

VII
1949

ORDER IN COUNCIL

Ratifying a Projet de Loi entitled

**"Compulsory Acquisition of Land
(Guernsey) Law, 1949".**

(Registered on the Records of the Island of Guernsey
the 1st April, 1949.)



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1949.

ORDER OF COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 1st day of April, 1949, before Ambrose James Sherwill, Esquire, C.B.E., M.C., Bailiff ; present : Ernest de Garis, Esquire, O.B.E., Sir John Leale, Knight, Arthur Falla, Pierre de Putron, Walter John Sarre, Esquires, Richard Henry Johns, Esquire, O.B.E., Walter John Gavey and Ernest Francis Laine, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of His Majesty in Council dated the 4th day of March, 1949, ratifying a *Projet de Loi* entitled "*Compulsory Acquisition of Land (Guernsey) Law, 1949*",—the Court, after the reading of the said Order in Council and after having heard His Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of the Island of Guernsey, of which *Projet de Loi* the tenor followeth:—

At the Court at Buckingham Palace,

The 4th day of March, 1949.

Present,

The King's Most Excellent Majesty

LORD PRESIDENT.

LORD HAILEY.

LORD PAKENHAM.

MR. CHANCELLOR OF THE DUCHY OF LANCASTER.

MR. NESS EDWARDS.

MR. MARQUAND.

DR. EDITH SUMMERSKILL.

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 2nd day of March, 1949, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 18th day of December, 1936, to refer unto this Committee (1) the humble Petition of the States of the Island of Guernsey most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or ‘Projet de Loi’ entitled ‘Compulsory Acquisition of Land (Guernsey) Law, 1949’ and to order and direct that the same should have force of Law in the Islands of Guernsey, Herm and Jethou; and (2) the humble Petition of certain Members of the States of the Island of Guernsey and other inhabitants of the said Island most humbly praying that Your Majesty would see fit to refuse Your Royal Sanction to the said ‘Projet de Loi’ becoming Law in its present form in the said Island of Guernsey:

“THE LORDS OF THE COMMITTEE in obedience to Your Majesty’s said Order of Reference have taken the said Petitions and the said Projet de Loi into consideration, and do this day humbly agree 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 of the States of the Island of Guernsey and to approve of and ratify the said Projet de Loi.”

HIS MAJESTY having taken the said Report into consideration is pleased, by and with the advice of His Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HIS 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 His Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

E. C. E. Leadbitter.

Projet de Loi referred to the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

**"Compulsory Acquisition of Land
(Guernsey) Law, 1949".**

THE STATES, in pursuance of their Resolution of the 22nd day of September, 1948, have approved the following provisions, which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in this Island and in the Islands of Herm and Jethou.

1. Where the States are satisfied that it is expedient for the carrying out of any public purpose, that any land should be owned by the States, they may by Resolution declare that land to be vested in the States by virtue of the provisions of this Law, whereupon all right, title and interest in or over such land, other than feudal rights and rights in respect of a "rente, rente hypothèque" or other "droit hypothécaire" shall vest in the States, together with the benefit of any covenant, contract, right of support or other easement or profit à prendre relating to such land or usually enjoyed therewith, and freed and discharged from any right to life or other enjoyment or occupation thereof or of any part thereof, and, to such extent as that Resolution or any subsequent Resolution may appoint, from the burden or any easement or profit à prendre, other than an existing right of support enjoyed by adjacent land or the natural passage of water over or under the land acquired.

Acquisition
of land.

2. (1) From and after the date of the vesting in the States of any land by virtue of the last preceding section, that land shall not be subject to any "rente, rente hypothèque" or other "droit hypothécaire" or to any "recours en garantie" previously affecting the same but the compensation payable by way of

Transfer of
rights from
land to
compensa-
tion.

"rente" in respect of the acquisition of that land in accordance with the provisions of this Law shall thenceforth be alone subject thereto in substitution for that land.

(2) In case the States, after redeeming any sum of compensation expressed as a "rente" are sued as "affieffeurs" in any "saisie" proceedings by reason of such redemption, and the States elect not to become "tenant" of such "saisie" the States may, in lieu of renouncing their "affieffement" pay to the "tenant" of the "saisie" the amount stated in the redemption contract, or such less sum as shall suffice for the payment to him of the amount of his claim, costs and expenses, so far as the value of the property of the "saisie" of which he has become "tenant" is insufficient to meet that amount.

