

BILLET D'ÉTAT No. XVI, 2015

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	<i>Page</i>
The Parochial Collection of Waste (Guernsey) Law, 2015	1
The Environmental Pollution (Guernsey) (Amendment) Law, 2015	38
The States (Reform) (Guernsey) Law, 2015	67
The Income Tax (Pension Amendments) (Guernsey) Ordinance, 2015	79
The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015	83
The Noise Abatement (Amendment) Ordinance, 2015	150
The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (Amendment) Ordinance, 2015	152
The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement) (No. 2) Ordinance, 2015	156
The Income Tax (Guernsey) (Approval of Agreement with Gibraltar) Ordinance, 2015	159

The Income Tax (Guernsey) (Approval of Agreement with Bulgaria) Ordinance, 2015	161
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Ordinances laid before the States

The Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015	162
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PROJET DE LOI

ENTITLED

The Parochial Collection of Waste (Guernsey) Law, 2015

ARRANGEMENT OF SECTIONS

PART I PARISH FUNCTIONS IN RELATION TO COLLECTION AND TRANSFER OF WASTE

1. Duty to collect and transfer waste from dwelling houses etc.
2. Power to admit business premises into Parish waste collection and transfer service.
3. Duty to have regard to Waste Management Plan.
4. Cost of collection and transfer of waste to specified sites.
5. Parish waste rate.
6. Douzaine to specify days and times of collection.
7. Private agreements not affected.

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

8. Waste Disposal Authority requirements in relation to waste put out for collection.
9. Duties on occupiers of premises.

PART III ENFORCEMENT

10. Warning notice.
11. Civil fixed penalty notice.
12. Level or amount of civil fixed penalties.
13. Powers to search receptacles and waste put out for collection.
14. Power of the Bailiff to grant warrant.
15. Offence relating to false or misleading information etc. or obstruction.
16. Authorised persons.

PART IV APPEALS

17. Appeals.

PART V GENERAL PROVISIONS

18. Delegation of Douzaine functions.
19. General provisions as to Ordinances, Orders and Regulations.
20. Service of notices etc.
21. Interpretation.
22. Repeals and revocation.
23. Consequential amendments.
24. Transitional provision.
25. Citation.
26. Commencement.

SCHEDULE: Consequential amendments.

PROJET DE LOI

ENTITLED

The Parochial Collection of Waste (Guernsey) Law, 2015

THE STATES, in pursuance of their Resolutions of the 12th of February, 2014^a and the 10th December, 2014^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I PARISH FUNCTIONS IN RELATION TO COLLECTION AND TRANSFER OF WASTE

Duty to collect and transfer waste from dwelling houses etc.

1. (1) The Douzaine of a Parish must, subject to subsection (3), make such arrangements as may be necessary for –

- (a) the regular collection of waste from dwelling houses and lodging houses in the Parish, and
- (b) the efficient transfer of such waste to sites specified in writing from time to time by the Waste Disposal Authority, for –
 - (i) recovery or disposal, or
 - (ii) the carrying out of any other operation in relation to such waste,

in accordance with such requirements as the Waste Disposal Authority shall from

^a Billet d'État No. II of 2014.

^b Article X of Billet d'État No. XXVI of 2014.

time to time specify in writing to the Douzaine.

(2) The requirements specified by the Waste Disposal Authority under subsection (1) may include, without limitation, requirements in relation to –

- (a) the frequency of regular collections of waste,
- (b) ensuring that arrangements made by the Douzaine of a Parish under subsection (1), including as to the equipment and methods to be used, are compatible with requirements specified by the Waste Disposal Authority under section 8,
- (c) the separation of any type or description of recyclable waste ("**waste stream**") from any other type or description of recyclable or other waste,
- (d) the separate collection and transfer to specified sites of such separate waste streams or other waste,

and the Waste Disposal Authority may specify different requirements for different types or descriptions of waste or waste streams.

(3) The duty under subsection (1) only extends to waste which meets all of the following requirements –

- (a) it is put out for collection in accordance with all the requirements under this Law, and
- (b) it is waste arising from the normal use of a dwelling house or lodging house as such.

Power to admit business premises into Parish waste collection and transfer service.

2. (1) The Douzaine of a Parish may, in its absolute discretion, agree with the owner of a business which operates from premises located in the

Parish to admit those premises into the Parish waste collection and transfer service where the Douzaine is satisfied that the waste that would be put out for collection by the business from those premises would be of –

- (a) a similar nature or composition, and
- (b) a similar or lower volume,

to that arising from the normal use of a typical dwelling house or lodging house as such.

(2) Where the Douzaine of a Parish admits business premises into the Parish waste collection and transfer service, the Douzaine must comply with the requirements of the Waste Disposal Authority specified under section 1(1) and (2) in relation to –

- (a) the regular collection of waste from those business premises, and
- (b) the efficient transfer of such waste to specified sites,

as if those premises were a dwelling house or a lodging house.

(3) For the avoidance of doubt, where the Douzaine of a Parish has admitted business premises into the Parish waste collection and transfer service the Douzaine is not obliged to collect and transfer waste from such premises unless–

- (a) the waste is put out for collection in accordance with all the requirements under this Law, and
- (b) the Douzaine is satisfied it is waste of a description falling within subsection (1).

(4) Where the Douzaine of a Parish agrees to admit business premises into the Parish waste collection and transfer service, it may agree with the owner of the business in question any terms and conditions of that agreement,

including the length of time such premises are admitted into the scheme, provided that such terms and conditions are consistent with any provision under this Law.

(5) Where the Douzaine of a Parish agrees to admit business premises into the Parish waste collection and transfer service –

(a) the Douzaine must notify the Waste Disposal Authority of –

- (i) the address of the business premises admitted,
- (ii) the name, address and e-mail address of the owner of the business with whom the agreement was made, and
- (iii) where specified in the agreement, the length of time the business premises are admitted into the Parish waste collection and transfer service,

within 21 days, starting with the date the agreement was made,

(b) the Douzaine must notify the Waste Disposal Authority of –

- (i) a change to any of the details in paragraph (a),
or
- (ii) the termination of an agreement entered into under subsection (1),

within 21 days of the Douzaine being notified, or otherwise becoming aware, of the same, and

(c) on receipt of any information under paragraphs (a) or

(b), the Waste Disposal Authority may request from the Douzaine such further information relating to the agreement in question as it reasonably considers necessary to facilitate the carrying out of its functions under this Law.

Duty to have regard to Waste Management Plan.

3. In carrying out its functions under this Law, the Douzaine of a Parish must have regard to the current Waste Management Plan.

Cost of collection and transfer of waste to specified sites.

4. The cost of arrangements for the collection and transfer of waste to specified sites under sections 1 and 2 including any administrative and incidental matters connected with the same is to be paid out of monies provided by the levying of a rate (the "**Parish waste rate**") in accordance with the provisions of this Law.

Parish waste rate.

5. (1) The Parish waste rate must be levied by the Douzaine of a Parish in respect of –

- (a) dwelling houses and lodging houses in the Parish, and
- (b) business premises in the Parish admitted into the Parish waste collection and transfer service under section 2.

(2) The States shall by Ordinance make such provision as they think fit in relation to the assessment and levying of a Parish waste rate by the Douzaine of a Parish and matters connected with or incidental to the same.

(3) Without prejudice to the generality of subsection (2), an Ordinance under this section may make provision for the following matters in relation to the assessment and levying of the Parish waste rate by the Douzaine of a Parish –

- (a) the persons liable to pay and the persons excepted or

exempted from liability including provision for a waiver or reduction of charges,

- (b) the basis on which, and the manner in which, the rate is to be calculated, assessed, approved and levied,
- (c) the times, and the periods in respect of which, the rate is to become due (including provision for levying on an annual, biannual or quarterly basis),
- (d) the authorisation of the levying of the rate by order of the Royal Court,
- (e) the administration, payment, collection and recovery of the rate and the enforcement of liabilities to pay it,
- (f) the levying of interest and penalties in the event of late or non-payment of the Parish waste rate including provision for amendment of any specified rate of interest by regulations of the Waste Disposal Authority, and
- (g) the making of assessments of the rate and the preparation of statements of account.

Douzaine to specify days and times of collection.

6. (1) The Douzaine of a Parish 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 day on which the collection of waste will take place in the Parish,
- (b) the hours between which waste may be put out for collection in the Parish, and

- (c) the consequences of putting waste out for collection other than on that day and between those hours.
- (2) Different days and hours may be specified for –
- (a) different parts of the Parish, or
 - (b) different types or descriptions of waste or waste streams.
- (3) In this section "**day**" means a period of 24 hours ending at midnight.

Private agreements not affected.

7. For the avoidance of doubt, the Douzaine of a Parish has power (and is deemed always to have had power) to enter into agreements with any person in respect of –

- (a) the collection and transfer of waste to sites for -
 - (i) recovery or disposal, or
 - (ii) the carrying out of any other operation in relation to such waste,

which the Douzaine is not required, or has not agreed, to collect and transfer to specified sites in accordance with sections 1 or 2, and
- (b) the levying of charges to cover the cost of such collection and transfer including any administrative and incidental matters connected with the same.

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 -

- (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,

- (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,

- (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.

(Guernsey) Law, 2004^f,

"flat" means a separate and self-contained set of premises constructed for the purposes of human habitation and forming part of a building from some other part of which it is divided horizontally,

"this Law" includes under any Ordinance, Order or regulations made under this Law or, for the avoidance of doubt, under any requirements specified under this Law,

"lodging house" means a dwelling place, other than a flat, which is occupied by more than one family or which is wholly or partly let in lodgings but excludes any premises, or part of any premises, which –

- (a) is not self-catering tourist accommodation, and
- (b) in respect of which there is in force a boarding permit granted under section 3 of the Tourist Law, 1948,

"notice" means notice in writing,

"notified" means notified in writing,

"Parish waste rate": see section 4,

"Parish waste collection and transfer service" means the regular collection of waste from dwelling houses, lodging houses and business premises in a Parish and the transfer of such waste to specified sites carried out in accordance with sections 1 and 2,

"Parochial Appeals Tribunal" means the Parochial Appeals

^f Ordres en Conseil Vol. XLIV (1), p. 274 as amended by Order in Council No. XIII of 2010 and the Environmental Pollution (Guernsey) (Amendment) Law, 2015, Recueil d'Ordonnances Tome XXIX, p. 406, Tome XXXI, p. 618, Tome XXXI, p. 660, Tome XXXII, p. 113, Ordinance No. XVIII of 2010 and No. V of 2011.

Tribunal established under the Parochial Administration Ordinance, 2013,

"police officer" means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

"Policy Council" means the States of Guernsey Policy Council,

"PPACE" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003,

"private sewer" and **"public sewer"** have the meanings in section 29(1) of the Sewerage (Guernsey) Law, 1974^g,

"receptacle" includes a holder for a receptacle,

"recyclable waste" means waste which is capable of being recycled or composted,

"representations period": see section 10(2)(e),

"recovery", where used in relation to waste, has the meaning in section 30(3) of the Environmental Pollution Law,

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"specified site" means a site specified in writing by the Waste Disposal Authority under section 1(1)(b),

"the States" means the States of Guernsey,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

^g Ordres en Conseil Vol. XXIV, p. 372 to which there are amendments not relevant to this Law.

enactment and having legislative effect,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^h,

"warning notice": see section 10(1),

"waste" has the meaning in section 73(5) of the Environmental Pollution Law except that it does not include –

- (a) effluent for which provision is made for disposal by public sewer or private sewer,
- (b) radioactive waste, or
- (c) any substance which is an explosive within the meaning of the Explosives (Guernsey) Law, 1905ⁱ,

"Waste Disposal Authority" means the Department of the States or other person from time to time designated as Waste Disposal Authority by Ordinance under section 29 of the Environmental Pollution Law,

"Waste Management Plan" has the meaning in section 31(3) of the Environmental Pollution Law,

"waste stream": see section 1(2)(c), and

"working day" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange

^h Ordres en Conseil Vol. XXXI, p. 278; for the current scale of fines see Recueil d'Ordonnances Tome XXXI, p. 542.

ⁱ Ordres en Conseil Vol. III, p. 414 and 473 as amended by Vol. V, p. 30, Vol. XV, p.11, Vol. XXIV, p. 250 and Vol. XXXIV p. 586.

(Guernsey) Law, 1958^j.

(2) In this Law the expressions "**dwelling house**" and "**lodging house**" include anything classified in property references B1.1, B1.2, B2.1, B2.2, B3.1, B3.2 and B4.2 (as the case may be) for the determination of property tax in accordance with the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007^k.

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

Repeals and revocation.

22. (1) The Parochial Collection of Refuse (Guernsey) Law, 2001^l, the Parochial Collection of Refuse (Guernsey) (Amendment) Ordinance, 2002^m and the Parochial Collection of Refuse (Guernsey) (Amendment) Ordinance, 2008ⁿ are repealed.

(2) Schedule 1 to the Environmental Pollution Law is repealed.

(3) The Refuse Disposal (Amendment) Ordinance, 1963^o is repealed.

^j Ordres en Conseil Vol. XVII, p. 384 as amended by Vol. XXIV, p. 84, Vol. XXXIV, p. 504 and Vol. XXXV(1), p. 367.

^k Recueil d'Ordonnances Tome XXXII, p. 504; Schedule 1, Part I to the Ordinance setting out the property references subject to property tax was substituted by Ordinance No. XXVII of 2013; Schedule 1, Part III (interpretation) is amended by Ordinance No. XLVIII of 2011 and Ordinance No. XIII of 2012, G.S.I. No. 54 of 2008, No. 109 of 2010, No. 40 of 2011 and No. 51 of 2013; there are other amendments not relevant to this Law.

^l Ordres en Conseil Vol. XLII (1), p. 256; as amended by Ordres en Conseil Vol. XLIV (1), p. 274, Recueil d'Ordonnances Tome XXIX, p. 93 and Tome XXXIII, p. 104. See also Order in Council No. X of 2006.

^m Recueil d'Ordonnances Tome XXIX, p. 93.

ⁿ Recueil d'Ordonnances Tome XXXIII, p. 104.

^o Recueil d'Ordonnances Tome XIII, p. 290.

