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The Guernsey Competition and Regulatory Authority Ordinance, 2012

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The Guernsey Competition and Regulatory Authority Ordinance, 2012

THE STATES, in pursuance of their Resolutions of the 27th July, 2006^a, the 29th September, 2009^b and the 30th September, 2011^c, and in exercise of the powers conferred on them by sections 1, 5 and 6 of the Competition (Enabling Provisions) (Guernsey) Law, 2009^d, sections 15(8), 22A and 23 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001^e, sections 2 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991,^f section 34(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001^g, section 36(1) of Electricity (Guernsey) Law, 2001^h, section 48(1) of the Post Office (Bailiwick of Guernsey) Law, 2001ⁱ, and all other powers enabling them in that behalf, hereby order:-

^a Article XVIII of Billet d'État No. XIII of 2006.

^b Article IX of Billet d'État No. XXI of 2009 (Volume II; adjourned from the 29th July, 2009).

^c Article XIV of Billet d'État No. XV of 2011 (Volume 1).

^d Order in Council No. XV of 2009.

^e Ordres en Conseil Vol. XLI, p. 295; amended by Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXII, p. 8; and Order in Council No. XXII of 2009.

^f Ordres en Conseil Vol. XXXIII, p. 478.

^g Ordres en Conseil Vol. XLI, p. 452; amended by Order in Council No. XXX of 2003; and Recueil d'Ordonnances Tome XXIX, p. 406.

^h Ordres en Conseil Vol. XLI, p. 343; amended by Recueil d'Ordonnances Tome XXVIII, p. 545; and Tome XXIX, p. 406.

ⁱ Ordres en Conseil Vol. XLI, p. 515; amended by Order in Council No. XXX of 2003; Recueil d'Ordonnances Tome XXVIII, p. 491; Tome XXIX, p. 406; Ordinance No. XXXIII of 2010; and the Guernsey Competition and Consumer Authority Ordinance, 2012.

PART I
ESTABLISHMENT OF
GUERNSEY COMPETITION AND REGULATORY AUTHORITY

The Authority.

1. (1) There is established a body to be called the Guernsey Competition and Regulatory Authority ("**the Authority**").

(2) The Authority is a body corporate with perpetual succession, capable of suing and being sued in its own name.

(3) Schedule 1 has effect in respect of the Authority and the constitution and proceedings thereof.

Status of Authority.

2. (1) The Authority is not a department or agent of the States, and its members are not servants or agents of the States, and, except to the extent provided otherwise in this Ordinance or any other enactment -

(a) the Authority is not subject to any rule of law relating to departments of the States, and

(b) the Authority does not have any right or privilege vested in departments of the States.

(2) The Authority may consult and co-operate with any department in relation to matters concerning its functions.

Power to give guidance or directions to Authority.

3. (1) The Department may, if it considers it desirable in the public interest to do so, and after consulting the Authority, give the Authority written guidance on matters relating to corporate governance, that is to say, matters relating to the system and arrangements by and under which the Authority is directed and controlled.

(2) Those matters include matters relating to the Authority's accountability, efficiency, and economy of operation, but not matters relating directly to the performance of the Authority's functions.

(3) The guidance may, without limitation, relate to conflicts of interest, the Authority's accounts and the audit thereof, the borrowing of money by the Authority and the investment of the Authority's funds.

(4) The Authority shall have regard to any guidance given by the Department under subsection (1).

(5) The States may, on the recommendation of the Department made after consultation with the Authority, by Ordinance give the Authority directions of a strategic or general nature including, without limitation, directions concerning the priorities to be taken into account by it in the exercise of its functions under the provisions of the Competition (Enabling Provisions) (Guernsey) Law, 2009 ("**the Competition Law**"), this Ordinance and any other Ordinance made under the Competition Law (a "**relevant Ordinance**").

(6) The Authority shall exercise its functions under the provisions of the Competition Law, this Ordinance and any relevant Ordinance in a manner which is consistent with directions given by the States under subsection (5) except where to do so would be in contravention of a duty imposed on it by any enactment.

PART II
FUNCTIONS, POWERS AND STATUS OF AUTHORITY

Functions of Authority.

4. The functions of the Authority are -
- (a) to advise the States Commerce and Employment Department ("**the Department**") generally in relation to -
 - (i) the administration and enforcement of the Competition Law, this Ordinance and any other relevant Ordinance,
 - (ii) the practice and procedures relating thereto, and
 - (iii) competition matters and matters set out in paragraph (b),
 - (b) subject to the provisions of any relevant Ordinance, to investigate -
 - (i) any abuse or suspected abuse of a dominant position by an undertaking,

- (ii) any anti-competitive practice or suspected anti-competitive practice of an undertaking, or
 - (iii) any merger or acquisition of undertakings,
- (c) to administer its office and undertaking,
- (d) subject to the provisions of any relevant Ordinance, to determine -
 - (i) the fees payable and costs and expenses recoverable (whether generally or in any particular case) in respect of the exercise of its functions under this Ordinance or any relevant Ordinance,
 - (ii) the interest and penalties payable in the event of default in the due payment of fees, costs and expenses, and
 - (iii) the classes or descriptions of person by whom such fees, costs, expenses, interest and penalties are to be payable,
- (e) the functions transferred to it by section 5, and
- (f) such other functions as may be assigned or transferred to it -
 - (i) by or under this Ordinance, any relevant

Ordinance and any other enactment, or

(ii) by Resolution of the States.

Transfer of functions of Director General of Utility Regulation.

5. (1) The functions, rights and liabilities of the Director General of Utility Regulation and the Office thereof arising under or by virtue of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 ("**the Regulation of Utilities Law**") or any other enactment are, on the date of commencement of this Ordinance, transferred to and vested in the Authority.

(2) For any reference, however expressed, in any enactment (other than an enactment amended by section 22, 23 or 24 and Schedule 3, 4 or 5) to the Director General of Utility Regulation or to the Office thereof there is substituted, on the date of commencement of this Ordinance, a reference to the Authority.

(3) Anything done before the date of commencement of this Ordinance or in the process of being done on that date by or in relation to the Director General of Utility Regulation or the Office thereof under or by virtue of the Regulation of Utilities Law or any other enactment shall have effect as if done or (as the case may be) may be continued by or in relation to the Authority.

(4) The provisions of subsections (1) to (3) also apply in relation to any subordinate legislation made or having effect as if made under the Regulation of Utilities Law or any other enactment as they apply to the enactment itself; and the provisions of the enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this subsection.

Transfer of undertaking of Director General of Utility Regulation.

6. Schedule 2 has effect in respect of the transfer of the undertaking, property and liabilities of the Director General of Utility Regulation and the Office thereof to the Authority.

Ancillary powers of Authority.

7. (1) The Authority, having regard to the provisions of sections 4 and 5, has power to do anything that appears to it to be conducive or incidental to, or necessary or expedient for the purposes of, the exercise of its functions including, without limitation, power -

- (a) to require the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as it thinks fit,
- (b) to prepare and, subject to any provision to the contrary in this Ordinance, any relevant Ordinance or any other enactment, to publish information, reports, codes of practice, guidance, recommendations and other documents,
- (c) to appoint any person or body to advise it in relation to the exercise of any of its functions, and
- (d) to apply to the Royal Court for directions or for a determination under section 8.

(2) For the purposes of exercising its functions the Authority may, having regard to the provisions of sections 4 and 5 -

- (a) acquire, lease, hold, use, encumber, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it,
- (b) expend money, borrow money (by way of mortgage, overdraft or otherwise, and with or without security) and open, operate and close bank accounts,
- (c) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

Power to apply for directions.

