

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

**THE WASTE MANAGEMENT SERVICES (CHARGING) ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Waste Management Services (Charging) 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 under section 32A of the Environmental Pollution (Guernsey) Law, 2004 ("2004 Law") in relation to the assessment and levying of charges for certain waste management services provided, managed, arranged, operated or funded by or on behalf of the Waste Disposal Authority (WDA). Section 32A is inserted into the 2004 Law by the Environmental Pollution (Guernsey) (Amendment) Law, 2015.

Section 1 provides for charges for waste management services to be payable through the prescribed bag charges and annual fixed charge set out in the Schedule. The annual fixed charge is payable in respect of dwelling houses, lodging houses and business premises admitted into the Parish waste collection and transfer service as the charge relates to waste collected from those premises. The section also provides for the prescribed charges in the Schedule to be amended by Regulations of the WDA.

Section 2(2) excludes from the definition of waste management services those services provided in relation to waste delivered to public waste management sites by commercial waste operators or by private individuals for which a charge is already made by way of a gate fee under section 32(3)(c) of the 2004 Law. Therefore, the waste management services in relation to which the charge is made relate primarily to the recovery and disposal of waste collected and transferred to site by the Parish waste collection and transfer service. The capital and other costs to be charged to the Capital Reserve, in accordance with the relevant April, 2018 States' resolution, are also excluded under section 2(3).

Sections 3 and 4 provide for the basis on which future amendments are to be made by the WDA of the charges set out in the Schedule. The charges must be calculated to meet the projected total cost to the WDA and the States of providing waste

management services for the year in question subject to the adjustments allowed under section 3(2). Section 4(1) allows the WDA to take into account certain principles in setting the prescribed bag charges.

Section 5 imposes a duty on the WDA to make arrangements (which may be by commercial agreement) to ensure that WDA tags or bags are sold at the prescribed wholesale and retail charges so that prices for those buying tags or bags remain consistent throughout the island. The Ordinance retains the option of charging for bags to allow operational flexibility for the future although the initial charging is to be through sale of tags.

Part III provides for the levying of the annual fixed charge and for its calculation where the WDA amend the Schedule in future years. The future calculation is based on the projected total cost of providing the relevant services minus any income to be derived from projected prescribed bag charges with the resulting sum divided equally between all dwelling houses, lodging houses and relevant business premises in respect of which a charge is payable.

Sections 7 and 8 provide for the annual fixed charge to be levied on the owners of dwelling houses and lodging houses and of businesses which operate from business premises admitted into the Parish waste collection and transfer service and the date from which it may be levied.

Sections 8 to 12 set out the provisions relating to payment, collection and recovery of the annual fixed charge which are consistent with those set out for payment of the Parochial waste rate. The owner of a dwelling house, lodging house or of the relevant business is liable to pay the charge and is the person from whom the WDA may recover any sums not paid. However, an owner of a dwelling house or lodging house may in turn recover the annual fixed charge from the occupiers of the premises as a civil debt (section 12(1)). There is also provision for recovery of the relevant part of the annual fixed charge from subsequent owners for owners of dwelling houses, lodging houses and businesses where ownership of the same changes during a year (section 12(2)).

The remainder of section 9 and sections 10 and 11 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 10 allows for a penalty payment where an account or instalment is not paid within 30 days.

Section 14 clarifies that the WDA may take into account any deficit from 2019 which may arise if it does not require occupiers to affix WDA tags to receptacles from 1<sup>st</sup> January, 2019 but only from a later date.

The Ordinance is to come into force on 1<sup>st</sup> January, 2019 except for section 5 relating to agreements with suppliers, distributors and retailers and certain general provisions

necessary to give effect to that section. That section and the related provisions come into force on 1<sup>st</sup> November, 2018 as the agreements etc. may need to be entered into and take effect before January, 2019.



# **The Waste Management Services (Charging) 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>, the 14th December, 2017<sup>c</sup> and the 19th April, 2018<sup>d</sup>, and in exercise of the powers conferred on them by sections 32A and 72 of the Environmental Pollution (Guernsey) Law, 2004<sup>e</sup> and of all other powers enabling them in that behalf, hereby order:-

## **PART I**

### **WASTE MANAGEMENT CHARGES**

#### **Waste management charges.**

1. (1) A charge is payable for waste management services through –
  - (a) the sale by or on behalf of the Waste Disposal Authority of WDA tags or WDA receptacles at the charges set out in Part I of the Schedule ("**prescribed bag charges**"), and

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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> Article V of Billet d'État No. XI of 2018.

