

**ORDINANCE**  
**OF THE STATES OF DELIBERATION**

ENTITLED

**The Environmental Pollution (Enforcement and Appeals)**  
**Ordinance, 2019** \*

*[CONSOLIDATED TEXT]*

**NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. XXXIX of 2019; as amended by the: Environmental Pollution (Water Pollution) Ordinance, 2022 (No. \*\* of 2022). This Ordinance is modified by the Environmental Pollution (Water Pollution) Ordinance, 2022 (*supra*). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122).

# ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

## **The Environmental Pollution (Enforcement and Appeals) Ordinance, 2019**

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*(Made on 27th November, 2019.)*

## **The Environmental Pollution (Enforcement and Appeals) Ordinance, 2019**

**THE STATES**, in pursuance of their Resolutions of the 1<sup>st</sup> February, 2017<sup>a</sup> and 27<sup>th</sup> November, 2019<sup>b</sup>, and in exercise of the powers conferred on them by sections 24(6), 58 to 62, 64 and 72 of the Environmental Pollution (Guernsey) Law, 2004<sup>c</sup>, and all other powers enabling them in that behalf, hereby order: –

### PART I

#### POWERS OF ENTRY AND TO MAKE REQUIREMENTS

##### **Statutory powers of entry upon premises.**

1. (1) Subject to subsection (3), the Director may enter any premises without the consent of the owner or occupier for any of the purposes indicated in subsection (2) and the power to enter created by this section includes the power for the Director to be accompanied by –

- (a) any person authorised by the Director including, where the Director has reasonable cause to apprehend any serious obstruction in the carrying out of the Director's functions, a police officer, and

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<sup>a</sup> Article III of Billet d'État No. III of 2017.

<sup>b</sup> Article IX of Billet d'État No. XXIII of 2019.

<sup>c</sup> Order in Council No. XIII of 2004; as amended by Order in Council No. XIII of 2010; Nos. XV and XVI of 2015; Ordinance No. XXXIII of 2003; No. XXXVIII of 2006; No. XLIX of 2006; No. XIII of 2007; No. XVIII of 2010; No. V of 2011 and No. IX of 2016.

- (b) any equipment or materials required for any purpose for which the power of entry is being exercised.
- (2) The purposes are –
- (a) establishing whether any prohibition, restriction, requirement or condition –
    - (i) imposed under the Law, and
    - (ii) for which the Director is responsible for regulating,  
is being, or has been, complied with,
  - (b) where the Director reasonably believes that any premises or activity is a source, or potential source, of environmental pollution or nuisance –
    - (i) inspecting or examining any –
      - (A) plant or equipment,
      - (B) substance or article, or
      - (C) any waste or by-product,
    - (ii) investigating any contravention of any provision under the Law, or
    - (iii) taking any sample,

located upon or relating to those premises or that activity, and

- (c) exercising any other function conferred on the Director under the Law.

(3) The power of entry under subsection (1) shall not be exercisable –

- (a) in the case of private premises (other than in a case of emergency), unless –

- (i) it is exercised at a reasonable time of the day, and

- (ii) the Director –

- (A) gives to the owner or occupier of the premises concerned at least 24 hours notice of the Director's intention to enter the premises, and

- (B) if requested by the owner or occupier of the premises, produces evidence of the Director's authority, or

- (b) in the case of premises used wholly as a dwelling except under, and in accordance with –

(i) the authority of a warrant issued by the Bailiff under, and

(ii) the provisions of,

section 2.

(4) In this section "**private premises**" means all premises other than premises –

(a) which are wholly owned and occupied by the States,

(b) which are used wholly as a dwelling, or

(c) which are, or have been (and the condition of which is reasonably believed to be such as to give rise to a significant risk of environmental pollution), used for the purposes of a prescribed operation.

