

PROJET DE LOI

ENTITLED

The Compulsory Purchase (Electricity) (Sark) Law, 2021

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WHEREAS the ongoing generation, conveyance and supply of electricity on Sark is essential to the health and wellbeing of the people of that Island;

AND WHEREAS the sole general commercial provider of electricity on the Island, Sark Electricity Limited, has indicated on more than one occasion that it may be obliged to discontinue that generation, conveyance and supply;

AND WHEREAS Chief Pleas have attempted on several occasions to negotiate the purchase of Sark Electricity Limited, and those attempts have failed;

NOW THEREFORE THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 21st June 2021, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

The relevant day.

1. In this Law, "**the relevant day**" means the day –
 - (a) seven days after a binding agreement is deemed to have been entered into between Chief Pleas and SEL under and for the

purposes of paragraph 5(3) of Schedule 2 (Compensation)
(which Schedule has effect), or

- (b) the day appointed for this purpose in an Order made under paragraph 6 of Schedule 2,

as the case may be.

Vesting of property.

2. (1) At 9 a.m. on the relevant day, the property set out in Schedule 1 (Assets to be transferred) shall hereby be vested in Chief Pleas; and thereupon, for the avoidance of doubt, Chief Pleas shall be the owner of that property.

(2) The Committee may amend Schedule 1 by regulations for the purpose only of more clearly identifying the property of SEL.

Contracts, etc.

3. (1) Subject to subsection (2), at 9 a.m. on the relevant day, contracts and leases of real property, to which SEL is a party, shall continue to have effect in accordance with their terms, as if Chief Pleas were substituted, as a party thereto, for SEL.

(2) Chief Pleas shall not be liable for any –

- (a) breach of contract,
- (b) breach of the terms of a lease of real property, or
- (c) other act, or failure to act,

of SEL, or of any officer, servant or agent of SEL committed or done after 21st June, 2021.

(3) The Committee may make regulations modifying the application of subsection (1) or (2) for the purpose of preventing unfairness or potential unfairness to a third party in any particular case that might otherwise result from that subsection's application, including suspending the application of either subsection, either for a specified period of time or indefinitely.

Payment of statutory compensation.

4. (1) At 9 a.m. on the relevant day, the statutory compensation –
- (a) shall be payable by Chief Pleas to SEL, and
 - (b) subject to subsection (2), if not paid on or before the expiry of 28 days from the relevant date –
 - (i) shall be recoverable from Chief Pleas by SEL as a civil debt, and
 - (ii) shall carry interest from that time at the same rate as a judgment debt.

(2) Subsection (1)(b) shall not apply where Chief Pleas have offered to make payment of the statutory compensation and –

- (a) SEL refuses to accept payment,

(b) SEL omits or refuses to make suitable arrangements for receipt of the payment, or

(c) in all the circumstances it is not reasonable that the subsection should apply, taking into account the efforts made by Chief Pleas to make or facilitate payment.

(3) In this section, "**the statutory compensation**" means an amount in the sum of –

(a) the valuation, under and within the meaning of Schedule 2, or

(b) the value of the relevant assets and interests, under and within the meaning of Schedule 2, specified in an Order of the Royal Court made under paragraph 6 of Schedule 2,

(as the case may be), less any monies paid in advance by Chief Pleas to SEL.

Exclusion of liability.

5. (1) No person undertaking a function under this Law (including, but not limited to, the valuer within the meaning of Schedule 2) is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Law in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in

respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^a.

Service of notices.

6. (1) A notice served under this Law –
 - (a) on SEL or SEHL, may be served by being delivered to, or being left at, or sent by post to the principal place of business in Sark of SEL or SEHL (as the case may be) or such other address as SEL or SEHL (as the case may be) may indicate,
 - (b) on Chief Pleas by being delivered to, or sent by post to, the Committee.
- (2) Subsection (1) is without prejudice to any other lawful method of service.
- (3) In subsection (1), the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post.
- (4) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance to have been received on the third day after the day of posting, excluding any day which is not a working day.

