

PROJET DE LOI

ENTITLED

The Renewable Energy (Guernsey) Law, 2010 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. XV of 2009; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. ** of 2016). See also the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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The Renewable Energy (Guernsey) Law, 2010

THE STATES, in pursuance of their Resolutions of the 25th June, 2008^a, the 25th June 2009^b and the 29th April 2010^c, 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, Herm and Jethou.

PART I

REGULATION OF RENEWABLE ENERGY ACTIVITIES

General prohibition on renewable energy activities and exemptions.

1. (1) Except as may be permitted by or under this Law or any other enactment and subject to subsection (2), no person shall –

- (a) operate, deploy or use,
- (b) arrange for the operation, deployment or use of,
- (c) manage,
- (d) be concerned in the management of, or

^a Article IV of Billet d'État No. VIII of 2008.

^b Article X of Billet d'État No. XVI of 2009.

^c Article X of Billet d'État No. IX of 2010.

(e) decommission or arrange for the decommissioning of,

any renewable energy system on Guernsey or within the territorial waters of Guernsey.

(2) The provisions of Schedule 1 shall have effect with respect to exemptions from the prohibition in subsection (1).

Further exemptions and licensing of renewable energy activities.

2. (1) The States may from time to time by Ordinance make such provision as they may deem expedient in order to –

- (a) exempt a renewable energy activity from the prohibition under section 1, or
- (b) provide for the licensing of a renewable energy activity,

and for matters ancillary thereto, including the form and manner in which applications in relation to licences are to be made and the information to be provided by the applicant in relation to the same.

(2) Without prejudice to the generality of subsection (1), that subsection includes power to make provision for, or concerning, all or any of the following matters –

- (a) empowering the Commission, the [Committee] or any other specified department of the States, by regulations, or otherwise –
 - (i) to exempt a renewable energy activity from the prohibition under section 1, subject to such

terms and conditions as the Commission or the department in question thinks fit, and

- (ii) to prescribe conditions for the conduct and control of, and for matters of administration in connection with, a renewable energy activity and any activity related thereto,
- (b) the licensing, by the Commission, of any person to carry on a renewable energy activity, subject to such conditions and other matters as the Commission may think fit including, without limitation, conditions relating to –
- (i) the renewable energy activities authorised by the licence,
 - (ii) precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised renewable energy activities) in connection with or in consequence of those activities, or
 - (iii) the approval by the Commission, prior to the carrying on of the renewable energy activity of –
 - (A) a decommissioning programme in relation to the decommissioning of the renewable energy system and any related plant or apparatus, or

- (B) arrangements to ensure that such decommissioning is carried out in accordance with such an approved programme including financial arrangements to ensure the provision of satisfactory security to cover the cost of such decommissioning,
 - (c) the form and manner in which applications in relation to licences are to be made and the information to be provided by the applicant in relation to the same which may include a requirement for –
 - (i) an environmental statement to be submitted setting out information in relation to the environmental effects, and
 - (ii) a decommissioning programme to be submitted setting out information in relation to measures to be taken for the decommissioning,
- of the renewable energy system and any related plant or apparatus,
- (d) the matters to which the Commission is to have regard in making a decision in relation to functions conferred under this section,
 - (e) the persons with whom the Commission must consult on applications in relation to licences, including on any

environmental statement and decommissioning programme and other information submitted in relation to the same, before making a decision in relation to an application, which must include –

- (i) the Director, and
- (ii) the States Harbourmaster,
- (f) the obtaining of information and documents by the Commission to enable it to perform functions imposed by or under this Law,
- (g) the investigation, by the Commission into the suitability of any applicant for, or holder of, a licence to carry on a renewable energy activity,
- (h) the grant, renewal, variation, suspension or revocation by the Commission of any licence to carry on a renewable energy activity or the acceptance of the surrender or the effecting of the transfer of such a licence by the Commission,
- (i) the taking of steps by the Commission falling short of suspension or revocation and which, without limitation, may include the imposition of financial penalties, payable to the States, in respect of any contravention of the terms or conditions of a licence to carry on a renewable energy activity:

Provided that the amount of any financial penalty

imposed shall not exceed the maximum amount of any financial penalty which could be imposed by a court under section 32(1), and

(j) enabling any applicant for, or holder of, a licence to carry on a renewable energy activity to appeal from any of the following decisions of the Commission –

- (i) to refuse to grant or renew,
- (ii) to suspend or revoke,
- (iii) to impose conditions upon the grant of,
- (iv) to take steps under subsection (2)(i) in respect of the contravention of the terms or conditions of,
- (v) to vary the terms or conditions of,
- (vi) to refuse to vary the terms or conditions of,
- (vii) to refuse to accept the surrender of,
- (viii) to refuse to effect the transfer of, or
- (ix) such other decision as may be specified in relation to,

any such licence and to provide for the grounds of appeal, the period within which such an appeal may be

made and otherwise as to the procedure to be adopted for such appeals.

NOTES

In section 2, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

The following Ordinance has been made under section 2:

Renewable Energy (Guernsey) Ordinance, 2015.

PART II

REGULATION OF RISKS ARISING FROM RENEWABLE ENERGY ACTIVITIES

Extinguishment etc. of public rights of navigation.

3. (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the extinguishment or suspension, or imposition of restrictions or conditions on the exercise, of rights of navigation by declaration or otherwise by the Commission in so far as such rights pass through Guernsey waters at locations at which, or in the vicinity of which, a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located for the purposes of securing –

- (a) that such system, plant or apparatus does not result in a danger to navigation, or
- (b) the safety of –

(i) such a system, plant or apparatus or other structures, or

(ii) persons and ships,

in the vicinity of such locations.

(3) Without prejudice to the generality of subsection (1), that subsection includes power to provide for –

(a) the making of applications to the Commission for –

(i) the extinguishment or suspension, or

(ii) the imposition of restrictions or conditions on the exercise,

of rights of navigation where any part of a renewable energy system or any related plant or apparatus is, or is to be, located within Guernsey waters,

(b) the matters to which the Commission is to have regard in making a decision as to whether or not to extinguish, suspend or impose restrictions or conditions on rights of navigation,

(c) the prior publication of any such extinguishment, suspension, restriction or condition so as to bring it to the attention of persons likely to be affected by it and for the making of representations by such persons in

relation to such proposed extinguishment, suspension, restriction or condition, and

- (d) the modification or revocation of any declaration or other means of extinguishing, suspending or imposing restrictions or conditions on the exercise of rights of navigation.

NOTE

The following Ordinance has been made under section 3:

Renewable Energy (Guernsey) Ordinance, 2015.

