

# ORDER IN COUNCIL

**XII**  
**1994**

ratifying a Projet de Loi

ENTITLED

## **The Water (Control) (Alderney) Law, 1994**

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(Registered on the Records of the Island of Guernsey  
on the 7th day of June, 1994.)

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1994

# ORDER IN COUNCIL



## IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 7th day of June, 1994 before Sir Graham Dorey, Bailiff; present:— Harry Wilson Bisson, Herbert Nicolle Machon, Stanley Walter John Jehan, Raymond Arthur Heaume, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe, Lawrence Oscar Ozanne, John Richard Rowe Henry, Esquires and Mrs. Eileen May Glass, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 13th day of April, 1994, approving and ratifying a Projet de Loi entitled “The Water (Control) (Alderney) Law 1994”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller 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 Majestys Greffier to the Clerk of the Court of Alderney for registration on the records that Island of which Order in Council the tenor followeth:—

# **At the Court at Windsor Castel**

The 13th day of April 1994

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 21st day of March, 1994 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 a humble petition of Jon Kay-Mouat, Esquire, President of the States of Alderney, setting forth:—

‘That at a meeting of the States of Alderney held on the 5th day of march 1993, the States adopted a Resolution that a Projet de Loi entitled “The Water (Control) (Alderney) Law, 1994” be approved. That at the meeting of the Sates aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said Projet de Loi is set forth in the words and figures of the Schedule hereunto annexed: And most humbly praying that Your Majesty be graciously pleased to grant Your Royal Sanction to the Projet de Loi entitled “The Water (Control) (Alderney) Law, 1994”, and to order that the same shall have force of Law in the Island of Alderney.’.

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto 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 Island of Alderney.

**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, of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(No.XII - 1994)

Projet de Loi

ENTITLED

## **The Water (Control) (Alderney) Law, 1994**

THE STATES, in pursuance of their Resolution of the 5th day of March, and the 17th December, 1993, 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 Alderney.

### **PART I**

#### **CONTROL OF WELLS**

##### *Construction etc. of wells.*

1. (1) No person shall, except under the authority of and in accordance with the conditions of a licence of the States of Alderney Water Board ("the Board")—

- (a) sink, construct, open up, extend or improve any well;
- (b) instal, modify or replace any machinery whereby additional quantities of water may be abstracted from any underground strata by means of any well; or
- (c) cause or permit any of those things to be done.

(2) The restrictions imposed by subsection (1) do not apply to anything done for the purpose of

- (a) fire-fighting;

(b) testing machinery used for the purposes of fire-fighting; or

(c) training or practice in the use of such machinery

(3) The restrictions imposed by subsection (1) do not apply to anything done by or on behalf of the States.

(4) The States may by Ordinance prescribe exemptions from the restrictions imposed by subsection (1).

*Licences.*

2. (1) A person wishing to obtain the grant, renewal or variation of a licence under section 1 shall apply in that behalf to the Board.

(2) The application shall be in such form and accompanied by such information and documentation as the Board may require.

(3) Only the owner or occupier of the land upon which the well in question is or is to be situated may make an application under this section.

(4) Upon receipt of an application, the Board may—

(a) consent to the application;

(b) refuse the application; or

(c) consent to the application subject to the imposition of such conditions as the Board may consider necessary or expedient.

(5) A person who holds a licence under section 1 shall comply with the conditions thereof in all respects.

(6) The Board may at any time suspend, revoke or vary a licence under section 1 or any condition thereof.

(7) A licence under section 1 may be limited in time.

(8) The States may by Ordinance prescribe fees in respect of applications for the grant, renewal or variation of licences under section 1.

(9) The Board may refuse applications which are not accompanied by the prescribed fee.

*Notice of Board's decision.*

3. (1) The Board shall give notice of any decision made by it under section 2(4) or (6) in accordance with this section.

(2) The notice shall be signed by the Chairman and shall state the reasons for the decision.