^a Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

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

Regulations.

7. (1) The Committee must consult Her Majesty's Procureur, and take into account Her Majesty's Procureur's advice, before making regulations under section 2 or section 3.

(2) Regulations under this Law shall be laid before a meeting of Chief Pleas as soon as possible; and (with the exception of regulations made under section 10) shall, if at that or the next meeting Chief Pleas resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

8. (1) In this Law –

"**the Committee**" means the Policy and Finance Committee of Chief Pleas,

"**electric line**" and "**electric plant**" have the meanings given in the Electricity (Guernsey) Law, 2001^b,

"**SEL**" means Sark Electricity Limited, a company registered in Guernsey under Company No. 57127, and includes (except where otherwise specified) SEHL and any holding company or subsidiary company of SEL,

^b Order in Council No. XIII of 2001; amended by Ordinance No. L of 2001; No. XXXIII of 2003; No. XIII of 2012; No. XXIII of 2015; and No. IX of 2016.

"SEHL" means Sark Electricity Holdings Limited, a company registered in Guernsey under Company No. 30260, and

"the statutory compensation": see section 4.

(2) In circumstances where, after having consulted Her Majesty's Procureur, the Committee is satisfied that –

- (a) all or most of the assets of SEL were transferred to a third party on or after 21st June, 2021, whether at an undervalue or otherwise, and
- (b) the reason, or one of the reasons, for that transfer was to frustrate the operation of this Law,

the Committee may apply to the Court of the Seneschal for an Order that references in this Law to SEL are to be construed as including references to that third party; and on the making of such an Order, this Law shall be construed and applied in accordance with the terms of that Order.

(3) Subject to subsection (4), an application under subsection (3) shall be made in such manner as the Court of the Seneschal thinks fit.

(4) For the avoidance of doubt, notice of an application under subsection (2) must be given to the third party in question and SEL.

Citation.

9. This Law may be cited as the Compulsory Purchase (Electricity) (Sark)

Law, 2021.

Commencement.

10. This Law shall come into force on the day appointed by regulations made by the Committee; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE 1

Section 2

ASSETS TO BE TRANSFERRED

All property of SEL, including, but not limited to (and without prejudice to the generality of the foregoing) –

1. the Sark electricity distribution grid (including all electric line and electric plant forming part thereof),
2. all other plant and equipment and fuel (including lubricating materials),
3. all documents and records including, but not limited to (and without prejudice to the generality of the foregoing) –
 - (a) lists of customers of SEL,
 - (b) lists of suppliers to SEL,
 - (c) records of meter readings,
 - (d) plant and equipment service and repair records and user manuals,
 - (e) payroll records,
 - (f) billing records,
 - (g) assets registers,

- (h) load forecasting records,
- (i) plans and diagrams relating to the location of the Sark distribution grid,
- (j) documents relating to rights to locate and use plant and equipment on land not owned or occupied by SEL, and
- (k) documents of title to plant and equipment and/or freehold or leasehold land.

SCHEDULE 2

Section 1

COMPENSATION

Appointment of valuer by agreement of the parties, and definitions.

1. (1) SEL and the Committee (on behalf of Chief Pleas) may, within 30 days of the commencement of this Law, jointly appoint a person (in this Schedule, "**the valuer**") suitably qualified for the purpose to determine, for the purposes of this Law, the value of the assets and interests to be transferred to Chief Pleas under sections 2 and 3 (in this Schedule, "**the relevant assets and interests**"); and the determination to be made by the valuer shall be referred to in this Schedule as "**the valuation**".

(2) In this Schedule –

- (a) "**the parties**" means SEL and the Committee (on behalf of Chief Pleas), and "**party**" shall be construed accordingly,
- (b) "**SEL**" means Sark Electricity Limited, and
- (c) "**the Royal Court**" means the Royal Court sitting as an Ordinary Court, which shall be constituted by the Bailiff sitting alone.

