

DRAFT WATER POLLUTION (JERSEY) LAW 200-

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by the Public Services Committee**



STATES OF JERSEY

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Report

Clean, unpolluted water is vital for all life on this planet, for drinking and agricultural purposes, recreational use and supporting all the animals and plants that rely on it. Pure water can no longer be regarded as being in unlimited supply but is a precious and finite resource that must be managed and protected.

Following the publication of the Report of the Working Party on the Safeguarding of Water Resources in Jersey under the Chairmanship of the late Major John Riley, the States debated the issue of the Island's water resources on 26th September 1992. The States acknowledged the importance of water management and charged the Public Services Committee to produce comprehensive legislation on the matter.

Since the States debate, the Public Services Committee has set up a Water Resources Section within the Public Services Department, dedicated to both water pollution prevention and remediation, together with the necessary water sampling and analysis. In 1995, the Public Services Committee decided that because of the frequency and severity of water pollution incidents, priority should be given to a Water Pollution Law, as the first phase in overall water management legislation. This subsequently resulted in this Law receiving a much higher priority within the States' Legislation Programme.

The Water Resources Section continues to collect extensive data on the Island's water quality, abstractions and recharges. Preparation of drafting instructions for quantitative water resource management have, in the meantime, continued with a view to its future inclusion as the next phase in the water management legislation programme.

In order to obtain consensus on the proposed Water Pollution Law, extensive consultations have been held with States Departments and other interested bodies. The feedback has been very encouraging and most of the points raised by consultees have been incorporated into the draft Law.

The Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR) has been ratified by the United Kingdom Government. The Island and United Kingdom Governments have signified that this Convention should be ratified in respect of Jersey. However, in order to achieve this, there is a need for domestic legislation to implement the provisions of the OSPAR Convention. For that reason, the draft Law has been pre-audited by the Home Office which has confirmed that, if this Law is passed, it will facilitate ratification of the Convention on behalf of Jersey.

This Law reflects the approach to water pollution control adopted in most European countries, (including the United Kingdom) and incorporates specific requirements for the Island. The United Nations predicts that water shortages will become steadily more severe, agricultural productivity will be reduced through loss of topsoil, nutrient run-off from land will lead to continued algal growth along coastlines, and further disruptive climate change effect is inevitable despite international agreements on the environment. The European Community recognised the need to protect groundwater over 20 years ago. The Riley Report recognised the deficiency with lack of legal powers in its statement *Jersey appears singular in Europe in not having comprehensive legislation governing the safeguarding of water.*

Whilst the Island of Jersey rightly displays a positive environmental image, particularly in respect of its bathing water, and has, as a consequence, won several prestigious awards, these successes sadly do not extend to all of Jersey's aquatic environment. Although Jersey is not an industrialised society, pollution of water occurs frequently and from many sources. Some of these pollution incidents have been serious, with associated adverse publicity which could have significant implications for the Island's environmental image, with consequential effects on tourism. This problem was recognised and highlighted in the Nitrate and Pesticide Working Party Report which observed *.....Negative publicity on the quality of drinking water or groundwater, whether well-founded or not, could have a significant effect upon the tourist trade in the future....*

The range of water pollution incidents is diverse. Pollutants can affect not only the quality of the aquatic environment itself, but can also be harmful to human health, plants and animals, as well as interfering with recreational uses of water. Even relatively minor pollution incidents can be both time-consuming and expensive to investigate and remediate. At present, in the absence of effective anti-pollution Laws, there is no deterrent to prevent pollution, nor is there a mechanism to allow the Committee to recover the cost of pollution remediation. It is the intention of this Law to rectify this situation.

Some concern has been expressed in relation to potential conflict with the Public Services Committee's role as both regulator and operator. The legislation has, therefore, included rigorous conditions on the Committee to ensure that openness, consultation and appeal procedures are applied. If, at some later stage, it is considered appropriate to appoint another Committee of the States or independent body as regulator, it would be a relatively straightforward procedure to transfer the administration of the Law to that Committee or body.

In the interim, the Public Services Committee is the only body with the manpower, expertise and facilities to deal with water

pollution. This issue should not, therefore, delay the implementation of this vital legislation.

The principal purpose of this Law is to prevent pollution of the aquatic environment (which includes sources of water for drinking, whether from boreholes or reservoirs). Unpolluted water for agricultural purposes is also important, not only for drinking by cattle but for irrigation of crops, especially where supermarkets are insisting on high standards and where the crops are to be exported to European Union member states.

Groundwater is easily contaminated and subsequently very difficult to treat or control, and contaminants can be transferred over large distances.

To ensure that the quality of water is safeguarded, it is essential to have effective legislation incorporating appropriate powers of investigation, monitoring, control of discharges, anti-pollution measures, clean-up powers and cost recovery.

This Law will achieve these objectives and also go a long way towards implementing the recommendations of the two independent Reports -

- (i) The Working Party on the Safeguarding of the Water Resources of Jersey, and
- (ii) The Nitrate and Pesticides Joint Working Party.

This Law will bring Jersey into line with the rest of Europe in terms of water pollution control. It will safeguard the quality of Jersey waters for the benefit of future generations. The enactment of this Law will enable the States to comply with the relevant requirements of the OSPAR Convention. It will also constitute implementation of the States' decision to promote appropriate legislation, in line with its agreed Strategic Policy on the environment.

Explanatory Note

1. This draft Law is intended to control pollution in Island waters.

2. Basic concepts:

There are two central concepts -

“*Controlled waters*”:

The waters in respect of which pollution will be controlled are defined in Article 2. They are -

- (a) the territorial sea; and
- (b) coastal waters lying to landward of the territorial sea, such as bays and inlets; and
- (c) natural and artificial inland waters, such as lakes, ponds, reservoirs, streams, surface water sewers and the waters of marshlands and wetlands; and
- (d) ground waters on the Island.

The draft Law will also apply to the area between low and high tides (in other words, the seashore) and the bottoms, beds and channels of controlled waters that are inland waters, whether or not they are dry.

Controlled waters do not include lawful foul sewers, or treated water in the mains and other pipes of the Jersey New Waterworks Company Limited.

Ordinarily, they will not include other artificial water systems that do not affect controlled waters. For example, they will not include an irrigation system or private pond that is self-contained. However, this last exception does not apply to waters (such as reservoirs) owned or used by the Company; and Article 3 enables the States, by Regulations, to declare in particular cases that other discrete waters shall be controlled waters.

“*Pollution*”:

Pollution - the activity to be controlled - is defined in Article 4.

This word has its ordinary meaning. It also has an extended definition, which will include (*inter alia*) pollution within the meaning of the Convention for the Protection of the Marine Environment of the North-East Atlantic (“OSPAR”) made in Paris on 22nd September 1992.

The extended definition covers the introduction into controlled waters, directly or indirectly, of any substance or energy that does result or is likely to result in a hazard to human health or to water supplies, or in harm to living resources or to the aquatic environment, or in damage to amenities or interference with legitimate uses of controlled waters.

It also includes the introduction into controlled waters of a substance or energy that contributes to pollution - for example, if it combines chemically with something else in the waters to cause pollution.

3. Other features:

The draft Law also incorporates the following features -

- (a) The Public Services Committee will have a duty to maintain and improve the quality of Island waters, and to seek to promote the conservation and enhancement of the aquatic environment.
- (b) When carrying out its functions, the Committee is to adopt, as far as reasonably practicable, the best available techniques and best environmental practice.

As far as reasonably practicable, it is also to adopt a *precautionary* principle in anticipating and managing the risk of pollution, and a *cost* principle by which the costs of preventing and dealing with pollution will be borne by those persons who cause or knowingly permit pollution.

- (c) The Committee is to gather and disseminate information about its activities.
- (d) It will be responsible for consulting other Committees of the States, persons and bodies. In some circumstances, consultation is mandatory; in other cases it will be a matter of discretion.
- (e) The Committee must give public notice of proposals for Water Quality Orders (*see Article 12*) and discharges into controlled waters (*see (g) below*). It must take into account any public representations (including objections) before proceeding on such proposals. There are rights of recourse to the Royal Court in respect of the Committee's decisions.
- (f) In respect of pollution, the Committee will be subject to criminal and civil sanctions in the same way as private individuals.
- (g) The Committee will nevertheless have power to authorize discharges by other persons into controlled waters. In the course of its other functions (notably as the sewerage undertaker for the Island), the Committee itself also makes discharges, and it will have power to continue to do so under the draft Law.

However, these activities will be regulated by a system of discharge permits and discharge certificates.

Where a person (other than the Committee itself) wishes to make a discharge, he will have to apply to the Committee for a discharge *permit*.

If the Committee itself wishes to discharge, it must in future issue a discharge *certificate* - in other words, it will be required to formally state and record its intention.

In either case, notice of the proposal must first be published. The public will have the right to object, and the Royal Court will have power to review the Committee's decision.

Although discharge permits and discharge certificates serve the same purpose - to control and manage discharges - the process of review by the Court differs in each case.

Where the Committee certifies its own intention to make a discharge, the Court will have an *unlimited* power to set aside or vary the Committee's decision. It may do so either on the application of an aggrieved objector or on that of the Attorney General acting in the public interest.

In contrast, the Court's jurisdiction in respect of discharge permits will be limited to conventional grounds of appeal and judicial review.

- (h) The draft Law, other than those provisions creating criminal liability, will generally bind the Crown.

4. The "OSPAR" Convention:

The draft Law is intended to implement requirements under the OSPAR Convention (*see 2 above*) in relation to controlled waters.

Although the convention applies only to maritime pollution, the draft Law applies several OSPAR concepts to inland and ground waters. These include the extended definition of pollution in respect of substances and energy, the requirements for best available techniques and environmental practice, the precautionary and cost principles and the recognition of "high risk" substances (*see Article 19*).

