

# ORDER IN COUNCIL

X  
2014

ratifying a Projet de Loi

ENTITLED

## **The Plant Health (Enabling Provisions) (Guernsey) Law, 2014**

(Registered on the Records of the Island of Guernsey  
on the 10th November, 2014.)



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2014

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 10<sup>th</sup> day of November, 2014 before Sir Richard Collas, Bailiff; present:- Susan Mowbray, Terry George Snell, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, David Allan Grut, Jonathan Grenfell Hooley, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 8<sup>th</sup> October, 2014 approving and ratifying a Projet de Loi entitled “The Plant Health (Enabling Provisions) (Guernsey) Law, 2014”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED that the said Order be registered on the records of this Island.

J TORODE  
Her Majesty’s Greffier



*At the Court at Buckingham Palace*

THE 8th DAY OF OCTOBER 2014

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 27th April 2006, the States of Deliberation at a meeting on 30th April 2014 approved a *Projet de Loi* entitled the Plant Health (Enabling Provisions) (Guernsey) Law, 2014 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Plant Health (Enabling Provisions) (Guernsey) Law, 2014, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Richard Tilbrook*

# PROJET DE LOI

ENTITLED

## **The Plant Health (Enabling Provisions) (Guernsey) Law, 2014**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> April, 2006<sup>a</sup>, 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.

### **General power to make Ordinances protecting plant health.**

1. The States may by Ordinance make such provision as they think fit to protect plant health, by –

- (a) the regulation of the importation into and export and re-export from Guernsey of plants, plant products, and plant pests, and
- (b) any other provision which has the purpose of preventing the introduction of, and where already present, preventing or controlling the spread of noxious, invasive or otherwise harmful plants, or plant pests.

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<sup>a</sup> Article IX of Billet d'État No. VIII of 2006.

**Specific matters for which Ordinances may make provision.**

2. (1) An Ordinance under section 1 may, without limitation, make provision in relation to the following matters –

- (a) prohibiting the importation into Guernsey of specified plants, plant pests and plant products,
- (b) prohibiting the importation into, export and re-export from and movement within Guernsey of specified plants, plant pests and plant products not accompanied by a phytosanitary or other specified certificate, or another specified document,
- (c) imposing other requirements or restrictions relating to the importation into and export and re-export from Guernsey of specified plants, plant pests and plant products, including (but not limited to) –
  - (i) the prohibition of imports into and exports and re-exports from ports and airports other than those designated by the Department for the purpose,
  - (ii) requirements relating to marking and certification, and the presentation and display of documents, and
  - (iii) requirements relating to advance notification of imports,

- (d) providing for the appointment of officers by the Department, referred to in this Law as "**plant health officers**", and for plant health officers to have powers for the purpose of preventing and controlling the introduction and spread of noxious, invasive and other harmful plants, and plant pests; including (but not limited to) –
  - (i) entering and inspecting premises,
  - (ii) inspecting and copying documents,
  - (iii) monitoring, taking samples from, seizing, treating and destroying plants and specified material, and
  - (iv) serving notices in relation to the same,
- (e) providing for the designation of control areas, the removal from which of specified plants, plant pests and plant products may be prohibited or restricted,
- (f) providing for the issue by the Department, and by persons authorised in that regard by the Department, of documents and labels relating to –
  - (i) plant health generally, and

(ii) the importation into, export and re-export from, and movement within Guernsey of plants in particular,

and for the Department to impose requirements regarding the use of such documents and labels,

- (g) empowering officers of Customs and Excise to inspect and detain specified containers, packages and cargo,
- (h) prohibiting the keeping, storing, selling, moving or otherwise disposing of specified plants, plant pests and plant products,
- (i) establishing a register of plant traders, prohibiting specified activities by persons other than persons registered as plant traders, and making other provision and imposing other requirements in relation to such a register and registered persons, including (but not limited to) the payment of fees and charges,
- (j) requiring specified persons to notify the Department, a plant health officer or any other specified person of specified matters, including (but not limited to) the presence or suspected presence of specified plants and plant pests, and in such circumstances to take other specified steps with the purpose of preventing or controlling the spread of noxious, invasive or otherwise harmful plants, and of plant pests,

