

STATES OF JERSEY

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DRAFT WATER RESOURCES (JERSEY) LAW 200

**Lodged au Greffe on 19th February 2007
by the Minister for Planning and Environment**

STATES GREFFE



Jersey

DRAFT WATER RESOURCES (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Planning and Environment has made the following statement –

In the view of the Minister for Planning and Environment the provisions of the Draft Water Resources (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator F.E. Cohen**

REPORT

Introduction

The Minister for Planning and Environment (“the Minister”) considers that there is an immediate compelling need for the introduction of comprehensive water resources management legislation on the Island for the better protection and management of this vital, precious resource for the benefit of the whole community and the environment. These resources comprise both surface waters (including streams, lakes and reservoirs) and groundwater (from which it is estimated that over 5,000 boreholes abstract).

Surface water sources are extensively used by Jersey Water to supply mains water to some 90% of the Island’s population. The Draft Law, when enacted, will greatly assist Jersey Water to perform its statutory obligations to provide an adequate supply of wholesome water for domestic purposes. Surface waters are also used for crop irrigation and in addition provide the habitats for Jersey’s flora and fauna that are dependent on water bodies and wetlands.

Groundwater, on the other hand, is a much smaller component of the Island’s water supplies but it is however vital to those many households (approximately 3,500) that are not connected to the mains supply as well as for agriculture, industry and recreational purposes; the Draft Law will, when implemented, also ensure that these resources are adequately protected for present and future generations.

A reliable, adequate supply of clean, unpolluted water is vital for all life on this planet for drinking purposes, for industry, for agriculture, for recreational use and for the protection of all the animals, plants and their habitats. Freshwater must therefore be protected and managed and consequently most countries in the world have already enacted legislation for this purpose; for example, comprehensive water resources legislation was introduced in England and Wales over 40 years ago.

Small islands have particular water resource problems due to their size and in the case of Jersey, its high population density. Freshwater is therefore an extremely valuable resource for the Island and certainly cannot be taken for granted. Jersey is already reliant on Jersey Water’s Desalination Plant to augment its water supplies. The amount of available freshwater in Jersey per capita is lower than in any Region of the U.K. and indeed in many other parts of the world and the Island does not have the benefit of being able to readily import water from other countries.

The best available climate change models show that Jersey will in future experience summers that are much warmer than today and consequently there will be significantly less summer rainfall, albeit that there will be more winter rainfall; however, without new storage reservoirs, the extra winter rainfall cannot be stored to compensate for the shortfall in the summer months. This further highlights the need for sound water resource management on the Island. As well as this external climate factor, water use patterns are changing in the Island; people are using more water as lifestyle patterns change and the population increases.

Jersey’s freshwater resources are locally derived, originally falling on the Island as rain, hail, sleet or snow. The majority of the water taken for human use is collected from streams by Jersey Water to be stored in reservoirs and supplied to households on the Island. The rest of the water runs off back into the sea, evaporates or soaks into the earth and the underlying rock strata to form groundwater. The remaining households in the Island (i.e. those who are not on mains supply) rely on this groundwater for drinking and other domestic purposes and it is also used to irrigate crops and for industrial and leisure related purposes. All this further reinforces the importance of protecting Jersey’s groundwater from the potential adverse effects of over- abstraction or poor management.

Jersey is very unusual in the world in not already having legislation in place to guard against over-abstraction and impoundment and to ensure that the limited amount of water in the Island is shared equitably for the benefit of everyone and the environment. Although there is a Law in Jersey to protect water from pollution (Water Pollution (Jersey) Law 2000), there is currently no Law in place to protect the Island’s water resources.

The Draft Water Resources (Jersey) Law 200-

Following a dry period in the late 1980s, a working party was set up on the Island to examine the subject of water resources in Jersey. The working party, under the chairmanship of the late Major John Riley, published its report on the Safeguarding of the Water Resources in Jersey in March 1992. The report was debated by the States in September 1992 (P.78/1992). The States acknowledged the importance of water management and charged the

then Public Services Committee to produce comprehensive water legislation. As the first stage in overall water management legislation, the Water Pollution (Jersey) Law 2000 was debated by the States in March 2000 and was fully implemented from 27th November 2000. During the debate, certain Members expressed the importance of introducing a Water Resources Law to complement the Water Pollution Law. In Summer 2003, the Draft Water Resources (Jersey) Law 200- was duly subjected by the then Environment and Public Services Committee (“the former Promoting Committee”) to an extensive consultation process (including States’ Members, various former States’ Committees and relevant Stakeholders) and many of the comments received were incorporated into the Draft Law.

The Draft Law now being presented to the States’ Assembly –

- Provides for the protection, management and regulation of Jersey’s water resources and the protection of all the animals, plants and habitats that are dependent on them.
- Allows for the proper allocation and sharing of this valuable resource for the benefit of the whole community, ensuring that sufficient water is available for drinking as well as for industry, agriculture and recreation.

Introduces a new licensing regime for the abstraction and impoundment of water subject to important exemptions (including a threshold level below which a licence will not be required, as well as a total exemption for all domestic abstractions).

- Protects existing and future abstraction rights (both public and private).
- Complements the Water Pollution (Jersey) Law 2000 in lowering pollution levels that may be caused by over-abstraction.
- Allows for the collection of data on the number and distribution of boreholes and current and future abstraction rates and will allow public access to more environmental information.
- Allows for the management of drought situations and for long-term management strategies to be implemented to (inter alia) minimise the negative impacts of global warming and climate change.
- Allows for powers of entry for monitoring and other purposes and contains appropriate enforcement provisions.

The Scrutiny Process

In February 2004, the former Promoting Committee approved the Draft Law in principle for submission to the Attorney General (AG) for clearance in respect of (inter alia) its compatibility with the Human Rights Convention (HRC); subject thereto the Draft Law was ready for lodging au Greffe. However, before the AG’s audit had been completed, the Draft Law was called in for review by the then Vibert Shadow Scrutiny Panel (SSP) in April 2004.

During the SSP’s consideration of the Draft Law, a fundamental disagreement arose as to whether or not deep groundwater in Jersey is recharged from local rainfall (as opposed to, from groundwater flowing from France) and as such it is a finite resource that needs to be managed for future equitable use. The British Geological Survey (BGS), who had undertaken detailed hydrogeological studies on the Island during the preceding 15 years, gave evidence to the SSP on behalf of the former Promoting Committee in relation to that particular issue. BGS contended that for the most part, Jersey’s groundwater storage and transport takes place in the top 25 m. of saturated rock (i.e. from the top of the water table to 25 m. below it, commonly referred to as the “shallow aquifer”). Nevertheless, BGS did acknowledge that some boreholes in Jersey abstract usable quantities of groundwater at depth; details of approximately 40 such boreholes had been included in their original 1991 Technical Report to the States (WD/91/15). However, BGS told the SSP that all the then available evidence indicated that water yields obtained from deep fractures have a limited resource volume compared to the shallow aquifer. In contrast, local water diviners told the SSP that the deep groundwater beneath Jersey represents a separate and major groundwater resource capable of significant future development.

In their Report published on 13th December 2004 (S.R.3/2004) the SSP concluded that no comprehensive water resources management legislation should be introduced on the Island for an indefinite period, for two principal reasons, namely –

- In the first instance, a scientific investigation (making use of local knowledge) should be undertaken in order to determine conclusively whether the Island benefits from significant quantities of

groundwater flows from France AND what is the extent of the exploitable sources of water that are known to exist at depth beneath the Island (“the Deep Water Issues”).

- Moreover, substantial further data needs to be collected on the Island’s water resources (“the Data Collection Issue”).

Response to SSP Report

On 15th March 2005, the former Promoting Committee presented its formal Response (S.R.3/2004 Res.) to the SSP Report. Basically, they did not agree with the view expressed by the SSP, namely that the Draft Law should be deferred indefinitely. In particular, in relation to the two principal reasons put forward by the SSP in support of a deferment, the former Promoting Committee responded as follows –

- (1) Irrespective of the outcome of the investigations into the Deep Water Issues, comprehensive water resources legislation will be required on the Island in any event, since in terms of volume of abstractions, the majority rely on surface waters.
- (2) In relation to the Data Collection Issue, the SSP had not given sufficient cognisance to the extensive data that had already been collected over the previous 15 years or so, both by the Department itself and by its consultants. Moreover, the question of data collection was an on-going process and would continue and indeed be supplemented following the enactment of the Draft Law.

Accordingly, the Draft Law was, following receipt of the necessary HRC confirmation from H.M. A.G., duly lodged “au Greffe” by the former Promoting Committee on 27th September 2005 (P.206/2005). However, notwithstanding its formal Response in relation to the Deep Water Issues (see above), the former Promoting Committee decided in October 2005 that the necessary scientific investigations should be carried out in order to assess the magnitude, sustainability and origin of the deep groundwater resources that are present beneath the Island, before any debate on the Draft Law by the States’ Assembly takes place. The former Promoting Committee duly established the Deep Groundwater Advisory Group (DGAG) in order to undertake those investigations.

In early December 2005, the former Committee system was replaced by the current system of Ministerial Government; from the transfer date the Minister for Planning and Environment took over responsibility for the Projet. The Minister has since fully reviewed this matter, including the SSP Report and is in general agreement with the stance taken by the former Promoting Committee in relation to that Report, and in particular with its decision to set up the DGAG with a view to having the deep groundwater investigations undertaken before the Draft Law is debated by the States’ Assembly.

The Deep Groundwater Advisory Group (DGAG)

The composition of the DGAG comprised of 2 Jersey-based geologists, 3 local water diviners and drillers, the Managing Director of Jersey Water, 2 States’ Members (Deputies S. Ferguson and R. Duhamel) and the Director of Environment. The DGAG held its inaugural meeting in December 2005 and its Terms of Reference were, taking an evidence-based approach, to –

- Examine the theory that Jersey has a groundwater connection with France that contributes to the Island’s overall water resources.
- Review the evidence for deep groundwater resources on the Island and comment on its likely contribution to the overall water resources of Jersey.

On 7th June 2006, all DGAG members endorsed the investigations by signing an agreement that stated that “*the definitive test*” for proving whether or not flowing freshwater connections with mainland Europe exist will be to “*compare the isotopic signature of the water sampled from the two test boreholes with that of water from the surface aquifer*”. Within the signed document, all parties agreed to accept the findings of the investigations and to “*drop all claims of an underground water connection between Jersey and the European mainland*”, if the investigation concluded that no significant difference existed between deep groundwater and the shallow aquifer.

Two of the water diviners/driller members of the DGAG, being the main supporters of the claim to the underground flowing freshwater streams, specified two exact locations where the test boreholes should be sited, one at La Rocque in the south-east of the Island and the other at St. Catherine in the north-east. In addition, they specified the required depths for each of the boreholes (being 150 ft. (45.7 m.) and 250 ft. (76.2 m.) respectively) which they considered were the optimal positions where the underground streams from outside the Island were

located. No restrictions were placed on them in relation to either the chosen locations or depths. In the event, the boreholes were in fact drilled to greater depths, namely 180 ft. (55.5 m.) and 260 ft. (79.5 m.) at La Rocque and St. Catherine respectively.

