

PROJET DE LOI

ENTITLED

The Electricity (Sark) Law, 2020

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 2nd day of October, 2019, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

PART 1

THE AUTHORITY

The Authority.

1. (1) There is established a body to be called the Sark Electricity Licensing Authority ("**the Authority**").

(2) The Authority is a body corporate with perpetual succession.

(3) The members of the Authority shall be appointed by resolution of Chief Pleas made on the recommendation of the Policy & Finance Committee of Chief Pleas ("**the Policy & Finance Committee**").

(4) Schedule 1, which makes further provision in relation to the Authority, has effect.

(5) Chief Pleas may by Ordinance amend Schedule 1 for the

purpose of amending the procedure applying in relation to the Authority.

PART 2

GRANTING OF LICENCES AND ACCESS TO LAND

Authority to be notified of intent to undertake a relevant activity.

2. (1) A person must notify the Authority in writing at least one month before the person intends to start undertaking any of the following activities on Sark –

- (a) generating electricity for the purpose of giving a supply to any premises (including giving a supply to the person's own premises only) or enabling a supply to be so given,
- (b) conveying electricity through an electricity network for that purpose, or
- (c) supplying electricity to any premises,

and in this Law such an activity is referred to as a "**relevant activity**".

(2) A notification under subsection (1) must be in such form as the Authority may direct.

(3) On receiving a notification under this section, the Authority may request such further information from the notifying person as it reasonably requires to make a determination under section 3.

Authority power to require persons undertaking relevant activities to be licensed.

3. (1) On receipt of a notification under section 2, and of any further information requested under section 2(3), the Authority shall determine whether –

(a) to permit the applicant to undertake the relevant activity described in the notification without being licensed, or

(b) to require the applicant to be licensed under this Law before being permitted to undertake the relevant activity described in the notification.

(2) The Authority may determine to require the applicant to be licensed to undertake the relevant activity described in the notification if the applicant only if satisfied that such a determination would be reasonable and proportionate in all the circumstances, both generally and having regard in particular to –

(a) the objectives set out in Schedule 2 ("**the Objectives**"), and

(b) published policies of the Authority in respect of electricity regulation.

(3) On making a determination under this section the Authority must, as soon as practicable, inform the applicant that –

(a) the applicant may undertake the relevant activity described in the notification without being licensed, or

- (b) the applicant may only undertake the relevant activity described in the notification if the applicant is licensed,

as the case may be.

(4) If the Authority informs the applicant that the relevant activity described in the notification may be undertaken without the applicant being licensed, the applicant –

- (a) may begin to undertake that activity immediately on being so informed, but
- (b) must notify the Authority in writing one month before he or she intends to make any material change to that activity.

(5) A notification under subsection (4)(b) shall be treated as a new notification under section 1 with respect to that material change.

(6) If the Authority informs the applicant that the relevant activity described in the notification may only be undertaken if the applicant is licensed, the Authority shall also inform the applicant at the same time of the details referred to in section 4(1)(a), and of the fee by which an application for a licence must be accompanied.

Applications for licences.

- 4. (1) The Authority shall publish –

- (a) details of the procedures to be followed in relation to applications for, and the grant and renewal of, a licence (which procedures may, without limitation, include requirements as to the submission of information and documents with an application), and
- (b) any changes made by the Authority from time to time to such procedures and requirements.

(2) The Authority may, by notice in writing, require a person who has submitted an application for a licence or the renewal of a licence to produce such additional information and documents as it may reasonably require for the purpose of determining that person's application.

- (3) An application for a licence or for the renewal of a licence –
 - (a) shall be accompanied by a fee of £100 or such other sum not exceeding £500 as the Authority may direct, and the Authority may direct that a higher fee is payable where it is satisfied that the undertaking of the relevant activity is a business, or part of a business, of the licensee or of a company in which the licensee has a direct or indirect interest; and
 - (b) may be withdrawn by notice in writing to the Authority at any time before it is determined.

Grant or refusal of licences.

- 5. (1) A licence may be granted for any period of up to ten years.

(2) The Authority shall publish notice of a decision to grant a licence.

(3) Where the Authority proposes to refuse to grant a licence, it shall inform the applicant by notice in writing of the reasons for the proposed refusal, specify a period (being not less than 7 days from the date of the notice) in which representations may be made, and consider any representations made within that period.

