of actual, potential or suspected non-compliance with the OCR,
- (b) may –

- (i) keep and maintain such –
 - (A) registers and records,
 - (B) lists of designated, recognised, authorised or approved bodies, councils, agencies, laboratories or like establishment (however described), or sites, facilities and stations (however described), and
 - (C) lists or records of officers or other individuals appointed or permitted to perform official controls and other official activities on its behalf (including authorisations to issue official certificates or official attestations),
- (ii) grant, issue, amend, suspend, withdraw and revoke such authorisations, consents, licences, certificates, attestations, approvals or like permissions,
- (iii) publicise such information (including on the internet), and
- (iv) take such other action,

as it considers to be necessary or expedient to enable it to discharge its functions under the OCR and this Ordinance.

Policies and guidance.

5. A Designated Authority may make available to the public, in a manner and form it considers appropriate, any policies and guidance it intends to take into account in exercising its functions under the OCR and this Ordinance.

Activities performed by Designated Authorities.

6. (1) A Designated Authority must draw up written records of official controls and other official activities that it performs, which must contain –

- (a) a description of the purpose of the official controls or other official activities,
- (b) the control methods applied,
- (c) the outcome, and
- (d) where appropriate, any action required by the Designated Authority.

(2) Except in the circumstances provided in Article 13(2) of the OCR (written records of official controls) –

- (a) operators that are subject to official controls or other official activities must be provided upon request with a copy of the corresponding records, and
- (b) where non-compliance has been identified by any

Designated Authority through the application of official controls or other official activities, the operator must be promptly informed of the non-compliance.

(3) Any costs or expenses reasonably incurred by a Designated Authority in providing the records under subsection (2)(a) are recoverable by the Designated Authority from the operator who requested the records as a civil debt.

Audits.

7. (1) The Director may make arrangements from time to time for audits of Designated Authorities.

(2) The Director may appoint an auditor in writing and, during the term of the appointment and the conduct of the audit, the auditor shall be deemed to be a Designated Officer for the purposes of performing functions under this Ordinance.

(3) Upon request, an auditor must produce evidence of appointment under this section when exercising functions under this Ordinance.

(4) A Designated Authority must provide such assistance to the auditor as is reasonably required in order for the auditor to carry out the audit effectively.

(5) The auditor must produce an audit report in such form as he or she considers to be appropriate and send copies of the report to –

(a) the Designated Authority, and

(b) the Director.

Orders may impose fees and charges.

8. (1) There is payable to a Designated Authority fees or charges of such amounts or at such rates, by such persons and in such manner as may be prescribed by Order of a Committee designated by section 1(1) in connection with –

- (a) the carrying out of functions,
- (b) the provision of any services by that Designated Authority or its Designated Officers in connection with their functions, or
- (c) the recovery of any reasonable costs associated with administration and enforcement,

under the OCR or this Ordinance.

(2) An Order made under this section may, without limiting the generality of subsection (1), make provision for the calculation, administration, payment, collection and recovery of fees and charges, the enforcement of liabilities to pay the same and the levying of interest or penalties in the event of late or non-payment of fees or charges.

(3) An Order made under this section shall be laid before a meeting of the States as soon as is reasonably practicable after being made and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of new Orders.

Exchange of information, assistance and co-operation.

9. (1) For the purpose of implementing the OCR, committees of the States of Guernsey may exchange information with each other and, further, a Designated Authority may also exchange information with any committee of the

States of Alderney or of the Chief Pleas of Sark and with competent authorities in the [British Islands].

(2) For the purpose of assisting a competent authority in the [British Islands], in relation to their functions under the OCR, Designated Officers may –

- (a) when exercising a power to enter premises or inspect records –
 - (i) be accompanied by officers of such other competent authorities, or by [such persons as the Designated Officer considers necessary],
 - (ii) show to them such records, and
 - (iii) make for them copies (or require copies to be made) of such records, and
- (b) require any person to provide the Designated Officer with such assistance, information or facilities as the Designated Officer may reasonably require for the purposes of implementing the OCR.

NOTE

In section 9, first, the words in square brackets in subsection (1), second, the words in the first pair of square brackets in subsection (2) and, third, the words in the second pair of square brackets in subsection (2) were substituted by the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020, regulation 2, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 11 p.m. on 31st December, 2020, subject to the savings and transitional provisions in regulation 4 of the 2020 Regulations.

