

PROJET DE LOI

ENTITLED

The Preferred Debts (Guernsey) Law, 1983 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXVIII, p. 184; as amended by the Preferred Debts (Guernsey) (Amendment) Law, 1992 (No. VII of 1992); the Security Interests (Guernsey) Law, 1993 (No. III of 1993, Ordres en Conseil Vol. XXXIV, p. 299); the Employment Protection (Guernsey) Law, 1998 (No. IX of 1998); the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006 (No. XIV of 2008); the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (No. XXXI of 2005); the Preferred Debts (Guernsey and Alderney) (Amendment) Ordinance, 2006 (No. XXIII of 2006). See also the Government of Alderney Law, 2004 (No. III of 2005); the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005 (No. X of 2006).

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ARRANGEMENT OF SECTIONS

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4. Goods subject to tacit hypothecation.
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SCHEDULE Limitations on privileges of landlords.

PROJET DE LOI

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The Preferred Debts (Guernsey) Law, 1983

THE STATES, in pursuance of their Resolution of the twenty-sixth day of March, nineteen hundred and eighty-one, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Preferred debts.

1. (1) In the distribution of the property of a person whose affairs have been declared to be in a state of "désastre" at a meeting of his arresting creditors held before a Jurat as Commissioner of the Court or in the winding-up of a company which is insolvent, there shall be paid –

[(za) in the case of a bank, in priority to all other debts, all amounts paid up to the total amount of compensation payable in respect of qualifying deposits with that bank in accordance with section 12(2) of the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008^{za} ("**the DCS Ordinance**"), when read with section 14 of that Ordinance, by the Guernsey Banking Deposit Compensation Board ("**the Board**") as compensation for qualifying deposits in accordance with the DCS Ordinance,]

^{za} No. XLVIII of 2008 (Recueil d'Ordonnances Tome XXXIII, p. 238); as amended by Ordinance No. XXX of 2014; and No. IX of 2016.

- (a) in priority to all other debts [other than debts to which paragraph (za) relates], any debt owing to a landlord by his tenant in respect of the rent of any immovable property to the extent that such debt is secured by goods present in or upon that immovable property which are subject to tacit hypothecation by operation of law (in the French language "tacite hypothèque") for the payment of that rent:

Provided that, where the rent is payable at any of the intervals set out in the first column of the Schedule to this Law, such priority shall not apply to rent payable for any period in excess of the period set out in relation to such interval in the second column of the said Schedule,

- [(b) in priority to all debts other than debts to which [paragraph (za) or (a) relates] –
- (i) all wages or salary due to any clerk or servant (whether or not earned wholly or in part by way of commission) for a period or periods not exceeding four months in the aggregate in respect of services rendered to the debtor during the six years immediately preceding the relevant date, and the wages due to any workman or labourer (whether payable for time or for piece work) for a like period or periods in respect of services so rendered,

- (ii) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or, in the case of his death, to any other person in his right) on the termination of his employment before, or by the effect of, the insolvency of the debtor or the winding-up of a company,
- (iii) all income tax deducted during a period or periods not exceeding twelve months in the aggregate, in accordance with the provisions of section 81A of the Income Tax (Guernsey) Law, 1975, as amended^a, by an employer from the emoluments of an employee within the six years immediately preceding the relevant date and not paid by the employer in accordance with the provisions of the said section 81A,
- (iv) all primary Class I contributions deducted during a period or periods not exceeding twelve months in the aggregate, in accordance with the provisions of section 13 of the Social Insurance (Guernsey) Law, 1978, as amended^b, by an employer from the earnings of an employed

^a Ordres en Conseil Vol. XXV, p.124; section 81A was inserted by Vol. XXVII, p. 118 and amended by Vol. XXVIII, p. 184, Vol. XXXII, p. 307 and No. IV of 1991.

^b Ordres en Conseil Vol. XXVI, p. 292 as amended by Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; No. XII of 1993; Ordinance No. XIV of 1993 (Tome XXVI, p. 177); No. V of 1994; Nos. VI and XIII of 1995; No. 1 of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No. XXIV of 2003; No. XI of 2004.

