

BILLET D'ÉTAT No. XI, 2012

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PROJET DE LOI

ENTITLED

The Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2012

THE STATES, in pursuance of their Resolution of the 23rd November, 2010^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of 1987 Law.

1. The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended^b, is further amended as follows.

2. After section 2(2A)^c insert the following subsection -

"(2AB) Notwithstanding the repeal on the 28th October, 2008 by the Financial Services Commission (Amendment) (Bailiwick of

^a Adjourned from the 27th October, 2010; Article IV of Billet d'État No. XXI of 2010.

^b Ordres en Conseil Vol. XXX, p. 243; amended by Vol. XXXIII, p. 471; Vol. XXXV(1), p. 271; Vol. XXXVII, p. 24; Vol. XXXVIII, p. 79; No's. XVII and XXI of 2002; No's. III and XXII of 2003; No's. XIX, XXIII and XXIV of 2008; No. XIX of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXX, p. 722; and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Regulations, 2009 (G.S.I. 2009/29).

^c Subsection (2A) was inserted by Order in Council No. XVII of 2002 (Vol. XLII (I), p. 644).

Guernsey) Law, 2008 of subparagraphs (i) and (ii) of subsection (2A)(a), the Commission shall be deemed, between that date and the 23rd November, 2010 (when the States resolved pursuant to section 2(2)(f) that the general functions of the Commission shall include the taking of such steps as the Commission considers necessary or expedient for participating in the ownership and governance of the GTA University Centre, including (without limitation) to act as protector of the charitable trust declared on the 6th June, 1996 by which the Finance Training Agency Trust was constituted, and to fund and support the GTA University Centre) to have had power to perform those functions in all respects as if the said subparagraphs (i) and (ii) had not been repealed."

Citation.

3. This Law may be cited as the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2012.

The Merchant Shipping (Oil Pollution) (Bunkers Convention) (Bailiwick of Guernsey) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 30th day of September, 2011^a, and in exercise of the powers conferred on them by sections 130(1)(e), 289(1)(b) and 290(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^b and all other powers enabling them in that behalf, hereby order:-

Amendment of the 2002 Law.

1. The Merchant Shipping (Bailiwick of Guernsey) Law, 2002 is amended as follows.

Meaning of "the Liability Convention", "the Bunkers Convention" and other expressions.

2. (1) Section 160 (meaning of "**the Liability Convention**" and related expressions) is amended as follows.

(2) In the heading, before "**the Liability Convention**" there is inserted "**the Bunkers Convention**",.

(3) In subsection (1) –

(a) before the definition of "**the Liability Convention**",

^a Article XVII of Billet d'État No XV of 2011.

^b Order in Council No. VIII of 2004; amended by Ordinance XXXIII of 2003; by Ordinance No. XXXV of 2009; and by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010).

there is inserted -

"the Bunkers Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

"Bunkers Convention country" means a country in respect of which the Bunkers Convention is in force;

"Bunkers Convention State" means a State which is a party to the Bunkers Convention;"; and

(b) in the definition of **"Liability Convention State"**, after "the" there is inserted "Liability".

(4) In subsection (2), after "Convention" (in the first place it appears), there is inserted "or the Bunkers Convention" and for "the Liability Convention" (in the second place it appears), there is substituted "that Convention".

Liability for oil pollution in case of tankers.

3. (1) Section 161 (liability for oil pollution in case of tankers) is amended as follows.

(2) For "owner" and "owners" (in each place), there is substituted respectively "registered owner" and "registered owners".

(3) In subsection (2), the words after paragraph (b) are omitted.

(4) After subsection (2), there is inserted -

"(2A) In this Chapter, such a threat is referred to as a relevant threat of contamination falling within subsection (2) of this section."

(5) Subsections (7) and (8) are omitted.

Liability for pollution by bunker oil.

4. After section 161, there is inserted –

"Liability for pollution by bunker oil.

161A. (1) Subject to subsection (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship then (except as otherwise provided by this Chapter) the owner of the ship shall be liable –

- (a) for any damage caused outside the ship in the territory of Guernsey by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Guernsey by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of Guernsey by any measures so taken.

(2) Subject to subsection (3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused

outside a ship by the contamination that might result if there were a discharge or escape of bunker oil from the ship then (except as otherwise provided by this Chapter) the owner of the ship shall be liable -

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Guernsey; and
- (b) for any damage caused outside the ship in the territory of Guernsey by any measures so taken.

(3) There shall be no liability under this section in relation to -

- (a) a discharge or escape of bunker oil from a ship to which section 161 applies, or
- (b) a threat mentioned in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

(4) In the subsequent provisions of this Chapter -

- (a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subsection (3)(a), is referred to as a discharge or escape of bunker oil falling within subsection (1) of this section; and

- (b) a threat mentioned in subsection (2), other than one excluded by subsection (3)(b), is referred to as a relevant threat of contamination falling within subsection (2) of this section.

(5) Where a person incurs a liability under subsection (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of Guernsey included the territory of any other Bunkers Convention country.

(6) Where –

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) In this Chapter (except in section 178(1)) "owner", except when used in the term "registered owner", means the registered owner, bareboat charterer, manager and operator of the ship. "

Further liability for oil pollution.

5. (1) Section 162 (liability for pollution in case of other ships) is amended as follows.

(2) In the heading, for "in case of other ships" there is substituted "in other cases".

(3) For "owner" and "owners" (in each place), there is substituted respectively "registered owner" and "registered owners".

(4) In subsections (1) and (2), at the beginning there is inserted "Subject to subsection (2A)," and the words "other than a ship to which section 161 applies" are omitted.

(5) In subsection (2), the words after paragraph (b) are omitted.

(6) After subsection (2), there is inserted –

"(2A) No liability shall be incurred under this section by reason of –

(a) a discharge or escape of oil from a ship to which section 161 applies or a relevant threat of contamination falling within subsection (2) of that section;

(b) a discharge or escape of bunker oil falling within section 161A(1) or a relevant threat of contamination falling within section 161A(2).

(2B) In the subsequent provisions of this Chapter –

- (a) a discharge or escape of oil from a ship, other than one excluded by subsection (2A), is referred to as a discharge or escape of oil falling within subsection (1) of this section; and
- (b) a threat mentioned in subsection (2), other than one excluded by subsection (2A), is referred to as a relevant threat of contamination falling within subsection (2) of this section."

(7) In subsection (5), after "section", there is inserted "(apart from subsection (2A))".

Exceptions from liability under sections 161, 161A and 162.

6. (1) Section 163 (exceptions from liability under sections 161 and 162) is amended as follows.

(2) In the heading, after "161", there is inserted ", 161A".

(3) For the words from "No" to "contamination" (in the second place it appears) there is substituted –

"(1) No liability shall be incurred by a person ("the defendant") under section 161, 161A or 162 by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subsection (2) applies.

(2) This subsection applies if the discharge or escape or the relevant threat of contamination (as the case may be) -".

(4) In paragraph (b), for "owner", there is substituted "defendant".

Restriction of liability for oil pollution.

7. (1) Section 164 (restriction of liability for oil pollution) is amended as follows.

(2) In the heading, for "oil pollution", there is substituted "pollution from oil or bunker oil".

(3) In subsection (1) –

(a) for paragraphs (a) and (b), there is substituted –

"(a) there is a discharge or escape of oil from a ship to which section 161 applies or there arises a relevant threat of contamination falling within subsection (2) of that section, or

(b) there is a discharge or escape of oil falling within section 162(1) or there arises a relevant threat of contamination falling within section 162(2),",

and

(b) for "owner", there is substituted "registered owner".

(4) In subsection (2), for "owner", in both places, there is substituted "registered owner".

(5) After subsection (2), there is inserted –

"(2A) Where, as a result of any occurrence –

- (a) there is a discharge or escape of bunker oil falling within section 161A(1); or
- (b) there arises a relevant threat of contamination falling within section 161A(2),

then, whether or not the owner of the ship in question incurs any liability under section 161A –

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2B) Subsection (2A)(ii) applies to-

- (a) any servant or agent of the owner;
- (b) any person not falling within paragraph (a) above but engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (d) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 161A; and
- (e) any servant or agent of a person falling within paragraph (c) or (d).".

(6) In subsection (3), for "the owner of a ship under section 161 or 162", there is substituted "a person under section 161, 161A or 162".

Liability under section 161, 161A or 162: supplementary provisions.

8. After section 164, there is inserted –

"Liability under section 161, 161A or 162: supplementary provisions.

164A. (1) For the purposes of this Chapter –

- (a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;
- (b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;
- (c) where more than one discharge or escape of oil or bunker oil results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (d) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(2) Part I of the Law Reform (Tort) Guernsey Law, 1979 shall apply in relation to any damage or cost for which a person is liable under section 161, 161A or 162, but which is not due to his fault, as if it were due to his fault."

Limitation of liability under section 161.

9. (1) In the cross-heading before section 165, at the end, there is inserted "*under section 161*".

- (2) In section 165 (limitation of liability under section 161) –
 - (a) in subsection (1), for "owner" there is substituted "registered owner" and after "contamination" there is inserted "falling within subsection (2) of that section", and
 - (b) in subsection (3), for "owner" there is substituted "registered owner".

Limitation actions.

- 10. In section 166 (limitation actions) –

- (a) in subsection (1), for "owner", there is substituted "registered owner", and
- (b) in subsection (6)(a), for "owner" there is substituted "registered owner" and at the end there is inserted "(in relation to any insurance or other security provided as mentioned in subsection (1) of that section)".

