

PART II
DUTIES OF OCCUPIERS OF PREMISES IN RELATION
TO WASTE COLLECTIONS

Waste Disposal Authority requirements in relation to waste put out for collection.

8. (1) The Waste Disposal Authority must by notice, published in La Gazette Officielle or in such other manner as it thinks fit to bring it to the attention of those likely to be affected, specify –

- (a) the requirements as to the manner in which waste is to be put out for collection by the Parish waste collection and transfer service, and
- (b) the consequences of –
 - (i) contravening those requirements, or
 - (ii) putting waste out for collection other than on the day and between the hours specified by the Douzaine of the relevant Parish under section 6.

(2) Without prejudice to the generality of subsection (1), the Waste Disposal Authority may specify different requirements for different types or descriptions of waste or waste streams put out for collection including –

- (a) the particular types or descriptions of waste or waste streams which must be separated for collection,
- (b) the particular bags, or other receptacles, in which particular types or descriptions of waste or waste streams must be put out for collection,
- (c) the types or descriptions of waste or waste streams that must not be put out for collection, and

- (d) the materials to be used, or not to be used, in relation to particular types or descriptions of waste or waste streams put out for collection.

(3) The Waste Disposal Authority must provide a copy of the requirements to a member of the public on request and may charge a reasonable fee for providing the copy.

Duties on occupiers of premises.

9. An occupier of –

- (a) a dwelling house or a lodging house, or
- (b) business premises which have been admitted into the Parish waste collection and transfer service,

must put out their waste for collection, by the Parish waste collection and transfer service –

- (i) in accordance with all the requirements specified in writing from time to time by the Waste Disposal Authority under section 8, and
- (ii) only on the day and between the hours specified under section 6, by the Douzaine of the Parish in which the dwelling house, lodging house or business premises in question is located, for the type or description of waste or waste stream in question.

PART III
ENFORCEMENT

Warning notice.

10. (1) A Constable of a Parish may serve a notice ("warning

notice"), signed by two or more persons each of whom is a Constable or Douzenier of the Parish, on an occupier of premises falling within section 9(a) or (b), if the Douzaine of the Parish is satisfied that the occupier has contravened section 9 on more than one occasion.

- (2) A warning notice must –
 - (a) identify the premises to which it relates,
 - (b) explain why it has been served, including specifying the alleged contraventions of section 9,
 - (c) explain that if, within the period of twelve months or such shorter period as is specified in the notice, a further contravention of section 9 is committed which is the same as or similar to any of those specified in the notice, a civil fixed penalty notice may be served by a Constable of the Parish on the occupier of the premises,
 - (d) state the amount of –
 - (i) the civil fixed penalty, and
 - (ii) any additional daily penalty or interest for late or non-payment,to which the occupier may be liable, and
 - (e) state that written representations may be made by the occupier to the Douzaine of the Parish within a period of 28 days beginning with the date of service of the notice in relation to the alleged contraventions ("**representations period**") including representations as to why –

- (i) the occupier has not contravened section 9, or
- (ii) a civil fixed penalty should not be imposed.

Civil fixed penalty notice.

11. (1) Where a warning notice has been served, a Constable of the Parish may serve a notice ("**civil fixed penalty notice**"), signed by two or more persons each of whom is a Constable or Douzenier of the Parish, on the occupier on whom the warning notice was served requiring the occupier to pay a civil fixed penalty if the Douzaine of the Parish is satisfied that -

- (a) the occupier has, without reasonable excuse, committed a further contravention of section 9 which is the same as or similar to any contravention specified in the warning notice, and
 - (b) such further contravention has occurred within the period specified in the warning notice.
- (2) A civil fixed penalty notice must not be served until –
- (a) the expiry of the representations period, and
 - (b) the Douzaine of the Parish has taken into account any written representations made by the occupier under section 10(2)(e) within that period.
- (3) A civil fixed penalty notice must –
- (a) contain an explanation of why it has been served including –
 - (i) specifying the further alleged contravention, and
 - (ii) stating why the Douzaine of the Parish

considers the contravention is the same as or similar to any contravention specified in the warning notice,