Safety zones.

4. (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the creation of safety zones, by declaration or otherwise, by the Commission in areas around or adjacent to a place in Guernsey waters where a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located for the purposes of securing the safety of –

- (a) such a system, plant or apparatus or other structures or objects in the vicinity of such a place, or
- (b) persons and ships in the vicinity of such a place.

(3) Without prejudice to the generality of subsection (1), that subsection includes power to provide for –

- (a) the making of applications to the Commission for the creation of a safety zone where any part of a renewable energy system or any related plant or apparatus is, or is to be, located within Guernsey waters,
- (b) the matters to which the Commission is to have regard in making a decision as to whether or not to declare a safety zone,
- (c) the variation of the area of a safety zone from time to time,
- (d) the prohibition of the carrying on of certain activities in a safety zone,
- (e) the granting of permission for a ship or a person to enter or remain in a safety zone or for a person to carry on activities which are prohibited in a safety zone subject to such conditions as the Commission thinks fit,
- (f) the prior publication of the notice or other document declaring a safety zone so as to bring it to the attention of persons likely to be affected by it and for the making of representations by such persons in relation to such proposed declaration, and
- (g) the modification or revocation of the notice or other document declaring a safety zone.

NOTE

The following Ordinance has been made under section 4:

Renewable Energy (Guernsey) Ordinance, 2015.

Health and safety.

5. (1) The Health and Safety at Work Etc. (Guernsey) Law, 1979^d and any provisions made under it shall, subject to subsection (3) and to any exceptions that the States may by Ordinance provide, apply to and in relation to persons at work (within the meaning of that Law) within the territorial waters of Guernsey where such work is carried on in connection with –

- (a) the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus,
- (b) arranging for the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus, or
- (c) the exercise of functions conferred under this Law or the 1979 Law in relation to the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus or in relation to arranging for the same.

(2) Work falling within subsection (1) includes, without limitation–

- (a) any marine survey work including wave energy or tidal current monitoring, bathymetry, water column

^d Ordres en Conseil Vol. XXVII, p. 155 as amended by Ordres en Conseil Vol. XXXIV, p. 589.

investigations, surveys of the sea, seabed or subsea surveys, carried out in connection with prospective or actual deployment, operation, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus whether or not carried on by or on behalf of an operator or prospective operator of a renewable energy system,

- (b) the construction, reconstruction, assembly, lowering into the sea or on to the seabed, alteration, repair, maintenance, cleaning, operation, deployment, use, lifting up from the sea or the seabed, demolition, dismantling or removal, of a renewable energy system, or part thereof, or related plant or apparatus or the preparation for any such activity,
- (c) the transfer of people or goods between a ship or aircraft and a renewable energy system, or part thereof or related plant or apparatus,
- (d) the loading, unloading, fuelling or provisioning of a ship or an aircraft used in connection with the operation, deployment, use or decommissioning of a renewable energy system, or part thereof or related plant or apparatus,
- (e) diving or other submarine activity, carried on with or without underwater breathing apparatus, carried out in connection with a renewable energy system, or part thereof, or related plant or apparatus, and

- (f) the operation of related plant or apparatus which transmits electricity or any other type of energy from a renewable energy system to any place.

(3) The 1979 Law and any provisions made under it shall not have effect in relation to –

- (a) a qualifying foreign ship whilst it is exercising –
 - (i) the right of innocent passage,
 - (ii) the right of transit passage through straits used for international navigation, or
- (b) persons on such a ship whilst it is exercising any such right.

(4) In this section, unless the context requires otherwise –

"the 1979 Law" means the Health and Safety at Work Etc. (Guernsey) Law, 1979,

"qualifying foreign ship" has the meaning given in section 295 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^e, and

"right of innocent passage", "right of transit passage" and "straits used for international navigation" shall be construed in accordance with the

^e Order in Council No. VIII of 2004.

United Nations Convention on the Law of the Sea 1982^f as revised or re-issued from time to time.

PART III
RENEWABLE ENERGY COMMISSION

Establishment of Renewable Energy Commission, functions and status

Renewable Energy Commission.

6. (1) There is established by, and in accordance with this Law, a body known as the Renewable Energy Commission ("**the Commission**").

(2) The Commission is a body corporate with perpetual succession and a common seal, and is capable of suing and being sued in its corporate name.

(3) The provisions of Schedule 2 shall have effect with respect to the Commission.

(4) The States may by Ordinance amend Schedule 2 for the purpose of amending the procedure applying in relation to the Commission.

Functions of the Commission.

7. (1) The Commission shall carry out such functions as may be conferred upon it –

(a) under this Law,

(b) under the Renewable Energy (Sark) Law, 2010,

^f UK Command Paper Cmnd 8941.

- (c) by any other enactment including, for the avoidance of doubt, one applying in any part of the Channel Islands, or

- (d) by resolution of the States,

except that the Commission may only carry out functions in connection with activities outside of Guernsey, or the territorial waters of Guernsey, where approved by resolution of the States.

(2) In the carrying out of any Guernsey functions conferred upon it as set out in subsection (1), except those conferred under section 35, the Commission may take into account any matter which it considers appropriate, but shall –

- (a) have particular regard to –
 - (i) any serious harm to human health or the environment,
 - (ii) any interference with shipping, fishing and any other lawful activities within Guernsey or the territorial waters of Guernsey or of any other place,

which is likely to be caused, in all the circumstances, by any renewable energy activity, and

- (b) have particular regard to –
 - (i) the desirability of ensuring that the operation, deployment or use of a renewable energy

system has as a principal objective the generation of energy from renewable power sources and such other objectives as the States or the [Committee] or any other specified department of the States may from time to time determine, and

- (ii) what reasonably appears to the Commission, in all the circumstances, to be in the best interests of Guernsey.

(3) In carrying out any of its Guernsey functions conferred upon it as set out in subsection (1), except that conferred under section 35, the Commission must also have regard to any other matter as the States may by Ordinance prescribe.

NOTE

In section 7, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Status of the Commission.

8. (1) The Commission is not a department of the States, or a servant or agent of the States, and, except to the extent that this Law or any other enactment otherwise provides –

- (a) is not subject to any rule of law relating to departments of the States, and
- (b) does not have any right or privilege vested in any department of the States.

(2) The Commission may consult and co-operate with any department of the States in relation to any matter relating to a renewable energy activity or in relation to any activity carried on outside Guernsey or the territorial waters of Guernsey which would be such an activity if carried on there.

Information, reports, guidance and directions for Commission

Provision of information to the States and departments of the States.

