

ST HELENA

REVISED EDITION OF THE LAWS, 2017

INFRASTRUCTURE & PUBLIC UTILITIES

UTILITY SERVICES ORDINANCE, 2013¹

*Ordinance 3 of 2013
In force 1 April 2013*

No amendments to 1 November 2017

No subsidiary legislation to 1 November 2017

But see Directives issued under section 5 for Maximum Electricity and Water Tariffs:

G.N. 21 of 26 March 2014; G.N. 50 of 31 March 2015; G.N.56 of 29 February 2016; G.N. 148 of 26 September 2017 (as corrected by G.N. 29 of 22 February 2018); G.N. 180 of 31 August 2017; G.N. 55 of 23 March 2020

UTILITY SERVICES ORDINANCE, 2013

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 April 2020.

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AN ORDINANCE to establish a Utilities Regulatory Authority and to create a legal framework to facilitate private sector provision of public utility services; and for connected and incidental matters.

PART I
PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Utility Services Ordinance, 2013, and comes into force on 1st April 2013.

Interpretation

2. (1) In this Ordinance, subject to subsection (2), and unless the context otherwise requires—

“**Authority**” means the Utilities Regulatory Authority established by section 3;

“**public utility services**” means any or all of the following services provided (whether or not for payment or reward) by one person to another—

- (a) the generation, distribution or supply of electricity;
- (b) the collection, storage, treatment and distribution of water; and
- (c) the disposal of waste water;

“**Utilities Provider**” means a person licensed by the Governor in Council under section 6 to provide any public utility services in St Helena.

(1A) Words and expressions defined in the Electricity Ordinance, 1961 or the Water Ordinance, 1978 have the same meanings when used in this Ordinance.

(2) Regulations made under section 12 may provide that, in prescribed circumstances, activities specified in the regulations re not to be regarded as public utility services.

PART II UTILITIES REGULATORY AUTHORITY

Utilities Regulatory Authority

- 3.** **(1)** This section establishes a Utilities Regulatory Authority.
- (2)** The members of the Authority are—
- (a)* the Chief Magistrate (as Chair); and
- (b)* other members that the Governor (after consulting the Chair, and subject to subsection (3)) appoints by writing under his or her hand.
- (3)** In appointing members under subsection (2)(b), the Governor -
- (a)* may not appoint any person who is a member of the Legislative Council or a director or employee of a Utilities Provider;
- (b)* must have regard to any policy statement approved by the Governor in Council as to the skills, experience and knowledge which (if practicable) ought to be represented on the Authority.
- (4)** The members appointed under subsection (2)(b) -
- (a)* must each be appointed for a period (not exceeding 3 years) the Governor decides; and
- (b)* are entitled to receive any remuneration and allowances the Governor approves, which are to be paid out of sums duly appropriated from the Consolidated Fund.
- (5)** If the office of Chief Magistrate is vacant, or the holder of the office is absent or otherwise unable to act, the Governor (acting in his or her discretion, but after consulting the President of the Judicial Service Commission) may appoint a Justice of the Peace to act as Chair of the Authority.
- (6)** In the exercise of the powers conferred by this Ordinance, the Authority, and any person acting under the Authority's authority, must act independently and is not subject to the direction or control of the Governor, the Executive Council or any other person or authority.
- (7)** The Governor must appoint a public officer to be the Secretary to the Authority.

Objective and duties of Authority

- 4.** **(1)** The objective of the Authority is to regulate the development and provision of public utility services in a manner which—
- (a)* ensures that users of such services are protected from both unreasonable prices and unreasonably low levels of service;
- (b)* ensures (so far as is consistent with paragraphs *(d)* and *(e)*) that the prices charged for such services do not create unreasonable hardships for households or unreasonable hindrance to commercial and economic development in St Helena;
- (c)* motivates Utilities Providers to improve the quality of the services they provide;
- (d)* ensures stability and predictability in the public utilities industry in the medium and long terms;
- (e)* supports a progressive reduction in levels of subsidy from public funds; and

(f) has regard to any other regulatory objectives prescribed.

