

STATES OF JERSEY



DRAFT COMMUNITY PROVISIONS (NUTRITION AND HEALTH CLAIMS ON FOODS) (JERSEY) REGULATIONS 201-

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

STATES GREFFE



Jersey

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REPORT

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

These Regulations implement Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006, p.9) as amended up to 29th November 2012 (the “Council Regulation”). The Council Regulation, as amended, may be viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006R1924:20121129:EN:PDF>.

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

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

Regulation 2 gives effect to the Council Regulation in Jersey, subject to modification of the Council Regulation. For the purposes of the implementation of the Council Regulation, the Community is taken to include the Channel Islands and the Isle of Man.

The modifications omit, in all cases, provisions in the Council Regulation that are either concerned with applications for authorisation of health claims or the internal processes of the European Commission. The provisions regarding applications for authorisation of health claims are omitted as such applications must be submitted to the national competent authority of a Member State. The fact of their omission does not prevent a person in Jersey making an application to such an authority, under the Council Regulation as it has effect throughout the Community.

The modifications of the transitional measures apply only to the making of nutrition and health claims on foods marketed in Jersey or the Bailiwick of Guernsey. Such foods marketed or labelled before the date these Regulations are adopted by the States (the ‘adoption date’) may be marketed until whichever is the earlier of their expiry date or the second anniversary of the date these Regulations come into force (the ‘commencement date’). Products which bear trademarks or brand names that exist before the adoption date may continue to be marketed until the 15th anniversary of the commencement date. Nutrition claims used in Jersey before the adoption date may continue to be used, under the responsibility of food business operators, until the third anniversary of the commencement date.

Otherwise, foods marketed to the Community or the Isle of Man must comply with the Council Regulation from the commencement date, subject to the unmodified transitional measures in the Council Regulation. Most of these transitional measures are spent, as the Council Regulation has applied since 1st July 2007. However, products bearing trademarks or brand names that existed before 1st January 2005 may continue to be marketed in the Community or the Isle of Man until 19th January 2022.

Regulation 3 makes it an offence to contravene the following provisions of the Council Regulation –

Article 3, being a prohibition on the use of nutrition and health claims used in the marketing of foods in the Community if the claims do not comply with the

Council Regulation. Article 3 imposes general requirements that claims must not be false or misleading and specifically prohibits certain claims, for example, claims that encourage excess consumption of a food or that infer that a balanced and varied diet cannot provide appropriate quantities of nutrients in general.

Article 4(3), which prohibits the use of health claims on drinks containing more than 1.2% by volume of alcohol and only allows nutrition claims referring to low or reduced alcohol volumes on such drinks.

Article 6(2), which requires a food business operator to justify the use of a nutrition or health claim.

Article 7, which applies requirements as to the labelling of health claims on foodstuffs.

Article 8(1), which provides that only nutrition claims that are listed in the Annex to the Council Regulation may be made, in compliance with the requirements of the Council Regulation. The Annex currently lists 29 claims including, by way of example, “low energy”, “low fat”, “with no added sugars”, “low sodium/salt”, “high fibre”, “high protein” and “high polyunsaturated fat”.

Article 9, which allows comparative claims to be made only in relation to foods of the same category, and by comparing the same quantities of food.

Article 10(1), which provides that only health claims that are listed in accordance with the Council Regulation may be used, in compliance with the requirements of the Council Regulation. Commission Regulation (EU) No. 432/2012 of 16 May 2012 establishes a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children’s development and health. The list applies from 14th December 2012. The Commission Regulation may be viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:136:0001:0040:EN:PDF>.

The list contains 222 permitted claims and conditions attached to their use, of which the following are examples –

Alpha-linolenic acid (ALA) – “ALA contributes to the maintenance of normal blood cholesterol levels”. The claim may be used only for food which is at least a source of ALA as referred to in the claim SOURCE OF OMEGA-3 FATTY ACIDS as listed in the Annex to Regulation (EC) No 1924/2006. Information shall be given to the consumer that the beneficial effect is obtained with a daily intake of 2 g of ALA.

Calcium – “Calcium is needed for the maintenance of normal bones”. The claim may be used only for food which is at least a source of calcium as referred to in the claim SOURCE OF [NAME OF VITAMIN/S] AND/OR [NAME OF MINERAL/S] as listed in the Annex to Regulation (EC) No 1924/2006.

Article 10(2), which makes it a condition of using a health claim that the labelling or marketing also contains a statement as to the importance of a varied and balanced diet and healthy lifestyle, the quantity of the food required to be consumed to achieve the claimed beneficial effect, persons who should avoid using the food and a warning, if excessive consumption is likely to present a health risk.

Article 10(3), which prohibits the use of generalised, non-specific statements about the health benefits of a food, unless they are accompanied by a permitted health claim, as described above.

Article 12, which prohibits the use of any claim – that health could be affected by not consuming the food, that refers to rate or amount of weight loss, or that refers to recommendations of individual doctors or other health professionals or organizations (unless the organization is a national association of doctors or other health professionals or a health-related charity).

Article 14(2), which requires that any claim that a foodstuff reduces the risk of disease must be accompanied by a statement that the disease in question has multiple risk factors, and that altering one of these may or may not have a beneficial effect.

Regulation 3 also contains the standard provision for liability of individuals in the event that an offence is committed by a company or by certain descriptions of partnership.

