

PROJET DE LOI

ENTITLED

The Environmental Pollution (Guernsey) Law, 2004 *

[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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* No. XIII of 2004; as amended by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. ** of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Machinery of Government (Transfer of Functions) (Guernsey) (No. 2) Ordinance, 2006 (No. XXXVIII of 2006); the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006 (No. XLIX of 2006); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007 (No. XIII of 2007); the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010 (No. ** of 2010). See also the Environmental Pollution (Guernsey) Law, 2004 (Commencement and Designation of Waste Disposal Authority) Ordinance, 2006 (No. XXVII of 2006); the Waste Disposal Charges Regulations (No. 2), 2008 (G.S.I. No. 25 of 2008).

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THE STATES, in pursuance of their Resolutions of 26th February, 1997^a and 10th December 2003^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

PRELIMINARY PROVISIONS AND GENERAL POWER

Purposes and objectives of this Law.

1. (1) The purposes of this Law are to empower the States to enact, monitor and effectively enforce all such measures as may be conducive to the preservation and enhancement of the environment through the limitation and reduction of pollutants therein.

(2) The primary objective of this Law is to ensure that activities which may give rise to a risk of environmental pollution –

(a) are only carried on if and to the extent that the interests of the community so require, and

^a Billet d'État No. II of 1997.

^b Article VI on Billet d'État No. XXVIII of 2003.

- (b) are carried on, if at all, using the best available technique for eliminating or reducing to the minimum any such risk.

(3) Secondary objectives of this Law are to ensure, where activities have given rise to environmental pollution –

- (a) that those activities –
 - (i) are discontinued, or
 - (ii) if their continuation is required in the interests of the community, are continued using the best available technique for eliminating or reducing to the minimum any further pollution, and
- (b) where practical and appropriate, that any damage to the environment caused thereby is adequately redressed.

NOTE

The following Ordinance has been made under Part I:

Environmental Pollution (Waste Control and Disposal) Ordinance, 2010.

"Environmental pollution" and related concepts.

2. (1) The following provisions of this section have effect for the interpretation of this Law and (subject to any adaptation contained in such an Ordinance) any Ordinance or instrument made under this Law.

(2) "**Environmental pollution**" means pollution of the environment due to an act or default which results in the introduction of any pollutant into the environment.

(3) "**Pollution**" means the presence in the environment, whether permanently or temporarily, of any pollutant; and a "**pollutant**" is any substance or energy capable of causing –

- (a) harm to the health or well-being of man, including damage to or deleterious interference with man's senses,
- (b) harm to the health of other living organisms supported by the environment, or
- (c) other interference with the ecological systems of which man or other living organisms form part.

(4) "**The environment**" means the media of air, water and land;
and –

- (a) "**air**" includes air within buildings and structures,
- (b) "**water**" includes the sea and any water on or below the surface of the ground, including the water in any lake, pond or watercourse (whether natural or artificial), and in any well or borehole, and
- (c) "**land**" includes land in the open air, the sea-bed and

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any other land covered by water, and land covered by a building or structure.

- (5) For the purposes of the preceding provisions of this section –
- (a) an activity in relation to a pollutant includes the keeping or possession, without any further positive act, of that pollutant,
 - (b) the introduction of a pollutant into the environment includes –
 - (i) the transfer of a pollutant from one environmental medium to another,
 - (ii) any spread, proliferation, or intensification of pollution which is already present in the environment,
 - (iii) its introduction by any means including, without prejudice to the generality of the foregoing, through a pipe, conduit or sewer; provided that the contents of a sewer shall not as such be regarded as constituting environmental pollution,
 - (c) the capacity of any substance or energy to cause harm or other interference is to be assessed having regard to all of its characteristics (including its volume, concentration and intensity), the characteristics of the

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environmental medium into which it is introduced (including other substances or energy present in that medium) and the circumstances of its introduction,

- (d) the following words have the meanings hereby assigned –

"**energy**" includes heat, light, sound, electricity and radiation,

"**structure**" includes any man-made or natural structure, whether above or below ground, and

"**substance**" includes any solid, liquid or gas.

General power to make Ordinances in relation to environmental pollution.

3. (1) The States may by Ordinance enact such provisions as they consider expedient in relation to environmental pollution.

(2) Without prejudice to the generality of subsection (1), an Ordinance made under this Law may contain provision designed to –

- (a) prohibit, restrict or control the introduction of pollutants into the environment and acts or defaults giving rise to a risk of such introduction,
- (b) avoid or limit any harm or interference arising from the introduction of pollutants into the environment, or
- (c) redress or reduce any harm or interference occasioned

by pollution,

and may make any other provision contemplated by the succeeding provisions of this Law.

(3) The States may by Ordinance establish standards, objectives or requirements to control pollution arising from particular processes or particular pollutants.

(4) An Ordinance under subsection (3) may –

(a) in relation to releases or emissions of any pollutant into any environmental medium, prescribe standard limits for –

(i) the volume,

(ii) the concentration, or

(iii) any other characteristics,

of or concerning that pollutant,

(b) prescribe standard requirements for the measurement or analysis of, or of releases or emissions of, pollutants to or for which limits are prescribed under paragraph (a).

(5) An Ordinance under this section may establish for any environmental medium the objectives or standards in relation to any pollutant which

may be released or emitted to that or any other medium; and, for the avoidance of doubt, an Ordinance making such provision as is envisaged by this section may be made for any of the purposes of this Law.

PART II
DIRECTOR OF ENVIRONMENTAL HEALTH AND POLLUTION
REGULATION

Appointment of Director of Environmental Health and Pollution Regulation.

4. (1) The States [Policy Council] shall appoint a person as Director of Environmental Health and Pollution Regulation ("**the Director**") to carry out the functions, exercise the powers and perform the duties created or arising under this Law.

(2) It shall be the duty of the States [Treasury and Resources Department] ("**the [Department]**") to ensure that adequate resources are provided for the Director so that he may carry out the functions, exercise the powers and perform the duties created or arising under this Law.

NOTES

In section 4,

the words in square brackets in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 12(a), with effect from 6th May, 2004;

the words in square brackets in subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 2, Schedule, with effect from 24th August, 2006.

The functions, rights and liabilities of the Civil Service Board and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy Council and its Minister by the

Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 12(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The functions, rights and liabilities of the Policy Council arising under or by virtue of subsection (2) were transferred to and vested in the Treasury and Resources Department by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 1, Schedule, with effect from 24th August, 2006, subject to the savings and transitional provisions in section 3 of the 2006 Ordinance.

Guidance and directions.

5. (1) The States may, on the recommendation of the [Environment Department], by Resolution give to the Director –

- (a) written guidance, or
- (b) written directions,

of a general or specific character or nature, concerning the policies to be followed by the Director in relation to the manner in which any function of his is to be carried out.

(2) Before making any recommendation to the States under subsection (1), the [Environment Department] shall consult –

- (a) the [Health and Social Services Department],
- (b) the [Environment Department],
- (c) the States [Public Services Department],

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- (d) the States [Commerce and Employment Department],
- (e) the Constables of each of the Parishes of Guernsey,
and
- (f) the Director,

in connection with the reasons for the proposal to make and the nature of the recommendation.

(3) It is the duty of the Director, in carrying out any of his functions –

- (a) to take into account any guidance given under subsection (1)(a), and
- (b) to act in accordance with any directions given under subsection (1)(b).

NOTES

In section 5,

the words in square brackets in subsection (1) and in the first pair of square brackets in subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 2, Schedule, with effect from 24th August, 2006;

the words in square brackets in paragraph (a) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004;

the words in square brackets in paragraph (b) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions)

(Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 19, with effect from 6th May, 2004;

the words in square brackets in paragraph (c) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004;

the words in square brackets in paragraph (d) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004.

The functions, rights and liabilities of the Policy Council arising under or by virtue of this section were transferred to and vested in the Environment Department by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 1, Schedule, with effect from 24th August, 2006.

The functions, rights and liabilities of the Island Development Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Environment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 19, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The functions, rights and liabilities of the Sea Fisheries Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Commerce and Employment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Functions of the Director.

6. (1) The functions of the Director shall be –
 - (a) when requested in writing by the [Environment Department], to furnish the [Environment Department], to the best of his ability, with such information as the [Environment Department] may

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require concerning achievement of the purposes and objectives described in section 1,

- (b) to give publicity to measures and practices designed to enable achievement of the purposes and objectives described in section 1,
- (c) to grant and renew, or to refuse to grant or renew, licences in accordance, and in a manner consistent, with States' Directions and the provisions of this Law and any other enactment,
- (d) to monitor the compliance of the holder of a licence with its conditions and the provisions of this Law and any other enactment,
- (e) to vary the conditions of a licence or revoke or suspend a licence in accordance, and in a manner consistent, with States' Directions and the provisions of this Law and any other enactment,
- (f) to accept the surrender or effect the transfer of a licence in accordance, and in a manner consistent, with States' Directions and the provisions of this Law and any other enactment,
- (g) to maintain a register in accordance with the provisions of section 10;
- (h) to conduct inquiries and investigations into practices or

matters which appear to inhibit or defeat achievement of the purposes and objectives described in section 1,

- (i) to advise the States generally in relation to the achievement of the purposes and objectives described in section 1, and
- (j) to carry out such other functions as may be created, assigned or transferred for or to him by or under this Law or any other enactment.

(2) The Director shall carry out his functions with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with States' Directions and the provisions of this Law and any other enactment.

NOTES

In section 6, the words in square brackets in paragraph (a) of subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 2, Schedule, with effect from 24th August, 2006.

The functions, rights and liabilities of the Policy Council arising under or by virtue of this section were transferred to and vested in the Environment Department by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 1, Schedule, with effect from 24th August, 2006, subject to the savings and transitional provisions in section 3 of the 2006 Ordinance.

General powers of the Director.

7. (1) The Director may do anything that appears to him to be necessary, conducive or expedient to or for the carrying out of his functions or

incidental to their proper discharge 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 and licensees within such time periods or at such intervals as he may require,
- (c) to publish information, reports and other documents,
- (d) to appoint or consult any person or body to advise or in connection with the provision of advice to him in relation to the carrying out of his functions, and
- (e) to exercise such other powers as may be created, assigned or transferred for or to him by or under this Law or any other enactment.

(2) The Director shall exercise his powers with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with States' Directions and the provisions of this Law and any other enactment.

Power of [Treasury and Resources Department] to prescribe charges.

8. (1) The [Treasury and Resources Department] may make regulations prescribing rates of charges and fees payable to the States in respect of any –

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- (a) service provided,
- (b) work undertaken, or
- (c) time expended,

by the Director or a delegate carrying out his functions pursuant to an arrangement made under section 9 in connection with the carrying out by him or such delegate of any functions under this Law or any other enactment.

(2) Regulations made under subsection (1) may make all such provision as may be necessary to enable the States to recover the full cost of the service provided, work undertaken or time expended and, without prejudice to the generality of the same, may prescribe –

- (a) time-based charges and fees,
- (b) fixed charges and fees,
- (c) charges and fees from which there is a specified discount for a specified reason, including (by way of example and not limitation) payment on or before a specified day,
- (d) the identity of the person from whom payment is due.

(3) Rates of charges and fees prescribed in regulations made under subsection (1) shall not exceed such amounts as are fair and reasonable in relation to the particular service provided, work undertaken or time expended.

NOTES

In section 8, and the marginal note thereto, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 2, Schedule, with effect from 24th August, 2006.

The functions, rights and liabilities of the Policy Council arising under or by virtue of this section were transferred to and vested in the Treasury and Resources Department by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 1, Schedule, with effect from 24th August, 2006, subject to the savings and transitional provisions in section 3 of the 2006 Ordinance.

Delegation of functions and powers.

9. (1) The Director may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be carried out in his name by any person named or described in the instrument, other than –

- (a) this power of delegation,
- (b) any function which (however framed or worded) –
 - (i) requires him to consider representations concerning a decision which he proposes to make, or
 - (ii) empowers him to make a decision concerning the refusal, imposition of conditions on the grant of or revocation of a licence.

(2) A function carried out by a delegate pursuant to an

arrangement made under this section is for all purposes carried out by the Director; 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.

(3) An arrangement made under this section for the carrying out of a function by a delegate –

- (a) may be varied or terminated at any time by the Director, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and
- (b) does not prevent the carrying out of the function by the Director while the arrangement subsists.

Public register.

10. (1) The Director shall maintain at his offices a register containing prescribed particulars relating to –

- (a) licences,
- (b) licence applications,
- (c) modifications to licences,
- (d) the revocation or suspension of licences,
- (e) the surrender of licences (including certificates of completion),

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- (f) the transfer of licences,
- (g) enforcement activities,
- (h) inspection and monitoring activities,
- (i) movements of specially controlled waste, and
- (j) such other matters as the Committee may by order prescribe.

