

PUBLIC SUBMISSION

Issued to Deputy Catherine Curtis

Chair of the Children, Education and Home Affairs Scrutiny Panel

By Mr Graeme Millar

For and on behalf of Jersey Gas Company Limited

Date: 2 January 2026

1. Introduction

This submission is provided at the invitation of the Children, Education and Home Affairs Scrutiny Panel, to outline the concerns of Jersey Gas Company Limited (“JGCL”), ahead of the States Assembly debate on the Draft Jersey Gas Company Amendment Law 202– (the “Amendment Law”), scheduled for 20 January 2026.

JGCL remains fully committed to public safety, continuity of gas supply, and constructive engagement with Government. While JGCL supports the aims of the Amendment Law, a number of important issues require further consideration to ensure that the legislation is clear, proportionate and workable in practice.

JGCL has also expressed willingness to enter into a voluntary Memorandum of Understanding with the Government of Jersey, to set out the parties’ intentions, expectations and principles for co-operation, regarding the voluntary sharing of information, with the intention of obviating the rationale given by Ministers, for the introduction of the proposed Amendment Law.

This submission addresses:

- A matrix summary of JGCL’s concerns and the Government of Jersey (“GoJ”)’s responses, identifying any subsequent amendments included in the Amendment Law as a result of engagement since April 2025;
- The outstanding areas of concern raised by JGCL, upon which further consideration is respectfully requested, before the Amendment Law progresses to a debate before the Assembly.
- The respectful conclusion that it would be in the interests of Islanders and all stakeholders for the Assembly Debate on the Amendment Law to be postponed until such time as the issues raised in this submission have been fully reviewed and in any event, until after the conclusion of the Haut du Mont criminal proceedings.

1. Summary Matrix of Issues Raised by JGCL and GoJ Responses

Article / Issue	Concern Raised by JGCL	Status	Summary of GoJ Response / Amendment	Issues O/S
1.Art. 89H – Penalties	Imprisonment terms (5–7 years) for information-related offences are disproportionate, and incongruent with equivalent offences (see Appendix I) may deter recruitment, and apply only to JGCL and no other hazardous industries.	Not amended	GoJ maintained penalties following advice from the Law Officers’ Department.	Outstanding and significant
2.General – Timing of Legislation	Legislating before findings from Haut du Mont risks uninformed measures and potential prejudice to proceedings.	Not addressed	GoJ has not proposed delay or sequencing changes.	Outstanding and significant.
3.General – Independence of GoJ & LOD	Need for separation between GoJ (as proponent) and LOD (as adviser and prosecutor).	Not addressed	No procedural safeguards or clarifications introduced.	Outstanding and significant.
4.General – Equality of Regulatory Treatment	Penalties apply uniquely to JGCL, unlike other suppliers of hazardous commodities.	Not addressed	No cross-sector parity mechanisms added.	Outstanding and significant.
5.General – Corporate Manslaughter Law	Corporate manslaughter offence would better address systemic failings	Not addressed	No commitment to prioritization.	Outstanding and significant.

	and improve public safety.			
6. Art. 13 – Inspection of Registers	Allow inspection by website to modernize compliance.	Not amended	Deferred to forthcoming Energy Strategy.	Outstanding.
7. Art. 20 – Annual General Meetings	Allow suspension of AGM requirement by shareholder resolution.	Not amended	Deferred to Energy Strategy.	Outstanding.
8. Art. 29 – Director Numbers	Reduce minimum number of directors from five to two and remove maximum.	Not amended	Deferred to Energy Strategy.	Outstanding
9. Art. 89A / 89B – Reporting Requirements	Definitions of ‘reportable events’ were too broad, capturing routine and low-risk matters without improving safety.	Amended	Definitions narrowed; reporting thresholds to be clarified in Ministerial Directions developed with JGCL.	None at this stage.
10. Art. 89B(2) – Notification Timing	Immediate notification and full information provision was operationally unworkable during live incidents.	Amended	Notification timelines adjusted; requirement for ‘all information immediately’ removed.	Closed.
11. Art. 89C / 89G – Entry & Information-Gathering; Human Rights	Insufficient protection against compelled self-incrimination and inadequate entry safeguards.	Amended	Evidence-of-authority requirement added; safeguards strengthened.	Closed.
12. Art. 89D – Excluded Information	Disclosure obligations risked overriding statutory prohibitions.	Amended	Article amended to exempt legally protected information.	Closed.

