

The Renewable Energy (Guernsey) Ordinance, 2015

ARRANGEMENT OF SECTIONS

PART I EXEMPTIONS

1. Power to make regulations to exempt activities etc.

PART II LICENSING OF RENEWABLE ENERGY ACTIVITIES

2. Application for licence.
3. Publicity for applications.
4. Determination of applications.
5. Consultation.
6. Public inquiries or other hearings.
7. Grant or refusal of licence.
8. Period of validity of licence.
9. Conditions of licence.
10. Variation of licence.
11. Revocation or suspension of licence.
12. Surrender of licence.
13. Transfer of licence.
14. Representations prior to variation, revocation or suspension of licence.
15. Effect of licence.

PART III RIGHTS OF NAVIGATION AND SAFETY ZONES

16. Declarations extinguishing etc. public rights of navigation.
17. Declarations creating safety zones.
18. Prohibition against activities in safety zones.
19. Additional offences relating to safety zones.
20. Procedure - declarations under this Part.

PART IV POWERS OF INVESTIGATION

21. Power to request and obtain information and documents.
22. Investigations by inspectors.
23. Power of the Bailiff to grant warrant.
24. Powers conferred by Bailiff's warrant.
25. Legal professional privilege, liens and duties of confidentiality.
26. Offence of falsification, etc. of documents during investigation.

PART V
CIVIL NOTICES AND POWER TO TAKE REMEDIAL STEPS

Civil notices

27. Power to issue compliance notice.
28. Power to issue remediation notice.
29. Power to issue stop notice.
30. Further provision as to notices under this Part.

Remedial steps

31. Power to take remedial steps.
32. Powers under this Part without prejudice to those under Part VI.

PART VI
CIVIL SANCTIONS

33. Public statements.
34. Discretionary financial penalties.
35. Representations prior to public statement or financial penalty.

PART VII
POWERS OF ENFORCEMENT OFFICERS

36. Enforcement officers.
37. Inspection in connection with licences.
38. General powers of entry and inspection and to stop and detain vehicles.
39. Warrant to enter premises.
40. Supplementary functions-search, examination etc.
41. Power to direct ship or renewable energy system etc. to port.

PART VIII
APPEALS

42. Appeals against decisions of the Commission.

PART IX
ADDITIONAL OFFENCES

43. Offence of contravention of terms or conditions of licence or requirement of a notice under Part V.
44. Action taken in an emergency.
45. Offence in relation to false or misleading information or obstruction.

PART X
MISCELLANEOUS

- 46. Co-ordination and facilitation.
- 47. Public register.
- 48. Recovery of costs, expenses, a fee or a penalty as a civil debt.
- 49. Power of Commission to issue guidance.
- 50. Interpretation.
- 51. Power of Department to amend Schedules.
- 52. Index of defined expressions.
- 53. Extent.
- 54. Citation.
- 55. Commencement.

- SCHEDULE 1: Environmental statement.
- SCHEDULE 2: Matters to be included in a decommissioning programme.
- SCHEDULE 3: Notice of application for licence and declaration.
- SCHEDULE 4: Inquiry procedure.
- SCHEDULE 5: Exceptions to prohibited activities in safety zones.
- SCHEDULE 6: Procedure in relation to declarations under Part III.

NOT YET IN FORCE

The Renewable Energy (Guernsey) Ordinance, 2015

THE STATES, in pursuance of their Resolutions of the 25th June, 2009^a, and in exercise of the powers conferred on them by sections 2 to 4, 26 to 30, 35, 37 and 39 of the Renewable Energy (Guernsey) Law, 2010^b, and all other powers enabling them in that behalf, hereby order:-

PART I EXEMPTIONS

Power to make regulations to exempt activities etc.

1. The Department may by regulations -
 - (a) amend section 1(2) and Schedule 1 to the Law so as to change the activities which are exempt from the prohibition in section 1(1) of the Law,
 - (b) provide for further exemptions for any activity from the prohibition in section 1 of the Law, subject to such terms and conditions as the Department thinks fit, and
 - (c) prescribe conditions for the conduct and control of, and for matters of administration in connection with, a renewable energy activity and any activity related thereto.

^a Article X of Billet d'État No. XVI of 2009.

^b Order in Council No. XIV of 2011.

PART II
LICENSING OF RENEWABLE ENERGY ACTIVITIES

Application for licence.

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

(2) An application under this section must -

(a) contain a description of the renewable energy activities which the applicant proposes to carry on,

(b) contain a description, by reference to a map, of the location at which those activities are to be carried on and such map must include the co-ordinates of latitude and longitude of that location by reference to the World Geodetic System 1984,

(c) where it relates to the operation, deployment, use or decommissioning of a renewable energy system, or any part thereof, be accompanied by -

(i) an environmental statement which must include -

(A) at least the information in Part I of Schedule 1, and

(B) such of the information referred to in Part II of Schedule 1 as is reasonably required to assess the

environmental effects of the development and which, having regard in particular to current knowledge and methods of assessment, the applicant can reasonably be required to compile,

(ii) a decommissioning programme, including at least the matters set out in Schedule 2, relating to the decommissioning -

(A) of the renewable energy system, and

(B) of any related plant or apparatus, whether on, in, over or under land, the sea or the sea bed,

(d) be accompanied by such fee as may be prescribed by regulations under the Law, and

(e) comply with any other requirements as to the form, manner and content of such application and any other information and documents to accompany such application as the Department may by regulations prescribe,

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

(3) For the avoidance of doubt, the environmental effects of the

development include –

- (a) such effects resulting from the operation of the development including those resulting from the carrying on of the proposed renewable energy activities, and
 - (b) such effects in countries or territories outside Guernsey.
- (4) The Commission may require an applicant to -
- (a) supply such information,
 - (b) produce such articles, and
 - (c) permit such investigations, examinations and tests,

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

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

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

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

consideration of the application.

(8) The Commission may require an environmental statement or a decommissioning programme, meeting the requirements of subsection (2), to accompany an application which only relates to arranging for the operation, deployment, use or decommissioning of -

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

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

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

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

Publicity for applications.

3. (1) The Commission must secure that an applicant for a licence publishes a notice in the form set out in Schedule 3, allowing representations to be made in relation to the application and, where relevant, the environmental statement and the decommissioning programme and containing the other information required thereon -

- (a) in such manner as the Commission considers appropriate, and
- (b) in the case of an application relating to the operation, deployment, use or decommissioning of a renewable energy system, or any part thereof, in such manner as the Commission considers is best calculated to bring the application to the attention of persons whose activities in Guernsey waters are likely to be affected by the operation, deployment, use or decommissioning of that system.

(2) The notice under subsection (1) must allow representations to be made within a period of not less than 28 days, commencing with the date of publication of the notice.

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

(4) The Commission must, subject to subsection (5), publicise in such manner and for such period as it considers appropriate -

- (a) a copy of the applicant's notice required under subsection (1),
- (b) a copy of the application,
- (c) in the case of an application in relation to the operation, deployment, use or decommissioning of a renewable energy system, or any part thereof, a

copy of the environmental statement and the decommissioning programme, and

- (d) in the case of an application in relation to arranging for the operation, deployment, use or decommissioning of a renewable energy system, or any part thereof, where the Commission has required the submission of an environmental statement or a decommissioning programme, a copy of any such document required to accompany the application,

and must continue to so publicise such documents until the application is withdrawn by the applicant or determined by the Commission.

(5) The Commission may, upon written request from the applicant, withhold or allow the withholding of information from the documents required to be publicised under subsection (1) and (4), if the Commission determines that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

Determination of applications.

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

- (a) the need to protect human health,
- (b) the likely effects of the renewable energy system on the generation and supply of energy in Guernsey, including, without limitation, the safety of that supply,

- (c) the technical quality of the renewable energy system,
- (d) the cumulative effects of the operation, deployment, use and decommissioning of the renewable energy system to which the application relates with that of other existing and proposed renewable energy systems in Guernsey waters, having particular regard to -
- (i) the effects on human health,
 - (ii) the effects on the environment, and
 - (iii) any interference with shipping, fishing and other lawful activities within Guernsey, or the territorial waters of Guernsey,
- (e) where the application relates to an activity which is specified by order under section 7(1) of the Food and Environment Protection Act (as extended with modifications to the Bailiwick of Guernsey)^c as an operation not needing a licence under Part II of that Act, the need to –
- (i) protect the marine environment and the

^c An Act of Parliament (1985 c.48); the Act was extended to the Bailiwick of Guernsey with modifications by United Kingdom S.I. 1987/665 as amended by United Kingdom S.I. 1997/1770.

living resources which it supports, and

- (ii) prevent interference with legitimate uses of the sea,

and for the purposes of this paragraph the expressions in subparagraphs (i) and (ii) have the same meanings as in that Act, and

- (f) where the application relates to the operation, deployment, use or decommissioning of a renewable energy system for generating or supplying energy for public supply, such of the following as are relevant to the application in question -

- (i) the likely social and economic impacts in Guernsey of the operation, deployment, use or decommissioning of the renewable energy system, and

- (ii) the robustness of arrangements for securing the following without expense being incurred by the States or the Commission -

- (A) the decommissioning of the renewable energy system,

- (B) the decommissioning of any related plant or apparatus, and

(C) the restoration of the place in which such system or related plant or apparatus was situated, insofar as is appropriate in all the circumstances, into the condition it was prior to the installation of the same,

including in the event of a transfer of the licence to another person or in the event of another person becoming the owner, occupier or enjoying the use of such system or related plant or apparatus,

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

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

(v) the States Energy Policy.

- (2) In determining an application for a licence the Commission -
- (a) must also, in accordance with -
 - (i) section 7(2) of the Law, have particular regard to the matters set out in that section, and
 - (ii) section 11(2) of the Law, act in accordance with any directions of the States given to it under section 11(1)(b) of the Law and take into account any guidance of the States given to it under section 11(1)(a) of the Law, and
 - (b) may also, in accordance with section 7(2) of the Law, take into account any other matter which it considers appropriate.
- (3) For the avoidance of doubt, where the Commission must have regard, under section 7(2) of the Law or this section, to any interference -
- (a) with shipping, fishing and other lawful activities within Guernsey or the territorial waters of Guernsey,
 - (b) which is likely to be caused by any renewable energy activity,

that consideration includes how, in relation to that activity, the Commission has exercised or may exercise its powers to make a declaration under section 16 or 17.

Consultation.

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

(a) must consult -

(i) the Director, and

(ii) the States Harbourmaster, and

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

(2) Before deciding whether or not to grant an application under section 7 which relates to the operation, deployment, use or decommissioning of a renewable energy system, or any part thereof, the Commission must, in addition to the persons listed in subsection (1)(a), consult -

(a) the Senior Sea Fisheries Officer of the Department,

(b) the Guernsey Airport division of the States Public Services Department,

(c) Guernsey Electricity Limited, which is registered in the Register of Companies within the meaning of the Companies (Guernsey) Law, 2008^d under company registration number 38692, and any other person who is -

(i) a licensee within the meaning of the Electricity (Guernsey) Law, 2001^e, and

(ii) prescribed for the purposes of this paragraph by regulations of the Department.