8. (1) The Authority may, if it believes that it would assist it in the proper and lawful exercise of its functions, apply to the Royal Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by Order of the Royal Court, and on such an application the Royal Court may make such order as it thinks fit.

(2) For the purposes of an application under this section, the Royal Court -

- (a) is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) may appoint one or more assessors to assist it.

(3) An appeal from an order of the Royal Court under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal

on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961^j ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Reports.

9. (1) The Authority shall, whenever directed by the Department, and without prejudice to its powers to prepare and publish reports of its own motion, submit to the Department a report on the exercise of its functions in such form and in respect of such matters and such periods as the Department may specify.

(2) The Department -

(a) may submit a report of the Authority made under subsection (1) to the States, and

(b) may at the same time submit their own report to the States on the exercise by the Authority of its functions.

(3) This section does not apply to the functions of the Authority under the Regulation of Utilities Law or any Sector Law within the meaning thereof.

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

Grants and loans to the Authority.

10. The States may, on the recommendation of the Department made after consultation with the Authority, and on such terms and conditions (whether as to repayment, payment of interest or otherwise) as they think fit, make grants or loans from the States general revenue account towards the costs and expenditure of the Authority incurred in exercising its functions.

Investment of surplus funds.

11. The Authority may invest any of its monies not immediately required by it in any investment.

Exemption from income tax.

12. The Authority's income is not subject to income tax under the Income Tax (Guernsey) Law, 1975^k.

Financial and accounting provisions.

13. (1) All fees and similar sums received by the Authority in the exercise of its functions shall, subject to the provisions of any enactment to the contrary, be paid by it to the Department.

(2) Subsection (1) does not apply -

(a) to grants and loans obtained from the States under section 10 or money borrowed by the Authority under the powers conferred by section 7,

^k Ordres en Conseil Vol. XXV, p. 124; there are amendments which are not material to this Law.

- (b) to monies required to be paid into the Public Utilities Regulation Fund by section 9(3) of the Regulation of Utilities Law, or
- (c) if and to the extent that, in accordance with agreed financial procedures, the Department directs otherwise.

(3) The Authority shall -

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) prepare in respect of each year, and submit to the Department, a statement of account giving a true and fair view of the state of affairs of the Authority.

(4) The accounts of the Authority -

- (a) shall be audited annually by auditors appointed by the States on the recommendation of the Public Accounts Committee, and
- (b) shall be submitted, together with the auditors' report thereon, to the Department.

(5) The Department shall in turn submit the accounts and auditors' report thereon to the States.

PART III
OFFENCES

False or misleading information.

14. (1) A person is guilty of an offence if -

- (a) in making any statement or providing any information or document to the Authority, or any member, officer, employee or agent of the Authority, when acting in the exercise of their respective functions, or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person making the statement or providing the information or document knows or could reasonably be expected to know that the statement, information or document would or might be used by the Authority for the purpose of exercising its functions,

he does any of the following -

- (i) he makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) he recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

- (iii) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
 - (iv) he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.
- (2) A person guilty of an offence under subsection (1) is liable -
- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both,
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

Confidentiality.

15. (1) Any document or information from which an individual or body may be identified and which is acquired by the Authority in the exercise of its functions shall be regarded as confidential by the Authority and by its members, officers and servants.

(2) No document or information of a description referred to in subsection (1) may be disclosed without the consent of every individual who, and every body which, can be identified from that document or information, except to the extent that its disclosure is expressly authorised or required by or under this Ordinance or any other enactment or appears to the Authority to be necessary -

- (a) to enable the Authority to exercise its functions,
- (b) in the interests of the investigation, detection, prevention or prosecution of crime,
- (c) in connection with the discharge of any international obligation to which Guernsey may from time to time be subject,
- (d) to assist, in the public interest, any authority that appears to the Authority to exercise, in a place outside Guernsey, functions or powers corresponding to its own, or
- (e) to comply with an order of a court.

(3) Without prejudice to subsections (1) and (2), any document or information communicated to the Authority by a department of the States shall, if that department so requests, be regarded as confidential by the Authority and by its members, officers and servants; and no such document or information shall be disclosed except -

- (a) in compliance with an order of a court, or

(b) with leave of that department, for any reason set out in paragraphs (a) to (d) of subsection (2).

(4) A person who discloses any document or information or who causes or permits the disclosure of any document or information in contravention of this section is guilty of an offence and liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both.

Criminal liability of directors, etc, of bodies corporate.

16. (1) Where an offence under this Ordinance or any relevant Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Criminal liability of partners, etc, of unincorporated bodies.

17. (1) Where an offence under this Ordinance or any relevant Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance or any relevant Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance or any relevant Ordinance shall be paid from the funds of the body.

Defence of due diligence.

18. In any proceedings for an offence under this Ordinance or any relevant Ordinance it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VI
MISCELLANEOUS

Exclusion of liability.

19. (1) No liability is incurred by -
- (a) the States or any department thereof,
 - (b) the Authority, any member thereof or the Chief Executive,
 - (c) any person to whom the Authority or Chief Executive has, under paragraph 13 or 14 of Schedule 1, delegated any function,
 - (d) any person appointed as Deputy Chief Executive under paragraph 16 of Schedule 1, or
 - (e) any officer, employee or member of the States or any officer or employee of the Authority,

in respect of anything done or omitted to be done after the commencement of this Ordinance in the discharge or purported discharge of their functions under this Ordinance or any relevant Ordinance, unless the thing was done or omitted to be

done in bad faith.

(2) Subsection (1) does not prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^l.

Interpretation.

20. (1) In this Ordinance, unless the context requires otherwise -

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

"**Bailiff**" means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff, Judge of the Royal Court or Juge Délégué,

"**body corporate**" means a body of persons incorporated with or without limited liability in any part of the world,

"**Chairman**" means the member of the Authority appointed by the States as Chairman thereof,

"**Chief Executive**" is the most senior officer of the Authority, appointed pursuant to paragraphs 11 and 12 of Schedule 1,

"**Competition Law**" means the Competition (Enabling Provisions) (Guernsey) Law, 2009^m,

^l Ordres en Conseil Vol. XL p. 396; as amended by Order in Council No. I of 2005; and G.S.I. No. 27 of 2006.

^m Order in Council No. XV of 2009.

"**contravention**" includes failure to comply, and related expressions shall be construed accordingly,

"**Court of Appeal**" means the Court of Appeal established by the Court of Appeal (Guernsey) Law, 1961ⁿ,

"**a department**" of the States means any department, council or committee of the States, however called,

"**the Department**" : see section 4(1),

"**Director General**" of Utility Regulation and the "**Office**" thereof shall be construed in accordance with the Regulation of Utilities Law as that Law had effect immediately before the date of commencement of this Ordinance,

"**documents**" means information recorded in any form (including, without limitation, in electronic form) and, in relation to information recorded otherwise in legible form, references to its production, howsoever expressed, include (without limitation) references to the production of the information in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

ⁿ Ordres en Conseil Vol. XVIII, p. 315.

"employee" means a person who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of service or apprenticeship (whether express or implied and whether written or oral), and includes a person engaged under a contract for services or on a consultancy or secondment basis,

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

"functions" includes duties and powers,

"insolvent", in relation to a member or the Chief Executive, includes an individual -

- (a) whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,
- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929^o, or
- (d) in respect of whom an event has occurred outside the Bailiwick which, in the opinion of the Department (in the case of a member) or the Authority (in the case of

^o Ordres en Conseil Vol. VIII, p. 310.

the Chief Executive), corresponds as nearly as may be to any event described in paragraph (a), (b) or (c),

"member" means a member of the Authority, and includes the Chairman,

"non-business day" means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^P,

"ordinary member" means a member of the Authority other than the Chairman,

"Regulation of Utilities Law" means the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001,

"relevant Ordinance" means an Ordinance made under the Competition Law,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted for the purposes of an application under section 8 in accordance with section 8(2),

"States" means the States of Guernsey,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

^P Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 504; and Vol. XXXV(1) p. 367.

enactment and having legislative effect,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^q,

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

(2) 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.

