

PROJET DE LOI

ENTITLED

The Energy (Bailiwick of Guernsey) Law, 1978 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXVI, p. 520; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Emergency Powers (Bailiwick of Guernsey) (Amendment) Law, 2005 (No. VII of 2005); the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 (No. XIV of 2013); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406). See also the Arbitration (Guernsey) Law, 2016 (No. ** of 2016); the Resolution of the States of Alderney of 15th January, 1997 (Billet d'État, 15th January, 1997, Article V).

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THE STATES, in pursuance of their Resolution of the twenty-eighth day of September, nineteen hundred and seventy-seven, 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.

General control by order.

1. (1) Subject to the next following subsection and to section three of this Law, the competent authority may by order provide for regulating or prohibiting the production, supply, acquisition or use of –

(a) any of the following substances, namely –

(i) crude liquid petroleum, natural gas and petroleum products,

(ii) any substance, whether solid, liquid or gaseous, not falling within sub-paragraph (i) of this paragraph, but used as fuel, whether for the propulsion of vehicles or for any other purposes,

(b) electricity.

(2) Orders under subsection (1) of this section regulating or prohibiting the use of any of the substances mentioned in that subsection, or electricity, may be made at any time but only where it appears to the competent authority to be desirable for the purpose of conserving energy.

(3) Subject to section three of this Law, the competent authority

may by order provide for regulating the price at which crude liquid petroleum, natural gas or petroleum products may be supplied.

Reserve power to control by directions of the competent authority.

2. (1) Subject to the next following section, the competent authority may give directions –

- (a) to any person carrying on an undertaking in the course of which he produces any substance mentioned in subsection (1) of section one of this Law, as to the production and use of that substance,
- (b) to any person carrying on an undertaking in the course of which he supplies any such substance, as to the supply by him of that substance, and
- (c) to any person carrying on an undertaking which involves the use of any such substance, as to the use by him of that substance for the purposes of the undertaking.

(2) Without prejudice to the generality of subsection (1) of this section –

- (a) a direction under paragraph (a) of that subsection may prohibit or restrict the use of any material for the production of a substance mentioned in subsection (1) of section one of this Law and may extend to the disposal of stocks of such a substance or of any such material,
- (b) a direction under paragraph (b) of subsection (1) of this section may –
 - (i) prohibit or restrict the supply, anywhere in the world, of any such substance to specified

persons,

- (ii) require the supply, anywhere in the world, of any such substance to specified persons in accordance with specified requirements including, in the case of crude liquid petroleum, natural gas or petroleum products, requirements as to price, and
- (c) a direction under paragraph (c) of subsection (1) of this section may prohibit or restrict the use of any substance mentioned in subsection (1) of section one of this Law for specified purposes or during specified periods.

(3) In this section "**specified**" means specified by the competent authority's directions.

(4) This section, other than sub-paragraph (ii) of paragraph (b) of subsection (2) thereof so far as it relates to requirements as to price, shall apply in relation to electricity as it applies in relation to the substances mentioned in subsection (1) of section one of this Law.

Implementation of reserve power.

3. (1) The States of Guernsey may by Ordinance declare the powers conferred by section one and section two of this Law to be exercisable to their fullest extent where –

- (a) there is for the time being in force in the United Kingdom an Order in Council under section three of the Energy Act 1976 declaring the corresponding powers conferred by section one and section two of that Act to be exercisable to their fullest extent and the States of Guernsey are of the opinion that it is necessary and desirable that the said powers conferred by section one and section two of this Law should

consequentially be declared to be exercisable to their fullest extent, or

- (b) [an emergency within the meaning of section 2 of the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 is occurring or is about to occur] affecting fuel or electricity supplies which, in the opinion of the States of Guernsey, necessitates the exercise of exceptional powers for controlling the sources and availability of energy.

(2) Unless an Ordinance under this section is for the time being in force, the powers of the competent authority to make orders under section one of this Law shall not be exercisable, except the power to make orders –

- (a) regulating or prohibiting the use of any substance mentioned in subsection (1) of that section, or of electricity, or
- (b) regulating the price at which petroleum products may be supplied,

and the power to give directions under section two of this Law shall not be exercisable for any purpose unless an Ordinance under this section is for the time being in force.

(3) An Ordinance under this section may at any time be repealed by the States of Guernsey by a subsequent Ordinance where the States of Guernsey are of the opinion that the circumstances which led to the making of the earlier Ordinance no longer obtain.

