

# PROJET DE LOI

ENTITLED

## **The Control of Electricity Prices (Sark) Law, 2016**

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## **The Control of Electricity Prices (Sark) Law, 2016**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the **\*\*** **2016**, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

### PART I

#### SARK ELECTRICITY PRICE CONTROL COMMISSIONER

##### **Establishment of office of the Commissioner.**

1. (1) There is established an office to be known as the office of the Sark Electricity Price Control Commissioner (referred to in this Law as "**the Office of the Commissioner**").

(2) The Office of the Commissioner is a body corporate with perpetual succession.

(3) The holder of the Office of the Commissioner shall discharge the functions of that office and is referred to in this Law as "**the Commissioner**".

(4) The Schedule has effect in relation to the Commissioner.

##### **Independence of office of the Commissioner.**

2. (1) The Office of the Commissioner is independent of the Chief

Pleas and of any committee, and accordingly -

- (a) the Office is not a committee of the Chief Pleas, and
- (b) the Commissioner and the Commissioner's servants and agents are not servants or agents of the Chief Pleas, or any committee.

(2) Except to the extent provided otherwise under this Law or any other enactment, the Office of the Commissioner -

- (a) is not subject to any rule of law relating to, and
- (b) does not have any right or privilege vested in, or enjoyed by,

a committee.

**Functions.**

3. (1) The functions of the Office of the Commissioner are -

- (a) to investigate the price which is charged by a regulated electricity supplier for the supply of electricity,
- (b) to 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) to carry out such other functions as may be conferred on the Office –

- (i) by this Law,
- (ii) by any other enactment, or
- (iii) by an Ordinance of the Chief Pleas made under this paragraph.

(2) Without prejudice to the generality of subsections (1) and (2), the Commissioner may in the name of the Office of the Commissioner -

- (a) sue and be sued,
- (b) enter into contracts, and
- (c) acquire, hold and dispose of property.

(3) The Commissioner shall carry out the functions of the Office of the Commissioner under this Law independently and in a fair and reasonable manner.

## PART II

### POWERS EXERCISEABLE BY COMMISSIONER

#### **General powers of the Commissioner.**

4. (1) The Commissioner may do anything which appears to the Commissioner to be conducive to the carrying out of the functions of the Office of the Commissioner or to be incidental or expedient to their proper discharge.

(2) Without prejudice to the generality of subsection (1) the

Commissioner may, in connection with the carrying out of the functions of the Office of the Commissioner -

- (a) obtain information relating to the price which is charged by any electricity supplier for the supply of electricity in the Bailiwick and outside the Bailiwick,
- (b) consult and seek the advice of such persons or bodies as the Commissioner considers appropriate, and
- (c) publish, in such manner as the Commissioner considers appropriate, such information relating to the functions of the Office of the Commissioner as the Commissioner thinks fit.

(3) This section relates only to the capacity of the Office of the Commissioner as a body corporate and does not authorise the disregard by the Commissioner of any enactment or rule of law.

**Power to require and obtain information and documents.**

5. (1) The Commissioner may, by notice in writing served on a regulated electricity supplier, require the supplier to provide the Commissioner, or any person authorised by the Commissioner, at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commissioner, or that person, may reasonably require for the purpose of an investigation or determination under this Law.

(2) The Commissioner may, by notice in writing served on a regulated electricity supplier require that supplier -

- (a) to produce to the Commissioner, or any person authorised by the Commissioner, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified, and
- (b) to furnish forthwith to the Commissioner, or any person authorised by the Commissioner, such information and documents as the Commissioner may specify,

being documents or information reasonably required for the purpose of investigating or determining the price which is charged by a regulated electricity supplier under this Law.

