

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE TAXATION OF REAL PROPERTY (GUERNSEY AND ALDERNEY) (AMENDMENT)
ORDINANCE, 2020

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Taxation of Real Property (Guernsey and Alderney) (Amendment) Ordinance, 2020", 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 amends the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 by a number of technical revisions concerning, but not limited to, assessment methods, appeals and the definition of certain words and phrases to assist with its application.

The Taxation of Real Property (Guernsey and Alderney)

(Amendment) Ordinance, 2020

THE STATES, in pursuance of their Resolution of the 18th April, 2018^a, and in exercise of the powers conferred on them by sections 1 and 2 of the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of Ordinance.

1. The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007^c is further amended as follows.

2. Immediately after section 2(2), insert the following subsection -

"(2A) Where a building has a mezzanine floor, each square metre of the plan area of that floor is an assessable unit, in addition to the measurement of assessable units set out in subsection (2)."

3. Immediately after section 3(4), insert the following subsection -

"(5) For the avoidance of doubt, nothing in this Ordinance

^a Article IV of Billet d'État No. XI of 2018.

^b Order in Council No. X of 2006.

^c No. XXXIII of 2007; as amended by Order in Council No. XIII of 2010; Ordinance Nos. X and LVI of 2008; No. XLV of 2009; No. LIII of 2010; No. XLVIII of 2011; Nos. XIII and LI of 2012; No. XXVII of 2013; No. XLI of 2014; No. XLI of 2015; Nos. IX and XXXII of 2016; No. XXXII of 2017; No. XXXI of 2018; No. XXVI of 2019; G.S.I. No. 54 of 2008; No. 109 of 2010; No. 40 of 2011; No. 51 of 2013.

shall prevent different parts of real property falling into different property references where the Committee can ascertain and accurately measure those parts."

4. Immediately after section 6(1), insert the following subsection -

"(1A) For the avoidance of doubt, nothing in subsection (1) shall prevent the internal or external measurement of a building where the Committee considers it appropriate."

5. In section 9 -

- (a) re-number the current text as subsection (1), and
- (b) immediately after subsection (1), insert the following subsection -

"(2) For the avoidance of doubt, a decision of the Committee under this section is a relevant decision within the meaning of section 28."

6. In section 11 -

- (a) re-number the current text as subsection (1), and
- (b) immediately after subsection (1), insert the following subsection -

"(2) For the avoidance of doubt, where an enactment -

- (a) adds, amends or repeals any property reference, or
- (b) grants the Committee power to approve whether a property falls into a particular property reference,

the property reference of any real property affected for the purposes of calculating the amount of property tax due in any year in respect of that real property in accordance with subsection (1)(b) shall be taken to be, from the date on which the enactment is made or the Committee grants approval (as the case may be), the property reference accorded to it by the enactment or the grant of approval, notwithstanding that the enactment was not in force at the time appointed for the purpose of determining the property reference of any real property."

7. Immediately after section 11, insert the following section -

"Repayment of overpayments.

11A. (1) Where –

- (a) a person has paid an amount by way of property tax to the Committee,
- (b) the plan area or usage of that person's property has changed within the two years immediately preceding the date of that payment, and

(c) that person believes that, due to that change of plan area or usage -

(i) the property tax was not due, or

(ii) the amount of property tax paid was greater than was due,

that person may make a claim to the Committee for repayment of the amount overpaid.

(2) The Committee is not liable to give effect to a claim under this section if or to the extent that the claim falls within subsection (3) or (4).

(3) A claim falls within this subsection where the property tax was not due or the amount paid is greater than was due by reason of a failure by the claimant to notify the Committee of -

(a) a change in the plan area of the property, or

(b) a change in the property or the purposes for which the property is used,

in accordance with section 15.

(4) A claim falls within this subsection where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following -

- (a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a "**relevant appeal**") was determined by the Tax or Real Property Appeals Tribunal ("**the Tribunal**") or is treated as having been so determined,
- (b) the date on which the claimant withdrew a relevant appeal to the Tribunal, or
- (c) the end of the period in which the claimant was entitled to make a relevant appeal to the Tribunal.

(5) A claim under this section may not be made more than four years after the date of payment of the property tax to the Committee."

8. Immediately after section 14(2), insert the following subsection -

"(2A) For the avoidance of doubt, the Committee may serve notice in writing on the owner of a property for the purposes of subsection (2) by means of an account specifying the amount of tax due for the purposes of section 8."

9. In section 15(1), for "within 28 days of the change" substitute "by 31st December of the year in which the change is effected."

10. Immediately after section 23, insert the following section -

"Resignation or removal of members of the Panel.

23A. (1) A person ceases to be a member of the Panel if -

- (a) that person resigns from office by giving not less than 3 months' notice in writing to the Committee, or
- (b) that person's appointment is terminated under subsection (2).

(2) The States may, on the recommendation of the Committee, terminate the appointment of a member of the Panel after satisfying themselves that the member -

- (a) has become bankrupt,
- (b) is incapacitated by physical or mental illness, or
- (c) is otherwise unable or unfit to discharge the functions of a member.

(3) For the purposes of subsection 2(a), "**become bankrupt**" means -

- (a) that a declaration of insolvency has been made in respect of that member by the Royal Court

under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929^d,

- (b) that a Commissioner or Committee of Creditors has been appointed by the Royal Court under that Law to supervise or secure that member's estate,
- (c) that that member's affairs have been declared to be in a state of "*désastre*" at a meeting of that member's arresting creditors held before a Commissioner of the Royal Court,
- (d) that an interim vesting order has been made against a person in respect of any of that member's real property in the Bailiwick, or
- (e) that a composition, compromise or arrangement with creditors has been entered into in respect of that member whereby that member's creditors will receive less than 100 pence in the pound,".

