

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE PUBLIC HIGHWAYS (TEMPORARY CLOSURE) (AMENDMENT) ORDINANCE, 2022

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Public Highways (Temporary Closure) (Amendment) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Public Highways (Temporary Closure) Ordinance, 1999 ("the 1999 Ordinance"), which provides for applications to the Royal Court for "al fresco" licences enabling the licence holder to have exclusive possession of a specified area of the public highway without offending the law against obstructing the public highway. The amendments insert into the 1999 Ordinance a new Part which enables the Committee for the Environment & Infrastructure by Order to designate "al fresco zones" in certain areas of the island after public consultation. Within these zones, the Committee will be empowered to grant "al fresco" permits, the effect of which will be similar to the licences. Standard conditions will apply within such zones unless waived by the Committee in a particular case and additional conditions can be applied by the Committee as necessary. If premises are not in an "al fresco" zone, the Royal Court licence application process will still apply. The Ordinance also changes the licence validity period from the calendar year to October-September (which is the relevant period for the new permits) and makes consequential amendments to other parts of the Ordinance.

The Public Highways (Temporary Closure) (Amendment) Ordinance, 2022

THE STATES, in pursuance of their Resolution of the 28th April, 2022^a, in exercise of the powers conferred on them by section 1(2) of the Fees, Charges and Penalties (Guernsey) Law, 2007^b, and in exercise of all other powers enabling them in that behalf, hereby order:-

Amendment of 1999 Ordinance.

1. The Public Highways (Temporary Closure) Ordinance, 1999^c ("**the 1999 Ordinance**") is amended as follows.

2. Before section 1 of the 1999 Ordinance, for "*Effect of "al fresco" licences*", substitute -

"PART I

EFFECT OF "AL FRESCO" LICENCES AND PERMITS".

3. In section 1(1) of the 1999 Ordinance -

(a) for "rule of customary law" substitute "rule of law, whether customary or statutory",

^a Article IV of Billet d'État No. VIII of 2022.

^b Order in Council No. VII of 2008. This enactment has been amended.

^c Recueil d'Ordonnances Tome XXVIII, p. 185. This enactment has been amended.

(b) after "licence", in each place where it occurs, insert "or permit", and

(c) after "licensee" insert "or permit holder".

4. After section 1 of the 1999 Ordinance, for "*Applications for grant of "al fresco" licences*", substitute -

"PART II

"AL FRESCO" LICENCES: APPLICATION TO ROYAL COURT".

5. In the following provisions of the 1999 Ordinance -

(a) section 2(1),

(b) section 4,

(c) section 6(1), and

(d) section 8(2),

for "this Ordinance", in each place where it occurs, substitute "this Part".

6. Section 3(1)(e) is repealed.

7. Section 5(1)(e) is repealed.

8. In section 6(1) of the 1999 Ordinance, for "have exclusive occupation of the area specified in the licence" substitute "occupy the specified area in accordance with section 1".

9. In section 7 of the 1999 Ordinance -

(a) in subsection (1)(a), for "31st December" substitute "30th September (**"the expiration date"**)",

(b) in subsection (2), for paragraph (a) substitute -

"(a) from the 1st October until the expiration date in the following year, or",

(c) in subsection (3), for "31st December preceding" substitute "expiration date", and for "1st January" substitute "1st October",

(d) after subsection (3) insert -

"(3A) Despite the provisions of subsection (3), Her Majesty's Greffier may, if Her Majesty's Greffier thinks fit having regard to all the circumstances, receive and deal with an application for renewal of an "al fresco" licence after the expiration date, and any such renewal shall be deemed to have had effect from the day after the expiration date.", and

(e) in subsection (5), for "October" substitute "July preceding the expiration date".

10. After section 12 of the 1999 Ordinance, insert the following -

"PART III
APPLICATIONS FOR "AL FRESCO PERMITS" IN DESIGNATED ZONES

Designation of "al fresco" zones.