Exclusion of liability.

10. (1) Subject to subsection (3), no person falling within subsection (2) is to be –

- (a) liable in damages, and
- (b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done after the commencement of this Ordinance in the discharge or purported discharge of their functions, or functions delegated to them, under the OCR or this Ordinance, unless the thing was done or omitted to be done in bad faith.

(2) The persons within this subsection are –

- (a) a Designated Authority, or
- (b) a Designated Officer or any other person authorised to carry out a function under the OCR or this Ordinance.

(3) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^e.

PART III

^e Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

FUNCTIONS OF DESIGNATED OFFICERS

Methods and techniques for official controls.

11. (1) The methods and techniques for official controls must be in accordance with Article 14 of the OCR (methods and techniques for official controls).

(2) An operator whose animals, goods or other objects are subject to sampling, analysis, testing or diagnosis has the right to a second expert opinion at the operator's own expense in accordance with Article 35 of the OCR (second expert opinion).

Powers of entry, search etc.

12. (1) A Designated Officer may enter any premises at a reasonable time for the purpose of –

- (a) performing official controls to verify –
 - (i) that an operator is complying with the OCR, or
 - (ii) that any animals, goods or other objects which are subject to rules and requirements under the OCR comply with those rules or requirements,
- (b) carrying out other official activities which are to be performed by a Designated Authority under the OCR,
- (c) implementing the OCR, in particular following a failure to comply with a notice, and
- (d) verifying information supplied by a person to a Designated Authority in connection with the conduct of

official controls or other official activities.

(2) Subsection (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(3) A Designated Officer who enters premises for a purpose specified in subsection (1) or under a warrant issued by the Bailiff may –

- (a) examine, photograph or mark any part of the premises, any object on the premises or anything that is attached to or otherwise forms part of the premises,
- (b) take samples of or from any animal, good or other object, any container, package or item which has been or may have been in contact with an animal, good or other object, or any substance or material,
- (c) open any container or package or require the owner, occupier or other person in charge of any container or package to open the container or package, or
- (d) inspect or make copies of any documents or records (in whatever form they may be held) relating to the animal, good or other object.

(4) A Designated Officer may destroy or otherwise dispose of any sample taken under this section when the sample is no longer required.

(5) A Designated Officer may be accompanied by such other persons (including those referred to in section 9(2)(a)(i)) and bring onto the premises

such equipment and vehicles as the Designated Officer considers necessary.

- (6) A person accompanying a Designated Officer under subsection (5) may –
- (a) remain on the premises and from time to time re-enter the premises without a Designated Officer,
 - (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
 - (c) carry out the measures provided in subsection (3)(a) to (d) or such other work on the premises in a manner directed by a Designated Officer.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Right of entry conferred by a warrant issued by the Bailiff.

13. (1) If the Bailiff is satisfied by information on oath supplied by a Designated Officer that –
- (a) there are reasonable grounds for entering premises for the purposes of –

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- (i) preventing, controlling, eradicating or otherwise dealing with any suspected animal disease or pests of plants,
 - (ii) otherwise preventing or minimising the risks or hazards to human health arising from animals, goods or other objects, or
 - (iii) taking action under section 12 or 15, and
- (b) any of the conditions in subsection (2) are met,

the Bailiff may grant a warrant to a Designated Officer permitting entry to those premises, if necessary by reasonable force.

- (2) The conditions are that –
- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier,
 - (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry,
 - (c) entry is required urgently, or
 - (d) the premises are unoccupied or the occupier is temporarily absent.
- (3) A warrant granted under this section is valid for one month.

(4) A Designated Officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

PART IV
ENFORCEMENT

Enforcement powers

Notices.

14. (1) A Designated Authority or a Designated Officer may by notice in writing require an appropriate person to provide, within the time specified in the notice, any information which the person may possess as to –

- (a) the animals, goods or other objects stored at any time on the premises specified in the notice,
- (b) any animal disease, pests of plants, or any other risk or hazard to human health, or
- (c) the persons who have had, or are likely to have had, any

animal, good or other object in their possession or under their charge.