9. Without prejudice to the generality of section 10, the Commission shall, when requested in writing by the States, the [Committee] or any other specified department of the States, furnish the States or the [Committee] or any other specified department of the States, to the best of the Commission's ability, with such information as the States or such department may require in relation to –

- (a) the carrying on of a renewable energy activity, or
- (b) the carrying on of any activity, carried on outside Guernsey or the territorial waters of Guernsey, which would be such an activity if carried on there.

NOTE

In section 9, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Annual reports.

10. (1) The Commission shall, as soon as practicable in each year, make a report to the [Committee] or any other specified department of the States on its activities carried on in connection with its Guernsey functions during the preceding year.

(2) The annual report made pursuant to subsection (1) may refer to any aspect of the Commission's Guernsey functions and in particular –

- (a) may set out or refer to any guidance given to the Commission under section 11(1)(a) during the preceding year, and
- (b) shall set out any directions given to the Commission under section 11(1)(b) during the preceding year.

NOTE

In section 10, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Guidance and directions.

11. (1) The States may, on the recommendation of the [Committee] made after consultation with the Commission, by resolution give to the Commission –

- (a) written guidance of a general character, or
- (b) written directions of a general character,

concerning the policies to be followed by the Commission in the discharge of any of its Guernsey functions.

(2) It is the duty of the Commission, in carrying out any of its Guernsey functions –

- (a) to take into account any guidance given under subsection (1)(a), and
- (b) to act in accordance with any directions given under subsection (1)(b).

(3) The Commission shall not be deemed to have acted unreasonably or beyond its powers in the carrying out of any of its Guernsey functions by reason only that it has complied with its duty under subsection (2).

NOTE

In section 11, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Powers of Commission

General powers of the Commission.

12. (1) The Commission may do anything which appears to it to be conducive to the carrying out of its functions or to be incidental to their proper discharge.

(2) Without prejudice to the generality of subsection (1) the Commission may, in connection with the carrying out of its functions –

- (a) obtain information relating to –
 - (i) renewable energy systems,
 - (ii) the carrying on of a renewable energy activity,

- (iii) the carrying on of any activity carried on outside Guernsey or the territorial waters of Guernsey which would be such an activity if carried on there, and
 - (iv) the licensing, supervision, control and regulation of renewable energy systems carried on outside Guernsey or the territorial waters of Guernsey,
- (b) consult or seek the advice of such persons or bodies as it considers appropriate, and
- (c) publish, in such manner as it considers appropriate, such information relating to its Guernsey functions as it thinks fit.

(3) This section relates only to the capacity of the Commission as a body corporate and does not authorise the disregard by the Commission of any enactment or rule of law.

Contractual powers.

13. (1) The Commission may enter into a contract, or make an arrangement, with any person for the provision of any service or any facility to facilitate the carrying out of the Commission's functions and may expend money generally for the proper purposes of the Commission.

(2) The power conferred by subsection (1) includes the power –

- (a) to open, operate and close banking accounts in the name of the Commission,

- (b) to enter into, and pay any premium in respect of, contracts of insurance insuring the Commission, any member of the Commission, or any officer or servant of the Commission against –
 - (i) any risk to the Commission's property, or
 - (ii) any risk arising in connection with the carrying out of the Commission's functions, including, without prejudice to the generality of the foregoing, the risk of a claim against the Commission in respect of any description of civil liability.

Powers as to property.

14. (1) The Commission has all such powers in relation to the acquisition, use and disposal of property (whether realty or personalty) as are conducive to the carrying out of its functions.

(2) Without prejudice to the generality of subsection (1), the Commission may –

- (a) acquire any building or other land (which shall include the seabed), or any interest in any building or other land (including the seabed), by purchase, lease, sublease or otherwise,
- (b) deal generally with, and dispose of, by sale, lease, sublease or otherwise, any building or other land or an interest in any building or other land,

- (c) acquire any furniture, equipment or other personalty, by purchase, hire, bailment or otherwise, and
- (d) deal generally with, and dispose of, by sale, hire, bailment or otherwise, any furniture, equipment or other personalty.

Appointment, remuneration etc. of staff.

15. (1) The Commission may appoint such officers, employees and consultants as it considers necessary for carrying out its functions.

(2) An appointment under subsection (1) may be made on such terms as to remuneration, expenses, pensions and other conditions of service as the Commission thinks fit.

(3) The Commission may establish and maintain such schemes, or make such other arrangements, as it thinks fit for the payment of pensions and other benefits in respect of its officers, employees and consultants.

Funding and financial matters

The Commission's funds.

16. (1) The funds and resources of the Commission are –

- (a) any grant paid to the Commission under section 17,
- (b) any money borrowed by the Commission in accordance with section 18,
- (c) any fees and other charges payable to the Commission

under this Law, and

- (d) any other money or property, and any income and profits derived from such money or property, as is lawfully vested in the Commission.

(2) For the avoidance of doubt, this section does not preclude the Commission from having other funds and resources to those listed in this section in relation to the exercise of any of its functions carried out in relation to activities outside Guernsey or the territorial waters of Guernsey.

Grants to the Commission.

17. (1) In respect of each year the States, or the [Committee] or any other specified department of the States, may make grants of sums of money to the Commission towards the expenses of the Commission in carrying out its functions.

(2) The amount of any grant under subsection (1) shall be determined by resolution of the States following consultation carried out on its behalf by the [Committee] or any other specified department of the States; and in determining the amount the States shall have regard to –

- (a) the results of that consultation, and
- (b) the extent, if any, to which the Commission's estimated expenditure in any year is likely to exceed its estimated funds and resources from other sources in that year.

NOTE

In section 17, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st

May, 2016.

Borrowing by the Commission.

18. (1) For the purpose of assisting the Commission to carry out its functions, the States may make advances of sums of money by way of loan to the Commission.

(2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission under this section shall not at any time exceed such sum as the States may from time to time by resolution determine.

(3) No advance shall be made under this section except on such terms (as to repayment, payment of interest or otherwise) as the States may from time to time by resolution determine.

(4) The Commission shall not borrow money except in accordance with this section.

Investment of surplus funds.

19. The Commission may invest any of its funds referred to in section 16(1), which are not immediately required, in any investment approved in writing for the purpose by the States or the States of Guernsey [Policy & Resources Committee] or any other specified department of the States.

NOTES

In section 19, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the

Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Accounts and audit.

- 20.** (1) The Commission shall –
- (a) keep proper accounts and proper records in relation to those accounts, and
 - (b) prepare in respect of each year a statement of accounts giving a true and fair view of the state of affairs of the Commission.
- (2) The accounts of the Commission shall be –
- (a) audited by auditors appointed by the States, and
 - (b) laid before the States, in the same manner and form as the accounts of a department of the States.