Service of documents.

21. (1) Any document to be served under or for the purposes of this Ordinance or any relevant Ordinance may be served -

- (a) on 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) on a body corporate with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in Guernsey, by being left at, or sent by post or

^q Ordres en Conseil Vol. XXXI, p. 278; amended by Recueil d'Ordonnances Tome XXV, p. 344, Tome XXVIII, p. 89; and Tome XXXI, p. 542.

transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

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

(2) If a person notifies the Authority of an address for service within Guernsey for the purposes of this Ordinance or any relevant Ordinance, any document to be served on him may be 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 in La Gazette Officielle on two occasions falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

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

(5) Notwithstanding the provisions of subsections (1) to (4) and any other enactment or rule of law in relation to the service of documents, no document to be served on the Authority or Chief Executive under or for the purposes of this Ordinance or any relevant Ordinance shall be deemed to have been served until it is received.

(6) If a person on whom a document is to be served under this Ordinance or any relevant Ordinance is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of this Ordinance or (as the case may be) the relevant Ordinance.

(7) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance and any relevant 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.

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

(9) In this section -

"document" does not include a summons,

"by post" means by registered post, recorded delivery service or ordinary letter post,

"served" includes given,

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

(10) The provisions of this section -

- (a) are subject to any contrary provision in any relevant Ordinance, and
- (b) do not apply in respect of documents to be served under or for the purposes of the Regulation of Utilities Law or any Sector Law within the meaning thereof (in respect of which the provisions of section 24 of the Regulation of Utilities Law apply).

Amendment of Regulation of Utilities Law.

22. The Regulation of Utilities Law is amended in accordance with Schedule 3.

Amendment of Competition Law.

23. The Competition Law is amended in accordance with Schedule 4.

Amendment of Utilities Laws.

24. The Utilities Laws are amended in accordance with Schedule 5.

Repeal.

25. The Regulation of Utilities (Exclusion of Liability) Ordinance, 2001^r is repealed.

General provisions as to subordinate legislation.

26. (1) An order under this Ordinance -
- (a) may be amended or repealed by a subsequent order hereunder, and
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.
- (2) Any power conferred by this Ordinance to make an order may be exercised -
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

^r Recueil d'Ordonnances Tome XXVIII, p. 482.

- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Citation.

27. This Ordinance may be cited as the Guernsey Competition and Regulatory Authority Ordinance, 2012.

Commencement.

28. This Ordinance shall come into force on the 1st June, 2012.

D.J. ROBILLIARD,
Her Majesty's Deputy Greffier.

SCHEDULE 1

THE AUTHORITY AND THE CHIEF EXECUTIVE

Members of Authority.

1. (1) The Authority shall consist of a minimum of 3 members ("members"), one of whom shall be the Chairman thereof.

(2) The Chairman shall be appointed by the States on the recommendation of the Department.

(3) The members other than the Chairman (the "ordinary members") shall be appointed by the Department after consultation with the Chairman.

(4) The members shall be persons appearing to the States (in the case of the Chairman) or the Department (in the case of the ordinary members) to have knowledge, qualifications, experience or expertise appropriate and relevant to the functions of the Authority.

(5) A person is not disqualified from holding office as a member by reason only of being an officer, employee or agent of the Authority.

(6) The validity of any proceedings of the Authority is unaffected by a vacancy in its members, by any defect in the appointment of a member and by any lack of qualification of a person to act as a member.

Tenure of office of members.

2. (1) A member shall, subject to the provisions of this Ordinance, hold and vacate office in accordance with the terms and conditions of his appointment.

(2) A member shall be appointed for a period not exceeding 5 years and is eligible for reappointment.

Resignation and removal of members.

3. (1) A member may at any time resign his office -

(a) by giving written notice -

(i) in the case of the Chairman, to the Department,

(ii) in the case of an ordinary member, to the Chairman, or

(b) in such other manner as may be specified by the terms and conditions of his appointment.

(2) The States may, on the recommendation of the Department, revoke the appointment of the member appointed as Chairman if satisfied that -

(a) he has been absent from meetings of the Authority for a period exceeding 6 consecutive months without the Authority's consent,

(b) he has neglected the duties of Chairman or member or has engaged in misconduct,

(c) he is insolvent,

- (d) he is incapacitated by physical or mental illness, or
- (e) he is otherwise unable or unfit to discharge the functions of Chairman.

(3) The Department may, after consultation with the Chairman, revoke the appointment of an ordinary member if satisfied that -

- (a) he has been absent from meetings of the Authority for a period exceeding 6 consecutive months without the Authority's consent,
- (b) he has neglected the duties of member or has engaged in misconduct,
- (c) he is insolvent,
- (d) he is incapacitated by physical or mental illness, or
- (e) he is otherwise unable or unfit to discharge the functions of member.

Remuneration of members.

4. (1) The Authority shall pay to its members -
- (a) such expenses as it may determine, and
 - (b) such remuneration, if any, as the Department may determine.

(2) The Authority may also with the approval of the Department establish and maintain such schemes or make such other arrangements as it thinks fit, if any, for the payment of pensions and other benefits in respect of its members or former members.

Committees.

5. (1) The Authority may establish committees whose members may, but need not, be members, officers, employees or agents of the Authority.

(2) A committee of the Authority may, without limitation, be established -

- (a) to advise the Authority as to such matters concerning the exercise of the Authority's functions, and any other matter of relevance to the Authority, as the Authority thinks fit,
- (b) to exercise any function of the Authority, so far as may be lawfully delegated to it.

(3) A committee of the Authority may itself establish sub-committees whose members may, but need not, be members of the committee or members, officers, employees or agents of the Authority.

(4) The Authority may, in respect of a committee established under this paragraph -

- (a) discharge or reconstitute it,
- (b) redefine or add to its terms of reference, and

(c) remove any person appointed to it.

(5) A committee established under this paragraph may, subject to any directions given by the Authority, regulate its own procedure.

Procedure at meetings.

6. At a meeting of the Authority -

(a) a quorum is the nearest whole number above one half of the number of members (including, for the avoidance of doubt, the Chairman) for the time being in office,

(b) the person presiding shall be -

(i) the Chairman, if he is present, or

(ii) if the Chairman is not present -

(A) the person nominated by the Chairman to act in his place, or

(B) if that person is not present, the person elected to chair the meeting by, and from among, the ordinary members present,

(c) each member other than the person presiding has one vote,

- (d) the person presiding has no vote, unless -
 - (i) there is only one other member present, in which case he has one vote, or
 - (ii) there is an equality of votes, in which case he has a casting vote.

Transaction of business and written resolutions.

7. (1) The Authority may, if it thinks fit, transact any business by the circulation of papers to all members.

(2) Anything that may be done by resolution passed at a meeting in person of the members of the Authority may be done by resolution in writing signed by members who, on the date on which the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at such a meeting.

(3) A resolution in writing may consist of several instruments in the same form each signed by one or more members.

(4) A resolution in writing shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as may be specified in the resolution.

(5) A document attached to a resolution in writing shall be deemed to have been laid before a meeting in person of the members signing the resolution.

