

# STATES OF JERSEY



## **DRAFT COMMUNITY PROVISIONS (FOOD SUPPLEMENTS) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 8th May 2014  
by the Minister for Health and Social Services**

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**STATES GREFFE**





Jersey

## **DRAFT COMMUNITY PROVISIONS (FOOD SUPPLEMENTS) (JERSEY) REGULATIONS 201-**

### **REPORT**

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#### **Background**

The pressure from the UK Ministry of Justice started in 2008 as Jersey currently has no legislation in place to cover the above and these Regulations are needed to maintain free movement of goods for Protocol 3.

There have been numerous Parliamentary Questions in the UK which brought Jersey into disrepute. The UK Minister with responsibility for relations with the Channel Islands has raised this issue annually. The number of adverse adjudications against Jersey businesses by the UK Advertising Standards Authority are damaging to Jersey's reputation.

There will be little impact on existing reputable suppliers, who are already complying with the requirements of the jurisdictions to which they export. The majority of these businesses procure their products from the UK and, therefore, they are already in compliance. Phased implementation will enable local only traders to comply.

It is expected that the main thrust will be on internet fulfilment companies who fulfil orders for UK customers from third countries such as Egypt, Africa, and the Caribbean etc. There are about 30 businesses at present so this represents a very small share of the local economy.

The States of Guernsey implemented similar Regulations on 1st April 2014.

#### **Financial and manpower implications**

These Regulations will be monitored and enforced via existing capacity.

## Explanatory Note

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These Regulations implement Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L183, 12.7.2002, p.51) as amended up to 5th December 2011 (the “Directive”). The Directive, as amended, may be viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0046:20111205:EN:PDF>

*Regulation 1* defines expressions used in the Regulations. If an expression is not defined, but is also used in the Directive, it has the same meaning as in the Directive.

“Sell” is given a widened definition. It includes possessing, offering, exposing or advertising for sale. It also includes supply of a food supplement, otherwise than by sale, where the supply is in the course of a business. It is further extended to include circumstances where a food supplement is offered as a prize or given away as part of a marketing campaign.

*Regulation 2* provides that the Regulations apply to food supplements sold as foodstuffs within the Community. For these purposes, “Community” is defined to include the Channel Islands and Isle of Man. These Regulations do not apply to medicinal products for humans.

*Regulation 3* requires that a food supplement sold to an ultimate consumer must be pre-packed. “Ultimate consumer” is defined in Regulation 1 with the objective of identifying the person who will personally use the food supplement, rather than someone who will sell it on in the course of a business. Non-compliance with Regulation 3 is an offence under Regulation 9.

*Regulation 4* restricts the use of vitamins and minerals in food supplements to such vitamins and minerals as are (a) listed in Annex I to the Directive and (b) satisfy international requirements as to purity. Non-compliance with Regulation 4 is an offence under Regulation 9.

*Regulation 5* imposes various requirements on a person selling a food supplement that is ready for delivery to an ultimate consumer or a catering establishment. Firstly, the product must be sold under the name “food supplement”. The requirement does not affect the additional use of a sales or brand name for the product. In addition, paragraphs (2) and (3) impose detailed requirements, including the listing of vitamins and minerals contained in the food supplement, the recommended amounts of such vitamins and minerals, and recommended daily consumption of the food supplement. Paragraph (4) prohibits a person selling a food supplement if the labelling or other advertising associated with the product implies that a balanced diet will not provide an appropriate quantity of nutrients in general. Non-compliance with Regulation 5 is an offence under Regulation 9.

*Regulation 6* requires the particulars specified in Regulation 5(2) to be clearly marked on a food supplement that is ready for delivery to the ultimate consumer or a catering establishment. Non-compliance with Regulation 6 is an offence under Regulation 9.

*Regulation 7* imposes further requirements as to how a food supplement is to be labelled. A food supplement that is ready for delivery to the ultimate consumer must

have the particulars required by Regulation 5(2) marked on the packaging itself or on a label attached to the packaging. A food supplement that is ready for delivery to a catering establishment and is prepacked may have the particulars required by Regulation 5(2) included in the commercial documents accompanying the consignment. Non-compliance with Regulation 7 is an offence under Regulation 9.