Miscellaneous provisions relating to Commission

Delegation.

- 21.** (1) The Commission may, by an instrument in writing under its common seal, delegate to any of its members, officers or employees named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except –
- (a) this power of delegation,

- (b) its duty to make an annual report under section 10, or
- (c) so much of any of its functions as require the Commission to consider representations concerning a decision which it proposes to take.

(2) The Commission may, by an instrument in writing under its common seal, delegate to any public body, either generally or otherwise as provided by that instrument, any of its functions except –

- (a) this power of delegation, or
- (b) its duty to make an annual report under section 10.

(3) A function delegated under this section may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, shall, for the purposes of this Law, be deemed to have been carried out by the Commission.

(4) A delegation under this section is revocable by the Commission at will and does not prevent the carrying out of a function by the Commission.

(5) In this section "**public body**" means –

- (a) any department of the States,
- (b) the Director or any employee of the States responsible to the Director, or

- (c) any other person prescribed for the purpose by regulations of the [Committee].

NOTE

In section 21, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Execution of documents.

22. Any deed, instrument, contract or other document shall be deemed to have been duly executed by or on behalf of the Commission, and shall be effective in law to bind the Commission, if it is –

- (a) sealed with the common seal of the Commission, and
- (b) signed by a member or officer of the Commission or a public body to whom the Commission has delegated, under section 21, authority to affix the Commission's common seal.

Presumption of authenticity of documents.

23. Any document purporting to be issued by the Commission and to be signed by –

- (a) a member or officer of the Commission,
- (b) a public body to whom the Commission has delegated authority to issue such a document under section 21,

on behalf of the Commission shall be deemed to be such a document unless the contrary is shown.

Confidentiality.

24. (1) Any information from which an individual or body can be identified which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and employees.

(2) No such information as is referred to in sub-section (1) shall be disclosed, without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure is expressly authorised or required by or under this Law or appears to the Commission to be necessary –

- (a) to enable the Commission to carry out any of its functions,
- (b) in the interests of the prevention, detection or investigation of crime within or outside Guernsey or the territorial waters of Guernsey,
- (c) in connection with the discharge of any international obligation to which Guernsey (including in respect of the territorial waters of Guernsey) is subject,
- (d) to assist, in the interests of the public, any authority which appears to the Commission to carry out in a place outside Guernsey, or the territorial waters of Guernsey, functions corresponding to those of the Commission,
- (e) to assist any prosecuting authority with the prosecution

of criminal offences within or outside Guernsey or the territorial waters of Guernsey, or

(f) to comply with the directions of the Royal Court.

(3) Without prejudice to subsections (1) and (2), any information communicated to the Commission by a department of the States shall be regarded as confidential, if that department of the States so requests, by the Commission and by its members, officers and servants; and no such information shall be disclosed to any other person, except in compliance with the directions of the Royal Court.

(4) A person who discloses information, or who causes or permits the disclosure of information, in contravention of this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

Communications by auditors and others to Commission.

25. (1) No duty, to which an auditor, employee or agent of any person licensed, or otherwise authorised, to carry on a renewable energy activity under this Law, is subject, is contravened by reason of his communication in good faith to the Commission, whether or not in response to a request by it, of any information or opinion on a matter to which this section applies and which is relevant to any function of the Commission under this Law.

(2) This section applies to any matter of which an auditor, employee or agent becomes aware in his capacity as auditor, employee or agent and which relates to the business or affairs of –

(a) a person licensed, or otherwise authorised, to carry on a renewable energy activity under this Law, or

(b) any associated body of such person.

(3) This section applies in relation to the auditor, employee or agent of a person formerly licensed, or otherwise authorised, to carry on a renewable energy activity under this Law, as it applies to a person currently so licensed or otherwise authorised.

(4) In this section "**associated body**" means a person whom the Commission reasonably believes to be associated with the operations of a person licensed, or otherwise authorised, to carry on a renewable energy activity under this Law.

PART IV

POWERS OF ENTRY, ENFORCEMENT AND OFFENCES

Powers of entry and enforcement powers

Powers of entry and enforcement powers.

26. (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are –

(a) powers of entry on to premises for the purpose –

(i) set out in paragraph (b),

(ii) of considering any application for a licence or other approval under this Law,

- (iii) of deciding whether and in what manner any functions conferred under this Law ought to be exercised, or
- (iv) of carrying out any investigation, examination, test or remedial steps under this Law, or
- (b) securing the enforcement of any provisions of this Law and of any provisions made, or documents issued, under this Law including, without limitation, any licences or notices,

except that provision may only be made for entry to any place used as a dwelling, without the consent of a person appearing to be entitled to permit entry, where the enforcement officer is acting in accordance with a warrant to do so obtained by him upon information laid on oath before the Bailiff.

(3) Without prejudice to the generality of subsection (1) that section includes power to –

- (a) provide for the appointment of persons in writing by the Commission, for the purposes of carrying out functions related to the matters set out in subsection (2) including, without limitation, monitoring the enforcement of, or enforcing, any provisions of this Law or any provisions made under this Law including any licences or notices ("**enforcement officers**"),
- (b) provide for the enforcement powers that may be exercised by an enforcement officer, on production of his authority to exercise such power and on the

provision of any information as may be specified, including powers to –

- (i) board and inspect ships used in connection with a renewable energy activity where any part of the renewable energy system or any related plant or apparatus is within Guernsey waters and board and inspect renewable energy systems, or part thereof, or related plant or apparatus located within Guernsey waters,
 - (ii) do anything to facilitate the boarding of such ships, renewable energy systems, or part thereof, or related plant or apparatus, or
 - (iii) enter and inspect any premises used in connection with a renewable energy activity where any part of the renewable energy system, or any related plant or apparatus is within Guernsey waters, or
- (c) provide for an enforcement officer whilst carrying out an inspection under paragraph (b) to –
- (i) search any such premises for any item and examine, or carry out any measurement or test, on anything in, on, attached to, forming part of, or controlled from such premises,
 - (ii) require production of documents from any person at such premises where such document is

in a person's possession or control, or

- (iii) seize and detain any item found at such premises for so long as is necessary in all the circumstances and to take copies of or extracts from any document or record found at such premises, except that provision may not be made for the retention of any item if a photograph or a copy would be sufficient for the purpose, or
- (d) provide for an enforcement officer to direct that a ship or, where practicable, any renewable energy system, or part thereof, or related plant or apparatus be taken into the nearest convenient port, but only where an enforcement officer considers that it would not be reasonably practicable to exercise a power in relation to that ship, renewable energy system, or part thereof, or related plant or apparatus without so detaining it in port,

in each case on production of their authority to exercise such power and on the provision of such other information as may be specified.