(3) Where under subsection (2) the Commissioner, or any person authorised by the Commissioner, has power to require the production of any documents, the Commissioner or that person, shall have the like power to require the production of those documents from any person who appears to be in possession or control of them or able to obtain access to them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) A regulated electricity supplier or other person on whom a notice is served under subsection (1), (2) or (3) must -

- (a) attend at such place and time as may be specified in the notice and answer such questions as the Commissioner, or any person authorised by the Commissioner, may reasonably put to them for the purposes of the investigation or determination, and

- (b) otherwise give the Commissioner, or any person authorised by the Commissioner, all assistance in connection with the investigation or determination which they are reasonably able to give.

(5) The power conferred by this section to require a person to produce any documents includes power -

- (a) if the documents are produced, to take copies of them or extracts from them and to require -

- (i) that person, or

- (ii) any other person who is or has been a director, controller, partner, manager or employee of -

- (A) the regulated electricity supplier concerned, or

- (B) any associated company of the regulated electricity supplier concerned,

to provide an explanation of them, and

- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(6) A person who without reasonable excuse fails to comply with

a requirement imposed on them by or under this section is guilty of an offence and liable -

- (a) in the case of a first offence, to a fine not exceeding level 5 on the uniform scale of fines, or to imprisonment for a term not exceeding 3 months, or to both, and
- (b) in the case of a second or subsequent offence under the same provision, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

(7) A statement made by a person in response to a requirement imposed by or under this section -

- (a) may be used in evidence against them in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against them in criminal proceedings except -
  - (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 (6) or section 10 or 11,

(B) some other offence where, in giving evidence, they make 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.

(8) A notice under subsection (1), (2) or (3) shall give particulars of the right of appeal conferred by section 20.

(9) For the purposes of subsection (5), where the regulated electricity supplier concerned is a company, a company is an "**associated company**" of that supplier if -

(a) it is a subsidiary of the supplier,

(b) the supplier is a subsidiary of the company,

(c) any person who hold shares in the supplier also holds shares in the company, or

(d) there is, or has been, an agreement between the company and the supplier relating to the business of the supplier.

(10) The Chief Pleas may amend subsection (9) by an Ordinance made under this subsection

**Power of the Seneschal to grant warrant.**

6. (1) If the Seneschal is satisfied by information on oath –
- (a) that a notice has been served under section 5 on any person and that there are reasonable grounds for suspecting -
    - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
    - (ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 5, or
    - (iii) that any information or document furnished pursuant to any requirement mentioned in subparagraph (i) or (ii) is false, misleading, inaccurate or incomplete,
  - (b) that it is not reasonably practicable to serve a notice under section 5, or
  - (c) that there are reasonable grounds for suspecting that if such a notice were served -
    - (i) it would not be complied with,

- (ii) any documents to which it would relate would be concealed, falsified, tampered with or destroyed, or
- (iii) the service of the notice might seriously prejudice the performance by the Commissioner of the functions of the Office of the Commissioner,

the Seneschal may, subject to subsection (2), grant a warrant conferring the powers set out in section 7.

(2) The Seneschal shall not grant a warrant unless he is satisfied that there are reasonable grounds for suspecting -

- (a) in the case of a warrant authorising any person to enter and search any premises, that there are on those premises documents -

- (i) the production of which has been required, or
- (ii) the production of which could be required,

under section 5, or

- (b) in the case of a warrant authorising person A to require person B -

- (i) to answer any questions,

- (ii) to state the whereabouts of any documents, or
- (iii) to make an explanation of any documents,

that person B has some knowledge justifying the requirement in question.

**Powers conferred by warrant granted by the Seneschal.**

7. (1) A warrant granted under section 6 authorises the Constable, together with any other person named in, or of a class or description specified in, the warrant (including, without limitation, the Commissioner or any servant or agent of the Commissioner) -

- (a) to enter any premises specified in the warrant, being premises -
  - (i) which are occupied by the regulated electricity supplier or person upon whom the notice under section 5 was or could be served,
  - (ii) upon which the documents to which the notice under section 5 relates are reasonably believed to be or from which they are reasonably believed to be accessible, or
  - (iii) where no notice under section 5 has been served, upon which the documents to which the notice would relate are reasonably believed to be or from which they are reasonably believed to be accessible,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents -

(i) which were required by the notice under section 5, or

(ii) where no notice under section 5 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 5,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take and retain copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions which could have been put to him under section 5,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(2) A warrant granted under section 6 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(3) Any documents of which possession is taken under the powers conferred by a warrant granted under section 6 may be retained for -

(a) a period of three months, or

(b) such longer period as the Seneschal may, when issuing the warrant or at any time thereafter, direct.