*Regulation 8* provides that a food supplement that is ready for delivery to a catering establishment and is not pre-packed must have the particulars required by Regulation 5(2) stated on a label attached to the food supplement, on a ticket or notice that the purchaser can see at the point of selection for purchase or in commercial documents that accompany the food supplement. Non-compliance with Regulation 8 is an offence under Regulation 9.

*Regulation 9* makes it an offence to contravene any of Regulations 3 to 8. The penalty for an offence is a fine of up to level 4 on the standard scale (£5,000). Regulation 9 also contains the standard provision for liability of individuals in the event that an offence is committed by a body corporate or partnership having legal personality.

*Regulation 10* applies certain provisions of the Food Safety (Jersey) Law 1966 (the “1966 Law”) for the purposes of these Regulations.

Firstly, enforcement powers are conferred on officers who are already authorized for the purposes of the 1966 Law. The powers are as follows –

- (a) to take samples for examination or analysis, and purchase samples in accordance with Article 33 of the 1966 Law;
- (b) to arrange for the analysis of samples so taken, in accordance with the procedural requirements of Articles 34, 35 and 38 of the 1966 Law;
- (c) to enter premises (including ships, aircraft and other vehicles) for the purpose of establishing whether there has been any contravention of these Regulations and inspect records that relate to a food business, and to seize and detain records that may be required as evidence in proceedings, in accordance with Articles 41 and 42 of the 1966 Law as modified by these Regulations.

Further provisions of the 1966 Law are applied for the purposes of these Regulations, with the following effect –

- (a) to provide that where an offence consists of advertising a foodstuff for sale, a publisher of the advertisement who merely received the advertisement for publication in the ordinary course of business does not commit the offence (Article 3(5) of the 1966 Law);
- (b) to empower the Minister for Health and Social Services to make Orders for the provision of information regarding food ingredients (Article 7 of the 1966 Law);
- (c) to provide that obstructing a person acting in the execution of the Regulations is an offence subject to a fine of up to £2,000 (Article 44 of the 1966 Law);
- (d) to provide that a certificate of the Official Analyst is sufficient evidence of the facts stated in it, unless the analysis is questioned (Article 48 of the 1966 Law);

- (e) to raise a rebuttable presumption that articles commonly sold or used for human consumption or commonly used in the preparation of articles for human consumption are intended for such sale or use (Article 49 of the 1966 Law);
- (f) to empower a court before which proceedings are taken under the Regulations to cause a sample to be analyzed by the Government Chemist for Great Britain (Article 50 of the 1966 Law);
- (g) to provide that a person charged with an offence under the Regulations will be acquitted if he or she give notice, and proves, that the offence was due to the act or default of another and that he or she used all due diligence to secure that the Regulations were complied with (Articles 51 and 52 of the 1966 Law);
- (h) to empower the Minister for Health and Social Services, for the purposes of the performance of his or her functions under the Law, to obtain information regarding the ownership of premises (Article 59 of the 1966 Law); and
- (i) to provide that, in proceedings, no proof is required of the appointment and handwriting of an authorized officer (Article 60 of the 1966 Law).

The 1966 Law may be viewed at –

[http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f20%2f20.225\\_FoodSafetyLaw1966\\_RevisedEdition\\_1January2006.htm](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f20%2f20.225_FoodSafetyLaw1966_RevisedEdition_1January2006.htm)

*Regulation 11* provides that any thing done in compliance with these Regulations does not, of itself, contravene Article 8 of the 1966 Law or an Order made under Article 9 of that Law. Article 8 makes it an offence to sell a food that is labelled or advertised in a way that falsely describes the food or is calculated to mislead as to its nature, substance or quality. Article 9 of the Law confers a power for the Minister to make Orders regulating the labelling, marking or advertising of food intended for sale for human consumption. An Order has been made – the Food Safety (Labelling) (Jersey) Order 2005, which may be viewed at –

[http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f20%2f20.225.66\\_FoodSafety\(Labelling\)Order2005\\_RevisedEdition\\_1January2006.htm](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce%2fconsolidated%2f20%2f20.225.66_FoodSafety(Labelling)Order2005_RevisedEdition_1January2006.htm).

