

# ORDER IN COUNCIL

**XI**  
**2001**

ratifying a Projet de Loi

ENTITLED

## **The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001**

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(Registered on the Records of the Island of Guernsey  
on the 7th August, 2001.)

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2001

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 7th day of August, 2001 before de Vic Graham Carey, Esquire, Bailiff; present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, and Michael Henry De La Mare, and Michael John Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of July, 2001, approving and ratifying a Projet de Loi entitled “The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001”, 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 Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

# At the Court at Buckingham Palace

The 18th day of July, 2001

PRESENT,

## The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 10th day of July 2001 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

1. That, in pursuance of their Resolution of the 26th day of January, 2000, the States of Deliberation at a meeting held on the 31st day of January, 2001 approved a Bill or “Projet de Loi” entitled “The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 18th day of April, 2001, considered the said Bill or “Projet de Loi” when a resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 18th day of April, 2001, considered the said Bill or “Projet de Loi” when a resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Regulation of Utilities (Bailiwick of Guernsey) 2001”, and to order that the same shall have force of law in the Bailiwick of Guernsey.”



“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001**

### ARRANGEMENT OF SECTIONS

#### PART I OFFICE OF THE DIRECTOR GENERAL

1. Establishment of the Office of the Director General.

#### PART II GENERAL DUTIES OF THE STATES AND THE DIRECTOR GENERAL

2. General duties.
3. States' Directions.

#### PART III FUNCTIONS AND POWERS OF THE DIRECTOR GENERAL

4. Functions of the Director General.
5. Powers of the Director General.
6. Power to obtain injunctions.
7. Confidentiality.
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#### PART IV FINANCIAL PROVISIONS

9. The Public Utilities Regulation Fund.
10. Grants and loans to the Director General.
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- 15. Right of appeal.
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- 19. Criminal liabilities of directors, etc.
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- 21. Power of the States to exclude liability.
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SCHEDULE

Office of the Director General of Utility Regulation.

# PROJET DE LOI

ENTITLED

## **The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001**

**THE STATES**, in pursuance of their Resolution of the 26<sup>th</sup> January, 2000<sup>a</sup>, 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.

### PART I

#### OFFICE OF THE DIRECTOR GENERAL

##### **Establishment of the Office of the Director General.**

1. (1) There shall stand established an office to be known as the Office of the Director General of Utility Regulation (referred to in this Law as the "**Office of the Director General**"), and the holder of that office shall be known as the Director General.

(2) The States shall, on the recommendation of the Board of Industry, appoint the Director General who shall exercise the functions and powers assigned or transferred to him by or under this Law, any Sector Law and any other enactment.

(3) The Office of the Director General is not a committee, servant

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<sup>a</sup> Article I of Billet d'État No.II of 2000.

or agent of the States and, except to the extent provided otherwise in this Law or any other enactment -

(a) is not subject to any rule of law relating to committees of the States; and

(b) does not have any of the rights or privileges vested in committees of the States.

(4) The Director General shall hold office for a term not exceeding five years, and a person may be appointed to that office for more than one term of office, as the States may decide, on the recommendation of the Board of Industry pursuant to subsection (2).

(5) The Director General may resign his office at any time by notice in writing addressed to the Board of Industry.

(6) The States may remove any person from the office of Director General on the grounds of permanent incapacity, misbehaviour or gross incompetence, in each case on the recommendation of the Board of Industry.

(7) Subject to subsections (4), (5), (6) and (8), the Director General shall hold and vacate his office in accordance with the terms and conditions of his appointment which shall be determined by the Board of Industry.

(8) The provisions of the Schedule to this Law shall have effect with respect to the Office of the Director General.

## PART II

### GENERAL DUTIES OF THE STATES AND THE DIRECTOR GENERAL



**General duties.**

2. In exercising their respective functions and powers, the States and the Director General shall each have a duty to promote (and, where they conflict, to balance) the following objectives -

- (a) to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services;
- (b) to secure, so far as practicable, the provision of utility services that satisfy all reasonable demands for such services within the Bailiwick, whether those services are supplied from, within or to the Bailiwick;
- (c) to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the Bailiwick;
- (d) to introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions;
- (e) to improve the quality and coverage of utility services and to facilitate the availability of new utility services within the Bailiwick; and

- (f) to lessen, where practicable, any adverse impact of utility activities on the environment;

and, in performing the duty imposed by this section, the States and the Director General shall have equal regard to the interests of the residents of all islands of the Bailiwick.

