

DETAILED SUBMISSION OF JERSEY GAS COMPANY LTD IN RESPONSE TO THE JERSEY GAS COMPANY AMENDMENT LAW 202-

28 April 2025

Dear Members of the Children, Education & Home Affairs Scrutiny Panel

Introduction

The draft **Jersey Gas Company Amendment Law 202-** (the “**draft Amendment Law**”) was lodged au Greffe on 11 March 2025. It will be debated no earlier than 13 May 2025.

The Draft Amendment Law will, if passed, provide the Minister for Justice and Home Affairs (the “**JHA Minister**”) with powers to gather information from the Jersey Gas Company (the “**Company**” or “**Islands Energy**”) by: (1) imposing an obligation on the Company to notify the JHA Minister when certain reportable events or circumstances occur; (2) imposing an obligation on the Company to disclose certain information to the JHA Minister on request; and (3) the JHA Minister exercising a power to enter premises and require information.

The Draft Amendment Law creates four offences relating to the new powers punishable by up to 5- or 7-years imprisonment and a fine.

We are supportive of the purpose of the draft Amendment Law and continue to be committed to both public safety, security and the of the supply of gas in Jersey. We are, however, concerned by certain aspects of the draft Amendment Law. We are firmly of the view that it should be subject to a thorough scrutiny prior to the debate.

We propose that, in the interim, Islands Energy provide the information requested on a voluntary basis to allow sufficient time for scrutiny and to work through the issues we have identified and which we set out below. In the meantime, please provide us with details of the outstanding information requests, which were submitted to the former officers of Islands Energy.

Summary of Submissions

We recognise that the provision of certain information may assist the JHA Minister and others to discharge their functions in respect of public safety and the continued supply of gas in Jersey. To achieve these ends, the draft Amendment Law must be fit for purpose. We have carefully analysed the proposals and are firmly of the view that they are not, in certain respects and as drafted, fit for purpose. Moreover, enacting legislation in the terms of the current draft may be counterproductive.

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In summary:

- The definitions of reportable events and circumstances are vague and overly broad. The requirement to provide all information immediately is impracticable. Reportable events and the process by which they should be reported should be clearly set out and subject to appropriate timescales.
- The powers to request information, enter premises, and require individuals to answer questions, have not been subject to an appropriate level of scrutiny to ensure they are ECHR compliant, particularly in respect of self-incrimination and safeguards against self-incrimination.
- The offence created by draft Article 89H is not properly defined.
- The penalties contained in draft Article 89H are wholly disproportionate.
- The timing of the draft Amendment Law is not appropriate due to the ongoing criminal proceedings concerning Haut Du Mont.

Islands Energy is committed to working with the Government of Jersey to address these issues and to ensure public safety, the continuity of the gas supply, and proper accountability.

Obligation to notify the JHA Minister

Draft Article 89B creates an obligation to notify the JHA Minister (or another) as soon as a reportable event or circumstance occurs.

There are serious issues with the way the draft Amendment Law is formulated.

Definition of and threshold for events and circumstances

The definition of each reportable event is so wide that the provisions will require Islands Energy to report events that amount to no more than run-of-the-mill occurrences in the day-to-day business of a gas company. No attempt has been made to limit the scope of the provisions so that the obligation to notify only arises in respect of events that are significant and likely to be of interest (and the information of use) to the JHA Minister.

By way of example, in draft Article 89B(3)(a) the obligation to notify arises where “*an event...that potentially threatens...harm to people*” occurs. Gas is a hazardous industry with inherent risks (as are petroleum, electricity, and water). Any event involving gas potentially threatens harm. All events are treated seriously and responded to, but the majority are commonplace and do not involve immediate danger, for example, a minor gas escape. Such events occur periodically and are addressed without incident.

In draft Article 89B(3)(b) the obligation to notify arises where “*an event...potentially threatens the supply of gas in Jersey*”. It is not clear whether this relates to the supply of gas in Jersey as a

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whole or any supply of gas within Jersey. If it is the latter, then an event that potentially threatens the supply of gas to a single premises for a short period would be notifiable. Such events occur periodically and are usually resolved quickly.

We note that in draft Article 89(3)(c) the obligation to notify is qualified so that only an event that has a *material* adverse effect on the ability of the Company to carry out its functions are reportable. The qualification would permit Islands Energy to exercise its discretion to only notify if the threshold is met and not to notify when the event is *de minimis*. There is no qualification at all in respect of other draft provisions.

An obligation to notify that includes day-to-day events (irrespective of seriousness) is neither necessary nor proportionate and will not improve public safety or gas security. Islands Energy would welcome the opportunity to consult with the Government on the definition of reportable events and the appropriate threshold for notification. English legislation and guidance set out in clear terms what is required of employers generally and gas suppliers specifically when a reportable event occurs. It could be used as a model.

