

ORDER IN COUNCIL

XXI
1994

ratifying a Projet de Loi

ENTITLED

The Housing (Control of Occupation and Development) (Alderney) Law, 1994

(Registered on the Records of the Island of Guernsey
on the 23rd August, 1994.)



1994

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 23rd day of August, 1994 before Sir Graham Dorey, Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Stanley Walter John Jehan, Raymond Arthur Heaume, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, John Richard Rowe Henry, David Charles Lowe, Esquires and Mrs Eileen May Glass, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 22nd day of June, 1994, approving and ratifying a *Projet de Loi* entitled “The Housing (Control of Occupation and Development) (Alderney) Law, 1994”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney for registration on the records of that Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 22nd day of June 1994

PRESENT.

The Queen's most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 14th day of June 1994, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of George Baron, Esquire, President of the States of Alderney setting forth:—

“That at a meeting of the States of Alderney held on the 17th day of December 1993, the States adopted a Resolution that a “Projet de Loi” entitled “The Housing (Control of Occupation and Development) (Alderney) Law, 1994”, be approved. That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said “Projet de Loi” be sanctioned: That the said “Projet de Loi” is set forth in the Schedule hereunto annexed: And most humbly praying that Your Majesty be graciously pleased to grant Your Royal Sanction to the “Projet de Loi” entitled “The Housing (Control of Occupation and Development) (Alderney) Law, 1994”, and order that the same shall have force of Law within the Island of Alderney.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said **Report** into consideration, is pleased, by and with the advice of **Her Privy Council**, to approve of and ratify the said **Projet de Loi**, and to order, and it is hereby ordered, that the same shall have the force of **Law** within the **Island of Alderney**.

AND HER MAJESTY doth hereby further direct that this **Order**, and the said **Projet de Loi** (a copy whereof is hereunto annexed), be entered upon the **Register** of the **Island of Guernsey** and observed accordingly.

AND the **Lieutenant Governor** and **Commander-in-Chief** of the **Island of Guernsey**, the **Bailiff** and **Jurats**, and all other **Her Majesty's Officers** for the time being, of the said **Island of Guernsey**, and also the **Jurats** of the said **Island of Alderney**, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

(No.XXI - 1994)

PROJET DE LOI

ENTITLED

**The Housing (Control of Occupation and Development)
(Alderney) Law, 1994**

THE STATES, in pursuance of their Resolutions of the 15th December, 1992 and the 17th December, 1993, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

Control of construction of dwellings.

1. (1) The Committee shall not, subject to the provisions of subsection (3), grant any application for permission under the Building and Development Control (Alderney) Law, 1975(a) (the Law of 1975") in relation to the construction of a dwelling unless the applicant-

- (a) is aged at least 21 years and has been ordinarily resident in Alderney for an aggregate of not less than 10 years in the 15 year period immediately preceding the date of the application;
- (b) is ordinarily resident in Alderney and is the spouse or surviving spouse of a person described in paragraph (a); or
- (c) is a person of such other description as the States may prescribe by Ordinance;

and, in the case of a person falling within paragraph (a) or (b), has neither previously been granted any such permission nor owned a dwelling in Alderney, whether alone or jointly with any other person.

(a) Ordres en Conseil Vol.XXV, p. 8; Vol.XXVI, p. 560; Vol.XXIX, p. 18; and Vol.XXX, pp. 21 and 371.

(2) The Committee may, upon receipt of an application for permission under the Law of 1975 in relation to the construction of a dwelling and at any time thereafter, require the applicant to furnish such information and documents as the Committee considers necessary for the purpose of determining whether or not the applicant is a person to whom, under this section, such permission may lawfully be granted.

(3) The provisions of subsection (1) shall not apply in relation to an application which was entered by the Committee in the Register before the 10th December, 1992.

Control of occupation of dwellings.

2. (1) No person shall, subject to the provisions of subsection (2), occupy a dwelling in Alderney unless-

- (a) he is aged at least 21 years and has been ordinarily resident in Alderney for an aggregate of not less than 10 years in the immediately preceding 15 year period;
- (b) he is ordinarily resident in Alderney and is the spouse or surviving spouse of a person described in paragraph (a);
- (c) he has acquired an interest in the dwelling concerned by inheritance;
- (d) he is occupying the dwelling concerned as a member of the household of a person, provided that the latter-
 - (i) is a person described in any of the preceding paragraphs of this subsection;
 - (ii) is not a minor; and
 - (iii) is occupying the dwelling as his principal dwelling; or

- (e) he is a person of such other description as the States may prescribe by Ordinance.

(2) The provisions of subsection (1) shall not apply in relation to the occupation of a dwelling where-

- (a) the application for permission under the Law of 1975 in relation to the construction of the dwelling was entered by the Committee in the Register before the 10th December, 1992; or
- (b) the construction of the dwelling was lawfully completed before that date.

Power to exempt certain dwellings.

3. The States may by Ordinance provide that any provision of section 1 or 2 shall not apply in relation to the construction or occupation of dwellings of the description specified in the Ordinance.

Powers of entry.

4. (1) If the Chairman of the Court of Alderney or, if he is absent from the Island or otherwise unavailable, any Jurat thereof, is satisfied by information on oath that there are reasonable grounds for suspecting that any person is occupying a dwelling in contravention of section 2, he may grant a warrant authorising an officer of police to enter that dwelling, using such force as may be reasonably necessary, at any reasonable time within a period of 28 days beginning on the date of the warrant.