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## NOTES

*In accordance with the provisions of the Environmental Pollution (Water Pollution) Ordinance, 2022, section 6, with effect from 28th November, 2022, where any provision of this Ordinance is exercised in relation to a prescribed operation prescribed under section 1 of the 2022 Ordinance, or a prohibition, restriction, requirement or condition imposed under this Ordinance, any reference to "environmental pollution" in this Ordinance is to be construed as if it also includes "water pollution" and any reference to "pollutant" is to be construed as if it means a pollutant falling within section 2(3) or section 40(1)(c) of the Environmental Pollution (Guernsey) Law, 2004.*

*In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein*

*relating to the discharge of such functions or the exercise of such powers shall have effect as if the references in this Ordinance to the Bailiff included a reference to the Deputy Bailiff.*

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**Warrant to enter dwelling.**

2. (1) If the Bailiff is satisfied by information on oath supplied by the Director that there are reasonable grounds for suspecting that any premises used wholly as a dwelling (or any articles or substances or other thing which may be in or on such dwelling) are in a condition giving rise to a significant risk of environmental pollution, the Bailiff may grant a warrant to the Director.

(2) A warrant granted under subsection (1) shall authorise the Director and any person authorised by the Director including, where the Director has reasonable cause to apprehend any serious obstruction in the carrying out of the Director's functions, a police officer, at any time within 28 days of the date of the grant –

- (a) to enter the dwelling, and
- (b) to exercise in respect of the dwelling (and any substances or articles or other things found in or on the dwelling), all such powers as the Director, and any person authorised by the Director, may exercise in respect of any other premises under this Part,

for one or more of the purposes indicated in section 1(2).

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied –

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- (a) that the Director has given 7 days' notice in writing to the occupier of the dwelling in question demanding access to the dwelling, and
- (b) that either –
  - (i) access was demanded at a reasonable hour and was unreasonably refused, or
  - (ii) although entry to the dwelling was granted, the occupier unreasonably refused to comply with a request by the Director or any person authorised by the Director to permit the Director or person to do any of the things referred to in subsection (2), and
- (c) that the occupier has, after the refusal, been notified by the Director of the application for the warrant and has had an opportunity of being heard by the Bailiff on the question whether or not it should be issued.

(4) Subsection (3) shall not apply if the Bailiff is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.

(5) A person executing a warrant issued under this section may use such reasonable force as may be necessary.

(6) A warrant issued under this section must be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that any material evidence of environmental pollution would not be found

if it were so executed.

(7) If the person who occupies the dwelling in respect of which a warrant is issued under this section is present when the warrant is executed, the person must be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant must be left in a prominent place on the dwelling.

(8) A person seizing anything in pursuance of a warrant under this section must give a receipt for it if asked to do so.

**Statutory powers to make requirements.**

3. (1) Where the Director reasonably believes that any premises or activity is a source, or potential source, of environmental pollution or nuisance the Director may require –

- (a) the occupier of those premises, or
- (b) any person reasonably believed by the Director to be carrying on, or to have carried on, that activity,

to comply with any of the requirements indicated in subsection (2).

(2) The requirements for the purpose of subsection (1) are –

- (a) to make available for examination by the Director any –
  - (i) plant or equipment,
  - (ii) substance or article, or
  - (iii) waste or by-product,

used, stored or produced at those premises or in connection with that activity,

- (b) to provide the Director with such information, including records and other documents, relating to the premises or to that activity as the Director may reasonably require, and
- (c) to answer such questions relating to those premises or to that activity as the Director may reasonably ask.

(3) Anything provided or made available to the Director in compliance with a requirement under this section may be detained by the Director for so long as is necessary for all or any of the following purposes, namely –

- (a) to take it for further examination (including dismantling it or subjecting it to any process or test (but not so as to damage or destroy it unless this is necessary)),
- (b) to ensure that it is not tampered with before the Director's examination of it is completed, or
- (c) to ensure that it is available for use –
  - (i) as evidence in any proceedings for an offence under the Law, or
  - (ii) in connection with the enforcement of the requirements of a compliance notice or other notice issued under the Law.