NOTE

The following Ordinance has been made under section 26:

Renewable Energy (Guernsey) Ordinance, 2015.

Power to issue compliance or remediation notice.

27. (1) Without prejudice to the generality of section 26(1), that

section includes power to provide for the issuing of a notice specified in subsection (3) ("**a compliance notice**") by the Commission to a person holding a licence issued under section 2 in the circumstances set out in subsection (2).

(2) The circumstances referred to in subsection (1) are that –

- (a) the licence is for the carrying on of a renewable energy activity where any part of the renewable energy system or any related plant or apparatus to which that licence relates is, or is to be, within Guernsey waters, and
- (b) it appears to the Commission that there has been a contravention of the terms or conditions of that licence.

(3) A compliance notice is a notice requiring the person holding a licence under section 2 to take such steps as may be specified in it to ensure that the term or condition of a licence is complied with.

(4) Without prejudice to the generality of section 26(1), that subsection includes power to provide for the issuing of a notice specified in subsection (6) ("**a remediation notice**") by the Commission to –

- (a) a person holding a licence issued under section 2 for the carrying on of a renewable energy activity where any part of the renewable energy system or any related plant or apparatus to which that licence relates is, or is to be, within Guernsey waters where –
 - (i) it appears to the Commission that there has been a contravention of the terms or conditions of that licence, and

- (ii) the renewable energy activity in respect of which the contravention has taken place has caused, or is likely to cause, the effects set out in subsection (5),
 - (b) a person who has contravened the prohibition in section 1 by virtue of carrying on a renewable energy activity without a licence issued under section 2 where –
 - (i) any part of the renewable energy system or any related plant or apparatus is, or is to be, within Guernsey waters, and
 - (ii) the renewable energy activity in respect of which the prohibition has been contravened has caused, or is likely to cause, the effects set out in subsection (5).
- (5) The effects referred to in subsection (4) are any of the following –
- (a) harm to the environment,
 - (b) harm to human health, or
 - (c) interference with shipping, fishing or other lawful activities within Guernsey waters.
- (6) A remediation notice is a notice requiring the person on whom it is served to do either or both of the following –

- (a) to take such remedial steps as may be specified in it for the purpose of –
 - (i) protecting the environment,
 - (ii) protecting human health,
 - (iii) preventing interference with shipping, fishing or other lawful activities within Guernsey waters,
 - (iv) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (5),
 - (v) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred, or
 - (vi) where the holder of a licence under section 2 has failed to carry out decommissioning in accordance with a decommissioning programme approved by the Commission, in relation to the renewable energy system or related plant or apparatus in question, carrying out decommissioning in accordance with that decommissioning programme, or

- (b) to pay a sum to the Commission or the States to cover any reasonable expenses incurred, in the taking of remedial steps (whether or not under section 30), by the Commission.

(7) A sum required to be paid in a remediation notice by virtue of subsection (6)(b) is recoverable as a civil debt.

NOTE

The following Ordinance has been made under section 27:

Renewable Energy (Guernsey) Ordinance, 2015.

Power to issue stop notice.

28. (1) Without prejudice to the generality of section 26(1), that section includes power to provide for the issuing of a notice specified in subsection (3) ("**a stop notice**") by the Commission to a person carrying on a renewable energy activity, which is not exempt from the prohibition in section 1, where –

- (a) any part of the renewable energy system or any related plant or apparatus, is, or is to be, within Guernsey waters, and
- (b) the renewable energy activity in respect of which the contravention has taken place –
 - (i) is causing or will cause,
 - (ii) is creating or will create an imminent risk of,

the effects set out in subsection (2).

(2) The effects referred to in subsection (1) are any of the following –

- (a) serious harm to the environment,
- (b) serious harm to human health, or
- (c) serious interference with shipping, fishing or other lawful activities within Guernsey waters.

(3) A stop notice is a notice prohibiting a person from carrying on an activity specified in the notice.

NOTE

The following Ordinance has been made under section 28:

Renewable Energy (Guernsey) Ordinance, 2015.

Power to make further provision in relation to notices under this Part and to provide for appeals against such notices.

29. (1) Without prejudice to the generality of section 26(1), that section includes power to provide for –

- (a) the matters which must be specified in a compliance notice, a remediation notice and a stop notice, and
- (b) the duration and effect of such notices and such other matters in connection with such notices as the States consider appropriate,

except that provision may not be made, in relation to a renewable energy activity carried on in accordance with a licence issued under section 2, for a stop notice to have effect for more than 7 days, beginning with the day on which the prohibition takes effect, save that provision may be made for a renewal of such a notice for an aggregate period not exceeding 35 days.

(2) The States may by Ordinance make such provision as they consider appropriate for –

- (a) appeals to be brought against a compliance notice, a remediation notice or a stop notice including, without limitation, provision as to –
 - (i) the persons who may bring such appeals,
 - (ii) the grounds of appeal, and
 - (iii) the period and manner in which such an appeal must be made and otherwise as to the procedure to be adopted for such appeals, and
- (b) details of notices issued or action taken under this Part by the Commission to be kept on a public register.

NOTE

The following Ordinance has been made under section 29:

Renewable Energy (Guernsey) Ordinance, 2015.

Power to take remedial steps.

30. (1) The States may from time to time by Ordinance make such

provision as they may deem expedient for the taking of remedial steps by the Commission in the circumstances set out in subsection (2).

(2) The circumstances referred to in subsection (1) are that –

- (a) a renewable energy activity, which is not exempt from the prohibition in section 1, is being or has been carried out otherwise than under and in accordance with the terms and conditions of a licence issued under section 2, and
- (b) any part of the renewable energy system or any related plant or apparatus is, or is to be, or has been within Guernsey waters.

(3) In this section "**remedial steps**" means any works that appear to it to be necessary or expedient for any one or more of the following purposes –

- (a) protecting the environment,
- (b) protecting human health,
- (c) preventing interference with shipping, fishing or other lawful activities within Guernsey waters,
- (d) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (4),
- (e) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to

the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred, or

- (f) where a holder of a licence issued under section 2 has failed to carry out decommissioning in accordance with a decommissioning programme approved by the Commission in relation to the renewable energy system or related plant or apparatus in question, carrying out decommissioning in accordance with that decommissioning programme.