(2) The Director shall provide facilities for –

- (a) making the information contained in the entries in the register available for inspection by members of the public at such reasonable times during such business days as he may from time to time determine, and
- (b) enabling copies of that information to be taken or obtained upon payment of such reasonable fee as may be prescribed.

(3) No information shall be included (and where it has been so included shall be removed and not included) in the register if and so long as, in the opinion of a Law Officer of the Crown, the exclusion from the register of that information, or information of that description, is required for the purpose of safeguarding the security of the British Islands.

(4) No information relating to the affairs of any person shall be included in the register, without the consent of that person, if and so long as the

information –

- (a) is, in relation to him, commercially confidential, and
- (b) is not required to be included in the register pursuant to directions under subsection (9),

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the Director or, on appeal, by the Tribunal.

(5) Where information is furnished to the Director for the purpose of –

- (a) an application for a licence or for a modification of a licence,
- (b) complying with any condition of a licence, or
- (c) complying with a notice under section 61,

then, if the person furnishing it applies to the Director to have the information excluded from the register on the ground that it is commercially confidential (as regards himself or another person), the Director shall determine whether the information is or is not commercially confidential.

(6) A determination under subsection (5) shall be made within the period of 21 days beginning with the date of the application and if the Director fails to make a determination within that period he shall be treated as having determined that the information is commercially confidential.

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(7) Where it appears to the Director that any information (other than information furnished under subsection (5)) which has been obtained by the Director under or by virtue of any provision of this Law might be commercially confidential, the Director shall –

- (a) give to the person to whom or to whose business it relates notice that that information is required to be included in the register unless excluded under this section, and
- (b) give him a reasonable opportunity –
 - (i) of objecting to the inclusion of the information on the grounds that it is commercially confidential, and
 - (ii) of making representations to the Director for the purpose of justifying any such objection,

and, if any representations are made, the Director shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(8) Where under subsection (5) or (7), the Director determines that information is not commercially confidential –

- (a) the information shall not be entered in the register until the end of the period of 28 days beginning with the date on which the determination is notified to the

person concerned, and

- (b) where an appeal is brought under section 25 in respect of any information, the information shall not be entered on the register until the end of the period of 7 days following the day on which the appeal is finally determined or withdrawn.

(9) The [Environment Department] may give to the Director directions as to specified information, or descriptions of information, which the public interest requires to be included in the register notwithstanding that the information may be commercially confidential.

(10) Information excluded from the register shall be treated as ceasing to be commercially confidential for the purposes of this section at the end of the period of 4 years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Director for the information to remain excluded from the register on the ground that it is still commercially confidential and the Director shall determine whether or not that is the case.

(11) Subsection (8) shall apply in relation to determination under subsection (10) as it applies in relation to a determination under subsection (5) or (7).

(12) For the purposes of this section, unless the context otherwise requires –

- (a) "**prescribed**" means prescribed by order or regulations made by the Committee, and

- (b) information is, for the purposes of any determination under this section, commercially confidential, in relation to any person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that person.

(13) The [Environment Department] may by order substitute for any period of time specified in this section such other period as it thinks fit.

NOTES

In section 10, the words in square brackets in subsection (9) and subsection (13) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 2, Schedule, with effect from 24th August, 2006.

The functions, rights and liabilities of the Policy Council arising under or by virtue of subsection (9) and subsection (13) of this section were transferred to and vested in the Environment Department by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006, section 1, Schedule, with effect from 24th August, 2006, subject to the savings and transitional provisions in section 3 of the 2006 Ordinance.

The following Regulations have been made under section 10:

Environmental Pollution (Public Register) Regulations, 2010.

Proof of documents.

11. In any legal proceedings (including, without limitation, proceedings concerning appeals against a decision of the Director) any document purporting to be issued by or on behalf of the Director or to be signed by the Director or a delegate carrying out his functions pursuant to an arrangement made under section 9 –

- (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 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.

Confidentiality.

12. (1) Any document or information from which an individual or body may be identified and which is acquired by the Director in carrying out his functions or a delegate carrying out his functions pursuant to an arrangement made under section 9 shall be regarded as confidential by the Director and by such delegate.

(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 other enactment or appears to the Director or a delegate carrying out his functions pursuant to an arrangement made under section 9 to be necessary –

- (a) to enable him to carry out his functions,

- (b) in the interests of –
 - (i) the investigation, detection or prevention of crime, or
 - (ii) the apprehension or prosecution of offenders,

within or outside the Bailiwick,
- (c) in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject, or
- (d) to comply with an order of a court.

(3) Without prejudice to subsections (1) and (2), any document or information communicated to the Director, or a delegate carrying out his functions pursuant to an arrangement made under section 9, by a committee of the States shall, if that committee so requests, be regarded as confidential by the Director or such delegate; 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 (c) 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.

PART III

LICENSING OF PRESCRIBED OPERATIONS

Prescribed operations.

13. (1) The States may by Ordinance prescribe any description of operation which, in the opinion of the States, may involve a risk of environmental pollution, as an operation for the carrying on of which a licence is required under section 15; and an operation for the time being so prescribed is referred to in this Law as a "**prescribed operation**".

(2) For the avoidance of doubt and without prejudice to the generality of subsection (1) –

- (a) the collection, removal, transportation or handling of waste when carried on by way of business or as a public service,
- (b) the sorting, processing, treating, storage or disposal of waste in any circumstances, and
- (c) the provision or operation of any site, plant or equipment for the sorting, treatment, processing or disposal of waste,

are operations which may be prescribed, irrespective of the nature or composition of the waste concerned, by an Ordinance under this section.

(3) An Ordinance under this section may –

- (a) frame the description of an operation by reference to –
 - (i) any characteristics of the operation,
 - (ii) the area or other circumstances in which it is carried on, and
 - (iii) the description of person carrying it on,
- (b) empower the Director, by regulation or otherwise, to exempt from any or all of its requirements, on such terms as the Director may specify, any operation which in the opinion of the Director does not involve a significant risk of environmental pollution.

(4) Subject to the terms of any exemption created under subsection (3)(b), a person shall not carry on a prescribed operation unless –

- (a) he is the holder of a valid licence to carry on that operation granted under section 15, and
- (b) if he is holder of such a licence, the operation is carried on in accordance with the conditions to which that licence is subject.

(5) For the avoidance of doubt, the expression "valid licence" in subsection (4) does not include a licence which has been revoked or is suspended by the Director.

NOTE

The following Ordinance has been made under Part III:

Environmental Pollution (Waste Control and Disposal) Ordinance, 2010.

Licence applications.

- 14.** (1) An application for a licence shall be –
- (a) made to the Director in such form and manner,
 - (b) supported by such information and documents, certified in such manner, and
 - (c) accompanied by such fees,

as may be prescribed by or under any relevant Ordinance made under this Law; and the Director need not consider any purported application which does not comply with this subsection in every respect.

(2) Upon receipt of an application made in accordance with subsection (1) the Director may require the applicant to furnish such further information, certified in such manner, and within such time, as the Director may specify in order to assist him in determining the application; and, if the applicant does not comply fully with a requirement under this subsection, the Director may

refuse to proceed with his consideration of the application.

(3) In considering an application for a licence under this section the Director shall take into account –

- (a) the extent to which, and the circumstances in which, the operation may give rise to a risk of environmental pollution,
- (b) any relevant objectives, requirements or limits prescribed by an Ordinance making such provision as is mentioned in section 3(3) to 3(5),
- (c) any relevant policies of the Strategic and Corporate Plan,
- (d) any relevant States' Guidance or States' Directions,
- (e) the suitability of the premises, plant and equipment proposed to be used in connection with the operation,
- (f) the fitness of the applicant and of any person proposed to be employed by the applicant, having regard to his skill, qualifications and experience and to any criminal convictions,
- (g) the proposals of the applicant for ensuring that in the carrying on of the prescribed operation the best available technique will be used for –

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- (i) preventing the introduction of pollutants into the environment, or, if that is not practical,
 - (ii) reducing to the minimum the introduction of pollutants and any environmental pollution thereby caused,
- (h) the ability of the applicant, in the opinion of the Director, to ensure that the operation is carried on in accordance with those proposals, and the likelihood, in the opinion of the Director, that he will do so, and
- (i) any other factor specified in relation to prescribed operations of the description concerned by any Ordinance made under this Law.

Grant or refusal of applications.

15. (1) If, and only if, the Director is satisfied –

- (a) that a prescribed operation in respect of which an application is made for a licence under this section can be carried on without giving rise to –
- (i) serious risk of significant environmental pollution,
 - (ii) contravention of any Ordinance made under this Law,
 - (iii) conflict with any relevant policy of the

Strategic and Corporate Plan, or

- (iv) conflict with any relevant States' Direction,
and
- (b) that the applicant is and will remain able and likely to carry on the operation in accordance with its conditions,

the Director may grant the application subject to the general condition imposed by section 16(1), and subject to such other conditions, if any, as the Director considers expedient.

(2) For the avoidance of doubt, in any other case the Director must refuse the application and give written notice to the applicant of that refusal and of the reasons therefor.

(3) When the Director grants an application for a licence under this section he must issue to the applicant a licence in writing, specifying the conditions of the licence, and must retain a copy thereof which must be available for inspection at the Director's offices during such reasonable hours, and on such other reasonable terms if any, as the Director may by resolution determine.

Licence conditions.

16. (1) It is automatically, by virtue of this subsection, a condition of every licence that the holder of the licence shall ensure that the operation to which it relates is carried on using the best available technique for –

- (a) preventing the introduction of pollutants into the environment; or, if that is not practical,

- (b) reducing to the minimum the introduction of pollutants and any environmental pollution thereby caused.
- (2) The Director may attach to a licence –
- (a) such specific conditions as he considers appropriate, when taken with the general condition imposed by subsection (1), for achieving the objectives specified in that general condition,
 - (b) conditions intended to ensure –
 - (i) the attainment of limits prescribed by or under any Ordinance making such provision as is mentioned in section 3(4),
 - (ii) compliance with –
 - (aa) relevant policies of the Strategic and Corporate Plan,
 - (bb) any States' Guidance or States' Directions,
 - (c) conditions of a description authorised or required to be imposed on licences relating to the prescribed operation concerned by or under any Ordinance under this Law, and

- (d) such other conditions as appear to the Director to be appropriate,

provided that no conditions shall be imposed for the purpose only of securing the health of persons at work within the meaning of the Health and Safety at Work etc. (Guernsey) Law, 1979^c and any Ordinance for the time being in force thereunder.

(3) Without prejudice to the generality of subsection (2) a condition attached to a licence to carry on a prescribed operation may –

- (a) require the operator to employ such number of persons, having such qualifications or of such descriptions, and performing such functions in such circumstances as may be specified by the condition,
- (b) restrict the times and places at which, and specify the manner in which, the operation may be carried on,
- (c) limit the amount, or specify the composition, of any substance (whether or not itself a pollutant) which may be produced by or used in the operation in any period,
- (d) require the operator to obtain the Director's approval for, and thereafter comply with the terms of, plans containing such particulars as the Director may require of the manner in which the operation or any part of it is carried out,

^c Ordres en Conseil Vol. XXVII, p. 155; and Order in Council No. XIV of 1993.

- (e) require the operator to maintain such records of the operation, and to provide such information to the Director, as may be specified in the condition,
- (f) specify a date on which the licence will cease to have effect unless previously renewed in accordance with any Ordinance making such provision as is mentioned in section 22(3)(h),
- (g) require that specified measures be taken before the operation may commence and after the operation has ceased, and, in the latter case, require the operator to provide appropriate guarantees and security for ensuring that such measures are taken, or
- (h) require that the operation be carried on in such manner as may be specified, using such plant and equipment as may be specified.

Variation of licence conditions.

17. (1) The Director may at any time vary the conditions of a licence by –

- (a) imposing an additional condition,
- (b) rescinding an existing condition, or
- (c) altering the terms of an existing condition,

either on application made by the holder of the licence in accordance with subsection (2) or of his own motion in accordance with subsection (3).

(2) The holder of a licence who wishes the Director to consider any variation of its conditions shall make an application to the Director specifying the variation requested and the reasons for the request; and the provisions of sections 14 and 15 apply in relation to such an application as they apply to an application for a licence and the consideration and grant or refusal thereof.

(3) If otherwise than at the request of its holder the Director proposes to vary the conditions of a licence he shall notify the holder of the licence in writing of the variation proposed and the reasons therefor, together with the date from which the proposed variation will, subject to sections 21 and 25, take effect.

