

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

The Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016 *

[CONSOLIDATED TEXT]

NOTE

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* No. I of 2016; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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(Made on 26th January, 2016.)

The Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016

THE STATES, in pursuance of their Resolutions of the 27th April, 2006^a and the 26th February, 2014^b, and in exercise of the powers conferred on them by sections 1 to 3 of the Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010^c, hereby Order: –

PART I

DESIGNATION OF AUTHORITIES

Designation and functions of Management Authority.

1. (1) The States of Guernsey [Committee for the Environment & Infrastructure] ("**the Committee**") is designated as the Management Authority for the Bailiwick of Guernsey for the purposes of the Convention on International Trade in Endangered Species of Wild Fauna and Flora^d ("**the Convention**").

(2) The functions of [the Committee] as Management Authority are to –

(a) carry out the functions conferred upon [the Committee] under the following sections of this Ordinance,

a Article X of Billet d'État No. VIII of 2006.

b Article V of Billet d'État No. III of 2014.

c Order in Council No. III of 2011.

d Signed at Washington DC on the 3rd March, 1973; the United Kingdom ratified the Convention on the 2nd August, 1976 and it came into force on the 31st October, 1976.

- (b) co-operate with other relevant authorities to implement this Ordinance and any other enactment applying in the Bailiwick relating to the conservation of specimens,
- (c) maintain records of trade in Annex A to C specimens required to be regulated under this Ordinance and prepare –
 - (i) an annual report concerning such trade, and
 - (ii) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the Convention under this Ordinance,and submit the reports to the appropriate authority in the United Kingdom by the prescribed date,
- (d) advise the States of Guernsey, States of Alderney and Chief Pleas of Sark on action to be taken for the implementation of the Convention,
- (e) communicate with the competent Management Authority for the United Kingdom, the Convention Secretariat (through the competent Management Authority for the United Kingdom) and other relevant authorities on scientific, administrative and enforcement issues in relation to the implementation of the Convention, and

- (f) carry out such other functions as are recommended to be carried out by the Management Authority under any relevant resolutions of the Conference of the Parties.

NOTES

In section 1, the words, first, "Committee for the Environment & Infrastructure" in square brackets in the definition of the expression "the Committee" and, second, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2 and section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for the Environment & Infrastructure and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Designation and functions of Scientific Authorities.

2. (1) [The Committee] shall, from time to time, designate in writing such persons as it considers appropriate as Scientific Authorities for the Bailiwick of Guernsey for the purposes of the Convention.

(2) In making an appointment under subsection (1) [the Committee] must have regard to the desirability of appointing a person who has relevant expertise in relation to the functions of the Scientific Authority under this Ordinance.

(3) [The Committee] may designate different persons in relation to different specimens or classes of specimen under this section.

(4) A person designated under this section shall, in respect of the

specimens or classes of specimen in relation to which the person is designated –

- (a) carry out the functions of the Scientific Authority under the following sections of this Ordinance,
- (b) monitor the export permits granted under this Ordinance, and exports taking place, of species of specimens listed in Annex B,
- (c) when the person considers that the population of a species monitored under paragraph (b) is such that measures should be taken to limit the issuing of export permits under this Ordinance relating to such species, advise the Management Authority of suitable measures to limit the issue of such export permits,
- (d) advise [the Committee] on the disposal of specimens seized and forfeited under this Ordinance,
- (e) advise [the Committee] on any matter the person considers relevant in relation to the protection or conservation of specimens, and
- (f) carry out such other functions as are recommended to be carried out by the Scientific Authority under any relevant resolutions of the Conference of the Parties.

NOTE

In section 2, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with

effect from 1st May, 2016.

PART II
REGULATION OF TRADE

Prohibition on import of Annex A or B specimens except under import permit.

3. (1) A person must not import an Annex A or B specimen unless it is imported –

- (a) under and in accordance with an import permit issued by [the Committee] under this section, and
- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and import permit are presented to a customs officer for inspection together with such other documentation as [the Committee] may specify in writing under this subsection.

(3) [The Committee] must not issue an import permit in relation to a specimen under this section unless –

- (a) the applicant has provided a copy of a valid –
 - (i) export permit, or
 - (ii) re-export certificate,

in relation to the specimen issued by the relevant authority in the country from which the specimen is to

be imported, and

- (b) in the case of an Annex A specimen, the Scientific Authority has advised [the Committee] in writing that –
 - (i) the import of the specimen would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species,
 - (ii) the import of the specimen is for a purpose which is not detrimental to the survival of the species in question, and
 - (iii) the Scientific Authority is satisfied that the intended accommodation for a live specimen, at the place of destination, is adequately equipped for the proper housing and care of the specimen,
- (c) in the case of an Annex A specimen, [the Committee] is satisfied that the specimen is not to be used for primarily commercial purposes following import, and
- (d) where the import is of an Annex A specimen from a country not Party to the Convention, [the Committee] has complied with section 10.

(4) In determining whether or not a specimen is to be used for primarily commercial purposes following import, [the Committee] must have regard to any relevant resolutions of the Conference of the Parties.

NOTE

In section 3, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Prohibition on introduction from the sea of Annex A or B specimens except under introduction from the sea certificate.

4. (1) A person must not introduce from the sea an Annex A or B specimen unless it is introduced –

- (a) under and in accordance with an introduction from the sea certificate issued by [the Committee] under this section, and
- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and introduction from the sea certificate are presented to a customs officer for inspection together with such other documentation as [the Committee] may specify in writing under this subsection.

(3) [The Committee] must not issue an introduction from the sea certificate in relation to a specimen under this section unless –

- (a) the Scientific Authority has advised [the Committee] in writing that –
 - (i) the introduction from the sea of the specimen would not have a harmful effect on the

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conservation status of the species or on the extent of the territory occupied by the relevant population of the species, and

- (ii) the introduction from the sea of the specimen is for a purpose which is not detrimental to the survival of the species in question,
- (b) in the case of the introduction from the sea of an Annex A specimen, [the Committee] is satisfied that –
- (i) the specimen is not to be used for primarily commercial purposes following introduction, and
 - (ii) in the case of a live specimen, the intended accommodation at the place of destination is adequately equipped for the proper housing and care of the specimen, and
- (c) [the Committee] is satisfied that the specimen will be prepared and transported so as to minimize the risk of injury, damage to health or cruel treatment.

(4) In determining whether or not a specimen is to be used for primarily commercial purposes following introduction from the sea, [the Committee] must have regard to any relevant resolutions of the Conference of the Parties.

NOTE

In section 4, the words "T/the Committee" in square brackets, wherever

occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Prohibition on import of Annex C or D specimens except under import notification.

5. (1) A person must not import an Annex C or D specimen unless it is imported –

- (a) at a specified port or airport, and
- (b) in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and an import notification are presented to a customs officer for inspection together with –

- (a) in the case of an Annex C specimen –
 - (i) where the export is from a country mentioned in Annex C in relation to the species concerned, evidence in writing, by means of an export permit issued in accordance with the Convention by a relevant authority, that the specimen has been obtained in accordance with the law of that country on the conservation and protection of the species concerned,
 - (ii) where the export is from a country not mentioned in Annex C in relation to the species

concerned or is a re-export from any country –

(A) an export permit,

(B) a re-export certificate, or

(C) a certificate of origin,

issued in accordance with the Convention by a relevant authority, and

(iii) such other documentation as [the Committee] may specify in writing under this subsection, and

(b) in the case of an Annex D specimen, such other documentation as [the Committee] may specify in writing under this paragraph.

NOTE

In section 5, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Prohibition on export of Annex A, B or C specimens except under export permit.

6. (1) A person must not export an Annex A, B or C specimen unless it is exported –

(a) under and in accordance with an export permit issued by [the Committee] under this section, and

- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and export permit are presented to a customs officer for inspection together with such other documentation as [the Committee] may specify in writing under this subsection.

(3) [The Committee] must not issue an export permit in relation to a specimen under this section unless –

- (a) in the case of an Annex A specimen, the applicant has provided a copy of a valid import permit in relation to the specimen issued by the relevant authority in the country to which the specimen is to be exported,
- (b) the Scientific Authority has advised [the Committee] in writing that the export of the specimen or its capture or collection from the wild in the Bailiwick would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species,
- (c) [the Committee] is satisfied, on production by the applicant of evidence in writing, that –
 - (i) the specimen has been obtained in accordance with the law of the Bailiwick in relation to the conservation and protection of the species in question,

- (ii) in the case of a live specimen, the specimen will be prepared and transported so as to minimize the risk of injury, damage to health or cruel treatment, and
- (iii) the export of the specimen will not exceed any export quota for that specimen, from time to time in force and established by –
 - (A) the Conference of the Parties, or
 - (B) [the Committee], and
- (d) where the export of an Annex A specimen is to a country which is not a Party to the Convention, [the Committee] has complied with section 10.