- (4) The Collection of Refuse Order, 1964^P is revoked.

Consequential amendments.

23. (1) The amendments specified in the Schedule have effect.

(2) Subject to the provisions of the Schedule, a reference in an enactment or another document to the refuse rate (however worded) shall, unless the contrary intention appears, be construed as a reference to the Parish waste rate.

Transitional provision.

24. Any monies lawfully collected by or on behalf of the Douzaine of a Parish under the provisions of any enactment repealed by this Law may be applied by the Douzaine in contribution towards the Parish waste rate to be levied under this Law.

Citation.

25. This Law may be cited as the Parochial Collection of Waste (Guernsey) Law, 2015.

Commencement.

26. This Law shall come into force on the day appointed by Order of the Policy Council; and different dates may be appointed for different provisions and for different purposes.

^P G.S.I. No. 5 of 1964.

SCHEDULE

Section 23

CONSEQUENTIAL AMENDMENTS

Amendment of Refuse Disposal Ordinances.

1. (1) Section 6 (collection of refuse) of the Refuse Disposal Ordinance, 1959^q is repealed.

(2) Section 1(e) of the Refuse Disposal (Amendment) Ordinance, 1989^r is repealed.

Amendment of Parochial Taxation (Reserve Funds) (Guernsey) Law, 1997.

2. (1) The Parochial Taxation (Reserve Funds) (Guernsey) Law, 1997^s is amended as follows.

(2) In section 1(4)(b) (establishment and limits of reserve funds) for "the Refuse Laws" substitute "the Parochial Collection of Waste Law".

(3) In section 5(1) (interpretation and construction), for the definition of "**the Refuse Laws**" substitute –

"**the Parochial Collection of Waste Law**" means the Parochial Collection of Waste (Guernsey) Law, 2015 and any Ordinance, Order and regulations made under it,".

Amendment of Waste Control and Disposal (Duty of Care) Regulations, 2010.

3. In the first row of the first Column of the Schedule to the Waste

^q Recueil d'Ordonnances Tome XII, p. 97 as amended by Ordres en Conseil Vol. XXXI, p. 278, Recueil d'Ordonnances Tome XIII p. 290, Tome XIV, p. 328, Tome XXV, pp. 75, 97, 129 and 259, Tome XXVI, p. 430, Tome XXIX, p. 406 and Ordinance No. XVIII of 2010.

^r Recueil d'Ordonnances Tome XXV, p. 75.

^s Ordres en Conseil Vol. XXXVII, p. 168 as amended by Ordres en Conseil Vol. XLII (1), p. 256, Ordinance No. XVI of 2004 and No. XXVIII of 2011.

Control and Disposal (Duty of Care) Regulations, 2010^t, for "collection, transfer and disposal of refuse under the Parochial Collection of Refuse (Guernsey) Law, 2001" substitute "collection and transfer of waste under the Parochial Collection of Waste (Guernsey) Law, 2015".

Amendment of Parochial Administration Ordinance, 2013.

4. (1) Schedule 1 (the Parochial Appeals Tribunal) to the Parochial Administration Ordinance, 2013^u is amended as follows.

(2) In paragraph 1 (establishment and function of the Tribunal) –

(a) at the end of subparagraph (2)(b) omit the word "and", and

(b) after subparagraph (2)(c) add –

"and,

(d) the Parochial Collection of Waste (Guernsey) Law, 2015."

^t G.S.I. No. 45 of 2010.

^u Ordinance No. XL of 2013.

PROJET DE LOI

ENTITLED

The Environmental Pollution (Guernsey) (Amendment) Law, 2015

THE STATES, in pursuance of their Resolutions of the 1st November, 2012^a, the 12th February, 2014^b and the 10th December, 2014^c, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of the Environmental Pollution Law.

1. The Environmental Pollution (Guernsey) Law, 2004^d is amended as follows.

2. For each reference to "the Strategic and Corporate Plan" substitute "the States Strategic Plan".

3. For each reference to "Waste Disposal Plans", "Waste Disposal Plan" and ""**Waste Disposal Plan**"" substitute "Waste Management Plans", "Waste Management Plan" and ""**Waste Management Plan**"" respectively.

^a Article VI of Billet d'État No. XXI of 2012.

^b Billet d'État No. II of 2014.

^c Article X of Billet d'État No. XXVI of 2014.

^d Ordres en Conseil Vol. XLIV (1), p. 274 as amended by Order in Council No. XIII of 2010, Recueil d'Ordonnances Tome XXIX, p. 406, Tome XXXI, p. 618, Tome XXXI, p. 660, Tome XXXII, p. 113, Ordinance No. XVIII of 2010 and No. V of 2011. See also Ordres en Conseil Vol. XXII, p. 122 and Recueil d'Ordonnances Tome XXXI, p. 540.

4. For each reference to "public waste disposal site", "public waste disposal sites" or **"public waste disposal site"** substitute "public waste management site", "public waste management sites" and **"public waste management site"** respectively.

5. In section 9 (delegation of functions and powers) –

(a) for each reference to "instrument" substitute "authorisation", and

(b) at the end, add –

"(4) This section is without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991."

6. In section 21(2) (representations prior to refusal, variation, revocation or suspension), for "section 62" substitute "section 63".

7. For each reference to "the Public Services Department" in sections 25(3)(j) (right of appeal) and 44(1) (anti-pollution notices), substitute "the Director".

8. In section 25(7)(b) (quashing of decision) –

(a) delete "or the Public Services Department, as the case may be," , and

(b) for "have taken" substitute "has taken".

9. In section 30 (general functions of the Waste Disposal Authority) –

- (a) in subsection (1)(d), for "the disposal of waste" substitute "the recovery or disposal of waste",
- (b) in subsection (2)(a)(i), for "the deposit of waste" substitute "the recovery or disposal of waste",
- (c) in subsection (2)(a)(ii), for "sorting, treating and disposing of waste" substitute "storing, recovery or disposal of waste",
- (d) in subsection (2)(c), at the beginning, insert "without prejudice to the generality of paragraph (a)," and
- (e) at the end, add –

"(3) In this section and sections 31 to 32A –

- (a) "**disposal**" includes an operation set out in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November, 2008 on waste and repealing certain Directives, and
- (b) "**recovery**" in relation to waste –
 - (i) means any operation the principal result of which is waste serving a useful purpose by replacing other

materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in a plant or in the wider economy, and

- (ii) includes an operation set out in Annex II to Directive 2008/98/EC of the European Parliament and of the Council of 19 November, 2008 on waste and repealing certain Directives,

and, for the avoidance of doubt, "**recovery**" or "**disposal**" includes any sorting, processing or treating of waste carried out to effect such recovery or disposal."

10. In section 31 (formerly Waste Disposal Plans) –

- (a) in subsection (3) –

- (i) for each reference to "disposal" substitute "recovery or disposal",

- (ii) for paragraph (e) substitute –

"(e) the sites or facilities provided, managed, arranged, operated or funded by or on behalf of the Waste Disposal Authority where, subject to subsection (4), such recovery,

disposal or other waste management operations are to take place ("**public waste management sites**"),", and

(b) for paragraph (a) of subsection (4) substitute –

"(a) does not override the terms of any Development Plan, Subject Plan or Local Planning Brief for the time being in force under the Land Planning and Development (Guernsey) Law, 2005, or avoid the need for a planning inquiry to be held where required under that Law as respects any amendment to such a Plan or Brief intended to enable the implementation of that designation, and".

11. For section 32 (formerly public waste disposal sites) substitute –

"Public waste management sites.

32. (1) Subject to the following provisions of this section, it is the duty of the Waste Disposal Authority to make such arrangements as may be necessary for the reasonable provision of facilities for the reception and recovery or disposal of waste at one or more public waste management sites in accordance with the Waste Management Plan.

(2) For the avoidance of doubt, in discharging its duty under subsection (1) the Waste Disposal Authority need not make arrangements for the provision of facilities for the reception and recovery or disposal of waste other than in respect of the public waste management sites identified in the current Waste Management Plan.

(3) In discharging its duty under subsection (1) the Waste Disposal Authority is entitled –

- (a) to reserve particular sites for –
 - (i) particular descriptions of waste, or
 - (ii) use by particular categories of persons,
- (b) to specify limited times at which, and other conditions subject to which, waste or waste of any particular description will be accepted at any site or any particular site, and
- (c) to prescribe by regulations the charges or rates of charge and the basis on which charges must be paid as a precondition of its acceptance of waste, or of waste of any particular description,

and need not accept waste in respect of which all such requirements are not fulfilled.

(4) Regulations of the Waste Disposal Authority under subsection (3)(c) may for the avoidance of doubt and without prejudice to the generality of that subsection -

- (a) prescribe charges with a view to recovering the capital, operational and administrative

costs reasonably incurred by the States in providing facilities and services at all public waste management sites, and

- (b) apply a discount or surcharge to a charge calculated on the basis of paragraph (a), based on the position in the waste hierarchy of operations carried on at the site, with the highest charge being in respect of sites where disposal is carried on.

(5) In this section and in section 32A "**waste hierarchy**" means applying the following waste hierarchy as a priority order –

- (a) prevention,
- (b) preparing for re-use,
- (c) recycling,
- (d) other recovery, including energy recovery, and
- (e) disposal.

(6) In the exercise of its powers under subsections (3) and (4), and generally in its management of public waste management sites, the Waste Disposal Authority must –

- (a) have regard to the current Waste Management Plan,

- (b) comply with the conditions of any licence under this Law to which the operation is subject, and
- (c) comply with all other obligations imposed on it by or under this Law and any other enactment.

Charging for waste management services.

32A. (1) The States shall by Ordinance make such provision as they think fit in relation to the assessment and levying of charges for 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.

(2) For the avoidance of doubt, an Ordinance under subsection (1) may make provision for the levying of charges based on the capital, operational and administrative costs reasonably incurred by the Waste Disposal Authority and the States in providing all waste management services.

(3) Without prejudice to the generality of subsection (1), an Ordinance under this section may make provision for the following matters in relation to the assessment and levying of charges for waste management services –

- (a) the persons liable to pay and the persons excepted or exempted from liability including provision for a waiver or reduction of charges,

- (b) the basis on which, and the manner in which, the charges are to be calculated, assessed, approved and levied and the prescribing of the level of charges in accordance with the same including provision for –
 - (i) a charge by way of the sale of a receptacle at a prescribed wholesale or retail charge,
 - (ii) a charge by way of a combination of such charge and an additional, fixed charge for waste management services, and
 - (iii) a zero charge for any charge within subparagraph (i) or (ii),
- (c) the matters to be taken into account in prescribing a charge which may include the following in relation to a charge for a receptacle–
 - (i) the position in the waste hierarchy of the operations to which the waste, intended to be put into the receptacle, is to be subject, or
 - (ii) the principle that the person generating such waste should pay for its disposal or recovery,

- (d) the times, and the periods in respect of which, the charge is to become due (including provision for levying on an annual, biannual or quarterly basis),
- (e) the administration, payment, collection and recovery of the charges and the enforcement of liabilities to pay the same,
- (f) the levying of interest and penalties in the event of late or non-payment of the charges including provision for amendment of any specified rate of interest by regulations of the Waste Disposal Authority,
- (g) the making of assessments of the charges and the preparation of statements of account, and
- (h) the making of agreements or other arrangements by the Waste Disposal Authority in relation to the supply, distribution and retail sale of receptacles including arrangements in relation to –
 - (i) the supply of receptacles by the Waste Disposal Authority to retailers and payment for the same at the prescribed wholesale charge, or
 - (ii) the distribution and retail sale of

receptacles by retailers within the prescribed retail charge.

(4) An Ordinance under subsection (1) may make provision for the Waste Disposal Authority to amend or substitute by regulations the charges prescribed in the Ordinance; such amended or substituted charges must be calculated and assessed by the Waste Disposal Authority on the basis, and in the manner, set out in the Ordinance.

(5) Without prejudice to the generality of subsection (1), the waste management services provided by, or on behalf of, the Waste Disposal Authority include –

- (a) the reception, recovery or disposal or carrying on of other waste management services at public waste management sites of, or in relation to, waste collected by the Douzaine of any Parish pursuant to section 1 and 2 of the Parochial Collection of Waste (Guernsey) Law, 2015,
- (b) the transport of waste, by or on behalf of the Waste Disposal Authority, for recovery or disposal outside of Guernsey,
- (c) provision, by or on behalf of the Waste Disposal Authority, of receptacles, and
- (d) waste prevention and minimisation programmes (however named) run by or on behalf of the Waste Disposal Authority.

(6) In this section –

"charge" includes a charge by way of a prescribed wholesale or retail charge, or range of such charges, for a receptacle,

"receptacle" means a bag or other receptacle in which an occupier is required to put out waste for collection under the Parochial Collection of Waste (Guernsey) Law, 2015 and includes a holder for such a receptacle,

"retail" means any sale except a sale for resale in the course of a trade or business and related expressions are construed accordingly,

"prescribed" means prescribed by or under an Ordinance under this section,

"waste management services" is construed in accordance with subsections (1) and (5), and

"wholesale" means any sale for resale in the course of a trade or business and includes a sale by the Waste Disposal Authority to a retailer."

12. In section 33 (private waste disposal on land) –

(a) for the heading substitute –

"Private waste management on land."

(b) for subsection (2) substitute –

"(2) In considering an application for a licence, or the variation of the conditions of a licence, under this Law permitting –

- (a) the disposal of waste on land otherwise than at a public waste management site, or
- (b) the carrying out of an operation which might divert waste from a public waste management site identified under that Part of the Waste Management Plan detailing policy in relation to strategically important Waste Disposal Authority facilities,

the Director shall comply with the requirements in subsection (2A).

(2A) The requirements referred to in subsection (2) are that the Director -

- (a) shall not grant the application in contravention of subsection (1),
- (b) shall take into account, in addition to the matters set out in section 15, the current Waste Management Plan, and
- (c) shall consult, and have regard to any representations made by -

- (i) the Waste Disposal Authority,
- (ii) the Constables of the Parish concerned,
- (iii) the Environment Department,
- (iv) the Health and Social Services Department,
- (v) the Committee, and
- (vi) the Public Services Department,

provided that compliance with this subsection does not modify the effect of section 23.", and

- (c) in subsection (3), for "subsection (2)(c)(i)" substitute "subsection (2A)(c)(i)".