Concurrent liabilities of owners and others.

- 11. In section 168 (concurrent liabilities), for "owner" (in each place), there is substituted "registered owner".

Limitation period for claims.

- 12. (1) Before section 170, there is inserted the following cross-heading: "*Limitation period for claims under this Chapter*".

(2) In section 170 (extinguishment of claims), after "161", there is inserted ", 161A".

Compulsory insurance against liability for oil pollution.

13. In section 171(5) (compulsory insurance against liability for pollution), for "owner", there is substituted "registered owner".

Compulsory insurance for pollution by bunker oil.

14. After section 171, there is inserted –

"Compulsory insurance against liability for pollution from bunker oil.

171A. (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) below shall apply to any ship having a gross tonnage greater than 1,000 tons calculated in the manner prescribed by an order made by the Board under paragraph 5(2) of Part II of Schedule 7.

(2) The ship shall not enter or leave a port in Guernsey or arrive at or leave a terminal in the territorial sea adjacent to Guernsey nor, if the ship is a Guernsey ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force –

- (a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunkers Convention; and
- (b) a certificate complying with the provisions of subsection (3) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.

(3) The certificate must be –

- (a) if the ship is a Guernsey ship, a certificate issued by the Board;
- (b) if the ship is registered in a Bunkers Convention country other than Guernsey, a certificate issued by or under the authority of the government of the other Bunkers Convention country; and
- (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Board or by or under the authority of the government of any Bunkers Convention country other than Guernsey.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of Customs and Excise or of the Board and, if the ship is a Guernsey ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) by reason of there being no certificate in force as mentioned in that subsection, the master or registered owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding level 5 on the uniform scale.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master shall be liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(7) If a ship attempts to leave a port in Guernsey in contravention of subsection (2), the ship may be detained.

(8) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of (or otherwise in connection with) proceedings for an offence under subsection (5) against the company as registered owner of the ship shall be treated as duly served on the company if the document is served on the master of the ship; and in this subsection "**foreign company**" means a company or body which is not one to which either section 116 of the Companies (Guernsey) Law, 1994^c, as amended, or section 160 of the Companies (Alderney) Law, 1994^d applies so as to authorise the service of the document in question under one of those provisions.

(9) Any person authorised to serve any document for the purposes of the institution of (or otherwise in connection with) the institution of proceedings for an offence under this section shall, for that purpose, have the right to go on board the ship in question.

^c Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; No. IX of 2006; and by Ordinance No. X of 1997; Ordinance No. XXXIII of 2003 and Ordinances XI, XII and XVIII of 2006.

^d Ordres en Conseil Vol. XXXV(2), p. 777; as amended by Vol. XLI, p.13; Vol. XLII, p. 420; and Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406; and Ordinance No. VII of 2009; and Alderney Ordinances No. V of 1995; No. I of 1996; No. II of 1997; No. III of 1995; No. II of 1997; No. XI of 2007; No. XVII of 2008; and No. VI of 2009.

(10) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (1), the best available evidence shall be used in calculating the tonnage of the ship in accordance with any order under paragraph 5(2) of Part II of Schedule 7. "

Issue of certificate by Board.

15. (1) Section 172 (issue of certificate by Board) is amended as follows.

(2) In subsection (1) –

(a) for "section 171", there is substituted "section 171(2)", and

(b) for "owner", there is substituted "registered owner".

(3) After subsection (1), there is inserted –

"(1A) Subject to subsection (2) below, if the Board is satisfied, on the application for such a certificate as is mentioned in section 171A(2) in respect of a Guernsey ship or a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Board shall issue such a certificate to the registered owner."

(4) For subsection (2), there is substituted –

"(2) The Board may refuse the certificate if it is of the opinion that there is a doubt whether –

- (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
- (b) the insurance or other security will cover the registered owner's liability under section 161, or the owner's liability under section 161A, as the case may be."

Rights of third parties against insurers.

16. (1) Section 173 (rights of third parties against insurers) is amended as follows.

(2) In subsection (1) –

- (a) for "owner" there is substituted "registered owner",
- (b) for "171" there is substituted "171(2)", and
- (c) the words from "(in the" to the end are omitted.

(3) After subsection (1), there is inserted –

"(1A) Where it is alleged that the owner of a ship has incurred a liability under section 161A as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination

arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 171A(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.

(1B) In the following provisions of this section, “the insurer” means the person who provided the insurance or other security referred to in subsection (1) or subsection (1A), as the case may be.”.

(4) In subsection (2) –

- (a) after "section", there is inserted "in respect of liability under section 161",
- (b) for "owner's", there is substituted "registered owner's", and
- (c) for "owner", there is substituted "registered owner".

(5) In subsection (3) –

- (a) after "claims", there is inserted "in respect of liability under section 161 which are",
- (b) for "owner" (in both places), there is substituted "registered owner", and
- (c) after "his liability" (in the second place it appears), there is inserted "under section 165".

(6) In subsection (4) –

(a) for "owner", there is substituted "registered owner",
and

(b) after "liability", there is inserted "(in relation to
liability under section 161)".

(7) After subsection (4), there is inserted –

"(4A) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 161A it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.

(4B) The insurer may limit his liability in respect of claims in respect of liability under section 161A which are made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability by virtue of section 194; but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from any act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 7.

(4C) Where the owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under section 161A) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other."

(8) In subsection (5), after "171", there is inserted "or 171A".

Jurisdiction of Guernsey courts and registration of foreign judgments.

17. (1) Section 174 (jurisdiction of Guernsey courts and registration of foreign judgments) is amended as follows.

(2) In subsection (1) –

- (a) in paragraph (a), for "any oil is discharged or escapes from a ship but" there is substituted "there is a discharge or escape of oil from a ship to which section 161 applies, or a discharge or escape of oil falling within section 162(1), which",
- (b) in paragraph (b), after "contamination" there is inserted "falling within section 161(2) or 162(2)", and
- (c) in paragraph (i), for "owner" there is substituted "registered owner".

(3) After subsection (2), there is inserted –

"(2A) Where –

- (a) there is a discharge or escape of bunker oil falling within section 161A(1) which does not result in any damage caused by contamination in the territory of Guernsey and no measures are reasonably taken to prevent or minimise such damage in that territory, or

- (b) any relevant threat of contamination falling within section 161A(2) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of Guernsey,

no court in Guernsey shall hear any proceedings to enforce a claim arising from any relevant damage or cost –

- (i) against the owner of the ship, or
- (ii) against any person to whom section 164(2A)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(2B) In subsection (2A) above, "**relevant damage or cost**" means –

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Bunkers Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country;

- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;

and section 164(2B)(d) shall have effect for the purpose of subsection (2A)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b) above."

- (4) For subsection (3), there is substituted –

"(3) Part II of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957^e shall apply, whether or not it would so apply apart from this section, to –

- (a) any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 161; and
- (b) any judgment given by a court in a Bunkers Convention country to enforce a claim in

^e Ordres en Conseil, Vol. XVII, p. 178; amended by Vol. XXXV(1), p. 218.

respect of a liability incurred under any provision corresponding to section 161A;

and in its application to any such judgment that Part shall have effect with the omission of section 6(2) and (3) of that Law."

Government ships.

18. (1) Section 175 (Government ships) is amended as follows.

(2) For subsection (2), there is substituted –

"(2) In relation to a ship owned by a State and for the time being used for commercial purposes –

(a) it shall be sufficient compliance with section 171(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of that Convention; and

(b) it shall be sufficient compliance with section 171A(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Bunkers Convention will be met

up to the limits set out in Chapter II of the Convention in Part I of Schedule 7. ".

(3) After subsection (3), there is added –

"(4) Every Bunkers Convention State shall, for the purposes of any proceedings brought in a court in Guernsey to enforce a claim in respect of a liability incurred under section 161A, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the execution of a judgment against the property of any State."

Limitation of liability under section 161A.

19. In section 176 (limitation of liability under section 162) –

- (a) in the heading, after "section" there is inserted "161A or",
- (b) for "section 162", there is substituted "section 161A or 162".

Amendment of section 178 (Interpretation).

20. (1) Section 178 (interpretation) is amended as follows.

(2) In subsection (1) –

- (a) after "Chapter", there is inserted "(except this subsection)",
- (b) before the definition of "the court", there is inserted –

"**bunker oil**" means any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;",

- (c) in the definition of "oil", after "**oil**", there is inserted ", except in the term **bunker oil**",
- (d) in the definition of "owner", for "means" (in the first place it appears), there is substituted "has the meaning given by section 161A(7), and **registered owner** means", and
- (e) in the definition of "relevant threat of contamination" for the words from "shall" to the end there is substituted –

"includes (unless a contrary intention appears) –

- (a) a relevant threat of contamination falling within section 161(2) (as defined in section 161(2A));
- (b) a relevant threat of contamination falling within section 161A(2) (as defined in section 161A(4)(a)); and
- (c) a relevant threat of contamination falling within section 162(2) (as defined in section 162(2B)(b));".

(3) In subsection (2) –

- (a) after "oil", there is inserted "or bunker oil",
- (b) after "owner" in the first place it appears, there is inserted "or the registered owner", and
- (c) after "owner" in the second place it appears, there is inserted "or the registered owner (as the case may be)".

(4) In subsection (3)(b), after "Liability Convention country", there is inserted "or Bunkers Convention country".

Citation, commencement and transitional provision.