The detailed methodology, analysis of data and reporting of the results was to be undertaken by the nominated joint consultants, BGS and Entec U.K. Ltd. (the latter had provided the Technical Advisor to the SSP in 2004). The agreed investigations were undertaken in autumn 2006 and the joint BGS/Entec Report was duly issued in December 2006. The Report concluded on the basis of the investigations undertaken that –

- (a) The isotopic signatures obtained from the shallow and deep groundwater at the two test locations are **indistinguishable** and moreover are consistent with the range of isotopic signatures for Jersey groundwater.
- (b) There is **no** evidence that ‘underground streams’ exist at either location. Moreover, there is **no** evidence to suggest that the shallow or deep groundwater beneath Jersey has a source that is located outside of the Island; this supports the proposition that Jersey’s groundwater is recharged entirely by the rainfall that falls on the Island.
- (c) Groundwater at depth is hydraulically connected to shallower groundwater via a network of interconnected fractures and **does not** represent a separate major groundwater resource (i.e. from that already ‘tapped’ by shallower wells and boreholes) that would be capable of significant future development to contribute to the water needs of the Island.

On the basis of the signed agreement of the DGAG members, the above findings of the investigations represent the “definitive test”.

The Minister has duly examined the Report and likewise regards its findings as conclusive in relation to the Deep Water Issues that were identified by the SSP. Accordingly, the Minister believes that the Draft Law should now be debated by the States’ Assembly without further delay.

Amendments to the Draft Law

Since the Draft Law was originally formulated by the former Promoting Committee, it has undergone several changes. Firstly, substantive amendments were made to it in order to address the constructive comments that were received during the extensive consultation process that was undertaken in summer 2003 (see above). Secondly, further substantive amendments have been made to the Draft Law following the scrutiny process, brief details of which are set out below –

[A] By the Environment and Public Services Committee

- The requirement for returns to be made to the Regulator by those abstracting below the exemption threshold has been included (Article 12(7)).
- It has been made clear that the granting of a Test Pumping Consent by the Regulator does not guarantee the subsequent issue of an abstraction licence (Article 16(1)).
- Provision enabling the Regulator to have access to relevant borehole data has been added (Article 34 (1)).

[B] By the Minister for Planning and Environment

Since taking over responsibility for this Project, the Minister has reviewed the matter and has also taken further advice from an independent U.K.-based Water Resources Consultant on the specific issue of the appropriate exemption threshold for Jersey (below which a licence will not be required). As a consequence, the Minister has made further amendments to the Draft Law as follows –

- The exemption threshold has been increased from 3 m³/day to 15 m³/day (Article 12(1)).
- All abstractions for domestic purposes will be totally exempt from the licensing requirements of the Law (Article 12(1)).
- Provision to enable the States, by Regulations, to vary (inter alia) the exemption threshold or to impose different thresholds for different parts of the Island, has been incorporated (Article 12(5)–(6)).

Summary

In the view of the Minister –

1. The Draft Water Resources (Jersey) Law 200- will provide for the protection, management and regulation of water resources in Jersey and the promotion of the conservation of water dependant animals and plants and their habitats.
2. It will allow for the proper allocation of this most precious of resources for the benefit of the whole community and the environment, ensuring that sufficient water will be available for drinking as well as for industry, agriculture and recreation; very importantly, it will protect current and future abstraction rights, both public and private.
3. It will allow for a long-term integrated and sustainable approach to be adopted for the management of Jersey's water resources in line with the approach adopted in the European Union and many other countries world-wide.

Financial and manpower implications

It has been estimated that the total cost of implementing all the provisions of the Draft Water Resources (Jersey) Law 200- will be £100,000 per annum. This includes the appointment of a hydrogeologist as a specialist technical officer to administer the provisions of the Law.

It is intended to recover the full costs of implementation of the Law by charging for abstraction and impoundment licences. However, households with private domestic supplies will be totally exempt from the licensing provisions of the Law and hence will not be charged. As Jersey Water (who is totally supportive of the need for the Law) will be the main abstractor, most of the costs will be borne by the Company. It is estimated that this will increase the cost of an average domestic water bill by less than £3 per annum, which is considered by the Minister to represent good value for money in order to protect the Island's water resources. It has been estimated that the cost of other abstraction licenses amounting to some 120, (all non-domestic), will range between approximately £50 – £150 per annum, depending on the quantity of water licensed to be abstracted.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 15th February 2007 the Minister for Planning and Environment made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Planning and Environment the provisions of the Draft Water Resources (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law seeks to provide for the protection, better management and enhancement of water resources in Jersey, the fauna and flora that are dependent on inland waters and their habitats, and the natural beauty and amenity of inland waters.

It is set out in the following way –

PART 1

Introductory Provisions

Article 1 is an interpretation clause.

To “abstract” water means to remove it from a source of supply.

To “impound” water means to build or use a dam or weir, or other works, in a source of supply so as to have or to be likely to have a significant effect on the flow or level of water, or on the character of any source of supply or on any fauna or flora that is dependent on any source of supply.

“Groundwater” means water below the surface of the ground, in the saturation zone and in direct contact with the ground or subsoil.

“Surface waters” is defined as meaning the waters of lakes, marshlands, ponds, reservoirs, streams, surface water sewers and wetlands (not being groundwater).

Article 2 defines “inland waters”. This expression means groundwater, and surface waters, waters of lakes, marshlands, ponds, reservoirs, streams, surface water sewers and wetlands.

However, it does not include coastal waters; and it does not include discrete sources of surface water, unless the States by Regulations declare that they are to be treated as inland waters. Nor does it include waters in foul sewers, or in drains that run into such sewers.

Article 3 defines “source of supply” to mean a particular source of inland waters.

PART 2

Administration

Article 4 charges a water resources regulator with responsibility for pursuing the following objectives –

- (a) protecting water resources in Jersey;
- (b) monitoring, conserving, redistributing and augmenting those resources, and securing their proper use;
- (c) their sustainable development; and
- (d) promoting the conservation of fauna and flora that are dependent on inland waters, and their habitats to the extent that they are also dependent on such waters.

In carrying out his or her functions, the regulator is also to have regard to the conservation and enhancement of the natural beauty and amenity of inland waters and their use for recreational purposes.

As the Law is drafted, the Minister for Planning and Environment will initially be the regulator. However, because that Minister also carries out operational functions, the Law includes provisions in Schedule 4 (*q.v.*) to facilitate the transfer of the regulatory functions to some other person or body. It also imposes a regime of control on the regulator’s own operational functions, so long as the operational and regulatory functions are combined in a single person or body.

Article 5 requires the regulator, in administering the Law, to have regard to best environmental practice, a precautionary approach in anticipating and preventing environmental damage by the abstracting or impounding of water and a cost principle by which the persons who abstract or impound water are responsible for the costs of the regulation and management of those activities.

It also requires the regulator to have regard to the obligations of The Jersey New Waterworks Company Limited under the Water (Jersey) Law 1972.

Article 6 requires the regulator to gather information about water resources in Jersey.

Article 7 obliges the regulator to publish annual reports, and to make other information about the regulator's functions under the Law available to the public.

Article 8 requires the regulator to give public notice of proposals relating to the abstracting or impounding of water. The public will have the right to make representations, and the regulator must take them into account before reaching decisions.

Article 9 enables the regulator to authorize public officers to carry out functions under the Law. It also enables the waterworks company to authorize responsible employees to carry out the company's functions under Drought Orders (q.v.).

Article 10 enables an authorized person, in exercising his or her functions, to take assistants and equipment for those purposes.

PART 3

Protection of water resources

Article 11 prohibits the abstracting or impounding of inland waters otherwise than in accordance with a water resources licence issued by the regulator.

Article 12 sets out exceptions from the restrictions in Article 11.

In particular, they will not apply to –

- (a) the abstracting of surface water at a rate not exceeding 15 cubic metres in 24 hours,
- (b) the abstracting of groundwater at a rate not exceeding 15 cubic metres in 24 hours,
- (c) the abstracting of water for the domestic purposes of a household, regardless of the quantity taken, or
- (d) the alteration or use of an existing dam or other impounding works, which does not produce and is not likely to produce a materially different effect on the source of supply or on any fauna or flora that depends on it.

To obtain the benefit of an exemption under either of sub-paragraphs (b) and (c) (above), a person must register in the prescribed manner.

Article 13 creates offences, punishable by imprisonment not exceeding 2 years and an unlimited fine, for abstracting or impounding water in contravention of the restrictions.

Article 14 provides a statutory defence in cases of emergency.

Article 15 specifies how applications relating to water resources licences are to be made to the regulator.

Article 16 stipulates the considerations that the regulator must take into account in considering proposals relating to licences.

Article 17 provides for the determination of applications for licences.

A licence will have effect for a period to be specified by the regulator. The period is not to exceed 10 years, unless the licence is being granted to the waterworks company to allow it to fulfil its obligations under the Water (Jersey) Law 1972, or there are exceptional circumstances.

Article 18 enables the regulator to attach conditions to licences.

Article 19 provides for the issue of a licence.

Article 20 states the effect of a licence.

Article 21 provides for the variation and revocation of licences.

Article 22 provides for the suspension of a licence in an emergency.

Article 23 provides for the transfer of a licence.

Article 24 requires the regulator to give notice of his or her decisions, within 14 days, to persons who are affected by them, together with the regulator's reasons for the decisions.

Article 25 enables the prescribing of charges for licences, both in respect of applications and periodically while licences remain in effect.

PART 4

Drought measures

Article 26 provides for the making of Drought Orders, if there is an existing or threatened deficiency in water supplies or in the flow or level of water in a source of supply. Before making such an Order, the regulator must consult the waterworks company.

Article 27 provides for the duration of a Drought Order.

Article 28 deals with the matters for which a Drought Order may make provision.

Article 29 authorizes the regulator and the waterworks company to carry out works under Drought Orders.

Article 30 provides that it is an offence, punishable by imprisonment not exceeding 2 years and a fine, to contravene a Drought Order. If a person fails to comply with a duty imposed on him or her by such an Order, the regulator may in any event itself act in default and recover the costs of doing so from the person.

PART 5

Enforcement

Article 31 empowers the regulator or a person authorized on his or her behalf, on reasonable grounds for the purposes of the Law, to enter, board, inspect and search land and vehicles, to carry out tests there and take samples, and to remove things for the purposes of evidence.

Ordinarily, these powers may be exercised only at reasonable hours and, in the case of residential premises, on 48 hours' notice.

However, they may be exercised at any time in an emergency.

Under *Article 32* an authorized person may apply for a judicial warrant to exercise his or her powers under the Law, if it is thought desirable to do so. The warrant may authorize the use of reasonable force, if necessary.

Article 33 gives an authorized person the power to require an owner, occupier or person in charge of any land or vehicle, or any other responsible person present, to assist in the exercise of his or her powers.

Article 34 empowers the regulator or an authorized person to inspect and copy documents and records that are relevant to the purposes of the Law.