Regulation 4 applies certain provisions of the Food Safety (Jersey) Law 1966 (the “1966 Law”) for the purposes of enforcement of these draft Regulations and generally to supplement the provisions in them.

The enforcement powers conferred 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; and
- (c) to enter premises (including ships, aircraft and other vehicles) for the purpose of establishing whether there has been any contravention of these Regulations, to 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.

The supplementary provisions applied are as follows –

- (a) 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 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);
- (c) 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);
- (d) 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);

- (e) 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);
- (f) 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);
- (g) 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
- (h) 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.

Regulation 5 provides that a nutrition or health claim made in accordance with the Council Regulation 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 6 provides for the citation of these draft Regulations and their commencement 3 months after they are made.



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Arrangement

Regulation

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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 1996¹, have made the following Regulations –

1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
 - “1966 Law” means the Food Safety (Jersey) Law 1966²;
 - “authorized officer” has the same meaning as in the 1966 Law;
 - “Council Regulation” means Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006, p.9) as amended up to 29th November 2012³;
 - “entertainment” includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.
- (2) 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.
- (3) These Regulations apply –
 - (a) in relation to a food 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 were or had been exposed for sale by each person concerned in the organization of the entertainment;
 - (b) in relation to any food 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 were or had been exposed for sale by the person offering it or giving it away; and

- (c) in relation to any food 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 were or had been exposed for sale by the occupier of the premises.
- (4) Unless the context otherwise requires, other expressions used in these Regulations have the same meaning as in the Council Regulation.

2 Application of Council Regulation

- (1) The Council Regulation shall have effect in Jersey subject to the modifications in paragraphs (2) to (4).
- (2) In Article 3 of the Council Regulation, “Community” shall be taken to include the Channel Islands and Isle of Man.
- (3) Articles 15 to 27 and 29 of the Council Regulation are omitted.
- (4) Article 28 of the Council Regulation is modified, for the purposes of the application of the Council Regulation to nutrition and health claims used in the labelling, presentation and advertising of foods placed on the market in Jersey or the Bailiwick of Guernsey, as follows –
 - (a) before paragraph (1) there is inserted the following paragraph –

“(A1) In this Article –

 - ‘adoption date’ means the day the Community Provisions (Nutrition and Health Claims on Foods) (Jersey) Regulations 201-⁴ are adopted by the States;
 - ‘commencement date’ means the day the Community Provisions (Nutrition and Health Claims on Foods) (Jersey) Regulations 201- come into force.”;
 - (b) in paragraph (1) –
 - (i) for the words “the date of application of this Regulation” there are substituted the words “the adoption date”,
 - (ii) for the words “31 July 2009” there are substituted the words “the second anniversary of the commencement date”;
 - (c) in paragraph (2) –
 - (i) for the words “1 January 2005” there are substituted the words “the adoption date”,
 - (ii) for the words “19 January 2022” there are substituted the words “the fifteenth anniversary of the commencement date”;
 - (d) in paragraph (3) –
 - (i) for the words “a Member State before 1 January 2006” there are substituted the words “Jersey before the adoption date”,
 - (ii) for the words “national provisions” there are substituted the words “any enactment”,
 - (iii) for the words “19 January 2010” there are substituted the words “the third anniversary of the commencement date”,

- (iv) the words “and without prejudice to the adoption of safeguard measures as referred to in Article 24” are omitted;
- (e) paragraphs (4), (5) and (6) are omitted.

3 Offences

- (1) Subject to the exception contained in Article 1(3) of the Council Regulation and to the transitional measures contained in Article 28 of the Council Regulation as modified by these Regulations, a person who contravenes any of the following provisions of the Council Regulation is guilty of an offence –
 - (a) Article 3;
 - (b) Article 4(3);
 - (c) Article 6(2);
 - (d) Article 7;
 - (e) Article 8(1);
 - (f) Article 9;
 - (g) Article 10(1), (2) or (3);
 - (h) Article 12;
 - (i) Article 14(2).
- (2) A person guilty of an offence under paragraph (1) is liable to imprisonment for 2 years and a fine.
- (3) 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.
- (4) If the affairs of a body corporate are managed by its members, paragraph (3) 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.

4 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 Articles 33, 34, 35, 36, 38, 41, 42 and 43 of the 1966 Law, for the purposes of enforcement of that Law.
- (2) 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(1), any definition, to the extent that is required for the purposes of the application, by this Regulation, of any provision of the 1966 Law;
 - (b) Article 3(5);
 - (c) Article 44(1), (2) and (3);
 - (d) Article 48(1);
 - (e) Article 49;
 - (f) Article 50;
 - (g) Article 51;
 - (h) Article 52;
 - (i) Article 59;
 - (j) Article 60(1), (2) and (4) to (7).
- (3) Notwithstanding paragraph (2)(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.
- (4) Article 46 of the 1966 Law applies in relation to an offence against any provision of the 1966 Law mentioned in paragraph (1) or (2).

5 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 make a claim in compliance with the Council Regulation.

6 Citation and commencement

These Regulations may be cited as the Community Provisions (Nutrition and Health Claims on Foods) (Jersey) Regulations 201- and shall come into force 3 months after they are made.

¹ *chapter 17.245*

² *chapter 20.225*

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1924:EN:NOT>

⁴ *P.75/2014*