21. (1) This Ordinance may be cited as the Merchant Shipping (Oil Pollution) (Bunkers Convention) (Bailiwick of Guernsey) Ordinance, 2012, and shall come into force on the day appointed by an Order of the Public Services Department.

(2) Nothing in this Ordinance applies in relation to –

- (a) any occurrence before the day mentioned in subsection (1), or
- (b) any occurrence in a series of occurrences having the same origin, if the first took place before that day.

The Pilotage (Amendment) Ordinance, 2012

THE STATES, on the representations of the Public Services Department, and in exercise of the powers conferred on them by section 1 of the Pilotage (Guernsey) Law, 1966^a, hereby order:-

Amendment to Ordinance of 1967.

1. In section 4(2)(b) of the Pilotage Ordinance, 1967^b, for the words "the Royal Court", substitute "the Pilotage Board".

Interpretation.

2. References in this Ordinance to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

Citation.

3. This Ordinance may be cited as the Pilotage (Amendment) Ordinance, 2012.

Commencement.

4. This Ordinance shall come into force on the 1st July, 2012.

^a Ordres en Conseil Vol. XX, p. 206; amended by Vol. XXIX, p. 340 and Vol. XLI, p. 681.

^b Recueil d'Ordonnances Tome XV, p. 50; amended by Tome XVIII, p. 24; Tome XX, p. 161; Tome XXIII, p.34; Tome XXIV, p. 1; Tome XXVI, p. 118.

The Guernsey Competition and Regulatory Authority Ordinance, 2012

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The Guernsey Competition and Regulatory Authority Ordinance, 2012

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

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

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

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

^d Order in Council No. XV of 2009.

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

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

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

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

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

PART I
ESTABLISHMENT OF
GUERNSEY COMPETITION AND REGULATORY AUTHORITY

The Authority.

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

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

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

Status of Authority.

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

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

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

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

Power to give guidance or directions to Authority.

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

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

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

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

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

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

PART II
FUNCTIONS, POWERS AND STATUS OF AUTHORITY

Functions of Authority.

4. The functions of the Authority are -

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

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

Ordinance and any other enactment, or

(ii) by Resolution of the States.

Transfer of functions of Director General of Utility Regulation.

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

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

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

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

Transfer of undertaking of Director General of Utility Regulation.

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

Ancillary powers of Authority.

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

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

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

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

Power to apply for directions.

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

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

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

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

on a question of law.

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

Reports.

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

(2) The Department -

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

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

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

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

Grants and loans to the Authority.

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

Investment of surplus funds.

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

Exemption from income tax.

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

Financial and accounting provisions.

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

(2) Subsection (1) does not apply -

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

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

- (b) to monies required to be paid into the Public Utilities Regulation Fund by section 9(3) of the Regulation of Utilities Law, or
 - (c) if and to the extent that, in accordance with agreed financial procedures, the Department directs otherwise.
- (3) The Authority shall -
 - (a) keep proper accounts and proper records in relation to those accounts, and
 - (b) prepare in respect of each year, and submit to the Department, a statement of account giving a true and fair view of the state of affairs of the Authority.
- (4) The accounts of the Authority -
 - (a) shall be audited annually by auditors appointed by the States on the recommendation of the Public Accounts Committee, and
 - (b) shall be submitted, together with the auditors' report thereon, to the Department.
- (5) The Department shall in turn submit the accounts and auditors' report thereon to the States.

PART III
OFFENCES

False or misleading information.

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

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

he does any of the following -

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

- (iii) he produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under subsection (1) is liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both,
- (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

Confidentiality.

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

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

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

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

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

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

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

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

Criminal liability of directors, etc, of bodies corporate.

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

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

Criminal liability of partners, etc, of unincorporated bodies.

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

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

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

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

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

Defence of due diligence.

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

**PART VI
MISCELLANEOUS**

Exclusion of liability.

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

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

done in bad faith.

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

Interpretation.

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

"Authority" : see section 1(1),

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

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

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

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

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

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

^m Order in Council No. XV of 2009.

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

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

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

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

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

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

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

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

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

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

"functions" includes duties and powers,

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

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

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

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

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

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

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

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

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

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

"States" means the States of Guernsey,

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

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

enactment and having legislative effect,

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

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

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Service of documents.

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

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a body corporate with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in Guernsey, by being left at, or sent by post or

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

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

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

(2) If a person notifies the Authority of an address for service within Guernsey for the purposes of this Ordinance or any relevant Ordinance, any document to be served on him may be served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published in La Gazette Officielle on two occasions falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

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

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

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

(7) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance and any relevant Ordinance to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

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

(9) In this section -

"document" does not include a summons,

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

"served" includes given,

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

(10) The provisions of this section -

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

Amendment of Regulation of Utilities Law.

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

Amendment of Competition Law.

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

Amendment of Utilities Laws.

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

Repeal.

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

General provisions as to subordinate legislation.

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

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

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

Citation.

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

Commencement.

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

SCHEDULE 1
THE AUTHORITY AND THE CHIEF EXECUTIVE

Members of Authority.

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

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

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

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

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

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

Tenure of office of members.

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

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

Resignation and removal of members.

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

(a) by giving written notice -

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

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

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

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

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

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

(c) he is insolvent,

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

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

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

Remuneration of members.

4. (1) The Authority shall pay to its members -

- (a) such expenses as it may determine, and
- (b) such remuneration, if any, as the Department may determine.

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

Committees.

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

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

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

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

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

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

- (c) remove any person appointed to it.

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

Procedure at meetings.

6. At a meeting of the Authority -

- (a) a quorum is the nearest whole number above one half of the number of members (including, for the avoidance of doubt, the Chairman) for the time being in office,
- (b) the person presiding shall be -
 - (i) the Chairman, if he is present, or
 - (ii) if the Chairman is not present -
 - (A) the person nominated by the Chairman to act in his place, or
 - (B) if that person is not present, the person elected to chair the meeting by, and from among, the ordinary members present,
- (c) each member other than the person presiding has one vote,

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

Transaction of business and written resolutions.

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

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

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

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

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

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

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

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

Participation in meetings.

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

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

Minutes.

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

Residual power to regulate procedure.

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

Appointment of staff.

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

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

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

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

Chief Executive.

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

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

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

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

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

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

Delegation of functions by Authority.

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

described in the instrument, other than -

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

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

Delegation of functions by Chief Executive.

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

the instrument, other than this power of delegation.

Other provisions as to delegation.

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

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

- (a) may be varied or terminated at any time by the Authority or by the Chief Executive, as the case may be, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function by the Authority or by the Chief Executive, as the case may be, while the arrangement subsists.

(3) The provisions of paragraphs 13 and 14 -

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

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

Appointment of Deputy Chief Executive.

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

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

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

Disclosure of interests.

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

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

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

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

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

Official seal.

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

(2) Any document -

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

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

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

Proof of documents.

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

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

SCHEDULE 2

TRANSFER OF UNDERTAKING OF DIRECTOR GENERAL OF UTILITY REGULATION TO AUTHORITY

Transfer of undertaking of Director General.

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

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

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

- (a) the Director General shall hold the property as trustee for the Authority, and
- (b) the Authority shall fully indemnify the Director General in respect of the liability.

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

commencement of this Ordinance.

Supplementary provisions as to transfer and vesting.

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

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

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

General.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

meaning of Schedule 1 to the said Law.

Auditors.

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

Evidence of transfer and vesting.

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

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

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

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

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

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

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

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

Evidence: documents.

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

Savings in respect of transfer and vesting of property.

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

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

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

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

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

Contracts of employment not covered by paragraphs 1 to 6.

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

Effect of transfer on contracts of employment, etc.

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

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

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

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

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

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

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

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

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

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

Effect of transfer on collective agreements.

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

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

by or in relation to the Authority, and

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

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

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

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

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

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

- (a) breach of contract, or

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

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

Dismissal of employee because of transfer of undertaking.

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

(2) The provisions of this section apply -

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

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

Effect of transfer on union recognition.

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

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

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

Restriction on contracting out.

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

Employment outside Guernsey.

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

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

Interpretation.

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

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

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

the carrying out of any such procedures,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of this Schedule.

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

SCHEDULE 3
AMENDMENT OF REGULATION OF UTILITIES LAW

Section 22

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

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

3. In section 2 -

- (a) after "their respective functions and powers" insert "under this Law and any Sector Law",
- (b) for "the Director General" substitute "the Guernsey Competition and Regulatory Authority (**the Authority**)",
- (c) in paragraph (d) for "the Director General" substitute "the Authority",
- (d) in the text immediately following paragraph (f) for "the Director General" substitute "the Authority".

4. In section 3 -

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

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

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

6. In section 4 -

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

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

Authority",

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

7. In section 5 -

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

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

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

9. In section 7 -

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

enactment",

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

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

10. In section 8 -

(a) in subsection (1) -

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

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

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

(iv) paragraph (b) is repealed,

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

11. In section 9 -

(a) for "Director General" wherever appearing substitute

"Authority",

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

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

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

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

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

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

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

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

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

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

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

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

12. In section 10 -

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

13. In section 11 -

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

14. In section 13 -

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

15. Section 13A is repealed.

16. In section 13B -

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

"Authority",

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

17. In section 15 -

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

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

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

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

18. In section 18 -

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

substitute "Authority",

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

19. Section 21 is repealed.

20. In section 22(1) -

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

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

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

repealed,

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

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

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

22. In section 24 -

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

- 23.** The Schedule is repealed.

