

Island of  Guernsey

Ordinance of the States

**I
1999**

Made 24th February, 1999
Coming into operation..... 1st March, 1999

**The Public Highways (Temporary Closure)
Ordinance, 1999**

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The Public Highways (Temporary Closure) Ordinance, 1999

THE STATES, in pursuance of their Resolution of the 25th day of March, 1998(a), hereby order:-

Effect of "al fresco" licences

Abridgment of public right of access, etc.

1. (1) Subject to subsection (2) and notwithstanding any rule of customary law to the contrary, at any time during which the holder of an "al fresco" licence is entitled to occupy the specified area to which his licence relates, no person shall have the right to pass and repass over, whether on foot or with animals or vehicles or be on, that specified area unless he does so, or is there, with the consent, express or implied, of the "al fresco" licensee.

(2) Subsection (1) does not apply to-

- (a) an officer of police, an officer of Customs and Excise or an immigration officer, acting in the course of his duty;
- (b) a member of the fire brigade, ambulance or other emergency service, acting in the course of his duty;
- (c) a person lawfully exercising any power conferred by any enactment or lawfully discharging any function or duty on behalf of a Committee of the States, a parochial authority or the Gas Company; or
- (d) a vehicle or animal which is in the charge of a person mentioned in paragraph (a), (b) or (c).

Applications for grant of "al fresco" licences

Particulars in application.

2. (1) A person wishing to obtain an "al fresco" licence shall apply to the Royal Court in accordance with the provisions of this Ordinance.

(2) An application for an "al fresco" licence shall include the following particulars-

- (a) the full name and address of the applicant;
- (b) the location of the area of the public highway for which the application is made; and
- (c) full details of-
 - (i) the purpose,
 - (ii) the hours of the day, and
 - (iii) the days of the year,for which the "al fresco" licence is being sought.

Formalities prior to application.

3. (1) At least 28 clear days prior to the date on which an applicant proposes to make the application, he shall send to-

- (a) the Constables of the Parish in which the specified area is situated;
- (b) the States Traffic Committee;
- (c) the States of Guernsey Board of Industry;

- (d) the States Committee for Home Affairs; and
- (e) the Island Development Committee,

a notice in writing containing the details prescribed in section 2(2) and full details of the date and time of the proposed application.

(2) Each notice sent pursuant to subsection (1) shall be accompanied by-

- (a) a plan drawn to scale showing the proposed dimensions and layout of the specified area, so as to indicate, in particular, the positioning of the tables, seating and other items of furniture and any means by which the extent of the specified area will be marked;
- (b) a full description of the tables, seating and other items of furniture proposed to be placed in the specified area, which may, where appropriate, include photographs, drawings or other visual representations; and
- (c) full details of any proposed screening, awnings or other means of enclosure and other extraneous fixtures and fittings in respect of the specified area.

(3) On two weekly occasions prior to the proposed application, an applicant shall cause a notice to be published in La Gazette Officielle in the manner prescribed by law, which shall contain-

- (a) the details prescribed in section 2(2);
- (b) full details of the date and time of the proposed application; and

- (c) a statement indicating that further details of the proposed application, including plans, may be inspected at the premises of the Constables of the Parish in which the specified area is situated.

(4) Unless an "al fresco" licence is already in force in respect of the specified area, an applicant shall cause a notice containing the details set out in subsection (3) to be affixed on or near premises in the vicinity of the specified area in question in such a manner as to be easily read by a person in a public place adjacent to those premises for 14 clear days prior to the date of the proposed application.

(5) An applicant in respect of a specified area which is not adjacent to premises over which he exercises control is not required to comply with subsection (4).

Duties of Royal Court.

4. The Royal Court shall not dispose of any application under this Ordinance unless the provisions of this Ordinance, when applicable to the particular case, have been complied with.

Grant, suspension, variation and forfeiture of "al fresco" licences

Reports to Royal Court.

5. (1) Upon the hearing of an application for an "al fresco" licence, written reports shall be submitted by-

- (a) the Constables of the Parish in which the specified area is situated;
- (b) the States Traffic Committee;
- (c) the States of Guernsey Board of Industry;

- (d) the States Committee for Home Affairs, setting out, in particular, the views of the fire brigade and the police on the application; and
- (e) the Island Development Committee.

(2) A report under subsection (1)(a) shall contain-

- (a) a description of the specified area in question, the applicant's premises (if any) adjacent thereto and their immediate surroundings; and
- (b) the objections (if any)-
 - (i) of the Constables and Douzaine, or
 - (ii) which have been received from interested parties or members of the public;

and may contain any other matter which the Constables consider pertinent to the application.

(3) If objections are made in accordance with subsection (2)(b), one of the Constables shall attend personally or by his representative before the Royal Court at the making of the application and, in default of such appearance, the Royal Court may hear and determine the said application.

(4) Where a report under paragraph (b), (c), (d) or (e) of subsection (1) does not raise any objection to the application, that report may consist of a letter to that effect.

Grant of "al fresco" licence.