(d) La Société Guernesiaise,

(e) the National Trust of Guernsey, and

(f) the Guernsey Fishermen's Association.

(3) The Commission must give the applicant an opportunity to make representations to the Commission on any consultation responses made by any person consulted under this section.

(4) The Commission may require in writing that any person, consulted under this section, makes representations to the Commission within a period of not less than 28 days starting from the date on which the Commission consulted that person.

(5) The Commission may require in writing that the applicant makes representations under subsection (3) within a period of not less than 28 days starting from the date on which it gave the applicant the opportunity to make such representations.

^d Order in Council No. VIII of 2008 to which there are amendments not relevant to this Ordinance.

Public inquiries or other hearings.

6. (1) Where the Commission considers it necessary or expedient to do so it may cause a public inquiry or other hearing to be held in connection with -

- (a) the determination of an application for a licence to operate, deploy, use or decommission a renewable energy system,
- (b) the determination of an application for a declaration, or
- (c) the making by the Commission of a declaration of its own volition.

(2) The Commission must cause a public inquiry to be held in connection with any of the matters listed in subsection (1)(a) to (c) where it considers that -

- (a) any of the renewable energy activities which are the subject of the licence to operate, deploy, use or decommission a renewable system, or
- (b) the operation of the declaration,

is likely to cause serious interference with shipping.

^e Ordres en Conseil Vol. XLI, p. 343 as amended by Recueil d'Ordonnances Tome XXVIII, p. 545, Tome XXIX, p. 406 and by Ordinance No. XIII of 2012 and No. XXIII of 2015.

(3) For the avoidance of doubt, where the Commission causes a public inquiry or other hearing to be held under subsection (1)(a) or (2) in connection with an application for a licence and it also considers it necessary or expedient for an inquiry or other hearing to be held in connection with -

- (a) an application for a declaration in relation to that application for a licence,
- (b) the issuing by the Commission of a declaration in connection with the same application for a licence, or
- (c) any other matters which the Commission decides are so far related or connected with the application for a licence or declaration in question that they should be considered together,

the Commission may direct that all of the matters be considered at the same inquiry or other hearing.

(4) Where the Commission holds a hearing, other than a public inquiry, under subsection (1) it must before granting the application or making the declaration in question, as the case may be -

- (a) give any person who has made a written objection to the application or declaration, which has been duly made and not withdrawn, an opportunity of appearing before and being heard by a person appointed by the Commission for the purpose, and

(b) consider the report of the person so appointed.

(5) Schedule 4 (which provides for inquiry procedure) has effect.

(6) The Department may by regulations under this paragraph make such further provision as it considers necessary or expedient in relation to the procedure in connection with an inquiry or other hearing held under this section.

(7) Subject to the provisions of this section and of Schedule 4 and of any regulations made under subsection (6), the procedure -

(a) at an inquiry is determined by the inspector, and

(b) at another hearing is determined by the person appointed by the Commission for the purpose.

(8) In making any decision as to the procedure or conduct of an inquiry or other hearing, the inspector or other person appointed to conduct a hearing must act with fairness and with regard to the need to avoid any unnecessary cost (whether to public funds, witnesses or others).

Grant or refusal of licence.

7. (1) The Commission may, subject to the following provisions of this section, upon receipt of an application under section 2 from a person wishing to be licensed to carry on renewable energy activities -

(a) grant the application unconditionally,

(b) grant the licence subject to such conditions as the

Commission thinks fit, or

- (c) refuse the application.

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

- (a) the period given for the making of representations under section 3, and
- (b) any period given by the Commission for the making of representations by consultees or the applicant under section 5.

(3) In making its determination of an application for a licence, the Commission must take into account any representations duly made in accordance with this Ordinance.

(4) Without prejudice to the generality of its powers conferred by subsection (1), the Commission must not grant an application for a licence which relates to the operation, deployment, use or decommissioning of a renewable energy system, or any part thereof, unless -

- (a) the Commission is satisfied that the activities authorised by the licence are in compliance with international law,
- (b) the Commission has taken into account any environmental statement and decommissioning programme required under section 2 in making its decision,

(c) the Commission is satisfied that the applicant will maintain, in such manner and in such amounts as the Commission may from time to time determine, adequate insurance cover to cover the risks most likely to arise from the carrying on of the renewable energy activities in question including, without limitation -

- (i) public liability insurance,
- (ii) employer's liability onshore insurance,
- (iii) maritime employer's liability insurance,
- (iv) protection and indemnity insurance, and
- (v) collision, clean up and pollution liability insurance where, in the opinion of the Commission, such insurance is available at commercially acceptable rates,

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

(d) the Commission is satisfied that the insurer will, where required, note the Commission's interest under the insurance policies referred to in paragraph (c),

- (e) the Commission is satisfied that the applicant -
- (i) will maintain a permanent establishment in Guernsey, where any document addressed to that person may validly be served, or
 - (ii) has appointed a person approved by the Commission who has and is obliged to retain such an address and also, if the applicant is not a Guernsey company or an individual ordinarily resident in Guernsey, who has and will retain full power to act generally on behalf of the applicant in relation to the renewable energy activities in question.

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

(6) Where the Commission grants an application it must -

- (a) issue to the applicant, with the notice of its decision, a licence in writing specifying any conditions to which the licence is subject, and
- (b) include in the notice of its decision the reasons for the imposition of any such condition and a statement of the applicant's right of appeal under section 42.

(7) Where the Commission refuses an application it must

include in the notice of its decision the reasons for the refusal and a statement of the applicant's right of appeal under section 42.

Period of validity of licence.

8. A licence may provide -
- (a) that it is to expire unless the activity which it authorises is begun within a specified period, or
 - (b) that it is to remain in force indefinitely or for a specified period of time (which may be determined by reference to a specified event).

Conditions of licence.

9. (1) The conditions that may be attached to a licence under section 7(1)(b) may, without limitation, relate to -

- (a) the renewable energy activities authorised by the licence,
- (b) precautions to be taken or works to be carried out (whether before, during or after the carrying on of the authorised renewable energy activities) in connection with or in consequence of those activities, or
- (c) the approval by the Commission, prior to the carrying on of the renewable energy activity of -
 - (i) a decommissioning programme in relation to the decommissioning of

the renewable energy system and any related plant or apparatus, or

- (ii) arrangements to ensure that such decommissioning is carried out in accordance with such an approved programme including financial arrangements to ensure the provision of satisfactory security to cover the cost of such decommissioning.

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

- (a) that no renewable energy activity authorised by the licence be carried out until the Commission or some other specified person has given such further approval of the activity as the licence may specify,
- (b) as to the provision, maintenance, testing or operation of equipment for monitoring, measuring or recording specified matters relating to any renewable energy activity authorised by the licence or any activity related to such activity,
- (c) as to the keeping of records or the making of returns or giving of other information, including information concerning the financial position of the holder of the licence, to the Commission,

- (d) for the removal, at the end of a specified period, of any renewable energy system to which the licence relates or any part thereof, or of any related plant or apparatus,
- (e) for the carrying out, at the end of a specified period, of such works as the licence may specify for the remediation of the site on which any of the following are located -
 - (i) the renewable energy system to which the licence relates, or any part thereof, or
 - (ii) any related plant or apparatus, and
- (f) that any activity authorised by the licence must take place at a specified site.

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

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

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

Variation of licence.

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

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

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

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

(3) The Commission may vary the terms or conditions of a licence granted by it if it appears to the Commission that the licence ought to be varied -

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

any of the matters set out in section 7(4)(a) and (c) to (e),

(e) because the Commission is not satisfied that the holder of the licence -

(i) is able to generate or supply energy, or

(ii) will continue to be able to do so for the term of the licence,

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

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

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

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

(a) the variation requested,

(b) the reasons for the request, and

- (c) any changes, arising from the proposed variation, to any information required to be provided under section 2, including, where relevant, any changes to the environmental statement or the decommissioning programme,

and the requirements of section 2(9) apply to any changes to the environmental statement or the decommissioning programme as they apply to such a document as originally submitted.

(6) Sections 2(2)(c) and (d), 2(3) to (8) and 4 and 5 apply to an application for a variation of a licence as they apply to an application for a licence.

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

(8) Sections 3, 7(1) to (5) and 7(7) and, for the avoidance of doubt, Schedule 3 (notice of application for licence) apply to an application for a variation of a licence as they apply to an application for a licence with any necessary amendments except that -

- (a) representations need only be invited in relation to any environmental statement or decommissioning programme where the variation in question necessitates an amendment to any such document and only in relation to such an amendment,
- (b) the Commission need only publicise any such amendment to any such document, together with

such other text of the original environmental statement or decommissioning programme, as the case may be, as is reasonably necessary to understand the amendment made, and

- (c) in making its determination of the application, the Commission, instead of taking into account the whole of any environmental statement or decommissioning programme required under section 2, need only take into account such amendments to any such documents.

(9) Where the Commission proposes to vary a licence otherwise than at the request of the holder, it must notify the holder of the licence in writing of the proposed variation and the reasons for the same, together with the date from which the proposed variation will, subject to sections 14 and 42, take effect.

(10) When the Commission grants an application made under subsection (5) or when a proposed variation notified under subsection (9) takes effect, the Commission must issue to the holder of the licence -

- (a) a notice of the variation and must append a copy of the variation to the copy licence retained at the Commission's offices under section 47, and
- (b) in the case of a variation other than at the request of the holder, include in the notice of variation a statement of the right of appeal under section 42.

Revocation or suspension of licence.

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

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

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

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

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

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

any of the matters set out in section 7(4)(a) and (c) to (e), or

(e) because the Commission is not satisfied that the holder of the licence -

(i) is able to generate or supply energy, or

(ii) will continue to be able to do so for the term of the licence,

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

(4) Where the Commission proposes to revoke or suspend a licence, it must notify the holder of the licence in writing of the proposed revocation or suspension and the reasons for the same, together with the date from which the proposed revocation or surrender will, subject to sections 14 and 42, take effect.

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

(a) issue to the former holder or holder of the licence a notice of the revocation or suspension and must endorse on the copy licence retained at the Commission's offices under section 47 an indication that the licence

has been revoked or suspended, and

- (b) include in the notice of revocation or suspension, a statement of the right of appeal under section 42.

(6) The revocation or suspension of a licence does not absolve the former holder or holder of the licence from responsibility incurred or undertaken by that holder during the currency of the licence including, without limitation, any responsibility arising from a condition of the kind referred to in section 9(1)(c) or 9(2)(d) or (e).

