

PROJET DE LOI

ENTITLED

The Renewable Energy (Sark) Law, 2010 *

[CONSOLIDATED TEXT]

NOTE

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* No. XVI of 2011; as amended by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015 (Sark Ordinance No. II of 2015); the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018 (Sark Ordinance No. XIII of 2018).

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The Renewable Energy (Sark) Law, 2010

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 17th January, 2008, the 1st October, 2008, the 14th April 2010 and the 6th October, 2010, 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 Sark.

PART I

REGULATION OF RENEWABLE ENERGY ACTIVITIES

General prohibition on renewable energy activities and exemptions.

1. (1) Except as may be permitted by or under this Law or any other enactment and subject to subsection (2), no person shall –

- (a) operate, deploy or use,
- (b) arrange for the operation, deployment or use of,
- (c) manage,
- (d) be concerned in the management of,
- (e) decommission or arrange for the decommissioning of,

any renewable energy system on Sark or within the territorial waters of Sark.

(2) The provisions of Schedule 1 shall have effect with respect to exemptions from the prohibition in subsection (1).

Further exemptions and licensing of renewable energy activities.

2. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in order to –

- (a) exempt a renewable energy activity from the prohibition under section 1, or
- (b) provide for the licensing of a renewable energy activity,

and for matters ancillary thereto, including the form and manner in which applications in relation to licences are to be made and the information to be provided by the applicant in relation to the same.

(2) Without prejudice to the generality of subsection (1), that subsection includes power to make provision for, or concerning, all or any of the following matters –

- (a) exempting a renewable energy activity from the prohibition under section 1, subject to such terms and conditions as the Chief Pleas, the committee or the Commission, as the case may be, thinks fit, and
- (b) prescribing conditions for the conduct and control of, and for matters of administration in connection with, a renewable energy activity and any activity related thereto,
- (c) the licensing, by the Chief Pleas, the committee or the

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Commission, of any person to carry on a renewable energy activity, subject to such conditions and other matters as the Chief Pleas, the committee or the Commission, as the case may be, thinks fit, including, without limitation, conditions relating to –

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

- (d) the form and manner in which applications in relation to licences are to be made and the information to be provided by the applicant in relation to the same which may include a requirement for –
 - (i) an environmental statement to be submitted setting out information in relation to the environmental effects, and
 - (ii) a decommissioning programme to be submitted setting out information in relation to measures to be taken for the decommissioning,

of the renewable energy system and any related plant or apparatus,
- (e) the matters to which the Chief Pleas, the committee or the Commission is to have regard in making a decision in relation to functions conferred under this section,
- (f) the persons with whom the Chief Pleas, committee or the Commission must consult on applications in relation to licences, including on any environmental statement and decommissioning programme and other information submitted in relation to the same, before making a decision in relation to an application, which must include –
 - (i) the department of the States of Guernsey or other person from time to time responsible for

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licensing under Part II of the Food and Environment Protection Act 1985^a as extended to the Bailiwick of Guernsey, and

- (ii) the Sark Harbourmaster,

- (g) the obtaining of information and documents by the Chief Pleas, the committee or the Commission to enable any of the same to perform functions imposed by or under this Law,

- (h) the investigation, by the Chief Pleas, the committee or the Commission, into the suitability of any applicant for, or holder of, a licence to carry on a renewable energy activity,

- (i) the grant, renewal, variation, suspension or revocation by the Chief Pleas, the committee or the Commission, of any licence to carry on a renewable energy activity or the acceptance of the surrender or the effecting of the transfer of such a licence by the Chief Pleas, the committee or the Commission,

- (j) the taking of steps by the Chief Pleas, the committee or the Commission, falling short of suspension or revocation and which, without limitation, may include the imposition of financial penalties, payable to the Chief Pleas, in respect of any contravention of the

^a An Act of Parliament, 1985 c. 48; extended to the Bailiwick of Guernsey with modifications by S.I. 1987/665 (see Ordres en Conseil Vol. XXX p. 26) and further modified by S.I. 1997/1770 (see Ordres en Conseil Vol. XXXVII p. 284).

terms or conditions of a licence to carry on a renewable energy activity:

Provided that the amount of any financial penalty imposed shall not exceed the maximum amount of any financial penalty which could be imposed by a court under section 34(1), and

- (k) enabling any applicant for, or holder of, a licence to carry on a renewable energy activity to appeal from any of the following decisions of the Chief Pleas, the committee or the Commission –
 - (i) to refuse to grant or renew,
 - (ii) to suspend or revoke,
 - (iii) to impose conditions upon the grant of,
 - (iv) to take steps under subsection (2)(j) in respect of the contravention of the terms or conditions of,
 - (v) to vary the terms or conditions of,
 - (vi) to refuse to vary the terms or conditions of,
 - (vii) to refuse to accept the surrender of,
 - (viii) to refuse to effect the transfer of, or

- (ix) such other decision as may be specified in relation to,

any such licence and to provide for the grounds of appeal, the period within which such an appeal may be made and otherwise as to the procedure to be adopted for such appeals.

PART II

REGULATION OF RISKS ARISING FROM RENEWABLE ENERGY ACTIVITIES

Extinguishment etc. of public rights of navigation.

3. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the extinguishment or suspension, imposition of restrictions or conditions on the exercise, of rights of navigation by declaration or otherwise by the Chief Pleas, the committee or the Commission in so far as such rights pass through Sark waters at locations at which, or in the vicinity of which, a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located for the purposes of securing –

- (a) that such system, plant or apparatus does not result in a danger to navigation, or
- (b) the safety of –
 - (i) such a system, plant or apparatus or other structures, or

(ii) persons and ships,

in the vicinity of such locations.

(3) Without prejudice to the generality of subsection (1), that subsection includes power to provide for –

(a) the making of applications to the Chief Pleas, the committee or the Commission, for –

(i) the extinguishment or suspension, or

(ii) the imposition of restrictions or conditions on the exercise,

of rights of navigation where any part of a renewable energy system or any related plant or apparatus is, or is to be, located within Sark waters,

(b) the matters to which the Chief Pleas, the committee or the Commission, as the case may be, is to have regard in making a decision as to whether or not to extinguish, suspend or impose restrictions or conditions on rights of navigation,

(c) the prior publication of any such extinguishment, suspension, restriction or condition so as to bring it to the attention of persons likely to be affected by it and for the making of representations by such persons in relation to such proposed extinguishment, suspension,

restriction or condition, and

- (d) the modification or revocation of any declaration or other means of extinguishing, suspending or imposing restrictions or conditions on the exercise of rights of navigation.

Safety Zones.

4. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the creation of safety zones, by declaration or otherwise, by the Chief Pleas, the committee or the Commission in areas around or adjacent to a place in Sark waters where a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located for the purposes of securing the safety of –

- (a) such a system, plant or apparatus or other structures or objects in the vicinity of such a place, or
- (b) persons and ships in the vicinity of such a place.