*Regulation 12* provides for the citation of these Regulations, their commencement and associated transitional arrangements. The Regulations shall apply to all food supplements, irrespective of whether they are manufactured, packed, marked or labelled before or after the date these Regulations come into force.

These Regulations come into force 3 months after they are made. However, the sale to a person in Jersey or the Bailiwick of Guernsey of food supplements that do not comply with these Regulations may continue for 2 years after these Regulations are made.



Jersey

## **DRAFT COMMUNITY PROVISIONS (FOOD SUPPLEMENTS) (JERSEY) REGULATIONS 201-**

### **Arrangement**

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#### **Regulation**

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Jersey

## **DRAFT COMMUNITY PROVISIONS (FOOD SUPPLEMENTS) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

(1) In these Regulations, except where the context otherwise requires –

“1966 Law” means the Food Safety (Jersey) Law 1966<sup>2</sup>;

“authorized officer” has the same meaning as in the 1966 Law;

“catering establishment” means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the consumer and is ready for consumption without further preparation;

“dose form” means a form such as capsules, pastilles, tablets, pills and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles, and other similar forms of liquids and powders designed to be taken in measured small unit quantities;

“food supplement” means a foodstuff –

- (a) the purpose of which is to supplement the normal diet;
- (b) which is a concentrated source of nutrients or other substances with a nutritional or physiological effect, alone or in combination; and
- (c) which is sold in dose form;

“entertainment” includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill;

“Food Supplements Directive” means Directive 2002/46/EC of the European Parliament and of the Council of 10th June 2002 on the approximation of the laws of the Member States relating to food

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supplements (OJ L 183, 12.7.2002. p.51), as amended up to 5th December 2011<sup>3</sup>;

“medicinal product” has the same meaning as in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p.67) as amended up to 16th November 2012<sup>4</sup>;

“Minister” means the Minister for Health and Social Services;

“preparation” includes manufacture and any form of processing or treatment, and “prepared” shall be construed accordingly;

“ultimate consumer” means any person who purchases otherwise than –

- (a) for the purposes of resale;
  - (b) for the purposes of a catering establishment; or
  - (c) for the purposes of a manufacturing business.
- (2) A food supplement shall be regarded as prepacked for the purposes of these Regulations if –
- (a) it is ready for sale to the ultimate consumer or to a catering establishment; and
  - (b) it is put into packaging before being offered for sale in such a way that the food supplement cannot be altered without opening or changing the package.
- (3) For the purposes of these Regulations a reference to sale includes –
- (a) possession for sale, and offering, exposing or advertising for sale; and
  - (b) supply, otherwise than by sale, in the course of a business.
- (4) These Regulations apply –
- (a) in relation to a food supplement which is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, whether or not on payment of money, as if the food supplement were or had been exposed for sale by each person concerned in the organization of the entertainment;
  - (b) in relation to any food supplement which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or given away, as if the food supplement were or had been exposed for sale by the person offering it or giving it away; and
  - (c) in relation to any food supplement which is exposed or deposited in any premises for the purposes of being offered or given away as described in sub-paragraph (a) or (b), as if the food supplement were or had been exposed for sale by the occupier of the premises.
- (5) In these Regulations, except where the context otherwise requires, a reference to an Annex by number is a reference to the Annex of that number to the Food Supplements Directive.
- (6) Other expressions used in these Regulations and in the Food Supplements Directive have the same meaning as in that Directive.

## **2 Application**

- (1) These Regulations apply to food supplements sold as foodstuffs and presented as such.
- (2) These Regulations apply to the sale of such food supplements within the Community.
- (3) For the purposes of paragraph (2), “Community” includes the Channel Islands and Isle of Man.
- (4) These Regulations do not apply to medicinal products.

## **3 Requirement for prepackaging**

No person shall sell any food supplement to the ultimate consumer unless it is prepacked.

## **4 Restriction on vitamins and minerals that may be used in the manufacture of food supplements**

- (1) No person shall sell a food supplement in the manufacture of which a vitamin or mineral has been used unless that vitamin or mineral –
  - (a) is listed in Annex I; and
  - (b) is in a form which –
    - (i) is listed in Annex II, and
    - (ii) satisfies the relevant purity criteria.
- (2) For the purposes of paragraph (1)(b)(ii) the relevant purity criteria are the generally acceptable purity criteria for the substance in question recommended by international bodies.

