

Island of



Guernsey

Ordinance of the States

XL
2013

Made 11th December, 2013

The Parochial Administration Ordinance, 2013

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THE STATES, in pursuance of their Resolution of the 30th June, 2010^a, hereby order:-

Amendments.

1. In the Ordonnance Générale relative aux Routes, Rues et Chemins of 1840^b -

- (a) repeal Articles 5, 8, 9, 28, 35, 82 and 84,
- (b) in Article 10, for "des Connétables et Douzeniers du Canton", substitute "du Département des États de cette Isle anglicisé comme "the Public Services Department"",
- (c) for Article 14, substitute –

"14. Le Département des États de cette Isle anglicisé comme "the Public Services Department" sera tenu de maintenir ou faire maintenir convenablement, par qui il appartiendra, les Pompes, Puits, Fontaines, et Abreuvoirs, bordant les Grandes Routes, Rues, et Chemins de cette Isle, et veillera à ce que les Eaux qui en proviennent ne nuisent aux dites Routes, Rues, et Chemins."

^a Article III of Billet d'État No. XV of 2010.

^b Recueil d'Ordonnances Tome II, p. 509, amended by Recueil d'Ordonnances Tome IV, p. 8; Tome V, p. 357; Tome VIII, pp. 23 and 305; Tome XII, p. 97; Tome XIV, p. 8; Tome XXV, p. 144; Ordonnances Master Set Vol. 18, p. 109; Vol. 20, p. 207; Vol. 21, p.68. See also Article 38 of Recueil d'Ordonnances Tome VIII, p. 140.

- (d) in Article 27, for "un des Connétables de la Ville", substitute "le Département des États de cette Isle anglicisé comme "the Environment Department"", and
- (e) for Article 41, substitute –

"41. Il est défendu d'enclorre le tout ou partie d'aucune Largisse, ou de fermer aucune Rue ou Chemin, ou d'en changer la direction, sans préalablement appeler les Connétables et Douzeniers de la Paroisse dans laquelle telle Largisse, Rue, ou Chemin, est situé, et donner connaissance publique, par le moyen de la Gazette Officielle, du jour et de l'heure auxquels les dits Connétables et Douzeniers doivent se rendre sur les lieux, afin que s'il se trouve des opposants ils soient à même de s'y présenter pour faire valoir leur opposition, lesquels Connétables et Douzeniers, après avoir entendu les parties, dresseront un Rapport par écrit réglant la manière dont l'ouvrage peut être fait, lequel Rapport sera présenté à la Cour Royale, composé du Président et de Sept Jurés pour le moins, au nom du Département des États de cette Isle anglicisé comme "the Environment Department", afin qu'elle en ordonne. Et est défendu d'enclorre telle Largisse, ou de fermer ou changer telle Rue ou Chemin, sans en avoir obtenu la permission de la Cour, sur la peine d'une Amende qui n'excédera pas un montant égal à ce qui est dénommé "level 4 on the uniform scale established by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989", et d'être de plus tenu de remettre les lieux dans leur premier état.

41A. Dans le cas où la Cour Royale doit considérer si elle va accorder une permission conformément à l'Article 41, la Cour doit déterminer si l'intérêt public qui serait desservi par la fermeture ou changement du Chemin ou de la Rue, ou la clôture de la Largisse, l'emporte sur les intérêts propres de ces personnes (le cas échéant) qui s'opposent au projet de fermeture, changement ou clôture, et l'intérêt public au maintien

de la Largisse, la Rue ou le Chemin ouvert, ou de la direction actuelle de la Rue ou du Chemin."

2. In the Ordonnance ayant rapport à la Construction de Maisons, Salles Publiques et Bâtiments, et au Tracement de Routes et Chemins of 1931^c -

- (a) in Article 36(2), for "9 metres" substitute "1.5 metres", and
- (b) for Article 36(3), substitute –

"(3) An appeal shall lie to the Parochial Appeals Tribunal established under the Parochial Administration Ordinance, 2013, by way of service of a notice of appeal on the President of that Tribunal, from the refusal of the competent authority, whether under this Article or Article 37, to permit the erection or re-erection of a building; and subsections (2) to (6) of section 1C of the Cutting of Hedges Ordinance, 1953 shall apply to the service of a notice of appeal under this Article as they apply to the service of a notice of appeal under that Ordinance."