NOTE

In section 6, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Prohibition on re-export of Annex A, B or C specimens except under re-export certificate.

7. (1) A person must not re-export an Annex A, B or C specimen unless it is re-exported –
- (a) under and in accordance with a re-export certificate issued by [the Committee] under this section, and

- (b) at a specified port or airport in accordance with the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(b) are that the specimen and re-export certificate are presented to a customs officer for inspection together with such other documentation as [the Committee] may specify in writing under this subsection.

(3) [The Committee] must not issue a re-export certificate in relation to a specimen under this section unless –

- (a) in the case of an Annex A specimen, the applicant has provided a copy of a valid import permit in relation to the specimen issued by the relevant authority in the country to which the specimen is to be re-exported,
- (b) in the case of a live specimen, [the Committee] is satisfied, on production by the applicant of evidence in writing, that the specimen will be prepared and transported so as to minimize the risk of injury, damage to health or cruel treatment,
- (c) [the Committee] is satisfied, on production by the applicant of evidence in writing, that –
 - (i) the specimen was imported in accordance with this Ordinance,
 - (ii) where imported on or after the 31st October, 1976 and before the entry into force of this

Ordinance –

- (A) where imported into Guernsey, the specimen was imported in compliance with the relevant order, from time to time in force, under the Import and Export (Control) (Guernsey) Law, 1946^e,
- (B) where imported into Alderney, the specimen was imported in compliance with the relevant order, from time to time in force, under the Import and Export (Control) Alderney Law, 1946^f,
or
- (iii) the specimen was legally imported before the 31st October, 1976, and
- (d) where the re-export is of an Annex A specimen to a country which is not a Party to the Convention, [the Committee] has complied with section 10.

NOTE

^e Ordres en Conseil Vol. XII, p. 332; as amended by Ordres en Conseil Vol. XXIII, p. 573, Vol. XXXIII p. 246 and Order in Council No. XIV of 2007, Recueil d'Ordonnances Tome XXIX, p. 406. The Law is applied to the Island of Herm by Recueil d'Ordonnances Tome IX, p. 247. See also Ordres en Conseil Vol. XXVII, p. 172 and Order in Council No. IX of 2014.

^f Ordres en Conseil Vol. XII, p. 367 as amended by Ordres en Conseil Vol. XXXI, pp. 306 and 396 and Order in Council No. XIV of 2007.

In section 7, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Offences and penalties for contraventions of this Part.

8. (1) A person who contravenes section 3(1), 4(1), 5(1), 6(1) or 7(1) is guilty of an offence and liable –

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

(2) A person who knowingly falsifies or alters any permit, certificate or label is guilty of an offence and is liable –

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

(3) A person who knowingly uses a permit, certificate, label or import notification for any specimen other than that for which it was issued is guilty of an offence and is liable –

- (a) on conviction on indictment, to imprisonment for a

term not exceeding five years, or to a fine, or to both, or

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

(4) A holder of a permit or certificate or person registered under this Ordinance commits an offence if the holder or person registered, as the case may be, contravenes the terms or conditions of a permit, certificate or registration and is liable –

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

(5) In subsection (2) and (3) –

"label" means –

- (a) a label referred to in section 14(b), or
- (b) any other label issued or approved by [the Committee] or a relevant authority, and

"permit or certificate" means –

- (a) a permit or certificate issued or deemed to be issued by [the Committee] under this Ordinance, or

- (b) a permit or certificate issued by a relevant authority.

NOTE

In section 8, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

PART III

TRADE WITH COUNTRIES THAT ARE NOT PARTY TO THE CONVENTION

Permits or certificates issued by non Parties.

9. A permit or certificate issued by a competent authority of a country not Party to the Convention must not be accepted as valid for the purposes of this Ordinance unless it includes –

- (a) the name and stamp of the competent authority and is signed by an authorised signatory of that authority,
- (b) sufficient identification of a specimen to meet the requirements of the Convention,
- (c) certification of the origin of the specimen, including where the specimen is to be imported, the export permit number from the country of origin,
- (d) subject to paragraph (e), in the case of an import of an Annex A or B specimen certification from –
 - (i) the relevant Scientific Authority or competent

Scientific Authority in the country of origin that the export of the specimen will not be detrimental to the survival of the relevant species, and

- (ii) the relevant authority in the country of origin that the specimen was obtained in accordance with the law of that country,
- (e) in the case of an import of an Annex A or B specimen which has been re-exported, certification by the relevant authority of the country of re-export that the relevant authority of the country of origin has issued an export permit or comparable document which meets the requirements of the Convention, and
- (f) in the case of an import of a live Annex A or B specimen, certification by the relevant authority of the country of export or re-export that the specimen will be transported so as to minimise the risk of injury, damage to health or cruel treatment.

Restrictions on trade in Annex A specimens with countries not Party to the Convention.

10. (1) [The Committee] must not issue a permit or certificate under this Ordinance authorising trade in an Annex A specimen, which is of wild origin, with a country not Party to the Convention unless –

- (a) the Scientific Authority has advised it in writing that –
 - (i) the trade would benefit the conservation of the

relevant species, or

- (ii) the trade would benefit the welfare of the specimen, and
- (b) it has first consulted the Convention Secretariat through the competent Management Authority for the United Kingdom.

(2) [The Committee] must not issue an import permit under this Ordinance authorising the import of an Annex A specimen, which in the case of an animal was bred in captivity or in the case of a plant was artificially propagated, with a country not Party to the Convention unless –

- (a) [the Committee] has first consulted the Convention Secretariat through the competent Management Authority for the United Kingdom, and
- (b) the Convention Secretariat, through the competent Management Authority for the United Kingdom, has indicated in writing that it considers that the same would be consistent with the Convention.

NOTE

In section 10, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

PART IV
EXEMPTIONS AND MODIFICATIONS

Specimens in transit.

11. Part II does not apply to a specimen which is in transit or being transhipped through the Bailiwick provided that the specimen is accompanied by a valid export permit or re-export certificate issued by the relevant authority.

Pre-Convention specimens.

12. (1) Part II does not apply to a specimen provided that [the Committee] –

- (a) in the case of an export or re-export –
 - (i) is satisfied that a specimen was acquired before the date on which the provisions of the Convention became applicable to such a specimen, and
 - (ii) has issued a pre-Convention certificate under this section to that effect,
- (b) in the case of an import, is satisfied that the relevant authority of the country from which the specimen is to be imported –
 - (i) is satisfied that the specimen was acquired before the date on which the provisions of the Convention became applicable to such a specimen, and
 - (ii) has issued a pre-Convention certificate to that effect.

- (2) For the purposes of subsection (1) –
- (a) the date on which the provisions of the Convention became applicable to a specimen is the date on which the species was first included in the Appendices to the Convention, and
 - (b) the date on which a specimen is acquired is the date the specimen was known –
 - (i) to be removed from the wild,
 - (ii) in the case of an animal, born in captivity or, in the case of a plant, artificially propagated in a controlled environment, or
 - (iii) where the date in subparagraph (i) or (ii) is unknown or cannot be proved in writing, any subsequent date which can be proved in writing on which it was first possessed by a person.
- (3) In this section a "**pre-convention Certificate**" means a certificate –
- (a) certifying the matters in subsection (1)(a)(i) or (b)(i), and
 - (b) complying with any relevant resolutions of the Conference of the Parties.

NOTE

In section 12, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Personal and household effects.

13. (1) Part II does not apply to trade in personal and household effects –

- (a) where carried out in accordance with such requirements, and
- (b) subject to such exceptions and other matters,

as [the Committee] may by Regulations provide.

(2) Any requirements, exceptions and other matters provided for by Regulations of [the Committee] under subsection (1) must be consistent with the Convention.

NOTE

In section 13, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Non-commercial loan, donation or exchange between registered scientific institutions.