## **5 Required particulars of food supplements**

- (1) No person shall sell a food supplement which is ready for delivery to the ultimate consumer or to a catering establishment unless the name under which it is sold is “food supplement”.
- (2) Without prejudice to the requirements of any Order made under Article 9 of the 1966 Law, no person shall sell a food supplement which is ready for delivery to the ultimate consumer or to a catering establishment unless it is marked or labelled with the following particulars –
  - (a) the names of the category of any vitamin or mineral or other substance with a nutritional or physiological effect which characterises the product or an indication of the nature of that vitamin or mineral or other substance;
  - (b) the portion of the food supplement recommended for daily consumption;
  - (c) a warning not to exceed the stated recommended daily dose;
  - (d) a statement to the effect that food supplements should not be used as a substitute for a varied diet;

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- (e) a statement to the effect that the food supplement should be stored out of the reach of young children; and
  - (f) the amount of any vitamin or mineral or other substance with a nutritional or physiological effect which is present in the product.
- (3) The information required by paragraph (2)(f) –
- (a) shall be given in numerical form and, where the vitamin or mineral is listed in Annex I, using the units specified for the vitamin or mineral in that Annex;
  - (b) shall be the amount of the vitamin or mineral contained in the size of portion of the food supplement that is recommended, on the labelling, for daily consumption;
  - (c) shall be an average amount, based on the manufacturer's analysis of the food supplement; and
  - (d) where the vitamin or mineral is listed in Annex I to Council Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs (OJ L 276, 6.10.1990, p.40-44), as amended up to 11th December 2008<sup>5</sup>, shall also be expressed as a percentage of the relevant recommended daily allowance specified in that Annex, and may be given in graphical form.
- (4) No person shall sell any food supplement which is ready for delivery to the ultimate consumer or to a catering establishment if the labelling, presentation or advertising of that food supplement includes any mention, express or implied, that a balanced and varied diet cannot provide appropriate quantities of nutrients in general.

## **6 Clarity of marking or labelling of particulars**

No person shall sell any food supplement which is ready for delivery to the ultimate consumer or to a catering establishment unless the particulars with which it is required to be marked or labelled by virtue of Regulation 5(2) –

- (a) are easy to understand, clearly legible and indelible;
- (b) are not hidden, obscured or interrupted by any other written or pictorial matter; and
- (c) when the food supplement is sold to the ultimate consumer, are marked in a conspicuous place in such a way as to be easily visible.

## **7 Placement of marking or labelling of food supplements for consumers or prepacked**

- (1) No person shall sell any food supplement which –
  - (a) is ready for delivery to the ultimate consumer; or
  - (b) is ready for delivery to a catering establishment and is prepacked,unless the particulars required by Regulation 5(2) are marked or labelled in accordance with paragraph (2).
- (2) Except as permitted by paragraph (3), the particulars must appear –
  - (a) on the packaging;

- (b) on a label attached to the packaging; or
  - (c) on a label which is clearly visible through the packaging.
- (3) Where the sale is otherwise than to the ultimate consumer, the particulars may, alternatively, appear only on the commercial documents relating to the food supplement provided that those documents, containing those particulars –
- (a) accompany the food supplement; or
  - (b) were sent before or at the same time as delivery of the food supplement.

## **8 Placement of marking or labelling of food supplements for catering establishments and not prepacked**

No person shall sell any food supplement which is ready for delivery to a catering establishment and is not prepacked, unless the particulars with which it is required to be marked or labelled by virtue of Regulation 5(2) appear –

- (a) on a label attached to the food supplement;
- (b) on a ticket or notice which is readily discernable to the intending purchaser at the place where he or she chooses the food supplement; or
- (c) in commercial documents relating to the food supplement, where it can be guaranteed that such documents –
  - (i) accompany the food supplement, or
  - (ii) were sent before or at the same time as delivery of the food supplement.

