

# PROJET DE LOI

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## **The Renewable Energy (Alderney) (Amendment) Law, 2011**

**THE STATES OF ALDERNEY**, in pursuance of their Resolution of the 21<sup>st</sup> September, 2011, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

### **Amendment of the 2007 Law.**

1. The Renewable Energy (Alderney) Law, 2007<sup>a</sup> ("**the 2007 Law**") is amended as follows.

### **Amendment of section 1.**

2. (1) In section 1 of the 2007 Law (general prohibition on operation etc. of renewable energy systems) -

(a) in paragraph (b) for the words "or use" substitute "or use of",

(b) at the end of paragraph (c), omit the word "or", and

(c) after paragraph (d) insert -

"or

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<sup>a</sup> Order in Council No. XII of 2008 as amended by Ordinance No. XIV of 2008.

- (e) decommission or arrange for the decommissioning of,".

**Substitution of section 2.**

3. For section 2 of the 2007 Law (power of States to make Ordinances to exempt specified activity) substitute -

**"Further exemptions and licensing of renewable energy activities.**

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

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

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

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

- (a) empowering the Commission, the States or any committee of the States, by regulations, or otherwise -

- (i) to exempt a renewable energy activity from the prohibition under section 1, subject to such terms and conditions as the Commission, the States or the committee, as the case may be, thinks fit, and
  - (ii) to prescribe conditions for the conduct and control of, and for matters of administration in connection with, a renewable energy activity and any activity related thereto,
- (b) the licensing, by the Commission, the States or any committee of the States, of any person to carry on a renewable energy activity, subject to such conditions and other matters as the Commission, the States or any committee of the States, as the case may be, thinks fit, including, without limitation, conditions relating to -
  - (i) the renewable energy activities authorised by the licence,
  - (ii) precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised renewable energy activities) in connection with or in consequence of

those activities, or

(iii) the approval by the Commission, the States or any committee of the States, prior to the carrying on of the renewable energy activity of -

(A) a decommissioning programme in relation to the decommissioning of the renewable energy system and any related plant or apparatus, or

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

(c) the form and manner in which applications in relation to licences are to be made and the information to be provided by the applicant in relation to the same which may include a requirement for -

- (i) an environmental statement to be submitted setting out information in relation to the environmental effects, and
- (ii) a decommissioning programme to be submitted setting out information in relation to measures to be taken for the decommissioning,

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

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

time responsible for licensing under Part II of the Food and Environment Protection Act 1985 as extended to the Bailiwick of Guernsey, and

- (ii) the Alderney Harbour Officer,
- (f) the obtaining of information and documents by the Commission, the States or any committee of the States to enable any of the same to perform functions imposed by or under this Law,
- (g) the investigation, by the Commission, the States or any committee of the States, into the suitability of any applicant for, or holder of, a licence to carry on a renewable energy activity,
- (h) the grant, renewal, variation, suspension or revocation by the Commission, the States or any committee of the States of any licence to carry on a renewable energy activity or the acceptance of the surrender or the effecting of the transfer of such a licence by the Commission, the States or any committee of the States,
- (i) the taking of steps by the Commission, the States or any committee of the States, falling short of suspension or revocation and which,

without limitation, may include the imposition of financial penalties, payable to the States, in respect of any contravention of the terms or conditions of a licence to carry on a renewable energy activity:

Provided that the amount of any financial penalty imposed shall not exceed the maximum amount of any financial penalty which could be imposed by a court under section 3(1), and

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

(vi) to refuse to vary the terms or conditions of,

(vii) to refuse to accept the surrender of,

(viii) to refuse to effect the transfer of, or

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

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

**Amendment of section 3.**

4. In section 3 of the 2007 Law (general offence and penalties) -

(a) in subsection (1)(a), for the words "in the case of a first offence" substitute "on summary conviction",

(b) in subsection (1)(b), for the words "in the case of a second or subsequent offence under the same provision" substitute "on conviction on indictment",

(c) in subsection (2), for the words ", ship, vessel, platform or other structure" where first occurring substitute "or on any structure", and for those words where next occurring substitute "or structure", and

- (d) in subsection (3), after the words "any renewable energy system or part thereof" insert "or any related plant or apparatus".