NOTE

In section 3, the words in square brackets in paragraph (b) of subsection (1) were substituted by the Civil Contingencies (Bailiwick of Guernsey) Law, 2012, section 26(2), Schedule, Part III, paragraph 2, with effect from 4th February, 2013.

Other powers.

4. (1) A person supplying or using a substance mentioned in subsection (1) of section one of this Law may, if authorised to do so by the competent authority by any general or special authority granted for the purpose, and while acting in accordance with that authority, disregard or fall short in discharging any obligation imposed by or under an enactment, or any contractual obligation, relating to or involving the supply or use of that substance:

Provided that this subsection shall have effect only at a time when there is for the time being in force an Ordinance under subsection (1) of the last foregoing section.

(2) The States of Guernsey may by Ordinance make provision for modifying or excluding any obligation or restriction imposed, or extending any power conferred, by or under an enactment which directly or indirectly affects the use of a substance mentioned in subsection (1) of section one of this Law.

(3) While an Ordinance is in force under subsection (1) of the last foregoing section, the last foregoing subsection shall have effect as if for the words "affects the use" therein there were substituted the words "affects the supply or use".

(4) This section shall apply in relation to electricity, as it applies in relation to substances mentioned in subsection (1) of section one of this Law.

Orders, directions and Ordinances.

5. (1) Any order made under this Law by the competent authority as respects the Bailiwick other than the Island of Alderney shall be laid before a meeting of the States of Guernsey as soon as may be after the making thereof, and if, at that meeting or at the next subsequent meeting, the States of Guernsey resolve that the order be annulled, the order shall cease to have effect but without prejudice to anything done thereunder or to the making of a new order by that competent authority.

(2) Any order made under this Law by the competent authority as

respects the Island of Alderney shall be laid before a meeting of the States of Alderney as soon as may be after the making thereof, and if, at that meeting or at the next subsequent meeting, the States of Alderney resolve that the order be annulled, the order shall cease to have effect but without prejudice to anything done thereunder or to the making of a new order by that competent authority.

(3) The powers conferred by this Law to make an order or to give a direction shall include a power to revoke or vary the order or direction, as the case may be.

(4) The powers conferred by this Law to make an order shall include power to make any incidental, supplementary or transitional provision which appears to the competent authority to be appropriate.

(5) The powers conferred by subsection (2) of the last foregoing section to make an Ordinance shall include a power to vary or repeal the Ordinance and a power to make any incidental, supplementary or transitional provision which appears to the States of Guernsey to be appropriate.

(6) An order under this Law and an Ordinance under subsection (2) of the last foregoing section may –

- (a) apply to persons, premises or undertakings generally, or to classes of persons, premises or undertakings, or to particular persons, premises or undertakings, and may so apply either in all areas or in specified areas of the Bailiwick,
- (b) provide for exempting persons, premises or undertakings, or any class of persons, premises or undertakings, from the requirements of the order or Ordinance, as the case may be, either unconditionally or subject to conditions and with or without a limit in time, and for any such exemption to be varied or revoked.

(7) Where this Law confers power to give directions for any purpose, there is also power to make provision for that purpose by order applicable to all, or to any class of, persons to whom directions could be given.

Power to obtain information.

6. (1) Where the competent authority thinks it expedient for a purpose connected with the operation of this Law and the effective performance of its functions under it, the competent authority may direct any person carrying on an undertaking –

- (a) to keep such books, accounts and records relating to a substance mentioned in subsection (1) of section one of this Law, or to electricity, as may be specified,
- (b) to furnish, as and when specified, estimates, forecasts, returns and information relating to such a substance, or to electricity,
- (c) to furnish, as and when specified, information and forecasts relating to the undertaking itself or its activities, including the way in which the undertaking is organized and administered and the character and extent of its operations.

(2) In this section "**specified**" means specified by the competent authority's directions.

Power to call for documents.

7. For the purpose of securing compliance with any provision made by or under this Law, and of checking estimates and forecasts or verifying returns and information provided in response to directions under the last foregoing section, a person authorised by or on behalf of the competent authority may, on production, if so required, of his authorisation –

- (a) require any person to produce for inspection, or to deliver up, any document in his possession or control

which has been issued by or on the authority of the competent authority in connection with the administration and enforcement of this Law, or any provision made under it,

- (b) require any person with executive functions in an undertaking, or the persons carrying it on, to produce documents relating to the undertaking or its operations, and allow copies or extracts to be made from them,
- (c) require any such person, or one who has in the preceding five years exercised such functions, to provide further particulars as to the whereabouts, contents or subject matter of such documents.

Access to premises etc. for enforcement purposes.