(2) An officer of police acting under the authority of a warrant granted under subsection (1) may-

- (a) make such inspection and examination of the dwelling in respect of which the warrant was granted;
- (b) make such inquiry of any person therein; and

- (c) require any such person to furnish such information and documents;

as he considers to be necessary for the purposes of determining whether or not any person is occupying the dwelling in contravention of section 2.

Certificate of Clerk of States conclusive.

5. For the purposes of sections 1 and 2 a certificate under the hand of the Clerk of the States stating whether or not an application for permission under the Law of 1975 in relation to the construction of a dwelling was entered by the Committee in the Register before the 10th December, 1992 shall be conclusive evidence of the fact.

Offences.

6. (1) A person who-

- (a) occupies, or causes or permits another person to occupy, a dwelling in contravention of section 2;
- (b) for the purpose of avoiding any provision of this Law, or in connection with or in response to a requirement or inquiry made of him or another person under section 1(2) or 4(2), or for any other purpose connected with this Law-
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
 - (iii) furnishes or causes or permits to be furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or

- (iv) recklessly furnishes or recklessly causes or permits to be furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;
- (c) without reasonable excuse, proof whereof shall lie on him-
 - (i) obstructs or fails to give all reasonable assistance to an officer of police; or
 - (ii) fails to comply with any requirement or reply to any inquiry made of him by an officer of police;

exercising or purporting to exercise any power or authority conferred by or under this Law;

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable on conviction to a fine not exceeding level 4 on the Alderney uniform scale, imprisonment for a term not exceeding 3 months or both.

(3) It is a defence for a person accused of causing or permitting another person to occupy a dwelling in contravention of section 2 to prove that he had reasonable cause to believe that that other person was not prohibited by section 2 from occupying the dwelling.

(4) Where a person is convicted of an offence under subsection (1)(b) in connection with an application for permission under the Law of 1975 in relation to the construction of a dwelling, any such permission granted in consequence of the application shall be void if, at the time when the permission was granted, the applicant was a person to whom, under section 1, such permission could not lawfully be granted; and in any such case the provisions of the Law of 1975 shall have effect in all respects as if the permission had not been granted.

Offences by bodies corporate.

7. (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Application of Law to States land.

8. The provisions of this Law-

- (a) shall not apply in relation to the construction of dwellings; but
- (b) shall apply in relation to the occupation of dwellings;

which are owned by, or which are on land owned by, the States (whether or not leased to or occupied by another person).

Interpretation.

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

"the Committee" means the Building and Development Control Committee established pursuant to section 1 of the Law of 1975;

"construction of a dwelling" includes the construction thereof by building, conversion or alteration, and-

- (a) the conversion or alteration of an immovable structure not used in whole or in part as a dwelling into one or more

dwelling (in which case each such dwelling shall be deemed to have been constructed for the purposes of this Law);

- (b) the conversion or alteration of an immovable structure comprising one or more dwellings into an immovable structure comprising a greater number of dwellings (in which case the additional number of dwellings comprised in the immovable structure after conversion or alteration shall be deemed to have been constructed for the purposes of this Law, and a certificate under the hand of the States Surveyor stating which particular dwellings comprised in the structure are to be deemed to have been constructed for the purposes of this Law shall be conclusive evidence of the fact);
- (c) the use as a private dwelling of-
 - (i) a building previously used as a nursing home or residential home within the meaning of the Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987(b);
 - (ii) a building designated as self-catering tourist accommodation pursuant to section 13A(1) of the Law of 1975;
 - (iii) any other building previously used otherwise than as a dwelling;
- (d) the use as two or more separate dwellings of a building previously used as a lesser number of dwellings (in which case the additional number of dwellings comprised in the building thereafter shall be deemed to have been constructed for the purposes of this Law, and a certificate under the hand of the

States Surveyor stating which particular dwellings comprised in the building are to be deemed to have been constructed for the purposes of this Law shall be conclusive evidence of the fact);

and cognate expressions shall be construed accordingly;

"dwelling" means any premises or any part of any premises wholly or principally used or usable for the purposes of human habitation, and includes any part of such a dwelling;

"immovable structure" means any building or structure, of whatever material, in whatever manner constructed and whether permanent or temporary, which is, or on the erection of which will become, realty;

"the Law of 1975" has the meaning given by section 1(1);

"officer of police" means a member of the salaried police force of the Island of Guernsey or a member of any police force which may be established by the States;

"the Register" means the register of applications kept by the Committee in pursuance of the provisions of section 9(1) of the Law of 1975;

"the States" means the States of Alderney.

(2) The provisions of the Interpretation (Guernsey) Law, 1948(c) shall apply to the interpretation of this Law as they apply in Guernsey to the interpretation of an enactment.

(3) References in this Law to an enactment are references thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Amendment.

10. In section 6(1) of the Law of 1975, after the words "the Committee may either" insert ", subject to the provisions of section 1 of the Housing (Control of Occupation and Development) (Alderney) Law, 1994".

General provisions as to Ordinances.

11. (1) An Ordinance of the States under this Law-

- (a) may be amended or repealed by a subsequent Ordinance hereunder; and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance may be exercised-

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised-
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;

- (iii) any such provision either unconditionally or subject to any prescribed conditions.
- (c) so as to prohibit the doing of anything in relation to which the Ordinance may be made except under the authority of and in accordance with the conditions of a licence granted, subject to the satisfaction of such criteria and the payment of such fee as may be specified in the order, by such person or body as may be so specified.

Citation.

12. This Law may be cited as the Housing (Control of Occupation and Development) (Alderney) Law, 1994.

Commencement.

13. This Law shall come into force on the day appointed by Ordinance of the States.