

ORDINANCE
OF THE STATES OF ALDERNEY

ENTITLED

The Renewable Energy (Alderney) Ordinance, 2008 *

[CONSOLIDATED TEXT]

NOTE

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* Alderney Ordinance No. XIV of 2008; as amended by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Renewable Energy (Alderney) (Amendment) Ordinance, 2013 (Alderney Ordinance No. II of 2013); the Renewable Energy (Alderney) (Exemptions) Regulations, 2018 (A.S.I. No. 4 of 2018). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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(Made on 10th November, 2008.)

The Renewable Energy (Alderney) Ordinance, 2008

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 10th November, 2008, and in exercise of the powers conferred on them by sections 2, 6, 7, 17, 29, 30 and Schedule 1, paragraph 1 of the Renewable Energy (Alderney) Law, 2007^a, hereby order: –

PART I

EXEMPTIONS AND DISAPPLICATION

Exemptions for certain activities.

1. (1) The prohibition in section 1 of the Law shall not apply to any activity specified in that section where it is carried out in relation to a renewable energy system which was installed at the place where it is being operated, deployed, used[, managed or decommissioned] –

(a) on or before the date on which the Law came into force,
and

(b) where relevant, in compliance with any applicable requirements under the Building and Development (Control) (Alderney) Law, 2002^b.

(2) [The prohibition in section 1 of the Law shall not apply to any renewable energy activity, where it is carried out in relation to a renewable energy

a Order in Council No. XII of 2008.

b Order in Council No. XII of 2003, amended by Order in Council No. XV of 2004 and Alderney Ordinance No. III of 2007.

system [which] –]

- (a) heats water, for the sole use of the premises in which it is installed, but does not also generate electricity, or
- (b) generates electricity and has a rated maximum output of no more than [20 kilowatts] provided that none of the energy generated by that system is fed, directly or indirectly, into a network which is used for the conveyance of electricity for public supply.

(3) The prohibition in section 1 of the Law shall not apply to any activity specified in that section where it is carried out in relation to a renewable energy system which is –

- (a) installed in a ship located in Alderney waters or a harbour, and
- (b) is operated, deployed, used or managed solely in relation to the private use of energy on board that ship.

NOTES

In section 1,

the words in the first, second and third pairs of square brackets were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, respectively section 6(a), section 6(b)(i) and section 6(b)(ii), with effect from 20th March, 2013;

the word in square brackets within the first pair of square brackets was substituted by the Renewable Energy (Alderney) (Exemptions) Regulations, 2018, regulation 1, with effect from 2nd July, 2018.

Exemption and disapplication for licensed activities.

2. (1) The prohibition in section 1 of the Law shall not apply to –
 - (a) any activity carried out by the holder of a licence issued by the Commission under Part II under and in accordance with the terms and conditions of that licence, or
 - (b) any activity carried out by a subcontractor or agent of such a person under and in accordance with the terms and conditions of such a licence except where the Commission provides otherwise in the terms and conditions of the licence in question.

- (2) Notwithstanding the following provisions of this Ordinance –
 - (a) the provisions specified in subsection (3) shall not apply in relation to the application for and determination and grant of any licence –
 - (i) to be issued by the Commission to Alderney Renewable Energy Limited pursuant to, and
 - (ii) in a form approved by,

a resolution of the States dated 10th November, 2008,
and
 - (b) the other provisions of this Ordinance shall apply in relation to such application, determination and grant of any such licence as if any relevant requirements of the

specified provisions had been met.

- (3) The specified provisions are –
- (a) section 4 (application for licence),
 - (b) section 5 (publicity for applications),
 - (c) section 8 (objection to application for licence),
 - (d) section 9(2)(a) and (3) (duty not to determine an application before expiry of specified periods),
 - (e) section 9(4) (duty to take into account representations) insofar as it applies to any representations made under sections 5 and 8, and
 - (f) section 9(5)(b) (requirement to take into account environmental statement and decommissioning report).

Power to make regulations to exempt activities etc.

3. The Commission may by regulations –
- (a) amend section 1,
 - (b) provide for further exemptions for any activity from the prohibition in section 1 of the Law, subject to such terms and conditions as the Commission thinks fit, and
 - (c) prescribe conditions for the better conduct and control of, and for matters of administration in connection with

–

- [(i) renewable energy activities, and]
- (ii) activities related thereto.

NOTES

In section 3, subparagraph (i) of paragraph (c) was substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 7, with effect from 20th March, 2013.

The following Regulations have been made under section 3:

Renewable Energy (Alderney) (Exemptions) Regulations, 2018.

PART II

LICENSING OF ACTIVITIES BY THE COMMISSION

Application for licence.

4. (1) A person wishing to apply for a licence shall apply to the Commission in writing.

(2) An application under this section shall –

- (a) contain a description of the renewable energy activities which the applicant proposes to carry out,
- (b) where it relates to [the operation, deployment, use or decommissioning] of a renewable energy system, or any part thereof, within Alderney waters, be accompanied by –

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- (i) an environmental statement which must include –
 - (A) at least the information in Part I of Schedule 1, and
 - (B) such of the information referred to in Part II of Schedule 1 as is reasonably required to assess the environmental effects of all development (including on, in, over or under land) which is necessary to allow [the operation, deployment, use or decommissioning] of the renewable energy system in question,
- (ii) a decommissioning programme, including at least the matters set out in Schedule 2, relating to the decommissioning –
 - (A) of the renewable energy system, and
 - (B) of any [related plant or apparatus], whether on, in, over or under land, the sea or the sea bed,
- (c) be accompanied by such fee as the Commission may by regulations prescribe, and
- (d) comply with any other requirements as to the form, manner and content of such application and any other

information and documents to accompany such application as the Commission may by regulations prescribe,

and the Commission need not consider any purported application which does not comply with this subsection in every respect.

- (3) The Commission may require an applicant to –
 - (a) supply such information,
 - (b) produce such articles, and
 - (c) permit such investigations, examinations and tests,

as in the Commission's opinion may be necessary or expedient to enable it to determine the application.

(4) If the Commission carries out any investigation, examination or test under subsection (3), the Commission may require the applicant to pay a fee to the Commission towards the reasonable expenses of that investigation, examination or test.

(5) An application under this section may be withdrawn by notice to the Commission at any time before it is determined.

(6) If the applicant does not comply fully with a requirement under subsection (3) or (4), the Commission may refuse to proceed with its consideration of the application.

- (7) The Commission may require an environmental statement or a

decommissioning programme, meeting the requirements of subsection (2), to accompany an application which only relates to arranging for [the operation, deployment, use or decommissioning] of –

- (a) a renewable energy system, or
- (b) any part thereof,

within Alderney waters where it considers that the submission of an environmental statement or a decommissioning programme is reasonably required having regard to the seriousness of the environmental damage likely to be caused by such activities.

(8) Any environmental statement or decommissioning programme required to accompany an application under this section must be sent to the Commission –

- (a) in hard copy form, and
- (b) in electronic form and sent in such form and by such a means as the applicant reasonably considers will enable the Commission to read it and retain a copy of it.

NOTES

In section 4,

the words in the first and second pairs of square brackets in subsection (2) and in square brackets in subsection (7) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(1), with effect from 20th March, 2013;

the words in the third pair of square brackets in subsection (2) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 3(1), with effect from 20th March, 2013.