<sup>e</sup> Order in Council No. XIII of 2004 as amended by Order in Council No. XIII of 2010 and No. XVI of 2015, Ordinance No. XXXIII of 2003, No. XXXVIII of 2006, No. XLIX of 2006, No. XIII of 2007, No. XVIII of 2010, No. V of 2011 and No. IX of 2016.

(b) the levying of the annual fixed charge set out in Part II of the Schedule by the Waste Disposal Authority ("**annual fixed charge**") in respect of –

(i) dwelling houses and lodging houses in Guernsey, and

(ii) business premises admitted into the Parish waste collection and transfer service.

(2) A prescribed bag charge may provide for a fixed charge or a range of charges on the wholesale or retail sale of a WDA tag or a WDA receptacle.

(3) The Schedule may be amended or substituted by Regulations of the Waste Disposal Authority in accordance with the provisions of this Ordinance.

**Waste management services.**

2. (1) For the purposes of this Ordinance, "**Waste management services**" means, subject to subsections (2) and (3), the provision of waste management services provided, managed, arranged, operated or funded by or on behalf of the Waste Disposal Authority and matters connected with or incidental to the same and includes –

(a) the capital, operational and administrative costs reasonably incurred by the Waste Disposal Authority

and the States in providing such services, and

- (b) without prejudice to the generality of paragraph (a), the services set out in section 32A(5) of the Law.

(2) Waste management services do not include any such services provided by the Waste Disposal Authority under section 32(1) of the Law at public waste management sites in relation to waste –

- (a) collected and transferred to a public waste management site by a means other than the Parish waste collection and transfer service, and
- (b) in respect of which a charge has or will be imposed by the Waste Disposal Authority as a precondition of its acceptance of that waste at such a site during the year in question under section 32(3)(c) of the Law.

(3) Waste Management services do not include any of the capital and other costs to be charged to the Capital Reserve in accordance with a Resolution of the States<sup>f</sup>.

**Basis on which charges are to be calculated.**

3. (1) Where the Waste Disposal Authority amends or substitutes the Schedule by regulations under section 1(3), it must calculate any new prescribed bag charges and annual fixed charge by imposing such charges as are necessary to

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<sup>f</sup> See resolution 1A b) of 19<sup>th</sup> April, 2018 on Article V of Billet d'État No. XI of 2018.

meet the projected total cost to the Waste Disposal Authority and the States of providing waste management services for the year in question.

(2) The Waste Disposal Authority in calculating the projected total cost under subsection (1) may, for the avoidance of doubt, adjust the total to –

- (a) take into account a surplus or deficit from previous years, or
- (b) spread out costs incurred in order to avoid a significant increase or decrease in the annual fixed charge in any one year.

(3) For the avoidance of doubt, nothing in this Ordinance requires the Waste Disposal Authority to amend any prescribed bag charge or the annual charge each year.

## PART II

### PRESCRIBED BAG CHARGES AND RELATED MATTERS

#### **Prescribed bag charges.**

4. (1) Where the Waste Disposal Authority amends or substitutes the prescribed bag charges by regulations under section 1(3), it may take into account the following matters –

- (a) the position in the waste hierarchy of the operations to which the waste, intended to be put into the receptacle in question, is to be subject, and



- (b) the principle that the person generating such waste should pay for its disposal or recovery.

(2) For the avoidance of doubt, the Waste Disposal Authority may prescribe a zero charge for any description of WDA tag or WDA receptacle.

**Agreements with suppliers, distributors and retailers etc. in relation to WDA tags or receptacles.**

5. (1) The Waste Disposal Authority must make such arrangements as may be necessary in relation to the supply, distribution and sale of WDA tags or WDA receptacles, including those to ensure that -

- (a) any wholesale sale of WDA tags or WDA receptacles is at the prescribed wholesale charge, and
- (b) any retail sale of WDA tags or WDA receptacles is at the prescribed retail charge.

