

PROJET DE LOI

ENTITLED

The Prevention of Pollution (Guernsey) Law, 1989 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXXI, p. 500; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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The Prevention of Pollution (Guernsey) Law, 1989

THE STATES, in pursuance of their Resolution of the 10th day of December, 1987, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of Law in the Island of Guernsey.

Prohibition of water pollution.

1. No person shall cause or permit the occurrence of pollution, or cause or permit a risk of pollution to arise.

Ordinances to protect water resources.

2. (1) The States may by Ordinance make such provision as they consider necessary or expedient to protect the Island's water resources against pollution or the risk thereof.

(2) Without prejudice to the generality of subsection (1), an Ordinance thereunder may make provision as to –

- (a) the regulation and control of drainage and sewage disposal from premises (whether or not those premises are in existence when the Ordinance is made),
- (b) the regulation and control of oil installations,
- (c) the regulation or prohibition of the storage, transport,

use and disposal of any matter likely to present a threat of pollution,

- (d) the prohibition of the doing of anything regulated by the Ordinance except under the authority of and in accordance with the conditions of a permit granted by the Board,
- (e) the regulation or prohibition of the doing or using of any thing, and of the execution of any works, specified in the Ordinance, and
- (f) the empowering of the Board (or any other Committee or like body of the States) to make orders by way of statutory instrument in respect of any matter described in the Ordinance.

NOTES

The following Ordinance has been made under section 2:

Animal Carcasses (Control of Burial) Ordinance, 1998.

The following Ordinance has effect as if made under section 2:

States Water Supply (Prevention of Pollution) Ordinance, 1966.

Service of anti-pollution notices.

3. Where the Board considers that a person is, by reason of his acts or omissions, his proposed acts or omissions or his use or proposed use of any thing, causing or permitting the occurrence of pollution in the catchment area, or causing or permitting a risk of pollution in the catchment area to arise, the Board may serve an anti-pollution notice on him.

Provisions of anti-pollution notices.

4. An anti-pollution notice –

- (a) may require the taking of such action and the execution and keeping in good repair of such works, specified in the notice, as the Board considers necessary to protect the Island's water resources against pollution or the risk thereof,
- (b) may provide that anything specified in the notice which the Board considers is causing pollution or a risk thereof shall not be done or used,
- (c) may provide that any such thing shall not be done or used –
 - (i) until any action or work specified in the notice has been carried out, or
 - (ii) unless any conditions specified in the notice are complied with,
- (d) may specify a time limit within which the notice is to be complied with, or provide that the notice is to be complied with forthwith.
- (e) shall state that there is a right of appeal against the notice to the Royal Court which may be exercised within 7 days of the date of service.

Appeals against anti-pollution notices.

5. (1) A person aggrieved by an anti-pollution notice served on him may, within 7 days of the date of service, appeal against the notice to the Royal Court on the grounds that its provisions (or any of them) are *ultra vires* or unreasonable.

(2) An appeal under this section shall be instituted by way of summons served on [the President] of the Board.

(3) The summons shall state the grounds and material facts upon which the appellant relies.

(4) On an appeal under this section the Royal Court may set the notice aside or confirm it, with or without modification.

(5) No appeal lies to the Court of Appeal from a decision of the Royal Court under this section except on a question of law and with leave of the Court of Appeal.

NOTE

In section 5, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016.¹

No prosecutions, etc., within time for appealing.

6. (1) No proceedings under section 9 shall be brought and (subject to subsection (2)) no action under section 7(1)(i) shall be taken in respect of a contravention of an anti-pollution notice occurring –

(a) before the expiration of the time for appealing against the notice under section 5(1),

- (b) where an appeal is instituted, before the determination of the appeal.

(2) Subsection (1) does not prejudice the Board's powers under section 7(1)(i) in the circumstances described in section 7(1)(a).

