

# BILLET D'ÉTAT No. III, 2015

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# PROJET DE LOI

ENTITLED

## **The Parochial Church Property (Guernsey) Law, 2015**

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# PROJET DE LOI

ENTITLED

## **The Parochial Church Property (Guernsey) Law, 2015**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> February, 2012<sup>a</sup>, 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

#### PAROCHIAL CHURCH PROPERTY

##### *Ancient parish churches and churchyards*

##### **Ownership of ancient parish churches and churchyards.**

1. For the avoidance of doubt, this Law does not affect the ownership of -

- (a) the parish churches, and
- (b) the churchyards of the parish churches,

of the ancient parishes.

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<sup>a</sup> Article XV of Billet d'État No. IV of 2012.

*Glebe land and other buildings*

**Ownership of glebe land.**

2. (1) Legal ownership of glebe land belonging to an ancient parish, wherever situated, is transferred to and shall vest in the Constables for the time being of that parish.

(2) In addition to the provisions of section 4, the Constables of a parish may not -

(a) sell, or

(b) change the use of,

glebe land except after consultation with, and taking into consideration the views of, the Rector and Churchwardens.

(3) For the purposes of subsection (2)(b), only a change of use which would lead to a change in the property reference of glebe land for the purposes of the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007<sup>b</sup> is a change of the use of glebe land.

(4) Subject to any lease approved in accordance with section 4(2)(a)(ii), the Constables shall permit the Rector and Churchwardens to have reasonable use of the glebe land.

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<sup>b</sup> Recueil d'Ordonnances Tome XXXII, p. 504; Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXXIII, pp. 45, 332 and 674; Ordinance No. LIII of 2010; No. XLVIII of 2011 and No. XIII of 2012; G.S.I. No. 54 of 2008; No. 109 of 2010 and No. 40 of 2011.

(5) For the avoidance of doubt, and without prejudice to section 5, any thing or sum of money which in accordance with the customary law of Guernsey represents the *fructus* of the glebe land will continue to be due or payable to the Rector.

**Ownership of other buildings.**

3. (1) Subject to subsections (2) and (3), legal ownership of -
  - (a) the St Martin Community Centre, the land upon which it is built and any land which, on the commencement of this section, forms part of its grounds ("**the Community Centre**") is transferred to and shall vest in the Constables for the time being of the parish of Saint Martin, and
  - (b) the Torteval Church Hall and the land upon which it is built ("**the Church Hall**") is transferred to and shall vest in the Constables for the time being of the parish of Torteval.
  
- (2) Notwithstanding subsection (1)(a) and section 5 -
  - (a) ownership of the Community Centre is transferred to and vested in the Constables subject to the lease held by the Saint Martin's Community Centre LBG, and
  - (b) if it is proposed to sell the Community Centre, in addition to the provisions of section 4, a sale may only take place after consultation with, and taking into

consideration the views of, the Rector and Churchwardens.

- (3) Notwithstanding subsection (1)(b) and section 5 -
- (a) the Constables shall -
- (i) permit the Rector and Churchwardens to have reasonable use of the Church Hall, or
- (ii) with the agreement of the Rector and Churchwardens, provide equivalent facilities for use by them in the performance of their functions, and
- (b) if it is proposed to sell the Church Hall, in addition to the provisions of section 4, a sale may only take place after consultation with, and taking into consideration the views of, the Rector and Churchwardens.
- (4) For the avoidance of doubt, no building or land transferred to and vested in the Constables in accordance with this section is parochial church property for the purposes of section 6(4).

*General provisions*

**Transfer of property and vesting in Constables.**

4. (1) Where any property has been transferred to and vested in the Constables under section 2 or 3 (a "**relevant property**"), that property shall be held

by the Constables on trust for purposes beneficial to the relevant persons of the parish.

- (2) For the avoidance of doubt, the Constables -
- (a) in addition to any duty to consult the Rector and Churchwardens under section 2 or 3, may not -
- (i) sell,
- (ii) lease, or
- (iii) change the use of,
- the relevant property except with the approval of a ratepayers meeting called for that purpose, and
- (b) in the exercise of any function under this Law, must act in accordance with any direction given to them by a ratepayers meeting, unless that direction would be contrary to any provision of this Law.

(3) For the purposes of subsection (2)(a)(iii), only a change of use which would lead to a change in the property reference of the relevant property for the purposes of the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007<sup>c</sup> is a change of the use of the relevant property.

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<sup>c</sup> Recueil d'Ordonnances Tome XXXII, p. 504; Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXXIII, pp. 45, 332 and 674; Ordinance No. LIII of 2010; No. XLVIII of 2011 and No. XIII of 2012; G.S.I. No. 54 of 2008; No. 109 of 2010 and No. 40 of 2011.

**Continuation of certain rentes etc. and personal liabilities.**

5. (1) For the avoidance of doubt, the following provisions shall apply in respect of a relevant property -

- (a) all rentes, encumbrances and servitudes subsisting and enforceable at the date of commencement of this Law in respect of a relevant property shall continue to subsist and be enforceable, and
- (b) all rights, obligations and liabilities subsisting on the date of commencement of this Law and enforceable against the persons in whom, immediately before that date, the property was vested shall, on that date, be transferred to and enforceable against the Constables of the parish and shall thereby be extinguished as against those persons.

(2) For the purposes of subsection (1)(b), "**all rights**" includes, for the avoidance of doubt and without limitation, the rights of a beneficiary under a trust.

PART II

MANAGEMENT BOARDS

**Management Boards.**

6. (1) There shall be established a Management Board for each ancient parish which, subject to any decision of the ratepayers meeting, has the functions listed in subsection (2) in relation to the management of the parochial church property of that parish.