(6) A resolution in writing of the Authority shall be passed by the majority that it would have required if put to a meeting of the Authority at which all members were present in person.

(7) Notice specifying a proposed resolution in writing shall be given by the Authority to all members in accordance with such formalities as the Authority may determine or as all members may agree in any particular case.

(8) This paragraph is without prejudice to any rule of law relating to the effectiveness of the assent of members given to a proposition, document, act or matter otherwise than at a meeting in person.

Participation in meetings.

8. (1) If a member is, by any means, in communication with one or more other members so that each member participating in the communication can hear or read what is said or communicated by each of the others, each member so participating is deemed to be present at a meeting with the other members so participating.

(2) A meeting of members conducted pursuant to subparagraph (1) shall be deemed to be held in the place in which the chairman of the meeting is present.

Minutes.

9. The Authority shall keep proper minutes of its proceedings, including minutes of any business transacted by virtue of paragraphs 7 and 8.

Residual power to regulate procedure.

10. The Authority may, subject to the provisions of this Ordinance, regulate its own procedure.

Appointment of staff.

11. (1) The Authority may, subject to the approval of the Department as to the maximum number of officers and employees that may, from time to time, be engaged by it, appoint such officers and employees on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as it thinks necessary for the exercise of its functions.

(2) The Authority may establish and maintain such schemes or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

(3) Without prejudice to the provisions of section 11, the Authority shall take such steps as it considers necessary and reasonable to protect and indemnify its current and former members, officers and employees against any costs, claims, liabilities and proceedings arising from or in consequence of anything done or omitted to be done in the discharge or purported discharge by them of their respective functions as members, officers or, as the case may be, employees of the Authority.

(4) This paragraph is subject to the provisions of paragraph 12.

Chief Executive.

12. (1) The most senior officer of the Authority shall have the title Chief Executive.

(2) The Chief Executive shall, subject to provisions of subparagraph (4) and to the terms and conditions of his appointment as to resignation, hold office for a minimum term which shall be determined by the Authority.

(3) The Chief Executive shall be paid such salary, emoluments and other allowances as the Department may determine.

(4) The Chief Executive may be dismissed from office by the Authority, but only on the grounds that -

- (a) he has been absent from meetings of the Authority for a period exceeding 6 consecutive months without the Authority's consent,
- (b) he has neglected the duties of Chief Executive or has engaged in misconduct,
- (c) he is insolvent,
- (d) he is incapacitated by physical or mental illness, or
- (e) he is otherwise unable or unfit to discharge the functions of Chief Executive.

(5) The Chief Executive shall, subject to the provisions of this Ordinance, hold and vacate office in accordance with the terms and conditions of his appointment.

Delegation of functions by Authority.

13. (1) The Authority may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of its functions under this Ordinance, any relevant Ordinance or any other enactment to be exercised in its name by any of its members, officers or employees named or

described in the instrument, other than -

- (a) this power of delegation,
- (b) any function which (however framed or worded) -
 - (i) requires the Authority to consider representations concerning a decision of a description set out in item (ii) which it proposes to make, or
 - (ii) empowers the Authority to make a decision against which a right of appeal is conferred by an enactment,
- (c) any obligation to submit a report to the Department, or
- (d) the power conferred by paragraph 12(2) to determine the Chief Executive's minimum term of office.

(2) For the avoidance of doubt, a function may be delegated under this subparagraph (1) to a committee of members, officers and / or employees.

Delegation of functions by Chief Executive.

14. The Chief Executive may, notwithstanding the principle of *delegatus non potest delegare*, by an instrument in writing, and either generally or otherwise as specified in the instrument, arrange for any of his functions under this Ordinance, any relevant Ordinance or any other enactment to be exercised in his name by any of the officers or employees of the Authority named or described in

the instrument, other than this power of delegation.

Other provisions as to delegation.

15. (1) A function exercised by a delegate pursuant to an arrangement made under paragraph 13 or 14 is for all purposes exercised by the Authority or Chief Executive, as the case may be; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by a quorate meeting of the Authority or personally by the Chief Executive, as the case may be.

(2) An arrangement made under paragraph 13 or 14 for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Authority or by the Chief Executive, as the case may be, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Authority or by the Chief Executive, as the case may be, while the arrangement subsists.

(3) The provisions of paragraphs 13 and 14 -

(a) have effect for the removal of any doubt and are not to be construed as impliedly invalidating anything done in conformity with any other enactment or rule of law, whether before or after those paragraphs come into force,

- (b) are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^s.

Appointment of Deputy Chief Executive.

16. (1) Without prejudice to the generality of paragraph 14, the Chief Executive may, subject to such terms and conditions as he thinks fit, appoint any officer or employee of the Authority as Deputy Chief Executive with authority to exercise the Chief Executive's functions during any period in which the Chief Executive is temporarily unavailable or unable to act or during any vacancy in that office.

(2) An appointment under this paragraph of a Deputy Chief Executive is subject to the approval of the Authority.

(3) The provisions of paragraph 15 apply in relation to an appointment under this paragraph as they apply in relation to an arrangement under paragraph 14.

Disclosure of interests.

17. (1) Any member of the Authority shall, if he has any direct or indirect personal interest in the outcome of any matter of which he or the Authority is seised in the exercise of its functions under this Ordinance, any relevant Ordinance or any other enactment, disclose the nature of his interest to the other members of the Authority and to the Department.

(2) For the purposes of this paragraph, a general notice given by

^s Ordres en Conseil Vol. XXXIII, p. 478.

a member of the Authority to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

(3) This paragraph applies in relation to the Chief Executive as it applies in relation to a member of the Authority.

Official seal.

18. (1) The Authority may have an official seal for the authentication of documents required for the purpose of exercising its functions.

(2) Any document -

(a) sealed with the official seal of the Authority, and

(b) signed by the Chairman of the Authority or by any member, officer or employee thereof to whom, pursuant to paragraph 13, the Authority has delegated authority to affix its official seal,

is deemed to be duly executed by or on behalf of the Authority and is effective in law to bind it.

(3) The provisions of this paragraph are without prejudice to any other lawful method of authentication or execution of documents.

Proof of documents.

19. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Authority or Chief Executive, or
 - (b) signed by a member, officer or employee of the Authority.
- (2) The document -
- (a) may be received in evidence,
 - (b) unless the contrary is proved, is deemed -
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Authority or Chief Executive or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
 - (c) is evidence of the matters stated therein.

SCHEDULE 2

TRANSFER OF UNDERTAKING OF DIRECTOR GENERAL OF UTILITY
REGULATION TO AUTHORITY**Transfer of undertaking of Director General.**

1. (1) The undertaking of the Director General is, on the date of commencement of this Ordinance, transferred to and vested in the Authority to the intent that the Authority shall succeed to the undertaking in all respects as if it were the same person in law as the Director General.

(2) Where the transfer to or vesting in the Authority of any property or liability comprised in the undertaking of the Director General is governed by the law of a country or territory outside the Bailiwick of Guernsey, the Director General shall, if the Authority so requires, use his best endeavours to secure that the transfer to and vesting in the Authority of the property or liability is fully effective under the law of that country or territory.

(3) Until such time as any property or liability referred to in subparagraph (2) is transferred to and vested in the Authority under the law of the country or territory concerned -

(a) the Director General shall hold the property as trustee for the Authority, and

(b) the Authority shall fully indemnify the Director General in respect of the liability.

(4) References in this paragraph to the Director General include references to the individual who held that office immediately before the date of

commencement of this Ordinance.

Supplementary provisions as to transfer and vesting.

