

Gibraltar Electricity Authority Act 2003

Principal Act

Act. No. 2003-02	<i>Commencement (Parts I, II, IV, V and VII)</i>	1.4.2003
	<i>(Part III and VI)</i>	3.4.2003
	<i>Assent</i>	3.4.2003

Amending enactments	Relevant current provisions	Commencement date
Act. 2005-74	Sch. 1	29.12.2005
2006-40	s. 25(2), (2A), (3)	14.12.2006
2009-16	Sch. 3	3.4.2009
2019-14	s. 19A, Sch. 3	10.6.2019
2019-12	ss. 2, 7(7), 10(c)-(d), 12(6), 12A, 34A, 36, 39(4), 40(2), Sch. 3	10.8.2019

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AN ACT TO ESTABLISH THE GIBRALTAR ELECTRICITY AUTHORITY TO MAKE PROVISION FOR THE SUPPLY OF ELECTRICITY IN GIBRALTAR AND MATTERS CONNECTED THEREWITH.

PART I

PRELIMINARY

Title and Commencement.

1.(1) This Act may be cited as the Gibraltar Electricity Authority Act 2003.

(2) The provisions of this Act shall come into operation on such day as the Government shall appoint by notice in the Gazette and different days may be so appointed for different purposes.

Interpretation.

2. In this Act, unless the context otherwise requires, the words and phrases following shall have the meanings hereinafter assigned to them respectively—

“Authority” shall mean the Gibraltar Electricity Authority established under section 3 of this Act;

“Chief Executive” and “Deputy Chief Executive” shall mean the persons appointed from time to time by the Authority with the consent of the Minister to hold the said offices respectively pursuant to the provisions of section 4 of this Act:

Provided that the first Chief Executive and Deputy Chief Executive shall be the City Electrical Engineer and the Deputy City Electrical Engineer of the Government at the time of the commencement of this Act;

“Chairman” shall mean the Minister or the person from time to time appointed by the Minister to act as Chairman either for one or more specified meetings or for a specified period or periods;

“consumer” means any body or person supplied or entitled to be supplied with electricity by the Authority and includes a customer who contracts any other service or the supply or installation of any works by the Authority;

“conditions of employment” means the terms and conditions of employment for the time being forming part of the contract of employment between the Authority as employer and any member of its staff whether contained in any document or otherwise agreed from time to time;

“electricity” means a supply of electricity, electric current, electrical energy or any like power supplied by the Authority;

“electric line” means a wire or wires, conductors or other means used for the purpose of conveying, transmitting or distributing electricity and includes the casing, coating, covering, tube, pipe, duct, or insulator enclosing, surrounding or supporting the same (if any) and any part thereof and any apparatus connected therewith for the purpose of conveying, transmitting or distributing electricity;

“feed-in agreement” means an agreement under section 12A;

“financial year” means the financial year of the Authority commencing on the 1st April and ending on the 31st March in every year or such other period as the Authority might, with the consent of the Government, adopt as its financial year from time to time;

“the Government” means the Government of Gibraltar;

“land” includes any interest in land and any easement or right in, to or over land;

“Minister” means the Minister of the Government for the time being charged with responsibility for Electricity;

“officer” means an employee, servant or agent of the Authority or a person seconded to the Authority for the time being;

“occupier” means the person or body in actual occupation of the premises supplied with electricity and if the occupier cannot be found the licensee, tenant or owner of the premises;

“powers” means the powers, discretions and authorities conferred on the Authority under this Act and otherwise;

“premises” includes messuages, buildings, lands, easements and hereditaments of any tenure;

“street” includes any lane, road, passageway, steps, patio or any open area;

“works” means installations for the supply of electricity and includes electric lines, machinery, engines, cables, apparatus, devices and fittings and things of every description forming part of such installations or used or required in connection with such supply whether or not housed in structures or premises belonging to or otherwise occupied by the Authority and includes appliances of every kind supplied by the Authority.

PART II

**ESTABLISHMENT AND CONSTITUTION
OF THE AUTHORITY****Establishment and Objects of the Authority.**

3.(1) There is hereby established the Gibraltar Electricity Authority which is a body corporate with perpetual succession and a public seal which shall be officially and judicially noted.

(2) The Authority is established with the object of supplying electricity to the general public and for general purposes associated therewith and further with the object of—

- (a) maintaining developing and promoting an efficient and economical system of supply of electricity in Gibraltar;
- (b) advising the Government on matters related to electricity.

(3) As from the appointed day the supply of electricity and general purposes aforesaid shall be undertaken by the Authority as the successor of the Electricity Department of the Government which shall on the appointed day by virtue of this section be deemed to have transferred its undertaking including all its works, rights, obligations, assets and liabilities and all its property to the Authority subject nevertheless to and in accordance with the provisions of the First Schedule of this Act.

(4) The Authority shall have all the powers that shall be necessary or expedient to enable it to carry out and discharge its functions and duties howsoever arising under this Act and without prejudice to the generality of the words aforesaid the Authority shall have the powers and may do all or any of the things set out in the Third Schedule of this Act.

The Composition of the Authority.

4.(1) The Authority shall consist of the Minister who shall be the Chairman thereof and the Chief Executive Officer and the Deputy Executive Officer and not less than four members.

(2) The Chief Executive Officer and the Deputy Chief Executive Officer shall be suitably qualified persons appointed for such term definite or indefinite and on such conditions as to remuneration and otherwise as shall be specified in the appointment

(3) The other members for the time being shall be selected and appointed by the Minister for such terms and on such conditions as the Minister shall think fit in manner that one member is a person experienced in the field of commerce and finance, another in law, another in trade union and labour relations and another in electricity and consumer relations.

