

PROJET DE LOI

ENTITLED

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

[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. XI of 2001; as amended by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007 (No. ** of 2009); the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001 (No. XXXVII of 2001); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007 (No. III of 2007). See also the Post Office (Bailiwick of Guernsey) Law, 2001 (No. XV of 2001); the Telecommunications (Bailiwick of Guernsey) Law, 2001 (No. XIV of 2001).

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Law, 2001

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SCHEDULE Office of the Director General of Utility Regulation.

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

THE STATES, in pursuance of their Resolution of the 26th January, 2000^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

OFFICE OF THE DIRECTOR GENERAL

Establishment of the Office of the Director General.

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

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

(3) The Office of the Director General is not a committee, servant or agent of the States and, except to the extent provided otherwise in this

^a Article I of Billet d'État No. II of 2000.

Law or any other enactment –

- (a) is not subject to any rule of law relating to committees of the States, and
- (b) does not have any of the rights or privileges vested in committees of the States.

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

(5) The Director General may resign his office at any time by notice in writing addressed to the [Commerce and Employment Department].

(6) The States may remove any person from the office of Director General on the grounds of permanent incapacity, misbehaviour or gross incompetence, in each case on the recommendation of the [Commerce and Employment Department].

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

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

NOTES

In section 1, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

The following case has referred to this Law:

Cable and Wireless Guernsey Limited v. Office of Utility Regulation (Director General), Guernsey Airtel Limited and Wave Telecom Limited [2007-08] GLR N-7.

PART II

GENERAL DUTIES OF THE STATES AND THE DIRECTOR GENERAL

General duties.

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

- (a) to protect the interests of consumers and other users in the Bailiwick in respect of the prices charged for, and the quality, service levels, permanence and variety of, utility services,
- (b) to secure, so far as practicable, the provision of utility services that satisfy all reasonable demands for such services within the Bailiwick, whether those services are supplied from, within or to the Bailiwick,
- (c) to ensure that utility activities are carried out in such a way as best to serve and contribute to the economic and social development and well-being of the

Bailiwick,

- (d) to introduce, maintain and promote effective and sustainable competition in the provision of utility services in the Bailiwick, subject to any special or exclusive rights awarded to a licensee by the Director General pursuant to States' Directions,
- (e) to improve the quality and coverage of utility services and to facilitate the availability of new utility services within the Bailiwick, and
- (f) to lessen, where practicable, any adverse impact of utility activities on the environment,

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

States Directions.

3. (1) The States may, on the recommendation of the [Commerce and Employment Department] made after consultation with the Director General, by Resolution give to the Director General directions (referred to in this Law as "**States' Directions**") specifying –

- (a) the identity of the person to whom the first licence containing a universal service obligation is to be awarded under a Sector Law,
- (b) any special or exclusive rights to be awarded to any

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licensee, and the term of such rights, which in the case of telecommunications networks or telecommunications services shall not exceed a period of 5 years,

- (c) the scope of any universal service obligation, and
- (d) any requirements to be imposed on licensees in the light of any international obligations to which the Bailiwick may from time to time be subject,

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

[(1A) The States may, on the recommendation of the Commerce and Employment Department made after consultation with the Director General, and without prejudice to the provisions of subsection (1), by Ordinance give the Director General directions of a strategic or general nature including, without limitation, directions concerning the priorities to be taken into account by him in the exercise of his functions and powers in respect of any utility service.

(1B) References in this Law, however expressed, to States' Directions include references to directions under subsection (1A).]

(2) The [Commerce and Employment Department] shall consult the Policy and Finance Committee of the States of Alderney and the [General Purposes and Finance Committee] of the Chief Pleas of Sark in relation to any recommendation as to States' Directions [...].

NOTES

In section 3,

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) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004;

subsection (1A) and subsection (1B) were inserted, and the words omitted in the third pair of square brackets in subsection (2) were repealed, by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 2 and section 3, with effect from 9th November, 2009;

the words in the second pair of square brackets in subsection (2) were substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001.

The functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its President arising under this Law were transferred to and vested in, respectively, the Sark General Purposes and Finance Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from 31st October, 2001, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

PART III

FUNCTIONS AND POWERS OF THE DIRECTOR GENERAL

Functions of the Director General.

4. (1) The functions of the Director General shall be –
 - (a) to advise the States generally in relation to utility activities through the office of the [Commerce and Employment Department],
 - (b) to grant and renew, or to refuse to grant and renew,

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licences in a manner consistent with States' Directions and the provisions of this Law and any relevant Sector Law,

- (c) to monitor, enforce, modify, suspend, revoke or consent to the surrender of licences in a manner consistent with States' Directions and the provisions of this Law and any relevant Sector Law,
- (d) subject to subsection (3), to determine and to prescribe the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and the interest and penalties payable in the event of default in the due payment of fees or levies,
- (e) to receive and to conduct inquiries and investigations (which may include inspections of any part of a utility network) and to hear complaints by any person regarding utility activities, and
- (f) to exercise such other functions as may be assigned or transferred to him by or under any Sector Law and any other enactment.

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

- (a) timely, transparent, objective and, subject to the exception set out in section 3(1), consistent with States' Directions and the provisions of this Law and

any relevant Sector Law,

- (b) proportionate to the Bailiwick's circumstances, and
- (c) accountable, consistent and targeted only at cases in respect of which action on his part is necessary.]

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

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

(5) The Director General may refrain, in whole or in part, and conditionally or unconditionally, from the exercise of his functions and powers where to do so would in his opinion be consistent with the duty imposed on him by section 2.

NOTES

In section 4,

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

subsection (2) was substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 4, with effect from 9th November, 2009.

Powers of the Director General.

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

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

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a licence,

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

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

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

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

Power to obtain injunctions.

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

- (a) there is a reasonable likelihood that a person will contravene –
 - (i) a provision of a Sector Law which prohibits, except under the authority of a licence, any utility activity,
 - (ii) a condition of a licence, or
 - (iii) a direction or requirement of the Director General under a Sector Law, or
- (b) a person may have been guilty of such a contravention and there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention.

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

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

- (4) In this section "**the Court**" means –
- (a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal of Sark, the Court of Alderney or, as the case may be, the Court of the Seneschal of Sark,
 - (b) in any other case, the Royal Court.

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

Confidentiality.

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

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

^b Ordres en Conseil Vol. XXX, p. 145.

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

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

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

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

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

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

Annual reports.

8. (1) The Director General shall, as soon as practicable in each calendar year, submit to the [Commerce and Employment Department] –

- (a) a report on –
 - (i) the exercise of his functions and powers, and
 - (ii) the steps taken by him to uphold the duty imposed on him by section 2,in the preceding year, and
- (b) the audited accounts of the Office of the Director General.

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

- (3) The [Commerce and Employment Department] –
- (a) shall submit the Director General's report made under subsection (1)(a) to the States, and
 - (b) may at the same time submit their own report to the States covering –
 - (i) the period of the Director General's report, and
 - (ii) the matters described in paragraphs (i) and (ii) of subsection (1)(a).

NOTE

In section 8, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

PART IV
FINANCIAL PROVISIONS

The Public Utilities Regulation Fund.

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

- (a) paying remuneration to the Director General and his officers and servants, and

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- (b) meeting all other costs and expenditure properly incurred in exercising his functions and powers.

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

(3) There shall be paid into the Fund –

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

Grants and loans to the Director General.

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

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

NOTE

In section 10, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

Investment of surplus funds.

11. The Director General may invest any monies of the Fund which are not immediately required by him in any investment approved for the purpose by the [Commerce and Employment Department] in writing.

NOTE

In section 11, the words in square brackets were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

Exemption from income tax.

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

Accounts and audit.