SCHEDULE 4
AMENDMENT OF COMPETITION LAW

Section 23

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

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

3. In section 7(1), in the definition of "Director General" -

(a) for "is to be" substitute "may be", and

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

^w Order in Council No. XV of 2009.

SCHEDULE 5
AMENDMENT OF UTILITIES LAWS

Section 24

PART I
TELECOMMUNICATIONS LAW

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

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

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

4. In section 31(1) -

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

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

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

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

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

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

6. The provisions are -

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

PART II
ELECTRICITY LAW

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

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

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

4. In section 33(1) -

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

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

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

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

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

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

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

6. The provisions are -

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

PART III

POST OFFICE LAW

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

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

3. In section 45(1) -

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

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

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

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

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

5. The provisions are -

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

The Post Office (Bailiwick of Guernsey) (Amendment) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 30th September, 2011^a, and in exercise of the powers conferred on them by section 48(1) of the Post Office (Bailiwick of Guernsey) Law, 2001, as amended^b and all other powers enabling them in that behalf, hereby order:-

Amendment of Law.

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

2. In section 1(1) after "Subject to the provisions of subsections (2) and (3)" insert "and (3A)".

3. Section 1(2)(a) is repealed.

4. In section 1(3) for "subsection (1)" substitute "subsection (2)".

5. After section 1(3) insert the following subsections -

"(3A) The Authority may, having regard to the objectives set out in section 2 of the Regulation Law, and subject to the provisions of any States' Directions, by direction grant an exemption from subsection (1).

^a Article XIV of Billet d'État No. XV of 2011 (Volume I).

^b Order in Council No. XV of 2001; amended by Ordinance No. XXXIV of 2001; Order in Council No. XXX of 2003; Ordinance No. XXXIII of 2003; Ordinance No. XXXIII of 2010; and the Guernsey Competition and Consumer Authority Ordinance, 2012.

(3B) An exemption under subsection (3A) -

- (a) may be granted to a particular person or particular class of persons,
- (b) may be granted subject to such conditions as the Authority may think fit,
- (c) when granted to a particular class of persons, shall be published, and
- (d) unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified in or determined by or under the exemption."

6. In section 2(3) the words "for the provision of reserved services" are repealed.

7. In section 4(4) for "Utility Appeals Tribunal" substitute "Royal Court".

8. After section 5(1) insert the following subsections -

"(1A) A licence condition may, without prejudice to the generality of subsection (1) and in particular paragraph (c) thereof, require a licensee to contribute to a fund to be used to finance or to assist in the financing of the provision, by the licensee required to provide such a

service, of a universal postal service.

(1B) A licence condition under subsection (1A) may, without limitation, specify or make provision in respect of -

- (a) the timing, frequency and amount, or manner of calculation of the amount, of the contributions,
- (b) the manner in which the amount of the contributions is to be raised by the licensee (whether by means of a levy on services or otherwise),
- (c) the manner in which the contributions are to be made to the fund (whether by means of the payment of money, the maintenance of reserves, the provision of guarantees or other security, or otherwise), and
- (d) the vesting, administration, allocation, distribution and use of the fund.

(1C) A licence condition under subsection (1A) may reserve power to the Authority to specify or make provision in respect of anything referred to in paragraphs (a) to (d) of subsection (1B).".

9. Section 9 is repealed.

10. In sections 32(5) and 33(4) for "Utility Appeals Tribunal" substitute

"Royal Court".

11. In section 45(1) -

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

Savings for section 9 orders.

12. Notwithstanding the repeal of section 9 of the Post Office (Bailiwick of Guernsey) Law, 2001 by section 9 of this Ordinance, an Order made under that section and in force immediately before the date of commencement of this Ordinance shall remain in force until the earlier of -

- (a) the date of its revocation by a subsequent Order of the Guernsey Competition and Regulatory Authority made in all respects as if the said section 9 were still in force, or
- (b) such date as may be appointed by States' Directions given by Resolution of the States under section 3(1) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, as amended.

Extent.

13. This Ordinance has effect throughout the Bailiwick.

Citation.

14. This Ordinance may be cited as the Post Office (Bailiwick of Guernsey) (Amendment) Ordinance, 2012.

Commencement.

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

The Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 30th September, 2011^a, and in exercise of the powers conferred on them by sections 3(1A) and 23 of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, as amended^b and all other powers enabling them in that behalf, hereby order:-

States' Directions to Director General.

1. The States, on the recommendation of the Commerce and Employment Department made after consultation with the Director General, by this Ordinance gives the Director General the directions set out in sections 2 and 3.

Principles for economic regulation.

2. (1) The Director General shall follow the six principles for economic regulation set out in paragraph 5.11 of the report of the States Commerce and Employment Department entitled "Review of Utility Regulation" and dated the 8th July, 2011^c ("**the report**") and take them into account in the performance of his functions and powers.

(2) The six principles for economic regulation are for ease of reference reproduced in the Schedule.

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

^b Order in Council No. XI of 2001; amended by Ordinance No. XXXIII of 2003; Ordinance No. III of 2007; Order in Council No. XXII of 2009; and the Guernsey Competition and Regulatory Authority Ordinance, 2012; section 3(1A) was inserted by Order in Council No. XXII of 2009.

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

Memoranda of understanding with States' owned utilities.

3. The Director General shall prepare, with Guernsey Post Limited and Guernsey Electricity Limited respectively, a Memorandum of Understanding setting out formally the approach, process, practice and procedure, objectives, deliverables and measurements of success for the future regulation of each company as described in paragraphs 5.14 and 5.15 of the report.

Regard to be had to contents of Billet.

4. The Director General shall, in complying with the directions set out in sections 2 and 3, and without limitation, have regard to paragraph 5 of the report ("principles for economic regulation – the role of the regulator").

Interpretation.

5. (1) In this Ordinance -

"**Director General**" means the holder of the Office of the Director General of Utility Regulation,

"**report**" : see section 2(1),

"**OUR**" means the Office of the Director General of Utility Regulation,

and other expressions shall be construed in accordance with the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001, as amended.

(2) The Interpretation (Guernsey) Law, 1948^d applies to the interpretation of this Law throughout the Bailiwick.

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

Extent.

6. This Ordinance has effect throughout the Bailiwick.

Citation.

7. This Ordinance may be cited as the Regulation of Utilities (States' Directions) (Bailiwick of Guernsey) Ordinance, 2012.

Commencement.

8. This Ordinance shall come into force on the 30th May, 2012.

SCHEDULE

Section 2(1)

THE SIX PRINCIPLES FOR ECONOMIC REGULATION

(a) **Accountability.**

Independent regulation needs to take place within a framework of duties and polices set by the democratically accountable States of Deliberation.

Roles and responsibilities between the States of Guernsey and the OUR should be allocated in such a way as to ensure that regulatory decisions are taken by the body that has the legitimacy, expertise and capability to arbitrate between the required trade-offs.

Decision-making powers of the OUR should be, within the constraints imposed by the need to preserve commercial confidentiality, exercised transparently and subject to appropriate scrutiny and challenge.

(b) **Focus.**

The role of the OUR should be concentrated on protecting the interests of end users of infrastructure services by ensuring the operation of well-functioning and contestable markets where appropriate or by designing a system of incentives and penalties that replicate as far as possible the outcomes of competitive markets.

The OUR should have clearly defined, articulated and prioritised responsibilities focussed on outcomes rather than specified inputs or tools.

The OUR should have adequate discretion to choose the tools that best achieve these outcomes.

(c) **Predictability.**

The framework of economic regulation should provide a stable and objective environment enabling all those affected to anticipate the context for future decisions and to make long term investment decisions with confidence.

The framework of economic regulation should not unreasonably unravel past decisions, and should allow efficient and necessary investments to receive a reasonable return, subject to the normal risks inherent in markets.

(d) **Coherence.**

Regulatory frameworks should form a logical part of the States of Guernsey's broader policy context, consistent with established priorities.

Regulatory frameworks should enable cross-sector delivery of policy goals where appropriate.

(e) **Adaptability.**

The framework of economic regulation needs capacity to evolve to respond to changing circumstances and continue to be relevant and effective over time.

(f) **Efficiency.**

Policy interventions must be proportionate and cost-effective while decision making should be timely, and robust.

The Income Tax (Guernsey) (Amendment) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 29th September, 2011^a and the 15th December, 2011^b, and in exercise of the powers conferred on them by sections 75Q, 203A and 208C of the Income Tax (Guernsey) Law, 1975^c and all other powers enabling them in that behalf, hereby orders:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended, is further amended as follows.

2. In section 43(2) after paragraph (ii) and the proviso thereto insert the following paragraphs -

"or (iii) in respect of any year of charge for which the husband is not entitled to a personal allowance for married persons prescribed by the States under section 36(1) by way of relief from income tax, or

(iv) in such other cases or circumstances, and subject to such limitations, conditions, restrictions and qualifications, as may be prescribed by Resolution of the States or regulation of the Department."

^a Article XI of Billet d'État No. XV of 2011.

^b Proposition 15 of Billet d'État No. XXII of 2011.

^c Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by No. V of 2011.

3. After section 48(2) insert the following subsection -

"(2A) For the avoidance of doubt, a person shall be regarded as an agent for the purposes of this section whether he pays the income in respect of which the non-resident person is liable to tax -

- (a) directly to the non-resident, or
- (b) indirectly, to or through an agent, intermediary or other third party or any number of agents, intermediaries or other third parties, on behalf of or for onward transmission to the non-resident."