(4) When the Director grants an application made under subsection (2), and when a proposed variation notified under subsection (3) takes effect, in relation to a licence the Director must issue to its holder a notice in writing of the variation and must append a copy thereof to the copy licence retained at his offices pursuant to section 15(3).

Revocation and suspension of licences.

18. (1) The Director may at any time revoke or suspend a licence in whole or in part, either on the application of the holder of the licence or of his own motion in accordance with subsection (3).

(2) The grounds upon which the Director may revoke or suspend a licence otherwise than on the application of its holder are –

- (a) that the operation to which it relates is being or has been carried on in contravention of a condition to

which the licence is subject,

- (b) that its holder has contravened or failed to comply with a provision of this Law, or of an Ordinance made under this Law,
- (c) that the Director is no longer satisfied as to each of the factors set out in section 15(1) (as those factors apply at the time of the notice given under subsection (3) of this section), or
- (d) any other ground specified, as a ground for revocation or suspension of a licence to carry on a prescribed operation of a description to which the licence relates, by any Ordinance made under this Law.

(3) If otherwise than at the request of its holder the Director proposes to revoke or suspend a licence he shall notify the holder of the licence in writing of the proposed revocation or suspension and the reasons therefor, together with the date from which the proposed revocation or suspension will, subject to sections 21 and 25, take effect.

(4) When the Director revokes or suspends a licence on the application of its holder, and when a proposed revocation or suspension notified under subsection (3) takes effect, he must issue to its former holder or holder a notice in writing to that effect and must endorse on the copy of the licence retained at his offices pursuant to section 15(3) an indication that the licence has been revoked or suspended.

(5) The revocation or suspension of a licence does not absolve its

former holder or holder from any liability or responsibility incurred or undertaken by him during its currency and, without prejudice to the generality of the foregoing, any such condition as is mentioned in section 16(3)(g) shall continue to have effect and may be enforced as if the licence had not been revoked.

Surrender of licences.

19. (1) A licence may be surrendered by its holder to the Director only if the Director accepts the surrender.

(2) An application to surrender a licence shall be –

- (a) made to the Director in such form and manner,
- (b) supported by such information and documents, certified in such manner, and
- (c) accompanied by such fees,

as may be prescribed by or under any relevant Ordinance made under this Law; and the Director need not consider any purported application which does not comply with this subsection in every respect.

(3) Upon receipt of an application made in accordance with subsection (2) the Director –

- (a) shall inspect any premises, plant and equipment used in connection with the prescribed operation to which the licence relates, and
- (b) may require the applicant to furnish to him such

further information, certified in such manner, and within such time, as the Director may specify in order to assist him in determining the application.

(4) If the applicant does not comply fully with a requirement under subsection (3)(b), the Director may refuse to proceed with his consideration of the application.

(5) If the requirements of subsections (2) and (3) have been satisfied or complied with, the Director shall determine whether the condition of the premises, plant and equipment used in connection with the prescribed operation to which the licence relates is likely or unlikely to cause environmental pollution.

(6) If the Director is satisfied that the condition of the premises, plant and equipment is unlikely to cause environmental pollution, he shall, subject to subsection (7), accept the surrender of the licence; but otherwise he shall refuse to accept it.

(7) Where the Director proposes to accept the surrender of a licence, he shall, before he does so –

- (a) refer the proposal to the [Public Services Department] with a request that the [Department] makes any representations about the proposal within such period (being not less than 28 days) as the Director may specify, and
- (b) consider any representations about the proposal which the [Public Services Department] makes to it during that period.

(8) If the Director proposes to refuse to accept an application under this section, he shall notify the applicant in writing of the refusal and the reasons therefor.

(9) Where the surrender of a licence is accepted under this section, the Director shall issue to the applicant, with the notice of his determination, a certificate (a "**certificate of completion**") stating that he is satisfied as mentioned in subsection (6) and, on the issue of that certificate, the licence shall cease to have effect.

(10) If within the period of three months beginning on the date on which the Director receives an application under this section, or within such longer period as the Director and the applicant may at any time agree in writing, the Director has neither issued a certificate of completion nor given notice to the applicant that he has rejected his application, the Director shall be deemed to have rejected the application.

NOTE

In section 19, the words in square brackets in subsection (7) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

Transfer of licences.

- 20.** (1) A licence may be transferred to another person –
- (a) in accordance with subsections (2) to (8), and
 - (b) whether or not the licence is partly revoked or

suspended under any provision of this Part.

(2) Where the holder of a licence desires that the licence be transferred to another person ("**the proposed transferee**") the licence holder and the proposed transferee shall jointly make application to the Director.

(3) An application under subsection (2) shall be –

- (a) made to the Director in such form and manner,
- (b) supported by such information and documents, certified in such manner, and
- (c) accompanied by such fees,

as may be prescribed by or under any relevant Ordinance made under this Law; and the Director need not consider any purported application which does not comply with this subsection in every respect.

(4) Upon receipt of an application made in accordance with subsection (3) the Director may require either or both of the applicants jointly to furnish such further information, certified in such manner, and within such time, as the Director may specify in order to assist him in determining the application; and, if the applicant or applicants does or do not comply fully with a requirement under this subsection, the Director may refuse to proceed with his consideration of the application.

(5) If –

- (a) the requirements of subsections (2), (3) and (4) have

been satisfied or complied with, and

- (b) the Director is satisfied that the proposed transferee is a fit and proper person,

the Director shall effect a transfer of the licence to the proposed transferee.

(6) If –

- (a) the requirements of subsections (2), (3) and (4) have been satisfied or complied with, and

- (b) the Director is –

- (i) not satisfied that the proposed transferee is a fit and proper person, and
- (ii) as a result, is proposing to refuse to accept the application,

the Director shall notify the applicants in writing of the refusal and notify the proposed transferee in writing of the reasons why he is not satisfied that the proposed transferee is a fit and proper person.

(7) The Director shall effect a transfer of a licence under this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

(8) If within the period of one month beginning with the date on

which the Director receives an application under this section, or within such longer period as the Director and the applicants may at any time agree in writing, the Director has neither effected a transfer of the licence nor given notice to the applicants that he has rejected the application, the Director shall be deemed to have rejected the application.

(9) In considering whether a proposed transferee is a "**fit and proper person**" for the purposes of this section, the Director shall take into account in respect of the proposed transferee, the matters relating to applicants in section 14(3)(f).

Representations prior to refusal, variation, revocation or suspension.

21. (1) An applicant for a licence, the holder of a licence or the proposed transferee of a licence to whom notice is given under section 15(2), 17(3), 18(3), 19(8) or 20(6) may make written representations to the Director concerning the refusal, variation, revocation or suspension as the case may be, within 7 days of the date of the notice.

(2) In order to afford reasonable opportunity for the holder of a licence to exercise his right under subsection (1) –

- (a) the notice must inform that person of that right, and
- (b) in the case of a notice given under section 17(3) or 18(3), the date specified in it from which the variation, revocation or suspension is to take effect must not be less than 14 days after the date of the notice,

but this is without prejudice to the service during the intervening period of a compliance notice, or exercise during that period of the powers conferred by section

62.

(3) If an applicant for a licence exercises his right under subsection (1) the Director must consider his representations as soon as reasonably practicable and shall then either confirm his decision to refuse the application, or rescind that decision and grant the application in accordance with sections 14 and 15.

(4) If the holder of a licence or the proposed transferee of a licence exercises his right under subsection (1) the Director must consider his representations, and may withdraw the notice or postpone its effective date, but in any event must inform that person of his decision in writing before the date on which, in the case of a variation, revocation or suspension, the variation, revocation or suspension takes effect or would otherwise take effect.

Ordinances concerning licensing and prescribed operations.

22. (1) In addition to the powers conferred on them by section 13, the States may by Ordinance under this section –

- (a) require the provision, and regulate the use, of plant and equipment in connection with any prescribed operation,
- (b) regulate the handling and disposal of waste as prescribed operations in their own right, or the handling and disposal of waste arising from any other prescribed operation, and
- (c) provide for the operation of the licensing system in respect of any prescribed operation.

(2) An Ordinance making such provisions as is mentioned in subsection (1)(a) or (1)(b) may impose restrictions and requirements directly, or may provide that the plant, equipment or waste to which the Ordinance applies must be provided, operated, handled or otherwise dealt with in accordance with such licence, permission or consent as may be specified by the Ordinance.

(3) An Ordinance making such provision as is mentioned in subsection (1)(c) may, in relation to any or any description of licence –

- (a) limit the number of licences which may be in force at any one time,
- (b) restrict the issue of licences for specified purposes to one or more specified public bodies, or to other bodies of such descriptions as may be specified,
- (c) specify the procedures to be followed in connection with the making of an application under any provision of this Law, and the procedures for revocation, suspension or transfer of a licence,
- (d) prescribe the information to be provided by an applicant for, and subsequently by the holder of, a licence,
- (e) prescribe the particulars to be recorded in a licence and the particulars to be recorded in, endorsed on, or annexed to any copy of a licence required to be retained by the Director pursuant to any provision of

this Law,

- (f) prescribe the manner in which any such information is to be verified including, without prejudice to the generality of the foregoing, the circumstances in which and extent to which an applicant for or holder of a licence must at his own expense furnish independent assessments of the potential or actual impact on the environment of the operation, or of any change in the operation, which he proposes to carry on or is carrying on,
- (g) prescribe the fees to be paid on an application for or on the issue of a licence, and thereafter upon the occurrence of specified events or at specified intervals, and
- (h) specify the period for which, subject to sections 18 and 19, a licence remains valid, and prescribe the circumstances in which and procedures in accordance with which a licence may or must be renewed.

(4) For the avoidance of doubt, this section is without prejudice to the exercise of the powers of the States under any other section of this Law in relation to prescribed operations; and any provision made under this Law applies to holders of licences, unless the contrary is expressly stated or necessarily implied, as it applies to other persons.

Effect of licence etc.

23. (1) The issue of a licence under this Law does not absolve its

holder from the need to obtain any other licence, permission or consent required, or from any obligation imposed on him, by or under any other enactment for the time being in force.

(2) The issue of a licence under this Law implies that the Director has considered the risk of environmental pollution posed by the operation concerned, in the context of the purposes and objectives of this Law, but is not in any other respect to influence the determination of any application, or making of any decision, under or for the purposes of any other enactment for the time being in force.

(3) In any proceedings whether civil or criminal, other than proceedings under a provision of this Law –

- (a) failure to obtain, or to comply with the terms and conditions of, a licence under this Law does not in itself establish that a person is in breach of any enactment, or any duty to another party to the proceedings, and
- (b) compliance with the terms and conditions of a licence under this Law does not in itself provide a defence to the alleged breach of any enactment, or of any duty owed to another party to the proceedings.

PART IV
APPEALS

Establishment of the Environmental and Public Health Appeals Panel and Tribunal.

24. (1) The States shall, on the recommendation of the Committee, draw up and maintain a panel to be called the Environmental and Public Health Appeals Panel (referred to in this Law as "**the Panel**").

(2) The 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 25.

(3) The members of the Panel shall be persons who have experience and knowledge relevant to environmental and public health 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^d, or of the States of Alderney or the Chief Pleas of Sark, may be a member of the Panel.

(5) A tribunal to be called the Environmental and Public Health Appeals Tribunal (referred to in this Law as "**the Tribunal**") shall be appointed from the membership of the Panel to exercise the functions conferred by section 25 and by any other enactment.

(6) The States may by Ordinance make such provision as they think fit in relation to [the establishment, appointment, constitution, proceedings, functions and administration of the Panel or the Tribunal] including, without limitation, provision as to –

(a) procedure (including the method of pleading, the

^d Ordres en Conseil Vol. XIII, p. 288; Orders in Council No. V of 1993 and No. X of 1998.

practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given), [...]

- (b) costs, fees, expenses and allowances (including the expenses and allowances of members of [the Panel or of] the Tribunal)[, and
- (c) the appointment of a secretary or other officers to the Panel or the Tribunal or for the provision of facilities to the Panel or the Tribunal].

(7) A member of the 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 –
 - (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.

NOTES

In section 24, first, the words in the first pair of square brackets in subsection (6) were substituted, second, the word omitted in square brackets in paragraph (a) thereof was repealed, third, the words in square brackets in paragraph (b) thereof were inserted and, fourth, paragraph (c) of subsection (6), and the word immediately after paragraph (b) thereof, were inserted by the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010, respectively section 24(2)(a), section 24(2)(b), section 24(2)(c) and section 24(2)(d), with effect from 1st June, 2010.