13. (1) The Director General shall –

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

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

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

- [(a) shall be audited annually by auditors appointed by the States on the recommendation of the Public Accounts Committee, and]
- (b) shall be submitted to the [Commerce and Employment Department] which shall in turn submit them, together with the auditors' report thereon, to the States with the Director General's report made under section 8(1)(a).

NOTES

In section 13,

paragraph (a) of subsection (2) was substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5, with effect from 9th November, 2009;

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 5, with effect from 6th May, 2004.

[Audit and Remuneration Committee.

13A. (1) The Director General shall establish a committee to be called the Audit and Remuneration Committee for the Office of the Director General ("**the Audit Committee**").

(2) Subject to subsections (3) and (4), the Director General shall determine the constitution of the Audit Committee and such rules of procedure for it as he considers necessary or expedient; and the constitution and rules may, without limitation, make provision in respect of –

- (a) the number of members of the Audit Committee,
- (b) the terms of office and voting rights of members,
- (c) the appointment of the chairman and his alternate,
- (d) the quorum and other matters of procedure at meetings, and
- (e) the resignation and termination of office of members, and casual vacancies in office.

(3) One member of the Audit Committee, who may be a member of the States of Deliberation, shall be appointed by, and may only be removed by, the Commerce and Employment Department.

(4) The other members of the Audit Committee, who may not be members of the States of Deliberation –

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- (a) shall be appointed by the Commerce and Employment Department on the recommendation of the Director General, and
 - (b) may only be removed by the Commerce and Employment Department, with or without any such recommendation.
- (5) The functions and powers of the Audit Committee are –
- (a) to oversee the internal controls in place in the Office of Director General,
 - (b) to review the remuneration of the officers and servants of the Office of Director General (other than the Director General himself) and to seek the advice of the Public Sector Remuneration Committee on such remuneration,
 - (c) to bring any matter of concern to the attention of any interested party (including, without limitation, the Commerce and Employment Department and Public Accounts Committee), and
 - (d) to exercise such other functions and powers as may be assigned by the Director General.]

NOTE

Section 13A was inserted by the Regulation of Utilities (Bailiwick of

Guernsey) (Amendment) Law, 2007, section 6, with effect from 9th November, 2009.

[Access to records, etc, of Office of Director General.]

13B. (1) The Director General shall, if given reasonable notice, and at all reasonable times during ordinary business hours, give any permitted person access to –

- (a) the premises,
- (b) the records, accounts and other documents, and
- (c) the officers and servants,

of the Office of the Director General.

(2) Permitted persons are members, officers, servants and other representatives of the Public Accounts Committee or the States Internal Audit service.

(3) Access under subsection (1) –

- (a) is subject to such reasonable restrictions as the Director General may impose, and
- (b) is to be given only to the extent necessary to enable the Public Accounts Committee or (as the case may be) the States Internal Audit service to exercise their respective functions, powers and mandates –

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- (i) under or in relation to this Law or any Sector Law, or
 - (ii) in relation to the Office of the Director General.
- (4) The duty to give access under subsection (1) includes –
- (a) in the case of premises, a duty to permit entry and inspection,
 - (b) in the case of documents, a duty –
 - (i) to produce them and to permit their inspection, copying and removal, and
 - (ii) to give an explanation of them or, if documents are missing, of their whereabouts,
 - (c) in the case of officers and servants, a duty –
 - (i) to allow a permitted person to ask them questions,
 - (ii) to require them to answer such questions, and
 - (iii) to require them to accord a permitted person all reasonable assistance and facilities for the purposes of his visit.]

NOTE

Section 13B was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 6, with effect from 9th November, 2009.

PART V
APPEALS

Establishment of the Utility Appeals Panel and Tribunal.

14. (1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

(8) ...

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

NOTE

In section 14, subsections (1) to (8) were repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 2, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance.

Right of appeal.

