

GUERNSEY STATUTORY INSTRUMENT

2020 No. 159

**The Organic Products (Brexit)
(Bailiwick of Guernsey) Regulations, 2020**

<i>Made</i>	<i>31st December, 2020</i>
<i>Coming into operation</i>	<i>On being made.</i>
<i>Laid before the States</i>	<i>, 2020</i>

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 5(1) and 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018^a, and upon receipt of the certificate required under section 5(3) of that Law, hereby makes the following Regulations:-

Designation of database manager.

1. The Committee shall designate in writing a database manager for the purposes of Article 48(2) of Commission Regulation 889/2008.

Exemption from requirement to adhere to control system.

2. Article 28 of the Council Regulation (requirements to notify activities and submit undertakings to the control system) does not apply to an operator who sells an organic product directly to the final consumer or user, provided that the operator does not produce, prepare, store other than in connection with the point of sale, or import such a product from a third country, or has not contracted out such activities to a third party.

a Order in Council No. I of 2019; amended by G.S.I. No. 6 of 2020.

Permitted exceptions to the organic production rules.

3. The Committee may permit the use of non-organic seed and seed potatoes for the purposes of Article 45(1)(b) and in accordance with Article 45 of Commission Regulation 889/2008.

Advance notification.

4. (1) A person seeking the release for free circulation in the Bailiwick of a consignment must give to the Chief Revenue Officer and the Committee advance notice in writing of the intended arrival of the consignment at that place of import.

(2) Any such notice must be given at least six hours in advance in relation to a consignment arriving by air and at least twenty four hours in advance in relation to a consignment arriving by any other means.

Control on movement.

5. (1) A customs officer or an authorised officer (in this regulation and regulation 6, "an officer") may prohibit the movement of a consignment from the place of import or from any other place from which release for free circulation in the Bailiwick is being sought if the officer has reason to believe that there has been a failure to comply with any relevant provision of the Council Regulation or Commission Regulation 1235/2008.

(2) An officer who has prohibited such movement must, as soon as possible, give written notice to the importer or person who appears to the officer to be in charge of the consignment.

- (3) The notice must –
- (a) specify the controlled consignment,
 - (b) state that it may not be moved without the written consent of an officer,
 - (c) specify the relevant provision of the Council Regulation or Commission Regulation 1235/2008 in respect of which the officer has reason to believe that there has been a failure to comply, and
 - (d) specify what steps, if any, might be taken to show that there has been compliance with that provisions, and within what time such steps must be taken.
- (4) Where –
- (a) no steps are specified for the purposes of paragraph (3)(d), or
 - (b) there has been a failure to take such steps as are specified within the time specified,

an officer may order that, under supervision, the controlled consignment be destroyed or otherwise disposed of.

(5) If the person to whom the officer gives the notice does not appear to the officer to be the importer or an agent, contractor or employee of the

importer, the officer must use best endeavours to bring the contents of the notice to the attention of such a person as soon as possible.

(6) An officer may affix to any controlled consignment, or to any container in which the controlled consignment is packed, labels warning of the prohibition on movement.

(7) An officer who is satisfied that the steps specified in the notice under paragraph (3)(d) have been taken must, as soon as possible, remove the prohibition on movement.

Consent to movement.

6. (1) An officer may, at any time, give written consent to the movement of a controlled consignment.

(2) An officer must, on request, give written consent to the movement of a controlled consignment if that officer or another officer has been given a written undertaking by the importer to the effect that the consignment will –

- (a) be moved to a place specified by an officer, and
- (b) not be moved from that place without the written consent of an officer.

(3) Any consent given under this regulation must –

- (a) specify the controlled consignment to which it relates,
- (b) specify the place to which the controlled consignment

is to be moved, and

- (c) state that the controlled consignment continues to be controlled.

(4) Where such a consent has been given and the consignment has been moved to the place in question, the prohibition on movement under regulation 5 applies to it at the place in question as it applied at the place where the prohibition on movement under that regulation last applied.

Fees - general.

7. In any proceedings for recovery of an amount payable under these Regulations, a certificate issued by the person to whom the amount is payable stating that payment of an amount payable was not received by a date specified in the certificate is evidence of the facts stated.

Fees for registering information in the database.

8. The person designated to be the database manager under regulation 1 may charge a supplier a fee not exceeding £182 for registering information in the database in accordance with Articles 49(1) and 51(1) of Commission Regulation 889/2008.

