

ORDER IN COUNCIL

**XXII
2009**

ratifying a Projet de Loi

ENTITLED

The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007

(Registered on the Records of the Island of Guernsey
on the 9th November, 2009.)



2009

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

9th day of November, 2009 before Sir Geoffrey Rowland, Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin and Alan Cecil Bisson, Esquire, The Reverend Peter Gerald Lane, Michael John Tanguy, Esquire, Susan Mowbray, Barbara Jean Bartie, Stephen Murray Jones, Esquire, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire, Constance Helyar-Wilkinson and Terry George Snell, Esquire, Jurats

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 15th October 2009 approving and ratifying a Projet de Loi entitled “The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED:

1. That the said Order in Council be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the Sénéschal of Sark for registration on the records of those Islands respectively.



At the Court at Buckingham Palace

THE 15th DAY OF OCTOBER 2009

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 1st June 2006, the States of Deliberation at a meeting on 28th March 2007 approved a *Projet de Loi* entitled the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 23rd May 2007 considered the *Projet de Loi* when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 5th July 2007 considered the *Projet de Loi* when a Resolution was passed agreeing to its application to Sark. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, and to order that it shall have force of law in the Bailiwick of Guernsey.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

PROJET DE LOI

ENTITLED

The Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007

THE STATES, in pursuance of their Resolution of the 1st June, 2006^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of Regulation of Utilities Law.

1. The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, as amended^b ("the Law of 2001"), is further amended as follows.

2. After section 3(1) of the Law of 2001 insert the following subsections-

"(1A) The States may, on the recommendation of the Commerce and Employment Department made after consultation with the Director General, and without prejudice to the provisions of subsection (1), by Ordinance give the Director General directions of a strategic or general nature including, without limitation, directions concerning the priorities to be taken into account by him in the exercise of his functions and powers in

^a Article XIV of Billet d'État No. X of 2006.

^b Order in Council No. XI of 2001; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

respect of any utility service.

(1B) References in this Law, however expressed, to States' Directions include references to directions under subsection (1A).".

3. In section 3(2) of the Law of 2001 the expression "under subsection (1)" is repealed.

4. For section 4(2) of the Law of 2001 substitute the following subsection -

"(2) The Director General shall exercise his functions and powers with fairness, impartiality and independence and in a manner which is -

- (a) timely, transparent, objective and, subject to the exception set out in section 3(1), consistent with States' Directions and the provisions of this Law and any relevant Sector Law,
- (b) proportionate to the Bailiwick's circumstances, and
- (c) accountable, consistent and targeted only at cases in respect of which action on his part is necessary.".

5. For section 13(2)(a) of the Law of 2001 substitute the following paragraph -

"(a) shall be audited annually by auditors appointed by the States on the recommendation of the Public Accounts Committee, and".

6. After section 13 of the Law of 2001 insert the following sections -

"Audit and Remuneration Committee.

13A. (1) The Director General shall establish a committee to be called the Audit and Remuneration Committee for the Office of the Director General ("**the Audit Committee**").

(2) Subject to subsections (3) and (4), the Director General shall determine the constitution of the Audit Committee and such rules of procedure for it as he considers necessary or expedient; and the constitution and rules may, without limitation, make provision in respect of -

- (a) the number of members of the Audit Committee,
- (b) the terms of office and voting rights of members,
- (c) the appointment of the chairman and his alternate,
- (d) the quorum and other matters of procedure at meetings, and
- (e) the resignation and termination of office of members, and casual vacancies in office.

(3) One member of the Audit Committee, who may be a member of the States of Deliberation, shall be appointed by, and may only be removed by, the Commerce and Employment Department.

(4) The other members of the Audit Committee, who may not be members of the States of Deliberation -

(a) shall be appointed by the Commerce and Employment Department on the recommendation of the Director General, and

(b) may only be removed by the Commerce and Employment Department, with or without any such recommendation.