4. In section 75A(1)(a)^d after subparagraph (ii) insert the following subparagraph -

"or (iii) the enforcement of any such liability and the collection and recovery of any amount due,".

5. In section 75A(1)(b) after "any such liability," insert "or to the enforcement of any such liability and the collection and recovery of any amount due,".

6. In section 75B(1)^e -

^d Section 75A was inserted by No. XVII of 2005.

^e Section 75B was inserted by No. XVII of 2005.

(a) after "inquiring into the liability" insert "or the amount of the liability", and

(b) after "any person (**"the taxpayer"**)" insert ", or for the purpose of the enforcement of any such liability and the collection and recovery of any amount due,".

7. In section 75B(2) after paragraph (b) insert the following paragraph -

"and/or (c) the enforcement of any such liability and the collection and recovery of any amount due.".

8. In section 75C(1)^f for "section 75CA"^g substitute "subsection (2)".

9. After section 75C(1) insert the following subsection^h -

"(2) The Director of Income Tax must be satisfied that the request for information is made in accordance with the provisions of, and for the purposes of, the approved international agreement pursuant to which it is made.".

10. Section 75CAⁱ is repealed.

^f Section 75C was inserted by No. XVII of 2005.

^g The expression "section 75CA" was inserted by the Income Tax (Guernsey) (Amendment) Law, 2008.

^h The original subsection (2) of section 75C was repealed by the Income Tax (Guernsey) (Amendment) Law, 2008.

ⁱ Section 75CA was inserted by the Income Tax (Guernsey) (Amendment) Law, 2008.

11. In section 75D(5)^j after "or the amount thereof," insert "or to the enforcement of any such liability and the collection and recovery of any amount due,".

12. In section 75E(2)(a)^k after subparagraph (ii) insert the following subparagraph -

"or (iii) the enforcement of any such liability and the collection and recovery of any amount due,".

13. In section 75E(2)(c) after "any such liability," insert "or to the enforcement of any such liability and the collection and recovery of any amount due,".

14. In section 75J(3)(b)^l after subparagraph (ii) insert the following subparagraph -

"or (iii) matters relevant to the enforcement of any such liability and the collection and recovery of any amount due,".

15. In section 75O^m in the definition of "taxpayer" after "whose liability to tax is being inquired into" insert ", or is being enforced or sought to be

^j Section 75D was inserted by No. XVII of 2005.

^k Section 75E was inserted by No. XVII of 2005.

^l Section 75J was inserted by No. XVII of 2005.

^m Section 75O was inserted by No. XVII of 2005.

enforced,".

16. In section 190 -

- (a) the text is numbered as subsection (1),
- (b) in paragraph (i) of subsection (1) (as so numbered) for "if any time before the Director of Income Tax issues the notice referred to in section two hundred of this Law" substitute "if on or before the day on which the return is required to be delivered to the Director of Income Tax",
- (c) after subsection (1) (as so numbered) insert the following subsection -

"(2) A penalty or further penalty is not payable under this section in such cases as may be prescribed by regulations of the Department or any statement of practice issued by the Director of Income Tax."

17. In section 200(1), (4) and (5) immediately before "section 193A" insert "section 190,".

18. In section 201(2) immediately before "section 200" insert "section 190 or".

19. After section 205(1) insert the following subsection -

"(1A) For the avoidance of doubt, more than one Deputy Director of Income Tax may be appointed under this section; and references

in this Law and in any other enactment, statutory instrument or statement of practice to the Deputy Director of Income Tax are references to any person for the time being appointed to that office."

20. Section 206(1)(bb)ⁿ is repealed.

Citation.

21. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) Ordinance, 2012.

Commencement.

22. This Ordinance shall come into force on the date of registration on the records of the Island of Guernsey of the Income Tax (Guernsey) (Amendment) Law, 2008.

ⁿ Paragraph (bb) of section 206(1) was inserted by the Income Tax (Guernsey) (Amendment) Law, 2008.

The Income Tax (Exempt Bodies) (Guernsey) (Amendment) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 29th September, 2011^a, and in exercise of the powers conferred on them by sections 40A, 40B, 203A and 208C(1) of the Income Tax (Guernsey) Law, 1975, as amended^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of 1989 Ordinance.

1. The Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989, as amended^c ("**the Ordinance**"), is further amended as follows.

2. In section 1(1)(c)(i) the expression "in the case of a category A, B or C body," is repealed.

3. After section 1(1) insert the following subsection -

"(1A) An exemption from tax under this Ordinance may be granted in respect of any class, description or source of the body's income."

^a Article XI of Billet d'État No. XV (Vol. 1) of 2011.

^b Ordres en Conseil Vol. XXV, p. 124; sections 40A and 40B were inserted by Vol. XXVIII, p. 409 and amended by Vol. XXXI, p. 473 and Vol. XXXIV, p. 201; section 203A was inserted by No. XVII of 2005; and section 208C was inserted by No. V of 2011.

^c Recueil d'Ordonnances Tome XXV, p. 106; Tome XXVI, p. 41; No. I of 1995; No. VI of 1996; (No. I of 1995 never came into force and was repealed by No. VI of 1996); No. XXXIX of 1997; No. XXXIII of 2003; No. XXXVII of 2006; No's. VII, XIX and XXXIV of 2009; and Order in Council No. V of 2011.

4. In section 2(1), in paragraph (i) of the proviso, the expression "in the case of a category A, B or C body," is repealed.

5. In section 2(2)(c) the expression "in the case of a category A, B or C body, but only" is repealed.

6. In section 2(2)(c)(ii) for "its" substitute "the body's".

7. In section 3(1) the words "as a category A, B or C body" are repealed.

8. In section 6(a) the words "category A, B or C" are repealed.

9. In section 7(1) insert the following definitions in the appropriate places -

"collective investment" means any arrangement relating to property of any description (including money) which is a collective investment scheme within the meaning of paragraph 1 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987, provided that the purpose or effect of the arrangement, or of the trusts, constitutive documents or objects of the arrangement, is to enable members of the public to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the property, or sums paid out of such profits or income,

"collective investment vehicle" means a body established for the purposes of undertaking collective investment,

"**established**" in a place, in relation to a body, means that the body is incorporated, registered or established in that place or created under or governed by the law of that place,

"**units**" means the rights and interests (however described) of investors in a collective investment,".

10. Section 7(3)(a) is repealed.

11. For Schedules 1 and 2 to the Ordinance substitute the following -

"SCHEDULE 1

Section 1(1)(a)

BODIES ELIGIBLE FOR EXEMPTION FROM TAX

1. A collective investment vehicle established in Guernsey.
2. A collective investment vehicle established in any place outside Guernsey.
3. A body established in Guernsey or elsewhere solely for the purposes of -
 - (a) the management of a specific collective investment vehicle described in paragraph 1 or 2,
 - (b) enabling investment into a specific collective investment vehicle described in paragraph 1 or 2,

- (c) the acquisition or the management of the assets of a specific collective investment vehicle described in paragraph 1 or 2, or
 - (d) facilitating the funding of, or borrowing by, a specific collective investment vehicle described in paragraph 1 or 2 for the acquisition of its assets.
4. A body not covered by paragraphs 1 to 3, established for the purposes of undertaking collective investment in which the units are listed on an exchange or market approved by the Director of Income Tax for the purpose of this Schedule.
 5. A company which is in the beneficial ownership or which is a wholly owned subsidiary of such a body, but only to the extent that the subsidiary company does not have income taxable under the provisions of the Law at the company intermediate rate or company higher rate.

SCHEDULE 2

Sections 1(1)(c) and 2(2)(a)

CONDITIONS OF ELIGIBILITY FOR EXEMPTION FROM TAX

1. That the body has contracted with a person for the provision of managerial and secretarial services and, where appropriate, custodian services in respect of its affairs for remuneration calculated on an arm's length basis.

2. That the person with whom the body has contracted -
 - (a) is resident in Guernsey,
 - (b) is the holder of a licence or other authorisation in respect of the provision of the relevant services under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, and
 - (c) has not itself been granted an exemption from tax under this Ordinance.
3. That no investment or other property situated in Guernsey, other than-
 - (a) a relevant bank deposit,
 - (b) an interest in another body to which an exemption from tax has been granted under this Ordinance, or
 - (c) shares in a Guernsey company,

is acquired or held."

Citation.

12. This Ordinance may be cited as the Income Tax (Exempt Bodies) (Guernsey) (Amendment) Ordinance, 2012.

Commencement.

- 13.** This Ordinance shall come into force on the 30th May, 2012.

**The Income Tax (Guernsey) (Approval of Agreements with
India, Japan, Poland, Seychelles and St Kitts and Nevis)
Ordinance, 2012**

THE STATES, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975 as amended^a and all other powers enabling them in that behalf, hereby order:-

Approval of Agreements.

1. The agreements providing for the obtaining and exchanging of information in relation to tax, made between the States of Guernsey and the Governments of -

- (a) Japan, signed on the 6th December, 2011,
- (b) the Republic of Poland, signed on the 6th December, 2011,
- (c) the Republic of India, signed on the 20th December 2011,
- (d) the Republic of Seychelles, signed on the 20th December 2011,
and
- (e) the Federation of Saint Kitts and Nevis, signed on the 18th January 2012 and the 7th February 2012 on behalf of the Federation and Guernsey respectively

^a Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of the Income Tax (Guernsey) (Amendment) Law, 2005 (Order in Council No. XVII of 2005).

are, pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

Citation.