Under *Article 35* it is an offence, punishable by imprisonment not exceeding 2 years and a fine, to obstruct an authorized person or his or her assistants in the course of their duties.

Article 36 enables the regulator or an authorized person to seek an injunction from the Royal Court to enforce compliance with the Law.

This is without prejudice to any other remedies that may be available – for example, criminal prosecution.

PART 6

Other provisions

Article 37 enables a person to apply to the regulator for a certificate of confidentiality, to the extent that disclosure under the Law will reveal a trade secret. If the regulator is satisfied that a trade secret would be revealed, the certificate must be granted.

Under *Articles 38* and *39*, the effect of the certificate will be to restrict the persons to whom and the purposes for

which the information may be disclosed.

Article 40 confers rights of appeal to the Royal Court against decisions of the regulator. Objectors to proposals relating to water resources licences will not themselves have rights of appeal, but they will be entitled to notice of appeals, and to be heard in reply.

Article 41 provides for the payment of compensation, in accordance with the same procedure as applies under the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, to a person who suffers loss because of the exercise of any power under Article 29 (work done under Drought Orders) or Article 31 (general ancillary power of the regulator).

Compensation will not be payable under the draft Law to the extent that loss is attributable to the fault of the claimant, or to the extent that compensation is payable under any other law. It will not be payable under the draft Law either, if the claim is for loss of profits in respect of the use of land indirectly affected by the exercise of a power under Article 29 or Article 31.

Under *Article 42* it is an offence to interfere with equipment used for the purposes of the Law.

Under *Article 43* it is an offence to give false information in connection with a licence.

Article 44 provides for the criminal liability of parties to offences.

Article 45 provides that a person's conviction for contravening the Law does not preclude the regulator from exercising civil remedies against that person under the draft Law.

Article 46 contains evidentiary provisions.

Article 47 protects members, officers, agents and servants of the regulator (if acting in good faith) against any personal criminal or civil liability in respect of regulatory decisions relating to water resources licences.

Article 48 facilitates the service of documents under the Law.

Article 49 deals with Orders made under the Law. The Article also deals with Rules of Court.

Article 50 provides that the requirements of the Law are additional to those of other enactments.

Article 51 empowers the States, by Regulations, to modify the Law to give effect to any international agreement or obligation relating to water resources that applies to Jersey.

Article 52 describes the extent to which the Law will bind the Crown.

Article 53 contains consequential amendments and transitional and other arrangements (which are set out in detail in Schedules 2, 3 and 4).

Article 54 provides for the citation and commencement of the Law.

Its provisions (except for the requirement to obtain a water resources licence or to issue a water resources certificate) will come into force on a date to be appointed by the States, by Act ("the appointed day").

The requirement to obtain a licence or to issue a certificate will come into force 12 months later.

Schedule 1 describes information that the regulator is not bound to disclose.

Schedule 2 contains consequential amendments to other laws.

Schedule 3 contains transitional arrangements in respect of water resources licences.

If a person has lawfully abstracted water from a source of supply within 3 years before the appointed day, and applies for a licence at least 9 months before the requirement to have a licence comes into force, he or she will be entitled as of right to a licence to continue to do so for a period of 5 years after the licensing requirement comes into force.

If a person has planning permission before the appointed day, and applies for a licence at least 9 months before the licensing requirement comes into force, he or she will be entitled as of right to a licence to impound the water in accordance with the planning permission for 5 years after the licensing requirement comes into force.

Schedule 4 contains arrangements that will apply to the regulator, in respect of the regulator's own operational activities while remaining the regulator and also having operational responsibilities.

If that ceases to be the case, this Schedule will expire, and the regulator will then be required to hold a licence in order to continue any operational activities.

Under the arrangements in the Schedule, the regulator will be obliged to advertise proposals for the regulator's own operational activities in the same way as applicants for licences. Members of the public will have the same

rights to make representations, which the regulator must consider before deciding to proceed with a proposal.

The Attorney General and objectors will have a right to apply to the Royal Court to review the regulator's decision. On hearing an application for review, the Court may substitute its own judgment for that of the regulator.

In carrying on operational activities under the regime established by the Schedule, the regulator will be subject to obligations and sanctions corresponding to those applicable to licensees.

Schedule 4 includes transitional provisions, corresponding to those that apply under Schedule 3 to licences, in respect of activities that are already being undertaken by the regulator before the appointed day.

It also contains transitional provisions that will apply if the regulator's regulatory functions are transferred to another body or persons. The effect of these will be that, on the transfer, the regulator will be treated as being duly licensed to carry on the activities that the regulator is at that point of time lawfully carrying on under the regime in Schedule 4.

Where the Law prescribes a penalty by way of a fine not exceeding a specified level "on the standard scale", this is a reference to the scale set out in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993. The maximum penalties for each level on that scale, currently, are –

Level 1	–	£50
Level 2	–	£500
Level 3	–	£2,000
Level 4	–	£5,000

Where the Law prescribes a fine but does not specify a level, the maximum fine that may be imposed is unlimited.



Jersey

DRAFT WATER RESOURCES (JERSEY) LAW 200

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Jersey

DRAFT WATER RESOURCES (JERSEY) LAW 200

A LAW to provide for the protection, management and regulation of water resources in Jersey; the promotion of the conservation of the fauna and flora that are dependent on inland waters and of the habitats of such fauna and flora to the extent that those habitats are themselves dependent on inland waters; the conservation and enhancement of the natural beauty and amenity of inland waters; and for related purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTRODUCTORY PROVISIONS

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“abstract” means to remove water from a source of supply;

“alter” includes to complete and also includes to demolish;

“appointed day” means the day appointed by the States, by Act, under Article 54(2);

“approved” means approved in writing by the regulator;

“authorized person” means a person who is authorized for the purposes of this Law by the regulator under Article 9(1) and, for the purposes to which paragraph (2) of that Article refers, also means person who is authorized by the Company under that paragraph;

“business” includes –

(a) a trade;

(b) an industrial activity;

(c) a commercial activity; and

(d) a profession;

“certificate of confidentiality” means a certificate of confidentiality that is granted under Article 37;

“coastal waters” means waters that are within the area that extends landward, from the baselines from which the breadth of the territorial sea is measured, as far as the limit of the highest tide;

“Company” means The Jersey New Waterworks Company Limited registered by Act of the Royal Court dated 11th February 1882 in accordance with the provisions of the Loi (1861) sur les Sociétés à Responsabilité Limitée^[1];

“discrete source of supply” means a source of supply that –

- (a) is artificial;
- (b) consists only of surface waters; and
- (c) is constructed so that water does not pass between it and any other source of supply;

“Drought Order” means a Drought Order made under Article 26;

“groundwater” means water that is below the surface of the ground, in the saturation zone and in direct contact with the ground or with the subsoil;

“impound” means to construct, alter or use, in a source of supply, any dam, weir or other works, if to do so would have or is likely to have a significant effect on –

- (a) the flow or level of water in any source of supply;
- (b) the character of any source of supply; or
- (c) any fauna or flora that is dependent on any source of supply;

“land” –

- (a) includes a house, building or premises; and
- (b) also includes land under water,

and the expression “on any land” means on, in or under any land;

“licensee” means a person to whom a water resources licence is issued;

“prescribe” means to prescribe by Order;

“records” includes computer records and records that are kept otherwise than in documents;

“regulate” includes to control, restrict, limit or prohibit;

“regulator” means the Minister for Planning and Environment;

“representation” includes an objection;

“stream” includes a brook, canal, culvert, ditch, lavoir, sluice or spring;

“surface waters” means the waters of lakes, marshlands, ponds, reservoirs, streams, surface water sewers, surface water drains and wetlands, but does not mean groundwater;

“suspend”, when referring to a water resources licence, means to suspend its effect wholly or partly;

“vary”, when referring to a water resources licence, means to vary any term or condition of the licence;

“water resources licence” means a licence that is issued by the regulator under Article 19 and is in effect.

- (2) For the purposes of this Law, references to fauna or flora that are dependent on a source of supply shall be construed as including references to their habitats, to the extent that those habitats are also dependent on a source of supply.
- (3) For the purposes of this Law, it is immaterial that the removal of water from a source of supply is permanent or temporary or that the water is removed to be transferred to another source of supply.

2 Meaning of “inland waters”

- (1) In this Law, except as otherwise provided, “inland waters” means –

- (a) groundwater; and
 - (b) surface waters,
whether natural or artificial.
- (2) “Inland waters” does not mean –
- (a) coastal waters;
 - (b) water in a discrete source of supply; or
 - (c) water in a foul sewer, or in a drain that drains into a foul sewer.
- (3) However, the States may by Regulations declare that any water described in paragraph (2)(b) shall be inland waters for the purposes of this Law.
- (4) The Regulations may provide that such water shall be inland waters either for the purposes of the whole of this Law, or for the purposes of such provisions of this Law as are specified in the Regulations.

3 Meaning of “source of supply”

- (1) In this Law, except as otherwise provided, “source of supply” means a particular source of inland waters.
- (2) For the purposes of paragraph (1), it is immaterial that a source of supply–
- (a) is affected by the flow of the tide; or
 - (b) is for the time being dry.
- (3) Water in a main, or other pipe, that is owned or used by The Jersey New Waterworks Company Limited is not water comprised in a source of supply.

PART 2

ADMINISTRATION

4 General objectives

- (1) In carrying out functions under this Law, the regulator shall have regard to the following general objectives –
- (a) the protection of water resources in Jersey;
 - (b) the monitoring, conservation, redistribution and augmenting of those resources, and the securing of their proper use;
 - (c) their sustainable development; and
 - (d) the promotion of the conservation of fauna and flora that are dependent on inland waters, and of their habitats to the extent that those habitats are also dependent on inland waters.
- (2) Where water quality objectives under Article 12 of the Water Pollution (Jersey) Law 2000^[2] are for the time being set in respect of any controlled waters (as defined in that Law), the regulator shall carry out functions under this Law in a manner that ensures as far as reasonably practicable that those objectives are also achieved.
- (3) In carrying out functions under this Law, the regulator shall also seek to promote the conservation and enhancement of the natural beauty and amenity of inland waters and their use for recreational purposes.

5 Operating considerations

- (1) In carrying out functions under this Law the regulator shall have regard, as far as is reasonably practicable, to the following considerations –
 - (a) the best techniques that are for the time being available and the best environmental practice that is for the time being recognized;
 - (b) a precautionary principle by which, if there are reasonable grounds for concern that the abstraction or impounding of water or any other activity or omission in respect of water resources may cause environmental harm, the regulator takes preventive measures in anticipation of the risk, whether or not there is conclusive evidence of a causal relationship between that activity or omission and its effects; and
 - (c) a cost principle by which the costs of managing and regulating the abstraction or impounding of water are borne by the persons who abstract or impound it.
- (2) In carrying out functions under this Law, the regulator shall also have regard to the obligations imposed on the Company by the Water (Jersey) Law 1972^[3].