(3) In case the States, after redeeming any sum of compensation expressed as a "rente" are sued for any claim in "usufruit", dower or other enjoyment affecting the same, the States may satisfy such a claim by paying the claimant, during the period of such "usufruit", dower or other enjoyment, an annual sum equal to the annual value thereof on the date of redemption.

Retrait
Lignager.

3. An action "en retraits lignager" shall not lie in respect of the acquisition of any land under section 1 of this Law.

Temporary
possession
by the
States.

4. Where the States are satisfied that it is expedient for the carrying out of any public purpose that the States should temporarily take possession of any land, they may by Resolution so declare, whereupon it shall be lawful for the States and for any person authorised by them to enter and take possession of such land to the exclusion of any other persons for such period as may in the Resolution have been specified and to make such alterations and generally to do such things on that land as may be requisite for the carrying out of the public purpose.

Control of
use of and
access to
land.

5. Where the States are satisfied that it is expedient for the carrying out of any public purpose that the use of or the right of access to or over any land should be controlled by the States, they may by Resolution

so declare, and in such case may indicate in the Resolution what control it is expedient to impose, and for what period, whereupon the imposition of that control shall have effect:

PROVIDED ALWAYS that the States may by any such Resolution delegate to the Board the exercise of such control of use or access, or of both use and access, as the case may be, and, where such control is to be intermittent and not continuous or is to be of varying character or in respect of varying areas of the land, authorise the Board to prescribe from time to time the period of operation of such control, the extent of such control and the area of the land subject thereto and thereupon such control shall have effect to such extent and during such period or periods and as respects such areas of the land as shall be specified in an announcement inserted by the Board in the "Gazette Officielle" not earlier than thirty days nor later than three days before the commencement of any such period of control.

6. (1) A Resolution proposed under any of sections 1, 4 or 5 of this Law shall designate the land to which it relates by reference to a map, either with or without descriptive matter, to be signed by the President of the States and deposited at the Greffe, a copy of which map shall be exhibited by His Majesty's Greffier in the Vestibule of the Royal Court for not less than one week prior to the date of the passing of the Resolution.

Resolution
to designate
the land
affected.

(2) Any such Resolution as aforesaid shall be registered by His Majesty's Greffier in the Livre des Contrats immediately on the passing thereof.

7. The States may at any time, subject to compliance with the formalities required by the last preceding section, vary or rescind any Resolution passed under either of sections 4 or 5 of this Law, and may at any time sell, exchange or let any land acquired under section 1 of this Law, or otherwise part with the possession thereof, wherether for value or not.

Variation of
Resolutions
and
dealings
with
acquired
land.

Notices to
be given
by the
Board.

8. (8) When a Resolution has been passed affecting any estate or interest in land under this Law, the Board shall give notice thereof in writing to all persons interested in the land concerned, or such of the said persons as shall, after diligent inquiry, be known to the Board, and by such notice shall demand from such persons the particulars of their estate and interest in such land, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the Resolution, and that the Board, acting on behalf of the States, are willing to treat in respect of compensation.

(2) All notices required by the last preceding sub-section to be served shall either be served personally on such persons, or left at, or sent through the post by registered letter to, their last known place of abode, or in the case of a corporation, its usual office of business, if any such can be found, or if any such person or office cannot be found after diligent inquiry, notice shall be published on at least two occasions in the "Gazette Officielle", and such publication shall constitute sufficient service of the notice on any such person.

Compensa-
tion.

9. If for twenty-one days after the service of such notice any person shall fail to state the particulars of his claim, or to treat with the Board in respect thereof, or if such person and the Board shall not agree as to the amount of the compensation, such amount shall be valued in accordance with the provisions of the Schedule to this Law, and the States shall compensate such person accordingly. In respect of land acquired under section 1 of this Law, interest calculated at the rate of three per centum per annum from the date of the Resolution giving rise to the claim for compensation shall be payable on any "rente" created as compensation under this Law until the redemption thereof, and on any outstanding sum of money agreed or awarded as compensation. Sums of money payable periodically shall bear interest at the like rate from the dates on which they respectively became payable.