Surrender of licence.

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

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

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

and the Commission need not consider any purported application which does not comply with this subsection, or with any requirements prescribed by regulations under the Law in relation to fees in connection with such an application, in every respect.

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

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

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

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

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

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

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

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

and in considering the above matters the Commission must have particular regard to the robustness of the decommissioning and other arrangements referred to in section 4(1)(f)(ii) including any decommissioning programme with which the applicant is required to comply under the licence.

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

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

(9) Where the Commission refuses an application under this section, it must issue to the applicant a notice of its decision and include in that notice the reasons for the refusal and a statement of the applicant's right of appeal under section 42.

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

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

Transfer of licence.

13. (1) A licence may be transferred to another person -

- (a) in accordance with subsections (2) to (9), and
- (b) whether or not the licence is suspended under section 11.

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

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

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

and the Commission need not consider any purported application which does not comply with this subsection, or with any requirements prescribed by regulations under the Law in relation to fees in connection with such an application, in every respect.

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

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

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

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

(6) If -

- (a) the requirements of subsections (2) to (5) have been satisfied or complied with, and
- (b) the Commission is satisfied that the licence may be transferred to the proposed transferee having regard to the matters set out in sections 4(1)(f)(ii) to (iv) and 7(4)(c) to (e) as if those sections referred to the proposed transferee and not the applicant,

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

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

(8) If -

(a) the requirements of subsections (2) to (5) have been satisfied or complied with, and

(b) the Commission is -

(i) not satisfied that the licence may be transferred to the proposed transferee having regard to the matters referred to in subsection (6), and

(ii) as a result, is proposing to refuse to accept the application,

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

(9) The Commission must effect a transfer of a licence under this section by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants and must note that endorsement on the copy licence retained at the Commission's offices under section 47.

(10) Where the Commission refuses an application under this section, it must issue to the applicants a notice of its decision and include in that notice the reasons for the refusal and a statement of the applicants' right of appeal under section 42.

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

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

Representations prior to variation, revocation or suspension of licence.

14. (1) The holder of a licence to whom notice is given under section 10(9) or 11(4) may make written representations to the Commission concerning the variation, revocation or suspension of the licence, as the case may be, within 14 days of the date of the notice.

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

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

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

Effect of licence.

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

PART III

RIGHTS OF NAVIGATION AND SAFETY ZONES

Declarations extinguishing etc. public rights of navigation.

16. (1) The Commission may, in the circumstances set out in subsection (2), make a declaration under this section as respects rights of navigation in so far as such rights pass through Guernsey waters.

(2) The circumstances referred to in subsection (1) are that -

- (a) the Commission has granted, or is considering an application for, a licence and rights of navigation pass through Guernsey waters at locations at which, or in the vicinity of which, the renewable energy system, or part thereof, or related plant or apparatus in question, is, or is proposed to be, located, and

- (b) the declaration is for the purpose of securing -
 - (i) that the renewable energy system or related plant or apparatus does not result in a danger to navigation, or
 - (ii) the safety of -
 - (A) the renewable energy system, related plant or apparatus or other structures, or
 - (B) persons or ships,
- in the vicinity of the locations referred to in paragraph (a).

(3) The Commission may make a declaration under this section of its own volition or upon application by an applicant for a licence.

(4) A declaration under this section is one declaring that the rights of navigation specified or described in it are -

- (a) extinguished,
- (b) suspended for the period that is specified in the declaration,
- (c) suspended until such time as may be determined by the Commission in accordance with provision contained in the declaration, or

(d) to be exercisable subject to such restrictions or conditions as are set out in the declaration.

(5) A declaration under this section -

(a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force, and

(b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with any provision contained in it.

(6) A declaration under this section -

(a) must identify the renewable energy system or related plant or apparatus by reference to which it is made,

(b) must specify the date on which it is to come into force, or the means by which that date is to be determined,

(c) may modify or revoke a previous such declaration, and

(d) may make different provision in relation to different cases.

(7) Where a declaration is made by the Commission under this

section or a determination is made by the Commission for the purposes of a provision contained in such a declaration, it must either -

- (a) publish the declaration or determination in such manner as appears to it to be appropriate for bringing it, as soon as reasonably practicable, to the attention of persons likely to be affected by it, or
- (b) where relevant, secure that it is published in that manner by the applicant for the declaration.

(8) The Commission must send a copy of such a declaration or determination to the International Maritime Organisation within the period of 24 hours from the making of the declaration or the determination.

Declarations creating safety zones.

17. (1) The Commission may, in the circumstances set out in subsection (2), make a declaration under this section creating a safety zone in Guernsey waters.

(2) The circumstances referred to in subsection (1) are that -

- (a) the Commission has granted, or is considering an application for, a licence,
- (b) the safety zone would be in areas around or adjacent to a place in Guernsey waters where a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located,
- (c) the declaration of the creation of a safety zone is for

the purpose of securing the safety of -

- (i) the renewable energy system, related plant or apparatus in question or other structures or objects in the vicinity of the place referred to in paragraph (b), or
- (ii) persons and ships in the vicinity of such a place.

(3) The Commission may make a declaration under this section of its own volition or upon application by an applicant for a licence.

(4) A declaration under this section -

- (a) must identify the renewable energy system or related plant or apparatus by reference to which it is made,
- (b) must specify the date on which it is to come into force, or the means by which that date is to be determined,
- (c) may contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the declaration,
- (d) may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified

in, or determined in accordance with, the provisions of the declaration, or for the imposition of such prohibitions,

- (e) may contain provision granting 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 Commission thinks fit, or for the grant of such permissions,
- (f) may modify or revoke a previous such declaration, and
- (g) may make different provision in relation to different cases.

(5) Provision in relation to permissions under subsection (4)(e) may provide -

- (a) that the permission applies in relation only to such times and such periods as may be specified or described,
- (b) that the permission applies only to such ships, persons and purposes as may be specified or described, and
- (c) for the imposition of conditions on the permission.

(6) Where a declaration is made by the Commission under this

section or a determination is made by the Commission for the purposes of provision contained in such a declaration, it must either -

- (a) publish the declaration or determination in such manner as appears to it to be appropriate for bringing it, as soon as reasonably practicable, to the attention of persons likely to be affected by it, or
- (b) where relevant, secure that it is published in that manner by the applicant for the declaration.

(7) The Commission must send a copy of such a declaration or determination to the International Maritime Organisation within the period of 24 hours from the making of the declaration or the determination.

Prohibition against activities in safety zones.

18. (1) A ship is not to enter or remain in a safety zone except where permission for it to do so is granted by or in accordance with -

- (a) a declaration under section 17, or
- (b) Schedule 5.

(2) A person must not carry on an activity wholly or partly in a safety zone if doing so is prohibited by or in accordance with a declaration under section 17.

(3) Subsection (2) does not apply to the extent that carrying on the activity is permitted by or in accordance with -

- (a) a provision contained in a declaration made under

section 17, or

(b) Schedule 5.

Additional offences relating to safety zones.

19. (1) Where a ship enters or remains in a safety zone in contravention of section 18(1), the ship's owner and her master, commander or other person in charge are each guilty of an offence.

(2) Where -

(a) a ship enters or remains in a safety zone with a permission referred to in section 18(1), and

(b) there is a contravention of a condition of that permission in relation to the ship or individuals on the ship,

the ship's owner and her master, commander or other person in charge are each guilty of an offence.

(3) Where a person carries on an activity wholly or partly in a safety zone with a permission referred to in section 18(3) and there is a contravention of a condition of that permission in relation to the carrying on of that activity that person is guilty of an offence.

(4) A person -

(a) guilty of an offence under this section, or

(b) guilty of an offence under section 32(1) of the Law

by virtue of carrying on an activity wholly or partly
in a safety zone in contravention of section 18(2),

is liable -

- (i) on summary conviction to a fine not exceeding twice level 5 on the uniform scale, or to imprisonment for a term not exceeding 6 months, or to both,
- (ii) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both.

(5) In proceedings against a person as the owner of a ship for an offence under subsection (1) or (2), it is a defence for the owner to show that the existence of the safety zone -

- (a) was not known to the master, commander or other person in charge of the ship in question at the time of the offence, and
- (b) would not have become known to the master, commander or other person in charge had that person made reasonable inquiries before that time.

(6) In any other proceedings against a person for an offence under this section or under section 32 of the Law, by virtue of contravention of section 18(2), it is a defence for that person to show that the existence of the safety zone -

- (a) was not known to that person at the time of the offence, and
 - (b) would not have become known to that person had that person made reasonable inquiries before that time.
- (7) Where the commission of an offence -
- (a) under subsection (1) or (2) is due to an act or omission of a person other than the owner, master, commander or other person in charge of the ship in question, or
 - (b) under subsection (3) or section 32(1) of the Law in relation to a contravention of section 18(2) is due to an act or omission of a person other than the person carrying on the activity in question,

that person is also guilty of that offence and is liable to be proceeded against and dealt with accordingly.

Procedure - declarations under this Part.

20. Schedule 6 (which makes provision about the procedure for declarations under this Part) has effect.

PART IV
POWERS OF INVESTIGATION

Power to request and obtain information and documents.

21. (1) The Commission may, by notice served on a holder of a licence, require the holder to provide the Commission at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Commission may reasonably require for the performance of its functions.

(2) The Commission may, by notice served on a holder of a licence -

(a) require the holder to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,

(b) require the holder to furnish forthwith, to any of the Commission's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify,

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

(3) Where under subsection (2) the Commission or any officer, servant or agent thereof has power to require the production of any documents from a holder of a licence, the Commission or that officer, servant or agent has

the like power to require the production of those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by them).

(4) The power conferred by this section to require a person to produce any documents includes power -

(a) if the documents are produced, to take copies of them or extracts from them and to require -

(i) that person, or

(ii) any other person who is a present or past director, controller, partner, manager or employee of the holder of a licence,

to provide an explanation of them, and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are.

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

(6) A statement made by a person in response to a requirement imposed by or under this section -

- (a) may be used in evidence against that person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against that person in criminal proceedings except -
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for -
 - (A) an offence under section 45(1) or under section 45(3) (but only in relation to a requirement imposed by or under this section),
 - (B) some other offence where, in giving evidence, that person makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.

Investigations by inspectors.

22. (1) The Commission may appoint one or more competent

persons ("**inspectors**") to investigate and report to the Commission on the suitability of any applicant for, or holder of, a licence, to carry on renewable energy activities having regard to the matters -

- (a) to which the Commission is required to have particular regard in carrying out its functions under the Law,
- (b) to which the Commission is required to have regard under section 4, and
- (c) which the Commission is required to be satisfied of under section 7(4),

and the Commission must give notice of the appointment to the applicant or holder of the licence concerned.