(2) A Designated Authority or a Designated Officer may by notice in writing to an appropriate person –

- (a) confirm what action is being or is going to be taken by the Designated Authority or the Designated Officer, or
- (b) require an appropriate person to take such action, within the time specified in the notice,

as the Designated Authority or Designated Officer consider to be necessary for the purposes of preventing the establishment or spread of, or for the purposes of eradicating, any actual or suspected animal disease, pests of plants or any other risk or hazard to human health.

(3) In cases of actual or suspected non-compliance with obligations arising under the OCR, a Designated Authority or a Designated Officer may by notice in writing to an appropriate person –

- (a) confirm what action is being or is going to be taken by the Designated Authority or the Designated Officer, or
- (b) require an appropriate person to take such action as the Designated Authority or Designated Officer consider to be necessary within the time specified in the notice,

and in each case including, but not being limited to, the measures provided in Articles 66 (measures to be taken in cases of non-compliant consignments entering the [Bailiwick]), 67 (measures to be taken on animals or goods entering the [Bailiwick])

from third countries presenting a risk), 137 (general obligations on competent authorities as regards enforcement action) or 138 (actions in the event of established non-compliance) of the OCR.

(4) The time within which the information is required to be given or action is required to be taken must be reasonable.

(5) An appropriate person must produce for examination by a Designated Authority or a Designated Officer any authorisation, official statement, certificate, record, invoice or other document relating to an animal, good or other object specified in the notice.

(6) In this section, "**appropriate person**" means –

- (a) in relation to any premises to be specified in a notice under subsection (1), a person who is the owner, occupier or other person in charge of the premises,
- (b) a person who has, has had, or is reasonably suspected by the Designated Authority or the Designated Officer to have or have had, possession or charge of an animal, good or other object, or
- (c) a person who, as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of an animal, good or other object.

(7) A statement made by a person in response to a requirement imposed by or under subsection (1) –

- (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 23,

(B) some other offence where, in giving evidence that person makes a statement inconsistent with it, but is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(8) Any costs or expenses reasonably incurred by a Designated Authority in taking or causing to be taken any action under subsection (2)(a) or (3)(a) are recoverable by the Designated Authority from the person on whom the notice was served as a civil debt.

(9) A Designated Authority may by notice –

(a) demarcate an area in relation to the presence of an

animal disease, pests of plants, or any other risk or hazard to human health, and

(b) specify the prohibitions or restrictions which are to apply to the demarcated area for that purpose.

(10) A notice under subsection (9) –

(a) must describe the extent of the demarcated area,

(b) must specify the date on which any such prohibitions or restrictions are to commence, and

(c) must be published in a manner appropriate to bring it to the attention of the public.

NOTE

In section 14, the word "Bailiwick" in square brackets, wherever occurring, was substituted by the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020, regulation 2(d), with effect from 11 p.m. on 31st December, 2020, subject to the savings and transitional provisions in regulation 4 of the 2020 Regulations.

Failure to comply with a notice.

15. (1) If a person fails to comply with a notice within the time specified in the notice, or, in default, within a reasonable time, served on that person under this Ordinance, a Designated Officer may enter any premises at all reasonable times to take or cause to be taken any steps that the Designated Authority or the Designated Officer consider necessary to ensure compliance with the notice or to remedy the consequences of the failure to carry them out.

(2) Subsection (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(3) Subsection (1) does not affect any right of entry conferred by a warrant issued by the Bailiff.

(4) Any costs or expenses reasonably incurred by a Designated Authority in taking or causing to be taken any steps under subsection (1) are recoverable by the Designated Authority from the person on whom the notice was served as a civil debt.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Disclosure of information held by the Committee for Home Affairs.

16. (1) The States of Guernsey Committee for Home Affairs may disclose any information in its possession to a Designated Authority for the purposes of enabling or assisting the Designated Authority to carry out any function conferred on it under the OCR and this Ordinance.

(2) Nothing in subsection (1) affects any other power or requirement of the States of Guernsey Committee for Home Affairs to disclose information.

Miscellaneous provisions as to notices.

17. (1) This section applies to any notice given by a Designated Authority or a Designated Officer under this Ordinance.