(4) The provisions of section 18 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>a</sup> ("additional powers of seizure") apply to a person acting under the authority of a warrant granted under section 6 as they apply to a police officer.

(5) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 6 is guilty of an offence and liable -

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<sup>a</sup> Order in Council No. XXIII of 2003.

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

(6) A statement made by a person in response to a requirement imposed under a warrant granted under section 6 -

- (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 -
  - (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 (5) or section 10 or 11,
    - (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.

**Supplementary provisions as to production of documents.**

8. (1) To comply with a notice under section 5, copies of documents may, with the consent of the Commissioner and subject to the terms and conditions of that consent, be delivered instead of originals, but -

- (a) the copies must be in such form and verified in such manner as the Commissioner may specify, and
- (b) if so required by the Commissioner, the originals of the documents must be made available for inspection, removal and use by the Commissioner in accordance with the requirement (for example, but without limitation, if they are required for use as evidence in any criminal or civil proceedings or for the purpose of investigating a suspected offence or a suspected contravention of this Law or for the purposes of an investigation under this Law),

and a failure to comply with a requirement under paragraph (b) is an offence punishable in the same manner as a failure to comply with a requirement of the notice under section 5.

(2) If possession is taken of documents under the powers conferred by this Part, a record (which shall comprise a list or, if a list is

impracticable, a description) of the documents must upon request be supplied to the person from whom they were obtained.

(3) The record shall be provided within a reasonable time from the making of the request for it.

(4) Where the Commissioner proposes to give notice to a regulated electricity supplier or other person under section 5, the Commissioner may by notice require them -

- (a) to tell the Commissioner what documents they have in their possession or power which are or may be relevant to an investigation or determination under this Law,
- (b) to take any steps which appear to be necessary for preserving them or preventing interference with them,

and a failure to comply with a requirement of a notice under this subsection is punishable in the same manner as a failure to comply with a notice under section 5.

**Legal professional privilege, liens and duties of confidentiality.**

9. (1) Nothing in section 5 or 7, shall compel the production or divulgence by any person of items subject to legal professional privilege within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

(2) Where a person claims a lien on a document, its production under section 5 or 7, is without prejudice to his lien.

(3) A requirement imposed by or under section 5 or 7 shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise, and, accordingly, the obligation or restriction is not contravened by the making of a disclosure under such a requirement.

**Offence of falsification, etc, of documents.**

10. A person upon whom a notice under section 5 has been served or who knows or has reasonable grounds to suspect -

- (a) that such a notice is likely to be served on him,
- (b) that an investigation is being or is likely to be carried out under this Law, or
- (c) that a determination under this Law is being considered,

and who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect -

- (i) are or would be specified in such a notice, or
- (ii) are or would be relevant to such an investigation or determination,

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Commissioner or, as the case may be, from the persons carrying out such an investigation, or considering such a determination,

on behalf of the Commissioner.

**False or misleading information.**

11. (1) A person who -
- (a) in purported compliance with a requirement imposed by or under this Law, or
  - (b) otherwise than as mentioned in paragraph (a), but in circumstances in which the person providing the information or document intends, or could reasonably be expected to know, that the information or document would or might be used by the Commissioner for the purpose of exercising functions under this Law -
    - (i) makes a statement which the person 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) produces 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,

is guilty of an offence.

(2) A regulated electricity supplier who fails to provide the Commissioner with any information in its possession knowing or having reasonable cause to believe -

- (a) that the information is relevant to the exercise by the Commissioner of the functions of the Office of the Commissioner under this Law in relation to the supplier, and
- (b) that the withholding of the information is likely to result in the Commissioner being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the supplier,

is guilty of an offence.