(b) state –

(i) the amount of the civil fixed penalty payable, the period within which it must be paid so as not to incur any additional daily fixed penalty or interest for late or non-payment and how it must be paid, and

(ii) the amount of any additional daily fixed penalty or interest to which the occupier may be liable for late or non-payment,

(c) state that if the civil fixed penalty is not paid on time–

(i) the civil fixed penalty, and

(ii) any additional daily penalty and any interest for late or non-payment,

will be recoverable by the Douzaine of the Parish as a civil debt from the occupier, and

(d) state that there is a right of appeal to the Parochial Appeals Tribunal under section 17 and state the period within which the appeal must be made.

(4) The period specified for payment of the civil fixed penalty, without incurring any additional daily fixed penalty or interest for late or non-payment, must not be less than a period of 28 days starting with the date of service of the civil fixed penalty notice.

(5) For the avoidance of doubt, where different levels or amounts

of civil fixed penalty are provided under section 12(2) for payment -

- (a) in full within a specified period shorter than the 28 day period referred to in subsection (4), and
- (b) within any time after that specified period,

both levels or amounts, and the period within which full payment is required for the lower amount of penalty to be payable, must be stated in the civil fixed penalty notice under subsection (3)(b).

(6) A Constable of a Parish may serve a civil fixed penalty notice on an occupier, requiring payment of a civil fixed penalty, on each separate occasion the Douzaine of the Parish is satisfied of the matters in subsection (1).

(7) A civil fixed penalty and any other sums payable under this section are payable to the Constables of the relevant Parish, and on payment form part of the general funds of that Parish.

(8) If a civil fixed penalty is not paid within the 28 day or longer period specified in the civil fixed penalty notice the Douzaine of the Parish may recover that penalty, any additional daily penalty and any interest owing for late or non-payment as a civil debt from the occupier.

(9) Where two or more persons are liable under this Law to pay a civil fixed penalty, additional daily penalty or any interest owing for late or non-payment, those persons are jointly and severally liable.

Level or amount of civil fixed penalties.

12. (1) The States –

- (a) shall by Ordinance make such provision as they think fit in relation to the level or amount of civil fixed penalties, and

(b) may by Ordinance make such provision as they think fit in relation to-

(i) any additional daily penalties for a continuing contravention of section 9, to which an occupier may be liable under section 11, and

(ii) the rate of any interest which may be charged for late or non-payment of civil fixed penalties or additional daily penalties.

(2) An Ordinance under subsection (1) may, without prejudice to the generality of subsection (1), provide for –

(a) different levels or amounts of civil fixed penalty for different or repeated contraventions of section 9, and

(b) different levels or amounts of civil fixed penalty for payment –

(i) in full within a specified period shorter than the 28 day period referred to in section 11(4), and

(ii) at any time after that specified period.

Powers to search receptacles and waste put out for collection.

13. (1) Where an authorised person has reasonable grounds to suspect that section 9 has been or is being contravened they may, subject to subsection (2), open and search a receptacle –

(a) put out for collection by an occupier falling within section 9, or

(b) collected by or on behalf of the Douzaine of the Parish,

for the purpose of investigating that contravention.

(2) The power in subsection (1) does not give an authorised person a power to enter –

- (a) private land,
- (b) premises, or any part of a premises, used as a dwelling, or
- (c) land within the curtilage of a dwelling,

to carry out a search of such a receptacle without the consent of the occupier or a warrant issued by the Bailiff under section 14.

(3) An authorised person, exercising the power under subsection (1), may where it is reasonably necessary for the purpose of investigating a suspected contravention of section 9, including identifying the occupier of the premises from which the waste has been put out for collection –

- (a) carry out a measurement or test on the receptacle or on any waste in the receptacle,
- (b) take a sample of the receptacle or of any waste in the receptacle,
- (c) use a mark or other method to identify the receptacle or any waste in the receptacle,
- (d) take a photograph of the receptacle or a photograph or copy of any waste in the receptacle including any document or record (in whatever form) comprising part of that waste, or
- (e) subject to subsection (6), seize and take into possession

any receptacle or waste in the receptacle which they reasonably believe to be evidence of the commission of a contravention of section 9 including evidence as to the identity of the occupier who is reasonably believed to have committed the contravention.