(4) Where the Authority refuses to grant a licence, it shall inform the applicant of its reasons in writing.

(5) A person aggrieved by a decision of the Authority to refuse to grant a licence, or to grant a licence including conditions, may appeal against the decision to the Court under and in accordance with section 10.

(6) The grant of a licence shall not relieve the licensee of any obligation to obtain any other licence, consent, permission or waiver required for any other purpose.

(7) In this section, references to granting a licence include references to renewing a licence.

Access to and use of land.

6. (1) Subject to the provisions of this section and section 7, the Authority may determine that the code of rights, powers, duties and obligations set out at Schedule 3 (referred to in this Law as "**the Code**") should apply in relation to a licensee if such application appears to the Authority to be appropriate and

proportionate, having regard to the nature of the application for the licence and the Objectives.

(2) The Code shall only apply to a licensee if the licence states that it so applies.

(3) No right, power, duty or obligation conferred or imposed by or under the Code shall be exercisable in relation to any property belonging to Her Majesty in right of the Crown except with the consent of Her Majesty's Receiver General.

(4) A consent given for the purposes of subsection (3) may be given subject to such financial and other conditions as Her Majesty's Receiver General may think fit.

Licence conditions: general, and modification.

7. (1) A licence may include such conditions as appear to the Authority to be reasonable and proportionate in all the circumstances, both generally and having regard in particular to –

- (a) the Objectives, and
- (b) published policies of the Authority in respect of electricity regulation.

(2) Without prejudice to the generality of subsection (1), the Authority may include in the licence conditions –

- (a) requiring the licensee to comply with any direction

given by the Authority under any power contained in this Law or in any condition in the licence,

- (b) requiring the licensee to ensure continuity of supply, where the licence is a licence to generate electricity for the purpose of giving a supply other than to the licensee's own premises only,
 - (c) relating to the enforcement, revocation and suspension of the licence,
 - (d) relating to the application of the Code to the licensee,
 - (e) relating to the sale of electricity generated by the licensee to a licensed supplier,
 - (f) intended to prevent and control anti-competitive behaviour, and
 - (g) (where the undertaking of the relevant activity is a business, or part of a business, of the licensee or of a company in which the licensee has a direct or indirect interest) relating to the provision of documents, accounts, and other information relating to that business.
- (3) Any condition included in a licence may be time-limited.
- (4) Subject to subsection (5) the Authority may, having regard to

the Objectives, and on application of the licensee or by its own volition, modify a licence by –

- (a) amending or revoking any condition included in it, or
- (b) adding any condition to it (including any condition as to the application of the Code to the licensee).

(5) Before determining whether to make modifications under this section to a licence, the Authority shall publish and give to the licensee a notice –

- (a) stating the modifications which it proposes to make,
- (b) stating the reasons why it proposes to make those modifications, and
- (c) specifying the time (being not less than 7 days from the date of publication of the notice) within which representations in respect of the proposed modifications may be made by interested parties (including the licensee).

(6) Once the time specified in subsection (5)(c) has elapsed, the Authority shall consider any representations or objections received from any interested party (including the licensee), and

- (a) modify the licence (and publish and give to the licensee a notice of the modification), or

(b) decide not to modify the licence (and publish and give to the licensee notice of that decision).

(7) A modification to a licence shall take effect from such time as the Authority directs.

(8) A person aggrieved by a modification to a licence may appeal against the modification to the Court under and in accordance with section 10.

Licence conditions: continuity of supply.

8. (1) Subject to subsection (5), where a licence includes conditions relating to continuity of supply, it may also make provision in respect of action that may be taken by or on behalf of Chief Pleas in case of a breach of that condition, for the purpose of –

(a) continuing the supply of electricity on Sark, and thereby

(b) eliminating or reducing the risk of, or mitigating, damage to human welfare or other harm arising from that breach.

(2) Without prejudice to the generality of subsection (1), provision of the type described in subsection (1) may include provision empowering Chief Pleas, or a person or body appointed by Chief Pleas for the purpose, to take such steps as the Authority reasonably considers necessary and proportionate in all the circumstances for the purpose set out in subsection (1), including (but not limited to) entering premises, and using and interfering with property, owned or used by the licensee.