**Penalties.**

12. A person guilty of an offence under section 10 or 11(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 1 month or to both, or

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

### PART III

#### DETERMINATION OF FAIR AND REASONABLE PRICE

##### **Determination of fair and reasonable price.**

**13.** (1) Following completion of an investigation under this Law, the Commissioner shall, determine whether a price which is charged by a regulated electricity supplier for the supply of electricity is, or is not, fair and reasonable.

(2) In determining whether a price is, or is not, fair and reasonable the Commissioner shall take all material considerations into account, including without limitation the following matters -

- (a) the cost of generating and distributing the supply of electricity, including the cost of -
  - (i) acquisition and maintenance of any plant and equipment,
  - (ii) fuel and other consumables, and
  - (iii) labour,

required to generate the supply,

- (b) the replacement cost of any plant and equipment required to generate and distribute the supply,
  - (c) the quality and reliability of, and the economy and efficiency with which, the supply of electricity is generated and distributed,
  - (d) the margin of profit obtained by the regulated electricity supplier,
  - (e) the margin of profit obtained by such other electricity suppliers, generating and distributing a supply of electricity in similar circumstances in such other islands or territories, as the Commissioner thinks fit,
  - (f) the entitlement of the regulated electricity supplier to receive such reasonable return, as the Commissioner thinks fit, on the value of assets (including plant and equipment and working capital) operated or used by the supplier for the purpose of generating and distributing the supply, and
  - (g) any representations made in response to a request given under section 14, or otherwise.
- (3) A determination under this section -
- (a) shall be made in writing, and

- (b) shall set out the reasons for the determination.

**Consultation.**

**14.** (1) Before making a determination under section 13, the Commissioner -

- (a) may consult such person in relation to such matter arising in relation to that determination as the Commissioner thinks fit, and

- (b) must -

- (i) consult the regulated electricity supplier and the Committee, and

- (ii) give the supplier and the Committee an opportunity to make representations to the Commissioner in connection with any proposed determination.

(2) The Commissioner must give the regulated electricity supplier opportunity to make representations to the Commissioner on any consultation responses made –

- (a) by any person consulted under subsection (1)(a), or

- (b) by the Committee under subsection (1)(b).

(3) The Commissioner may request by notice in writing that any person consulted under subsection (1), makes representations to the Commissioner

within a period of not less than 14 days starting from the date on which the Commissioner consulted that person.

(4) The Commissioner may request by notice in writing that the regulated electricity supplier or the Committee makes representations under subsection (2) within a period of not less than 14 days starting from the date on which it gave the supplier or the Committee, as the case may be, the opportunity to make such representations.

#### PART IV PRICE CONTROL ORDERS

**Power to make price control order.**

**15.** (1) In any case where the Commissioner determines that a price which is charged by a regulated electricity supplier for the supply of electricity is not fair and reasonable, the Commissioner may make a price control order in accordance with this Part.

(2) A price control order is an order regulating the maximum price, charge or fee –

- (a) for any supply of electricity, or
- (b) for such other specified service of whatever description,

that may be charged, raised or demanded by or on behalf of the regulated electricity supplier to whom the order relates.

(3) A price control order may, without limitation, specify -

- (a) a maximum per unit price for the supply of electricity,
- (b) a maximum price for the connection or disconnection of any household or other premises to, or from, any plant and equipment used to distribute a supply, and
- (c) a maximum price for the provision of any other service associated with the supply.

(4) A price control order may extend to prices under agreements in existence on the date on which the order is made, but shall not extend to, or affect, prices chargeable or payable before the date on which it has effect.

(5) Whilst a price control order is in force, the regulated electricity supplier to whom it relates shall not, without the consent of the Commissioner, charge, raise or demand any other price, charge or fee for the supply of electricity or any related service.