(3) Where an appeal against an anti-pollution notice is instituted under section 5(1) and, before the determination of the appeal, the Board (by virtue of subsection (2)) takes action under section 7(1)(i) in respect of a contravention of the notice, the Royal Court, upon the determination of the appeal –

- (a) if it sets the notice aside, or
- (b) if it confirms the notice with modifications so that the action taken by the Board no longer falls to be done under the notice,

may order that the Board's expenses (or any part thereof) shall not be recoverable under section 7(1)(ii) and that the Board shall pay compensation to the appellant of such amount as the Royal Court thinks just in the circumstances of the case.

Powers of Board to execute works.

7. (1) Where –

- (a) the Board considers that pollution is occurring or that a risk of pollution has arisen, and that in view of the seriousness of the pollution or risk it is desirable that immediate action be taken to protect the Island's water resources,

- (b) there is a contravention of an anti-pollution notice, or
- (c) a person is convicted of an offence under section 9,

the Board may (whether or not, in the case of paragraphs (a) and (b), proceedings under section 9 are brought in respect of the pollution, risk or contravention) –

- (i) take such action as is reasonably necessary to protect the Island's water resources against the pollution or risk, or to remedy the contravention of the anti-pollution notice, or to remedy or deal with any pollution or risk thereof resulting from the commission of the offence, as the case may be, and
- (ii) recover the expenses reasonably incurred by it under paragraph (i) as a civil debt from the owner or occupier of the land on which the pollution or risk occurred or arose, or from the owner or user of the thing from which the pollution or risk emanated, or from the person on whom the anti-pollution notice was served, or from the offender, as the case may be.

(2) The powers conferred by subsection (1)(i) may be exercised only within the catchment area.

Powers of entry.

8. (1) An officer of the Board, and any other person authorised in writing in that behalf by the Board, at any reasonable time (or at any time, in cases of emergency), on production (if required) of evidence of his office or authority, may

enter any premises and may –

- (a) make any inspections, examinations and inquiries necessary to ascertain whether there is being or has been committed an offence under section 9,
- (b) take for analysis samples of any water, effluent or other matter from those premises,
- (c) on behalf of the Board, do any thing the Board is authorised to do under section 7(1)(i),
- (d) take with him the persons, materials and equipment necessary for the purpose of exercising his powers under this section.

(2) The powers conferred by subsection (1)(a), (c) and (d) may be exercised only within the catchment area.

(3) When a sample is taken from any premises under subsection (1)(b), a duplicate of the sample shall, if the owner or occupier of the premises so requests, be left with him.

Offences.

9. A person who –

- (a) contravenes any provision of section 1, of an Ordinance under section 2 or order under such an Ordinance, or of an anti-pollution notice,
- (b) intentionally obstructs or impedes any officer of the

Board or other person exercising or seeking to exercise any power conferred by section 7(1)(i) or 8(1) or by an Ordinance under section 2 or order under such an Ordinance,

- (c) on an inquiry being made of him under section 8(1)(a), makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, or fails without reasonable excuse to reply,

is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding 3 months, a fine not exceeding level 4 on the uniform scale, or both.

Liability of directors, etc.

10. (1) Where an offence under section 9 committed by a body corporate 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 of the body corporate.

Offences due to default of third person.

11. Where the commission by a person of an offence under section 9 is due to the act or default of another person, the latter is guilty of the offence and may be proceeded against and punished accordingly, whether or not proceedings are taken against the former.

Defence of due diligence.

12. (1) It is, subject to subsection (2), a defence for a person charged with an offence under section 9(a) to prove that he exercised all due diligence and took all reasonable precautions to avoid committing the offence.

(2) Where the defence provided by subsection (1) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged may not, without the leave of the court, rely on the defence unless, at least 7 days before the hearing, he serves written notice on Her Majesty's Procureur giving such information as to the identity of the other person as is in his possession.

Catchment area map.

13. (1) The Board shall –

- (a) determine the boundaries of an area to be known as the States water supply catchment area ("**the catchment area**"),
- (b) prepare and thereafter maintain a map of the Island ("**the map**") on which the boundaries of the catchment area shall be marked.