(3) Provision of the type described in subsection (2) may only be included if it also provides that Chief Pleas must compensate –

- (a) the owner, for any damage caused to the owner's property, and
- (b) the licensee and any other person, for any other loss, injury or damage suffered by them,

in the course of the exercise of the power; and such compensation shall be recoverable as a civil debt.

(4) Subject to subsections (5) and (6), the Policy and Finance Committee may, by regulations, make further provision in relation to the matters described in this section, including (but not limited to) –

- (a) providing that injunctive relief claimed on or incidental to the raising of a Clameur de Haro as a result of action taken by Chief Pleas in the case of the breach of a condition shall not prevent the continuing generation and distribution of electricity, unless a court orders otherwise, and
- (b) the calculation and payment of compensation to be paid by Chief Pleas pursuant to provision of the type described in subsections (2) and (3).

(5) Regulations under subsection (4) may make it an offence,

punishable by a fine not exceeding level 5 on the Sark uniform scale, to obstruct a person acting pursuant to provision in a licence of a type described in this section.

(6) The Policy and Finance Committee must consult Her Majesty's Procureur before –

- (a) making or amending regulations under subsection (4),
or
- (b) issuing a licence issued containing a provision of the type described in this subsections (1) to (4),

and such regulations, and such a licence, must contain a statement certifying that Her Majesty's Procureur has been so consulted.

Licence may be exclusive.

9. A licence may grant an exclusive right to undertake a relevant activity.

Right of appeal.

10. (1) A person aggrieved by a decision of the Authority -
- (a) to refuse to grant a licence,
 - (b) to impose a licence condition,
 - (c) to amend or modify a licence,
 - (d) to suspend a licence, or

- (e) to revoke a licence,

may appeal to the Court on any of the grounds set out in subsection (2).

- (2) 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.
- (3) An appeal under this section shall be instituted -
 - (a) within a period of 56 days (or such further time as the Court may in its absolute discretion, on an application made before the expiration of that period, allow, where it is satisfied that it is not reasonably practicable for the appeal to be instituted within that period or that it is otherwise in the interests of justice to do so) immediately following the date of the Authority's decision, and
 - (b) by summons served on the Authority stating the grounds and material facts on which the appellant

relies.

- (4) On an appeal under this section, the Court may -
 - (a) dismiss the appeal, or
 - (b) quash the decision of the Authority,

and, where the Court quashes the decision of the Authority, it may remit the matter to the Authority with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

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

(6) The Authority may, where an appeal under this section is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to the 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 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.
- (7) For the purposes of determining an appeal under this section,

the Court may appoint one or more assessors to assist.

Appeals to the Court of Appeal on a question of law.

11. (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^a ("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.

PART 3

ENFORCEMENT OF LICENCES

Enforcement of licence conditions.

12. (1) Where the Authority is satisfied that a licensee is or has been in contravention of any condition of a licence it may give, and may publish, a direction under this section.

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

- (2) A direction under this section -
- (a) shall require the licensee to whom it is given to do, or not to do, any thing specified in the direction, and
 - (b) shall take effect -
 - (i) at such time (which may be immediately) as may be specified in the direction, or
 - (ii) if no time is so specified, at the earliest practicable time.

(3) Subject to subsection (5), before giving a direction under this section to a licensee, the Authority shall give to the licensee, and may publish, a notice -

- (a) stating that it proposes to give a direction under this section to the licensee,
 - (b) detailing the requirements of the proposed direction, and
 - (c) identifying the condition of the licence in respect of which, in the opinion of the Authority, the licensee is in contravention.
- (4) A notice under subsection (3) stating that the Authority

proposes to give a direction under this section to a licensee shall specify the time (not being less than 7 days from the date of the giving of the notice, except in cases of urgency, in which case as much notice as is reasonably practicable shall be given) within which written representations or objections in respect of the proposed direction may be made by the licensee or (where the notice is published) by any interested party; and the Authority shall -

- (a) before giving the direction, consider any representations or objections received within the relevant period from the licensee or (where the notice was published) from any interested party, and
- (b) having followed the procedure set out in subsection (3) and in this subsection, give the direction, or not give the direction, and publish notice of the fact.