(6) A price control order -

- (a) may be varied, or revoked by the Commissioner, and
- (b) shall be valid for the period specified by the Commissioner, which shall not exceed the period of two years commencing on the day the order is made.

(7) For the avoidance of doubt, the Commissioner may make successive price control orders in respect of the same regulated electricity supplier.

**Material considerations and consultation.**

16. (1) When making or varying a price control order or considering whether or not to give consent under section 15(5), the Commissioner must take all material considerations into account including those referred to in section 13(2).

(2) Before making or varying a price control order or considering whether or not to give consent under section 15(5), the Commissioner -

(a) must consult -

(i) the Committee, and

(ii) the regulated electricity supplier, and

(b) may consult such person in relation to such matter arising, or appearing to the Commissioner to arise, in relation to the making or variation of the order or giving of consent as the Commissioner thinks fit.

(3) The Commissioner must give the regulated electricity supplier opportunity to make representations to the Commissioner on any consultation responses made by -

(a) the Committee under subsection (2)(a)(i), or

(b) any person consulted under subsection (2)(b).

(4) The Commissioner may request by notice in writing given to the Committee or person (as the case may be) that the Committee and any person consulted under subsection (2)(b), make representations to the Commissioner within

a period of not less than 14 days, as determined by the Commissioner, starting from the date on which the Commissioner consulted that person.

(5) The Commissioner may request by notice in writing given to the regulated electricity supplier that the supplier makes representations under subsection (3) within a period of not less than 14 days, as determined by the Commissioner, starting from the date on which it gave the supplier the opportunity to make such representations.

**Price control orders to have effect when served.**

17. (1) A price control order, and any variation of a price control order shall -

- (a) be served on the regulated electricity supplier to whom it relates in accordance with section 25, and
- (b) have effect on the day that the order or the variation is so served.

(2) The Commissioner shall deliver, or cause there to be delivered, to the Speaker of the Chief Pleas a copy of a price control order and any variation of a price control order as soon as possible after it has been made.

(3) A price control order, and any variation of an order, which has effect under subsection (1) shall continue to have effect until -

- (a) it is revoked,
- (b) the period specified by the Commissioner under section 15(5) expires, or

- (c) it is annulled by the Chief Pleas under section 19.

**Prohibition on charges in excess of maximum price.**

18. (1) A regulated electricity supplier on whom a price control order has been served in accordance with section 25, or any person acting on behalf of that supplier, shall not charge, or seek to recover any payment, for a supply of electricity, service or any other thing -

- (a) in excess of the maximum price, or
- (b) based upon, a unit price in excess of the maximum price, or maximum unit price,

specified by the order.

(2) Any charge or payment referred to in subsection (1), to the extent that it is -

- (a) in excess of the maximum price or
- (b) based upon, a unit price in excess of the maximum price, or maximum unit price,

specified by the relevant price control order, shall be irrecoverable as a civil debt.

**Power of Chief Pleas to annul a price control order.**

19. (1) Subject to subsection (2), a price control order and variation of a price control order shall be laid before the meeting of the Chief Pleas immediately following receipt by the Speaker of a copy of the order or variation.

(2) Where the meeting referred to in subsection (1) falls to be held within 14 days of receipt by the Speaker of the relevant copy order or variation, it shall be laid at the next following meeting of the Chief Pleas.

(3) The Chief Pleas may resolve that any order or variation laid in accordance with this section shall be annulled in which case it shall cease to have effect, but without prejudice to anything previously done under the order or variation or to the making by the Commissioner of a further order or variation.

PART V  
APPEALS

**Appeal to Court of the Seneschal against determinations and decisions.**

20. (1) A person aggrieved -

by a decision of the Commissioner to –

- (a) make a price control order under section 15(1),
- (b) specify anything under section 15(3),
- (c) fail or refuse, when requested by a regulated electricity supplier, to give consent under section 15(5),
- (d) vary a price control order under section 15(6),
- (e) fail or refuse, when requested by a regulated electricity supplier, to vary or revoke a price control

order under section 15(6),

may appeal to the Court of the Seneschal against the decision.

