

# ORDER IN COUNCIL

**VII**  
**1994**

ratifying a Projet de Loi

ENTITLED

## **The Duty on Long Leases (Alderney) Law, 1994**

(Registered on the Records of the Island of Guernsey  
on the 26th day of April, 1994.)



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1994

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 26th day of April, 1994 before de Vic Graham Carey, Esquire, Deputy Bailiff; present:—Harry Wilson Bisson, Stanley Walter John Jehan, Raymond Arthur Heaume, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires and Mrs. Eileen May Glass, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 15th day of March, 1994, approving and ratifying a *Projet de Loi* entitled “The Duty on Long Leases (Alderney) Law, 1994”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller 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 15th day of March 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 8th day of March 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 a humble petition Jon Kay-Mouat, President of the States of Alderney, setting forth:—

“That at a meeting of the States of Alderney held on the 1st day of September 1993 the States adopted a Resolution that a Projet de Loi entitled “The Duty on Long Leases (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 words and figures of the Schedule hereunto annexed: And most humbly praying that Your Majesty might be pleased to grant Your Royal Sanction to the Projet de Loi entitled “The Duty on Long Leases (Alderney) Law, 1994” and to 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 to 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.VII - 1994)

PROJET DE LOI

ENTITLED

**The Duty on Long Leases (Alderney) Law, 1994**

**THE STATES**, in pursuance of their Resolution of the 1st day of September, 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.

**Leasehold duty payable on dealings in long leases.**

1. (1) A duty to be called leasehold duty shall be payable in accordance with the provisions of this Law in respect of any dealing in a long lease of land.

(2) Leasehold duty shall be payable within a period of 28 days beginning on the date of the dealing.

**Rate of leasehold duty.**

2. (1) Leasehold duty shall be payable at the rate of 5½ per cent of the value of the dealing.

(2) Leasehold duty shall accrue for the benefit of the States of Alderney and the States of Guernsey respectively in the ratio of 4 to 1½.

**Value of dealing.**

3. For the purposes of section 2 the value of a dealing in a long lease of land shall be a sum equivalent to the aggregate of the following amounts-

- (a) any premium in respect of the dealing;
- (b) a sum equal to eight times the average annual rate of rent payable in respect of the lease after the date of the dealing.

**Dealings invalid until registered.**

4. No dealing in a long lease of land shall be valid unless and until a note of the dealing is made in the Alderney Land Register pursuant to an application made under section 18(1) of the Alderney Land and Property Law, 1949(a).

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(a) Ordres en Conseil Vol.XIV, p.67; and Vol.XXVIII, p.578.

**Formalities required for registration.**

5. (1) The Land Registrar shall not make a note of a dealing in a long lease of land in the Alderney Land Register unless-

- (a) the amount of leasehold duty appearing to him to be payable in respect of the dealing (if any) has been paid to him; and
- (b) there has been delivered to him, not less than 21 days previously-
  - (i) a duly completed return in the form set out in the Schedule completed by an individual who is resident in Alderney or who is an Advocate of the Royal Court and containing particulars as to the dealing and a declaration by that individual as to the truth of the contents of the return; and
  - (ii) the instrument, if any, whereby the dealing was effected.

(2) Upon receipt of a return under subsection (1)(b) and at any time thereafter, the Land Registrar may require any party to the dealing to supply such additional information and documentation as the Land Registrar may require.

(3) The Land Registrar, when making a note of a dealing in a long lease of land in the Alderney Land Register, shall enter in the Register the amount of leasehold duty paid in respect of the dealing or (as the case may require) a statement that the dealing is an exempt dealing; but no such entry shall be conclusive evidence that, in respect of the dealing, the amount of leasehold duty properly payable has been paid or that the dealing was an exempt dealing.

**Power to refuse registration.**

6. (1) The Land Registrar may refuse to make a note of a dealing in a long lease of land in the Alderney Land Register-

- (a) if he has reasonable cause to believe that the amount of leasehold duty payable in respect of the dealing has not been paid to him;
- (b) if he has reasonable cause to believe that the return delivered to him under section 5(1)(b) has not been duly completed in accordance with the requirements of that section or contains particulars which are false, deceptive or misleading;
- (c) if any additional information or documentation required to be supplied under section 5(2) has not been supplied or, having been supplied, is reasonably suspected by the Registrar to contain particulars which are false, deceptive or misleading;
- (d) until any arbitration under section 13 in respect of a dispute as to the value of the dealing has been determined.

