

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE PAROCHIAL COLLECTION OF WASTE (GUERNSEY) ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Parochial Collection of Waste (Guernsey) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Ordinance makes provision in relation to the assessment and levying of the Parish waste rate by the Douzaines under the Parochial Collection of Waste (Guernsey) Law, 2015 ("the Law") and as to the level of the civil fixed penalty payable by the occupier of premises for failing to comply with requirements in relation to the putting out of waste (including black bag waste and kerbside recycling) for collection under the Law.

Section 5 of the Law imposes a duty on a Douzaine to levy the Parish waste rate in respect of dwelling houses, lodging houses and business premises, as defined under the Law, admitted into the Parish waste collection and transfer service. Section 1 of the Ordinance provides for the Parish waste rate to be levied on the owners of dwelling houses and lodging houses and the owners of businesses which operate from business premises admitted into the Parish waste collection and transfer service.

Sections 2 to 4 provide for the basis of calculation of the Parish waste rate for each year and the date from which it may be levied and provide that the rate may not be levied by a Douzaine unless authorised to do so by a Royal Court Order. The main differences from the current Parochial Collection of Refuse (Guernsey) Law, 2001 ("2001 Law") are that only the cost of collection and transfer of waste to sites (not disposal) are included in calculating the rate and the total cost is then divided equally between all premises and not assessed on a TRP basis (i.e. on the number of assessable units of the property in accordance with the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007).

Sections 5 to 8 set out the provisions relating to payment, collection and recovery of the Parish waste rate. Sections 5(1) and 8 are similar to provisions in the 2001 Law in that it is the owner of the dwelling house or lodging house who is liable to pay the Parish waste rate and from whom the Douzaine may recover any sums not paid, but

those sums may be recovered by an owner as a civil debt from the occupiers of the premises. Also, there is provision for owners to recover from subsequent owners of dwelling houses, lodging houses and businesses where ownership of the same changes during a year.

The remainder of section 5 and sections 6 and 7 provide as to when accounts may be served, liability to pay and the time within which payment must be made including express provision for instalment payments. Section 6 is a new provision allowing for a penalty payment where an account or instalment is not paid within 30 days. This provision is consistent with the penalty provision in Article 6 of the *Ordonnance relative aux Taxes Paroissiales, 1931* payable in respect of the owner's rate for which most parishes charge in the same invoice as the current refuse rate.

Section 9 provides the level of the civil fixed penalty payable by the occupier of premises for failing to comply with requirements in relation to the putting out of waste for collection under the Law; this is £40 if payment is made within 14 days starting from the date of the service of the relevant fixed penalty notice, and £60 if payment is made later than that.

The Ordinance is to come into force on 1<sup>st</sup> January, 2019.

# **The Parochial Collection of Waste (Guernsey)**

## **Ordinance, 2018**

**THE STATES**, in pursuance of their Resolutions of the 12<sup>th</sup> February, 2014<sup>a</sup>, the 10<sup>th</sup> December, 2014<sup>b</sup> and the 14<sup>th</sup> December, 2017<sup>c</sup>, and in exercise of the powers conferred on them by sections 5(2) and (3), 12 and 19 of the Parochial Collection of Waste (Guernsey) Law, 2015<sup>d</sup> and of all other powers enabling them in that behalf, hereby order:-

### **PART I**

#### **PARISH WASTE RATE**

#### **Levying of Parish waste rate.**

1. The Parish waste rate must be levied by the Douzaine –
  - (a) in respect of dwelling houses and lodging houses in the Parish, on the owner of the dwelling house or lodging house, and
  - (b) in respect of business premises admitted into the Parish waste collection and transfer service under section 2 of the Law, on the owner of the business

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<sup>a</sup> Billet d'État No. II of 2014.

<sup>b</sup> Article X of Billet d'État No. XXVI of 2014.

<sup>c</sup> Article XIII of Billet d'État No. XXIV of 2017.