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

- (a) must produce to an inspector, at such time and place as the inspector may require, all documents in that person's custody or power relating to that holder of a licence or applicant, and the inspector may take copies of or extracts from any documents produced to the inspector under this paragraph,
- (b) must attend before an inspector at such time and place as the inspector may require and answer such

questions as the inspector may ask in relation to that holder of a licence or applicant, and

- (c) otherwise must give an inspector all assistance in connection with the investigation which that person is reasonably able to give.

(3) An inspector must, if so required, produce evidence of their authority to act as an inspector.

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

- (a) may be used in evidence against that person in proceedings other than criminal proceedings, and

- (b) may not be used in evidence against that person in criminal proceedings except -

- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

- (ii) in proceedings for –

- (A) an offence under section 45(1) or under section 45(3) (but only in relation to a requirement imposed by or under this section),

- (B) some other offence where, in giving

evidence, that person makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(5) The costs, fees and expenses of an investigation must be met by the holder of, or the applicant for, a licence the suitability of which is being investigated under subsection (1) and such sums are payable to the Commission.

Power of the Bailiff to grant warrant.

23. (1) If the Bailiff is satisfied by information on oath -

(a) that a notice has been served under section 21 on any person and that there are reasonable grounds for suspecting -

(i) that there has been a failure to comply with any requirement imposed by or under the notice,

(ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 21, or

(iii) the accuracy or completeness of any information or documents furnished under

any requirement mentioned in subparagraph
(i) or (ii),

- (b) that it is not practicable to serve a notice under section 21, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served -
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

the Bailiff may grant a warrant conferring the powers set out in section 24.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 22 to carry out an investigation under that section, and that there are reasonable grounds for suspecting -

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

investigation, or

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

the Bailiff may grant a warrant conferring the powers set out in section 24.

(3) For the avoidance of doubt, the following additional requirements apply in relation to a warrant, or an application for a warrant, issued or made under this section –

- (a) an application for a warrant under this section and a warrant issued under this section must identify, in so far as is practicable, any document sought, and
- (b) the endorsement required to be made on a warrant under section 11(9) of PPACE must state whether any document sought was found and whether any of the same, other than that sought, was seized.

Powers conferred by Bailiff's warrant.

24. (1) A warrant granted under section 23(1) authorises any police officer, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

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

(i) which are occupied by the person upon whom the notice under section 21 was or could be served,

(ii) at which the documents to which the notice under section 21 relates are reasonably believed to be, or

(iii) where no notice under section 21 has been served, at which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents -

(i) which were required by the notice under section 21, or

(ii) where no notice under section 21 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 21,

to take possession of them or to take any other steps

which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant -
 - (i) to answer any questions that person could have been asked under section 21,
 - (ii) to state to the best of that person's knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(2) A warrant granted under section 23(2) authorises any police officer, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

- (a) to enter any premises specified in the warrant, being premises -
 - (i) which are occupied by the holder of, or the applicant for, a licence being investigated under section 22, or
 - (ii) at which any documents to which the

investigation under section 22 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 22, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant -
 - (i) to answer any questions relevant to the investigation under section 22,
 - (ii) to state to the best of that person's knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(3) Any documents of which possession is taken under the powers conferred by a warrant granted under section 23 may be retained -

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

(4) A statement made by a person in response to a requirement imposed under a warrant granted under section 23 –

- (a) may be used in evidence against that person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against that person in criminal proceedings except -
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under section 45(1) or under section 45(3) (but only in relation to a requirement imposed by or under section 23),
 - (B) some other offence where, in giving evidence, that person makes a

statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

Legal professional privilege, liens and duties of confidentiality.

25. (1) Nothing in -

(a) section 21, 22, or 40, or

(b) a warrant granted under section 23 or 39,

compels the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege within the meaning of section 24 of PPACE, but an advocate or other legal adviser may be required to give the name and address of any client.

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

(a) section 21, 22 or 40, or

(b) a warrant granted under section 23 or 39,

is without prejudice to that person's lien.

(3) A requirement imposed by or under -

- (a) section 21, 22 or 40, or
- (b) a warrant granted under section 23 or 39,

has effect despite any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise, and, accordingly, the obligation or restriction is not contravened by the making of a disclosure under such a requirement.

Offence of falsification, etc. of documents during investigation.

26. (1) A person upon whom a notice under section 21 or 22 has been served or who knows or has reasonable grounds to suspect -

- (a) that such a notice is likely to be served on them, or
- (b) that an inquiry or investigation is being or is likely to be carried out under section 21 or 22,

and who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which they know or have reasonable grounds to suspect -

- (i) are or would be specified in such a notice, or
- (ii) are or would be relevant to such an inquiry or investigation,

is guilty of an offence unless they prove that they had no intention of concealing facts disclosed by the documents from the Commission or, as the case may be,

from the persons carrying out such an inquiry or investigation.

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

- (a) on summary conviction, to a fine not exceeding level 5 on the 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.

PART V

CIVIL NOTICES AND POWER TO TAKE REMEDIAL STEPS

Civil notices

Power to issue compliance notice.

27. (1) If it appears to the Commission that the holder of a licence is contravening any term or condition of a licence, it may serve on that holder a compliance notice.

(2) A compliance notice is a notice requiring the person holding a licence under section 7 to take such steps as may be specified in it to ensure that the term or condition of the licence is complied with.

(3) A compliance notice must -

- (a) state that it appears to the Commission that there is a contravention of the terms or conditions of the

licence,

- (b) specify the matters constituting the contravention,
- (c) specify the steps that must be taken to remedy the contravention,
- (d) specify a period for the taking of those steps,
- (e) state that a person who fails to comply with the notice commits an offence under section 43(2), and
- (f) state that there is a right of appeal against the notice under section 42.

Power to issue remediation notice.

28. (1) The Commission may serve a remediation notice on -

- (a) a person holding a licence where -
 - (i) it appears to the Commission 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 (2),
- (b) a person who has contravened the prohibition in section 1 of the Law by virtue of carrying on a

renewable energy activity without a licence 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 (2).

(2) The effects referred to in subsection (1) 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 Guernsey waters.

(3) 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 Guernsey waters,

(iv) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (2),

(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 has failed to carry out decommissioning in accordance with a decommissioning programme approved by the Commission, 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 Commission or the States to cover any reasonable expenses incurred, in the taking of remedial steps (whether or not under section 31), by the Commission.

(4) A remediation notice must -

(a) specify the Commission's grounds for believing that a remediation notice may be served under this section,

- (b) specify any remedial steps that are required to be taken and the period within which those steps must be taken,
- (c) specify any sum payable to the Commission or the States to cover any reasonable expenses incurred by the Commission in the carrying out of remedial steps under section 31 or otherwise,
- (d) state that a person who fails to comply with the notice commits an offence under section 43(2), and
- (e) state that there is a right of appeal against the notice under section 42.

Power to issue stop notice.

29. (1) The Commission may serve a stop notice on a person carrying on a renewable energy activity, which is not exempt from the prohibition in section 1, where the renewable energy activity -

- (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 Guernsey waters.

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

(4) A stop notice -

- (a) must specify the Commission's grounds for believing that a stop notice may be served under this section,
- (b) must specify the activity to which it relates,
- (c) must state the date and time from which the prohibition from carrying on the activity is to take effect (which may be a time on the date of the notice but must allow a period for compliance which is reasonable in all the circumstances),
- (d) may require the person to take such steps as the Commission considers appropriate to ensure that the cessation of the activity takes place safely,
- (e) must state that a person who fails to comply with the notice commits an offence under section 43(2), and

(f) must state that there is a right of appeal against the notice under section 42.

(5) Where a stop notice is served in relation to a renewable energy activity carried on in accordance with a licence, it -

(a) ceases to have effect at the end of a period of 7 days (or such shorter period as may be specified in the notice) beginning with the date on which the prohibition takes effect, but

(b) may be renewed for a period specified in a further notice but not so that it has effect for an aggregate period exceeding 35 days.

(6) If a stop notice relating to a renewable energy activity is served on a person who does not hold a licence for that activity, the stop notice may remain in force until such time (if any) as a licence for that activity is granted to that person.

Further provision as to notices under this Part.

30. (1) The Commission may at any time withdraw, or waive or relax a requirement of, a notice issued by it under this Part and, if it does so, it must notify the person on whom the notice was served.

(2) The withdrawal of a notice issued under this Part does not affect the power of the Commission to issue a further such notice -

(a) in the case of a compliance notice or remediation notice, in respect of the same contravention, or

- (b) in the case of a stop notice, in respect of the same activity and effects.

Remedial steps

Power to take remedial steps.

31. (1) The Commission may take remedial steps in the circumstances set out in subsection (2).

(2) The circumstances referred to in subsection (1) are that -

- (a) a renewable energy activity, which is not exempt from the prohibition in section 1 of the Law, is being or has been carried out otherwise than under and in accordance with the terms and conditions of a licence, and
- (b) any part of the renewable energy system or any related plant or apparatus is, or is to be, or has been within Guernsey waters.

(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 Guernsey 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 a holder of a licence has failed to carry out decommissioning in accordance with a decommissioning programme approved by the Commission 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 Guernsey waters.

(5) In accordance with section 30(5) of the Law, where decommissioning of a renewable energy system or related plant or apparatus is carried out under subsection (1) for or on behalf of the Commission, that decommissioning is permitted under the Law for the purposes of section 1 of the Law.

Powers under this Part without prejudice to those under Part VI.

32. In accordance with section 31 of the Law, the powers of the Commission under this Part are without prejudice to those of the Commission under Part VI.

PART VI
CIVIL SANCTIONS

Public statements.

33. (1) Where the Commission is satisfied, subject to subsections (2) and (5), that a person has contravened the terms or conditions of a licence it may publish a statement to that effect.

(2) A person who is bound by a condition of a licence by virtue of section 9(3) is not to be taken as having contravened that condition for the purposes of this section and of sections 34 and 43(1) unless the requirements of subsection (3) are satisfied.

(3) The requirements are that -

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

- (b) the person has failed to comply with the condition within that period.

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

- (a) whether the contravention was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned and to third parties of publishing a statement, and
- (f) the action taken by the Commission under this section in other cases.

(5) Where the Commission proposes to publish a statement, it must notify in writing the person in relation to whom the statement would be made of –

- (a) the proposed statement and the reasons for the same, and

- (b) the date on which it is proposed, subject to sections 35 and 42, to make the statement.
- (6) Where the Commission publishes a statement it must-
- (a) issue to the person in relation to whom the statement is made notice of the statement, and
 - (b) include in the notice a statement of the right of appeal under section 42.

Discretionary financial penalties.

34. (1) Where the Commission is satisfied, subject to section 33(2), that a person has contravened the terms or conditions of a licence it may impose on that person a financial penalty in respect of the contravention of such amount as it considers appropriate but not exceeding the maximum amount which could be imposed by a court in relation to such contravention under section 43(1).