(4) The Authority shall regulate its own procedures subject nevertheless to the regulations set out in Schedule 2 of this Act.

(5) The Authority may sue and, subject to Section 7 hereof, may be sued in its corporate name and may do and suffer all other things that bodies corporate may lawfully do and suffer.

Vacation of membership.

5.(1) If the Minister is satisfied that a Member—

- (a) has been absent from three consecutive meetings of the Authority without the permission of the Chairman;
- (b) has become bankrupt;
- (c) has retained or acquired an interest contrary to the provisions of section 6 ;
- (d) is incapacitated by physical or mental illness, or
- (e) is otherwise unable or unfit to discharge his functions,

the Minister may by notice in the Gazette declare his office to be vacant and thereafter appoint a new member in the place of the member whose office has been vacated.

(2) A member may resign his position by giving three months' written notice to the Chairman.

Disclosure of interests by members.

6.(1) Every member of the Authority shall disclose to the Chairman full particulars of any interest or commitment that might reasonably be thought to impinge on his independence or judgment in the discharge of his functions as a member of the Authority.

(2) A member of the Authority shall not whilst in office acquire or retain any interest of the nature referred to in the previous sub-section without the sanction of the Authority in writing.

Liability and Exemptions therefrom.

7.(1) No action shall lie against the Authority or any officer of the Authority in respect of any injury, damage, or economic loss or inconvenience caused by or arising directly or indirectly from any interruption, defect, variation or discontinuance of the supply of electricity or from any breakdown of or accident to the Authority's machinery or any other apparatus:

Provided that this exemption shall not be available to a person convicted of an offence contrary to Part VI of this Act.

(2) No officer of the Authority shall be personally liable in respect of any act or omission in the execution of any function of the Authority within the scope of his employment if he acted reasonably and in the honest belief that his duty required or empowered him to do that act or make such omission.

(3) Notwithstanding the provisions of the preceding sub-section, the Authority may in the exercise of its own discretion indemnify an officer who has been found to be personally liable if for any reason the Authority thinks fit.

(4) Save as specifically provided this section shall not be construed as relieving the Authority of any liability in respect of its acts and the acts of its officers.

(5) The Authority may settle or compromise any claim made against itself or any officer.

(6) The Authority may provide for the protection of itself and its employees and officers from any reasonably foreseeable claim for financial compensation that might be brought against the Authority, its officers and employees either by insurance or self insurance or otherwise.

(7) Subsection (1) applies in relation to supply of electricity in accordance with a feed-in agreement as in relation to supply by the Authority.

Management Advisory Board.

8.(1) The day to day management of the functions of the Authority shall vest in the Chief Executive Officer who shall establish an Advisory Board of Management for the purpose of assisting in the development and execution of the functions and duties of the Authority.

(2) The Management Advisory Board shall consist of the following—

- (a) the Chief Executive Officer who will act as chairman;
- (b) the Deputy Chief Executive Officer;
- (c) the three Senior Engineers of the Authority;
- (d) the Administrator, and
- (e) such other persons not exceeding 3 as the Chief Executive Officer may invite to form part of the board or co-opt to the board for general or specific purposes from time to time.

(3) The proceedings of the Board shall be regulated under the provisions of Schedule 2 and subject thereto the Chief Executive Officer shall regulate the Board's procedure.

(4) The Chief Executive Officer may appoint a Secretary, who need not be an officer otherwise in the employment of the Authority.

Duties of the Authority.

9. In the performance of its functions the Authority has the duties and obligations following—

- (a) to comply with such directives as might be issued by Government from time to time on matters related to the functions of the Authority;
- (b) to lay and maintain suitable and sufficient distributing mains for the purposes of general supplies throughout every street or portion of a street or along any other route in Gibraltar;
- (c) subject to the payment of contributions (if any) required pursuant to the provisions of section 15 to furnish a supply of electricity, upon being required to do so by the owner or occupier of any premises in accordance with any conditions for the time being applicable;
- (d) to supply electricity to public lamps in public areas in accordance with directions given by the Government to the Authority;
- (e) to reinstate any excavation and, make good the same, up to the level that may be required by the Government;
- (f) to minimise inconvenience and detriment as far as possible and subject to the exemption from liability under the provisions of section 7 to make suitable and reasonable compensation to all persons and bodies for all damage sustained by reason or in consequence of the exercise by the Authority of its duties;
- (g) to have due regard to the safety and welfare of its employees and the safety of the public in general;
- (h) to ensure that details of electricity tariffs are published;
- (i) to keep records of the physical disposition and geographical location of its installations and works by reference to maps of the area of supply or drawings or sections as may be considered necessary.

Regulations.

10.(1) The Minister may, after consultation with the Authority, make regulations generally with regard to any matters in connection with the supply of electricity and the implementation of the provisions of this Act and without prejudice to the generality of the words aforesaid for the purposes following—

- (a) to provide for the regular, efficient and safe supply of electricity to consumers and to secure that the public is, so far as practicable, protected from any injury arising from the supply of electricity or the use of electricity supplied to a consumer and for testing the supply and works;
- (b) to determine the conditions to be fulfilled and observed by consumers of electricity, and the conditions subject to which electricity shall be supplied, consumption measured and charged and the circumstances under which a supply can be discontinued or cut-off;
- (c) to establish tariffs and charges for the connection and supply of electricity and other services provided by the authority;
- (d) to make provision for the operation of feed-in agreements, and related matters.

(2) Notice of any Regulation made pursuant to the powers herein conferred shall be published in the Gazette within twenty-one days thereafter.