(5) Subsections (3) and (4) do not apply in any case where the Authority is satisfied that the contravention of the licence condition in question has created an immediate risk of damage to human welfare.

(6) Where a licensee contravenes any provision of a direction under this section, the Authority may enforce any remedy available to it under the licence held by or applicable to the licensee, including (subject to the provisions of section 13) suspension or revocation of the licence.

Revocation and suspension of licences.

13. (1) Before suspending or revoking a licence pursuant to section 12, the Authority shall serve on the licensee, and may publish, a notice stating -

- (a) that it proposes to suspend or revoke the licence, and
- (b) the reasons for the proposed suspension or revocation.

(2) A notice under subsection (1) stating that the Authority proposes to suspend or revoke a licence shall specify the time (not being less than seven days from the date of the giving of the notice, except in cases of exceptional urgency, in which case as much notice as is reasonably practicable shall be given) within which written representations or objections in respect of the proposed decision may be made by the licensee or (where the notice is published) by any interested party.

(3) Before making a decision as to whether or not to suspend or revoke a licence, the Authority shall consider any representations or objections received within the relevant period under subsection (2) from the licensee and (where the notice under subsection (1) was published) from any interested party; and, having complied with this subsection, the Authority shall make its said decision and shall serve on the licensee, and may publish, notice thereof.

(4) The Authority shall not suspend or revoke a licence if satisfied that -

- (a) the licensee is taking or has taken all such steps as may be reasonably necessary to secure compliance with the direction under section 12, or
- (b) the contravention of the direction is not, in its opinion, material.

(5) Where the Authority decides to suspend or revoke a licence, an appeal against the decision shall lie to the Royal Court under section 10.

PART 4
OFFENCES

Undertaking a relevant activity in contravention of Part 1.

14. (1) A person who undertakes a relevant activity –
- (a) without notifying the Authority, or
 - (b) without being licensed in circumstances where the person has notified the Authority and has been informed that he or she must be licensed to undertake the activity,

commits an offence.

(2) A person who commits an offence under this section is liable to a fine not exceeding level 5 on the Sark uniform scale, or to imprisonment for a term not exceeding one month, or to both.

False or misleading information.

15. (1) A person who –
- (a) in making any statement or providing any information or document to the Authority or any member, officer or servant of the Authority when acting in the exercise of their respective functions and powers under this

Law, or

- (b) otherwise than as mentioned in paragraph (a) 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 Authority or by any person or body mentioned in paragraph (a) for the purpose of exercising their respective functions and powers mentioned in paragraph (a) -
- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (iii) provides or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
 - (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or

document which is false, deceptive or misleading in a material particular,

commits an offence.

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

- (a) the information is relevant to the exercise by the Authority of its functions and powers under this Law or any other enactment; and
- (b) the withholding of the information is likely to result in the Authority being misled as to any matter which is relevant and of material significance to the exercise of those functions and powers in relation to the licensee;

commits an offence.

(3) A person who commits an offence under this section is liable to a fine not exceeding level 4 on the Sark uniform scale, or to imprisonment for a term not exceeding one month, or to both.

Criminal liability of directors etc.

16. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality 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 -

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is 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 the member's functions of management as if the member were a director.

(3) In this section -

"foundation" means -

- (a) a foundation created under the Foundations (Guernsey) Law, 2012^b, or
- (b) an equivalent or similar body created or

^b Order in Council No. I of 2013; as amended by Order in Council No. VI of 2017; Ordinance No. IX of 2016; and No. XXVII of 2018.

established under the law of another jurisdiction (however named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

"general partner" means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of "**limited partnership**", a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995^c, and

^c Ordres en Conseil Vol. XXXVI, p. 264; as amended by Ordres en Conseil Vol. XXXVI, p. 571; Order in Council No. IV of 2001; No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. No. 51 of 2016.

- (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition.

- (4) In this section and in section 20 "**limited partnership**" means -
 - (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
 - (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which-
 - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
 - (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the

business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

17. (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 (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the Authority or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person 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 must, without prejudice to subsection (1), 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 for an offence under this Law must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

(a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013^d, or

(b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

Defence of due diligence.

18. In any proceeding for an offence under this Law, it shall be a defence for the accused ("D") to prove that D took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by D and by any person under D's control.