14. Part II does not apply to the non-commercial loan, donation or exchange of herbarium specimens or other preserved, dried or embedded museum specimens or live plant material provided that –

- (a) such loan, donation or exchange is between registered scientific institutions under and in accordance with that registration, and
- (b) the specimen, or container used to transport the specimen, bears a label –
 - (i) issued or approved by –
 - (A) [the Committee], or
 - (B) a relevant authority, and
 - (ii) meeting such requirements as may be prescribed.

NOTE

In section 14, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Specimens born and bred in captivity or artificially propagated.

15. (1) For the purposes of this Ordinance, an Annex A specimen which was-

- (a) in the case of an animal, bred in captivity, or
- (b) in the case of a plant, artificially propagated,

for commercial purposes is deemed to be an Annex B specimen.

(2) Where a specimen is, in the case of an animal, bred in captivity or, in the case of a plant, artificially propagated, for purposes other than commercial purposes a certificate certifying that the animal was so bred in captivity or the plant so artificially propagated may be –

- (a) issued by [the Committee], in the case of an export or re-export, or
- (b) provided by the applicant, in the case of an import,

instead of an export permit or re-export certificate for the purposes of sections 3(3)(a), 5(2), 6(1)(a) or 7(1)(a).

(3) For the avoidance of doubt –

- (a) the certificate must be provided by the person to whom the export permit or re-export certificate would have been issued, and
- (b) subsection (1) applies whether or not the purpose of the export, re-export or import is for commercial purposes.

(4) In determining whether or not to issue a certificate under this section [the Committee] must consult with the Scientific Authority.

NOTE

In section 15, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Further exemptions and modifications.

16. [The Committee] may by Regulations provide, insofar as it is consistent with the Convention –

- (a) for such amendments to this Part,
- (b) for such further exemptions from Part II, and
- (c) for Part II to apply to trade in specified specimens with such modifications,

as it considers necessary or expedient.

NOTE

In section 16, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

PART V

PERMITS, CERTIFICATES AND REGISTRATIONS

Application of this Part.

17. This Part applies, subject to any express provision to the contrary, in relation to any –

- (a) permit or certificate which may be issued, or
- (b) registration which may be made,

under this Ordinance.

Application for a permit, certificate or registration.

18. (1) An application for a permit, certificate or for registration must

–

- (a) be made to [the Committee] in such form and manner as [the Committee] specifies in writing,
- (b) in the case of an application for a permit, specify –
 - (i) whether it is for an import permit or an export permit, and
 - (ii) the specimen to which the application relates,
- (c) in the case of an application for a certificate, specify –
 - (i) the class of certificate to which the application relates, and
 - (ii) in the case of an application for a re-export certificate, a certificate issued under Part IV or an introduction from the sea certificate, the specimen to which it relates,
- (d) be accompanied by such other information as [the Committee] specifies in writing for the type of application in question, and
- (e) be accompanied by the fee prescribed under section 56.

(2) [The Committee] is not obliged to consider an application for a permit, certificate or for registration unless the application complies with subsection (1) in all respects.

(3) A person may not make a retrospective application for a permit or certificate except in such circumstances, and subject to such conditions, as [the Committee] may by Regulations provide.

NOTE

In section 18, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Determination of application.

19. (1) [The Committee] may –

- (a) upon receipt of an application in relation to a permit, certificate or for registration, request the applicant to supply such further information in writing as [the Committee] may reasonably consider necessary to determine the application in question, and
- (b) in determining the application, consider such matters as it considers appropriate for the application in question.

(2) [The Committee] may –

- (a) grant an application for a permit, certificate or registration –

Consolidated text

- (i) either unconditionally or subject to conditions,
- (ii) in the case of an application for a permit, in respect of all, or one or more, of the specimens specified under section 18(1)(b), and
- (iii) in the case of an application for a certificate, in respect of all, or one or more, of the specimens specified under section 18(1)(c), or

(b) refuse an application for a permit, certificate or registration.

(3) For the avoidance of doubt, a separate permit or certificate is required for each consignment of specimens.

(4) [The Committee] must notify the applicant of its decision on an application for a permit, certificate or registration as soon as possible after it has made its decision.

(5) A notification under subsection (4) must –

(a) where the application is granted –

- (i) specify the specimen in respect of which it is granted,
- (ii) where it is granted subject to conditions, include the reasons for each condition imposed,

(b) where the application is granted in respect of some, but

not all, of the specimens specified under section 18(1)(b) or 18(1)(c), as the case may be, state the reasons for refusing the application in respect of the remainder,

- (c) where the application is refused, include the reasons for the refusal, and
- (d) include details of the right of appeal under section 45.

NOTE

In section 19, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Permit, certificate or registration conditions.

20. [The Committee] may attach to a permit, certificate or registration such conditions as it considers appropriate.

NOTE

In section 20, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Form and duration etc. of certificate or permit.

21. (1) A permit or certificate must be in such form as [the Committee] may specify in writing.

- (2) A permit comes into force on the date on which it is issued.

(3) An export permit or a re-export certificate remains in force, unless it is earlier revoked, for 6 months from the date on which it is issued.

(4) An import permit remains in force, unless it is earlier revoked, for 12 months from the date on which it is issued.

(5) Subject to subsection (3) and to the provisions of any Regulations made under section 28(b), a certificate remains in force until –

(a) the certificate is revoked, or

(b) where relevant, the expiration of the period of validity (however expressed) specified in the certificate.

(6) Any copy of a permit or certificate must be marked clearly as such and no such copy may be used in place of the original except to the extent endorsed on the copy.

NOTE

In section 21, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Variation or transfer of permit, certificate or registration.

22. (1) [The Committee] may vary a permit, certificate or registration by –

(a) imposing an additional condition,

(b) rescinding, or altering the terms of, an existing condition,

- (c) in the case of a permit, the deletion or addition of a specimen within the consignment, or
- (d) in the case of a certificate, the addition or deletion of a description of specimens,

either on application made by the holder of the permit, certificate or registration under subsection (3) or, subject to section 24, of its own volition where it considers such variation is necessary or expedient.

(2) A permit or certificate may not be transferred to another person.

(3) An application for the variation of a permit or certificate or registration must be –

- (a) made to [the Committee] –
 - (i) in such form and manner, and
 - (ii) accompanied by such information,as [the Committee] may specify in writing for the type of application in question, and
- (b) accompanied by the fee prescribed under section 56.

(4) [The Committee] is not obliged to consider an application for a variation of a permit, certificate or registration unless it complies with subsection (3) in all respects.

(5) [The Committee] may, upon receipt of an application under this section, request the applicant to supply such further information in writing as [the Committee] may reasonably consider necessary to determine the application.

(6) [The Committee] must notify the applicant of its decision on an application under this section as soon as possible after it has made its decision and where the notification is of a refusal of the application such notification must include

–

- (a) the reasons for the refusal, and
- (b) details of the right of appeal under section 45.

NOTE

In section 22, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Suspension or revocation of permit, certificate or registration.

23. (1) [The Committee] may, subject to section 24, suspend or revoke a permit, certificate or registration where –

- (a) there is a contravention of a term or condition of the permit, certificate or registration,
- (b) it is satisfied that any information given for the purposes of the application in relation to a permit, certificate or registration was in any material respect false or misleading,

- (c) the holder of the permit or certificate or person registered, as the case may be, or any employee of, or person acting under a contract for services with, such a person is convicted of an offence –
 - (i) under this Ordinance, or
 - (ii) the law of any other country relating to the conservation of specimens,
- (d) it is satisfied that the holder of the permit or certificate is not able to make reasonable provision to minimise the risk of injury, damage to the health or cruel treatment of any live specimen included in a consignment specified in the permit, or
- (e) it is advised by the Scientific Authority that it is desirable to do so to assist in –
 - (i) the survival of specimens of a particular species, or
 - (ii) the survival, health or welfare of a live specimen.

NOTE

In section 23, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Notification of proposed variation, suspension or revocation of permit, certificate or registration.

24. (1) Where [the Committee] proposes to –

- (a) vary the conditions of a permit, certificate or registration of its own volition, or
- (b) suspend or revoke a permit, certificate or registration,

it must notify the licensee of the matters in subsection (2).

(2) The matters referred to in subsection (1) are –

- (a) the proposed variation, suspension or revocation or and the reasons for the same, and
- (b) that the person to whom the permit or certificate was issued or the person to whom the registration was granted, as the case may be, has a period of not less than 28 days from the date of the notification to make representations in writing to [the Committee] on the proposed variation, suspension or revocation.

(3) [The Committee] must take into account any representations made under subsection (2).