2. (1) Without prejudice to the generality of paragraph 1, but subject to any provision of this Schedule to the contrary, the following provisions shall have effect in relation to any part of the undertaking of the Director General transferred to and vested in the Authority by or by virtue of paragraph 1.

(2) Every contract to which the Director General is a party shall be construed and have effect from the date of commencement of this Ordinance -

- (a) as if the Authority had been a party thereto instead of the Director General,
- (b) as if for any reference (however worded and whether express or implied) to the Director General there were substituted a reference to the Authority, and
- (c) as if any reference (however worded and whether express or implied) to the officers, representatives or employees or to any officer, representative or employee of the Director General were a reference to the members, officers, representatives or employees of the Authority, as the case may require, or to such member, officer, representative or employee of the Authority as the Authority may nominate for that purpose or, in default of nomination, to the member, officer, representative or employee of the Authority who corresponds as nearly as may be to the said officer, representative or employee of the Director

General.

(3) Subparagraph (2)(b) and (c) shall, on and from the date of commencement of this Ordinance, apply to any enactment other than the provisions of this Ordinance and to any provision of any contract to which the Director General was not a party; and subparagraph (2)(a), (b) and (c) shall, on and from that date, apply to any provision of any other document (not being a contract) as they apply to a contract to which subparagraph (2) applies.

(4) An offer or invitation to treat made to or by the Director General before the date of commencement of this Ordinance shall be construed and have effect on and after that date as an offer or invitation to treat, as the case may be, made to or by the Authority.

(5) For the purpose of construing and giving effect to any contract which -

- (a) has effect or continues to have effect on, or on and after, the date of commencement of this Ordinance, and
- (b) makes reference to terms or conditions published, determined or ascertained from time to time by the Director General,

the Authority shall have the same right under that contract as the Director General had to publish, determine, ascertain, vary or amend terms or conditions, and any such terms or conditions published, determined, ascertained, varied or amended by the Authority shall apply in place of those which could have been published, determined, ascertained, varied or amended by the Director General.

(6) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by the Director General (whether in writing or not) shall have effect, on and from the date of commencement of this Ordinance, as if given to or, as the case may be, by the Authority.

(7) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money drawn on or by, or given to, or accepted or endorsed by, the Director General, whether so drawn, given, accepted, endorsed or payable before, on or after the date of commencement of this Ordinance, shall have the same effect, on and from that date, as if it had been drawn on or by, or given to, or accepted or endorsed by, the Authority.

(8) Any document, claim or demand addressed on or after the date of commencement of this Ordinance to the Director General pursuant to an existing contract shall be deemed to have been addressed to the Authority.

(9) The custody of any document, goods or other thing held by the Director General as bailee shall pass to the Authority on the date of commencement of this Ordinance, and the rights and obligations of the Director General under any contract of bailment relating to any such document, goods or thing shall on that date become rights and obligations of the Authority.

(10) Where by virtue of this Schedule any property or liability of the Director General becomes the property or liability of the Authority, the Authority and all other persons shall, on and from the date of commencement of this Ordinance, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that

property or liability as if it had at all times been the property or liability of the Authority.

(11) Any right of action and any remedy available in consequence thereof which accrues, arises or becomes enforceable or available before the date of commencement of this Ordinance by or against the Director General, or which would, but for this Schedule, accrue, arise or become enforceable or available by or against the Director General on or after that date, may be enforced or availed of by or against the Authority on or after that date, and any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before that date by or against the Director General may be continued by or against the Authority.

(12) Any judgment, order or award obtained by or against the Director General and not fully satisfied before the date of commencement of this Ordinance shall on that date, to the extent to which it is enforceable by or against the Director General, become enforceable by or against the Authority.

(13) The Data Protection Commissioner may, on and from the date of commencement of this Ordinance, serve on the Authority any notice under section 40 of the Data Protection (Bailiwick of Guernsey) Law, 2001^t which he could have served on the Director General in respect of a breach by the Director General of the data protection principles; but the transfer to, and vesting in, the Authority by this Schedule of the undertaking of the Director General (and any disclosure to the Authority of any information in contemplation or as a result thereof) shall not amount to a breach of any duty of confidentiality to which the Director General is subject at the date of such disclosure or to a contravention by the Authority or the Director General of the data protection principles within the

^t Ordres en Conseil Vol. XLII(1), p. 51.

meaning of Schedule 1 to the said Law.

Auditors.

3. No auditor of the Director General shall by virtue only of this Schedule become an auditor of the Authority.

Evidence of transfer and vesting.

4. (1) The production of this Ordinance shall, for all purposes, be conclusive evidence of the transfer to and vesting in the Authority of any part of the undertaking of the Director General transferred to or vested in the Authority by or by virtue of paragraph 1.

(2) Without prejudice to the generality of subparagraph (1) -

- (a) any document made or executed on or after the date of commencement of this Ordinance whereby the Authority, whether alone or jointly with any other person, conveys, or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by the Director General immediately before that date, whether alone or jointly with any other persons, shall be sufficient evidence that the interest of the Director General in that property has been transferred to and vested in the Authority, alone or jointly, under this Schedule, and
- (b) where there is any other transaction by the Authority on or after the date of commencement of this Ordinance in connection with, or in relation to, any

property or liability which was the property or liability of the Director General immediately before that date, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that the Authority has full power and authority for that transaction as if the property or liability had been transferred to and vested in it under this Schedule.

- (3) Without prejudice to the generality of subparagraph (1) -
- (a) any document made or executed on or after the date of commencement of this Ordinance whereby the Director General, whether alone or jointly with any other person, conveys or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by him immediately before that date, whether alone or jointly with any other person, shall be as effective as if that property had been conveyed, transferred or registered by the Authority, and
 - (b) where there is any other transaction by the Director General on or after the date of commencement of this Ordinance in connection with, or in relation to, any property or liability which was the property or liability of the Director General immediately before that date, that transaction shall be as effective as if it had been a transaction by the Authority.

(4) A certificate given by or on behalf of the Authority on or after the date of commencement of this Ordinance that any property or liability of the Director General specified in the certificate has transferred and vested to and in the Authority under this Schedule shall be conclusive evidence for all purposes of the fact so certified.

(5) Nothing in this paragraph affects the liability of the Director General or the Authority to the other of them in respect of anything done, or purported to have been done, by either of them in connection with, or in relation to, any property or liability.

(6) References in subparagraphs (3) and (5) to the Director General include references to the individual who held that office immediately before the date of commencement of this Ordinance.

Evidence: documents.

5. All documents which would, before the date of commencement of this Ordinance, have been evidence in respect of any matter for or against the Director General in relation to any part of the undertaking of the Director General transferred to or vested in the Authority by or by virtue of paragraph 1 shall, on and from that date, be admissible in evidence in respect of the same matter for or against the Authority.

Savings in respect of transfer and vesting of property.

6. The transfer to and vesting in the Authority of any property or liability by virtue of this Schedule shall not -

- (a) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition

of or dealing with property or of an interest in property for the purposes of any enactment other than this Ordinance or any provision in any instrument, contract or order of any court concerning that property or interest,

- (b) give rise to any forfeiture,
- (c) invalidate or discharge any contract, security or other thing,
- (d) require further registration in respect of any security,
- (e) cause or enable the benefit of any contract, permission, licence or privilege enjoyed by the Director General or the Authority to be lost or surrendered or otherwise affected, or require the disposal by the Director General or the Authority of any interest, otherwise than as provided in this Schedule,
- (f) relieve any person under an obligation to the Director General of a corresponding obligation to the Authority,
- (g) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the Director General or the Authority is a party or is bound,

- (h) allow any party to a contract to terminate that contract when he would not otherwise have been able to terminate it,
- (i) operate so as to merge any leasehold interest in the reversion expectant on it,
- (j) entitle any party to any contract to which the Director General or the Authority is a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had, or
- (k) cause the imposition of any greater or lesser obligations on any party to any contract to which the Director General or the Authority is a party when that greater or lesser obligation would not otherwise have been imposed.