- (k) empowering the Department (acting through plant health officers or otherwise), in circumstances where there has been an outbreak of a specified plant pest in Guernsey, or where such an outbreak is suspected, to take steps aimed at controlling that outbreak ("**containment measures**"), including (but not limited to) –
  - (i) regulating access to designated areas,
  - (ii) directing that buildings, equipment or other things in that area be disinfected or otherwise treated, and
  - (iii) directing the seizure, treatment, and destruction of affected plants,
  
- (l) empowering the Department (acting through plant health officers or otherwise), in circumstances where there has been an outbreak of a specified plant pest in another Island within the Bailiwick or a neighbouring jurisdiction, to take steps aimed at minimizing the risk of that outbreak reaching Guernsey ("**preventative measures**"), including (but not limited to) –
  - (i) temporary restrictions on the landing of specified plants, plant pests and plant products, and

- (ii) making directions and restrictions relating to specified plants (including (but not limited to) directions and restrictions relating to areas where specified plants are, and the marketing, sale and transportation of specified plants),
- (m) providing for the issue of licences and permits by the Department permitting the carrying out of activities that would be otherwise controlled, restricted or prohibited, for trial or scientific or other specified purposes,
- (n) providing for plant health officers to be accompanied by persons authorised by the Department when exercising powers under the Ordinance,
- (o) providing for the payment of compensation to specified persons in specified circumstances, and
- (p) empowering the Department to levy fees and charges in relation to its functions under the Ordinance, including (but not limited to) the issue of documents.

(2) References in section 1 and subsection (1) of this section to plant pests include, unless the context otherwise requires, references to plants, soil and other material that is or may be carrying or infected with such pests; and the reference in subsection (1)(k) of this section to "affected plants" includes soil and other material that is or may be carrying or infected with plant pests.

**General provisions as to Ordinances.**

3. (1) An Ordinance under this Law -
  - (a) may be amended or repealed by a subsequent Ordinance hereunder, and
  - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law may be exercised -
  - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
  - (b) so as to make, as respects the cases in relation to which it is exercised -
    - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case

or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may impose different requirements relating to the importation into, export and re-export from and transport within Guernsey of plants, plant pests and plant products depending on the country or region of origin or destination (as the case may be), including (but not limited to) whether that country or region is within the European Union,
- (b) where plants, plant products, and plant pests are to be or may be specified, may provide for them to be specified by Order of the Department,
- (c) may provide for containment measures and preventative measures to be prescribed by Order of the Department,
- (d) may, subject to subsection (4), make provision in relation to the imposition of civil penalties and the creation, trial (summarily or on indictment) and punishment of offences and may (for the avoidance of doubt) specify penalties which may be imposed by the courts,

- (e) may empower the Department, any other department of the States, and any other body or person, to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance made under it,
- (f) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith,
- (g) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (h) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1 or 2,
- (i) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
- (j) may implement the provisions, or any provision, of any relevant convention, treaty or agreement, or any Directive or Regulation (regardless of whether these provisions are binding on or directly applicable to Guernsey),

- (k) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi, but (for the avoidance of doubt) may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) The power conferred by subsection (3)(d) to create offences and specify penalties does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008<sup>b</sup>, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding five years.

**Orders made under powers conferred by this Law.**

4. (1) Any power conferred by this Law to make Orders includes the power to make incidental, consequential, supplemental or transitional provision

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<sup>b</sup> Order in Council No. XVIII of 2009; as amended by Recueil d'Ordonnances Tome XXXIII, p. 536.

and savings; and any Order made under a power conferred by this Law may be amended or revoked by a subsequent Order.

(2) Sections 3(2), 3(3)(d), (f) and (j) and 3(4) shall apply to an Order made under a power conferred by this Law as they apply to an Ordinance made under this Law, save that section 3(4) shall apply as if for paragraphs (b) and (c) there were substituted –

"(b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment exceeding six months, or a fine exceeding level 5 on the uniform scale, or both, or

(c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years."