In several respects, the draft Law is more stringent than OSPAR. For example, the definition of pollution in the convention does not expressly include contributory causes of pollution.

5. The scheme of the draft Law, in detail, is as follows -

PART I

Introductory

Article 1 defines expressions used in the draft Law.

Article 2 defines “controlled waters”.

Article 3 enables the States, by Regulations, to declare in particular cases that discrete waters (in the sense explained in 2 (above)) are controlled waters.

Article 4 defines “pollution”.

PART 2

Administration

Article 5 describes the general objectives of the Committee under the draft Law.

Article 6 sets out the Committee’s operating considerations. These relate to the use of best techniques and best environmental practice, and to the precautionary and cost principles in respect of pollution.

Article 7 requires the Committee to gather information by monitoring controlled waters periodically, and undertaking research.

Article 8 requires the Committee to publish reports on its activities.

It must also make available to any person, on request, information relating to the purposes of the draft Law. It will have to do so as promptly as possible, and in any event within 28 days after receiving the request. It must provide facilities for copying the information, but may make reasonable charges for any of these services.

The Committee’s obligation to disclose information to the public is qualified in two ways -

(a) *Trade secrets:*

Under Article 41, a person may apply to the Committee for a certificate of confidentiality in respect of information to be given by him under the draft Law, if its disclosure will reveal a trade secret. If a certificate is granted, the Committee and its staff will be prohibited from disclosing to other persons any details except those set out in Article 43, and from using the information otherwise than for the purposes of the draft Law.

(b) *Information listed in Schedule 1:*

In its discretion, the Committee may refuse to provide information of any kind described in Schedule 1.

Where the Committee refuses a request for information, it must give reasons in writing.

Article 9 imposes on the Committee responsibility for consulting and taking into consideration the views of other Committees and other persons before making Water Quality Orders or Water Catchment Management Orders (*see Articles 12 and 15*), approving codes of practice (*see Article 16*) or prescribing charges (*see Article 28*).

Article 10 requires the Committee to give public notice before determining proposals relating to Water Quality Orders, discharge permits or discharge certificates.

However, on varying a discharge permit, it need not give public notice if it is satisfied that a discharge will not have an appreciable adverse effect on the aquatic environment.

The Committee must inform specified Committees about proposals, and is responsible in its discretion for notifying other Committees and persons.

Before determining a proposal, the Committee must consider all written representations received in response and, in the case of discharge permits, those from the applicant or holder in reply.

Article 11 allows the Committee, by agreement, to provide services, facilities and materials to other persons. It may charge for doing so.

PART 3

Water quality

Article 12 enables the Committee, by Water Quality Orders, to classify controlled waters according to their uses and amenity, to set quality objectives in respect of their uses and amenity, and to set standards of quality and methods and dates by which the objectives are to be achieved.

In such an Order it may specify monitoring programmes, and it may limit the duration of the Order.

Water Quality Orders will not affect proprietary interests. However, *Article 13* provides that the Committee is to carry out its functions relating to the control of pollution and the water company is to carry out its functions so as to ensure, as far as is reasonably practicable, that objectives in Water Quality Orders are achieved.

Article 14 enables the States, by Regulations, to designate land as Water Catchment Management Areas and specify conditions that the Committee may impose by Order in those areas for the control of pollution.

Article 15 empowers the Committee to make a Water Catchment Management Order in respect of any land within a Water Catchment Management Area, imposing such conditions in respect of the activities of persons on that land.

The Committee can do so either with the consent of the persons having proprietary interests in the land so affected - or compulsorily, after first giving them the opportunity to make representations.

It will be an offence for a person to contravene a condition of a Water Catchment Management Order.

Article 45 provides for the payment of compensation to persons who suffer proprietary loss in consequence of Water Catchment Management Orders.

Under *Article 16*, the Committee may by Order approve any code of practice for the purposes of the Law. It may in this way endorse a code that it has itself prepared, one issued by another Committee of the States (for example, the Agriculture and Fisheries Committee) or one issued by any other person or body.

When deciding whether to approve a code, the Public Services Committee must have regard to the desirability of practical guidance for persons whose activities may affect water quality, and the encouragement of good practices for the prevention of pollution.

Compliance or non-compliance with an approved code will be relevant to the statutory defence of reasonable precautions and due diligence, in a prosecution for pollution (*see Article 18(4) and (5)*). It will also be relevant to claims for compensation under the draft Law (*see Article 45*).

PART 4

Pollution offences

Article 17 creates new offences relating to pollution.

These offences are basic sanctions against the pollution of controlled waters by any person (including the Committee itself).

Under *paragraph (1)* of Article 17, anyone (including the Committee) who causes or knowingly permits pollution in controlled waters will be guilty of an offence. This is an offence of strict liability.

Paragraph (2) imposes on the Committee, in its capacity as the sewerage undertaker for the Island, strict criminal liability for the escape of pollutants from public sewerage works into controlled waters. In those circumstances, the Committee will be liable even though it does not cause or permit the pollution itself.

This provision is to be read with paragraphs (2) and (3) of Article 18. The first protects from criminal liability any other person who puts anything lawfully into a public sewer (even though it subsequently escapes into controlled waters, causing pollution). The second gives the Committee a defence if that other person has acted unlawfully.

Under *paragraph (3)* of Article 17, it is an offence for the holder of a discharge permit to contravene the conditions of his permit.

Under *paragraph (4)* of Article 17, it is an offence for the Committee to contravene the conditions of a discharge certificate.

The penalties for pollution offences under this Article include, in the Court's discretion, a fine of any amount.

Article 18 sets out statutory defences to criminal charges of pollution under Article 17. These are in addition to common law defences. There will be five statutory defences -

- (1) A person does not commit an offence of pollution if he introduces anything into controlled waters in accordance with a discharge permit or discharge certificate.
- (2) A person (other than the Committee) who puts anything lawfully into a public sewer is not liable criminally for its subsequent escape from a public sewer into controlled waters.
- (3) Where the Committee is charged in respect of an escape from a public sewer into controlled waters, it will not be criminally liable if it proves that the pollutant was put into a public sewer without its authority, and unlawfully.
- (4) A person who proves that he took all reasonable precautions and exercised due diligence, and took reasonable steps to minimize the pollution, and reported it promptly, will not be guilty of an offence. (This defence is not available to the Committee in respect of escapes from public sewers.)

Conformity to a relevant approved code of practice will be admissible as evidence that a person has acted reasonably and with due diligence. Failure to conform will be admissible as evidence that he has not.

- (5) A person will not be criminally liable if he proves that he was acting on a reasonable decision made in an emergency that arose in circumstances beyond his control, and that he took all steps that were reasonably practicable to minimize the extent of pollution and also ensured that the Committee was informed promptly.

PART 5

Authorized discharges

Article 19 provides that in administering the system of discharge permits and discharge certificates, the Committee must have particular regard to substances of the kinds described in Schedule 2.

The Article enables the Committee to amend Schedule 2 by Order.

Article 20 deals with the manner in which applications relating to discharge permits are to be made.

Article 21 empowers the Committee to grant a discharge permit to an applicant.

Under *Article 22*, the Committee may impose a wide range of conditions in granting or varying a discharge permit. These include requirements as to the place and manner of discharges, the duration of the permit, processes to be used to minimize pollution, sampling and measuring facilities, and the keeping of records and the making of returns.

Article 23 empowers the Committee to vary or revoke a discharge permit, on the holder's application or on the Committee's own initiative.

Article 24 enables the Committee to suspend a discharge permit in an emergency.

Article 25 enables the transfer of a discharge permit to another person approved by the Committee.

Article 26 relates to the issue of discharge certificates by the Committee itself, to allow it to make discharges into controlled waters in the course of its other functions (for example, as the sewerage undertaker for the Island). It also deals with the variation, suspension and revocation of discharge certificates.

Before issuing or varying a discharge certificate it must give public notice of its intention, whether or not the proposal will have any appreciable adverse effect on the aquatic environment. Before deciding to proceed, the Committee must consider all representations received. Every objector who is dissatisfied with a decision by the Committee to proceed to issue a discharge certificate will have the right to challenge the decision in the Royal Court, which may set it aside or vary its terms. The

Court's powers on review are not limited.

The Attorney General also has the right to challenge the Committee's decision in the Royal Court.

Article 27 requires the Committee to give notice of its decision relating to a discharge permit or discharge certificate to the applicant or permit holder, to specified Committees, and to everyone who has made representations under Article 10 in response to public notification of the proposal.

Article 28 allows the Committee to prescribe charges in respect of discharge permits, including periodical charges (in addition to application fees) while permits remain in force. Different charges may be imposed in different circumstances.

PART 6

Enforcement

Article 29 empowers the Committee to appoint designated officers for the purposes of the draft Law.

Article 30 requires a designated officer, on request, to produce evidence of his authority, give his name and say what powers he proposes to exercise.

Article 31 empowers a designated officer to take other persons and vehicles, equipment and materials with him when exercising his powers.

Article 32 empowers a designated officer, on reasonable grounds for the purposes of the draft Law, to enter, board, inspect and search land, premises, vehicles, vessels, hovercraft and aircraft, to carry out tests there and take samples, and to remove things for the purposes of evidence.

In the ordinary course, these powers will only be exercisable 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. Where it may be desirable to obtain a warrant to exercise them at any time or to authorize the use of reasonable force, the Bailiff or a Jurat may in any event grant such a warrant.

Under Article 45, compensation may be paid to persons suffering loss because of the exercise of powers under Article 32.

Article 33 gives a designated officer the power to require an owner, occupier or person in charge of anything entered or boarded, or any other responsible person present, to assist him in the exercise of his powers.