Contracts of employment not covered by paragraphs 1 to 6.

7. The provisions of paragraphs 8 to 13, and not the provisions of paragraphs 1 to 6, apply to the contract of employment of any person employed by the Director General in the undertaking of the Director General.

Effect of transfer on contracts of employment, etc.

8. (1) Except where objection is made under subparagraph (5), the transfer of the undertaking of the Director General shall not operate so as to terminate the contract of employment of any person employed by the Director

General in the undertaking; and any such contract which would otherwise have been terminated by the transfer shall have effect after the transfer as if originally made between the person so employed and the Authority.

(2) Without prejudice to subparagraph (1), but subject to subparagraph (5), on the completion of the transfer of the undertaking of the Director General -

- (a) all the Director General's rights, powers, duties and liabilities under or in connection with any contract of employment described in subparagraph (1) shall be transferred by virtue of this Schedule to the Authority, and
- (b) anything done before the transfer is completed by or in relation to the Director General in respect of that contract or a person employed in the undertaking shall be deemed to have been done by or in relation to the Authority.

(3) Any reference in subparagraph (1) or (2) to a person employed in the undertaking of the Director General is a reference to a person so employed immediately before the transfer.

(4) Subparagraph (2) shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.

(5) Subparagraphs (1) and (2) shall not operate to transfer an employee's contract of employment and the rights, powers, duties and liabilities

under or in connection with it if he informs the Director General in writing that he objects to becoming employed by the Authority.

(6) Where an employee so objects, the transfer of the undertaking of the Director General shall operate so as to terminate his contract of employment with the Director General; but he shall not be treated for any purpose as having been dismissed by the Director General.

(7) Subparagraphs (1) and (5) are without prejudice to any right of an employee arising apart from this Ordinance to terminate his contract of employment without notice if a substantial change is made in his working conditions to his detriment or in acceptance of a repudiatory breach of contract by his employer; but no such right shall arise by reason only that, under those subparagraphs, the identity of the employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Effect of transfer on collective agreements.

9. Where at the time of the transfer of the undertaking of the Director General there exists a collective agreement made by or on behalf of the Director General with a trade union recognised by the Director General in respect of any employee whose contract of employment is preserved by paragraph 8(1), then -

- (a) that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if made by or on behalf of the Authority with that trade union; and accordingly anything done under or in connection with it in its application as aforesaid by or in relation to the Director General before the transfer shall, after the transfer, be deemed to have been done

by or in relation to the Authority, and

- (b) any order made in respect of that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if the Authority were a party to the agreement.

Non-application of paragraphs 8 and 9 to occupational pension schemes.

10. (1) Paragraphs 8 and 9 shall not apply -

- (a) to so much of a contract of employment or collective agreement as relates to an occupational pension scheme of a description set out in section 157C(1)(e) of the Income Tax (Guernsey) Law, 1975, or
- (b) to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue of any such agreement and relating to such a scheme or otherwise arising in connection with a person's employment and relating to such a scheme.

(2) For the purposes of subparagraphs (1) and (3), any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors shall not be treated as being part of the scheme.

(3) An employee whose contract of employment is transferred by virtue of paragraph 8(1) shall not be entitled to bring a claim against the Director General or the Authority for -

- (a) breach of contract, or

- (b) constructive unfair dismissal under Part II of the Employment Protection (Guernsey) Law, 1998^u,

arising out of a loss or reduction in his rights under an occupational pension scheme described in subparagraph (1)(a) in consequence of the transfer, save insofar as the alleged breach of contract or dismissal (as the case may be) occurred before the date of commencement of this Ordinance.

Dismissal of employee because of transfer of undertaking.

11. (1) Where, either before or after the transfer of the undertaking of the Director General, any employee of the Director General or Authority is dismissed, the dismissal of the employee shall be regarded for the purposes of Part II of the Employment Protection (Guernsey) Law, 1998 as having been unfair if the reason for the dismissal (or, if more than one, the principal reason) was the transfer or a reason connected with it; and the provisions of that Law shall apply accordingly.

- (2) The provisions of this section apply -
 - (a) whether or not the employee in question is employed in the undertaking transferred or to be transferred,
 - (b) subject to the provisions of the Employment Protection (Guernsey) Law, 1998.

^u Ordres en Conseil Vol. XXXVIII, p. 295.

Effect of transfer on union recognition.

12. (1) This section applies where, after the transfer of the undertaking of the Director General, the undertaking maintains an identity distinct from the remainder of the Authority's undertaking.

(2) Where, before the transfer, an independent trade union is recognised to any extent by the Director General in respect of employees of any description who in consequence of the transfer become employees of the Authority, then, after the transfer -

- (a) the union shall be deemed to have been recognised by the Authority to the same extent in respect of employees of that description so employed, and
- (b) any agreement for recognition may be varied or rescinded accordingly.

Restriction on contracting out.

13. Any provision of any agreement (whether a contract of employment or not) shall be void in so far as it purports to exclude or limit the operation of paragraph 8 or 11.

Employment outside Guernsey.

14. The provisions of paragraphs 8 to 13 apply notwithstanding that -

- (a) persons employed in the undertaking of the Director General ordinarily work outside Guernsey,
- (b) the employment of any of those persons is governed by the law of a country or territory outside Guernsey.

Interpretation.

15. (1) In this Schedule, unless the context requires otherwise -

"**collective agreement**" means any agreement or arrangement made by or on behalf of a trade union and an employer or employers' association and relating to any of the following matters -

- (a) terms and conditions of employment, or the physical conditions in which employees are required to work,
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of any employee,
- (c) allocation of work or the duties of employment as between employees or groups of employees,
- (d) matters of discipline,
- (e) the membership or non-membership of trade unions on the part of an employee,
- (f) facilities for officials of trade unions, and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in

the carrying out of any such procedures,

"collective bargaining" means negotiations relating to or connected with any of the matters specified in the definition of the expression "collective agreement",

"contract" includes any agreement, transaction, arrangement or understanding, whether or not conditional or in writing and governed by the law of the Bailiwick or any part thereof,

"contract of employment" means any agreement, whether express or implied and whether written or oral, between an employee and his employer determining the terms and conditions of his employment,

"Director General" means the Director General of Utility Regulation and includes the Office thereof (and see paragraphs 1(1) and 4(6)),

"employee" means a person who has entered into or who works under a contract of service or apprenticeship (whether express or implied and whether written or oral), but does not include a person engaged under a contract for services or on a consultancy or secondment basis, and cognate expressions shall be construed accordingly,

"employers' association" has the meaning given by section 34 of the Employment Protection (Guernsey) Law, 1998,

"independent trade union" has the meaning given by section 34 of the Employment Protection (Guernsey) Law, 1998,

"liability" includes a debt, a duty and an obligation of any

description (whether present or future, actual, contingent or prospective),

"occupational pension scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category,

"property" means property and assets of every description and includes property and assets held on trust or in a fiduciary capacity and securities, rights, benefits and powers of every description,

"recognised", in relation to a trade union, means recognised to any extent by an employer, or two or more associated employers (within the meaning of section 34 of the Employment Protection (Guernsey) Law, 1998), for the purpose of collective bargaining,

"security" includes a bond, mortgage or charge (in each case whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), security interest, assignment by way of security, indemnity, right of set-off, right of compensation, hypothèque, flawed asset arrangement, undertaking or other means of securing payment or discharge of a liability and also includes any agreement or undertaking (whether in writing or not) to give or execute any of the foregoing whether upon demand or otherwise,

"trade union" has the meaning given by section 34 of the Employment Protection (Guernsey) Law, 1998,

"undertaking" of the Director General means the business, property and liabilities of the Director General, and includes any business of, and any department or operation conducted by, the Director General,

"working conditions" includes terms and conditions of employment and physical working conditions.