10. In this Law and in the Schedule thereto, unless Interpretation.
the context otherwise requires—

the expression “the Board” means the States Board of Administration ;

the expression “claimants” means all the persons claiming compensation in respect of land or an interest in land affected by virtue of the provisions of this Law, other than persons who have accepted the compensation offered by the States, and the expression “claimant” shall be construed accordingly ;

the expression “land” includes houses and buildings, parts of houses or of buildings, land covered with water, highways and public and private rights of way and any easement or other right to use, or do work in relation to, land ;

the expression “public purposes” includes any purpose of public utility, and in particular includes any naval, military or air force purpose, or any civil defence purpose, and any educational or other charitable purpose, whether or not such purpose is or is intended to be carried out by a public authority ;

the expression “Royal Court” means the Royal Court sitting as an Ordinary Court.

11. The “Loi qui autorise l'Expropriation Forcée pour Cause d'Utilité Publique” registered on the Records of this Island on the 4th day of March, 1922, is hereby repealed: Repeal.

SAVE THAT such repeal shall not—

- (a) affect the previous operation of that Law or anything duly done or suffered thereunder ; or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder ; or
- (c) affect any proceeding already instituted thereunder ;

and any such proceeding may be continued as if this repeal had not been effected.

12. Ordinances may from time to time be made Power
for the enforcement of the provisions of this Law. to make
Ordinances.

SCHEDULE.

Assessment of Compensation.

1. (1) Where any question of disputed compensation required by this Law to be settled in accordance with the provisions of this Schedule shall have arisen, each party shall nominate and appoint in writing an arbitrator, to whom the dispute shall be referred. Every appointment of an arbitrator shall be made, on behalf of the States, by the President of the Board, and, on behalf of the claimants, by all the claimants or, failing agreement among them and notification of such agreement and of the name and address of the agreed arbitrator to the Law Officers of the Crown or either of them, within one month of the date of service of the last of the notices required by section 8 of this Law, then by the Royal Court on the application of the said Law Officers or either of them.

(2) The Law Officers of the Crown shall, before making application to the Court for the appointment by the Court of an arbitrator under the provisions of the last preceding sub-paragraph, cause to be published in the "Gazette Officielle" not less than one week prior to the date of the application, a notice of their intention so to apply, and of the intended date of application. At the making of any such application any interested party shall be entitled to be heard.

(3) If an appointment of an arbitrator be made by the claimants, that appointment shall be delivered to him, and the claimants shall not have power to revoke the same without the consent of the President of the Board, nor shall the death of any of the claimants operate as a revocation.

2. If before the matter referred to arbitration shall be determined any arbitrator appointed by either party or by the Royal Court die, or become incapable, or refuse or for seven days neglect to act, the party, or the Court, as the case may be, by whom that arbitrator was appointed, may nominate and appoint some other person to act in his place, and if for the space of seven days after notice in writing from the remaining arbitrator for that purpose no

appointment be made, the Royal Court shall make an appointment on the application of the remaining arbitrator; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability or refusal or neglect to act as aforesaid:

PROVIDED ALWAYS that a notice to be given under this paragraph to the Royal Court shall be given to the Law Officers of the Crown or either of them, who shall inform the Court thereof.

3. The arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they differ; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and if the arbitrators shall refuse or shall for seven days after request of either party to the arbitration neglect to appoint an umpire, the Royal Court, sitting as an Ordinary Court, shall, on the application of either party, appoint an umpire.

4. (1) The arbitrators shall sit and determine the matters referred to them—

(a) In the case of land affected by a Resolution under either section 1 or section 4 of this Law, subject to the provisions of clause (b) of sub-paragraph (2) of paragraph 9 of the Schedule, as soon as possible after their appointment;

(b) in the case of land affected by a Resolution under section 5 of this Law, at such times as they shall think fit, not being less often than once in every calendar year during which the land in question has been affected by the Resolution.

(2) In the cases referred to in clause (b) of the last preceding sub-paragraph, a separate award shall

be made in respect of each of the periods envisaged by that clause.