6 Gathering of information

- (1) For the purposes of carrying out functions under this Law, the regulator shall monitor water resources in Jersey and the extent to which this Law is being complied with, and undertake continuing scientific and technical research.
- (2) In doing so, the regulator shall have regard to the latest developments in technology.

7 Dissemination of information

- (1) The regulator shall publish by 30th April in each calendar year a report of the regulatory activities undertaken by the regulator under this Law during the previous calendar year.
- (2) The regulator shall also make available the information in the regulator's possession that is relevant to the following matters under this Law –
 - (a) reports published under paragraph (1);
 - (b) representations made to the regulator under Article 8;
 - (c) the registration under Article 12 of the abstracting or impounding of any water, and consents given under that Article;
 - (d) applications for and the grant, variation, transfer, suspension and revocation of water resources licences;
 - (e) information obtained by the regulator in consequence of the requirements of conditions of licences;
 - (f) Drought Orders;
 - (g) notices served by the regulator in the exercise of the regulator's powers under Article 34;
 - (h) the results of civil and criminal proceedings instituted under this Law;
 - (i) in respect of certificates of confidentiality, the information to which Article 39 refers; and
 - (j) any other activities, or measures, that affect or are likely to affect water resources in Jersey or are undertaken under this Law,

but this paragraph is subject to paragraph (6).

- (3) The information to which paragraph (2) applies shall be available for inspection by any person during reasonable office hours, as soon as possible after it is requested and in any event within 28 days.

- (4) The regulator shall also provide facilities for copying the information.
- (5) The regulator may make reasonable charges for providing information and facilities for copying under this Article.
- (6) The regulator may refuse to make available under this Article any information specified in Schedule 1.
- (7) Where the regulator refuses a request for information under this Article, the regulator shall give the applicant a statement in writing of the reasons for the refusal.
- (8) The States may by Regulations amend Schedule 1.
- (9) This Article is subject to Article 38.

8 Public notice of proposals

- (1) Before proceeding on either of the following proposals, namely—
 - (a) an application for the grant or variation of a water resources licence; or
 - (b) a proposal of the regulator's own motion to vary a licence,the regulator shall comply with this Article.
- (2) The regulator shall publish in the Jersey Gazette a notice –
 - (a) stating that a copy of the proposal will be available for inspection free of charge at a place specified in the notice;
 - (b) specifying the period for which it will be available for inspection (being a period of not less than 21 days beginning after the notice is published in the Jersey Gazette);
 - (c) specifying times, during reasonable office hours, when it may be inspected; and
 - (d) explaining that anyone may make representations in writing to the regulator in respect of the proposal at any time before the expiry of the 7 days following the period for inspection,and the regulator shall make a copy of the proposal available accordingly for inspection.
- (3) If the regulator is satisfied on reasonable grounds that the activity to which the proposal relates is not likely to have any appreciable adverse effect on a source of supply or on fauna or flora that are dependent on a source of supply, the regulator need not comply with paragraph (2).
- (4) A person who wishes to make representations in respect of the proposal may do so by delivering them in writing to the regulator at any time before the expiry of the 7 days following the period for inspection.
- (5) The regulator shall serve on the applicant or licensee (as the case may be) copies of all representations made by other persons under paragraph (4) in respect of the proposal.
- (6) Within 14 days after being served under paragraph (5) with a copy of any representations, the applicant or licensee may deliver to the regulator representations in writing in reply.
- (7) The regulator shall not proceed to determine the proposal until the time limits for making representations under this Law have elapsed.
- (8) In determining the proposal, the regulator shall consider all representations made under this Law in respect of the proposal.
- (9) In this Article, "proposal" includes –
 - (a) the information and any representations supporting the proposal; and
 - (b) in the case of a proposal of the regulator's own motion to vary a water resources licence, all written representations made by the licensee under Article 21 in respect of the proposal.

9 Authorized persons

- (1) The regulator may in writing authorize for the purposes of this Law any person who is employed in the service of the States.
- (2) The Company may in writing authorize any responsible employee of the Company, for the purposes of the carrying out of any works by it under Article 29(2) in the exercise of any authorization or power conferred on the Company under Article 28(1)(a) by a Drought Order.
- (3) An authorized person who is exercising his or her powers under this Law shall produce on request evidence of his or her authority to do so.
- (4) An authorized person shall also state on request his or her name, and the power that he or she proposes to exercise.

10 Assistants

- (1) In exercising his or her powers under this Law (including any powers conferred by a warrant granted under Article 32), an authorized person may take such other persons, vehicles, equipment and materials with the authorized person as are reasonably necessary or expedient for the purpose.
- (2) A person who accompanies an authorized person under paragraph (1) may perform any of the authorized person's functions under this Law, but only under the latter's supervision.

PART 3

PROTECTION OF WATER RESOURCES

11 Restrictions on the abstraction or impounding of water

A person shall not cause or knowingly permit –

- (a) the abstracting of water from a source of supply; or
- (b) the impounding of water in a source of supply,

unless he or she is acting in accordance with a water resources licence.

12 Cases in which the restrictions do not apply

- (1) Article 11 does not apply to–
 - (a) the abstracting of surface water on or contiguous to any land, by or on behalf of the occupier of the land, not exceeding in the aggregate 15 cubic metres in any period of 24 hours;
 - (b) the abstracting of groundwater, by or on behalf of an occupier of land, not exceeding in the aggregate 15 cubic metres in any period of 24 hours;
 - (c) the abstracting of water for the domestic purposes of a household;
 - (d) the abstracting or impounding of water, as far as it is reasonably necessary to prevent interference with or damage to any civil engineering works or construction works;
 - (e) the abstracting or impounding of water, as far as it is reasonably necessary for the purposes of the Fire Service (Jersey) Law 1959^[4] or the safety of aviation, or for the purpose of testing any machinery or apparatus for any of those purposes, or for the purpose of training or practice in the use of such machinery or apparatus;
 - (f) the abstracting or impounding of water, for the purposes of exercising a regulatory power

under any enactment or performing a regulatory duty under any enactment;

- (g) the abstracting of groundwater in the course of ascertaining whether it is present, or to ascertain its level, volume or quality or the effect of its abstraction, if the activity is carried on with the written consent of the regulator and in accordance with such conditions (if any) as the regulator imposes in giving that consent; or
 - (h) the alteration or use, on or after the day on which Article 11 comes into force, of any dam, weir or other works in existence in a source of supply before the appointed day, where the alteration or use does not have and is not likely to have any effect described in paragraph (3).
- (2) However, paragraph (1) only applies to an abstracting or impounding of water to which any of sub-paragraphs (b), (c) and (d) of that paragraph refers if the abstracting or impounding is registered in the prescribed manner.
 - (3) Paragraph (1)(h) refers to any effect –
 - (a) on the flow or level of water in any source of supply;
 - (b) on the character of any source of supply; or
 - (c) on any fauna or flora dependent on any source of supply,that is materially different from the effect that the works had or were likely to have had before the appointed day.
 - (4) The States may by Regulations amend paragraph (1).
 - (5) Regulations made under paragraph (4) may be expressed so as to apply –
 - (a) generally throughout Jersey; or
 - (b) to any specified part of Jersey.
 - (6) Regulations made under paragraph (4) may include transitional provisions.
 - (7) The regulator may by Order –
 - (a) prescribe the manner in which registration for the purposes of any of sub-paragraphs (b), (c) and (d) of paragraph (1) may be effected;
 - (b) prescribe the time within which registration is to be effected;
 - (c) specify the person who is responsible for applying for registration;
 - (d) prescribe information that is to be provided to the regulator when applying for registration; and
 - (e) prescribe information that is to be provided to the regulator periodically, the times at which the information is to be provided and the person by whom it is to be provided, in respect of the registered abstraction of water.
 - (8) Registration is effected on completion of the requirements specified in an Order to which paragraph (7) refers.
 - (9) However, registration will cease to have effect if prescribed information to which paragraph (7)(e) refers is not provided in accordance with such an Order.

13 Offences in respect of water resources

- (1) A person who contravenes Article 11 shall be guilty of an offence.
- (2) A licensee who contravenes any condition of his or her licence shall be guilty of an offence.
- (3) A person who commits an offence under either of paragraphs (1) and (2) shall be liable to a fine.

14 Statutory defence of emergency

Where a person is charged with an offence under either of paragraphs (1) and (2) of Article 13, in respect of a source of supply, it shall be a defence to prove –

- (a) that the act in respect of which he or she is charged was done in consequence of a decision to do so in an emergency that arose in circumstances beyond the person's control;
- (b) that the decision was reasonable;
- (c) that he or she took all steps that were reasonably practicable for avoiding or minimizing any harm to the source of supply and to fauna and flora that are dependent on that source of supply; and
- (d) that he or she gave full details of the matter to the regulator, or ensured that they were given to the regulator, as soon as was reasonably practicable.

15 Applications in respect of water resources licences

- (1) An application for the grant, variation, transfer or revocation of a water resources licence shall be made in writing to the regulator, with such information (including maps and diagrams) as may be prescribed or as the regulator may reasonably require in any case.
- (2) An application for the transfer of a water resources licence shall include the written consent of the proposed transferee to becoming the licensee.

16 Matters to be taken into account

- (1) In considering an application in respect of a water resources licence or a proposal for its variation or revocation, the regulator shall have regard to all the circumstances, including –
 - (a) the reasonable requirements of the applicant or licensee or, if it is an application for the transfer of a licence, the proposed transferee (as the case requires);
 - (b) the quantity and the quality of the water that is available to be abstracted;
 - (c) whether the granting of the application or other proposal would adversely affect to a significant degree, at the time when it is granted, any right specified in paragraph (2) and the extent to which it would do so and the effect of that consequence;
 - (d) the result of any test, investigation or survey involving the abstracting of groundwater in accordance with a consent to which Article 12(1)(g) refers;
 - (e) the existing and prospective requirements of existing lawful uses of water that is abstracted from any source of supply for any purpose;
 - (f) the existing and prospective amenity of any source of supply;
 - (g) any effect that the granting of the application or other proposal will have or is likely to have on the flow, level, volume or quality of water in any source of supply;
 - (h) any effect that the granting of the application or other proposal will have or is likely to have on any existing building or other structure; and
 - (i) any effect that the granting of the application or other proposal will have or is likely to have on the fauna and flora that are dependent on any source of supply.
- (2) Paragraph (1)(c) refers to a right of a person to abstract water from any source of supply–
 - (a) in the circumstances described in either of sub-paragraphs (b) and (c) of Article 12(1); or
 - (b) under a water resources licence.

17 Determination of applications for licences

- (1) The regulator shall determine an application for a water resources licence either by granting it unconditionally or on such conditions as the regulator may specify in the decision, or by refusing to grant it.
- (2) If the regulator grants the application, the regulator shall specify in the decision the period for which

the water resources licence shall have effect.

- (3) The period that the regulator specifies shall not exceed 10 years from the date on which the water resources licence is issued, unless –
 - (a) the licence is granted to the Company to allow it to fulfil its obligations under the Water (Jersey) Law 1972; or
 - (b) there are exceptional circumstances.
- (4) There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator.