PART 5

FINAL

^d Order in Council No. VI of 2014; as amended by Order in Council No. VI of 2017; Ordinance No. XII of 2015; No. IX of 2016; and No. XXVII of 2018.

Transitional provisions.

19. (1) In this section, "**the transitional period**" means the period of three months beginning on the day this Law comes into force ("**Commencement**").

(2) Subject to subsection (3), Parts 2 to 4 of this Law shall not apply during the transitional period to a person who is undertaking a relevant activity on Commencement.

(3) A person falling within subsection (2) who wishes to continue undertaking the relevant activity after the end of the transitional period shall notify the Authority in writing of that intent during the transitional period; and the provisions of Part 1 shall apply in such circumstances during the transitional period as if the person were not already undertaking the relevant activity, and shall be construed accordingly.

General provisions as to Ordinances and regulations.

20. (1) Any Ordinance or regulation made under this Law -

(a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder, and

(b) may contain such consequential, incidental, supplemental, transitional and savings provisions as may appear necessary or expedient.

(2) Any power conferred by this Law to make an Ordinance or regulation 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 conditions specified in the regulations.

(3) Regulations made under this Law shall be laid before a meeting of the Chief Pleas as soon as possible and shall, if at that or the next meeting the Chief Pleas resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Service of notices.

21. (1) Any notice or document other than a summons to be served under, or for the purposes of, the provisions of this Law may be served on -

- (a) 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) 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 Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere
- (c) an unincorporated body -
 - (i) by being served on any partner, member, manager, or other similar officer thereof in accordance with paragraph (a), or
 - (ii) 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,
- (d) the Authority, by being left at, or sent by post or transmitted to, the Authority's offices.

(2) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the notice or document may be served by being delivered to some responsible person in the dwelling (if any) to

which the notice or document relates or, if there is no such person, by being affixed to a conspicuous part of the dwelling.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) Notwithstanding the provisions of this section and any other enactment or rule of law in relation to the service of documents, no document to be served on the Authority under or for the purposes of this Law shall be deemed to be served until it is received.

(5) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this 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.

(6) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(7) In this section –

"**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post,

"**served**" includes given and submitted, and

"**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).

Interpretation.

22. In this Law –

"**the Authority**": see section 1(1),

"**the Code**": see section 6(1),

"**the Court**" means the Court of the Seneschal,

"**the Objectives**": see section 3(2),

"**publish**" means publish on the website of Chief Pleas, and

"**relevant activity**": see section 2(1).

Citation.

23. This Law may be cited as the Electricity (Sark) Law, 2020.

Commencement.

24. This Law shall come into force on the day appointed by Ordinance of the Chief Pleas; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE 1

THE AUTHORITY

1. The Authority shall consist of a Chairman and at least 2, but no more than 4, other members.
2. The Chairman and other members of the Authority shall hold office for a period of five years (or such other shorter period as may be agreed between the the Policy & Finance Committee and any member of the Authority) and vacate office as such in accordance with the terms of their appointments.
3. A person who ceases to hold office as a member of the Authority, or ceases to hold office as Chairman, shall be eligible for reappointment.
4. Chief Pleas shall pay to the Chairman and other members of the Authority such remuneration, allowances, expenses, pensions and other benefits (if any) as Chief Pleas may from time to time by resolution determine.
5. Where the members of the Authority meet together so as to transact any business -
 - (a) decisions shall be made and other matters determined or resolved by a majority of the members attending and voting in favour of the decision or matter in question,
 - (b) each member has one vote, and

- (c) in the event of an equality of votes, the Chairman has a second or casting vote.

6. The Authority may, if it thinks fit, transact any business by the circulation of papers to all of the members of the Authority, or by a telephone conference at which each member joining in that telephone conference call can hear each other member and a resolution in writing, approved in writing, or by oral confirmation during a telephone conference by a majority of the members of the Authority shall be as valid and effectual as if passed at a meeting of the Authority by the votes of the members so approving the resolution.

7. The validity of any proceedings of the Authority shall not be affected by any vacancy among the members of the Authority or by any defect in the appointment of any such member.

8. The Authority shall keep proper minutes of its proceedings, including minutes of any business transacted as permitted by paragraph 6 of this Schedule.