The following Ordinance has been made under Part IV:

Environmental Pollution (Waste Control and Disposal) Ordinance, 2010.

In accordance with the provisions of the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010, section 7(a) and section 7(b), with effect from 1st June, 2010, the provisions of section 8 to section 16 of that Ordinance shall have effect in relation to, respectively, the Environmental and Public Health Appeals Panel and the Environmental and Public Health Appeals Tribunal.

Right of appeal.

25. (1) A person aggrieved by a decision of the Director made in the carrying out of his functions, being a decision of a description set out in subsection (3), may appeal against the decision –

- (a) to the Tribunal on any of the grounds set out in subsection (4), or
- (b) where the person aggrieved and the Director agree that the appeal concerns exclusively a question of law, to the Royal Court on any of the grounds set out in subsection (4).

(2) For the purposes of the following subsections, the expression "**the appellate body**" means –

- (a) in respect of an appeal made under subsection (1)(a), the Tribunal, and
- (b) in respect of an appeal made subsection (1)(b), the Royal Court.

(3) The decisions of the Director against which an appeal shall lie under this section are, subject to the provisions of any other enactment, decisions of the following descriptions –

- (a) to make a determination under section 10,
- (b) to refuse to grant a licence,

- (c) to impose a licence condition,
 - (d) to vary a licence condition,
 - (e) to refuse to vary a licence condition,
 - (f) to amend or modify a licence,
 - (g) to revoke or suspend a licence,
 - (h) to refuse to accept the surrender of a licence,
 - (i) to refuse to effect the transfer of a licence,
 - (j) to issue a compliance notice (including, where this provision applies by virtue of section 44(2) and for the avoidance of doubt, a decision of the [Public Services Department] to issue an anti-pollution notice), and
 - (k) such other description of decision as the States may by Ordinance prescribe.
- (4) The grounds of an appeal under this section shall be –
- (a) that the decision was ultra vires or that some other 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, bad faith or lack of proportionality.
- (5) An appeal under this section shall be instituted –
- (a) within a period of 28 days (or such longer period as the appellate body may, for good cause, permit) immediately following the date of the Director's decision,
 - (b) by summons served on the Director stating the grounds and material facts on which the appellant relies.
- (6) On an appeal under this section, the appellate body may –
- (a) dismiss the appeal, or
 - (b) quash the decision of the Director.
- (7) Where the appellate body quashes the decision of the Director, it may –
- (a) remit the matter to him with a direction to reconsider it and reach a decision in accordance with the findings of the appellate body, and

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- (b) where the quashed decision is a decision to serve a compliance notice and the Director or the [Public Services Department], as the case may be, (before or after the institution of that appeal) have taken action pursuant to section 63, the appellate body may make an order under this section as follows –
 - (i) that the States' expenses, or such part thereof as may be specified in the order, shall not be recoverable under section 63(1)(b), and
 - (ii) that the States shall pay compensation to the appellant in an amount specified by the appellate body, but not exceeding such sum, if any, as may for the time being be prescribed by Ordinance of the States.

[(8) The effect of a decision in respect of which an appeal may be made under this section shall not be suspended in consequence of the right of appeal except in respect of a decision to –

- (a) refuse to grant an application for a renewal of a licence upon the expiry of a previous licence for substantially the same operations, or
- (b) revoke a licence.

(8A) Where the Director makes a decision falling within paragraph (a) or (b) of subsection (8), the decision shall be suspended and the licence in question shall continue to have effect until –

- (a) the expiry of the period for appealing under subsection (5), or
- (b) where an appeal is duly instituted, the appeal is finally determined or withdrawn; and the appeal is finally determined when the appeal and any further appeal is finally determined.]

(9) The Director may, where an appeal under this section is not determined by the appellate body within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to the body, 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 appellate body may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the body may direct), or
- (b) make such other order as the appellate body considers just.

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

NOTES

In section 25,

the words in square brackets in subsection (3) and subsection (7)

were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004;

subsection (8) was substituted and subsection (8A) was inserted by the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010, section 24(3), with effect from 1st June, 2010.

In accordance with the provisions of the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010, section 29, with effect from 1st June, 2010, a decision of the Director of Environmental Health and Pollution Regulation under section 28(4)(b) of that Ordinance to refuse consent to the collection or transport of specially controlled waste is prescribed for the purposes of subsection (3) of this section.

Appeals from Tribunal to Royal Court.

26. (1) A person aggrieved by a decision of the 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 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 –

- (a) considered by the Royal Court under section 25, or
- (b) referred to the Royal Court under section 27.

Reference of questions of law to Royal Court.

27. (1) A question of law arising in connection with a decision which

the Director is contemplating may, if the Director believes that it would enable or assist him in the proper and lawful making of that decision, be referred to the Royal Court for a determination of the question of law, in such manner and within such period as may be prescribed by order of the Royal Court.

(2) A question of law arising in connection with the hearing and determination by the 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.

Appeals from Royal Court to Court of Appeal.

28. (1) An appeal –

- (a) from a decision of the Royal Court made under section 25 or 26,
- (b) against a determination made by the Royal Court under section 27(1), or
- (c) from a decision of the Royal Court made on a reference under section 27(2),

shall, with leave of the Royal Court or the Court of Appeal, lie to the Court of Appeal.

(2) An application made to the Court of Appeal for leave to appeal under subsection (1) shall be treated, for the purposes of section 21 of the Court of Appeal (Guernsey) Law, 1961^e, in respect of –

^e Ordres en Conseil Vol. XVIII, p. 315.

- (a) the powers that may be exercised by a single judge of the Court under section 21(1) of that Law, and
- (b) the entitlement of an applicant under section 21(2) of that Law,

as if it were an application made under Part II of that Law.

PART V

WASTE

Waste Management

The Waste Disposal Authority.

29. The States shall by Ordinance designate a person or a committee of the States (other than the [Health and Social Services Department]) as the Waste Disposal Authority, which Authority shall carry out the functions conferred on it as respects the management of waste by or under this Law or any other enactment.

NOTES

In section 29, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

The following Ordinance has been made under Part V:

Environmental Pollution (Waste Control and Disposal) Ordinance, 2010.

In accordance with the provisions of the Environmental Pollution (Guernsey) Law, 2004 (Commencement and Designation of Waste Disposal Authority) Ordinance, 2006, section 2, the States of Guernsey Public

Services Department is designated as the Waste Disposal Authority under and for the purposes of this Law, with effect from 26th July, 2006.

General functions of the Waste Disposal Authority.

30. (1) The functions of the Waste Disposal Authority shall be –
- (a) to make arrangements for and ensure the operation of Guernsey's public waste management system,
 - (b) to monitor the creation of waste in Guernsey,
 - (c) to keep under review the systems for collection, transportation, sorting and recycling of waste,
 - (d) to identify the best practical environmental options for the disposal of waste,
 - (e) to comply with the current Waste Disposal Plan, and
 - (f) to carry out such other functions as may be created, assigned or transferred for or to it by this Law or any other enactment.

(2) For the purpose of carrying out its functions under this Law the Waste Disposal Authority is empowered –

- (a) subject to compliance with this Law and all other enactments, to ensure the provision of –
 - (i) places for the deposit of waste, and

- (ii) plant and equipment for sorting, treating and disposing of waste,
- (b) to make provision for and ensure the operation of arrangements for the collection of waste which is not removed pursuant to the Parochial Collection of Refuse (Guernsey) Law, 2001^f,
- (c) to make provision for and ensure the operation of arrangements (including arrangements under which waste is bought or otherwise acquired, is treated, sold or otherwise transferred, by the Authority) for the purposes of enabling waste to be re-used or of enabling substances to be reclaimed from waste, and
- (d) to do such other things as the States may by Ordinance create, assign or transfer for or to it.

NOTE

The functions, rights and liabilities of the Environment Department, as Waste Disposal Authority, arising under or by virtue of paragraph (b), paragraph (c) and paragraph (d) of subsection (1) were transferred to and vested in the Public Services Department by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 1, Schedule, with effect from 1st June, 2007, subject to the savings and transitional provisions in section 3 of the 2007 Ordinance.

Waste Disposal Plans.

^f Orders in Council IX of 2002 (as amended by Ordinance No. IX of 2002).

31. (1) The Waste Disposal Authority shall from time to time make recommendations to the [Public Services Department] in connection with the preparation by the [Department] for consideration by the States of draft Waste Disposal Plans.

(2) In performing its duties under subsection (1) the Waste Disposal Authority shall consult –

- (a) the [Public Services Department],
- (b) the [Public Services Department],
- (c) the States [Commerce and Employment Department],
- (d) the Douzaine of each of the Parishes of Guernsey,
- (e) the [Health and Social Services Department],
- (f) the Director, and
- (g) such other bodies or persons as it thinks fit.

(3) The [Public Services Department] shall from time to time, following recommendations made to it by the Waste Disposal Authority, lay before the States a draft Waste Disposal Plan identifying –

- (a) the descriptions and quantities of waste for the disposal of which provision needs to be made during such period as may be specified,

- (b) the methods to be employed for its disposal,
- (c) the estimated financial costs of such disposal,
- (d) arrangements for the recovery of those costs, and
- (e) the sites under the management of the Waste Disposal Authority where, subject to subsection (4), such disposal is to take place ("**public waste disposal sites**"),

and when such a draft Plan has been approved, with or without modification, by the States it shall become the current "**Waste Disposal Plan**" for the purposes of this Law.

(4) For the avoidance of doubt, the designation of a public waste disposal site by a Waste Disposal Plan –

- (a) does not override the terms of any Detailed Development Plan for the time being in force under the Island Development (Guernsey) Law, 1966^g, or avoid the need for a Planning Inquiry to be held as respects any proposed amendment to such a Detailed Development Plan intended to enable the implementation of that designation, and
- (b) does not absolve the Waste Disposal Authority from

^g Ordres en Conseil Vol. XX, p. 276; Vol. XXII, p. 573; Vol. XXIII, p. 231; Vol. XXVII, p. 355; Vol. XXXI, p. 61 and Vol. XXXII, p. 33.

obtaining and complying with the conditions of any licence required pursuant to this Law in respect of its operation of that site.

NOTES

In section 31,

the words in square brackets in subsection (1) and subsection (3) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 2, Schedule 1, with effect from 1st June, 2007;

the words in square brackets in paragraph (a) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 2, Schedule 1, with effect from 1st June, 2007;

the words in square brackets in paragraph (b) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 2, Schedule 1, with effect from 1st June, 2007;

the words in square brackets in paragraph (c) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004;

the words in square brackets in paragraph (e) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

The functions, rights and liabilities of the Environment Department, as Waste Disposal Authority, arising under or by virtue of subsection (1), subsection (2) and subsection (3) were transferred to and vested in the Public Services Department, as Waste Disposal Authority, by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 1, Schedule, with effect from 1st June, 2007, subject to the savings and transitional provisions in section 3 of the 2007 Ordinance.

The functions, rights and liabilities of the Environment Department arising under or by virtue of subsection (1) and subsection (3) of this section, otherwise than as the Waste Disposal Authority, were transferred to and vested in the Public Services Department by the Machinery of Government

(Transfer of Functions) (Guernsey) Ordinance, 2007, section 1, Schedule, with effect from 1st June, 2007, subject to the savings and transitional provisions in section 3 of the 2007 Ordinance.

The functions, rights and liabilities of the Environment Department arising under or by virtue of paragraph (a) of subsection (2) were transferred to and vested in the Public Services Department by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 1, Schedule, with effect from 1st June, 2007, subject to the savings and transitional provisions in section 3 of the 2007 Ordinance.

The functions, rights and liabilities of the Environment Department arising under or by virtue of paragraph (b) of subsection (2) were transferred to and vested in the Public Services Department by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007, section 1, Schedule, with effect from 1st June, 2007, subject to the savings and transitional provisions in section 3 of the 2007 Ordinance.

The functions, rights and liabilities of the Sea Fisheries Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Commerce and Employment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The Island Development (Guernsey) Law, 1966 has since been repealed by the Land Planning and Development (Guernsey) Law, 2005, section 93, Schedule 3, Part I, paragraph 2, with effect from 6th April, 2009, subject to, first, the savings in section 93 of the 2007 Law, second, the savings and transitional provisions in the Land Planning and Development (Guernsey) Law, 2005 (Savings and Transitional Provisions) Ordinance, 2007 and, third, the transitional provisions in section 19 of the Land Planning and Development (Plans) Ordinance, 2007.

Licensed waste operations

Public waste disposal sites.

32. (1) Subject to the provisions of this section, it is the duty of the Waste Disposal Authority to make reasonable provision for the reception and disposal of all normal household and commercial waste at one or more public waste disposal sites.