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person within the six years immediately preceding the relevant date and not paid by the employer in accordance with the requirements of the said section 13,

provided always that –

- (A) if wages or salary are due to the clerk, servant, workman or labourer in question for a period or periods exceeding four months in the aggregate, or
- (B) if income tax or primary Class I contributions have been deducted by the employer in question during a period or periods exceeding twelve months in the aggregate and not paid by the employer as mentioned in subparagraph (iii) or (iv) above,

then, for the purpose of calculating the amount to which preference is to be given in accordance with subparagraph (i), (iii) or (iv), as the case may be, regard shall be had to the wages or salary most recently due or to the deductions most recently made][, and]

- [(c) in the case of a bank, in priority to all other debts other than debts to which paragraph (za), (a) or (b) relates, any amount representing a qualifying deposit with that bank to which paragraph (za) does not relate.]

(2) Notwithstanding the provisions of sub-paragraph (i) of paragraph (b) of the last preceding subsection the sum to which priority is to be given under those provisions shall not, in the case of any one claimant, exceed [£5,000] or such other sum as the States may, from time to time, by Ordinance prescribe:

Provided that where a claimant under the said sub-paragraph (i) of paragraph (b) has entered into a contract for the payment of a portion of his wages in a lump sum at the end of a period of employment whether by way of bonus or otherwise he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, apportioned to the time of service up to the relevant date.

- (3) Where any payment has been made –
- (a) to any clerk, servant, workman or labourer in the employment of a company, on account of wages or salary, or
 - (b) to any such clerk, servant, workman or labourer or, in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a distribution of property or a winding-up to which subsection (1) of this section relates have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, or other person in his right, would have been entitled to priority in the distribution of property or in the winding-up has been diminished by reason of the payment having been made.

(4) The debts to which paragraph (b) of subsection (1) of this section relates shall rank equally amongst themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

(5) Subject to the provisions of section seventy-seven of the Guernsey Companies Law or of section eleven of the Alderney Companies Law, as the case may require, in respect of distributions by the liquidator of a company which is being wound up by the Court and subject to the retention of such sums as may be necessary for the costs of administration or otherwise the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(6) For the purposes of this section –

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period,

(b) the expression "**accrued holiday remuneration**" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Law), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday,

(c) the expression "**the relevant date**" means –

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- (i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date, and
- (ii) in any case of a company being wound up where the foregoing sub-paragraph does not apply, the date of the passing of the Special Resolution for the winding-up of the company, and
- (iii) in the case of a debtor whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Jurat as Commissioner of the Court –
 - (aa) for the purposes of sub-paragraph (i) (which relates to wages or salary) and sub-paragraph (ii) (which relates to accrued holiday remuneration) of paragraph (b) of subsection (1) of this section, [the date of appointment of the said Commissioner by the Court] or, where a clerk, servant, workman or labourer has ceased to be employed by such debtor within the twelve months immediately preceding [the date of appointment of the said Commissioner

by the Court], the date of the cessation of the employment, whichever is the earlier,

- (bb) for the purposes of sub-paragraph (iii) (which relates to amounts deducted in respect of income tax) and sub-paragraph (iv) (which relates to amounts deducted in respect of Social Insurance contributions) of the said paragraph (b), [the date of appointment of the said Commissioner by the Court].

[(7) Where any property of such a person as is described in subsection (1) of this section is subject to a security interest within the meaning of the Security Interests (Guernsey) Law, 1993 the proceeds of its sale or application are to be applied in the manner provided by section 7(5) and (6) of that Law.]

[(8) The provisions of this section are subject to the provisions of section 29 of the Employment Protection (Guernsey) Law, 1998 ("awards to be recoverable as preferred debts").]

[(9) The provisions of this section are subject to the provisions of section 52 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 ("awards to be recoverable as preferred debts").]