**States Directions.**

3. (1) The States may, on the recommendation of the Board of Industry made after consultation with the Director General, by Resolution give to the Director General directions (referred to in this Law as "**States' Directions**") specifying -

- (a) the identity of the person to whom the first licence containing a universal service obligation is to be awarded under a Sector Law;
- (b) any special or exclusive rights to be awarded to any licensee, and the term of such rights, which in the case of telecommunications networks or telecommunications services shall not exceed a period of 5 years;
- (c) the scope of any universal service obligation; and
- (d) any requirements to be imposed on licensees in the light of any international obligations to which the Bailiwick may from time to time be subject;

and, in exercising his functions and powers, the Director General shall comply with

States' Directions except where to do so would be in contravention of the duty imposed on him by section 2 or any of his functions and powers.

(2) The Board of Industry shall consult the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark in relation to any recommendation as to States' Directions under subsection (1).

### PART III

#### FUNCTIONS AND POWERS OF THE DIRECTOR GENERAL

##### **Functions of the Director General.**

4. (1) The functions of the Director General shall be -
- (a) to advise the States generally in relation to utility activities through the office of the Board of Industry;
  - (b) to grant and renew, or to refuse to grant and renew, licences in a manner consistent with States' Directions and the provisions of this Law and any relevant Sector Law;
  - (c) to monitor, enforce, modify, suspend, revoke or consent to the surrender of licences in a manner consistent with States' Directions and the provisions of this Law and any relevant Sector Law;
  - (d) subject to subsection (3), to determine and to prescribe the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and

the interest and penalties payable in the event of default in the due payment of fees or levies;

- (e) to receive and to conduct inquiries and investigations (which may include inspections of any part of a utility network) and to hear complaints by any person regarding utility activities; and
- (f) to exercise such other functions as may be assigned or transferred to him by or under any Sector Law and any other enactment.

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

(3) The fees, levies, interest and penalties which may be determined and prescribed by the Director General under subsection (1)(d) shall be of such an amount as may be necessary to defray the costs and expenditure incurred or anticipated by the Director General, over the term of the licence in question, in connection with the exercise of his functions and powers.

(4) The States may, on the recommendation of the Board of Industry made after consultation with the Director General, by Resolution assign or transfer to the Director General such other functions and powers as the States may decide are necessary or expedient in relation to the regulation of utility activities.

(5) The Director General may refrain, in whole or in part, and conditionally or unconditionally, from the exercise of his functions and powers

where to do so would in his opinion be consistent with the duty imposed on him by section 2.

**Powers of the Director General.**

5. (1) The Director General may, having regard to the provisions of sections 2, 3 and 4, do anything that appears to him to be necessary or expedient for the purpose of exercising his functions and powers and, without prejudice to the generality of the foregoing, he shall have power -

- (a) to determine the conditions to be included in a licence;
- (b) to require the production of such documents, accounts or information from applicants for licences, licensees and other interested persons in relation to utility activities within such time periods or at such intervals as the Director General may require;
- (c) subject to any provision to the contrary in this Law or any Sector Law, to publish information, reports and other documents;
- (d) subject to the provisions of States' Directions, to determine which universal service obligations may be imposed on a licensee and on what conditions, and how and by whom such obligations should be funded;
- (e) to give directions to a licensee concerning utility activities in cases where he is authorised to do so by or under this Law, any Sector Law or any condition of a licence;



- (f) where provided for in any Sector Law, to determine when and in respect of which utility activities a person may be made exempt from an obligation to obtain a licence;
- (g) to impose any direction, requirement or other sanction under this Law or any Sector Law;
- (h) to appoint any person or body to advise him in relation to the exercise of any of his functions and powers; and
- (i) to institute proceedings for injunctions under section 6.