9. Subject to the provisions of this Schedule, the Authority shall have power to make rules to regulate its own procedure.

SCHEDULE 2
THE OBJECTIVES

1. To ensure the security of supply of electricity on Sark.
2. To encourage the generation of electricity from renewable sources, and by other environmentally-friendly methods, on Sark.
3. To promote the modernisation of, and investment in, the infrastructure relating to the generation, conveyance and supply of electricity on Sark.
4. Only where this does not conflict with the foregoing objectives, to promote competition in respect of the generation, conveyance and supply of electricity on Sark.

SCHEDULE 3
THE ACCESS TO LAND CODE

Power to undertake works.

1. (1) Subject to the succeeding provisions of this code, and subject also to the provisions of any conditions in the licensee's licence, a licensee may exercise any of the powers referred to in subparagraph (2) upon or in relation to any land where it decides that it is necessary or expedient to do so for the purposes of undertaking any of the activities listed in section 2(1).

(2) The powers which a licensee may exercise upon or in relation to land are the following -

- (a) the licensee may install, place and subsequently use, establish, operate, maintain, repair, modify, replace, remove, extend or improve any electric line or electrical plant whatsoever;
- (b) for the purposes of exercising the powers mentioned in item (a) of this subparagraph or for any purpose ancillary or incidental thereto, the licensee may carry out and subsequently maintain, repair, modify, replace, extend or improve such works (whether of excavation, construction or otherwise) as the licensee may think fit; and
- (c) for the purposes of exercising the powers referred to in items (a) and (b) of this subparagraph, the licensee

may, with its officers, servants, agents, workmen and contractors and all necessary equipment and materials, at all reasonable times enter and remain upon the land.

(3) The powers referred to in subparagraph (2) are in addition to and not in derogation from the powers conferred upon the licensee by any other enactment.

Works to be carried out quickly, etc.

2. A licensee shall, when exercising any power referred to in paragraph 1(2), take all reasonable steps to ensure that the licensee -

- (a) causes the least possible inconvenience to the owner or occupier of the land in question;
- (b) makes good any damage caused to the land; and
- (c) carries out any works as quickly and efficiently as possible and in a good and workmanlike manner.

Restrictions on works.

3. (1) Before exercising any power referred to in paragraph 1(2) upon or in relation to any land, a licensee shall, except in cases of emergency, endeavour to enter into an arrangement with the owner or occupier of the land as to the terms of entry.

(2) A licensee shall not install any electric line or electrical plant by the side of any land so as to stop, hinder or interfere with entry or exit for any purpose to or from the land without the previous consent of the owner and occupier

of the land.

(3) A licensee shall not place any electric line or electrical plant directly over any residential dwelling at a height of less than 6 feet above the roof if the owner or occupier thereof objects to the licensee placing it at a lesser height.

(4) Where an owner or occupier of land upon which an electric line or electrical plant is installed or placed by a licensee in exercise of any power referred to in paragraph 1(2)(a) -

(a) proposes to construct, alter or extend any building on that land, and

(b) the proposed works of construction, alteration or extension ("**the proposed works**") cannot reasonably be carried out due to the installation or placing of the electric line or electrical plant,

the owner or occupier ("O") may, by way of a written notice containing the details set out in and served upon the licensee in accordance with subparagraph (5), require the licensee to alter (either temporarily or permanently, whichever is more reasonable in the circumstances) the installation or placing of the electric line or electrical plant, within a period of not less than 28 days from the date of service of such notice, so that the proposed works may be carried out.

(5) A notice under sub paragraph (4) -

(a) shall contain the following details -

- (i) O's full name and address,
- (ii) a description of the location of the electric line or electrical plant concerned,
- (iii) a description of the proposed works and the means by which it is intended that they are to be carried out,
- (iv) a statement of the date when it is intended to commence the proposed works (being a date at least 28 days after the date upon which the notice is served upon the licensee),
- (v) a statement of the intended duration of the proposed works,
- (vi) a statement setting out the grounds upon which O claims that the proposed works cannot reasonably be carried out due to the installation or placing of the electric line or electrical plant concerned,
- (vii) a statement describing the alteration which O requires the licensee to make to the installation or placing of the electric line or electrical plant concerned ("**the required alteration**"), and

(vii) a statement of the dates (being dates at least 28 days after the date upon which the notice is served upon the licensee) when O requires the required alteration to be commenced and completed ("**the specified period**"); and

(b) shall be served upon the licensee-

(i) on the day upon which a copy of the notice is delivered to, or

(ii) on the business day following the day upon which a copy of the notice is sent by recorded delivery post to,

the licensee at the licensee's address.