The following Regulations have been made under section 4:

Renewable Energy (Alderney) (Fees) Regulations, 2010.

Publicity for applications.

5. (1) An applicant for a licence shall cause a notice in the form set out in Schedule 3, allowing objections and other representations to be made in relation to the application and, where relevant, the [environmental statement] and the decommissioning programme, within a period of 21 days, commencing with the date of publication of the notice, and containing the other information required thereon to be published –

(a) in the edition of the Alderney Gazette next following the date of its application, and

(b) in the case of an application relating to a renewable energy system, or any part thereof, to be [deployed, operated, used or decommissioned] within Alderney waters, in such manner as the Commission considers is best calculated to bring the application to the attention of persons whose activities in those waters are likely to be affected by the [deployment, operation, use or decommissioning] of that system.

(2) The Commission may by regulation amend Schedule 3.

(3) The Commission must not proceed with an application unless notice has been published as required under subsection (1).

(4) The Commission shall, subject to subsection (5), make available for public inspection at its offices during the Commission's normal office

hours and post on its website –

- (a) a copy of the applicant's notice required under subsection (1),
- (b) a copy of the application,
- (c) in the case of an application in relation to [the operation, deployment, use or decommissioning] of a renewable energy system, or any part thereof, within Alderney waters, a copy of the [environmental statement] and the decommissioning programme, and
- (d) in the case of an application in relation to arranging for [the operation, deployment, use or decommissioning] of a renewable energy system, or any part thereof, within Alderney waters where the Commission has required the submission of an [environmental statement] or a decommissioning programme, a copy of any such document required to accompany the application,

and shall continue to make such documents so available and keep them so posted until the application is withdrawn by the applicant or determined by the Commission.

(5) The Commission may, upon written request from the applicant, withhold information from the documents required to be made available for public inspection or posted on its website under subsection (4), if the Commission considers that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

NOTES

In section 5,

the words "environmental statement" in square brackets, wherever occurring, were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 4, with effect from 20th March, 2013;

the words in the second and third pairs of square brackets in subsection (1) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(2), respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013;

the words in the first and third pairs of square brackets in subsection (4) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(1), with effect from 20th March, 2013.

Determination of applications.

6. (1) The Commission must, in determining an application for a licence, have regard to –

- (a) the need to protect human health,
- (b) the likely effects of the renewable energy system on the generation and supply of energy in Alderney, including, without limitation, the safety of that supply,
- (c) the technical quality of the renewable energy system,
- (d) the cumulative effects of the [operation, deployment, use and decommissioning] of the renewable energy system to which the application relates with that of other existing and proposed renewable energy systems in Alderney waters having particular regard to –
 - (i) the effects on human health,

- (ii) the effects on the environment, and
 - (iii) any interference with shipping, fishing and other lawful activities [within Alderney or Alderney waters], and
- (e) where the application relates to the operation, deployment or use of a renewable energy system for generating or supplying energy for public supply –
- (i) the likely social and economic impacts in Alderney of the operation, deployment and use of the renewable energy system, and
 - (ii) the robustness of arrangements for securing the following without expense being incurred by the States or the Commission –
 - (A) the decommissioning of the renewable energy system,
 - (B) the decommissioning of any [related plant or apparatus], and
 - (C) the restoration of the place in which such system [or related plant or apparatus] was situated into the condition it was prior to the installation of the same,
- including in the event of a transfer of the licence

to another person or in the event of another person becoming the owner, occupier or enjoying the use of such system [or related plant or apparatus],

(iii) the fitness of the applicant and of any person proposed to be employed in a senior position by the applicant having regard to his skill, qualifications and experience and to any criminal convictions,

(iv) the likelihood, in the opinion of the Commission, that the applicant will be able to generate or supply energy in the way, manner, or of the amount, proposed and continue to do so for the proposed term of the licence having regard to such matters as the Commission considers appropriate including the liquidity and funding of the applicant, and

(v) the Island Plan or, if that is no longer in force, any plan adopted by the States and currently in force which replaced such plan.

(2) In determining an application for a licence the Commission –

(a) must also, in accordance with –

(i) section 7(2) of the Law, have particular regard to [...] the matters set out in that section, and

- (ii) section 11(2) of the Law, act in accordance with any directions of the States given to it under section 11(1)(b) of the Law and take into account any guidance of the States given to it under section 11(1)(a) of the Law, and
- (b) may also, in accordance with section 7(2) of the Law, take into account any other matter which it considers appropriate.

NOTES

In section 6,

the words in square brackets in paragraph (d) of subsection (1) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(3), with effect from 20th March, 2013;

the words in square brackets in, first, paragraph (d)(iii) of subsection (1) and, second, paragraph (a)(i) of subsection (2) were, respectively, substituted and repealed by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, respectively section 8(a) and section 8(b), with effect from 20th March, 2013;

the words in, first, the third and, second, the fourth and fifth pairs of square brackets in subsection (1) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, respectively section 3(1) and section 3(2), with effect from 20th March, 2013.

Consultation.

7. (1) Before deciding whether or not to grant an application under section 4 the Commission –

- (a) shall consult –
 - (i) in relation to any renewable energy system, or any part thereof, to be [operated, deployed,

used, managed or decommissioned] within Alderney waters or in any harbour –

(A) the Alderney Harbour Officer,

(B) the Alderney Fisheries Officer,

(C) the Alderney Wildlife Trust,

[(D) the department of the States of Guernsey or other person from time to time responsible for licensing under Part II of the Food and Environment Protection Act 1985 as extended to the Bailiwick of Guernsey,]

(ii) Alderney Electricity Limited and any other person who is lawfully supplying electricity for public consumption on Alderney,

(b) may consult, any person which has particular expertise in any matter arising in relation to that application.

(2) The Commission must give the applicant opportunity to make representations to the Commission on any consultation responses made by any person consulted under subsection (1).

(3) The Commission may require in writing that any person consulted under subsection (1), makes representations to the Commission within a period of not less than 14 days starting from the date on which the Commission consulted that person.

(4) The Commission may require in writing that the applicant makes representations under subsection (2) within a period of not less than 14 days starting from the date on which it gave the applicant the opportunity to make such representations.

NOTES

In section 7,

the words in square brackets in paragraph (a)(i) of subsection (1) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(4), with effect from 20th March, 2013;

paragraph (a)(i)(D) of subsection (1) was inserted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 9, with effect from 20th March, 2013.

Objection to application for licence.

8. (1) Where the Commission receives any representation made as a result of –

- (a) the publicity required by section 5, or
- (b) any consultation made under section 7,

within, where relevant, any time period given for such representations which raises any objection to the grant of a licence, the Commission shall enquire in writing of the person making the objection whether he wishes to make oral representations at a hearing before the Commissioners or whether he is content for the Commission to take into account his objection, including any further representations he may wish to submit within 21 days of the date of the enquiry, without the need for a hearing.

(2) If the person making the objection elects to make oral

representations, the Commission shall, by giving at least 21 days' notice of the hearing to the applicant and the person raising the objection, appoint a date, time and place for the hearing.

(3) If a person fails to respond to the Commission's enquiry under subsection (1) within 21 days of receipt of that enquiry, the Commission may proceed as if that person had indicated that he is content for the Commission to take into account only those representations that such person has already duly made.