Article 34 empowers the Committee or a designated officer to inspect and copy documents and records that are relevant to the purposes of the draft Law.

Article 35 gives the Committee anticipatory powers, if it appears on reasonable grounds that a person has a potential pollutant in his control. In such a case, the Committee may require him to provide information and to keep proper records about the potential pollutant.

Under *Article 36*, the Committee may require a person who has a potential pollutant in his control to take precautionary measures against the risk of pollution and its consequences.

If it is not reasonably practicable for him to do so, and the Committee considers on reasonable grounds that the seriousness of the risk justifies such a course of action, this Article also empowers the Committee to require the person concerned to dispose of the potential pollutant.

Article 37 empowers the Committee to require a person who is responsible for actual pollution to deal with its consequences, as far as it is reasonably practicable to do so.

Article 38 contains general provisions relating to the powers conferred by Articles 34, 35, 36 and 37. In particular, those under Articles 35, 36 and 37 are not exercisable in respect of activities carried on under discharge permits.

Article 39 authorizes the Committee itself to deal with the risk or consequences of pollution, if the person who may be required to do so under Article 36 or Article 37 does not do so or cannot be found, or in a case of urgency. It also enables the Committee to recover its expenses from that person.

Article 40 enables the Committee or a designated officer to seek an injunction from the Royal Court to enforce compliance with the draft Law.

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

PART 7

General

Article 41 enables a person giving information under the draft Law to apply to the Committee for a certificate of confidentiality, to the extent that disclosure will reveal a trade secret. If the Committee is satisfied that disclosure would reveal a trade secret, it must grant the certificate.

Under *Articles 42 and 43*, the effect will be to restrict the persons to whom and the purposes for which the information may be disclosed.

Article 44 confers the following rights of appeal, against decisions of the Committee, to the Royal Court -

- (a) by the applicant for a discharge permit or the holder of a permit (except on a refusal to approve its transfer); and
- (b) by a person against whom a power under any of Articles 34 to 37 is exercised; and
- (c) by an applicant for a certificate of confidentiality.

Objectors will not themselves have rights of appeal, but they will be entitled to notice of appeals relating to discharge permits, and to be heard.

Article 45 provides for the payment of compensation from public funds, in accordance with the procedure in the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961, in the following cases -

- (a) where any person suffers proprietary loss, by way of the reduction of the value of an interest in land or disturbance of a business carried on upon the land, because of a Water Catchment Management Order affecting land; and
- (b) where any person suffers loss because of the exercise of any power under Article 32.

Compensation will not be payable 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.

A person who is conforming in a material way to an approved code of practice cannot thereby be at fault, and nothing in the Article limits an entitlement to compensation under any other law.

However a failure in some material way to conform to an approved code of practice within a reasonable time will be admissible as evidence of a claimant's fault.

Under *Article 46*, it is a criminal offence to interfere with equipment used for the purposes of the draft Law.

Article 47 provides that it is an offence knowingly or recklessly to give false or misleading information under the draft Law.

Article 48 provides that if a body corporate commits an offence under the draft Law, its officers who are involved in its direction or management are also guilty of that offence if they consent to or connive at its commission, or if it is attributable to their neglect.

Article 48 also provides that persons who aid, abet, counsel, or procure the commission of offences are liable as principal offenders.

Article 49 contains evidentiary provisions.

Article 50 protects the Committee and its agents (if acting in good faith) against any criminal or civil liability for granting,

varying, transferring, suspending or revoking a discharge permit or for the consequences of discharges under a permit by any other person.

Article 51 facilitates the service of documents under the draft Law.

Article 52 deals with Regulations and Orders made under the draft Law. These relate to matters that are incidental to its purposes - for example, forms and standard conditions in discharge permits. The Article also deals with Rules of Court.

Article 53 provides that the requirements of the draft Law are additional to those of other enactments.

Article 54 empowers the States, by Regulations, to modify the draft Law to give effect to any international agreement or obligation that applies to the Island.

This is complementary to the powers conferred on the States in respect of European Union obligations by the European Communities Legislation (Implementation) (Jersey) Law 1996.

Article 55 describes the extent to which the draft Law will bind the Crown.

Article 56 deals with the repeal and amendment of other enactments (in the manner described in detail in Schedules 3 and 4).

It also contains transitional arrangements (described in detail in Schedule 5). If a person applies, within six months after the provisions relating to the granting of discharge permits commence, for a discharge permit for sewage effluent or trade effluent, and the application is not decided by the Committee before the enforcement provisions relating to the control of pollution come into force, the person may continue to discharge the effluent to which the application relates until it is decided.

Schedule 5 specifically provides that no charge may be made for an application under it in respect of the discharge of domestic sewage effluent, the holding of any discharge permit granted on such an application, or any subsequent application for the variation, transfer or revocation of such a permit. However, the States will have power, by Regulations, to repeal this exemption (wholly or partly) if they subsequently wish to do so.

Article 57 provides that the machinery provisions relating to discharge permits and discharge certificates, and other machinery for or incidental to the administration of the Law, will commence on the expiry of the period of seven days following its registration.

The Article also provides that the remaining provisions in the Law, including those relating to its enforcement, will come into force on the expiry of the period of six months following its registration.

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

WATER POLLUTION (JERSEY) LAW 200

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WATER POLLUTION (JERSEY) LAW 200

A LAW to provide for the control of pollution in Island waters, and the implementing of provisions of the Convention for the Protection of the Marine Environment of the North-East Atlantic concluded in Paris on the twenty-second day of September 1992; the monitoring and the classification of waters; the setting of quality objectives for classified waters; administrative, regulatory, preventive and remedial measures; and related purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200)

STATES OF JERSEY

The _____ day of _____ 200

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

PART 1

INTRODUCTORY

ARTICLE 1

Interpretation

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

“approved” means approved in writing by the Committee;

“approved code of practice” means a code of practice that is approved by the Committee by an Order made under Article 16;

“best environmental practice” has the same meaning as it has in the Convention;

“best techniques” has the same meaning as it has in the Convention;

“business” includes any trade, industrial or commercial activity or profession;

“certificate of confidentiality” means a certificate of confidentiality granted under Article 41;

“clean technology” has the same meaning as it has in the Convention;

“Committee” means the Public Services Committee;

“Company” means the Jersey New Waterworks Company Limited, as defined in Article 1(1) of the Water (Jersey) Law 1972;^{[\[1\]](#)}

“conform to”, when referring to an approved code of practice -

(a) in the case of an act, means to do that act in accordance with the code; and

(b) in the case of an omission, means to make that omission in accordance with the code;

“contravene”, when used in respect of a person who must comply with a requirement in or under this Law, includes to fail to comply;

“Convention” means the Convention for the Protection of the Marine Environment of the North-East Atlantic concluded in Paris on the twenty-second day of September 1992;

“Court” means the Royal Court;

“designated officer” means a person appointed under Article 29 as a designated officer;

“discharge certificate” means a discharge certificate in writing that is issued by the Committee under Article 26 and is in effect;

“discharge permit” means a discharge permit in writing that is granted by the Committee under Article 21 and is in effect;

“energy” has the same meaning as it has in the Convention;

“hovercraft” means a vehicle that is designed to be supported, when in motion, wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“land” -

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

“micro-organism” includes any microscopic, biological entity that is capable of replication;

“monitor”, when referring to controlled waters, includes to measure from time to time -

- (a) the quality of controlled waters and their sediments and biota;
- (b) activities, and additions to and inputs into controlled waters, that affect or may affect the quality of controlled waters; and
- (c) the effects on controlled waters of those activities, additions and inputs;

“persistence” has the same meaning as it has in the Convention;

“person” -

- (a) includes a Committee of the States; and
- (b) also includes an unincorporated body or unincorporated association of persons;

“prescribed” means prescribed by an Order made under this Law;

“public sewer” -

- (a) means an “égout public” as defined in Article 3 of the “Loi (1937) sur les égouts”;^[2] and
- (b) also means any works that are vested in or maintained by the Committee in its capacity as the sewerage undertaker for the Island, and relate to the reception, handling, conveying, treatment or disposal of sewage;

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

“representation” includes an objection;

“slimicides” has the same meaning as it has in the Convention;

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

“substance” -

(a) includes any matter whatever (whether it is in solid or liquid form, or is in the form of gas or vapour, or is radioactive matter or is natural or artificial); and

(b) also includes any micro-organism;

“suspend”, when referring to a discharge permit or a discharge certificate, means to suspend its effect;

“transboundary significance” has the same meaning as it has in the Convention;

“vary”, when referring to a discharge permit or discharge certificate, includes to vary any condition of the permit or certificate;

“Water Catchment Management Area” means any land that is designated under Article 14 as a Water Catchment Management Area;

“Water Catchment Management Order” means an Order to which Article 15 refers;

“Water Quality Order” means an Order to which Article 12 refers.

(2) In this Law, references to the Committee in its capacity as the sewerage undertaker for the Island are references to it in that capacity by reason of Articles 1 and 4 of the “Loi (1937) sur les égouts”.^[3]

(3) A reference in this Law to a Part, Article or Schedule by number only and without further identification is a reference to a Part, Article or Schedule of that number in this Law.

(4) A reference in an Article or other division of this Law to a paragraph or sub-paragraph by number or letter only and without further identification is a reference to the paragraph or sub-paragraph of that number or letter in the Article or other division of this Law.

(5) Unless the context otherwise requires -

(a) a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied by or under another enactment, including another provision of this Law; and

(b) a reference in this Law to an enactment includes a reference to any Regulation, Order, Bye-law or Notice made or issued under that enactment.