(2) The duties of the Authority are, having regard to its objective set out in subsection (1), to carry out the functions prescribed by or under this Ordinance and to ensure that Utilities Providers comply with—

- (a) this Ordinance and any other Ordinance regulating public utility services;
- (b) regulations and directives issued under any such Ordinances; and
- (c) the conditions of their licences under section 6.

Powers of Authority

5. (1) The Authority may, for the purpose of performing its duties under section 4, issue Directives to a Utilities Provider in connection with the provision of any public utility service; and, without limiting that power, such Directives may impose requirements concerning—

- (a) the quality or standard of service which the Utilities Provider must deliver to its customers;
- (b) payments of compensation (or abatement of charges) to compensate customers when the service provided does not meet the standards so set;
- (c) the maximum charges or fees² to be levied by a Utilities Provider for providing the public utility service;
- (d) the terms and conditions on which public utility services are to be provided; and
- (e) any other prescribed matters.

(2) All Directives issued under subsection (1) must be published in the *Gazette*.

(3) If a Directive issued under subsection (1) is inconsistent with any term or condition of a licence under section 6, the term or condition prevails; but if a term or condition of a licence is lawfully amended (or additional terms or conditions are imposed), any Directive issued prior to the amendment prevails over the amendment.

(4) The Authority (or any person authorised by the Authority for the purpose) may, for the purpose of performing its duties under section 4, at all reasonable times (having given at least 3 days' notice) enter upon all or any premises used or occupied by any Utilities Provider in order to inspect books, documents and records kept by the Utility Provider in connection with its business as such.

(5) If the Authority is satisfied that a Utilities Provider has failed to comply with a Directive, or with a condition of its licence, the Authority may order the Utility Provider to pay a penalty not exceeding the sum of £100,000.

(6) A penalty imposed under subsection (5) is payable and enforceable (and accountable for when paid) in every respect as if it were a fine imposed following a conviction in the Supreme Court; but the imposition of such penalty is not a conviction for a criminal offence.

² *Direction for maximum electricity and water charges published in G.N. 55 of 23 March 2020*

**PART III
LICENSING OF UTILITIES PROVIDER**

Utilities Provider

6. (1) The Governor in Council may grant a licence to a person or body of persons to provide public utility services in St Helena upon terms and conditions, not inconsistent with this Ordinance, that the Governor in Council determines.

(2) A licence under subsection (1) may be granted in respect of all types of utility services, or in relation to the types specified in the licence, and may apply in respect of services provided for the whole Island or for the part of the Island specified in the licence.

(3) A licence under subsection (1) may be granted for a period (not exceeding 10 years) that the Governor in Council specifies in the licence.

(4) A Utilities Provider must—

- (a)* comply with all the lawful Directives issued by the Authority under section 5(1); and
- (b)* perform and observe each and all of its obligations under its licence.

(5) If a Utilities Provider is licensed to—

- (a)* generate, distribute or supply electricity - the Electricity Ordinance, 1961, applies to the Utilities Provider;
- (b)* collect, store, treat or distribute water, or to dispose of waste water - the Water Ordinance, 1978 applies to the Utilities Provider.

No person other than Utilities Provider to provide public utility service

7. (1) No person, other than a Utilities Provider licensed under section 6, may provide any public utility service within St Helena.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine, or imprisonment for 2 years, or both.

Revocation of licence

8. (1) A licence granted under section 6 may, notwithstanding anything contained in it or any terms and conditions relating to it, be revoked by the Governor in Council upon recommendation of the Authority, if the Utilities Provider is in substantial and continuing breach of—

- (a)* any provision of the licence;
- (b)* any Directive issued by the Authority under section 5(1); or
- (c)* any other obligation under this Ordinance.

(2) The Governor in Council must not exercise the power granted by subsection (1) unless the Utilities Provider has been given notice of the proposal to do so and allowed a period of at least 28 days to show cause why the licence should not be revoked.

(3) If the Governor in Council revokes a licence –

- (a)* the Governor in Council must notify the Utilities Provider in writing of the

- revocation;
- (b) the revocation takes effect from the date specified in the notice;
- (c) the date of revocation must not be earlier than 30 days after the date of the notice.