(2) In discharging its duty under subsection (1) the Waste Disposal Authority is entitled –

- (a) to reserve particular sites for –
 - (i) particular descriptions of waste, or
 - (ii) use by particular categories of persons,
- (b) to specify limited times at which, and other conditions subject to which, waste or waste of any particular description will be accepted at any or any particular site, and
- (c) to prescribe by regulations the scales and basis on which charges must be paid as a precondition of its acceptance of waste, or of waste of any particular description,

and need not accept waste in respect of which all such requirements are not fulfilled.

(3) In the exercise of its discretions under subsection (2), and generally in its management of public waste disposal sites, the Waste Disposal Authority must –

- (a) have regard to the current Waste Disposal Plan,
- (b) comply with the conditions of any licence under this

Law to which the operation is subject, and

- (c) comply with all other obligations imposed on it by or under this Law and any other enactment.

NOTE

The following Regulations have been made under section 32:

Waste Disposal Charges Regulations, 2010.

Private waste disposal on land.

33. (1) Without prejudice to the generality of section 22(3)(a), an Ordinance making such provision as is mentioned in section 13 as respects the disposal of waste (or, whilst such an Ordinance is in force, any other Ordinance made under this Law) may –

- (a) prohibit the disposal of any waste, or of any description or type of waste, otherwise than at a public waste disposal site,
- (b) preclude the Director from granting licences permitting the disposal of any waste, or of any description or type of waste –
 - (i) except at a public waste disposal site,
 - (ii) except with the consent of, and in accordance with any requirements made by, the Waste Disposal Authority,

- (iii) in excess of such volumes as may be specified in the Ordinance, or
- (iv) at such locations, or other than at such locations, as may be specified or described in the Ordinance.

(2) In considering an application for a licence under this Law permitting the disposal of waste on land otherwise than at a public waste disposal site, or for any variation of the conditions of such a licence, the Director –

- (a) shall not grant the application in contravention of subsection (1),
- (b) shall take into account, in addition to the matters set out in section 15, the current Waste Disposal Plan, and
- (c) shall consult, and have regard to any representations made by –
 - (i) the Waste Disposal Authority,
 - (ii) the Constables of the Parish concerned,
 - (iii) the [Environment Department],
 - (iv) the [Health and Social Services Department],

(v) the Committee, and

(vi) the [Public Services Department],

provided that compliance with this paragraph does not modify the effect of section 23.

(3) For the avoidance of doubt, the representations of the Waste Disposal Authority to which the Director is obliged by subsection (2)(c)(i) to have regard are not confined to the matters set out in section 15, but include the public interest in ensuring that waste is not without good reason diverted from public waste disposal sites.

NOTES

In section 33,

the words in square brackets in sub-paragraph (iii) of paragraph (c) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 19, with effect from 6th May, 2004;

the words in square brackets in sub-paragraph (iv) of paragraph (c) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004;

the words in square brackets in sub-paragraph (vi) of paragraph (c) of subsection (2) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

The functions, rights and liabilities of the Island Development Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Environment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 19, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Waste disposal to the sea.

34. (1) The power conferred by section 13 includes power to prescribe, as an operation for the carrying on of which a licence is required under section 15, the discharge to the sea of any or any description of waste –

- (a) using any land-based plant or machinery,
- (b) via a sewer, pipe or conduit, or
- (c) by any other means not for the time being licensed in accordance with Part II of the Food and Environment Protection Act 1985^h.

(2) Without prejudice to the generality of section 22(3)(a), an Ordinance making such provision as is mentioned in subsection (1) (or, whilst such an Ordinance is in force, any other Ordinance made under this Law) may preclude the Director from granting licences permitting any or any description or type of discharge into the sea –

- (a) except with the consent of, and in accordance with any requirements made by, the Waste Disposal Authority,
- (b) in excess of such volumes as may be specified in the Ordinance, or
- (c) at such locations, or other than at such locations, as

^h Act of Parliament, 1985 c. 48, as extended to Guernsey by the Food and Environmental Protection Act 1985 (Guernsey) Order, 1987 (S.I.19871/665).

may be specified or described in the Ordinance.

(3) In considering an application for a licence under this Law permitting a discharge to the sea, or for any variation of the conditions of such a licence, the Director –

- (a) shall not grant the application in contravention of subsection (2),
- (b) shall take into account, in addition to the matters set out in section 15, the current Waste Disposal Plan,
- (c) shall consult, and have regard to any representations made by –
 - (i) the Waste Disposal Authority,
 - (ii) the Douzaine of any Parish to which the application appears to the Director to be of particular concern,
 - (iii) the [Environment Department], and
 - (iv) the States [Commerce and Employment Department],

provided that compliance with this paragraph does not modify the effect of section 23.

NOTES

In section 34,

the words in square brackets in sub-paragraph (iii) of paragraph (c) of subsection (3) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 19, with effect from 6th May, 2004;

the words in square brackets in sub-paragraph (iv) of paragraph (c) of subsection (3) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004.

The functions, rights and liabilities of the Island Development Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Environment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 19, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

The functions, rights and liabilities of the Sea Fisheries Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Commerce and Employment Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Waste operation licence conditions.

35. (1) It is the duty of the Director to attach to any licence permitting –

- (a) the collection, removal, transportation or handling of waste,
- (b) the sorting, treatment or processing of waste,
- (c) the disposal of waste on land, or

- (d) the discharge of waste to sea,

all such conditions as appear to the Director necessary or expedient to ensure not only that the environment is protected against pollution, but also the efficient and sustainable management of waste in the longer term.

(2) Without prejudice to the generality of section 16 the conditions attached to any such licence may specify –

- (a) its duration,
- (b) the descriptions, types and quantities of waste which may be dealt with under it, or which may be so dealt with during any specified period,
- (c) the methods of dealing with waste, and the precautions to be observed when dealing with waste, under the licence,
- (d) the times at which waste may be dealt with under the licence,
- (e) the manner in which any operation permitted by the licence is to be supervised –
 - (i) by the holder of the licence, and
 - (ii) by the Director,

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- (f) the making, retention, and provision to the Director of records in relation to the operations permitted by the licence, and
- (g) the works to be carried out at or in respect of any place to which the licence relates –
 - (i) before any operation permitted by it may commence,
 - (ii) whilst any such operation is continuing, and
 - (iii) after any such operation has ceased.

Generally applicable provisions

General duty of care.

36. (1) It is the duty of every person who, whether or not by way of business, produces, keeps, handles, sorts, processes, transports or disposes of any waste, in addition to himself complying with this Law, to take all such measures as are reasonable in the circumstances –

- (a) to prevent any contravention of this Law by any other person,
- (b) to prevent any escape of the waste from his control,
- (c) to transfer the waste only –
 - (i) to a person who may lawfully handle the waste

under this Law, and

- (ii) with sufficient information about it to enable other persons to avoid any contravention of this Law.

(2) The duties imposed by paragraphs (a) to (c) of subsection (1) do not apply to the occupier of a dwelling as respects household waste produced at that dwelling.

(3) The States may by Ordinance provide that specified measures are to be taken, and specified procedures are to be followed, to facilitate observance of the duties imposed by subsection (1).

Specially controlled waste: general provisions.

37. (1) The States may by Ordinance identify any description of waste as so dangerous or difficult to dispose of that special measures need to be taken in respect of it ("**specially controlled waste**").

(2) An Ordinance under this section may –

- (a) prohibit or restrict the production of specially controlled waste,
- (b) require the occupier of any premises to notify the Director of the presence on those premises of any specially controlled waste, and
- (c) impose requirements in relation to the storage, handling, treatment, movement or disposal of

specially controlled waste, including, without prejudice to the generality of the foregoing, requirements for any person, whether or not engaged in a trade or business –

- (i) to obtain, and act in accordance with, the approval of the Director, and
- (ii) to maintain records and make them available to the Director.

All waste: general provisions.

38. (1) The States may by Ordinance –

- (a) prohibit the leaving or keeping of waste on any land in the open air, other than on a site or particular description or type of site in respect of which a licence under this Law permitting the sorting, treatment, processing or disposal of waste is for the time being in force ("**a licensed waste site**"),
- (b) prohibit the leaving or keeping of waste at a licensed waste site otherwise than in accordance with the conditions of the licence pertaining to that site,
- (c) restrict the circumstances in which, and specify the conditions subject to which, persons other than the licensee or his servants or agents may enter a licensed waste site or any part of such a site,

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- (d) control the conduct of such persons at such sites, and
 - (e) prohibit the removal of waste from a licensed waste site by persons other than the licensee or his servants or agents.
- (2) Subsection (1)(a) does not apply to household waste –
- (a) which is not specially controlled waste, and
 - (b) which is kept or disposed of within the curtilage of the dwelling where it was produced, by or with the permission of the occupier of that dwelling.

PART VI
WATER POLLUTION

Generally applicable provisions

General scope of this Part and Ordinances thereunder.

39. (1) This Part has effect for the purpose of better enabling the States to control the nature, volume and concentration of pollutants introduced into or present in water, whatever their origin.

- (2) The States may by Ordinance prohibit the introduction –
- (a) into water on or below the surface of the ground in Guernsey, either generally or in any specified or specified description of lake, pond, watercourse, or borehole, or

- (b) into the sea, either generally or at any specified or specified description of marine location,

of any substance capable of causing serious water pollution, whether in Guernsey or elsewhere.

- (3) The States may by Ordinance –

- (a) impose restrictions and limitations on the amount and concentration of any substance which may be introduced into water or the sea, and
- (b) prescribe conditions subject to which that substance may be so introduced,

either generally; during any specified period; into water or the sea in specified or specified descriptions of lakes, ponds, watercourses, wells, boreholes or marine locations; as a result of specified operations or activities; or from premises, vehicles or vessels of specified descriptions.

- (4) Unless otherwise expressly or by necessary implication limited in its scope –

- (a) an Ordinance made under any provision of this Part which imposes prohibitions, restrictions or limits in relation to a person carrying on an activity applies whether or not that activity is or involves a prescribed operation, and

- (b) compliance with such an Ordinance does not absolve any person carrying on a prescribed operation from any obligation to which he is subject under Part III, but
- (c) a licence to carry on a prescribed operation may provide that compliance with specified conditions of the licence is deemed to constitute compliance with specified provisions of the Ordinance.

Extended definition of pollution as respects water resources.

40. (1) For the purposes of this group of sections –

- (a) "**Guernsey's water resources**" includes all water on or below the surface of the ground in Guernsey, whether or not under the control of the [Public Services Department] and whether or not within the catchment area,
- (b) "**water pollution**" means introduction into Guernsey's water resources of any pollutant, and
- (c) "**pollutant**" includes anything (whether or not a pollutant as defined by section 2(3)) which may have a deleterious affect on water or which may adversely affect the actual or intended uses of water.

(2) In subsection (1) and in section 44(2)(c), "**this group of sections**" means this section, sections 41 to 45 and any other provision of this Law in its application to those sections.

NOTE

In section 40, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

General protection of water resources by Ordinance.

41. (1) The States may by Ordinance make such provision as they consider necessary or expedient to protect Guernsey's water resources from pollution or the risk of pollution.

(2) An Ordinance under this section may prohibit any person from causing or permitting the occurrence of water pollution, or of a risk of water pollution.

(3) Without prejudice to the generality of subsections (1) and (2), an Ordinance under this section may make provision for –

- (a) regulation and control of drainage and sewage disposal from premises (whether or not the premises are in existence when the Ordinance is made),
- (b) regulation and control of oil installations,
- (c) regulation or prohibition of the storage, transport, use and disposal of anything likely to present a threat of water pollution,
- (d) regulation or prohibition of the execution of works or

doing of any other thing specified in the Ordinance as likely to present a threat of water pollution,

- (e) prohibition of doing anything regulated by the Ordinance except under and in accordance with the conditions of a permit granted by the [Public Services Department], and
- (f) empowering the [Public Services Department] or any other Committee of the States to make Orders by way of statutory instrument in respect of any matter specified in the Ordinance.

NOTE

In section 41, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

Powers of [Public Services Department] to take samples.

42. (1) An officer of the [Public Services Department], and any other person authorised in writing in that behalf by that [Department], may at any reasonable time (or, in cases of emergency, at any time), on production if required of evidence of his office or authority, enter any premises and take from those premises samples of any water, effluent or other matter.

(2) When a sample is taken from any premises a duplicate of the sample shall, if the owner or occupier of the premises so requests, be left with him.

NOTE

In section 42, and the marginal note thereto, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

Water resources in the catchment area

The catchment area.

43. (1) The catchment area consists of all areas of Guernsey the drainage of which is used by the [Public Services Department] for or in connection with the supply of water to its consumers.