(3) Without prejudice to the generality of subsection (1), that subsection includes power to provide for –

- (a) the making of applications to the Chief Pleas, the committee or the Commission, for the creation of a safety zone where any part of a renewable energy system or any related plant or apparatus is, or is to be, located within Sark waters,

- (b) the matters to which the Chief Pleas, the committee or the Commission, as the case may be, is to have regard in making a decision as to whether or not to declare a safety zone,
- (c) the variation of the area of a safety zone from time to time,
- (d) the prohibition of the carrying on of certain activities in a safety zone,
- (e) the granting of permission for a ship or a person to enter or remain in a safety zone or for a person to carry on activities which are prohibited in a safety zone subject to such conditions as the Chief Pleas, the committee or the Commission, as the case may be, thinks fit,
- (f) the prior publication of the notice or other document declaring a safety zone so as to bring it to the attention of persons likely to be affected by it and for the making of representations by such persons in relation to such proposed declaration, and
- (g) the modification or revocation of the notice or other document declaring a safety zone.

Health and safety.

5. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient to provide –

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- (a) for securing the health, safety and welfare of persons at work,
- (b) for protecting persons, other than persons at work, against risk to health and safety arising out of or in connection with the activities of persons at work,
- (c) for extending, in relation to activities carried on in connection with a renewable energy activity, the meaning of the expressions "work" and "at work" in subsection (2),
- (d) for the appointment of, and conferring of functions on, inspectors for the purpose of carrying into effect any Ordinance made under this section, including, without limitation, conferring of powers –
 - (i) to enter into and inspect any premises for the purpose of carrying into effect any provisions made under this section,
 - (ii) to take and detain samples of any article or substance found in any premises, and of the atmosphere in, or in the vicinity of, the premises,
 - (iii) in relation to any article or substance which appears to have caused, or be likely to cause, danger to health or safety –

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- (A) to dismantle or subject it to a process or test, (but not damage or destroy it unless necessary for the purpose of carrying into effect any Ordinance made under this section), and
 - (B) to take possession of, or detain it, in connection with the enforcement of any provision under this section, and
- (iv) to seize and render harmless an article or substance which is a cause of imminent danger or serious personal injury,
- (e) for the issuing of notices, by the committee, or by an inspector appointed under this section, on persons of specified descriptions, requiring such persons to take, discontinue or refrain from such actions or activities as may be specified in the notice, for the purpose of –
 - (A) remedying a contravention, or matters giving rise to a contravention, of any provision made under this section, or
 - (B) remedying matters which give rise, or may give rise, to a risk of serious personal injury,
- (f) for the making of appeals against notices issued under this section, including the grounds of appeal, the period within which such an appeal may be made and

otherwise as to the procedure to be adopted for such appeals,

- (g) for the appointment of persons for the investigation of any accident, occurrence, situation or other matter which the committee considers necessary or expedient to investigate for the purposes of any Ordinance made under this section or with a view to the making of such an Ordinance,
- (h) for the obtaining of information and documents by the committee to enable it to perform functions imposed by or under this section,
- (i) for requiring any person to furnish any information and to keep any record as the committee considers necessary or expedient for facilitating the introduction or operation of a scheme of control for which provision has been made, or for which, in the opinion of the committee, it will or may be found necessary or expedient that provision should be made under this section, and
- (j) where a person is convicted of an offence under this section, for providing for a court to order –
 - (A) that person to take steps to remedy the matters in respect of which the offence has been committed, or
 - (B) that an article or substance be forfeited and

destroyed or dealt with in such manner as the court may order,

in addition to, or instead of, imposing any penalty for the offence.

(2) In this section –

(a) "**work**" means work as an employee or as a self-employed person carried on in connection with –

(i) the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus,

(ii) arranging for the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus, or

(iii) the exercise of functions conferred under this Law in relation to the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus or in relation to arranging for the same,

(b) an employee is "**at work**" throughout the time when he is in the course of his employment of the kind described in paragraph (a), but not otherwise, and

(c) a self-employed person is "**at work**" throughout such

time as he devotes to work as a self-employed person of a kind described in paragraph (a),

and the expressions "**work**" and "**at work**" shall be construed accordingly.

(3) Work falling within subsection (2) includes, without limitation, the following activities where carried on in connection with a renewable energy system, or part thereof, or related plant or apparatus –

- (a) any marine survey work including wave energy or tidal current monitoring, bathymetry, water column investigations, surveys of the sea, seabed or subsea surveys, carried out in connection with prospective or actual deployment, operation, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus whether or not carried on by or on behalf of an operator or prospective operator of a renewable energy system,
- (b) the construction, reconstruction, assembly, installation, lowering into the sea or onto the sea-bed, alteration, repair, maintenance, cleaning, operation, deployment, use, lifting up from the sea or the sea-bed, demolition, dismantling or removal of, a renewable energy system, or part thereof, or related plant or apparatus or the preparation for any such activity,
- (c) the transfer of people or goods between a ship or aircraft and a renewable energy system, or part thereof or related plant or apparatus,

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- (d) the loading, unloading, fuelling or provisioning of a ship or an aircraft used in connection with the operation, deployment, use or decommissioning of a renewable energy system, or part thereof or related plant or apparatus,
- (e) diving or other submarine activity, carried on with or without self-contained underwater breathing apparatus, carried out in connection with a renewable energy system, or part thereof, or related plant or apparatus, and
- (f) the operation of related plant or apparatus which transmits electricity or any other type of energy from a renewable energy system to any place.

(4) Without prejudice to the generality of subsection (1), that subsection includes power to make provision in relation to the regulation or management of –

- (a) risks to the health and safety of persons at work and risks to the health and safety of persons, other than those at work, arising from such activities, including provision for the submission of a safety case giving details of
 - (i) arrangements for the managing of such risks, and
 - (ii) the control of hazards which may give rise to major accidents,

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- (b) risks to the health and safety of divers, and other persons, at work within Sark waters,
- (c) risks to the health and safety of persons arising from any activities carried on by persons at work including such risks arising from –
 - (i) the keeping, storage, movement, transport, disposal, acquisition or use of explosive, highly flammable, or otherwise dangerous substances,
 - (ii) noise or vibrations, or the emission of noxious or offensive substances, generated by such activities, and
 - (iii) operations, including, without limitation, lifting operations, carried on, by persons at work or arising from any equipment, machinery or plant used by such persons.

(5) For the avoidance of doubt, an Ordinance made under subsection (1) shall not apply in relation to –

- (a) a qualifying foreign ship whilst it is exercising –
 - (i) the right of innocent passage,
 - (ii) the right of transit passage through straits used for international navigation, or

(b) persons on such a ship whilst it is exercising any such right.

(6) In this section, unless the context requires otherwise –

"contract of employment" means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing),

"employee" means an individual who works under a contract of employment,

"qualifying foreign ship" has the meaning given in section 295 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^b,

"right of innocent passage" and **"right of transit passage"** shall be construed in accordance with the United Nations Convention on the Law of the Sea 1982^c as revised or re-issued from time to time,

"self-employed person" means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others,

"straits used for international navigation" shall be construed in accordance with the United Nations Convention on the Law of the Sea 1982 as revised or re-issued from time to time, and

"substance" means any natural or artificial substance, (including

^b Order in Council No. VIII of 2004.