- (2) The Management Board will have the functions of -
- (a) making recommendations to ratepayers meetings in relation to -
    - (i) any works to the parochial church property, and
    - (ii) any sum that should be raised by means of the Owners' Rate for the maintenance and upkeep of parochial church property,
  - (b) overseeing any works approved by the ratepayers meeting,
  - (c) reporting to the ratepayers meeting in relation to any works approved by the ratepayers meeting,
  - (d) reporting to the ratepayers meeting on an annual basis in relation to the insurance of the parochial church property, and
  - (e) subject to subsection (3), recommending additional uses of the parish church to the Rector and Churchwardens.
- (3) For the avoidance of doubt, an additional use of the parish church -

- (a) must not be incompatible with any relevant Canon of the Church of England, and
- (b) may only be carried out with the permission of the Rector and Churchwardens.

(4) For the purposes of this section, the "**parochial church property**" of an ancient parish is -

- (a) the parish church,
- (b) the churchyard, and
- (c) the glebe land,

of that parish.

**Composition and procedure of Management Boards.**

7. (1) The Management Board of an ancient parish shall be composed of the following seven members -

- (a) the Rector,
- (b) the two Churchwardens,
- (c) two representatives of the parish, elected annually by the Douzeniers and Constables from amongst their number, and

(d) two ratepayers elected annually at a ratepayers meeting.

(2) The members of the Management Board shall elect a Chairman from amongst their number, who shall have an original vote.

(3) For the avoidance of doubt, a person may not be a member of a Management Board in more than one capacity listed in subsection (1).

(4) The quorum of a Management Board shall be three, consisting of one member of each category described in subsection (1)(b), (c) and (d).

(5) A Management Board shall determine its own procedure.

**Powers of Management Boards.**

8. A Management Board may do anything which appears to it to be conducive to the carrying out of the functions specified in section 6(2) or to be incidental to their proper discharge, and, without prejudice to the generality, it may -

(a) instruct experts, and

(b) receive reports.

PART III  
RECTORIES

**Exemptions.**

9. (1) Sections 10 and 11 do not apply to the ancient parishes of St Peter Port and the Vale.

(2) For the avoidance of doubt, subsection (1) does not affect any liability of the two parishes mentioned in that subsection to maintain the rectory as before.

**Ownership of rectories.**

10. Legal ownership of the rectory of each of the ancient parishes is -

- (a) transferred to and shall vest in the Constables for the time being of that parish, and
- (b) held by them on trust for purposes beneficial to the relevant persons of the parish.

**Sale of rectories.**

11. (1) A rectory shall not be sold by the Constables of a parish except -

- (a) where there is a vacancy in the living, after consultation with, and taking into consideration the views of, the Deanery Synod, or
- (b) where a Rector currently lives in the rectory -
  - (i) with the agreement of the Rector, and

- (ii) after consultation with, and taking into consideration the views of, the Deanery Synod.

(2) Where it is proposed that a rectory is to be sold by the Constables of a parish, it must be approved at a ratepayers meeting called for that purpose.

(3) Subject to any customary law duty to provide suitable accommodation for -

- (a) the Rector of an ancient parish, and
- (b) the Rector's household,

the proceeds of the sale of a rectory may be applied in any lawful way for purposes beneficial to the relevant persons of the parish.

#### PART IV MISCELLANEOUS

##### **Powers of trustees.**

**12.** Where the Constables of a parish hold any property on trust pursuant to this Law, they may, subject to any provision of this Law, apply any part of the capital or income of that property for the purposes of the trust.

##### *Amendments*

##### **Amendment of Law of 1923.**

**13.** (1) The Law entitled the *Loi relative à la Taxation Paroissiale*

registered on the 27<sup>th</sup> October, 1923<sup>d</sup> ("**the Law of 1923**") is further amended as follows in relation to Article I -

- (a) in paragraph (b), immediately after "ni évaluer d'avance", insert ", par exemple, l'entretien annuel de nature générale",
- (b) in paragraph (c), immediately after "ordinaire", insert "du Cimetière de l'Église Paroissiale et",
- (c) in paragraph (d) -
  - (i) immediately after "Cimetières Paroissiaux", insert ", par exemple, les grosses réparations ou les travaux nécessaires pour la préservation et la protection des propriétés", and
  - (ii) for "des Curateurs du Trésor de l'Église", substitute "du Conseil d'administration dit "Management Board" (créé par la Loi intitulée "the Parochial Church Property (Guernsey) Law, 2015)",
- (d) in paragraph (f), immediately after "l'Église Paroissiale" insert "(sauf l'assurance des biens mobiliers)",

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<sup>d</sup> Ordres en Conseil Vol. VII, p. 146; amended by Ordres en Conseil Vol. VII, p. 392; Vol. XIII, p.351; and Vol. XIX, p.152.

- (e) delete paragraph (g),
- (f) for paragraph (h), substitute the following paragraph -
  - "(h) la taxe sur l'Église Paroissiale et le Cimetière de l'Église, le Presbytère, la Glèbe et les autres bâtiments ou terres ecclésiastiques appartenant de la Paroisse enoncées de temps à autre suivant les dispositions de l'Ordonnance intitulée "the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007";",
- (g) in paragraph (z), for "." substitute ";", and
- (h) immediately after paragraph (z), insert the following paragraphs -
  - "(aa) les réparations ordinaires à effectuer à la Glèbe, par exemple, l'entretien général;
  - (bb) les réparations extraordinaires à effectuer à la Glèbe, par exemple, les grosses réparations ou les travaux nécessaires pour la préservation et la protection de la Glèbe, que le conseil d'administration dit "Management Board" doit détailler et évaluer en avance;
  - (cc) les frais et les dépenses raisonnables encourus par le conseil d'administration dit

"Management Board" dans l'exercice de ses fonctions;

et dans cet article "la Glèbe" (anglicé "glebe land") signifie les terres qui étaient nommées auparavant "les terres appartenant de la Cure".