(2) The provisions of subsection (1) are without prejudice to the powers of the Land Registrar to refuse to make a note of a dealing in a long lease of land in the Alderney Land Register arising otherwise than under that subsection.

(3) Where pursuant to the provisions of subsection (1) the Land Registrar refuses to make a note of a dealing in a long lease of land in the Alderney Land Register, the provisions of section 22 of the Alderney Land and Property Law, 1949 shall not apply in respect of such refusal.

**Interest and penalties on unpaid duty.**

7. (1) In default of payment of any leasehold duty in respect of a dealing in a long lease of land within the period of 28 days specified in section 1(2), the amount of unpaid duty shall carry interest at the rate of 10 per cent per annum from the expiry of that period until the amount of unpaid duty is paid.

(2) Where, in respect of a dealing in a long lease of land, a person is convicted of an offence under section 10(1), there shall be recoverable, in addition to any fine which may be imposed under that section, and notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987(b), a penalty of three times the amount of leasehold duty payable in respect of the dealing and not duly paid.

**Leasehold duty a debt due to the States.**

8. Leasehold duty payable in respect of any dealing in a long lease of land, together with any interest or penalty recoverable in respect thereof under section 7, shall be recoverable by the States from any party to the dealing as a civil debt.

**Legal avoidance.**

9.(1) Where the Land Registrar is of the opinion that there has been a transaction the main purpose or one of the main purposes of which is the avoidance or the reduction of the liability of any person to leasehold duty, he may, in his discretion, direct that-

- (a) such liability to leasehold duty shall be imposed upon that person; or
- (b) such adjustments shall be made in respect of the liability of that person to leasehold duty,

as may in his opinion be appropriate to counteract the avoidance or reduction of liability which would otherwise be effected by the transaction; and that person shall (unless he can show that the transaction in question was not such a transaction as is described in this section) be liable accordingly.

(2) Without prejudice to the generality of the provisions of subsection (1), the Clerk may in particular direct that-

- (a) leasehold duty shall be charged on any person who, but for the direction, would not be liable to leasehold duty or would not be so liable to the same extent;

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(b) Ordres en Conseil Vol.XXX, p.37; No.VI of 1989.



- (b) leasehold duty shall be charged on any person in a greater amount than would be chargeable but for the direction.

**Offences.**

**10.(1)** A person who, in making or in connection with the making of a return or declaration under section 5(1)(b), or in supplying or in connection with the supply of any information or documentation under section 5(2), or otherwise for the purposes of this Law-

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) produces or furnishes or causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

**is guilty of an offence.**

- (2) A person guilty of an offence under subsection (1) is liable-

- (a) on summary conviction, and notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987(c), to a fine not exceeding level 5 on the Alderney uniform scale, to imprisonment for a term not exceeding 3 months or to both;

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(c) **Ordres en Conseil Vol.XXX, p.37; No.VI of 1989.**

- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

**Offences by officers of bodies corporate.**

11.(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 person who is a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, that person 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.

**Dealings void in certain cases.**

12. Where, in respect of any dealing in a long lease of land, a person is convicted of an offence under section 10(1), the dealing shall be void ab initio.

**Valuation disputes.**

13.(1) Where, upon receipt of a return under section 5(1) in respect of a dealing in a long lease of land and such further information as may be required under section 5(2), the Land Registrar disputes the value of the dealing, he or any party to the dealing may refer the matter in dispute to the arbitration of a single arbitrator.

(2) The Arbitration (Alderney) Law, 1983, as amended(d), shall apply to an arbitration under this section.

(3) The arbitrator may be appointed, on the application of the Land Registrar or any party to the dealing, by the Chairman of the Court.

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(d) Ordres en Conseil Vol.XXVIII, p.236; and Vol.XXIX, p.171.