**Amendment of section 5.**

5. In section 5(1) of the 2007 Law (defence of due diligence), after the words "section 3(1)," insert "25(4)".

**Insertion of new Part IA.**

6. After section 5 of the 2007 Law (defence of due diligence), insert the following Part -

"PART IA  
REGULATION OF RISKS ARISING FROM RENEWABLE ENERGY  
ACTIVITIES

*Extinguishment etc. of public rights of navigation and creation of safety  
zones*

**Extinguishment etc. of public rights of navigation.**

5A. (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the extinguishment or suspension or imposition of restrictions or conditions on the exercise, of rights of navigation by declaration or otherwise by the Commission, the States or any committee of the States in so far as such rights pass through Alderney waters at locations at which, or in the vicinity

of which, a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located for the purposes of securing -

(a) that such system, plant or apparatus does not result in a danger to navigation, or

(b) the safety of -

(i) such a system, plant or apparatus or other structures, or

(ii) persons and ships,

in the vicinity of such locations.

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

(a) the making of applications to the Commission, the States or any committee of the States, for -

(i) the extinguishment or suspension, or

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

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

- (b) the matters to which the Commission, the States or any committee of the States, as the case may be, is to have regard, in making a decision as to whether or not to extinguish, suspend or impose restrictions or conditions on rights of navigation,
- (c) the prior publication of any such extinguishment, suspension, restriction or condition so as to bring it to the attention of persons likely to be affected by it and for the making of representations by such persons in relation to such proposed extinguishment, suspension, restriction or condition, and
- (d) the modification or revocation of any declaration or other means of extinguishing, suspending or imposing restrictions or conditions on the exercise of rights of navigation.

**Safety zones.**

**5B.** (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

(2) The matters referred to in subsection (1) are the creation of safety zones, by declaration or otherwise by the Commission, the States or any committee of the States, in areas around or adjacent to a place in

Alderney waters where a renewable energy system, or part thereof, or related plant or apparatus is, or is to be, located for the purposes of securing the safety of -

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

and such a safety zone may extend to British fishery limits adjacent to Alderney where the area around or adjacent to the place in Alderney waters where the renewable energy system, or part thereof, or related plant or apparatus in question is, or is to be, located extends to such limits.

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

- (a) the making of applications to the Commission, the States or any committee of the States, for the creation of a safety zone where any part of a renewable energy system or any related plant or apparatus is, or is to be, located within Alderney waters,
- (b) the matters to which the Commission, the States or any committee of the States, as the case may be, is to have regard, in making a

decision as to whether or not to declare a safety zone,

- (c) the variation of the area of a safety zone from time to time,
- (d) the prohibition of the carrying on of certain activities in a safety zone,
- (e) the granting of permission for a ship or a person to enter or remain in a safety zone or for a person to carry on activities which are prohibited in a safety zone subject to such conditions as the Commission, the States or any committee of the States, as the case may be, thinks fit,
- (f) the prior publication of the notice or other document declaring a safety zone so as to bring it to the attention of persons likely to be affected by it and for the making of representations by such persons in relation to such proposed declaration, and
- (g) the modification or revocation of the notice or other document declaring a safety zone.

*Extension of health and safety legislation*

**Health and safety.**

**5C.** (1) The Health and Safety at Work (Alderney) Law, 1997 ("**the 1997 Law**") and any provisions made under it shall, subject to subsection (3) and to any exceptions that the States may by Ordinance provide, apply to and in relation to persons at work (within the meaning of that Law) within the territorial waters of Alderney where such work is carried on in connection with -

- (a) the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus,
- (b) arranging for the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus, or
- (c) the exercise of functions conferred under this Law or the 1997 Law in relation to the operation, deployment, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus or in relation to arranging for the same.