(4) The harm or interference mentioned in subsection (3)(d) and (e) is any of the following which has been, is being, or is likely to be, caused by the carrying on of the renewable energy activity –

- (a) harm to the environment,
- (b) harm to human health, or
- (c) interference with shipping, fishing or other lawful activities within Guernsey waters.

(5) For the avoidance of doubt, where decommissioning of a renewable energy system or related plant or apparatus is carried out under subsection (1) for or on behalf of the Commission, that decommissioning is permitted under this Law for the purposes of section 1.

NOTE

The following Ordinance has been made under section 30:

Renewable Energy (Guernsey) Ordinance, 2015.

Powers under this Part without prejudice to those under section 2.

31. The powers in this Part are without prejudice to the powers under section 2 in so far as those section 2 powers relate to the enforcement of any provisions of, or made under, this Law, or of any licence, notice or other document issued under this Law.

Offences, penalties and defence

General offence and penalties.

32. (1) A person who contravenes section 1, or any Ordinance or regulations made under this Law, shall be guilty of an offence and, save where otherwise provided by this Law, or by the Ordinance or regulations, shall be liable –

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale, or to imprisonment for a term not exceeding 2 years, or to both, and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both.

(2) Where an offence under subsection (1) or any Ordinance or regulations made under this Law, is committed –

- (a) by a servant or agent of any other person, or
- (b) on any premises or on any structure whether temporary or permanent by a person other than the occupier or

person having management of it,

the principal, or the occupier or the person having the management of the premises or structure shall also be guilty of that offence.

(3) The court by which any person is convicted under this section or under any Ordinance or regulations made under this Law, may order anything produced to the court and shown to the satisfaction of the court to relate to the offence, including for the avoidance of doubt, any renewable energy system, or part thereof, or any related plant or apparatus to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Offences committed by bodies corporate and partnerships, etc.

33. (1) Where an offence under section 32(1) or any Ordinance or regulations made under this Law, 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.

(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.

(3) Proceedings for an offence under section 32(1) or under any Ordinance or regulations made under this Law, alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners, but without prejudice to any liability of the partners under subsection (5).

(4) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

(5) Where an offence under section 32(1) or any Ordinance or regulations made under this Law, is committed by a partnership 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 partner or any person purporting to act in that capacity, he as well as the partnership is guilty of the offence and may be proceeded against and punished accordingly.

Defence of due diligence.

34. (1) In any proceedings for an offence under section 24(4), 32(1), or any Ordinance or regulations made under this Law, it shall, subject to subsection (2), be a defence for the person charged to prove that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person shall not, without the leave of the court, be entitled to rely on that defence unless –

- (a) at least seven clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

PART V
GENERAL

Co-ordination and facilitation, exclusion of liability and fees and charges

Co-ordination and facilitation.

35. (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are –

- (a) enabling the Commission, having regard to any issues of propriety and insofar as it may lawfully do so, to act in a co-ordinating and facilitating role in relation to the obtaining of any relevant consent including, without limitation –
 - (i) acting as a common point of contact for applicants,
 - (ii) passing on publicly available information to applicants relating to the obtaining of consents,
 - (iii) co-ordinating procedures for the obtaining of consents, and
 - (iv) co-operating with other persons from whom consents are required.

- (b) the responsibilities, obligations and liabilities of the Commission, the applicant and any other person from whom a consent is required to be obtained where the Commission carries out any functions conferred under this section.

- (3) In this section –

"applicant" means a person who is applying or proposing to apply for a consent, and

"consent" means a licence, consent or permission (however named) provided for under any enactment or subordinate legislation and required –

- (a) to allow the lawful carrying out, or
- (b) in connection with the lawful carrying out,

of a renewable energy activity.

NOTE

The following Ordinance has been made under section 35:

Renewable Energy (Guernsey) Ordinance, 2015.

Exclusion of liability.

36. (1) Subject to subsection (3), no person within subsection (2) is to be –

- (a) liable in damages, or

- (b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of his functions, or functions delegated to him, under this Law, unless the thing was done or omitted to be done in bad faith.

- (2) The persons within this subsection are –

- (a) the Commission or any member, officer or servant of the Commission,
- (b) any public body to whom functions are delegated under section 21 or any member, officer or servant of such a public body, or
- (c) any enforcement officer appointed under section 26.

(3) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^g.

Fees and charges.

37. (1) There shall be payable to the Commission, the [Committee] or any other department of the States, such fees or charges of such amounts, by such persons and in such manner as may be specified or prescribed by regulations of the Commission in connection with –

^g Ordres en Conseil Vol. XL p. 396 as amended by Order in Council No. 1 of 2005 and G.S.I. No. 27 of 2006.

- (a) the carrying out of any functions under the Law,
- (b) the provision of any services by the Commission in connection with any of its functions under the Law, and
- (c) the recovery of any reasonable costs associated with the administration and enforcement of any Ordinance or subordinate legislation made under this Law.

(2) Without prejudice to the generality of subsection (1), an Ordinance or regulations under that subsection may provide for the charging of –

- (a) fees in connection with applications made under this Law, and
- (b) an annual licence fee, payable by the holder of a licence issued under section 2, to cover any reasonable costs incurred by the Commission in connection with issuing and enforcement of such licences.

NOTES

In section 37, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

The following Ordinance has been made under section 37:

Renewable Energy (Guernsey) Ordinance, 2015.

General provisions

Interpretation.

38. (1) In this Law, unless the context requires otherwise –

"the Bailiff" means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff, Juge Délégué or a Judge of the Royal Court^{**h**},

"the Commission" means the Renewable Energy Commission,

"compliance notice": see section 27(1) and (3),

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly,

"craft" means anything made for the conveyance by water of human beings or of property including a jet ski, wet bike or water scooter or other similar craft, however described,

"[Committee]" means the States of Guernsey [Committee for the Environment & Infrastructure],

"department of the States" includes any council or committee (however called) thereof,

"the Director" means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Environmental Pollution (Guernsey) Law, 2004^{**i**},

^{**h**} The office of Judge of the Royal Court was established by Order in Council No. XXII of 2008.

^{**i**} Order in Council No. XIII of 2004 as amended by Ordinance No. XVIII of 2010.