**Exempt dealings.**

14. Leasehold duty shall not be payable in respect of any of the following dealings in a long lease of land ("exempt dealings")-

- (a) a dealing executed before the commencement of this Law;
- (b) a dealing to which the only parties are the trustees of a trust, provided that-
  - (i) there is no change in beneficial ownership;
  - (ii) the sole purpose of the dealing is the appointment of new or additional trustees; and
  - (iii) there is no consideration in money or money's worth in respect of the dealing;
- (c) a dealing occurring by operation of law by way of inheritance upon and in consequence of the death of any person;
- (d) a dealing made solely for natural love and affection between husband and wife, parents and their children, children of the same parents and grandparents and grandchildren, provided that there is no consideration in money or money's worth in respect of the dealing;
- (e) a dealing ordered to be made or sanctioned by the Matrimonial Causes Division of the Royal Court, provided that the Royal Court declares that leasehold duty is not to be payable in respect of the dealing;
- (f) a dealing to which the States is a party;
- (g) a dealing effected by Her Majesty's Receiver-General in respect of a lease which is bona vacantia.

**Power to vary rate of leasehold duty, etc.**

**15. The States may by Ordinance-**

- (a) vary the rate of leasehold duty, provided that no Ordinance shall prescribe a rate which exceeds the aggregate of the following rates-
    - (i) the rate of document duty for the time being payable in respect of documents described in paragraph 1 of the First Schedule to the Document Duty (Guernsey) Law, 1973(e);
    - (ii) the rate for the time being determined by Ordinance under section 16(5)(a) of the Alderney Land and Property Law, 1949 in respect of the amount payable in accordance with that section in substitution for treizième;
  - (b) vary the ratio specified in section 2 in which leasehold duty is divisible;
  - (c) amend the descriptions of the amounts provided for in paragraphs (a) and (b) of section 3;
  - (d) vary the rate of interest specified in section 7(1);
  - (e) amend section 14 by adding to the list of exempt dealings set out therein or by removing or modifying any exempt dealing;
  - (f) amend the definitions of "dealing" or "long lease" set out in section 17(1);
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- (e) Ordres en Conseil Vol. XXIV, pp.74 and 236 and Ordinance No.XXVII of 1989; the 1973 Law was extended to Alderney by Ordinance No.XXXIX of 1973 (Tome XIX, p.111).

- (g) amend the form of return set out in the Schedule;
- (h) prescribe a minimum amount of leasehold duty to be payable in respect of any dealing in a long lease of land;
- (i) make such provision as they may deem necessary or expedient for the purposes of the implementation and administration of this Law, including procedural and formal matters.

**General provisions in relation to Ordinances.**

**16.(1) An Ordinance under this Law-**

- (a) may be amended or repealed by a subsequent Ordinance hereunder;
- (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.

### **Interpretation.**

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

**"the Alderney Land Register"** means the Register of that name established and maintained by the Land Registrar under Part III of the Alderney Land and Property Law, 1949;

**"children"** includes adopted, step and illegitimate children, and **"grandchildren"** shall be construed accordingly;

**"contravention"** includes failure to comply, and cognate expressions shall be construed accordingly;

**"the Court"** means the Court of Alderney;

**"dealing"**, in relation to a long lease, means any grant, assignment or surrender thereof and also includes-

- (a) any modification or rectification thereof, or any agreement or arrangement whatsoever, pursuant to which there becomes payable in respect of the lease any additional premium or rent;
- (b) where the lease is held in trust, any disposal, acquisition or transfer of any beneficial interest therein and any other dealing, transaction or event whereby or upon which (whether

by the appointment of a beneficiary or by any other means whatsoever) there is a change in beneficial ownership or proportion of beneficial ownership thereof;

- (c) any agreement or arrangement whatsoever, including an agreement to enter into any dealing defined above, pursuant to which the parties enjoy rights or are entitled to enjoy rights equivalent to those which they would enjoy or which they would be entitled to enjoy pursuant to any dealing defined above;

**"exempt dealing"** means a dealing in a long lease of land described in section 14 in respect of which leasehold duty is not payable;

**"land"** means any land or other immovable property in Alderney, and includes any house or building;

**"the Land Registrar"** means the holder of the office of that name established by section 13(2) of the Alderney Land and Property Law, 1949;

**"leasehold duty"** means the duty payable under and by virtue of the provisions of this Law in respect of any dealing in a long lease of land;