^c U.K. Command Paper Cmnd. 8941.

micro-organisms) whether in solid or liquid form or any combination of the two forms, or in the form of a gas or vapour.

Safety and supply of energy.

6. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the safety and supply of electricity or any other type of energy generated or supplied from a renewable energy system including, without limitation, provision –

- (a) for securing that the supply of such energy is regular and efficient,
- (b) for protecting the public from dangers arising from the generation, conveyance or supply of such energy, from the use of such energy supplied or from the installation, maintenance or use of any related infrastructure, and
- (c) without prejudice to the generality of paragraph (b), for eliminating or reducing the risks of personal injury, damage to property or interference with its use, or damage to the environment, animals or plants arising as mentioned in that paragraph.

PART III

SARK COMMISSION FOR RENEWABLE ENERGY ETC.

Establishment of Sark Commission for Renewable Energy, functions and status

Sark Commission for Renewable Energy.

7. (1) There is established by, and in accordance with this Law, a body known as the Sark Commission for Renewable Energy ("**the Commission**").

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

(3) The provisions of Schedule 2 shall have effect with respect to the Commission.

(4) The Chief Pleas may by Ordinance amend Schedule 2 for the purpose of amending the procedures applying in relation to the Commission.

Functions of the Commission.

8. The Commission shall carry out such functions as may be conferred upon it –

- (a) under this Law,
- (b) by any other enactment, or
- (c) by resolution of the Chief Pleas.

Status of the Commission.

9. (1) The Commission is not a committee of the Chief Pleas, or a servant or agent of the Chief Pleas, and, except to the extent that this Law or any other enactment otherwise provides –

- (a) is not subject to any rule of law relating to committees of the Chief Pleas, and

- (b) does not have any right or privilege vested in any committee of the Chief Pleas.

(2) The Commission may consult and co-operate with any committee of the Chief Pleas in relation to any matter relating to a renewable energy activity or in relation to any activity carried on outside Sark or the territorial waters of Sark which would be such an activity if carried on there.

Information, reports, guidance and directions for Commission

Provision of information to the Chief Pleas and committees of the Chief Pleas.

10. Without prejudice to the generality of section 11, the Commission shall, when requested in writing by the Chief Pleas or the committee, furnish the Chief Pleas or the committee, to the best of the Commission's ability, with such information as the Chief Pleas or the committee, as the case may be, may require in relation to –

- (a) the carrying on of a renewable energy activity, or
- (b) the carrying on of any activity, carried on outside Sark or the territorial waters of Sark, which would be such an activity if carried on there.

Annual reports.

11. (1) The Commission shall, as soon as practicable in each year, make a report to the committee on its activities during the preceding year.

(2) The annual report made pursuant to subsection (1) may refer to any aspect of the Commission's functions and in particular –

- (a) may set out or refer to any guidance given to the

Commission under section 12(1)(a) during the preceding year, and

- (b) shall set out any directions given to the Commission under section 12(1)(b) during the preceding year.

Guidance and directions.

12. (1) The Chief Pleas may, after consulting the Commission, give to the Commission –

- (a) written guidance of a general character, or
- (b) written directions of a general character,

concerning the policies to be followed by the Commission in the discharge of any of its functions.

(2) It is the duty of the Commission, in carrying out any of its functions –

- (a) to take into account any guidance given under subsection (1)(a), and
- (b) to act in accordance with any directions given under subsection (1)(b).

(3) The Commission shall not be deemed to have acted unreasonably or beyond its powers in the carrying out of any of its functions by reason only that it has complied with its duty under subsection (2).

Powers of Commission

General powers of the Commission.

13. (1) The Commission may do anything which appears to it to be conducive to the carrying out of its functions or to be incidental to their proper discharge.

(2) Without prejudice to the generality of subsection (1) the Commission may, in connection with the carrying out of its functions –

- (a) obtain information relating to –
 - (i) renewable energy systems,
 - (ii) the carrying on of a renewable energy activity, and
 - (iii) the carrying on of any activity carried on outside Sark or the territorial waters of Sark which would be such an activity if carried on there,
 - (iv) the licensing, supervision, control and regulation of renewable energy systems carried on outside Sark or the territorial waters of Sark,
- (b) consult or seek the advice of such persons or bodies as it considers appropriate, and
- (c) publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit.

(3) This section relates only to the capacity of the Commission as a body corporate and does not authorise the disregard by the Commission of any enactment or rule of law.

Contractual powers.

14. (1) The Commission may enter into a contract, or make an arrangement, with any person for the provision of any service or any facility to facilitate the carrying out of the Commission's functions and may expend money generally for the proper purposes of the Commission.

(2) The power conferred by subsection (1) includes the power –

- (a) to open, operate and close banking accounts in the name of the Commission,
- (b) to enter into, and pay any premium in respect of, contracts of insurance insuring the Commission, any member of the Commission, or any officer or servant of the Commission against –
 - (i) any risk to the Commission's property, or
 - (ii) any risk arising in connection with the carrying out of the Commission's functions, including, without prejudice to the generality of the foregoing, the risk of a claim against the Commission in respect of any description of civil liability.

Powers as to property.

15. (1) The Commission has all such powers in relation to the acquisition, use and disposal of property (whether realty or personalty) as are conducive to the carrying out of its functions.

(2) Without prejudice to the generality of subsection (1), the Commission may –

- (a) acquire any building or other land (which shall include the seabed), or any interest in any building or other land (including the seabed), by purchase, lease, sublease or otherwise,
- (b) deal generally with, and dispose of, by sale, lease, sublease or otherwise, any building or other land or an interest in any building or other land,
- (c) acquire any furniture, equipment or other personalty, by purchase, hire, bailment or otherwise, and
- (d) deal generally with, and dispose of, by sale, hire, bailment or otherwise, any furniture, equipment or other personalty.

Appointment, remuneration etc. of staff.

16. (1) The Commission may appoint such officers, employees and consultants as it considers necessary for carrying out its functions.

(2) An appointment under subsection (1) may be made on such terms as to remuneration, expenses, pensions and other conditions of service as the Commission thinks fit.

(3) The Commission 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 employees and consultants.

Funding and financial matters

The Commission's funds.

17. The funds and resources of the Commission are –

- (a) any grant paid to the Commission under section 18,
- (b) any money borrowed by the Commission in accordance with section 19,
- (c) any fees and charges payable to the Commission under this Law, and
- (d) any other money or property, and any income and profits derived from such money or property, as is lawfully vested in the Commission.

Grants to the Commission.

18. (1) In respect of each year the Chief Pleas or the committee may make grants of sums of money to the Commission towards the expenses of the Commission in carrying out its functions.

