

CONTROL OF ELECTRICITY PRICES (SARK) LAW, 2016 (*Consultation draft 2016*)

EXPLANATORY MEMORANDUM

Introductory

The version of the above draft Law (headed "Consultation draft 2016") is a revised version of an earlier draft relating to the same topic which was considered by the Chief Pleas and circulated for comment last year. This revised draft takes into account a number of comments and observations made upon that earlier draft by various bodies and individuals both within and outside Sark. In particular it has been reviewed by BW Energy, the technical specialists engaged further to the extraordinary meeting of the Chief Pleas held on 17th May, 2016, and is consistent with their observations.

Significant revisions to previous draft Law

The most significant differences from the draft Law circulated last year are as follows –

1. The powers of the holder of the office of Sark Electricity Price Control Commissioner to investigate and determine whether electricity prices are fair and reasonable are exercisable at the discretion of the Commissioner alone. The requirement that they should be exercised only when requested by the Policy and Performance Committee ("PPC") has been removed.
2. An additional criminal offence is created where a person knowingly or recklessly provides false information to the Commissioner. This is an offence provision found in comparable Bailiwick legislation (e.g. financial services regulatory legislation).
3. There is a wider range of matters that the Commissioner must take into account when determining whether or not electricity prices are fair and reasonable.
4. The Commissioner is given the power to make price control orders which will limit the prices which may be charged for electricity where it has been determined by the Commissioner that prices being charged are not fair and reasonable.

Draft Law

Part I

Sark Electricity Price Control Commissioner

This Part establishes the office of Sark Electricity Price Control Commissioner ("the Commissioner") and confers on the Commissioner certain functions. In particular, the functions of the office are to –

- (a) investigate the price which is charged by a regulated electricity supplier for the supply of electricity,
- (b) determine whether the price which is charged by a regulated electricity supplier for the supply of electricity is, or is not, fair and reasonable,

and

- (c) carry out such other functions as may be conferred on the office by the Law, any other enactment or by an Ordinance of the Chief Pleas made under the Law.

Part II
Powers exercisable by Commissioner

Part II confers a number of powers on the Commissioner. Clause 4 enables the Commissioner to do anything that appears to the Commissioner to be conducive to the carrying out of the functions of the Office or to be incidental or expedient to their proper discharge. This is consistent with the provisions of other Bailiwick legislation relating to regulatory authorities, including the Guernsey Competition and Regulatory Authority.

Under clause 5, the Commissioner may by notice served on a regulated electricity supplier, require the supplier to provide the Commissioner with such information as the Commissioner may require for the purpose of an investigation. The power includes power to require the production of documents and to require attendance of a supplier at any place and at a time specified by the Commissioner in order to answer questions which are relevant to an investigation.

If the Commissioner has served a notice on someone to provide information and the person fails to comply with the notice, clause 6 enables the Commissioner to apply for a warrant from the Court of the Seneschal. If the Court grants the warrant the Constable, together with any other person named in the warrant, may enter premises to search for any documents containing the information requested and take possession of the documents or make copies of them. Under clause 7, a person who without reasonable excuse obstructs or fails to comply with a requirement of a person exercising a power conferred by a warrant is guilty of a criminal offence.

This Part also contains provisions (clause 9) which provide protection against production of communications that are subject to legal professional privilege.

There are also criminal offences created relating to falsification, concealing and destruction of relevant documents (clause 10) and providing false or misleading information (clause 11).

Part III
Determination of fair and reasonable price

Part III prescribes the procedure to be adopted by the Commissioner at the conclusion of an investigation to determine whether a price is fair and reasonable. In particular, the Commissioner is to take all material considerations into account, including a number of specific matters set out in clause 13(2) (including the margin of profit obtained by a regulated electricity supplier and the entitlement of a supplier to receive a reasonable return on assets used to generate and supply electricity). Under clause 14, the Commissioner may consult with any person he thinks fit in relation to the determination. In addition, he must consult with the regulated electricity supplier and give the supplier an opportunity to make

representations before giving a written determination whether any price charged is, or is not, fair and reasonable.

Part IV Price control orders

Part IV is a new Part under which the Commissioner may make price control orders where the Commissioner has determined that the price which is charged by an electricity supplier for the supply of electricity is not fair and reasonable. A price control order regulates the maximum price, charge or fee for any supply of electricity, or for any other specified service, that may be charged, raised or demanded by a regulated electricity supplier to whom the order relates.

Before making or varying a price control order the Commissioner must again take into account all material considerations including those referred to in clause 13(2). There is also an obligation placed on the Commissioner to consult the regulated electricity supplier.

Further to clause 17, a price control order has effect when served on the regulated supplier to whom it relates and a copy must be delivered to the Speaker (when appointment to that office is made, currently intended to be at the end of February 2017) of the Chief Pleas. Once served with a price control order a regulated supplier may not charge or seek to recover any payment in excess of the maximum price or maximum unit price specified in the order. To the extent that the supplier does charge an amount in excess of the maximum, that excess shall be irrecoverable as a civil debt (clause 18(2)).

Clause 19 requires a price control order and any variation of a price control order to be laid before the meeting of the Chief Pleas immediately following receipt by the Speaker of a copy of an order or any variation of an order. However, where the meeting fails to be held within 14 days of receipt by the Speaker of the copy order or variation, it must be laid at the next following meeting of the Chief Pleas. Once laid, the Chief Pleas may resolve to annul the order in which case it shall cease to have effect, but without prejudice to anything done under the order.

Part V Appeals

Part V provides for appeals against various decisions of the Commissioner including the decision to make a price control order. The grounds of an appeal are set out in clause 20(2) and are standard grounds that have been used in Bailiwick legislation for several years. They are broad grounds designed to ensure compliance with the rights and fundamental freedoms under the European Convention on Human Rights as incorporated into Bailiwick law under the Human Rights (Bailiwick of Guernsey) Law, 2000. An appeal can be made on any of the grounds to the Court of the Seneschal.

In accordance with section 19 of the Reform (Sark) Law, 2008 there is an automatic right of appeal from a decision of the Court of the Seneschal to the Royal Court. Clause 21 of the draft Law provides for an appeal from a decision of the Royal Court to the Court of Appeal on a question of law.

Part VI
Miscellaneous

Part VI consists of general provisions relating to offences committed by legal persons (such as companies – clause 22) and unincorporated bodies (such as partnerships – clause 23); a defence of due diligence available to persons charged under the Law (clause 24); service of documents (clause 25); exclusion of liability, including for the Chief Pleas, committees of Chief Pleas and the Commissioner (clause 26); general provisions for Ordinances made under the draft Law (clause 27) and interpretation (clause 28).

Schedule

The provisions of the Schedule set out administrative arrangements relating to the Commissioner.

Paragraph 1 empowers the Chief Pleas, on the nomination of the PPC to appoint the Commissioner. Paragraph 2 enables PPC to agree the terms and conditions of the appointment. Paragraph 3 prescribes the term of office of the Commissioner as being such term not exceeding 5 years as PPC may agree with the Commissioner. Paragraphs 4 and 5 address matters of the Commissioner's staff and resources and enable the Commissioner to delegate the functions of the office. The remaining paragraphs of the Schedule deal with confidentiality, the Commissioner's oath of office (to be made before the Court of the Seneschal) and the use of a seal for executing documents.

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