

ORDER IN COUNCIL

X
1995

ratifying a Projet de Loi

ENTITLED

The Food and Drugs (Amendment) (Guernsey) Law, 1995

(Registered on the Records of the Island of Guernsey
on the 14th November, 1995.)



1995

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 14th day of November, 1995 before Sir Graham Dorey, Bailiff; present:—Stanley Walter John Jehan, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille and Derek Martin Le Page, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th October, 1995, approving and ratifying a *Projet de Loi* entitled “The Food and Drugs (Amendment) (Guernsey) Law, 1995” THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 18th day of October, 1995

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 3rd day of October 1995 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 23rd day of February 1995, the States of Deliberation at a meeting held on the 26th day of April 1995 approved a Bill or “Projet de Loi” entitled “The Food and Drugs (Amendment) (Guernsey) Law, 1995”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Food and Drugs (Amendment) (Guernsey) Law 1995”, and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.”:

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

PROJET DE LOI

ENTITLED

The Food and Drugs (Amendment) (Guernsey) Law, 1995

THE STATES, in pursuance of their Resolution of the 23rd day of February, 1995(a), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendments to Law of 1970

1. The Food and Drugs (Guernsey) Law, 1970, as amended(b), is further amended as follows:-

- (a) delete section 7(3) and substitute the following:-

"(3) An Order made under this section may apply to milk, cream and any food containing milk.";

- (b) delete section 14 and substitute the following sections:-

"Improvement notices.

14.(1) If an authorised officer has reasonable grounds for believing that the proprietor of a food business is failing to comply with an Order of the Board made under section 13 he may, by a notice in such form as may be prescribed by the Board and served on that proprietor (hereinafter referred to as an "improvement notice"):-

- (a) state the officer's grounds for believing that the proprietor is failing to comply with the Order;

(a) Article VIII of Billet d'État No. V of 1995.

(b) Ordres en Conseil, Vol. XXII, p. 412; Vol. XXV, p. 378; Vol. XXIX, p. 329.

- (b) specify the matters which constitute the proprietor's failure so to comply;
- (c) specify the measures which, in the officer's opinion, the proprietor must take in order to secure compliance; and
- (d) require the proprietor to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days or, where the measures consist only of the cleaning of premises or equipment, not being less than 7 days) as may be specified in the notice.

(2) A person who fails to comply with an improvement notice is guilty of an offence.

(3) A person aggrieved by a decision of an authorised officer to serve an improvement notice may appeal to the Royal Court.

(4) On an appeal under subsection (3), the Royal Court may cancel or affirm the notice and, if it affirms it, may do so in its original form or with such modifications as the Court may in the circumstances think fit.

(5) Where an appeal against an improvement notice is brought, the period specified in the notice shall be suspended until the appeal is disposed of, withdrawn or struck out for want of prosecution.

Prohibition orders.

14A. (1) If:-

- (a) the proprietor of a food business is convicted of an offence under an Order of the Board made under section 13 of this Law; and
- (b) the court by which he is so convicted is satisfied that the health risk condition is fulfilled with respect to that business,

the court shall

(2) The health risk condition referred to in subsection (1)(b) is fulfilled following

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

(3) The appropriate prohibition referred to in subsection (1) is:-

- (a) in a case falling within subsection (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within subsection (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or

any other food business of the same class or description;

- (c) in a case falling within subsection (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) Where the court by which a person is convicted of an offence under an Order of the Board made under section 13 thinks it proper to do so in all the circumstances of the case, the court may, by order, prohibit the proprietor from participating in the management of any food business or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under subsection (1) or (4) (hereinafter referred to as a "prohibition order"), the Board shall:-

- (a) serve a copy of the prohibition order upon the proprietor of the business; and
- (b) in the case of an order under subsection (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as it considers appropriate;

and a person who knowingly contravenes such an order is guilty of an offence.

(6) A prohibition order shall cease to have effect:-

- (a) in the case of an order under subsection (1), on the issue by the Board of a certificate to the

effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business;

- (b) in the case of an order under subsection (4), on the giving by the court of a direction to that effect.

(7) The Board shall issue a certificate under subsection (6)(a) within three days of its being satisfied as mentioned in that paragraph; and on an application by the proprietor for such a certificate, the Board shall:-

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

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

- (a) within six months after the making of the prohibition order; or
- (b) within three months after the making by the proprietor of a previous application for such a direction.

(9) Where the Magistrate's Court makes an order under section 14B(2) with respect to any food business, subsection (1) shall apply as if the proprietor of the business had been convicted by the court of an offence under an Order of the Board made under section 13.

(10) Subsection (4) shall apply in relation to a manager of a food business as it applies in relation to the proprietor of such a business; and any reference in subsection (5) or (8) to the proprietor of the business shall be construed accordingly.

(11) In subsection (10) "manager", in relation to a food business, means any person who is entrusted by the proprietor with the day to day running of the business or any part of the business.