(2) The [Public Services Department] shall –

- (a) determine the boundaries of an area to be known as the States water supply catchment area ("**the catchment area**"),
- (b) prepare and hereafter maintain a map, signed and dated by its [Minister], on which the boundaries of the catchment area are marked ("**the map**"), and
- (c) deposit a copy of the map, signed and dated by its [Minister], for public inspection at the Greffe.

(3) The [Public Services Department] may from time to time vary its determination of the catchment area boundaries; but a variation is not effective until it is marked, signed and dated by the [Minister] of the [Public Services Department] on both the map and copy referred to in subsection (2), and until notice thereof is published in La Gazette Officielle.

(4) Subject to compliance with this section the [Public Services Department]'s determination from time to time of the catchment area boundaries may not be challenged in any legal proceedings.

NOTE

In section 43, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

Anti-pollution notices as respects the catchment area.

44. (1) If the [Public Services Department] considers that a person is, by reason of his acts or omissions, his proposed acts or omissions, or his use or proposed use of any thing –

- (a) causing or permitting the occurrence of pollution in the catchment area, or
- (b) causing or permitting a risk of pollution in the catchment area to arise,

the [Public Services Department] may serve an anti-pollution notice on him.

(2) For the purposes of this Law an anti-pollution notice is a compliance notice, and Part IV and sections 62 to 64 apply in the case of an anti-pollution notice as those provisions apply in the case of any other compliance notice, subject to the modifications that –

- (a) such a notice is served under the power conferred

directly by this section rather than by an Ordinance made under section 62,

- (b) references to the Director are to be construed as referring to the [Public Services Department], and
- (c) the reference in section 63(2) to environmental pollution is to water pollution within the meaning of this group of sections.

NOTE

In section 44, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

Additional powers of [Public Services Department] Officers etc in the catchment area.

45. A duly authorised officer of the [Public Services Department], and any other person authorised in writing on that behalf by that [Department], may at any reasonable time (or, in cases of emergency at any time), on production if required of evidence of his office or authority, enter any premises in the catchment area and –

- (a) make any inspection, examination and inquiry necessary to ascertain whether an offence under section 65 or 66 is being or has been committed, and
- (b) on behalf of the [Public Services Department], do anything which that [Department] is authorised to do

under section 62 or section 63 as applied by section 44(2).

NOTE

In section 45, and the marginal note thereto, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

Sea water

Sea water quality standards.

46. (1) In the exercise of their powers under section 3 as respects sea water the States shall have regard to –

- (a) any relevant international conventions or agreements,
- (b) any relevant Community provision, and
- (c) any relevant provisions of the Strategic and Corporate Plan and, as respects waste, the current Waste Disposal Plan.

(2) It is the duty of any committee of the States in the carrying out of functions under any enactment which may impact on the quality of sea water to take into account all relevant standards, objectives and requirements established by Ordinance as mentioned in subsections (3) to (5) of section 3.

Duties of the [Health and Social Services Department] as regards deposits in the sea etc.

47. (1) In discharging its functions under Part II of the Food and Environment Protection Act 1985 the States [Health and Social Services Department] must act generally with a view to promoting the purposes and objectives of this Law, and in particular that [Department] shall consult the Director, and shall have regard to any views expressed by the Director, concerning –

- (a) the practical availability of alternative methods of dealing with substances or articles in respect of which a licence for disposal has been applied for, as mentioned in section 8(2) of that Act,
- (b) the provisions which it may be necessary to include in a licence pursuant to section 8(3) of that Act, and
- (c) the exercise of any of its powers to grant, vary or revoke a licence under that Act.

(2) The Director may require the States [Health and Social Services Department] to conduct tests for any of the purposes set out in section 13 of the Food and Environment Protection Act 1985, and to furnish the Director with the results of, together with all data gathered in the course of, those tests.

NOTES

In section 47, and the marginal note thereto, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) (No. 2) Ordinance, 2006, section 2, Schedule, with effect from 27th September, 2006.¹

The functions, rights and liabilities of the Home Department and of its Minister arising under or by virtue of this section were transferred to and vested in, respectively, the Health and Social Services Department and its Minister by the Machinery of Government (Transfer of Functions)

(Guernsey) (No. 2) Ordinance, 2006, section 1, Schedule, with effect from 27th September, 2006, subject to, first, the savings and transitional provisions in section 3 of the 2006 Ordinance and, second, the provisions of section 4 of the 2006 Ordinance.²

Discharges from vessels.

48. (1) The States may by Ordinance impose such prohibitions, restrictions and requirements in relation to the construction, navigation and use of vessels or of any descriptions of vessels, as appear to the States to be necessary or expedient to prevent or limit the deliberate or accidental discharge into the sea of pollutants by or from such vessels.

(2) Without prejudice to the generality of the foregoing, an Ordinance under this section may impose duties on and prescribe qualifications to be held by the masters and members of the crew of any specified description of vessel which is –

- (a) registered in Guernsey, or
- (b) navigated in the territorial waters adjacent to Guernsey.

(3) A prohibition imposed by any Ordinance under this section on the discharge of any substance shall not be so construed as to render unlawful anything done under, and in accordance with the conditions of, a licence granted under this Law or under Part II of the Food and Environment Protection Act 1985.

PART VII
AIR POLLUTION

General scope of this Part and Ordinances thereunder.

49. (1) This Part has effect for the purpose of better enabling the States to control by Ordinance the nature, volume and intensity of pollutants other than energy released into or present in the air, whatever their origin.

(2) The States may by Ordinance prohibit the release into the air of Guernsey, or at any specified place or description of place within Guernsey, of any substance capable of causing serious pollution of the air, whether in Guernsey or elsewhere.

(3) The States may by Ordinance –

- (a) impose restrictions and limits on the amount of any substance which may be released into the air, and
- (b) prescribe conditions subject to which that substance may be so released,

either generally, during any specified period, at specified places, or from premises, vehicles, vessels or processes of specified descriptions.

(4) Unless otherwise expressly or by necessary implication limited in the scope –

- (a) an Ordinance made under any provision of this Part which imposes prohibitions, restrictions or limits in relation to a person carrying on an activity applies whether or not that activity is or involves a prescribed operation, and
- (b) compliance with such an Ordinance does not absolve

any person carrying on a prescribed operation from any obligation to which he is subject under Part III, but

- (c) a licence to carry on a prescribed operation may provide that compliance with specified conditions of the licence is deemed to constitute compliance with specified provisions of the Ordinance.

Dark smoke.

50. (1) The States may by Ordinance prohibit the emission of dark smoke from –

- (a) the chimney of any building other than a dwelling house,
- (b) a chimney (not being a chimney of a building) which serves the furnace of any fixed boiler or industrial plant,
- (c) the burning of any commercial waste, and
- (d) any vehicle or vessel.

(2) An Ordinance under this section may exclude from any prohibition thereby imposed emissions at such times and places, lasting for no longer than such periods, and otherwise in such circumstances, as may be prescribed.

Furnaces and boilers.

51. (1) The States may by Ordinance provide that no furnace or boiler shall be installed on any premises other than a dwelling house unless it is so far as practicable capable of being operated continuously without emitting smoke when burning fuel of a type for which it is designed.

(2) The States may by Ordinance prescribe limits on the rates of emission of grit, dust and other pollutants from the chimneys of furnaces and boilers installed on any premise other than a dwelling house.

(3) In the case of such descriptions of furnaces and boilers, in such circumstances, as may thereby be prescribed, the States may by Ordinance require –

- (a) the installation and use of plant for arresting emissions of grit, dust and other pollutants,
- (b) the installation and use of apparatus for recording such emissions,
- (c) the maintenance and furnishing to the Director of records relating to such emissions, and
- (d) the provision to the Director of information concerning the operation of such furnaces and boilers.

(4) An Ordinance under this section may –

- (a) require that the prior approval of the Director be obtained for the installation of such descriptions of furnaces and boilers; and of any chimneys, plant and

equipment associated with them, as may be prescribed, and

- (b) make provision as to –
 - (i) the conditions to be attached to any such approval,
 - (ii) the consequences of its being granted, and
 - (iii) the rights (including a right of appeal) of a person aggrieved by its refusal, or by any condition attached to it.

Uncontrolled burning.

52. The States may by Ordinance prohibit or restrict the burning on land in the open air of any substance the burning of which is in the opinion of the States liable to cause pollution.

Composition of fuels.

53. (1) The States may by Ordinance specify –

- (a) substances which may be present, or
- (b) substances which must not be present,

in the composition of any fuel, or of any description of fuel.

(2) An Ordinance under subsection (1) may prohibit or restrict the procession, or the burning or other use, of any fuel which does not comply with

the specifications therein set out.

Notices to provide information.

54. (1) The States may by Ordinance empower the Director to require –

- (a) the owner or occupier of any premises other than a dwelling house, or
- (b) the owner of any vehicle, vessel, plant or machinery,

to provide the Director with such information concerning air pollution, or risk of air pollution, arising from the premises, vehicles, vessels, plant or machinery, as may be specified in a notice served pursuant to that Ordinance.

(2) An Ordinance under this section shall –

- (a) specify the circumstances and manner in which a notice pursuant to it may be served,
- (b) prescribe fair and adequate procedures whereby the requirements of such a notice may be challenged, and
- (c) set out the consequences (which may include liability to criminal proceedings and power for the Director to take such further steps as are therein set out) of failure to comply with such requirements.

**PART VIII
POLLUTION BY SOUND, LIGHT, ETC**

General scope of this Part and Ordinances thereunder.

55. (1) This Part has effect for the purpose of better enabling the States to control by Ordinance the nature, volume and intensity of sound, light and other forms of energy pollutant emitted into environmental medium.

(2) The States may by Ordinance prohibit the emission anywhere in Guernsey, or of any specified place or description of place in Guernsey, of any energy capable of causing serious pollution of the environment.

(3) The States may by Ordinance –

- (a) impose restrictions and limits on the volumes and intensity of any energy which may be emitted, and
- (b) prescribe conditions subject to which that energy may be emitted,

either generally, during any specified period, at specified places, as a result of specified operations or activities, or from premises, vehicles, vessels or processes of specified descriptions.

(4) Unless otherwise expressly or be necessary implication limited in its scope –

- (a) an Ordinance made under any provision of this Part which imposes prohibitions, restrictions or limits in relation to a person carrying on an activity applies whether or not that activity is or involves a prescribed operation,

- (b) compliance with such an Ordinance does not absolve any person carrying on a prescribed operation from any obligation to which he is subject under Part III, but
- (c) a licence to carry on a prescribed operation may provide that compliance with specified conditions of the licence is deemed to constitute compliance with specified provisions of the Ordinance.

Construction sites etc.

56. (1) The States may by Ordinance make special provision for controlling the noise emitted from any premises by or in consequence of any building, engineering, mining or other operations on those premises.

(2) An Ordinance under this section may empower the Director to serve notice ("**a construction site noise notice**") imposing requirements designed to ensure adoption of the best available technique by any person who appears to the Director to be carrying on, or intending to carry on, any such operations.

(3) An Ordinance making such provision as is referred to in subsection (2) shall –

- (a) specify the person on whom and manner in which a construction site notice may be served,
- (b) prescribe full and adequate procedures whereby the requirements of such a notice may be challenged, and

- (c) set out the consequences (which may include liability to criminal proceedings and power for the Director to seek such injunctions or take such further steps as are therein set out) of failure to comply with such requirements.

(4) An Ordinance under this section may empower the Director to grant his consent for the purpose of this Law (but only for those purposes) to the carrying on of building, engineering, mining or other operations on any premises subject to conditions designed to ensure adoption of the best available technique by any person responsible for their carrying on there.

(5) It is a defence for a person charged with an offence of failing to comply with, and is equally a justified challenge to, the requirements of a construction site noise notice, to prove that the operation has been carried on in accordance with the conditions of a consent granted pursuant to an Ordinance making such provision as is referred to in subsection (4).

Energy emission controls.

57. (1) The States may by Ordinance prescribe the maximum levels of any description of energy pollutant which may be emitted from –

- (a) any premises,
- (b) premises of any specified description,
- (c) premises in any specified area, and
- (d) premises of any specified description in any specified area.

(2) An Ordinance under this section may impose requirements (both positive and negative) as respects the installation and operation of plant and machinery on any premises, with a view to ensuring the adoption of the best available technique, balancing the legitimate use of those premises with the rights of their neighbours to freedom from the effect of energy pollutants.

(3) An Ordinance under this section may empower the Director to serve a notice ("**an energy emission notice**") requiring that the emission of noise, light, or any other specified form of energy, from any premises specified in the notice shall not exceed such levels, at such times in any day and on such days of any week, as may be therein specified.