ARTICLE 2

Meaning of “controlled waters”

(1) In this Law, unless otherwise provided, “controlled waters” means -

(a) the territorial sea adjacent to the Island;

(b) coastal waters, being 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;

(c) inland waters, being the waters of lakes, marshlands, ponds, reservoirs, streams, surface water sewers and wetlands (whether in any such case they are natural or artificial, or above or below the ground), and not being coastal waters; and

(d) ground waters, being waters that are below the surface of the land and are not inland waters.

- (2) “Controlled waters” does not mean -
 - (a) lawful foul sewers;
 - (b) drains that drain into lawful foul sewers; or
 - (c) waters that are within mains or other pipes owned or used by the Jersey New Waterworks Company Limited, having been treated for the purposes of supply.

(3) “Controlled waters” does not mean any artificial inland waters in respect of which each of the following conditions is fulfilled, namely -

- (a) that they are constructed so that water does not pass between them and controlled waters;
- (b) that they are not owned by the Company; and
- (c) that they are not used by the Company,

but this paragraph is subject to Article 3.

(4) This Law also applies to -

- (a) the foreshore, being the land that lies between the limits of the highest and lowest tides; and
- (b) the bottoms, beds and channels of controlled waters that are inland waters, whether or not they are for the time being dry,

as it applies to controlled waters.

ARTICLE 3

Extension of controlled waters

(1) The States may by Regulations declare that any artificial inland waters described in Article 2(3) shall be controlled waters for the purposes of this Law.

- (2) The Regulations may provide that those waters shall be controlled waters -
 - (a) for the purposes of the whole of this Law; or
 - (b) for the purposes of such provisions of this Law as are specified in the Regulations.

ARTICLE 4

Meaning of “pollution”

In this Law, “pollution” includes the introduction directly or indirectly into controlled waters of any substance, or energy, where its introduction results or is likely to result in -

- (a) a hazard to human health or water supplies;
- (b) harm to any living resource or aquatic ecosystem;
- (c) damage to any amenity; or
- (d) interference with any legitimate use of controlled waters,

and whether or not its introduction is or would be the only contributing factor to that hazard, harm, damage or interference.

PART 2

ADMINISTRATION

ARTICLE 5

General objectives of Committee

(1) In carrying out its functions under this Law, the Public Services Committee shall have as its general objectives the maintenance and improvement of the quality of water in and around the Island by the prevention, control, reduction and elimination of the pollution of controlled waters.

(2) In carrying out its functions under this Law, the Committee shall also seek to promote the conservation and enhancement of the natural beauty and amenity of controlled waters, their use for recreational purposes and the conservation of flora and fauna that are dependent on an aquatic environment.

ARTICLE 6

Operating considerations

(1) In carrying out its functions under this Law the Committee 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 (including, where appropriate, clean technology);
- (b) a precautionary principle in respect of pollution, by which if there are reasonable grounds for concern that the introduction of anything into controlled waters may cause pollution, the Committee takes preventive measures in anticipation of the risk, whether or not there is conclusive evidence of a causal relationship between such an introduction and its effects; and
- (c) a cost principle in respect of pollution, by which the costs of preventing, controlling, reducing and eliminating pollution are borne by the persons who cause or knowingly permit it.

(2) In carrying out its functions under this Law, the Committee shall also have regard to the obligations imposed on the Company by the Water (Jersey) Law 1972^[4] to supply wholesome water for human consumption and use.

ARTICLE 7

Gathering of information

For the purposes of carrying out its functions under this Law, the Committee shall -

- (a) monitor controlled waters, and the extent to which this Law is being complied with; and
- (b) undertake continuing scientific and technical research and have regard to the latest developments in technology.

ARTICLE 8

Dissemination of information

(1) The Committee shall publish reports of its activities under this Law.

(2) The Committee shall also make available the information in its possession that is relevant to the following matters under this Law -

- (a) reports published under paragraph (1);
- (b) representations made to the Committee under paragraph (5) or paragraph (7) of Article 10;
- (c) Water Quality Orders;

- (d) Water Catchment Management Areas and Water Catchment Management Orders;
- (e) approved codes of practice;
- (f) applications for and the grant, variation, transfer, suspension and revocation of discharge permits;
- (g) information obtained by the Committee in consequence of the requirements of conditions of permits;
- (h) proposals for and the issue, variation, suspension and revocation of discharge certificates;
- (i) the results of analyses of samples taken by the Committee;
- (j) notices served by the Committee in the exercise of its powers under any of Articles 34, 35, 36 and 37;
- (k) the results of civil and criminal proceedings instituted under this Law;
- (l) in respect of certificates of confidentiality, the information to which Article 43 refers; and
- (m) any other matters relating to the state of controlled waters or activities, or measures, that affect or are likely to affect controlled waters or are undertaken under this Law,

but this paragraph is subject to paragraph (6).

(3) The information 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 Committee shall also provide facilities for copying the information.

(5) The Committee may by Order prescribe reasonable charges for providing information and facilities for copying under this Article.

(6) The Committee may refuse to make available under this Article any information specified in Schedule 1.

(7) Where the Committee refuses any request for information under this Article, it shall give the applicant a statement in writing of its reasons.

(8) This Article is subject to Article 42.

ARTICLE 9

Consultation with other persons

(1) Before the Committee proceeds on any proposal to make a Water Quality Order -

- (a) it shall consult the Agriculture and Fisheries Committee, the Health and Social Services Committee, the Planning and Environment Committee and the Company; and
- (b) it shall also consult such other Committees of the States and other persons as it considers appropriate.

(2) Before the Committee proceeds on any proposal to make a Water Catchment Management Order, to approve a code of practice under Article 16 or to prescribe charges under Article 28-

- (a) it shall consult the other Committees named in paragraph (1)(a) of this Article; and
- (b) it shall also consult such other Committees of the States and other persons as it considers appropriate.

ARTICLE 10

Public notice of proposals

(1) Before the Committee proceeds on any of the following proposals, namely -

- (a) a proposal to make a Water Quality Order;
- (b) an application for the grant or variation of a discharge permit;
- (c) a proposal by the Committee of its own motion to vary a permit; or
- (d) a proposal by the Committee for the issue or variation of a discharge certificate,

it shall comply with the requirements of this Article.

- (2) The Committee shall publish a notice in the Jersey Gazette -
 - (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 Committee in respect of the proposal at any time before the expiry of the seven days following the period for inspection,

and it shall make a copy of the proposal available accordingly for inspection.

- (3) In the case of -
 - (a) an application for the variation of a discharge permit; or
 - (b) a proposal by the Committee of its own motion to vary a permit,

where the Committee is satisfied on reasonable grounds that the introduction to which the proposal relates does not have and is not likely to have any appreciable adverse effect on the aquatic environment, the Committee need not comply with paragraph (2).

(4) In the case of an application for the grant or variation of a discharge permit, or of a proposal by the Committee of its own motion to vary a permit or to issue or vary a discharge certificate -

- (a) the Committee shall send copies of the proposal to the Agriculture and Fisheries Committee, the Health and Social Services Committee and the Planning and Environment Committee; and
- (b) it shall also send copies to such other Committees of the States and other persons as it considers appropriate.

(5) Any person who wishes to make representations in respect of the proposal may do so by delivering them in writing to the Committee -

- (a) at any time before the expiry of the seven days following the period for inspection; or
- (b) within 21 days after receiving under paragraph (4) a copy of the proposal,

whichever is the later date.

- (6) If a person who delivers such representations wishes to have the right -
 - (a) under Article 26, to apply to the Court to review a decision made by the Committee in respect of a discharge certificate; or
 - (b) under Article 44, to be given notice of an appeal,

he shall also provide in writing, to the Committee, an address for service in the Island.

(7) In the case of an application for the grant or variation of a discharge permit, or of a proposal by the Committee of its own motion to vary a permit -

(a) the Committee shall serve on the applicant or holder copies of all representations made by other persons under paragraph (5) in respect of the proposal; and

(b) he may deliver to the Committee representations in writing in reply, within 14 days after being served.

(8) The Committee -

(a) shall not proceed to determine the proposal until the time limits for making representations under this Law have elapsed; and

(b) in determining the proposal, 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 by the Committee of its own motion to vary a discharge permit, all written representations made by the holder of the permit under Article 23(2) in respect of the proposal.

ARTICLE 11

Provision of services

The Committee may by agreement with any other person -

(a) provide services, facilities and materials to that person for the purposes of this Law; and

(b) charge for doing so.

PART 3

WATER QUALITY

ARTICLE 12

Water Quality Orders

(1) For the purposes of carrying out its functions under this Law, the Committee may by Order ("a Water Quality Order") -

(a) identify and classify controlled waters according to the uses to which they are being lawfully put or may in future be lawfully put and their amenity;

(b) set objectives to be achieved in respect of their quality for such uses and amenity; and

(c) specify any period of time for which the Order shall have effect.

(2) In setting objectives, the Committee may specify in a Water Quality Order-

(a) standards of quality to be achieved;

(b) methods and dates by which the objectives shall be achieved; and

(c) monitoring programmes in respect of the objectives.

(3) In exercising its powers under this Article, the Committee shall have regard (as far as they are relevant to the purposes of this Law) to the state of the controlled waters, including -

- (a) the substances that are present in them and the concentrations of those substances; and
 - (b) substances that are absent from the waters.
- (4) In this Article, “use” includes use for any agricultural purpose, bathing, boating, fishing for pleasure, fishing for profit, any industrial purpose, any other recreational purpose and the supply of water.

ARTICLE 13

Compliance with water quality objectives

While a Water Quality Order remains in force in respect of any controlled waters -

- (a) the Committee shall carry out its functions under Articles 14, 15, and 16, and Parts 5 and 6, in a manner that ensures as far as is reasonably practicable that the objectives set by the Order are achieved; and
- (b) the Company shall, to the extent that it may do so under the Water (Jersey) Law 1972,^[5] carry out its functions under that Law in a manner that ensures as far as is reasonably practicable that those objectives are achieved.