(2) Work falling within subsection (1) includes, without limitation -

- (a) any marine survey work including wave energy or tidal current monitoring bathymetry, water column investigations, surveys of the sea, seabed or subsea surveys, carried out in connection with prospective or actual

deployment, operation, use or decommissioning of a renewable energy system, or part thereof, or related plant or apparatus whether or not carried on by or on behalf of an operator or prospective operator of a renewable energy system,

- (b) the construction, reconstruction, assembly, lowering into the sea or on to the seabed, alteration, repair, maintenance, cleaning, operation, deployment, use, lifting up from the sea or the seabed, demolition, dismantling or removal of a renewable energy system, or part thereof, or related plant or apparatus or the preparation for any such activity,
- (c) the transfer of people or goods between a ship or aircraft and a renewable energy system, or part thereof or related plant or apparatus,
- (d) the loading, unloading, fuelling or provisioning of a ship or an aircraft used in connection with the operation, deployment, use or decommissioning of a renewable energy system, or part thereof or related plant or apparatus,
- (e) diving or other submarine activity, carried on with or without underwater breathing apparatus, carried out in connection with a

renewable energy system, or part thereof, or related plant or apparatus, and

- (f) the operation of related plant or apparatus which transmits electricity or any other type of energy from a renewable energy system to any place.

(3) The 1997 Law and any provisions made under it shall not have effect in relation to -

- (a) a qualifying foreign ship whilst it is exercising-
  - (i) the right of innocent passage,
  - (ii) the right of transit passage through straits used for international navigation, or
- (b) persons on such a ship whilst it is exercising any such right.

(4) In this section, unless the context requires otherwise -

**"the 1997 Law"** means the Health and Safety at Work (Alderney) Law, 1997,

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

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

**Substitution of section 7.**

7. For section 7 of the 2007 Law (functions of the Commission) substitute-

**"Functions of the Commission.**

7. The Commission shall carry out such functions as may be conferred upon it -

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

(2) In the carrying out of any functions conferred upon it as set out in subsection (1), the Commission may take into account any matter which it considers appropriate, but shall -

- (a) have particular regard to -
  - (i) any serious harm to human health or the environment,

- (ii) any interference with shipping, fishing and any other lawful activities within the Island of Alderney or the territorial waters of Alderney or of any other place,

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

- (b) have particular regard to -

- (i) the desirability of ensuring that the operation, deployment or use of a renewable energy system has as a principal objective the generation of energy from renewable power sources and such other objectives as the Commission, the States or any specified committee of the States may from time to time determine, and

- (ii) what reasonably appears to the Commission, in all the circumstances, to be in the best interests of the Island of Alderney.

(3) In the carrying out of any function conferred under subsection (1), the Commission must also take into account any other matter as is specified."

**Amendment of sections 8 and 9.**

8. In sections 8 (status of the Commission) and 9 (provision of information to the States and committees of the States) of the 2007 Law, for each reference to "the operation, deployment, use or management of any renewable energy system within the Island of Alderney, the territorial waters of Alderney or elsewhere" substitute "a renewable energy activity or in relation to any activity carried on outside the Island of Alderney or the territorial waters of Alderney which would be such an activity if carried on there".

**Amendment of section 12.**

9. In section 12(2)(a) of the 2007 Law (powers of Commission to obtain information), for subparagraph (ii) substitute -

- "(ii) the carrying on of a renewable energy activity,
- (iia) the carrying on of any activity carried on outside of the Island of Alderney or the territorial waters of Alderney which would be such an activity if carried on there, and".

**Amendment of section 16.**

10. In section 16 of the 2007 Law ("the Commission's funds") -

- (a) at the end of paragraph (b) omit the word "and" and insert -

"(ba) any fees and charges payable to the Commission under this Law, and",

- (b) in paragraph (c) omit the words "through the exercise of its powers under this Law".

**Repeal of section 17.**

- 11. Section 17 of the 2007 Law (fees and charges) is repealed.

**Amendment of section 22.**

- 12. In section 22 of the 2007 Law (delegation to members and officers) -

- (a) for the heading substitute -

**"Delegation."**

- (b) after subsection (1) insert -

" (1A) The Commission may, by an instrument in writing under its common seal, delegate to any public body, either generally or otherwise as provided by that instrument, any of its functions except-

- (a) this power of delegation, or
- (b) its duty to make an annual report under section 10.", and
- (c) at the end insert -

"(4) In this section "**public body**" means -

- (a) any committee of the States or any

department of the States of Guernsey,

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

**Amendment of section 23.**

13. In section 23(b) of the 2007 Law (execution of documents), after the words "officer of the Commission" insert "or a public body".