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreements with India, Japan, Poland, Seychelles and St Kitts and Nevis) Ordinance, 2012.

Commencement.

3. This Ordinance shall come into force on the 30th May, 2012.

The Renewable Energy (Guernsey) Law, 2010 (Commencement) Ordinance, 2012

THE STATES, in exercise of the powers conferred on them by section 43 of the Renewable Energy (Guernsey) Law, 2010^a, hereby order:-

Commencement of Law.

1. Section 2 and Parts II, IV and V of the Renewable Energy (Guernsey) Law, 2010 shall come into force on the 30th May, 2012.

Citation.

2. This Ordinance may be cited as the Renewable Energy (Guernsey) Law, 2010 (Commencement) Ordinance, 2012.

^a Order in Council No. XIV of 2011.

**The Belarus (Freezing of Funds)
(Guernsey) (Amendment) (No.2) Ordinance, 2011**

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948 hereby orders:-

Amendment of Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006.

1. In section 2 of the Belarus (Freezing of Funds) (Guernsey) Ordinance, 2006^b, after paragraph (e) insert -

"(ea) in Article 4a -

- (i) for "the competent authorities of the Member States, as indicated in the websites listed in Annex II," substitute "the Policy Council",
- (ii) for "they deem" substitute "it deems", and
- (iii) for the proviso substitute -

"provided that the Policy Council:

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b Recueil d'Ordonnances Tome XXXI, p. 545; amended by Ordinance made by the States Legislation Select Committee on 30th June 2011.

- (i) has determined that the payment is not, directly or indirectly, to or for the benefit of a person, entity or body listed in Annex I or Annex IA; and
- (ii) has notified one of Her Majesty's Principal Secretaries of State of that determination and its intention to grant the authorisation,".

Citation.

2. This Ordinance may be cited as the Belarus (Freezing of Funds) (Guernsey) (Amendment) (No.2) Ordinance, 2011.

Commencement.

3. This Ordinance shall come into force on the 31st October, 2011.

The Syria (Restrictive Measures) (Guernsey) (Amendment) (No. 2) Ordinance, 2011

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b hereby orders:-

Amendment of Syria (Restrictive Measures) (Guernsey) Ordinance, 2011.

1. In section 2 of the Syria (Restrictive Measures) (Guernsey) Ordinance, 2011^c, after paragraph (f) insert -

"(fa) in Article 9a(b), for the words "the competent authority of the relevant Member State" substitute "the Policy Council", ". "

Citation.

2. This Ordinance may be cited as the Syria (Restrictive Measures) (Guernsey) (Amendment) (No. 2) Ordinance, 2011.

Commencement.

3. This Ordinance shall come into force on the 31st October, 2011.

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

^c Made by the States Legislation Select Committee on 17th May 2011 and amended by Ordinance made by the States Legislation Select Committee on 26th September 2011.

The Syria (Restrictive Measures) (Guernsey) Ordinance, 2012

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, hereby order:-

Application and infringement of EU Regulation.

1. (1) Council Regulation (EU) No. 36/2012 of the 18th January, 2012^c concerning restrictive measures in view of the situation in Syria and repealing Regulation (EC) No 442/2011 ("**the EU Regulation**") is, subject to such exceptions, adaptations and modifications as may be specified in this Ordinance, applicable in Guernsey in all respects as if Guernsey were a Member State.

(2) A person who infringes, or causes or permits any infringement of, any of the prohibitions in the EU Regulation is guilty of an offence.

Modification of Regulation.

2. The EU Regulation in its application to Guernsey is modified as follows -

(a) Articles 1(q), 23, 30, 33 and 34 shall not apply,

(b) references to the competent authorities of, or in, the

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

^c OJ L 16, 19.1.2012, p.1.

Member States shall be construed as references to the Policy Council,

- (c) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) references to the Member State concerned shall be construed as references to the Policy Council,
- (e) references to the Union shall be construed as including Guernsey,
- (f) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto, and
- (g) references to the law of a Member State shall be construed as including the law of Guernsey.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, may appeal to the Ordinary Court against that decision on the grounds 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.

(2) On an appeal under this section the Ordinary Court may -

- (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Ordinary 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 in question, pending the determination of the appeal.

Information.

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information for the purpose of ensuring compliance with the EU Regulation.

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the cooperation of any person, under any article of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

7. (1) A person guilty of an offence under -

(a) section 1(2), 5 or 6, or

(b) paragraph 2(b) or (c) of the Schedule,

is liable -

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

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

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(3) Where a body corporate is guilty of an offence under this Ordinance, and the offence is proved to have been committed with the consent or

connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Certain provisions of Customs and Excise Law applicable.

8. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^d applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under customs or excise legislation.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, penalties and proceedings for offences under this Ordinance as they apply to offences, penalties and proceedings for offences under customs or excise legislation.

Interpretation.

9. (1) In this Ordinance, except where the context requires otherwise-

"**advocate**" means an advocate of the Royal Court of Guernsey,

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court

^d Ordres en Conseil Vol. XXIII, p. 573; Vol. XXXIII, p. 217; and Order in Council No. X of 2004.

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

"customs or excise legislation" means those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"enactment" includes a Law, an Ordinance and any subordinate legislation,

"EU Regulation" has the meaning given by section 1,

"Guernsey" means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark,

"Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^e,

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,

"Policy Council" means the States of Guernsey Policy Council,

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

^e Order in Council No. XXII of 2008.

"**uniform scale of fines**" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^f,

and other terms used in this Ordinance and the EU Regulation shall have the same meaning as in the EU Regulation.

(2) A reference in this Ordinance to an enactment or to the EU Regulation is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Repeals.

10. The Syria (Restrictive Measures) (Guernsey) Ordinance, 2011^g, the Syria (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2011^h and the Syria (Restrictive Measures) (Guernsey) (Amendment) (No.2) Ordinance, 2011ⁱ are repealed.

Citation.

11. This Ordinance may be cited as the Syria (Restrictive Measures) (Guernsey) Ordinance, 2012.

Commencement.

12. This Ordinance shall come into force on the 27th January, 2012.

^f Ordres en Conseil Vol. XXXI, p. 278; Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Tome XXVIII, p. 89 and Tome XXXI, p. 542.

^g Ordinance No. XXIII of 2011.

^h Ordinance No. XLV of 2011.

ⁱ Made by the States Legislation Select Committee on 31st October 2011.

SCHEDULE

Section 4

INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person in or resident in Guernsey to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body

corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this item but such

consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.

The Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b and all other powers enabling the States in that behalf, hereby orders:-

Amendment of Iran (Restrictive Measures) (Guernsey) Ordinance, 2010.

1. (1) The Iran (Restrictive Measures) (Guernsey) Ordinance, 2010^c ("the Ordinance") is amended as follows.

(2) For section 2 of the Ordinance, substitute the following section -

"Infringement of prohibitions and requirements in EU Regulation.

2. A person who infringes, or causes or permits any infringement of, any prohibition in, or requirement of, the EU Regulation is guilty of an offence."

(3) For section 3 of the Ordinance, substitute the following section -

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b Ordres en Conseil Vol. XIII, p.288; there are amendments not material to this Ordinance.

^c Ordinance No. II of 2011

*ORDINANCE LAID BEFORE THE STATES***"Undertaking transactions and other activities without authorisation."**

3. A person who undertakes any transaction or other activity for which authorisation is required under the EU Regulation without the authorisation of the Policy Council is guilty of an offence."

(4) In section 5 of the Ordinance, for the words "Article 3.4 or 31.1(a) of" substitute "any obligation to provide information under".

(5) For section 9 of the Ordinance, substitute the following section -

"Modification of Regulation."

9. The EU Regulation in its application to Guernsey is modified as follows -

- (a) Article 38.1 shall not apply,
- (b) in Article 1(g), the definition of "financial institution" includes a person who is a licensee for the purposes of the Insurance Business (Bailiwick of Guernsey) Law, 2002^d or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^e,
- (c) in Article 26.2, immediately after

^d Order in Council No. XXI of 2002; Ordinances Nos. XII and LI of 2008; G.S.I. No. 4 of 2008.

^e Order in Council No. XXII of 2002; Ordinance No. XIII of 2008; G.S.I. No. 2 of 2008.

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"based in the Union" insert "or in the Bailiwick of Guernsey, Bailiwick of Jersey or Isle of Man",

- (d) in Article 27.2, immediately after "(EEC) No 2454/93", insert "and under or in accordance with the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 or any other enactment for the time being in force relating to customs or excise matters in Guernsey",
- (e) references to the competent authorities of or in the Member States shall be construed as references to the Policy Council,
- (f) references to the obligation of a Member State to inform or notify shall be construed as references to the obligation of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (g) references to the Member State concerned shall be construed as references to the Policy Council,
- (h) references to the Union shall be

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construed as including Guernsey,

- (i) references to the territory of the Union and its airspace shall be construed as including Guernsey, its airspace and the territorial waters adjacent thereto,
- (j) references to ports of Member States shall be construed as including any port in Guernsey,
- (k) references to competent customs authorities of Member States shall be construed as including the Chief Officer of Customs and Excise,
- (l) references to nationals of Member States or from the territories of Member States shall be construed as including any person in Guernsey or from Guernsey, and
- (m) references to the law of a Member State shall be construed as including the law of Guernsey."

(6) After section 10 of the Ordinance, insert the following section-

"Appeals against decisions of Policy Council.