ARTICLE 14

Water Catchment Management Areas

The States may by Regulations -

- (a) designate any land described in the Regulations as a Water Catchment Management Area for the purposes of this Law; and
- (b) specify conditions, for the prevention, control, reduction or elimination of pollution in controlled waters or of the risk of pollution in controlled waters, that the Committee may impose by a Water Catchment Management Order in respect of such an Area or part of an Area.

ARTICLE 15

Water Catchment Management Orders

- (1) The Committee may by Order (“a Water Catchment Management Order”) impose in respect of -
 - (a) a Water Catchment Management Area; or
 - (b) any part of the Area,

any conditions that the States have for the time being specified under Article 14 in respect of that Area or that part of the Area (as the case may be).

- (2) However, the Committee may only make a Water Catchment Management Order -
 - (a) with the agreement of every person who has a proprietary interest in any land to which the Order is to apply;
or
 - (b) after complying with paragraphs (3) and (4).

(3) Where the Committee proposes to make a Water Catchment Management Order without the agreement of a person who has a proprietary interest in any land to which the Order applies, it shall serve on him a notice in writing -

- (a) informing him of the terms of the proposed Order; and
- (b) explaining that he may within a specified period (being a period of not less than 21 days beginning after the date of service of the notice on him) make representations in writing to the Committee in respect of the

proposal.

(4) In deciding whether or not to make the Water Catchment Management Order, the Committee shall consider all representations so made.

(5) Any person who intentionally and without reasonable excuse contravenes any condition imposed under paragraph (1) in respect of any land to which a Water Catchment Management Order applies shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

ARTICLE 16

Approved codes of practice

- (1) The Committee may by Order approve any code of practice for the purposes of this Law.
- (2) In exercising its powers under paragraph (1), the Committee shall have regard to the desirability of -
 - (a) the provision of practical guidance to persons engaged in activities (including, in particular, agricultural and related activities) that may affect the quality of controlled waters; and
 - (b) the promotion and encouragement of good practices by such persons for preventing, controlling, reducing or eliminating the pollution of controlled waters.

PART 4

POLLUTION OFFENCES

ARTICLE 17

Pollution offences

(1) Any person who causes or knowingly permits the pollution of any controlled waters shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

(2) Where -

- (a) the Committee in its capacity as the sewerage undertaker for the Island receives anything into a public sewer;
- (b) it passes subsequently from any public sewer into controlled waters; and
- (c) its introduction into controlled waters constitutes pollution,

the Committee shall be guilty of an offence and liable to a fine.

(3) Any person who, being the holder of a discharge permit, contravenes any condition of the permit shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

(4) Where the Committee contravenes any condition of a discharge certificate, it shall be guilty of an offence and liable to a fine.

ARTICLE 18

Statutory defences

(1) Where a person is charged with an offence under paragraph (1) or paragraph (2) of Article 17, it shall be a defence to prove that in doing any act or making any omission that is a necessary ingredient of the offence he was acting in accordance with a discharge permit or discharge certificate.

(2) Where a person (other than the Committee) is charged with an offence under paragraph (1) of Article 17 by reason only of the introduction into a public sewer of anything that passes subsequently into controlled waters, it shall be a defence to prove that the Committee was bound (either unconditionally or subject to conditions that were observed) to

receive it into the sewer.

(3) Where the Committee is charged with an offence under paragraph (2) or paragraph (4) of Article 17 by reason of the introduction of anything into controlled waters, it shall be a defence to prove -

- (a) that the occurrence was attributable to the fact that its prior introduction into a public sewer was caused or permitted by a person who was not acting under the authority of the Committee; and
- (b) that the Committee either was not bound to receive it into the sewer, or was only bound to do so on conditions that were not observed.

(4) Where a person is charged with an offence under paragraph (1) of Article 17, it shall be a defence to prove-

- (a) that he took all reasonable precautions and exercised due diligence to avoid the commission of the offence;
- (b) that he took all steps that were reasonably practicable for minimizing the extent of pollution of controlled waters; and
- (c) that he gave full details of the occurrence to the Committee, or ensured that they were given to it, as soon as was reasonably practicable.

(5) For the purposes of paragraph (4) -

- (a) the fact that a person conforms in a material way to an approved code of practice shall be admissible as evidence that he is conducting himself reasonably and with due diligence in that way; and
- (b) the fact that a person fails in a material way to conform to an approved code of practice shall be admissible as evidence that he is not conducting himself reasonably and with due diligence in that way.

(6) Where a person is charged with an offence under any of paragraphs (1), (2), (3) and (4) of Article 17 by reason of the introduction of anything into controlled waters, it shall be a defence to prove -

- (a) that it was introduced in consequence of a decision to do so in an emergency that arose in circumstances beyond his control;
- (b) that the decision was reasonable;
- (c) that he took all steps that were reasonably practicable for minimizing the extent of pollution of controlled waters; and
- (d) that he gave full details of the occurrence to the Committee, or ensured that they were given to it, as soon as was reasonably practicable.

PART 5

AUTHORIZED DISCHARGES

ARTICLE 19

High risk substances

- (1) In deciding under this Part whether or not to grant, vary, transfer, suspend or revoke a discharge permit, or to issue, vary, suspend or revoke a discharge certificate, the Committee shall have particular regard in every relevant case to the risk of pollution by any substance of a kind described in Schedule 2.
- (2) The Committee may by Order amend Schedule 2.

ARTICLE 20

Applications in respect of discharge permits

- (1) Every application for the grant, variation, transfer or revocation of a discharge permit shall be in writing, with such information (including maps and diagrams) as may be prescribed or as the Committee may reasonably require in any case.
- (2) An application for the transfer of a discharge permit shall include the written consent of the proposed transferee to his becoming the holder of the permit.

ARTICLE 21

Discharge permits

- (1) If any person other than the Committee wishes to make an introduction into controlled waters that would otherwise be in contravention of Article 17(1), he shall first apply to the Committee for a discharge permit for that purpose.
- (2) The Committee, on considering an application for a discharge permit, shall -
 - (a) grant the application, unconditionally or on such conditions as it may specify in its decision; or
 - (b) refuse the application.
- (3) There shall be a right of appeal, in accordance with Article 44, against the decision of the Committee.

ARTICLE 22

Conditions of discharge permits

Without prejudice to the generality of the conditions that the Committee may impose in granting a discharge permit, or in subsequently varying the permit, they may include all or any of the following matters -

- (a) the place at which anything may be introduced into controlled waters;
- (b) the design or construction of any outlet to be used for that purpose;
- (c) the nature, origin, volume, rate, composition, properties, radioactivity, temperature or other qualities of anything to be introduced, or the frequency with which or the times during which it may be introduced;
- (d) any treatment or process to be applied, by the holder of the permit or any other person, to minimize the pollution of controlled waters (including the provision or maintenance by the holder or any other person of approved treatment facilities for the purpose);
- (e) the provision or maintenance of approved facilities (including boreholes, inspection chambers, manholes or observation wells), by the holder or any other person, for taking samples of the thing introduced or of controlled waters;

- (f) the provision or maintenance of approved meters or other approved apparatus, by the holder or any other person, for measuring, assessing, determining or otherwise recording the nature, origin, volume, rate, composition, properties, radioactivity, temperature or other qualities of the thing introduced or of controlled waters;
- (g) the keeping of records, the making of returns or the giving of other information, by the holder or any other person to the Committee, in respect of the introduction or its consequences; or
- (h) time limits for complying with any conditions.

ARTICLE 23

Variation and revocation of discharge permits

(1) The Committee may, on the application of the holder of a discharge permit or of its own motion, vary or revoke the permit.

(2) Where the Committee proposes of its own motion to vary or revoke a discharge permit -

(a) it shall serve a notice in writing on the holder, specifying its proposal and informing him that he may make representations in writing to the Committee in respect of the proposal within 21 days after the notice is served on him; and

(b) in determining whether or not to proceed with its proposal, it shall consider all representations so made,

before proceeding on the proposal and complying (where necessary) with Article 10.

(3) A variation or revocation shall not take effect before it is served on the holder.

(4) A variation or revocation shall take effect -

(a) when it is served on the holder, if the Committee does not specify a later date; or

(b) where the Committee does specify a later date, on that date.

(5) However, where a variation imposes any restriction, obligation or requirement on the holder, the variation shall take effect on a date to be specified by the Committee, being not sooner than six months after it is served on the holder.

(6) The Committee need not comply with paragraph (5) if -

(a) there are exceptional circumstances; and

(b) it specifies those circumstances in its decision.

(7) There shall be a right of appeal, in accordance with Article 44, against the decision of the Committee to vary or revoke a discharge permit.

ARTICLE 24

Suspension of discharge permits

(1) Where it appears to the Committee on reasonable grounds that it is necessary or expedient to do so because of an emergency -

(a) it may by notice in writing served on the holder of a discharge permit suspend the permit for any period, not exceeding 14 days, that is specified in the notice; and

(b) it may in the same manner extend the suspension of the permit for any period not exceeding 14 days.

(2) There shall be a right of appeal, in accordance with Article 44, against the decision of the Committee.

ARTICLE 25

Transfer of discharge permits

- (1) With the written approval of the Committee on an application made in accordance with Article 20, the holder of a discharge permit may transfer it to any other person.
- (2) With effect from the date of approval, or from such later date as the Committee may specify in its approval -
 - (a) the transferor shall cease to be the holder of the discharge permit; and
 - (b) the transferee shall be the holder.