(2) The notice may do one or more of the following –

(a) specify one or more requirements (which may include prohibitions, restrictions, or conditions) or alternative requirements,

(b) specify the manner in which and the period in which any requirement specified in the notice must be carried out or otherwise fulfilled, and

(c) require the owner, occupier or other person in charge of the premises to which the notice relates to –

(i) notify the Designated Authority of any change in occupation of the premises, the date of the change and the name of the new occupier, and

(ii) inform the new occupier of the premises of the content of the notice.

(3) Any destruction, disposal, re-export or treatment of an animal, good or other object, or substance or material, which is required to be carried out under the notice must be carried out, or arranged to be carried out, to the satisfaction of the Designated Authority or the Designated Officer by the person on whom the notice has been served.

(4) A Designated Officer or, as the case may be, a Designated

Authority may amend or withdraw the notice by a further notice.

(5) The notice may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

Service of notices.

18. (1) Any notice to be given or served under this Ordinance may be given or served –

- (a) on an individual, by being delivered to the individual, or by being left at, or sent by post or transmitted to, the individual' s usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on 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) on an unincorporated body, by being given to or served on any partner, member, manager or authorised officer thereof 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) on a Designated Authority or Designated Officer, by

being left at, or sent by post or transmitted to, the principal offices of the Committee designated by section 1(1).

(2) In subsection (1) –

(a) the expression "**by post**" means by 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 notice is to be regarded as served when it is received.

(3) If a person notifies a Designated Authority or Designated Officer of an address for service within Guernsey, any notice to be given to or served on the person may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If a notice under this Ordinance is to be served on the occupier or any other person in charge of premises, and the last known place of abode or address of that person cannot be ascertained after reasonable enquiry, the notice may be served on that person by addressing it to "the occupier" and leaving it conspicuously affixed to an object on the premises for a period of seven days.

(5) If service of a notice cannot, after reasonable enquiry, be effected by a Designated Authority or Designated Officer in accordance with this section, the notice may be served –

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

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

(6) Subsections (1) to (5) are without prejudice to any other lawful method of service.

(7) Despite subsections (1) to (5) and (9) and any other enactment or rule of law in relation to the service of documents, no notice to be given to or served on a Designated Authority or a Designated Officer is to be regarded as having been given or served until it is received.

(8) If a person upon whom a document is to be served is a person under legal disability, the document must be served on the person's guardian, and if there is no guardian, the party wishing to effect service may apply to the court for the appointment of a person to act as guardian.

(9) A notice sent by post is, unless the contrary is shown, deemed to have been received –

- (a) in the case of a notice sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting, or
- (b) in the case of a notice 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 notice sent by post is to be proved by showing the date of posting, the address thereon and the fact of prepayment.

(11) In this section, "**working day**" means any day other than a Saturday, a Sunday or a non-business day.

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

NOTE

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

Appeals

Appeals against decisions.

19. (1) A person aggrieved by a decision of a Designated Authority or, as the case may be, a Designated Officer –

(a) to issue a notice or a notice to amend a notice (other than notices under section 14(1)) –

(i) served on that person, or

- (ii) designating or demarcating an area (however named) where that person's premises, or a part of the same, are located, or
- (b) to take or ensure the taking of any measures provided for under the OCR or this Ordinance in relation to that person's premises, or part of the same,

may appeal to the Court against the decision.

(2) A person aggrieved by such other description of decision as a Committee designated by section 1(1) may, by Order, prescribe may appeal to the Court against the decision.

- (3) The grounds of an appeal under this section are that –
 - (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (4) An appeal under this section must be instituted –
 - (a) within a period of 28 days immediately following the

date of the notification of the decision, and

- (b) by summons served on the President of the Committee designated by section 1(1), the Designated Officer or the other person, as the case may be, stating the grounds and material facts on which the appellant relies.

(5) The Designated Authority, Designated Officer or other person, as the case may be, may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may –

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

(6) The provisions of subsection (5) are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^f.

(7) On an appeal under this section the Court may –

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Designated Authority, Designated Officer or other person, as the

^f O.R.C. No. IV of 2007; amended by O.R.C. No. II of 2008; and No. IV of 2009.

case may be, with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(8) On an appeal under this section against a decision, the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(9) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(10) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Offences and proceedings

General.

20. (1) A person commits an offence if the person contravenes a

provision –

- (a) of the OCR specified in Part I of Schedule 1, or
- (b) in other [Preserved] EU instruments specified in Part II of Schedule 1.