(3) The notice shall be served on the holder or applicant (as the case may be) within seven days of the date upon which the decision was made.

## PART II

### CONTROL OF WATER ABSTRACTION

*Control of water abstraction.*

4. (1) The Board may, if there is in force a Resolution of the States declaring that by reason of a serious water shortage in the Island it is necessary that the Board should be authorised to exercise the powers conferred by this Part of this Law, by notice in writing served upon the owner and occupier of any land regulate (by reference to conditions set out in the notice or otherwise) the drawing of water from any well on the land for such period as may be specified in the notice.

(2) No person shall contravene or cause or permit the contravention of any provision of a notice under subsection (1).

(3) The Board may at any time withdraw or vary a notice under subsection (1) or any condition thereof; and the Board shall serve written notification of any such withdrawal or variation upon the owner and occupier of the land in question.

(4) A notice under subsection (1) shall be valid only while the Resolution of the States under subsection (1) is in force.

(5) The expiry, repeal or amendment of a Resolution of the States under subsection (1) shall be without prejudice to the validity or legality of anything done under the authority of the Resolution before such expiry, repeal or amendment.

### PART III

#### POWERS OF BOARD TO ABSTRACT

*Power of Board to undertake works on private land.*

5. (1) The Board may, if there is in force a Resolution of the States declaring that by reason of a serious water shortage in the Island it is necessary that the Board should be authorised to exercise the powers conferred by this Part of the Law, exercise any of the powers referred to in subsection (2) in, upon or in relation to any land where it decides that it is necessary or expedient to do so for the purposes of—

- (a) protecting the Island's water resources; or
- (b) increasing, improving or protecting the Island's water storage capacity or the quantity or quality of water available for public consumption or supply.

(2) The powers referred to in subsection (1) which the Board may exercise in, upon or in relation to the land are as follows—

- (a) the Board may sink, construct, open up, extend or improve, and subsequently use, any well;



- (b) the Board may instal and subsequently maintain, modify and replace any machinery whereby water or additional quantities of water may be abstracted, conveyed, pumped, treated or stored;
- (c) the Board may execute and subsequently maintain, modify and replace such other works for the purposes of abstracting, conveying, pumping, treating or storing water as the Board may think fit;
- (d) the Board may appropriate to public use any water, source of water or well, or any machinery or works of a kind described in paragraph (b) or (c).

(3) The powers conferred on the Board by this Part of this Law may be exercised only while the Resolution of the States under subsection (1) authorising the Board to exercise those powers is in force.

(4) The expiry, repeal or amendment of a Resolution of the States under subsection (1) shall be without prejudice to the validity or legality of anything done under the authority of the Resolution before such expiry, repeal or amendment.

*Incidental powers.*

6. The Board may—

- (a) for the purpose of exercising the powers referred to in section 5(2), undertake such works (whether of excavation, installation, replacement, modification, removal, maintenance, repair or otherwise) as in its opinion are necessary and are ancillary or incidental to or consequential upon the exercise of those powers;

- (b) for the purposes of exercising the powers referred to in section 5(2) or paragraph (a), at all reasonable times and, except in cases of emergency, upon the giving of not less than 7 days' written notice to the owner or occupier of the land in question, enter and remain upon the land with its officers, servants, agents, workmen and contractors and all necessary equipment and materials.

*Other powers not prejudiced.*

7. The powers referred to in sections 5(2) and 6 are in addition to, and not in derogation from, the powers conferred upon the Board by the Alderney Water Supply Law, 1954(a) ("the Law of 1954") and upon the States by the Compulsory Purchase (Alderney) Law, 1986(b).

*Works to be carried out quickly, etc.*

8. The Board shall, when exercising any power referred to in section 5(2) or 6, take all reasonable steps to ensure that it causes the least possible inconvenience to the owner or occupier of the land in question, makes good any damage caused to the land and carries out any works as quickly and efficiently as possible and in a good and workmanlike manner.