(4) A person who takes a sample from a receptacle or any waste in a receptacle under subsection (3)(b) must give a part of the sample to the occupier of the premises at which the receptacle was put out for collection, if, before the sample is taken, they are requested to do so by the occupier.

(5) Section 16(1) and (2) (record of thing seized) of PPACE^c applies in relation to an authorised person who seizes and takes into possession a receptacle or waste under subsection (3)(e) as it applies in relation to the exercise of a power of seizure by a police officer.

(6) Any receptacle or waste which has been seized or taken into possession or detained in the exercise of a power under subsection (3)(e) may, subject to the following provisions of this Law, be retained so long as is necessary in all the circumstances and in particular –

- (a) for use as evidence in relation to a contravention of section 9, or
- (b) for forensic examination or for investigation in connection with a contravention of section 9,

except that nothing may be retained for such a purpose where a photograph or a copy would be sufficient.

(7) Subsection (3)(e) does not include power to seize anything which the authorised person exercising the power has reasonable grounds for

^c Ordres en Conseil Vol. XLIII(2), p. 617 as amended by Order in Council No. XVI of 2009, No. XV of 2011, Recueil d'Ordonnance Tome XXIX, p. 406, Tome XXXIII, p. 617 and Ordinance No. XXIX of 2011.

believing to be an item subject to legal professional privilege within the meaning of section 24 of PPACE.

Power of the Bailiff to grant warrant.

14. (1) If the Bailiff is satisfied by information on oath supplied by a Constable or Douzenier of a Parish or an authorised person that there are reasonable grounds for entering any premises located in the relevant Parish for the purpose of investigating a suspected contravention of section 9 the Bailiff may grant a warrant conferring any of the powers set out in subsection (2).

(2) A warrant granted under subsection (1) authorises a Constable or Douzenier of the Parish or an authorised person at any time within one month of the date of the grant –

- (a) to enter the premises,
- (b) to exercise any power under section 13, and
- (c) to require any occupier of the premises to answer any question which may reasonably be put to him in relation to the suspected contravention of section 9.

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied that one or more of the following three conditions is met.

(4) The first condition is that the whole of the premises are on private land, are used as a dwelling or are within the curtilage of a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises are not on private land, used as a dwelling, or within the curtilage of a dwelling and that each of the following applies to the occupier of the premises -

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- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,
- (b) the occupier has failed to allow entry to the premises on being requested to do so by a Constable or Douzenier of the Parish or an authorised person, and
- (c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that -

- (a) the premises are unoccupied or the occupier is absent, and
- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) A Constable or Douzenier of the Parish or authorised person executing a warrant issued under this section may use such reasonable force as may be necessary.

(8) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of PPACE apply in relation to the issue of a warrant under this section to a Constable or Douzenier of the Parish or an authorised person as they apply in relation to the issue of a warrant to a police officer.

(9) The following additional requirements apply in relation to a warrant, or application for a warrant, issued or made under this section -

- (a) an application for a warrant under this section and a warrant issued under this section must identify, in so far as is practicable, any receptacle or waste sought, and

- (b) the endorsement required to be made on a warrant under section 11(9) of PPACE must state whether any receptacle or waste sought was found and whether any of the same, other than those which were sought, were seized.

(10) A statement made by a person in response to a requirement imposed under a warrant granted under this section –

- (a) may be used in evidence against them in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against them in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on their behalf, or
 - (ii) in proceedings for –
 - (A) an offence under section 15,
 - (B) some other offence where, in giving evidence, they make a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.

Offence relating to false or misleading information etc. or obstruction.