Works to remain the property of the Authority.

11.(1) Works and in particular appliances let by the Authority on hire whether or not in or upon premises of which the Authority are in possession, or fixed or fastened to any part of the premises in or upon which they may be situate, or to the soil under such premises, shall at all times continue to be the property of and be removable by the Authority and the powers of entry conferred under paragraph 6 of the Third Schedule shall be available for that purpose.

(2) Works and in particular electric lines, fitting, apparatus and appliances disposed of by the Authority on terms of payment by instalments shall, until the whole of the instalments have been paid, be deemed to be electric lines, fittings, apparatus, appliances and works let on hire by the Authority.

PART III

RELATIONS WITH CONSUMERS

Duty to Supply.

12.(1) The Authority shall supply every consumer with the maximum amount of electric power which the consumer in consultation with the Authority may reasonably anticipate might

be consumed on the premises under the relevant tariff, and shall enter into a contract with the consumer for such supply.

(2) The Authority, before commencing a supply of electricity to any consumer shall issue a written statement to the consumer containing the information following—

- (a) the type of current, whether direct or alternating which the Authority propose to supply;
- (b) in the case of alternating current the number of phases and the frequency at which the supply is to be delivered;
- (c) the voltage at which the supply is to be delivered;
- (d) the tariffs and other charges which will be made for connecting the supply and thereafter for the electricity to be supplied.

(3) The Authority shall use every reasonable endeavour—

- (a) to maintain the frequency within one per cent of the declared value; and
- (b) the voltage within six per cent of the declared value.

(4) The Authority shall ensure that consumers are accurately billed for any electricity consumed by each consumer and shall state on the face of such bills how such charges as may have been levied are related to the tariffs.

(5) Consumption shall be registered by an appropriate meter, except in those cases where there is insufficient space for a meter or where the Authority with the agreement of the consumer determines that the consumption may be accurately determined by other means.

(6) Where a consumer generates excess electricity and supplies it to the Distribution Network in accordance with a feed-in agreement, bills under subsection (4) shall allow credits in respect of the excess electricity in accordance with the terms of the agreement (which may provide for credits annually or otherwise).

Feed-in agreements.

12A.(1) The Authority may, at its discretion, enter into an agreement with a consumer to enable electricity generated by the consumer in excess of the consumer's consumption needs to be supplied to the Distribution Network in accordance with arrangements made by the Authority.

(2) The agreement shall, where relevant, inter alia include terms—

- (a) about the equipment to be supplied by the Authority for the receipt of the excess electricity (which may, in particular, apply or replicate any provision of section 11 or 13);
- (b) about the installation, technical specifications, usage conditions, maintenance and safety of that equipment;
- (c) determining the amounts by which the consumer's charges for electricity will be reduced as a result of credits allowed by the Authority to reflect the supply of electricity by the consumer (and provision under this paragraph may refer to a document published by the Authority, including any future variations or replacements of that document);
- (d) about charges (if any) for or in respect of the equipment supplied by the Authority;
- (e) conferring rights of entry and control that may be exercised by the Authority in respect of the consumer's premises and equipment in order to maintain continuity of supply by the consumer in accordance with the agreement or in order to protect any aspect of the Distribution Network or the safety of persons working on it (and those rights may, in particular, apply or replicate any provision of section 27);
- (f) dealing with any other matter which the Authority thinks necessary or expedient in connection with the supply of electricity by the consumer; and
- (g) specifying a process in accordance with which the Authority may vary terms of the agreement at its discretion (and the process may include provision for variation without consultation or notice in cases of urgency).

Obligations of Consumers.

13.(1) The Consumer shall be deemed to be a custodian for reward of any works within the premises which are the subject of a contract for the supply of electricity and shall be liable for any damage to any works occurring within the said premises.

(2) The landlords or management company of the premises upon which the electric lines, fittings, works, apparatus or meters of the Authority are situated shall maintain and upkeep any structures, rooms, cabinets, infrastructure belonging to the Authority in a satisfactory state of repair at no cost to the Authority.

(3) Where damage is caused to any works within a common area or room or cabinet of a property and the owner or landlord has failed to take reasonable steps to safeguard the security of the works the landlord or owner of the property shall be liable for the cost of repairs and replacement.

Charges for the supply of electricity.

14.(1) The charges and tariffs for the supply of electricity shall be those set out in regulations made by the Minister from time to time pursuant to section 10 hereof in manner that shows the principles and methods by which the charges are to be made.

(2) In addition to publication in the Official Gazette the Authority shall secure such further publicity as to the Authority shall seem fit.

(3) A tariff may, inter alia, include—

- (a) a rent or other charge in respect of electrical fittings and works provided by the Authority for the consumer;
- (b) fixed charges related to the cost of providing services which cannot be registered by meter;
- (c) variable charges which relate to the rate of consumption of electrical energy and which may vary according to different criteria;
- (d) a standing charge based on the contracted power demand required by the consumer and which sets the limit of maximum power that may be drawn from the Authority;
- (e) a flexibility charge, allowing for upward or downward adjustments of any charge in regard to the fluctuating cost of supplying electricity;
- (f) any other charge or charges as the Government may authorise or direct.

Contribution to cost of supply.

15.(1) The Authority may require that a contribution be made in respect of any works to be carried out in providing new supplies of electricity or reinforcing any existing supplies of electricity.

(2) The Authority may require any person for whose benefit or at whose request works are to be carried out for the purpose of providing new supplies of electricity or increasing or improving any existing supplies to make a contribution towards the actual cost of the works carried out on such terms as the Authority thinks fit. In assessing the amount of such contribution the Authority shall take into account the degree of utilization envisaged and the profitability foreseen by the Authority.