2.1 Article 89H – Disproportionate Penalties

The accompanying Report to the Amendment Law states that:

“The penalty is intended to convey the severity of the potential worst-case outcomes (public safety, harm to people or property, failure of the supply of gas to Jersey) should the MJHA not be notified as required by directions and is in line with other similar offences in recent Jersey Law.”

With respect, we do not consider this explanation to be sound or adequate. These are not health and safety offences. They do not relate to a failure on the part of JGCL to comply with its duties in respect of public safety, causing harm to people or property, or a failure to supply gas; nor do they relate to any failure on the part of JGCL to take reasonably practicable steps to mitigate or prevent such risks of harm or failures. All of those offences and their penalties are already covered by existing legislation or the current common law. The offences considered in the Amendment Law relate only to the provision of information to the Minister in respect of such matters.

We remain concerned that the proposed sentencing regime will substantially affect JGCL’s ability to retain and appoint capable directors, officers and employees with the necessary expertise to support JGCL.

We maintain that the penalties should be proportionate with equivalent offences under other enactments concerning the provision of information to a Minister or public authority as set out in our original submission. **(see Appendix 1)**. There is no principled basis upon which such a significant difference in potential sanctions can be justified or maintained.

2.2 Equality of Regulatory Treatment

We respectfully submit that equality of regulation should apply to all companies who operate in Jersey in the business of the supply and storage of hazardous substances. It is submitted that at present, the Amendment Law solely seeks to regulate JGCL.

2.3 Proposed Additional Amendments by JGCL to Modernize Articles 13, 20 and 29

As the Amendment Law represents the first revision to the Gas Law in 36 years, it provides the appropriate and timely opportunity to resolve long standing issues within the Jersey Gas Company (Jersey) Law 1989 (the “Gas Law”). The proposed amendments to Articles 13, 20 and 29 are gas-specific and are best addressed within this legislative update. Deferring them to the wider energy policy review would introduce unnecessary delay and administrative burden.

Article 13 concerns the inspection of registers. It imposes on JGCL a requirement to keep the registers at the public office of JGCL and for any person to attend the office and examine the registers. In the digital age, the provision is outdated. The registers should be made accessible via JGCL’s website. An amendment to Article 13 to permit JGCL to allow any person to inspect its registers via its website should be included in the Amendment Law.

Article 20 concerns annual and extraordinary general meetings. The provision does not currently permit shareholders, if they think fit, to suspend the requirement to hold an annual general meeting, upon the passing of a special resolution. This suggested amendment is considered sensible because this is an option ordinarily available to shareholders of private companies and permits greater flexibility in the management of JGCL.

Article 29 concerns the directors of JGCL and provides that the administration and management of JGCL shall be entrusted to a body of directors, not less than five nor more than ten in number. The provision should be amended to reduce the minimum number of directors to two. There is no reason why JGCL must have a minimum of five directors. In Jersey, a private company is ordinarily required to have one director whilst a public company is required to have two. Whilst JGCL is a private company, we recognize that as a utility provider, it has many of the duties of a public company. Accordingly, we propose that the Gas Law be amended to require a minimum of two directors and to remove the maximum.

2.4 Potential Conflict of Interest Created by Article 89 and Parallel Investigations

JGCL is cognizant of the importance of the actual and perceived independence between the Government and the Law Officers' Department (LOD), particularly where legislative changes intersect with ongoing criminal proceedings.

We understand that the GoJ (as promoter of the Amendment Law) relies on the advice received from the LOD as its impartial legal adviser and that the LOD participates in the executive's legal strategy. We recognize that the LOD constitutionally occupies an unusual position, simultaneously advising the GoJ whilst also holding independent prosecutorial and public interest responsibilities. Consequently, the AG and the LOD both advise on the drafting of the Amendment Law penalties and later oversee their enforcement.