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

- (a) whether the contravention was brought to the attention of the Commission by the person concerned,
- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,

- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned and to third parties of imposing a penalty, and
- (f) the penalties imposed by the Commission under this section in other cases.

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

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

(5) Where the Commission proposes to impose a financial penalty, it must notify in writing the person on whom the penalty is proposed to be imposed of –

- (a) the proposed penalty, and the reasons for the same, and
- (b) the date on which it is proposed, subject to sections 35 and 42, to impose the penalty.

(6) Where the Commission imposes a financial penalty it must-

- (a) issue to the person in relation to whom the statement is made notice of the financial penalty, and

- (b) include in the notice a statement of the right of appeal under section 42.

Representations prior to public statement or financial penalty.

35. (1) The person on whom a notice is served under section 33(5) or 34(5) may make written representations to the Commission concerning the proposed public statement or financial penalty, as the case may be, within 14 days of the date of the notice.

(2) In order to afford reasonable opportunity for the person in question to exercise their right under subsection (1) -

- (a) the notice must inform that person of that right, and
- (b) the date specified in it on which the public statement is to be made or the financial penalty is to be imposed, as the case may be, must not be less than 21 days after the date of the notice.

(3) If the person in question exercises their right under subsection (1) the Commission -

- (a) must consider their representations, and
- (b) may withdraw the notice or decide not to issue the public statement or impose a financial penalty or postpone the date for the issuing or imposing of the same,

but in any event must inform that person of its decision in writing, and the reasons for the same, before the date on which the public statement is made or the financial penalty, as the case may be, is imposed or would otherwise have been made or imposed.

PART VII

POWERS OF ENFORCEMENT OFFICERS

Enforcement officers.

36. (1) A person may be appointed in writing by the Commission for the purpose of carrying out any of the functions of an enforcement officer under this Ordinance.

(2) A person purporting to carry out the functions of an enforcement officer under this Ordinance must, upon request, produce evidence of authority to act as such.

(3) An enforcement officer must keep a written record of any exercise of any power under section 37, 38, 40 or 41 or under a warrant issued under section 39.

Inspection in connection with licences.

37. (1) An enforcement officer may, subject to section 38, carry out an inspection of premises to check compliance with -

- (a) the terms or conditions of a licence, or
- (b) provisions under the Law which are relevant to the carrying on of the renewable energy activity to which such a licence relates.

(2) An enforcement officer may, subject to section 38, carry out an inspection of any premises for the purpose and at the time set out in subsection (3), where -

- (a) an application has been made under this Ordinance for a licence or the variation of the conditions of the same, and
- (b) the premises are to be used in connection with the renewable energy activity in respect of which the application is made.

(3) An inspection under subsection (2) may be carried out at any reasonable time before the determination of an application for a licence, a variation of the conditions, or a transfer, of a licence for the purpose of ascertaining whether or not that application should be granted.

General powers of entry and inspection and to stop and detain vehicles.

38. (1) An enforcement officer may, subject to subsections (5) and (8) -

- (a) board and inspect a ship,
- (b) board and inspect a renewable energy system, or part thereof, or related plant or apparatus,
- (c) do anything to facilitate the boarding of the same, or
- (d) enter and inspect any other premises,

at any reasonable time for any of the purposes set out in subsection (2).

(2) The purposes referred to in subsection (1) are -

- (a) exercising the power of inspection under section 37,
- (b) considering any application in relation to a licence,
- (c) deciding whether and in what manner any functions conferred under the Law ought to be exercised,
- (d) carrying out any investigation, examination, test or remedial steps under this Ordinance,
- (e) ensuring that any requirements of a notice served under this Ordinance have been, or are being, complied with,
- (f) exercising any other function conferred on an enforcement officer or the Commission under the Law, or
- (g) where the enforcement officer has reasonable grounds to suspect that an offence under the Law has been, or is being, committed, investigating that offence.

(3) For the purpose of exercising the power conferred by subsection (1), an enforcement officer may require a ship, renewable energy system or part thereof or related plant or apparatus –

- (a) to stop, or

- (b) to do anything else that will facilitate the boarding of that or any other ship, renewable energy system or part thereof or related plant or apparatus.

(4) An enforcement officer who has boarded a ship, renewable energy system or part thereof or related plant or apparatus may, for the purposes of disembarking from the same, require that ship, renewable energy system or part thereof or related plant or apparatus –

- (a) to stop, or
- (b) to do anything else that will enable the officer, and any other person accompanying the officer, to disembark from the same.

(5) The power under subsection (1) is not exercisable (other than in a case of emergency) -

- (a) unless the enforcement officer gives -
 - (i) in the case of a ship, a renewable energy system or part thereof or related plant or apparatus, to the master, commander or other person in charge, or
 - (ii) in the case of other premises, to the owner or occupier of the premises concerned,

at least 24 hours' notice of the enforcement officer's intention to enter the premises, and

- (b) in the case of any ship, renewable energy system, related plant or apparatus or other premises, or any part of the same, used as a dwelling except under and in accordance with the authority of a warrant issued by the Bailiff under and in accordance with section 39.

(6) The powers of entry under subsections (1) and (2) include a power -

- (a) for an enforcement officer to take with them such persons, equipment and materials as that enforcement officer reasonably considers necessary for the purpose for which the power of entry is being exercised, and
- (b) for such persons to exercise any power that may be exercised by the enforcement officer, for the purpose for which the enforcement officer entered, provided that any such person is in the company, and under the supervision, of the enforcement officer exercising the power of entry.

(7) An enforcement officer (if accompanied by a police officer in uniform) may -

- (a) stop and detain a vehicle for the purpose of the exercise of a power under any of sections 37 or 40 or subsections (1) or (2), and

- (b) detain that vehicle for as long as reasonably required for the exercise of the power concerned.

(8) The powers in this section do not authorise an enforcement officer to board and inspect any ship, renewable energy system or part thereof, related plant or apparatus or to enter any other premises, or to stop and detain a vehicle, by force.

Warrant to enter premises.

39. (1) If the Bailiff is satisfied by information on oath supplied by an enforcement officer, that there are reasonable grounds for entering any premises for any purpose for which an enforcement officer has a right to enter premises under this Part, the Bailiff may grant a warrant to any enforcement officer.

(2) A warrant granted under subsection (1) authorises any enforcement officer at any time within one month of the date of the grant -

- (a) to enter the premises, and
- (b) to exercise in respect of the ship, renewable energy system or part thereof, related plant or apparatus or other premises (and anything found in or on the premises), all such powers as that enforcement officer may exercise under this Part,

for the purposes indicated in subsection (1).

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied that any of the following four conditions is met.

(4) The first condition is that the whole of the premises is used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises is not used as a dwelling and that each of the following applies to the occupier of the premises -

(a) the master, commander or other person in charge in the case of a ship, renewable energy system, part thereof or related plant or apparatus, or the occupier in the case of other premises, has been informed of the decision to seek entry to the premises and of the reasons for that decision,

(b) the master, commander, other person in charge or occupier, as the case may be, has failed to allow entry to the premises on being requested to do so by an enforcement officer, and

(c) the master, commander, other person in charge or occupier, as the case may be, has been informed of the decision to apply for a warrant.

(6) The third condition is that -

(a) the premises are unoccupied or the occupier is absent, and

(b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) The fourth condition is that it is inappropriate to inform the master, commander, person in charge or occupier, as the case may be, of the decision to apply for a warrant because -

(a) it would defeat the object of entering the premises,
or

(b) entry is required as a matter of urgency.

(8) An enforcement officer executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of PPACE^f apply in relation to the issue of a warrant under this section to an enforcement officer as they apply in relation to the issue of a warrant to a police officer.

(10) For the avoidance of doubt, the following applies in relation to a warrant, or an application for a warrant, issued or made under this section -

(a) an application for a warrant under this section and a warrant issued under this section must identify, in so far as is practicable, anything sought, and

(b) the endorsement required to be made on a warrant under section 11(9) of PPACE must state whether anything sought was found and whether any of the

same, other than those which were sought, were seized.

Supplementary functions-search, examination etc.

40. (1) This section applies to an enforcement officer exercising a power under section 37 or 38 or under a warrant issued under section 39.

(2) An enforcement officer exercising a power to which this section applies may, where it is reasonably necessary for the purpose for which that officer has exercised the power -

- (a) search the relevant premises for anything,
- (b) examine anything that is in or on the relevant premises,
- (c) carry out a measurement or test on anything in or on the relevant premises,
- (d) take a sample from anything in or on the relevant premises,
- (e) require any person in or on the relevant premises to produce any document or record that is in the person's possession or control,
- (f) take copies of a document,

^f Order in Council No. XXIII of 2003 as amended by Order in Council No. XVI of 2009 and Ordinance No. XXIX of 2011.

- (g) take a photograph of anything,
- (h) open or break open a container or other thing in or on the relevant premises,
- (i) subject to subsection (6), seize and take into possession or detain anything which the officer reasonably believes to be evidence of the commission of an offence under the Law relevant to the purpose for which the power is exercised, or
- (j) require any person at the relevant premises to afford such facilities and assistance with respect to such matters under that person's control as the officer considers would facilitate the exercise of the relevant power referred to under subsection (1) or of any other power under this section.

(3) An officer who takes a sample from anything, under subsection (2)(d), must give a part of the sample, or a similar sample, to the owner or other person who appears entitled to be in possession of the thing in question, if, before the sample is taken, the person taking the sample is requested to do so by such owner or other person.

(4) Section 16(1) and (2) (record of thing seized) of PPACE apply in relation to an enforcement officer who seizes and takes into possession anything under subsection (2)(i) as it applies in relation to the exercise of a power of seizure by a police officer.

(5) Anything which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(i) may, subject to the

following provisions of this Ordinance, be retained so long as is necessary in all the circumstances and in particular -

- (a) for use as evidence at a trial for a relevant offence,
or
- (b) for forensic examination or for investigation in connection with an offence,

except that nothing may be retained for such a purpose where a photograph or a copy would be sufficient.

(6) Subsection (2)(i) does not include power to seize anything which the person exercising the power has reasonable grounds for believing to be an item subject to legal professional privilege within the meaning of section 24 of PPACE.

Power to direct ship or renewable energy system etc. to port.

41. (1) This section applies where an enforcement officer considers that it would not be reasonably practicable for the officer to exercise a power which the officer wishes to exercise in relation to a ship, renewable energy system or part thereof, or related plant or apparatus without detaining the same in port.

(2) The officer may direct that the ship, renewable energy system or part thereof or related plant or apparatus be taken to the port which appears to the officer to be the nearest convenient port.