13. In section 40(2) (extended definition of pollution as respects water resources), for "sections 41 to 45" substitute "sections 41 to 45B".

14. In section 41(3) (general protection of water resources by Ordinance)–

- (a) in paragraph (e), for "the Public Services Department" substitute "the Director", and
- (b) in paragraph (f), for "the Public Services Department or any other Committee" substitute "the Director or

any Committee".

15. For section 42 substitute –

"Powers of the Director to take samples.

42. (1) The Director may at any reasonable time (or, in cases of emergency, at any time) subject to section 45A, on production if required of evidence of his office or authority, enter any premises for the purpose of taking from those premises samples of any water, effluent or other matter.

(2) When a sample is taken from any premises a duplicate of the sample shall, if the owner or occupier of the premises so requests, be left with him."

16. In section 44 (anti-pollution notices as respects the catchment area) –

(a) for the heading substitute –

"Anti-pollution notices."

(b) in subsection (1), for each reference to "pollution in the catchment area" substitute "water pollution", and

(c) in subsection (2), delete paragraph (b).

17. For section 45 (additional powers of Public Services Department officers etc. in the catchment area) substitute –

"Additional powers of the Director.

45. The Director may at any reasonable time (or, in cases of emergency,

at any time) subject to section 45A, on production if required of evidence of his office or authority, enter any premises for the purpose of—

- (a) making any inspection, examination and inquiry necessary to ascertain whether an offence under section 65 or 66 is being or has been committed, or
- (b) doing anything which the Director is authorised to do under section 62 or section 63 as applied by section 44(2).

Powers of entry.

45A (1) The powers of entry under sections 42(1) and 45 shall not be exercisable -

- (a) in the case of private premises (other than in a case of emergency), unless the Director gives to the owner or occupier of the premises concerned at least 24 hours' notice of his intention to enter the premises, or
- (b) in the case of premises used as a dwelling except under, and in accordance with—
 - (i) the authority of a warrant issued by the Bailiff under, and
 - (ii) the provisions of,

section 45B.

(2) The powers of entry in section 42(1) and 45 do not authorise the Director to enter any premises by force.

(3) In this section "**private premises**" means all premises other than premises -

- (a) which are wholly owned and occupied by the States,
- (b) which are used as a dwelling, or
- (c) which are, or have been (and the condition of which is reasonably believed to be such as to give rise to a significant risk of water pollution), used for the purposes of a prescribed operation.

(4) For the avoidance of doubt, in this section and in section 45B, "**premises used as a dwelling**" includes any part of premises used as a dwelling.

Warrant to enter premises.

45B. (1) If the Bailiff is satisfied by information on oath supplied by the Director that there are reasonable grounds for entering any premises for a purpose for which the Director has a power to enter premises under section 42 or 45, he may grant a warrant to the Director.

(2) A warrant granted under subsection (1) shall authorise the Director and any person authorised by the Director including, where he has reasonable cause to apprehend any serious obstruction in the carrying

out of his functions, a police officer, at any time within 28 days of the date of the grant –

- (a) to enter the premises, and
- (b) to exercise in respect of the premises (and any substances or articles or other things found in or on the dwelling), all such powers as he, and any person authorised by him, may exercise under section 42 or section 45.

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

(4) The first condition is that the premises are used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that the premises are not used as a dwelling and that each of the following applies to the occupier of the premises -

- (a) he has been informed of the decision to seek entry to the premises and of the reasons for that decision,
- (b) he has failed to allow entry to the premises on being requested to do so by the Director, and

- (c) he 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) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because -

- (a) it would defeat the object of entering the premises, or
- (b) entry is required as a matter of urgency.

(8) A person executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) A warrant issued under this section shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that any material evidence of water pollution would not be found if it were so executed.

(10) If the person who occupies premises in respect of which a warrant is issued under this section is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and

if that person is not present a copy of the warrant shall be left in a prominent place on the premises."

18. In section 67(7) (obstruction, misleading information etc.) –

- (a) at the end of paragraph (a) insert "or",
- (b) at the end of paragraph (b) for "and," substitute ".", and
- (c) delete paragraph (c).

19. Immediately before section 71 add –

"Exclusion of liability."

70A. (1) The Director is not -

- (a) liable in damages, or
- (b) personally liable in any civil proceedings,

in respect of anything done, or omitted to be done, in the discharge, or purported discharge, of his functions under this Law, unless the thing was done, or omitted to be done, in bad faith.

(2) Subsection (1) only applies to anything done, or omitted to be done, after the commencement of the provision under the Law under which the relevant function is conferred.

(3) Subsection (1) does not operate to prevent an award of damages in respect of an act or omission on the ground that it was unlawful

as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000."

20. For section 71 (service of notices and other documents) substitute –

"Service of notices and other documents."

71. (1) Any notice or other document required or authorised to be served under this Law may be served –

- (a) on an individual, by addressing it to him, and either delivering it to him personally or leaving it at or sending it by post or transmitting it to his usual or last known place of abode,
- (b) on a body corporate, by addressing it to that body, and leaving it at or sending it by post or transmitting it to–
 - (i) its registered office (wherever situated), or
 - (ii) if its registered office is not in Guernsey, its principal or last known principal place of business in Guernsey,
- (c) on an unincorporated body, by addressing it to the secretary or clerk to that body, or in the case of a partnership to any partner, and leaving it at or sending it by post or

transmitting it to the principal or last known principal office or place of business of that body.

(2) If a notice or document is required or authorised under this Law to be served on the owner or on the occupier of, or on a person having an interest in, 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 owner of, the occupier of, or the person having the relevant interest in, 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 served on any one of two or more joint owners of premises is deemed to have been served on all of those joint owners, except where this Law specifically requires that the notice be served on each of them.

(4) A document required or authorised by or under this Law to be served on the Director, or on any committee of the States, may be served by addressing it to the Director, or to that committee as appropriate, and leaving it at or sending it by post or transmitting it to the principal offices of the Director or committee as appropriate.

(5) In subsections (1) to (4) –

- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
- (b) the expression "**transmitting**" means transmitting 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 shall be regarded as served when it is received.

(6) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served –

- (a) by being published by the Director in such manner and for such period as he thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

and a document served under this subsection is sufficiently served if addressed to the person for whom it is intended.

(7) Despite the provisions of subsections (1) to (6) or any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Director under or for the purposes of the Law shall be deemed to have been given or served until it is received.

(8) A document which is served by sending it through the post is deemed to have been served, unless it is returned to the sender -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting, or

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(9) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section "**document**" does not include a summons.

(11) This section is subject to any different or alternative provision made by Ordinance in respect of the service of compliance notices; but both this section and any such Ordinance are without prejudice to the validity of any other method of service by which a notice or other document is in fact received by its addressee."

21. In section 73 (interpretation) –

(a) in subsection (5) –

- (i) insert the following definitions in the appropriate places -

"the Bailiff" includes the Deputy Bailiff and any person appointed as Juge-Délégué, Lieutenant Bailiff or as a Judge of the Royal Court, ",

"committee of the States" includes any department, council or committee of the States (however named), ",

"police officer" means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, ",

"working day" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958", ".

- (ii) delete the definition of "**fax**",

- (iii) for the definition of "**States**" substitute -

"the States" means the States of Guernsey, ",

- (iv) for the definition of "**Strategic and Corporate Plan**" substitute –

"States Strategic Plan" means -

- (a) the States Strategic Plan 2013 to 2017 as set out in Billet d'État No. VI of 2013, or

- (b) any policy or plan, other than the States Strategic Plan, (however named) adopted by the States and currently in force which replaced the States Strategic Plan,

in each case as from time to time amended or replaced,"

- (v) in the definition of "**Waste Disposal Authority**" after "means the" insert "person or",

- (b) for subsection (8) substitute –

"(8) Any reference in this Law to an enactment, instrument or Community provision (within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994) is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied."

Interpretation.

22. (1) In this Law -

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

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

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

enactment and having legislative effect.

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

Transitional provisions and savings.

23. (1) The current Waste Disposal Plan in force immediately before this Law comes into force shall –

- (a) continue in effect, subject to this section, as it had effect immediately before that commencement,
- (b) be deemed to be the current Waste Management Plan, and
- (c) be construed, unless the contrary intention appears, as though references in it to a public waste disposal site, public waste disposal and other waste management sites provided, managed, arranged, operated or funded by or on behalf of the Waste Disposal Authority or to public waste management and disposal sites (in each case however worded) are to public waste management sites,

and for the avoidance of doubt, no amendment made by this Law to the 2004 Law affects the validity of that Plan.

(2) A reference, however expressed, in any enactment or other document to –

- (a) the current Waste Disposal Plan shall be construed, unless the contrary intention appears, as a reference to the current Waste Management Plan, and
- (b) a public waste disposal site shall be construed, unless the contrary intention appears, as a reference to a public waste management site.

Amendment to the Competition (Guernsey) Ordinance, 2012.

24. (1) The Competition (Guernsey) Ordinance, 2012^e is amended as follows.

(2) After section 56(2)(e) (non-application of Ordinance to States and statutory bodies; and other exemptions) add the following paragraphs –

- "(ea) any matter in respect of which provision may be made by Ordinance under section 32A of the Environmental Pollution (Guernsey) Law, 2004,
- (eb) any conduct or agreement to the extent to which it is engaged in or entered into to ensure or facilitate compliance with the requirement under the Parochial Collection of Waste (Guernsey) Law, 2015 to put out waste for collection in the receptacles specified by notice under that Law; and in this paragraph "**receptacle**" and "**waste**" have the meanings in that Law, "

^e No. XXXI of 2012; as amended by Ordinance No. IV of 2014.

Consequential amendments.

25. (1) In regulation 1(b)(ii) of the Environmental Pollution (Public Register) Regulations, 2010^f, for "section 33(2)(c)" substitute "section 33(2A)(c)".

(2) For each reference to "**public waste disposal site**" in section 20 of the Animal Welfare (Guernsey) Ordinance, 2012^g substitute "**public waste management site**".

Citation.

26. This Law may be cited as the Environmental Pollution (Guernsey) (Amendment) Law, 2015.

Commencement.

27. (1) This Law shall come into force on the day appointed by Order of the States of Guernsey Public Services Department; and any such order may -

- (a) appoint different dates for different provisions of this Law and for different purposes, and
- (b) contain saving and transitional provisions.

^f G.S.I No. 52 of 2010.

^g Ordinance No. 3 of 2012 as amended by G.S.I. No. 32 of 2014.

PROJET DE LOI

ENTITLED

The States (Reform) (Guernsey) Law, 2015

THE STATES, in pursuance of their Resolutions of the 25th June, 2015^a and the 9th July, 2015^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

General Election: 2016.

1. A person elected to the office of People's Deputy -
 - (a) at the General Election of People's Deputies due to take place on 27th April 2016, or
 - (b) at any election under Article 29(1) of the Reform (Guernsey) Law, 1948^c to fill any vacancy not filled at that General Election,

^a Billet d'État No. XI of 2015.

^b Billet d'État No. XII of 2015.

^c Ordres en Conseil Vol. XIII, p. 288; Vol. XIV, p. 407; Vol. XV, p. 279; Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, pp. 84 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, p. 164; Vol. XXXII, p. 41; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, pp. 150 and 295; Order in Council No. XIII of 2003; No. III of 2004; Nos. II and XX of 2007; Nos. XIII and XXII of 2008; No. VII of 2010; No. II of 2012; also amended by Ordinance No. XXXIII of 2003; No. XXVI of 2008; No. XXXII of 2011.

shall retire from office on 30th June 2020, despite Article 29(1) of the Reform (Guernsey) Law, 1948.

Performance of functions by members of Committees.

2. (1) Subject to subsection (4), a Committee may arrange for any of its functions to be performed in its name by any one or more members of that Committee.

(2) A function performed by a member of a Committee pursuant to an arrangement made under this section is for all purposes performed by the Committee concerned; and every decision taken or other thing done by a member of a Committee pursuant to such an arrangement has the same effect as if taken or done at a quorate meeting of the Committee concerned.

(3) An arrangement under this section for the performance of a function by a member of a Committee -

(a) may be varied or terminated at any time by the Committee concerned, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and

(b) does not prevent the performance of the function by the Committee concerned whilst the arrangement subsists.

(4) This section does not empower a Committee to arrange for any legislative function to be performed by a member of that Committee.

(5) This section -

- (a) is not to be construed as impliedly invalidating anything done in conformity with any other enactment or rule of law, either before or after this section comes into force, and
- (b) does not permit the making of an arrangement which would clearly be inconsistent with the intention of the function concerned.

(6) The power created by this section is exercisable by a Committee in addition to any other power of the Committee to arrange for any of its functions to be performed in its name by any other person, including any power exercisable under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^d.

Performance of functions by other Committees.

3. (1) Subject to subsection (5) a Committee ("**Committee A**") may, by regulations made jointly with another committee ("**Committee B**"), arrange for any of its functions to be performed by Committee B in the name of Committee B.

(2) Unless regulations under subsection (1) provide otherwise -

- (a) a function performed, and
- (b) every decision taken, or other thing done,

by Committee B pursuant to an arrangement made under this section have the same effect as if performed, taken or done at a quorate meeting of Committee A.

^d Ordres en Conseil Vol. XXXIII, p. 478.

(3) For the avoidance of doubt, unless regulations under subsection (1) provide otherwise, Committee B may arrange for any functions under those regulations to be performed -

- (a) by an officer responsible to Committee B under section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991, or
- (b) by any one or more members of Committee B under section 1.

(4) An arrangement under this section -

- (a) may be varied or terminated at any time by further regulations made jointly by Committee A and Committee B, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and
- (b) unless regulations under subsection (1) provide otherwise, does not prevent the performance of the function by Committee A whilst the arrangement subsists.

(5) This section does not empower Committee A to arrange for any legislative function to be performed by Committee B.

(6) This section -

- (a) is not to be construed as impliedly invalidating anything done in conformity with any other enactment

or rule of law, either before or after this section comes into force, and

- (b) does not permit the making of an arrangement which would clearly be inconsistent with the intention of the function concerned.