NOTES

In section 1,

first, paragraph (za) of subsection (1) was inserted, second, the words in square brackets in paragraph (a) thereof were inserted, third, the words in square brackets in paragraph (b) of that subsection were

substituted, fourth, the word in square brackets at the end of subsection (1)(b) was substituted and, fifth, subsection (1)(c) was inserted by the Preferred Debts (Guernsey) (Amendment) Ordinance, 2020, section 1(2), respectively paragraph (a), paragraph (b), paragraph (c), paragraph (d) and paragraph (e), with effect from 27th November, 2020;

paragraph (b) of subsection (1) was substituted by the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006, section 2, with effect from 25th February, 2009, subject to the transitional provisions in section 12 of the 2006 Law;

the figures and symbol in square brackets in subsection (2) were substituted by the Preferred Debts (Guernsey and Alderney) (Amendment) Ordinance, 2006, section 1, with effect from 31st May, 2006;¹

the words in square brackets in subsection (6)(c)(iii)(aa) and subsection (6)(c)(iii)(bb) were substituted by the Preferred Debts (Guernsey) (Amendment) Law, 1992, section 1(b), with effect from 18th January, 1993;

subsection (7) was inserted by the Security Interests (Guernsey) Law, 1993, section 15, Schedule 2, with effect from 26th May, 1993;

subsection (8) was inserted by the Employment Protection (Guernsey) Law, 1998, section 36(3), with effect from 4th January, 1999;

subsection (9) was inserted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, section 71, with effect from 1st March, 2006.

The following Ordinance has been made under section 1:

Preferred Debts (Guernsey and Alderney) (Amendment) Ordinance, 2006.

The following cases have referred to this Law:

Concorde Leasing U.K. Limited v. B.D. Properties Limited (1992) 13.GLJ.42;

Bell Data Systems (C.I.) Limited v. Moffat: in re application of Prospects Limited (1993) 15.GLJ.35;

Law Officers of the Crown v. A A Osborne (2017) (Unreported, Royal Court, 12th September) (Guernsey Judgment No. 40/2017);

In the matter of the Liquidation of Conqueror Holdings Limited [2019]GRC038 (Unreported, Royal Court, 25th June).

In accordance with the provisions of the Taxation of Real Property (Enabling Provisions) (Guernsey and Alderney) Law, 2005, section 4(f), with effect from 13th November, 2006, this enactment is one of those that the States may repeal, amend, extend, adapt, modify or disapply by Ordinance made under the 2005 Law.

Payment of preferred debts in compulsory winding-up of a company in Guernsey.

2. When at any time in the compulsory winding-up of a company under the provisions of the Guernsey Companies Law the liquidator has realised sufficient assets to meet, in whole or in part, the preferred debts of the company he may, notwithstanding that he has not realised all the assets of the company, cause an action to be brought before the Court in accordance with Article seventy-seven of the Guernsey Companies Law; and thereafter the procedure set out in the said Article shall apply in relation to any such action as aforesaid save that the Commissioner shall not be obliged to verify the respective demands and preferences of any creditor in respect of any debt which is not a preferred debt.

Payment of preferred debts in compulsory winding-up of a company in Alderney.

3. When at any time in the compulsory winding-up of a company under the provisions of the Alderney Companies Law the liquidator has realised sufficient assets to meet, in whole or in part, the preferred debts of the company he may, notwithstanding that he has not realised all the assets of the company, cause an action to be brought before the Court in accordance with section eleven of the Alderney Companies Law; and thereafter the procedure set out in the said section shall apply in relation to any such action as aforesaid save that the Commissioner shall not be obliged to verify the respective demands and preferences of any creditor in respect of any debt which is not a preferred debt.

Goods subject to tacit hypothecation.

4. (1) For the avoidance of doubt it is hereby declared that any goods present in or upon immovable property which appear to be owned by the tenant of that property are subject to tacit hypothecation by operation of law:

Provided that, notwithstanding any rule of law or practice to the contrary, such goods

shall not be subject to tacit hypothecation if it is proved, in accordance with the succeeding provisions of this section, that they are wholly owned by a person who is not the tenant of that property or that they are jointly owned by several persons none of whom is the tenant of that property.