(2) The amount of any grant under subsection (1) shall be determined by resolution of the Chief Pleas following consultation carried out on its behalf by the committee; and in determining the amount the Chief Pleas shall have regard to –

- (a) the results of that consultation, and
- (b) the extent, if any, to which the Commission's estimated expenditure in any year is likely to exceed its estimated funds and resources from other sources in that year.

Borrowing by the Commission.

19. (1) For the purpose of assisting the Commission to carry out its functions, the Chief Pleas may make advances of sums of money by way of loan to the Commission.

(2) The aggregate amount outstanding by way of principal in respect of sums advanced to the Commission under this section shall not at any time exceed such sum as the Chief Pleas may from time to time by resolution determine.

(3) No advance shall be made under this section except on such terms (as to repayment, payment of interest or otherwise) as the Chief Pleas may from time to time by resolution determine.

(4) The Commission shall not borrow money except in accordance with this section.

Investment of surplus funds.

20. The Commission may invest any of its funds which are not immediately required in any investment approved in writing for the purpose by the Chief Pleas or the committee.

Accounts and audit.

21. (1) The Commission shall –

- (a) keep proper accounts and proper records in relation to

those accounts, and

- (b) prepare in respect of each year a statement of accounts giving a true and fair view of the state of affairs of the Commission.

(2) The accounts of the Commission shall be –

- (a) audited by auditors appointed by the Chief Pleas, and
- (b) laid before the Chief Pleas, in the same manner and form as the accounts of a committee of the Chief Pleas.

Miscellaneous provisions relating to Commission

Delegation.

22. (1) The Commission may, by an instrument in writing under its common seal, delegate to any of its members, officers or employees named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except –

- (a) this power of delegation,
- (b) its duty to make an annual report under section 11, or
- (c) so much of any of its functions as require the Commission to consider representations concerning a decision which it proposes to take.

(2) The Commission may, by an instrument in writing under its common seal, delegate to any public body, either generally or otherwise as provided

by that instrument, any of its functions except –

- (a) this power of delegation, or
- (b) its duty to make an annual report under section 11.

(3) A function delegated under this section may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, shall, for the purposes of this Law, be deemed to have been carried out by the Commission.

(4) A delegation under this section is revocable by the Commission at will and does not prevent the carrying out of a function by the Commission.

(5) In this section "**public body**" means –

- (a) any committee of the Chief Pleas or any department of the States of Guernsey,
- (b) the department of the States of Guernsey or other person from time to time responsible for licensing under Part II of the Food and Environment Protection Act 1985 as extended to the Bailiwick of Guernsey, or
- (c) any other person prescribed for the purpose by Ordinance of the Chief Pleas.

Execution of documents.

23. Any deed, instrument, contract or other document shall be deemed to have been duly executed by or on behalf of the Commission, and shall be effective in

law to bind the Commission, if it is –

- (a) sealed with the common seal of the Commission, and
- (b) signed by a member or officer of the Commission or a public body to whom the Commission has delegated, under section 22, authority to affix the Commission's common seal.

Presumption of authenticity of documents.

24. Any document purporting to be issued by the Commission and to be signed by –

- (a) a member or officer of the Commission, or
- (b) a public body to whom the Commission has delegated authority to issue such a document under section 22,

on behalf of the Commission shall be deemed to be such a document unless the contrary is shown.

Confidentiality.

25. (1) Any information from which an individual or body can be identified which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and employees.

(2) No such information as is referred to in sub-section (1) shall be disclosed, without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure is expressly authorised or required by or under this Law or appears to the Commission to be

necessary –

- (a) to enable the Commission to carry out any of its functions,
- (b) in the interests of the prevention, detection or investigation of crime within or outside Sark or the territorial waters of Sark,
- (c) in connection with the discharge of any international obligation to which Sark (including in respect of the territorial waters of Sark) is subject,
- (d) to assist, in the interests of the public, any authority which appears to the Commission to carry out in a place outside Sark or the territorial waters of Sark functions corresponding to those of the Commission,
- (e) to assist any prosecuting authority with the prosecution of criminal offences within or outside Sark or the territorial waters of Sark, or
- (f) to comply with the directions of the Royal Court or the Court of the Seneschal.

(3) Without prejudice to subsections (1) and (2), any information communicated to the Commission by a committee of the Chief Pleas shall be regarded as confidential, if that committee of the Chief Pleas so requests, by the Commission and by its members, officers and servants; and no such information shall be disclosed to any other person, except in compliance with the directions of the Royal Court or the Court of the Seneschal.

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

- (a) on summary conviction, to a fine not exceeding level 3 on the Sark uniform scale, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

Communications by auditors and others to Commission.

26. (1) No duty, to which an auditor, employee or agent of any person licensed, or otherwise authorised, to carry on a renewable energy activity under this Law, is subject, is contravened by reason of his communication in good faith to the Commission, whether or not in response to a request by it, of any information or opinion on a matter to which this section applies and which is relevant to any function of the Commission under this Law.

(2) This section applies to any matter of which an auditor, employee or agent becomes aware in his capacity as auditor, employee or agent and which relates to the business or affairs of –

- (a) a person licensed, or otherwise authorised, to carry on a renewable energy activity under this Law, or
- (b) any associated body of such person.

(3) This section applies in relation to the auditor, employee or agent of a person formerly licensed, or otherwise authorised, to carry on a renewable energy activity under this Law, as it applies to a person currently so licensed or

otherwise authorised.

(4) In this section "**associated body**" means a person whom the Commission reasonably believes to be associated with the operations of a person licensed, or otherwise authorised, to carry on a renewable energy activity under this Law.

Conferring of functions on any public body

Conferring of functions on any public body.

27. (1) The Chief Pleas may, subject to subsection (2), by Ordinance

–

- (a) confer on any public body any function which is, or may be conferred, on the Commission by this Law or by Ordinance or subordinate legislation under this Law (and whether or not the Commission is established under Part III), and
- (b) make such additional provision as they think fit for the purpose of giving effect to any administrative, procedural and financial arrangements in connection with the conferring of such functions on any public body, including, without limitation, any such provision corresponding to that made under Part III.

(2) The power of the Chief Pleas to make provision under subsection (1) to confer any function on any public body established under Guernsey law is subject to the prior approval in principle by resolution of the States of Guernsey to the conferring of functions under this Law on that public body.

PART IV
POWERS OF ENTRY, ENFORCEMENT AND OFFENCES

Powers of entry and enforcement powers

Powers of entry and enforcement powers.

28. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2) except that this power shall not apply in relation to any provision made under section 5.

- (2) The matters referred to in subsection (1) are –
- (a) powers of entry on to premises for the purpose –
 - (i) set out in paragraph (b),
 - (ii) of considering any application for a licence or other approval under this Law,
 - (iii) of deciding whether and in what manner any functions conferred under this Law ought to be exercised, or
 - (iv) of carrying out any investigation, examination, test or remedial steps under this Law, or
 - (b) securing the enforcement of any provisions of this Law and of any provisions made, or documents issued, under this Law including, without limitation, any licences or notices,

except that provision may only be made for entry to any place used as a dwelling, without the consent of a person appearing to be entitled to permit entry, where the enforcement officer is acting in accordance with a warrant to do so obtained by him upon information laid on oath before the Seneschal, his deputy or a Lieutenant Seneschal.