Regulations.

- 4. (1) Regulations under this Law -
 - (a) may be amended or repealed by subsequent regulations hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation, provision making consequential amendments to this Law and any other enactment.
- (2) Any power to make regulations under this Law 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 prescribed conditions.

(3) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Amendment of Reform (Guernsey) Law, 1948.

5. (1) In the Reform (Guernsey) Law, 1948 -

- (a) in Article 1(1)(c), for "Forty-five" substitute "Thirty-eight",
- (b) in Article 4(2)(f), for "forty-five" substitute "thirty-eight",
- (c) Article 8(b) is repealed,
- (d) in Article 17 -
 - (i) in paragraph (2)(a), the words "or has,

subsequently to such election, ceased to possess either of the first two qualifications required by that Article," are repealed, and

(ii) in paragraph (3) -

(A) the words "is under a legal disability or" are repealed, and

(B) for the words "in either of which cases" substitute "in which case",

(e) in Article 27 –

(i) paragraph (1)(b) is repealed, and

(ii) in paragraph (4) the words "or is subject to any legal disability" are repealed,

(f) immediately after Article 27A, insert the following Article –

"Abolition of mental incapacity to vote.

27B. Any rule of law which provides that a person is subject to a legal incapacity to vote by reason of his or her mental state is abolished.",

(g) in Article 29

(i) in paragraph (1) -

(A) for "2000", substitute "2020",

(B) for "April" wherever appearing, substitute "June", and

(C) for "May" substitute "July",

(ii) in paragraph (2), immediately after the words "the four year term then current", insert "or, in the case of the General Election held on the 27th day of April, 2016, until the 30th day of June, 2020",

(h) Article 42 is repealed,

(i) in Article 49, the definition of "Legal disability" is repealed,

(j) in Article 66 -

(i) in paragraph (2), for "and, subject to the provisions of the next succeeding paragraph, to transmit the same to the States for the consideration and decision of the States." substitute -

"and to transmit the same -

(a) to the States for consideration and decision of the States, or

(b) where the Policy and Resources Committee is

of opinion that the immediate or early enactment thereof is necessary or expedient in the public interest under Article 66A, to the Policy and Resources Committee for consideration and order of that Committee.",

(ii) paragraphs (3) and (4) are repealed, and

(k) immediately after Article 66 insert the following Article -

"Power of Policy and Resources Committee to enact Ordinances.

66A. (1) Where, in the case of any draft Ordinance transmitted under paragraph (2)(b) of Article 66, the Policy and Resources Committee is of opinion that the immediate or early enactment thereof is necessary or expedient in the public interest, the Policy and Resources Committee shall have power to order that the same shall be operative either immediately or upon such then future date as it shall prescribe and thereupon the Ordinance shall have effect accordingly:

PROVIDED that every Ordinance coming into effect by virtue of this paragraph shall be laid before the States as soon as may be after the making thereof in such manner as the States may, by general resolution, from time to time direct and if, at the Meeting of the States in the course of which any Ordinance made by the Policy and Resources Committee is laid before them or at the next subsequent Meeting, the States resolve that the Ordinance be annulled, the Ordinance shall cease to have effect but without prejudice to anything previously done thereunder or to the making by the Policy and Resources Committee of any new Ordinance.

(2) For the purpose or removing doubts, it is hereby

declared that on an Ordinance ceasing to have effect by virtue of a Resolution of the States under the proviso to paragraph (1) of this Article, any other Ordinance which was modified or extended or repealed in whole or in part by the first-mentioned Ordinance shall thenceforth have effect, notwithstanding such modification, extension or repeal as though such modification, extension or repeal had not been effected.

(3) In paragraph (2)(b) of Article 66 and in this Article, **"the Policy and Resources Committee"** means the States Policy and Resources Committee."

(2) An Ordinance made under paragraph (3) of Article 66 of the Reform (Guernsey) Law, 1948, which is in force immediately before subsection (1) comes into force, shall remain in force as if made under paragraph (1) of Article 66A of that Law.

Amendment of States Committees (Constitution and Amendment) (Guernsey) Law, 1991.

6. Immediately after section 1(4) of the States Committees (Constitution and Amendment) (Guernsey) Law, 1991^e, insert the following subsection -

"(5) For the avoidance of any doubt and subject to subsection (2), a Resolution under subsection (1) or under any relevant enactment may include provision that a committee's membership shall consist of members, the majority or a minority of whom are not elected members of the States; provided that no person shall be elected or appointed to the office of President of a committee, unless the person is an elected member of the States."

^e Ordres en Conseil Vol. XXXIII, p. 471.

Interpretation.

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

"Committee" means any department, authority, board, committee, council or other like body (however denominated) of the States constituted by a Resolution or Law approved by the States,

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

"function" includes every power and duty which is or may be given to or imposed on a Committee, whether by an enactment, resolution of the States, rule of law, custom or otherwise,

"legislative function" means a power to make any Ordinance, regulations, rules, order, scheme or other instrument of a legislative character,

"a member of a Committee" includes every member of a Committee, whether or not elected, and

"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.

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

Citation.

8. This Law may be cited as the States (Reform) (Guernsey) Law, 2015.

Commencement.

9. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

The Income Tax (Pension Amendments) (Guernsey) Ordinance, 2015

THE STATES, in pursuance of their Resolution of the 30th September, 2015^a, and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975^b and all other powers enabling them in that behalf, hereby order:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended, is further amended as follows.

2. After section 17(2) insert the following subsection -

"(3) In this section, and for the avoidance of doubt, the expression "income" includes a lump sum which arises in commutation of or in lieu of a pension which would otherwise have been payable to the individual to whom the lump sum is paid."

3. After section 40(kk) insert the following paragraph -

"(ll) a lump sum -

(i) which is paid out of or under the provisions of a pension scheme, annuity scheme or annuity trust scheme, being a scheme which, in the opinion of the Director of Income Tax -

(A) is situated in a place outside Guernsey,

(B) is approved or exempted by the

^a Article ** of Billet d'État No. ** of 2015.

^b Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

competent authority in that place under the relevant provisions of the laws relating to income tax there, and

- (C) provides retirement or other benefits of a nature similar to a scheme which may be approved under section 150 or 157A,
- (ii) to the extent that it does not, together with all other lump sum payments made from the scheme to or in respect of the individual, exceed 30%, or such other percentage as the Department may prescribe by regulation, of the value of the fund accumulated under the scheme and attributable to the individual to or in respect of whom the lump sum is paid, the valuation being made immediately before the time of the making of the payment, and
- (iii) which, or part of which, arises in commutation of or in lieu of a pension which would otherwise have been payable to the individual to whom the lump sum is paid out of or under the provisions of that scheme,

being a payment which would otherwise be taxable under section 17."

4. In section 157A(2)(b) after the words "the provisions of subsection (3)" insert "and subsection (12)".

5. After section 157A(11) insert the following subsections -

"(12) Where a payment is or has at any time been made on behalf of an individual into a retirement annuity scheme or retirement annuity trust scheme approved by the Director of Income Tax under this

section from -

- (a) a superannuation fund established in Guernsey which has not been approved or deemed to have been approved by the Director of Income Tax in accordance with section 150(2) or (3) and the income of which is exempt from income tax by virtue of section 40(o), or
- (b) a pension scheme, annuity scheme or annuity trust scheme situated in a place outside Guernsey and described in section 157B(1)(e),

then, provided that the payment from that scheme, or the funds derived from that payment, can be separately identified, and without prejudice to any other retirement or other benefits specified by the rules of the retirement annuity scheme or retirement annuity trust scheme into which the payment was made, the payment or funds may be used, paid, transferred or expended in any manner or for any purpose allowed by -

- (i) the rules of the superannuation fund referred to in paragraph (a), or, as the case may be,
- (ii) the relevant provisions of the laws of the place in which the scheme referred to in paragraph (b) is situated,

as those rules or provisions, as the case may be, have effect at the time of such use, payment, transfer or expenditure.

(13) Subsection (12) is without prejudice to section 153(6) or 157B(2).".

Citation.

6. This Ordinance may be cited as the Income Tax (Pension

Amendments) (Guernsey) Ordinance, 2015.

Commencement.

7. This Ordinance shall come into force on the 2nd October, 2015.

The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015

ARRANGEMENT OF SECTIONS

PART I REGISTRATION, ETC.

Prohibition of unregistered child minders, day care providers and premises

1. Child minders and premises to be registered.
2. Day care providers and premises to be registered.

Registration

3. Applications for registration.
4. Circumstances in which applications must be refused.
5. Registrations and certificates.
6. Registration conditions.
7. Public register to be kept.

Suspension, revocation, variation and improvement notices.

8. Suspension, revocation or variation by registration officer.
9. Registered person may apply for variation.
10. Procedure for refusal, suspension, revocation or variation of registration.
11. Improvement notices.

Duties of registered child minders and registered day care providers

12. Duties of registered persons.
13. Replacement certificates.
14. Surrender of certificates.

PART II
REVIEWS AND APPEALS

- 15. Review of registration decisions and improvement notices.
- 16. Appeal to relevant Court.

PART III
EMERGENCY PROTECTION OF CHILDREN

- 17. Emergency suspension or variation by Department.
- 18. Court may order immediate suspension, revocation or variation.

PART IV
ADMINISTRATION, ENFORCEMENT AND PENALTIES

Registration officer and authorised officers

- 19. Department to appoint registration officer and authorised officers.

Powers of entry, search, etc.

- 20. General powers of entry, search, etc.
- 21. Safeguards for general powers of entry, search, etc.
- 22. Entry to dwellings restricted.

Warrant to enter dwellings, etc.

- 23. Warrants for entry, etc.
- 24. Procedure for search warrants.
- 25. Requirements of search warrants.
- 26. Execution of warrants.
- 27. Safeguards for warranted entry, search, etc.
- 28. Endorsement, return and inspection of warrants.

Miscellaneous powers

- 29. Persons exercising powers may bring other persons, etc.
- 30. Storage and disposal of seized property.
- 31. Other powers not limited.

Obstruction, penalties, etc.

- 32. Obstruction, etc. or provision of false, deceptive or misleading information.
- 33. Penalties and proceedings.
- 34. Court may order forfeitures or suspension.

PART V

GENERAL PROVISIONS

- 35. Delegations by Department or registration officer.
- 36. Service of documents.
- 37. Confidentiality.
- 38. Protection from self-incrimination.
- 39. Regulations may amend period for notices, applications, etc.
- 40. General provisions as to regulations.
- 41. Interpretation.
- 42. Index of defined expressions.
- 43. Repeals and revocations.
- 44. Transitional provisions.
- 45. Extent and modifications.
- 46. Citation.
- 47. Commencement.

- SCHEDULE 1 Provisions for storage and disposal of seized property.
- SCHEDULE 2 Transitional provisions.

The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015

THE STATES, in pursuance of their Resolution of the 11th December, 2013^a, and in exercise of the powers conferred on them by sections 108, 120 and 123 of the Children (Guernsey and Alderney) Law, 2008^b and section 1 of the Alderney (Application of Legislation) Law, 1948^c, and all other powers enabling them in that behalf, hereby order:-

PART I REGISTRATION, ETC.

Prohibition of unregistered child minders, day care providers and premises

Child minders and premises to be registered.

1. (1) A person is guilty of an offence who provides child minding services on any premises unless –

- (a) the person is a registered child minder, and
- (b) the premises are registered premises or exempt premises.

(2) Nothing in subsection (1) applies to an exempt minder

^a Article XIII of Billet d'État No. XXIV of 2013.

^b Order in Council No. XIV of 2009 as amended by Ordinances No. XI and XLVIII of 2009.

^c Ordres en Conseil Vol. XIII, p. 448; as amended by Vol. XVI, pp. 124 and 126; Vol. XXIV, p. 210; Vol. XXIX, p. 299; Vol. XXX, p. 224; Vol. XXXVII, p. 251 and Recueil d'Ordonnances Tome XXIX, p. 406 and Tome XXXII, p. 504.

providing child minding services in respect of any child.

(3) In this section –

"exempt minder", in relation to any child, means –

- (a) a person who is a parent of, or who has parental responsibility for, the child,
- (b) a person who is married to, is a civil partner of, or is cohabiting with, a person described in paragraph (a),
- (c) a close relative of the child,
- (d) a person who is a Departmental foster carer for the child, within the meaning of section 20(3) of the Children Law,
- (e) a person who is employed as a carer (for example, a nanny or babysitter) for the child by a person mentioned in paragraph (a), and is looking after that child wholly or mainly in the home of the employer, or
- (f) any other prescribed person, and

"registered child minder" means a child minder registered under section 5.

Day care providers and premises to be registered.

2. (1) A person is guilty of an offence who provides day care services on any premises unless –

- (a) the person –
 - (i) is a registered day care provider, or
 - (ii) is providing those services on behalf of, and under the supervision of, another person who is a registered day care provider, and
- (b) the premises are registered premises or exempt premises.

(2) Nothing in subsection (1) applies to an exempt provider providing day care services in respect of any child.

(3) In this section –

"exempt provider" means –

- (a) a person who is a parent of, or who has parental responsibility for, the child,
- (b) a person who is married to, is a civil partner of, or is cohabiting with, a person described in paragraph (a),
- (c) a close relative of the child,
- (d) a school (within the meaning of section 1(1) of the

Education (Guernsey) Law, 1970^d) to the extent that it looks after children aged 4 years or older wholly or mainly for the purpose of the children's education, or

- (e) any other prescribed person, and

"registered day care provider" means a day care provider registered under section 5.

Registration

Applications for registration.

3. (1) Any individual may apply to the registration officer for -
 - (a) registration as a child minder, and
 - (b) registration of any premises as premises on which the person is authorised to provide child minding services.
- (2) Any individual or body corporate may apply to the registration officer for –
 - (a) registration as a day care provider, and
 - (b) registration of any premises as premises on which the person is authorised to provide day care services.

^d Ordres en Conseil Vol. XXII, p.318; as amended by Vol. XXVI, p. 107, Vol. XXVII, p. 347; Vol. XXVIII, p. 181; Vol. XXX, p. 179; Vol. XXXI, pp. 168 and 278, and Vol. XXXII, p. 144; Order in Council No. XVII of 2009; Recueil d'Ordonnances Tome XXXIII, pp. 98 and 129.

