ORDER IN COUNCIL

XXII
1972

ratifying a Projet de Loi

ENTITLED

The States Water Supply (Prevention of Pollution) (Alderney) Law, 1972

(Registered on the Records of the Island of Guernsey on the 5th day of December, 1972.)

1972.

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ORDER IN COUNCIL

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of December, 1972, before Sir William Arnold, Kt., C.B.E., Bailiff; present:—Bertram Guy Blampied, Esquire, O.B.E., Claude Fortescue Nason, Stanley Walter Gavey, Esquires, Gilbert Carey de Jersey, Esquire, C.B., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Jean Le Pelley, Walter Francis Robin, Richard Alan Kinnersly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe and Richard Oliver Symons, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 23rd day of October, 1972, ratifying a Projet de Loi of the States of Alderney entitled "The States Water Supply (Prevention of Pollution) (Alderney) Law, 1972", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island, of which Order in Council the tenor followeth:—

At the Court at Windsor Castle

The 23rd day of October 1972

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 10th day of October 1972, in the words following, viz.:—

"YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee a humble Petition of George William Baron, Esquire, President of the States of Alderney setting forth:

'That at a meeting of the States of Alderney held on the 21st day of June 1972, the States adopted a Resolution that a Projet de Loi entitled "The States Water Supply (Prevention of Pollution) (Alderney) Law, 1972" be approved: That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said Projet de Loi is set forth in the words and figures of the Schedule hereunto annexed: And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Projet de Loi entitled "The States Water Supply (Prevention of Pollution) (Alderney) Law, 1972" and to order that the same shall have the force of Law within the Island of Alderney.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition, and the Projet de Loi annexed thereto, into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of law within the Island of Alderney.

AND HER MAJESTY doth hereby further direct that this Order and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. Agnew.

Projet de Loi referred to in the foregoing Order in Council.

PROJET DE LOI

ENTITLED

The States Water Supply (Prevention of Pollution) (Alderney) Law, 1972

THE STATES, in pursuance of their Resolution of the fourteenth day of December, nineteen hundred and seventy-one, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

Interpretation.

1.—(1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"the Board" means the States of Alderney Water Board constituted under the Law of 1954;

"occupier", in relation to any premises, means the person who, not being the owner of those premises, is in or is entitled to actual possession of those premises;

"the Law of 1954" means the Alderney Water Supply Law, 1954(*a*);

"owner", in relation to any premises, means—

(*a*) the beneficial owner, if those premises are not held in trust;

(*b*) the trustees, if those premises are held in trust;

"premises" includes land;

(*a*) Ordres en Conseil Vol. XVI, p. 129; Vol. XXI, p. 310.

"the Court" means the Court of Alderney;

"undertaking" means any undertaking by way of any trade or business.

(2) Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

(3) The Interpretation (Guernsey) Law, 1948(*b*) shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

Power of the States to make Ordinances.

2.—(1) The States may from time to time by Ordinance provide—

(*a*) for prohibiting or regulating the doing of any act specified in the Ordinance for the purpose of protecting against pollution any water, whether on the surface or underground, which is under the control of the Board;

(*b*) for the entry into and inspection of any premises for any purpose connected with the exercise of powers conferred by or under this Law;

(*c*) for any incidental and supplementary matters for which the States deem it expedient for the purposes of the Ordinance to provide.

(2) An Ordinance made under this Law may prohibit the doing of anything regulated by the Ordinance except under the authority of a permit

(*b*) Ordres en Conseil Vol. XIII, p. 355.

granted by the Board, and may be made so as to apply either to persons or undertakings generally or to any particular person or undertaking or class of persons or undertakings, and either to the whole or to any part of such undertakings, and so as to have effect either generally or in any particular area.

Power of the Board to require works to be executed, etc.

3.—(1) The Board may by notice in writing require the owner or occupier of any premises to execute and keep in good repair such works as it considers necessary for preventing the pollution of any water under its control and, if he fails to comply with any such requirement, he shall be guilty of an offence and liable, on conviction, to a fine not exceeding fifty pounds and to a further fine not exceeding ten pounds for every day during which the offence continues after conviction therefor—

> "Provided that any person who considers that a requirement made on him under this subsection is not reasonable may, within twenty-eight days after service on him of the requirement, appeal to the Court and the Court may, if it decides that the requirement is not reasonable, modify or disallow the requirement".