(4) If—

- (a) a Utilities Provider, being a body of persons (whether incorporated or not), is dissolved or goes into liquidation (otherwise than for the purposes of a reconstruction which the Governor is satisfied does not destroy the identity of the body of persons);
- (b) a Utilities Provider ceases to engage in providing public utility services as part of its business; or
- (c) due to the happening of any other event (other than an assignment previously approved by the Governor) the rights conferred by a licence granted to a Utilities Provider vest in any other person,

the Governor may, by notice in writing to the Utilities Provider or to the receiver or liquidator of it (as the case may be) revoke the licence and the licence thereupon ceases, but without affecting any antecedent rights and liabilities.

(5) The revocation of a licence in accordance with this section does not affect the right of the Utilities Provider to recover any debt or charge due to it from any person in respect of public utility services provided before the revocation of the licence.

Right to compensation

9. (1) Whenever a licence of a Utilities Provider comes to an end and it is not renewed for a period commencing with the expiry of that licence, the public utility service assets (as defined in subsection (5) thereupon vest, without any deed or other instrument of transfer, in Her Majesty in right of Her Government of St Helena, and that Government must pay to the Utilities Provider compensation in accordance with this section.

(2) Subsection (1) applies regardless of whether the licence of the Utility came to an end by reason of passage of time or by revocation.

(3) If a licence has come to an end by revocation, the amount payable to the Utilities Provider by way of compensation is, notwithstanding subsequent provisions of this section, to be abated or reduced by any damage or loss suffered by the Government arising out of or in connection with the breaches of the obligations of the Utilities Provider which resulted in the revocation of the licence.

(4) The compensation payable under this section is the fair value of its public utility service assets in St Helena.

(5) In subsection (4)—

“public utility service assets” means—

- (a) the land, buildings (and their contents), including any staff quarters, plant, apparatus, spares, stores and other articles in St Helena belonging to and reasonably used or intended to be used by the Utilities Provider in the provision or operation of the public utility service; and
- (b) all reasonable outstanding commitments incurred by the Utilities Provider in providing such public utility service in St Helena;

“the fair value” means the fair value at the time of the cessation of the licence, due regard being

had to the—

- (a) replacement value of the asset;
- (b) age and standard life expectancy of the asset; and
- (c) condition of the asset.

(6) If the licence of the Utilities Provider was terminated by the Government under any provision of the licence enabling the Government to terminate the licence by written notice, the Government is not by virtue of section obliged to pay any compensation to the Utilities Provider in respect of any major extension or major renewal of any of the equipment, plant, apparatus or buildings in St Helena of the Utilities Provider effected after the service of such notice of determination unless, prior to such major extension or major renewal, the Utilities Provider served notice in writing upon the Government applying to the Government for its consent thereto and either—

- (a) the Government gave consent to such major extension or renewal; or
- (b) the withholding of such consent was, in the circumstances of the case, unreasonable.

(7) If the Government and the Utilities Provider are unable to agree together the amount of compensation to be paid to the Utilities Provider under this section, then, at the instance of either the Government or the Utilities Provider –

- (a) the matter must be referred to arbitration in accordance with the arbitration law of St Helena; and
- (b) the award in any such arbitration, subject to any right of appeal, is binding on the Government and the Utilities Provider.

(8) Any compensation payable by the Government to a Utilities Provider under this section must be paid forthwith upon the amount being agreed between the Government and the Utilities Provider (or, if not agreed, determined by arbitration as contemplated by subsection (7)) and stands charged upon the Consolidated Fund until paid.

Judicial review

10. (1) No appeal lies to any court against—

- (a) any Directive issued under section 5 or any other action of the Authority; or
- (b) any revocation of a licence, under section 8,

but nothing in this section prevents any person aggrieved by any such Directive, action or revocation from applying to the Supreme Court for judicial review, subject to subsection (1A).

(1A) Any application for leave to apply for judicial review must be filed in the Supreme Court within 28 days of the date on which the applicant became, or could with reasonable diligence have become, aware of the Directive, action or revocation the subject of the application.