18 Conditions of licences

- (1) A condition of a water resources licence may relate to any of the following matters –
 - (a) the place at which water may be abstracted or impounded;
 - (b) the design or construction of any works, apparatus or machinery to be used for that purpose;
 - (c) the quantity of water that may be abstracted;
 - (d) the rate at which water may be abstracted;
 - (e) the times of the day during which water may be abstracted;
 - (f) the periods during which water may be abstracted;
 - (g) the minimum flow, level or volume of water that is to be maintained in a source of supply;
 - (h) the augmenting of the flow, level or volume of water in a source of supply;
 - (i) the provision or maintenance of approved meters or other approved apparatus, by the licensee or any other person, for measuring, assessing, determining or otherwise recording the volume or rate at which water is abstracted;
 - (j) the keeping of records, the making of returns or the giving of other information, by the licensee or any other person to the regulator, in respect of the abstracting or the impounding of water;
 - (k) the purposes for which water that is abstracted is to be or may be used;
 - (l) the purposes for which water may be impounded;
 - (m) the efficient or effective use of water that is abstracted; and
 - (n) time limits for complying with any condition of the licence.
- (2) Nevertheless, paragraph (1) does not limit the kinds of conditions on which the regulator may grant a water resources licence.

19 Issue of licences

On granting an application for a water resources licence, the regulator shall issue a licence accordingly to the applicant.

20 Effect of licences

A water resources licence authorizes the licensee to carry on, in accordance with the terms and conditions of the licence but subject to the provisions of any Drought Order, the activity specified in the licence.

21 Variation and revocation of licences

- (1) The regulator may –
 - (a) subject to the other provisions of this Law, vary a water resources licence; or
 - (b) revoke a licence,

on the application of the licensee or of the regulator's own motion.

- (2) The regulator shall not on any one occasion vary a water resources licence by extending its term for a period exceeding 10 years from the date of the regulator's decision to vary the licence, unless –
 - (a) the variation is to allow the Company to fulfil its obligations under the Water (Jersey) Law 1972; or
 - (b) there are exceptional circumstances.
- (3) The regulator shall not vary or revoke a water resources licence of the regulator's own motion, unless it is reasonably necessary to do so to deal with serious harm or the threat of serious harm to –
 - (a) any source of supply; or
 - (b) any fauna or flora that are dependent on a source of supply.
- (4) If proposing to vary or revoke a water resources licence of the regulator's own motion, the regulator shall serve a notice in writing on the licensee, specifying the proposal and informing the licensee that he or she may make representations in writing to the regulator in respect of the proposal within 21 days after the notice is served on the licensee.
- (5) The regulator shall consider all representations so made, before proceeding on the proposal and before complying (where necessary) with Article 8.
- (6) A variation or revocation shall not take effect before it is served on the licensee.
- (7) A variation or revocation shall take effect when it is served on the licensee, unless the regulator specifies a later date.
- (8) If the regulator does specify a later date, the variation or revocation shall take effect on that date.
- (9) If a variation imposes a restriction, obligation or requirement on the licensee, the regulator must specify a later date and that date must not be sooner than 6 months after the variation is served on the licensee.
- (10) The regulator need not comply with paragraph (9) if there are exceptional circumstances, and the regulator states those circumstances in the decision.
- (11) There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator.

22 Suspension of licences

- (1) Where it appears to the regulator on reasonable grounds that it is necessary or expedient to do so because of an emergency –
 - (a) the regulator may by serving a notice in writing on a licensee suspend the licence for any period, not exceeding 14 days, that is specified in the notice; and
 - (b) the regulator may extend the suspension from time to time, in the same manner, for any period not exceeding 14 days.
- (2) There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator.

23 Transfer of licences

- (1) With the written approval of the regulator on an application made in accordance with Article 15, a licensee may transfer his or her licence to any other person.
- (2) With effect from the date of approval, or from such later date as the regulator may specify in the approval, the transferor shall cease to be the licensee and the transferee shall be the licensee.
- (3) There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator.

24 Notice of decisions

- (1) If –
 - (a) the regulator grants or refuses an application for a water resources licence, or an application to vary, transfer or revoke a licence; or
 - (b) the regulator varies, suspends or revokes a licence of the regulator’s own motion,the regulator shall state the reasons for the decision, and shall serve a written copy of the decision (including the reasons) within 14 days on each of the persons specified in paragraph (2).
- (2) The persons to whom paragraph (1) refers are–
 - (a) the applicant or the licensee, as the case may be;
 - (b) every person who has made representations under Article 8(4) in respect of the matter, and has provided an address for service in Jersey; and
 - (c) in the case of an application to transfer a licence, the proposed transferee.
- (3) This Article does not require the regulator, if suspending a water resources licence or extending the period of its suspension under Article 22, to give to the licensee additional notice under this Article.

25 Charges

- (1) The regulator may prescribe –
 - (a) charges that shall be payable to the regulator by applicants, licensees and proposed transferees, in respect of applications for the grant, variation, transfer and revocation of licences;
 - (b) charges that shall be payable to the regulator periodically, by licensees, while their licences remain in effect; and
 - (c) charges that shall be payable to the regulator by persons who apply for consent under Article 12.
- (2) In prescribing charges under this Article, the regulator shall have regard to the amounts that are needed to meet the regulator’s expenditure in carrying out functions under this Law.
- (3) Those functions include the consideration of applications relating to licences, the granting of licences, the monitoring of activities undertaken by licensees and the variation, transfer, suspension and revocation of licences, but this paragraph does not limit the generality of paragraph (2).
- (4) In prescribing charges under this Article, the regulator may impose –
 - (a) different charges in respect of different parts of any periods during which licences remain in effect; and
 - (b) different charges according to the kinds or scale of activity, the volumes and rates of abstraction of water, the localities or circumstances and the number of different activities to which licences relate.
- (5) Where any charge is prescribed under this Article, the regulator may refuse to do anything for which it is payable until the charge is paid (without prejudice to the right of the regulator to recover the money).

PART 4

DROUGHT MEASURES

26 Drought Orders

- (1) If the regulator is satisfied on reasonable grounds that –
 - (a) a serious deficiency of supplies of water (whether or not they comprise inland waters) in any part of Jersey; or
 - (b) a deficiency, in the flow, level or volume of water in any source of supply, posing a significant threat to any fauna or flora that are dependent on a source of supply,exists or is threatened, the regulator may make a Drought Order.
- (2) However, the regulator shall consult the Company before making a Drought Order.
- (3) A Drought Order may be expressed so as to apply –
 - (a) generally throughout Jersey;
 - (b) to any specified part of Jersey;
 - (c) to any specified activity or class of activities; or
 - (d) to any specified class of persons.

27 Duration of Drought Orders

- (1) Unless it is sooner revoked by the regulator, a Drought Order shall expire on a day to be specified in the Order.
- (2) The day to be specified shall not be later than 6 months after the day on which the Drought Order comes into force.

28 Terms of Drought Orders

- (1) A Drought Order may –
 - (a) authorize or empower the regulator or the Company to abstract water from any source of supply specified in the Order, or impound water in any source of supply specified in the Order, subject to any conditions or restrictions specified in the Order;
 - (b) regulate the abstracting, impounding, use or consumption of water from any source of supply;
 - (c) regulate the construction or alteration of any works, machinery or apparatus for the abstraction of water from any source of supply;
 - (d) regulate the supply of water by the Company, or the use or consumption of any water so supplied (whether or not in either case the water comprises inland waters); and
 - (e) modify or suspend any restriction or obligation imposed on the Company by the Water (Jersey) Law 1972.
- (2) The terms of a Drought Order shall apply notwithstanding –
 - (a) Article 11 or Article 12; or
 - (b) the terms and conditions of a water resources licence.

29 Works under Drought Orders

- (1) While a Drought Order is in force, the regulator or any person authorized under Article 9(1) may carry out on any land any works that are reasonably necessary to enable the regulator to exercise any authorization or power that is conferred under Article 28(1)(a) by the Order.
- (2) While a Drought Order is in force, the Company or any person authorized by it under Article 9(2) may carry out on any land any works that are reasonably necessary for the exercise by the Company of any authorization or power that is conferred on it under Article 28(1)(a) by the Order.
- (3) The regulator, the Company or an authorized person may for the purpose of carrying out on any land

any works under paragraph (1) or paragraph (2)–

- (a) enter on the land; or
- (b) enter on any other land to obtain access to the land on which the works are to be carried out.

30 Breaches of Drought Orders

- (1) Any person who contravenes a Drought Order shall be guilty of an offence and liable to a fine.
- (2) If a person fails to comply with a duty imposed on him or her by a Drought Order, the regulator may after the expiry of a reasonable period of time do all or any of the things that the person ought to have done to ensure his or her compliance with that duty.
- (3) Any expenses that are reasonably incurred by the regulator in exercising the powers under paragraph (2) shall be a civil debt due and payable to the regulator by the person who has failed to comply with his or her duty, and shall be recoverable accordingly by the regulator in any court of competent jurisdiction.
- (4) For the purposes of this Article, the regulator's reasonable expenses of exercising the powers under paragraph (2) shall include any expenses incurred by the regulator in investigating and establishing the identification of the person who has failed to comply with the duty.

PART 5

ENFORCEMENT

31 Ancillary powers

- (1) A power under paragraph (3) shall only be exercised–
 - (a) if there are reasonable grounds for doing so; and
 - (b) in a manner that is proportionate and otherwise reasonable.
- (2) A power under paragraph (3) shall not be exercised in respect of residential land unless–
 - (a) at least 48 hours' notice in writing has been given to the occupier; or
 - (b) the power is being exercised in an emergency.
- (3) The regulator or a person authorized under Article 9(1) may, for the purposes of executing any work or performing any other function or exercising any other power under or for the purposes of this Law, do any of the following things at any reasonable hour or in an emergency, namely –
 - (a) enter on or board, inspect or search any land or vehicle;
 - (b) take or carry out any measurements, surveys, tests, investigations or photographs on or in the land or vehicle;
 - (c) install, construct, maintain or operate any monitoring equipment or other apparatus on or in the land or vehicle;
 - (d) carry out or dig on any such land any experimental borings, trial pits or trial holes;
 - (e) take or remove from the land or vehicle, for analysis, samples of any substance, article or other thing found there;
 - (f) take or remove from the land or vehicle, for the purposes of evidence in any civil or criminal proceedings under this Law, any substance, article or other thing;
 - (g) transfer water from one source of supply to another; or
 - (h) enter on any land to obtain access to any other land.
- (4) If a person enters on any land or boards any vehicle in the exercise of a power under paragraph (3) and it is for the time being unoccupied or unmanned, the person exercising the power shall leave it

secured as effectually as that person found it.