(4) At a hearing under paragraph (2) –

- (a) the person raising the objection shall make his representations and the applicant shall respond,
- (b) a duly authorised officer of the Commission shall be entitled to ask questions of either person, and
- (c) the parties and the duly authorised officer may appear in person or through any representative.

(5) Unless the Commission otherwise directs, a hearing under subsection (2) shall be held in public in Alderney.

Grant or refusal of licence.

9. (1) The Commission may, subject to the following provisions of this section, upon receipt of an application under section 4 from a person wishing to be licensed to carry out renewable energy activities –

- (a) grant the application unconditionally,
- (b) grant the licence subject to such conditions as the

Commission thinks fit, or

- (c) refuse the application.

(2) The Commission shall not determine an application for a licence before the expiry of –

- (a) the period of 21 days given for the making of objections and other representations under section 5,
- (b) any period given by the Commission for the making of representations by consultees or the applicant under section 7.

(3) Where a person makes an objection to the grant of a licence within the period of 21 days given for the making of objections under section 5 or a consultee raises an objection within, where relevant, any period given for the making of representations under section 7, the Commission shall not determine an application for a licence –

- (a) where such person indicates he is content for the Commission to take into account such objection and any further representations or fails to respond to the Commission's enquiry, before the expiry of the period of 21 days given for the making of any such further representations under section 8(1),
- (b) where such person elects to make oral representations under section 8(1), before the close of the hearing held under section 8(2).

(4) In making its determination of an application for a licence, the Commission shall take into account any representations duly made in accordance with this Ordinance and any oral representations duly made in any hearing under section 8(2).

(5) Without prejudice to the generality of its powers conferred by subsection (1), the Commission shall not grant an application for a licence which relates to [the operation, deployment, use or decommissioning] of a renewable energy system, or any part thereof, within Alderney waters unless –

- (a) the Commission is satisfied that the activities authorised by the licence are in compliance with international law,
- (b) the Commission has taken into account any environmental statement and decommissioning programme required under section 4 in making its decision,
- (c) the Commission is satisfied that the applicant will maintain, in such manner and in such amounts as the Commission may from time to time determine, adequate insurance cover to cover the risks most likely to arise from the carrying on of the renewable energy activities in question including, without limitation –
 - (i) public liability insurance,
 - (ii) employer's liability onshore insurance,
 - (iii) maritime employer's liability insurance,

- (iv) protection and indemnity insurance, and
- (v) collision, clean up and pollution liability insurance where, in the opinion of the Commission, such insurance is available at commercially acceptable rates,

and in determining the level of cover the Commission shall have regard to best practice in businesses and industries carrying on the same or similar activities giving rise to the same or similar risks,

- (d) the Commission is satisfied that the applicant will, where required, note the Commission's interest under the insurance policies referred to in paragraph (c),
- (e) the Commission is satisfied that the applicant –
 - (i) will maintain a permanent establishment in Alderney, where any document addressed to him may validly be served, or
 - (ii) has appointed a person approved by the Commission who has and is obliged to retain such an address and also, if the applicant is not an Alderney company or an individual ordinarily resident in Alderney, who has and will retain full power to act generally on behalf of the applicant in relation to the renewable energy activities in question.

(6) Where the Commission grants or refuses an application for a licence, it must issue to the applicant a notice of its decision.

(7) Where the Commission grants an application it must –

(a) issue to the applicant, with the notice of its decision, a licence in writing specifying any conditions to which the licence is subject, and

(b) include in the notice of its decision the reasons for the imposition of any such condition and a statement of the applicant's right of appeal under section 29.

(8) Where the Commission refuses an application it must include in the notice of its decision the reasons for the refusal and a statement of the applicant's right of appeal under section 29.

NOTE

In section 9, the words in square brackets were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(1), with effect from 20th March, 2013.

Period of validity of licence.

10. A licence may provide –

(a) that it is to expire unless the activity which it authorises is begun within a specified period,

(b) that it is to remain in force indefinitely or for a specified period of time (which may be determined by

reference to a specified event).

Conditions of licence.

11. (1) The conditions that may be attached to a licence under section 9(1)(b) may, without limitation, relate to –

- (a) the renewable energy activities authorised by the licence,
- (b) precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised renewable energy activities) in connection with or in consequence of those activities, [or
- (c) the approval by the Commission, the States or any committee of the States, prior to the carrying on of the renewable energy activity of –
 - (i) a decommissioning programme in relation to the decommissioning of the renewable energy system and any related plant or apparatus, or
 - (ii) arrangements to ensure that such decommissioning is carried out in accordance with such an approved programme including financial arrangements to ensure the provision of satisfactory security to cover the cost of such decommissioning].

(2) The conditions referred to in subsection (1) include, in particular, conditions –

- (a) that no renewable energy activity authorised by the licence be carried out until the Commission or some other specified person has given such further approval of the activity as the licence may specify,
- (b) as to the provision, maintenance, testing or operation of equipment for measuring or recording specified matters relating to any renewable energy activity authorised by the licence or any activity related to such activity,
- (c) as to the keeping of records or the making of returns or giving of other information, including information concerning the financial position of the licensee, to the Commission,
- (d) for the removal, at the end of the specified period, of any renewable energy system to which the licence relates or any part thereof, or of any [related plant or apparatus],
- (e) for the carrying out, at the end of the specified period, of such works as the licence may specify for the remediation of the site on which any of the following are located –
 - (i) the renewable energy system to which the licence relates, or any part thereof, or
 - (ii) any [related plant or apparatus], and

- (f) that any activity authorised by the licence must take place at a specified site.

(3) A licence authorising activities relating to the operation, deployment, use[, decommissioning] or management of a renewable energy system, or any part thereof, within Alderney waters, may provide that the conditions attached to it bind any other person who for the time being owns, occupies or enjoys any use of the –

- (a) renewable energy system or any part thereof, or
- (b) any [related plant or apparatus],

whether or not the licence is transferred to that other person.

NOTE

In section 11,

paragraph (c) of subsection (1), and the word immediately after paragraph (b) thereof, were inserted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 10, with effect from 20th March, 2013;

the words in square brackets in paragraph (d) and paragraph (e) of subsection (2) and in the second pair of square brackets in subsection (3) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 3(1), with effect from 20th March, 2013;

the punctuation and word in the first pair of square brackets in subsection (3) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(5), with effect from 20th March, 2013.

Variation of licence.

12. (1) The Commission may, subject to the following provisions of this section, vary a licence granted by the Commission if it appears to the

Commission that there has been a contravention of its terms or conditions or of any provision of, or made under, the Law.

(2) The Commission may, subject to the following provisions of this section, vary a licence granted by it if it appears to the Commission that –

- (a) in the course of the application for the licence, any person either supplied information to the Commission that was false or misleading or failed to disclose information, and
- (b) if the correct information had been supplied the Commission would have, or is likely to have, refused the application or granted the licence on different terms or conditions.

(3) The Commission may vary a licence granted by it if it appears to the Commission that the licence ought to be varied –

- (a) because of a change in circumstances relating to the environment or human health,
- (b) because of increased scientific knowledge relating to either of those matters,
- (c) in the interests of safety of navigation,
- (d) because the Commission is no longer satisfied as to any of the matters set out in section 9(5), or
- (e) because the Commission is not satisfied that the holder

of the licence –

- (i) is able to generate or supply energy, or
- (ii) will continue to be able to do so for the term of the licence,

in the way, manner, or of the amount, proposed at the time the licence was granted, having regard to such matters as the Commission considers appropriate including the liquidity and funding of the holder of the licence, or

- (f) for any other reasons that appear to the Commission to be relevant.

