

CONSULTATION BY STATES OF ALDERNEY ON PROPOSED AMENDMENTS TO THE RENEWABLE ENERGY (ALDERNEY) LAW, 2007

In September 2009 the States of Alderney consulted on amendments to the Renewable (Energy) (Alderney) Law, 2007. Since that date it has been decided to make further amendments to the Law in particular to ensure that the Law is consistent with the provisions of renewable energy legislation which has since been drafted since in Guernsey and Sark. This seems desirable as tidal power operators are likely to operate across the Bailiwick. The original 2009 amendments and the new proposed amendments are summarised below.

A. Original amendments consulted on in 2009

1. Give the States of Alderney powers to provide by Ordinance for -
 - a. **Restrictions on the exercise of rights of navigation-** extinguishment, suspension or imposition of restrictions on rights of navigation in the vicinity of tidal turbines; these powers would be exercisable to ensure the safety of shipping and tidal turbines or to ensure that tidal turbines and support platforms etc. did not result in a danger to navigation for ships etc,
 - b. **Safety Zones-**the creation of safety zones around tidal turbines and support platforms etc. to ensure the safety of the turbines and shipping etc.
2. The provisions described in paragraph 1 only give powers to make an Ordinance so that no such provisions would apply until any Ordinance is made by the States under those powers.
3. **Extension of Alderney health and safety legislation-**Extend Alderney health and safety legislation to work carried on in relation to tidal turbines and other renewable energy systems in Alderney territorial waters.
4. **Additional powers of entry and enforcement-**Give the States of Alderney power by Ordinance to provide for the Alderney Renewable Energy Commission (“ACRE”) to have additional powers of entry and enforcement powers in particular powers to issue notices to tidal power operators where there is a breach of a licence or where tidal turbines are causing harm to the environment or human health or interference with shipping, fishing or other lawful activities carried on at sea; such notices may require the tidal power operator to take steps to meet a licence condition or to protect the environment or human health or prevent interference with other uses of the sea. This would include requiring remedial action where harm to the environment or human health or interference with shipping, fishing etc. had been caused by tidal power operations. There is also provision for ACRE to issue a notice prohibiting an activity from being carried on for a limited period where there is serious harm to the environment/human health or serious interference with other uses of the sea.
5. **Adjustment to 2009 amendments-**There has been some adjustment to the above provisions since 2009 on points of detail. This includes amendments to the steps that ACRE can require an operator to take under a remediation notice and clarification of the remedial steps that ACRE can itself take where someone is operating a tidal turbine other than in accordance with the conditions of a licence.

B. Proposed new amendments

These amendments are made primarily to ensure consistency with new renewable energy legislation in Guernsey and Sark which has been made since 2009. Amendments on substantive points include the following. Most relate to Ordinance making powers only so that any substantive provision can only be made by a further Ordinance of the States.

1. **Decommissioning**-The amendments clarify that decommissioning of a tidal turbine or other renewable energy system is an activity requiring a licence and that conditions may be imposed on an operator licence in relation to decommissioning including requiring prior approval of a decommissioning programme.
2. **More detailed powers for the States to make Ordinance in relation to licensing of tidal turbines etc.**-For clarity, the powers of the States to make Ordinances under section 2, in particular in relation to a licensing system, are spelt out in more detail rather than in general terms. This includes -
 - a. express provision being made for the submission of environmental statements and decommissioning programmes by applicants for a licence;
 - b. express provision for consultation of certain persons prior to the grant of a licence including the Health and Social Security Department in Guernsey who have responsibility for regulation of deposits at sea (which would include tidal turbines) under the Food and Environment Protection Act 1985 which applies in the whole Bailiwick.
3. **Fees**-the power to charge fees for applications etc. under the Law has been amalgamated in one place and now includes provision to charge for the reasonable costs of ACRE in administering and enforcing the legislation including annual licence fees. This only provides a power and a further Ordinance of the States or regulations of ACRE would be required to create new fees.
4. **Matters ACRE has to take into account in carrying out its functions**-there have been some adjustments to the detail of these provisions including a new requirement for ACRE to have regard to what appears to be in the best interests of Alderney.
5. **Delegation of ACRE functions**-there is a new power to allow ACRE to delegate functions to another public body. This would allow, for instance, the consideration of environmental and human health effects to be carried out by those with relevant expertise, such as environmental health officers, but the functions would remain those of ACRE and would be carried out in its name.

Comments on proposed amendments-as the amendments are likely to be of general interest, in particular to those who use the sea for business or leisure, the draft legislation is being placed by the States of Alderney, ahead of its consideration by the States, on the ACRE website for comment. Anyone wishing to comment must do so in writing by 6 September 2011. Please send any comments to Alderney Commission for Renewable Energy PO BOX 84 Alderney GY9 3LL. If you have any queries please contact The States Chief Executive Roy Burke on 01481 822816.