- (5) If a person has exercised any power under paragraph (3) in respect of any land or vehicle, and any person specified in paragraph (6) so requests, the person exercising that power shall as soon as reasonably practicable and in any event within 21 days inform the other person in writing of –
 - (a) the power so exercised; and
 - (b) everything taken or removed in the course of its exercise.
- (6) The persons to whom paragraph (5) refers are–
 - (a) the owner or occupier of the land concerned;
 - (b) the driver or other person in charge of the vehicle concerned; and
 - (c) any other person of whom a requirement is made under Article 33 in respect of the matter.
- (7) The powers conferred on the regulator or an authorized person by this Article are in addition to any other powers conferred on the regulator or on that person by this Law.

32 Warrants

- (1) If the Bailiff or a Jurat is satisfied on sworn information –
 - (a) that there are reasonable grounds for the exercise of any power under this Law; and
 - (b) that in the circumstances of the case it is desirable to grant a warrant under this paragraph,he or she may grant a warrant to an authorized person authorizing that person at any time to enter on or board any land or vehicle specified in the warrant and there exercise any other powers under this Law, and in doing so to use such reasonable force as may be necessary.
- (2) A warrant shall continue in force until –
 - (a) the purposes for which the warrant is granted have been fulfilled; or
 - (b) the expiry of the period of one month following its grant,whichever event occurs first.

33 Co-operation by owners and others

- (1) An authorized person who is exercising or seeking to exercise his or her powers under this Law on or in any land or vehicle may require any person present who is or appears to the authorized person to be –
 - (a) the owner, occupier, driver or person in charge; or
 - (b) some other responsible person,to render such assistance as the authorized person may reasonably require of the other person in order that the authorized person can carry out more effectively the purposes for which the authorized person is exercising his or her powers.
- (2) Paragraph (1) does not empower an authorized person to require a person to do anything that the regulator may require a person to do under Article 34.
- (3) Any person who intentionally and without reasonable excuse contravenes a requirement made of a person under this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.

34 Access to documents and records

- (1) Where it appears to the regulator on reasonable grounds that a person has in his or her custody or control a document or record (including specification or plan relating to an impoundment, and a

borehole record) that is relevant to the purposes of this Law, the regulator may require the person to allow the regulator, or a person who is authorized under Article 9(1), to inspect and copy it.

- (2) A requirement by the regulator under paragraph (1) shall be made by a notice in writing served on the person to whom it relates.
- (3) The notice –
 - (a) shall specify the document or record to be inspected or copied; and
 - (b) shall also specify a period of time (being a reasonable period in the circumstances) within which the notice is to be complied with.
- (4) If it is reasonably necessary or expedient to do so, the regulator or a person who is authorized under Article 9(1) may take the document or record away temporarily, to inspect or copy it.
- (5) There shall be a right of appeal, in accordance with Article 40, against the making of a requirement by the regulator under this Article.
- (6) Any person who intentionally and without reasonable excuse contravenes a requirement made of the person under this Article shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.

35 Obstruction

Any person who without reasonable excuse –

- (a) intentionally obstructs an authorized person who is exercising or seeking to exercise any power under this Law; or
- (b) intentionally obstructs any person who is lawfully accompanying an authorized person, or performing any function under the supervision of the authorized person, under Article 10,

shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.

36 Injunctions

- (1) The regulator or a person who is authorized under Article 9(1) may apply to the Royal Court for an injunction to enforce compliance by any person with any requirement of this Law or made under this Law, or to restrain any person from contravening any provision of this Law.
- (2) The Company or a person who is authorized by the Company under Article 9(2) may for the purposes to which that paragraph refers apply to the Royal Court for an injunction to enforce compliance by any person with any requirement of this Law or made under this Law, or to restrain any person from contravening any provision of this Law.

PART 6

OTHER PROVISIONS

37 Applications for protection of trade secrets

- (1) A person specified in paragraph (2) may apply to the regulator in accordance with this Article for a certificate of confidentiality in respect of any information described in that paragraph, on the ground that its disclosure will reveal a trade secret.
- (2) The persons who may apply for certificates of confidentiality, and the information in respect of which they may so apply, are –
 - (a) an applicant for the grant, variation, transfer or revocation of a water resources licence, in respect of any information that he or she is required or wishes to give to the regulator in

support of the application;

- (b) any person, in respect of any information that he or she wishes to give or is required to give under any of Articles 12, 18, 31, 33 and 34; and
- (c) any person, in respect of any information relating to the person, or to any business (including any research or experiment) carried on by the person, that the regulator, the Company or an authorized person may obtain directly or indirectly in the course of the exercise of any power under this Law.

- (3) An application under this Article shall be made in writing.
- (4) However, in a case to which either of sub-paragraphs (b) and (c) of paragraph (2) refers, the application may in the first instance be made –
 - (a) orally; and
 - (b) either to the person who has required or obtained the information, or to the regulator directly,but in that event, on the expiry of the period of 14 days following the day on which it was made, it shall cease to be an application made in accordance with this Article unless the applicant has put it in writing and delivered the written application to the regulator.
- (5) Where the regulator is satisfied that the disclosure of the information will reveal a trade secret, the regulator shall grant a certificate of confidentiality in respect of that information.
- (6) Within 14 days after determining an application for a certificate of confidentiality, the regulator shall serve on the applicant a written copy of the decision.
- (7) There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator.

38 Information that is protected

- (1) While –
 - (a) an application for a certificate of confidentiality, having been made in accordance with Article 37, has not been determined by the regulator;
 - (b) any time allowed for appealing to the Royal Court against the decision of the regulator in respect of the application has not expired, and the Royal Court has not dismissed such an appeal;
 - (c) any time allowed for a further appeal has not expired, and the court concerned has not dismissed such an appeal; or
 - (d) any appeal, having been lodged, has not been determined,the information in respect of which the application for a certificate of confidentiality was made shall be confidential, unless it is information described in Article 39.
- (2) Where a certificate of confidentiality is granted (whether by the regulator, or on appeal), the information in respect of which it is granted shall be confidential, unless it is information described in Article 39.
- (3) Any person who knowingly or recklessly –
 - (a) discloses to any other person any information that is confidential by virtue of either of paragraphs (1) and (2); or
 - (b) uses that information otherwise than for the purposes of this Law,shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.
- (4) Paragraph (3) does not apply to any disclosure –
 - (a) by the applicant for the certificate of confidentiality, or with his or her consent;
 - (b) for the purposes of this Law, to any Minister of the States or public officer, or the Company, or any authorized person or other person specified in Article 10; or

- (c) to a court or to any party in any civil or criminal proceedings under this Law, in private and for the purposes of those proceedings.

39 Information that is not protected

Article 38 does not apply to the following information–

- (a) the name and address of the applicant for the certificate of confidentiality;
- (b) the fact that the applicant has applied for or been granted such a certificate or that an appeal to the Royal Court, or any further appeal, is pending in respect of his or her application for it; and
- (c) the site of the activity or proposed activity to which the confidential information relates.

40 Appeals

- (1) The following persons shall have a right of appeal to the Royal Court under this Law –
 - (a) an applicant for a water resources licence or its variation, transfer or revocation, against the refusal of the application by the regulator;
 - (b) an applicant for a licence, against any term specified or condition imposed by the regulator in granting the application;
 - (c) a licensee, against the variation or revocation of the licence otherwise than on his or her own application, or against the suspension of the licence or the extending of the suspension of the licence;
 - (d) a person of whom a requirement is made under Article 34, against the making of the requirement; and
 - (e) an applicant for the grant of a certificate of confidentiality, against the refusal of the application in whole or in part.
- (2) An appeal shall be brought within 21 days after the appellant is served with a written copy of the decision or the notice in writing of the requirement (as the case may be), or within such further time as the Royal Court may allow.
- (3) In any matter to which Article 8(4) applies, the regulator shall give notice in writing of the appeal to every person who has made representations under that paragraph and has provided an address for service in Jersey, and that person may appear and be heard.
- (4) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision or requirement pending the determination of the appeal.
- (5) On hearing the appeal, the Royal Court may confirm, reverse or vary the decision or requirement against which the appeal is brought, and may make such order as to the costs of the appeal as it thinks fit.

41 Compensation

- (1) Where any person suffers any loss or damage in consequence of the exercising of any power under Article 29 or Article 31(3), by the regulator or by any person authorized under Article 9(1), the regulator shall be liable to pay compensation to the person for that loss or damage.
- (2) Where any person suffers any loss or damage in consequence of the exercising of any authorization or power under Article 29, by the Company or by any person authorized by the Company under Article 9(2), the Company shall be liable to pay compensation to the person for that loss or damage.
- (3) Compensation shall not be payable under this Law to the extent that –
 - (a) loss or damage is attributable to the fault of the claimant; or

- (b) such compensation is payable under any other enactment or rule of law.
- (4) Compensation shall not be payable under this Law unless the claim arises from the exercise of a power under Article 29 or Article 31(3) directly in respect of land in which the claimant has a interest or right.
- (5) This Article does not limit any right to compensation under any other enactment or rule of law.
- (6) Any dispute as to the entitlement of any person to compensation under this Article, or as to the amount of compensation shall be referred to and determined by the arbitration of a single arbitrator, who shall be appointed by agreement –
 - (a) between the regulator and the claimant, if the dispute is between them; or
 - (b) between the Company and the claimant, if the dispute is between them.
- (7) However, in default of such agreement, the dispute shall be referred to and determined by the Board of Arbitrators appointed in accordance with Articles 8 and 9 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961^[5].
- (8) In the determination of the dispute –
 - (a) Articles 10 and 20 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 shall apply; and
 - (b) in their application to this Law, the references in those provisions to the acquisition of land shall be read as references to the exercise of a power under Article 29 or Article 31(3) of this Law, as the case requires.
- (9) In the determination of the dispute –
 - (a) Articles 12, 13, 14, 16 and 17 of that Law shall also apply; and
 - (b) in the application of those Articles (other than Article 11) to this Law, the references in them to the Board of Arbitrators shall be read as including a reference to a single arbitrator appointed by agreement under paragraph (6) of this Article.
- (10) Interest, at the rate specified in Article 11(4) of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 and calculated in accordance with that paragraph from the date on which the loss or damage occurred until the date of payment, shall be added to the amount of any compensation assessed under this Article.

42 Interference with apparatus

Any person who maliciously or dishonestly interferes or tampers with any meter or other apparatus installed on any land or in any vehicle –

- (a) by the regulator, for the purposes of this Law; or
 - (b) by any person, in accordance with a requirement of or under this Law,
- shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.

43 False information

Any person who –

- (a) in support of an application for the grant, variation, transfer or revocation of a water resources licence or under this Law; or
- (b) on being required under a condition of a licence or under any of Articles 12, 31, 33 and 34, to give or deliver any information to the regulator,

knowingly or recklessly makes a statement that is false or misleading in a material particular shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.

44 Criminal liability

- (1) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.
- (2) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of –
 - (a) a person who is a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the body corporate to the penalty provided for that offence.
- (3) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

45 Remedies to be cumulative

The fact that a person is convicted of an offence under this Law does not preclude the regulator from instituting any civil proceedings against the person under this Law in respect of the same matter.