(4) The Commission may vary a licence on application by the holder of the licence.

(5) Any holder of a licence who wishes the Commission to consider any variation of its licence shall make an application in writing to the Commission specifying –

- (a) the variation requested,
- (b) the reasons for the request, and
- (c) any changes, arising from the proposed variation, to any information required to be provided under section 4, including, where relevant, any changes to the [environmental statement] or the decommissioning

programme,

and the requirements of section 4(8) shall apply to any changes to the [environmental statement] or the decommissioning programme as they apply to such a document as originally submitted.

(6) Sections 4(2)(c) and (d), 4(3) to (6) and 6 to 8 shall apply to an application for a variation of a licence as they apply to an application for a licence.

(7) The Commission need not consider any purported application for a variation of a licence which does not comply with subsection (5) and sections 4(2)(c) and (d).

(8) Sections 5, 9(1) to (6) and 9(8) and, for the avoidance of doubt, Schedule 3 (notice of application for licence) shall apply to an application for a variation of a licence as they apply to an application for a licence with any necessary amendments except that –

- (a) objections and other representations need only be invited in relation to any [environmental statement] or decommissioning programme where the variation in question necessitates an amendment to any such document and only in relation to such an amendment,
- (b) the Commission need only post any such amendment to any such document on its website and make the same available for public inspection, together, in either case, with such other text of the original [environmental statement] or decommissioning programme, as the case may be, as is reasonably necessary to understand the amendment made, and

- (c) in making its determination of the application, the Commission instead of taking into account the whole of any [environmental statement] or decommissioning programme required under section 4, need only take into account such amendments to any such documents.

(9) Where the Commission proposes to vary a licence otherwise than at the request of the holder, it shall notify the holder of the licence in writing of the proposed variation and the reasons for the same, together with the date from which the proposed variation will, subject to sections 16 and 29, take effect.

(10) When the Commission grants an application made under subsection (5) or when a proposed variation notified under subsection (8) takes effect, the Commission must issue to the holder of the licence –

- (a) a notice of the variation and must append a copy of the variation to the copy licence retained at the Commission's offices under section 30, and
- (b) in the case of a variation other than at the request of the holder, include in the notice of variation, a statement of the right of appeal under section 29.

NOTE

In section 12, the words "environmental statement" in square brackets, wherever occurring, were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 4, with effect from 20th March, 2013.

Revocation or suspension of licence.

13. (1) The Commission may, subject to the following provisions of

this section, revoke or suspend a licence granted by it if it appears to the Commission that there has been a contravention of its terms or conditions or of any provision of, or made under, the Law.

(2) The Commission may, subject to the following provisions of this section, revoke or suspend a licence granted by it if it appears to the Commission that –

- (a) in the course of the application for the licence, any person either supplied information to the Commission that was false or misleading or failed to disclose information, and
- (b) if the correct information had been supplied the Commission would have, or is likely to have, refused the application or granted the licence in different terms.

(3) The Commission may, subject to the following provisions of this section, revoke or suspend a licence granted by it if it appears to the Commission that the licence ought to be revoked or suspended –

- (a) because of a change in circumstances relating to the environment or human health,
- (b) because of increased scientific knowledge relating to either of those matters,
- (c) in the interests of safety of navigation,
- (d) because the Commission is no longer satisfied as to any of the matters set out in section 9(5), or

- (e) because the Commission is not satisfied that the holder of the licence –
 - (i) is able to generate or supply energy, or
 - (ii) will continue to be able to do so for the term of the licence,

in the way, manner, or of the amount, proposed at the time the licence was granted, having regard to such matters as the Commission considers appropriate including the liquidity and funding of the holder of the licence.

(4) Where the Commission proposes to revoke or suspend a licence, it shall notify the holder of the licence in writing of the proposed revocation or suspension and the reasons for the same, together with the date from which the proposed revocation or surrender will, subject to sections 16 and 29, take effect.

(5) When a proposed revocation or suspension notified under subsection (4) takes effect, the Commission must –

- (a) issue to the former holder or holder of the licence a notice of the revocation or suspension and must endorse on the copy licence retained at the Commission's offices under section 30 an indication that the licence has been revoked or suspended,
- (b) include in the notice of revocation or suspension, a statement of the right of appeal under section 29.

(6) The revocation or suspension of a licence does not absolve the former holder or holder of the licence from responsibility incurred or undertaken by him during the currency of the licence including, without limitation, any responsibility arising from a condition of the kind referred to in [section 11(1)(c) or 11(2)(d) or (e)].

NOTE

In section 13, the words in square brackets were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 11, with effect from 20th March, 2013.

Surrender of licence.

14. (1) A licence may be surrendered by its holder to the Commission but in the case of a licence for the operation, deployment, use[, decommissioning] or management of a renewable energy system, or any part thereof, within Alderney waters it may only be surrendered if the Commission accepts the surrender.

(2) An application to surrender a licence shall be made to the Commission in writing and shall comply with any requirements the Commission may by regulations prescribe as to –

- (a) the form and manner of such application,
- (b) the information and documents to accompany such application, and
- (c) the fees to accompany such application,

and the Commission need not consider any purported application which does not comply with this subsection in every respect.

(3) Upon receipt of an application made in accordance with subsection (2) the Commission may require an applicant to –

- (a) supply such information,
- (b) produce such articles, and
- (c) permit such investigations, examinations and tests,

as, in the Commission's opinion, may be necessary or expedient to enable it to determine the application.

(4) If the Commission carries out any investigation, examination or test under subsection (3), the Commission may require the applicant to pay a fee to the Commission towards the reasonable expenses of that investigation, examination or test.

(5) If the applicant does not comply fully with a requirement under subsection (3) or (4), the Commission may refuse to proceed with its consideration of the application.

(6) If the requirements of subsections (2) to (4) have been satisfied or complied with, the Commission shall determine whether the condition of the renewable energy system and any [related plant or apparatus], is likely or unlikely to be –

- (a) detrimental to the environment,
- (b) harmful to human health, or

- (c) interfere with shipping, fishing and any other lawful activities within Alderney waters,

and in considering the above matters the Commission shall have particular regard to the robustness of the decommissioning and other arrangements referred to in section 6(1)(e)(ii).

(7) If the Commission is satisfied that the condition of the renewable energy system [and any related plant or apparatus] is unlikely to cause any of the effects referred to in subsection (6), the Commission shall, subject to subsection (8), accept the surrender of the licence; but otherwise the Commission shall refuse to accept the surrender.

(8) Where the surrender of a licence is accepted under this section, the Commission shall issue to the applicant, with the notice of his determination, a certificate (a "**certificate of completion**") stating that the Commission is satisfied as mentioned in subsection (7) and, on the issue of that certificate, the licence shall cease to have effect.

(9) Where the Commission refuses an application under this section, it must issue to the applicant a notice of its decision and include in that notice the reasons for the refusal and a statement of the applicant's right of appeal under section 29.