ARTICLE 26

Discharge certificates

- (1) If the Committee wishes to make an introduction into controlled waters that would otherwise be in contravention of Article 17(1), it shall first issue a discharge certificate for that purpose.
- (2) The Committee shall specify in the discharge certificate the conditions (if any) on which the introduction will be made.
- (3) The Committee may vary a discharge certificate.
- (4) A discharge certificate or its variation shall take effect from a date to be specified in the certificate by the Committee (being not sooner than 21 days after the Committee complies with Article 27 in respect of its decision).
- (5) Where the Committee issues or varies a discharge certificate, any person who -
 - (a) has made representations under Article 10(5) in respect of its proposal to do so; and
 - (b) has provided an address for service in the Island,may apply to the Court to review the decision.
- (6) An application under paragraph (5) of this Article shall be made -
 - (a) within 21 days after the applicant is served with a written copy of the Committee's decision (or within such further time as the Court may allow); and
 - (b) on notice to the Committee.
- (7) Where the Committee issues or varies a discharge certificate, the Attorney General may apply to the Court at any time, on notice to the Committee, to review the decision.
- (8) Rules of Court may provide for the manner in which applications for review under this Article shall be brought, heard and determined.
- (9) Unless the Court so orders, the lodging of an application for review under this Article shall not operate to stay the effect of a decision pending the determination of the application.
- (10) On hearing an application for review, the Court -
 - (a) may in its own judgment confirm, reverse or vary the decision of the Committee; and
 - (b) may make such order as to the costs of the review as it thinks fit.
- (11) The Committee may at any time suspend or revoke a discharge certificate.

ARTICLE 27

Notice of decisions

- (1) Within 14 days after the Committee -
 - (a) grants or refuses an application for a discharge permit, or an application to vary, transfer or revoke a permit;
 - (b) of its own motion varies, suspends or revokes a permit; or
 - (c) issues, varies, suspends or revokes a discharge certificate,

it shall serve a written copy of its decision on each of the persons specified in paragraph (2).

- (2) The persons to whom paragraph (1) refers are -
 - (a) the applicant or the holder of the discharge permit, as the case may be;
 - (b) the Agriculture and Fisheries Committee, the Health and Social Services Committee and the Planning and Environment Committee;
 - (c) every person who has made representations under Article 10(5) in respect of the matter, and has provided an address for service in the Island; and
 - (d) in the case of an application to transfer a permit, the transferee proposed in the application.

(3) This Article does not require the Committee, where it has suspended a discharge permit or extended the period of its suspension under Article 24, to give to the holder additional notice under this Article.

ARTICLE 28

Charges for discharge permits

- (1) The Committee may prescribe -
 - (a) charges that shall be payable to the Committee by applicants, holders of discharge permits, and proposed transferees in respect of applications for the grant, variation, transfer and revocation of permits; and
 - (b) charges that shall be payable to the Committee periodically, by holders of permits, while their permits remain in force.

(2) In prescribing such charges, the Committee shall have regard to the amounts that are needed to meet its expenditure in carrying out its functions under this Law in respect of discharge permits (including, but without limiting the generality of this paragraph, the consideration of applications relating to permits, the granting of permits, the monitoring of discharges by holders of permits and the variation, suspension and revocation of permits).

- (3) In prescribing charges in respect of discharge permits, the Committee may impose -
 - (a) different charges in respect of different parts of any periods during which permits remain in effect; and
 - (b) different charges according to the kinds or scale of activity, the kinds or amounts of any substances, the localities or circumstances and the number of different activities to which permits relate.

(4) Where any charge is prescribed, the Committee may refuse to do anything for which it is payable until it is paid (without prejudice to the right of the Committee to recover the money).

PART 6

ENFORCEMENT

ARTICLE 29

Appointment of designated officers

The Committee may in writing appoint as a designated officer for the purposes of this Law any person who is employed in the service of the States.

ARTICLE 30

Proof of authority

(1) A designated officer who is exercising his powers under this Law shall produce on request evidence of his authority to do so.

(2) A designated officer shall also state on request -

- (a) his name; and
- (b) the power that he proposes to exercise.

ARTICLE 31

Persons who may accompany designated officers

(1) In exercising his powers under this Law (including any powers conferred on him by a warrant granted under Article 32(4)), a designated officer may take with him -

- (a) such other persons; and
- (b) such vehicles, equipment and materials,

as are reasonably necessary or expedient for the purpose.

(2) A person whom a designated officer takes with him under paragraph (1) may perform any of the designated officer's functions under this Law, but only under the latter's supervision.

ARTICLE 32

General powers of entry and investigation

(1) A power conferred by this Article shall only be exercisable -

- (a) where there are reasonable grounds for doing so;
- (b) in a manner that is proportionate and otherwise reasonable; and
- (c) at a reasonable hour,

and, if it is to be exercised in respect of residential land, where the designated officer has given not less than 48 hours' notice in writing to the owner or occupier.

(2) However, the requirements in paragraph (1) as to the time at which the power may be exercised and (in the case of residential land) as to the notice that must be given before it may be exercised do not apply in an emergency.

(3) A designated officer may do all or any of the following things in respect of any land, vehicle, vessel, hovercraft or aircraft, for the purposes of carrying this Law into effect -

- (a) enter, board, inspect or search it;
 - (b) take or carry out on or in it any measurements, surveys, tests, investigations or photographs;
 - (c) in the case of any land, carry out or dig on or in it any experimental borings, trial pits or trial holes;
 - (d) install, maintain or operate on or in it any monitoring equipment or other apparatus;
 - (e) take or remove from it, for analysis, samples of any water, other substances, articles or other things found there; or
 - (f) take or remove any water, other substances, articles or other things found there, for the purposes of evidence in any civil or criminal proceedings under this Law.
- (4) Where the Bailiff or a Jurat is satisfied on sworn information -
- (a) that there are reasonable grounds for the exercise of any power under paragraph (3); and
 - (b) that in the circumstances of the case it is desirable to grant a warrant under this paragraph,

he may grant a warrant to a designated officer authorizing the officer at any time to enter or board any land, vehicle, vessel, hovercraft or aircraft specified in the warrant and there exercise any other powers under paragraph (3), and in doing so to use such reasonable force as may be necessary.

- (5) 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.

(6) Where a designated officer enters any land, vehicle, vessel, hovercraft or aircraft in the exercise of his powers under this Article, and it is for the time being unoccupied or unmanned, he shall leave it secured as effectually as he found it.

- (7) Any person who without reasonable excuse -
- (a) intentionally obstructs a designated officer who is exercising or seeking to exercise any power under this Article; or
 - (b) intentionally obstructs any person who is lawfully accompanying a designated officer, or performing any function under his supervision, under Article 31,

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

ARTICLE 33

Co-operation by owners and others

(1) A designated officer who is exercising or seeking to exercise his powers under Article 32 on or in any land, vehicle, vessel, hovercraft or aircraft may require any person present who is or appears to the officer to be -

- (a) the owner, occupier, driver, master, commander or person in charge; or
- (b) some other responsible person,

to render such assistance as the designated officer may reasonably require of him in order that the designated officer can carry out more effectively the purposes for which he is exercising his powers.

(2) Paragraph (1) does not empower a designated officer to require a person to do anything that the Committee, under any of Articles 34, 35, 36 and 37, may require a person to do.

(3) Any person who intentionally and without reasonable excuse contravenes a requirement made of him under this Article shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

ARTICLE 34

Access to documents and records relating to water quality

(1) Where it appears to the Committee on reasonable grounds that a person has in his custody or control a document or record that is relevant to the purposes of this Law, the Committee may require him to allow the Committee to inspect and copy it.

(2) If it is reasonably necessary or expedient to do so, the Committee or the designated officer may take the document or record away temporarily, to inspect or copy it.

(3) There shall be a right of appeal, in accordance with Article 44, against the making of a requirement by the Committee under this Article.

ARTICLE 35

Provision of information about potential pollution

(1) Where it appears to the Committee on reasonable grounds that a person has anything in his custody or control in circumstances in which it may pollute controlled waters, the Committee may require him to do all or any of the following things -

- (a) to deliver to the Committee in writing details of the thing or the circumstances in which it is in his custody or control (including details as to its nature, origin, volume, rate, composition, properties, radioactivity, temperature or other qualities or, where appropriate, any methods of transfer used by the person in respect of it);
- (b) to deliver to the Committee in writing such other information as it may reasonably require in order to determine the extent of that risk of pollution, or how best to prevent such pollution or to deal with the consequences of any pollution that does ensue; or
- (c) to keep proper records for the purposes of sub-paragraph (a) or sub-paragraph (b).

(2) There shall be a right of appeal, in accordance with Article 44, against the making of a requirement by the Committee under this Article.

ARTICLE 36

Control of potential pollution

(1) Where it appears to the Committee on reasonable grounds that a person has anything in his custody or control in circumstances in which it may pollute controlled waters, the Committee may require him to do all or any of the following things -

- (a) to take reasonable precautions or undertake appropriate works or other measures (including monitoring); or
- (b) to comply with reasonable conditions, while the thing is in his custody or control,

for the prevention of such pollution, or in anticipation of the control, reduction or elimination of such pollution.

(2) Where it appears to the Committee on reasonable grounds that a person has anything in his custody or control in circumstances in which it may pollute controlled waters, and -

- (a) that it is not reasonably practicable by any other means to take adequate precautions against the risk of pollution, or to deal adequately with the consequences of any pollution that does ensue; and
- (b) that the nature of the risk and the consequences of pollution are sufficiently serious to justify it in doing so,

the Committee may require him to dispose of the thing.

(3) There shall be a right of appeal, in accordance with Article 44, against the making of a requirement by the Committee under this Article.