**Amendment of Parish Reserve Funds Law.**

14. The Parochial Taxation (Reserve Funds) (Guernsey) Law, 1997<sup>e</sup> is further amended as follows -

(a) for section 2(a), substitute the following paragraph -

"(a) extraordinary repairs to the Parish Church, Rectory, Churchyard or Parish Cemeteries," and

(b) for section 2(b), substitute the following paragraph -

"(b) the purchase of land for, and establishment of, a Churchyard or Parish Cemeteries,".

**Amendment of Parochial Assemblies Law.**

15. In Article 3(3) of the Law entitled the *Loi relative aux Assemblées Paroissiales* registered on the 29<sup>th</sup> November, 1902<sup>f</sup>, immediately after "Cure", insert "(et pour éviter l'incertitude, le Presbytère ne fait pas partie de la Cure)".

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<sup>e</sup> Ordres en Conseil Vol. XXXVII, p. 168; Vol. XLII(1), p. 256; Recueil d'Ordonnances Tome XXIX, p. 454.

*General***Exclusion.**

**16.** (1) Subject to subsection (2), nothing in this Law shall affect any property belonging to or held on trust for or by any of the following parishes -

- (a) Holy Trinity,
- (b) Saint John,
- (c) Saint Stephen, and
- (d) Saint Matthew, Cobo.

(2) The provisions of this Law shall apply to any property belonging to or held on trust for or by a parish listed in subsection (1) where it represents the parochial church property or rectory of an ancient parish.

**Interpretation.**

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

**"the ancient parishes"** means the ecclesiastical parishes of -

- (a) Saint Peter Port,
- (b) Saint Sampson,

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<sup>f</sup> Ordres en Conseil Vol. III, p. 274; Vol. VI, p. 115; Vol. VII, p. 481; Vol. XIX, p. 155.

- (c) the Vale,
- (d) the Castel,
- (e) Saint Saviour,
- (f) Saint Pierre du Bois,
- (g) Torteval,
- (h) the Forest,
- (i) Saint Martin, and
- (j) Saint Andrew,

**"the Church Hall"** has the meaning given in section 3(1)(b),

**"churchyard"** means any enclosed ground in which an ancient parish church stands,

**"churchwardens"** means, together, the Rector's warden and the People's warden of an ancient parish,

**"the Community Centre"** has the meaning given in section 3(1)(a),

"**the Deanery Synod**" means the synodical body of the Island and Bailiwick of Guernsey for the purposes of the Channel Islands (Church Legislation) Measure, 1931<sup>g</sup>,

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

"**the Law of 1923**" has the meaning given in section 13(1),

"**Owners Rate**" means the tax levied in accordance with Article II of the Law of 1923,

"**the Parochial Taxation Laws**" means -

- (a) the Law of 1923,
- (b) the Parochial Taxation and Voting Law, 1963<sup>h</sup>,
- (c) the Parochial Taxation (Reserve Funds) Law, 1997,
- (d) the *Ordonnance relative aux Taxes Paroissiales*, made permanent on 31st January, 1931<sup>i</sup>, and

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<sup>g</sup> Ordres en Conseil Vol. IX, p.127; as amended by the Synodical Government (Channel Islands) Order, 1970 (Ordres en Conseil Vol. XXII, p. 495).

<sup>h</sup> Ordres en Conseil Vol. XIX, p. 152.

<sup>i</sup> Recueil d'Ordonnances Tome V, p. 387; Tome XXIII, p. 254; and Tome XXVII, p. 52.

- (e) the *Ordonnance relative à la Procédure à suivre pour la levée d'une Taxe Paroissiale*, made permanent on 18th January, 1932<sup>j</sup>,

"**ratepayers**" has the same meaning as "contribuables" in the Law of 1923, as construed in accordance with the Parish Taxation and Voting Law, 1963, and related expressions shall be construed accordingly,

"**a ratepayers meeting**" means either -

- (a) a meeting convened to obtain the approval of ratepayers for the raising of tax under the Parochial Taxation Laws, or
- (b) any other meeting of ratepayers convened in accordance with the Law entitled the *Loi relative aux Assemblées Paroissiales* registered on the 29<sup>th</sup> November, 1902,

"**Rector**" includes a minister of the Church of England for the time being licensed as priest-in-charge of any of the ancient parishes within the meaning of the Priests-in-Charge (Assimilation to Rectors) (Guernsey) Law, 1999<sup>k</sup>,

"**rectory**" includes the grounds of that rectory,

"**relevant persons of the parish**" means -

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<sup>j</sup> Recueil d'Ordonnances Tome VI, p. 75.

<sup>k</sup> Ordres en Conseil Vol. XXXIX, p. 396.

- (a) the ratepayers of the parish, and
- (b) the dependants of those ratepayers,

and a "**dependant**" for these purposes means an individual who is dependent on a ratepayer of the parish for the ordinary necessities of life,

"**a relevant property**" has the meaning giving in section 4,

"**St Martin Community Centre**" means the building otherwise known as the Professor Shaw Community Centre, 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) In determining any question as to glebe land, regard shall be had to the provisions, and in particular Appendix 6, of the report of the Parochial Ecclesiastical Rates Review Committee dated 18<sup>th</sup> November 2011<sup>1</sup>.

(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.