(4) An Ordinance making such provision as is referred to in subsection (3) shall –

- (a) specify the person on whom and manner in which an energy emission notice may be served,
- (b) prescribe fair and adequate procedures whereby the requirements of such a notice may be challenged, and
- (c) set out the consequences (which may include liability to criminal proceedings and power for the Director to seek such injunctions or take such further steps as are therein set out) of failure to comply with such requirements.

PART IX
ENFORCEMENT ETC

Powers of inspection and investigation

Powers of Director.

58. For the avoidance of doubt, the powers exercisable by the Director by or under this Part –

- (a) are exercisable in addition to, and not substitution for, powers exercisable by him by or under –
 - (i) any other Part,
 - (ii) any Ordinance made under this Law, or
 - (iii) any other enactment,
- (b) may be adapted or modified by Ordinance for the purposes of any Ordinance made under this Law,
- (c) may be exercised by any person to whom the exercise of the same is delegated by the Director under section 9, and
- (d) do not, except as may be expressly conferred by or under this Law or any other enactment, include a general power to enter on or interfere with private property without the consent of the owner of that property or of some other person entitled to give such consent.

NOTE

The following Ordinance has been made under Part IX:

*Environmental Pollution (Waste Control and Disposal) Ordinance,
2010.*

Statutory powers of entry.

59. (1) Subject to subsection (2), the States may by Ordinance empower the Director to enter any premises without the consent of the owner thereof for the purpose of –

- (a) establishing whether any prohibition, restriction, requirement or condition imposed by or under this Law or any other enactment is being or has been complied with, or
- (b) exercising any other power conferred on the Director by or under this Law or any other enactment.

(2) An Ordinance under this section shall not confer power on the Director –

- (a) to enter private premises without producing, if required, evidence of his authority,
- (b) to enter private premises without first giving 24 hours notice of his intention to do so, or to enter private premises otherwise than at a reasonable time, except (in either case) –

- (i) premises where a prescribed operation, in respect of which a licence under section 15 is for the time being in force, is or is reasonably believed to be carried on, or
 - (ii) other premises in an emergency, or
- (c) to enter premises used wholly as a dwelling, except under the authority of a warrant issued by the Bailiff.

Statutory powers of examination, inspection and investigation.

60. (1) Subject to subsections (2) and (3), the States may by Ordinance empower the Director (whether or not he has for the purpose entered premises pursuant to a power conferred under section 59), in respect of any premises or activity reasonably thought by him to be a source or potential source of pollution or nuisance –

- (a) to require the occupier of those premises, or any person reasonably believed by the Director to be carrying on or to have carried on that activity –
 - (i) to make available for examination by the Director any –
 - (aa) plant or equipment,
 - (bb) substance or article, or
 - (cc) any waste or by-product,

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used, stored or produced at those premises or in connection with that activity,

- (ii) to furnish the Director with such information, including records and other documents, relating to the premises or to that activity as he may reasonably require, and
 - (iii) to answer such questions relating to those premises or to that activity as he may reasonably ask,
- (b) to take for further examination samples of substances or articles made available to him and copies of documents furnished to him, whether pursuant to such a requirement or otherwise, and
 - (c) to take such action as may be required for the effectual carrying out of any function conferred on the Director by or under this Law or any other enactment.

[(2) A statement made by a person in response to a requirement imposed by or under this Law –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –

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- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
- (ii) in proceedings for –
 - (A) an offence under subsection 67(3),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(3) An Ordinance under subsection (1) which provides for the compulsory taking of samples shall further make provision –

- (a) for the results of any examination thereof to be furnished to the person from whom they are taken,
- (b) where practicable, for duplicates to be left with that person if he so requests, and
- (c) except in the case of waste, or in the case of substances or articles required to establish the commission of an offence, for their return to that

person after examination.

(4) This section is without prejudice to the power of the Director to impose and enforce different or more far-reaching requirements as to examination, inspection and investigation by conditions attached to a licence under section 15.

NOTE

In section 60, subsection (2) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Obtaining of information.

61. Subject to section 60(2), the States may by Ordinance empower the Director, for the purpose of the carrying out of such of his functions as may be specified by Ordinance, to serve a written notice on any person, requiring that person to furnish such information specified in the notice as the Director reasonably considers he needs, in such form and within such period following service of the notice, as is specified in the notice.

Compliance notice procedures

Compliance notices.

62. (1) The States may by Ordinance identify particular circumstances in which the Director may issue and serve on persons of specified descriptions notices ("**compliance notices**") requiring those persons to take, discontinue, or refrain from, such actions or activities as may be –

- (a) identified in general terms in the Ordinance, and

- (b) specified with reasonable precision in the compliance notice,

for the purpose of avoiding, discontinuing, redressing damage caused by, or preventing the recurrence of any environmental pollution, nuisance, or other circumstance regulated under this Law and within the purview of that Ordinance.

(2) A compliance notice need not (subject to any more specific provision made by Ordinance) be in any particular form, but must, in addition to specifying its requirements with reasonable precision –

- (a) identify (by name or description) the person required to fulfil those requirements,
- (b) specify a time within which any positive requirements imposed by it are to be fulfilled,
- (c) indicate the statutory provision and circumstances authorising its service, and
- (d) indicate that it is a compliance notice within the meaning of this Law and the consequences, including in particular the right of appeal conferred by section 25, ensuing therefrom.

(3) This section and sections 63 and 64 are without prejudice to the power of the Director to impose and enforce different or more far-reaching requirements as to compliance by conditions attached to a licence under section 15.

Action to enforce compliance notice requirements.

63. (1) If the Director is of the opinion that a requirement of a compliance notice has not been adequately complied with before the end of the period specified in respect thereof in that notice then subject to subsection (2) –

- (a) the Director may take such action as appears necessary to secure compliance with the requirements of the notice, and
- (b) the expenses reasonably incurred by the States as a consequence of the action taken by the Director under paragraph (a) shall be recoverable as a civil debt due to the States from the person on whom the compliance notice was served.

(2) The Director shall not take any action under subsection (1) until whichever is the later of –

- (a) the expiry of the period allowed for institution of an appeal against the requirements of the compliance notice, or
- (b) the determination of any appeal instituted within that period,

unless the Director certifies that there exists an imminent risk of environmental pollution, nuisance, or other circumstance regulated by this Law, of sufficient significance as to justify immediate action under that subsection.

Compliance notice Ordinances.

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64. The States may by Ordinance prescribe, whether in respect of compliance notices generally or in respect of compliance notices served pursuant to a particular Ordinance –

- (a) the information to be conveyed by such compliance notices,
- (b) the manner in which they may be served, and
- (c) such other matters in respect of compliance notices, their enforcement, and appeals against their requirements, not being inconsistent with this Law, as may appear to the States to be expedient.

Criminal Proceedings

Contraventions leading to environmental pollution or a risk thereof.

65. (1) A person who causes or permits the occurrence of environmental pollution, or who causes or permits a risk of environmental pollution, by contravening a provision of any Ordinance made under this Law, is guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding twice level 5 of the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for term not exceeding two years, or to a fine, or to both.
- (2) A person who causes or permits the occurrence of

environmental pollution, or who causes or permits a risk of environmental pollution, by contravening section 13(4), is guilty of an offence and is liable –

(a) on summary conviction, to imprisonment for a term not exceeding twelve months, or to a fine not exceeding ten times level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.

(3) The court before which a person is convicted of an offence under this section –

(a) shall, in considering the appropriate penalty, have regard to the environmental consequences or risk thereof occasioned by the acts or defaults of the offender, and

(b) may, in addition to or in substitution for any penalty under subsection (1) or subsection (2) as the case may be, require the offender –

(i) to take such action, and

(ii) to pay such sum to the States,

as that Court considers appropriate to remedy, or to enable the States to remedy, the environmental consequence of the offender's acts or defaults.

(4) For the avoidance of doubt, in this section "**environmental pollution**" includes water pollution, and "**environmental consequences**" includes effect on water or on the actual or intended uses of water.

Other contraventions.

- 66.** (1) A person who contravenes –
- (a) any provision of an Ordinance or instrument made under this Law,
 - (b) section 13(4), in circumstances other than as described in section 65(2),
 - (c) a requirement of an anti-pollution notice,
 - (d) a requirement of a compliance notice, or
 - (e) section 36,

is guilty of an offence and, unless in respect of the same contravention he is convicted of an offence under section 65, is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twice level 5 on the uniform scale, or to both.

(2) If a Court before which a person is charged with an offence under section 65 is satisfied that he has contravened a provision of an Ordinance made under this Law, or has contravened section 13(4) of this Law, but is not satisfied that he has thereby caused or permitted any environmental pollution or risk thereof, that Court may, instead of convicting that person of an offence under section 65, convict him of an offence under this section and deal with him

accordingly.

Obstruction, misleading information etc.

67. (1) A person who obstructs an authorised person in the carrying out of his functions under this Law is guilty of an offence.

(2) A person who, without reasonable excuse, fails to comply with a requirement made by an authorised person under this Law is guilty of an offence.

(3) A person who –

- (a) in proceedings before the Tribunal,
- (b) in making any statement or providing any information or document to an authorised person when carrying out his functions, 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 that authorised person for the purpose of carrying out his functions –
 - (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.

(4) A licensee who fails to provide an authorised person with any information in his possession knowing or having reasonable cause to believe that –

- (a) the information is relevant to the carrying out by that person of his functions, and
- (b) the withholding of the information is likely to result in that person being misled as to any matter which is relevant and of material significance to the carrying out of his functions in relation to the licensee,

shall be guilty of an offence.

(5) A person guilty of an offence under any provision of this section 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.

(6) On convicting a person of an offence under any provision of this section a court may in addition to imposing any penalty under subsection (5) –

- (a) order the person convicted to take such steps and within such time as the court may specify in order to rectify any obstruction or failure comprised in the offence, and
- (b) if a licence has been granted, renewed or varied following the commission of an offence under subsection (3), order that the grant, renewal or variation shall cease to have effect.

(7) For the purposes of this section, the expression "**an authorised person**" includes –

- (a) the Director,

- (b) any person to whom the carrying out of a function of the Director is delegated under section 9, and
- (c) a person lawfully carrying out any function under section 42 or section 45.

Assisting or attempting the commission of offences.

68. (1) A person who aids, abets, commits or procures the commission of –

- (a) an offence under this Law, or
- (b) an act which if committed in Guernsey would constitute such an offence,

is guilty of an offence, and is liable on conviction to the same penalty as if he had committed the substantive offence.

(2) A person who attempts to commit –

- (a) an offence under this Law, or
- (b) an act which if committed in Guernsey would constitute such an offence

is guilty of an offence, and is liable on conviction to the same penalty as if he had committed the substantive offence.

(3) If on the trial of a person charged with an offence under any

provision of this Law apart from this section the court is not satisfied on the evidence that the person committed the offence but is satisfied that he attempted to commit the same, the court may convict him of an offence under subsection (2) of this section.

Due diligence and statutory defences.

69. (1) In any proceeding 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.

(2) The States may by Ordinance prescribe circumstances in which a person charged with an offence under this Law may in his defence establish facts which, though all the ingredients of the offence be proved, will entitle him to be acquitted of the offence.

Criminal liability of directors etc.

70. (1) Where an offence under this Law committed by a body corporate or by an unincorporated body is proved to have been committed with the consent or connivance of, or be attributable to any neglect on the part of, a director, manager, secretary or similar office of that body, or any person who was purporting to act in any such capacity, he, as well as that body, is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purposes of this section a person is deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate act.

PART X

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Service of notices and other documents.

71. (1) Any notice or other document required or authorised to be served under this Law may be served –

(a) on an individual, by addressing it to him, and either delivering it to him personally or leaving it at or sending it by post to his usual or last known place of abode, or sending it to his usual or last known fax number,

(b) on a body corporate, by addressing it to that body, and leaving it at or sending it by post to –

(i) its registered office (wherever situated), or

(ii) if its registered office is not in Guernsey, its principal or last known principal place of business in Guernsey,

or sending it to that body's usual or last known fax number,

(c) on an unincorporated body, by addressing it to the secretary or clerk to that body, or in the case of a partnership to any partner, and leaving it at or sending it by post to the principal or last known principal office or place of business of that body, or sending it to that body's usual or last known fax number.

(2) If a notice or document is required or authorised under this Law to be served on the owner or on the occupier of, or on a person having an interest in, premises, it is deemed to have been duly served if it is –

- (a) addressed to that person either by name or by referring to the owner of, the occupier of, or the person having the relevant interest in, the premises concerned, and
- (b) either served in accordance with subsection (1) or affixed conspicuously to, or to some object on, the premises concerned.