(2) The Director General may, having regard to the provisions of sections 2, 3 and 4, for the purposes of exercising his functions and powers -

- (a) acquire, lease, encumber, dispose of, exchange, invest or otherwise allocate any movable or immovable property and any interest in it and raise capital from banks and other financial institutions whether in the Bailiwick or elsewhere by way of mortgage, overdraft or otherwise, with or without security; and
- (b) enter into any contract, including any contract of insurance, or make any arrangement with any person.

(3) The Director General may sue and be sued as Director General.

**Power to obtain injunctions.**

6. (1) If on the application of the Director General the Court is satisfied that -

(a) there is a reasonable likelihood that a person will contravene -

(i) a provision of a Sector Law which prohibits, except under the authority of a licence, any utility activity;

(ii) a condition of a licence; or

(iii) a direction or requirement of the Director General under a Sector Law; or

(b) a person may have been guilty of such a contravention and there is a reasonable likelihood that the contravention will continue or be repeated;

the Court may grant an injunction restraining the contravention.

(2) An injunction under subsection (1) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit.

(3) An application by the Director General for an injunction under this section may, with the approval of the Court, and on such terms as the Court may direct, be made ex parte.

(4) In this section "**the Court**" means -

(a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal of Sark, the Court of Alderney or, as the case may be, the Court of the Seneschal of Sark;

(b) in any other case, the Royal Court.

(5) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>b</sup>; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions of the Royal Court under this section.

### **Confidentiality.**

7. (1) Any document or information from which an individual or body may be identified and which is acquired by the Director General in the exercise of his functions and powers shall be regarded as confidential by the Director General and by his officers and servants.

(2) No document or information of a description referred to in subsection (1) may be disclosed without the consent of every individual who, and every body which, can be identified from that document or information, except to the extent that its disclosure is expressly authorised or required by or under this Law or any Sector Law or appears to the Director General to be necessary -

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<sup>b</sup> Ordres en Conseil Vol. XXX, p. 145.

- (a) to enable the Director General to exercise his functions and powers;
- (b) in the interests of the investigation, detection, prevention or prosecution of crime;
- (c) in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject;
- (d) to assist, in the public interest, any authority that appears to the Director General to exercise, in a place outside the Bailiwick, functions or powers corresponding to his; or
- (e) to comply with an order of a court.

(3) Without prejudice to subsections (1) and (2), any document or information communicated to the Director General by a committee of the States shall, if that committee so requests, be regarded as confidential by the Director General and by his officers and servants; and no such document or information shall be disclosed except -

- (a) in compliance with an order of a court; or
- (b) with the leave of that committee, for any reason set out in paragraphs (a) to (d) of subsection (2).

(4) A person who discloses any document or information or who

causes or permits the disclosure of any document or information in contravention of this section shall be guilty of an offence and liable -

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

**Annual reports.**

8. (1) The Director General shall, as soon as practicable in each calendar year, submit to the Board of Industry -

- (a) a report on -
  - (i) the exercise of his functions and powers; and
  - (ii) the steps taken by him to uphold the duty imposed on him by section 2;

in the preceding year; and

- (b) the audited accounts of the Office of the Director General.

(2) The Director General's report made under subsection (1)(a) shall set out any States' Directions which were in force during the period of the report.



- (3) The Board of Industry -
  - (a) shall submit the Director General's report made under subsection (1)(a) to the States; and
  - (b) may at the same time submit their own report to the States covering -
    - (i) the period of the Director General's report; and
    - (ii) the matters described in paragraphs (i) and (ii) of subsection (1)(a).

#### PART IV FINANCIAL PROVISIONS

##### **The Public Utilities Regulation Fund.**

9. (1) The Director General shall establish a fund to be known as the Public Utilities Regulation Fund (referred to in this Law as the "**Fund**") which shall vest in the Director General and which may be applied for the purposes of -

- (a) paying remuneration to the Director General and his officers and servants; and
- (b) meeting all other costs and expenditure properly incurred in exercising his functions and powers.

(2) The Director General may open, operate and close bank accounts for the Fund.

- (3) There shall be paid into the Fund -
- (a) all fees and other payments received from licensees and applicants for licences;
  - (b) any grants and loans obtained from the States under section 10;
  - (c) any money borrowed by the Director General under the powers conferred on him by section 5; and
  - (d) any other money, and any income, profit or proceeds derived from or representing any money or property, which is lawfully vested in the Director General from time to time.