6. (1) The Royal Court may, on application being made to it in accordance with the provisions of this Ordinance and after taking into account the reports submitted by virtue of section 5, grant to the applicant an "al fresco" licence authorising the applicant to have exclusive occupation of the area specified in the licence during the hours and days mentioned and for the purposes specified and subject to any conditions imposed therein.

(2) A licence granted under subsection (1) may be made subject to such conditions as the Royal Court thinks fit to impose and (without prejudice to the generality of the foregoing) may, when an officer of police or a member of the fire brigade is of the opinion that an emergency has arisen requiring its immediate suspension, be liable upon his direction to such suspension.

(3) A person shall not be refused the grant or renewal of an "al fresco" licence solely on the ground that he is already the holder of one or more "al fresco" licences if the Royal Court is satisfied that he can adequately supervise the exercise of each such licence granted to him.

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

7. (1) Unless suspended or forfeited under this Ordinance, an "al fresco" licence granted under section 6 shall be valid-

- (a) from such day as the Royal Court directs until the 31st December next following; or
- (b) where the application is not unlimited as respects the days of the year, between such days as the Royal Court determines.

(2) If renewed, unless suspended or forfeited under this Ordinance, an "al fresco" licence shall be valid-

- (a) from the 1st January until the 31st December in that year; or
- (b) between the days previously determined by the Royal Court.

(3) An "al fresco" licence shall, subject to the provisions of subsections (4) to (6) and section 10, be granted or renewed for any year upon payment on or before the 31st December preceding to Her Majesty's Greffier of the annual fee prescribed in section 13 in one payment, and in default shall cease to be valid on the 1st January next following.

(4) The Constables of the Parish in which the specified area is situated, or a Committee of the States mentioned in section 3(1), as the case may be, may, if they consider there is good reason to do so, object to the renewal of an "al fresco" licence and (without prejudice to the generality of the foregoing) shall consider any objections they receive from any person or body.

(5) Any objection to a renewal of an "al fresco" licence shall be lodged in writing at the Greffe before the 31st October and a copy served on the "al fresco" licensee.

(6) The Royal Court shall consider any objection made under this section and shall have power to renew the licence, renew it with conditions attached, or refuse to renew it.

(6) Upon considering an objection, the Royal Court shall hear the evidence in support thereof and any evidence by or on behalf of the "al fresco" licensee before reaching a decision.

(7) The powers set out in this section are in addition to and not in derogation from the powers contained in section 10.

Application to vary "al fresco" licence.

8. (1) An "al fresco" licensee wishing to vary-

(a) the purpose,

(b) the hours of the day,

- (c) the days of the year, or
- (d) any other condition,

of his "al fresco" licence shall apply to the Royal Court for approval of the variation.

(2) An application under subsection (1) shall be subject to the same requirements under this Ordinance as if it were an original application for the grant of an "al fresco" licence.

Functions of Her Majesty's Greffier.

9. (1) Her Majesty's Greffier shall as soon as reasonably practicable after an "al fresco" licence has been granted, or its terms varied, by the Royal Court, and upon being satisfied that the fees prescribed by this Ordinance have been paid, issue to the "al fresco" licensee concerned an "al fresco" licence certificate in such form as Her Majesty's Greffier may from time to time determine.

(2) Her Majesty's Greffier shall keep a register of all "al fresco" licences granted by the Royal Court under the provisions of section 6.

(3) Her Majesty's Greffier shall from time to time amend the register kept in accordance with subsection (2) in the following circumstances-

- (a) upon suspension, forfeiture or non-renewal of an "al fresco" licence; or
- (b) upon variation of the terms of an "al fresco" licence; or
- (c) where an "al fresco" licensee informs him that he has ceased or will cease to exercise that licence; or
- (d) upon a change of name by an "al fresco" licensee; or
- (e) upon an "al fresco" licence ceasing for any other reason to be valid.

Applications by Her Majesty's Procureur.

10. (1) The Royal Court may, upon an application being made to it by or on behalf of Her Majesty's Procureur-

- (a) suspend, vary or order the forfeiture of an "al fresco" licence; or
- (b) direct Her Majesty's Greffier not to renew an "al fresco" licence held by the "al fresco" licensee named in the application.

(2) In proceedings under this section Her Majesty's Procureur shall summon the "al fresco" licensee named in the application to appear before the Royal Court to show cause why his "al fresco" licence should not be suspended, varied or forfeited or why the Royal Court should not direct Her Majesty's Greffier not to renew the "al fresco" licence; and the summons shall state shortly the grounds upon which Her Majesty's Procureur intends to rely to support the application.

(3) Upon considering an application, the Royal Court shall hear the evidence in support thereof and any evidence by or on behalf of the "al fresco" licensee before reaching a decision.

(4) Her Majesty's Procureur may-

- (a) at his discretion, or
- (b) at the request of-
 - (i) the Constables of the Parish in which the specified area is situated, or
 - (ii) a Committee of the States mentioned in section 3(1),

make an application in pursuance of the provisions of subsection (1).

Renewal of "al fresco" licence after suspension.