(3) Orders made under any power conferred by this Law 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 them, cease to have effect, but without prejudice to anything done under them or to the making of new Orders.

**Interpretation.**

5. (1) In this Law, unless the context otherwise requires -

"**the Department**" means the States Commerce and Employment Department,

"**Directive**" means a Directive of the European Union and, for the avoidance of doubt, includes Council Directive 2000/29/EC<sup>c</sup> (as amended from time to time) on protective measures against the introduction into the Union of organisms harmful to plants or plant products and against their spread within the Union,

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**Guernsey**" means the Islands of Guernsey, Herm and Jethou,

"**implement**" includes the enforcement or enactment, and the securing of the administration, execution, recognition, exercise or enjoyment, in or under domestic law -

- (a) of provisions of the convention, treaty, agreement, Directive or Regulation in question, and
- (b) of any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the same,

"**neighbouring jurisdiction**" means the Bailiwick of Jersey, the United Kingdom, Ireland, the Isle of Man, France, Belgium or the Netherlands,

"**officers of Customs and Excise**" means officers within the meaning of section 1(1) of the Customs and Excise (General Provisions)

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<sup>c</sup> OJ L 169, 10.7.2000, p. 1.

(Bailiwick of Guernsey) Law, 1972<sup>d</sup>,

"**person**" includes any body or authority,

"**plant**" means a living plant (including a tree, fungus or shrub), or a living part of a plant (including a living part of a tree, fungus or shrub), at any stage of growth; and living parts of a plant shall include –

- (a) fruit or seed,
- (b) vegetables, other than those preserved by deep freezing,
- (c) tubers, corms, bulbs or rhizomes,
- (d) cut flowers,
- (e) branches with or without foliage,
- (f) a plant or shrub that has been cut and which retains any foliage,

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<sup>d</sup> Ordres en Conseil Vol. XXIII, p. 573; as amended by Vol. XXXIII, p. 217 and Recueil d'Ordonnances Tome XXIX, p. 406. There are other amendments not relevant to this enactment.

- (g) leaves or foliage,
- (h) a plant or shrub in tissue culture,
- (i) live pollen, and
- (j) bud wood, cuttings or scions,

**"plant pest"** means any species, strain or biotype of plant, animal or pathogenic agent which is injurious or likely to be injurious to any plant or plant product, and for the avoidance of doubt includes viruses and viroids,

**"plant products"** has the same meaning as in Article 2(1)(b) of Directive 2000/29/EC, and **"plant product"** shall be construed accordingly,

**"plant trader"** means a person in the business of buying, selling, hiring out or transporting plants,

**"Regulation"** means a Regulation of the European Union,

**"relevant convention, treaty or agreement"** means any convention, treaty or agreement having as its object the protection of plant health or the prevention of the introduction and spread of plant pests; and, for the avoidance of doubt, includes the International Plant Protection Convention<sup>e</sup>,

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<sup>e</sup> Signed at Rome on the 6<sup>th</sup> December 1951; it came into force on the 3<sup>rd</sup> April, 1952.

"**seed**" means seed in the botanical sense other than seed not intended for planting,

"**soil**" includes other growing media, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Repeals.**

6. The enactments specified in the Schedule are hereby repealed.

**Citation.**

7. This Law may be cited as the Plant Health (Enabling Provisions) (Guernsey) Law, 2014.

**Commencement.**

8. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes, and in particular, different days may be appointed for the taking effect of the repeal of particular enactments, or parts of such enactments to be specified, set out in the Schedule.

## SCHEDULE

Section 6.