Charge for connection of supply.

16. The Authority may make such charges for connecting a supply of electricity as might be authorised by Regulations made from time to time under section 10.

Security for payments.

17. The Authority may require a consumer to deposit with the authority a sum of money or give other security for the due payment of moneys which may from time to time become payable to the Authority in respect of the supply of electricity or the provision or the undertaking of any works. The Authority may, at any time, revise the level of security demanded from a consumer and may apply the provisions of section 19(b) after a period of fourteen days from the date of service of a notice to any consumer requiring revision of the level of security.

Measure of electricity to be made by meter.

18. Except where otherwise expressly provided by agreement between the Authority and the consumer, electricity supplied under this Act shall be measured by meter in accordance with Regulations made from time to time pursuant to the provisions of section 10 and the register of the meter shall be prima facie evidence of the quantity of electricity consumed.

Refusal or discontinuation of supply.

19. The Authority may in accordance with conditions and procedures approved by the Government refuse to supply or may discontinue to supply electricity to-

- (a) a person whose payment of what is due to the Authority for the supply of electricity or for the supply or the hire of any apparatus or appliance, or for any works or other service carried out by the authority, is more than 60 days in arrears whether such arrears are in respect of the premises to which a supply is to be discontinued or in respect of any other premises but only whilst such payments or charges remain unpaid;
- (b) a person who fails to give the Authority such security as the Authority may require for the payment of all moneys which may become due to the Authority in respect of the supply or the undertaking of works;
- (c) a consumer who uses the electricity supplied to him by the Authority or any apparatus, fitting or appliance unduly or improperly or for any purpose or in any manner that might interfere or prejudice the efficient supply of electricity by the Authority to any other consumer;
- (d) a consumer who fails to submit the appropriate application form or the appropriate test certificate or the certificate of completion or "as fitted" electrical drawings of the electrical installations in the premises where the supply is required;
- (e) a consumer who is not a legally entitled occupier of the premises at which a supply of electricity is requested;

- (f) a consumer who fails to produce a certificate of fitness in respect of the building supplied or to be supplied;
- (g) a consumer whose installation or any part thereof in the opinion of the Chief Executive, is so constructed or used or is in such state as to insufficiently prevent danger or provide protection therefrom. Notwithstanding the aforesaid, the installation of a consumer which complies with the provisions of regulations issued by the Institution of Electrical Engineers and the British Standards Institutions in the United Kingdom shall be deemed to comply with the requirements of this paragraph.

Installation or keeping of substantial works in premises.

19A.(1) Where, in the opinion of the Authority, the supply of electricity to premises would require or does require the installation of substantial works in such premises or the keeping of substantial works in the premises, the Authority may refuse to supply or may discontinue to supply electricity to persons or consumers in respect of the premises if it is not satisfied that-

- (a) adequate provision is made in the premises for the installation of the works and the keeping of the works (including, where the Authority considers it appropriate, a separate room or area within the premises to house the works); or
- (b) the provisions of this Act and in particular the rights of entry contained in paragraph 6 of Schedule 3 are sufficient to allow the Authority to undertake its duties under this Act.

(2) Where, in the opinion of the Authority, the supply of electricity to premises would require or does require the installation of substantial works in such premises or the keeping of substantial works in the premises, the Authority may additionally utilise such works to enable the supply of electricity to other consumers.

Recovery of charges.

20. Without prejudice to the right of the Authority to take whatever action it deems necessary for the recovery of any sum due to the Authority in any court of competent jurisdiction, the Magistrates' Court will have jurisdiction to order the payment of any amount due to the Authority under any of the provisions of this Act.

Power to remove meter and fittings.

21. If a consumer of electricity supplied by the Authority ceases to require a supply of electricity, or if the Authority are authorised to discontinue or cut off the supply of electricity from any premises, it shall be lawful for the Authority, their agents or officers upon notice and otherwise subject to the provisions of paragraph 6 of Schedule 3 to enter such premises in which any electric lines, fittings, works, apparatus or meters belonging to the Authority are

laid or fixed, and through or in which the supply of electricity is to be discontinued and to remove such electric lines, fittings, works, apparatus or meters, repairing all damage caused by such entry or removal and the expenses occasioned by such removal may be recovered summarily as a civil debt from the person liable thereto.

Power to dispense from obligation to supply electricity.

22. If it appears to the Minister that, for the purpose of maintaining conserving or making the best use of available resources or for reasons of public safety it is necessary to limit the consumption of electricity, the Minister may order the Authority to curtail supplies in such manner and to such extent as the Minister deems necessary and whilst such order shall remain in force the authority shall be deemed to have complied with its obligations if it limits the supply in accordance with the terms of such order.

Jurisdiction of the Magistrates' Court.

23.(1) The Magistrates' Court shall have jurisdiction in matters related to this Act as follows—

- (a) to order the payment of any amount due to the Authority under this Act by any person;
- (b) to determine the amount of compensation which might be due by the Authority to any person under the provisions of section 9(f) of this Act;
- (c) to determine the amount consumed or the charges payable in respect of such consumption or any matter from which any indebtedness of a consumer to the Authority results;
- (d) to determine differences arising between the Authority and the owners of conduits, ducts, pipes, wire or manholes in connection with the exercise of powers under paragraph 4 of Schedule 3;
- (e) to determine objections by an owner of land to a notice issued pursuant to paragraph 5 of the Schedule 3.

(2) The determination of the Magistrates' Court on any of the matters aforesaid shall be final and no further appeal shall lie except on a point of law.

(3) The Magistrates' Court may make an order for costs against either party as it thinks fit.