11. Where a court orders the suspension of an "al fresco" licence in pursuance of any of the provisions of this Ordinance and that period of suspension does not end until after the unexpired portion of the period for which the "al fresco" licence is then current, the "al fresco" licensee may, upon payment of the appropriate fee, renew that "al fresco" licence at the end of the period then current but the "al fresco" licence so renewed shall be of no effect until the period of suspension is ended.

Change of name of "al fresco" licensee or adjacent premises.

12. An "al fresco" licensee who changes his name or the name of the premises (if any) controlled by him adjacent to the specified area shall as soon as reasonably practicable thereafter notify Her Majesty's Greffier and the Chief Officer of the Island Police Force in writing thereof and at the same time send his "al fresco" licence to Her Majesty's Greffier for amendment.

Fees

Fees.

13. (1) The fees payable under this Ordinance shall be-

- (a) in respect of an application for the grant of an "al fresco" licence or an application to vary the conditions attached to an "al fresco" licence-
 - (i) £100 to Her Majesty's Greffier, and
 - (ii) £20 to the Constables of the Parish in which the specified area is situated; and
- (b) in respect of an application to renew an "al fresco" licence, £100 to Her Majesty's Greffier.

(2) Fees shall not be reimbursable (whether or not the application is granted).

*Offences and penalties***Offences and penalties.**

14. (1) A person who exercises an "al fresco" licence otherwise than in accordance with the conditions attached to it is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the uniform scale.

(2) A person who in connection with any application under this Ordinance knowingly makes any false statement or representation or produces or furnishes any information which he knows or believes to be false is guilty of an offence and liable, on summary conviction, to a term of imprisonment not exceeding three months or to a fine not exceeding level 4 on the uniform scale, or to both.

(3) Where a person is convicted of an offence under subsection (1), in addition to any penalty imposed, the court may order the "al fresco" licence to be suspended for a period not exceeding three months and upon such order being made (which shall be considered as part of the sentence for purposes of appeal) the "al fresco" licence shall cease to have effect during the period specified.

(4) Where a Notice of Appeal has been lodged in accordance with the Magistrate's Court (Criminal Appeals) Law, 1988(b), it is hereby declared that any order under subsection (3) may be suspended by the Magistrate's Court until the disposal of the appeal.

Offences by bodies corporate.

15. (1) Where an offence under this Ordinance is committed by a body corporate and 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, he, as well as the body corporate, is guilty of the offence and may be proceeded against and punished accordingly.

(b) Ordres en Conseil Vol. XXXI, p. 83.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

General provisions

Service of notices.

16. A notice under this Ordinance is validly served -

- (a) on any person, if delivered to him, left, or sent by registered post or recorded delivery service to him, at his usual or last known place of abode, within the Bailiwick or elsewhere;
- (b) on any partnership, if delivered to any partner, or left at, or sent by registered post or recorded delivery service to, the principal or last known place of business within the Bailiwick or elsewhere;
- (c) on any body corporate, if left at, or sent by registered post or recorded delivery service to, its registered office if situated in the Bailiwick, or if not so situated, to its principal or last known place of business within the Bailiwick or elsewhere.

Amendment to 1929 Ordinance.

17. In section (4) of Article II of the "Ordonnance relative au Trafic Véhiculaire en cette Ile" of the 2nd March, 1929(c), for "Leave" substitute "Save in accordance with a licence granted under the provisions of the Public Highways (Temporary Closure) Ordinance, 1999, leave".

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- (c) Recueil d'Ordonnances Tome VIII, pp. 184, 194 and 204; Tome X, pp. 9, 59 and 176; Tome XIII, p. 292; Tome XIV, p. 319; Tome XVI, p. 187; Tome XXI, p. 190; Tome XXII, p. 125; Tome XXIII, pp. 26 and 404; Tome XXV, p. 140; Tome XXVI, pp. 90 and 374.

Interpretation.

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

"**al fresco**" licence" means a licence granted under the provisions of section 6;

"**al fresco**" licensee" means the holder of an "al fresco" licence;

"**applicant**" means a person wishing to obtain an "al fresco" licence;

"**application**" means an application for an "al fresco" licence;

"**fire brigade**" means the fire brigade of the Island of Guernsey;

"**the Gas Company**" has the same meaning as in section 1 of the Public Thoroughfares (Guernsey) Law, 1958(d);

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller;

"**officer of police**" means a member of the salaried police force of the Island of Guernsey, or, within the limits of his jurisdiction, a member of the Special Constabulary;

"**public highway**" includes any road, street, lane or public place over which the public has, under the customary law of the Island, the right to pass and repass without let or hindrance, whether on foot or with animals or vehicles;

"**the Royal Court**" means the Royal Court sitting as a Full Court;

"**specified area**" means the area of the public highway in respect of which an "al fresco" licence is sought, or granted, as the case may be.

(2) Unless the context otherwise requires, any reference in this Ordinance to any other enactment shall be construed as a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment, including this Ordinance.

Extent.

19. This Ordinance shall have effect in the Island of Guernsey.

Citation.

20. This Ordinance may be cited as the Public Highways (Temporary Closure) Ordinance, 1999.

Commencement.

21. This Ordinance shall come into force on the 1st March, 1999.

K. H. TOUGH,
Her Majesty's Greffier.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

PRICE £2.50