(12) A person aggrieved by a decision of the Board to refuse a certificate mentioned in subsection (6)(a) may appeal to the Royal Court.

Emergency prohibition notices and orders.

14B. (1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any food business, he may, by a notice served on the proprietor of the business (hereinafter referred to as an "emergency prohibition notice") impose the appropriate prohibition.

(2) If the Magistrate's Court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the Court shall, by an order (hereinafter referred to as an "emergency prohibition order"), impose the appropriate prohibition.

(3) Such an officer shall not apply for an emergency prohibition order unless, at least one day before the date of the

application, he has served notice on the proprietor of the business of his intention to apply for the order.

(4) Subsections (2) and (3) of section 14A shall apply for the purposes of this section as they apply for the purposes of that section but as if the reference in subsection (2) thereof to risk of injury to health were a reference to imminent risk of such injury.

(5) As soon as practicable after the service of an emergency prohibition notice, the Board shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the business as it considers appropriate; and a person who contravenes such a notice is guilty of an offence.

(6) As soon as practicable after the making of an emergency prohibition order, the Board shall:-

- (a) serve a copy of the order on the proprietor of the business; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of that business as it considers appropriate;

and a person who knowingly contravenes such an order is guilty of an offence.

(7) An emergency prohibition notice shall cease to have effect:-

- (a) if no application for an emergency prohibition order is made within the period of three days beginning with the service of the notice, at the end of that period;

- (b) if such an application is so made, on the determination or abandonment of the application.

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

(9) The Board shall issue a certificate under subsection (8) within three days of its being satisfied as mentioned in that subsection; and on an application by the proprietor for such a certificate, the Board shall:-

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

(10) Where an emergency prohibition notice is served on the proprietor of a business, the Board shall compensate him in respect of any loss suffered by reason of his complying with the notice unless:-

- (a) an application for an emergency prohibition order is made within the period of three days beginning with the service of the notice; and
- (b) the Magistrate's Court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect

to the business at the time when the notice was served;

provided that the compensation payable to the proprietor of a business by virtue of this subsection shall in no case exceed such sum as may for the time being be prescribed by the States by Ordinance.

(11) A person aggrieved by a decision of the Board to refuse to issue such a certificate as is mentioned in subsection (8) may appeal to the Royal Court.

Emergency control orders

14C. (1) If it appears to the Board that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve an imminent risk of injury to health, it may, by an order (in this Law referred to as an "emergency control order"), prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

(2) A person who knowingly contravenes an emergency control order is guilty of an offence.

(3) The Board may consent, either unconditionally or subject to any condition that it considers appropriate, to the doing in a particular case of anything prohibited by an emergency control order.

(4) It shall be a defence for a person charged with an offence under subsection (2) to show:-

- (a) that consent had been given under subsection (3) to the contravention of the emergency control order; and

- (b) that any condition subject to which that consent was given was complied with.

(5) The Board:-

- (a) may give such directions as appear to it to be necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food source or contact materials which it believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies; and
- (b) may do anything which appears to it to be necessary or expedient for that purpose.

(6) A person who fails to comply with a direction under this section is guilty of an offence.

(7) If the Board does anything by virtue of this section in consequence of any person failing to comply with an emergency control order or a direction under this section, the Board may recover from that person any expenses reasonably incurred by it under this section.

Penalties under sections 14 to 14C

14D. (1) A person guilty of an offence under section 14, 14A, 14B or 14C shall be liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale or to imprisonment for a term not exceeding two years or to both.

(2) If, after a person has been convicted of such an offence, he does not as soon as practicable do everything in his power to prevent the continuing commission of that offence, he shall be guilty of a further offence and shall be liable upon summary conviction to a

fine not exceeding level 3 on the uniform scale for each day following his first conviction on which the offence continues.

Service of notices and orders

14E. (1) Without prejudice to any other provision of law relating to the service of documents, a notice or a copy of an order of the court to be served upon or given to the proprietor or manager of a food business under section 14, 14A or 14B may be served or given:-

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode or the premises at which the food business in question is being carried on;
- (b) on a body corporate, by being left at, or sent by post or transmitted to, its registered office in the Island, its principal or last known principal place of business in the Island or the premises described in paragraph (a);
- (c) on an unincorporated body, by being given to or served on any partner, member, manager or 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 the Island or the premises described in paragraph (a);

and in this section the expression "by post" means by registered post or recorded delivery service and the expression "transmitted" means transmitted by telex, facsimile transmission or any similar means producing a document containing the text of the communication.

(2) If service of a document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the document may be served or given by being delivered to some responsible person on the premises at which the food business in question is being carried on or, if there is no such person, by being affixed to a conspicuous part of those premises.

(3) A document served or given under this section is sufficient if addressed to the proprietor or (as the case may be) the manager of the food business in question by that description.";

- (c) delete sections 15 and 16 and substitute the following section:-

"Registration of food premises.