(2) The provisions of subparagraph (1) are without prejudice to the provisions of section 20 of this Ordinance (interpretation), except that in the case of any conflict between the definitions of any term or expression set out respectively in those provisions then for the purposes of this Schedule the provisions of paragraph (1) shall prevail.

Effect of this Schedule.

16. The provisions of this Schedule are in addition to and not in derogation from the provisions of section 5 of this Ordinance (transfer of functions of Director General to Authority).

SCHEDULE 3
AMENDMENT OF REGULATION OF UTILITIES LAW

Section 22

1. The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001^v is further amended as follows.

2. Part I is repealed and in the heading to Part II for "Director General" substitute "Authority".

3. In section 2 -

(a) after "their respective functions and powers" insert "under this Law and any Sector Law",

(b) for "the Director General" substitute "the Guernsey Competition and Regulatory Authority (**the Authority**)",

(c) in paragraph (d) for "the Director General" substitute "the Authority",

(d) in the text immediately following paragraph (f) for "the Director General" substitute "the Authority".

4. In section 3 -

^v Ordres en Conseil Vol. XLI, p. 295; amended by Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXII, p. 8; and Order in Council No. XXII of 2009.

- (a) for "the Director General" wherever appearing substitute "the Authority",
- (b) for "him" and "his" substitute, respectively, "it" and "its",
- (c) for "functions and powers" in subsections (1) [where the expression first appears] and (1A) substitute "functions and powers under this Law and any Sector Law",
- (d) in subsection (1) for the words following "by section 2" substitute "or by any other enactment".

5. In the heading to Part III for "Director General" substitute "Authority".

6. In section 4 -

- (a) in the heading for "Director General" substitute "Authority",
- (b) in subsection (1) for "The functions of the Director General" substitute "For the purposes of this Law and any Sector Law the functions of the Authority",
- (c) in subsection (1)(f) -
 - (i) for "him" substitute "it",

- (ii) after " by or under" insert "this Law or", and
 - (iii) the words "and any other enactment" are repealed,
- (d) for subsection (2) substitute -
- "(2) The Authority shall exercise its functions and powers under this Law and any Sector Law -
- (a) in accordance with the principles for economic regulation for the time being specified in the Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012, and
 - (b) in a manner which is -
 - (i) subject to the exception set out in section 3(1), consistent with States' Directions and the provisions of this Law and any relevant Sector Law, and
 - (ii) proportionate to the Bailiwick's circumstances."
- (e) in subsections (3), (4) and (5) for "the Director General" wherever appearing substitute "the

Authority",

- (f) in subsections (3) and (5) -
 - (i) for "his" wherever appearing substitute "its",
and
 - (ii) after "functions and powers" wherever
appearing insert "under this Law and any
Sector Law".

7. In section 5 -

- (a) in the heading for "Director General" substitute
"Authority",
- (b) in subsection (1) -
 - (i) for "Director General" wherever appearing
substitute "Authority",
 - (ii) after "functions and powers" wherever
appearing insert "under this Law or any Sector
Law",
 - (iii) for "he", "him" and "his" wherever appearing
substitute, as the case may require, "it" or
"its",
- (c) in subsection (2) -

- (i) for "Director General" substitute "Authority",
 - (ii) after "functions and powers" insert "under this Law or any Sector Law",
 - (iii) for "his" substitute "its"
- (d) subsection (3) is repealed.

8. In section 6(1) and (3) for "Director General" wherever appearing substitute "Authority".

9. In section 7 -

- (a) in subsections (1), (2) and (3) -
 - (i) for "Director General" wherever appearing substitute "Authority",
 - (ii) for "his" wherever appearing substitute "its",
- (b) in subsections (1) and (3) for "officers and servants" substitute "members, officers and servants",
- (c) in subsection (1) after "functions and powers" insert "under this Law or any Sector Law",
- (d) in subsection (2)(a) after "functions and powers" insert "under this Law, any Sector Law or any other

enactment",

(e) for subsection (4)(b) substitute -

"(b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both."

10. In section 8 -

(a) in subsection (1) -

(i) for "Director General" substitute "Authority",

(ii) in paragraph (a)(i) after "functions and powers" insert "under this Law and any Sector Law",

(iii) in paragraph (a)(i) and (ii) for "his" and "him" wherever appearing substitute, respectively, "its" and "it",

(iv) paragraph (b) is repealed,

(b) in subsections (2) and (3) for "Director General's" wherever appearing substitute "Authority's".

11. In section 9 -

(a) for "Director General" wherever appearing substitute

"Authority",

(b) for subsection (1)(a) substitute -

"(a) paying remuneration to the members, officers and servants of the Authority in respect of the exercise of their functions and powers under, or in respect of their employment for the purposes of, this Law and any Sector Law, and",

(c) in subsection (1)(b) -

(i) for "his" substitute "the Authority's", and

(ii) after "functions and powers" insert "under this Law and any Sector Law",

(d) in subsection (2) for "Director General" substitute "Authority",

(e) in subsection (3)(c) -

(i) for "Director General" substitute "Authority",

(ii) for "him" substitute "it",

(f) in subsection (3)(d) -

(i) for "Director General" substitute "Authority",

- (ii) after "from time to time" insert "and attributable to its functions and powers under this Law and any Sector Law".

12. In section 10 -

- (a) in the heading for "Director General" substitute "Authority",
- (b) in subsection (1) -
 - (i) for "Director General" wherever appearing substitute "Authority",
 - (ii) for "his" substitute "its",
 - (iii) after "functions and powers" insert "under this Law and any Sector Law",
- (c) in subsection (2) for the words following "estimated costs and expenditure" substitute "of the Authority in any year in respect of the exercise of its functions and powers under this Law and any Sector Law have exceeded or are likely to exceed the income or estimated income of the Authority attributable to those functions and powers in that year".

13. In section 11 -

- (a) for "Director General" substitute "Authority",
- (b) for "him" substitute "it",
- (c) the words "approved for the purpose by the Commerce and Employment Department in writing" are repealed.

14. In section 13 -

- (a) in subsection (1) for "Director General" substitute "Authority",
- (b) in subsections (1)(b) and (2) for "Office of the Director General" substitute "Authority",
- (c) in subsection (2)(b) for "Director General's" substitute "Authority's".

15. Section 13A is repealed.

16. In section 13B -

- (a) in the heading for "Office of Director General" substitute "Authority",
- (b) in subsection (1) for "Director General" and "Office of the Director General" substitute "Authority",
- (c) in subsection (3)(a) for "Director General" substitute

"Authority",

- (d) in subsection (3)(b)(ii) for "Office of the Director General" substitute "Authority in respect of its functions and powers under this Law or any Sector Law".