The offence of failing to notify carries a maximum sentence of five years imprisonment. Islands Energy and its employees are entitled to know precisely what is expected of them and in what circumstances, in order that they may comply and avoid criminal liability.

Notification required as soon as event occurs and to include all information

The obligation to notify is triggered “*as soon as*” the reportable event occurs and must include “*all information that the Company has that is relevant to the reportable event...*”. The obligation is immediate and potentially impossibly onerous. It applies to all reportable events irrespective of Islands Energy’s operational responsibilities.

An obligation to notify should not take precedence over operational responsibilities, particularly when an event threatens safety or supply. When such an event occurs, resources must be focused on dealing with the event. Notification should follow. The proposals do not permit any delay or discretion. In the event of an emergency, management and employees should be focussed on their immediate responsibility. They should not be distracted by the threat of criminal sanction for non-compliance with notification requirements.

No attempt has been made to limit the scope of the information required to that which the JHA Minister (or another) might reasonably require to discharge their functions at the point an event occurs.

The draft Amendment Law should take account of Islands Energy’s operational responsibilities and include appropriate timescales for notification and a clear definition of what information is required and when, in each case.

We would welcome the opportunity to consult with the Government on timescales for notification and what information needs to be provided.

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Conflating distinct events in a single provision

There are four categories of event or circumstance: safety or harm; the supply of gas; the Company's capacity to carry out its functions; and a change of control of the Company. The four categories relate to very different events that will arise in wholly different circumstances, yet the proposed draft Amendment Law treats them identically.

Islands Energy's operational and reporting procedures will necessarily be different in each case. The type of information and the amount of information available will vary significantly in each case. The likelihood that information will be sensitive (e.g. confidential, or subject to legal professional privilege) will be different in each case. The amount of time it will reasonably and realistically take to collate and review "*all the information that the company has*" will vary enormously.

None of this is reflected in the proposed draft Amendment Law.

We would welcome the opportunity to consult with the Government on our operational and reporting procedures and how these might inform effective notification requirements in the draft Amendment Law.

United Kingdom reporting requirements

We have reviewed the laws and regulations that apply in the United Kingdom to employers generally and the gas sector specifically.

Regulation 7 of the GMSR sets out the requirements in the event of gas escapes, including where such an escape has or was likely to have resulted in a fire or explosion. The regulations set out what action the responsible person is required to take and the timeframe for action, and when an investigation and report is required.

The draft Amendment Law proposes that a failure to report is a serious criminal offence punishable by 5 years imprisonment and a fine. Islands Energy and its employees are entitled to clarity as to precisely what needs to be reported, when, and in what format, in order that it and they can comply with the requirements.

Islands Energy considers that similar regulations, tailored to Jersey's particular circumstances, will be far more effective in promoting public safety than the overly broad/imprecise requirement contained in the draft Amendment Law.

Powers to request information, enter premises and require a person to answer questions

The draft Amendment Law includes an obligation to disclose information to the JHA Minister (draft Article 89C) and a power to enter premises and require information (draft Article 89G).

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The circumstances in which the obligations under draft Article 89C arise include where the JHA Minister believes that the Company is in breach of Article 89B or another statutory duty. It is to be a criminal offence punishable by 5 years imprisonment and a fine to contravene the obligation to disclose.

The power under draft Article 89G permits a duly authorised person to enter certain premises to examine and take away documents and other material, and to require a person to answer questions and provide information. It is to be a criminal offence to obstruct a person exercising their functions under this provision (and therefore an offence to refuse to answer questions). The proposed offence is punishable by 7 years imprisonment and fine (draft Article 89H(4)).

Draft Article 89(D) excludes from the requirements information that is subject to privilege or information that the Company could not be compelled to give in civil proceedings. The draft Amendment Law does not, however, contain any safeguards against self-incrimination or the use of information obtained under compulsion in criminal proceedings.

Safeguards against self-incrimination are essential and are ordinarily included in legislation which include a power to require information, for example:

- Health and Safety at Work Jersey Law 1989 – Article 12(4) and 12(5)
- Proceeds of Crime (Supervisory Bodies Law) – Article 30(12) and (13)
- Food Safety (Jersey) Law 1966 – Article 44(3)

Article 6 of the ECHR guarantees the right to a fair trial. The right against self-incrimination is recognised as a basic aspect of a fair trial. Article 6 is engaged by the requirement in the draft Amendment Law to answer questions under compulsion (and under threat of prosecution and imprisonment).

The Appendix to the Report attached to the draft Amendment Law summaries the principal human rights issues arising from the contents of the draft Amendment Law. The issue of self-incrimination and safeguards against self-incrimination is not addressed at all.

Islands Energy is very concerned that the Human Rights of its officers and employees appear not to have been properly considered, particularly given the severe penalties proposed for non-compliance.

Offences

Draft Article 89H creates several new offences.