**Citation.**

**18.** This Law may be cited as the Parochial Church Property (Guernsey) Law, 2015.

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<sup>1</sup> Article XV of Billet d'État No. IV of 2012.

**Commencement.**

**19.** This Law shall come into force on such day as the States may by Ordinance appoint, and an Ordinance may -

- (a) appoint different dates for different provisions of this Law and for different purposes, and
- (b) contain such saving and transitional provisions as the States think appropriate.

## **The Driving Licences (Guernsey) (Amendment) Ordinance, 2015**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> January, 2014<sup>a</sup>, and in exercise of the powers conferred on them by sections 2 and 28A of the Motor Taxation and Licensing (Guernsey) Law, 1987<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Amendments to the 1995 Ordinance.**

1. The Driving Licences (Guernsey) Ordinance, 1995<sup>c</sup>, is further amended as follows –

- (a) immediately after section 16(2), insert the following subsection -

"(2A) For the avoidance of doubt, the persistent misuse of drugs or alcohol, whether or not such misuse amounts to a dependency, shall be treated as if it were a disability for the purposes of this Ordinance (except for section 16(4)(a))."

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<sup>a</sup> Article VIII of Billet d'État No. I of 2014.

<sup>b</sup> Ordres en Conseil Vol. XXX, p. 341; Vol. XXXI, p. 278; Vol. XXXIII, p. 127; Vol. XXXVI, p. 256; Vol. XL, p. 298; Order in Council No. XIX of 2007; Recueil d'Ordonnances Tome XXVI, p. 90; and Tome XXIX, p. 406).

<sup>c</sup> Recueil d'Ordonnances Tome XXVI, p. 374; Tome XXVII, p. 62; Tome XXVII, p. 138; Tome XXVII, p. 149; Tome XXVIII, p. 55; Tome XXVIII, p. 299; Tome XXIX, p. 202; Tome XXXII, p. 93; and Ordinance No. V of 2010. There are also other unrelated amendments.

(b) in section 18 –

(i) in subsection (5), for "If the Committee has reasonable grounds", substitute "If the circumstances prescribed in subsection (5A) obtain in relation to a person who is an applicant for, or holder of, a licence, or if the Committee has reasonable grounds", and

(ii) immediately after subsection (5), insert the following subsections –

"(5A) Subject to subsection (5B), the circumstances prescribed for the purposes of subsection (5) are that the person who is an applicant for, or holder of, a licence –

(a) has been disqualified by an order of a court by reason that the proportion of alcohol in his body equalled or exceeded –

(i) 87.5 microgrammes per 100 millilitres of breath,

(ii) 200 milligrammes per 100 millilitres of blood,  
or

- (iii) 267.5 milligrammes per 100 millilitres of urine,
- (b) has been disqualified by order of a court by reason that he has failed, without reasonable excuse, to provide a specimen when required to do so pursuant to section 3 of the Road Traffic (Drink Driving) (Guernsey) Law, 1989<sup>d</sup> ("**the Drink Driving Law**"), or
- (c) has been disqualified by order of a court by reason of failure, without reasonable excuse, to give permission for a laboratory test of a specimen of blood taken pursuant to section 3A(6) of the Drink Driving Law, or
- (d) has been disqualified by order of a court on two or more occasions within any period of 10 years by reason that –

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<sup>d</sup> Ordres en Conseil Vol. XXXI, p. 512; Vol. XXXII, p. 392; Order in Council No. V of 2004; No. XXIX of 2008; Ordinance No. XXXIII of 2003; and Ordinance No. L of 2008.

- (i) he was unfit to drive through drink contrary to section 1 of the Drink Driving Law, or
- (ii) the proportion of alcohol in his breath, blood or urine exceeded the limit prescribed by virtue of section 2 of the Drink Driving Law.

(5B) For the purposes of subsection (5A)(a), (b) and (c) an order of the court shall not be taken into account unless it was made on or after 25<sup>th</sup> February, 2015 and subsection (5A)(d) shall not apply to a person unless the last such order was made on or after 25<sup>th</sup> February, 2015.", and

- (c) in section 24(1), immediately after the definition of "**disability**", insert the following definition –

""**the Drink Driving Law**" has the meaning given in section 18(5A)(b),".

**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), extended or applied.

**Citation and commencement.**

3. This Ordinance -

- (a) may be cited as the Driving Licences (Guernsey) (Amendment) Ordinance, 2015, and
- (b) shall come into force on the 25<sup>th</sup> February, 2015.

*ORDINANCE LAID BEFORE THE STATES*

**The Charities and Non Profit Organisations  
(Registration) (Guernsey) Law, 2008  
(Amendment) Ordinance, 2014**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the States' Resolution of the 24<sup>th</sup> September, 2014<sup>a</sup>, and in exercise of the power conferred on them by section 11 of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended<sup>b</sup> 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, as amended<sup>c</sup>, hereby orders:-

**Amendment of Schedule 1 to the Law of 2008.**

**1.** Schedule 1 to the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 is amended as follows -

(a) in paragraph 5, immediately after subparagraph (2) insert the following subparagraph -

"(3) For the avoidance of doubt, an organisation which -

(a) is struck off the Register under subparagraph (2), and

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<sup>a</sup> Article VII of Billet d'État No. XX of 2014.