PART IV**FINANCIAL AND REPORTING PROVISIONS****Revenues and Reserves.**

24.(1) The Authority shall perform their functions so as to secure that subject to any directions or consents required from the Government hereunder the revenue is sufficient to meet outgoings properly chargeable to revenue account taking one year with another.

(2) The Government shall indemnify and keep the Authority indemnified in respect of any revenue deficit resulting from compliance with any directions given by the Government to the Authority under this Act or from a withholding of any consent or approval sought of the Government by the Authority.

(3) The Authority may use its funds including any funds provided by the Government whether under the indemnity contained in this section, or by way of grant or on loan, generally to perform its functions hereunder, but moneys provided by the Government by way of grant or loan for a particular purpose shall only be used by the Authority for that purpose.

(4) The Authority shall establish and maintain a general reserve fund to which it shall transfer any surplus of revenue or other sum as the Authority may from time to time determine.

Reports, Accounts and Audit.

25.(1) The Authority shall prepare and submit to the Government within four months of the end of the Financial Year an annual report of the performance of their functions and of their policy and programmes.

(2) The Authority shall keep proper books of account and other records in relation to the business of the Authority.

(2A) The financial statements of the Authority shall be prepared on a cash basis of accounting, in line with the standards prescribed for the preparation of the public accounts of Gibraltar.

(3) The Accountant General may give directions to the Authority as to how the accounts and records referred to in subsection (2) shall be kept and prepared and the Authority shall comply with any directions that might be so given.

(4) The accounts of the Authority shall be presented for audit within four months of the end of the financial year and shall be audited by the Principal Auditor or auditors to be appointed by the Authority, with the consent of the Principal Auditor, in respect of each financial year.

(5) The Authority shall submit a copy of the statement of accounts and any report made by the auditors to the Government, within a period of eight months after the end of the financial year of the Authority.

(6) The Minister shall lay a copy of every such annual statement of accounts and auditors report before the Parliament at its next meeting after those accounts have been submitted to the Government.

PART V

CONTROL OF ELECTRICITY UNDERTAKINGS

Interpretation.

26.(1) In this part, unless the context otherwise requires—

“controller” means a person appointed as such under section 27(1);

“electricity undertaking” means any supplier of electricity.

Power of the Authority to assume control of an electricity undertaking.

27.(1) Whenever any person, who by virtue of any licence, grant or concession or otherwise carries on or operates in Gibraltar any electricity undertaking, shall for whatever reason discontinue the undertaking, or if the Authority shall have good reason to believe that such person is immediately about to discontinue the undertaking, it shall be lawful for the Authority to appoint a controller and to authorise and direct the controller to enter upon and take possession of the buildings, premises or works from which the undertaking is conducted or operated and to assume the control of and to conduct and to carry on such electricity undertaking until such time as the Authority shall see fit.

(2) The appointment of a controller under this section shall be notified in the Gazette.

(3) When a controller has been appointed and as from the date of such appointment all debts due to the controlled undertaking shall be paid to the controller whose receipt shall be deemed a sufficient discharge for all purposes.

(4) The controller shall, out of moneys received by him on account of the controlled undertaking, pay all the expenses and necessary outgoings of such undertaking, and may, with the consent of the Government, expend all reasonable amounts to replace fair wear and tear and keep the undertaking in as good and efficient condition when control was assumed.

(5) The accounts of a controlled undertaking shall be audited by the Government’s Principal Auditor and any surplus of income over expenditure shall be paid, upon the authority of the Government, to the owner or owners of such undertaking.

Employees of controlled undertaking.

28.(1) In the discharge of his duties under section 27, a controller shall be deemed to be the agent of the electricity undertaking and the employees of the controlled undertaking shall continue and remain in the employ of the controller as such agent upon the terms of their respective contracts of service.

(2) The salaries and wages of such persons may from time to time be varied by the controller with the consent of the Government and such salaries and such wages shall be a first charge on the income of the controlled undertaking:

Provided that no service with or under a controller shall be deemed to be public service in the employ of the Government.

(3) Any notice to determine any contract of service given by the owner of the controlled undertaking to any person engaged in or upon the controlled undertaking shall be deemed to be void and of no effect unless the controller shall assent thereto.

No compensation payable to owner.

29. No compensation or other remuneration shall be payable to the owner or owners of the controlled undertaking except as provided in section 27(5).

Saving for existing legal remedies.

30. Nothing in this Act contained shall be construed so as to deprive any person of any legal remedy otherwise existing against the owner or owners of the controlled undertaking for breach of contract or any other matter.

PART VI

OFFENCES

Injuring works with intent to cut off supply of electricity.

31. A person who unlawfully, wilfully or maliciously by any act injures any works, or whether by removing fuses, disconnecting wires or otherwise interfering with any works, interrupts the continuity of or cuts off any supply is guilty of an offence and is liable on conviction on indictment to imprisonment for five years.

Wilful Damage.

32.(1) Any person who wilfully or maliciously removes, destroys or damages any electric line, meter seal or other contrivance or other works belonging to the Authority and fitted for the purpose of supplying electricity or of impeding or preventing the unlawful abstraction and use of electricity or for any other purpose in connection with the performance of the functions

of the authority is guilty of an offence and is liable on conviction on indictment to imprisonment for five years.

(2) In criminal proceedings under this section against a consumer the burden of proof that the alleged removal, destruction or damage has occurred without any wilful act or default on his part shall lie on the consumer.

Tampering with meters.

33.(1) It shall be unlawful for any person to tamper with any meter or without the consent of the Authority to connect any meter with any electric line through which electricity is supplied by the Authority or to disconnect any meter from any such electric line.