17. In section 15 -

- (a) in subsection (1) -
 - (i) for "Director General" substitute "Authority",
 - (ii) for "his" substitute "its",
- (b) in subsection (2) for "Director General" substitute "Authority",
- (c) in subsection (4)(a) -
 - (i) for "28 days" substitute "56 days (or such further time as the Royal Court may in its absolute discretion, on an application made before the expiration of that period, allow, where it is satisfied that it is not reasonably practicable for the appeal to be instituted within that period or that it is otherwise in the interests of justice to do so)",

- (ii) for "Director General's" substitute "Authority's",
- (d) in subsection (4)(b) for "Director General" substitute "Authority",
- (e) in subsection (5) -
 - (i) for "Director General" wherever appearing substitute "Authority",
 - (ii) for "him" substitute "the Authority",
- (f) in subsection (7) for "Director General" substitute "Authority",
- (g) after subsection (8) insert the following subsections -

"(9) The Royal Court may by Order make rules dealing with all procedural matters arising under this section (and any such rules may amend, modify or disapply any provision of this section).

(10) Rules under subsection (9) may without limitation make provision as to the practice and procedure to be followed by, and the powers to be available to, the Royal Court in hearing and determining an appeal under this section and as to other ancillary matters relating to proceedings under this section."

18. In section 18 -

- (a) in subsection (1)(a) the words "the Audit Committee" are repealed,
- (b) in subsection (1)(a)(ii) for "Office of the Director General" substitute "Authority in respect of its functions and powers under this Law or any Sector Law",
- (c) for subsection (1)(b) substitute -
 - "(b) in making any statement or providing any information or document to the Authority or any member, officer or servant of its when acting in the exercise of their respective functions and powers under this Law or any Sector Law, or",
- (d) in subsection (1)(c) -
 - (i) for "Director General" substitute "Authority",
 - (ii) after "their respective functions and powers" insert "mentioned in paragraphs (a) and (b)",
- (e) in subsection (2) -
 - (i) for "Director General" wherever appearing

substitute "Authority",

- (ii) in paragraph (a) for "his" substitute "its",
- (iii) in paragraph (a) after "functions and powers" insert "under this Law, any Sector Law or any other enactment", and
- (iv) in paragraph (b) for "his functions" substitute "those functions".

19. Section 21 is repealed.

20. In section 22(1) -

- (a) the definition of the "Audit Committee" is repealed,
- (b) immediately before the definition of "**Bailiff**" insert the following definition -

"**Authority**" means the Guernsey Competition and Regulatory Authority established by the Guernsey Competition and Regulatory Authority Ordinance, 2012,"

- (c) the definition of "Director General" is repealed,
- (d) the definition of "functions and powers" is repealed,
- (e) the definition of "Office of the Director General" is

repealed,

- (f) in the definition of "Sector Law" for "Director General" substitute "Authority",
- (g) in the definition of "States' Directions" for "Director General" wherever appearing substitute "Authority".

21. After section 23(3) insert the following subsection -

"(4) In this section the expression "rule" includes an order."

22. In section 24 -

- (a) in subsection (1)(e) for "Director General" wherever appearing substitute "Authority",
- (b) in subsection (1)(ii) after "or other similar means which produce" insert "or enable the production of"
- (c) in subsection (2) -
 - (i) for "Director General" substitute "Authority",
 - (ii) for "him" substitute "it",
- (d) in subsection (5) for "Director General" substitute "Authority".

23. The Schedule is repealed.

SCHEDULE 4
AMENDMENT OF COMPETITION LAW

Section 23

1. The Competition (Enabling Provisions) (Guernsey) Law, 2009^w is amended as follows.

2. In section 5(c) after "or as a separate legal entity," insert "or the establishment or appointment of any other body or authority,".

3. In section 7(1), in the definition of "Director General" -
 - (a) for "is to be" substitute "may be", and

 - (b) after "under this Law," insert "and includes any other body or authority established or appointed by virtue of section 5(c),".

^w Order in Council No. XV of 2009.

SCHEDULE 5
AMENDMENT OF UTILITIES LAWS

Section 24

PART I
TELECOMMUNICATIONS LAW

1. The Telecommunications (Bailiwick of Guernsey) Law, 2001^x is further amended as follows.

2. In section 1(1) for "the Director General" substitute "the Guernsey Competition and Regulatory Authority ("**the Authority**")".

3. In sections 4(4), 28(5) and 29(4) for "Utility Appeals Tribunal" substitute "Royal Court".

4. In section 31(1) -

(a) immediately before the definition of "Bailiwick" insert the following definition -

""**Authority**" means the Guernsey Competition and Regulatory Authority established by section 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012,"

(b) the definition of "Director General" is repealed,

^x Ordres en Conseil Vol. XLI, p. 452; amended by Order in Council No. XXX of 2003; and Recueil d'Ordonnances Tome XXIX, p. 406.

- (c) in the definition of "States' Directions" after "section 3(1)" insert ", or by Ordinance of the States under section 3(1A)",
- (d) the definitions of "Utility Appeals Panel" and "Utility Appeals Tribunal" are repealed.

5. In all other provisions (except those specified in paragraph 6) for "Director General" wherever appearing substitute "Authority" (and all necessary consequential amendments, for example, the substitution of "it" for "he", shall also be made).

6. The provisions are -

- (a) section 11(1) in the reference to the Director General of Telecommunications appointed under the Telecommunications Act,
- (b) section 31(1) in the definition of "numbers" in the reference to the Director General of Telecommunications appointed under the Telecommunications Act,
- (c) section 33(3),
- (d) paragraph (8) of Schedule 2.

PART II
ELECTRICITY LAW

1. The Electricity (Guernsey) Law, 2001^y is further amended as follows.

2. In section 1(1) for "the Director General" substitute "the Guernsey Competition and Regulatory Authority ("**the Authority**")".

3. In sections 4(4), 30(5) and 31(4) for "Utility Appeals Tribunal" substitute "Royal Court".

4. In section 33(1) -

(a) immediately before the definition of "Bailiwick" insert the following definition -

""**Authority**" means the Guernsey Competition and Regulatory Authority established by section 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012,"

(b) the definition of "Director General" is repealed,

(c) in the definition of "States' Directions" after "section 3(1)" insert ", or by Ordinance of the States under section 3(1A),"

^y Ordres en Conseil Vol. XLI, p. 343; amended by Recueil d'Ordonnances Tome XXVIII, p. 545; and Tome XXIX, p. 406.

- (d) the definitions of "Utility Appeals Panel" and "Utility Appeals Tribunal" are repealed.

5. In all other provisions (except those specified in paragraph 6) for "Director General" wherever appearing substitute "Authority" (and all necessary consequential amendments, for example, the substitution of "it" for "he", shall also be made).

6. The provisions are -

- (a) section 34(1)(i),
- (b) section 34(3)(a) and (b).

PART III POST OFFICE LAW

1. The Post Office (Bailiwick of Guernsey) Law, 2001^z is further amended as follows.

2. In section 1(1) for "the Director General" substitute "the Guernsey Competition and Regulatory Authority ("**the Authority**")".

3. In section 45(1) -

^z Ordres en Conseil Vol. XLI, p. 515; amended by Order in Council No. XXX of 2003; Recueil d'Ordonnances Tome XXVIII, p. 491; Tome XXIX, p. 406; Ordinance No. XXXIII of 2010; and the Post Office (Bailiwick of Guernsey) (Amendment) Ordinance, 2012.

- (a) immediately before the definition of "Bailiwick" insert the following definition -

"**Authority**" means the Guernsey Competition and Regulatory Authority established by section 1 of the Guernsey Competition and Regulatory Authority Ordinance, 2012,"

- (b) the definition of "Director General" is repealed.

4. In all other provisions (except those specified in paragraph 5) for "Director General" wherever appearing substitute "Authority" (and all necessary consequential amendments, for example, the substitution of "it" for "he", shall also be made).

5. The provisions are -

- (a) paragraph 1(1)(i) of Schedule 1,
- (b) paragraphs 1(3)(a) and (b) of Schedule 1.

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