(2) In making arrangements under subsection (1), the Waste Disposal Authority may, without prejudice to the generality of that subsection, enter into agreements or other arrangements with distributors or retailers, whether as agents of the Waste Disposal Authority or otherwise, in relation to -

- (a) the supply of WDA tags or WDA receptacles by the Waste Disposal Authority to distributors or retailers and payment for the same,
- (b) the distribution and wholesale sale of WDA tags or WDA receptacles by distributors to retailers,

- (c) the retail sale of WDA tags or WDA receptacles, and
- (d) such incidental and ancillary matters as the Waste Disposal Authority considers appropriate.

(3) Where the Waste Disposal Authority enters into an agreement under subsection (2), the agreement must provide for -

- (a) payment by retailers to the Waste Disposal Authority or to a distributor, for WDA tags or WDA receptacles supplied to retailers, at the prescribed wholesale charge, and
- (b) the retail sale of WDA tags or WDA receptacles by retailers, at the prescribed retail charge.

### PART III

#### CHARGE IN RESPECT OF PREMISES

##### **Annual fixed charge in respect of premises.**

6. (1) Where the Waste Disposal Authority amends or substitutes the annual fixed charge by regulations under section 1(3), it must calculate the charge by -

- (a) calculating the projected total cost to the Waste Disposal Authority and the States of providing waste management services for the year in question in accordance with section 3,

- (b) deducting from the total cost in paragraph (a), any income derived, or to be derived, by the Waste Disposal Authority in the year in question from projected sales of WDA tags or WDA receptacles, and
- (c) dividing the resulting cost equally between all dwelling houses, lodging houses and business premises in respect of which the annual fixed charge is levied under section 1(1)(b).

(2) For the avoidance of doubt and subject to subsection (1), the Waste Disposal Authority may prescribe a zero charge for the annual fixed charge.

**Levying of annual fixed charge.**

7. The annual fixed charge must be levied by the Waste Disposal Authority –

- (a) in respect of dwelling houses or lodging houses in Guernsey, 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, on the owner of the business which operates from the business premises,

as at the applicable date.

**Applicable date for annual fixed charge.**

8. The annual fixed charge may be levied on and from the first day of the year to which it relates ("**the applicable date**").

**Payment and collection of annual fixed charge.**

9. (1) The annual fixed charge 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 7 as at the applicable date.

(2) Accounts specifying the matters set out in subsection (3) may be served by the Waste Disposal Authority –

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

(3) Subject to the provisions of this Ordinance, liability to pay the annual fixed charge, or part or it, in respect of any premises arises upon service by the Waste Disposal Authority on the owner specified in subsection (1) of an account specifying –

- (a) where accounts are served annually, the amount of the annual fixed charge due for the year in question, or
- (b) where accounts are served twice-yearly, or quarterly, the amount of the annual fixed charge due for the

half-year or quarter of the year in question.

(4) The annual fixed charge, or part of it, for which an account has been served by the Waste Disposal Authority 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 Waste Disposal Authority may reasonably specify in the account.

(5) In any proceedings for the recovery of the annual fixed charge, or part of it, a copy of an account produced by the Waste Disposal Authority (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 annual fixed charge.**

10. Where the annual fixed charge, 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 9(4), the Waste Disposal Authority may, in its 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 annual fixed charge and penalty by the Waste Disposal Authority and liability for the same.**

11. (1) The annual fixed charge, 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 9(4), together with any penalty payable in respect of the charge under section 10 is recoverable from the owner of the dwelling house or lodging house or the owner of the business specified in section 9(1), as the case may be, as a civil debt due to the Waste Disposal Authority.

(2) If two or more persons are the owners of a dwelling house, lodging house or a business as specified in section 9(1), as the case may be, their liability for the annual fixed charge and any penalty in respect of the same is joint and several.

**Recovery of annual fixed charge by the owner.**

12. (1) The annual fixed charge 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 9(1) for the payment of the annual fixed charge 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 annual fixed charge as bears the same proportion to the whole of the annual fixed charge 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 IV GENERAL PROVISIONS

##### **Interpretation.**

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

"**annual fixed charge**": see section 1(1)(b),

"**applicable date**": see section 8,

"**business**", except in the definitions of "**retail**" and "**wholesale**", has the meaning in the Parochial Collection Law,

"**business premises**" has the meaning in the Parochial Collection Law,

"**disposal**" has the meaning in section 30(3) of the Law,

"**dwelling house**" has the meaning in the Parochial Collection Law,

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

"**Guernsey**" means the island of Guernsey and, for the avoidance of doubt, does not include the islands of Herm or Jethou,