(4) Where [the Committee], having taken into account any representations made under subsection (2), decides to confirm its decision to vary, suspend or revoke the permit, certificate or registration, it must notify the person to whom the permit or certificate was issued or the person to whom the registration was granted, as the case may be, of –

- (a) such decision and the reasons for the same,
- (b) the date on which the decision will take effect which shall be a date after the expiry of the period referred to in subsection (2)(b), and
- (c) the right of appeal under section 45.

NOTE

In section 24, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Lost, defaced or damaged permit or certificate.

25. (1) The holder of a permit or certificate may apply to [the Committee] for the issue of a permit or certificate to replace one which has been lost, defaced or damaged.

(2) An application under subsection (1) must be –

- (a) made in such form and manner, and accompanied by such information, as [the Committee] may specify in writing for the type of application in question, and
- (b) accompanied by the fee prescribed under section 56.

(3) [The Committee] is not obliged to consider an application under subsection (1) unless the application complies with subsection (2) in all respects.

(4) [The Committee] may, upon receipt of an application under this section, request the applicant to supply such further information in writing as [the Committee] may reasonably consider necessary to determine the application.

(5) [The Committee] may issue a permit or certificate to replace the lost, defaced or damaged permit or certificate.

NOTE

In section 25, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Retention and revocation of used permit or certificate.

26. [The Committee] must retain any permit or certificate which –

- (a) is issued by a relevant authority,
- (b) relates to a specimen which has been imported, and
- (c) was provided to [the Committee] because it was required under this Ordinance to accompany the import of the specimen,

and [the Committee] must, at the same time, revoke any corresponding import permit issued by it.

NOTE

In section 26, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with

effect from 1st May, 2016.

Validity of permit or certificate.

27. (1) For the avoidance of doubt, a permit, certificate or other document issued by a relevant authority, and any document issued by [the Committee] on the basis of the same, is not valid for the purposes of this Ordinance if

–

- (a) it was issued in contravention of the law of the country of the relevant authority,
- (b) it does not comply substantially with the requirements of the Convention, or
- (c) any condition subject to which it was issued has not been complied with.

(2) Subsection (1) is without prejudice to the other circumstances which may render the permit invalid.

NOTE

In section 27, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Regulations relating to permits, certificates and other documents.

28. [The Committee] may by Regulations –

- (a) amend this Part, or

- (b) make such further provision in relation to the matters set out in this Part,

as it considers necessary or expedient to implement the Convention or any relevant resolutions of the Conference of the Parties.

NOTE

In section 28, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

PART VI
COMMERCIAL ACTIVITIES ETC.

Control of commercial activities.

- 29.** (1) This section applies to an Annex A or B specimen which has been –
- (a) imported in contravention of section 3(1),
 - (b) introduced from the sea in contravention of section 4(1), or
 - (c) otherwise acquired unlawfully.
- (2) A person who, without reasonable excuse –
- (a) buys or offers to buy,
 - (b) acquires for commercial purposes,

- (c) displays to the public for commercial purposes,
- (d) uses for commercial gain,
- (e) sells, keeps for sale or offers for sale, or
- (f) transports for sale,

a specimen to which this section applies is guilty of an offence.

(3) A person is not guilty of an offence under subsection (2) if the person can prove that at the time the alleged offence was committed the person had no reason to believe that the specimen was an Annex A or, as the case may be, Annex B specimen.

(4) A person is not guilty of an offence under subsection (2) if the person proves –

- (a) that at the time when the specimen first came into the person's possession the person made such enquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported, introduced from the sea or otherwise acquired unlawfully, as the case may be, as mentioned in subsection (1), and
- (b) that at the time the alleged offence was committed, the person had no reason to believe that the specimen was so imported, introduced from the sea or otherwise acquired unlawfully.

(5) Without prejudice to the generality of subsection (4), a person

is taken to have made such enquiries as are mentioned there if that person produces to the court a statement which was furnished by the person from whom that person obtained possession of the specimen ("**the supplier**"), which was signed by the supplier or by a person authorised by him, and which states that –

- (a) the supplier made enquiries at the time the specimen came into the supplier's possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully, and
- (b) the supplier had no reason to believe at the time the supplier relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired unlawfully.

(6) A person guilty of an offence under subsection (2) shall be liable –

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

(7) [The Committee] may by Regulations provide for exemptions from subsection (2).

NOTE

In section 29, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Possession of specimens.

30. (1) A person who possesses or controls, without lawful authority or reasonable excuse, a specimen which that person knows, or ought reasonably to be expected to know, has been –

- (a) imported or introduced from the sea in contravention of this Ordinance, or
- (b) otherwise acquired unlawfully,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable –

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

Organising or facilitating unlawful trade in specimens outside the Bailiwick.

31. (1) A person must not, subject to subsection (2), organise, or otherwise facilitate, in or from the Bailiwick –

- (a) trade in, or
- (b) the transport or movement of,

a specimen between countries outside the Bailiwick.

(2) Subsection (1) does not apply to trade in or the transport or movement of –

(a) specimens between Member States of the European Community carried out in accordance with the EU Regulation, or

(b) Annex A, B or C specimens between other countries outside the Bailiwick carried out in accordance with the Convention.

(3) A person who contravenes subsection (1) is guilty of an offence and liable –

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both, or

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

(4) In this section "**trade**" has the meaning in section 57 except that for references to "the Bailiwick" in the definitions of "**import**", "**introduction from the sea**" or "**export**" there is substituted references to the relevant country outside the Bailiwick.

PART VII REGISTRATION

Register of scientific institutions.

32. (1) [The Committee] must prepare and maintain a register of registered scientific institutions registered under this Part for the purposes of section 14(a).

- (2) An entry of an institution in the register must include –
- (a) the period of validity of the registration,
 - (b) the type of loan, donation or exchange in respect of which the institution is registered,
 - (c) the descriptions of specimens in respect of which the institution is registered, and
 - (d) the conditions of registration,

and may include such other information and documents as [the Committee] considers appropriate.

(3) For the avoidance of doubt, an entry of a registered scientific institution in the register authorises a loan, donation or exchange by –

- (a) the registered scientific institution, or
- (b) where acting for and on behalf of the registered scientific institution –
 - (i) any officer or employee of that institution, or
 - (ii) where provided for by the conditions of

registration, any person acting as an agent for, under a contract for services with or otherwise acting under the supervision of, that institution.

(4) The register may be prepared and maintained in electronic form.

(5) The register must be kept at the principal office of [the Committee] and made available for inspection by the public free of charge at all reasonable times.

(6) [The Committee] must provide copies of any information or document on the register to any person upon written request and payment of a reasonable fee.

NOTE

In section 32, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Other registers.

33. (1) [The Committee] may by Regulations make such provision as it considers necessary or expedient in relation to the registration by [the Committee] of

–

(a) persons –

(i) carrying on trade in Annex A or B specimens,

(ii) in the case of an animal, breeding a specimen in

captivity,

(iii) in the case of a plant, artificially propagating a specimen,

(b) pre-Convention specimens located in the Bailiwick, and

(c) such other matters as it considers necessary or expedient to register to facilitate compliance with the Convention.

(2) [The Committee] may by Regulations –

(a) provide for pre-conditions for registration under this Part, or

(b) impose such requirements as it considers necessary or expedient on persons registered under this Ordinance to facilitate compliance with the Convention including, without limitation, the keeping of records by such persons in relation to the matters in respect of which such persons are registered.

(3) A person registered under this Ordinance who, without reasonable excuse, fails to comply with any requirement imposed by Regulations under subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the uniform scale.

NOTE

In section 33, the words "T/the Committee" in square brackets, wherever

occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Application for registration.

34. (1) [The Committee] must consult with the Scientific Authority before determining an application for registration under this Part.

(2) [The Committee] must not register a person, pre-Convention specimen or other matter under this Part unless it is satisfied that any relevant pre-conditions for registration on the register in question prescribed under section 33 have been met.

NOTE

In section 34, the words "The Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Period of validity of registration.

35. A registration under this Ordinance is valid for such period as is specified in the grant of registration subject to any suspension or revocation of the registration under section 23.

PART VIII
ENFORCEMENT

Proof of lawful import, introduction from the sea, export or re-export.

36. (1) Where any specimen –
- (a) is being imported, introduced from the sea, exported or

re-exported,

- (b) has been imported, introduced from the sea or brought to any place for the purpose of being exported or re-exported,

a customs officer may require any person possessing or having control of that specimen to furnish proof that its importation, introduction from the sea, export or re-export is or was not unlawful under this Ordinance.