## **9 Offences**

- (1) A person who contravenes Regulation 3, 4, 5, 6, 7, or 8 is guilty of an offence and liable to a fine of level 4 on the standard scale.
- (2) Where an offence under this Regulation committed by a limited liability partnership or a separate limited partnership or by an incorporated limited partnership or other body corporate is proved to have been committed with the consent or connivance of –
  - (a) in the case of a limited liability partnership, a person who is a partner of the partnership;
  - (b) in the case of a separate limited partnership or an incorporated limited partnership –
    - (i) a general partner, or
    - (ii) a limited partner who is participating in the management of the partnership;
  - (c) in the case of a body corporate other than an incorporated limited partnership, a director, manager, secretary or other similar officer of the body corporate; or
  - (d) any person purporting to act in any capacity described in subparagraphs (a) to (c),

the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (3) If the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

## 10 Application of provisions of the 1966 Law

- (1) An authorized officer shall have the same powers, upon the same terms, for the purposes of enforcement of these Regulations as the officer has, by virtue of the following provisions of the 1966 Law, for the purposes of enforcement of that Law –
  - (a) Article 33(1), (2), (5), (6) and (7);
  - (b) Articles 34, 35, 38 and 41;
  - (c) subject to paragraph (2), Article 41; and
  - (d) subject to paragraph (3), Article 42, with the omission of paragraph (1)(a).
- (2) Article 41 of the 1966 Law is modified in its application for the purposes described in paragraph (1) so as to insert the following paragraphs after paragraph (3) –
  - “(3A) An authorized officer entering premises by virtue of this Article, or of a warrant granted under it, for the purposes of the enforcement of the Community Provisions (Food Supplements) (Jersey) Regulations 201-<sup>6</sup>, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in electronic form –
    - (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
    - (b) may require any person having charge of or otherwise concerned with the operation of, the computer, apparatus or material to afford the authorized officer such assistance as he or she may reasonably require.
  - (3B) An authorized officer exercising any power conferred by paragraph (3A) may –
    - (a) seize and detain any records which he or she has reason to believe may be required as evidence in proceedings under the Community Provisions (Food Supplements) (Jersey) Regulations 201-<sup>7</sup>; and
    - (b) where the records are stored in any electronic form, may require the records to be produced in a form in which they may be taken away.”
- (3) In Article 42(2) of the 1966 Law as it is applied for the purposes described in paragraph (1), the reference to Article 41(2) to (4) of

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the 1966 Law is a reference to the provisions of that Article as modified by paragraph (2) of this Regulation.

- (4) The following provisions of the 1966 Law apply for the purposes of these Regulations with the modification that any reference in them to that Law or a provision of that Law is to be read as a reference to these Regulations –
- (a) in Article 1, any definition, to the extent that is required for the purposes of the application, by this Regulation, of the 1966 Law or any provision of that Law;
  - (b) Article 3(5);
  - (c) Article 7;
  - (d) Article 44(1), (2) and (3);
  - (e) Article 48(1);
  - (f) Article 49;
  - (g) Article 50;
  - (h) Article 51;
  - (i) Article 52;
  - (j) Article 59;
  - (k) Article 60(1), (2) and (4) to (7).
- (5) Notwithstanding paragraph (4)(a), where a provision of the 1966 Law applied by this Regulation contains an expression for which provision is made in Regulation 1, the expression, in the provision of the 1966 Law as so applied, is to be construed in accordance with Regulation 1.

## **11 Defence in proceedings under 1966 Law**

Nothing in Article 8 of the 1966 Law or in an Order made under Article 9 of the 1966 Law makes it an offence to do any thing in compliance with these Regulations.

## **12 Citation, commencement and transitional arrangements**

- (1) These Regulations may be cited as the Community Provisions (Food Supplements) (Jersey) Regulations 201-
- (2) These Regulations shall come into force 3 months after they are made.
- (3) These Regulations apply to the sale of food supplements whether manufactured, packed, marked or labelled before or after these Regulations come into force.
- (4) Notwithstanding paragraph (2), these Regulations shall not apply to the sale of food supplements to a person in Jersey or the Bailiwick of Guernsey before the expiry of 2 years following the day these Regulations are made.

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<sup>1</sup> chapter 17.245

<sup>2</sup> chapter 20.225

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0046:EN:NOT>

<sup>4</sup> [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0083R\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0083R(01):EN:NOT)

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0496:EN:NOT>

<sup>6</sup> P.74/2014

<sup>7</sup> P.74/2014