**Grants and loans to the Director General.**

10. (1) The States may, on the recommendation of the Board of Industry made after consultation with the Director General, and on such terms and conditions (whether as to repayment, payment of interest or otherwise) as they think fit, make grants or loans from the States General Revenue Account towards the costs and expenditure of the Director General incurred in exercising his functions and powers.

(2) The States shall, before making any grant or loan under subsection (1), satisfy themselves that the costs and expenditure or estimated costs and expenditure of the Office of the Director General in any year is likely to exceed, or has exceeded, the income or estimated income of that Office in that year.

**Investment of surplus funds.**

11. The Director General may invest any monies of the Fund which are not immediately required by him in any investment approved for the purpose by the Board of Industry in writing.

**Exemption from income tax.**

12. The Fund and the income thereof is not subject to income tax under the Income Tax (Guernsey) Law, 1975<sup>c</sup>.

**Accounts and audit.**

13. (1) The Director General shall -

- (a) keep proper accounts and proper records in relation to those accounts; and
- (b) prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of the Office of the Director General.

(2) The accounts of the Office of the Director General, including the accounts relating to the Fund -

- (a) shall be audited annually by auditors appointed by the Director General with the approval of the Board of Industry; and

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<sup>c</sup> Ordres en Conseil Vol. XXV, p. 124; there are amendments which are not material to this Law.

- (b) shall be submitted to the Board of Industry which shall in turn submit them, together with the auditors' report thereon, to the States with the Director General's report made under section 8(1)(a).

## PART V APPEALS

### **Establishment of the Utility Appeals Panel and Tribunal.**

14. (1) The States shall, on the recommendation of the Board of Industry made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark, draw up and maintain a panel to be called the Utility Appeals Panel.

(2) The Utility Appeals Panel shall consist of such number of persons as in the opinion of the States is necessary for the purpose of hearing and determining appeals under the provisions of section 15.

(3) The members of the Utility Appeals Panel shall be persons who have experience and knowledge relevant to utility activities and the regulation thereof and who are independent of any licensee.

(4) No member of the States of Deliberation or the States of Election within the meaning of the Reform (Guernsey) Law 1948<sup>d</sup>, or of the States of Alderney or the Chief Pleas of Sark, may be a member of the Utility Appeals Panel.

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<sup>d</sup> Ordres en Conseil Vol. XIII, p. 288; No. V of 1993; No. X of 1998.

(5) A tribunal to be called the Utility Appeals Tribunal shall be appointed from the membership of the Utility Appeals Panel to exercise the functions conferred by section 15, by any Sector Law and by any other enactment.

(6) The States may by Ordinance<sup>e</sup> make such provision as they think fit in relation to the appointment, constitution, proceedings and powers of the Utility Appeals Tribunal including, without limitation, provision as to -

- (a) procedure (including the method of pleading, the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given); and
- (b) costs, fees, expenses and allowances (including the expenses and allowances of members of the Tribunal).

(7) A member of the Utility Appeals Panel shall not disclose any document or information which relates to the business or affairs of any person and which is acquired by him in the course of the exercise of his functions as a member of that Panel, except -

- (a) with the consent of the person to whom the document or information relates and (if different) the person from whom it was acquired; or
- (b) to the extent that the disclosure is necessary -

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<sup>e</sup> See Ordinance XXXIII of 2001.



- (i) to enable him to exercise his functions as a member of that Panel;
- (ii) in the interests of the investigation, detection, prevention or prosecution of crime; or
- (iii) to comply with an order of a court.

(8) A person who discloses any document or information or who causes or permits the disclosure of any document or information in contravention of subsection (7) shall be guilty of an offence and liable -

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

(9) The States may by Ordinance amend the provisions of this section.

**Right of appeal.**

**15.** (1) A person aggrieved by a decision of the Director General made in the exercise of his functions and powers, being a decision of a description set out in subsection (2), may (subject to the provisions of any Sector Law) appeal against the decision to the Utility Appeals Tribunal on any of the grounds set out in subsection (3).