(2) Until such proof is furnished the specimen is liable to detention under the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^g and if such proof is not furnished to the satisfaction of the Chief Officer of Customs and Excise the specimen is liable to forfeiture under that Law.

Authorised Persons.

37. (1) A person may be authorised in writing by the [President], or [Vice-President], of [the Committee] to perform any of the functions of an Authorised Person under this Ordinance.

(2) A person purporting to carry out the functions of an Authorised Person under this Ordinance must, upon request, produce evidence of his authority.

(3) An Authorised Person must keep a written record of any exercise of a power under section 38, 39, or 41 or under a warrant issued under section 40.

^g Ordres en Conseil Vol. XXIII, p. 573 as amended by Vol. XXIV, p. 87, Vol. XXXI, p. 278, Vol. XXXIII, p. 217, Order in Council No. X of 2004, No. XIV of 2007, No. II of 2010, No. XV of 2012, Recueils d'Ordonnances Tome XXIX p. 406 and Tome XXXII, p. 668 and to which there are other amendments not relevant to this Ordinance.

(4) For the avoidance of doubt, the States Veterinary Officer may be appointed as an Authorised Person.

NOTE

In section 37, the words in, first, the first and second and, second, the third pairs of square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2 and section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Inspection in connection with permits, certificates or registration.

38. (1) An Authorised Person may, subject to section 39, carry out an inspection of premises –

- (a) to check compliance with the terms or conditions of a permit, certificate or registration, or
- (b) where an Authorised Person has reasonable cause to believe that an Annex A or B specimen is being kept on those premises, to ascertain whether the premises is being used for an activity set out in section 29(2).

(2) An Authorised Person may require the holder of a permit or certificate or a person registered under this Ordinance to produce for inspection any records which that person is required to keep under a permit, certificate or registration.

(3) Where records which a person is so required to keep are stored in electronic form, the power under subsection (2) includes power to require the records to be made available for inspection in a visible and legible form or in a form

from which they can readily be produced in a visible and legible form.

(4) An Authorised Person may, subject to section 39, carry out an inspection of any premises for the purpose and at the time set out in subsection (5), where –

- (a) an application has been made under this Ordinance for a permit, certificate or registration or the variation of the same, and
- (b) the premises are to be used in connection with the trade or activity in respect of which the application is made.

(5) An inspection under subsection (4) may be carried out at any reasonable time before the determination of an application for a permit, certificate or registration or a variation of the same for the purpose of ascertaining whether or not that application should be granted.

Powers of entry onto premises and to stop and detain vehicles etc.

39. (1) Subject to subsections (3) and (6), an Authorised Person or a police officer may enter any premises at any reasonable time where that person or officer has reasonable grounds to suspect that –

- (a) an offence under this Ordinance has been, or is being, committed, for the purpose of investigating that offence, or
- (b) there is any specimen on the premises which has been, or is being, imported or introduced from the Sea in contravention of this Ordinance or otherwise acquired unlawfully.

(2) Subject to subsections (3) and (6), an Authorised Person may enter any premises at any reasonable time for the purpose of –

- (a) considering any application in relation to a permit, certificate or registration made under this Ordinance,
- (b) carrying out an inspection under section 38,
- (c) deciding whether and in what manner any functions of an Authorised Person or [the Committee] under this Ordinance ought to be exercised,
- (d) exercising any other function conferred on an Authorised Person or [the Committee] under this Ordinance.

(3) The powers of entry under subsections (1) and (2) are not exercisable (other than in a case of emergency) –

- (a) unless the Authorised Person or the police officer gives to the owner or occupier of the premises concerned at least 24 hours' notice of his intention to enter the premises, and
- (b) in the case of any premises, or any part of premises, used as a dwelling except under and in accordance with the authority of a warrant issued by the Bailiff, within the meaning of section 40, under and in accordance with that section.

(4) The powers of entry under subsections (1) and (2) include a power –

(a) for an Authorised Person or police officer to take with him such persons, equipment and materials as that Authorised Person or police officer reasonably considers necessary for the purpose for which the power of entry is being exercised, and

(b) for such persons to exercise any power that may be exercised by the Authorised Person or police officer, for the purpose for which the Authorised Person or police officer entered, provided that any such person is in the company, and under the supervision, of the Authorised Person or police officer exercising the power of entry.

(5) A police officer or an Authorised Person (if accompanied by a police officer in uniform) may –

(a) stop and detain a vehicle for the purpose of the exercise of a power under any of sections 38 or 41 or subsections (1) or (2), and

(b) detain that vehicle for as long as reasonably required for the exercise of the power concerned.

(6) The powers in this section do not authorise a police officer or an Authorised Person to enter any premises, or to stop and detain a vehicle, by force.

NOTE

In section 39, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Warrant to enter premises.

40. (1) If the Bailiff is satisfied by information on oath supplied by –

- (a) an Authorised Person, that there are reasonable grounds for entering any premises for any purpose for which an Authorised Person has a right to enter premises under this Part, the Bailiff may grant a warrant to an Authorised Person, or
- (b) a police officer, that there are reasonable grounds for entering any premises for any purpose for which a police officer has a right to enter premises under this Part, the Bailiff may grant a warrant to a police officer.

(2) A warrant granted under subsection (1) authorises an Authorised Person or a police officer at any time within one month of the date of the grant –

- (a) to enter the premises, and
- (b) to exercise in respect of the premises (and any specimen, container containing a specimen or other thing found in or on the premises), all such powers as that Authorised Person or police officer may exercise under this Part,

for the purposes indicated in subsection (1).

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

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

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

- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,
- (b) the occupier has failed to allow entry to the premises on being requested to do so by an Authorised Person or a police officer, and
- (c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that –

- (a) the premises are unoccupied or the occupier is absent, and
- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

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

- (a) it would defeat the object of entering the premises, or
- (b) entry is required as a matter of urgency.

(8) An Authorised Person or a police officer executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) Sections 10 (search warrants – safeguards) and 11 (execution of warrants) of PPACE^h apply in relation to the issue of a warrant under this section to an Authorised Person as they apply in relation to the issue of a warrant to a police officer.

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

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

(11) For the purposes of this section, "**the Bailiff**" means –

^h Ordres en Conseil Vol. XLIII (2), p. 617 as amended by Order in Council No. XVI of 2009, No. XV of 2011, Recueil d'Ordonnances Tome XXIX, p. 406 and Ordinance No. XXIX of 2011 and No. XX of 2015.

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
- (b) where the warrant is to be executed in Sark, the Seneschal, and
- (c) in any other case, the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué.

Supplementary functions.

41. (1) This section applies to a person exercising a power under section 38 or 39 or under a warrant issued under section 40.

(2) A person exercising a power to which this section applies may, where it is reasonably necessary for the purpose for which that person has exercised the power –

- (a) inspect a specimen, a container containing a specimen or any other thing (including a document or record in any form),
- (b) take a sample from a specimen, container containing a specimen or other thing,
- (c) take copies of a document or record (in whichever form it is held),
- (d) take a photograph of anything,

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- (e) open or break open a container or other thing containing a specimen,
- (f) subject to subsection (6), seize and take into possession or detain a specimen, a container containing a specimen or other thing which that person reasonably believes to be evidence of the commission of an offence under this Ordinance relevant to the purpose for which the power is exercised.

(3) A person who takes a sample from a specimen, under subsection (2)(b), must give a part of the sample, or a similar sample, to the owner or other person who appears entitled to be in possession of the specimen if –

- (a) the person taking the sample is requested to do so by such owner or other person, and
- (b) in all the circumstances it is reasonably practicable to do so.

(4) Section 16(1) and (2) (record of thing seized) of PPACE apply in relation to an Authorised Person who seizes and takes into possession a specimen, a container containing a specimen or other thing under subsection (2)(f) as it applies in relation to the exercise of a power of seizure by a police officer.

(5) Any specimen, container containing a specimen or other thing which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(f) may, subject to the following provisions of this Ordinance, be retained so long as is necessary in all the circumstances and in particular –

- (a) for use as evidence at a trial for a relevant offence, or

- (b) for forensic examination or for investigation in connection with an offence,

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

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

Supplementary provisions.