46 Evidence

- (1) Where in any civil or criminal proceedings under this Law, evidence is adduced of information recorded by a meter or other apparatus that is approved by the regulator, or used by the regulator in carrying out functions under this Law, it shall be presumed until the contrary is proved that the meter or apparatus has at all material times recorded information accurately.
- (2) In any civil or criminal proceedings under this Law, information that is provided by or obtained from any person under any condition of a water resources licence shall be admissible in evidence against that person.

47 Limitation of liability

Neither the regulator nor any officer nor any of the regulator's servants or agents shall incur any civil or criminal liability for any act or omission relating to any regulatory function under this Law –

- (a) in respect of the grant, variation, transfer, suspension or revocation of a water resources licence by the regulator;
- (b) in respect of any activity undertaken in accordance with a licence; or
- (c) in respect of the volume or quality of water abstracted, or available to be abstracted, in accordance with a licence,

unless it is proved that that person was acting in bad faith.

48 Service of documents

- (1) Without prejudice to any other mode of service that is permitted under any rule of law, a document may be served under this Law in any of the following ways –
 - (a) on an individual, by delivering it to him or her personally or by leaving it at his or her proper address or by sending it by recorded delivery post to the person at that address;

- (b) on a body corporate, by serving it in accordance with sub-paragraph (a) on the secretary or clerk of that body;
 - (c) on a partnership, by serving it in accordance with sub-paragraph (a) on a partner or a person having the control or management of the partnership business; or
 - (d) on an unincorporated body or association of persons, by serving it in accordance with sub-paragraph (a) on any person having the control or management of its affairs.
- (2) For the purposes of this Article, and of Article 7 of the Interpretation (Jersey) Law 1954^[6] in its application to this Article, the proper address of any person or body on whom a document is to be served shall be his, her or its last known address, except that –
- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body; or
 - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.
- (3) In the case of a company registered outside Jersey or of a partnership carrying out business outside Jersey, its principal office in Jersey shall be its principal office for the purposes of paragraph (2).
- (4) Where a person who is to be served under this Law with any document has specified an address in Jersey other than his or her proper address, as determined in accordance with paragraph (2), as the one at which the person or someone on his or her behalf will accept service of documents, that address may be treated as the proper address for the purposes of this Article.
- (5) Where a document is to be served under this Law on the owner or occupier of any land or the driver or person in charge of any vehicle, and after reasonable enquiry he or she cannot be found and his or her name and address cannot be ascertained, and the document relates to the land or vehicle –
- (a) the document may be served by leaving it with any other responsible person who is or appears on reasonable grounds to be resident or employed on the land, or employed in connection with the vehicle; or
 - (b) it may be served by affixing it, or a copy, conspicuously to a part of the land or vehicle.
- (6) This Article shall not apply to any document for which provision for service is made by Rules of Court.

49 Subordinate legislation

- (1) The regulator may make Orders relating to any of the following matters –
- (a) prescribing forms of application for the grant, variation, transfer or revocation of water resources licences, or information to be provided in support of such applications;
 - (b) prescribing standard conditions in licences;
 - (c) prescribing forms in which records shall be kept or returns shall be made under this Law;
 - (d) prescribing the form of applications for certificates of confidentiality;
 - (e) providing for any other matters that may be prescribed under any other provisions of this Law; and
 - (f) providing for such other matters as are reasonably necessary for or incidental to the purpose of carrying this Law into effect.
- (2) For the purposes of this Law –
- (a) a standard condition that is for the time being prescribed in respect of a water resources licence; and
 - (b) a requirement that is for the time being prescribed as to the form in which records are to be kept or returns are to be made by a licensee,

are conditions imposed by the regulator in every licence.

- (3) The powers of the Superior Number of the Royal Court to make rules under the Royal Court (Jersey) Law 1948^[7] shall include power to make rules for the purposes of this Law.

50 Relationship to other enactments

This Law does not relieve any person from an obligation to obtain any authorization, consent or permission that is required by or under any other enactment.

51 Implementation of international obligations

The States may by Regulations modify this Law to give effect to any international agreement, or international obligation, that relates to water resources and is applicable to or binding on Jersey.

52 Application to Crown

- (1) Subject to this Article, this Law shall bind the Crown.
- (2) No contravention by the Crown of any provision of this Law shall make the Crown criminally liable.
- (3) However –
 - (a) the Royal Court may, on the application of the regulator, declare unlawful any act or omission of the Crown that contravenes a provision of this Law; and
 - (b) the provisions of this Law apply in any event to persons in the public service of the Crown as they apply to other persons.
- (4) If the Lieutenant-Governor certifies that it appears to him or her that it is requisite or expedient that, in the interests of national security, any powers in or under this Law that are specified in the certificate should not be exercisable in relation to any Crown land specified in the certificate, those powers shall not be exercisable in respect of that land.
- (5) This Law does not apply to Her Majesty in her private capacity.

53 Consequential amendments, and transitional and other provisions

- (1) The enactments specified in the first column of Schedule 2 shall be amended in the manner specified in the second column of that Schedule.
- (2) This Law shall have effect subject to the transitional provisions of Schedule 3 and the provisions of Schedule 4.

54 Citation and commencement

- (1) This Law may be cited as the Water Resources (Jersey) Law 200.
- (2) Except as provided in paragraph (3), this Law shall come into force on such day as the States may by Act appoint.
- (3) Article 11 and paragraph 3 of Schedule 4 shall come into force on the expiry of the period of 1 months following the appointed day.

SCHEDULE 1

(Article 7(6))

INFORMATION THAT NEED NOT BE DISCLOSED

1. The regulator shall not be obliged under Article 7 to make available any information—
 - (a) affecting the confidentiality of the deliberations of any public or parish authority;
 - (b) relating to international relations, national defence or public security;
 - (c) relating to matters that are under enquiry (whether or not the enquiry is of a disciplinary nature) or to documents that are still in draft form or to any internal communications of a public or parish authority;
 - (d) relating to matters that are or have been the subject of legal or other proceedings (whether actual or prospective) or to any investigations undertaken with a view to such proceedings;
 - (e) relating to matters to which commercial or industrial confidentiality attaches (including matters of that character relating to intellectual property);
 - (f) relating to matters to which domestic or personal confidentiality attaches;
 - (g) supplied to the regulator by a person who was not under a legal obligation to do so;
 - (h) if the regulator, reasonably, is not satisfied of the reliability of the information;
 - (i) if the disclosure of the information could lead to damage to the aquatic environment;
 - (j) that cannot be separated, for the purpose of making it available, from information specified in any of paragraphs (a) to (i) (inclusive); or
 - (k) if the request for information is manifestly unreasonable or is formulated in too general a manner.
2. In this Schedule, a reference to a public authority includes a reference to the Council of Ministers, the Chief Minister and any Minister of the States.

SCHEDULE 2

(Article 53(1))

CONSEQUENTIAL AMENDMENTS

<i>(1)</i>	<i>(2)</i>
<i>Short title</i>	<i>Extent of amendment</i>
1. Water (Jersey) Law 1972 ^[8]	<p>In Article 5(6), by substituting for the words “Article 24 of this Law” the words “Article 11 of the Water Resources (Jersey) Law 200^[9] or by a Drought Order made under that Law”.</p> <p>By inserting, after Article 20 but before Part IV, the following Article –</p> <p>“20A Restrictions of supply</p> <p>Nothing in any of Articles 7, 8, 9 and 20 of this Law shall be construed as imposing on the Company any obligation to supply water in contravention of any restriction imposed by or under the Water Resources (Jersey) Law 200^[10].”.</p> <p>By repealing Article 24.</p> <p>By repealing Article 26.</p>
2. Queen’s Valley Reservoir (Jersey) Law 1988 ^[11]	<p>In Article 8, by substituting for the word “The” the words “Subject to Article 11 of the Water Resources (Jersey) Law 200^[12], the”.</p>
3. Water Pollution (Jersey) Law 2000 ^[13]	<p>In Article 2, by substituting for paragraph (1)(d) the following subparagraph –</p> <p>“(d) groundwater, being water that is below the surface of the ground, in the saturation zone and in direct contact with the ground or with the subsoil.”.</p>

SCHEDULE 3

(Article 53(2))

TRANSITIONAL ARRANGEMENTS FOR WATER RESOURCES LICENCES

Part 1 – Water resources licences to abstract water

1. Notwithstanding Article 11–
 - (a) if a person has lawfully abstracted water from a source of supply at any time within the period of 3 years immediately preceding the appointed day; and
 - (b) he or she applies at least 9 months before Article 11 comes into force for a water resource licence to abstract water from that source of supply after that Article comes into force,

the regulator shall grant and issue to the person a licence to undertake that activity for a period of 5 years commencing on the day on which Article 11 comes into force, subject to the provisions of this Schedule and to the other provisions of this Law.
2. The regulator shall grant the licence subject to the condition that the quantities of water to be abstracted shall not exceed those specified by the regulator in the licence.
3. The quantities to be so specified shall be those which it was reasonable for the applicant (and his or her predecessors, if any) to have abstracted from the source of supply during the period of 3 years immediately preceding the appointed day.
4. Articles 8 and 16 shall not apply to an application for a water resources licence that is made by virtue of paragraph 1.
5. After granting a water resources licence by virtue of paragraph 1, the regulator shall not of the regulator's own motion subsequently vary the licence in a way that is inconsistent with any of paragraphs 1, 2 and 3, unless there are exceptional circumstances.
6. There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator on an application made by virtue of this Part of this Schedule.

Part 2 – Water resources licences to impound water

1. Notwithstanding Article 11–
 - (a) if a person has obtained planning permission, before the appointed day, to impound water in any source of supply;
 - (b) the planning permission is in force; and
 - (c) the person applies at least 9 months before Article 11 comes into force for a water resource licence to impound water in that source of supply in accordance with the planning permission after that Article comes into force,

the regulator shall grant and issue to the person a licence to undertake that activity in accordance with the planning permission for a period of 5 years commencing on the day on which Article 11 comes into force, subject to the provisions of this Schedule and to the other provisions of this Law.
2. Articles 8 and 16 shall not apply to an application for a water resources licence that is made by virtue of paragraph 1.
3. After granting a water resources licence by virtue of paragraph 1, the regulator shall not of the regulator's own motion subsequently vary the licence in a way that is inconsistent with that paragraph unless there are exceptional circumstances.
4. There shall be a right of appeal, in accordance with Article 40, against the decision of the regulator on an application made by virtue of this Part of this Schedule.

SCHEDULE 4

(Article 53(2))

OPERATIONS BY REGULATOR

Introductory provisions

1 Interpretation of Schedule

- (1) In this Schedule –
 - (a) references to the regulator as an operator, or acting as an operator, are references to the regulator acting otherwise than in the capacity described in clause (b); and
 - (b) all other references to the regulator are references to the regulator in the capacity of the person responsible for exercising and performing the functions, powers and duties that are for the time being conferred and imposed on the regulator by the provisions of this Law other than this Schedule.
- (2) In this Schedule –

“suspend”, when referring to a water resources certificate, means to suspend its effect wholly or partly;

“vary”, when referring to a water resources certificate, means to vary any term or condition of the certificate;

“water resources certificate” means a water resources certificate that is issued by the regulator under this Schedule and is in effect.