JGCL is concerned that the expanded powers proposed under Article 89B could result in Ministers (or officials acting on their behalf) obtaining information that may overlap with, or relate directly to, matters subject to separate States of Jersey Police ("Police") and Health & Safety Inspectorate ("HSI") investigations. In ordinary circumstances, information of this nature may attract legal professional privilege, public interest immunity protection or other confidentiality safeguards. If compelled, disclosure under Article 89 enables Ministers to access such information, which risks creating circumstances where the executive becomes aware of material connected to parallel criminal or regulatory investigations into other parts of government.

Such circumstances could generate significant conflicts of interest. By way of example, we note the recent prosecution brought by the Crown (via the HSI) against the States Employment Board ("SEB"), an entity forming part of the States of Jersey. A statutory framework that allows Ministers to compel production of information relevant to investigations of this nature may place the executive, the LOD and operational regulators (including the Police and the HSI) in constitutionally sensitive positions.

In this context, we query whether sufficient safeguards exist-or are proposed- to mitigate the constitutional challenges inherent in maintaining the necessary separation of powers between:

- the Attorney General (as independent prosecutor)
- the SoJ Executive (as political decision maker)
- the Police (as independent investigators), and
- the HSI (as specialist regulatory prosecutor)

Ensuring that adequate structural and operational firewalls are in place is essential to preserving both the reality and perception of independence across these bodies, particularly in politically sensitive matters where legislative mechanisms risk intersecting with ongoing enforcement activity.

Given the risks identified above, JGCL is concerned to ensure that the information it supplies to the Jersey Home Affairs Minister (“JHAM”) in accordance with its obligations under the Amendment Law is maintained securely and that it is only disclosed to the permitted recipients (set out in Article 89E) and that it is only used for the permitted uses and purposes (set out in Article 89F).

JGCL seeks clarification in respect of the following matters:

- Who is responsible for the protection of JGCL’s information / data once it is received by the JHAM?
- What controls will be put in place to prevent unauthorized access to the information/data received by Ministers, officers or other employees of the GoJ and connected bodies (e.g. the LOD, SOJP and Health & Safety Inspectorate) How will access be audited to ensure accountability?
- What controls will be put in place to ensure that the information/data received by the JHAM (or another permitted recipient) is only used for permitted uses and purposes?
- How will the JHAM manage conflicts of interest, for example, when a permitted recipient receives information for a permitted use that may be relevant for another use? By way of example, a Health and Safety inspector is entitled to receive information for the purposes of, for example, assessing health and safety risks associated with the supply of gas, but they are not entitled to receive it for the purposes of evidence gathering in connection with an investigation into a contravention of the Health & Safety at Work Law. If the information supplied is potentially relevant to both, how will the conflict be managed to ensure compliance with Article 89F?

2.5 Risk of Prejudice to Haut du Mont Proceedings

JGCL respectfully submits that the debate on the Amendment Law should be postponed until the following issues have been fully considered, ideally after the conclusion of the Haut du Mont criminal proceedings. This would (i) minimize the risk of prejudice to those proceedings, and (ii) ensure that any legislative changes are appropriately informed by the factual findings when they become available.

2.6 Prioritization of Corporate Manslaughter Legislation

JGCL supports the discussion, development and introduction of a corporate manslaughter law in Jersey, to strengthen corporate accountability, to align Jersey with UK standards and to promote a coherent approach to public safety. The creation of a new corporate manslaughter offence could ensure clearer legal avenues for investigation and prosecution, following fatal incidents arising from corporate negligence. It could also ensure Islanders benefit from protections comparable to those in neighbouring jurisdictions.

Conclusion

JGCL welcomes the constructive engagement to date and acknowledges the positive amendments made by GoJ and the engagement of the Children, Education and Home Affairs Scrutiny Panel. However, as discussed above, several material issues remain outstanding and require further consideration.

JGCL respectfully requests the debate on the Amendment Law scheduled for 20 January 2026 be postponed until such time as the numerous issues raised in this submission have been fully reviewed in any event, after the conclusion of the Haut du Mont criminal proceedings.

Jersey Gas Company Limited

Enc. Appendix 1- Penalties for comparable offences

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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.