**Statutory powers to take samples and do other necessary things.**

4. Where the Director reasonably believes that any premises or activity is a source, or potential source, of environmental pollution or nuisance the Director may, as regards any premises which the Director has power to enter under section 1

—

- (a) direct that those premises or any part of them, or anything in them, must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under this Ordinance,
- (b) take such measurements and photographs and make such recordings as the Director considers necessary for the purpose of any examination or investigation under this Ordinance,
- (c) take samples of any article or substance found in or on any premises, and of the air, water or land in, on, or in the vicinity of, the premises,
- (d) in the case of any article or substance found in or on any premises, being an article or substance which appears to the Director to have caused or to be likely to cause environmental pollution, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is necessary), and

- (e) in the case of any such article or substance as is mentioned in paragraph (d), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely –
  - (i) to examine it and do to it anything which the Director has power to do under that paragraph,
  - (ii) to ensure that it is not tampered with before the Director's examination of it is completed,
  - (iii) to ensure that it is available for use –
    - (A) as evidence in any proceedings for an offence under the Law, or
    - (B) in connection with the enforcement of the requirements of a compliance notice or other notice issued under the Law.

**Results of examination etc. to be provided by Director.**

5. (1) Where, under this Part, the Director takes, is provided with or obtains any –

- (a) plant or equipment,
- (b) substance or article, or
- (c) waste or by-product,

the Director must, so far as is reasonably practicable, comply with the requirements

of subsection (2).

- (2) The requirements are –
  - (a) that the results of any examination of anything referred to in subsection (1) are made available to any person who, in the opinion of the Director, has a material interest in those results,
  - (b) that duplicates of any –
    - (i) substance or article, or
    - (ii) waste or by-product,are provided to any person who, in the opinion of the Director, has a material interest in those duplicates, and
  - (c) that except in the case of waste, or any substance or article required to establish the commission of any offence under the Law, anything referred to in subsection (1) is returned to the person who, in the opinion of the Director, appears to be the rightful owner of the thing.

**Obtaining information by written notice.**

6. For the purpose of carrying out any function of the Director under Parts II, III, V, VI or IX of the Law, the Director may serve a written notice on any person requiring that person to provide such information specified in the notice as the Director reasonably considers is needed –

- (a) in such form, and
- (b) within such period following service of the notice,

as is specified in the notice.

PART II  
COMPLIANCE NOTICES

**Compliance notices - prescribed operations.**

7. (1) If the Director is of the opinion that –
- (a) a licensee –
    - (i) is contravening, or
    - (ii) is likely to contravene,  
  
any term or condition of a licence issued to the licensee under the Law,
  - (b) as respects the carrying on of a prescribed operation for which a valid licence has been issued, that –
    - (i) to continue to carry it on, or
    - (ii) to continue to carry it on in a particular way,  
  
gives rise to an imminent risk of environmental pollution or nuisance,

(c) a person carrying on an operation which is exempt from the requirement to hold a licence –

(i) is contravening, or

(ii) is likely to contravene,

any term or condition to which such exemption is subject under the Law, or

(d) as respects the carrying on of a prescribed operation by a person without holding a valid licence in contravention of section 13(4) of the Law, that the carrying on of that operation without a licence gives rise to a risk of environmental pollution or nuisance,

the Director may serve a compliance notice on the licensee or the person carrying on the operation.

(2) A compliance notice issued under subsection (1), must –

(a) as respects a notice served on a licensee, or a person carrying on an operation, as the case may be, under subsection (1)(a) or (c) –

(i) state that the Director is of the opinion that a contravention of a term or condition of a licence or an exemption, as the case may be –

(A) is taking place, or

- (B) is likely to take place,
  - (ii) specify the matters –
    - (A) constituting the contravention, or
    - (B) making it likely that a contravention will take place,
  - (iii) specify the steps that must be taken –
    - (A) to remedy the contravention, or
    - (B) to remedy the matters making it likely that the contravention will arise,
  - (iv) identify by name or description the person required to take the steps specified under subparagraph (iii), and
  - (v) specify the period within which the steps specified under subparagraph (iii) must be taken, and
- (b) as respects a notice served on a person carrying on the operation under subsection (1)(b) –
- (i) state that the Director is of the opinion that –
    - (A) to continue to carry on a prescribed operation, or

- (B) to continue to carry on a prescribed operation in a particular way,
    - gives rise to an imminent risk of environmental pollution or nuisance,
  - (ii) specify the nature of the risk involved,
  - (iii) specify the steps that must be taken to eliminate or remove the risk involved,
  - (iv) identify by name or description the person required to take the steps specified under subparagraph (iii),
  - (v) specify the period within which the steps specified under subparagraph (iii) must be taken, and
  - (vi) direct that the licence relating to the prescribed operation is, insofar as it authorises the activity giving rise to the risk involved, suspended until the steps specified under subparagraph (iii) have been taken to the satisfaction of the Director, and
- (c) as respects a notice served on a person carrying on the operation under subsection (1)(d) –