11. In section 28, immediately after paragraph (d), insert the following paragraph -

^d Ordres en Conseil Vol. VIII, p. 310.

"(da) a decision to levy a flat rate penalty or interest in accordance with section 9, and" .

12. Immediately after section 31(6), insert the following subsection -

"(7) Without prejudice to any other provision of this Ordinance, where the decision to be appealed is a decision to levy a flat rate penalty or interest in accordance with section 9 -

(a) the Tribunal may be constituted by the Chairman, Deputy Chairman, or other member of the Taxation on Real Property Appeals Panel as may be selected by the Chairman, sitting alone, and

(b) the appeal may be determined on the notice, information and documents received by the Tribunal and without a hearing."

13. In section 33(1), for "in the form set out in Part 1 or (as the case may be) Part II of Schedule 5", substitute "in such form as may be specified by the Committee".

14. In section 39(2), immediately after "hear any", insert "oral or receive any written".

15. Immediately after section 48(5), insert the following subsections -

"(5A) For the avoidance of doubt and without prejudice to any other method of service set out in this section, a document may be served by

being transmitted to the relevant electronic address of the person to be served and, for the purposes of this subsection -

(a) "**electronic address**" includes, without limitation, an e-mail address and telecommunications address, and

(b) "**relevant electronic address**" means an electronic address -

(i) with which, in the reasonable opinion of the person effecting service, the person concerned has a personal, business or other connection, and

(ii) a document transmitted to which is likely to come to his attention.

(5B) A document transmitted to an electronic address shall, unless the contrary is shown, be deemed to have been received when it was transmitted."

16. In section 54(1) -

(a) immediately after the definition of "**document**", insert the following definition -

"**electronic address**" and "**relevant electronic address**": see section 48(5A),",

- (b) immediately after the definition of "Map", insert the following definition -

"**mezzanine**" means a floor area within a building which does not extend over the whole floor space of the building", and

- (c) immediately after the definition of "**Register**" and "**registration**", insert the following definition –

"**relevant appeal**": see section 11A(4)(a),".

17. In paragraph 1 of Part II of Schedule 1, immediately after the words "for religious ceremony", insert "and connected purposes".

18. In Part III of Schedule 1 -

- (a) for the definition of "**development building**", substitute the following definition -

"**development building**" means, notwithstanding section 41 of this Ordinance -

- (a) where the building is in Guernsey, a building in relation to which -

- (i) full plans have been approved and a licence to execute the proposed works has been granted by the States of

Guernsey Development & Planning Authority in accordance with regulation 16 of the Building (Guernsey) Regulations, 2012 (**"the Guernsey Regulations"**)^d, and

- (ii) the States of Guernsey Development & Planning Authority has confirmed in writing that building work has commenced,

but a building will cease to be considered in development when the States of Guernsey Development & Planning Authority has -

- (A) issued a completion certificate,
or

- (B) confirmed the building has met the relevant requirements for completion in accordance with regulation 18(2) of the Guernsey Regulations, and

- (b) where the building is in Alderney, a building in relation to which -

(i) full plans have been approved in accordance with regulation 16 of the Building (Alderney) Regulations, 2014 ("**the Alderney Regulations**")^e, and

(ii) the States of Alderney Building and Development Control Committee has confirmed in writing that building work has commenced,

but a building will cease to be considered in development when the States of Alderney Building Development and Control Committee has -

(A) issued a completion certificate,
or

(B) confirmed the building has met the relevant requirements for completion in accordance with Regulation 18(2) of Alderney Regulations.",

(b) immediately after the definition of "**food outlet**", insert the following definition -

""**garaging or parking**"" means real property (or part of real property) used solely for the storage or parking of one or more private vehicles or for domestic storage,"

- (c) immediately after the definition of ""**glasshouse**""
insert the following definition -

""**harbour**"" has the meaning given to "harbour land" in section 58(1) of the Harbours Ordinance, 1988^e,"

- (d) in the definition of ""**hostelry**""
immediately after paragraph (c), insert "and includes any private residential, nursing or care home",

- (e) immediately after the definition of "**motor trade**", insert the following definition -

""**moveable site structure**"" does not include any property -

- (a) which cannot be moved to a different position without being damaged or deconstructed, or
- (b) which has a direct connection to receive -
 - (i) mains electricity,

^e Recueil d'Ordonnances Tome XXIV, p. 418; as amended by Ordres en Conseil Vol. XXXI, p. 78); Recueil d'Ordonnances Tome XXIV, p. 418; Tome XXV, p. 11; Tome XVI, p. 310; Ordinance No. XII of 2001; Nos. XVII and XXXIII of 2003; No. IX of 2016.

(ii) mains gas , or

(iii) mains water,"

(f) immediately after the definition of **publicly owned non-domestic**", insert the following definition -

"quays" shall have the meaning given in section 58(1) of the Harbours Ordinance, 1988," and

(g) for the definition of **"warehousing"**, substitute the following definition -

"warehousing" means any building used to store goods for the purposes of a business, trade or undertaking unless it is part of, or connected to, real property used principally for another property reference."

19. Schedule 5 is repealed.

Extent.

20. This Ordinance has effect in the islands of Guernsey, Alderney and Herm.

Citation.

21. This Ordinance may be cited as the Taxation of Real Property (Guernsey and Alderney) (Amendment) Ordinance, 2020.

Commencement.

22. This Ordinance shall come into force on the 6th May, 2020.