<sup>d</sup> Order in Council No. XV of 2015 as amended by Ordinance No. IX of 2016.

which operates from the business premises,

as at the applicable date.

**Basis on which Parish waste rate is to be calculated.**

2. (1) A Douzaine must calculate the Parish waste rate by –
  - (a) calculating the projected total cost to the Douzaine in the year to which the rate relates of –
    - (i) making arrangements for the regular collection of waste from –
      - (A) dwelling houses and lodging houses in the Parish, and
      - (B) business premises admitted into the Parish waste collection and transfer service,  
  
and the efficient transfer of such waste to specified sites in accordance with sections 1 and 2 of the Law, and
    - (ii) any related costs of making such arrangements including administrative and other incidental costs connected with such arrangements, and

- (b) dividing the total projected cost under paragraph (a) equally between all dwelling houses, lodging houses and business premises in respect of which the rate must be levied under section 5(1) of the Law.

(2) The cost of making arrangements referred to in subsection (1) must include in particular the costs incurred, or estimated costs to be incurred, under any contract entered into by the Douzaine for the collection and transfer of waste to meet its duties under section 1 and 2 of the Law.

(3) The amount of the Parish waste rate calculated under this section must be approved by a parish meeting prior to the Constables of a Parish making an application to the Royal Court under section 4 for permission to levy the Parish waste rate for that year.

**Applicable date for Parish waste rate.**

3. The Parish waste rate may be levied on and from –

- (a) the first day of the year to which it relates, or
- (b) the day of the granting by the Royal Court of an order under section 4 authorising the levy of the rate,

whichever is later ("**the applicable date**").

**Application to Royal Court.**

4. (1) The Douzaine must not levy a Parish waste rate in relation to any year unless authorised to do so by an order of the Royal Court but, for the avoidance of doubt, once such an order is granted, the rate may be levied in respect

of any period of the year in question falling before the date of granting of such order.

(2) An application for an order under subsection (1) must be made by the Constables of the Parish and must specify the amount it is proposed to levy as the Parish waste rate for the year calculated in accordance with section 2.

(3) Notice of the date and time on which it is proposed to make an application for an order under subsection (1) must be published by the Constables of the Parish –

- (a) in La Gazette Officielle, or
- (b) in such other manner as they think fit to bring the same to the attention of those likely to be affected.

(4) The owner of –

- (a) a dwelling house or lodging house in the Parish, or
- (b) a business operating from business premises which are admitted into the Parish waste collection and transfer service,

may oppose an application for an order under subsection (1).

**Payment and collection of Parish waste rate.**

5. (1) The Parish waste rate is payable by the person who is the owner of the dwelling house, lodging house or business, as the case may be,

referred to in section 1 as at the applicable date.

(2) Accounts specifying the matters set out in subsection (3) may be served by the Constables of a Parish on behalf of themselves and the Douzaine –

- (a) at any time on or after the applicable date in the year in question, and
- (b) annually, twice-yearly or quarterly as the Constables think fit.

(3) Subject to the provisions of this Ordinance, liability to pay the Parish waste rate, or part or it, in respect of any premises arises upon service by the Constables of the Parish on the owner specified in subsection (1) of an account specifying –

- (a) where accounts are served annually, the amount of the Parish waste rate due for the year in question, or
- (b) where accounts are served twice-yearly or quarterly, the amount of the Parish waste rate due for the half-year or quarter of the year in question.

(4) The Parish waste rate, or part of it, for which an account has been served by the Constables of the Parish in respect of the premises, or an instalment payment of the same, is payable –

- (a) within 30 days starting from -

(i) the date of issue of the account, or

(ii) in the case of an instalment payment, the date for payment of the relevant instalment specified in the account or otherwise notified to the owner, and

(b) by such means as the Constables may reasonably specify in the account.

(5) In any proceedings for the recovery of a Parish waste rate, or part of it, a copy of an account produced by the Constables of the Parish (whether from data stored electronically or other means) is evidence of the contents of the account.