Fees for ingredient authorisations.

9. The Committee may charge a fee not exceeding £38 for issuing or for renewing a provisional authorisation to permit the use of a non-organic agricultural ingredient in organic production for the purposes of Article 19(1)(c) of the Council Regulation.

Fees relating to the control system.

10. (1) The Committee may charge an operator a fee in respect of any expenses reasonably incurred in carrying out an inspection of the operator's holding, premises or facilities.

(2) In this regulation, "inspection" means an inspection or control visit carried out for the purposes of Article 65 of Commission Regulation 889/2008.

Fees relating to third country imports.

11. (1) Subject to paragraph (2), the Committee may charge an importer of a consignment a fee in respect of any expenses reasonably incurred -

(a) in carrying out functions under regulation 5 in respect of that consignment, and

(b) in carrying out a verification of the consignment.

(2) The Committee may waive the whole or part of any fee payable under paragraph (1), but in deciding to do so must consider the extent to which it would have been reasonable for it not to have taken the action in respect of which any such expenses have been incurred.

Obtaining samples and analysis etc.

12. (1) An authorised officer may, for the purposes of ascertaining whether any offence under these Regulations has been committed, purchase or take a sample of any organic product.

(2) An authorised officer who considers that the sample should be analysed, examined or tested, must submit it for that purpose to the Director of

Environmental Health and Pollution Regulation appointed under the Environmental Pollution (Guernsey) Law, 2004 ("the Director").

- (3) The Director must then –
 - (a) ensure that the sample is analysed, examined or tested as soon as practicable; and
 - (b) give the person who submitted the sample a certificate specifying the result.

- (4) In any proceedings, the production by one of the parties –
 - (a) of a document purporting to be a certificate under paragraph (3)(b), or
 - (b) of a document supplied to the party by the other party as being a copy of such a certificate,

is evidence of the facts stated in it unless, in a case falling within subparagraph (a), the other party requires that the Director be called as a witness.

(5) In any such proceedings, if a person charged or summonsed intends to produce a certificate of the Director or require, under paragraph (4), the Director to be called as a witness, written notice of the intention together with a copy of the certificate (if appropriate) must be given to the other party at least three clear days before the hearing or trial.

(6) If such notice is not given, the court may adjourn the proceedings on such terms as it thinks fit.

Offences.

13. (1) The Schedule (specified EU provisions) has effect.

(2) It is an offence for a person to contravene any of the specified EU provisions.

(3) It is an offence for a person, knowing a consignment to be a controlled consignment –

(a) to move it or cause it to be moved otherwise than in accordance with the written consent of an authorised officer, or

(b) to remove or cause to be removed from it a label which has been affixed under regulation 5(6).

Penalties.

14. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Offence due to fault of another person.

15. (1) Where the commission by a person ("A") of an offence under regulation 13 is due to the act or default of another person ("B"), B is guilty of the offence.

(2) B may be charged with and convicted of the offence whether

or not proceedings are taken against A.

Defence of due diligence.

16. In any proceeding for an offence under these Regulations, it shall be a defence for the accused ("D") to prove that D took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by D and by any person under D's control.

Enforcement.

17. These Regulations and the specified EU provisions shall be enforced by the Committee acting through authorised officers, and the Guernsey Border Agency.

Powers of entry.

18. (1) An authorised officer or a customs officer (in this regulation, regulation 19, regulation 20 and regulation 24, an "officer") may, on producing (if so required) a duly authenticated document showing the officer's authority, at all reasonable hours enter any premises for the purposes of enforcing the specified EU provisions or these Regulations.

(2) The officer may be accompanied by such other persons as the officer considers necessary.

(3) If the Bailiff is satisfied on sworn information that there are reasonable grounds for believing –

- (a) that an offence under these Regulations is being, or has been committed on any premises, and

- (b) that any of the conditions in paragraph (4) is met in relation to the premises,

the Bailiff may, by signed warrant, authorise an officer to enter the premises, if need be by force.

- (4) The conditions referred to are –

- (a) that entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant under this regulation has been given to the occupier,

- (b) that the case is one of urgency and the premises are unoccupied or the occupier is temporarily absent,

- (c) that an application for admission to the premises or the giving of notice of the intention to apply for a warrant would defeat the object of entry.