- (i) state that the Director is of the opinion that the carrying on of the prescribed operation without a licence gives rise to a risk of environmental pollution or nuisance,
- (ii) specify the nature of the risk involved,
- (iii) specify the steps that must be taken to eliminate or remove the risk involved,
- (iv) identify by name or description the person required to take the steps specified under subparagraph (iii),
- (v) specify the period within which the steps specified under subparagraph (iii) must be taken, and
- (vi) specify that a person who causes or permits the occurrence or the risk of environmental pollution, by contravening section 13(4) of the Law, is guilty of an offence under section 65(2) of the Law.

**Compliance notices in relation to provisions of the Air Pollution Ordinance.**

8. (1) If the Director is of the opinion that –
- (a) a person is contravening or is likely to contravene any term or condition of an approval issued to the person under the Air Pollution Ordinance,

- (b) a person is contravening or is likely to contravene any prohibition, restriction, requirement or condition imposed on that person under the Air Pollution Ordinance, other than one in relation to which a compliance notice may be served under section 7, or
- (c) a person is contravening or is likely to contravene any term, condition or proviso of any exemption or disapplication (however worded) from any prohibition, restriction or requirement under the Air Pollution Ordinance,

the Director may serve a compliance notice on that person.

- (2) A compliance notice issued under subsection (1) must –
  - (a) state that the Director is of the opinion that a contravention of –
    - (i) a term or condition of an approval referred to in subsection (1)(a),
    - (ii) any prohibition, restriction, requirement or condition referred to in subsection (1)(b), or
    - (iii) any term, condition or proviso of any exemption or disapplication referred to in subsection (1)(c),

as the case may be, is taking place or is likely to take place,

- (b) specify the matters –

- (i) constituting the contravention, or
  - (ii) making it likely that a contravention will take place,
- (c) specify the steps that must be taken –
- (i) to remedy the contravention, or
  - (ii) to remedy the matters making it likely that the contravention will arise,
- (d) identify by name or description the person required to take the steps specified under paragraph (c), and
- (e) specify the period within which the steps specified under paragraph (c) must be taken.

**[Content of anti-pollution notice.**

**8A.** A compliance notice which is an anti-pollution notice issued under section 44 of the Law must –

- (a) state that the Director considers that the person on whom the notice is served is causing or permitting –
  - (i) the occurrence of water pollution, or
  - (ii) a risk of water pollution to arise,

in contravention of section 5(2) of the Water Pollution

Ordinance,

- (b) specify the –
  - (i) acts or omissions or proposed acts or omissions,  
or
  - (ii) use or proposed use of any thing,

by reason of which the Director considers that the person on whom the notice is served is causing or permitting the occurrence of water pollution or the risk of water pollution to arise,

- (c) specify any steps that must be taken to eliminate or reduce the occurrence of water pollution or eliminate or remove the risk of water pollution arising,
- (d) identify by name or description the person required to take the steps specified under paragraph (c),
- (e) specify the period within which the steps specified under paragraph (c) must be taken, and
- (f) specify that a person who causes or permits the occurrence of water pollution or a risk of water pollution to arise in contravention of section 5(2) of the Water Pollution Ordinance, is guilty of an offence under section 65(1) of the Law.]

**NOTE**

*Section 8A was inserted by the Environmental Pollution (Water Pollution) Ordinance, 2022, section 7, Schedule 3, paragraph 1, with effect from 28th November, 2022.*

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**[Compliance notice in relation to provisions of the Water Pollution Ordinance.]**

- 8B.** (1) If the Director is of the opinion that –
- (a) a person is contravening or is likely to contravene any prohibition, restriction, requirement or condition imposed on that person under the Water Pollution Ordinance, other than one in relation to which a compliance notice may be served under section 7, or
  - (b) a person is contravening or is likely to contravene any term, condition or proviso of any exemption or disapplication (however worded) from any prohibition, restriction or requirement under the Water Pollution Ordinance,

the Director may serve a compliance notice on that person.