(2) But subsection (1) does not apply to anything done under, or in accordance with, a notice, authorisation, consent, licence, certificate, attestation, approval or like permission, given by a Designated Authority or a Designated Officer under the OCR or this Ordinance.

(3) The States of Guernsey Policy & Resources Committee may amend Schedule 1 by Order.

(4) An Order made under subsection (3) shall be laid before a meeting of the States as soon as is reasonably practicable after being made and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of new Orders.

NOTE

In section 20, the word in square brackets in subsection (1)(b) was inserted by the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020, regulation 2(1), with effect from 11 p.m. on 31st December, 2020, subject to the savings and transitional provisions in regulation 4 of the 2020 Regulations.

Failure to comply with requirements of notices etc.

21. A person commits an offence if the person fails to comply with a provision of a notice served on the person under the OCR or this Ordinance.

Defences.

22. It is a defence for a person charged with an offence under section 20 or 21 to show that –

- (a) the person had a reasonable excuse for contravening or failing to comply with the provision or notice in question, or
- (b) the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

Provision of false or misleading information.

23. A person commits an offence if, for the purposes of obtaining an authorisation, licence or other consent (however named) or procuring the issue of an official certificate by a Designated Authority or Designated Officer, the person –

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular,
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular, or
- (c) intentionally fails to disclose any material information.

Obstruction.

24. A person commits an offence if the person –

- (a) intentionally obstructs a Designated Officer or person accompanying a Designated Officer acting in the implementation of the OCR,

- (b) without reasonable excuse, fails to give to a Designated Officer or person accompanying a Designated Officer any assistance or information which the Designated Officer or person accompanying a Designated Officer may reasonably require for those purposes, or
- (c) fails to produce a document or record when required to do so by a Designated Authority or a Designated Officer acting in the implementation of the OCR.

Offence relating to the disclosure of information held by the Committee for Home Affairs.

25. A person commits an offence if the person discloses any information received from the States of Guernsey Committee for Home Affairs under section 16(1) and –

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure,
- (b) the disclosure is for a purpose other than specified in section 16(1), and
- (c) the States of Guernsey Committee for Home Affairs has not given its prior consent to the disclosure.

Defence: lawful disclosure.

26. It is a defence for a person charged with an offence under section 25 to prove that the person reasonably believed that –

- (a) the disclosure was lawful, or

- (b) the information had previously been made available lawfully.

Criminal liability of directors etc.

27. (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, 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 –

"foundation" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012^g, 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 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^h, and

^g Order in Council No. I of 2013; amended by Order in Council No. VI of 2017; Ordinance No. IX of 2016; and No. XXVII of 2018.

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

(b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of "limited partnership", a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition.

(4) In this section and in section 28 "**limited partnership**" means

(a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which –

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by

those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

28. (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, 2013ⁱ, 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.

29. A person guilty of an offence under this Ordinance is liable on summary conviction or conviction on indictment to a fine not exceeding level 5 on the uniform scale.

PART V
FINAL PROVISIONS

Interpretation.

30. (1) Unless the context requires otherwise, in this Ordinance –

"appropriate person": see section 14(6),

"audit" means an audit of a competent authority carried out for the

ⁱ Order in Council No. VI of 2014; amended by Order in Council No. VI of 2017; Ordinance No. XII of 2015; No. IX of 2016; and No. XXVII of 2018.

purposes of Article 6 of the OCR (audits of the competent authorities),

"auditor" means a person conducting an audit appointed under section 7(2),

"commencement date" means the date on which this Ordinance comes into force,

"Designated Authority": see section 1(1),

"Designated Officer": see section 3(1),

"the Director" means the Director of Environmental Health and Pollution Regulation appointed in accordance with section 4(1) of the Environmental Pollution (Guernsey) Law, 2004^j,

"the OCR" means [(subject to paragraph 5(2) of Schedule 2) Preserved] Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC,

^j No. XIII of 2004 (Ordres en Conseil Vol. XLIV(1), p. 274); amended by No. IX of 2016.