12A. (1) The Committee may, from time to time, by order -

- (a) designate any area as an "al fresco" zone ("**designated zone**") for the purpose of this Part,
- (b) prescribe, in respect of such designated zone, conditions of general application which shall, subject to variation under section 12B(6), be attached to permits issued under this Part in that designated zone,

as it thinks fit.

(2) In any case where the Committee proposes to make an order under this section, the Committee shall -

- (a) place a notice in La Gazette Officielle setting out -
 - (i) that the proposals have been published,
 - (ii) the times and public places at which the proposals are available for public inspection, and

- (iii) the period, which shall be not less than seven days beginning with the date of the publication, within which any representations in respect of the proposals may be sent to the Committee,
- (b) make the proposals, including maps of the proposed designated zone ("**proposed zone**"), available for inspection -
 - (i) on the States of Guernsey website,
 - (ii) at the premises of the Constables of the parishes in which the proposed zone is situated, and
 - (iii) in such other public place or places as the Committee considers appropriate, and
- (c) send a copy of the proposals, including a map of the proposed zone, to -
 - (i) the Constables of the parishes in which the proposed zone is situated,
 - (ii) the States Committee for Economic Development,

(iii) the States Committee for Home Affairs, and

(iv) such other committee or body as the Committee considers appropriate having regard to the location of the proposed zone,

together with a statement of the period for representations mentioned in paragraph (a)(iii).

(3) The Committee shall, before making an order under this section, consider any representations sent to the Committee pursuant to subsection (2).

Application for "al fresco" permit.

12B. (1) A person wishing to obtain an "al fresco" permit ("**permit**") in respect of any area of the public highway situated in a designated zone shall apply to the Committee in such form and manner as the Committee may determine.

(2) An application for a permit shall include, without limitation, the following particulars -

(a) the full name and address of the applicant,

(b) the location of the area of the public highway for which the application is made,

(c) full details of -

- (i) the purpose,
- (ii) the hours of the day, and
- (iii) the days of the year,

for which the permit is being sought.

(3) Upon receipt of an application under subsection (1), and at any time thereafter, the Committee may require the applicant to supply such additional information as it may reasonably consider necessary to determine the application.

(4) The Committee may, having taken into account the application and any additional information supplied to it -

- (a) subject to subsections (5) and (6), grant to the applicant a permit authorising the applicant to occupy the specified area in accordance with section 1 during the hours and days mentioned and for the purposes specified therein, or
- (b) refuse to grant to the applicant a permit.

(5) A permit granted under subsection (4) shall be made subject to -

- (a) such conditions as may be prescribed under section 12A(1)(b), unless varied by the Committee under subsection (6), and

(b) such other conditions as the Committee may consider necessary or expedient.

(6) The Committee may, if it thinks fit in any particular case, vary the conditions prescribed under section 12A(1)(b).

(7) The Committee may, if it thinks fit during the validity of a permit, and subject to section 12F(2), attach such other conditions to that permit, or vary those previously attached, as the Committee considers necessary or expedient.

(8) Without prejudice to any conditions attached to the permit, a permit issued under this Part is liable to immediate suspension upon the direction of an officer of police or a member of the fire brigade if such officer or member is of the opinion that an emergency has arisen requiring such immediate suspension.

Period of validity of "al fresco" permits and renewals.

12C. (1) Unless suspended or forfeited under this Ordinance, a permit granted under section 12B shall be valid -

(a) from such day as the Committee directs until the 30th September ("**the expiration date**") next following, or

(b) where the application is not unlimited as respects the days of the year, on or between such days as the Committee may determine.

(2) If renewed, unless suspended or forfeited under this

Ordinance, a permit shall be valid -

- (a) from the 1st October until the expiration date in the following year, or
- (b) on or between the days previously determined by the Committee.

(3) Subject to subsection (4) and section 12G, a permit shall be renewed for any year upon payment on or before the expiration date to the Committee of the renewal fee prescribed in section 13 in one payment, and in default shall cease to be valid after the expiration date.