42. (1) When an Authorised Person or a police officer exercises any power under section 41(2), in relation to a live specimen, other than with the knowledge of the owner or other person appearing to be entitled to possession of the specimen, the Authorised Person or police officer must take all reasonable measures to notify the owner, or other person appearing to be entitled to possession of the specimen, of the same including notifying them of the name and address of any place to which a specimen is removed.

(2) Any expenses reasonably incurred by an Authorised Person or a police officer in consequence of acting under section 41(2) in seizing, taking into possession, transporting and caring for a specimen are recoverable by the States from the owner, or other person appearing to be entitled to possession of the specimen, as a civil debt.

Statutory powers to make requirements.

43. (1) Where an Authorised Person reasonably suspects that an offence under the Ordinance has been, or is being, committed, in relation to any specimen, the Authorised Person may require the owner of a specimen or other

person appearing to be entitled to possession of it to comply with any of the requirements indicated in subsection (2).

- (2) The requirements for the purpose of subsection (1) are –
 - (a) to make available for inspection by an Authorised Person any specimen, container containing a specimen or other thing in relation to which an Authorised Person suspects that the offence has been committed,
 - (b) to furnish an Authorised Person with such information, including records and other documents, relating to the specimen as the Authorised Person may reasonably require, and
 - (c) to answer such questions relating to the specimen as the Authorised Person may reasonably ask.

(3) Any specimen, container containing a specimen or other thing provided or made available to an Authorised Person in compliance with a requirement under this section may be seized by an Authorised Person.

- (4) Where a specimen, container containing a specimen or other thing is seized under subsection (3) –
 - (a) an Authorised Person may exercise any of the relevant powers in section 41(2)(b) to (e) in relation to that thing, and
 - (b) the provisions of section 41(3) to (6) apply to such a thing as they apply to a thing seized under section

41(2)(f).

(5) A statement made by a person in response to a requirement imposed under this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings,

(b) may not be used in evidence against him 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 46,

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

(C) perjury, or

(D) perverting the course of justice.

Functions of a police officer under Part VIII.

44. For the avoidance of doubt, the functions of a police officer under this

Part are without prejudice to any other functions conferred on a police officer by law.

PART IX
APPEALS AGAINST DECISIONS OF [THE COMMITTEE]

Appeals against decisions.

45. (1) A person aggrieved by a decision of [the Committee] –
- (a) to refuse an application by that person for a permit, certificate or for registration,
 - (b) to refuse an application by that person for the issue of a permit or certificate to replace one that has been lost, defaced or damaged,
 - (c) to impose a condition on a permit, certificate or registration granted to that person,
 - (d) to vary, or refuse to vary, the conditions of a permit, certificate or registration granted to that person,
 - (e) to suspend or revoke a permit, certificate or registration granted to that person, or
 - (f) of such other description as may be prescribed,

may appeal to the Court against the decision.

- (2) 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.

(3) An appeal under this section must be instituted –

- (a) within a period of 28 days immediately following the date of the notification of [the Committee]'s decision, and
- (b) by summons served on the [President] of [the Committee] stating the grounds and material facts on which the appellant relies.

(4) [The Committee] 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 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,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007ⁱ or rule 51 of the Court of Alderney Civil Rules, 2005^j.

- (5) On an appeal under this section the Court may –
- (a) set the decision of [the Committee] aside and, if the Court considers it appropriate to do so, remit the matter to [the Committee] with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of [the Committee] 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.

(7) 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.

- (8) In this section "**the Court**" means –
- (a) where the person described in subsection (1) is –
 - (i) an Alderney company,

ⁱ O.R.C. No. IV of 2007 as amended by O.R.C. No. II of 2008 and No. IV of 2009.

^j As amended by the Court of Alderney Civil (Amendment) Rules, 2015.

- (ii) an individual ordinarily resident in Alderney, or
- (iii) not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Alderney,

the Court of Alderney,

- (b) where that person is –

- (i) an individual ordinarily resident in Sark, or
- (ii) not an Alderney company or a Guernsey company but has its principal or prospective principal place of business in Sark,

the Court of the Seneschal, or

- (c) in any other case, the Royal Court.

(9) An appeal from a decision of the Royal Court made under this Law (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal) lies to the Court of Appeal on a question of law and must be instituted –

- (a) within a period of 14 days immediately following the date of the decision of the Royal Court, and
- (b) by notice served on all parties to the proceedings in the course of which the order was made.

(10) In this section –

"**Alderney company**" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994^k, and

"**Guernsey company**" means a body corporate on the Register of Companies kept and maintained under section 496 of the Companies (Guernsey) Law, 2008^l.

NOTES

The words in square brackets in the heading to Part IX were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

In section 45, the words, first, "T/the Committee" in square brackets, wherever occurring, and, second, "President" in square brackets in subsection (3)(b) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 5 and section 2, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2, with effect from 1st May, 2016.

PART X

GENERAL OFFENCES AND PENALTIES

False, deceptive or misleading statements and obstruction etc.

46. (1) A person commits an offence if –

^k Ordres en Conseil Vol. XXXV (2), p. 777 to which there are amendments not relevant to this Ordinance.

^l Order in Council No. VIII of 2008 to which there are amendments not relevant to this Ordinance.

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- (a) for the purposes of or in connection with an application under this Ordinance,
- (b) in purported compliance with any requirement of a permit, certificate, or other document issued, or a registration made, under this Ordinance,
- (c) in purported compliance with a requirement imposed under, or otherwise for the purposes of, this Ordinance, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which that person intends, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of exercising functions conferred under this Ordinance,

that person does any of the following –

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

reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person who –

- (a) obstructs another person in the exercise of that other person's functions under this Ordinance,
- (b) fails, without reasonable excuse, to comply with a requirement imposed on him under section 43, or
- (c) fails, without reasonable excuse, to give any person executing a warrant issued under section 40 such assistance as that person may reasonably require for the execution of the warrant,

commits an offence.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

Offences committed by legal persons and unincorporated bodies.

47. (1) Where a legal person is guilty of an offence under this

Ordinance, 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,

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

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies to the acts and defaults of a member in connection with that member's functions of management as if that member were a director.

(3) 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, 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.

(4) Where an offence under this Law 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 in such proceedings must be paid from the funds of that body.

(6) In this section, "**legal person**" includes any body corporate and any other body of persons on which legal personality is conferred by any enactment.

Penalties for offences tried before the Court of Alderney or the Court of the Seneschal.

48. In relation to offences under this Ordinance tried before the Court of Alderney or the Court of the Seneschal, and for the avoidance of doubt, the penalties stipulated by this Ordinance are applicable notwithstanding the provisions of section 13 of the Government of Alderney Law, 2004^m and section 11 of the Reform (Sark) Law, 2008ⁿ.

Forfeiture orders.

49. (1) The court by which any person is convicted of an offence under this Ordinance –

(a) must order the forfeiture of any specimen or other thing

^m Order in Council No. III of 2005 as amended by Order in Council No. XXII of 2010, No. XI of 2012 and No. V of 2014.

ⁿ Order in Council No. V of 2008 as amended by No. VI of 2008, No. XXVII of 2008, No. XIV of 2010, No. XII of 2011, No. XI of 2014, Sark Ordinance No. II of 2015 and No. VI of 2015.

in respect of which the offence was committed, and

- (b) may order the forfeiture to [the Committee] of any vehicle, ship, aircraft or other thing which was used to commit the offence.

(2) The court shall not make an order under subsection (1), where a person claiming to be the owner of the specimen or other thing or otherwise interested in it applies to be heard by the court, unless that person has been given an opportunity to show cause why the order should not be made.

(3) Any person aggrieved by an order made under this section by the court, or by a decision of the court not to make such an order, may appeal against the order or decision as against a conviction or, as the case may be, as against an acquittal by that court of an offence.

(4) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

(5) This section is without prejudice to the provisions of any other enactment relating to forfeiture.

(6) Where any specimen, vehicle, ship, aircraft or other thing is forfeited under this section it must be disposed of in accordance with such directions as the court may give.

(7) Without prejudice to the generality of subsection (6) the court may direct, in relation to a living specimen, that –

- (a) a living specimen be entrusted to [the Committee],

- (b) the specimen is returned to the country from which it was exported, at the expense of that country, or placed in such place as [the Committee] considers appropriate having regard to the purposes of the Convention, after consultation by [the Committee] with –
 - (i) the relevant authority in the country from which the specimen was exported, and
 - (ii) the Scientific Authority.
- (8) In this section "**ship**" includes every description of vessel used in navigation.