(10) Notwithstanding subsection (9), if within the period of three months beginning with the date on which the Commission receives an application under this section, or within such longer period as the Commission and the applicant may at any time agree in writing, the Commission has neither issued a certificate of completion nor given notice to the applicant that it has rejected the application, the Commission shall be deemed to have rejected the application.

(11) An application under this section may be withdrawn by notice to the Commission at any time before it is determined.

NOTES

In section 14,

the punctuation and word in square brackets in subsection (1) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(5), with effect from 20th March, 2013;

the words in square brackets in, first, subsection (6) and, second, subsection (7) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, respectively section 3(1) and section 3(3), with effect from 20th March, 2013.

The following Regulations have been made under section 14:

Renewable Energy (Alderney) (Fees) Regulations, 2010.

Transfer of licence.

- 15.** (1) A licence may be transferred to another person –
- (a) in accordance with subsections (2) to (9), and
 - (b) whether or not the licence is suspended under section 13.

(2) Where the holder of a licence desires that the licence be transferred to another person ("**the proposed transferee**") the licence holder and the proposed transferee shall jointly make application to the Commission.

(3) An application under subsection (2) shall be made to the Commission in writing and shall comply with any requirements the Commission may by regulations prescribe as to –

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- (a) the form and manner of such application,
- (b) the information and documents to accompany such application, and
- (c) the fees to accompany such application,

and the Commission need not consider any purported application which does not comply with this subsection in every respect.

(4) Upon receipt of an application made in accordance with subsection (3), the Commission may require either, or both of the applicants jointly, to –

- (a) supply such information,
- (b) produce such articles, and
- (c) permit such investigations, examinations and tests,

as in the Commission's opinion may be necessary or expedient to enable it to determine the application.

(5) If the Commission carries out any investigation, examination or test under subsection (4), the Commission may require the applicant to pay a fee to the Commission towards the reasonable expenses of that investigation, examination or test.

(6) If –

- (a) the requirements of subsections (2) to (5) have been

satisfied or complied with, and

- (b) the Commission is satisfied that the licence may be transferred to the transferee having regard to the matters set out in sections 6(1)(e)(ii) to (iv) and 9(5)(c) to (e) as if those sections referred to the transferee and not the applicant,

the Commission shall effect a transfer of the licence to the proposed transferee.

(7) If the applicant does not comply with a requirement under subsection (4) or (5) the Commission may refuse to proceed with its consideration of the application.

(8) If –

- (a) the requirements of subsections (2) to (5) have been satisfied or complied with, and
- (b) the Commission is –
 - (i) not satisfied that the licence may be transferred to the transferee having regard to the matters referred to in subsection (6), and
 - (ii) as a result, is proposing to refuse to accept the application,

the Commission shall notify the applicants in writing of the refusal and notify the proposed transferee in writing of the reasons why he is not satisfied that the licence may be transferred to the transferee.

(9) The Commission shall effect a transfer of a licence under this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants and must note that endorsement on the copy licence retained at the Commission's offices under section 30.

(10) Where the Commission refuses an application under this section, it must issue to the applicant a notice of its decision and include in that notice the reasons for the refusal and a statement of the applicant's right of appeal under section 29.

(11) Notwithstanding subsection (10), if within the period of one month beginning with the date on which the Commission receives an application under this section, or within such longer period as the Commission and the applicants may at any time agree in writing, the Commission has neither effected a transfer of the licence nor given notice to the applicants that he has rejected the application, the Commission shall be deemed to have rejected the application.

(12) An application under this section may be withdrawn by the applicant at any time before it is determined.

NOTE

The following Regulations have been made under section 15:

Renewable Energy (Alderney) (Fees) Regulations, 2010.

Representations prior to variation, revocation or suspension of licence.

16. (1) The holder of a licence to whom notice is given under section 12(9) or 13(4) may make written representations to the Commission concerning the variation, revocation or suspension of the licence, as the case may be, within 14 days

of the date of the notice.

(2) In order to afford reasonable opportunity for the holder of a licence to exercise his right under subsection (1) –

- (a) the notice must inform that person of that right, and
- (b) the date specified in it from which the variation, revocation or suspension, as the case may be, is to take effect must not be less than 21 days after the date of the notice.

(3) If the holder of a licence exercises his right under subsection (1) the Commission must consider his representations, and may withdraw the notice or postpone its effective date, but in any event must inform that person of its decision in writing before the date on which the variation, revocation or suspension, as the case may be, takes effect or would otherwise take effect.

Effect of licence.

17. The issue of a licence under this Ordinance does not absolve its holder from the need to obtain any other licence, permission or consent required, or from any obligation imposed on him, by or under any other enactment for the time being in force.

**PART III
CIVIL PENALTIES AND OFFENCES**

Public statements.

18. (1) Where the Commission is satisfied, subject to subsection (2), that a person has contravened the terms or conditions of a licence it may publish a statement to that effect.

(2) A person who is bound by a condition of a licence by virtue of section 11(3) is not to be taken as having contravened that condition for the purposes of this section and sections 19 and 20 unless the requirements of subsection (3) are satisfied.

(3) The requirements are that –

- (a) the Commission has served the person with a notice requiring compliance with the condition within such period (not being less than 30 days) as may be specified in the notice, and
- (b) the person has failed to comply with the condition within that period.

(4) In deciding whether or not to publish a statement under this section and, if it decides to do so, the terms thereof the Commission must take into consideration the following factors –

- (a) whether the contravention was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the person

concerned and to third parties of publishing a statement,
and

- (f) the action taken by the Commission under this section in other cases.

Discretionary financial penalties.

19. (1) Where the Commission is satisfied, subject to section 18(2), that a person has contravened the terms or conditions of a licence it may impose on that person a financial penalty in respect of the contravention of such amount as it considers appropriate but not exceeding the maximum amount which could be imposed by a court in relation to such contravention under section 20.

(2) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Commission must take into consideration the following factors –

- (a) whether the contravention was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned and to third parties of imposing a penalty,
and

- (f) the penalties imposed by the Commission under this section in other cases.

(3) Where a penalty is imposed on a person under this section, the Commission may publish his name and the amount of the penalty.

(4) Any financial penalty imposed under this section shall be payable to the States.

Offence of contravention of terms or conditions of licence.

20. Subject to section 18(2), a person who contravenes any terms or conditions of a licence commits an offence and shall be liable –

- (a) [on summary conviction], to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding 6 months, or to both, and
- (b) [on conviction on indictment], to a fine, or to imprisonment for a term not exceeding 5 years, or to both.

NOTE

In section 20, the words in square brackets in, first, paragraph (a) and, second, paragraph (b) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 5, respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013.

Action taken in an emergency.

21. (1) It is a defence for a person charged with an offence under section 20 in relation to any activity to prove that the activity was carried out –

- (a) for the purpose of securing the safety of –
 - (i) a renewable energy system,
 - [(ii) any related plant or apparatus, or]
 - (iii) any [ship] or aircraft, or
- (b) for the purpose of saving life,

and the person took steps within a reasonable time to inform the Commission of the matters set out in subsection (2).

(2) The matters are –

- (a) the fact that the activity was carried out,
- (b) the locality and circumstances in which it was carried out, and
- (c) any [renewable energy system, related plant or apparatus], [ship], aircraft or persons concerned.