- (5) A warrant under this regulation is valid for one month.

(6) An officer who enters any premises that are unoccupied or from which the occupier is temporarily absent must leave them as effectively secured against unauthorised entry as they were before entry.

(7) It is an offence for a person who has entered premises under or by virtue of these Regulations to disclose any information obtained on the

premises with regard to any trade secret, unless the disclosure is made in the performance of the person's duty.

(8) In this regulation, "**premises**" includes any vehicle, stall or moveable structure but does not include any premises, or part of any premises, used only as a dwelling.

Powers following entry.

19. (1) An officer entering premises under regulation 18 may—
 - (a) inspect any documents or records (in whatever form they are held) relating to a business dealing with any organic product; and
 - (b) seize and detain any such records which the officer has reason to believe may be required as evidence in any proceedings under these Regulations.

- (2) For the purposes of paragraph (1), an officer may –
 - (a) have access to, inspect and check the operation of any computer and any associated apparatus or material which is or has been in use in connection with the records,
 - (b) require any person having charge of, or otherwise concerned with the operation of, any such computer, apparatus or material to give the officer such assistance as may reasonably be required,

- (c) where the records are kept by means of a computer, require them to be produced in a form in which they may be taken away.

(3) If it is decided that records seized and detained under paragraph (1)(b) are no longer needed as evidence in proceedings under these Regulations, an officer must return them as soon as reasonably practicable after that decision.

(4) In this regulation, "business" includes any undertaking whether it operates for profit or not and any undertaking or activity carried on by a public authority.

Power to require assistance.

20. An officer may require any person to provide the officer with such assistance, information or facilities as the officer may reasonably require for the purposes of carrying out functions under these Regulations.

Obstruction etc.

- 21 (1) It is an offence for a person –
- (a) intentionally to obstruct a person acting in the execution or enforcement of these Regulations or the specified EU provisions, or
 - (b) without reasonable excuse, the proof of which lies on the person, to fail to comply with any requirement made by an officer under regulation 20 .

(2) A person who, in response to a requirement made under regulation 20, makes any representation which is false or misleading in a material particular and does so recklessly or knowing it to be false or misleading in that particular is guilty of an offence.

(3) Nothing in paragraph (1)(b) requires a person to answer any question or give any information if to do so might incriminate the person.

Offences by legal persons and unincorporated bodies.

22. (1) Where a legal person is guilty of an offence under these Regulations, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) any director, manager, secretary or other similar officer, or any foundation official, of the legal person,
or

(b) any person purporting to act in any such capacity,

he or she as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director.

(3) Where an offence under these Regulations 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, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof 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 subparagraph (a) or (b),

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

(4) Where an offence under these Regulations is alleged to have been committed by an unincorporated body, proceedings for the offence must be brought in the name of that body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under these Regulations must be paid from the funds of that body.

Exclusion of liability.

23. (1) Subject to paragraph (2), no person is to be –
- (a) liable in damages, or
 - (b) where an individual, personally liable in any civil

proceedings,

in respect of anything done or omitted to be done after the commencement of these Regulations in the discharge or purported discharge of his or her functions, or functions delegated to him or her, under these Regulations, unless the thing was done or omitted to be done in bad faith.

(2) Paragraph (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^b.

Amendment of the OCR Ordinance.

24. (1) The European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019^c ("the **Implementation Ordinance**") is amended as follows.

(2) In section 3(5), at the end insert –

"(d) **"authorised officers"** for the purposes of the Organic Products (Brexit) (Bailiwick of Guernsey) Regulations, 2020."

Interpretation.

25. (1) In these Regulations –

^b Order in Council No. XIV of 2000; as amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

^c Ordinance No. III of 2020; as amended by Ordinance No. IX of 2020.