(2) Where any person has failed to comply with a requirement made on him under subsection (1) of this section and—

(*a*) he has not appealed to the Court against that requirement and the time for appealing has expired; or

(*b*) his appeal has been dismissed or the requirement has been modified on his appeal and he has failed to comply with the requirement as so modified;

the Board may execute and keep in good repair the works specified in the requirement originally made

or, as the case may be, as modified on appeal, and may recover the expenses reasonably incurred by it in so doing from that person in default as a civil debt.

(3) Subject to the provisions of the next succeeding subsection, the Board shall pay compensation to any person in respect of any expenses reasonably incurred by him in complying with any requirement made on him under subsection (1) of this section, or where such requirement has been modified on appeal, with such requirement as so modified, as the case may be, and such compensation shall be in such amount as the Board may consider reasonable having regard to all the circumstances of the case including any increase in the value of the premises on which any works have been carried out in compliance with such requirement where such increase is attributable to such works:

Provided that the Board shall, upon being requested by that person so to do, refer the question of the amount of compensation payable to that person under this subsection to two arbitrators, one appointed by the Board and one appointed by that person, which arbitrators shall appoint an umpire immediately after they themselves are appointed to determine that question should they fail to agree, and the decision of such arbitrators or umpire, as the case may be, shall be final.

(4) Compensation shall not be payable under the last preceding subsection in respect of any expenses incurred by any person in complying with any requirement made on him under subsection (1) of this section where such expenses were incurred—

(*a*) in connection with the maintenance or repair of any works; or

(*b*) in connection with any works necessitated by reason of a contravention of any of the

provisions of any Ordinance made under this Law or by reason of a contravention of subsection (5) of section six of the Law of 1954, except in the case where a contravention of the said subsection (5) relates to the erection of an oil-storage tank or any apparatus ancillary thereto and that person has not at any time been directed by the Board to carry out any works in relation to such tank or apparatus so as to prevent the pollution of water under the control of the Board, or if he has been so directed, has complied with the direction.

Power of the Board to cause immediate steps to be taken to prevent the pollution of water.

4.—(1) Where the Board has reason to believe that anything used or proposed to be used on, in or over any premises is likely to pollute any water which is, or which may become, under the control of the Board and that if steps are not taken immediately to prohibit or restrict the use of such thing or to remove such thing from the place which it occupies it will be impracticable to prevent the pollution of such water by reason of the use of such thing, the Board may, by order served on the owner or occupier of those premises—

(*a*) prohibit the use of such thing;

(*b*) permit the use of such thing only on such conditions as may be specified in the order;

(*c*) whether in addition to prohibiting or permitting the use of such thing as aforesaid, require such thing to be removed from the place which it occupies to such other place as may be specified in the order;

and in the event of the owner or occupier, as the case may be, of those premises failing at any time while the order is in force to comply therewith or, where the order has been varied by the Court under

the next succeeding subsection, to comply with the order as so varied, the Board may cause such steps to be taken as it may deem necessary to effect compliance with the order as originally made or so varied, as the case may be, and may cause such steps to be taken to effect compliance with the order as originally made notwithstanding that an appeal is pending against the order under the next succeeding subsection.

(2) Any person who considers that an order served on him under subsection (1) of this section is not reasonable may, within eight days after service on him of the order, appeal to the Court and the Court may, if it decides that the order is not reasonable, vary or revoke the order.

(3) Any expenses reasonably incurred by the Board in respect of any steps taken at the instance of the Board under subsection (1) of this section so as to effect compliance with any order under that subsection or, as the case may be, so as to effect compliance with any such order as varied by the Court under the last preceding subsection, shall be recoverable by the Board as a civil debt from the person in default—

Provided that where any such order—

(i) has been revoked by the Court under the last preceding subsection, such expenses shall not be recoverable from that person;

(ii) has been varied as aforesaid after such expenses have been incurred, the Board shall only be entitled to recover from that person such expenses as, in the opinion of the Court, would have been necessary to effect compliance with the order as so varied.

(4) In any case where the Court revokes or varies an order made against any person under subsection (1) of this section and such person has, in the opinion of the Court, sustained any loss by reason of any steps taken at the instance of the Board under that subsection, the Court may at the time of revoking or varying the order, as the case may be, order the Board to pay compensation to that person in respect of such loss in such amount as the Court may determine.

(5) The Board may revoke any order made under subsection (1) of this section.