(2) A person who acts in contravention of this section is guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

Abstracting of Electricity.

34. A person who dishonestly uses without authority, or dishonestly causes to be wasted or diverted, or in any other way fraudulently abstracts any electricity is liable on conviction on indictment to imprisonment for a term not exceeding five years.

Unauthorised supply.

34A.(1) It is an offence to supply or attempt to supply electricity to the Distribution Network otherwise than in accordance with a feed-in agreement (or under section 39(2)).

(2) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for 4 months or a fine at level 2 on the standard scale, or both.

Failing to give notice of damage.

35.(1) Every person, whether acting on his own behalf or on behalf of a consumer or other company or organization, who causes injury to any works or other property of the Authority shall give immediate notice to the Authority of such injury and in default thereof is guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale.

(2) In addition the Authority may recover summarily as a civil debt from every person, consumer, company or organisation full compensation for any damage recoverable at law from time to time.

Offences in relation to Controlled Undertakings.

36. A person who wilfully–

- (a) refuses to hand over the control to or who obstructs or hinders the controller in the execution of his duties;
- (b) tampers with, damages or causes the plant, machinery or equipment of a controlled undertaking to be damaged;
- (c) removes any plant, machinery or apparatus necessary to the working of an electricity undertaking;
- (d) refuses or neglects to pay to the controller any moneys due to the controlled undertakings or offers or attempts to pay any such moneys to the owner or owners of such undertakings;

is guilty of an offence, and liable on summary conviction to imprisonment for 4 months or a fine at level 2 on the standard scale, or both.

Obstructing Entry of an Authorised Officer.

37. A person who wilfully hinders an officer authorised by the Authority from entering any premises pursuant to the provisions of paragraph 6 of Schedule 3 is guilty of an offence, and liable on summary conviction to imprisonment and to a fine at level 2 on the standard scale.

Saving of other criminal liability.

38. Nothing in this Part shall preclude proceeding against any person for any offence which is punishable under any other provision of this Act or under any other enactment, or at common law.

PART VII

MISCELLANEOUS PROVISIONS

Restriction on supply by others.

39.(1) The Authority shall be the sole authorised supplier of electricity to consumers.

(2) The Authority may authorise any consumer to supply electricity to another consumer via sub-meters where the business of the person supplying the electricity is not primarily that of the supply of electricity to consumers.

(3) Nothing contained in section 39(1) shall preclude the Ministry of Defence from supplying electricity to their own defence installations and to persons living in estates belonging to the Ministry of Defence and to other persons in accordance with arrangements made and subsisting from time to time between the Government and the Ministry of Defence in the latter case.

(4) Subsection (1) does not prevent the supply of electricity in accordance with a feed-in agreement.

Exemptions.

40.(1) No income tax, company tax or any corporate tax shall be payable by the Authority.

(2) No judge of any court or justice of the peace shall be disqualified from acting in cases arising out of this Act by reason of his being a consumer or a supplier under a feed-in agreement or liable to the payment of any charges under this Act.

(3) When any electric lines, fittings, works, apparatus or meters belonging to the Authority are placed in or upon any premises for the purpose of supplying electricity under this Act, such electric lines, fittings, works, apparatus or meters shall not be subject to—

- (a) distress or to any remedy of the landlord for recovery of rent and the same shall not be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be;
- (b) the payment of any service charges or rent or to any other charges for the purposes of maintenance, repairs or otherwise as may be attributable to other occupiers.

(4) Electric lines, fittings, apparatus meters or works, referred to in section 40(3) shall not affect the amount of the assessment for rating of any premises upon which they are fixed nor render the Authority itself liable for the payment of rates.

Repeals.

41. Part I of the Public Utility Undertakings Act is repealed and section 48 of Part III of that Act is amended by deletion of the words “or electricity” at the end of that section.

Transitional Provisions.

42. Notwithstanding the repeal of Part I of the Public Utility Undertakings Act, Regulations made pursuant to section 25 of that Act shall be deemed to remain in force until Regulations substituting the same made under section 10 of this Act come into force when the Regulations first mentioned will be deemed to have been repealed.

SCHEDULE 1

Section 3(3)

Part 1
Transfer Provisions

On the appointed date—

1. There shall be transferred to the Authority all works, contracts and obligations, assets and liabilities and property and rights of the Government in relation to the supply of electricity hitherto under the management and control of the Electricity Department of the Government as more particularly described in Part 2 of this Schedule.

1A. With effect from 1 February 2004, there shall be transferred to the Authority all contracts and obligations, assets and liabilities of the Government in relation to the sale of electricity, inclusive of arrears and all other amounts due by or to the Government in respect of the electricity undertaking, including production, supply, purchase and all related matters hitherto under the management and control of any Department of the Government.

1B. With effect from 1 April 2003, there shall be transferred to the Authority all contracts and obligations, assets and liabilities of the Government in relation to the provision of electrical services and works to those facilities and buildings so specified and requested by the Government;

2. The Authority shall enter into contracts of employment either individually or collectively with person thitherto in the service of the Government who have opted to transfer to the Authority on terms and conditions agreed between the Government and such employees or their Trade Union representatives.

3. As from the appointed day, the Authority shall have the benefit and burden of all contracts, deeds, bonds, agreements and other instruments rights and obligations affecting the Electricity Department of the Government immediately before the appointed day and all notices then in force whether given by or to the Electricity Department aforesaid shall after the appointed day be of full force and effect and enforceable as between the Authority and the other parties thereto as if the Authority had been an original party thereto subject to and with the benefit of any equities previously subsisting in favour or against the Electricity Department.