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

(2) The decisions of the Director General against which an appeal shall lie under this section are, subject to the provisions of any Sector Law, decisions of the following descriptions –

- (a) to refuse to grant a licence,
- (b) to impose a licence condition,
- (c) that a licensee has a dominant position in a relevant market,
- (d) to amend or modify a licence,
- (e) to revoke a licence, or
- (f) to impose a direction, requirement or other sanction under this Law or any Sector Law.

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- (3) The grounds of an appeal under this section shall be –
 - (a) that an error of law has been made,
 - (b) that a material error as to the facts has been made,
 - (c) that there was a material procedural error, or
 - (d) that there was some other material irregularity, including unreasonableness or lack of proportionality.

- (4) An appeal under this section shall be instituted –
 - (a) within a period of [28 days] immediately following the date of the Director General's decision,
 - (b) by summons served on the Director General stating the grounds and material facts on which the appellant relies.

- (5) On an appeal under this section, [the Royal Court] may –
 - (a) dismiss the appeal, or
 - (b) quash the decision of the Director General,

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

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

(7) The Director General may, where an appeal under this section is not determined by [the Royal Court] within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to [the Royal Court], 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 Royal Court] may –

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

[(7A) For the purposes of determining an appeal under this section, the Royal Court –

- (a) may appoint one or more assessors to assist it, and
- (b) is properly constituted by the Bailiff sitting unaccompanied by the Jurats.]

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

NOTES

In section 15,

the words in square brackets in, first, subsection (1), second, paragraph (a) of subsection (4) and, third, subsection (5), subsection (6) and subsection (7) were substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, respectively section 3, section 4 and section 5, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

subsection (7A) was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 6, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance.

[Appeals from Royal Court to Court of Appeal.]

16. (1) A person aggrieved by a decision of the Royal Court on an appeal under section 15 may, with leave of the Royal Court or Court of Appeal, appeal to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961^{da} ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.]

NOTE

Section 16 was substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 7, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance.

^{da} Ordres en Conseil Vol. XVIII, p. 315.

Reference of points of law to Royal Court.

17. ...

NOTE

Section 17 was repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 8, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance.

PART VI
OFFENCES

False or misleading information.

18. (1) A person who –

(a) in making any statement or providing any information or document to the Public Accounts Committee, the Audit Committee or the States Internal Audit service, or any member, officer, servant or other representative of theirs, when acting in the exercise of their respective functions and powers –

(i) under or in relation to this Law or any Sector Law, or

(ii) in relation to the Office of the Director General,]

(b) in making any statement or providing any information or document to the Director General or any officer or

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servant of his when acting in the exercise of his functions and powers, or

- (c) otherwise than as mentioned in paragraphs (a) and (b) but in circumstances in which the person making the statement or providing the information or document knows or could reasonably be expected to know that the statement, information or document would or might be used by the Director General [or by any person or body mentioned in paragraph (a) for the purpose of exercising their respective functions and powers] –
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (iii) provides or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
 - (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished,

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dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

shall be guilty of an offence.

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

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

shall be guilty of an offence.

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

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

NOTES

In section 18,

paragraph (a) of subsection (1) (which was originally repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 9, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance) was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7, with effect from 9th November, 2009;

the words in square brackets in paragraph (c) of subsection (1) were substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 9th November, 2009.

Criminal liabilities of directors, etc.

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

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Defence of due diligence.

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

PART VII
MISCELLANEOUS

Power of States to exclude liability.

21. The States may by Ordinance provide that no liability shall be incurred by –

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

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

NOTE

The following Ordinance has been made under section 21:

Regulation of Utilities (Exclusion of Liability) Ordinance, 2001.

Interpretation.