(3) If the arbitrators shall fail to make their award—

- (a) in the case of land affected by a Resolution under either section 1 or section 4 of this Law, within twenty-eight days after the last of such arbitrators shall have been appointed or as regards an arbitration in respect of a diminution of value caused during temporary possession, within twenty-eight days after the termination of that possession ; and
- (b) in the case of land affected by a Resolution under section 5 of this Law, within twenty-eight days after the termination of the period for which an award is to be made ;

or, in case there shall be a reference to the Royal Court under the provisions of paragraph 6 of this Schedule, then within twenty-eight days after the Royal Court shall have given its decision thereon, or if appeal be made from that decision, then within twenty-eight days after the decision of that appeal the matters referred to them may be determined by the umpire to be appointed as aforesaid.

5. The arbitrators or the umpire may call such witnesses as they or he may think necessary and may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

6. The decision of the arbitrators or of the umpire upon any question of fact shall be final and binding on the parties and the persons claiming under them respectively, but the arbitrators or the umpire, as the case may be, may, and shall at the request either of the President of the Board or of any of the claimants,

state at any stage of the proceedings, in the form of a special case for the opinion of the Royal Court, any question of law or of mixed law and fact arising in the course of the proceedings, and may state their or his award as to the whole or part thereof in the form of a special case for the opinion of the Royal Court.

7. The arbitrators, or the umpire, as the case may be, shall deposit their or his final award, in writing under their or his hand, with the Law Officers of the Crown, who shall cause the same to be registered in the *Livre des Contrats* at the Greffe.

8. Moneys payable under the provisions of this Law to any person who, whether by reason of absence from this Island or otherwise, is unable to give a valid receipt therefor, may be paid by the Board to His Majesty's Sheriff, who shall retain the same until those moneys shall be applied in payment to any party entitled thereto.

9. In assessing compensation, the arbitrators, or the umpire, as the case may be, shall act in accordance with the following rules:—

- (1) No allowance shall be made, save as in these rules provided, on account of the acquisition or injurious affection of the land being compulsory.
- (2) (a) The value of land acquired by virtue of a Resolution under Section 1 of this Law shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise, plus fifteen per centum of such amount.
- (b) Temporary possession taken by virtue of a Resolution under Section 4 of this Law shall be compensated as though the possession had been taken under a lease at a rent made between a willing Lessor and a willing Lessee, and fifteen per centum shall be added to the amount so found due. Compensation shall also be

payable in respect of any diminution in the value of the land caused by the States or any person holding under the States during such possession, and such compensation shall be assessed on the termination of such possession.

- (c) Any interference with an easement or a profit à prendre under Section 1 of this Law or with an interest in land under Section 5 of this Law shall be compensated to such an extent as shall reasonably recoup to the claimant any loss or expenditure attributable to the interference, but no account shall be taken of inconvenience not involving pecuniary loss or expenditure or depreciation in value to property.
- (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of powers granted by enactment, or for which there is no market apart from the special needs of a particular purchaser or the requirements of the States.
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.
- (5) Where land is, and but for the compulsory acquisition or disturbance, would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, in the case of an acquisition under Section 1 of this Law, if the arbitrators, or umpire, as the case may be, are or is satisfied

that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement, or in case possession is acquired under Section 4 of this Law, compensation shall be assessed on the basis of a letting to a Lessee intending to carry out a like purpose.

- (6) Compensation shall be assessed and paid in respect of any depreciation in value of any land retained by a person having land or an interest in land affected by the operation of this Law, provided that such depreciation is directly attributable to the parcelling of that person's land.
- (7) The provisions of rule (2) of this paragraph shall not affect the assessment of compensation for disturbance, loss of earnings or loss of goodwill, which assessment shall be separately made, and compensation paid accordingly in cash.
- (8) (a) The compensation payable in respect of the value of any land or interest in land acquired by the States under a Resolution in accordance with Section 1 of this Law shall be expressed in "rente" at the rate of one quarter of rente to each twenty pounds of the amount.
- (b) The "rente" so expressed—
 - (i) shall be payable by the States on the 10th day of October of each year at the rate of twelve shillings per quarter of rente commencing to accrue on the day after the date of the relevant Resolution ;
 - (ii) shall be redeemable by the States at any time at the rate of twenty pounds per quarter and upon payment of the proportion accrued in respect of the year then current at the time of such redemption ;

(iii) shall be redeemed by the States (payment of the proportion accrued to date in respect of the year then current being made at the time of such redemption) upon the States being required by the "créditiers" to redeem the same and upon clearance to the reasonable satisfaction of the States of the charges (if any) secured against such "rente".