(3) Without prejudice to the generality of subsection (1) that section includes power to –

- (a) provide for the appointment of persons in writing by the Chief Pleas, the committee, or the Commission for the purposes of carrying out functions related to the matters set out in subsection (2) including, without limitation, monitoring the enforcement of, or enforcing, any provisions of this Law or any provisions made under this Law including any licences or notices ("**enforcement officers**"),
- (b) provide for the enforcement powers that may be exercised by an enforcement officer, on production of his authority to exercise such power and on the provision of any information as may be specified, including powers to –
 - (i) board and inspect ships used in connection with a renewable energy activity where any part of the renewable energy system or any related plant or apparatus is within Sark waters, and board and inspect renewable energy systems, or part thereof, or related plant or apparatus located

within Sark waters,

- (ii) do anything to facilitate the boarding of such ships, renewable energy systems, or part thereof, or related plant or apparatus, or
 - (iii) enter and inspect any premises used in connection with a renewable energy activity, or
- (c) provide for an enforcement officer whilst carrying out an inspection under paragraph (b) to –
- (i) search any such premises for any item and examine, or carry out any measurement or test, on anything in, on, attached to, forming part of, or controlled from such premises,
 - (ii) require production of documents from any person at such premises where such document is in a person's possession or control, or
 - (iii) seize and detain any item found at such premises for so long as is necessary in all the circumstances and to take copies of or extracts from any document or record found at such premises, except that provision may not be made for the retention of any item if a photograph or a copy would be sufficient for the purpose,
- (d) provide for an enforcement officer to direct that a ship

or, where practicable, any renewable energy system, or part thereof, or related plant or apparatus be taken into the nearest convenient port, but only where an enforcement officer considers that it would not be reasonably practicable to exercise a power in relation to that ship, renewable energy system, or part thereof, or related plant or apparatus without so detaining it in port,

in each case on production of their authority to exercise such power and on the provision of such other information as may be specified.

Power to issue compliance or remediation notice.

29. (1) Without prejudice to the generality of section 28(1), that section includes power to provide for the issuing of a notice specified in subsection (3) ("**a compliance notice**") by the Chief Pleas, the committee or the Commission to a person holding a licence issued under section 2 in the circumstances set out in subsection (2).

- (2) The circumstances referred to in subsection (1) are that –
- (a) the licence is for the carrying on of a renewable energy activity, and
 - (b) it appears to the Chief Pleas, the committee or the Commission, as the case may be, that there has been a contravention of the terms or conditions of that licence.

(3) A compliance notice is a notice requiring the person holding a licence under section 2 to take such steps as may be specified in it to ensure that the term or condition of a licence is complied with.

(4) Without prejudice to the generality of section 28(1), that subsection includes power to provide for the issuing of a notice specified in subsection (6) ("**a remediation notice**") by the Chief Pleas, the committee or the Commission to –

- (a) a person holding a licence issued under section 2 for the carrying on of a renewable energy activity where –
 - (i) it appears to the Chief Pleas, the committee or the Commission, as the case may be, that there has been a contravention of the terms or conditions of that licence, and
 - (ii) the renewable energy activity in respect of which the contravention has taken place has caused, or is likely to cause, the effects set out in subsection (5),
- (b) a person who has contravened the prohibition in section 1, by virtue of carrying on a renewable energy activity without a licence issued under section 2, where the renewable energy activity in respect of which the prohibition has been contravened has caused, or is likely to cause, the effects set out in subsection (5).

(5) The effects referred to in subsection (4) are any of the following –

- (a) harm to the environment,

- (b) harm to human health, or
- (c) interference with shipping, fishing or other lawful activities within Sark waters.

(6) A remediation notice is a notice requiring the person on whom it is served to do either or both of the following –

- (a) to take such remedial steps as may be specified in it for the purpose of –
 - (i) protecting the environment,
 - (ii) protecting human health,
 - (iii) preventing interference with shipping, fishing or other lawful activities within Sark waters,
 - (iv) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (5),
 - (v) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred, or
 - (vi) where the holder of a licence under section 2 has failed to carry out decommissioning in

accordance with a decommissioning programme approved by the Chief Pleas, the committee or the Commission, as the case may be, in relation to the renewable energy system or related plant or apparatus in question, carrying out decommissioning in accordance with that decommissioning programme, or

- (b) to pay a sum to the Chief Pleas, the committee or the Commission, as the case may be, to cover any reasonable expenses incurred, in the taking of remedial steps (whether or not under section 32), by the Chief Pleas, the committee or the Commission, as the case may be.

(7) A sum required to be paid in a remediation notice by virtue of subsection (6)(b) is recoverable as a civil debt.

Power to issue stop notice.

30. (1) Without prejudice to the generality of section 28(1), that section includes power to provide for the issuing of a notice specified in subsection (3) ("**a stop notice**") by the Chief Pleas, the committee or the Commission to a person carrying on a renewable energy activity, which is not exempt from the prohibition in section 1, where the renewable energy activity in respect of which the contravention has taken place –

- (a) is causing or will cause,
- (b) is creating or will create an imminent risk of,

the effects set out in subsection (2).

(2) The effects referred to in subsection (1) are any of the following –

- (a) serious harm to the environment,
- (b) serious harm to human health, or
- (c) serious interference with shipping, fishing or other lawful activities within Sark waters.

(3) A stop notice is a notice prohibiting a person from carrying on an activity specified in the notice.

Power to make further provision in relation to notices under this Part and to provide for appeals against such notices.

31. (1) Without prejudice to the generality of section 28(1), that section includes power to provide for –

- (a) the matters which must be specified in a compliance notice, a remediation notice and a stop notice, and
- (b) the duration and effect of such notices and such other matters in connection with such notices as the Chief Pleas consider appropriate,

except that provision may not be made, in relation to a renewable energy activity carried on in accordance with a licence issued under section 2, for a stop notice to have effect for more than 7 days, beginning with the day on which the prohibition takes effect, save that provision may be made for a renewal of such a notice for an aggregate period not exceeding 35 days.

(2) The Chief Pleas may by Ordinance make such provision as they consider appropriate for –

- (a) appeals to be brought against a compliance notice, a remediation notice or a stop notice including, without limitation, provision as to –
 - (i) the persons who may bring such appeals,
 - (ii) the grounds of appeal, and
 - (iii) the period and manner in which such an appeal must be made and otherwise as to the procedure to be adopted for such appeals.
- (b) details of notices issued or action taken under this Part by the Chief Pleas, the committee or the Commission to be kept on a public register.

Power to take remedial steps.

32. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient for the taking of remedial steps by the Commission, the Chief Pleas or the committee in the circumstances set out in subsection (2).