(6) In subsections (4) and (5), "**the account**" includes any information provided with the account.

**Penalty for late payment of Parish waste rate.**

6. Where the Parish waste rate, or part of it, for which an account has been served, or an instalment payment of the same, is not paid within the 30 day period specified under section 5(4), the Constables of the Parish may, in their absolute discretion, levy whichever of the following is the greater—

(a) a flat rate penalty of £25 for each part of a month in which the amount due is not paid, or

(b) interest on the sum due at the rate of 10% per annum calculated from the date on which the payment



becomes due until the date on which the payment is made.

**Recovery of Parish waste rate and penalty by the Douzaine and liability for the same.**

7. (1) The Parish waste rate, or part of it, in respect of any premises, or an instalment payment of the same, not paid within the 30 day period specified under section 5(4), together with any penalty payable in respect of the rate under section 6 is recoverable from the owner of the dwelling house or lodging house or the owner of the business specified in section 5(1), as the case may be, as a civil debt due to the Douzaine.

(2) If two or more persons are the owners of a dwelling house, lodging house or a business as specified in section 5(1), as the case may be, their liability for the Parish waste rate and any penalty in respect of the same is joint and several.

**Recovery of Parish waste rate by the owner.**

8. (1) The Parish waste rate levied in respect of a dwelling house or a lodging house on the owner may be recoverable by the owner, as at the applicable date, as a civil debt from the occupiers of that dwelling house or lodging house in equal shares.

(2) An owner of a dwelling house, lodging house or business who -

(a) is liable under section 5(1) for the payment of the Parish waste rate in respect of any year because they are the owner as at the applicable date, and

- (b) subsequently during that year ceases to own the dwelling house, lodging house or business operating from the business premises, as the case may be,

is entitled to recover from the subsequent owner of the dwelling house, lodging house or business operating from the business premises, as the case may be, such part of the Parish waste rate as bears the same proportion to the whole of the Parish waste rate in respect of the dwelling house, lodging house or business premises for that year as the unexpired portion of that year bears to the whole of that year.

## PART II

### AMOUNT OF CIVIL FIXED PENALTY

#### **Amount of civil fixed penalty.**

9. (1) The amount of the civil fixed penalty payable by an occupier of premises to a Douzaine under a civil fixed penalty notice served under section 11 of the Law in respect of contraventions of section 9 of the Law (duties on occupiers of premises) is –

- (a) £40 where payment of the civil fixed penalty is made in full within 14 days starting from the date of service of the civil fixed penalty notice, or
- (b) £60 where payment of the civil fixed penalty is made at any time after the expiry of the period specified in paragraph (a).

- (2) For the avoidance of doubt, no additional daily penalty or

interest for late payment of the civil fixed penalty is provided for under this Ordinance.

### PART III GENERAL PROVISIONS

#### **Interpretation.**

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

"**the applicable date**": see section 3,

"**the Douzaine**" means the Douzaine of a Parish and related expressions are construed accordingly,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**the Law**" means the Parochial Collection of Waste (Guernsey) Law, 2015,

"**owner**", in relation to any real property, means -

- (a) where the property is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour the order has been made,
- (b) where the property is not the subject of such saisie

proceedings but is the subject of a right of usufruit or a droit d'habitation, the usufructier or (as the case may be) the habitant,

(c) where the property is not the subject of such saisie proceedings or right of usufruit or droit d'habitation -

(i) where the property is held in trust, the trustees,  
or

(ii) where the property is not held in trust, the person in whom there is for the time being vested, whether solely or jointly with another person, an estate of inheritance therein,

and related expressions are construed accordingly,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

**"year"** means any period of 12 consecutive months,

and other expressions have the same meaning as in the Law.

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

**Citation.**

11. This Ordinance may be cited as the Parochial Collection of Waste (Guernsey) Ordinance, 2018.

**Commencement.**

12. This Ordinance shall come into force on the 1<sup>st</sup> January, 2019.