15. (1) A person who –

- (a) in purported compliance with a requirement imposed by or under any provision of this Law or any notice or warrant made under it, or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which they intend, or could reasonably be expected to know, that the statement, information or document provided by them would or might be used by any person for the purpose of exercising that person's functions conferred by or under this Law –

does any of the following -

- (i) makes a statement which they know or have reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly make a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information or document which they know or have reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

commits an offence.

(2) A person who obstructs a Constable or Douzenier of a Parish or an authorised person in the exercise of their functions under this Law commits an offence.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 5 on the uniform scale.

Authorised persons.

16. (1) A person may be authorised in writing by the Douzaine of a Parish to perform any of the functions of an authorised person under this Law.

(2) For the avoidance of doubt, a Constable or a Douzenier of a Parish may be appointed as an authorised person under subsection (1).

(3) A person purporting to carry out the functions of an authorised person under this Law must, upon request, produce evidence of their authority.

**PART IV
APPEALS**

Appeals.

17. (1) An occupier on whom a civil fixed penalty notice has been served may appeal to the Parochial Appeals Tribunal, by way of service of a notice of appeal on the President of that Tribunal on the grounds set out in paragraph 5 of Schedule 1 to the Parochial Administration Ordinance, 2013^d.

(2) A notice of appeal served by an occupier –

(a) must comply with any relevant requirements of the Tribunal Rules, and

^d Ordinance No. XL of 2013.

(b) must be accompanied by any fee provided for under the Tribunal Rules.

(3) The requirement to pay the civil fixed penalty, including any ongoing daily penalty or interest payable, is suspended pending the final determination or withdrawal of the appeal; and the appeal is finally determined when the appeal and any further appeal is finally determined.

(4) Where the requirement to pay the civil fixed penalty is confirmed at any stage in the proceedings on appeal payment must be made before the end of a period of 28 days starting with the date on which the requirement is so confirmed unless the person makes a further appeal before the end of that period.

(5) In this section, "the Tribunal Rules" means any rules for the time being in force under paragraph 6 of Schedule 1 to the Parochial Administration Ordinance, 2013.

PART V GENERAL PROVISIONS

Delegation of Douzaine functions.

18. (1) The Douzaine of a Parish may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of its functions under this Law to be exercised in its name by the Waste Disposal Authority, other than this power of delegation.

(2) A Constable or Douzenier of a Parish may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of that person's functions as Constable or Douzenier under this Law to be exercised in their name by the Waste Disposal Authority, other than this power of delegation.

(3) No delegation under this section may be arranged or varied without the agreement in writing of the Waste Disposal Authority.

(4) A function exercised by the Waste Disposal Authority as

delegate pursuant to an arrangement made under this section is for all purposes exercised by the Douzaine or the Constable or Douzenier of the relevant Parish; and every decision taken or other thing done by the Waste Disposal Authority as delegate pursuant to such an arrangement has the same effect as if taken or done by the Douzaine, Constable or Douzenier of the relevant Parish.

(5) An arrangement made under this section for the exercise of a function by the Waste Disposal Authority as a delegate -

- (a) may be varied or terminated at any time by the relevant Douzaine, Constable or Douzenier of a Parish but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and
- (b) does not prevent the exercise of the function by the relevant Douzaine, Constable or Douzenier of a Parish while the arrangement subsists.

(6) Before the delegation of a function is arranged, varied or terminated under this section the relevant Douzaine, Constable or Douzenier of a Parish must consult with the Waste Disposal Authority and such other persons as that Douzaine, Constable or Douzenier considers appropriate.

General provisions as to Ordinances, Orders and regulations.

19. (1) The States may by Ordinance –

- (a) amend the functions of the Douzaine of a Parish or of the Waste Disposal Authority in sections 1, 2, 3 and 6 in relation to the collection and transfer of waste,
- (b) amend sections 1, 4, 10, 11, 20 or 21 so as to amend the meaning of any expression defined in any of those sections or to define any other expression,

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- (c) make such other provision as they think fit for the purposes of carrying this Law into effect, and
- (d) make such amendments to any other enactment as they think fit where it is necessary to do so for the purpose of giving proper effect to that enactment and as are consequential upon the enactment of this Law.