"authorised officer" means a person authorised in writing by the Committee for the purposes of these Regulations,

"Chief Revenue Officer" has the meaning given in the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"Commission Regulation 889/2008" means Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control,

"Commission Regulation 1235/2008" means Commission Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries,

"Committee" means the committee designated under the European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019 in respect of organic production and labelling of organic products,

"controlled consignment" means any consignment the movement of which is, for the time being, prohibited under regulation 7,

"the Council Regulation" means Council Regulation (EC) No 834/2007 on organic production and labelling of organic products,

"customs Laws" and **"excise Laws"** have the meanings given in the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"customs officer" means any officer of Customs and Excise,

"the database" means the computerised database, established under Article 48(1) of Commission Regulation 889/2008, listing varieties of seed and seed potatoes obtained by the organic production method (which term has the same meaning as in the Council Regulation) which are available in the Bailiwick,

"free circulation" has the meaning given from time to time in the customs Laws and the excise Laws,

"holding" has the meaning given in Article 2(e) of Commission Regulation 889/2008,

"importer" means any person who imports from a third country any products referred to in Article 1 of the Council Regulation with a view to the subsequent placing on the market of such products, and cognate expressions are construed accordingly,

"organic product" means a product referred to in Article 1(2) of the Council Regulation, as read with Article 1(2) of Commission Regulation 889/2008,

"organic production" has the same meaning as in Article 2(a) of the Council Regulation,

"place of import", in relation to a consignment imported into the Bailiwick from a third country, means the place at which the consignment

first arrives in the Bailiwick,

"**specified EU provision**" means those provisions specified in column 1 of the table in the Schedule, as read with any supplementary provisions specified in column 2 of that Schedule,

"**third country**" means any country or territory other than –

- (a) the United Kingdom,
- (b) the Bailiwick of Jersey, or
- (c) the Isle of Man.

(2) Other expressions used in these Regulations have the same meaning as in Commission Regulation 889/2008, Commission Regulation 1235/2008 or the Council Regulation.

(3) A reference in these Regulations to any EU instrument, or any provision of an EU instrument, is a reference to that instrument or that provision as amended from time to time.

Citation and commencement.

26. These Regulations may be cited as the Organic Products (Brexit) (Bailiwick of Guernsey) Regulations, 2020, and come into force on being made.

Dated this 31st day of December, 2020

A handwritten signature in black ink, appearing to read 'P. T. R. Ferbrache', with a stylized flourish at the end.

P. T. R. FERBRACHE

President of the Policy & Resources Committee

For and on behalf of the Committee

SCHEDULE

Regulations 13 and 25

Specified EU Provisions

<i>Column 1</i> <i>Provision</i>	<i>Column 2</i> <i>Supplementary provision</i>	<i>Column 3</i> <i>Subject matter</i>
Article 23(1), (2), (3) or (4) of the Council Regulation	Title III of Commission Regulation 889/2008	Use of terms referring to organic production in labelling, advertising and commercial documents of products
Article 24(1) or (2) of the Council Regulation	Articles 23 and 25 of the Council Regulation and Title III of Commission Regulation 889/2008	Compulsory indications
Article 25(1) of the Council Regulation	Articles 57 and 58 of Commission Regulation 889/2008	Use of the Community organic production logo in labelling, presentation and advertising of products
Article 25(2) of the Council Regulation		Use of National or private logo in labelling, presentation and advertising of products
Article 32(1) of the Council Regulation	Articles 6 to 10, 13 to 15, 18 and 19 of Commission Regulation 1235/2008	Requirements for placing on the market of compliant products imported from

		third countries
Article 33(1) of the Council Regulation	Articles 6 to 10, 13 to 15, 18 and 19 of Commission Regulation 1235/2008	Requirements for placing on the market of products imported from third countries providing equivalent guarantees
Article 62 of Commission Regulation 889/2008		Use of indication "product under conversion to organic farming" in relation to in-conversion products of plant origin
Article 13(9) of Commission Regulation 1235/2008		Requirements on first consignees relating to certificates of inspection of consignments imported from third countries
Article 14 of Commission Regulation 1235/2008		Special customs procedures for consignments imported from third countries
Article 15 of Commission Regulation 1235/2008		Requirements relating to non-compliant products imported from third countries
Article 19(1) of Commission Regulation 1235/2008		Requirements relating to placing on the market, by importers authorised by the competent authority, of products imported from

		third countries not referred to in Article 33(2) of the Council Regulation
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made by the Policy & Resources Committee under section 5 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, provide for the administration and enforcement of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products (OJ No L 189, 20.7.07, p 1), Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 (OJ No L 250, 18.9.08, p 1), and Commission Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries (OJ No L 334, 12.12.08, p 25), each as amended from time to time. They make similar provision (with appropriate modifications) to that made by the United Kingdom's Organic Products Regulations 2009.

The Schedule lists provisions of the Council Regulation and two Commission Regulations referred to above for the purposes of offences and enforcement.

These Regulations come into force on being made.