- (2) A compliance notice issued under subsection (1) must –
- (a) state that the Director is of the opinion that a contravention of –
    - (i) any prohibition, restriction, requirement or condition referred to in subsection (1)(a), or

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- (ii) any term, condition or proviso of any exemption or disapplication referred to in subsection (1)(b),  
  
as the case may be, is taking place or is likely to take place,
- (b) specify the matters –
  - (i) constituting the contravention, or
  - (ii) making it likely that a contravention will take place,
- (c) specify the steps that must be taken –
  - (i) to remedy the contravention, or
  - (ii) to remedy the matters making it likely that the contravention will arise,
- (d) identify by name or description the person required to take the steps specified under paragraph (c), and
- (e) specify the period within which the steps specified under paragraph (c) must be taken.]

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**NOTE**

*Section 8B was inserted by the Environmental Pollution (Water Pollution) Ordinance, 2022, section 7, Schedule 3, paragraph 1, with effect from 28th November, 2022.*

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**[General requirements for compliance notices.]**

9. A compliance notice [...] must –
- (a) state the provision of [the Law or this Ordinance] under which it is served,
  - (b) specify that the notice is a compliance notice within the meaning of section 62(1) of the Law [or of that section as applied by section 44 of the Law] and that –
    - (i) if a requirement of it is not, in the Director's opinion, adequately complied with within the relevant period specified in the notice, the Director may take action to secure compliance under section 63 of the Law [or under that section as applied by section 44 of the Law], and
    - (ii) a person who contravenes it is guilty of an offence under section 66(1) of the Law, and
  - (c) inform the person served with the notice of the right of appeal under section 25 of the Law.

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**NOTE**

*In section 9, first, the heading thereto was substituted, second, the words omitted in the first pair of square brackets were repealed, third, the words in the second pair of square brackets were substituted, fourth, the words in square brackets in paragraph (b) and, fifth, the words in square brackets in paragraph (b)(i) were both inserted by the Environmental Pollution (Water Pollution) Ordinance, 2022, section 7, Schedule 3, respectively paragraph 2, paragraph 3(a), paragraph 3(b), paragraph 3(c) and paragraph 3(d), with effect from 28th November, 2022.*

[PART IIA

POWERS TO TAKE ACTION IN RELATION TO WATER POLLUTION

**Powers of Director to take action in relation to water pollution.**

9A. (1) This section applies where it appears to the Director that—

- (a) water pollution has occurred or is occurring, or
- (b) a risk of water pollution has arisen.

(2) In a case where it appears to the Director that water pollution has occurred or is occurring, the Director is entitled to enter land and take such action as appears necessary for any of the following purposes –

- (a) removing or disposing of a pollutant,
- (b) remedying or mitigating any water pollution caused by the introduction of a pollutant into the water, or
- (c) restoring (so far as is reasonably practicable to do so), the water, including any flora and fauna dependent on the aquatic environment of the water, to its state immediately before the pollutant became introduced into the water.

(3) In a case where it appears to the Director that a risk of water

pollution has arisen, the Director is entitled to enter land and take such action as appears necessary for the purpose of preventing water pollution from occurring.

(4) The powers conferred by this section are only exercisable in a case where –

(a) the Director certifies that it is necessary to carry out the works or other actions without delay, or

(b) it appears to the Director, after reasonable enquiry, that no person can be found on whom–

(i) an anti-pollution notice under section 44 of the Law, or

(ii) a compliance notice under section 7 or 8B,

may be served in relation to the water pollution, or risk of water pollution, in question.

(5) The expenses reasonably incurred by the States as a consequence of any action taken by the Director under this section are recoverable as a civil debt due to the States from any person who caused or permitted the occurrence of water pollution, or the risk of water pollution, in question.

(6) In this section, "**pollutant**" means a pollutant falling within section 2(3) or section 40(1)(c) of the Law.]

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**NOTE**

*Part IIA, and section 9A thereof, were inserted by the Environmental*

*Pollution (Water Pollution) Ordinance, 2022, section 7, Schedule 3, paragraph 4, with effect from 28th November, 2022.*

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PART III  
THE APPEALS PANEL AND TRIBUNAL

**Provisions relating to the Environmental and Public Health Appeals Panel and Tribunal.**

10. The provisions of sections 11 to 19 shall have effect in relation to –
- (a) the Environmental and Public Health Appeals Panel ("**the Panel**") drawn up under the provisions of section 24(1) of the Law, and
  - (b) an Environmental and Public Health Appeals Tribunal ("**the Tribunal**") appointed under the provisions of section 24(5) of the Law.