(3) When the ship, renewable energy system or part thereof, or related plant or apparatus has been taken to a port, the officer may –

- (a) detain it there, or

(b) require the master, commander or other person in charge of it to do so.

(4) An enforcement officer who detains any ship, renewable energy system or part thereof, or related plant or apparatus under this section must serve a notice on the master, commander or other person in charge stating that the ship, renewable energy system or part thereof, or related plant or apparatus is to be detained until the notice is withdrawn.

(5) A notice served under subsection (4) may be withdrawn by service of a further notice signed by an enforcement officer.

PART VIII

APPEALS

Appeals against decisions of Commission.

42. (1) A person aggrieved by a decision of the Commission -
- (a) to refuse an application by that person for a licence or a declaration or to make a declaration in terms materially different from those applied for by that person,
 - (b) to impose a condition on a licence granted to that person,
 - (c) to vary or refuse to vary the terms or conditions of a licence granted to that person,
 - (d) to suspend or revoke a licence granted to that

person,

- (e) to refuse to accept the surrender of a licence granted to that person,
- (f) to refuse an application by that person for the transfer of a licence,
- (g) to refuse a request from that person to withhold information from publicity requirements under section 3(5), 47(4) or paragraph 2(9) or 3(5) of Schedule 6,
- (h) to serve a compliance notice on that person under section 27,
- (i) to serve a remediation notice on that person under section 28,
- (j) to serve a stop notice on that person under section 29,
- (k) to publish a statement relating to that person under section 33, or
- (l) to impose a financial penalty on that person under section 34,

may appeal to the Royal Court against the decision.

- (2) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section must be instituted -

- (a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and
- (b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and upon hearing the application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or

- (b) make such other order as the Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 51(2) of the Royal Court Civil Rules, 2007^g.

- (5) On an appeal under this section the Royal Court may -
 - (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision described in subsection (1)(b) to (d) or (g) to (l) the Royal Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) For the purposes of an appeal under this section the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it.

(8) An appeal from a decision of the Royal Court under this section lies to the Court of Appeal on a question of law and must be instituted –

^g O.R.C. No. IV of 2007 as amended by O.R.C. No. II of 2008.

- (a) within a period of 14 days immediately following the date of the decision of the Royal Court, and
- (b) by notice served on all parties to the proceedings in the course of which the order was made.

PART IX
ADDITIONAL OFFENCES

Offences of contravention of terms or conditions of licence or requirement of a notice under Part V.

43. (1) Subject to section 33(2), a person who contravenes any terms or conditions of a licence commits an offence and is liable -

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale, or to imprisonment for a term not exceeding two years, 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) A person on whom a compliance notice, remediation notice or stop notice has been served commits an offence if they contravene any requirement of the notice and is liable -

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale, or to imprisonment for a term not exceeding 2 years, 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.

Action taken in an emergency.

44. (1) It is a defence for a person charged with an offence under –

- (a) section 32(1) of the Law relating to a contravention of section 1 of the Law, or
- (b) section 43(1) of this Ordinance,

in relation to any activity to prove that the activity was carried out –

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

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

(2) The matters are -

- (a) the fact that the activity was carried out,
- (b) the locality and circumstances in which it was carried out, and

- (c) any renewable energy system, related plant or apparatus, ships, aircraft or persons concerned.

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

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

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

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

Offences in relation to false or misleading information or obstruction.

45. (1) A person who, in any of the circumstances set out in subsection (2) -

- (a) makes a statement which is false or misleading in a material particular, knowing the statement to be false or misleading,
- (b) makes a statement which is false or misleading in a material particular, being reckless as to whether the

statement is false or misleading, or

- (c) intentionally fails to disclose any material particular,

commits an offence and is liable -

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

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

(2) The circumstances are where the statement or failure to disclose is -

- (a) for the purpose of procuring the issue, variation, transfer or surrender of a licence,

- (b) for the purpose of complying with, or purporting to comply with, any obligation imposed under the Law, or

- (c) otherwise made where the person so doing knows, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of

exercising that person's functions conferred under the Law.

(3) A person who -

- (a) obstructs another person in the exercise of that other person's functions under the Law,
- (b) fails, without reasonable excuse, to comply with a requirement imposed on them under section 21, 22 or 40,
- (c) fails, without reasonable excuse, to comply with a requirement of a person exercising a power conferred by a warrant issued under section 23 or 39, or
- (d) fails, without reasonable excuse, to comply with a direction imposed under section 41,

commits an offence and is liable -

- (i) 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, and
- (ii) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

PART X
MISCELLANEOUS

Co-ordination and facilitation.

46. (1) The Commission may, having regard to any issues of propriety and insofar as it may lawfully do so -

- (a) 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 including any pre-application discussions, and
 - (iv) co-operating with other persons from whom consents are required.

(2) In this section -

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

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

(a) to allow the lawful carrying on, or

(b) in connection with the lawful carrying on,

of a renewable energy activity.

Public register.

47. (1) The Commission must maintain a public register containing such documents as the Department prescribes under subsection (7) and such documents must be kept for such period as the Department may by regulations prescribe.

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

(3) The Commission must provide copies of any document on the register to any person upon written request and on payment of a reasonable fee.

(4) The Commission may withhold any information from the public register referred to in subsection (1), on written request from the applicant or holder of the licence, if the Commission determines that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

(5) The Commission must review a determination to exclude information from the public register every four years.

(6) On a review the Commission must include the information on the public register unless, on further written request from the applicant or holder of the licence, the Commission determines that it is appropriate to continue to exclude the information having regard to the need to preserve commercial confidentiality.

(7) The Department must by regulations prescribe such documents as it thinks fit to be kept by the Commission on the register to be maintained under this section including, without limitation, copies or prescribed particulars of -

- (a) any application relating to a licence, safety zone or rights of navigation,
- (b) any environmental statement or decommissioning programme required to accompany an application in relation to a licence,
- (c) any licence or modification, revocation, suspension, surrender or transfer of the same,
- (d) any declaration of a safety zone or in relation to rights of navigation,
- (e) any notice issued by it or other enforcement action taken by the Commission in relation to the contravention of the terms or conditions of a licence or any provision of, or under, the Law, and
- (f) any remedial steps taken by the Commission under section 31.

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

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

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

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

(a) the sum is not reasonable in amount or was not reasonably incurred, or

(b) the Commission or the States acted unreasonably, frivolously or vexatiously in incurring that sum.

Power of Commission to issue guidance.

49. (1) The Commission may issue such guidance as it considers appropriate for the purpose of providing practical guidance, advice and information in connection with any provision under the Law.

(2) Before issuing such guidance the Commission must consult with the Department and may consult with such other persons as it considers appropriate.

(3) The Commission may revise or withdraw such guidance.

(4) Guidance issued under subsection (1) may, without prejudice to the generality of that subsection, contain guidance in relation to –

(a) applications under this Ordinance including –

(i) any informal pre-application discussions or advice,

(ii) the circumstances in which the Commission may require an environmental statement or a decommissioning programme to accompany an application which relates only to arranging for the operation, deployment, use or decommissioning of a renewable energy system or any part thereof,

(iii) the information required to be included in an environmental statement or decommissioning programme required to accompany an application,

(iv) the information (including risk assessments or third party verification) the Commission may require an applicant to supply to enable it to determine an application in accordance with section 4 and 7, and

(b) the carrying out by the Commission of its functions under section 46 and related propriety issues,

(5) Any –

- (a) person preparing or making an application under this Ordinance, or
- (b) holding a licence under this Ordinance,

must take into account any relevant guidance issued under this section.

(6) Guidance under this section -

- (a) must be taken into account by the Commission in exercising its functions under this Law but, unless the guidance provides otherwise -
 - (i) is not binding on the Commission or on any other person,
 - (ii) is merely indicative of the Commission's likely approach to any particular issue,
 - (iii) does not prejudice the Commission's discretion to decide any particular case differently according to its merits,
 - (iv) does not relieve any person of any obligation, restriction or liability imposed by or under the Law, and
- (b) may, subject to the limitations set out in paragraph

(a), be received in proceedings under the Law.

(7) Nothing in this section authorises the issuing of any guidance about a particular application or licence or otherwise about a particular case.

(8) The Commission must publish any guidance issued by it under this section in such manner as as it considers appropriate for bringing the guidance to the attention of persons likely to be affected by it.

Interpretation.

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

"**application**" means an application in writing,

"**compliance notice**": see section 27(2),

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

- (a) a managing director or chief executive of that company or of any other company of which that company is a subsidiary,
- (b) a shareholder controller or an indirect controller, or
- (c) any person who has the power, alone or with another, to appoint or remove a director of a board or an executive committee,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961^h,

"**declaration**" means a declaration made under Part III,

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

"**director**" includes any person who occupies the position of or fulfils the role of director, by whatever name called, and also includes -

- (a) the chief executive and any member of the committee or other similar governing body, and
- (b) any person in accordance with whose directions or instructions any director is accustomed to act,

"**enforcement officer**" means a person appointed as such under section 36,

"**general lighthouse authority**" is construed in accordance with section 203(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002ⁱ,

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

ⁱ Order in Council No. VIII of 2004 to which there are amendments not relevant to this Ordinance.

"**Guernsey Border Agency**" means the organisation also known or referred to as "the Customs and Excise and Immigration and Nationality Service" including -

- (a) its Chief Officer and any officer acting by or under the Chief Officer's authority, and
- (b) any other individual working, including on a temporary basis, for such organisation whether under a contract of employment, a contract for services or otherwise,

"**Guernsey company**" means a body corporate on the Register of Companies kept and maintained under section 496 of the Companies (Guernsey) Law, 2008,

"**Guernsey Police**" means the organisation also known or referred to as "the Island Police Force" including -

- (a) its Chief Officer and any other member of the salaried police force of the Island of Guernsey,
- (b) any member of the special constabulary of the Island of Guernsey, and
- (c) any other individual working, including on a temporary basis, for such organisations whether under a contract of employment, a contract for services or otherwise,

"**harbour authority**" has the meaning in section 294(1) of the

Merchant Shipping (Bailiwick of Guernsey) Law, 2002,

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

"**the Law**" means the Renewable Energy (Guernsey) Law, 2010,

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

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

(a) exercises managerial functions, or

(b) is responsible for maintaining accounts or other records of the company,

"**police officer**" means a member of the salaried police force of the Island of Guernsey and, within the limits of that constable's jurisdiction, a member of the special constabulary of the Island of Guernsey,

"**PPACE**" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003,

"**remediation notice**": see section 28(3),

"**representations**" means representations in writing,

"**safety zone**" means an area which is a safety zone by virtue of a declaration under section 17,

"**shareholder controller**" -

- (a) in relation to a company, means a person who, alone or with associates, is entitled to exercise, or control the exercise of, 15% or more of the voting power in general meeting of that company or of any other company of which that company is a subsidiary, or
- (b) in relation to a protected cell company, means a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell of that company,

"**States Energy policy**" means the Energy Resource Plan^j and the Environmental Policy Plan, forming part of the States Strategic Plan^k, in each case as from time to time amended or replaced by a further policy or plan adopted by the States (however named),

"**stop notice**": see section 29(3),

"**subsidiary**" is construed in accordance with section 531(1) to (5) of the Companies (Guernsey) Law, 2008 as if that section applied to any

^j Article IX of Billet d'État No. III of 2012.