(2) The circumstances referred to in subsection (1) are that a renewable energy activity, which is not exempt from the prohibition in section 1, is being or has been carried out otherwise than under and in accordance with the terms and conditions of a licence issued under section 2.

(3) In this section "**remedial steps**" means any works that appear to it to be necessary or expedient for any one or more of the following purposes –

- (a) protecting the environment,
- (b) protecting human health,
- (c) preventing interference with shipping, fishing or other lawful activities within Sark waters,
- (d) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (4),
- (e) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred, or
- (f) where the holder of a licence under section 2 has failed to carry out decommissioning in accordance with a decommissioning programme approved by the Chief Pleas, the committee or the Commission, as the case may be, in relation to the renewable energy system or related plant or apparatus in question, carrying out decommissioning in accordance with that decommissioning programme.

(4) The harm or interference mentioned in subsection (3)(d) and (e) is any of the following which has been, is being, or is likely to be, caused by the

carrying on of the renewable energy activity –

- (a) harm to the environment,
- (b) harm to human health, or
- (c) interference with shipping, fishing or other lawful activities within Sark waters.

(5) For the avoidance of doubt, where decommissioning of a renewable energy system or related plant or apparatus is carried out under subsection (1) by or behalf of the Chief Pleas, the committee or the Commission, that decommissioning is permitted under this Law for the purposes of section 1.

Powers under this Part without prejudice to those under section 2.

33. The powers in this Part are without prejudice to the powers under section 2 in so far as those section 2 powers relate to the enforcement of any provisions of, or made under, this Law, or of any licence, notice or other document issued under this Law.

Offences, penalties and defence

General offence and penalties.

34. (1) A person who contravenes section 1, or any Ordinance made under this Law, shall be guilty of an offence and, save where otherwise provided by this Law, or by the Ordinance, shall be liable –

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

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or to both.

(2) Where an offence under subsection (1), or any Ordinance made under this Law, is committed –

- (a) by a servant or agent of any other person, or
- (b) on any premises or on any structure whether temporary or permanent by a person other than the occupier or person having management of it,

the principal or the occupier or the person having the management of the premises or structure, as the case may be, shall also be guilty of that offence.

(3) The court by which any person is convicted under this section, or under any Ordinance made under this Law, may order anything produced to the court and shown to the satisfaction of the court to relate to the offence, including for the avoidance of doubt, any renewable energy system, or part thereof, or any related plant or apparatus to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Offences committed by bodies corporate and partnerships, etc.

35. (1) Where an offence under section 34(1), or any Ordinance made under this Law, 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.

(3) Proceedings for an offence under section 34(1), or under any Ordinance made under this Law, alleged to have been committed by a partnership shall be brought against the partnership in the name of the firm and not in that of the partners, but without prejudice to any liability of the partners under subsection (5).

(4) A fine imposed on a partnership on its conviction in such proceedings shall be paid out of the partnership assets.

(5) Where an offence under section 34(1), or any Ordinance made under this Law, is committed by a partnership 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 partner or any person purporting to act in that capacity, he as well as the partnership is guilty of the offence and may be proceeded against and punished accordingly.

Defence of due diligence.

36. (1) In any proceedings for an offence under section 25(4), 34(1) or any Ordinance made under this Law, it shall, subject to subsection (2), be a defence for the person charged to prove that he took reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person shall not, without the leave of the court, be entitled to rely on that defence unless –

- (a) at least seven clear days before the hearing, and
- (b) where he has previously appeared before the court in connection with the alleged offence, within one month of his first appearance,

he has served on Her Majesty's Procureur a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

PART V
GENERAL

Matters to be taken into account, co-ordination and facilitation, etc.

Matters to be taken into account in carrying out of functions under this Law.

37. (1) In the carrying out of any functions conferred by or under this Law, except any power to make provision by Ordinance or any other function of the Chief Pleas or the committee under section 5 or Part III, the Chief Pleas, the committee or the Commission, as the case may be, may take into account any matter which it considers appropriate, but shall –

- (a) have particular regard to –
 - (i) any serious harm to human health or the environment,
 - (ii) any interference with shipping, fishing and any other lawful activities within Sark and the territorial waters of Sark or of any other place,

which is likely to be caused, in all the circumstances,
by any renewable energy activity,

- (b) have particular regard to –
 - (i) the desirability of ensuring that the operation, deployment or use of a renewable energy system has as a principal objective the generation of energy from renewable power sources and such other objectives as the Chief Pleas, the committee or the Commission may from time to time determine,
 - (ii) what reasonably appears to the Chief Pleas, the committee or the Commission, in all the circumstances, to be in the best interests of Sark.

(2) In carrying out any of its functions conferred by or under this Law, the Chief Pleas, the committee or the Commission must also take into account any other matter as the Chief Pleas may by Ordinance prescribe.

(3) For the avoidance of doubt, the functions of the Commission conferred by or under this Law include, for the purposes of subsection (1), those referred to in section 8(b) and (c).

Co-ordination and facilitation.

38. (1) The Chief Pleas may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

- (2) The matters referred to in subsection (1) are –
- (a) enabling the Chief Pleas, the committee or the Commission, having regard to any issues of propriety and insofar as they or it may lawfully do so, to act in a co-ordinating and facilitating role in relation to the obtaining of any relevant consent including, without limitation –
 - (i) acting as a common point of contact for applicants,
 - (ii) passing on publicly available information to applicants relating to the obtaining of consents,
 - (iii) co-ordinating procedures for the obtaining of consents, and
 - (iv) co-operating with other persons from whom consents are required.
 - (b) the responsibilities, obligations and liabilities of the Chief Pleas, the committee or the Commission, as the case may be, the applicant and any other person from whom a consent is required to be obtained where the Chief Pleas, the committee of the Commission carries out any functions conferred under this section.
- (3) In this section –

"applicant" means a person who is applying or proposing to apply for a consent, and

"consent" means a licence, consent or permission (however named) provided for under any enactment or subordinate legislation and required –

- (a) to allow the lawful carrying out, or
- (b) in connection with the lawful carrying out,

of a renewable energy activity.

Exclusion of liability.

39. (1) Subject to subsection (3), no person within subsection (2) is to be –

- (a) liable in damages, or
- (b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of his functions, or functions delegated to him, under this Law, unless the thing was done or omitted to be done in bad faith.

(2) The persons within this subsection are –

- (a) the Chief Pleas or the committee or any member, officer or servant of the Chief Pleas,
- (b) the Commission or any public body on whom functions

are conferred under section 27,

- (c) any member, officer or servant of –
 - (i) the Commission, or
 - (ii) any public body on whom functions are conferred under section 27, or
- (d) any public body to whom functions are delegated –
 - (i) under section 22, or
 - (ii) under any provision made under section 27(1)(b) which makes corresponding provision to section 22,

or any member, officer or servant of such a public body, or
- (e) any inspector appointed under section 5 or any enforcement officer appointed under section 28.

(3) Subsection (1) does not apply so as to 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^d.