**"long lease"** means a lease granted before or after the commencement of this Law for a term of years certain of 21 years or more, whether or not at a premium or rack rent and whether or not the lease is or may become terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise, and also any other lease which contains, or in relation to which there exists, a covenant, obligation or option-

- (a) for perpetual renewal, pursuant to which any party to the lease is entitled to enforce (whether or not subject to the fulfilment of any condition) the perpetual renewal or extension thereof;

- (b) for renewal, pursuant to which any party to the lease is entitled to enforce (whether or not subject to the fulfilment of any condition) the renewal or extension thereof (whether on one or more occasions, and whether or not for a specified term) which, if exercised in accordance with the terms of the covenant, obligation or option, and on whatever number of occasions, would bring the aggregate of terms granted to 21 years or more;

and for the purposes of this Law-

- (c) a lease for a fixed term and thereafter until determined shall be deemed to be a lease for a term equal to the fixed term together with such further period as must elapse before the earliest date upon which the lease can be determined;
- (d) a lease for life or for any term determinable with life or on marriage shall be deemed to be a lease granted for a term of years certain of 21 years or more;
- (e) without prejudice to the generality of paragraphs (a) and (b) above, any covenant, obligation or option to take a lease for a further or extended term shall be taken into account in calculating the length of the term for which the lease was originally granted, and accordingly (by way of example) a lease for a definite term with an option to renew or extend for a further definite term shall be deemed to be a lease for the aggregate term;
- (f) a renewal or extension of a lease which does not contain, and in relation to which there does not exist, a covenant, obligation or option described in paragraph (a) or (b) above shall be deemed to be a grant of a lease; and



(g) the expression "lease" includes an underlease or other tenancy;

"**premium**", in relation to a dealing in a long lease, means any consideration in respect of the dealing other than rent, including anything representing money or money's worth, and whether or not payable at the time of the dealing;

"**the States**" means the States of Alderney.

(2) The Interpretation (Guernsey) Law, 1948<sup>(f)</sup> shall apply to the interpretation of this Law as it applies in Guernsey to the interpretation of an enactment.

(3) Any reference in this Law to an enactment is a reference thereto as amended, re-enacted (with or without modifications), extended or applied.

#### **Amendment.**

18. In section 18(2) of the Alderney Land and Property Law, 1949, after the words "the Registrar shall as the case may be" insert "subject to the provisions of the Duty on Long Leases (Alderney) Law, 1994".

#### **Savings.**

19. The provisions of this Law are in addition to and not in derogation from the provisions of the Alderney Land and Property Law, 1949.

#### **Citation.**

20. This Law may be cited as the Duty on Long Leases (Alderney) Law, 1994.

#### **Commencement.**

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

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(f) Ordres en Conseil Vol.XIII, p.355.

## SCHEDULE

### Section 5

#### **Form of Return**

#### **"The Duty on Long Leases (Alderney) Law, 1994**

This form of return, duly completed, signed and dated by an individual who is resident in Alderney or who is an Advocate of the Royal Court of Guernsey, must be delivered to the Alderney Land Registrar at least 21 days before the dealing in a long lease of land\* to which it relates can be registered.

The amount of leasehold duty payable in respect of the dealing and the instrument whereby the dealing was effected, if any, must also be delivered to the Registrar before registration can take place.

It is an offence to furnish any false, deceptive or misleading information.

Expressions used in this return have the meanings given by the above Law.

1. Name and address of lessor/assignor:
2. Nature of dealing in lease (eg grant, assignment, surrender, modification):
3. Location, description and parcel and section registration numbers of land subject to lease:
4. Date of dealing:
5. Name, address and description of lessee/assignee:

6. Premium payable in respect of dealing (any consideration whatsoever must be stated):
7. Average future annual rent payable in respect of lease:
8. Amount of leasehold duty payable (if none, state why transaction is exempt):
9. Name, address and occupation of undersigned person making this return:
10. Capacity in which this return is made:

I, the undersigned, hereby declare that I have completed this return to the best of my knowledge and belief and that the information given herein is true and complete and that the dealing in the lease in question does not form part of any larger transaction or series of transactions in respect thereof.

The instrument, if any, whereby the dealing was effected is enclosed herewith.

Name of signatory:

Signed:

Dated:

\* Note - "**land**" means any land or other immovable property in Alderney, and includes any house or building."