(2) The decisions of the Director General against which an appeal

shall lie under this section are, subject to the provisions of any Sector Law, decisions of the following descriptions -

- (a) to refuse to grant a licence;
  - (b) to impose a licence condition;
  - (c) that a licensee has a dominant position in a relevant market;
  - (d) to amend or modify a licence;
  - (e) to revoke a licence; or
  - (f) to impose a direction, requirement or other sanction under this Law or any Sector Law.
- (3) The grounds of an appeal under this section shall be -
- (a) that an error of law has been made;
  - (b) that a material error as to the facts has been made;
  - (c) that there was a material procedural error; or
  - (d) that there was some other material irregularity, including unreasonableness or lack of proportionality.
- (4) An appeal under this section shall be instituted -

(a) within a period of 14 days immediately following the date of the Director General's decision;

(b) by summons served on the Director General stating the grounds and material facts on which the appellant relies.

(5) On an appeal under this section, the Utility Appeals Tribunal may -

(a) dismiss the appeal; or

(b) quash the decision of the Director General;

and, where the Tribunal quashes the decision of the Director General, it may remit the matter to him with a direction to reconsider it and reach a decision in accordance with the findings of the Tribunal.

(6) The effect of a decision to which an appeal under this section relates shall not, except where the Utility Appeals Tribunal orders otherwise, be suspended in consequence of the bringing of the appeal.

(7) The Director General may, where an appeal under this section is not determined by the Utility Appeals Tribunal within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to the Utility Appeals Tribunal, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and upon hearing such an application the Tribunal may -

(a) dismiss the appeal or dismiss the application (in either

case upon such terms and conditions as the Tribunal may direct); or

(b) make such other order as the Tribunal considers just.

(8) The States may by Ordinance amend the provisions of this section.

### **Appeals from Tribunal to Royal Court.**

16. (1) A person aggrieved by a decision of the Utility Appeals Tribunal on a question of law may, subject to the provisions of subsections (2) and (3), appeal therefrom to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) No decision of the Utility Appeals Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the appeal from presenting his case fairly before the Tribunal.

(3) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 17.

(4) An appeal from a decision of the Royal Court made on an appeal under this section shall, with leave of the Court of Appeal, lie to the Court of Appeal.

### **Reference of points of law to Royal Court.**

17. (1) A question of law arising in connection with the hearing and determination by the Utility Appeals Tribunal of an appeal may, if the Tribunal thinks fit, be referred for decision to the Royal Court in such manner and within

such period as may be prescribed by order of the Royal Court.

(2) An appeal from a decision of the Royal Court made on a reference under this section shall, with leave of the Court of Appeal, lie to the Court of Appeal.

## PART VI OFFENCES

### **False or misleading information.**

18. (1) A person who -

- (a) in proceedings before the Utility Appeals Tribunal;
- (b) in making any statement or providing any information or document to the Director General or any officer or servant of his when acting in the exercise of his functions and powers; or
- (c) otherwise than as mentioned in paragraphs (a) and (b) but in circumstances in which the person making the statement or providing the information or document knows or could reasonably be expected to know that the statement, information or document would or might be used by the Director General for the purpose of exercising his functions and powers -
  - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;



- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (iii) provides or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

shall be guilty of an offence.

(2) A licensee who fails to provide the Director General with any information in his possession knowing or having reasonable cause to believe that -

- (a) the information is relevant to the exercise by the Director General of his functions and powers; and
- (b) the withholding of the information is likely to result in the Director General being misled as to any matter which is relevant and of material significance to the exercise of his functions and powers in relation to the licensee;

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both;
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

**Criminal liabilities of directors, etc.**

19. (1) Where an offence 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 shall be 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.

**Defence of due diligence.**

20. In any proceedings for an offence under this Law it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person

under his control.

## PART VII MISCELLANEOUS

### **Power of States to exclude liability.**

21. The States may by Ordinance<sup>f</sup> provide that no liability shall be incurred by -

- (a) the States or any committee thereof;
- (b) the Director General or any person -
  - (i) to whom the Director General has, under paragraph 3 of the Schedule, delegated any duty, function or power; or
  - (ii) appointed as Deputy Director General under paragraph 4 of the Schedule; or
- (c) any officer, servant or member of the States or officer or servant of the Director General;

in respect of anything done or omitted to be done after the commencement of such Ordinance in the discharge or purported discharge of their functions and powers, unless the thing was done or omitted to be done in bad faith.