Fees and charges.

^d Ordres en Conseil Vol. XL p. 396 as amended by Order in Council No. 1 of 2005 and G.S.I. No. 27 of 2006.

40. (1) There shall be payable to the Chief Pleas, the committee, the Commission or a public body on whom functions are conferred under section 27 such fees or charges of such amounts, by such persons and in such manner as may be specified in connection with –

- (a) the carrying out of any functions under the Law,
- (b) the provision of any services by the Chief Pleas, the committee, the Commission or a public body on whom functions are conferred under section 27 in connection with, in each case, any of its functions under the Law, and
- (c) the recovery of any reasonable costs associated with the administration and enforcement of any Ordinance or subordinate legislation made under this Law.

(2) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may provide for the charging of –

- (a) fees in connection with applications made under this Law, and
- (b) an annual licence fee, payable by the holder of a licence issued under section 2, to cover any reasonable costs incurred by the Chief Pleas, the committee, the Commission or a public body on whom functions are conferred under section 27 in connection with issuing and enforcement of such licences.

Interpretation.

41. (1) In this Law, unless the context requires otherwise –

"animal" means any living creature except man,

"the Chief Pleas" means the Chief Pleas of Sark,

"the Commission" means the Sark Commission for Renewable Energy,

"the committee" means the [Sark Policy and Finance Committee] of the Chief Pleas,

"committee of the Chief Pleas" means a committee of the Chief Pleas appointed under section 44 of the Reform (Sark) Law, 2008^e,

"compliance notice": see section 29(1) and (3),

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly,

"craft" means anything made for the conveyance by water of human beings or of property including a jet ski, wet bike or water scooter or other similar craft, however described,

"department of the States of Guernsey" includes any council or

^e Order in Council No. V of 2008 as amended by No. VI of 2008 and No. XXVII of 2008.

committee (however called) thereof,

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however 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,

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

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

"enforcement officers": see section 28(3)(a),

"function" includes a duty and a power and the carrying out of functions includes the performance of duties and the exercise of powers,

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

"notice" means notice in writing,

"premises" includes any place and, in particular, includes –

- (a) a building and any other land,
- (b) a ship or an aircraft,
- (c) a renewable energy system or any part thereof,
- (d) any related plant or apparatus, and
- (e) a vehicle,

"related infrastructure" means any plant, structures, apparatus, lines or cables necessary to operate, deploy, use or manage a renewable energy system for the generation or supply of energy,

"related plant or apparatus" includes any of the following which is not itself a renewable energy system –

- (a) any mechanical system, plant or apparatus which is in the course of construction or assembly and which on completion of that construction or assembly will be, or will form part of, a renewable energy system,
- (b) any mechanical system, plant or apparatus which formed part of a renewable energy system, including any such system, plant or apparatus which is in the course of being decommissioned,
- (c) any mechanical system, plant or apparatus which –
 - (i) will form part of a renewable energy system, and

- (ii) is in transit to or from a place where it is to be located for the purpose of the generation or supply of energy,
- (d) any related infrastructure, and
- (e) any plant, structures, apparatus, lines or cables which will be or were necessary to operate, deploy, use or manage any system, plant or apparatus falling within paragraphs (a) to (c),

"remediation notice": see section 29(4) and (6),

"renewable energy activity" means an activity prohibited under section 1(1),

"renewable energy system" means any mechanical system, or any plant or apparatus, which is designed and constructed to generate or supply electricity or any other type of energy from any form of renewable power source,

"renewable power source" includes tidal power, wave power, wind power, solar power and any other form of specified power,

"Royal Court" means the Royal Court of Guernsey sitting as the Ordinary Court,

"Sark" includes all other islands, islets and rocks around the coast of Sark, whether or not attached at low water, and, for the avoidance of doubt, waters landward of the baselines for measuring the breadth of the territorial

waters of Sark,

"Sark uniform scale" has the same meaning as in the Uniform Scale of Fines (Sark) Law, 1989^f,

"Sark waters" means –

- (a) the territorial waters of Sark, and
- (b) waters landward of the baselines for measuring the breadth of the territorial waters of Sark,

"ship" includes –

- (a) every description of vessel used in navigation,
- (b) a hovercraft, and
- (c) any other craft capable of travelling on, in or under water, whether or not self-propelled,

but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed,

"specified" means specified by an Ordinance,

"stop notice": see section 30(1) and (3),

^f Ordres en Conseil Vol. XXXI, p. 320 to which there are amendments not relevant to this Law; for the current scale of fines see the Uniform Scale of Fines (Sark) (Amendment) Ordinance, 2006.

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect, and

"territorial waters of Sark" means the territorial sea adjacent to Sark, the breadth thereof being measured from the baselines established by the Territorial Waters Order in Council 1964^g as from time to time amended, re-enacted (with or without modification), extended or applied.

(2) In this Law, unless the context requires otherwise, references to **"arranging for the operation, deployment or use of any renewable energy system"** or any related expressions, include, for the avoidance of doubt, the carrying out of any marine survey work including –

- (a) wave energy or tidal current monitoring, bathymetry, water column investigations, or
- (b) surveys of the sea, seabed or subsea surveys,

carried out in connection with any prospective or potential operation, deployment or use of a renewable energy system or part thereof.

(3) Unless the context requires otherwise, any reference in this Law to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case with or without modification), extended or applied.

(4) The Interpretation (Guernsey) Law, 1948^h shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in

^g Order in Council of the 25th September 1964.

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

Guernsey.

(5) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

NOTES

In section 41, the words in square brackets in the definition of the expression "the committee" in subsection (1) were substituted by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 3, with effect from 10th October, 2018.¹

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Policy and Performance Committee and Sark Finance and Resources Committee (Transfer of Functions) Ordinance, 2018, section 1, with effect from 10th October, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.²

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

General provisions as to Ordinances.

- 42.** (1) The Chief Pleas may by Ordinance amend –
- (a) section 1(1) so as to change the activities which are prohibited by that section,
 - (b) section 1(2) and Schedule 1 so as to change the activities which are exempt from the prohibition in section 1(1), or
 - (c) Part IV, sections 5, 22, 38 and 41 so as to amend the

meaning of any expression defined therein or to define any other expression,

where they consider it necessary or expedient to do so for any of the the purposes set out in subsection (2).

- (2) The purposes referred to in subsection (1) are –
- (a) enabling the Chief Pleas, the committee or the Commission to carry out more effectively any functions conferred under this Law,
 - (b) exempting activities from the prohibition in section 1 which –
 - (i) are not likely to have a significant detrimental effect on the environment, human health or the safety of navigation and are not likely to result in any significant interference with other lawful activities within Sark or the territorial waters of Sark, or
 - (ii) are adequately controlled by other applicable law,
 - (c) discharging any international obligation to which Sark (including in respect of the territorial waters of Sark) is subject,
 - (d) assisting, in the interests of the public or otherwise, any authority which appears to the Chief Pleas to discharge

in a place outside Sark, or the territorial waters of Sark, functions corresponding to any of the functions conferred on the Chief Pleas, the committee or the Commission under this Law,

- (e) ensuring that the activities which are prohibited or may be exempted under this Law reflect scientific developments, from time to time, in the field of renewable energy, or
- (f) preventing any likely significant harm to the environment, human health or the safety of navigation or any significant interference with other lawful activities within or the territorial waters of Sark.