91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)^k and includes [a Preserved EU instrument or other enactment] made under the OCR,

"official controls": see Article 2(1) of the OCR (official controls and other official activities),

"this Ordinance" includes any Order made under this Ordinance,

"other official activities": see Article 2(2) of the OCR (official controls and other official activities),

"owner, occupier or other person in charge", 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),

"premises" includes any place, building or other land, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure,

^k OJ No L 95, 7.4.2017, p. 1.

["**Preserved EU law**" has the meaning given by section 3 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,]

"**States Veterinary Officer**" means the States Veterinary Officer within the meaning of section 81(1) of the Animal Welfare (Guernsey) Ordinance, 2012^l,

"**under**", in relation to an [Preserved] EU instrument, includes "by", "in accordance with", "for the purposes of", "pursuant to" and "by virtue of" the [Preserved] EU instrument or any other [Preserved] EU instrument made under it, and

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

(2) Unless otherwise provided for, terms used in this Ordinance have the same meaning as set out in the OCR.

[(3) Unless the context requires otherwise, any reference in this Ordinance to an item of Preserved EU law is a reference to that item of Preserved EU law as from time to time amended, modified or applied.]

(4) The States of Guernsey Policy & Resources Committee may by Order amend, substitute, insert or omit any definition in this section or other part of

^l No. III of 2012; there are amendments not relevant to this Ordinance.

^m Ordres en Conseil Vol. XXXI, p. 278; for the current scale of fines see Ordinance No. XXIX of 2006; there are other amendments not relevant to this Ordinance.

any interpretation provision in this Ordinance.

NOTE

In section 30, first, the words in the first pair of square brackets in the definition of the expression "the OCR" in subsection (1) were inserted, second, the words in the second pair of square brackets in that definition in that subsection were substituted, third, the definition of the expression "Preserved EU law" and, fourth, the word "Preserved" in square brackets wherever occurring in the definition of the expression "under", both in subsection (1), were inserted, and, fifth, subsection (3) was substituted by the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020, regulation 2, respectively paragraph (e)(i), paragraph (e)(ii), paragraph (f), paragraph (i) and paragraph (g), with effect from 11 p.m. on 31st December, 2020, subject to the savings and transitional provisions in regulation 4 of the 2020 Regulations.

Transitional provisions.

31. (1) Schedule 2, which makes transitional provisions, has effect.

(2) The States of Guernsey Policy & Resources Committee may by Order amend Schedule 2.

Extent.

32. This Ordinance has effect in the Islands of Guernsey, Herm and Jethou, including the territorial waters adjacent to those islands.

Citation and commencement.

33. This Ordinance may be cited as the European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019, and comes into force on 14th December 2019.

SCHEDULE 1
OFFENCES

Section 20

PART I
THE OFFICIALS CONTROL REGULATION

<i>Provision of the OCR</i>	<i>Subject matter</i>
Article 47(5) (read with such derogations, exceptions or exemptions (however described) as may be provided for in delegated or implementing acts under the OCR).	Requires the operator responsible for a relevant consignment entering the [Bailiwick] to ensure that it is presented for official controls at the border control post of first arrival into the [Bailiwick].
Article 50(1).	Requires the operator of a relevant consignment to which Article 47(1) applies to present the original official certificates or documents which are required to accompany the consignment to the competent authorities of the border control post.
Article 50(3).	Prohibits the operator of a relevant consignment from splitting the consignment until official controls have been performed and the Common Health Entry Document (" CHED ") has been finalised.
Article 56(1).	Requires the operator of a relevant consignment to complete the relevant part of the CHED.
Article 56(4) (as read with Article 1(1) of	Requires the operator of a relevant

Commission Implementing Regulation (EU) 2019/1013 on the prior notification of consignments of certain categories of animals and goods entering the [Bailiwick]ⁿ to give prior notification to the competent authorities of the border control post of arrival of the consignment prior to the physical arrival of the consignment in the [Bailiwick].

PART II

OTHER [Preserved] EU INSTRUMENTS

<i>Provision of [Preserved] EU instrument</i>	<i>Subject matter</i>
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Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination^o.	
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Article 3 (as read with Article 4(a), 5(1)(b) and (d), 5(2)(a) and (c) or 6(a)).	Requires the operator responsible for a consignment to ensure that a CHED accompanies the consignment before it is released for free circulation in accordance with Article 57(2)(b) of the OCR.
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NOTE

In Schedule 1, first, the word "Bailiwick" in square brackets, wherever occurring in the Table in Part I, was substituted and, second, the word "Preserved" in square brackets, wherever occurring in Part II was inserted by the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020, regulation 2, respectively paragraph (h) and paragraph (i), with effect from 11 p.m. on 31st December, 2020, subject to the savings and transitional provisions in regulation 4 of the 2020 Regulations.

