

**DRAFT PARISH RATE (ADMINISTRATION) (AMENDMENT  
No. 8) (JERSEY) LAW 199**

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**Lodged au Greffe on 1st December 1998  
by the Legislation Committee**

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**STATES OF JERSEY**

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## Report

The definition of “*land*” in Article 1 of the Parish Rate (Administration) (Jersey) Law 1946 reads as follows -

*“ ‘land’ means any land capable of actual occupation and, except in the definition of agricultural land, includes any houses, buildings and structures thereon or thereunder and land covered with water;”.*

It is not clear whether this definition -

- (i) extends only to land above the high water mark, not forming part of the foreshore; or whether it
- (ii) includes land which is under the sea, whether covered permanently by water or covered and uncovered by the tide.

In 1997 the Comité des Connétables received legal advice from a firm of advocates, instructed for the purpose, that land covered by the sea but used for moorings fell within the above definition of “*land*” and was therefore rateable. Accordingly in 1997 and 1998 the Parish of St. Helier has assessed the Harbours and Airport Committee to rate in respect of the moorings in St. Helier harbour. There are of course moorings in many other harbours, e.g. La Rocque, Gorey, St. Aubin’s, but none of these have been rated by the other Parishes.

The Harbours and Airport Committee has made strong representations to the Legislation Committee that this is an unsatisfactory position and that the situation ought to return to that which was generally thought to exist before 1997, namely that rate was not imposed in respect of moorings. The Harbours and Airport Committee argues, amongst other matters, that it is that Committee which administers the harbour and, in respect of matters such as lighting, refuse collection, upkeep and maintenance of quays and roadways, services which the Parish would normally undertake are in fact undertaken by the Committee. The Committee is also concerned about the administrative complexity and cost of rating individual moorings and the effect on the ability of the marinas to compete in terms of price with other marinas in the region.

Conversely the Constable of St. Helier argues strongly that it is fair and reasonable to impose rate on moorings.

No case has as yet been brought before the Royal Court on this issue and, until the position is clarified either by the Court or by the States, there will be continuing uncertainty. Such uncertainty poses potential problems as follows -

1. A Parish seeks to levy rate on a mooring. The person assessed brings proceedings in the Royal Court for a ruling that the definition of "*land*" in the 1946 Law does not extend to the foreshore. The Court holds in favour of the plaintiff and rules accordingly. Therefore not only is the purported assessment to rate invalid, but so are all other similar assessments. Not only have substantial legal costs been incurred in the litigation which the Parish will have to bear, but the money from the other assessments for which it budgeted is no longer payable or, if paid, has to be repaid.
2. A Parish in which there are moorings decides not to assess them to rate. If the definition of "*land*" in the 1946 Law is later held to include the foreshore, the Parish has all the time been in breach of its obligation to levy rate. This is so because, subject only to limited statutory exceptions, the Parish is under a *duty* to levy rate on all the land in the Parish. It is not a matter of choice for the Parish as to which land it assesses and which it does not.

Given such potential consequences, the Legislation Committee is convinced that it would be undesirable to allow the present state of uncertainty to persist and merely leave it to a Parish and/or a ratepayer to take their chances in the Royal Court to decide the issue. The Committee believes that the States in these circumstances must act to clarify the matter one way or the other.

The draft Law would provide that clarification by adding at the end of the definition of "*land*" (quoted above) the words -

*"but does not include land covered or, in the normal course of tides, from time to time covered by sea water"*.

The uncertainty would therefore be resolved on the basis that the 1946 Law applies only to land above the high water mark and not to the foreshore, i.e. moorings will not be rateable. In the light of the arguments adduced by the Harbours and Airport Committee and the practice followed without objection until 1997 the Legislation Committee considers, on balance, that this is the preferable view. However it recognises that the question of whether or not moorings should be rated is very much a political matter for decision by the States as a whole. The purpose of bringing the proposed amendment is so that the issue can be debated and resolved by the States.

The draft Law is expressed to take effect as from 1st January 1999. This is necessary so as to make it clear that the Law, if passed, will regulate the assessment of rate for 1999. Assessors will need to know whether or not to include moorings in their calculations when carrying out their work for 1999.

**Explanatory Note**

This Law, by amending the definition of “land” in Article 1 of the Parish Rate (Administration) (Jersey) Law 1946, has the effect of excluding from the payment of parish rates land covered or, in the normal course of tides, from time to time covered by sea water.

The Law will have effect from 1st January 1999.

**PARISH RATE (ADMINISTRATION) (AMENDMENT No. 8)  
(JERSEY) LAW 199**

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**A LAW** to amend further the Parish Rate (Administration) (Jersey) Law 1946, sanctioned by Order of Her Majesty in Council of the

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*(Registered on the      day of      199 )*

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**STATES OF JERSEY**

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The      day of      199

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

In Article 1 of the Parish Rate (Administration) (Jersey) Law 1946, as amended,<sup>1</sup> in the definition of "land" there shall be added at the end "but does not include land covered or, in the normal course of tides, from time to time covered by sea water".

**ARTICLE 2**

This Law may be cited as the Parish Rate (Administration) (Amendment No. 8) (Jersey) Law 199 and shall be deemed to have come into force on the first day of January 1999.

<sup>1</sup> Tome VII, page 351, Volume 1990-1991, pages 871 and 1112, and Volume 1994-1995, page 297.