NOTE

In section 49, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Orders as to expenses.

- 50.** (1) The court by which any person is convicted of an offence under this Ordinance may order the offender to –
- (a) reimburse any reasonable expenses incurred in seizing, taking into possession, transporting and caring for a specimen after its seizure and before the date of conviction, and
 - (b) where it makes a forfeiture order, reimburse the

expenses of carrying out that order,

and the offender may appeal against such an order as against a conviction.

(2) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal.

PART XI

MISCELLANEOUS PROVISIONS

Specified port or airport.

51. (1) The following ports and airports are specified for the purposes of this Ordinance –

- (a) St Peter Port Harbour, Guernsey,
- (b) La Villiaze Airport, Guernsey,
- (c) Braye Harbour, Alderney,
- (d) Alderney Airport, and
- (e) such other port or airport, which is appointed and named by order under section 7 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 for the purposes of customs and excise, as [the Committee] may, from time to time, approve in writing.

(2) [The Committee] may approve different ports or airports under

subsection (1)(e) in relation to different specimens or classes of specimen.

NOTE

In section 51, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Marking of specimens.

52. (1) An Authorised Person may mark any specimen, container, packaging, cage or other thing containing a specimen for the purposes of identifying it.

(2) [The Committee] may by Regulations make such provision as it considers necessary or expedient in relation to the marking of specimens to facilitate their identification including, without limitation –

- (a) requiring the marking of specimens and any container or packaging containing specimens, and
- (b) setting out the manner in, and methods by, which particular species of specimen must be marked.

(3) A person who contravenes any requirements of Regulations made under subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the uniform scale.

(4) Any person, other than an Authorised Person, who without reasonable excuse, alters, obscures, defaces, adds to or removes a marking –

- (a) made by an Authorised Person under subsection (1), or

- (b) required by Regulations under subsection (2),

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the uniform scale or to both.

(5) In this section, "**mark**" means an indelible imprint, lead seal or other suitable means of identifying a specimen designed in such a way as to render its imitation as difficult as possible.

NOTE

In section 52, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Service of documents.

53. (1) Any document to be given or served under, or for the purposes, of this Ordinance may be given or served –

- (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,
- (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 the Bailiwick 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 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 Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) on [the Committee] or an Authorised Person, by being left at, or sent by post or transmitted to, the principal offices of [the Committee] in Guernsey.

(2) In subsection (1) –

- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
- (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document is regarded as served when it is received.

(3) If a person notifies [the Committee] or an Authorised Person of an address for service within the Bailiwick for the purposes of this Ordinance, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

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

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

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

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of subsections (1) to (5) and (8) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on [the Committee] or an Authorised Person under or for the purposes of this Ordinance shall be deemed to have been given or served until it is received.

(7) If a person upon whom a document is to be served under this Ordinance is a minor or person under legal disability, the document must be served on his 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 for the purposes of this Ordinance and in this subsection "**the Court**" means –

- (a) where the person in respect of whom the guardian is to be appointed is within the jurisdiction of the Court of Alderney or the Court of the Seneschal, then the Court of Alderney or, as the case may be, the Court of the

Seneschal, or

(b) in any other case, the Royal Court.

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

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

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

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

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

(10) In this section "**document**" does not include a summons.

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

NOTE

In section 53, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

General provisions as to Regulations and Orders.

54. (1) Regulations and Orders made under this Ordinance –

- (a) may be amended or revoked by subsequent Regulations or Orders hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to [the Committee] to be necessary or expedient, and
- (c) must be laid before a meeting of the States as soon as possible 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 Regulations or an Order.

(2) Any power conferred under this Ordinance to make Regulations or an Order 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, or

- (iii) any such provision either unconditionally or subject to any conditions specified in the Regulations or Order.

NOTE

In section 54, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Exclusion of liability.

55. (1) [The Committee], the Scientific Authority and an Authorised Person are not –

- (a) liable in damages, or
- (b) in the case of an individual, personally liable in any civil proceedings,

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

(2) Subsection (1) only applies to anything done, or omitted to be done, after the commencement of the provision under this Ordinance under which the relevant function is conferred.

(3) Subsection (1) does not operate to prevent an award of

damages in respect of an 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, 2000⁰.

NOTE

In section 55, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Fees and charges.

56. (1) There shall be payable to [the Committee], such fees or charges of such amounts, by such persons and in such manner as may be prescribed in connection with –

- (a) the carrying out of any functions under this Ordinance,
- (b) the provision of any services by [the Committee] or the Scientific Authority in connection with any of its functions under this Ordinance, and
- (c) the recovery of any reasonable costs associated with the administration and enforcement of this Ordinance or any subordinate legislation made under this Ordinance.

(2) Without prejudice to the generality of subsection (1), an Ordinance or Regulations under that subsection may provide for the charging of fees in connection with an application in relation to a permit, certificate or registration made under this Ordinance.

⁰ Ordres en Conseil Vol. XL, p. 396 as amended by Order in Council No. I of 2005, Recueil d'Ordonnances Tome XXVIII, p. 493, Tome XXIX, p. 406, Tome XXXIII, p. 617, Ordinance No. XX of 2015 and G.S.I. No. 27 of 2006.

NOTE

In section 56, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Interpretation.

57. (1) In this Ordinance, unless the context requires otherwise –

"acquired" means, in relation to a specimen –

- (a) taken from the wild, or
- (b) the point at which, in the case of an animal, it was born in captivity or, in the case of a plant, artificially propagated,

"acquired unlawfully" means acquired contrary to the law of the Bailiwick relating to the conservation and protection of specimens,

"Annex A" means Annex A to the EU Regulation and **"Annex A specimen"** means a specimen falling within Annex A and related expressions are construed accordingly,

"Annex B" means Annex B to the EU Regulation and **"Annex B specimen"** means a specimen falling within Annex B and related expressions are construed accordingly,

"Annex C" means Annex C to the EU Regulation and **"Annex C specimen"** means a specimen falling within Annex C and related expressions

are construed accordingly,

"Annex D" means Annex D to the EU Regulation and **"Annex D specimen"** means a specimen falling within Annex D and related expressions are construed accordingly,

"Authorised Person" means a person appointed as such under section 37,

"the Bailiwick" means the Bailiwick of Guernsey,

"certificate", except in section 8(2) or (3), means a certificate issued by [the Committee] under this Ordinance,

"Chief Officer of Customs and Excise" has the meaning in section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

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

"competent authority", in relation to a country not Party to the Convention, means the competent authority for the import, export, re-export or introduction from the sea of specimens,

"competent Management Authority" means a person appointed in a country other than the Bailiwick as the Management Authority for the purposes of the Convention,

"competent Scientific Authority" means a person appointed in a country other than the Bailiwick as the Scientific Authority for the purposes

of the Convention,

"the Conference of the Parties" means the Conference of the Parties as referred to in Article XII of the Convention and related expressions are construed accordingly,

"the Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora,

"the Convention Secretariat" means the Secretariat of the Convention referred to in Article XII of the Convention,

"country" includes a territory,

"Court of Appeal" means the court established by the Court of Appeal (Guernsey) Law, 1961^P,

"Court of the Seneschal" means the Court of the Seneschal of Sark,

"customs Laws" has the meaning in section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

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

"the EU Regulation" means Council Regulation (EC) No. 338/97 of the 9th December, 1996 on the protection of species of wild fauna and flora by

^P Ordres en Conseil Vol. XVIII, p. 315 as amended by Order in Council No. III of 2012 and Recueil d'Ordonnances Tome XXIX, p. 406.

regulating trade therein^q,

"export", in relation to a specimen, means to take any specimen from the Bailiwick to any other place but does not include re-export and related expressions are construed accordingly,

"foundation official" has the meaning in the Foundations (Guernsey) Law, 2012^r,

"import", in relation to a specimen means –

- (a) to land, or attempt to land, the specimen in the Bailiwick, or
- (b) to bring the specimen into the Bailiwick,

but does not include the introduction from the sea of a specimen and related expressions are construed accordingly,

"import notification" means the notification in writing given by the importer, his agent or representative at the time of the import of an Annex C or D specimen on a form specified in writing by [the Committee],

"introduction from the sea" means –

- (a) the transport into the Bailiwick of any specimen which was taken in, and is transported into the Bailiwick directly from, the marine environment, and

^q O.J. L 61, 3.3.1997, p.1.

^r Order in Council No. I of 2013.