(6) If, within 14 days of the date of service upon it of a notice complying with subparagraphs (4) and (5) ("**a valid notice**"), the licensee does not object, upon either or both of the grounds and in accordance with the procedure set out in subparagraph (7), to the contents of a valid notice, it shall, within the specified period undertake the required alteration.

(7) A licensee, upon which is served a valid notice, within 14 days of the date of service -

(a) may object to the terms of the notice on either or both of the following grounds -

- (i) that the required alteration is unnecessary or unreasonable,
 - (ii) that the required alteration cannot reasonably be commenced or completed within the specified period; and
- (b) shall serve (using a method of service set out in paragraph 5(b)) written notice ("**a counter notice**") of any objection upon O at the address indicated in the valid notice, setting out or specifying in the counter notice -
- (i) the grounds of any objection,
 - (ii) any alternative proposals so as to enable the proposed works to be carried out ("**alternative proposals**"),
 - (iii) the period (being not less than 14 days from the date of service of the counter notice) within and the method by which O may accept or reject any alternative proposals, and
 - (iv) the right of O to refer any issue arising from a valid notice or counter notice for arbitration under subparagraph (9).

(8) Where a licensee serves a counter notice upon O in accordance with subparagraph (7), O -

- (a) may within the period specified in the counter notice accept the alternative proposals, in which case the licensee shall carry out the alternative proposals within the timescale indicated in the proposals;
- (b) may within the period specified in the counter notice reject the alternative proposals; or
- (c) where O fails to accept or reject the alternative proposals within the period specified in the counter notice, shall be deemed to have rejected the alternative proposals.

(9) If O rejects or is deemed to have rejected any alternative proposals under subparagraph (8)(b) or (c), O may, within 12 months from the date of service of the counter notice, refer any issue arising from a valid notice or counter notice for determination by a mediator to be agreed between the parties or, in the absence of such agreement, to be appointed by the Court on the application of one of the parties.

Compensation.

4. (1) A licensee shall, if it exercises any power referred to in paragraph 1(2) upon or in relation to any land, pay compensation in accordance with the provisions of this paragraph.

(2) The amount of compensation under this paragraph shall be

the sum of the following heads of loss to the extent only that such heads of loss are sustained by the owner or occupier of the land upon or in relation to which the power was exercised -

- (a) the amount of any diminution in the value of the land;
and
- (b) compensation for any other loss, injury or damage;

and, in assessing the amount of compensation, there shall be taken into account the amount, if any, by which the value of the land has been enhanced by the works in question, which amount may be set off against the amount of compensation.

(3) No compensation under this paragraph shall be paid in respect of any head of loss referred to in subparagraph (2) -

- (a) unless the loss was caused by the licensee in the exercise of the powers referred to in paragraph 1(2); or
- (b) if the loss is due wholly to the fault of the owner or occupier or his servants, agents or contractors.

(4) In the absence of agreement, the amount of compensation under this paragraph shall be determined by a mediator to be agreed between the parties or, in the absence of such agreement, to be appointed by the Court on the application of one of the parties.

(6) In determining compensation under this paragraph, the mediator may (without limitation) take into account the prejudicial effect (if any) of

the exercise of the power in question on the enjoyment, by the person claiming compensation, of the land upon or in relation to which the right is exercised.

Appeals.

5. (1) A person aggrieved by a decision of a licensee to exercise any power referred to in paragraph 1(2)(c) (hereinafter called "**the power in question**") may appeal to the Court against the decision.

(2) The grounds of an appeal under this paragraph shall be that the exercise of the power in question would be ultra vires or unreasonable.

(3) An appeal under this paragraph shall be instituted -

(a) within a period of 21 days immediately following the date of the notice under paragraph 7(1) of the licensee's decision or, where pursuant to that paragraph less than 28 days' notice was given, then as soon as is reasonably practicable and in any case within a period not exceeding 21 days immediately following that date;

(b) by summons served on the licensee stating the grounds and material facts upon which the appellant relies.