**Substitution of section 24.**

14. For section 24 of the 2007 Law (presumption of authenticity of documents) substitute -

**"Presumption of authenticity of documents.**

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

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

on behalf of the Commission shall be deemed to be such a document unless

the contrary is shown."

**Amendment of section 25.**

15. In section 25 of the 2007 Law (confidentiality) -

- (a) in subsection (2)(b), (2)(d) and (2)(e), after the words "outside Alderney" insert "or the territorial waters of Alderney", and
- (b) in subsection (2)(c), after the words "to which Alderney" insert "(including in respect of the territorial waters of Alderney)".

**Amendment of section 26.**

16. For each reference in section 26 of the 2007 Law to "operate, deploy, use or manage a renewable energy system" substitute "carry on a renewable energy activity".

**Repeal of section 27.**

17. Section 27 of the Law of 2007 (liability of members, officers and servants) is repealed.

**Insertion of new Part IIA.**

18. Immediately before Part II (general) of the 2007 Law, insert the following Part -

"PART IIA  
ENTRY, ENFORCEMENT, LIABILITY, FEES AND CHARGES

*Powers of entry and enforcement powers*

**Powers of entry and enforcement powers.**

**27A.** (1) The States may from time to time by Ordinance make such provision as they may deem expedient in relation to the matters set out in subsection (2).

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

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

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

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

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

Alderney waters, and board and inspect renewable energy systems, or part thereof, or related plant or apparatus within Alderney waters,

- (ii) do anything to facilitate the boarding of such ships, renewable energy systems, or part thereof, or related plant or apparatus, or
  - (iii) enter and inspect any premises used in connection with a renewable energy activity,
- (c) provide for an enforcement officer whilst carrying out an inspection under paragraph (b) to -
- (i) search any such premises for any item and examine, or carry out any measurement or test, on anything in, on, attached to, forming part of, or controlled from such premises,
  - (ii) require production of documents from any person at such premises where such document is in a person's possession or control, or

- (iii) seize and detain any item found at such premises for so long as is necessary in all the circumstances and to take copies of or extracts from any document or record found at such premises, except that provision may not be made for the retention of any item if a photograph or a copy would be sufficient for the purpose, or
- (d) provide for an enforcement officer to direct that a ship or, where practicable, any renewable energy system, or part thereof, or related plant or apparatus be taken into the nearest convenient port but only where an enforcement officer considers that it would not be reasonably practicable to exercise a power in relation to that ship, renewable energy system, or part thereof, or related plant or apparatus without so detaining it in port,

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

**Power to issue compliance or remediation notice.**

**27B.** (1) Without prejudice to the generality of section 27A(1), that section includes power to provide for the issuing of a notice specified in subsection (3) ("**a compliance notice**") by the Commission, the States or any committee of the States to a person holding a licence issued under section 2 in the circumstances set out in subsection (2).

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

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(a) the licence is for the carrying on of a renewable energy activity, and

(b) it appears to the Commission, the States or the Committee, as the case may be, that there has been a contravention of the terms or conditions of that licence.

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

(4) Without prejudice to the generality of section 27A(1), that section includes power to provide for the issuing of a notice specified in subsection (6) ("**a remediation notice**") by the Commission, the States or any committee of the States to -

(a) a person holding a licence issued under section 2 for the carrying on of a renewable energy activity where -

(i) it appears to the Commission, the States or any committee of the States, as the case may be, that there has been a contravention of the terms or conditions of that licence, and

- (ii) the renewable energy activity in respect of which the contravention has taken place has caused, or is likely to cause, the effects set out in subsection (5),
  - (b) a person who has contravened the prohibition in section 1, by virtue of carrying on a renewable energy activity without a licence issued under section 2, where the renewable energy activity in respect of which the prohibition has been contravened has caused, or is likely to cause, the effects set out in subsection (5).
- (5) The effects referred to in subsection (4) are any of the following -
  - (a) harm to the environment,
  - (b) harm to human health, or
  - (c) interference with shipping, fishing or other lawful activities within Alderney waters.
- (6) A remediation notice is a notice requiring the person on whom it is served to do either or both of the following -

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

as the case may be, in relation to the renewable energy system or related plant or apparatus in question, carrying out decommissioning in accordance with that decommissioning programme, or

- (b) to pay a sum to the Commission, the States or any committee of the States, as the case may be, to cover any reasonable expenses incurred, in the taking of remedial steps (whether or not under section 27E), by the Commission, the States or the committee, as the case may be.