- (2) The grounds of an appeal under this section shall be that -
  - (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section shall be instituted -
  - (a) within a period of 28 days (or such longer period as the Court of the Seneschal may for good cause permit) immediately following the date of the notice of the Commissioner's decision, and
  - (b) by summons served on the Commissioner stating the grounds and material facts on which the appellant relies.
- (4) The Commissioner may, where an appeal under this section

has been instituted, apply to the Court of the Seneschal, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and upon hearing the application the Court may -

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

and the provisions of this subsection are without prejudice to the inherent powers of the Court.

(5) On an appeal under this section the Court of the Seneschal may -

- (a) set the decision of the Commissioner aside and, if the Court considers it appropriate to do so, remit the matter to the Commissioner with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against decision described in subsection (1) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question pending the determination of the appeal.

**Appeal to the Court of Appeal on question of law.**

21. (1) An appeal from a decision of the Royal Court, made on an

appeal from the Court of the Seneschal relating to a matter under this Law shall, with leave of the Royal Court or Court of Appeal, lie to the Court of Appeal on a question of law.

(2) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date of the decision of the Royal Court, and

(b) in such manner as rules of court may provide.

(3) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>b</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(4) For the avoidance of doubt the Commissioner, as well as the regulated electricity supplier concerned, may appeal under this section.

## PART VI MISCELLANEOUS

### **Offences by legal person.**

22. (1) Where an offence under this Law is committed by a company or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of –

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<sup>b</sup> Ordres en Conseil Vol. XVIII, p. 315.

- (a) in the case of a company, any director, controller, manager, secretary or other similar officer thereof,
- (b) in the case of a foundation, any foundation official, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the company or foundation (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

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

**Offences by unincorporated bodies.**

23. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of the body.

**Defence of due diligence.**

24. (1) In any proceedings for an offence under this Law it shall, subject to subsection (2), be a defence for the person charged to prove that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person shall not, without the leave of the court, be entitled to rely on that defence unless -

- (a) at least 7 clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such

information identifying or assisting in the identification of the other person as was then in his possession.

**Service of documents.**

25. (1) Any document other than a summons to be given or served under, or for the purposes, of this 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 company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Sark or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (c) 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 Sark or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (d) on the Committee, by being left at, or sent by post or transmitted to, the Committee Office, Chasse Murette, Sark GY10 1SF or such other address as the Committee may by regulation specify.

- (2) In subsection (1) –
- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
  - (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

(3) If a person notifies the Commissioner or Committee of an address for service within Sark for the purposes of the Law, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published by the Commissioner or Committee in such manner and for such period as the Commissioner or Committee thinks fit and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

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

(6) Notwithstanding the provisions of subsections (1) to (5) and (7) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Commissioner or Committee under or

for the purposes of the Law shall be deemed to have been given or served until it is received.

(7) A document sent by post is, unless the contrary is shown, deemed for the purposes of the 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 day which is not a working day.

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

(9) The provisions of this section are subject to any contrary provision under the Law.

**Exclusion of liability.**

**26.** (1) No liability is incurred by -

- (a) the Commissioner,
- (b) any person to whom a function under this Law has been delegated by the Commissioner, or
- (c) any servant or agent of the Commissioner,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law or any other enactment, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>c</sup>.

**General provisions as to Ordinances.**

27. (1) Any Ordinance made under this Law -

(a) may be amended or repealed by a subsequent Ordinance hereunder, and

(b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power to make an Ordinance under this Law may be exercised -

(a) in relation to all cases to which the power extends, or

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<sup>c</sup> Ordres en Conseil Vol. XL, p. 396; as amended by Order in Council No. I of 2005; Recueil d'Ordonnances Tome XXVIII, p. 493; Tome XXIX, p. 406; Tome XXXIII, p. 617; and G.S.I. No. 27 of 2006.

in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and

(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.