<sup>b</sup> Order in Council No. XXVI of 2008; No. III of 2010; No. VIII of 2011; Recueil d'Ordonnances Tome XXXIII, pp. 149 and 290 and Ordinance No. XXIX of 2010.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

- (b) which has not applied to be put on the Register within 1 month of being given notice of being struck off,

is not registered for the purposes of the offence under section 1(5) of this Law.",

- (b) immediately after paragraph 10, insert the following paragraph -

**"Failure to provide information.**

**10A.** Where a registered organisation without reasonable excuse fails to -

- (a) comply with any request for information made by the Registrar under the Law,
- (b) comply with any obligation or requirement imposed by or under this Law, or
- (c) pay any fee imposed under paragraph 11,

it is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the uniform scale.", and

- (c) in paragraph 13 -

- (i) in subparagraph (2)(d) for the words "the Bailiwick", substitute "the Islands of Guernsey and Alderney", and
- (ii) immediately after subparagraph (2)(f), insert the following subparagraph -  
  
"(fa) the disclosure of information for the purposes of enabling or assisting the Director of Income Tax to discharge his functions,".

**Interpretation.**

2. Unless the context otherwise requires, references in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

**Extent.**

3. This Ordinance shall have effect in the islands of Guernsey, Alderney, Herm and Jethou.

**Citation.**

4. This Ordinance may be cited as the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2014.

**Commencement.**

5. This Ordinance shall come into force on the 10<sup>th</sup> December, 2014.

## **The Income Tax (Guernsey) (Amendment)**

### **(No. 2) Ordinance, 2014**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the States' Resolutions of the 2<sup>nd</sup> October, 2009<sup>a</sup> and the 11<sup>th</sup> December, 2013<sup>b</sup>, and in exercise of the powers conferred on the States by sections 75Q, 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>c</sup> and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>d</sup>, hereby orders:-

#### **Amendment of 1975 Law.**

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

2. After section 39D insert the following section -

#### **"Effect of tax cap on distributions made from taxed company income.**

**39E.** (1) Notwithstanding any other provision of this Law, when any income of a company has been taxed or is taxable in the company's hands at the company intermediate rate or the company higher rate, and in any year of charge the company distributes or is deemed to have distributed that income to an individual resident in Guernsey, then -

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<sup>a</sup> Article VII.9 of Billet d'État No. XXIV of 2009.

<sup>b</sup> Article IX of Billet d'État No. XXIV of 2013.

<sup>c</sup> Ordres en Conseil Vol. XXV, p. 124; sections 75Q and 203A were inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

<sup>d</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

- (a) no credit in respect of that year of charge for tax paid by the company may be allowed to the extent to which it would exceed the income tax liability (as limited by virtue of section 39B and the Sixth Schedule) in respect of that year of charge of the individual to whom the distribution was made or (if different) the individual claiming the credit,
  - (b) accordingly, no repayment shall be made to that individual in respect of the amount by which, apart from this section, the credit would have exceeded the amount of his income tax liability.
- (2) For the purpose of calculating -
- (a) the amount of credit due to the individual in that year of charge, and
  - (b) the amount (if any) of any repayment of tax due to him in that year of charge,

there shall be taken into account, before taking into account the amount of the company's distribution or deemed distribution, the amount of any other income of any different class, description or source arising or accruing to the individual in that year of charge from which tax has been deducted or in respect of which tax has already been paid."

3. In section 71 for "one hundred and eighty-two days or more" substitute "91 days or more in the aggregate".

4. In section 73A(4)(b) after "section 199" insert ", any surcharge or additional surcharge, or anything else required to be stated, under section 199AA".

5. After section 75K insert the following section -

**"Provision of returns as to interest payments."**

**75KA.** (1) A person carrying on banking business in Guernsey, including a person carrying on such business through a branch in Guernsey, (the "**bank**"), must, with effect from the 1<sup>st</sup> January 2015, provide the Director with -

- (a) a return of the amount of any interest paid or credited by the bank, in any calendar year specified by notice of the Director, not being a calendar year preceding 2014, to an individual resident in Guernsey (the "**depositor**"),
- (b) a return of the amount of any interest paid by an individual resident in Guernsey (the "**borrower**") in any calendar year specified by notice of the Director, not being a calendar year preceding 2014, to the bank on borrowed money secured against any land or building, wherever situate, or otherwise borrowed for the acquisition of any land, or the acquisition, construction, reconstruction or repair (including extension and renovation) of any

building, wherever situate,

- (c) in the case of a return relating to a calendar year after 2014, the tax identification number (the "**TIN**") of the depositor or (as the case may be) the borrower (and for the purposes of this paragraph the TIN means the social insurance registration number allocated to the individual in question under the Social Insurance (Contributions) Regulations, 2000 or such other identification number, word or expression as the Director may specify),
- (d) where the bank made or received no payment described in paragraph (a) or (b), a return containing a statement to that effect,
- (e) such other documents or information or class or description of documents or information as may be required for the purposes of this section or the performance by the Director of his functions and as the Director may by notice specify.

(2) Returns and other documents and information required to be provided by or under subsection (1) must be provided in such form and manner, by such means and at such times or intervals as the Director may by notice require.

(3) For the purposes of, but without prejudice to the

generality of, subsections (1) and (2) -

- (a) the notices referred to in those subsections may require a bank to register with the Director and to use and to provide information and documents by means of an electronic portal specified in the notices for that purpose,
- (b) the notices may be given or published in such form and manner, by such means and at such times or intervals and for such period as the Director thinks fit, including (without limitation) by publication on the official website of the States of Guernsey Income Tax office or by being set out in a statement of practice issued under section 204.

(4) Without prejudice to any other duty or power arising or imposed by or under this Law -

- (a) in the case of accounts established or (as the case may be) loans made on or after the 1<sup>st</sup> January, 2015, the bank must request the depositor's or (as the case may be) the borrower's TIN,
- (b) the depositor or (as the case may be) the borrower must upon request provide the bank and the Director with his TIN,

- (c) the Director may himself disclose the TIN to the bank, and
- (d) the TIN must (unless the Director determines otherwise) be used in all communications between the bank and the Director relating to the depositor or (as the case may be) the borrower.