(2) Where any goods found upon the property of a landlord and appearing to be owned by the tenant of that property have been seized in execution of a judgment in favour of the landlord for rent owing to him in respect of that property

—

- (a) in the Island of Guernsey, Her Majesty's Sheriff shall cause to be published in La Gazette Officielle on not less than two occasions, or
- (b) in the Island of Alderney, the Clerk of the Court of Alderney shall cause to be so published in La Gazette Officielle and shall cause to be affixed to the notice boards outside the Court House and the gate of the Parish Church of that Island,

a notice that goods found upon the said property have been seized in execution of a judgment against the tenant and that any person other than the tenant who claims to be the owner or joint owner of any of those goods may, within the fourteen days next following the first publication of the notice [or within such additional time as the Court may in any particular case allow], make application to the Court to determine the lawful ownership of such goods.

(3) In any proceedings under the last preceding subsection the burden of proving the lawful ownership of any goods shall lie upon the person who claims to be the lawful owner or joint owner of those goods.

(4) Upon the hearing of an application made under subsection (2) of this section the Court may determine the ownership of any goods to which the application relates and may make such order as to the disposal of those goods as it deems to be just in all the circumstances of the case.

(5) No goods to which this section relates shall be sold –

(a) where no application is made to the Court [within the period of 14 days next following the first publication of the notice referred to in subsection (2)], before the expiration of the said period,

(b) where an application is made within the said period [or after the expiration of that period but prior to the goods being sold], until such application has been heard and determined.

NOTES

In section 4,

the words in square brackets in, first, subsection (2) and, second, paragraph (b) of subsection (5) were inserted by the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006, respectively section 3 and section 5, with effect from 25th February, 2009;

the words in square brackets in paragraph (a) of subsection (5) were substituted by the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006, section 4, with effect from 25th February, 2009.

The following cases have referred to section 4:

Bell Data Systems (C.I.) Limited v. Moffat: in re application of Prospects Limited (1993) 15.GLJ.35;

Concorde Leasing U.K. Limited v. B.D. Properties Limited (1992) 13.GLJ.42.

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

Amendment to the Income Tax Law of 1975.

5. Subsection (10) of section eighty-one A of the Income Tax (Guernsey) Law, 1975, as amended, is hereby repealed and the following subsection is hereby substituted therefor –

" (10) In the event of any proceedings "en désastre" in respect of the personal property of an employer or of the compulsory or voluntary winding-up of the affairs of an employer who is a body corporate, the amount of any tax deducted by the employer from the emoluments of an employee in accordance with the provisions of this section which has not been paid shall rank for payment in accordance with the provisions of the Preferred Debts (Guernsey) Law, 1983."

Costs, etc.

6. In any proceedings relating to the distribution of the property of a person whose affairs have been declared to be in a state of "désastre" or in the winding-up of a company which is insolvent, the Court may, notwithstanding any rule of law or practice to the contrary, make such order as to the payment of costs or the fees and expenses of the liquidator and as to the priority, if any, to be given to such costs, fees and expenses as the Court may consider to be just.

Repeals.

7. The Law entitled "Loi au sujet des Privilèges pour Loyers de Maisons en cas de Faillite ou de Déconfiture" registered on the fourth day of January, eighteen

hundred and ninety^c, and the Ordinance entitled "Loi relative au Sujet des Privilèges pour loyer de Maisons en cas de faillite ou déconfiture" annexed to, and ratified by, an Order of Her Majesty in Council of the nineteenth day of May, eighteen hundred and ninety-nine, and registered on the seventeenth day of June, eighteen hundred and ninety-nine^d, are hereby repealed.

Savings.

8. (1) The provisions of this Law shall not apply to any proceedings commenced in any court or to the winding-up of a company in which a liquidator has been appointed before the coming into force of this Law and for the purposes of any such proceedings or winding-up the enactments repealed by this Law shall continue to have effect.

(2) In any proceedings commenced in any court after the coming into force of this Law, or in the winding-up of a company in which a liquidator has not been appointed before the coming into force of this Law, the priorities as between the creditors in relation to any debt incurred before the coming into force of this Law shall be determined as though this Law had not been enacted.