(4) On an appeal under this paragraph, the Court may -

(a) dismiss the appeal; or

(b) quash the licensee's decision to exercise the power in question;

and, where the Court quashes the licensee's decision, it may remit the matter to the licensee with such directions as the Court thinks fit.

(5) In determining an appeal under this paragraph, the Court may (without limitation) consider -

(a) whether any prejudice caused by the exercise by the licensee of the power in question -

(i) can be adequately compensated for by money;

(ii) would be outweighed by the benefit accruing to the persons other than the licensee benefitting from the exercise of that power;

(b) whether the undertaking of the activities listed in section 1(1) would be materially prejudiced if the power in question were not exercised; and

(c) the Objectives.

(6) Where an appeal under this paragraph is instituted, the licensee may not, unless the Court directs otherwise, exercise the power in question until the appeal is determined or withdrawn.

(7) The licensee may, where an appeal under this paragraph is not determined by the Court within a period of three months immediately following the date of the summons by which the appeal was instituted, apply to the 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 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.

Appeals to the Court of Appeal on a question of law.

6. (1) An appeal from a decision of the Royal Court, made on an appeal from the Court of the Seneschal relating to a matter falling within paragraph 5 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^e ("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.

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

Proof of identity.

7. Any person seeking to enter or remain upon any land by virtue of the powers referred to in paragraph 1(2)(c) shall, whenever so requested by or on behalf of the owner or occupier of the land, furnish such proof of his identity as is necessary to establish that he is entitled to enter the land on behalf of the licensee concerned.

Notice to be served before works are carried out.

8. (1) A licensee shall, not less than 28 days before exercising the powers referred to in paragraph 1(2)(c), except in cases of emergency, in which case as much notice as is reasonably practicable shall be given, serve notice in writing on the owner and occupier of the land in question -

- (a) specifying the land upon which, and the period during which it is anticipated that, the powers are to be exercised;
- (b) stating the purpose mentioned in paragraph 1(1) for which the powers are to be exercised and the action mentioned in paragraph 1(2) which the licensee intends to take; and
- (c) giving particulars of the right of appeal conferred by paragraph 5.

(2) A licensee may at any time withdraw or vary a notice under subparagraph (1); and the licensee shall serve written notification of any such withdrawal or variation upon the owner and occupier of the land in question.

Private agreements not affected.

9. (1) Nothing in this code affects the right of a licensee to make any agreement which it could otherwise have made.

(2) In the event of any conflict between the provisions of this code and the terms of any agreement made between a licensee and an owner or occupier of land, the terms of any such agreement shall take priority and apply as between the parties to the agreement in the absence of any contrary intention.

Offences.

10. A person who without reasonable excuse obstructs any person acting or purporting to act in the exercise of any power referred to in paragraph 1(2) shall be guilty of an offence and liable to a fine not exceeding level 4 on the Sark uniform scale, or to imprisonment for a term not exceeding one months, or to both.

Interpretation.

11. In this code, unless the context requires otherwise -

"**the Court**" means the Court of the Seneschal,

"**emergency**" means a case where the exercise of the powers conferred by paragraph 1(2)(c), at the time when it is proposed to exercise them, is requisite in order to put an end to, or prevent the arising of, circumstances then existing or imminent which are likely to cause -

- (a) danger to persons or property;
- (b) the interruption of any electricity supply service provided by means of the licensee's electricity network;

or

- (c) substantial loss to the licensee,

"**land**" includes houses and buildings and any interest (including any leasehold interest) in land and any right over land,

"**owner**", in relation to land, means -

- (a) where the land is the subject of a vested right of usufruct, the usufructuary;
- (b) where the land is not the subject of such vested right of usufruct -
 - (i) where the land is held in trust, the trustees;
 - (ii) where the land is not held in trust, the person in whom there is for the time being vested, whether solely or jointly with another person, the estate of inheritance therein,

and includes, in the case of a leasehold interest, the lessee,

"**residential dwelling**" means any premises, or any part of any premises, wholly or principally used or usable for the purposes of human habitation, and

"**upon**", in connection with any land, includes under, in, over, upon,

along or across that land.