*Compensation.*

9. (1) The Board shall, if it exercises any power referred to in section 5(2), pay compensation to the owner of the land in relation to which the power is exercised.

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(a) Ordres en Conseil Vol. XVI, p. 129.

(b) Ordres en Conseil Vol. XXIX, p. 156.

(2) In the absence of agreement, the amount of compensation shall be determined by a single arbitrator.

(3) The amount of the compensation shall be the sum of the following heads of loss—

- (a) the amount of any diminution in the value of the land;
- (b) compensation for any other loss, damage or injury sustained by the owner or occupier; and
- (c) compensation for any disturbance, inconvenience and loss of use, amenity or enjoyment suffered while the works in question are being carried out or are present on the land.

(4) No compensation shall be paid in respect of any head of loss referred to in subsection (3) unless the loss was sustained by the owner or occupier of the land in question as a direct consequence of the exercise by the Board of the powers referred to in section 5(2).

(5) The Arbitration (Alderney) Law, 1983, as amended<sup>(c)</sup>, shall apply to an arbitration under this section.

*Proof of identity.*

10. Any person seeking to enter or remain upon any land by virtue of the powers conferred by section 5(2) or 6 shall, whenever so requested by the owner or occupier of the land, furnish such proof of his identity as is necessary to establish that he is entitled to enter the land.

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<sup>(c)</sup> Ordres en Conseil Vol. XXVIII, p. 236; and Vol. XXIX, p. 171.

*Notice to be served.*

11. (1) Before exercising the powers conferred by section 5(2), the Board shall serve notice in writing on the owner and occupier of the land in question—

- (a) identifying the land upon which and the period during which the powers are to be exercised;
- (b) stating the purpose mentioned in section 5(1) for which the powers are to be exercised and the action mentioned in section 5(2) which the Board intends to take;
- (c) stating that he may, within 28 days of the date of the notice, appeal to the Court under section 15;
- (d) making an offer of compensation pursuant to the provisions of section 9.

(2) The Board may at any time withdraw or vary a notice under subsection (1); and the Board shall serve written notification of any such withdrawal or variation upon the owner and occupier of the land in question.

(3) A copy of a notice under subsection (1), and of any withdrawal or variation thereof, shall also be served on the Land Registrar of the Alderney Land Registry.

*Notices to be registered.*

12. The Land Registrar shall, upon receiving a document pursuant to section 11(3), forthwith note the fact in the Alderney Land Register against the entry relating to the land upon which the powers referred to in section 5(2) are being or are to be exercised.

*Private agreements not affected.*

13. Nothing in this Part of this Law affects the power of the States or the Board to make any agreement which they could otherwise have made.

## PART IV

### GENERAL

*Matters to be taken into account.*

14. In deciding whether and in what manner to exercise its powers under sections 2(4) and (6), 4 and 5, the Board may consider such of the following matters as appear to it to be appropriate—

- (a) the effect of abstracting water from any well in question upon the abstraction of water from, or the level of water in, any other well or inland water;
- (b) the requirements of the owner or occupier of the land upon which any well in question is or is to be situated, where those requirements appear to the Board to be reasonable;
- (c) the requirements (both in quantity and quality) of the public supply and of other existing lawful uses of water abstracted from the underground strata from which any well in question abstracts or will abstract water;
- (d) the public health;
- (e) any written representations of—

- (i) the applicant for the grant, renewal or variation of a licence under section 1;
  - (ii) the holder of such a licence; or
  - (iii) in cases where section 17 applies, any other person;
- (f) whether and in what manner it is necessary or expedient to exercise those powers for the purposes of—
- (i) protecting the Island's water resources; and
  - (ii) increasing, improving or protecting the Island's water storage capacity or the quantity or quality of water available for public consumption or supply;
- (g) such other matters as the Board may, in its absolute discretion, think fit.