4. No right or equity, action or proceeding existing or pending between the Electricity Department of the Government and any other person immediately before the appointed day shall be prejudicially affected by reason of the transfer effected under this Act and the same shall continue and may be enforced and prosecuted by the or against the Authority as if such transfer had not taken place.

5. Every debt and other liability incurred by the Electricity Department, whether liquidated or unliquidated, remaining due or undischarged shall on the appointed day be transferred to and

attach to the Authority and shall be paid or discharged by and may be recovered from the Authority accordingly.

Part 2

Works, Contracts and Obligations, Assets and Liabilities Property and Rights of the Government Transferred to the Authority.

All buildings, premises, works, installations, plant, vehicles, facilities, lands and areas in use by the Electricity Department prior to the 1 February 2004, including but not limited to the following—

- (a) the Waterport Power Station, inclusive of buildings, lands, electrical and mechanical generating plant, and all ancillary and auxiliary works, with effect from 1 February 2004;
- (b) all Distribution Centres, substations, transformer rooms and any other distribution points, inclusive of buildings, lands and electrical and mechanical plant and ancillary and auxiliary works, with effect from 1 February 2004;
- (c) the Distribution Network which shall be deemed to originate, include, extend and terminate as hereinafter described—
 - (i) the network so originating, extending from the outgoing 11000 Volts High Voltage feeder circuits at Waterport Power Station to the Distribution Centres, Substations and beyond, including the 6600 Volts network, the Interconnector cables terminating at, but not including the Main Switchboard of any other privately owned generating plant, and the cables to all the 415/240 Volts low voltage network extending from the substations to the points of utilisation and terminating at the consumer's energy meter or any other point of utilisation agreed by the Authority;
 - (ii) all the cables, ducts, manholes, infrastructure systems, substations and 415/240 Volts low voltage distribution points, chambers, recesses and housing;
- (d) the Public Lighting Network and all the cables and lighting fittings in public thoroughfares which prior to and on the date of transfer are maintained and supplied by the Electricity Department;
- (e) the Electrical Installations equipment and accessories at traffic lights and signals of all kind including pedestrian crossings, traffic bollards and otherwise as installed and maintained by the Electricity Department prior to and on the date of transfer.

SCHEDULE 2

Sections 4(4) & 8(3)

Meetings and proceedings of the Authority and the Board of Management

1. The following provisions shall apply to meetings and proceedings of the Authority—
 - (a) the quorum at meetings of the Authority shall be—
 - (i) the Chairman or other person presiding with the authority of the Chairman;
 - (ii) the Chief Executive or the Deputy Chief Executive;
 - (iii) three other members;
 - (b) meetings of the Authority shall be held at least once in any period of 3 months and otherwise when convened at the request of the Chairman;
 - (c) the seal may be affixed in the presence of the Chairman and either the Chief Executive Officer or the Deputy Chief Executive Officer or persons acting in those appointments for the time being. The persons so present shall sign the instrument as witnesses to the sealing;
 - (d) minutes of every meeting shall be kept and once signed by the Chairman of the meeting at which they were approved, shall be evidence of the proceedings at the meeting to which they relate, and a copy of such minutes shall be provided to the Government within 14 days of the meeting.
2. The following provisions shall apply to meetings and proceedings of the Management Advisory Board—
 - (a) the quorum at meetings of the Board of Management shall be—
 - (i) the Chairman or Deputy Chief Executive; and
 - (ii) three other members;
 - (b) meetings shall be held at least once in any period of 1 month and otherwise when convened at the request of the Chairman;
 - (c) minutes of every meeting shall be kept and, once signed by the Chairman of the meeting at which they were approved, shall be evidence of the proceedings at the meeting to which they relate, and a copy of such minutes shall be provided to the Authority within 7 days of the meeting.

SCHEDULE 3

Section 3(4)

General powers of the Authority**Miscellaneous Powers.**

The Authority shall have powers as follows—

1. Electricity Suppliers and Contractors

1.(1) To provide supplies of electricity for public, domestic and other purposes and for the purposes thereof to acquire electricity or purchase such electricity from any source, acquire such lands and premises, provide and construct such works, enter into such contracts and generally do all such acts and things as may be necessary and incidental to such supplies.

(2) To carry on the business of contracting works for the provision of any type of electrical installations within buildings and premises and on public highways and exterior sites or the provision of any other associated service whether for the Government, official Departments or Agencies, Corporate bodies or private persons.

(3) To enter into contracts and to embark on tender procedures for the purchase, sale of electricity, or for the purchase, sale, lease, hire or hire purchase or credit sale of plant, fittings, apparatus, appliances and equipment, facilities, vehicles, machinery, cable and other apparatus and other goods for lighting, heating, cooling, and motive power and for all other purposes for which electricity can or may be used and for installation, maintenance and repair or other services associated with the above as might be thought fit.

(4) To sell or otherwise dispose of by-products from the process of generating electricity or scrap or waste materials and other things which are obsolete or surplus to the requirements of the Authority.

(5) To authorise any consumer to supply electricity to another consumer via sub-meters where the business of the person supplying the electricity is not primarily that of the supply of electricity to consumers.

(5A) To enter into feed-in agreements with consumers.

(6) To make arrangements with the Ministry of Defence pursuant to the provisions of section 39(3) and with others as to the Authority might seem appropriate.

(7) To enter into Commodity Swap Transactions and Options for the purpose of hedging against the fluctuation in the price of fuel required to be purchased by the Authority in order to supply electricity.

2. Employment.

2.(1) To employ such personnel as the Authority may deem necessary including public or other officers as may be made available to the Authority by the Government on such terms as might be agreed.