(5) The functions and powers of the Audit Committee are -

(a) to oversee the internal controls in place in the Office of Director General,

(b) to review the remuneration of the officers and servants of the Office of Director General (other than the Director General himself) and to seek the advice of the Public Sector Remuneration Committee on such remuneration,

(c) to bring any matter of concern to the attention of any interested party (including, without

limitation, the Commerce and Employment Department and Public Accounts Committee), and

- (d) to exercise such other functions and powers as may be assigned by the Director General.

Access to records, etc, of Office of Director General.

13B. (1) The Director General shall, if given reasonable notice, and at all reasonable times during ordinary business hours, give any permitted person access to -

- (a) the premises,
- (b) the records, accounts and other documents, and
- (c) the officers and servants,

of the Office of the Director General.

(2) Permitted persons are members, officers, servants and other representatives of the Public Accounts Committee or the States Internal Audit service.

(3) Access under subsection (1) -

- (a) is subject to such reasonable restrictions as the Director General may impose, and
- (b) is to be given only to the extent necessary to

enable the Public Accounts Committee or (as the case may be) the States Internal Audit service to exercise their respective functions, powers and mandates -

- (i) under or in relation to this Law or any Sector Law, or
- (ii) in relation to the Office of the Director General.

(4) The duty to give access under subsection (1) includes -

- (a) in the case of premises, a duty to permit entry and inspection,
- (b) in the case of documents, a duty -
 - (i) to produce them and to permit their inspection, copying and removal, and
 - (ii) to give an explanation of them or, if documents are missing, of their whereabouts,
- (c) in the case of officers and servants, a duty -
 - (i) to allow a permitted person to ask them questions,

- (ii) to require them to answer such questions, and
- (iii) to require them to accord a permitted person all reasonable assistance and facilities for the purposes of his visit."

7. Immediately before section 18(1)(b) of the Law of 2001 insert the following paragraph ^c -

"(a) in making any statement or providing any information or document to the Public Accounts Committee, the Audit Committee or the States Internal Audit service, or any member, officer, servant or other representative of theirs, when acting in the exercise of their respective functions and powers -

- (i) under or in relation to this Law or any Sector Law, or
- (ii) in relation to the Office of the Director General,".

8. In section 18(1)(c) of the Law of 2001 for the words "for the purpose of exercising his functions and powers" substitute "or by any person or body

^c The original section 18(1)(a) of the Law of 2001 was repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

mentioned in paragraph (a) for the purpose of exercising their respective functions and powers".

9. In section 22(1) of the Law of 2001 -

- (a) immediately before the definition of "Bailiff"^d insert the following definition -

"**Audit Committee**" means the Audit and Remuneration Committee for the Office of the Director General established under section 13A,"

- (b) for the definition of "**States' Directions**" substitute the following -

"**States' Directions**" means -

- (a) directions given to the Director General by Resolution of the States under section 3(1), and
- (b) directions given to the Director General by Ordinance of the States under section 3(1A),".

10. After section 22 of the Law of 2001 insert the following section -

^d The definition of "Bailiff" was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

"Power to amend Law by Ordinance.

22A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

(3) An Ordinance under subsection (1) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law."

11. In section 23(3) of the Law of 2001 after "15(8)" insert "or 22A".

12. For paragraph 4 of the Schedule substitute the following -

"Appointment of Deputy Director General.

4. Without prejudice to paragraph 3, the Director General may appoint any of his officers or servants as Deputy Director General with full authority to exercise his functions and powers -

- (a) during any period in which he is temporarily unavailable, or
- (b) in the event of his office falling vacant, during the period of the vacancy, but only pending the appointment of a new Director General,

and the provisions of paragraphs 3(2) and 3(3) apply in relation to an appointment under this paragraph as they apply to an arrangement under

paragraph 3(1).".

Citation.

13. This Law may be cited as the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007.

K.H. TOUGH,
Her Majesty's Greffier.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey

PRICE £2.00