^k See Billet d'État No. XIX of 2010 and No. VI of 2013.

company, and

"**under the Law**" includes under this Ordinance or any other Ordinance or regulations made under the Law and related expressions are construed accordingly.

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

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

(4) 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.

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

Power of Department to amend Schedules.

51. The Department may by regulations amend the Schedules.

Index of defined expressions.

52. In this Ordinance, the expressions listed below are defined by the provisions specified.

<i>Expression</i>	<i>Interpretation provision</i>
applicant	section 46(2)
application	section 50(1)
arranging for the operation, deployment or use of any renewable energy system	section 50(3) of this Ordinance and section 38(2) of the Law
an application in relation to the operation, deployment, use or decommissioning of a renewable energy system	section 50(2)
the Bailiff	section 50(3) of this Ordinance and section 38(1) of the Law
certificate of completion	section 12(8)
the Commission	section 50(3) of this Ordinance and section 38(1) of the Law
compliance notice	sections 50(1) and 27(2)
consent	section 46(2)
contravention	section 50(3) of this Ordinance and section 38(1) of the Law
controller	section 50(1)
Court of Appeal	section 50(1)
declaration	section 50(1)
Department	section 50(3) of this Ordinance and section 38(1) of the Law
department of the States	section 50(3) of this Ordinance and section 38(1) of the Law
development	section 50(1)
director	section 50(1)
the Director	section 50(3) of this Ordinance and section 38(1) of the Law

document	section 50(3) of this Ordinance and section 38(1) of the Law
electronic form	section 50(3) of this Ordinance and section 38(1) of the Law
electric line	Schedule 6, paragraph 4
enactment	section 50(3) of this Ordinance and section 38(1) of the Law
enforcement officer	section 50(1)
function	section 50(3) of this Ordinance and section 38(1) of the Law
general lighthouse authority	section 50(1)
Guernsey	section 50(3) of this Ordinance and section 38(1) of the Law
Guernsey Border Agency	section 50(1)
Guernsey company	section 50(1)
Guernsey Police	section 50(1)
Guernsey waters	section 50(3) of this Ordinance and section 38(1) of the Law
harbour authority	section 50(1)
indirect controller	section 50(1)
inspectors	section 22(1)
the Law	section 50(1)
licence	section 50(1)
manager	section 50(1)
notice	section 50(3) of this Ordinance and section 38(1) of the Law
police officer	section 50(1)
PPACE	section 50(1)
premises	section 50(3) of this Ordinance and section 38(1) of the Law

the proposed transferee	section 13(2)
related infrastructure	section 50(3) of this Ordinance and section 38(1) of the Law
related plant or apparatus	section 50(3) of this Ordinance and section 38(1) of the Law
remedial steps	section 31(3)
remediation notice	sections 50(1) and 28(3)
renewable energy activity	section 50(3) of this Ordinance and section 38(1) of the Law
renewable energy system	section 50(3) of this Ordinance and section 38(1) of the Law
renewable power source	section 50(3) of this Ordinance and section 38(1) of the Law
representations	section 50(1)
Royal Court	section 50(3) of this Ordinance and section 38(1) of the Law
safety zone	section 50(1)
shareholder controller	section 50(1)
ship	section 50(3) of this Ordinance and section 38(1) of the Law
the States	section 50(3) of this Ordinance and section 38(1) of the Law
States Energy policy	section 50(1)
stop notice	sections 50(1) and 29(3)
subsidiary	section 50(1)
substation	Schedule 6, paragraph 4
territorial waters of Guernsey	section 50(3) of this Ordinance and section 38(1) of the Law
under the Law	section 50(1)
uniform scale	section 50(3) of this Ordinance and

Extent.

53. This Ordinance extends to Guernsey and to the territorial waters of Guernsey.

Citation.

54. This Ordinance may be cited as the Renewable Energy (Guernsey) Ordinance, 2015.

Commencement.

55. This Ordinance shall come into force on such day as the Department may by Regulations appoint, and different days may be so appointed for different provisions of this Ordinance or for different purposes.

NOT YET IN FORCE

SCHEDULE 1

Section 2(2)(c)(i)

ENVIRONMENTAL STATEMENT

PART I

INFORMATION WHICH MUST BE INCLUDED IN AN ENVIRONMENTAL STATEMENT

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

PART II

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

1. A description of the development, including in particular -

- (a) a description of the physical characteristics of the whole development and the land-use requirements (including use of the sea-bed) during the construction and operational phases,
- (b) a description of the main characteristics of the production processes, for instance, nature and quality of the materials used, and
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

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

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

- (a) the existence of the development,
- (b) the use of natural resources, and

- (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.

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

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

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

NOT YET IN FORCE

SCHEDULE 2

Section 2(2)(c)(ii)

MATTERS TO BE INCLUDED IN A DECOMMISSIONING PROGRAMME

A decommissioning programme must include the following matters -

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

continuing monitoring and maintenance thereof will
be necessary.

NOT YET IN FORCE

SCHEDULE 3

Sections 3(1), 10(8)
and Schedule 6, para 2(2)

NOTICE OF APPLICATION FOR LICENCE AND DECLARATION

The form of notice to be published by an applicant for a licence must be as set out below and, where relevant, must include the words in square brackets relating to declarations -

An application for a licence dated *[insert date of application]* has been made to the Commission for Renewable Energy ("the Commission") under the Renewable Energy (Guernsey) Ordinance, 2015 by -

[insert name of applicant]

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

in relation to -

[description of activities in s1 of Renewable Energy (Guernsey) Law, 2010 in respect of which the application is made].

The above activities are to be carried out at-

[insert address of location or if none a description of the location or co-ordinates of latitude and longitude according to the World Geodetic System 1984].

["An application for a declaration in relation to [rights of navigation] [the creation of a safety zone] dated *[insert date of application]* has been made to the

Commission for Renewable Energy ("the Commission") under the Renewable Energy (Guernsey) Ordinance, 2015 by the applicant for the licence named above.]

[The declaration applied for would [affect rights of navigation] [create a safety zone] at -

[insert description of location or co-ordinates of latitude and longitude according to the World Geodetic System 1984.]

Any person wishing to make representations in relation to [this] [these] application[s] so that they must be considered in accordance with the Renewable Energy (Guernsey) Ordinance, 2015 must send the same to the offices of the Commission at the address set out below within ***[28 days or insert longer period given or specified by Commission]*** starting from the date of publication of this notice. [Any person making [representations objecting to the granting of [the application] [any of the applications] must provide a written statement of that objection and the reasons for which it has been made.]

A copy of -

- (a) the application,
- (b) a map showing the location at which the renewable energy activities are to be carried out, and
- (c) ***[insert if relevant]*** [the environmental statement and decommissioning programme relating to the proposed activities],
- (d) ***[insert if relevant]*** a map showing the place in

Guernsey waters in relation to which the declaration applied for will [affect rights of navigation] [establish a safety zone]],

is available for public inspection at the offices of the Commission at [*insert address*] and on their website [*insert website address*].

Signed:
for and on behalf of [insert applicant's name]

Dated: [insert date].

NOT YET IN FORCE

SCHEDULE 4

Section 6(5) and (7)

INQUIRY PROCEDURE

1. If the Commission causes a public inquiry to be held, it must appoint an inspector to hold it.
2. Following an inquiry the inspector must provide a report and a recommendation to the Commission.
3. Notice of an inquiry must be given as follows -
 - (a) where held in connection with an application, the Commission must inform the applicant in writing that it is to be held,
 - (b) if the Commission decides that an inquiry is to be held in connection with an application before the application is publicised under section 3, the details set out in paragraph 4(d) and (e) must be included in the notice published by the applicant under section 3,
 - (c) if in any other case the Commission decides that an inquiry is to be held in connection with an application or a declaration, the Commission must publish a notice setting out the details set out in paragraph 4 in such manner as it considers appropriate for bringing the inquiry to the attention of persons likely to be affected by the proposal.

4. The details referred to in paragraph 3 are -

- (a) a statement of the fact that the application or proposal has been made and a brief description of the application or proposal,
- (b) where relevant, a reference to the notice which publicised the application and details of where a copy of such notice may be obtained,
- (c) a place where a copy of the application or proposal, and of the map referred to in it, can be inspected,
- (d) a statement that an inquiry is to be held in connection with the application or proposal, and
- (e) the date, time and place of the inquiry and the name and address of the inspector,

and for the avoidance of doubt, where related or connected matters are to be considered at the same inquiry under section 6(3) the notice must indicate details of all relevant applications or proposals.

5. The following persons are entitled to appear at the inquiry -

- (a) the Department,
- (b) the applicant for a licence or a declaration, and
- (c) any person who has made written representations on the application or proposal in question which have

been duly made and not been withdrawn.

6. Nothing in paragraph 5 prevents the inspector from permitting any other person to appear at the inquiry.

7. (1) Any person entitled or permitted to appear may do so on that person's own behalf, or may be represented by a joint spokesperson or by any other person.

(2) Any person entitled to appear may, whether or not that person proposes to appear at the inquiry, send written representations for the consideration of the inspector to the address given in the notice.

8. The inspector appointed under paragraph 1 may -

(a) take evidence on oath and for that purpose administer oaths,

(b) by notice require a person to attend at a time and place stated in the notice to -

(i) give evidence,

(ii) produce any documents in that person's custody or under that person's control that relates to the subject matter in question at the inquiry, or

(iii) produce any other thing in that person's custody or under that person's control for inspection, examination or testing by or on

behalf of the inspector.

9. A person who -

- (a) without reasonable excuse, refuses or deliberately fails to attend to give evidence as required, or
- (b) deliberately alters, suppresses, conceals, destroys or refuses to produce any document which that person is required to produce,

by a notice issued under paragraph 8, is guilty of an offence and liable on conviction to a fine not exceeding level 3 on the uniform scale, or imprisonment for a term not exceeding six months, or to both.