ARTICLE 37

Remedial action by polluters

(1) Where any person has caused or knowingly permitted any controlled waters to be polluted, the Committee may require him to do all or any of the following things -

- (a) to eliminate, reduce or control the pollution;
- (b) to remedy or mitigate its effects; or
- (c) to restore the waters (or any flora or fauna that are dependent on the aquatic environment of those waters) to their state immediately before they were so polluted,

as far as it is reasonably practicable for him to do so.

(2) There shall be a right of appeal, in accordance with Article 44, against the making of a requirement by the Committee under this Article.

ARTICLE 38

Manner of exercising powers

(1) A requirement by the Committee in the exercise of any power under any of Articles 34, 35, 36 and 37 shall be made by a notice in writing served on the person to whom it relates.

(2) The notice -

- (a) shall in every case specify the document or record to be inspected and copied, the information to be delivered, the things to be done or the conditions to be complied with, as the case may be;
- (b) may, in the case of a requirement under Article 36 or Article 37, specify the means by which the person is to comply with it; and
- (c) shall in every case specify a period of time (being a reasonable period in the circumstances) within which the notice is to be complied with.

(3) No power conferred on the Committee by any of Articles 35, 36 and 37 shall be exercisable in respect of any act or omission by a person for which he has a defence under Article 18(1).

(4) Any person who intentionally and without reasonable excuse contravenes a notice served on him by the Committee in the exercise of a power under Article 34 shall be guilty of an offence and liable to a fine not exceeding level 4 on the standard scale.^[6]

(5) Any person who intentionally and without reasonable excuse contravenes a notice served on him by the Committee in the exercise of a power under any of Articles 35, 36 and 37 shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

ARTICLE 39

Remedial action by Committee

(1) Where -

- (a) a person on whom a notice is served in the exercise of a power under Article 36 or Article 37 contravenes the notice;

- (b) it appears to the Committee after reasonable enquiry, in any case in which there are grounds for serving such a notice, that the person on whom it is to be served cannot be found; or
- (c) it appears reasonably to the Committee, in any case in which there are grounds for serving such a notice, that the situation is one of urgency that warrants action under this Article,

the Committee may itself do all or any of the things that it has so required or could have so required the person to do.

(2) Where the Committee acts under paragraph (1), it may recover its reasonable expenses of doing so as a civil debt in any court of competent jurisdiction from any person on whom the notice was to be served.

ARTICLE 40

Injunctions

(1) The Committee or a designated officer may apply to the 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) Paragraph (1) does not relieve a person from any criminal liability that he may incur by reason of any act or omission, or limit any other remedies of the Committee or a designated officer in respect of the person's acts or omissions.

PART 7

GENERAL

ARTICLE 41

Application for protection of trade secret

(1) A person specified in paragraph (2) may apply to the Committee 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 discharge permit, in respect of any information that he is required or wishes to give to the Committee in support of the application;
- (b) any person, in respect of any information that he wishes to give under any of Articles 22, 34, 35, and 36;
- (c) any person, in respect of any information that he is required to give under any of those Articles; and
- (d) any person, in respect of any information relating to him, or to any business (including any research or experiment) carried on by him, that the Committee or a designated officer may obtain directly or indirectly in the course of the exercise of any power under Article 32 or Article 39.

(3) An application under this Article shall be made in writing.

(4) However, in a case to which any of sub-paragraphs (b), (c) and (d) 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 Committee 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 Committee.

(5) Where the Committee is satisfied that the disclosure of the information will reveal a trade secret, it 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 Committee shall serve on the applicant a written copy of its decision.

(7) There shall be a right of appeal, in accordance with Article 44, against the decision of the Committee.

ARTICLE 42

Information that is protected

(1) While -

- (a) an application for a certificate of confidentiality, having been made in accordance with Article 41, has not been determined by the Committee;
- (b) any time allowed for appealing to the Court against the decision of the Committee in respect of the application has not expired, and the 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 43.

(2) Where a certificate of confidentiality is granted (whether by the Committee itself, or on appeal), the information in respect of which it is granted shall be confidential, unless it is information described in Article 43.

(3) Any person who knowingly or recklessly -

(a) discloses to any other person any information that is confidential by virtue of paragraph (1) or paragraph (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 not exceeding two years or to a fine, or both.

(4) Paragraph (3) does not apply to any disclosure -

(a) by the applicant for the certificate of confidentiality, or with his consent;

(b) to the Public Services Committee or to any other Committee of the States or to any public officer or to any other person specified in Article 31, for the purposes of this Law; or

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

ARTICLE 43

Information that is not protected

Article 42 does not apply to the following information -

(a) the name and address of the applicant for the certificate of confidentiality;

(b) the fact that he has applied for or been granted such a certificate or that an appeal to the Court, or any further appeal, is pending in respect of his application for it; and

(c) the site of the introduction or proposed introduction, into controlled waters, of anything to which the confidential information relates.

ARTICLE 44

Appeals

(1) The following persons shall have a right of appeal to the Court under this Law -

(a) an applicant for a discharge permit, against the refusal of the application by the Committee;

(b) an applicant for a permit, against any condition imposed by the Committee in granting the application;

(c) the holder of a permit, against the variation or revocation of the permit, or against the suspension of the permit under Article 24, or the extending of the suspension of the permit under that Article;

(d) a person of whom a requirement is made under any of Articles 34, 35, 36 and 37, 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 Court may allow.

(3) In any matter to which Article 10(5) applies, the Committee 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 the Island, and that person may appear and be heard.

(4) Unless the 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 Court -

(a) may confirm, reverse or vary the decision or requirement against which the appeal is brought; and

(b) may make such order as to the costs of the appeal as it thinks fit.

ARTICLE 45

Compensation

(1) Where -

(a) any person who has a proprietary interest in any land that has been designated as or as part of a Water Catchment Management Area suffers any loss by way of reduction in the value of his interest or by way of the disturbance of business carried on by him on that land, in consequence of the imposition of any condition in respect of that land by a Water Catchment Management Order; or

(b) any person suffers any loss or damage in consequence of the exercise of any power under Article 32,

the Committee shall be liable to pay compensation to him for that loss or damage.

(2) Compensation shall not be payable under this Article -

(a) to the extent that the loss or damage is attributable to the claimant's fault; or

(b) to the extent that compensation for the loss or damage is payable under any other enactment or rule of law,

but this Article does not limit any right to compensation under any other enactment or rule of law.

(3) For the purposes of a claim for compensation under this Article -

(a) conforming to an approved code of practice is not an act or omission involving fault; and

(b) where a person claims compensation in respect of any loss or damage, his failure in a material way to conform to an approved code of practice within a reasonable time after the code was approved under Article 16 (1) shall be admissible as evidence that the loss or damage is attributable to his fault.

(4) Any dispute as to the entitlement of any person to compensation under this Article, or as to the amount of compensation -

(a) shall be referred to and determined by the arbitration of a single arbitrator appointed by agreement between the Committee and the claimant; or

(b) in default of such agreement, shall be referred to and determined by the Board of Arbitrators appointed in accordance with Articles 7 and 8 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961.^[7]

(5) In the determination of a dispute under paragraph (4) of this Article -

(a) Articles 9 and 16A of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961^[8] 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 imposition of a condition in respect of land by a Water Catchment Management Order or, as the case may be, to the exercise of a power under Article 32 of this Law;
- (6) In the determination of a dispute under paragraph (4) of this Article -
 - (a) Articles 10, 11, 12, 14 and 14A of that Law^[9] 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 (4) of this Article.
- (7) Interest, at the rate specified in Article 9A(4) of the Compulsory Purchase of Land (Procedure) (Jersey) 1961^[10] 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.

ARTICLE 46

Interference with apparatus

Any person who maliciously or dishonestly interferes or tampers with any meter or other apparatus installed on or in any land, vehicle, vessel, hovercraft or aircraft -

- (a) by the Committee, for the purposes of this Law; or
- (b) by any other person, in accordance with a requirement of or under this Law,

shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine, or both.

ARTICLE 47

False information

Any person who -

- (a) in support of an application under any of Articles 21, 23, 25 and 41 or under Schedule 5; or
- (b) on being required under a condition of a discharge permit or discharge certificate, or under Article 35, to give or deliver any information to the Committee,

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 not exceeding two years or to a fine, or both.

ARTICLE 48

Criminal liability

(1) Where an offence under this Law that is committed by a body corporate is proved to have been committed with the consent and connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or of any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the same offence and liable in the same manner to the penalty provided for that offence.

(2) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

ARTICLE 49

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 for the purposes of this Law is approved or used by the Committee, 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 discharge permit or discharge certificate shall be admissible in evidence against that person.

ARTICLE 50

Limitation of liability of Committee

Neither the Committee nor any of its members, officers, servants or agents shall incur any civil or criminal liability -

- (a) in respect of the grant, variation, transfer, suspension or revocation of a discharge permit by the Committee; or
- (b) in respect of the introduction of anything into controlled waters in accordance with a permit,

unless it is proved that it or he (as the case requires) was acting in bad faith.

ARTICLE 51

Service of documents

(1) A document may be served under this Law in any of the following ways -

- (a) on an individual, by delivering it to him personally or by leaving it at his proper address or by sending it by recorded delivery post to him 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 unincorporated 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 12 of the Interpretation (Jersey) Law 1954^[11] (which relates to the service of documents by post) in its application to this Article, the proper address of any person on whom a document is to be served is his last known address, except that -

- (a) in the case of service on a body corporate or its secretary or clerk, it is 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 is the address of the principal office of the partnership.

(3) In the case of a body incorporated outside the Island or of a partnership carrying on business outside the Island, its principal office in the Island is its principal office for the purposes of this Article.