Appointment of valuer by Order of the Court of the Seneschal.

2. (1) If no appointment is made within the period specified in paragraph 1(1), either party may apply to the Court of the Seneschal for an Order appointing a person as the valuer for the purposes of this Schedule.

(2) An application under this paragraph shall be made in such manner as the Court of the Seneschal thinks fit.

Appointment of valuer: application to the Royal Court.

3. (1) Within 14 days of an Order referred to in paragraph 2(1) being made, either party may apply to the Royal Court for an Order –

- (a) setting aside that Order, and
- (b) appointing another specified person as the valuer.

(2) The grounds of an application under subparagraph (1) shall be that -

- (a) the Order of the Court of the Seneschal was ultra vires or there was some other error of law,
- (b) the Order of the Court of the Seneschal was unreasonable,
- (c) the Order of the Court of the Seneschal was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An application under this paragraph shall be made in such manner as the Royal Court thinks fit.

Valuer may apply to the court for directions.

4. (1) A person appointed as the valuer by the Court of the Seneschal under paragraph 2 or by the Royal Court under paragraph 3 may apply to the Court of the Seneschal or the Royal Court (as the case may be) for that court to give such directions in respect of the preparation of the valuation as the court thinks fit including, but not limited to, in respect of the method, and basis, of the valuation.

(2) An application under subparagraph (1) shall be made in such manner as the Court of the Seneschal or the Royal Court (as the case may be) thinks fit.

(3) Any costs reasonably incurred by the valuer in making an application under subparagraph (1) shall be borne by Chief Pleas.

Valuer's fees, and service of notice of the valuation.

5. (1) The valuer's reasonable costs of the valuation shall be borne by Chief Pleas.

(2) When the valuer (whether appointed by the parties under paragraph 1, by Order of the Court of the Seneschal under paragraph 2, or by Order of the Royal Court under paragraph 3) has undertaken the valuation, the valuer shall serve a notice on the parties setting out the amount of the valuation, together with such supporting or explanatory information as the valuer thinks fit to provide in all the circumstances.

(3) Unless an application is instituted within a period of 28 days immediately following the date of the notice of the valuation, under and in accordance with paragraph 6, a binding agreement to sell the relevant assets and interests for the amount of the valuation shall be deemed to have been entered into for the purposes of section 1(a) at the end of the period of 56 days after service of the notice on the parties under subparagraph (2).

The valuation: application to the Royal Court.

6. (1) Either party may apply to the Royal Court within the period specified in paragraph 5(3) for an Order –

- (a) setting aside the valuation,
- (b) specifying the value of the relevant assets and interests for the purposes of the statutory compensation to be paid under section 4, and
- (c) appointing the relevant day for the purposes of section 1.

(2) The grounds of an application under this paragraph shall be that –

- (a) the valuation was ultra vires or there was some other error of law,
- (b) the valuation was unreasonable,
- (c) the valuation was made in bad faith,

- (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (3) An application under this paragraph shall be instituted –
- (a) within a period of 28 days immediately following the date of the notice of the valuation, and
 - (b) in such manner as the Royal Court thinks fit.

Appeal to the Court of Appeal on question of law.

7. (1) An appeal from a decision of the Royal Court relating to a matter under this Law shall, with leave of the Royal Court or Court of Appeal, lie to the Court of Appeal on a question of law.

- (2) An appeal under this section shall be instituted –
- (a) within a period of 28 days immediately following the date of the decision of the Royal Court, and
 - (b) in such manner as rules of court may provide.

- (3) Section 21 of the Court of Appeal (Guernsey) Law, 1961^c

^c Ordres en Conseil Vol. XVIII, p. 315; amended by Ordres en Conseil Vol. XXIII, p. 188; Order in Council No. III of 2012; Ordinance No. XXXIII of 2003;

("Powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

No. XIII of 2017; Alderney Ordinance No. VIII of 2018; and Sark Ordinance No. II of 2020.