3. In Article 1 of the Ordonnance relative à la Destruction de Rats of 1937^d, in the definition of "competent rat authority", delete "the Constables of the

^c Recueil d'Ordonnances Tome VIII, p. 123, amended by Recueil d'Ordonnances Tome VIII, pp. 140 and 147; Tome XI, p. 338; and Ordres en Conseil Vol. XXXI, p. 469.

^d Recueil d'Ordonnances Tome IX, p. 24, amended by Recueil d'Ordonnances Tome XXIII, p. 427; and Ordres en Conseil Vol. XXXI p. 278. Extended to Herm by Tome IX, p. 247.

several parishes of the Island acting within the limits of their respective parishes,".

4. In the Cutting of Hedges Ordinance, 1953^e -

(a) after section 1(1) insert the following subsection -

"(1A) Every occupier of land bordering the corner of a public road or, if the land is unoccupied, the owner thereof, shall ensure that no hedge overhangs that corner so as to obstruct the view over or around that corner.",

(b) repeal section 1(3), and

(c) immediately after section 1, insert the following sections -

"Warning Notices.

1A. (1) The Constables of each Parish may serve a notice (a "**warning notice**") signed by two or more Constables or Douzeniers, on a person who in their opinion is infringing any of the provisions of section 1, or who has otherwise not removed from a public road material he has cut from hedges.

(2) A warning notice must -

(a) contain an explanation of why it has been

^e Recueil d'Ordonnances Tome X, p. 373; amended by Ordres en Conseil Vol. XXXI p. 278; and Recueil d'Ordonnances Tome XXV, p.76.

served, including the precise nature of any alleged infringement of section 1;

- (b) explain that the person has, from the date of service of the warning notice,
 - (i) seven days to remedy the infringement, or
 - (ii) if the warning notice relates to material cut from hedges left on the public road, 24 hours to remove the material,

before the person becomes liable to pay a civil penalty and, thereafter, an ongoing daily penalty, pursuant to subsection (3) or (4) (as the case may be), and the amounts of those penalties; and

- (c) set out the person's right to appeal under section 1B against the service of the notice and against any penalty subsequently imposed.

(3) Subject to subsection (4), a person who has been served with a warning notice and who continues to infringe section 1 shall be liable, on the eighth day after service of the warning notice, to a civil penalty of £50; and he shall in addition be liable to a further ongoing penalty of £5 for every day after the date of the imposition of the original penalty, during which the infringement continues.

(4) A person who has been served with a warning notice relating to material cut from hedges left on the public road and who has not

removed that material shall be liable, 24 hours after service of the warning notice, to a civil penalty of £50; and he shall in addition be liable to a further ongoing penalty of £5 for every day after the date of the imposition of the original penalty, during which he does not remove the material.

(5) A penalty imposed under this section shall be collected by the Constables of the relevant Parish, and on collection shall form part of the general funds of that Parish.

(6) In default of payment of a penalty under this section, the Constables may proceed to enforce payment as if the amount due were a civil debt.

Appeals.

1B. (1) A person aggrieved by the decision to serve a warning notice, or to impose under section 1A a civil penalty, including an ongoing daily penalty, may appeal to the Parochial Appeals Tribunal established under the Parochial Administration Ordinance, 2013, by way of service of a notice of appeal on the President of that Tribunal.

(2) For the avoidance of doubt, the making of an appeal under subsection (1) does not affect the validity of the penalty or notice in question, save that an ongoing daily penalty shall stop accruing from the date of the service of a notice of appeal under subsection (1).

Service of documents.

1C. (1) A warning notice required to be served under this Ordinance on a person may be served by being delivered to, or being left at, or sent by post to the property to which the warning notice relates.

(2) A notice of appeal under section 1B may be served on the Tribunal by being delivered to, or being left at, or sent by post to the Tribunal's published address for service.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

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

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

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

Parish Accounts: general.

5. (1) The Constables of each Parish shall continue to keep the general records of their Parish's Douzaine.

(2) The Constables of each Parish shall continue to keep account books in respect of the general funds of the Parish and its reserve fund (if any).

(3) All accounts (including any accounts of charitable funds) held by or in the name of the Constables, Douzaines, Churchwardens or committees of a Parish ("**Parish Accounts**") must be scrutinised each year, and financial accounts

prepared, in accordance with the requirements of section 6.

(4) The financial accounts referred to in subsection (3) must be approved each year by the ratepayers and electors of the Parish in accordance with section 7.

Parish Accounts: scrutiny and preparation of financial accounts.

6. (1) Subject to the provisions of this section, Parish Accounts must be audited each year by a qualified accountant who is independent of the Parish, and financial accounts thereof prepared in line with generally accepted accounting standards.

