

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

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* No. XV of 2012; as amended by the Guernsey Competition and Regulatory Authority Ordinance, 2012 (No. XIII of 2012). See also the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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ARRANGEMENT OF SECTIONS

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SCHEDULE The six principles for economic regulation.

(Made on 30th May, 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 [Authority].

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

NOTES

In section 1, the word "Authority" in square brackets, wherever occurring, was substituted by the Guernsey Competition and Regulatory Authority Ordinance, 2012, section 5(2), with effect from 1st June, 2012.

In accordance with the provisions of the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, the Commerce and Employment Department has since been replaced by the Committee for Economic Development; and the functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Principles for economic regulation.

2. (1) The [Authority] shall follow the six principles for economic

^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.

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.

NOTES

In section 2, the word in square brackets was substituted by the Guernsey Competition and Regulatory Authority Ordinance, 2012, section 5(2), with effect from 1st June, 2012.

In accordance with the provisions of the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, the Commerce and Employment Department has since been replaced by the Committee for Economic Development; and the functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Memoranda of understanding with States' owned utilities.

3. The [Authority] 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.

NOTE

In section 3, the word in square brackets was substituted by the Guernsey Competition and Regulatory Authority Ordinance, 2012, section 5(2), with effect from 1st June, 2012.

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

Regard to be had to contents of Billet.

4. The [Authority] 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").

NOTE

In section 4, the word in square brackets was substituted by the Guernsey Competition and Regulatory Authority Ordinance, 2012, section 5(2), with effect from 1st June, 2012.

Interpretation.

5. (1) In this Ordinance –

"[Authority]" means [the Guernsey Competition and Regulatory Authority],

"report": see section 2(1),

"OUR" means the [Authority],

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.

NOTES

In section 5, the words in square brackets in the definition of the expression "Authority" in subsection (1), and the word in square brackets in the definition therein of the expression "OUR", were substituted by the Guernsey Competition and Regulatory Authority Ordinance, 2012, section 5(2), with effect from 1st June, 2012.

The functions, rights and liabilities of the Director General of Utility Regulation and the Office thereof arising under or by virtue of this

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

Ordinance were transferred to and vested in the Guernsey Competition and Regulatory Authority by the Guernsey Competition and Regulatory Authority Ordinance, 2012, section 5(1), with effect from 1st June, 2012, subject to the provisions of section 5(3) of, and section 6, Schedule 2 to, the 2012 Ordinance.

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.