- (b) where the marine environment is not under the jurisdiction of any country (including the air-space above the sea, the sea-bed and the subsoil beneath the sea),

"notice" means notice in writing,

"notify" means notify in writing,

"owner" in relation to premises includes, where premises comprise land, a usufrutier,

"permit", except in section 8(2) or (3), means a permit issued by [the Committee] under this Ordinance,

"personal or household effects" means dead specimens or parts and derivatives of specimens that are the belongings of a private individual and that form, or are intended to form, part of his normal personal property,

"police officer" means a member of the salaried police force of the Island of Guernsey and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed pursuant to section 47 of the

Government of Alderney Law, 2004, and

(c) in relation to Sark, the Constable and the Vingtenier,

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

"pre-Convention specimen" means a specimen which was acquired before the date on which the provisions of the Convention became applicable to such a specimen and section 12(2) applies for the purposes of this definition,

"premises" includes –

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

"prescribed" means prescribed by Regulations of [the Committee],

"re-export" means the export of any specimen that has previously been imported and related expressions are construed accordingly,

"registered scientific institution" means a scientist or scientific

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

institution which –

- (a) is registered under section 32 as a registered scientific institution,
- (b) is registered by the competent Management Authority in a country in which that person is resident or located in relation to a loan, donation or exchange of a specimen falling within section 14, or
- (c) in the case of a person resident or located in a country not Party to the Convention –
 - (i) is registered by the competent authority in relation to a loan, donation or exchange of a specimen falling within section 14, and
 - (ii) such registration meets conditions for such registration which conform substantially to those required under the Convention and any relevant resolutions of the Conference of the Parties,

"registration" means a registration of a person under this Ordinance,

"relevant authority" means –

- (a) in relation to a country which is a Party to the Convention, the competent Management Authority, or
- (b) in relation to a country not Party to the Convention, the

competent authority,

"relevant resolutions of the Conference of the Parties" means any relevant resolutions of the Conference of the Parties from time to time in force,

"relevant scientific authority" means a person appointed in a country not Party to the Convention to advise the competent authority in that country in relation to the conservation of specimens,

"Royal Court" means the Royal Court sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué sitting alone,

"Scientific Authority": see section 2,

"the Seneschal" means the Seneschal of Sark appointed under section 6(1) of the Reform (Sark) Law, 2008 and includes the Deputy Seneschal appointed under section 7 of that Law,

"specified port or airport" means a port or airport specified under section 51,

"specimen" has the meaning in the EU Regulation,

"the States" means the States of Guernsey,

"trade" means import, introduction from the sea, export or re-export,

"under this Ordinance" includes under Regulations made under this

Ordinance and related expressions are construed accordingly,

"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^t, and

"working day" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^u,

and other expressions have the same meaning as in the Control of Trade in Endangered Species (Enabling Provisions) (Bailiwick of Guernsey) Law, 2010.

(2) For the purposes of this Ordinance, a specimen is taken to have been **"bred in captivity"** only if it was born, or otherwise produced, in a controlled environment of parents that mated or otherwise transmitted their gametes in a controlled environment and for the purposes of this subsection **"controlled environment"** has the meaning in relevant resolutions of the Conference of the Parties; and related expressions are construed accordingly.

(3) For the purposes of this Ordinance, a specimen which is a plant is taken to have been **"artificially propagated"** only if the plant has been grown by a person from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules under controlled conditions and for the purpose of this subsection **"controlled environment"** has the meaning in relevant resolutions of the Conference of the Parties.

^t Ordres en Conseil Vol. XXXI, p. 278; for the current scale of fines see Recueil d'Ordonnances Tome XXXI, p. 542.

^u Ordres en Conseil Vol. XVII, p. 384 as amended by Vol. XXIV, p. 84, Vol. XXXIV, p. 504 and Vol. XXXV (1), p. 367.

(4) For the purposes of this Ordinance a specimen is "**in transit or being transhipped**" if –

- (a) it is being transported between two countries other than the Bailiwick,
- (b) it is being transported to a named consignee,
- (c) any interruption of the specimen's movement between those countries arises only from arrangements necessitated by the transit or transhipment,
- (d) any transit or transhipment is in accordance with the customs Laws and excise Laws within the meaning of the Customs and Excise (General Provisions) (Bailiwick of Guernsey), Law, 1972, and
- (e) whilst the specimen is on land, or is in a port or airport, in the Bailiwick it is within a specified port or airport,

and related expressions are construed accordingly,

(5) Any reference in this Ordinance to any expenses reasonably incurred in seizing, taking into possession, transporting and caring for a specimen is to be construed, for the avoidance of doubt, as including such expenses reasonably incurred in carrying out any veterinary treatment which is given to a live specimen in the course of the same.

(6) The Interpretation (Guernsey) Law, 1948^v applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(7) Any reference in this Ordinance to an owner or occupier of premises shall be construed, where premises comprise a vehicle, ship or aircraft as referring to the master, commander or other person in charge of the same.

(8) Any reference in this Ordinance to an enactment or to European Union legislation is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

NOTES

In section 57, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Consequential amendments.

58. Schedule 1, which makes consequential amendments, has effect.

Transitional provisions.

59. Schedule 2, which makes transitional provisions, has effect.

^v Ordres en Conseil Vol. XIII, p. 355.

Extent.

60. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

61. This Ordinance may be cited as the Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016.

Commencement.

62. This Ordinance shall come into force on such day as [the Committee] may by Order appoint and different days may be so appointed for different provisions of this Ordinance or for different purposes.

NOTES

The Ordinance was brought into force on 4th April, 2019 by the Control of Trade in Endangered Species etc. (Bailiwick of Guernsey) Ordinance, 2016 (Commencement) Order, 2019, article 1.

In section 62, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

SCHEDULE 1

Section 58

CONSEQUENTIAL AMENDMENTS

Amendment to the export control order.

1. Paragraph 4 of Schedule 4 (goods that cannot be exported without a licence) to the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010^W is omitted.

Amendment to the Guernsey import control order.

2. Paragraph 8 of Schedule 7 (goods that cannot be imported without a licence) to the Import (Control) (Guernsey) Order, 2010^X is omitted.

Amendment to the Alderney import control order.

3. Paragraph 8 of Schedule 8 (goods that cannot be imported without a licence) to the Import (Control) (Alderney) Order, 2010^Y is omitted.

^W G.S.I. No. 38 of 2010 as amended by G.S.I. Nos. 67 of 2010, 9 and 24 of 2012, 48 of 2013 and 51 of 2015.

^X G.S.I. No. 39 of 2010 as amended by G.S.I. Nos. 68 of 2010, 8 and 23 of 2012, 47 of 2013, 45 and 70 of 2014 and 17 and 52 of 2015.

^Y Alderney S.I. No. 3 of 2010 as amended by Alderney S.I. Nos. 4 of 2010, 1 and 3 of 2012, 6 of 2012, 6 of 2013 and 5 and 7 of 2014.

SCHEDULE 2

Section 59

TRANSITIONAL PROVISIONS

Export permits and certificates.

1. (1) An export permit relating to a specimen issued by [the Committee] under paragraph 4 of Schedule 4 to the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010 and in force immediately before the commencement of this Ordinance, is deemed to be an export permit issued by [the Committee] under section 6 of this Ordinance relating to that specimen.

(2) A re-export certificate relating to a specimen issued by [the Committee] under paragraph 4 of Schedule 4 to the Export Control (Miscellaneous Goods) (Bailiwick of Guernsey) Order, 2010 and in force immediately before the commencement of this Ordinance, is deemed to be a re-export certificate issued by [the Committee] under section 7 of this Ordinance relating to that specimen.

Import permits and certificates.

2. (1) An import permit relating to a specimen issued by [the Committee] under paragraph 8 of Schedule 7 to the Import (Control) (Guernsey) Order, 2010 and in force immediately before the commencement of this Ordinance is deemed to be an import permit or, in the case of an introduction from the sea, an introduction from the sea certificate, issued by [the Committee] under the relevant section of Part II of this Ordinance relating to that specimen.

(2) A licence in writing relating to a specimen granted under article 3 of the Import (Control) (Alderney) Order, 2010 by the States of Alderney Policy and Finance Committee and in force immediately before the commencement of this Ordinance is deemed to be an import permit or, in the case of an introduction from the sea, an introduction from the sea certificate, issued by [the Committee] under the relevant section of Part II of this Ordinance relating to that specimen.

NOTE

In Schedule 2, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.