**Designation of President of Panel.**

11. The States must, when drawing up the Panel under the provisions of section 24(1) of the Law, designate one of the members of the Panel as President and another as vice-President thereof.

**Duties of Director following service of summons.**

12. (1) Where an appeal to the Tribunal against a decision of the Director is instituted by summons in accordance with the provisions of section 25 of the Law the Director must, within 7 days after service of the summons upon the Director –

- (a) send a copy thereof to the President of the Panel (or, if the President is unavailable, to the vice-President),

together with copies of the documents described in subsection (2) which –

- (i) have been served upon the Director with the summons, or
  - (ii) are otherwise available to the Director,
- (b) request the President (or, if the President is unavailable, the vice-President) to appoint from the membership of the Panel the members of the Tribunal to hear and determine the appeal, and
- (c) notify the appellant that the Director has sent a copy of the summons to the President, or the vice-President, as the case may be.
- (2) The documents for the purpose of subsection (1)(a) are –
- (a) any statement of the grounds of appeal,
  - (b) where the appeal relates to a decision concerning a licence or an approval –
    - (i) any relevant form of application,
    - (ii) any plans, maps or other documents accompanying the application, and
    - (iii) any relevant licence or approval,

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- (c) where the appeal relates to a decision concerning a determination under section 10(5) of the Law, any statement of the information to which the determination relates,
- (d) where the appeal relates to a decision to refuse to consent to a collection or transport of specially controlled waste under section 28(4)(b) of the 2010 Ordinance, any proposed consignment note served on the Director under section 28(2) of the 2010 Ordinance,
- (e) where the appeal relates to a decision concerning the issue of a compliance notice or other notice, the notice,
- (f) any relevant correspondence,
- (g) any other document the Director believes is relevant for the purpose of enabling the determination of the appeal, and
- (h) any statement made by, or on behalf of, the appellant indicating whether the appellant wishes the appeal to be dealt with –
  - (i) by way of a hearing, or
  - (ii) on the basis of written representations, without any hearing.

(3) For the purposes of subsection (2)(b), "**a decision concerning a licence**" includes –

- (a) a decision of a description set out in section 25(3)(b) to (i) of the Law, and
- (b) such other description of decision prescribed by Ordinance under section 25(3)(k) of the Law, which relates to or concerns a licence in any manner whatsoever.

**Constitution and appointment of Tribunal.**

**13.** (1) The Tribunal shall consist of a minimum of three and a maximum of five persons drawn from the Panel and appointed in accordance with subsection (2).

(2) Following receipt of a request under section 12(1)(b), the President or, if the President is unavailable, the vice-President of the Panel must –

- (a) from the members of the Panel, appoint the members of the Tribunal who are to hear and determine the appeal,
- (b) nominate one of the members so appointed to chair the Tribunal, and
- (c) unless the President or vice-President determines otherwise, cause notice to be given in La Gazette Officielle, or in such other manner as the President or vice-President thinks fit, of –
  - (i) the appointment and nomination under paragraphs (a) and (b), and

- (ii) the reason for which the Tribunal has been appointed.

(3) For the avoidance of doubt, the President or vice-President may be appointed or nominated, as the case may be, under subsection (2)(a) and (b).

**Voting in hearings of Tribunal.**

**14.** (1) Each member of the Tribunal shall, subject to subsection (2), have one vote, and the decisions of the Tribunal shall be taken by a simple majority.

(2) The person chairing the Tribunal shall not have a vote except where there is an equality of votes, in which case the person chairing shall have a casting vote.

**Hearings of Tribunal to be in public.**

**15.** (1) A hearing before the Tribunal must be held in public unless the Tribunal directs otherwise on the ground that it is dealing with evidence or representations –

- (a) which are commercially confidential, or
- (b) which, in the opinion of a Law Officer of the Crown, should be treated as confidential for the purpose of safeguarding the security of the British Islands.