(5) A person who without reasonable excuse fails to comply with any provision of subsection (4)(a) or (b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(6) Without prejudice to subsections (2) and (3), section 68(1AAA) (giving of notice from Director) applies in relation to a notice of the Director under subsection (1) or (2) or otherwise given by him under or for the purposes of this section as it applies in relation to a notice of the Director requiring a person to deliver a return as to his income, and references (however expressed) in this Law to the giving or receipt of such a notice shall be construed accordingly.

(7) Section 68AA (returns to be submitted in electronic form and by electronic means) applies in respect of this section as if -

- (a) references in subsections (1) and (2) of that section to section 68 included references to this section,
- (b) references in subsection (1) of that section to a

return as to a person's income included references to a return or other document or information required or authorised to be provided by, under or for the purposes of this section,

- (c) paragraph (a) of subsection (1) of that section and, in paragraph (b) thereof, the words "in the case of a company" were omitted."

6. In section 75M(1)(a) and (2)(a) after "75F" in each paragraph add "or 75KA".

7. In section 76 -

- (a) after "section 199" where first appearing insert "or 199AA",

- (b) for "the date of notification of the surcharge" substitute "the date of the issue of the notification of the surcharge",

- (c) after paragraph (a) insert the following paragraph -

"(aa) the imposition of, or the amount of, a surcharge or additional surcharge under section 199AA, the sole grounds of appeal are that -

- (i) the imposition of the surcharge or additional surcharge is unreasonable as

a matter of law, having regard to all facts and circumstances of the case, or

- (ii) the surcharge or additional surcharge has been miscalculated,".

8. In section 79(1)(d) after "section 199" insert "or 199AA".
9. In section 153(3), the proviso is repealed.
10. In section 153(4), the text after "shall apply accordingly" is repealed.
11. In section 153(7) the words "notwithstanding the provisos to subsections (3) and (4) of this section" are repealed.
12. In section 199(6)(a) the words "whichever of the following is the later" are repealed.
13. In section 199(6)(a)(i) for "the year in which the return was issued" substitute "the year in which the notice from the Director of Income Tax referred to in section 68(1) requiring a person to deliver a return as to his income was published in La Gazette Officielle in accordance with section 68(1AAA)(b) (in the case of persons to whom the notice was addressed or to whom it applied)".
14. In section 199(6)(a)(ii) for "of issue of the return" substitute "on which the notice requiring delivery of their return was given (in the case of any other persons)".
15. After section 199(6)(b) insert the following paragraph –

"(c) for the avoidance of doubt, a return of income is made consequent to a failure to give notice as referred to in paragraph (b)(i),".

16. In section 199(11)(b) immediately before the words "if as respects any year of charge" insert "in respect of a surcharge or additional surcharge (including arrears thereof) payable by virtue of subsection (6)(a),".

17. In section 199(11)(b)(i) for "the year in which the return was issued" substitute "the year in which the notice from the Director of Income Tax referred to in section 68(1) requiring a person to deliver a return as to his income was published in La Gazette Officielle in accordance with section 68(1AAA)(b) (in the case of persons to whom the notice was addressed or to whom it applied)".

18. In section 199(11)(b)(ii) for "of issue of the return" substitute "on which the notice requiring delivery of their return was given (in the case of any other persons)".

19. After section 199 insert the following section -

**"Surcharges in cases of appeal to the Tribunal.**

**199AA.** (1) Notwithstanding subsections (1), (2), (10) and (11) of section 199, if as respects any year of charge -

- (a) the Director has made an interim assessment,
- (b) the taxpayer has, under section 76, appealed to the appropriate body against that assessment,
- (c) the Director has, under section 82(1), agreed to

suspend or defer collection of the tax due under that assessment in whole or in part pending the determination of the appeal,

- (d) the Tribunal has determined the appeal, and
- (e) the Director has reasonable cause to believe that his decision to suspend or defer collection of the tax due under the assessment in whole or in part was based on information, submissions or calculations provided or made by the taxpayer or any person acting on the taxpayer's behalf unreasonably, negligently, fraudulently or in bad faith, or without proper regard to the amount likely to be payable,

the Director may serve a notice under subsection (2).

(2) A notice under this subsection must state -

- (a) that the Director proposes, by reason of the matters set out in subsection (1)(e) and any other relevant matters, to impose surcharges and additional surcharges (including arrears thereof) in respect of the tax arising in the same manner, and in the same amount, and with effect from the same dates, as if the tax had been charged in an assessment made in respect of the year of charge concerned in sufficient time to enable the tax to have been

paid on the 30<sup>th</sup> June and the 31<sup>st</sup> December in that year,

- (b) a reasoned explanation of the matters referred to in paragraph (a),
- (c) the amount and manner of calculation of the proposed surcharges and additional surcharges,
- (d) that the taxpayer may, within a period of 30 days immediately following the date of the issue of the notice, make written or oral representations to the Director explaining why, having regard to the contents of the Director's notice, the proposed surcharges and additional surcharges should not be imposed, and
- (e) that if the taxpayer does not make such representations within that period, then surcharges and additional surcharges (including arrears thereof) shall be payable in accordance with the Director's notice.