(3) A person does not have the defence provided by subsection (1) if the court is satisfied that the activity was neither –

- (a) necessary for any purpose mentioned in subsection (1)(a) or (b), nor
- (b) a reasonable step to take in the circumstances.

(4) A person does not have the defence provided by subsection (1) if the court is satisfied that –

- (a) the activity was necessary for one of those purposes, but
- (b) the necessity was due to the fault of the defendant or a person acting under the defendant's direction or control.

NOTE

In section 21, the words in, respectively, the first, the second and fourth, and the third pairs of square brackets were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 21(b), section 21(a) and section 21(c), with effect from 20th March, 2013.

Offence in relation to false or misleading information.

22. (1) A person who, for any of the purposes set out in subsection (2)

–

- (a) makes a statement which is false or misleading in a material particular, knowing the statement to be false or misleading,
- (b) makes a statement which is false or misleading in a material particular, being reckless to whether the statement is false or misleading, or
- (c) intentionally fails to disclose any material particular,

commits an offence and is liable –

- (i) [on summary conviction], to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding 3 months, or to both, and
 - (ii) [on conviction on indictment], to a fine, or to imprisonment for a term not exceeding 2 years, or to both.
- (2) The purposes are –
- (a) the purpose of procuring the issue, variation, transfer or surrender of a licence, or
 - (b) the purpose of complying with, or purporting to comply with, any obligation imposed by or under the Law.

NOTE

In section 22, the words in square brackets in, first, paragraph (c)(i) and, second, paragraph (c)(ii) of subsection (1) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 5, respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013.

PART IV
POWERS OF INVESTIGATION

Power to request and obtain information and documents.

23. (1) The Commission may, by notice served on a licensee, require him to provide the Commission 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

Commission may reasonably require for the performance of its functions.

- (2) The Commission may, by notice served on a licensee –
 - (a) require him to produce, 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,
 - (b) require him to furnish forthwith, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify,

being information or documents reasonably required by the Commission for the performance of its functions.

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a licensee, the Commission or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) 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 –

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- (i) that person, or
- (ii) any other person who is a present or past director, controller, partner, manager or employee of that licensee,

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.

(5) The foregoing provisions of this section shall apply in relation to a former licensee as they apply in relation to a licensee, but only, unless the Commission directs otherwise in any particular case, for a period of six years immediately after the date on which the former licensee ceased to be a licensee.

(6) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence and liable

–

- (a) [on summary conviction], to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding 3 months, or to both, and
- (b) [on conviction on indictment], 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 –

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- (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 (6),
 - (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.]

(8) ...

NOTES

In section 23,

the words in square brackets in, first, paragraph (a) and, second,

paragraph (b) of subsection (6) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 5, respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013;

subsection (7) was substituted, and subsection (8) was repealed, by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Investigations by inspectors.

24. (1) The Commission may appoint one or more competent persons ("**inspectors**") to investigate and report to the Commission on the suitability of any applicant for, or holder of, a licence, to carry out renewable energy activities having regard to –

- (a) the matters which the Commission is required to have particular regard to ensure and take into account in carrying out its functions under the Law,
- (b) the matters which the Commission is required to [have regard to under section 6], and
- (c) [the matters] which the Commission is required to be satisfied of under section 9(5),

and the Commission shall give notice of the appointment to the applicant or licensee concerned.

(2) An applicant or a licensee being investigated under subsection (1) and any person who is or has been a director, controller, partner, manager, employee, agent, banker, auditor, advocate or other legal adviser of an applicant for a licence or a licensee –

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- (a) shall produce to an inspector, at such time and place as the inspector may require, all documents in his custody or power relating to that licensee or applicant, and the inspector may take copies of or extracts from any documents produced to him under this paragraph,
 - (b) shall attend before an inspector at such time and place as the inspector may require and answer such questions as the inspector may put to him in relation to that licensee or applicant, and
 - (c) otherwise shall give an inspector all assistance in connection with the investigation which he is reasonably able to give.
- (3) An inspector shall, if so required, produce evidence of his authority.
- (4) A person who without reasonable excuse obstructs or fails to comply with any requirement of, or fails to give all reasonable assistance to, an inspector exercising or purporting to exercise any right conferred by this section, is guilty of an offence and liable –
- (a) [on summary conviction], to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding 3 months, or to both, and
 - (b) [on conviction on indictment], to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

[(5) A statement made by a person in response to a requirement imposed by or under this section –

(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 (4),

(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.]

(6) ...

(7) The costs, fees and expenses of an investigation shall be met by the licensee or the applicant for a licence the suitability of which is being

investigated under subsection (1) and such sums shall be payable to the Commission.

NOTES

In section 24,

the words in the first and second pairs of square brackets in subsection (1) were, respectively, substituted and inserted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 13(a) and section 13(b), with effect from 20th March, 2013;

the words in square brackets in, first, paragraph (a) and, second, paragraph (b) of subsection (4) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 5, respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013;

subsection (5) was substituted, and subsection (6) was repealed, by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Power of Chairman of the Court of Alderney to grant warrant.

25. (1) If the Chairman of the Court of Alderney is satisfied by information on oath –

- (a) that a notice has been served under section 23 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 23, or
 - (iii) the accuracy or completeness of any

information or documents furnished under any requirement mentioned in subparagraph (i) or (ii),

- (b) that it is not practicable to serve a notice under section 23, 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 removed, tampered with or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

he may grant a warrant conferring the powers set out in section 26.

(2) If the Chairman of the Court of Alderney is satisfied by information on oath that the Commission has appointed inspectors under section 24 to carry out an investigation under that section, and that there are reasonable grounds for suspecting –

- (a) that an offence under this Ordinance or the Law has been committed in relation to the investigation,
- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation,

or

- (c) that, if a warrant were not granted –
 - (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed, or
 - (ii) the investigation might be seriously prejudiced,

he may grant a warrant conferring the powers set out in section 26.

Powers conferred by Chairman of Court of Alderney's warrant.

26. (1) A warrant granted under section 25(1) shall authorise any police officer, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –
 - (i) which are occupied by the person upon whom the notice under section 23 was or could be served,
 - (ii) at which the documents to which the notice under section 23 relates are reasonably believed to be, or
 - (iii) where no notice under section 23 has been served, at which the documents to which the notice would relate are reasonably believed to

be,

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 23, or

(ii) where no notice under section 23 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 23,

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 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 23,

(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 25(2) shall authorise any police officer, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

(a) to enter any premises specified in the warrant, being premises –

(i) which are occupied by the licensee or the applicant for a licence being investigated under section 24, or

(ii) at which any documents to which the investigation under section 24 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 24, 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 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 –

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- (i) to answer any questions relevant to the investigation under section 24,
- (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.

(3) ...

(4) Any documents of which possession is taken under the powers conferred by a warrant granted under section 25 may be retained –

- (a) for a period of three months or such longer period as the Chairman of the Court of Alderney may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(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 25 is guilty of an offence and is liable –

- (a) [on summary conviction], to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding 3 months, or to both, and

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

[(6) A statement made by a person in response to a requirement imposed under a warrant granted under section 25 –

- (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),

- (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.]

(7) ...

NOTES

In section 26,

subsection (3) was repealed by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 14, with effect from 20th March, 2013;

the words in square brackets in, first, paragraph (a) and, second, paragraph (b) of subsection (5) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 5, respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013;

subsection (6) was substituted, and subsection (7) was repealed, by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Legal professional privilege, liens and duties of confidentiality.