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<sup>f</sup> See Ordinance XXXII of 2001.

**Interpretation.**

**22.** (1) In this Law, unless the context otherwise requires -

"**Bailiwick**" means the Bailiwick of Guernsey, except in relation to the provision and regulation of electricity services when it means the Island of Guernsey only;

"**Board of Industry**" means States of Guernsey Board of Industry

"**body corporate**" means a body of persons incorporated with or without limited liability in any part of the world;

"**consult**" and "**consultation**" shall, in sections 3(2), 14(1) and 23(3), be construed in accordance with subsection (6);

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

"**Director General**" means the holder of the Office of the Director General of Utility Regulation;

"**documents**" means information recorded in any form (including, without limitation, in an electronic form) and, in relation to information recorded otherwise in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form;

"**dominant position**", in relation to a relevant market, shall

be construed as it would be in the United Kingdom under the Competition Act 1998<sup>g</sup>, but with the substitution, where appropriate, of references to the Bailiwick for references to the United Kingdom;

**"functions and powers"** means functions and powers assigned or transferred by or under this Law, any Sector Law and any other enactment;

**"Fund"** means the Public Utilities Regulation Fund established under section 9(1);

**"licence"** means a licence granted to a person to provide utility services, or to establish, operate or maintain a utility network, under any Sector Law;

**"licensee"** means a person who holds a licence;

**"Office of the Director General"** means the Office of the Director General of Utility Regulation established under section 1(1);

**"Royal Court"** means the Royal Court sitting as an Ordinary Court;

**"Sector Law"** means any Law which provides for the regulation by the Director General of utility activities within the Bailiwick or any part thereof;

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<sup>g</sup> An Act of Parliament (1998 c. 41).

"**servant**" includes a person employed under a contract of service or apprenticeship (whether written or oral, express or implied) and a person engaged on a consultancy or secondment basis;

"**States**" means the States of Guernsey;

"**States' Directions**" means directions given to the Director General by Resolution of the States under section 3(1);

"**universal service**" means any utility service the scope of which is specified by States' Directions under section 3(1)(c) and which is required by States' Directions to be provided by a licensee to persons or to a class of persons throughout the Bailiwick at an affordable price;

"**universal service obligation**" means the obligation of a licensee to provide a universal service;

"**utility activity**" means the establishment, operation and maintenance of a utility network, or the provision of utility services, in the Bailiwick;

"**Utility Appeals Panel**" means the panel drawn up and maintained by the States under section 14(1);

"**Utility Appeals Tribunal**" means the tribunal appointed from the membership of the Utility Appeals Panel under section 14(5);

"**utility network**" means a network (as defined in any Sector

Law) used in the provision of utility services; and

**"utility services"** means postal services, telecommunications services and electricity services, and such other services as the States may by Ordinance direct.

(2) The Interpretation (Guernsey) Law, 1948<sup>h</sup> applies to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment, Act of Parliament or statutory instrument is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) References in this Law to the Policy and Finance Committee of the States of Alderney and to the General Purposes and Advisory Committee of the Chief Pleas of Sark are references to the committees of those islands for the time being exercising the functions respectively conferred by this Law on the said Policy and Finance Committee or (as the case may be) on the said General Purposes and Advisory Committee.

(5) 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.

(6) Any requirement, howsoever expressed, imposed by sections 3(2), 14(1) and 23(3) on the Board of Industry (and any other committee of the States) to consult the General Purposes and Advisory Committee of the Chief Pleas

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<sup>h</sup> Ordres en Conseil Vol. XIII, p. 355.

of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

**General provisions as to subordinate legislation.**

23. (1) Any Ordinance or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient; and
- (c) may, in the case of an Ordinance, and without limitation, contain provision -
  - (i) as to the creation, trial and punishment of offences;
  - (ii) amending any provision of this Law;
  - (iii) authorising the Board of Industry to make rules in relation to any matter in relation to which an Ordinance can be made under section 14(6).

(2) Any power conferred by this Law to make any Ordinance or rule 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 prescribed conditions.

(3) The Board of Industry (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under section 14(9) or 15(8), consult the General Purposes and Advisory Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under those sections.