(2) If the Constables so elect, in relation to any year when the income of a Parish from ratepayers is under £250,000 its Parish Accounts shall, instead of being subject to the requirements of subsection (1), be scrutinised by any two persons who are independent of the Parish and who are considered to be of good character by the Constables and the Douzaine, and financial accounts thereof prepared by those persons in line with generally accepted accounting standards.

(3) If the Constables so elect, in relation to any year when the criteria in subsection (4) apply to a bank account which forms part of the Parish Accounts, it shall, instead of being subject to the requirements of subsection (1) and (2), be scrutinised by any person considered to be of good character by the Constables and the Douzaine, and a financial account thereof prepared by that person on a profit and loss basis.

(4) The criteria referred to in subsection (3) are that –

- (a) on 183 days or more during the year in question, the bank account had £50,000 or less in it, and
- (b) the majority of the money in the bank account over the course of that year did not come from ratepayers.

(5) For the avoidance of doubt, a Constable or member of the Douzaine may scrutinise the bank account and prepare the financial account referred to in subsection (3).

(6) In this section –

"bank account" includes a building society account,

"independent of the Parish" means not a member of the Douzaine, not a Constable, and not a spouse, sibling, parent or child of a member of the Douzaine or a Constable, and

"qualified accountant" means a professional member of an accountancy institute.

(7) The Policy Council may issue guidance in relation any of the matters set out in this section.

Parish Accounts: approval by ratepayers and electors.

7. (1) The Constables of each Parish shall convene a meeting of the ratepayers and electors of the Parish each year to approve the financial accounts referred to in section 6 within three months of their having been prepared.

(2) The Constables shall give at least 14 days' notice of the meeting referred to in subsection (1) by notice in La Gazette Officielle, and by such other method (if any) that they think fit.

(3) The Constables shall make the financial accounts available for public inspection for at least seven days before the meeting referred to in subsection (1).

Establishment of the Parochial Appeals Tribunal.

8. Schedule 1 has effect.

Interpretation.

9. (1) In this Ordinance -

"**Advocate**" means an Advocate of the Royal Court of Guernsey,

"**Court of Appeal**" means the Court of Appeal constituted by the Court of Appeal (Guernsey) Law, 1961^f,

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

"**person**" includes any body or authority,

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

"**the Royal Court**" means the Royal Court of Guernsey,

^f Ordres en Conseil Vol. XVIII, p. 315. There are amendments not relevant to this enactment.

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

Savings and transitional provisions.

10. Where a person commits an offence under a provision repealed by this Ordinance –

- (a) before the commencement of this Ordinance, or
- (b) partly before and partly after the commencement of this Ordinance,

he shall be charged and proceeded against under that provision as if it had not been repealed.

Extent.

11. (1) Subject to subsection (2), this Ordinance has effect in the islands of Guernsey and Herm.

(2) Sections 1, 2 and 4 have effect in the island of Guernsey only.

Repeals.

12. The Ordinances specified in Schedule 2 are hereby repealed.

Citation.

13. This Ordinance may be cited as the Parochial Administration Ordinance, 2013.

Commencement.

14. This Ordinance shall come into force on the day appointed by Order of the Policy Council, and such an Order may appoint different days for different provisions and different purposes.

J. TORODE,
Her Majesty's Greffier.

Section 8.

SCHEDULE 1
THE PAROCHIAL APPEALS TRIBUNAL

Establishment and function of the Tribunal.

1. (1) There is established by and in accordance with the provisions of this Ordinance a Tribunal, which is a public authority for the purposes of the Human Rights (Bailiwick of Guernsey) Law, 2000^g ("**the Human Rights Law**"), and which is to be known as the Parochial Appeals Tribunal ("**the Tribunal**").

(2) The function of the Tribunal is to hear and pronounce judgments on appeals under –

- (a) l'Ordonnance ayant rapport à la Construction de Maisons, Salles Publiques et Bâtiments, et au Tracement de Routes et Chemins of 1931,
- (b) the Cutting of Hedges Ordinance, 1953, and
- (c) the Law entitled "Loi relative aux Douits" of 1936.^h

^g Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Recueil d'Ordonnance Tome XXVIII, p. 493; Tome XXIX, p. 406; Tome XXXIII, p. 617; and G. S. I. 2006 No. 27.

