

CONTROL OF ELECTRICITY PRICES (SARK) LAW, 2015 (*Draft 7*)

EXPLANATORY MEMORANDUM

Introductory

This version of the above draft Law (now headed "Draft 7") is a heavily revised version of an earlier draft relating to the same topic. The 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.

The most significant difference from the earlier draft Law is the creation of the office of Sark Electricity Price Control Commissioner and the conferring on the office holder powers to investigate the price at which someone is selling electricity in Sark and to determine whether or not that price is fair and reasonable.

Draft Law

The revised draft Law now comprises six Parts as follows -

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, at the request of the Policy Performance Committee (the "PPC"), the Commissioner is to –

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

Part II

Investigations by Commissioner

Part II confers a number of investigatory powers on the Commissioner which may be exercised if the PCC has requested the Commissioner to carry out an investigation into the prices charged by an electricity supplier. In particular, the Commissioner may by notice served on an 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. 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 is also a criminal offence relating to falsification, concealing and destruction of relevant documents.

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 11(2) (e.g. the margins of gross and net profit obtained by the electricity supplier). The Commissioner may also consult with any person he thinks fit in relation to the determination and must consult with the electricity supplier before giving a written determination whether any price charged is, or is not, fair and reasonable.

Part IV Powers of Committee

Part IV gives some statutory powers to PPC which can be used in the event that the Commissioner makes a determination that the price which is charged by an electricity supplier for the supply of electricity is not fair and reasonable.

The first power is to require the supplier to give an undertaking to charge such fair price, for such period (not exceeding 12 months) as PPC may determine. Before requiring any undertaking PPC must consult the Commissioner and the electricity supplier in connection with the level or amount of any "fair price" that PPC may think appropriate.

If the supplier refuses to give an undertaking or having given an undertaking and not complied with it, the second power of the PPC is to refer the matter to Chief Pleas. Following such a reference the Chief Pleas may by Ordinance regulate the price which may be charged by the electricity supplier by, for example, in the Ordinance specifying the maximum per unit price that may be charged by the supplier for the supply of electricity.

Where an Ordinance has been made by the Chief Pleas specifying the maximum price, the electricity supplier may not charge any payment in excess of the maximum price. To the extent that the supplier does charge an amount in excess of the maximum, that excess shall be irrecoverable as a civil debt.

Part V
Appeals

Part V provides for appeals against a determination of the Commissioner or a decision of the PCC to require an electricity supplier to give an undertaking. The grounds of an appeal are set out in clause 17(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 ECHR. 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 18 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) and unincorporated bodies (such as partnerships); a defence of due diligence available to persons charged under the Law; service of documents; exclusion of liability, including for the Chief Pleas, committees of Chief Pleas and the Commissioner; general provisions for Ordinances made under the draft Law and interpretation.

Schedule

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

Paragraph 1 empowers the Chief Pleas, on the nomination of 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 Commissioners staff and resources and enable the Commissioner to delegate the functions of the office. The remaining paragraphs of the Schedule deal with the Commissioner's oath of office (to be made before the Court of the Seneschal), ancillary functions and a seal for executing documents.

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