(4) Despite the provisions of subsection (3), the Committee may, if it thinks fit in all the circumstances, receive and deal with an application for renewal of a permit after the expiration date and any such renewal shall be deemed to have had effect from the day after the expiration date.

(5) Where a permit is suspended in pursuance of any of the provisions of this Ordinance and that period of suspension does not end until after the unexpired portion of the period for which the permit is then current, the permit holder may, upon payment of the appropriate fee, renew that permit at the end of the period then current but the permit so renewed shall be of no effect until the period of suspension is ended.

Register of "al fresco" permits.

12D. (1) The Committee shall, having granted a permit, and subject to payment of the fees prescribed under this Ordinance, issue to the applicant a permit in such form as the Committee may from time to time

determine.

(2) The Committee shall keep a register, in such form as the Committee shall determine, of permits issued by the Committee under this Part.

(3) The Committee shall from time to time amend the register kept in accordance with subsection (2) in the following circumstances -

- (a) upon suspension, forfeiture or non-renewal of a permit, or
- (b) upon variation of the conditions of a permit, or
- (c) where a permit holder informs the Committee that the permit holder has ceased or will cease to exercise that permit, or
- (d) upon a change of name by a permit holder, or
- (e) upon a permit ceasing for any other reason to be valid.

Change of name of "al fresco" permit holder or adjacent premises.

12E. In the event of a change of name of a permit holder or of the name of the premises (if any) controlled by the permit holder adjacent to the specified area, the permit holder shall as soon as reasonably practicable notify the Committee and the Chief Officer of Police in writing thereof, and at the same time send the permit to the Committee for amendment.

Notices.

12F. (1) If the Committee decides to refuse to grant an application for a permit, the Committee shall give the applicant written notice stating -

- (a) the terms of, and the reasons for, the decision, and
- (b) particulars of the right of appeal under section 12H.

(2) If the Committee intends, in relation to a valid permit, to -

- (a) attach any condition or vary any condition previously attached, or
- (b) suspend or forfeit that permit,

("the decision") the Committee shall give the applicant ("A") written notice stating -

- (i) that the Committee intends to make the decision,
- (ii) the terms of, and the reasons for, the proposed decision,
- (iii) that A may, within a period of 14 days beginning on the date of the notice,

make written representations to the Committee in respect of the proposed decision, and

- (iv) particulars of the right of appeal which would be exercisable under section 12H if the Committee were to make the decision,

and the Committee shall consider any representations made in response to a notice given under this subsection before giving further consideration to the proposed decision.

(3) Where the Committee decides, having taken into account (where applicable) any representations, to make a decision in respect of which a right of appeal is conferred by section 12H, it shall give written notice to the person to whom the decision relates stating -

- (a) the terms of, and the reasons for, the decision, and
- (b) particulars of the right of appeal under section 12H.

Suspension, forfeiture or non-renewal of "al fresco" permit.

12G. Subject to section 12F(2), the Committee may suspend, or forfeit, a permit if it is satisfied that -

- (a) the permit holder has breached a condition attached to the permit,

- (b) the permit holder has been convicted of an offence under section 14,

or the Committee is otherwise satisfied in all the circumstances of the case that the permit should be suspended, or forfeited, as the case may be.

Appeals.

12H. (1) A person aggrieved by a decision of the Committee under this Part may appeal to the Royal Court ("**the Court**") against the decision.

(2) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality,
- (e) there was a material error as to the facts or as to the procedure.

(3) Subject to subsection (4), an appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the decision,

- (b) by summons served on the Committee stating the grounds and material facts on which the appellant relies.

(4) The Committee may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and on hearing the application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case, on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this section are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007.

(5) On an appeal under this section the Court may -

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section the Court may, on the application of the appellant or the Committee or of its own volition, and on

such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law."