^h Ordres en Conseil Vol. X, p. 419; as amended by the Projet de Loi approved by the States at the meeting on [x]. See also Recueil d'Ordonnance Tome VII, p. 34; Tome XI, p. 339; Tome XIII, pp. 14 and 59; Tome XVI, p. 201 and 509; Tome XXI, p. 552; Tome XXIV p. 476; Tome XXVI, p. 427; Tome XVIII, p. 203; and Tome XXIII, p. 442.

President, Vice-President and Panel members.

2. (1) The Royal Court shall appoint a President and Vice-President of the Tribunal and up to 15 other persons; and the President, Vice-President and those other persons shall together comprise, and be members of, a panel ("**the Panel**") from whom Tribunal members shall be selected to hear appeals pursuant to paragraph 3.

(2) The President and the Vice-President must each either be an Advocate or have held judicial office in Guernsey.

(3) The other members of the Panel must be, or have been, a Constable or a Douzenier.

(4) Subject to sub-paragraphs (5) to (7), a member of the Panel shall hold office until either the date specified for that purpose in the instrument appointing him, or his 72nd birthday, whichever is the earliest.

(5) A member of the Panel may resign his office at any time by giving one month's notice to the Royal Court.

(6) The Royal Court may declare the office of a member of the Panel to be vacant, and (subject to the provisions of this paragraph) subsequently appoint a person to fill that office, if that member has resigned or it appears to the Royal Court that any of the circumstances mentioned in sub-paragraph (7) apply.

(7) The circumstances are that the member –

(a) has been absent from the Island for more than six consecutive months,

- (b) is incapacitated by physical or mental illness, or
- (c) is otherwise unfit or unable to discharge his office.

Selection of members to constitute the Tribunal.

3. (1) Subject to the provisions of this paragraph, the members of the Tribunal constituted to hear an appeal shall be –

- (a) the President, or if he is unavailable,
- (b) the Vice-President, and

two other members of the Panel, who shall be selected by the President or the Vice-President (as the case may be) on the President's receipt of a notice of appeal; and for the avoidance of doubt, the President may select the Vice-President to be a Tribunal member under this sub-paragraph.

(2) The President or Vice-President (as the case may be) must not select a member if that member has a direct or indirect pecuniary or other personal interest in the matter.

(3) If the President has an interest of the type referred to in sub-paragraph (2), he must delegate all his functions under this Ordinance in relation to that matter to the Vice-President, including his functions under sub-paragraph (1), and may play no further part in it.

(4) If the Vice-President also has such an interest, then neither he nor the President may play any part in the matter; and in such a case, or if both the President and the Vice-President are unavailable, then the remaining Panel

members must select one of their number to perform the functions of the President in relation to that matter.

Administrative and financial support of the Tribunal.

4. (1) The Policy Council shall provide the Tribunal with –
 - (a) such professional, administrative, technical, clerical and secretarial assistance,
 - (b) such access to appropriately located and equipped premises, and
 - (c) such other equipment, facilities and support,

as the Tribunal reasonably requires to fulfil its functions.

(2) The Policy Council shall pay to the members of the Tribunal such allowances as the Policy Council may determine together with expenses incurred by them in connection with the exercise of their functions.

Grounds of appeal.

5. The grounds of an appeal to the Tribunal are –
 - (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,

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

Rules of procedure, and fees.

6. (1) Subject to the provisions of this Ordinance, the Tribunal may make its own rules of procedure (which, for the avoidance of doubt, it may vary from time to time) and may prescribe a fee to be paid by the appellant when serving a notice of appeal on the President.

(2) Rules of procedure made under subparagraph (1) must facilitate the proceedings being conducted in a way that is consistent with paragraph 7(1)(b).

(3) Without prejudice to the generality of subparagraph (1), rules of procedure made thereunder may in particular –

- (a) regulate procedure in connection with matters preparatory to a hearing, including without limitation the form and service of a notice of appeal,
- (b) prescribe the procedure for hearings,
- (c) regulate procedure in connection with matters subsequent to hearings,
- (d) make provision about the circumstances in which a party may be represented, and
- (e) make provision about the circumstances in which one

party may be ordered to pay another party's costs, or to give security for costs.

Hearings, etc.

7. (1) At the hearing of an appeal -
 - (a) subject to the provisions of this Ordinance, the Tribunal's procedure is within its discretion,
 - (b) the proceedings shall be conducted -
 - (i) in accordance with natural justice, and
 - (ii) with as little formality, and with as much expedition, as a proper consideration of the matters before the Tribunal will permit,
 - (c) the proceedings shall be in public, save to the extent that the Tribunal orders that the public be excluded from all or part of the hearing where the interests of juveniles or the protection of private life of the appellant so require, or where in the opinion of the Tribunal publicity would prejudice the interests of justice, and
 - (d) the appellant and the respondent shall each have the right to make oral representations, to call witnesses, and to ask questions of each other and, unless the Tribunal orders otherwise in the interests of justice, of any witnesses.