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10A. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation, or a decision of the Policy Council not to exercise any of its powers under the EU Regulation, may appeal to the Ordinary Court against that decision on the grounds 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.

(2) On an appeal under this section the Court may -

- (a) set the decision of the Policy Council aside and, if the Court considers it appropriate to do so, remit the matter to the Policy Council with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(3) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just,

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suspend or modify the operation of the decision in question, pending the determination of the appeal."

(7) In section 11 of the Ordinance, delete "and" where it appears after the definition of "Schedule" and in the appropriate places insert the following definitions -

"advocate" means an advocate of the Royal Court of Guernsey,"

"Bailiff" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court,"

"enactment" includes a Law, an Ordinance and any subordinate legislation,"

"Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^f,"

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,"

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

^f Order in Council No. XXII of 2008.

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and".

Citation.

2. This Ordinance may be cited as the Iran (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2012.

Commencement.

3. This Ordinance shall come into force on the 27th January, 2012.

The Income Tax (Pension Amendments) (Guernsey) Ordinance, 2012

THE STATES LEGISLATION SELECT COMMITTEE, in pursuance of the Resolution of the States of the 6th March, 2012^a, and in exercise of the powers conferred on the States by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975^b and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^c, and all other powers enabling the States in that behalf, hereby orders:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended, is further amended as follows.

2. After section 157D insert the following sections -

"Exempt pension contracts and exempt pension trusts."

157E. (1) For the purposes of this Law the expressions "**exempt pension contract**" and "**exempt pension trust**" mean, respectively, a contract approved by the Director in accordance with the provisions of subsection (2) and a trust approved by the Director in accordance with the provisions of subsection (4).

^a Article IX of Billet d'État No. V of 2012 (Vol. 1).

^b Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

^c Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

(2) The Director may, subject to any conditions he thinks proper to impose, approve a contract as an exempt pension contract if the following conditions are satisfied -

(a) the contract is made by an individual, whether or not he is in receipt of relevant earnings subject to income tax under the provisions of this Law, and called a "**member**" in this section and sections 157F to 157L, with a company that is -

(i) resident in Guernsey or carrying on business through a permanent establishment situate in Guernsey,

(ii) carrying on in Guernsey the business of the administration, management and granting of annuities on human life, and

(iii) carrying on business under the authority and in accordance with the conditions of a licence, registration or authorisation granted under any of the regulatory laws,

(b) the contract has for its sole or main purpose the provision of pension savings to provide benefits

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- (i) to the member on attaining an age of not less than 55 years, and/or
- (ii) to the surviving spouse, civil partner, children or other dependants of the member on the death of that member,

and, in either case, subject to the provisions of subsection (3),

- (c) the contract's rules provide that at least 70% of the member's UK tax-relieved scheme funds, if any, are designated by the administrator or other person having the management of the contract for the purpose of providing that member with an income for the life of that member,
- (d) without prejudice to any provisions in the contract for the matters set out in subsection (3)(d), the contract provides that no income payable under it shall be capable in whole or in part of surrender, commutation or assignment provided that the contract may give the member the right at any time on attaining the age of not less than 55 years to receive, by way of commutation of part of the income payable to him, a lump sum not exceeding 30% of the funds accumulated under the contract at the date on which such lump sum is paid,

- (e) resident individuals and non-resident individuals are eligible to enter into the contract.

(3) Provided that the conditions set out in subsection (2)(a), (c), (d) and (e) are satisfied the Director may, if he thinks fit, and subject to any conditions he thinks proper to impose, approve a contract otherwise satisfying the conditions contained in subsection (2)(b) notwithstanding that the contract provides for one or more of the following matters -

- (a) for the payment of a lump sum to the personal representative of a deceased member, or to the surviving spouse, civil partner, children or other dependants of a deceased member on the death of the member prior to the date on which an income for life would have become payable to the member had he not died,
- (b) for the payment after the death of the member of an income for life to the surviving spouse, civil partner, children or other dependants of that member,
- (c) for the payment of an income to any person to continue for a term certain, not exceeding ten years, notwithstanding his death within that term,

- (d) for the payment to the member of an income for life commencing before the age of 55 years, where the administrator or other person having the management of the contract accepts qualified medical advice to the effect that the member is and will continue to be medically incapable either physically or mentally as a result of injury, sickness, disease or disability of continuing the member's current occupation and as a result of such injury, sickness, disease or disability ceases to carry on that occupation,
- (e) in the case of an income which is to continue for a term certain, for the income to be assignable by will, and in the event of any person dying entitled to it, for it to be assignable by the personal representatives in the distribution of his estate.

(4) The preceding provisions of this section shall apply, with the necessary adaptations, in relation to the approval of an exempt pension trust by the Director as they apply in relation to the approval of an exempt pension contract, with the modification that for the condition in subsection (2)(a)(i), (ii) and (iii) as to the company with which the contract is made, there shall be substituted and added as appropriate the following conditions -

- (a) the trust is established under irrevocable trusts under the laws of the island of Guernsey and is administered and managed in Guernsey,

- (b) the number of trustees of the trust shall not be less than two, unless a corporate trustee is acting,
- (c) each trustee is resident in Guernsey,
- (d) each trustee carries on in Guernsey the business of the administration and management of trusts, and
- (e) each trustee carries on business under the authority and in accordance with the conditions of a licence, registration or authorisation granted under any of the regulatory laws.

Tax treatment of payments into and income from exempt pension contracts and trusts.

157F. (1) For the purposes of this Law -

- (a) no payment or contribution by a member to any exempt pension contract or any exempt pension trust shall be eligible for any allowance which may be claimable under the provisions of section 36,
- (b) no payment or contribution to any exempt pension contract or any exempt pension trust -

- (i) shall be an authorised deduction from the emoluments of an office or employment of a member for the purposes of section 8(3), or
- (ii) where made by an employer for the benefit of a member -
 - (A) may be exempted from tax by Ordinance under section 8(2A), or
 - (B) shall be left out of account in calculating the assessable income of any employment for the purposes of section 8(1), and
- (c) no payment or contribution to any exempt pension contract or any exempt pension trust to provide retirement or other benefits for any person employed in the business shall be permitted as a deduction under section 7(3)(g) in the computation of the amount of the profits of any business for any year of computation.

(2) Notwithstanding any other provision of this Law, tax shall not be chargeable in respect of any payment made, or income arising or accruing, to or for the benefit of a member by way of pension savings under an exempt pension contract or an exempt pension trust, whether the

member is a resident individual or a non-resident individual at the time the payment is made or the income arises or accrues.

(3) In accordance with section 40(b), income derived from investments or deposits forming part of an exempt pension contract or an exempt pension trust shall not be chargeable to tax under this Law and accordingly when paid out under the terms of the contract or trust shall be paid gross as being a benefit in respect of pension savings.

Revocation, refusal or variation of approval.

157G. (1) The Director may at any time -

- (a) revoke an approval of any exempt pension contract or any exempt pension trust given under section 157E if there is a contravention of or failure to comply with -
 - (i) any condition subject to which the approval was given, or
 - (ii) any restriction, obligation or requirement imposed by or under this Law or any other enactment in relation to the regulation of exempt pension contracts or exempt pension trusts or the administration or management thereof, or
- (b) vary any condition attached to any such approval.

(2) Where the Director decides -

- (a) not to grant approval of an exempt pension contract or an exempt pension trust under section 157E or to grant approval subject to conditions, or
- (b) to revoke any such approval or to vary any condition attached to any such approval,

he shall, as soon as is reasonably practicable, give written notice to the applicant (or, in the case of a revocation or variation, the person to whom the approval was given) of -

- (i) the decision,
- (ii) the reasons therefor, and
- (iii) in the case of a revocation or variation, the date (which may be a date prior to the notice) on which the revocation or variation is to take effect.

Appeals against revocation, etc.

157H. (1) A person aggrieved by a decision described in section 157G(2) may appeal on giving to the Director written notice, stating the grounds of appeal, within 30 days of the date of the notice of the Director's decision.

(2) The provisions of Part VII of this Law shall apply in the case of an appeal under the provisions of subsection (1) as they apply in the case of an appeal from an assessment, penalty, direction or order made or imposed by the Director, with such adaptations as may be necessary.

Transfer payments into exempt pension contracts or trusts.

157I. (1) In this section "**an exempt pension inward transfer payment**" means a payment or transfer of any property made on behalf of an individual into an exempt pension contract or an exempt pension trust for the benefit of that individual under the contract or trust as the case may be where the payment or transfer is from –

- (a) an exempt pension contract or an exempt pension trust,
- (b) a retirement annuity scheme or a retirement annuity trust scheme approved by the Director under section 157A,
- (c) a pension scheme approved by the Director under section 150,
- (d) a superannuation fund of a description set out in section 40(o),
- (e) a retirement annuity contract or a retirement annuity trust scheme of a description set out in section 40(ee),

- (f) with the prior written consent of the Director, a pension scheme, annuity scheme or annuity trust scheme which, in the opinion of the Director –
 - (i) is situated in a place outside Guernsey,
 - (ii) is approved or exempted by the competent authority in that place under the laws relating to income tax there,
 - (iii) provides benefits of a nature similar to a scheme which may be approved under section 157E, and
 - (iv) is not a scheme to which paragraph (g) applies,
- (g) a "registered pension scheme" within the meaning of section 153 of and Schedule 36 to the Finance Act 2004^d, or
- (h) a States' scheme or a statutory scheme.