15. (1) Subject to subsection (3), no premises shall be used for the purposes of a food business unless they are registered for that purpose by the Board.

(2) A person using any premises in contravention of subsection (1) is guilty of an offence.

(3) The Board may, by Order, exempt from the provisions of subsection (1) any business or class or description of business as may be specified in such Order.";

(4) The Board may, by Order, make such provision regulating the procedure relating to applications and registration, or refusal to register, under this section as it considers necessary or expedient.";

- (d) in section 17(1), before the word "specify", insert the words "be made not less than 28 days before the premises commence to be used for the purpose of a food business and shall";

- (e) delete section 32;

- (f) for sections 40 to 42 substitute the following:-

"Offences due to fault of another person

40. Where the commission by any person of an offence under this Law or any Order made thereunder is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

Defence of due diligence

41. (1) In any proceedings for an offence under section 1, 2, 6 or 8 (in this section referred to as "the relevant provisions"), it shall, subject to subsection (5) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of subsection (1), a person charged with an offence under the relevant provisions who neither:-

- (a) prepared the food in respect of which the offence is alleged to have been committed; nor
- (b) imported it into the Island,

shall be taken to have established the defence provided by that subsection if he satisfies the requirements of subsection (3) or (4) below.

(3) A person satisfies the requirements of this subsection if he proves:-

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;

- (b) that he carried out all such checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food to him; and
- (c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(4) A person satisfies the requirements of this subsection if he proves:-

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and
- (c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(5) If in any case the defence provided by subsection (1) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless:-

- (a) at least seven clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

Defence of publication in the course of business

42. In proceedings for an offence under this Law or any Order made thereunder consisting of the advertisement for sale of any food, it shall be a defence for the person charged to prove:-

- (a) that he is a person whose business it is to publish or arrange for the publication of advertisements; and
- (b) that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under that provision.";

(g) at the end of section 43(1) insert the following:-

"except in the case of an appeal under section 14(3) against a decision of an authorised officer to serve an improvement notice in which case the time within which such an appeal shall be brought shall be:-

- (a) twenty one days from the date on which the improvement notice was served on the person desiring to appeal; or
- (b) the period specified in the improvement notice,

whichever ends the earlier.";

(h) in section 54(1):-

(i) immediately after the definition of "Chief Officer of Police" insert the following definition:-

" **"commercial operation"**, in relation to any food or contact material, means any of the following:-

- (a) selling, possessing for sale and offering, exposing or advertising for sale;
- (b) consigning, delivering or serving by way of sale;
- (c) preparing for sale or presenting, labelling or wrapping for the purpose of sale;
- (d) storing or transporting for the purpose of sale;
and
- (e) importing and exporting;

and, in relation to any food source, means deriving food from it for the purpose of sale or for purposes connected with sale;"

(ii) immediately after the definition of "the Community" insert the following definition:-

" **"contact material"** means any article or substance which is intended to come into contact with food;"

- (iii) immediately after the definition of "drug" insert the following definition:-

"fish" includes crustaceans and molluscs;"

- (iv) in the definition of "food", insert "milk," immediately before "drink" and for paragraph (a) substitute

"(a) water supplied by the States Water Board under the provisions of the "Loi ayant rapport à la Fourniture d'Eau par les États de cette Île aux Habitants de la dite Île" registered on the 7th May, 1927, as amended(c), live animals or birds, or live fish which are not used for human consumption while they are alive;"

- (v) immediately after the definition of "food", insert the following definitions:-

" **"food business"** means any business in the course of which commercial operations with respect to food or food sources are carried out";

" **food premises**" means any premises used for the purposes of a food business";

" **food source**" means any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise);";

- (vi) delete the definition of "home-going ship";

(c) Ordres en Conseil, Vol. VIII, p. 112; Vol. XI, p. 236; Vol. XV, p. 272; Vol. XIX, p. 46; Vol. XXIV, p. 3; Vol. XXVI, p. 239; Vol. XXX, pp. 118 and 219; No. XXV of 1989; No. VII of 1991.

(vii) for the definition of "milk" substitute:-

" **"milk"** includes cream, separated milk, dried milk and condensed milk;"

(viii) immediately after the definition of "milk" insert:-

" **"occupier"**, in relation to any ship or aircraft or any vehicle, stall or place, means the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place;"

(ix) for the definition of "premises" substitute:-

" **"premises"** includes any place, any vehicle, stall or moveable structure and any ship or aircraft;"

(x) after the definition of "preparation", insert the following definition:-

" **"proprietor"**, in relation to a food business, means the person by whom that business is carried on;"

Citation

2. This Law may be cited as the Food and Drugs (Amendment) (Guernsey) Law, 1995.

Commencement

3. This Law shall come into force on a date to be appointed by Ordinance of the States and different dates may be appointed for different provisions or different purposes.