11. After section 12H of the 1999 Ordinance (inserted pursuant to section 8), insert -

"PART IV
GENERAL AND MISCELLANEOUS".

12. In section 13(1) of the 1999 Ordinance -

(a) at the end of paragraph (a)(ii), delete "and", and for "."
at the end of paragraph (b) substitute ",", and

(b) after paragraph (b) insert –

"(c) in respect of an application for the grant of an
"al fresco" permit or an application to vary the
conditions attached to such a permit, £176 to
the Committee, and

(d) in respect of an application to renew an "al
fresco" permit, £176 to the Committee."

13. In section 14 of the 1999 Ordinance –

(a) in subsection (1), after "'al fresco" licence" insert "or
permit", and

- (b) in subsection (3), after ""al fresco" licence", in each place where it occurs, insert ", or permit, as the case may be,".

14. In section 18(1) of the 1999 Ordinance -

- (a) after the definition of ""**al fresco**" licensee", insert -

""**al fresco**" permit" means a permit granted under Part III,

"al fresco" permit holder" means the holder of an "al fresco" permit,"

- (b) in the definitions of "**applicant**" and "**application**", after "licence" insert "or permit, as the case may be",

- (c) after the definition of "**application**", insert -

""**the Committee**" means the States Committee for the Environment & Infrastructure,

"designated zone": see section 12A(1)(a),",

- (d) after the definition of "**the Ordinary Court**", insert -

""**permit**" means an "al fresco" permit,

"permit holder" means an "al fresco" permit holder," and

- (e) in the definition of "**specified area**", after "licence" insert "or permit".

Amendment of 2007 Law.

15. In the Table in Part B of the Schedule to the Fees, Charges and Penalties (Guernsey) Law, 2007, in the second column of the entry relating to the Public Highways (Temporary Closure) Ordinance, 1999, after the existing wording, add the following paragraph -

"Fees payable to Committee for the Environment & Infrastructure on application for grant, variation of conditions and renewal of al fresco permit".

Transitional provisions.

16. (1) For the avoidance of doubt, where an "al fresco" licence which was granted or renewed under the 1999 Ordinance prior to commencement of this Ordinance ("**the date of commencement**") remains valid at the date of commencement, such licence shall continue to be valid, unless suspended or forfeited under Part II of the 1999 Ordinance, until 31st December next following the date of commencement.

(2) The holder of such a licence as is mentioned in subsection (1) which is held in respect of an area of the public highway situated in a designated zone may, prior to its expiration in accordance with subsection (1), apply to the Committee in such form and manner as the Committee may determine for an "al fresco" permit in place of the said licence, and upon such application and payment of the appropriate fee the Committee may -

- (a) grant to the applicant an "al fresco" permit in similar terms to the said licence, subject to such conditions as may be prescribed under section 12A(1)(b), unless varied by the Committee under section 12B(6), and

subject to such other conditions as the Committee may consider necessary or expedient, or

(b) refuse to grant the applicant an "al fresco" permit.

(3) Any -

(a) "al fresco" permit which is granted pursuant to subsection (2)(a), or

(b) "al fresco" licence which is renewed pursuant to section 7(3) of the 1999 Ordinance on or before 31st December next following the date of commencement (or pursuant to section 7(3A),

shall be valid only until 30th September next following the date of such grant or renewal, as the case may be, and the fees prescribed in section 13 of the 1999 Ordinance for such grant or renewal shall be reduced accordingly.

Interpretation.

17. In this Ordinance -

"**the 1999 Ordinance**" means the Public Highways (Temporary Closure) Ordinance, 1999,

"**designated zone**" means an area designated as an "al fresco" zone for the purpose of Part III of the 1999 Ordinance.

Extent.

18. This Ordinance has effect in the Island of Guernsey.

Citation.

19. This Ordinance may be cited as the Public Highways (Temporary Closure) (Amendment) Ordinance, 2022.

Commencement.

20. This Ordinance shall come into force on the 1st October, 2022.