

Island of  Guernsey

Ordinance of the States

XXXIII
2001

Made 26th September, 2001.

Coming into operation 1st October, 2001.

The Regulation of Utilities (Utility Appeals Tribunal)
Ordinance, 2001

The Regulation of Utilities (Utility Appeals Tribunal) Ordinance, 2001

THE STATES, in exercise of the powers conferred on them by section 14(6) and 23(1) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001^a, hereby order:-

Provision as to Utility Appeals Tribunal.

1. The following provisions of this Ordinance shall have effect in relation to the Utility Appeals Tribunal ("**the Tribunal**") which is to be appointed under the provisions of section 14(5) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 ("**the Law**").

Designation of Chairman of Panel.

2. The States shall, when drawing up the Utility Appeals Panel ("**the Panel**") under the provisions of section 14(1) of the Law, designate one of the members of the Panel as Chairman and another as deputy Chairman thereof.

Appointment of Tribunal.

3. Where an appeal against a decision of the Director General is instituted by summons in accordance with the provisions of section 15 of the Law -

- (a) the Director General shall, as soon as reasonably practicable after service of the summons, send a copy thereof to the Board; and
- (b) the Board shall, as soon as reasonably practicable after

^a Order in Council No. XI of 2001.

receipt, forward a copy of the summons to the person designated under section 2 as Chairman of the Panel (or, if he is unavailable, to the person so designated as deputy Chairman) asking him to appoint the Tribunal to hear and determine the appeal.

Constitution of Tribunal.

4. (1) The Tribunal shall consist of three persons drawn from the Panel.

(2) The Chairman or, if he is unavailable, the deputy Chairman of the Panel shall -

- (a) from the members of the Panel, appoint the three members of the Tribunal who are to hear and determine the appeal; and
- (b) nominate one of the three members so appointed to chair the Tribunal;

and for the avoidance of doubt the Chairman or deputy Chairman may so appoint and nominate himself.

Voting in hearings of Tribunal.

5. (1) Each member of the Tribunal shall, subject to subsection (2), have one vote, and the decisions of the Tribunal shall be taken by a simple majority.

(2) The person chairing the Tribunal shall not have a vote except where there is an equality of votes, in which case he shall have a casting vote.

Rules as to procedure of Tribunal.

6. (1) The Board may by order prescribe rules of procedure making such provision as the Board thinks fit in relation to -

(a) the hearing, investigation, settlement and determination by the Tribunal of appeals;

(b) the proceedings and powers of the Tribunal including, without limitation, provision as to -

(i) procedure (including the method of pleading, the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given); and

(ii) the powers of the Tribunal in respect of the costs of a hearing (including provision as to the payment of costs on a full or partial indemnity basis, the giving of security for costs and the taxation of costs);

(c) the summoning of witnesses, the service of documents and otherwise as to the giving of evidence;

(d) the carrying out by the Tribunal of any of its functions under the Law; and

(e) ancillary matters.

(2) Rules of procedure under subsection (1) may, without

limitation -

- (a) regulate procedure in connection with matters preparatory to hearings (including the publication of notice of hearings) and subsequent to hearings (including the publication, interpretation and enforcement of decisions and reasons for decisions), as well as in connection with the conduct of hearings;
- (b) make provision for the striking out of appeals (or of any claim or application in an appeal); and
- (c) make provision as to the representation, and joining, of parties.

(3) The expression "**costs of a hearing**" shall (without prejudice to the generality of the expression) include -

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs;
- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding or conduct of the hearing and the determination of the appeal (including, without limitation, any costs, fees and expenses incurred by the States pursuant to sections 9 and 10); and
- (c) the costs, fees, expenses and allowances of the Tribunal and the members thereof.

(4) The provisions of subsection (3) do not apply in relation to the Royal Court and are accordingly without prejudice to the power of the Royal Court to make orders as to the costs of an appeal or reference to it under section 16 or 17 of the Law.

(5) The Tribunal shall, subject to the provisions of section 5, and subject also to the provisions of any rules of procedure made by the Board under this section, determine its own procedure.

Hearings of Tribunal to be in public.

7. (1) A hearing and every part of a hearing before the Tribunal shall be held in public unless the Tribunal directs otherwise on the ground that it is dealing with evidence or representations which are commercially confidential.

(2) The Tribunal may at any time exclude any person from a hearing or any part thereof.

Offences in relation to hearings, etc.

8. (1) A person who -

(a) in proceedings before the Tribunal or in making any statement or providing any information or document to the Tribunal or any member thereof when acting in the exercise or purported exercise of their functions under the Law -

(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) 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;
- (b) on being duly summoned as a witness before the Tribunal, fails without reasonable excuse to attend;
- (c) on attending before the Tribunal as a witness, fails, when legally required to do so -
- (i) to take the oath or affirmation;
 - (ii) to produce any document in his possession, custody or power; or
 - (iii) to answer any question put to him;

- (d) does any other thing before the Tribunal which, if done before the Royal Court, would constitute a contempt of court;
- (e) without reasonable excuse, obstructs or hinders the Tribunal or any member thereof in the exercise or purported exercise of their functions under the Law; or
- (f) discloses, except for the purposes of legal proceedings or with other lawful excuse, any matter which came to his knowledge by reason of his being present before the Tribunal when the Tribunal was sitting in camera;

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both.

Allowances and expenses of Tribunal members.

9. There shall be paid to the members of the Tribunal such allowances as the Board may determine together with the travelling and other expenses incurred by them in connection with the exercise of their functions under the Law.

Appointment of secretary to Tribunal.

10. The Board may -

- (a) appoint a secretary to the Tribunal on such terms and conditions and with such functions; and

(b) provide such other officers and facilities;

as the Board thinks fit.

Interpretation.

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

"**appeal**" means an appeal under section 15 of the Law against a decision of the Director General;

"**Board**" means the States Board of Industry;

"**costs of a hearing**" has the meaning given by section 6(3);

"**Director General**" means the holder of the office of the Director General of Utility Regulation appointed under section 1(2) of the Law;

"**Law**" means the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001^b;

"**Panel**" means the Utility Appeals Panel drawn up and maintained under the provisions of section 14(1) of the Law;

"**Tribunal**" means the Utility Appeals Tribunal appointed under the provisions of section 14(5) of the Law;

and other expressions have the same meanings as in the Law.

^b Order in Council No. ** of 2001.

Citation.

12. This Ordinance may be cited as the Regulation of Utilities (Utility Appeals Tribunal) Ordinance, 2001.

Commencement.

13. This Ordinance shall come into force on the 1st October, 2001.