Interpretation.

9. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"the Alderney Companies Law" means the Companies (Amendment) (Alderney) Law, 1962^e,

^c Ordres en Conseil Vol. II, p. 318.

^d Ordres en Conseil Vol. III, p. 141.

^e Ordres en Conseil Vol. XIX, p. 33.

["**bank**" has the meaning given by the Banking Supervision (Bailiwick of Guernsey) Law, 1994,]

["**the Board**" has the meaning given in section 1(1)(za),]

"the Court" means –

- (a) in relation to the Islands of Guernsey, Herm and Jethou, the Royal Court sitting as an Ordinary Court,
- (b) in relation to the Island of Alderney, the Court of Alderney,

["**the DCS Ordinance**" has the meaning given in section 1(1)(za),]

"goods" means any movable goods but does not include any money or security,

"the Guernsey Companies Law" means the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the twenty-first day of March, nineteen hundred and eight^f,

"preferred debt" means a debt to which subsection (1) of section one of this Law relates,

["**qualifying deposit**" has the meaning given by the DCS Ordinance, 2008.]

^f Ordres en Conseil Vol. IV, p. 178; Vol. X, p. 298; Vol. XVII, p. 444; Vol. XX, p. 17; Vol. XXIV, p. 14.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as amended, extended, repealed or replaced by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948^g shall apply to the interpretation of this Law throughout the Islands of Guernsey, Alderney, Herm and Jethou.

NOTES

In section 9, the definitions of the expressions "bank", "the Board", "the DCS Ordinance" and "qualifying deposit" were inserted by the Preferred Debts (Guernsey) (Amendment) Ordinance, 2020, section 1(3), with effect from 27th November, 2020.

The Companies (Amendment) (Alderney) Law, 1962 has since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.

The Companies (Guernsey) Law, 1908 (the Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée) has since been repealed by the Companies (Guernsey) Law, 1994, section 122, with effect from 31st March, 1995, subject to the savings and transitional provisions in section 121 of, and Schedule 1 to, the 1994 Law. The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

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

[Power to make Ordinances and general provisions in respect thereof.]

- 9A.** (1) The States may by Ordinance amend this Law.
- (2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to make Ordinances (and vice versa).
- (3) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient.
- (4) Any power conferred by this Law to make an Ordinance may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different

provision for different cases or classes of cases,
or different provision for the same case or class
of case for different purposes, and

- (iii) any such provision either unconditionally or
subject to any prescribed conditions.]

NOTES

Section 9A was inserted by the Preferred Debts, Désastre Proceedings and Miscellaneous Provisions (Guernsey and Alderney) Law, 2006, section 6, with effect from 25th February, 2009.

The following Ordinance has been made under section 9A:

Preferred Debts (Guernsey) (Amendment) Ordinance, 2020.

Extent.

10. (1) The provisions of this Law, other than the provisions of sections two and three thereof, shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

(2) The provisions of section two of this Law shall have effect in the Islands of Guernsey, Herm and Jethou.

(3) The provisions of section three of this Law shall have effect in the Island of Alderney.

Citation.

11. This Law may be cited as the Preferred Debts (Guernsey) Law, 1983.

NOTE

Consolidated text

The Law received Royal Sanction on 22nd June, 1983 and was registered on the Records of the Island of Guernsey and came into force on 5th July, 1983.

SCHEDULE Section 1(1)(a)
LIMITATIONS ON PRIVILEGES OF LANDLORDS

<i>Intervals at which rent is payable.</i>	<i>Amount of rent to which the privilege of the landlord extends.</i>
Weekly or at longer intervals of less than one month.	Six weeks and the current week.
Monthly or at longer intervals of less than one quarter.	Three months and the current month.
Quarterly or at longer intervals of less than half a year.	Six months and the current quarter.
Half yearly or at any intervals of longer than a half year.	One year.

¹ The figures and symbol were previously substituted by the Preferred Debts (Guernsey) (Amendment) Law, 1992, section 1(a), with effect from 18th January, 1993.