- (3) An application under this section –
 - (a) must include the prescribed fee,
 - (b) must be made in the form and manner prescribed by Regulations or required by the registration officer, and
 - (c) must include any information prescribed by Regulations or required by the registration officer, which may include, for example, any personal data concerning any individual –
 - (i) applying for registration,
 - (ii) looking after the children, or
 - (iii) living, working, or regularly or frequently present at the premises sought to be registered.
- (4) An application for renewal of any registration must be made –
 - (a) no later than the date which is 3 months before the day on which the registration is due to expire, or
 - (b) within any further period allowed by the registration officer in that officer's sole discretion.

Circumstances in which applications must be refused.

4. (1) An application for registration must be refused if the registration officer is satisfied that –

- (a) the applicant or any person looking after the children does not satisfy a registration condition, or is otherwise not a fit and proper person,
 - (b) any person living, working or regularly or frequently present at the premises does not satisfy a registration condition, or is otherwise not a fit and proper person,
 - (c) the premises sought to be registered do not satisfy a registration condition, or are otherwise not adequate,
 - (d) any equipment, facilities or vehicles do not satisfy a registration condition, or are otherwise not adequate.
- (2) An application for registration must also be refused if –
- (a) the information provided is insufficient to satisfy the registration officer that the services provided by the applicant would comply with registration conditions or that the applicant would comply with the provisions of this Ordinance, or
 - (b) any information requested by the registration officer is not provided within a reasonable time.
- (3) A refusal under this section must be made in accordance with section 10.

Registrations and certificates.

5. (1) On receipt of an application made in accordance with section 3 and payment of any fee prescribed for the grant of registration, the registration officer must, subject to section 4 –

- (a) register the applicant as a child minder or (as the case may require) day care provider, and
- (b) register the premises sought to be registered as premises on which the services are authorised to be provided by the person registered as a child minder or day care provider.

(2) A registration is subject to registration conditions and cannot be transferred to another person.

(3) Upon registration, the registration officer must issue a certificate of registration to the registered person, which includes the following information –

- (a) the name, principal address and date of birth or (in the case of a body corporate) date of incorporation, of the registered person,
- (b) whether the person is registered as a child minder or day care provider,
- (c) the address of the registered premises on which that person is authorised to provide child minding services or (as the case may be) day care services,

- (d) the registration conditions or information on where these conditions may be viewed,
- (e) the date of issue, and
- (f) the date of expiry of the registration.

(4) A registered person to whom a certificate is issued must prominently display at the registered premises a true copy of the certificate at all times when the services are being provided on those premises.

(5) A registration expires on the second anniversary of the date of issue of the certificate, except as otherwise provided by this Ordinance.

(6) A person who fails to comply with or contravenes subsection (4) is guilty of an offence.

Registration conditions.

6. (1) Registration conditions may be made or issued for the purposes of this Ordinance –

- (a) by Regulations,
- (b) by publication by the registration officer in any manner and form the officer considers appropriate, or
- (c) in the case of registration conditions that are applicable only to a specific registration, by the registration officer specifying the condition in the relevant certificate.

(2) Without limiting the generality of subsection (1), registration conditions may include any conditions, requirements, standards or framework considered appropriate to –

- (a) ensure or safeguard the health or welfare of children,
- (b) ensure or safeguard the quality of education or care of children, or
- (c) minimise the risks to children.

(3) Without limiting the generality of subsection (1) or (2), examples of registration conditions include conditions relating to –

- (a) the number and description of children who may be looked after on the registered premises,
- (b) the persons who are to look after those children,
- (c) the persons who may live, work or otherwise be present in the registered premises at any time,
- (d) the registered premises,
- (e) the equipment, facilities or vehicles,
- (f) the manner in which the services are to be provided,
- (g) the implementation of any quality or other framework,
- (h) the activities involving the children, or

- (i) insurance.

(4) Registration conditions may refer to any guideline, standard, framework or regulatory requirement, made, issued or enacted, in Guernsey, Alderney or elsewhere, and any such reference, unless otherwise specified, takes effect as a reference to the guideline, standard, framework or regulatory requirement as amended, updated, revised, re-issued or re-enacted from time to time.

(5) For the purpose of determining whether or not a registration condition is satisfied or has been breached, the registration officer may at any time—

- (a) seek and receive any information from any person (whether in Guernsey, Alderney or elsewhere) as the officer considers appropriate, and
- (b) take into account any information obtained from any source.

Public register to be kept.

7. (1) The registration officer –

- (a) must maintain a register of child minders, day care providers and premises for the purposes of this Ordinance, and
- (b) must make available to the public, in a form and manner the registration officer considers appropriate, any information prescribed by Regulations.

(2) The registration officer may provide to any person a copy of the register upon payment of a reasonable charge determined by the officer.

Suspension, revocation, variation and improvement notices

Suspension, revocation or variation by registration officer.

8. The registration officer may suspend, revoke or vary a registration in accordance with section 10 if the officer believes, on reasonable grounds, that –

- (a) the registration was granted on the basis of false, deceptive, misleading or incomplete information,
- (b) the registered person has failed to pay any fee or charge required to be paid under this Ordinance,
- (c) the registered person has, without reasonable excuse, failed to comply with any direction in an improvement notice,
- (d) a registration condition has been breached or is no longer satisfied,
- (e) a registration condition is likely to be breached unless the registration were suspended, revoked or varied,
- (f) the services provided by the registered person are inadequate, having regard to the needs of the children concerned, or
- (g) the registered premises or the equipment, facilities or vehicles are inadequate, having regard to the needs of the children concerned.

Registered person may apply for variation.

9. (1) The registration officer may vary a registration on the application of the registered person.

(2) An application –

- (a) must include the prescribed fee, and
- (b) must be made in the form and manner prescribed by Regulations or required by the registration officer.

(3) The registration officer may refuse an application in accordance with section 10.

Procedure for refusal, suspension, revocation or variation of registration.

10. (1) This section applies where the registration officer proposes to make –

- (a) a decision to refuse an application for registration under section 4,
- (b) a decision to suspend, revoke or vary a registration under section 8, or
- (c) a decision to refuse an application to vary a registration under section 9.

(2) Where this section applies, the registration officer must give the applicant or (as the case may be) the registered person, written notice of —

- (a) the proposed decision and the reasons for it, and

- (b) the date (being 14 days or more after the date of the notice) by which a written submission may be made to the registration officer in respect of the proposed decision.

(3) The applicant or registered person may write to the registration officer with any submission that that person wishes to make (including any additional information) –

- (a) on or before the date specified in that notice under subsection (2)(b), or
- (b) within any further period allowed by the registration officer in that officer's sole discretion.

(4) Following consideration of any submission made in accordance with subsection (3) and any other information the registration officer considers relevant, that officer must decide whether or not to refuse the application or to suspend, revoke or vary the registration.

(5) The registration officer must give the applicant or registered person –

- (a) written notice of that officer's decision under subsection (4) and the reasons for it, and
- (b) a copy of Part II.

Improvement notices.

11. (1) The registration officer may issue an improvement notice in accordance with subsections (2) to (5) if the officer forms an opinion, on reasonable grounds, that —

- (a) a registration condition has been breached or is no longer satisfied,
- (b) a registration condition is likely to be breached unless an improvement notice is issued,
- (c) the services provided by a registered person are inadequate, having regard to the needs of the children concerned, or
- (d) the registered premises or equipment, facilities or vehicles are inadequate, having regard to the needs of the children concerned.

(2) An improvement notice may be issued by giving written notice to the registered person in the prescribed form stating the registration officer's opinion and the reasons for that opinion, specifying —

- (a) where subsection (1)(a) or (b) applies, the relevant registration condition, and
- (b) where subsection (1)(c) or (d) applies, in what respect the services, registered premises, equipment, facilities or vehicles are inadequate, having regard to the needs of the children concerned.

(3) An improvement notice must direct specified steps to be taken—

- (a) where subsection (1)(a) applies, to remedy the breach of the registration condition or to satisfy the relevant registration condition,
- (b) where subsection (1)(b) applies, to avoid a breach of the registration condition, and
- (c) where subsection (1)(c) or (d) applies, to ensure that the services, registered premises, equipment, facilities or vehicles are adequate, having regard to the needs of the children concerned.

(4) An improvement notice may direct the registered person to choose one of a number of steps specified in the improvement notice and that person must comply with the specified step chosen by that person.

(5) An improvement notice must —

- (a) specify a time limit within which each direction in the notice is to be complied with (and, for the avoidance of doubt, an improvement notice may require immediate compliance with a direction),
- (b) specify that the notice is issued under section 11 of this Ordinance, and
- (c) include a copy of Part II.

(6) A registered person to whom an improvement notice is issued must comply with directions in the notice, subject to –

- (a) any suspension or modification of the notice under section 15(7), and
- (b) any variation or revocation of the notice under section 15(4)(c).

(7) The costs of any action directed by an improvement notice must be borne by the registered person to whom the notice is issued.

(8) An improvement notice (in this subsection referred to as "**the earlier improvement notice**") may be amended or withdrawn by a further notice in writing, and the earlier improvement notice has effect subject to such amendment or withdrawal.

(9) A person who fails to comply with or contravenes subsection (6) is guilty of an offence.

Duties of registered child minders and registered day care providers

Duties of registered persons.

12. (1) A registered person must –

- (a) comply with all registration conditions,
- (b) keep prescribed records in the prescribed form and manner for the prescribed period,

- (c) make any information returns prescribed by Regulations in the prescribed form and manner and at the prescribed times,
- (d) on request by an authorised officer, produce for inspection any records required to be kept and the certificate issued to the registered person, and
- (e) promptly give written notice to the registration officer of any material change in the conduct of the services, and where appropriate, apply for a variation of the registration.

(2) Without limiting the duties in subsection (1), a registered person has a duty to ensure that the services, registered premises, equipment, facilities and vehicles, as well as any activities involving the children, are safe and appropriate.

(3) A person who fails to comply with or contravenes subsection (1) or (2) is guilty of an offence.

(4) In subsection (1)(e), "**material change in the conduct of the services**" includes –

- (a) any change that affects or might affect the ability of the registered person to comply with or continue to satisfy registration conditions,
- (b) any change that affects or might affect the ability of the registered person to comply with any provision of this Ordinance, and

- (c) any other prescribed change or event.

Replacement certificates.

13. (1) A registered person must give written notice to the registration officer of any loss or destruction of a certificate issued to the registered person within 14 days of becoming aware of it.

(2) If the registration officer is satisfied that a certificate has been lost or destroyed, that officer may issue a duplicate certificate on payment of the prescribed fee.

Surrender of certificates.

14. (1) A registered person who holds any certificate must surrender the certificate to the registration officer within 14 days of any of the following –

- (a) ceasing to carry out the services for which the certificate was issued,
- (b) expiry of the registration,
- (c) receiving written notice of suspension or revocation of the registration under this Ordinance,
- (d) receiving a written request from the registration officer to surrender the certificate for the purposes of variation, or
- (e) receiving an amended certificate from the registration officer.

(2) A person who fails to comply with or contravenes subsection (1) is guilty of an offence.

(3) A registered person may at any time surrender the person's certificate to the registration officer.

(4) Upon surrender of a certificate —

(a) the registration signified by the certificate (other than a certificate surrendered for the purposes of variation) ceases to have effect when the certificate is received by the registration officer, but

(b) this Ordinance continues to apply, for the purpose of enabling the person who formerly held the certificate to be investigated or otherwise dealt with for a matter arising before the surrender, as if the certificate had not been surrendered.

(5) Upon the expiry of any period of suspension, the registration officer must return any certificate surrendered to the officer as a result of the suspension.

PART II

REVIEWS AND APPEALS

Review of registration decisions and improvement notices.

15. (1) A notified person may apply to the Department to review a registration decision or an improvement notice in accordance with this section, even if the person has complied with the decision or notice.

(2) An application for review –

- (a) must be made within 14 days of the applicant receiving written notice of the reviewable decision,
- (b) must be made in the form and manner specified by the Department and must include any information which the applicant believes would assist that applicant's case, and
- (c) must be served by giving written notice of it to the registration officer.

(3) Within 14 days of being served with an application for review or within any further period allowed by the Department in its sole discretion, the registration officer must respond in writing to the Department with any information which that officer believes the Department should consider.

(4) Within 14 days of receiving the written response from the registration officer, the Department must –

- (a) consider any information submitted under subsection (2) or (3) and take into account any other information the Department considers relevant,
- (b) hear any oral submissions that the applicant or the registration officer wishes to make to the Department,
- (c) determine the application by –

(i) confirming or varying the reviewable decision,
or

(ii) revoking the reviewable decision, and, if the Department considers it appropriate, substituting that decision with a decision made by the Department or an improvement notice issued by the Department,

(d) give the applicant, any other notified person and the registration officer written notice of the Department's determination of the review under paragraph (c) and the reasons for it, and

(e) give the applicant and any other notified person a copy of Part II.

(5) In determining an application for review, the Department may—

(a) make any decision and issue any improvement notice that the registration officer is authorised to make or issue under this Ordinance, and

(b) give any direction it considers appropriate to the registration officer in order to give effect to the Department's decision or improvement notice.

(6) A decision made or improvement notice issued by the Department under subsection (4)(c) has effect as if it were made or issued by the registration officer, but —

- (a) neither the decision nor the improvement notice made or issued under subsection (4)(c) is reviewable under this section,
- (b) the procedure in section 10 does not apply to a decision of the Department made in substitution of the registration decision, and
- (c) if the Department issues an improvement notice in substitution of an improvement notice issued by the registration officer, section 11 has effect as if –
 - (i) in subsection (5) of that section, paragraphs (b) and (c) were omitted, and
 - (ii) in subsection (6) of that section, paragraphs (a) and (b) were substituted with the following paragraphs –
 - "(a) any suspension or modification of the notice under section 16(7), and
 - (b) any determination of the Court under section 16(6)(a)."

(7) Pending determination of a review, on application by the applicant, the Department may in exceptional circumstances and on such terms as it considers appropriate suspend or modify the effect of the reviewable decision by giving written notice to the registration officer.