**Interpretation.**

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

"**Alderney company**" means a company the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994<sup>d</sup>,

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<sup>d</sup> Order in Council No. XXXIV of 1994; No. 1 of 2001; No. XV of 2002; No. III of 2010; No. XIX of 2012; there are other amendments not relevant to this Law.

"**Assistant Constable**" means a person appointed by the Chief Pleas to act as an Assistant Constable pursuant to section 53 of the Reform (Sark) Law, 2008<sup>e</sup>,

"**Chief Pleas**" means the Chief Pleas of Sark,

"**the Commissioner**": see section 1(3),

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

"**a committee**" means any committee of the Chief Pleas, however styled,

"**the Constable**" means the person appointed by the Chief Pleas to act as Constable pursuant to section 52 of the Reform (Sark) Law, 2008, and shall include the Vingtenier, an Assistant Constable, a special constable and a Guernsey police officer on duty in Sark,

"**company**" means a body corporate, of whatever description, incorporated with or without limited liability in any part of the world, and includes a Guernsey company and an Alderney company,

"**the Court of the Seneschal**" means the Court of the Seneschal of Sark constituted in accordance with Part II of the Reform (Sark) Law, 2008,

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<sup>e</sup> Order in Council No. V of 2008; Nos. VI and XXVII of 2008; No. XIV of 2010 and No. XII of 2011.

"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>f</sup>,

"**the Deputy Seneschal**" means the person appointed to act as Deputy Seneschal pursuant to section 7 of the Reform (Sark) Act, 2008,

"**document**" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"**electronic form**", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

"**enactment**" means any Law, Ordinance or subordinate legislation,

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<sup>f</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278 and Vol. XXXIII, p. 217; Order in Council No. X of 2004; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXX, pp. 718; Tome XXXII, pp. 607 and 668; Ordinance No. LII of 2010 and No. XLVII of 2011.

**"foundation official"** has the same meaning as it does under the Foundations (Guernsey) Law, 2012<sup>g</sup>,

**"Guernsey company"** means a company registered in the Register of Companies within the meaning of section 496 of the Companies (Guernsey) Law, 2008<sup>h</sup>,

**"Guernsey foundation"** means a foundation created in accordance with section 1 of the Foundations (Guernsey) Law, 2012,

**"Guernsey police officer"** means a member of the salaried police force of the Island of Guernsey, and includes a customs officer,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"the Office of the Commissioner"**: see section 1(1),

**"person"** includes an individual and also -

- (a) a body corporate, and
- (b) a partnership or other unincorporated body of persons,

incorporated or established with or without limited liability in any part of the world,

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<sup>g</sup> Order in Council No. I of 2013.

<sup>h</sup> Order in Council No. VIII of 2008; there are amendments not relevant to this Law.

"**price**" includes any charge, fee or valuable consideration of any description, and any discount, margin or other element of a price,

"**price control order**": see section 15(1),

"**regulated electricity supplier**" means a person who generates or supplies, or both generates and supplies, electricity for or to another in return for money or money's worth,

"**the Seneschal**" means the person appointed to act as Seneschal pursuant to section 6 of the Reform (Sark) Act, 2008 and includes the Deputy Seneschal and a Lieutenant Seneschal,

"**special constable**" means a person appointed to be a special constable pursuant to section 54 of the Reform (Sark) Law, 2008, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"**uniform scale of fines**" means the scale of fines from time to time in force under the Uniform Scale of Fines (Sark) Law, 1989<sup>i</sup>, and

"**the Vingtenier**" means the person appointed to act as Vingtenier pursuant to section 52 of the Reform (Sark) Act, 2008.

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<sup>i</sup> Ordres en Conseil Vol. XXXI, p. 320.

(2) The Interpretation (Guernsey) Law, 1948<sup>j</sup> applies to the interpretation of this Law.