ⁿ OJ L 165, 21.6.2019, p. 8.

^o OJ L 250, 30.9.2019, p. 6.

SCHEDULE 2
TRANSITIONAL PROVISIONS

Section 31

Licences, consents or other authorisations.

1. (1) Any licence, consent or other authorisation issued or granted –
 - (a) in relation to any of the areas governed by rules in Article 1(2) of the OCR, and
 - (b) which has effect immediately before the commencement date and would otherwise lapse but for this paragraph,

remains in force until it expires or is superseded by another licence, consent or other authorisation issued or granted by a Designated Authority under, as the case may be, the OCR, this Ordinance or related legislation.

(2) Nothing in subparagraph (1) affects anything carried out prior to the commencement date under, or for the purposes of, the licence, consent or other authorisation.

Notices.

2. Any notice served in relation to any of the areas governed by rules in Article 1(2) of the OCR, which has effect immediately before the commencement date and would otherwise lapse but for this paragraph –
 - (a) remains in force and continues to have effect as if it were served, as the case may be, under the OCR, this Ordinance or related legislation for an equivalent purpose on the date on which it was previously served, and

- (b) is to be read with such modifications as are necessary for it to do so.

Certificates.

3. Any application made, certificate issued or other thing done in relation to the issuing of a certificate concerning any of the areas governed by rules in Article 1(2) of the OCR prior to the commencement date shall have effect as if done, as the case may be, under the OCR, this Ordinance or related legislation.

Registrations.

4. (1) Subject to subparagraph (2), a person who is an operator as at the commencement date, and is required to be registered but is not registered, shall be treated as registered provided that an application is made to the Designated Authority for registration in accordance with, as the case may be, the OCR, this Ordinance or related legislation within 6 months starting from the commencement date.

(2) Subject to subparagraph (3), an operator falling within subparagraph (1) shall be treated as if it were registered until the Designated Authority registers the operator.

(3) If the application to register as required by subparagraph (1) is refused by the Designated Authority, an operator shall cease to be treated as if it were registered from the later of –

- (a) the expiry of the period for appealing against the refusal to register, or
- (b) where an appeal is duly instituted against the refusal to register, the date the appeal is finally determined or withdrawn.

(4) An appeal is finally determined or withdrawn for the purposes of subparagraph (3) when the appeal and any further appeal is finally determined.

Interpretation of this Schedule.

5. [(1)] In this Schedule –

"certificate" includes attestations, labels, or marks,

"Plant Health Regulation" means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC^P, and

"related legislation" means –

- (a) any [Preserved] EU instrument amended or repealed by the OCR,
- (b) any [Preserved] EU instrument made under the [Preserved] EU instruments provided for in item (a),
- (c) any enactment implementing the [Preserved] EU instruments provided for in item (a) or (b),
- (d) the Plant Health Regulation,

^P OJ L 095, 7.4.2017, p. 1.

- (e) any [Preserved] EU instrument made under the Plant Health Regulation, and
- (f) any enactment implementing the [Preserved] EU instruments provided for in item (d) or (e).

[(2) For the avoidance of doubt, references in this Schedule to "**the OCR**" in –

- (a) paragraph 1(1)(a),
- (b) the first time it appears in paragraph 2, and
- (c) paragraph 3,

are references to Regulation (EU) 2017/625 (including EU instruments made thereunder) and accordingly are not references to Preserved EU law.]

NOTE

In Schedule 2, first, paragraph 5 was renumbered as subparagraph (1) and subparagraph (2) was inserted in paragraph 5 as so renumbered and, second, the word "Preserved" in square brackets, wherever occurring, was inserted by the Official Controls (Brexit) (Amendment) (Bailiwick of Guernsey) Regulations, 2020, regulation 2, respectively paragraph (j) and paragraph (i), with effect from 11 p.m. on 31st December, 2020, subject to the savings and transitional provisions in regulation 4 of the 2020 Regulations.