(2) Without affecting any other power of the Supreme Court upon an application for judicial review, the Court may, on granting leave to apply—

- (a) order that the Directive, action or revocation concerned is to be suspended; and
- (b) make any other interim orders that appear to the Court to be just.

PART IV MISCELLANEOUS

Subvention or subsidies by Government

11. (1) The Financial Secretary may pay to a Utilities Provider, out of sums duly appropriated or deemed to have been appropriated from the Consolidated Fund, any sums authorised by the Governor in Council by way of grant to support either capital or recurrent costs of the Utilities Provider.

(2) Grants made under subsection (1) may be made unconditionally or subject to any conditions the Governor in Council considers necessary or desirable to ensure that the sums so paid are applied only for the purposes intended in the making of the grant.

(3) Without limiting subsection (2), conditions attached to a grant may concern any of the following matters:

- (a)* circumstances in which the Utilities Provider must charge, for the services it provides to its customers, fees or charges less than the maximum fees or charges permitted by a Directive under section 5(1)(c);
- (b)* actions which the Utilities Provider must take (or refrain from taking) in relation to the maintenance, development or expansion of the infrastructure used by the Utilities Provider to supply public utility services;
- (c)* the keeping of accounts and other records concerning the use of the grant, and the production of those accounts and records to the Financial Secretary for inspection.

Regulations

12. (1) The Governor in Council may make regulations generally for the purposes of carrying into effect the purposes of this Ordinance, and in particular, without limiting that power, may prescribe—

- (a)* provisions to supplement Part II as to the functions and powers of the Authority;
- (b)* provisions to safeguard the facilities and infrastructure used for purposes of providing any utility service.

(2) Without limiting subsection (1), paragraph *(a)* of that subsection enables the making of regulations as to the procedures to be adopted or followed by the Authority, the persons or bodies of person whom it must consult before issuing any Directive, and matters which it must (or must not) take into account when exercising any of its powers.

Repeal and amendment of legislation

13. *Omitted*

PART V TRANSITIONAL PROVISIONS

General transitional provisions

14. (1) All consumers to whom public utility services were provided under an agreement with the Government immediately before the commencement of this Ordinance are

deemed to have entered into an agreement with the Utilities Provider for such services under the same terms and conditions until Directives regulating any such terms and conditions are issued by the Authority under section 5(1).

(2) *Omitted*

(3) *Omitted*

Transfer of assets

15. (1) In this section, “**relevant asset**” means any property (whether real or personal, and including choses in action, interests, rights, privileges, and any other intangible property of whatever nature) vested in Her Majesty in right of Her Government of St Helena which, on 31st March, 2013, was used by any organ of that Government for the purpose of, or in connection with, the provision by that Government of public utility services.

(2) On or after the date on which a licence is issued to a Utilities Provider under section 6, all relevant assets previously in use for, or in connection with, the provision of the public utility service which that Utilities Provider is licensed to provide, upon certificate under the hand of the Financial Secretary, vest in that Utilities Provider:

(2A) The Financial Secretary must not issue a certificate for the purpose of subsection (2) unless he or she is satisfied that the Utilities Provider has provided to the Government shares or other assets equivalent to the value of the assets so transferred.

(3) If any question arises as to whether any particular property, asset, interest, right, or privilege, has been vested in a Utilities Provider in accordance with this section, a certificate under the hand of the Financial Secretary (issued under subsection (2)) is conclusive evidence that the property, asset, interest, right, privilege, liability or obligation has or has not so vested:

(4) Every agreement (whether written or oral), and every deed or other instrument, relating to any of the relevant assets, to which any public officer was a party (in his or her official capacity) immediately before the date on which the asset was vested in a Utilities Provider, whether or not of such nature that the rights and liabilities under it could be assigned, has effect as from that date as if—

- (a) the Utilities Provider had been a party to the agreement, deed or instrument; and
- (b) for any reference to the relevant public officer there were substituted a reference to the Utilities Provider.

SCHEDULE (Section 13(2))

AMENDMENTS TO LEGISLATION

Omitted as spent