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

**Citation.**

29. This Law may be cited as the Control of Electricity Prices (Sark) Law, 2016.

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<sup>j</sup> Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE  
SARK ELECTRICITY PRICE CONTROL COMMISSIONER

**Appointment.**

1. The Chief Pleas shall, on the nomination of the Committee, appoint the Commissioner.

**Terms and conditions of appointment.**

2. The terms and conditions of the Commissioner's appointment shall be such as may from time to time be agreed between the Committee and the Commissioner, provided that none of those terms and conditions shall be -

- (a) inconsistent with any provision of this Schedule, or
- (b) construed so as to create a contract of employment or agency between -
  - (i) the Chief Pleas, or
  - (ii) any committee,and the Commissioner.

**Tenure of office.**

3. (1) Subject to the provisions of this paragraph, the Commissioner shall hold office for such term not exceeding five years as may be agreed between the Committee and the Commissioner at the time of appointment.

(2) The Commissioner may only be relieved from office by the

Committee before the expiration of the agreed term -

- (a) pursuant to a Resolution of the Chief Pleas requiring the Committee so to do, or
  - (b) on receipt of a written request made by the Commissioner.
- (3) When the Commissioner ceases to hold office by reason of the expiration of the agreed term he shall be eligible for reappointment.

**Staffing, resources etc.**

4. (1) The Committee must make available to the Commissioner such number and descriptions of staff as the Commissioner may reasonably require for the proper and effectual discharge of the functions of the office.

(2) To the extent that the services of an employee of the Chief Pleas are made available to the Commissioner as required by this paragraph, it is hereby declared for the avoidance of doubt that for the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>k</sup> -

- (a) that employee is an officer responsible to the Commissioner;
- (b) the Commissioner may arrange for any of the functions of the office to be performed in the Commissioner's name by that employee to the extent

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<sup>k</sup> Ordres en Conseil Vol. XXXIII, p. 478.

permitted by section 4 of that Law.

(3) The Committee must provide for the Commissioner such accommodation and equipment, such secretarial and clerical services, and such other facilities, as the Commissioner may reasonably request for the proper and effectual discharge of the functions of the office.

(4) The costs of meeting the requirements of this paragraph, as also the agreed emoluments and expenses of the Commissioner, shall be paid by the Committee out of public funds.

**Power to delegate functions.**

5. (1) The Commissioner may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any functions of the Office of the Commissioner under this Law (other than this power of delegation) to be exercised in the Commissioner's name by any person named or described in the instrument.

(2) A function delegated under this paragraph may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, shall, for the purposes of this Law, be deemed to have been carried out by the Commissioner.

(3) A delegation under this paragraph is revocable by the Commissioner at will and does not prevent the carrying out of a function by the Commissioner.

**Confidentiality.**

6. (1) Any document or information from which an individual or body may be identified and which is acquired by the Commissioner in the exercise

of the Commissioner's functions and powers under this Law shall be regarded as confidential by the Commissioner and by any officer responsible to, or servant or agent of, the Commissioner.

(2) No document or information of a description referred to in subparagraph (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 appears to the Commissioner to be necessary -

- (a) to enable the Commissioner to exercise the Commissioner's functions and powers under this Law or any other enactment, or
- (b) to comply with an order of a court.

(3) Without prejudice to subparagraphs (1) and (2), any document or information communicated to the Commissioner by a committee shall, if that committee so requests, be regarded as confidential by the Commissioner and by any officer responsible to, or servant or agent of, the Commissioner; 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 the reason set out in subparagraph (2)(a).

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

**Oath of office.**

7. The Commissioner shall, upon his appointment or as soon as reasonably practicable thereafter, take an oath or make an affirmation before the Court of the Seneschal in the following terms or in words to the like effect:

"You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of Sark Electricity Price Control Commissioner in accordance with law and that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions."

**Seal.**

8. (1) The Commissioner may have and use a common seal.

(2) If a document purports to be duly executed by the Commissioner under the seal, that document is to be -

- (a) received in evidence, and
- (b) taken to be duly executed, unless the contrary is proved.