27. (1) Nothing in –

(a) section 23 or 24, or

(b) a warrant granted under section 25,

shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege, but an advocate or other legal adviser may be required to give the name and address of any client.

(2) Where a person claims a lien on a document, its production under –

(a) section 23 or 24, or

- (b) a warrant granted under section 25,

is without prejudice to his lien.

- (3) A requirement imposed by or under –

- (a) section 23 or 24, or

- (b) a warrant granted under section 25,

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 during investigation.

28. (1) A person upon whom a notice under section 23 or 24 has been served or who knows or has reasonable grounds to suspect –

- (a) that such a notice is likely to be served on him, or
- (b) that an inquiry or investigation is being or is likely to be carried out under section 23 or 24,

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 inquiry or

investigation,

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

(2) A person who commits an offence under subsection (1) is liable –

- (a) [on summary conviction], to a fine not exceeding level 5 on the Alderney uniform scale, or to imprisonment for a term not exceeding 3 months, or to both, and
- (b) [on conviction on indictment], to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

NOTE

In section 28, the words in square brackets in, first, paragraph (a) and, second, paragraph (b) of subsection (2) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 5, respectively paragraph (a) and paragraph (b), with effect from 20th March, 2013.

PART V
APPEALS

Appeals against decisions of Commission.

- 29.** (1) A person aggrieved by a decision of the Commission –
- (a) to refuse an application by him for a licence,

Consolidated text

- (b) to impose a condition on a licence granted to him,
- (c) to vary or refuse to vary the terms or conditions of a licence granted to him,
- (d) to suspend or revoke his licence,
- (e) to refuse to accept the surrender of his licence,
- (f) to refuse to effect the transfer of his licence,
- (g) to publish a statement under section 18,
- (h) to impose a financial penalty under section 19,

may appeal to the Court of Alderney 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 immediately following the date of the notice of the Commission's decision, and
 - (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court of Alderney, 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 or to the provisions of rule 51(2) of the Court of Alderney Civil Rules, 2005.

- (5) On an appeal under this section the Court of Alderney may –
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission 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 a decision described in subsection (1)(b) to (d) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation or variation of the term, condition or notice in question pending the determination of the appeal.

(7) An appeal from a decision of the Royal Court, made on an appeal from the Court of Alderney, shall lie to the Court of Appeal on a question of law.

PART VI
MISCELLANEOUS

Licence register.

30. (1) The Commission shall maintain a public register of licences containing –

- (a) the names and addresses of all licensees to whom a licence has been granted, and
- (b) a copy of every licence granted by it.

(2) The public register referred to in subsection (1) shall be made available by the Commission for public inspection at its offices during the Commission's normal office hours.

(3) The Commission may withhold any information from the public register referred to in subsection (1), if the Commission considers that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

(4) The Commission may by regulations prescribe that such other matters as it thinks fit be kept by it on the register to be maintained under this section including, without limitation –

- (a) copies or prescribed particulars of any application relating to a licence, and
- (b) copies or prescribed particulars of any notice issued by it or other action taken by the Commission in relation to the contravention of the terms or conditions of a licence or any provision of, or under, this Ordinance.

(5) Any register maintained by the Commission under this section may be in electronic form.

Recovery of costs, expenses, a fee or a penalty as a civil debt.

31. (1) Where costs, expenses, a fee or a penalty is payable under this Ordinance to the Commission or the States such costs, expenses, fee or penalty may, subject to subsection (2), be recovered by the Commission or the States, as the case may be, as a civil debt from the person who is liable to pay such costs, expenses, fee or penalty.

(2) No sum in respect of costs, expenses or a fee payable under this Ordinance may be recovered by the Commission as a civil debt from the person who is liable to pay such sum where the court is satisfied that –

- (a) the sum is not reasonable in amount or was not reasonably incurred, or
- (b) the Commission acted unreasonably, frivolously or vexatiously in incurring that sum.

Amendment of the Law.

32. (1) The Law is amended as follows.

(2) In section 2(2)¹ (power of States to make Ordinances to exempt specified activity) –

(a) in paragraph (e) at the beginning insert "the obtaining of information and documents by the Commission, the States or any committee of the States to enable any of the same to perform functions imposed by or under the Law and",

(b) for paragraph (f) substitute –

"(f) the grant, renewal, variation, suspension or revocation by the Commission, the States or any committee of the States of any licence to operate, deploy, use or manage any renewable energy system or the acceptance of the surrender or the effecting of the transfer of such a licence by the Commission, the States or such a committee," and

(c) in paragraph (h), after subparagraph "(iii)" omit the word "or" and after subparagraph (iv) add –

"(v) to vary the terms or conditions of,

(vi) to refuse to vary the terms or conditions of,

(vii) to refuse to accept the surrender of, or

(viii) to refuse to effect the transfer of,"

(3) In section 3(1) (general offence and penalties) –

(a) in subsection (1)(a), for the words "level 4" substitute "level 5", and

(b) in subsection (1)(b), for the words "not exceeding twice level 4" to the end substitute "or to imprisonment for a term not exceeding 5 years, or to both."

(4) In section 7(1) (functions of the Commission), in paragraph (a), omit the word "or" and at the end of the subsection omit the full stop and add –

", or

(c) resolution of the States."²

(5) In section 28 of the Law (interpretation), at the end add –

"(5) In this Law any reference to "**operate, deploy, use or manage any renewable energy system**" and related expressions shall be construed as including to arrange for the operation, deployment or use or be concerned in the management of any renewable energy system."³

(6) In the Schedule to the Law (provisions having effect with respect to the Alderney Commission for Renewable Energy) in paragraph 1, for "and 3" substitute "and at least 2, but no more than 4,".

Service of notices and documents.

33. (1) Any document, other than a summons, to be given or served under this Ordinance may be given to or served upon –

- (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 with a registered office in Alderney, by being left at, or sent by post or transmitted to, that office,
- (c) a company without a registered office in Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Alderney or, if there is no such place, its registered office or principal or last known principal place of business outside Alderney,
- (d) an unincorporated body, by being given to or served on any partner, manager or other similar 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 Alderney or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) the Commission or its Chairman, by being left at, or sent by post or transmitted to, the principal office of the Commission in Alderney,

and in this section –

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post,
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication, in which event the document shall be regarded as served when it is received, and
- (iii) the expression "**summons**" includes any document compelling a person's attendance before the court.

(2) If a person notifies the Commission of an address for service within Alderney for the purposes of this Ordinance, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in the Alderney Official Gazette.

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

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Commission or its Chairman under this Ordinance shall be deemed to have been given or served until it is received.

(6) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Ordinance 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 within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^c, as amended.

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

Recommendation of appointment of persons as members of the Commission.

34. The Policy and Finance Committee of the States of Alderney is the committee specified to recommend to the States the persons to be appointed as the Chairman and members of the Commission pursuant to section 6 of, and the Schedule to, the Law.

^c Ordres en Conseil Vol. XVII, p. 384, as amended by Vol. XXIV, p. 84 and Orders in Council No. XI of 1993 and No. XIV of 1994.

Interpretation.