(3) If the taxpayer, within the 30 day period mentioned in subsection (2)(d), makes representations to the Director in accordance with that subsection, the Director shall review his notice, taking into account any representations made by the taxpayer, and having done so shall -

- (a) confirm or vary the proposed decision to impose surcharges and additional surcharges

(including arrears thereof), or rescind it and make a new decision as to the matter in question, and

(b) serve on the taxpayer a second notice in writing stating -

(i) the terms of, and the grounds for, the decision as confirmed or varied or, as the case may be, the new decision, and

(ii) that the taxpayer may, within a period of 30 days immediately following the date of the issue of the second notice, appeal against the decision under section 76.

(4) If the taxpayer, within the 30 day period mentioned in subsection (2)(d), does not make representations to the Director in accordance with that subsection -

(a) the proposed decision of the Director to impose surcharges and additional surcharges (including arrears thereof) is final,

(b) the taxpayer may not appeal against the decision under section 76, and

(c) the Director shall issue notification to the taxpayer of the surcharge and additional

surcharge.

(5) This section is without prejudice to the first proviso in section 76 (power of appropriate body to admit appeal out of time in specified circumstances).".

20. In section 200(1) and (4) after "section 199" insert "or 199AA".

21. Section 201(2)<sup>e</sup> is repealed.

22. In section 209(1) -

(a) for the definition of "Director of Income Tax"<sup>f</sup> substitute the following definition -

"the "**Director**" and the "**Director of Income Tax**" mean the Director of Income Tax referred to in section 205, and include the Deputy Director of Income Tax,"

(b) for the definition of "LLP"<sup>g</sup> substitute the following definition-

""**LLP**" means -

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<sup>e</sup> Section 201 was substituted by the Income Tax (Zero 10) (Guernsey) Law, 2007 (Order in Council No. V of 2011).

<sup>f</sup> See the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 pursuant to which the definition of the Director of Income Tax replaced that of the Administrator.

<sup>g</sup> The definition of "LLP" was substituted by Schedule 6 to the Limited Liability Partnership (Guernsey), 2013 (Order in Council No. VI of 2014).

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013, or
- (b) an entity formed under the laws of a place outside Guernsey, being an entity corresponding to an LLP described in paragraph (a),"

**23.** In the Sixth Schedule, for paragraph (2) of the table entitled "qualifying income" substitute the following paragraph -

"(2) Income derived from a body which has been granted an exemption from tax for that year of charge under an Ordinance made under section 40A, other than income arising or accruing from an office or employment held or exercised in Guernsey."

**24.** In the Sixth Schedule, in the paragraph which begins "However, notwithstanding the preceding provisions of this Schedule" -

- (a) after the words "elect to pay in respect of both qualifying and non-qualifying income", insert "(other than non-qualifying income arising or accruing from the ownership of lands and buildings situate in Guernsey, the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limits on tax specified in this Schedule)",

- (b) in subparagraph (ii) of that paragraph after the words "in respect of both qualifying and non-qualifying income", insert "(other than non-qualifying income arising or accruing from the ownership of lands and buildings situate in Guernsey, the tax on which is, for the avoidance of doubt, payable in addition to the amount of the limits on tax specified in this Schedule)".

**Citation.**

25. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 2) Ordinance, 2014.

**Commencement.**

26. This Ordinance shall come into force on the 1<sup>st</sup> January, 2015.

## **The Income Tax (Guernsey) (Amendment)**

### **(No. 3) Ordinance, 2014**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the States' Resolution of the 24<sup>th</sup> September, 2014<sup>a</sup>, and in exercise of the powers conferred on the States by sections 75Q, 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>b</sup> and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>c</sup>, hereby orders:-

#### **Amendment of 1975 Law.**

1. The Income Tax (Guernsey) Law, 1975, as amended, is further amended as follows.
2. In section 43(2)(ii), the proviso is repealed.
3. In section 51(4) after "section thirty-six of this Law" insert "in respect of individuals who are unmarried".
4. In section 51(5) after "under section 36(1)" insert "in respect of individuals who are unmarried".
5. After section 51(6) insert the following subsection -

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<sup>a</sup> Article VIII of Billet d'État No. XX of 2014.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; sections 75Q and 203A were inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

"(7) Notwithstanding any other provision of this section, a person who is non-resident in any year of charge is not, in respect of that year of charge, entitled to a proportion of the personal and other allowances prescribed under section 36(1) by way of relief from income tax which exceeds in amount the personal and other allowances to which an unmarried individual who is solely or principally resident in Guernsey in that year of charge would be entitled."

6. Section 51A(1)<sup>d</sup> is repealed.

7. In section 51A(2) after "section 36(1) of this Law" insert "in respect of individuals who are unmarried".

8. After section 51A(2) insert the following subsections -

"(2A) Notwithstanding the provisions of section 51(1), an individual who is resident, but not solely or principally resident, in Guernsey who is or has been in receipt of a pension arising or accruing or treated as arising or accruing in Guernsey in any year of charge shall, in respect of that year of charge, and provided that the pension is chargeable to tax and subject to the deduction of tax under this Law, be entitled to a proportion of the personal and other allowances prescribed under section 36(1) in respect of individuals who are unmarried by way of relief from income tax at the appropriate rate, and subject to the same conditions, as if he were solely or principally resident in Guernsey, that proportion -

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<sup>d</sup> Section 51A was inserted by Ordres en Conseil Vol. XXXIV, p. 388).

- (a) not to exceed one fifty-second part of those personal and other allowances in respect of every seven days for which he satisfies the Director of Income Tax that he is in receipt of that pension in that year of charge, and
- (b) to be set off only against his income comprised in that pension (and not against any other income arising or accruing or treated as arising or accruing in Guernsey).

(2B) In subsection (2A) "**pension**" means a pension, superannuation or other allowance described in section 81A(2)(b) or an annuity described in section 81A(2)(bA)."