(2) The power in subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (or vice versa).

(3) An Ordinance, Order or regulations made under this Law may -

- (a) be amended or repealed by a subsequent Ordinance, Order or regulations, as the case may be, under this Law, and
- (b) contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(4) Any power conferred under this Law to make an Ordinance, an Order or regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, or
- (iii) any such provision either unconditionally or subject to any specified conditions.

(5) Without prejudice to the generality of the foregoing provisions of this Law an Ordinance made under this Law may -

- (a) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (b) make any such provision of any such extent as might be made by Projet de Loi.

(6) Any Order or regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul them, they shall cease to have effect, but without prejudice to anything done under them or the making of a new Order or regulations.

Service of notices etc.

20. (1) A warning notice, civil fixed penalty notice, or other document to be given or served under this Law, other than a notice of appeal under section 17, may be given or served –

- (a) on an individual by being delivered to, or being left at, or sent by post or transmitted to the premises to which the notice relates,

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- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an unincorporated body, by being given to or served on any partner, member, manager or officer of the body by being left at, or sent by post or transmitted to, their usual or last known place of abode, or
- (d) on the Douzaine of a Parish by being addressed to the Constables of the Parish and being left at, or sent by post or transmitted to, the offices of the Douzaine.

(2) If a notice or other document is required or authorised to be served under this Law on the occupier of premises, it is deemed to have been duly served if it is –

- (a) addressed to that person either by name or by referring to the occupier of the premises concerned, and
- (b) either served in accordance with subsection (1) or affixed conspicuously to, or to some object on, the premises concerned.

(3) A notice of appeal under section 17 may be served on the Parochial Appeals Tribunal by being delivered to, or being left at, or sent by post to the Parochial Appeal Tribunal's published address for service and in accordance with any rules for the time being in force under paragraph 6 of Schedule 1 to the Parochial Administration Ordinance, 2013.

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service.

(5) In subsections (1) to (3) –

- (a) **"by post"** means by Special Delivery post, recorded delivery service or ordinary letter post, and
- (b) **"transmitted"** means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document is regarded as served when it is received.

(6) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received on the third day after the day of posting, excluding any day which is not a working day.

(7) Service of a document sent by post is proved by showing the date of posting, the address on it and the fact of prepayment.

(8) Despite the provisions of subsections (1) to (7) and any other enactment or rule of law in relation to the service of documents no document to be given to or served on the Douzaine of a Parish or a Constable or Douzenier of a Parish for the purposes of this Law is deemed to have been given or served before it is received.

Interpretation.

21. (1) In this Law, unless the context requires otherwise -

"authorised person" means a person appointed as such under section 16(1),

"the Bailiff" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"business" includes any economic activity, trade, profession or vocation, whether or not carried on for profit,

"business premises" means premises in which the sole or principal

activities carried on at the premises are carried on in the course of a business,

"civil fixed penalty notice": see section 11(1),

"contravene" includes failure to comply and related expressions are construed accordingly,

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

"dwelling house" means any premises, or any part of any premises, wholly or principally used or usable for the purposes of human habitation, and includes –

- (a) any self-catering tourist accommodation, and
- (b) any flat,

but excludes -

- (i) any premises or part of any premises (not being self-catering tourist accommodation) in respect of which there is in force a boarding permit granted under section 3 of the Tourist Law, 1948^e, and
- (ii) any lodging house,

"enactment" means any Law, Ordinance or subordinate legislation,

"Environmental Pollution Law" means the Environmental Pollution

^e Ordres en Conseil Vol. XIII, p. 329 as amended by Ordres en Conseil Vol. XXI, p. 104, Vol. XXVIII, p. 275, Vol. XXXI p. 278, Vol. XXXVIII, p. 307 and Recueil d'Ordonnances Tome XVIII, p. 20 and Tome XXIX, p. 406.