8. (1) Subject to subsection (2) of this section, a person authorised by or on behalf of the competent authority may for the purpose –

- (a) of securing compliance with orders made and directions given by the competent authority under this Law,
- (b) of checking estimates and forecasts or verifying returns and information provided in response to directions under the last foregoing section,

at all reasonable hours and on production, if so required, of his authorisation, go on any premises and there make such enquiries and inspections, and purchase or take such samples of any substance, as are allowed by the terms of his authorisation or he thinks necessary for those purposes.

(2) Except when an Ordinance under section three of this Law is for the time being in force, the powers conferred by this section shall not be exercisable for the purpose of securing compliance with orders under subsection (1)

of section one of this Law.

Entry with warrant.

9. (1) Subject to subsection (4) of this section, if the Bailiff is satisfied, on sworn information in writing submitted on behalf of the competent authority, that –

- (a) admission to premises is reasonably required for any of the purposes mentioned in subsection (1) of the last foregoing section, and
- (b) the circumstances specified in subsection (2) or subsection (3) of this section, as the case may be, are present,

the Bailiff may issue a warrant naming a person authorised by the competent authority and authorising that person to enter the premises, by force if necessary.

(2) If no Ordinance under section three of this Law is for the time being in force, the circumstances in which a warrant may be issued are that –

- (a) admission to the premises has been refused after, if the case is not one of urgency, not less than seven days' notice of the intention to enter had been given to the occupier, or
- (b) application for admission would defeat the object of the entry or the premises are unoccupied.

(3) If such an Ordinance is for the time being in force, the circumstances in which a warrant may be issued are that –

- (a) admission to the premises has been refused, or a refusal is apprehended, and notice of intention to apply for a warrant has been given to the occupier, or

- (b) application for admission would defeat the object of the entry, or the case is one of urgency, or the premises are unoccupied or the occupier is temporarily absent.

(4) Except when an Ordinance under section three of this Law is for the time being in force, a warrant under this section shall not be issued authorising entry for the purpose only of securing compliance with orders under subsection (1) of section one of this Law.

(5) A person entering premises under the authority of a warrant under this section may search the premises and take possession of any documents which he finds there and which appear to him to be relevant to the purposes for which the warrant was obtained.

(6) Any documents of which possession is taken under this section may be retained for a period of three months or, if within that period there are commenced any proceedings for an offence under this Law to which they are relevant, until the conclusion of those proceedings.

(7) If the premises are occupied or the occupier is temporarily absent, the person entering them under the authority of a warrant under this section shall leave them as effectively secured against trespassers as he found them.

(8) A warrant under this section shall continue in force until the end of one month beginning with the date on which it was issued.

Price control enforcement.

10. If the Bailiff is satisfied, on sworn information in writing submitted on behalf of the competent authority, that –

- (a) admission to premises is reasonably required for the purpose of securing compliance with price controls in relation to supplies to the general public, and
- (b) the circumstances specified in subsection (2) or

subsection (3) of the last foregoing section, as the case may be, are present,

the Bailiff may issue a warrant naming a person authorised by the competent authority to enter the premises, by force if necessary; and subsection (5) to subsection (8), inclusive, of the last foregoing section shall also apply in relation to such a warrant.

Non-disclosure of information.

11. No information obtained by virtue of this Law shall be disclosed except –

- (a) with the consent of the person by whom or on whose behalf the information was given or supplied and, where applicable, the owner of any goods, or the occupier of any premises, to which the information relates,
- (b) for the purpose of the exercise of any of its functions, to a committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, as the case may be,
- (c) in the form of statistics or otherwise, so that it cannot readily be recognised as relating to any particular person or undertaking,
- (d) with a view to the institution, or otherwise for the purposes, of any criminal proceedings.

Proof of documents.

12. (1) Every document purporting to be an instrument made by any person in pursuance of this Law and to be signed by or on behalf of that person shall be received in evidence and shall until the contrary is proved be deemed to be such an instrument.

(2) *Prima facie* evidence of any such instrument may in any legal proceedings (including arbitrations) be given by the production of a document purporting to be certified to be a true copy of the instrument by or on behalf of the person having power to make or issue the instrument.

(3) *Prima facie* evidence of –

- (a) any general authority granted under subsection (1) of section four of this Law,
- (b) any exemption under paragraph (b) of subsection (6) of section six of this Law relating to a class of persons, premises or undertakings, or
- (c) the variation or revocation of such an authority or exemption,

may be given in any legal proceedings (including arbitrations) by the production of a copy of La Gazette Officielle purporting to contain such an authority or exemption or, as the case may be, the variation or revocation.