(8) In this section and section 16 –

"notified person" in relation to a registration decision or an improvement notice, means any person given written notice of the registration decision, or to whom the improvement notice was issued, in accordance with this Ordinance,

"registration decision" means any decision of a kind specified in section 10(1), and

"reviewable decision" means registration decision or improvement notice.

Appeal to relevant Court.

16. (1) A determination by the Department under section 15(4)(c) following a review may be appealed to the relevant Court in accordance with this section by –

- (a) the person who applied for the review, or
- (b) any other notified person.

(2) The grounds of an appeal are that –

- (a) the determination was *ultra vires* or there was some other error of law,
- (b) the determination was unreasonable,
- (c) the determination was made in bad faith,

- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal must be made –

- (a) within the period of 28 days immediately following the date on which written notice of the Department's determination was received by the appellant, and
- (b) by summons served on the Department stating the grounds and material facts on which the appellant relies.

(4) Where an appeal has been made, the Department may apply to the relevant Court by summons served on the appellant, for an order to dismiss the appeal for want of prosecution; and on hearing the application the court may–

- (a) dismiss the appeal or dismiss the application (in either case with such directions as the court thinks fit), or
- (b) make such other order as the court considers just.

(5) The provisions of subsection (4) are without prejudice to the inherent powers of the relevant Court or to the rules of the relevant Court.

(6) On an appeal, the relevant Court may –

- (a) set the Department's determination aside in whole or in part and remit that determination to the Department

with such directions as the court thinks fit, or

- (b) confirm that determination, in whole or in part.

(7) On the application of the appellant, the relevant Court may suspend or modify the effect of the Department's determination with such directions as the court thinks just, pending the determination of the appeal.

(8) An appeal from a decision of the relevant Court under this section, on a question of law, lies –

- (a) where the relevant Court is the Royal Court, to the Court of Appeal, and
- (b) where the relevant Court is the Court of Alderney, to the Royal Court.

(9) For the avoidance of doubt, section 105 of the Children Law applies to any decision of the relevant Court under this section.

(10) In this section and section 18, "**relevant Court**" –

- (a) in relation to Guernsey, means the Royal Court,
- (b) in relation to Alderney, means the Court of Alderney.

PART III
EMERGENCY PROTECTION OF CHILDREN

Emergency suspension or variation by Department.

17. (1) This section applies where the Department forms an opinion, on reasonable grounds, that a child looked after by a registered person –

- (a) is suffering serious harm, or
- (b) is at imminent risk of suffering serious harm.

(2) Where this section applies, the Department may suspend or vary the registration with immediate effect by written notice to the registered person.

(3) A suspension or variation under subsection (2) –

- (a) must not be made except with the prior consent of Her Majesty's Procureur, and
- (b) has effect for a period of 72 hours from the time the written notice under subsection (2) was given to the registered person, or any lesser period specified in that written notice.

(4) In this section, "**Her Majesty's Procureur**" includes Her Majesty's Comptroller.

Court may order immediate suspension, revocation or variation.

18. (1) The Department may at any time apply to the relevant Court for an order under this section to suspend, revoke or vary a registration.

(2) An application may be made *ex parte* and must be supported by a written statement of the Department's reasons for making the application.

(3) Upon hearing the application, the relevant Court may make an order to suspend, revoke or vary a registration, with such directions as the court considers appropriate, if the court is satisfied that a child looked after by a registered person –

(a) is suffering serious harm, or

(b) is at imminent risk of suffering serious harm.

(4) Where an order is made under subsection (3), the Department must serve on the registered person, as soon as is reasonably practicable, notice of the order and a copy of the statement of the Department's reasons for making the application.

(5) For the avoidance of doubt, section 105 of the Children Law applies to any decision of the relevant Court under this section.

PART IV

ADMINISTRATION, ENFORCEMENT AND PENALTIES

Registration officer and authorised officers

Department to appoint registration officer and authorised officers.

19. (1) The Department may in writing –

(a) appoint an officer to be both the registration officer and an authorised officer, and

- (b) appoint any other officer it considers appropriate as authorised officers for the purposes of this Ordinance.

- (2) In subsection (1), "**officer**" means employee of the States.

Powers of entry, search, etc.

General powers of entry, search, etc.

20. (1) Subject to section 22, an authorised officer may at any reasonable time –

- (a) enter any premises specified in subsection (2) for a purpose specified in subsection (3), and
- (b) exercise the power specified in subsection (4) on or in relation to those premises.

- (2) Subsection (1)(a) refers to the following premises –

- (a) registered premises,
- (b) premises at which the authorised officer believes, on reasonable grounds, that child minding services or day care services are being or have been provided.

- (3) Subsection (1)(a) refers to the following purposes –

- (a) establishing whether registration conditions –
 - (i) are or have been breached, or

(ii) are or continue to be satisfied,

- (b) establishing whether there are any grounds for the registration officer to exercise any of the officer's functions under this Ordinance,
- (c) establishing whether there are any grounds for the Department to exercise any of its functions under this Ordinance or to apply to the relevant Court for an order under section 18,
- (d) establishing whether any offence under this Ordinance is being, or has been, committed on those premises, or
- (e) detecting or investigating an alleged offence under this Ordinance.

(4) Subsection (1)(b) refers to the power to do all or any of the following –

- (a) search the premises and examine anything at the premises, and open it (or break it open) as the officer considers necessary,
- (b) photograph, film or otherwise record anything at the premises,
- (c) measure or cause to be measured anything at the premises,

- (d) require the production of any equipment, facility, vehicle, record, document, or any other thing, and inspect it,
- (e) take copies of or extracts from any record or document,
- (f) if anything at the premises cannot be conveniently removed, secure it against interference,
- (g) require any person to give the officer such information, or afford the officer such facilities and assistance, as the officer considers necessary, and
- (h) seize any equipment, facility, vehicle, record, document, or any other thing, which is at the premises and retain it for as long as the officer considers necessary.

(5) Subsection (4) does not apply to, or in relation to, any items subject to legal professional privilege.

Safeguards for general powers of entry, search, etc.

21. (1) An authorised officer entering any premises under section 20 must, if the occupier or any person who appears to be in charge of those premises is present –

- (a) identify himself or herself to the occupier or that person, and
- (b) produce to the occupier or that person documentary

evidence that that officer is an authorised officer.

(2) If neither the occupier nor any person who appears to be in charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer –

- (a) must leave the premises as effectively secured against trespassers as that officer found them, and
- (b) must leave in a prominent place on those premises -
 - (i) written notice that those premises have been entered and searched under section 20 of this Ordinance (such notice to include that officer's name and an address at which that officer may be contacted), and
 - (ii) a copy of the documentary evidence referred to in subsection (1)(b).

(3) An authorised officer who seizes anything under section 20(4) must leave a statement, containing particulars of anything that has been seized and explaining that the officer has seized it -

- (a) if the occupier or person in charge of the premises is present, with that occupier or person in charge, or
- (b) in any other case, in a prominent place on those premises.

Entry to dwellings restricted.

22. An authorised officer must not enter a dwelling under section 20, except –

- (a) with the consent of the occupier or a person who appears to the officer to be in charge of those premises,
- (b) in the case of any dwelling registered as child minding premises, where the officer has given written notice to the occupier or a person who appears to that officer to be in charge of those premises at least 24 hours before that officer enters the dwelling, or
- (c) under and in accordance with a warrant issued under section 23.

Warrant to enter dwellings, etc.

Warrants for entry, etc.

23. (1) On application by an authorised officer in accordance with section 24, the Bailiff may, in accordance with sections 24 and 25, issue a warrant authorising an authorised officer to enter and search any premises (including a dwelling), if the Bailiff is satisfied that there are reasonable grounds for believing –

- (a) that an offence under this Ordinance is about to be committed, is being committed or has been committed on or in relation to those premises,
- (b) that there is material on those premises which is likely to be of substantial value (whether by itself or together

with other material) to the investigation of the offence,

- (c) that the material is likely to be relevant evidence,
- (d) that the material does not consist of or include items subject to legal professional privilege, and
- (e) that at least one of the conditions specified in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1)(e) are –

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
- (b) that it is not practicable to communicate with any person entitled to grant access to the evidence,
- (c) that entry to the premises will not be granted unless a warrant is produced, and
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless an authorised officer arriving at the premises can secure immediate entry to them.

(3) In this section, "**relevant evidence**", in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(4) In this section and section 24, "**the Bailiff**" –

- (a) in relation to Guernsey, means the Bailiff, the Deputy Bailiff, a Judge of the Royal Court, the Lieutenant-Bailiff or a Juge Délégué, and
- (b) in relation to Alderney, means the Chairman of the Court of Alderney, or, if the Chairman is not available, a Jurat of that court.

Procedure for search warrants.

- 24. (1) An application for a warrant –
 - (a) must be made and supported by information in writing, and
 - (b) must state –
 - (i) that the warrant would be issued under section 23 of this Ordinance,
 - (ii) the ground on which the authorised officer makes the application,
 - (iii) the premises which it is desired to enter and search, and
 - (iv) so far as is practicable, the things to be sought.
- (2) The Bailiff must hear the application in private and *ex parte*.
- (3) The authorised officer making the application must answer on oath any question that that officer is asked by the person hearing the application.

Requirements of search warrants.

25. (1) A warrant authorises entry only on one occasion.
- (2) A warrant –
- (a) must state the person who applied for it, the date on which it is issued, and the premises to be searched,
 - (b) must state that it is issued under section 23 of this Ordinance, and
 - (c) so far as is practicable, must identify the things to be sought.
- (3) The Greffier must ensure that two copies are made of each warrant, and that those copies are clearly certified as copies.

Execution of warrants.

26. (1) Any authorised officer may execute a warrant to enter premises.
- (2) An authorised officer executing a warrant may exercise all or any of the powers specified in section 20(4) on or in relation to those premises, subject to section 20(5), if the officer considers it reasonably necessary for the purpose for which the warrant was issued.
- (3) An authorised officer executing a warrant –
- (a) must be accompanied by a police officer,

(b) must do so at a reasonable hour, and

(c) must do so within one month from the date of its issue.

(4) Subsection (3)(b) does not apply if it appears to the authorised officer executing the warrant that the purpose of the search may be frustrated by making an entry at a reasonable hour.

(5) In subsection (3)(a), "**police officer**" means a member of the salaried police force of the Island of Guernsey, and includes -

(a) in relation to Guernsey, a member of the special constabulary of the Island of Guernsey, or

(b) in relation to Alderney, a member of the special constabulary of the Island of Alderney,

within the limits of the member's jurisdiction.

Safeguards for warranted entry, search, etc.

27. (1) An authorised officer entering any premises under section 26 must, if the occupier or any person who appears to be in charge of those premises is present –

(a) identify himself or herself to the occupier or that person, and

(b) produce to that occupier or person in charge the warrant being executed by the officer.

(2) If neither the occupier nor any person who appears to be in

charge of those premises is present at the time the authorised officer leaves those premises, the authorised officer –

- (a) must leave the premises as effectively secured against trespassers as that officer found them, and
- (b) must leave in a prominent place on those premises -
 - (i) written notice that those premises have been entered and searched under section 26 of this Ordinance (such notice to include that officer's name and an address at which that officer may be contacted), and
 - (ii) a copy of the warrant mentioned in subsection (1)(b).

(3) An authorised officer who seizes anything under section 26(2) must leave a statement (setting out particulars of anything that has been seized and explaining that the officer has seized it) -

- (a) with the occupier or person in charge of the premises, if that occupier or person in charge is present, or
- (b) in a prominent place on those premises, if the occupier or person in charge of the premises is not present.

Endorsement, return and inspection of warrants.

28. (1) An authorised officer executing a warrant must, after executing it, make an endorsement on it stating –

- (a) whether the things sought were found, and
- (b) whether any things, other than things which were sought, were seized.

(2) A warrant which has been executed, or which has not been executed within the time allowed for its execution, must be returned to the Greffier.

(3) The Greffier must retain a warrant which is returned for 12 months beginning on the date of its return.

(4) If, during the period for which a warrant is to be retained under subsection (3), the occupier of the premises to which it relates asks to inspect it, the Greffier must allow that occupier to do so.

Miscellaneous powers

Persons exercising powers may bring other persons, etc.

29. An authorised officer entering any premises under section 20 or 26 may bring onto the premises any person or thing that the officer considers necessary.

Storage and disposal of seized property.

30. (1) An authorised officer must store and dispose of any seized property in accordance with Schedule 1.

(2) Schedule 1 has effect in relation to any seized property.

(3) On the application of any authorised officer or any person who claims the seized property, the Court may, notwithstanding any provision to

the contrary in Schedule 1 –

- (a) make an order for the delivery of the property to the person appearing to the court to be the owner of it, or
 - (b) make any other order that the court thinks fit in respect of the property, for example an order for the forfeiture or destruction of the property.
- (4) In this section, "**the Court**" –
- (a) in relation to Guernsey, means the Magistrate's Court, and
 - (b) in relation to Alderney, means the Court of Alderney.

Other powers not limited.

31. For the avoidance of doubt, the powers conferred by any provision of this Ordinance are in addition to any other powers conferred by or under any other enactment or any rule of customary or common law.

Obstruction, penalties, etc.

Obstruction, etc. or provision of false, deceptive or misleading information.

32. (1) A person is guilty of an offence who –
- (a) intentionally obstructs an authorised officer who is acting in the exercise of the officer's functions under this Ordinance,
 - (b) without reasonable cause fails to comply with any

requirement made by an authorised officer who is acting in the exercise of the officer's functions under this Ordinance, or

- (c) removes, tampers or otherwise interferes with a thing secured against interference under section 20(4)(f) or 26(2).

(2) A person is guilty of an offence if –

- (a) for the purposes of or in connection with an application made under this Ordinance,
- (b) in purported compliance with any registration condition,
- (c) in purported compliance with any direction or requirement imposed under, or otherwise for the purposes of, this Ordinance, or
- (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which the person intends, or could reasonably be expected to know, that the information would or might be used by any person for the purpose of exercising that person's functions under this Ordinance,

the person does any of the following –

- (i) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (ii) recklessly makes 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 which that person knows or has 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 which is false, deceptive or misleading in a material particular.