35. (1) In this Ordinance, unless the context requires otherwise –

"**Alderney company**" means a body corporate 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^d,

"**Alderney waters**" means the territorial waters of Alderney and the national waters of Alderney,

"**Chairman of the Court of Alderney**" means the Chairman of the Court of Alderney or, if he is not available, a Jurat of such court,

"**controller**", in relation to a company, means –

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary, or
- (b) a shareholder controller or an indirect controller,

"**development**" means the carrying out of building, engineering or other operations in, on, over or under land, sea or the sea bed,

"**director**" includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes any person in accordance with whose directions or instructions any director is accustomed to act,

^d Order in Council No. XXXIV of 1994, as amended by Order in Council No. I of 2001 and No. XV of 2002.

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

"harbour" includes piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers,

"indirect controller", in relation to a company, means a person in accordance with whose directions or instructions any director of that company or of any other company of which that company is a subsidiary, or any controller of that company, is accustomed to act,

"Island Plan" means the plan adopted by the States and entitled "An Island Plan: Phase 1 Sustaining Alderney's Future" including any adopted amendment thereto from time to time in force,

"the Law" means the Renewable Energy (Alderney) Law, 2007,

"licence" means a licence issued by the Commission under this Ordinance to carry on renewable energy activities,

"manager", in relation to a company, means a person other than a chief executive who, under the immediate authority of a director or chief executive of the company –

- (a) exercises managerial functions, or
- (b) is responsible for maintaining accounts or other records of the company,

[...]

"notice" means notice in writing,

"objection" means an objection in writing,

"police officer" means –

- (a) a member of the salaried police force of the island of Guernsey,
- (b) a member of any police force established by the States, and
- (c) within the limits of his jurisdiction, a person appointed as a special constable under section 47 of the Government of Alderney Law, 2004^e,

[...]

"representations" means an objection or other representations in writing,

"shareholder controller", in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary,

[...]

"subordinate legislation" means any regulation, rule, order, rule of

^e Order in Council No. III of 2005.

court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"subsidiary" shall be construed in accordance with Schedule 4 of the Companies (Alderney) Law, 1994 as if that schedule applied to any company, and

"under the Law" includes under this Ordinance or any other Ordinance or regulations made under the Law and related expressions shall be construed accordingly,

(2) References to **"an application in relation to [the operation, deployment, use or decommissioning] of a renewable energy system"** or related expressions shall be construed as not including an application which only relates to arranging for [the operation, deployment, use or decommissioning], or managing or being concerned in the management of, any renewable energy system.

(3) Unless the context requires otherwise, other words and expressions used in this Ordinance and defined in the Law have the same meaning as in the Law.

(4) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of this Ordinance.

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

(6) In this Ordinance any words importing the neuter gender shall

^f Ordres en Conseil Vol. XIII, p. 355.

include the masculine and feminine and any words importing the masculine gender shall include the feminine and neuter.

NOTES

In section 35,

the words omitted in the first, second and third pairs of square brackets in subsection (1) were repealed by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 15, with effect from 20th March, 2013;

the words in square brackets in subsection (2) were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 2(1), with effect from 20th March, 2013.

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a).

Citation.

36. This Ordinance may be cited as the Renewable Energy (Alderney) Ordinance, 2008.

Commencement.

37. This Ordinance shall come into force on the 10th November, 2008.

SCHEDULE 1
ENVIRONMENTAL STATEMENT

Section 4(2)(b)(i)

PART I
INFORMATION WHICH MUST BE INCLUDED IN AN ENVIRONMENTAL
STATEMENT

1. A description of the development comprising information on the site, design and size of the development.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy any likely significant adverse effects of the development.
3. The data required to identify and assess the main effects which the development is likely to have on the environment.
4. An outline of the main alternatives to the development studied by the applicant and an indication of the main reasons for the choice of development, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

PART II
INFORMATION WHICH MUST BE INCLUDED IN AN ENVIRONMENTAL
STATEMENT WHERE REASONABLY REQUIRED TO ASSESS
ENVIRONMENTAL EFFECTS

1. A description of the development, including in particular –
 - (a) a description of the physical characteristics of the

whole development and the land-use requirements (including use of the sea-bed) during the construction and operational phases,

- (b) a description of the main characteristics of the production processes, for instance, nature and quality of the materials used, and
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

2. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.

3. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development resulting from –

- (a) the existence of the development,
- (b) the use of natural resources, and
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the applicant of the forecasting methods used to assess the

effects on the environment.

4. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

6. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

MATTERS TO BE INCLUDED IN A DECOMMISSIONING PROGRAMME

A decommissioning programme must include the following matters –

- (a) the measures to be taken for decommissioning the renewable energy system, or any part thereof, and any [related plant or apparatus], whether on, in, over or under land, the sea or sea bed,
- (b) an estimate of the expenditure likely to be incurred in carrying out those measures,
- (c) provision for the determination of the times at which, or the periods within which, those measures will have to be taken,
- (d) where the programme proposes that any renewable energy system, any part thereof or any [related plant or apparatus] will be moved from a place within Alderney waters, provision about restoring that place to the condition that it was in prior to the construction, erection or [placement] thereof, and
- (e) where the programme proposes that any renewable energy system, any part thereof or any [related plant or apparatus] will be left in position at a place within Alderney waters or will not be wholly removed from such a place, provision about whatever continuing monitoring and maintenance thereof will be necessary.

NOTE

In Schedule 2, the words in, first, the first, second and fourth and, second, the third pairs of square brackets were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, respectively section 3(1) and section 16, with effect from 20th March, 2013.

SCHEDULE 3

Section 5(1)

NOTICE OF APPLICATION FOR LICENCE

The form of notice to be published by an applicant for a licence in the Alderney Official Gazette shall be as set out below –

"An application for a licence dated *{insert date of application}* has been made to the Alderney Commission for Renewable Energy ("**the Commission**") under the Renewable Energy (Alderney) Ordinance, 2008 by –

{insert name of applicant}

of *{insert address of applicant's registered office if a company or, if not, business address or, if a private individual, the private address}*

in relation to –

{description of activities in s. 1 of Renewable Energy (Alderney) Law, 2007 in respect of which the application is made}.

The above activities are to be carried out at –

{insert address of location or if none a description of the location or co-ordinates}.

Any person wishing to make an objection or other representations in relation to this application so that they must be considered in accordance with section 8 of the Renewable Energy (Alderney) Ordinance, 2008 must send the same to the offices of the Commission at the address set out below within **21 days** of the date of publication of this notice. Any person making an objection must provide a written statement of that objection and the grounds on which it has been made.

A copy of the application and *{insert if relevant-**of the [environmental statement] and decommissioning programme relating to the proposed activities}**}* is available for public inspection at the offices of the Commission at *{insert address}* and on their website *{insert website address}*.

Signed:
for and on behalf of {insert applicant's name}

Dated: {insert date}."

NOTE

In Schedule 3, the words "environmental statement" in square brackets, wherever occurring, were substituted by the Renewable Energy (Alderney) (Amendment) Ordinance, 2013, section 4, with effect from 20th March, 2013.

¹ For subsequent amendments, see the consolidated text of the Renewable Energy (Alderney) Law, 2007.

² For subsequent amendments, see the consolidated text of the Renewable Energy (Alderney) Law, 2007.

³ For subsequent amendments, see the consolidated text of the Renewable Energy (Alderney) Law, 2007.