(3) The power in subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (or vice versa).

(4) An Ordinance under this Law may –

- (a) be amended or repealed by a subsequent Ordinance hereunder, and
- (b) contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(5) Any power conferred under this Law to make an Ordinance may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, or
 - (iii) any such provision either unconditionally or subject to any specified conditions.
- (6) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law may –
- (a) subject to subsection (7), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and for related defences,
 - (b) empower the Chief Pleas, the committee or the Commission to make or issue codes or guidance, whether as to matters in respect of which an Ordinance

can be made under this Law or otherwise,

- (c) make provision for the purpose of dealing with matters arising out of or related to renewable energy activities or any international instrument relating to such activities or activities that would be such activities if carried on in Sark or the territorial waters of Sark,
 - (d) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
 - (e) without prejudice to the generality of the foregoing, make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance, and
 - (f) make provision generally for carrying this Law into effect in whatever manner the Chief Pleas think fit.
- (7) An Ordinance under this Law may not –
- (a) provide for offences to be triable only on indictment, or
 - (b) provide for penalties for offences which exceed the maximum penalties that may be imposed by a court under section 34(1).

Extent.

- 43.** This Law extends to Sark and the territorial waters of Sark only.

Citation.

44. This Law may be cited as the Renewable Energy (Sark) Law, 2010.

Commencement.

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

NOTE

Section 2, section 27, Part II, Part IV and Part V of the Law were brought into force on 18th April, 2012 by the Renewable Energy (Sark) Law 2010 (Commencement) Ordinance, 2012, section 1.

SCHEDULE 1

Section 1(2)

EXEMPTIONS FROM THE PROHIBITION IN SECTION 1

PART I

EXEMPTIONS WHERE RENEWABLE ENERGY SYSTEM ETC. LOCATED
WITHIN SARK WATERS

1. The prohibition in section 1(1) shall not apply to a renewable energy activity, where it is carried out in relation to a renewable energy system where any part of that system or any related plant or apparatus is, or is to be, located within Sark waters, in the circumstances set out in paragraph 2.

2. The circumstances referred to in paragraph 1 are that the renewable energy system –
 - (a) generates or is to generate electricity and has a rated maximum output of no more than 20 kilowatts, or

 - (b) is or is to be installed in a ship located within Sark waters or a harbour and is or is to be operated, deployed or used, or in the case of the activity of decommissioning, was operated, deployed or used, solely in relation to the private use of energy on board that ship.

PART II

EXEMPTIONS WHERE RENEWABLE ENERGY SYSTEM ETC. NOT
LOCATED WITHIN SARK WATERS

3. The prohibition in section 1(1) shall not apply to a renewable energy activity, where it is carried out in relation to a renewable energy system where no part of that system or any related plant or apparatus is, or is to be, located within Sark waters, in

the circumstances set out in paragraph 4.

4. The circumstances referred to in paragraph 3 are that –
- (a) the activity is carried out in relation to a renewable energy system which was installed at the place where it is being operated, deployed, used, managed or decommissioned –
 - (i) on or before the date on which this Law came into force, and
 - (ii) where relevant, in compliance with any applicable requirements under the Development Control (Sark) Law, 1991ⁱ, including any requirements made under that Law by the Development Control (Sark) Ordinance, 1992^j,
 - (b) the activity is carried out in relation to any renewable energy system which when operated, deployed or used –
 - (i) heats water, for the sole use of the premises in which it is installed, but does not also generate electricity, or
 - (ii) generates electricity for the sole use of premises

ⁱ Ordres en Conseil Vol. XXXIII p. 155, as amended by No. X of 2009.

^j Amended by the Development Control (Sark) (Amendment) Ordinance, 2000 and the Development Control (Sark) (Amendment) Ordinance, 2009.

in which it is installed and has a rated maximum output of no more than 20 kilowatts, or

- (iii) generates heat, for the sole use of premises in which it is installed, and has a rated maximum heat output of no more than 20 kilowatts.

PART III

EXEMPTIONS APPLYING TO ALL RENEWABLE ENERGY SYSTEMS

- 5. The prohibition in section 1(1) shall not apply to –
 - (a) a renewable energy activity carried on –
 - (i) by the holder of a licence issued by the Chief Pleas, the committee, the Commission or a public body (on whom functions are conferred under section 27) under section 2, and
 - (ii) under and in accordance with the terms and conditions of that licence, or
 - (b) any activity carried on by a subcontractor or agent of such a person under and in accordance with the terms and conditions of such a licence except where the Chief Pleas, the committee, the Commission or any public body on whom functions are conferred under section 27, as the case may be, provides otherwise in the terms and conditions of the licence in question.

SCHEDULE 2

Section 7(3)

PROVISIONS HAVING EFFECT WITH RESPECT TO THE SARK
COMMISSION FOR RENEWABLE ENERGY

1. The Commission shall consist of a Chairman and at least 2, but no more than 4, other members appointed by the Chief Pleas upon the recommendation of the committee.
2. The Chairman and other members of the Commission shall hold office for a period of five years (or such other shorter period as may be agreed between the Chief Pleas and any member appointed to the Commission) and vacate office as such in accordance with the terms of their appointments.
3. A person who ceases to hold office as a member of the Commission, or ceases to hold office as Chairman, shall be eligible for reappointment.
4. The Commission shall pay to the Chairman and other members of the Commission such remuneration, allowances, expenses, pensions and other benefits as the Chief Pleas may from time to time by resolution determine.
5. Every member of the Commission shall, before discharging any function under this Law, take an oath or make an affirmation before the Royal Court or the Court of the Seneschal in the terms set out at the foot of this Schedule or in words to the like effect.
6. Where the members of the Commission meet together so as to transact any business –
 - (a) decisions shall be made and other matters determined or resolved by a majority of the members attending and voting in favour of the decision or matter in question,

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

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

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

9. The Commission shall keep proper minutes of its proceedings, including minutes of any business transacted as permitted by paragraph 7 of this Schedule.

10. Subject to this Law, the Commission shall have power to make rules to regulate its own procedure.

Oath/Affirmation of office

"You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge your functions as a member of the Sark Commission for Renewable Energy in accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the discharge of those functions; and that you will not disclose any

information received by you in the discharge of those functions which to your knowledge may directly lead to the identification of any person, save to persons engaged in the discharge of those functions; pursuant to an express power conferred by or under the Renewable Energy (Sark) Law, 2010; or in any other case required by law."

¹ These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015, section 2, Schedule, with effect from 21st January, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) Ordinance, 2015, section 1, Schedule, with effect from 21st January, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.