(3) A notice served on any one of two or more joint owners of premises is deemed to have been served on all of those joint owners, except where this Law specifically requires that the notice be served on each of them.

(4) A document required or authorised by or under this Law to be served on the Director, or on any committee of the States, may be served by addressing it to the Director, or to that committee as appropriate, and leaving it at or sending it, by post to its office, or to its fax number.

(5) A notice which is served by fax is presumed unless the contrary is shown to have been served at the date and time when it is sent.

(6) A notice which is served by sending through the post is deemed to have been served, unless it is returned to the sender –

- (a) if sent to an address in Guernsey, on the day after it is posted,

- (b) if sent to an address elsewhere in the British Islands, two days after it is posted,
- (c) if sent to an address elsewhere, one week after it is posted.

(7) This section is subject to any different or alternative provision made by Ordinance in respect of the service of compliance notices; but both this section and any such Ordinance are without prejudice to the validity of any other method of service by which a notice or other document is in fact received by its addressee.

NOTE

The following Ordinance has been made under Part X:

Environmental Pollution (Waste Control and Disposal) Ordinance, 2010.

Ordinances, orders and regulations.

72. (1) Any Ordinance, order or regulations made under any provision of this Law –

- (a) may be amended, repealed or revoked by a subsequent Ordinance, order or regulations so made,
- (b) may include incidental, consequential, supplementary and transitional provisions, and
- (c) may, in the case of an Ordinance, empower the

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Director or a committee of the States to make any instrument under it, and may in either case require the approval, licence or permission of the Director or a committee of the States to be obtained in circumstances specified in it.

(2) Any power conferred by or under this Law to make an Ordinance, order or regulations may be exercised –

(a) in relation to all cases to which the power extends, in relation to all of 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 less provision (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 but for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any instrument (other than an order of the Royal Court) made

under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the instrument it shall cease to have effect, but without prejudice to anything done under it or to the making of a new instrument.

NOTE

The following Regulations have been made under section 72:

Waste Control and Disposal (Exemptions) Regulations, 2010.

Interpretation.

73. (1) Unless the context otherwise requires, the following provisions of this section have effect as respects the interpretation of this Law.

(2) References to the "**best available technique**" in relation to any activity or process include (in addition to any technical means and technology) the number, qualifications, training and supervision of persons engaged or employed in the activity or process, and the design, construction, layout and maintenance of any premises where it is carried on and of any plant or machinery used in connection with it.

(3) A thing is "**by way of business**" if it comprises an activity for which payment is received, or is done in connection with such an activity, or is a consequence of such an activity.

(4) "**Waste is produced**" where and when it first becomes waste, and does not thereafter cease to be waste by reason only that it is identified or set aside to serve some useful purpose.

(5) In this Law, unless the context otherwise requires, the following words and expressions shall be construed in accordance with this subsection or the other provisions of this Law referred to against them in this subsection –

"air": see section 2(4)(a),

"anti-pollution notice" means a notice served in accordance with section 44,

"authorised person": see section 67,

"[Health and Social Services Department]" means the States [Health and Social Services Department],

"body corporate" includes a body incorporated under the laws of any country or territory,

"building" means a permanent enclosed man-made structure so designated as to be capable of sheltering people, animals or goods, but also includes a building in the course of construction,

"business day" has the meaning given by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958ⁱ,

"catchment area": see section 43(2)(a),

ⁱ Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p.84; Orders in Council No. XI of 1993; No. XIV of 1994 and No. IX of 2001.

"certificate of completion": see section 19(9),

"chimney" includes any flue, pipe or other conduit through which smoke or gas is emitted to the open air,

"commercial waste" means waste arising from any activity carried on by way of business, and includes agricultural and horticultural waste other than such waste arising from use of the curtilage of a dwelling house for purposes connected with the use of that dwelling house,

"Committee" means the States [Policy Council],

"Community provision" has the meaning given by section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^j,

"compliance notice": see section 62(1),

"contravention" includes failure to comply,

"Court of Appeal" means the Court of Appeal established under the Court of Appeal (Guernsey) Law, 1961^k,

"dark smoke" means smoke which appears to be as dark as or darker than shade 2 on the chart known as the Ringelmann Smoke Chart,

"Director" means the person appointed as Director of Environmental

^j Order in Council No. III of 1994.

^k Ordres en Conseil Vol. XVIII, p. 315.

Health and Pollution Regulation under section 4,

"**dwelling house**" means a building or part of a building used as a permanent residence for members of one household, and includes the curtilage of such a building, but does not include a hotel, hospital or other place where persons may temporarily live,

"**enactment**" includes an instrument,

"**energy**": see section 2(5)(d),

"**environment**": see section 2(4),

"**environmental medium**" means the media of air, water and land (see section 2(4)),

"**environmental pollution**": see section 2(2),

"**fax**" means a device capable of receiving signals generated by a remote device scanning a document, and producing from those signals a copy of the scanned document,

"**function**" includes a duty and a power and "**the carrying out of a function**" includes the performance of a duty and the exercise of a power,

"**Guernsey**" includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coasts of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

"**Guernsey's water resources**": see section 40(1)(a),

"household waste" means waste arising from the normal use of a dwelling house as such and does not include commercial waste arising thereon,

"instrument" means any order (including any order of the Royal Court), regulations, rules or other subsidiary legislative instrument,

"land": see section 2(4)(c),

"this Law" includes all Ordinances and instruments made under this Law,

"Law Officer of the Crown" means Her Majesty's Procureur or Her Majesty's Comptroller,

"licence" means a licence to carry on a prescribed operation granted under section 15,

"licensed waste site": see section 38(1)(a),

"licensee" means a person who holds a licence,

"map": see section 43(2)(b),

"nuisance" has the meaning given by section 1(4) of the Loi relative à la Santé Publique¹,

¹ Ordres en Conseil Vol. IX, p. 386 and Order in Council No. V of 1999.

"operation" means any process or activity, whether or not carried on by way of business, and includes wholly passive storage or possession of a substance or article,

"Ordinary Court" means the Royal Court sitting as an Ordinary Court,

"owner" in relation to premises, includes a usufructier,

"Panel" means the panel drawn up and maintained by the States under section 24(1),

"pollutant": see section 2(3) and section 40(1)(c),

"pollution": see section 2(3),

"premises" include buildings, structures and land in the open air,

"prescribed operation": see section 13(1),

"public waste disposal site": see section 31,

"register" means any document or collection of documents required by this Law to be retained and available for inspection at the Director's offices or any other specified place,

"Royal Court" means the Royal Court of Guernsey sitting as an Ordinary Court,

"sea" includes any area submerged at mean high water springs and

also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river,

"**sewer**" has the same meaning as in the Sewerage (Guernsey) Law, 1974^m,

"**smoke**" includes soot, ash, grit and gritty particles emitted in smoke,

"**specially controlled waste**": see section 37(1),

"**States**" means the States of Deliberation of the Island of Guernsey,

"**States' Direction**" means a direction given by the States under section 5(1)(b),

"**States' Guidance**" means guidance given by the States under section 5(1)(a),

"**Strategic and Corporate Plan**" means the plan currently approved by the States under section 2 of the Island Development (Amendment) (Guernsey) Law, 1990ⁿ,

"**structure**": see section 2(5)(d),

"**substance**": see section 2(5)(d),

^m Ordres en Conseil Vol. XXIV, p. 372.

ⁿ Ordres en Conseil Vol. XXXII, p. 33.

"Tribunal" means the tribunal appointed from the membership of the Panel under section 24(5),

"waste" includes –

- (a) scrap material, effluent or other unwanted surplus arising from any process, and
- (b) anything which requires to be disposed of as being broken, worn out, contaminated, spoiled or redundant,

"Waste Disposal Authority" means the Committee of the States designated as such by an Ordinance made under section 29,

"Waste Disposal Plan": see section 31(3), and

"[Public Services Department]" means the States of Guernsey [Public Services Department].

(6) If a meaning is assigned by this Law to a word or expression, then unless the context otherwise requires –

- (a) in any Ordinance, instrument or document made under or for the purposes of this Law that word or expression has the same meaning as in this Law, and
- (b) in this Law and in any such instrument or document, related expressions and parts of speech have corresponding meanings.

- (7) Unless the content otherwise requires –
- (a) a reference in this Law to a numbered or lettered provision is a reference to the provision which is so numbered or lettered in this Law,
 - (b) a reference in a provision of this Law to a numbered or lettered subdivision is a reference to the subdivision of that provision which is so numbered or lettered.

(8) Unless the context otherwise requires, a reference in this Law to an enactment includes a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

NOTES

In section 73,

the words in square brackets in the definition of the expression "Health and Social Services Department" in subsection (5) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004;

the words in square brackets in the definition of the expression "Committee" in subsection (5) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004;

the words in square brackets were in the definition of the expression "Public Services Department" in subsection (5) substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 31, with effect from 6th May, 2004.

The functions, rights and liabilities of the Board of Health and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Health and Social Services Department and its Minister by the Machinery of Government (Transfer of Functions)

(Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

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

The functions, rights and liabilities of the Water Board and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Public Services Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 31, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

Amendments and Repeals.

74. (1) The enactments listed in Schedule 1 to this Law are amended as set out in that Schedule.

(2) If in the opinion of the States any provision of or made under an enactment listed in Schedule 2 to this Law –

(a) has been superseded by a provision of this Law, or

(b) ought to be amended in order to enable the purposes and objectives of this Law to be achieved or more conveniently or efficiently achieved,

the States may by Ordinance repeal or amend the former provision.

(3) For the avoidance of doubt, the repeal or amendment of a

provision applying in Alderney or Sark pursuant to subsection (2) has effect only as respects Guernsey, and the provision thereby repealed or amended shall continue to apply in Alderney or Sark (including, where appropriate, the territorial waters adjacent thereto) notwithstanding its repeal or amendment as respects Guernsey.

(4) An Ordinance repealing or amending an enactment pursuant to subsection (2) may make consequential amendments to other enactments insofar as those enactments amend or refer to the enactment thereby repealed or amended.

Citation.

75. This Law may be cited as the Environmental Pollution (Guernsey) Law, 2004.

Commencement.

76. This Law shall come into force on such day as the States may by Ordinance appoint on that behalf, and different days may be so appointed for different provisions of this Law or for different purposes.

NOTES

The Law, save for Parts VI, VII and VIII thereof, was brought into force on 26th July, 2006 by the Environmental Pollution (Guernsey) Law, 2004 (Commencement and Designation of Waste Disposal Authority) Ordinance, 2006, section 1.

As of 1st August, 2010, Parts VI, VII and VIII of the Law are not yet in force.

SCHEDULE 1
AMENDMENTS

Section 74(1)

Parochial Collection of Refuse (Guernsey) Law, 2001.

1. (1) In section 1(1) of the Parochial Collection of Refuse (Guernsey) Law, 2001 for "the regular collection and disposal of refuse from dwelling houses and tenement houses in the Parish" there is substituted "the regular collection of refuse from dwelling houses and tenement houses in the Parish and the efficient transfer of that refuse for disposal at a public waste disposal site, the whole in accordance with any licence for the time being required by or under the Environmental Pollution (Guernsey) Law, 2004".

(2) In section 6(1) immediately after the definition of "**owner**" insert –

" **"public waste disposal site"** has the meaning given by section 31 of the Environmental Pollution (Guernsey) Law, 2004,".

SCHEDULE 2

Section 74(2)

PRIMARY LEGISLATION WHOSE PROVISIONS MAY BE REPEALED OR
AMENDED BY ORDINANCE

The Loi relative à la Santé Publique, 1934

The Public Health (Vermin) (Guernsey) Law, 1948^o

The Public Health (Vessels and Aircraft) (Guernsey) Law, 1950^p

The Public Health and Related Offences (Increase in Fines) (Guernsey) Law, 1986^q

The Prevention of Pollution (Guernsey) Law, 1989^r

The Public Health (Amendment) (Guernsey) Law, 1999^s

The Parochial Collection of Refuse (Guernsey) Law, 2001.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 3(a), with effect from 6th May, 2004.

² The functions, rights and liabilities of the Home Department and its Minister under this section were previously transferred to it from the States Board of Administration and of its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 3(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

^o Ordres en Conseil Vol. XIII, p. 367; Vol. XXII, p. 318.

^p Ordres en Conseil Vol. XIV, p. 402.

^q Ordres en Conseil Vol. XXIX, p. 329.

^r Ordres en Conseil Vol. XXXI, p. 500.

^s Order in Council No. V of 1999.