### *Appeals.*

15. (1) A person aggrieved by a decision of the Board under section 2(4) or (6) or by any provision of a notice under section 4 or 11 may, within 28 days of the date of the decision or the notice (as the case may be), appeal therefrom to the Court.

(2) The grounds of the appeal shall be that the decision or notice was ultra vires or unreasonable.

(3) The appeal shall be instituted by way of summons served on the Chairman of the Board.

(4) The summons shall set out the grounds and the material facts upon which the appellant relies.

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

(6) The decision of the Court on an appeal under this section (other than a decision on a question of law) is final.

(7) Only the owner or occupier of the land to which the decision or notice in question relates may appeal under this section.

*Effect of appeal.*

16. (1) Notwithstanding the institution of an appeal under section 15 in respect of a notice under section 4, the notice shall continue to be effective until it expires or is set aside by order of the Court or is withdrawn.

(2) Upon the institution of an appeal under section 15 in respect of a notice under section 11, the Board shall not, subject to the provisions of subsection (3), exercise any power referred to in section 5(2) until the determination of the appeal.

(3) The Board may, notwithstanding the institution of an appeal under section 15 in respect of a notice under section 11, exercise any power referred to in paragraph (d) of section 5(2) where it considers that, by reason of the existence of a serious water shortage in the Island, it is necessary or expedient to do so.

*Publication of applications.*

17. The Board shall publish in La Gazette Officielle, and affix to the notice board outside the Court House, a notice—

- (a) containing details of any application for the grant of a licence under section 1 and of any proposal by it to grant such a licence of its own motion;
- (b) stating that written representations in relation to the application or proposal may be served upon the Chairman of the Board at the States Office;

and the Board shall not grant the licence in question before the expiration of 14 days from the date of publication or 14 days' continuous display on the notice board, whichever is later.

*Licence conditions.*

18. Without prejudice to the generality of the Board's powers to impose conditions in relation to a licence under section 1 or a notice under section 4, such conditions may relate to

- (a) the quantity of water which may be abstracted from the well to which the licence or notice relates (whether generally or during any particular period);
- (b) the manner in which that quantity is to be assessed or measured;
- (c) the means whereby water is to be abstracted;
- (d) the purposes for which any water abstracted may be used;
- (e) the persons by whom the water is to be used;
- (f) the period for which the licence or notice is to be valid;

and different conditions may be imposed in respect of different periods or different uses.



*Powers of entry.*

19. (1) An officer of the Board, and any person authorised in writing in that behalf by the Board, may at any reasonable time enter any land; and, when he is there, he may—

- (a) inspect any well and any machinery and works whereby water or additional quantities of water may be abstracted, conveyed, pumped, treated or stored;
- (b) take for analysis samples of water;
- (c) take such measurements of the depth of any well and the water within it as he thinks fit.

(2) A person exercising, in relation to any land, any power conferred by subsection (1) shall, if so requested by the owner or occupier of the land, furnish evidence of his office or authority.

(3) The powers conferred by this section are in addition to the powers conferred by section 6.

*Offences.*

20. (1) A person who—

- (a) contravenes section 1(1), 2(5) or 4(2);
- (b) without reasonable excuse, proof whereof shall lie on him, obstructs or hinders any person acting or purporting to act in the exercise of any power conferred by section 5, 6 or 19;
- (c) in connection with an application to the Board for the grant, renewal or variation of a licence under section 1, or in making any representation to the Chairman of the Board under section 17(b)—

- (i) makes a statement which he knows or believes to be false, deceptive or misleading in a material particular;
  - (ii) recklessly makes a statement which is false, deceptive or misleading in a material particular; or
  - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or believes to be false, deceptive or misleading in a material particular;
- (d) without reasonable excuse, proof whereof shall lie on him, fails to comply with any provision of an order of the court under subsection (2);

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 4 on the Alderney uniform scale, to imprisonment for a term not exceeding 3 months, or to both; and the court convicting him may, in addition to imposing any such penalty, order—

- (a) the closure, stopping up, reinstatement or modification of any well;
- (b) the removal, destruction or other disposal, reinstatement or modification of any machinery,

in relation to which or by means of which the offence was committed.