2 Application

- (1) While any person who is for the time being the regulator is also charged with the administration (otherwise than as regulator) of public services that involve the abstracting of water from a source of supply or the impounding of water in a source of supply –
 - (a) Articles 11, 13 and 14 shall not apply to the regulator in respect of those other public services and
 - (b) the provisions of this Schedule shall apply instead in respect of those other public services.
- (2) If paragraph (1) ceases to apply, this Schedule shall expire.

Operations by regulator

3 Restrictions on operations by regulator

The regulator as an operator shall not cause or knowingly permit –

- (a) the abstracting of water from a source of supply; or
 - (b) the impounding of water in a source of supply,
- unless acting in accordance with a water resources certificate that is issued under this Schedule.

4 Exceptions

- (1) Paragraph 3 does not apply to –

- (a) the abstracting of surface water on or contiguous to any land, by or on behalf of the regulator as the occupier of the land, not exceeding in the aggregate 15 cubic metres in any period of 24 hours;
 - (b) the abstracting of groundwater, by or on behalf of the regulator as an occupier of land, not exceeding in the aggregate 15 cubic metres in any period of 24 hours;
 - (c) the abstracting of water for the domestic purposes of a household;
 - (d) the abstracting or impounding of water, as far as it is reasonably necessary to prevent interference with or damage to any civil engineering works or construction work;
 - (e) the abstracting or impounding of water, for the purposes of exercising a regulatory power under any enactment or performing a regulatory duty under any enactment;
 - (f) the abstracting of groundwater in the course of ascertaining whether it is present, or to ascertain its level, volume or quality or the effect of its abstraction;
 - (g) the alteration or use, on or after the day on which paragraph 3 comes into force, of any dam weir or other works in existence in a source of supply before the appointed day, where the alteration or use does not have and is not likely to have any effect described in sub-paragraph (4).
- (2) However, sub-paragraph (1) only applies to an abstracting or impounding of water to which any of clauses (b), (c), (d) and (f) of that sub-paragraph refers if the regulator as an operator complies with the condition in sub-paragraph (3) in respect of the abstracting or impounding of the water.
- (3) The condition to which sub-paragraph (2) refers is that the regulator as an operator keeps a written record of the abstracting or impounding of water to which it relates containing the same information as any other person would be required to provide to the regulator (as regulator) –
- (a) if that other person were applying to register that activity under Article 12; and
 - (b) if that activity by that other person were registered.
- (4) Sub-paragraph (1)(g) refers to any effect –
- (a) on the flow or level of water in any source of supply;
 - (b) on the character of any source of supply; or
 - (c) on any fauna or flora dependent on any source of supply,
- that is materially different from the effect that the works had or were likely to have had before the appointed day.
- (5) The States may by Regulations amend sub-paragraph (1).
- (6) Regulations made under sub-paragraph (5) may be expressed so as to apply–
- (a) generally throughout Jersey; or
 - (b) to any specified part of Jersey.
- (7) Regulations made under sub-paragraph (5) may include transitional provisions.

5 Offences

- (1) If the regulator acting as an operator contravenes paragraph 3, the regulator shall be guilty of an offence.
- (2) If the regulator acting as an operator contravenes any condition of a water resources certificate, the regulator shall be guilty of an offence.
- (3) Any person who –
 - (a) in connection with the issue, variation, suspension or revocation of a water resources certificate; or
 - (b) on being required under a condition of a certificate to give any information to any person,

knowingly or recklessly makes a statement that is false or misleading in a material respect shall be guilty of an offence.

- (4) If the regulator acting as an operator commits an offence under any of sub-paragraphs (1), (2) and (3) the regulator shall be liable to a fine.
- (5) A person (other than the regulator acting as an operator) who commits an offence under sub-paragraph (3) shall be liable to imprisonment for a term of 2 years and a fine.

6 Statutory defence for regulator acting as an operator

Where the regulator as an operator is charged with an offence under either of sub-paragraphs (1) and (2) of paragraph 5, in respect of a source of supply, it shall be a defence to prove–

- (a) that the act in respect of which the regulator is charged was done in consequence of a decision to do so in an emergency that arose in circumstances beyond the regulator's control;
- (b) that the decision was reasonable; and
- (c) that the regulator as an operator took all steps that were reasonably practicable for avoiding or minimizing any harm to the source of supply and to fauna and flora that are dependent on that source of supply.

7 Public notice

- (1) Before issuing or varying a water resources certificate, the regulator shall comply with Article 8 as if the proposal to issue or vary it were an application for the grant or variation of a water resources licence, as the case may be.
- (2) Paragraphs (2), (3), (4), (7), (8) and (9) of that Article shall apply accordingly.

8 Matters regulator must take into account

In deciding whether or not to issue or vary a water resources certificate, the regulator shall have regard to the matters specified in Article 16 as if the regulator were considering an application for a water resources licence.

9 Issue of water resources certificate

- (1) If the regulator issues a water resources certificate, the regulator shall specify in the certificate –
 - (a) the activity that is to be carried on under the certificate;
 - (b) the period for which the certificate shall have effect; and
 - (c) the conditions (if any) on which the activity will be undertaken.
- (2) In any civil or criminal proceedings under this Law, information that is provided by or obtained from any person under any condition of a water resources certificate shall be admissible in evidence against the person.

10 Variation of water resources certificate

Subject to the other provisions of this Schedule, the regulator may vary a water resources certificate.

11 Term of water resources certificate

- (1) A water resources certificate or its variation shall take effect from a date to be specified in the

certificate by the regulator (being not sooner than 21 days after the regulator complies with paragraph 13 in respect of the decision).

- (2) The regulator shall not –
 - (a) issue a water resources certificate for a term exceeding 10 years from the date of the decision to issue the certificate; or
 - (b) on any one occasion vary a certificate by extending its term for a period exceeding 10 years from the date of the decision to vary the certificate,unless there are exceptional circumstances.

12 Suspension or revocation of water resources certificate

The regulator may at any time suspend or revoke a water resources certificate.

13 Notice of decision

If the regulator issues or varies a water resources certificate, the regulator shall state the reasons for the decision, and shall serve a written copy of the decision (including the reasons) within 14 days on every person who has made representations under Article 8(4) (as applied by paragraph 7 of this Schedule) in respect of the matter and has provided an address for service in Jersey.

14 Review of regulator's decision

- (1) If the regulator issues or varies a water resources certificate, any person who has made representations under Article 8(4) (as applied by paragraph 7 of this Schedule) in respect of the proposal to issue or vary it, and has provided an address for service in Jersey, may apply to the Royal Court to review the decision.
- (2) An application under sub-paragraph (1) shall be made within 21 days after the applicant is served with a written copy of the regulator's decision (or within such further time as the Royal Court may allow).
- (3) An application under sub-paragraph (1) must be made on notice to the regulator.
- (4) If the regulator issues or varies a water resources certificate, the Attorney General may apply to the Royal Court at any time, on notice to the regulator, to review the decision.
- (5) Rules of the Royal Court may provide for the manner in which applications for review under this paragraph shall be brought, heard and determined.
- (6) Unless the Royal Court so orders, the lodging of an application for review under this paragraph shall not operate to stay the effect of a decision pending the determination of the application.
- (7) On hearing an application for review, the Royal Court may in its own judgment confirm, reverse or vary the decision of the regulator, and may make such order as to the costs of the review as it thinks fit.

15 Information about water resources certificates

The information to be made available by the regulator under Article 7 shall include proposals relating to and the issue, variation, suspension and revocation of water resources certificates.

16 Effect of Drought Orders

The terms of a Drought Order shall apply notwithstanding either of paragraphs 3 and 4 or the terms and conditions of a water resources certificate.

Other provisions

17 Existing operations to abstract water

- (1) Notwithstanding paragraph 3, if the regulator as an operator has lawfully abstracted water from a source of supply at any time within the period of 3 years immediately preceding the appointed day the regulator as regulator may issue a water resources certificate for the undertaking of that activity by the regulator as an operator for a period of 5 years commencing on the day on which paragraph 3 comes into force, subject to the provisions of this Schedule and to the other provisions of this Law.
- (2) The regulator shall issue the certificate subject to the condition that the quantities of water to be abstracted shall not exceed those specified by the regulator in the certificate.
- (3) The quantities to be so specified shall be those that it was reasonable for the regulator as an operator to have abstracted from the source of supply during the period of 3 years immediately preceding the appointed day.
- (4) Paragraphs 7, 8 and 14 shall not apply to the issue of a water resources certificate by virtue of sub-paragraph (1).
- (5) After issuing a water resources certificate by virtue of sub-paragraph (1), the regulator shall not subsequently vary the certificate in a way that is inconsistent with any of sub-paragraphs (1), (2) and (3), unless there are exceptional circumstances.

18 Existing operations to impound water

- (1) Notwithstanding paragraph 3 –
 - (a) if the regulator as an operator has obtained planning permission, before the appointed day, to impound water in a source of supply; and
 - (b) the planning permission is in force,the regulator as regulator may issue a water resources certificate for the undertaking of that activity by the regulator as an operator in accordance with the planning permission for a period of 5 years commencing on the day on which paragraph 3 comes into force, subject to the provisions of this Schedule and to the other provisions of this Law.
- (2) Paragraphs 7, 8 and 14 shall not apply to the issue of a water resources certificate by virtue of sub-paragraph (1).
- (3) After issuing a water resources certificate by virtue of sub-paragraph (1), the regulator shall not subsequently vary the certificate in a way that is inconsistent with that sub-paragraph unless there are exceptional circumstances.

19 Right of regulator to take own operations into account in considering applications in respect of water resources licences

In considering an application in respect of a water resources licence or a proposal for its variation or revocation, the regulator may take into account (in addition to the other matters to which regard must be had under Article 16) the regulator's own right to abstract water from any source of supply –

- (a) in the circumstances described in either of clauses (b) and (c) of paragraph 4(1) of this Schedule; or
- (b) under a water resources certificate.

20 Transitional arrangements if regulator ceases to perform regulatory functions

- (1) Notwithstanding paragraph 2(2), on the expiry of this Schedule every water resources certificate that

is in effect immediately before its expiry shall continue in effect according to the certificate's tenor, subject to the provisions of this Law, as if it were a water resources licence.

- (2) The expiry of this Schedule by the operation of paragraph 2(2) shall not relieve the regulator of the duty to comply with paragraph 15.

[1]	<i>L.1/1861</i>
[2]	<i>chapter 27.800</i>
[3]	<i>chapter 27.700</i>
[4]	<i>chapter 23.175</i>
[5]	<i>chapter 18.135</i>
[6]	<i>chapter 15.360</i>
[7]	<i>chapter 07.770</i>
[8]	<i>chapter 27.700</i>
[9]	<i>P.26/2007</i>
[10]	<i>P.26/2007</i>
[11]	<i>chapter 27.500</i>
[12]	<i>P.26/2007</i>
[13]	<i>chapter 27.800</i>