(2) The trustees, administrators or other persons having management of an exempt pension contract or an exempt pension trust may, subject to the provisions of sections 157E to 157M, accept an exempt pension inward transfer payment of any property from any trustee,

^d An Act of Parliament (2004 c. 12).

administrator or other person having management of a scheme referred to in subsection (1).

(3) The making of an exempt pension inward transfer payment does not constitute or involve -

- (a) the application to another purpose of a sum paid by an employer or contributor for the purpose of providing benefits under a pension scheme, within the meaning of sections 150(2)(j), 150(2)(l) or 152(3),
- (b) the provision of a benefit by a pension scheme, within the meaning of section 150(2)(k),
- (c) the surrender of a benefit under a pension scheme, within the meaning of section 150(2)(m),
- (d) the payment of a lump sum in commutation or in lieu of a pension, within the meaning of section 153(1)(a),
- (e) the payment of a sum otherwise than by way of annuity, within the meaning of section 157A(2)(b)(i) or 157A(2)(b)(iii),
- (f) the payment of a premium or contribution, within the meaning of section 157A(2)(b)(vi) or 157A(10),

- (g) the surrender, commutation or assignment of an annuity, within the meaning of section 157A(2)(c), or
- (h) the surrender, commutation or assignment of any income, within the meaning of section 157E(2)(d).

Duty to account for tax on exempt pension inward transfer payments.

157J. (1) If the whole or any part of an exempt pension inward transfer payment comprises or is derived from Guernsey tax-relieved scheme funds then the whole or that part of the payment shall be deemed to be income arising to the trustee, administrator or other person having the management of the scheme from which the payment is made and shall be chargeable to tax at the individual standard rate.

(2) Where the whole or any part of an exempt pension inward transfer payment comprises or is derived from funds which were at any time prior to the date of the payment charged to tax at a rate of one half of the individual standard rate pursuant to sections 153(6), 153(6A) or 157C, then the whole or that part of the payment shall be deemed to be income arising to the trustee, administrator or other person having the management of the scheme from which the payment was made and shall be chargeable to tax at a rate of one half of the individual standard rate.

(3) The trustee, administrator or other person having the management of a scheme making an exempt pension inward transfer payment shall, when making the payment, deduct the amount of tax chargeable under subsection (1) or (2) from the payment and shall remit the

tax so deducted to the Director within one month of the date of deduction, and shall at the same time furnish to the Director, in such form and manner as the Director may require, an account of the payment and the exempt pension contract or the exempt pension trust to which the payment is made and of the tax deducted pursuant to subsection (1) or (2).

(4) Any person who fails to comply with the provisions of subsection (3) shall be liable to a surcharge or additional surcharge under section 199 for the purposes of calculating which the tax shall be deemed to be an amount becoming due on the date on which it was required to be deducted.

(5) Where any person has failed to deliver to the Director the account required by subsection (3) within the time set out in that paragraph or where the Director is not satisfied with the account so delivered, the Director may make an assessment on that person to the best of his judgment.

(6) In the event that tax due under subsection (1) or (2) is not paid the Director may collect the tax and any other sums due under subsection (4) as if it were the joint and several liability of -

- (a) the member,
- (b) any other person beneficially entitled to or in receipt of the exempt pension inward transfer payment, or
- (c) the trustee, administrator or other person having the management of the exempt pension

contract or the exempt pension trust to which the exempt pension inward transfer payment is made.

Application by approved schemes for conversion to exempt contract or trust.

157K. (1) On the application in writing by the trustee, administrator or other person having the management of a scheme referred to in section 157I(1)(b) or (c) (an "**approved transferor scheme**"), the Director may -

- (a) subject to receiving payment of any tax chargeable under this section, release the scheme from the application of section 150 or section 157A, as the case may be, and
- (b) subject to the provisions of section 157E, grant approval for the scheme as an exempt pension contract or an exempt pension trust, as the case may be, under that section.

Upon the granting of such release and approval, the scheme shall cease to be governed by section 150 or section 157A, as the case may be, and shall instead be governed by the provisions of sections 157E to 157M.

(2) If the whole or any part of the funds of an approved transferor scheme comprises or is derived from Guernsey tax-relieved scheme funds then the whole or that part of the funds of the scheme as at the date on which the scheme ceases to be governed by section 150 or section

157A, as the case may be, shall be deemed to be income arising to the trustee, administrator or other person having the management of the scheme as at that date and shall be chargeable to tax at the individual standard rate.

(3) The trustee, administrator or other person having the management of the approved transferor scheme shall deduct the amount of tax chargeable under subsection (2) from the funds of the scheme and shall remit the tax so deducted to the Director with the application under subsection (1) and shall at the same time furnish to the Director, in such form and manner as the Director may require, an account of the funds comprised in the scheme and of the tax deducted pursuant to subsection (2).

(4) Where the Director is not satisfied with the amount of tax paid or the account delivered pursuant to subsection (3), he may -

- (a) refuse to release the approved transferor scheme from the application of section 150 or section 157A, as the case may be, and any sums remitted to the Director with the application shall be returned forthwith, or
- (b) grant such release on condition that tax due under an assessment on the trustee, administrator or other person having the management of the scheme made by the Director in accordance with his best judgment is paid forthwith; and in this case, if the tax due is not paid, the release shall not be granted and the scheme shall not cease to be governed by section 150 or section 157A, as the case

may be, and any sums remitted to the Director with the application shall be returned forthwith.

Transfer payments out of exempt pension contracts or trusts.

157L. A transfer may only be made out of an exempt pension contract or exempt pension trust to a scheme which is -

- (a) an exempt pension contract or an exempt pension trust,
- (b) a retirement annuity scheme or a retirement annuity trust scheme approved by the Director under section 157A,
- (c) a pension scheme approved by the Director under section 150,
- (d) in the opinion of the Director –
 - (i) situated in a place outside Guernsey,
 - (ii) approved or exempted by the competent authority in that place under the laws relating to income tax there, and
 - (iii) a scheme which provides benefits of a nature similar to a scheme which may be approved under section 157E,

- (e) a superannuation fund of a description set out in section 40(o), or
- (f) a retirement annuity contract or a retirement annuity trust scheme of a description set out in section 40(ee),

and which has provisions in respect of benefits that comply with section 157E(2)(b), (c) and (d) and are otherwise no more generous to the member than those permitted under a contract which is, subject to section 157E(3), eligible for approval as an exempt pension contract under that section.

Power to make regulations as to sections 157E to 157L.

157M. The Department may by regulation amend sections 157E to 157L and make such other provision as they think fit for the purposes of carrying those sections into effect."

3. In section 158 insert the following definitions at the appropriate places -

"approved transferor scheme" : see section 157K(1),

"civil partner" means a person who has registered as the civil partner of the deceased under the Civil Partnership Act 2004, or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled,

"exempt pension contract" and **"exempt pension trust"** : see section 157E(1),

"exempt pension inward transfer payment" : see section 157I(1),

"Guernsey tax-relieved scheme funds" means any funds (including income, profits and gains arising or accruing from the investment of such funds) which are or have been, or would have been had there been no limitation on the amounts so available in the relevant year of charge, the subject of -

- (a) any deduction against profits or income for the purposes of computing sums assessable to tax, or
- (b) any allowance or relief against sums which would otherwise be assessable to tax,

under the provisions of this Law,

"member" : see section 157E(2)(a),

"pension savings" means retirement or other benefits which are provided by a bona fide pension scheme, and which provide an income for life,

"regulatory laws" means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,

- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, and
- (f) any other enactment or statutory instrument prescribed for the purposes of this Part of this Law by regulations of the Department,

"UK tax-relieved scheme funds" means any funds which are UK tax-relieved scheme funds within the meaning of regulation 2(5) of the Pensions Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006^e.

4. In section 159 for "retirement annuity schemes and retirement annuity trust schemes" substitute "retirement annuity schemes, retirement annuity trust schemes, exempt pension contracts and exempt pension trusts".

Citation.

^e United Kingdom S. I. 2006/206.

5. This Ordinance may be cited as the Income Tax (Pension Amendments) (Guernsey) Ordinance, 2012.

Commencement.

6. This Ordinance shall come into force on the 26th March, 2012.

The Public Holidays (Diamond Jubilee) Ordinance, 2012

THE STATES LEGISLATION SELECT COMMITTEE, in pursuance of the Resolution of the States of the 28th July, 2011^a, and in exercise of the powers conferred on the States by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended^b, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^c, hereby orders:-

Diamond Jubilee in 2012.

1. (1) Notwithstanding the provisions of section 1(g) of the Public Holidays Ordinance, 1994^d, Monday, the 28th May, 2012 shall not be a public holiday.

(2) Without prejudice to the provisions of section 1 of the Public Holidays Ordinance, 1994, Monday the 4th June and Tuesday the 5th June, 2012 shall be public holidays.

Interpretation.

2. Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^a Article XI of Billet d'État No. XIII of 2011.

^b Ordres en Conseil Vol. XVII, p. 384 as amended by Vol. XXIV, p. 84, Vol. XXXIV, p. 504 and Vol. XXXV(1), p. 367.

^c Ordres en Conseil Vol. XIII p. 288; to which there are amendments not material to this Ordinance.

^d Recueil d'Ordonnances Tome XXVI, p. 289 as amended by Ordinance No. VI of 2010.

Citation and commencement.

3. This Ordinance may be cited as the Public Holidays (Diamond Jubilee) Ordinance, 2012 and shall come into force on the 26th March, 2012.