#### **Service of documents.**

**24.** (1) Any document other than a summons to be given or served under or for the purposes of this Law or any Sector 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 body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office;
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the Bailiwick;
- (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 the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere;
- (e) on the Director General, by being left at, or sent by post or transmitted to, the principal offices of the Director General in Guernsey;
- (f) on the Utility Appeals Tribunal, by being left at, or sent by post or transmitted to, the principal offices of the Board of Industry in Guernsey, or at any other

address specified by the Tribunal for the purposes of any particular appeal;

and in this section -

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post; and
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication: in which event the document shall be regarded as served when it is received.

(2) If a person notifies the Director General of an address for service within the Bailiwick for the purposes of this Law or any Sector Law, any document to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

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

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Director General or the Utility Appeals Tribunal under or for the purposes of this Law or any Sector Law shall be deemed to have been given or served until it is received.

(6) 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 Royal Court (or the Court of Alderney or the Court of the Seneschal of Sark, if appropriate) for the appointment of a person to act as guardian for the purposes of this Law or any Sector Law.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law and any Sector 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 non-business day within the meaning of section 1(1) of

the Bills of Exchange (Guernsey) Law, 1958, as amended<sup>i</sup>.

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

**Citation and commencement.**

**25.** This Law may be cited as the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and shall come into force on the day appointed by Ordinance of the States<sup>j</sup>; and different days may be appointed for different provisions or different purposes.

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<sup>i</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

<sup>j</sup> In force 1<sup>st</sup> October, 2001; see Ordinance XXIX of 2001.

## SCHEDULE

### OFFICE OF THE DIRECTOR GENERAL OF UTILITY REGULATION

#### **Salary of Director General.**

1. The Director General shall be paid such salary, emoluments and other allowances from the Fund as the Board of Industry may determine.

#### **Appointment of staff.**

2. (1) The Director General may appoint such officers and servants upon such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions and powers, subject to the approval of the Board of Industry as to the maximum number of officers and servants that may, from time to time, be engaged by him.

(2) The Director General may establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and servants.

#### **Delegation of functions and powers.**

3. (1) The Director General may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions and powers to be exercised in his name by any of his officers or servants named or described in the instrument, other than -

- (a) this power of delegation;
- (b) his obligation under section 8(1) to submit an annual report to the Board of Industry;

(c) any function or power which (however framed or worded) -

(i) requires him to consider representations concerning a decision which he proposes to make;

(ii) empowers him to make a decision of a description set out in section 15(2).

(2) A function or power exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Director General; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Director General.

(3) An arrangement made under this paragraph for the exercise of a function or power by a delegate -

(a) may be varied or terminated at any time by the Director General, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement;

(b) does not prevent the exercise of the function or power by the Director General while the arrangement subsists.

#### **Appointment of Deputy Director General.**

4. Without prejudice to the generality of paragraph 3, the Director General may appoint any of his officers or servants as Deputy Director General with

full authority to exercise the Director General's functions and powers during any period during which the Director General is unavailable; and the provisions of paragraphs 3(2) and 3(3) shall apply in relation to an appointment under this paragraph as they apply to an arrangement under paragraph 3(1).

**Disclosure of interests.**

5. (1) The Director General shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized under this Law or any Sector Law, disclose the nature of his interest to the Board of Industry.

(2) For the purposes of this paragraph, a general notice given by the Director General to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

**Official seal.**

6. (1) The Director General shall have an official seal for the authentication of documents required for the purpose of exercising his functions and powers.

(2) Any document -

(a) sealed with the official seal of the Director General;  
and

(b) signed by the Director General or by any of his officers or servants to whom, pursuant to paragraph 3, he has delegated authority to affix his official seal;

shall be deemed to have been duly executed by or on behalf of the Director General



and shall be effective in law to bind him.

**Proof of documents.**

7. In any legal proceedings (including, without limitation, proceedings before the Utility Appeals Tribunal) any document purporting to be issued by or on behalf of the Director General or to be signed by the Director General or any of his officers or servants -

- (a) shall be received in evidence;
- (b) shall, unless the contrary is proved, be deemed -
  - (i) to be the document which it purports to be; and
  - (ii) to have been issued by or on behalf of the Director General or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity; and
- (c) shall be evidence of the matters stated therein.