## REPEALS

**Ordinances**

Potatoes (Wart Disease) Ordinance, 1950<sup>f</sup>

Colorado Beetle (Export of Potatoes) Ordinance, 1952<sup>g</sup>

Road Traffic (Conveyance of Plant Material) Ordinance, 1976<sup>h</sup>

Control of Diseased Plant Material Ordinance, 1976<sup>i</sup>

Plant Pests Ordinance, 1982<sup>j</sup>

Tree Pests Ordinance, 1982<sup>k</sup>

Import and Export (Plant Health) Ordinance, 1982<sup>l</sup>

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<sup>f</sup> Recueil d'Ordonnances Tome X, p. 83; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XI, p. 305; Tome XXIX, p. 406.

<sup>g</sup> Recueil d'Ordonnances Tome X, p. 305; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XI, p. 305; Tome XXIX, p. 406.

<sup>h</sup> Recueil d'Ordonnances Tome XX, p. 424; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXV, p. 308; Tome XXIX, p. 406.

<sup>i</sup> Recueil d'Ordonnances Tome XX, p. 428; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXV, p. 306; Tome XXIX, p. 406.

<sup>j</sup> Recueil d'Ordonnances Tome XXII, p. 198; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXIX, p. 406.

<sup>k</sup> Recueil d'Ordonnances Tome XXII, p. 209; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXIX, p. 406.

<sup>l</sup> Recueil d'Ordonnances Tome XXII, p. 219; as amended by Ordres en Conseil Vol. XXXI, p. 278; Recueil d'Ordonnances Tome XXIII, p. 70; Tome XXIV, p. 78; Tome XXIX, p. 406.

Import and Export of Trees, Wood and Bark (Health) Ordinance, 1982<sup>m</sup>  
 Import and Export of Trees, Wood and Bark (Health) (Amendment) Ordinance,  
 1984<sup>n</sup>  
 Import and Export (Plant Health) (Amendment) Ordinance, 1984<sup>o</sup>  
 Import and Export (Plant Health) (Amendment) Ordinance, 1987<sup>p</sup>  
 Control of Diseased Plant Material (Amendment) Ordinance, 1991<sup>q</sup>  
 Road Traffic (Conveyance of Plant Material) (Amendment) Ordinance, 1991<sup>r</sup>  
 Noxious Weeds (Amendment) Ordinance, 2001<sup>s</sup>

### **Laws**

Noxious Weeds (Guernsey) Law, 1952<sup>t</sup>  
 Colorado Beetle (Bailiwick of Guernsey) Law, 1956<sup>u</sup> (in so far as it relates to  
 Guernsey)  
 Colorado Beetle (Transfer of Functions) (Bailiwick of Guernsey) Law, 1957<sup>v</sup> (in so  
 far as it relates to Guernsey)

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<sup>m</sup> Recueil d'Ordonnances Tome XXII, p. 321; as amended by Tome XXIII, p. 36; Tome XXIX, p. 406; and Ordres en Conseil Vol. XXI, p. 278.

<sup>n</sup> Recueil d'Ordonnances Tome XXIII, p. 36.

<sup>o</sup> Recueil d'Ordonnances Tome XXIII, p. 70.

<sup>p</sup> Recueil d'Ordonnances Tome XXIV, p. 78.

<sup>q</sup> Recueil d'Ordonnances Tome XXV, p. 306.

<sup>r</sup> Recueil d'Ordonnances Tome XXV, p. 308.

<sup>s</sup> Recueil d'Ordonnances Tome XXVIII, p. 522.

<sup>t</sup> Ordres en Conseil Vol. XV, p. 276; as amended by Vol. XIX, p. 126; XXXI, p.16 and p. 278; Recueil d'Ordonnances Tome XXVIII, p. 433 and p.522; Tome XXIX, p. 406.

<sup>u</sup> Ordres en Conseil Vol. XVII, p. 84; as amended by Vol. XVII, p. 194; Vol. XXXI, p. 278; Recueil d'Ordonnances XXIX, p. 406.

<sup>v</sup> Ordres en Conseil Vol. XVII, p. 194.

Export of Tomatoes (Prohibition) (Guernsey) Law, 1981<sup>w</sup>

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<sup>w</sup> Ordres en Conseil Vol. XXVII, p. 279.

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