(9) For the purposes of this paragraph the arbitrators or the umpire, as the case may be, shall be entitled to be furnished with such returns and assessments as they or he may require.

10. (1) Notwithstanding any of the provisions of paragraph 9 of this Schedule, German-altered properties which are acquired by the States during a period of three years from the commencement of this Law shall be acquired at a value equal to the total of the amounts calculated under the three following heads—

- (a) the price which would be payable as between a willing vendor and a willing purchaser at the date of acquisition, save that where a property or part thereof has increased in value by reason of work performed thereon, or on any land adjacent thereto, by or at the instance of the German authorities during the occupation of this Island, the increased value attributable to such work shall not be taken into account ;
- (b) the amount of any war damage grant in respect of the land not then paid ; and
- (c) a sum equal to fifteen per centum of the total of the amounts calculated under heads (a) and (b) hereof.

(2) For the purposes of this paragraph the expression "German altered properties" shall mean land on which work of a permanent nature was performed by or at the instance of the German authorities during the occupation of this Island, and land the character or value of which has been permanently and substantially altered since the 30th day of June, 1940, by reason of any such work performed on other land adjacent thereto.

11. (1) In any proceedings before the arbitrators or the umpire, as the case may be, not more than one expert witness on either side shall be heard unless the arbitrators or umpire, as the case may be, otherwise direct.

(2) The arbitrators or the umpire, as the case may be, shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

(3) The arbitrators or the umpire, as the case may be, and any person authorised by them or him, shall be entitled to enter on and inspect any land which, or an interest in which, is the subject of proceedings before them or him.

(4) Proceedings under this Schedule shall be heard by the arbitrators or the umpire, as the case may be, sitting in private, unless either party shall require the sitting to be in public.

(5) The fees to be charged in respect of proceedings before the arbitrators or the umpire, as the case may be, shall be such as may from time to time be prescribed by Ordinance.

(6) Subject as aforesaid, rules may from time to time be made by Ordinance regulating the procedure before arbitrators or before an umpire.

12. (1) Where the States have made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded to that claimant does not exceed the sum offered, the arbitrators or the umpire, as the case may be, shall, unless for special reasons they or he think proper not to do so, order

the claimant to bear his own costs and to pay the costs of the States so far as such costs were incurred after the offer was made.

(2) If the arbitrators or the umpire, as the case may be, are satisfied that a claimant has failed to deliver to the Board a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the Board to make a proper offer, the foregoing provisions of this paragraph shall apply as if an unconditional offer had been made by the Board at the time when in the opinion of the arbitrators or the umpire, as the case may be, sufficient particulars should have been furnished, and the claimant had been awarded a sum not exceeding the amount of such offer.

The notice of claim shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.

(3) Where a claimant has made an unconditional offer in writing to accept any sum as compensation, and has complied with the provisions of the last preceding sub-section, and the sum awarded is equal to or exceeds that sum, the arbitrators or the umpire, as the case may be, shall, unless for special reasons they or he think proper not to do so, order the Board to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4) Subject as aforesaid the costs of an arbitration under this Schedule shall be in the discretion of the arbitrators or the umpire, as the case may be, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and they or he may in any case disallow the cost of an advocate.

(5) The arbitrators or the umpire, as the case may be, shall tax the amount of costs ordered to be paid.

(6) Where the arbitrators or the umpire, as the case may be, order the claimant to pay the costs, or any part of the costs, of the Board, the Board may deduct the amount so payable by the claimant from the amount of the compensation payable to him.

(7) Without prejudice to any other method of recovery, the amount of costs ordered to be paid, or, in the case of costs payable to the Board, such part thereof as is not covered by such deduction as aforesaid, shall be recoverable by the Board or by the claimant, as the case may be, as a civil debt.

(8) For the purposes of this paragraph, costs include any fees, charges and expenses of the arbitration or award.

JAMES E. LE PAGE,

H.M. Greffier.