(2) The catchment area consists of all areas of the Island the drainage of which is used by the Board for or in connection with the supply of water to its consumers.

(3) A copy of the map shall be deposited at the Greffe for public inspection.

(4) For the purposes of identification, [the President] of the Board shall sign, and shall append the date of signature upon, the map and the copy thereof deposited at the Greffe.

(5) The Board may at any time vary its determination of the boundaries of the catchment area.

(6) The variation is not effective until –

- (a) notice thereof is published in La Gazette Officielle, and
- (b) the map and the copy thereof deposited at the Greffe are altered accordingly and the alterations are signed and dated as mentioned in subsection (4).

(7) Neither the Board's determination of the boundaries of the catchment area nor any variation thereof under subsection (5) may be challenged in a court of law.

NOTE

In section 13, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016.²

General provisions as to Ordinances.

14. (1) An Ordinance under section 2 or order under such an Ordinance –

- (a) may be amended or repealed by a further Ordinance or (as the case may be) order thereunder,

- (b) may make different provision for different persons, premises, areas, matters or pollutants, or for different classes thereof, and
 - (c) may contain transitional, consequential, incidental and supplemental provisions.
- (2) An order under an Ordinance under section 2 –
 - (a) shall be laid before a meeting of the States as soon as possible after being made, and
 - (b) shall, if at that or the next meeting the States resolve to annul it, cease to have effect, without prejudice to anything done under it or to the making of a new order.

Service of notices.

15. An anti-pollution notice is (without prejudice to any other lawful mode of service) validly served –

- (a) on an individual, if delivered to him, or if left at or sent by post to his usual or last known place of abode,
- (b) on a body corporate, if left at or sent by post to its registered office in the Island or (if its registered office is not in the Island) its principal or last known principal place of business in the Island,
- (c) on an unincorporated body, if served in accordance with paragraph (a) on any partner, manager or other

similar officer thereof, or if left at or sent by post to its principal or last known principal place of business in the Island.

Interpretation.

16. In this Law, unless the context requires otherwise –

"anti-pollution notice" means an anti-pollution notice served by the Board under section 3 and includes such a notice as modified by the Royal Court on an appeal under section 5(1),

"the Board" means the States [States' Trading Supervisory Board],

"catchment area", in sections 3, 7(2) and 8(2) and in the definition of "Island's water resources", means the area the boundaries of which are, in accordance with section 13(1)(b), marked on the map,

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

"Island's water resources" includes water on the surface or underground and whether or not –

- (a) under the control of the Board,
- (b) within the catchment area,

"the map" has the meaning given by section 13(1)(b),

"pollutant" means anything which has a deleterious effect on water or which adversely affects the actual or intended uses of water,

"pollution" means pollution of the Island's water resources by pollutants,

"post" means registered post or recorded delivery service,

"premises" includes land,

"Royal Court" means the Royal Court sitting as an Ordinary Court.

NOTES

In section 16, the words in square brackets in the definition of the expression "the Board" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016.³

The functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁴

Repeal.

17. (1) The States Water Supply (Prevention of Pollution) (Guernsey) Law, 1965^a is repealed.

(2) The States Water Supply (Prevention Pollution) Ordinance, 1966^b, as amended^c, shall have effect as if made under this Law.

^a Ordres en Conseil Vol. XX, p. 72.

^b Recueil d'Ordonnances Tome XIV, p. 311.

Citation.

18. This Law may be cited as the Prevention of Pollution (Guernsey) Law, 1989.

Commencement.

19. This Law shall come into operation on such day as the States may by Ordinance appoint, and different days may be appointed for different provisions.

NOTE

The Law was brought into force on 1st August, 1991 by the Prevention of Pollution (Commencement) Ordinance, 1991, section 1.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph

^c Recueil d'Ordonnances Tome XXI, p. 6.

31, with effect from 6th May, 2004.

² These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

³ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

⁴ The functions, rights and liabilities of the Public Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Water Board and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 31, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.