**9.** In section 51A(3) -

- (a) the words "or section 51" are repealed, and
- (b) immediately before the words "individual who is solely or principally resident" insert "unmarried".

**10.** In section 75D(4) -

- (a) after "a person under section 75A or 75B" insert "or under subsection (5)",
- (b) in paragraph (a) after "any document or information produced" insert "or, as the case may be, which the person has told the Director of Income Tax he has in

his possession or power",

- (c) in paragraph (b) after "is not" insert "or, as the case may be, cannot be".

**11.** In section 75D(5)(a) after "what documents" insert "and information".

**12.** After section 75F(2)<sup>e</sup> insert the following subsection -

"(3) An order of the Royal Court under this section may also direct the person on whom the order is served that he must not -

- (a) inform, or cause or permit to be informed, the taxpayer that the order has been made, or
- (b) disclose, or cause or permit to be disclosed, to any person (including the taxpayer) any information or matter which is likely to prejudice the inquiry to which the order relates or the performance by the Director of Income Tax of his functions,

and a person who fails to comply with a direction under this subsection may be dealt with as if he had committed a contempt of court, unless he can show

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<sup>e</sup> Section 75F was inserted by Order in Council No. XVII of 2005.

- (i) that he took all reasonable precautions and exercised all due diligence to avoid the failure to comply by himself and by any person under his control, or
- (ii) in the case of a failure to comply with paragraph (b), that he did not know or suspect that the disclosure was likely to be prejudicial to the inquiry in respect of which the order was made or to the performance by the Director of Income Tax of his functions."

**13.** After section 75G(4)<sup>f</sup> insert the following subsection -

"(5) Subsections (1), (2) and (3) do not apply in respect of an order under section 75F to the extent that the order comprises a direction under section 75F(3)."

**14.** In section 75I(8)(c)<sup>g</sup> after the words "specified in, the warrant" insert "and any other person on the premises appearing to have charge of, or to be otherwise concerned in the operation of, the management, recording or storage of any document which is on or accessible from the premises, whether or not stored or recorded in electronic form, or any system, arrangement or technology in or by virtue of which any such document is stored, recorded or accessed".

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<sup>f</sup> Section 75G was inserted by Order in Council No. XVII of 2005.

<sup>g</sup> Section 75I was inserted by Order in Council No. XVII of 2005.

15. After section 75I(8)(c)(ii)<sup>h</sup> insert the following paragraph -

"and (iii) to render all such assistance as may reasonably be requested in order to facilitate the execution of the warrant and the search for, accessing, seizure or removal of any document."

16. In section 75L(2)(c)<sup>i</sup> after "section 75A(4)" insert "or 75B(5)".

17. In section 75O(1) for the definition of "taxpayer" substitute the following definition -

"**taxpayer**" means the person whose liability or the amount of whose liability to tax is being inquired into, or whose liability to tax is being or is sought to be enforced, under this Part of this Law, or from whom any amount due is being or is sought to be collected or recovered."

18. After section 172(1) insert the following subsection -

"(1A) For the avoidance of doubt, arrangements made with the government of another territory and specified in a Resolution under this section may, without limitation, and provided that the main purpose or one of the main purposes of the arrangements is that they are made with a view to affording relief from double taxation, make provision in respect of the following matters -

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<sup>h</sup> Section 75I was inserted by Order in Council No. XVII of 2005.

<sup>i</sup> Section 75L was inserted by Order in Council No. XVII of 2005.

- (a) the apportionment of taxing rights,
- (b) variations in the rates of tax, and methods of computing a person's liability to tax, in relation to particular sources of income,
- (c) the exemption from tax of particular sources of income,
- (d) other methods of affording relief from double taxation, in addition to those provided for by section 173 (tax credits), and
- (e) consequential, incidental, supplementary and transitional matters."

**19.** In section 172(2) immediately before the word "revoked" insert "varied or".

**20.** After section 193A(2)<sup>j</sup> insert the following subsections -

"(2A) An employer -

- (a) who submits to the Director of Income Tax any form, schedule or list which he is required to submit by regulations made under the provisions of section 81A and which is

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<sup>j</sup> Section 193A was inserted by Ordres en Conseil Vol. XXVII, p. 118.

incorrect or incomplete in any material particular, and

- (b) who does not provide a corrected or completed form, schedule or list within a period specified by notice in writing from the Director of Income Tax (such period being one of not less than 21 days immediately following the date of the notice),

is liable to a penalty not exceeding £300 and is in addition liable to a further penalty not exceeding £50 for every day after the date of the imposition of the original penalty during which the form, schedule or list remains uncorrected or uncompleted.

(2B) Subsection (2A) is without prejudice to section 193(2)."

21. In section 209(1) for the definition of "emoluments" substitute the following -

**"emoluments"**, in relation to an office or employment, includes -

- (a) any salary, stipend, fees, wages, earnings, perquisites and profits and payments whatsoever arising therefrom, from the termination thereof, or in consequence of a change in the terms thereof,
- (b) any other benefit, whether or not convertible into cash and irrespective of the identity of its provider, which

is derived by an office holder or employee, or by a member of his family or household, from that office or employment, from the termination thereof, or in consequence of a change in the terms thereof,

whether in pursuance of a legal obligation or not, and whether directly or indirectly, and "emoluments" also includes, for the avoidance of doubt, an award of compensation for unfair dismissal made by the Employment and Discrimination Tribunal under section 21 of the Employment Protection (Guernsey) Law, 1998,".

**Citation.**

22. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) (No. 3) Ordinance, 2014.

**Commencement.**

23. This Ordinance shall come into force on the 1<sup>st</sup> January, 2015 and shall have effect for the year of charge 2015 and subsequent years.