Penalty for polluting water under the control of the Board.

5.—(1) If any person is guilty of any act or omission whereby any water under the control of the Board is polluted or likely to be polluted, he shall be guilty of an offence and liable, on conviction, to a fine not exceeding five hundred pounds and in the case of a continuing offence to a further fine not exceeding fifty pounds for every day during which the offence is continued after conviction.

(2) Where an offence under subsection (1) of this section has been committed by any person in the course of his employment under a contract of service or apprenticeship, his employer as well as that person shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he proves that the offence was committed without his consent or connivance and is not attributable to any neglect on his part.

Right of the Board to recover expenses in certain cases.

6.—(1) Where by the act or omission on the part of any person any water under the control of the Board is polluted or is likely to be polluted, the Board may recover as a civil debt—

(*a*) from that person; or

(*b*) if at the time of that act or omission that person was acting in the course of his employment under a contract of service or apprenticeship, from the employer of that person;

any expenses reasonably incurred by the Board by reason of that act or omission.

(2) On the conviction of any person of an offence under subsection (1) of this section, the Board may recover from that person as a civil debt any expenses reasonably incurred by the Board by reason of the commission of that offence.

False information.

7. If any person, in furnishing any information for the purposes of this Law or any Ordinance made thereunder, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

Obstruction.

8. If any person wilfully obstructs any person exercising any powers or performing any duties conferred or imposed on him under this Law or any Ordinance made under this Law, he shall be guilty of an offence and liable, on conviction, to a fine not exceeding fifty pounds.

Offences and penalties.

9.—(1) Save as otherwise expressly provided by that Ordinance, any person who contravenes or attempts to contravene or fails to comply with any of the provisions of any Ordinance made under this Law or any direction given or requirement imposed

under or by virtue of that Ordinance shall be guilty of an offence under that Ordinance.

(2) The States may from time to time by Ordinance prescribe the penalties which shall be incurred by any person guilty of any offence under any Ordinance made under this Law and different penalties may be so prescribed for different offences.

Appeals.

10.—(1) Any appeal under this Law shall be instituted by way of summons served on the Chairman of the Board to show cause—

(*a*) in the case of an appeal against a requirement made under subsection (1) of section three of this Law, why the requirement should not be modified or disallowed;

(*b*) in the case of an appeal against an order under subsection (1) of section four of this Law, why the order should not be varied or revoked;

and such summons shall set out the material facts upon which the appellant relies.

(2) On any appeal—

(*a*) against such a requirement, the burden of satisfying the Court that the requirement is reasonable shall be discharged by the Board;

(*b*) against such an order, the burden of satisfying the Court that the order is reasonable shall be discharged by the Board.

(3) The decision of the Court on any appeal under this Law shall be final and conclusive.

Service of notices.

11.—(1) Without prejudice to any special provision contained in any Ordinance made under this Law, a notice or order to be served for the purposes of

this Law or of any Ordinance made under this Law may be served—

(*a*) on any person by delivering it to him, by leaving it, or sending it by registered post or by recorded delivery service addressed to him, at his usual or last known place of abode;

(*b*) on any body corporate by leaving it at, or by sending it by registered post or by recorded delivery service to, its registered office if situate in Alderney or, if its registered office is not so situate, its principal or last known principal place of business in Alderney.

(2) Where two or more persons are the owners or occupiers of any premises, any notice or order served on one of those persons in accordance with the provisions of subsection (1) of this section shall, for the purposes of this Law or of any Ordinance made under this Law, be deemed to be service on all of those persons.

(3) Where the owner or occupier of any premises is an infant or a person under guardianship, any notice or order to be served in respect of those premises for the purposes of this Law or of any Ordinance made under this Law shall be served on the guardian of that infant or person, as the case may be, and in any case in which there is no guardian, the Board may apply to the Court for the appointment of a guardian to act as such for the purposes of this Law.

Variation and repeal of Ordinances.

12. Any power conferred by this Law to make any Ordinance shall be construed as including a power exercisable in the like manner to vary or repeal the Ordinance.

13. Section six of the Law of 1954 is hereby repealed. Repeal.

14. This Law may be cited as the States Water Supply (Prevention of Pollution) (Alderney) Law, 1972. Citation.

15. This Law shall come into force on such day as the States may by Ordinance appoint. Commencement.

R. H. VIDELO,
Her Majesty's Greffier.