(4) Where a person who is to be served under this Law with any document has specified an address in the Island other than his proper address (as determined in accordance with paragraph (2)) as the one at which he or someone on his 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 -

(a) on the owner or person in charge of any land, vehicle, vessel, hovercraft or aircraft; or

(b) on the occupier of any land, the driver of a vehicle, the master of a vessel or hovercraft or the commander of an aircraft,

and after reasonable enquiry he cannot be found and his name and address cannot be ascertained, and the document relates to the land, vehicle, vessel, hovercraft or aircraft, the document may be served by delivering it personally to some other responsible person who is or appears to be resident or employed on or in it, or by affixing it (or a copy) conspicuously to any part of the land, vehicle, vessel, hovercraft or aircraft.

(6) This Article does not apply to any document for which provision for service is made by Rules of Court, but it does not prevent service by any other mode that is permitted by any other enactment or rule of law.

ARTICLE 52

Subordinate legislation

(1) The Committee may make Orders relating to all or any of the following matters -

(a) providing for any matters that are to be or may be prescribed under any other provisions of this Law;

(b) prescribing forms of application for the grant, variation, transfer or revocation of discharge permits, or information to be provided in support of such applications;

(c) prescribing standard conditions in permits;

(d) prescribing forms in which records shall be kept or returns shall be made under this Law;

(e) prescribing the form of applications for certificates of confidentiality; or

(f) providing for such other matters as are reasonably necessary for or incidental to the purpose of carrying of this Law into effect.

(2) Regulations and Orders made under this Law may make different provision for different classes of cases.

(3) For the purposes of this Law -

(a) a standard condition that is for the time being prescribed in respect of a discharge permit; 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 holder of a permit,

are conditions imposed by the Committee in the permit.

(4) The Subordinate Legislation (Jersey) Law 1960^[12] shall apply to Orders made under this Law.

(5) The powers of the Superior Number of the Royal Court to make rules under the Royal Court (Jersey) Law 1948^[13] shall include power to make rules for the purposes of this Law.

ARTICLE 53

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.

ARTICLE 54

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 the control of pollution in Island waters and is applicable to or binding on the Island.

ARTICLE 55

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 Court may, on the application of the Committee, 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 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.

ARTICLE 56

Repeals, amendments and transitional provisions

- (1) The enactments specified in the first column of Schedule 3 are repealed to the extent specified in the second column of that Schedule.
- (2) The enactments specified in the first column of Schedule 4 are amended in the manner specified in the second column of that Schedule.
- (3) This Law shall have effect subject to the transitional provisions set out in Schedule 5.
- (4) The States may by Regulations repeal paragraph 3 of Schedule 5, wholly or in respect of any category of charge specified in the Regulations.

ARTICLE 57

Citation and commencement

- (1) This Law may be cited as the Water Pollution (Jersey) Law 200 .
- (2) The following provisions of this Law shall come into force on the expiry of the seventh day following the registration of this Law -

(a) Part 1, Articles 5, 6, 7, 11, 12, 14, paragraphs (1), (2), (3) and (4) of Article 15, Article 16, Part 5, Articles 29, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55, Article 56(2) (as far as it relates to paragraph 2 of Schedule 4), Article 56(3), this Article, Schedule 2 and Schedule 5; and

(b) Article 13, to the extent that it imposes a duty on the Committee.

(3) For the purposes of the Parts, Articles and Schedules specified in paragraph (2), the following provisions of this Law shall also come into force on the expiry of the seventh day following the registration of this Law, namely Articles 8, 9, 10, 30, 31, 32, 33, 34, 38, and 40 and Schedules 1 and 4.

(4) Except as provided in paragraphs (2) and (3), this Law shall come into force on the expiry of the period of six months following its registration.

SCHEDULE 1

(Articles 8(6); 57(3))

Information that need not be disclosed

The Committee shall not be obliged under Article 8 to make available any information -

- (a) affecting the confidentiality of the proceedings of any public or parish authority;
- (b) relating to international relations or national security;
- (c) relating to matters that are under enquiry or to documents in draft form;
- (d) relating to matters that are the subject of legal or other proceedings (whether actual or prospective);
- (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 Committee by a person who was not under a legal obligation to do so;
- (h) if the Committee, reasonably, is not satisfied of the reliability of the information;
- (i) that cannot be separated, for the purpose of making it available, from information specified in any of paragraphs (a) to (h) (inclusive); or
- (j) if the request for information is manifestly unreasonable or is formulated in too general a manner.

SCHEDULE 2

(Articles 19(1), (2); 57(2)(a), (3))

High risk substances

1. Any substance that has or is associated with any of the following properties, characteristics or features -
 - (a) persistency;
 - (b) toxicity or any other noxious property;
 - (c) a tendency to bioaccumulation;
 - (d) radioactivity;
 - (e) a risk, caused anthropogenically, of eutrophication;
 - (f) transboundary significance;
 - (g) a risk of undesirable changes in the aquatic ecosystem, and irreversibility or durability of effects;
 - (h) interference with harvesting of foods in controlled waters; and
 - (i) effects on the taste or smell of anything from the aquatic environment that is intended for human consumption, or effects on smell, colour, transparency or other characteristics of controlled waters.
2. Without limiting the generality of paragraph 1, any substance that is of any of the following kinds -
 - (a) heavy metals and their compounds;
 - (b) organohalogen compounds and substances that may form such compounds in the aquatic environment;
 - (c) organic compounds of phosphorus, silicon and tin;
 - (d) biocides, including pesticides, fungicides, herbicides, insecticides and slimicides;
 - (e) chemicals used, *inter alia*, for the preservation of wood, timber, wood pulp, cellulose, paper, hides and textiles;
 - (f) oils and hydrocarbons of petroleum origin;
 - (g) nitrogen and phosphorus compounds; and
 - (h) radioactive substances and radioactive wastes.
3. Any substance whose presence in any controlled waters would affect adversely the standards of quality to be achieved in those waters under a Water Quality Order.

SCHEDULE 3

(Article 56(1))

Enactments repealed

(1)

(2)

Short title

Extent of repeal

- | | |
|---|---------------------|
| 1. Loi (1937) sur les Egouts ^[14] | Article 12. |
| 2. Sewerage (Miscellaneous Provisions)
(Jersey) Law 1979 ^[15] | The whole Law. |
| 3. Jersey Gas Company (Jersey)
Law 1989 ^[16] | Articles 61 and 63. |

SCHEDULE 4

(Articles 56(2); 57(2)(a), (3))

Consequential amendments

(1)

Short title

(2)

Extent of amendment

1. Loi (1937) sur les Egouts^[17]

In Article 15, for the words “, autrement qu’en conformité des dispositions des Articles 12, 13 et 14 de la présente Loi, sera passible d’une amende n’excédant pas cinq cents livres sterling” there shall be substituted the words “par des travaux exécutés ainsi, sera passible d’un emprisonnement pour un terme n’excédant pas deux années ou d’une amende, ou d’un tel emprisonnement et d’une telle amende,”.
2. Water (Jersey) Law 1972^[18]

In Article 21(1), for the words “Where on a complaint made to it by a consumer, the Committee, after making due enquiry and after hearing both parties,” there shall be substituted the words “Where the Committee (whether on a complaint by a consumer or otherwise, and after making due enquiry and hearing the complainant, if any, and in any event the Company)”.

SCHEDULE 5

(Articles 47, 56(3), (4); 57(2)(a), (3))

Transitional provisions

1. Notwithstanding Article 17(1) -
 - (a) if within six months after the date on which the Articles specified in paragraphs (2) and (3) of Article 57 come into force (which Articles relate *inter alia* to applications for discharge permits), a person applies for a permit to introduce any sewage effluent or trade effluent into controlled waters; and
 - (b) the application has not been determined by the Committee by the date on which Article 17 comes into force,

that person may introduce the effluent into controlled waters, in the manner proposed in the application, until the application is determined by the Committee.

2. In considering an application to which paragraph 1 of this Schedule applies, the Committee need not comply with Article 10(2).

3. Notwithstanding Article 28, no charge under that Article shall be payable for -
 - (a) an application under paragraph 1 of this Schedule for a discharge permit;
 - (b) the holding of a permit that is granted on such an application; or
 - (c) an application for the variation, transfer or revocation of that permit,

so far as the permit relates to the discharge of domestic sewage effluent.

4. In this Schedule, “trade effluent” includes any effluent resulting from the use of any land -
 - (a) for carrying on any business; or
 - (b) for any educational, medical, public, recreational or scientific purpose, or for the purpose of providing any amenity,

whether that use is for profit or not.

[1] Volume 1970-1972, page 308.

[2] Tome VII, page 219.

[3] Tome VII, pages 218 and 219.

[4] Volume 1970-1972, page 307, Volume 1988-1989, page 217 and Volume 1990-1991, page 35.

[5] Volume 1970-1972, page 307, Volume 1988-1989, page 217 and Volume 1990-1991, page 35.

[6] Volume 1992-1993, page 437.

[7] Volume 1961-1962, page 395 and Volume 1994-1995, page 69.

[8] Volume 1961-1962, pages 396 and 401, Volume 1963-1965, page 172, Volume 1970-1972, page 179, Volume 1979-1981, page 374 and Volume 1990-1991, page 852.

[9] Volume 1961-1962, pages 397, 398 and 399 and Volume 1994-1995, page 69.

[10] Volume 1961-1962, page 397 and Volume 1979-1981, page 375.

[11] Tome VIII, page 381.

[12] Tome VIII, page 849.

[13] Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, page 175, Volume 1990-1991, pages 113 and 855, Volume 1992-1993, page 461, Volume 1996-1997, pages 147 and 667 and Volume 1998, page 659.

[14] Tome VII, page 220.

[15] Volume 1979-1981, page 189.

[16] Volume 1988-1989, pages 469 and 470.

[17] Tome VII, page 221.

[18] Volume 1970-1972, page 327.