(2) To take on an administrative and managerial responsibility in dealing with Government Civil Service employees previously engaged in the Electricity Department who have opted not to become officers of the Authority on the setting up of the Authority.

(3) To establish machinery for the settlement by negotiation of the terms and conditions of employment of persons employed by the Authority, and other industrial differences that might arise, and to make provision for reference to arbitration in default of agreement.

(4) To provide for persons in its employ or their dependants by means of insurance, or by establishing pension schemes or provident funds or otherwise, and to make provision for the payment of pecuniary benefits upon retirement, death, termination of service or in the event of illness.

(5) To promote and encourage by research investigation finance and subscription and cooperation with other bodies with a like interest measures to protect the safety, health, welfare, education and training of persons employed by the Authority and to promote the discussion of all matters of mutual interest to the Authority and its employees including efficiency in the performance of the functions of the Authority.

3. Borrowing.

To borrow and to invite public subscriptions or otherwise raise loans.

4. Building and Engineering Works.

4.(1) To build, construct, maintain and in any way modify, all and any works buildings, feeding points, electrical meter rooms or cabinets, manholes, plinths, foundation blocks, conduit and duct runs and any other structures necessary for the supply of electricity or for any other activity of the Authority.

(2) To install, erect, maintain, manufacture and in any way modify all types of works, cable plant and fittings and all other apparatus used or incidental to the supply of electricity.

(3) With the prior approval of the Government except in cases of emergency where public safety or the urgent need to restore or maintain the supply of electricity renders the need to seek such approval impractical, to break up the soil and pavement of any street in Gibraltar and open and break up any sewers, drains or tunnels within or under such streets.

(4) To lay down and place conduits and ducts, electric lines, fittings and other works and from time to time repair, alter or remove the same and they may, under, in, upon, over along

or across any such streets erect any pillars, posts, lamps, fuse-boxes, cables and other works and to all other acts which they shall from time to time deem necessary for supplying electricity.

(5) To alter the position of any conduits, ducts, pipes, wires, or manholes being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers to execute works and in so doing shall comply with such conditions as to the mode of making such alterations as may before the commencement of such alteration be agreed upon between the Authority and the owners of such conduits, ducts, pipes, wire or manholes or in the case of difference as may be determined in the Magistrates Court .

(6) To contract works for the provision of any type of electrical installations within buildings and premises and on the public highways and exterior sites and for the provision of any other service, whether for the Government or any department or agencies thereof or for public or private corporate bodies or a private person or persons.

5. Lop, Cut, or Fell Trees Etc.

5.(1) The Authority may require the occupier and/or owner of the land on which a tree, hedge or plantation is growing by 21 days notice to lop, cut, or fell it so as to prevent obstruction or interference with the construction, maintenance or working of any electric line, streetlight or any other item necessary for the supply of electricity:

Provided that if such a notice is served upon a person who, although the occupier of the land on which the tree or hedge is growing, is not the owner thereof, a copy of the notice shall also be served upon the owner thereof, if known.

(2) If within twenty-one days from the giving of such notice the requirements of the notice are not complied with and neither the owner nor the occupier of the land has appealed against such notice as is hereinafter provided, the Authority may cause the tree or hedge to be lopped or cut so as to prevent such obstruction or interference.

(3) The occupier and/or owner may appeal to the Magistrates' Court within twenty one days from service of such notice objecting to the requirements of the said notice, and, on hearing the appeal, the court may make such order as it thinks just and any such order may empower the Authority to cause the tree, hedge or plantation to be lopped, cut or felled so as to prevent such obstruction and interference and may determine any question as to what compensation (if any) and expenses to be paid.

6. Rights of entry.

6.(1) The Authority may at all reasonable times through an officer authorised by the Authority enter any premises for any of the purposes following—

- (a) removing the electric lines, fittings, works, apparatus or meters thereon belonging to the Authority, if the person in occupation of the premises does not take a supply of electricity from the Authority or does not hire the meters, fittings or apparatus belonging to the Authority situate therein;
- (b) inspecting or working on meters, fittings, electric lines, and other apparatus and works belonging to the Authority;
- (c) ascertaining the quantity of electricity consumed or supplied;
- (d) cutting off supply and removing apparatus when the Authority is otherwise authorised by this Act so to do.

(2) The power of entry herein conferred may be exercised between the hours of nine in the morning and four in the evening, after twenty-four hours' notice in writing, under the hand of an authorised officer of the Authority, has been served on the occupier of the relevant premises or, if unoccupied, then on the owner or lessee, or the agent of the owner or lessee thereof.

(3) The notice required to be given under the preceding sub-section may, in a case where the owner of the premises is unknown to the Authority and cannot be ascertained after diligent inquiry, be given by affixing it upon a conspicuous part of the premises not less than forty-eight hours before the premises are entered. Provided that, where an entry is made on premises which could not lawfully have been made but for the provisions of this subsection, the premises shall be left no less secure than they were immediately before they were entered.

(3A) Where provision has been made in the relevant premises for the installation or keeping of works in a separate room or area, the power of entry herein conferred may be exercised at any reasonable time without notice.

(3B) For the avoidance of doubt, any right of entry to premises exercised under the provisions of this Act shall not be deemed to directly or indirectly confer on the Authority any legal interest in the said premises.

(4) If the Authority has reasonable cause to believe that any right of entry of an authorised officer herein conferred may be or has been hindered by any person the Authority may apply to the Magistrates' Court for a warrant to enter the premises, if need be by force.

(5) A right of entry under a feed-in agreement shall be exercised, and may be enforced, as if it were a right conferred by this paragraph.