NOTE

In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.

Offences.

13. (1) A person who –

- (a) without reasonable excuse contravenes or fails to comply with any provision made by this Law, or made under it by order, direction or otherwise,

- (b) wilfully obstructs any person exercising a power conferred, or performing a duty imposed, by or under this Law, or
- (c) in furnishing any information for the purposes of this Law, or of an order made or direction given under it, or in a notice given for any of those purposes, makes or causes to be made on his behalf a statement which he knows to be false or does not believe to be true, or
- (d) has in his possession without lawful excuse a document purporting to be one issued for the purposes of this Law, or of an order made or direction given under it, which is not such a document but so closely resembles it as to be calculated to deceive,

shall be guilty of an offence under this Law.

(2) Where an offence under this Law 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 a body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Penalties.

14. (1) Subject to subsection (2) and subsection (3) of this section, a person guilty of an offence under this Law shall be liable, on summary conviction, to a fine not exceeding [level 4 on the uniform scale].

(2) In the case of a contravention of, or failure to comply with

price controls, the person guilty of the offence shall be liable as provided in subsection (1) of this section or, on conviction on indictment, to a fine.

(3) In the case of a contravention of, or failure to comply with –

- (a) a direction under section two of this Law, or
- (b) a provision of an order under this Law to which this subsection has been applied in accordance with the next following subsection,

and in the case of an offence under paragraph (c) or paragraph (d) of subsection (1) of the last foregoing section, the person guilty of the offence shall be liable, on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding [level 4 on the uniform scale] or both, or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both.

(4) An order under section one of this Law made at a time when there is in force an Ordinance under section three of this Law may apply the higher penalties of the last foregoing subsection to a contravention of, or failure to comply with, particular provisions of the order committed at a time when such an Ordinance is in force; and those penalties shall then apply in place of those provided by subsection (1) and subsection (2) of this section.

NOTE

In section 14, the words and figures in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

Interpretation.

15. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"Bailiff" means –

- (a) in relation to the Islands of Guernsey, Herm and Jethou, the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff or the Juge Délégué,
- (b) in relation to the Island of Alderney, the Chairman of the Court of Alderney, and
- (c) in relation to the Island of Sark, the Seneschal,

"the Bailiwick" means the Bailiwick of Guernsey,

"the competent authority" means –

- (a) in relation to the Islands of Guernsey, Sark, Herm and Jethou, the States of Guernsey [Emergency Powers Authority],
- (b) in relation to the Island of Alderney, the States of Alderney Finance Committee,

"petroleum products" means the following substances produced directly or indirectly from crude, that is to say, fuels, lubricants, bitumen, wax, industrial spirits and any wide-range substance (meaning a substance whose final boiling point at normal atmospheric pressure is more than 50° C higher than its initial boiling point),

"premises" includes vehicles and vessels, but does not include any premises used only as a dwelling,

"price controls" means orders under subsection (3) of section one of this Law and directions under section two of this Law imposing requirements as to price,

"undertaking" includes a business, and also any activity carried on

by a body of persons, whether corporate or unincorporate.

(2) The Interpretation (Guernsey) Law, 1948^a, shall apply to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 15, the words in square brackets in the definition of the expression "the competent authority" in subsection (1) were substituted by the Emergency Powers (Bailiwick of Guernsey) (Amendment) Law, 2005, section 9, with effect from 12th May, 2005.¹

The functions, rights and liabilities of the Policy Council and of the Chief Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Emergency Powers Authority and its Chairman by the Emergency Powers (Bailiwick of Guernsey) (Amendment) Law, 2005, section 8, with effect from 12th May, 2005, subject to the savings and transitional provisions in section 10 of the 2005 Law.²

In accordance with their Resolution of 15th January, 1997 on Article V of the Billet d'État of that date, the States of Alderney resolved that the mandate of the States of Alderney Policy and Finance Committee should include, inter alia, being, for all legislative and other purposes, the States Finance Committee with responsibility for matters affecting, inter alia, emergency fuel control under this Law.

Citation and commencement.

16. (1) This Law may be cited as the Energy (Bailiwick of Guernsey) Law, 1978.

(2) This Law shall come into force on such day as shall be appointed in that behalf by Ordinance of the States of Guernsey, and different dates may be so appointed under this subsection for different purposes.

NOTE

The Law is not yet in force.

^a Ordres en Conseil Vol. XIII, p. 355.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 14, with effect from 6th May, 2004.

² The functions rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to them from, respectively, the Emergency Council and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 14, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.