NOT YET IN FORCE

SCHEDULE 5

Section 18

EXCEPTIONS TO PROHIBITED ACTIVITIES IN SAFETY ZONES

1. The prohibition under section 18(1) on a ship entering or remaining in a safety zone does not apply if it is a ship –

- (a) belonging to, or operating under the authority of, a department of the States, the Commission or the Director, and engaged in -
 - (i) the provision of services for,
 - (ii) the transport of persons or goods to or from,
or
 - (iii) the carrying out of functions under the Law in relation to,
any renewable energy system or related plant or apparatus in that safety zone,
- (b) belonging to, or operating under the authority of, the Guernsey Police, the Guernsey Border Agency or Her Majesty's forces, where they are acting in the course of carrying out their functions,
- (c) belonging to or operating under the authority of the general lighthouse authority,
- (d) belonging to, or operating under the authority of the

harbour authority where that authority is acting in the course of its functions,

- (e) belonging to, or operating under the authority of, Her Majesty's Receiver General, the States or the Department where that person is acting in the exercise of its rights established in a lease or licence relating to a renewable energy system or related plant or apparatus in that safety zone,
- (f) acting in connection with the saving or attempted saving of life or property, or in connection with training exercises for the same,
- (g) entering or remaining in a safety zone owing to stress of weather or when in distress,
- (h) except in circumstances falling within item (f) or (g), entering or remaining in safety zone to avoid immediate danger to a ship, or
- (i) entering or remaining in a safety zone in connection with an activity mentioned in paragraph 2.

2. The prohibition under section 18(2) on a person carrying out an activity wholly or partly in a safety zone does not apply -

- (a) in connection with the laying, construction, servicing, inspection, testing, maintenance, alteration, renewal, removal or decommissioning by, or on behalf of, an owner or operator of a

renewable energy system or related plant or apparatus in that safety zone,

- (b) in connection with monitoring activities required to be undertaken by or on behalf of an owner or operator of a renewable energy system or related plant or apparatus in order to comply with the terms of any licence or other relevant consent relating to a renewable energy system or related plant or apparatus in that safety zone, or
- (c) in connection with activities undertaken in accordance with paragraph 1(a) to (h).

NOT YET IN FORCE

SCHEDULE 6

Section 20

PROCEDURE IN RELATION TO DECLARATIONS UNDER PART III

Applications for declarations.

1. (1) An application in relation to a declaration under section 16 or 17 must -

- (a) be made at the same time as an application for a licence,
- (b) describe, by way of a map -
 - (i) the place where the relevant renewable energy system or related plant or apparatus is to be, or is being, operated, deployed, used or decommissioned, and
 - (ii) the place in Guernsey waters in relation to which any declaration applied for will affect rights of navigation or establish a safety zone, as the case may be,

and such map must include the co-ordinates of latitude and longitude according to the World Geodetic System 1984 of the places in sub-items (i) and (ii),

- (c) in the case of an application under section 16, provide particulars of the rights of navigation in

question and the extinguishment, suspension or restriction in respect of which the application is made,

(d) in the case of an application under section 17 for a declaration creating a safety zone, include -

(i) a description of the renewable energy system, related plant or apparatus or other structure in relation to securing the safety of which the application is made, including an explanation of how much of it is or is expected to be visible above the water line and how much below the water line, supported by drawings,

(ii) a description of how the renewable energy system or related plant or apparatus operates or is to operate,

(iii) a description of the location, or proposed location of -

(A) any electric line used, or proposed to be used, for the conveyance of electricity to and from the renewable energy system or related plant or apparatus, and

(B) any connection to such an electric line,

- (iv) a description of the location, or proposed location, of any offshore substation housing connection equipment,
- (v) details of any navigational marking that has been specified for use with a renewable energy system, related plant or apparatus or other structure of the description in question by a general lighthouse authority,
- (vi) a description of the provisions which the applicant asks to be included in the declaration,
- (vii) where the application is made in relation to an existing or proposed renewable energy system or related plant or apparatus and where the renewable power source is, or is to be, tidal power or wave power -
- (A) a description of the components located, or to be located, above and below the water line,
- (B) details of any moving parts, or proposed parts, and of how far and in which direction such parts may move through waters surrounding the renewable energy system or related plant or apparatus,

(C) a description of the extent and location, or proposed extent and location, of anchors, moorings and cables used (or to be used) in relation to the same,

(D) details of the anticipated range of wave heights in the proposed safety zone,

(E) a description of typical spring and neap tidal data, and of typical tidal stream speeds and bearings, relating to waters in the proposed safety zone,

(viii) in relation to the proposed safety zone, the following information -

(A) whether the zone relates to the operation, deployment, use or decommissioning of the renewable energy system in question,

(B) the proposed dimensions of the safety zone,

(C) a description of the renewable energy activities in respect of which the zone is being applied for and

their estimated date and duration,

(D) whether the applicant proposes that the area of the zone will vary and any factors or determinations by reference to which the applicant proposes that such variation may take place,

(E) whether the zone would be required for major maintenance works in respect of a renewable energy system,

(F) what steps, if any, the applicant proposes to take to monitor ships and activities within the safety zone, and

(G) unless the Commission has notified the applicant that it is not required, an up to date shipping traffic survey for the waters comprising the proposed safety zone, and

(ix) an assessment of the extent to which navigation might be possible or should be restricted, and whether restrictions would cause navigational problems, within or near waters where the renewable energy system, related plant or apparatus or other structure

is to be, or is being, operated, deployed,
used or decommissioned, and

- (e) be accompanied by such fee as may be prescribed by regulations under the Law.

(2) The Commission need not consider any purported application for a declaration which does not comply with subsection (1) in every respect.

Procedure for applications for declarations.

2. (1) Subject to paragraph 3, where an application for a declaration under section 16 or 17 is made the following procedure applies.

(2) The application must be publicised at the same time and in the same manner as the application for a licence in accordance with section 3(1) and (2) and the form of notice under section 3(1) must include the relevant words relating to the type of application for a declaration in question as set out in Schedule 3.

(3) The Commission may require an applicant to -

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

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

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

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

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

(7) The Commission must not proceed with an application unless notice has been published as required under subparagraph (2).

(8) The Commission must, subject to subparagraph (9), publicise in such manner and for such period as it considers appropriate –

(a) a copy of the applicant's notice required under subsection (1), and

(b) a copy of the application,

and must continue to publicise such documents until the application is withdrawn by the applicant or determined by the Commission.

(9) The Commission may, upon written request from the applicant, withhold or allow the withholding of information from the documents required to be publicised under subparagraphs (2) and (8) if the Commission determines that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

(10) Before deciding whether or not to grant an application the Commission –

(a) must consult -

(i) the Director,

(ii) the States Harbourmaster,

(iii) the Senior Sea Fisheries Officer of the Department, and

(iv) the Guernsey Fishermen's Association, and

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

(11) The Commission must give the applicant an opportunity to make representations to the Commission on any consultation responses made by any person consulted under this paragraph.

(12) The Commission may require in writing that any person consulted under this paragraph makes representations to the Commission within a period of not less than 28 days starting from the date on which the Commission consulted that person.

(13) The Commission may require in writing that the applicant makes representations under subparagraph (11) within a period of not less than 28 days starting from the date on which it gave the applicant the opportunity to make such representations.

(14) The Commission must not determine an application before the expiry of –

- (a) the period given for the making of representations under subparagraph (2), and
- (b) any period given by the Commission for the making of representations by consultees or the applicant under subparagraph (12) or (13).

(15) In making its determination of an application, the Commission must take into account any representations duly made in accordance with this paragraph.

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

(17) Where the Commission refuses an application it must include in the notice of its decision the reasons for the refusal and a statement of the applicant's right of appeal under section 42.

Declarations at volition of the Commission.

3. (1) This paragraph applies where -

- (a) the Commission is proposing to make a declaration under section 16 or 17 without an application for a declaration having been made, or
- (b) the Commission, in response to an application for a declaration, but without the holding of a public

inquiry or other hearing in public, is minded to make a declaration in terms materially different from those applied for.

(2) In the circumstances set out in subparagraph (1)(b), the Commission must, as soon as reasonably possible after it decides it is minded to make a declaration in terms materially different from that applied for, notify the applicant in writing of that decision and such notification must include—

- (a) the reasons for its decision, and
- (b) a statement that the following procedure is to apply in relation to the declaration and not that in paragraph 2.

(3) The Commission must publish notice of the proposal in such manner as the Commission considers is best calculated to bring the proposal to the attention of persons whose activities in Guernsey waters are likely to be affected by the declaration in question.

(4) The notice published must -

- (a) describe by way of a map, the matters set out in paragraph 1(1)(b),
- (b) describe the provisions that the Commission proposes to include in the declaration,
- (c) state that representations may be made to the Commission within a period of not less than 28 days starting from the date of publication of the

notice, and

- (d) state the manner in which representations are to be made.

(5) The Commission may, upon written request from the applicant, withhold or allow the withholding of information from the documents required to be publicised under subparagraphs (1) and (3), if the Commission determines that it is appropriate to do so having regard to the need to preserve commercial confidentiality.

(6) The Commission may require the holder of, or the applicant for, a licence to –

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

as in the Commission's opinion may be necessary or expedient to enable it to determine whether or not to make a declaration.

(7) If the Commission carries out any investigation, examination or test under subparagraph (6), the Commission may require the holder of, or the applicant for, a licence to pay a fee to the Commission towards the reasonable expenses of that investigation, examination or test.

(8) Before deciding whether or not to make a declaration the Commission -

- (a) must consult -
 - (i) the Director,
 - (ii) the States Harbourmaster,
 - (iii) the Senior Sea Fisheries Officer of the Department, and
 - (iv) the Guernsey Fishermen's Association, and
- (b) may consult any person who has particular expertise in any matter arising in relation to that declaration.

(9) The Commission must give the holder of, or the applicant for, a licence an opportunity to make representations to the Commission on any consultation responses made by any person consulted under this paragraph.

(10) The Commission may require in writing that any person consulted under this paragraph makes representations to the Commission within a period of not less than 28 days starting from the date on which the Commission consulted that person.

(11) The Commission may require in writing that the holder of, or the applicant for, a licence makes representations under subparagraph (9) within a period of not less than 28 days starting from the date on which it gave the holder or applicant the opportunity to make such representations.

(12) The Commission must not decide whether or not to make a declaration before the expiry of –

- (a) the period given for the making of representations under subparagraph (4), and
- (b) any period given by the Commission for the making of representations by consultees or the holder of, or the applicant for, a licence under subparagraph (10) or (11).

(13) In making its decision, the Commission must take into account any representations duly made in accordance with this paragraph.

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

(15) Where the Commission refuses an application for a declaration or makes a declaration in terms materially different from those applied for, it must issue to the applicant a notice of its decision and include in that notice the reasons for the same and a statement of the applicant's right of appeal under section 42.

Interpretation of Schedule.

4. In this Schedule –

"**electric line**" has the meaning in section 33 of the Electricity (Guernsey) Law, 2001, and

"**substation**" means any premises, or part thereof, which contain equipment for either transforming or converting energy to or from high voltage (other than transforming or converting solely for the operation of switching devices or instruments) or for switching, controlling or regulating energy at high voltage.