(2) Every member, party, representative and witness has the same protections, immunities and duties as he would have if sitting or appearing in proceedings before the Royal Court.

(3) The validity of proceedings before the Tribunal shall not be affected merely by a formal deficiency, and the President may, by means of a certificate signed by him, correct any error arising from an accidental error, including an omission, in a decision of the Tribunal.

Determinations of the Tribunal.

8. (1) Every question before the Tribunal shall be determined on a majority.

(2) The Tribunal's judgment on any appeal before it shall be pronounced publicly, by –

- (a) being delivered orally at a public sitting of the Tribunal,
- (b) publication in writing in such manner as the Tribunal thinks appropriate or
- (c) both.

(3) By its judgment on an appeal the Tribunal may –

- (a) confirm the appealed decision,
- (b) quash the appealed decision, in whole or in part, and

remit the matter to the respondent with such directions as appear appropriate to the Tribunal, or

- (c) require the respondent to reconsider the matter in accordance with such directions as appear appropriate to the Tribunal.

(4) On an appeal against a decision to serve notice of intent to execute work under section 9 of the Law entitled "Loi relative aux Douits" of 1936, in circumstances where that work has been executed, the Tribunal may, on quashing the appealed decision, in whole or in part, direct the respondent to pay such compensation to the appellant as it thinks appropriate and proportionate in the circumstances.

Appeals from judgments of the Tribunal.

9. (1) Any party to an appeal who is dissatisfied with the Tribunal's judgment as being erroneous in law may, within 21 days, request the Tribunal to state a case for submission to the Royal Court sitting as an Ordinary Court.

(2) A request under subparagraph (1) must set out the nature of the alleged error in law.

(3) On receipt of a request under subparagraph (1) the President must, as soon as reasonably practicable, state and sign a case setting out the relevant facts, the matters in dispute, and the judgment of the Tribunal, and transmit it to Her Majesty's Greffier and the parties.

(4) The Royal Court shall give its opinion on a question of law arising in the case and may reverse, affirm or amend any direction given by the Tribunal in the light of that opinion.

(5) An appeal lies from the Royal Court to the Court of Appeal on any question of law arising under this paragraph, within such period and in such manner as may be prescribed by Order of the Royal Court.

SCHEDULE 2

REPEALS

1. Ordonnance relative au Temps de Gestion des Connétables of 1778ⁱ
2. Ordonnance aux Individus élus à la charge de Connétable of 1799^j
3. Ordonnance relative aux Registres Paroissiale of 1801^k
4. Ordonnance relative aux Curateurs des Trésors of 1809^l
5. Ordonnance relative à l'accès des Connétables aux Registres du Greffe of 1822^m
6. Ordonnance relative aux Connétables of 1827ⁿ
7. Ordonnance relative à la Passation des Comptes des Officiers Paroissiaux of 1872^o
8. Ordonnance ayant rapport à l'Établissement de Machines de Vapeur et à l'Exploitation de Carrières supplémentaire à l'Ordonnance relative aux Routes, Rues et Chemins of 1921^p

ⁱ Recueil d'Ordonnances Tome I p. 306.

^j Recueil d'Ordonnances Tome I p. 381.

^k Recueil d'Ordonnances Tome II p. 6; as amended by Ordres en Conseil Vol. XXXVII, p. 168.

^l Recueil d'Ordonnances Tome II p. 71.

^m Recueil d'Ordonnances Tome II p. 278.

ⁿ Recueil d'Ordonnances Tome II p. 350.

^o Recueil d'Ordonnances Tome IV p. 129.

^p Recueil d'Ordonnances Tome VIII p. 23.

9. Ordonnance relative à la hauteur des Haïes bordant les encoignures des Voies Publiques of 1925^q
10. Ordonnance relative à l'Enterrement des Corps de personnes l'état desquels constitue un danger à la Santé Publique, et au transport de tels corps dans des églises, chapelles ou autre lieux deculte of 1931^r
11. Ordonnance relative aux Souilles à Cochons of 1931^s

^q Recueil d'Ordonnances Tome V p. 370.

^r Recueil d'Ordonnances Tome V p. 355; as amended by Tome XXIII, p. 427. Extended to Herm by Tome IX, p.247.

^s Recueil d'Ordonnances Tome V p. 357.

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