Draft Article 89H(1) provides that: *“A person who contravenes Article 89B or 89C commits an offence and is liable to imprisonment for a term of 5 years and to a fine.”* The reference to imprisonment and the terms of the statutory defence contained in Draft Article 89H(2) indicates that the offence can be committed by an individual but the obligation to notify and disclose

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information rests with the Company. The draft Amendment Law does not specifically provide for individual liability or the circumstances in which individual liability arises.

The proposed penalty is severe and individual directors, officers and employees are entitled to know whether they are personally liable to commit the offence and, if so, in what circumstances.

Disproportionate penalties

The draft Amendment Law proposes to make it an offence for a person to contravene the requirement to notify the JHA Minister as soon as a reportable event or circumstance occurs. The proposed offence is punishable by 5 years imprisonment and a fine.

The draft Amendment Law proposes to make it an offence for a person to provide false or misleading information; destroy, conceal or fraudulently alter information; or to obstruct a person exercising the power to enter premises and require a person to provide information. The proposed offence is punishable by 7 years imprisonment and a fine.

Islands Energy have reviewed the general level of sentences for similar offending under equivalent provisions in Jersey and in England. We are firmly of the view that the proposed penalties are wholly disproportionate.

By way of comparison, the Health and Safety at Work (Jersey) Law 1989 makes it an offence to make a false statement in purported compliance with a requirement to provide information; and to obstruct an inspector in the performance of their duties. The offences are punishable by a fine not exceeding Level 3 on the standard scale.

The Petroleum (Jersey) Law 1984 makes it an offence to obstruct an inspector exercising their powers of entry and inspection. The offence is punishable by a fine not exceeding Level 2 on the standard scale.

The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 makes it an offence to fail to comply with a request for information or documents, or to obstruct an officer exercising their powers to enter premises and put questions. The offence is punishable by 6 *months* imprisonment and a fine.

In England and Wales notification and reporting requirements are governed by the Health and Safety at Work Act 1974 (HSA) regulations issued under it including The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) and the Gas Safety Management Regulations 1996 (GSM). The HSA makes it an offence to contravene these regulations. The maximum penalty under the HSA for contravening the regulations is imprisonment for a term not exceeding 2 years, or a fine, or both.

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Neither the report or explanatory note accompanying the draft Amendment Law set out the rationale for imposing such severe sentences on Islands Energy, its officers and employees. The proposed sentencing regime will substantially damage Islands Energy's ability to retain and appoint capable directors, officers and employees with the necessary expertise to support the Company.

The timing of the draft Amendment Law

The draft Amendment Law was lodged with the Greffe on 11 March 2025. That was three days before Islands Energy and three individuals (1 a former employee and 2 who are existing employees) were due to appear in the Magistrate's Court to answer charges in relation to Haut Du Mont.

The report accompanying the draft Amendment Law states that it proposed in response to Haut Du Mont (and other incidents over the past two years). The proposed amendments are clearly aimed at preventing further incidents.

If the legislation is intended to address specific issues arising out of recent incidents it should be informed by a thorough understanding of the issues, or it will not be effective.

The situation at present is that Islands Energy and the three individuals have entered not guilty pleas in the Magistrate's Court. The trial will take place in the Royal Court, but it is unlikely to take place before Q3 2026. No findings have been made as to what happened at Haut Du Mont and the evidence is not in the public domain. To legislate at this point would be premature.

Policies and enactments concerned with public safety need to be subject to proper scrutiny and informed debate, to ensure that they are fit for purpose and effective. Neither scrutiny nor informed debate are possible when the facts of the incident that are said to have triggered the draft Amendment Law have not been established. Public debate is inappropriate and potentially prejudicial in circumstances where Islands Energy and three individuals are awaiting trial in the Royal Court.

Conclusion

Islands Energy remains absolutely committed to public safety and proper accountability. As stated, Islands Energy would welcome the opportunity to engage with the Government of Jersey to ensure the draft Amendment Law is fit for purpose and as effective as it can be. However, for the reasons set out in this letter, Islands Energy is firmly of the view that the draft Amendment Law (as it currently stands) will place an impossible burden on Islands Energy, its directors, officers, and employees, which are not capable of being discharged, and which carry very heavy

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criminal penalties. The current approach proposed is, with respect, unworkable, potentially unlawful, and counterproductive. It will not achieve what it aims to achieve.

The draft Amendment Law requires scrutiny and informed debate. Islands Energy respectfully invites the Government to adjourn consideration of the draft Amendment Law until the criminal proceedings in relation to Haut du Mont are concluded.

As stated above, Islands Energy is willing to enter a memorandum of understanding to comply with the JHA Minister's reasonable requests for information within a reasonable timeframe (perhaps to be agreed on a case-by-case basis) in the interim.

Yours sincerely

Jersey Gas Company Ltd