(2) The Tribunal may at any time exclude, from a hearing or any part thereof, any person who, in its opinion, is acting in a disruptive manner and may

–

- (a) refuse to permit that person to return, or

- (b) permit that person to return only on such conditions as the Tribunal may specify,

but any such person may submit to the Tribunal any evidence or other matter in writing before the close of the hearing.

**Procedure of the Tribunal.**

**16.** (1) The Committee for the Environment & Infrastructure may, if requested by the Panel, by order prescribe rules of procedure making such provision as the Committee, acting upon the advice of the Panel, thinks fit in relation to –

- (a) the hearing, investigation, settlement and determination by the Tribunal of appeals,
- (b) the proceedings and powers of the Tribunal including, without limitation, provision as to procedure (including the method of pleading, the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given),
- (c) the summoning of witnesses, the service of documents and otherwise as to the giving of evidence,
- (d) the carrying out by the Tribunal of any of its functions under the Law, and
- (e) ancillary matters.

(2) Rules of procedure under subsection (1) may, without limitation –

- (a) regulate procedure in connection with matters preparatory to hearings (including the publication of notice of hearings) and subsequent to hearings (including the publication, interpretation and enforcement of decisions and reasons for decisions), as well as in connection with the conduct of hearings,
- (b) make provision for the striking out of appeals (or of any claim or application in an appeal), and
- (c) make provision as to the representation, and joining, of parties.

(3) The Tribunal shall, subject to the provisions of this Part, and subject also to the provisions of any rules of procedure made by the Committee for the Environment & Infrastructure under this section, determine its own procedure.

**Costs of the parties.**

17. Each party to an appeal shall bear its own costs incurred in connection with an appeal and, for the avoidance of doubt, the Tribunal shall not have any power to order that the costs of an appeal, or any part thereof, incurred by one party shall be paid for by another.

**Costs, fees, expenses and allowances of Panel and Tribunal members and expert witnesses.**

18. (1) There shall be paid to the members of the Panel and the Tribunal such allowances as the Committee for the Environment & Infrastructure may determine, together with the travelling and other expenses incurred by them in connection with the exercise of their functions under the Law.

(2) There shall be paid to any expert or other advisor, appointed by

the Tribunal to advise in connection with the determination of any particular appeal, the reasonable charges claimed by that expert or advisor, together with any travelling and other expenses incurred by that expert or advisor in connection with the provision of their advice.

(3) The costs, fees, expenses and allowances described in this section must be paid by the Committee for the Environment & Infrastructure from the general revenue account of the States.

**Appointment of secretary to the Panel or the Tribunal.**

19. The Committee for the Environment & Infrastructure may –
- (a) appoint a secretary to the Panel or to the Tribunal on such terms and conditions and with such functions, and
  - (b) provide such other officers and facilities to the Panel or the Tribunal as the Committee thinks fit.

PART IV

MISCELLANEOUS PROVISIONS

**Relationship with enforcement provisions under the Law.**

20. (1) For the avoidance of doubt, the enforcement functions exercisable by the Director under this Ordinance are exercisable in addition to, and not in substitution for, enforcement functions exercisable by the Director under the Law.

(2) The institution of criminal proceedings under sections 65 to 68 of the Law does not –

- (a) prevent the exercise by the Director of the power to issue a compliance notice or other notice under the Law, or
- (b) prejudice the continuation of any proceeding or the taking of any action under section 63 of the Law.

**Interpretation.**

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

**"2010 Ordinance"** means the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010<sup>d</sup>,

**"the Air Pollution Ordinance"** means the Environmental Pollution (Air Pollution) Ordinance, 2019,

**"Guernsey"** includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coasts of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

**"the Law"** means the Environmental Pollution (Guernsey) Law, 2004,

**"notify"** means notify in writing,

**"the Panel"**: see section 10(a),

**"plant"** includes any type of machinery, implement or apparatus, whether affixed to or at a specific site or capable of being operated at more

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<sup>d</sup> Ordinance No. XVIII of 2010; as amended by Ordinance No. IX of 2016.

than one site,

**"prescribed operation"**: see section 13(1) of the Law, section 1 of the 2010 Ordinance, [...] section 2 of the Air Pollution Ordinance [and section 1 of the Water Pollution Ordinance],

**"President of the Panel"** means the person designated as President of the Environmental and Public Health Appeals Panel under section 11,

**"specially controlled waste"**: see section 37(1) of the Law and section 26 of the 2010 Ordinance,

**"specified"** means specified in writing by the Director,

[ **"steps"** includes, for the avoidance of doubt, requirements to discontinue or refrain from an action or activity,]

**"the Tribunal"**: see section 10(b),

**"vice-President"** means the person designated as vice-President of the Environmental and Public Health Appeals Panel under section 11, [...]