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

**Power to issue stop notice.**

**27C.** (1) Without prejudice to the generality of section 27A(1), that section includes power to provide for the issuing of a notice specified in subsection (3) ("**a stop notice**") by the Commission, the States or any committee of the States to a person carrying on a renewable energy activity, which is not exempt from the prohibition in section 1, where- the renewable energy activity in respect of which the contravention has taken place -

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

the effects set out in subsection (2).

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

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

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

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

**27D.** (1) Without prejudice to the generality of section 27A(1), that subsection includes power to provide for -

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

except that provision may not be made, in relation to a renewable energy activity carried on in accordance with a licence issued under section 2, for a stop notice to have effect for more than 7 days, beginning with the day on

which the prohibition takes effect, save that provision may be made for a renewal of such a notice for an aggregate period not exceeding 35 days.

(2) The States may by Ordinance make such provision as they consider appropriate for -

(a) appeals to be brought against a compliance notice, a remediation notice or a stop notice including, without limitation, provision as to -

(i) the persons who may bring such appeals,

(ii) the grounds of appeal, and

(iii) the period and manner in which such an appeal must be made and otherwise as to the procedure to be adopted for such appeals, and

(b) details of notices issued or action taken under this Part, by the Commission, the States or any committee of the States, to be kept on a public register.

**Power to take remedial steps.**

**27E.** (1) The States may from time to time by Ordinance make such provision as they may deem expedient for the taking of remedial steps by the Commission, the States or any committee of the States in the circumstances set out in subsection (2).

(2) The circumstances referred to in subsection (1) are that a renewable energy activity, which is not exempt from the prohibition in

section 1, is being or has been carried out otherwise than under and in accordance with the terms and conditions of a licence issued under section 2.

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

- (a) protecting the environment,
- (b) protecting human health,
- (c) preventing interference with shipping, fishing or other lawful activities within Alderney waters,
- (d) preventing or minimising, or remedying or mitigating the effects of, any harm or interference falling within subsection (4),
- (e) restoring (whether in whole or in part) the condition of any place affected by any such harm or interference to the condition, or a condition reasonably similar to the condition, in which the place would have been had the harm or interference not occurred, or
- (f) where the holder of a licence under section 2 has failed to carry out decommissioning in

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

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

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

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

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

**27F.** The powers in this Part are without prejudice to the powers under section 2 in so far as those section 2 powers relate to the enforcement

of any provisions of, or made under, this Law, or of any licence, notice or other document issued under this Law.

**Exclusion of liability.**

**27G.** (1) Subject to subsection (3), no person within subsection (2) is to be -

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

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

(2) The persons within this subsection are -

- (a) the Commission or any member, officer or servant of the Commission,
- (b) any public body to whom functions are delegated under section 22 or any member, officer or servant of such a public body, or
- (c) any enforcement officer appointed under section 27A.

(3) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a

result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

**Fees and charges.**

**27H.** (1) There shall be payable to the Commission, the States or any committee of the States, such fees or charges of such amounts, by such persons and in such manner as may be specified or prescribed by regulations of the Commission in connection with -

- (a) the carrying out of any functions under the Law,
- (b) the provision of any services by the Commission in connection with any of its functions under the Law, and
- (c) the recovery of any reasonable costs associated with the administration and enforcement of any Ordinance or subordinate legislation made under this Law.

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

- (a) fees in connection with applications made under this Law, and
- (b) an annual licence fee, payable by the holder of a licence issued under section 2, to cover any reasonable costs incurred by the Commission in

connection with issuing and enforcement of such licences."