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

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

"enforcement officers": see section 26(3)(a),

"function" includes a duty and a power and the carrying out of functions includes the performance of duties and the exercise of powers,

"Guernsey" includes Herm and Jethou and all other islands, islets and rocks around the coast of Guernsey, whether or not attached at low water, and, for the avoidance of doubt, waters landward of the baselines for measuring the breadth of the territorial waters of Guernsey,

"Guernsey function" means a function of the Commission conferred on it by or under this Law or any other enactment in connection with activities carried on, or matters otherwise arising, in Guernsey or the territorial waters

of Guernsey,

"Guernsey waters" means –

- (a) the territorial waters of Guernsey, and
- (b) waters landward of the baselines for measuring the breadth of the territorial waters of Guernsey,

"harbour" includes piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers,

"notice" means notice in writing,

"premises" includes any place and, in particular, includes –

- (a) a building and any other land,
- (b) a ship or an aircraft,
- (c) a renewable energy system or any part thereof,
- (d) any related plant or apparatus, and
- (e) a vehicle,

"related infrastructure" means any plant, structures, apparatus, lines or cables necessary to operate, deploy, use or manage a renewable energy system for the generation or supply of energy,

"related plant or apparatus" includes any of the following which is

not itself a renewable energy system –

- (a) any mechanical system, plant or apparatus which is in the course of construction or assembly and which on completion of that construction or assembly will be, or will form part of, a renewable energy system,
- (b) any mechanical system, plant or apparatus which formed part of a renewable energy system, including any such system, plant or apparatus which is in the course of being decommissioned,
- (c) any mechanical system, plant or apparatus which –
 - (i) will form part of a renewable energy system, and
 - (ii) is in transit to or from a place where it is to be located for the purpose of the generation or supply of energy,
- (d) any related infrastructure, and
- (e) any plant, structures, apparatus, lines or cables which will be or were necessary to operate, deploy, use or manage any system, plant or apparatus falling within paragraphs (a) to (c),

"remediation notice": see section 27(4) and (6),

"renewable energy activity" means an activity prohibited under

section 1(1),

"renewable energy system" means any mechanical system, or any plant or apparatus, which is designed and constructed to generate or supply electricity or any other type of energy from any form of renewable power source,

"renewable power source" includes tidal power, wave power, wind power, solar power and any other form of specified power,

"Royal Court" means the Royal Court of Guernsey sitting as the Ordinary Court,

"ship" includes –

- (a) every description of vessel used in navigation,
- (b) a hovercraft, and
- (c) any other craft capable of travelling on, in or under water, whether or not self-propelled,

but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed,

"specified" means specified by an Ordinance,

"the States" means the States of Guernsey,

"stop notice": see section 28(1) and (3),

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"territorial waters of Guernsey" means the territorial sea adjacent to Guernsey, the breadth thereof being measured from the baselines established by the Territorial Waters Order in Council 1964^j as from time to time amended, re-enacted (with or without modification), extended or applied, and

"uniform scale" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^k.

(2) In this Law, unless the context requires otherwise, references to **"arranging for the operation, deployment or use of any renewable energy system"** or any related expressions, includes, for the avoidance of doubt, the carrying out of any marine survey work including –

- (a) wave energy or tidal current monitoring, bathymetry, water column investigations, or
- (b) surveys of the sea, seabed or subsea surveys,

carried out in connection with any prospective or potential operation, deployment or use of a renewable energy system or part thereof.

(3) Unless the context requires otherwise, any reference in this

^j Order in Council of the 25th September 1964.

^k Ordres en Conseil Vol. XXXI, p. 278; for the current scale of fines see Ordinance No. XXIX of 2006.

Law to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case with or without modification), extended or applied.

(4) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

NOTES

In section 38, the words, first, "Committee" and, second, "Committee for the Environment & Infrastructure" in square brackets in the definition of the expression "Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 5 and section 2, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2, with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for the Environment & Infrastructure and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(c), Schedule 2, Part 1, paragraph 2, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

General provisions as to Ordinances and regulations.

- 39.** (1) The States may by Ordinance amend –
- (a) section 1(1) so as to change the activities which are prohibited by that section,
 - (b) section 1(2) and Schedule 1 so as to change the activities which are exempt from the prohibition in section 1(1),
 - (c) Part IV, sections 5, 21, 35, 38 and 40 so as to amend the

meaning of any expression defined therein or to define any other expression, and

- (d) Part III so as to –
 - (i) change the name of the Commission, or
 - (ii) change the functions of the Commission and related administrative, procedural and financial provisions,

where they consider it necessary or expedient to do so for any of the purposes set out in subsection (2).

- (2) The purposes referred to in subsection (1) are –
 - (a) enabling the Commission to carry out more effectively any functions conferred under this Law,
 - (b) exempting activities from the prohibition in section 1 which –
 - (i) are not likely to have a significant detrimental effect on the environment, human health or the safety of navigation and are not likely to result in any significant interference with other lawful activities within Guernsey and the territorial waters of Guernsey, or
 - (ii) are adequately controlled by other applicable law,

- (c) discharging any international obligation to which Guernsey (including in respect of the territorial waters of Guernsey) is subject,
- (d) assisting, in the interests of the public or otherwise, any authority which appears to the States to discharge in a place outside Guernsey, or the territorial waters of Guernsey, functions corresponding to any of the functions conferred on the Commission under this Law,
- (e) ensuring that the activities which are prohibited or may be exempted under this Law reflect scientific developments, from time to time, in the field of renewable energy,
- (f) preventing any likely significant harm to the environment, human health or the safety of navigation or any significant interference with other lawful activities within Guernsey or the territorial waters of Guernsey, or
- (g) enabling the Commission to carry out functions in connection with activities outside Guernsey or the territorial waters of Guernsey.

(3) The power in subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (or vice versa).

(4) Any power of the States, or of any department of the States, under this Law to confer functions, by Ordinance, regulations or otherwise, on the

Commission or to otherwise make provision in relation to the Commission may also be exercised to confer the same functions on the [Committee] or any other department of the States or to make the same provision in relation to the [Committee] or any other department of the States.

(5) An Ordinance or regulations made under this Law may –

- (a) be amended or repealed by a subsequent Ordinance or regulations, as the case may be, hereunder, and
- (b) contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(6) Any power conferred under this Law to make an Ordinance or regulations 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 cases,
- (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,
- (iii) any such provision either unconditionally or subject to any specified conditions.

(7) Without prejudice to the generality of the foregoing provisions of this Law an Ordinance made under this Law may –

- (a) subject to subsection (8), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and for related defences,
- (b) empower the Commission to make or issue codes or guidance, whether as to matters in respect of which such an Ordinance or regulations can be made or otherwise,
- (c) make provision for the purpose of dealing with matters arising out of or related to renewable energy activities or any international instrument relating to such activities or activities that would be such activities if carried on in Guernsey or the territorial waters of Guernsey,
- (d) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
- (e) confer power on any department of the States to make

regulations in relation to any matter as to which an Ordinance may make provision,

- (f) make provision generally for carrying this Law into effect in whatever manner the States think fit, and
- (g) make any such provision of any such extent as might be made by *Projet de Loi* but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(8) An Ordinance under this Law may not –

- (a) provide for offences to be triable only on indictment, or
- (b) provide for penalties for offences which exceed the maximum penalties that may be imposed by a court under section 32(1).