**"water"**: see section 2(4)(b) of the Law,

[ **"water pollution"**: see section 10(1) of the Water Pollution Ordinance, and]

[ **"the Water Pollution Ordinance"** means the Environmental Pollution (Water Pollution) Ordinance, 2022.]

**NOTE**

*In section 21, first, the words omitted in the first pair of square brackets in the definition of the expression "prescribed operation" were repealed and those in the second pair of square brackets therein were inserted, second, the definition of the expression "steps" was inserted and, third, the word omitted in square brackets in the definition of the expression "vice-President" was repealed and the definitions of the expressions "water pollution" and "the Water Pollution Ordinance" were inserted by the Environmental Pollution (Water Pollution) Ordinance, 2022, section 7, Schedule 3, paragraph 5, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 28th November, 2022.*

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**Consequential amendments.**

22. The Schedule, which provides for consequential amendments, has effect.

**Extent.**

23. This Ordinance has effect in Guernsey.

**Citation.**

24. This Ordinance may be cited as the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019.

**Commencement.**

25. This Ordinance shall come into force on the 2<sup>nd</sup> of December, 2019.

SCHEDULE  
CONSEQUENTIAL AMENDMENTS

Section 22

**Amendment of the 2010 Ordinance.**

1. The 2010 Ordinance is amended as follows –
  - (a) sections 7 to 16 of Part II (appeals) and Part VI (Director's statutory powers of entry, examination, inspection and investigation and to issue compliance notices) are repealed, and
  - (b) in section 42(1) (interpretation), the definitions of "Bailiff", "compliance notice", "Committee for the Environment & Infrastructure", "Law Officer of the Crown", "nuisance", "Panel", "police officer", "President of the Panel", "the Tribunal" and "vice-President" are repealed.

**Amendment of the Environmental Pollution (Public Register) Regulations, 2010.**

2. (1) The Environmental Pollution (Public Register) Regulations, 2010<sup>e</sup> are amended as follows.
  - (2) For each reference to "Part VI of the Ordinance" substitute "the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019".
  - (3) In regulation 3(1) (interpretation) –
    - (a) in the definition of "compliance notice", for "section 41 of the Ordinance" substitute "sections 7 and 8 of the

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<sup>e</sup> G.S.I. No. 52 of 2010.

Environmental Pollution (Enforcement and Appeals)  
Ordinance, 2019, and

- (b) in the definition of "inspection and monitoring activities" –
  - (i) in paragraph (a), for "section 35, 37 or 38 of the Ordinance" substitute "section 1, 3 or 4 of the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019",
  - (ii) in paragraph (b), for "section 36 of the Ordinance" substitute "section 2 of the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019", and
  - (iii) in the definition of "a prescribed operation", for "and section 1 of the Ordinance" substitute ", section 1 of the Ordinance and section 2 of the Environmental Pollution (Air Pollution) Ordinance, 2019".

**Amendment of the Environmental Pollution (Appeals and References) Order, 2010.**

3. (1) The Environmental Pollution (Appeals and References) Order, 2010<sup>f</sup> is amended as follows.

- (2) In article 13(1) (interpretation) –

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<sup>f</sup> Order of the Royal Court No. IV of 2010.

*Consolidated text*

- (a) for the definition of "the Ordinance" substitute –

**"the Ordinance"** means the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019,"

- (b) in the definition of "person chairing the Tribunal" for "section 10(2)(b)" substitute "section (13)(2)(b)",
- (c) in the definition of "President of the Panel", for "section 8" substitute "section 11",
- (d) in the definition of "the Secretary" for "section 16" substitute "section 19", and
- (e) in the definition of "vice-President of the Panel", for section 8" substitute "section 11".