**Amendment of section 28.**

**19.** In section 28 of the 2007 Law (interpretation) -

- (a) in subsection (1), insert the following definitions at the appropriate places -

**""Alderney waters"** means the territorial waters of Alderney and the national waters of Alderney,

**"British fishery limits adjacent to Alderney"** means that part of British fishery limits set by or under section 1 of the Fishery Limits Act 1976 not exceeding 12 miles from the baselines from which the breadth of the territorial sea adjacent to Alderney is measured, but not extending beyond the median line,

**"compliance notice"**; see section 27(B)(1) and (B)(3),

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

**"department of the States of Guernsey"** includes any council or committee (however called)

thereof,

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

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

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

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

**"enforcement officers"**: see section 27(A)(3),

**"median line"** means a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea adjacent to Alderney is measured and the corresponding

baselines adjacent to Guernsey and Sark,

**"national waters of Alderney"** means waters landward of the baselines for measuring the breadth of the territorial waters of Alderney,

**"notice"** means notice in writing,

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

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

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

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

**"remediation notice"**: see section 27(B)(4) and (6),

**"renewable energy activity"** means an activity prohibited under section 1,

**"ship"** includes -

- (a) every description of vessel used in navigation,

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

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

**"stop notice"** :see section 27C(1) and (3),

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

- (b) in subsection (1) -
  - (i) for the definition of **"Island of Alderney"** substitute -

**"Island of Alderney"** and **"Alderney"** includes all other islands, islets and rocks around the coast of Alderney, whether or not attached at low water, and, for the avoidance of doubt, the national waters of Alderney,"

- (ii) for the definition of "**premises**" substitute -

"**premises**" includes any place and, in particular, includes -

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

- (iii) for the definition of "**renewable energy system**" substitute -

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

- (c) For subsection (5) substitute -

"(5) In this Law, unless the context

requires otherwise, references to "**arranging for the operation, deployment or use of any renewable energy system**" or any related expressions, include, for the avoidance of doubt, the carrying out of any marine survey work including -

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

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

**Amendment of section 30.**

20. At the end of section 30 of the 2007 Law (general provisions as to ordinances and regulations) add the following subsections -

"(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law may -

- (a) subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and for related defences,
- (b) empower the Commission, the States or any

committee of the States to make or issue codes or guidance, whether as to matters in respect of which an Ordinance can be made under this Law or otherwise,

- (c) make provision for the purpose of dealing with matters arising out of or related to renewable energy activities or any international instrument relating to such activities or activities that would be such activities if carried on in the Island of Alderney or the territorial waters of Alderney,
- (d) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
- (e) without prejudice to the generality of the foregoing, make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance,
- (f) confer power -
  - (i) on any committee of the States, or
  - (ii) on the Commission,

to make regulations in relation to any matter as

to which an Ordinance may make provision,  
and

- (g) make provision generally for carrying this Law into effect in whatever manner the States thinks fit.

(4) An Ordinance under this Law may not -

- (a) provide for offences to be triable only on indictment, or
- (b) provide for penalties for offences which exceed the maximum penalties that may be imposed by a court under section 3(1).

(5) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect but without prejudice to anything done under them or to the making of new regulations."

**Insertion of new section 30A.**

**21.** After section 30 of the 2007 Law (general provisions as to ordinances and regulations) insert the following section -

**"Extent.**

**30A.** (1) This Law extends, subject to subsection (2), to the Island of Alderney and the territorial waters of Alderney.

(2) Sections 3 to 5, 5B, Part IIA and section 30 of this Law extend also to British fishery limits adjacent to Alderney insofar as those sections and that Part make provision for -

- (a) a safety zone to extend to British fishery limits adjacent to Alderney,
- (b) enforcement of provisions relating to such a safety zone, and
- (c) the creation, trial and punishment of offences which may be committed in relation to such a safety zone and related defences."

**Interpretation.**

22. (1) In this Law, unless the context requires otherwise -

**"the 2007 Law"** means the Renewable Energy (Alderney) Law, 2007,

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

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

(2) The Interpretation (Guernsey) Law, 1948<sup>b</sup> applies to the interpretation of this Law.

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<sup>b</sup> Ordres en Conseil Vol. XIII, p. 355.

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

**Citation.**

23. This Law may be cited as the Renewable Energy (Alderney) (Amendment) Law, 2011.

**Commencement.**

24. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.