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

"Audit Committee" means the Audit and Remuneration Committee for the Office of the Director General established under section 13A,]

"Bailiff" means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,]

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

"[Commerce and Employment Department]" means States of Guernsey [Commerce and Employment Department],

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

"consult" and **"consultation"** shall, in sections 3(2) [...] and 23(3), be construed in accordance with subsection (6),

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

"Director General" means the holder of the Office of the Director General of Utility Regulation,

"documents" means information recorded in any form (including,

without limitation, in an electronic form) and, in relation to information recorded otherwise in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form,

"dominant position", in relation to a relevant market, shall be construed as it would be in the United Kingdom under the Competition Act 1998^e, but with the substitution, where appropriate, of references to the Bailiwick for references to the United Kingdom,

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

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

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

"licensee" means a person who holds a licence,

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

"Royal Court" means the Royal Court sitting as an Ordinary Court[, constituted (for the purposes of an appeal under section 15) in accordance with section 15(7A)],

^e An Act of Parliament (1998 c. 41).

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

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

"States" means the States of Guernsey,

["States' Directions" means –

- (a) directions given to the Director General by Resolution of the States under section 3(1), and
- (b) directions given to the Director General by Ordinance of the States under section 3(1A),]

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

"universal service obligation" means the obligation of a licensee to provide a universal service,

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

[...]

[...]

"utility network" means a network (as defined in any Sector Law) used in the provision of utility services, and

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

(2) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of this Law throughout the Bailiwick.

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

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

(5) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine

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

gender shall include the feminine and the neuter.

(6) Any requirement, howsoever expressed, imposed by sections 3(2) [...] and 23(3) on the States [Commerce and Employment Department] (and any other committee of the States) to consult the [General Purposes and Finance Committee] of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

NOTES

In section 22,

the definition of the expression "Audit Committee" in subsection (1) was inserted, and the definition therein of the expression "States' Directions" was substituted, by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 9(a) and section 9(b), with effect from 9th November, 2009;

the definition of the expression "Bailiff" in subsection (1) was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 10(a), with effect from 28th March, 2007;

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

the words omitted in square brackets in the definition of the expression "consult" in subsection (1) were repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 10(b), with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

the words in square brackets in the definition of the expression "Royal Court" in subsection (1) were inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 10(c), with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

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the words omitted in square brackets, first, immediately after the definition of the expression "utility activity" in subsection (1) and, second, immediately before the definition therein of the expression "utility network" were repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 10(d), with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

the words in square brackets in subsection (4) and in the third pair of square brackets in subsection (6) were substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001;

the words omitted in square brackets in the first pair of square brackets in subsection (6) were repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 11, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

the words in the second pair of square brackets in subsection (6) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

The functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its President arising under this Law were transferred to and vested in, respectively, the Sark General Purposes and Finance Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from 31st October, 2001, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

The functions, rights and liabilities of the Board of Industry 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 5, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

[Power to amend Law by Ordinance.

- 22A.** (1) The States may by Ordinance amend this Law.
- (2) The provisions of subsection (1) are without prejudice to any

other provision of this Law conferring power to enact Ordinances (and vice versa).

(3) An Ordinance under subsection (1) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.]

NOTE

Section 22A was inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 10, with effect from 9th November, 2009.

General provisions as to subordinate legislation.

- 23.** (1) Any Ordinance or rule under this Law –
- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
 - (c) may, in the case of an Ordinance, and without limitation, contain provision –
 - (i) as to the creation, trial and punishment of offences,
 - (ii) amending any provision of this Law,

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(iii) ...

(2) Any power conferred by this Law to make any Ordinance or rule may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

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

(3) The [Commerce and Employment Department] (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under section 14(9) or 15(8) [or 22A], consult the [General Purposes and Finance Committee] of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed

Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under those sections.

NOTES

In section 23,

sub-paragraph (iii) of paragraph (c) of subsection (1) was repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 12, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

the words in the first pair of square brackets in subsection (3) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004;

the word, figures and letter in the second pair of square brackets in subsection (3) were inserted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 11, with effect from 9th November, 2009;

the words in the third pair of square brackets in subsection (3) were substituted by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 3, with effect from 31st October, 2001.

The functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its President arising under this Law were transferred to and vested in, respectively, the Sark General Purposes and Finance Committee and its President by the Sark General Purposes and Advisory Committee (Transfer of Functions) (Guernsey) Ordinance, 2001, section 1, with effect from 31st October, 2001, subject to the savings and transitional provisions in section 2 of the 2001 Ordinance.

In accordance with the provisions of:

- (i) the Post Office (Bailiwick of Guernsey) Law, 2001, section 48(3); and*
- (ii) the Telecommunications (Bailiwick of Guernsey) Law, 2001, section 34(3),*

the provisions of this section shall apply to Ordinances under, respectively, section 48(1) and section 34(1) of those Law as they apply to an Ordinance

under this Law.

Service of documents.

24. (1) Any document other than a summons to be given or served under or for the purposes of this Law or any Sector Law may be given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the Bailiwick,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,

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- (e) on the Director General, by being left at, or sent by post or transmitted to, the principal offices of the Director General in Guernsey,
- (f) ...

and in this section –

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

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

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published in La Gazette Officielle on two occasions falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

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

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

(6) If a person upon whom a document is to be served under this Law is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court (or the Court of Alderney or the Court of the Seneschal of Sark, if appropriate) for the appointment of a person to act as guardian for the purposes of this Law or any Sector Law.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law and any Sector Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of

the Bills of Exchange (Guernsey) Law, 1958, as amended^g.

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

NOTES

In section 24,

paragraph (f) of subsection (1) was repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 13, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance;

the words omitted in square brackets in subsection (5) were repealed by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 13, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance.

Citation and commencement.

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

NOTE

The Law was brought into force on 1st October, 2001 by the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (Commencement) Ordinance, 2001, section 1.

^g Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

SCHEDULE

OFFICE OF THE DIRECTOR GENERAL OF UTILITY REGULATION

Salary of Director General.

1. The Director General shall be paid such salary, emoluments and other allowances from the Fund as the [Commerce and Employment Department] may determine.

Appointment of staff.

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

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

Delegation of functions and powers.

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

- (a) this power of delegation,
- (b) his obligation under section 8(1) to submit an annual report to the [Commerce and Employment

Department],

- (c) any function or power which (however framed or worded) –
 - (i) requires him to consider representations concerning a decision which he proposes to make,
 - (ii) empowers him to make a decision of a description set out in section 15(2).

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

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

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

[Appointment of Deputy Director General.]

4. Without prejudice to paragraph 3, the Director General may appoint any of his officers or servants as Deputy Director General with full authority to exercise his functions and powers –

- (a) during any period in which he is temporarily unavailable, or
- (b) in the event of his office falling vacant, during the period of the vacancy, but only pending the appointment of a new Director General,

and the provisions of paragraphs 3(2) and 3(3) apply in relation to an appointment under this paragraph as they apply to an arrangement under paragraph 3(1).]

Disclosure of interests.

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

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

Official seal.

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

- (2) Any document –
 - (a) sealed with the official seal of the Director General,
and
 - (b) signed by the Director General or by any of his
officers or servants to whom, pursuant to paragraph 3,
he has delegated authority to affix his official seal,

shall be deemed to have been duly executed by or on behalf of the Director General and shall be effective in law to bind him.

Proof of documents.

7. In any legal proceedings (including, without limitation, proceedings before [the Royal Court]) any document purporting to be issued by or on behalf of the Director General or to be signed by the Director General or any of his officers or servants –

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

- (c) shall be evidence of the matters stated therein.

NOTES

In the Schedule,

the words in square brackets in paragraph 1, paragraph 2, paragraph 3 and paragraph 5 were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004;

paragraph 4 was substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Law, 2007, section 12, with effect from 9th November, 2009;

the words in square brackets in paragraph 7 were substituted by the Regulation of Utilities (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 15, with effect from 28th March, 2007, subject to the savings in section 17 of the 2007 Ordinance.