(3) An appeal lies from an order of the court under subsection (2) in the same manner as if it were a penalty imposed upon conviction.

(4) Where an offence under this section 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.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) applies to a member in connection with his functions of management as if he were a director.

*Interpretation.*

21. (1) In this Law—

“the Board” means the States of Alderney Water Board or such other committee of the States as the States may by Ordinance appoint for the purposes of this Law;

“the Court” means the Court of Alderney;

“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 under the control of the Board;

“machinery” includes equipment, plant and apparatus;

“well” means any well, borehole or other work whereby water may be abstracted from any underground strata.

(2) The Interpretation (Guernsey) Law, 1948(d) applies to the interpretation of this Law as it applies to the interpretation of an enactment in Guernsey.

(3) Any reference in this Law to an enactment is a reference thereto as amended, re-enacted, extended or applied.

*Service of notices.*

22. (1) Any notice or document to be served for the purposes of this Law it may be served—

- (a) on an individual, by being delivered to him, or by being left at, or sent by registered post or recorded delivery service to, his usual or last known place of abode;
- (b) on a body corporate with a registered office in the Island, by being left at, or sent by registered post or recorded delivery service to, the registered office;
- (c) on a body corporate without a registered office in the Island, by being left at, or sent by registered post or recorded delivery service to, the body’s principal or last known principal place of business in the Island;

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(d) Ordres en Conseil Vol. XIII, p. 355.

(d) on an unincorporated body, by being served on any partner, manager or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by registered post or recorded delivery service to, the body's principal or last known principal place of business in the Island;

(e) on the Board or the Chairman thereof, by being left at, or sent by registered post or recorded delivery service to the States Office.

(2) If service of a notice or document cannot after reasonable enquiry be effected in accordance with subsection (1), the notice or document may be served by being—

(a) published on two occasions in *La Gazette Officielle*; and

(b) affixed to the notice board outside the Court House.

(3) If a person upon whom a notice or document is to be served under this Law is an infant or person under guardianship, the notice shall be served on his guardian; and if there is no guardian, the States may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

(4) Subsections (1) and (2) are without prejudice to any other lawful method of service.

### *Building and Development Law.*

23. The provisions of this Law are without prejudice to the provisions of the Building and Development Control (Alderney)

Law, 1975, as amended<sup>(e)</sup>, the Building (Alderney) Law, 1978<sup>(f)</sup> and the Historic Buildings and Ancient Monuments (Alderney) Law, 1989<sup>(g)</sup>.

*Amendment of 1978 Building Law.*

24. After section 1(3) of the Building (Alderney) Law, 1978<sup>(g)</sup> add the following subsection—

“(4) Without prejudice to the generality of the powers to make regulations conferred upon the Committee by this section, such regulations may make provision as to the incorporation and installation in or about buildings, and as to the construction, design, siting, connection and use, of tanks, cisterns and other receptacles for the catchment, holding or storage of water from any source and of machinery, plant and equipment ancillary thereto or necessary for the use thereof.”.

*General provisions as to Ordinances.*

25. An Ordinance under section 1(4) or 2(8)—

- (a) may be amended or repealed by a subsequent Ordinance thereunder;
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States to be necessary or expedient;
- (c) may make different provision for different cases or classes of cases.

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<sup>(e)</sup> Ordres en Conseil Vol. XXV, p. 8.

<sup>(f)</sup> Ordres en Conseil Vol. XXVI, p. 505.

<sup>(g)</sup> No. XXIV of 1989.

*Citation.*

**26. This Law may be cited as the Water (Control) (Alderney) Law, 1994.**