"**the Law**" means the Environmental Pollution (Guernsey) Law, 2004,

"**lodging house**" has the meaning in the Parochial Collection Law,

"**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 usufruitier 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,

**"the Parochial Collection Law"** means the Parochial Collection of Waste (Guernsey) Law, 2015<sup>8</sup>,

**"Parish waste collection and transfer service"** has the meaning in the Parochial Collection Law,

**"prescribed bag charges"**: see section 1(1)(a),

**"prescribed retail charge"** means the retail charge or range of retail

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<sup>8</sup> Order in Council No. XV of 2015 as amended by Ordinance No. IX of 2016.

charges set out in Table B of Part I of Schedule 1,

**"prescribed wholesale charge"** means the wholesale charge or range of wholesale charges set out in Table A of Part I of Schedule 1,

**"receptacle"** means a bag or other receptacle and includes a holder for such a receptacle,

**"recovery"** has the meaning in section 30(3) of the Law,

**"retail sale"** means any sale except a wholesale sale 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,

**"trade mark"** has the meaning in the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006<sup>h</sup>,

**"waste hierarchy"** has the meaning in section 32(5) of the Law,

**"waste management services"**: see section 2,

**"WDA receptacle"** means a bag or other receptacle, marked with the

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<sup>h</sup> Ordinance No. I of 2006 as amended by Ordinance No. XXXIX of 2006 and No. IX of 2016.

name or trademark of the Waste Disposal Authority or otherwise identified as being a Waste Disposal Authority approved receptacle, in which an occupier is required to put out waste for collection under the Parochial Collection Law,

**"WDA tag"** means a tag which –

- (a) is marked with the name or trademark of the Waste Disposal Authority or otherwise identified as being approved by the Waste Disposal Authority, and
- (b) an occupier is required to affix to a receptacle in which waste is put out for collection under the Parochial Collection Law,

**"wholesale sale"** means any sale for resale in the course of a trade or business and includes a sale by –

- (a) the Waste Disposal Authority to a distributor or retailer, and
- (b) a distributor to a retailer,

and related expressions are construed accordingly,

**"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.

**Transitional Provision.**

14. (1) This section applies where, despite the provisions of this Ordinance, the Waste Disposal Authority requires an occupier, in accordance with sections 8 and 9 of the Parochial Collection Law, to affix a WDA tag to a receptacle in which waste is put out for collection only from a date after 1<sup>st</sup> January, 2019.

(2) When the Waste Disposal Authority next amends or substitutes the Schedule by regulations under section 1(3) it may, for the avoidance of doubt, take into account any deficit from 2019 arising from the circumstances in subsection (1).

**Extent.**

15. This Ordinance has effect in Guernsey.

**Citation.**

16. This Ordinance may be cited as the Waste Management Services (Charging) Ordinance, 2018.

**Commencement.**

17. (1) This Ordinance, except as provided in subsection (2), shall come into force on the 1<sup>st</sup> January, 2019.

(2) Section 5 (agreements with suppliers, distributors and retailers etc. in relation to WDA tags or receptacles) and sections 13, 15 and 16, insofar as it necessary to give effect to section 5, shall come into force on the 1<sup>st</sup>

November, 2018.

# SCHEDULE

Sections 1, 3 and 13(1)

## PART I

### PRESCRIBED BAG CHARGES

TABLE A

| <b>WDA Tag or WDA Receptacle</b>                                | <b>prescribed wholesale charge per<br/>WDA tag or WDA receptacle</b> |
|---|--|
| Residual waste bag of up to and including 50 litres in capacity | £1.40  |
| Residual waste bag of 51 to 90 litres in capacity               | £2.50  |
| Blue or clear recycling bag                                     | zero   |
| Glass recycling bag   | zero   |
| Food caddy  | zero   |

TABLE B

| <b>WDA Tag or WDA Receptacle</b>                                | <b>prescribed retail charge per WDA tag<br/>or WDA receptacle</b> |
|---|---|
| Residual waste bag of up to and including 50 litres in capacity | £1.40   |
| Residual waste bag of 51 to 90 litres in capacity               | £2.50   |
| Blue or clear recycling bag                                     | zero  |
| Glass recycling bag   | zero  |
| Food caddy  | zero  |

PART II  
ANNUAL FIXED CHARGE

The annual fixed charge is £85 per annum.