(9) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or the making of new regulations.

NOTE

In section 39, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.

Service of documents.

40. (1) Any document to be given or served under or for the purposes of this Law may be given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on the Commission, by being left at, or sent by post or transmitted to, the principal offices of the Commission in Guernsey.

(2) In subsection (1) –

- (a) the expression "**by post**" means by registered post,

recorded delivery service or ordinary letter post, and

- (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

(3) If a person notifies the Commission of an address for service within Guernsey for the purposes of this Law, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served –

- (a) by being published by the Commission in such manner and for such period as it thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of subsections (1) to (5) and any other enactment or rule of law in relation to the service of documents, no

document to be given to or served on the Commission under or for the purposes of this Law shall be deemed to have been given or served until it is received.

(7) If a person upon whom a document is to be served under this Law is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

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

(10) In this section –

- (a) **"document"** does not include a summons, and
- (b) **"working day"** means a day which is not a Saturday, a Sunday, Christmas Day or Good Friday or a day appointed as a public holiday by Ordinance of the

States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958¹.

(11) The provisions of this section are subject to any contrary provision in this Law.

NOTES

In accordance with the provisions of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1) and section 1(2), with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, the reference in this section to a "minor" shall be construed as a reference to a person under the age of 18 years.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section of that section are satisfied.

Extent.

41. This Law extends to Guernsey and the territorial waters of Guernsey only.

Citation.

42. This Law may be cited as the Renewable Energy (Guernsey) Law, 2010.

Commencement.

43. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions or different purposes.

¹ Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.

NOTE

Section 2 and Parts II, IV and V of the Law were brought into force on 30th May, 2012 by the Renewable Energy (Guernsey) Law, 2010 (Commencement) Ordinance, 2012, section 1.

SCHEDULE 1

Section 1(2)

EXEMPTIONS FROM THE PROHIBITION IN SECTION 1

PART I

EXEMPTIONS WHERE RENEWABLE ENERGY SYSTEM ETC. LOCATED
WITHIN GUERNSEY WATERS

1. The prohibition in section 1(1) shall not apply to a renewable energy activity, where it is carried out in relation to a renewable energy system where any part of that system or any related plant or apparatus is, or is to be, located within Guernsey waters, in the circumstances set out in paragraph 2.
2. The circumstances referred to in paragraph 1 are that the renewable energy system –
 - (a) generates, or is to generate, electricity and has a rated maximum output of no more than 20 kilowatts, or
 - (b) is or is to be installed in a ship located within Guernsey waters or a harbour and is or is to be operated, deployed or used, or in the case of the activity of decommissioning, was operated, deployed or used, solely in relation to the private use of energy on board that ship.

PART II
EXEMPTIONS WHERE RENEWABLE ENERGY SYSTEM ETC. NOT
LOCATED WITHIN GUERNSEY WATERS

3. The prohibition in section 1(1) shall not apply to a renewable energy activity, where it is carried out in relation to a renewable energy system where no part of that system or any related plant or apparatus is, or is to be, located within Guernsey waters.

PART III
EXEMPTIONS APPLYING TO ALL RENEWABLE ENERGY SYSTEMS

4. The prohibition in section 1(1) shall not apply to –
- (a) a renewable energy activity carried on –
 - (i) by the holder of a licence issued by the Commission under section 2, and
 - (ii) under and in accordance with the terms and conditions of that licence, or
 - (b) any activity carried on by a subcontractor or agent of such a person under and in accordance with the terms and conditions of such a licence except where the Commission provides otherwise in the terms and conditions of the licence in question.

SCHEDULE 2

Section 6(3)

PROVISIONS HAVING EFFECT WITH RESPECT TO THE RENEWABLE
ENERGY COMMISSION

1. The Commission shall consist of a Chairman and at least 2, but no more than 4, other members appointed by the [Committee] or any other specified department of the States.
2. The Chairman and other members of the Commission shall hold office for a period of five years (or such other shorter period as may be agreed between the [Committee] or any other specified department of the States and any member appointed to the Commission) and vacate office as such in accordance with the terms of their appointments.
3. A person who ceases to hold office as a member of the Commission, or ceases to hold office as Chairman, shall be eligible for reappointment.
4. The Commission shall pay to the Chairman and other members of the Commission such remuneration, allowances, expenses, pensions and other benefits as the [Committee] or any other specified department of the States may from time to time by resolution determine.
5. Every member of the Commission shall, before discharging any function under this Law, take an oath or make an affirmation before the Royal Court in the terms set out at the foot of this Schedule or in words to the like effect.
6. Where the members of the Commission meet together so as to transact any business –
 - (a) decisions shall be made and other matters determined or resolved by a majority of the members attending and

voting in favour of the decision or matter in question,

- (b) each member has one vote, and
- (c) in the event of an equality of votes, the Chairman has a second or casting vote.

7. The Commission may, if it thinks fit, transact any business by the circulation of papers to all of the members of the Commission, or by a telephone conference at which each member joining in that telephone conference call can hear each other member and a resolution in writing, approved in writing, or by oral confirmation during a telephone conference by a majority of the members of the Commission shall be as valid and effectual as if passed at a meeting of the Commission by the votes of the members so approving the resolution.

8. The validity of any proceedings of the Commission shall not be affected by any vacancy among the members of the Commission or by any defect in the appointment of any such member.

9. The Commission shall keep proper minutes of its proceedings, including minutes of any business transacted as permitted by paragraph 7 of this Schedule.

10. Subject to this Law, the Commission shall have power to make rules to regulate its own procedure.

Oath/Affirmation of office

"You {swear and promise on the faith and truth that you owe to God} {do solemnly, sincerely and truly declare and affirm} that you will well and faithfully discharge your functions as a member of the Renewable Energy Commission in accordance with law; that you will exercise the powers

entrusted to you only as appears necessary to you for the discharge of those functions; and that you will not disclose any information received by you in the discharge of those functions which to your knowledge may directly lead to the identification of any person, save to persons engaged in the discharge of those functions; pursuant to an express power conferred by or under the Renewable Energy (Guernsey) Law, 2010; or in any other case required by law."

NOTE

In Schedule 2, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 5, with effect from 1st May, 2016.