Penalties and proceedings.

33. (1) A person guilty of an offence under this Ordinance is liable upon summary conviction or conviction on indictment, to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 3 on the uniform scale, or both.

(2) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that officer or other person, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its

members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

(4) In subsection (1), "**uniform scale**" means the uniform scale of fines for the time being in force in relation to the relevant island under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^e.

Court may order forfeitures or suspension.

34. (1) Where a person is convicted of an offence under this Ordinance, the court may, in addition to imposing the penalties specified in section 33(1), order the forfeiture to the States of anything that was used in, the subject of, or otherwise involved in the commission of the offence.

(2) Where a registered person is convicted of an offence under this Ordinance, the court may order any registration held by the person to be suspended –

- (a) in the case of a person convicted summarily of an offence, for a period not exceeding three months, and
- (b) in the case of a person convicted of an offence on indictment, for a period not exceeding one year,

and the registration ceases to have effect during that period.

(3) The court may make a forfeiture order under subsection (1) -

^e Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXXI, p. 542; Ordinance No. XXIX of 2006.

- (a) regardless whether the thing to be forfeited is seized property, and
- (b) in the case of seized property, regardless whether the property has been returned to the person entitled to possession of that property.

(4) The court may make any order it considers appropriate to give effect to a forfeiture order made under subsection (1).

PART V

GENERAL PROVISIONS

Delegations by Department or registration officer.

35. Section 4 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^f has effect in relation to the functions of the Department and the registration officer under this Ordinance as if –

- (a) the reference to "any officer responsible to that Committee" in section 4(1)(a) of that Law includes a reference to any employee of the States of Guernsey (whether or not that employee is responsible to the Department), and
- (b) the office of registration officer is a public office for the purposes of section 4(1)(b) of that Law.

^f Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

Service of documents.

36. (1) Any document to be given or served under, or for the purposes, of this Ordinance may be given or served –

- (a) on an individual, by being delivered to the individual, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) on an authorised officer or the Department, by being left at, or sent by post or transmitted to, the principal offices of the authorised officer or the Department in Guernsey.

(2) In subsection (1) –

- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
- (b) the expression "**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 shall be regarded as served when it is received.

(3) If a person notifies an authorised officer or the Department of an address for service within Guernsey or Alderney for the purposes of this Ordinance, any document to be given to or served on that person may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served –

- (a) by being published by an authorised officer or the Department in such manner and for such period as the officer or the Department thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

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

(6) Notwithstanding the provisions of subsections (1) to (5) and (8) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on an authorised officer or the Department, under or for the purposes of this Ordinance, is to be regarded as being given or served until it is received.

(7) If a person upon whom a document is to be served under this Ordinance is a child or a person under legal disability, the document shall be served on the person's guardian; and if there is no guardian, the party wishing to effect service may apply to the court for the appointment of a person to act as guardian for the purposes of this Ordinance.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

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

(10) In this section "**document**" does not include a summons.

(11) The provisions of this section are subject to any contrary provision under this Ordinance.

Confidentiality.

37. (1) This section applies to any information from which an individual or body may be identified and which is acquired by a person in carrying out the person's functions under this Ordinance.

(2) A person mentioned in subsection (1) must not disclose any information to which this section applies without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure –

- (a) is expressly authorised or required by or under this Ordinance or any other enactment, or
- (b) appears to that person to be necessary –
 - (i) to enable functions under this Ordinance to be carried out,
 - (ii) in the interests of –
 - (A) the investigation, detection or prevention of offences, or
 - (B) the apprehension or prosecution of offenders, or
 - (iii) to comply with a court order.

(3) A person who fails to comply with or contravenes subsection (2) is guilty of an offence.

Protection from self-incrimination.

38. A statement made by a person in response to a requirement imposed by or under this Ordinance ("**the statement concerned**") –

- (a) may be used in evidence against the person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against the person in criminal proceedings except –
 - (i) where evidence relating to the statement concerned is adduced, or a question relating to the statement concerned is asked, in the proceedings by or on behalf of that person,
 - (ii) in proceedings for an offence under section 32(2),
 - (iii) in proceedings for perjury or perverting the course of justice, or
 - (iv) in proceedings where, in giving evidence, that person makes a statement inconsistent with the statement concerned, but in this case the statement concerned is only admissible to the extent necessary to establish the inconsistency.

Regulations may amend period for notices, applications, etc.

39. The Department may at any time by Regulations amend any period for the giving of notices, making of applications, submissions or appeals, or the doing of any other thing, specified in any of the following provisions –

- (a) section 10(2)(b),
- (b) section 13(1),
- (c) section 14(1),
- (d) section 15(3) or (4), or
- (e) section 16(3)(a).

General provisions as to regulations.

40. (1) Regulations made under this Ordinance –

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

(2) Any power conferred by this Ordinance to make 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,
 - (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

Interpretation.

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

"the 1972 Law" means the Child Protection (Guernsey) Law, 1972^g,

"the 2011 Regulations" means the Child Protection (Registration

^g Ordres en Conseil Vol. XXIII, p. 238; as amended by Vol. XXXI, p. 278; Vol. XXXVII, p. 45; Vol. XLI, p. 151; applied to Alderney by Recueil d'Ordonnances Tome XXVIII, p. 295; Recueil d'Ordonnances Tome XXIX, p. 406; Ordinance Nos. VII and XLII of 2010; No. XXVII of 2012.

Fees) (Guernsey and Alderney) Regulations, 2011^h,

"authorised officer" means the registration officer and any other officer appointed to be an authorised officer under section 19(1)(b),

"certificate" means a certificate of registration issued under section 5(3),

"child minder" means a person who looks after any child under the age of 8 years (whether or not the service is provided in the form of an educational activity) for the designated period of time or longer –

(a) for reward, and

(b) on premises which are wholly or mainly used as a dwelling,

"child minding services" means services provided as a child minder,

"Children Law" means the Children (Guernsey and Alderney) Law, 2008,

"civil partner" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004ⁱ, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled,

^h G.S.I. No. 9 of 2011.

ⁱ An Act of Parliament, Chapter 33 of 2004.

"close relative" means any grandparent, great-grandparent, brother, sister, uncle, aunt, nephew, niece or first cousin; and a relationship of the whole blood includes a relationship of a half-blood,

"day care provider" means a person who looks after any child under the age of 8 years (whether or not the service is provided in the form of an educational activity) for the designated period of time or longer –

- (a) whether or not for reward, and
- (b) on any premises except –
 - (i) premises which are wholly or mainly used as a dwelling, or
 - (ii) any hospital, home or institution mentioned in section 3(3) of the 1972 Law,

"day care services" means services provided as a day care provider,

"Department" means the States of Guernsey Health and Social Services Department,

"designated period" means –

- (a) 2 hours or more a day, on six or more days in any 12-month period, or
- (b) any other period that may be prescribed in place of the period in paragraph (a),

"equipment, facilities or vehicles" means equipment, facilities or vehicles used or provided, or to be used or provided, in connection with the services,

"exempt premises" means –

- (a) premises on which child minding services or day care services are provided only during occasional outings or visits supervised by a registered person, or
- (b) any other prescribed premises,

"the Greffier" –

- (a) in relation to Guernsey, means Her Majesty's Greffier, and
- (b) in relation to Alderney, means the Greffier of the Court of Alderney,

"Guernsey" includes the islands of Guernsey,

"improvement notice" means an improvement notice issued under section 11,

"information" includes any document, statement or evidence, regardless of the manner or form in which it is kept or given,

"items subject to legal professional privilege" has the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^j,

"parent" and **"parental responsibility"** have the meanings given by sections 2 and 5, respectively, of the Children Law,

"premises" includes any place and any vehicle, vessel, aircraft, offshore installation, tent or moveable structure,

"prescribed" means prescribed by Regulations,

"registered person" means a child minder or day care provider registered under section 5,

"registered premises" –

- (a) in relation to premises on which child minding services are provided, means premises registered as premises on which those services are authorised to be provided, and
- (b) in relation to premises on which day care services are provided, means premises registered as premises on which those services are authorised to be provided,

"registration" means registration under Part I of this Ordinance and

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

includes renewal of registration, and "**registered**" and other cognate terms have a corresponding meaning,

"**registration condition**" means any registration condition made or issued in accordance with section 6(1),

"**registration officer**" means the officer appointed as registration officer under section 19(1)(a),

"**Regulations**" means regulations made by the Department,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of any proceedings under this Ordinance, the Court may appoint one or more assessors to assist it in the determination of any matter before it,

"**seized property**" means anything seized by an authorised officer under this Ordinance,

"**services**" means child minding services or day care services,

"**the States**" means the States of Guernsey, and

"**vary**", in relation to a registration, includes varying the registration conditions.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^k apply to the interpretation of this Ordinance as they apply in Guernsey to the

^k Ordres en Conseil Vol. XIII, p. 355.

interpretation of an enactment.

(3) 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.

Index of defined expressions.

42. In this Ordinance, the expressions listed below are defined by the provisions specified in relation to those expressions:

Expression	Provision
The 1972 Law	Section 41(1)
The 2011 Regulations	Section 41(1)
Authorised officer	Section 41(1)
The Bailiff	Section 23(3)
By post	Section 36(2)
Certificate	Section 41(1)
Child minder	Section 41(1)
Child minding services	Section 41(1)
Children Law	Section 41(1)
Civil partner	Section 41(1)
Close relative	Section 41(1)
Commencement date	Paragraph 12 of Schedule 2
The Court	Section 30(4)
Day care provider	Section 41(1)
Day care services	Section 41(1)
Deemed registration	Paragraph 12 of Schedule 2
Department	Section 41(1)
Designated period	Section 41(1)
Document	Section 36(10)
The earlier improvement notice	Section 11(8)
Equipment, facilities or vehicles	Section 41(1)
Exempt minder	Section 1(3)
Exempt premises	Section 41(1)
Exempt provider	Section 2(3)
The Greffier	Section 41(1)
Guernsey	Section 41(1)
Her Majesty's Procureur	Section 17(4)
Improvement notice	Section 41(1)
Information	Section 41(1)

Expression	Provision
Items subject to legal professional privilege	Section 41(1)
Last application date	Paragraph 12 of Schedule 2
Material change in the conduct of the services	Section 12(4)
Notified person	Section 15(8)
Officer	Section 19(2)
Parent	Section 41(1)
Parental responsibility	Section 41(1)
Police officer	Section 26(5)
Premises	Section 41(1)
Prescribed	Section 41(1)
Previous certificate	Paragraph 12 of Schedule 2
Registered	Section 41(1)
Registered child minder	Section 1(3)
Registered day care provider	Section 2(3)
Registered person	Section 41(1); paragraph 12 of Schedule 2
Registered premises	Section 41(1); paragraph 12 of Schedule 2
Registration	Section 41(1)
Registration condition	Section 41(1)
Registration decision	Section 15(8)
Registration officer	Section 41(1)
Regulations	Section 41(1)
Relevant Court	Section 16(10)
Relevant evidence	Section 23(3)
Reviewable decision	Section 15(8)
Royal Court	Section 41(1)
Seized property	Section 41(1)
Services	Section 41(1)
The statement concerned	Section 38
The States	Section 41(1)
Transmitted	Section 36(2)
Uniform scale	Section 33(4)
Vary	Section 41(1)

Repeals and revocations.

43. (1) The following legislation is repealed –

(a) Part III of the 1972 Law,

- (b) the Child Protection (Amendment) (Guernsey) Ordinance, 2012^l, and
- (c) the Child Protection (Amendment) (Guernsey) Ordinance, 2010^m.

(2) The 2011 Regulations are revoked.

Transitional provisions.

44. The provisions of Schedule 2 have effect.

Extent.

45. This Ordinance has effect in Guernsey and Alderney, including the territorial waters adjacent to these islands.

Citation.

46. This Ordinance may be cited as the Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015.

Commencement.

47. This Ordinance shall come into force on a date specified by regulation made by the Department.

^l Ordinance No. XXVII of 2012.

^m Ordinance No. XLII of 2010

SCHEDULE 1
PROVISIONS FOR STORAGE AND DISPOSAL OF SEIZED PROPERTY

Section 30

1. An authorised officer may store seized property in any manner and place the officer considers appropriate, before the seized property is disposed of in accordance with this Ordinance.

2. Any person who appears to an authorised officer to be the person who would, but for the seizure, be entitled to possession of the seized property must be given reasonable access to that property.

3. Where the seized property is perishable or its storage involves unreasonable expense or inconvenience, and –

- (a) the Department is unaware of any person who would, but for the seizure, be entitled to possession of the seized property,
- (b) no person has claimed the property within the period of three months after it was seized under this Ordinance, and
- (c) there is no order to the contrary by a competent court,

the Department may destroy, sell or otherwise dispose of that property in any manner the Department considers appropriate.

4. A person convicted of an offence under this Ordinance is liable to pay to the States (through the Department) all expenses reasonably incurred in relation to the storage of any seized property that was used in, the subject of, or otherwise involved in, the commission of the offence; and –

- (a) the States may recover the expenses, for which that person is liable, as a civil debt due from the person to the States, and
- (b) this paragraph applies whether or not the seized property is forfeited to the States under any enactment, but a person is not liable to pay expenses incurred on and from the day on which the thing is so forfeited.

SCHEDULE 2

TRANSITIONAL PROVISIONS

Section 44

1. Any person who, immediately before the commencement date, was registered under section 15(1)(b) of the 1972 Law –

- (a) in the case of a child minder within the meaning of section 41(1) of this Ordinance, is deemed to be registered as a child minder under section 5 of this Ordinance, and
- (b) in the case of a day care provider within the meaning of section 41(1) of this Ordinance, is deemed to be registered as a day care provider under section 5 of this Ordinance.

2. Any premises that, immediately before the commencement date, were registered under section 15(1)(a) of the 1972 Law are deemed to be registered under section 5(1)(b) of this Ordinance as premises on which child minding services or (as the case may be) day care services are authorised to be provided by the registered person in respect of those premises.

3. The registration conditions for a deemed registration are –

- (a) the conditions applicable to the registered premises under the 2011 Regulations, by reference to the type and category of those premises as specified in its previous certificate,
- (b) any other conditions or requirements made or imposed by the Department under the 2011 Regulations or the 1972 Law, that

were in force in relation to the registered person or registered premises immediately before the commencement date, and

- (c) conditions made or issued under section 6(1) of this Ordinance.

4. As soon as practicable after this Ordinance comes into force, the registration officer must issue a fresh certificate to each registered person, specifying the premises deemed to be registered in relation to that person and any registration conditions.

5. For the avoidance of doubt, a deemed registration may be suspended, revoked or varied in accordance with this Ordinance.

6. If a registered person has not made an application for registration in accordance with section 3 of this Ordinance in respect of the registered premises on or before the last application date, the deemed registration expires on the day immediately following that date.

7. Where a registered person has made an application for registration in accordance with section 3 of this Ordinance on or before the last application date, and the application is granted under this Ordinance, the deemed registration expires on the date on which the application is so granted.

8. Where a registered person has made an application for registration in accordance with section 3 of this Ordinance on or before the last application date, but the application is refused, the deemed registration expires -

- (a) if no application for review of the refusal is made within the period specified in section 15(2)(a) of this Ordinance, on the expiry of that period,

- (b) if an application for review of the refusal is made within the period specified in section 15(2)(a) of this Ordinance,
 - (i) when the application for review is finally determined or withdrawn, or
 - (ii) where an appeal against the Department's determination of the review is made within the period specified in section 16(3)(a) of this Ordinance, when the appeal is finally determined or withdrawn.

9. For the purposes of paragraph 8(b)(i), an application for review is finally determined if the application is determined by the Department and the period for appeal specified in section 16(3)(a) of this Ordinance expires without any appeal being made against the Department's determination of the review.

10. For the purposes of paragraph 8(b)(ii), an appeal against the Department's determination of a review is finally determined when the appeal and any further appeal is determined.

11. Where a registered person applies for registration in respect of registered premises in accordance with section 3 of this Ordinance and, at any time within the 12 month period preceding the commencement date –

- (a) the person or the premises were registered under section 15(1) of the 1972 Law, or
- (b) any fee for continuing registration payable under regulation 3 of the 2011 Regulations was paid to the Department in respect of the person or the premises –

the registration officer may waive all or any part of the fee prescribed under this Ordinance for an application for registration or for a grant of registration, if the officer considers it fair and just to do so in the circumstances.

12. In this Schedule –

"commencement date" means the date specified by Regulations for this Ordinance to come into force,

"deemed registration" means a deemed registration under paragraph 1 or 2,

"last application date" means the date which is two months following the commencement date,

"previous certificate" in relation to any registered person or registered premises, means the certificate of registration –

- (a) in force immediately before the commencement date in respect of the person or premises concerned, and
- (b) issued under the 2011 Regulations or the 1972 Law,

"registered person" means a person who is deemed to be a registered child minder or registered day care provider under paragraph 1, and

"registered premises" means premises which are deemed to be registered premises under paragraph 2.

The Noise Abatement (Amendment) Ordinance, 2015

THE STATES, in pursuance of their Resolution of the 26th September, 2014^a, and in exercise of the powers conferred upon them by sections 2 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^b, and all other powers in that behalf, hereby order:-

Amendment of the 1962 Ordinance.

1. Section 2(e) of the Noise Abatement Ordinance, 1962^c is amended by substituting, for "Chief Officer of Police", "Director of Environmental Health and Pollution Regulation (appointed under the Environmental Pollution (Guernsey) Law, 2004)".

Interpretation.

2. (1) In this Ordinance -

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

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(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),

^a Article XV of Billet d'État No. XX of 2014.

^b Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

^c Recueil d'Ordonnances Tome XIII, p. 85; as amended by Ordres en Conseil Vol. XXXI, p. 278 and Recueil d'Ordonnances Tome XXI, p. 190.

extended or applied.

Transitional and savings.

3. Despite section 1, on the commencement of this Ordinance, a permission in writing given by the Chief Officer of Police under section 2(e) of the Noise Abatement Ordinance, 1962 (for the operation of a loudspeaker in connection with a public function or meeting), and in force immediately before the 15th October, 2015, has effect and may be revoked or varied, as if it were a permission given in writing by the Director of Environmental Health and Pollution Regulation (appointed under the Environmental Pollution (Guernsey) Law, 2004^d).

Extent.

4. This Ordinance has effect in the islands of Guernsey and Herm.

Citation.

5. This Ordinance may be cited as the Noise Abatement (Amendment) Ordinance, 2015.

Commencement.

6. This Ordinance shall come into force on the 15th October, 2015.

^d Ordres en Conseil Vol. XLIV (1), to which there are amendments not relevant to this Ordinance.

The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (Amendment) Ordinance, 2015

THE STATES, in exercise of the powers conferred on them by sections 54(8) and 55 of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013^a and all other provisions enabling them in that behalf, hereby order:-

Amendment of section 54.

1. (1) Section 54(1) of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 ("**the Law**") is amended as follows -

- (a) immediately after the definition of "application for review", insert the following definition -

"appropriate judicial officer" means -

- (a) in Alderney, the Chairman or a Jurat of the Court of Alderney,
- (b) in Sark, the Seneschal, the Deputy Seneschal or a Lieutenant Seneschal,"
- (b) in the definition of "**the Bailiff**", immediately after "Juge Délégué", insert "or an appropriate judicial officer,"
- (c) immediately after the definition of "picture", insert the following definition -

^a

Order in Council No. IX of 2014.

"police officer" means -

- (a) in relation to Guernsey, Herm and Jethou -
 - (i) a member of the salaried police force of the Island of Guernsey, or
 - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney -
 - (i) a member of the salaried police force of the Island of Guernsey,
 - (ii) a member of any police force which may be established by the States of Alderney, or
 - (iii) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004^b, and
- (c) in relation to Sark -
 - (i) the Constable, the Vingtenier or the Assistant Constable of Sark,

^b No. III of 2005 (Ordres en Conseil Vol. XLV, p. 26); as amended by Order in Council No. XXII of 2010, No. XI of 2012 and No. V of 2014. See also Ordres en Conseil Vol. XXII, p. 122 and Ordres en Conseil Vol. XXIX, p. 207.

- (ii) a member of the salaried police force of the Island of Guernsey, or
- (iii) within the limits of his jurisdiction, a special constable appointed by the Court of the Seneschal,"
- (d) immediately after the definition of "restriction order", insert the following definition -

"Royal Court", for the purposes of sections 18 and 20, may be constituted by the Bailiff sitting unaccompanied by the Jurats," and

- (e) immediately after the definition of "sexual offence to which this Law applies", insert the follow definitions –

"sexual offences prevention order", **"foreign travel order"** and **"risk of sexual harm order"**, for the purposes of section 2(6), also include an interim order of the same type made under section 18, 20 and 22 respectively,".

Interpretation.

2. (1) In this Ordinance, unless the context requires otherwise -

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

"the Law" has the meaning given in section 1, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance throughout the Bailiwick.

(3) 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.

3. This Ordinance may be cited as the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (Amendment) Ordinance, 2015.

^c Ordres en Conseil Vol. XIII, p. 355.

**The Financial Services Ombudsman (Bailiwick of
Guernsey) Law, 2014 (Commencement) (No. 2)
Ordinance, 2015**

THE STATES, in exercise of the powers conferred on the States by sections 6(1), 26, 27 and 29(2) of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014^a, and all other powers enabling them in that behalf, hereby orders:-

Commencement.

1. The following provisions of the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 ("**the Law**") shall come into force on the 16th November, 2015 -

- (a) Part III (other than section 9),
- (b) Part IV, and
- (c) Part V (other than sections 20 and 21).

Service of documents and jurisdiction.

2. (1) Any document to be given or served for the purposes of any legal proceedings may be given or served on OFSO, by being left at, or sent by post to, the address specified on the official OFSO website.

(2) In subsection (1), the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post.

^a

Order in Council No. I of 2015.

(3) For the avoidance of doubt, proceedings may not be instituted in any jurisdiction outside the Bailiwick of Guernsey in relation to -

- (a) a determination (including any award of costs) made by an Ombudsman, or
- (b) the handling of a complaint by OFSO or any person on its behalf,

in accordance with or for the purposes of Part IV of the Law.

Interpretation.

3. (1) In this Ordinance -

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

"**the Law**" has the meaning given in section 1,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect

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

(2) The Interpretation (Guernsey) Law, 1948^b applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(3) Any reference in this Ordinance to an enactment is a reference

^b Ordres en Conseil Vol. XIII, p. 355.

thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

4. This Ordinance -

- (a) may be cited as the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (Commencement) (No. 2) Ordinance, 2015, and
- (b) shall come into force on the 30th September, 2015.

The Income Tax (Guernsey) (Approval of Agreement with Gibraltar) Ordinance, 2015

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975 as amended^a and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. The agreement providing for the obtaining, furnishing and exchanging of information in relation to tax –

- (a) made between the States of Guernsey and the Government of Gibraltar, and
- (b) contained in a Protocol signed on the 23rd March, 2015 and the 6th April, 2015, on behalf of Guernsey and Gibraltar respectively (which amends the agreement between the States of Guernsey and the Government of Gibraltar providing for the exchange of information relating to tax matters signed on the 22nd October, 2013^b),

is pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Gibraltar) Ordinance, 2015.

^a Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005, and section 75C has subsequently been amended by Order in Council No. XVI of 2002; No. I of 2014; and No. XXXI of 2014.

^b See Ordinance No. V of 2014.

Commencement.

3. This Ordinance shall come into force on the 30th September, 2015.

The Income Tax (Guernsey) (Approval of Agreement with Bulgaria) Ordinance, 2015

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975 as amended^a and all other powers enabling them in that behalf, hereby order:-

Approval of Agreement.

1. The agreement providing for the obtaining, furnishing and exchanging of information in relation to tax made between the States of Guernsey and the Government of the Republic of Bulgaria, signed on the 20th May, 2015 and the 11th June, 2015 on behalf of Bulgaria and Guernsey respectively, is pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreement with Bulgaria) Ordinance, 2015.

Commencement.

3. This Ordinance shall come into force on the 30th September, 2015.

^a Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of Order in Council No. XVII of 2005, and section 75C has subsequently been amended by Order in Council No. XVI of 2002; No. I of 2014; and No. XXXI of 2014.

The Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by section 1 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^a, and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, hereby order:-

Transfer of functions.

1. (1) Notwithstanding the provisions of the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009^c and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015^d, any functions, rights and liabilities of the Sark General Purposes and Finance Committee and of its Chairman arising under or by virtue of an enactment specified in subsection (2) are transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman.

(2) The enactments referred to in subsection (1) are -

- (a) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^e,
- (b) the Protection of Investors (Bailiwick of Guernsey) Law, 1987^f,

^a Ordres en Conseil Vol. XXXIII, p. 478.

^b Ordres en Conseil Vol. XIII, p.288.

^c Recueil d'Ordonnances Tome XXXIII, p. 617.

^d Ordinance No. XX of 2015.

^e Ordres en Conseil Vol. XXX, p. 243.

^f Ordres en Conseil Vol. XXX, p. 281.

- (c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994^g,
- (d) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^h,
- (e) the Human Rights (Bailiwick of Guernsey) Law, 2000ⁱ,
- (f) the Post Office (Bailiwick of Guernsey) Law, 2001^j,
- (g) the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001^k,
- (h) the Telecommunications (Bailiwick of Guernsey) Law, 2001^l,
- (i) the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002^m
- (j) the Insurance Business (Bailiwick of Guernsey) Law, 2002ⁿ,
- (k) the Insurance Managers and Insurance Intermediaries

^g Ordres en Conseil Vol. XXXV, p. 271.
^h Ordres en Conseil Vol. XLI, p. 13.
ⁱ Ordres en Conseil Vol. XL, p. 396.
^j Ordres en Conseil Vol. XLI, p. 515.
^k Ordres en Conseil Vol. XLI, p. 295.
^l Ordres en Conseil Vol. XLI, p. 452.
^m Ordres en Conseil Vol. XLII, p. 393.
ⁿ Ordres en Conseil Vol. XLII(2), p. 766.

- (Bailiwick of Guernsey) Law, 2002^o,
- (l) the Public Trustee (Bailiwick of Guernsey) Law, 2002^p,
 - (m) the Legal Aid (Bailiwick of Guernsey) Law, 2003^q,
 - (n) the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^r,
 - (o) the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^s,
 - (p) the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004^t,
 - (q) the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004^u, and
 - (r) the Disclosure (Bailiwick of Guernsey) Law, 2007^v.
 - (s) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008^w.

o Ordres en Conseil Vol. XLII(2), p. 1022
p Ordres en Conseil Vol. XLIII, p. 49.
q Order in Council No. VI of 2004.
r Ordres en Conseil Vol. XXX, p. 243.
s Order in Council No. XIV of 2004.
t Order in Council No. I of 2005.
u Order in Council No. XII of 2005.
v Order in Council No. XVI of 2007.
w Order in Council No. XII of 2009.

Savings and transitional provisions.

2. Anything done before the date of the commencement of this Ordinance or in the process of being done on that date by or in relation to the Sark General Purposes and Finance Committee or its Chairman under or by virtue of an enactment specified in section 1(2) shall have effect as if done or (as the case may be) may be continued by or in relation to the Sark Policy and Performance Committee or (as the case may be) its Chairman.

Amendment of statutory references.

3. For any reference in an enactment specified in section 1(2) to the Sark General Purposes and Finance Committee or to its Chairman, however expressed, there is substituted a reference to the Sark Policy and Performance Committee or (as the case may be) its Chairman.

Interpretation.

4. (1) Any reference in this Ordinance to an enactment specified in section 1(2) includes a reference to -

- (a) any Ordinance of the States of Deliberation, and
- (b) any subordinate legislation made by any department, council or committee (however called) of the States of Guernsey,

made under the enactment.

(2) The Interpretation (Guernsey) Law, 1948^x applies to the interpretation of this Ordinance.

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

^x Ordres en Conseil Vol. XIII, p. 355.

Citation.

5. This Ordinance may be cited as the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015.

Commencement.

6. This Ordinance shall come into force on 25th June, 2015.