

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Compulsory Purchase (Alderney) Law, 1986

(Registered on the Records of the Island of Guernsey
on the 6th day of May, 1986.)



1986

V
1986

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of May, 1986 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:— Donald Pescott Plummer, Brian Ernest Herbert Joy, Esquires, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley and Leonard Arthur Moss, Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 26th March 1986 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Compulsory Purchase (Alderney) Law 1986", the Court, after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said *Projet de Loi* be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 26th day of March 1986

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 19th day of March 1986 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 of Jon Kay-Mouat, Esquire, President of the States of Alderney, setting forth:

‘That at a meeting of the States of Alderney held on the 13th day of December 1985 the States adopted a Resolution that a *Projet de Loi* entitled “The Compulsory Purchase (Alderney) Law, 1986” 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 might be graciously pleased to grant Your Royal Sanction to the *Projet de Loi* entitled “The Compulsory Purchase (Alderney) Law, 1986” 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 humble 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.

G. I. de Deney.

Projet de Loi referred to in the foregoing Order
in Council.

PROJET DE LOI

ENTITLED

The Compulsory Purchase (Alderney) Law, 1986

ARRANGEMENT OF SECTIONS

Section

1. Resolution to acquire land etc.
2. Notice to state a price.
3. Effect of notice under section 2.
4. Offer to sell etc.
5. Deemed agreement between States and vendor.
6. Reference to arbitration.
7. Notices following award.
8. Consequences of deemed agreement.
9. Compensation and restriction on further notices
if relevant interest not purchased.
10. Service of notices.
11. Power of entry and offence of obstruction.
12. Interpretation.
13. Repeals and savings.
14. Citation.
15. Commencement.

PROJET DE LOI

ENTITLED

The Compulsory Purchase (Alderney) Law, 1986

THE STATES, in pursuance of their Resolutions of the 16th day of December, 1983 and the 4th day of September, 1985 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.

Resolution to
acquire land
etc.

1. (1) Subject to subsection (2) of this section, the States may from time to time by resolution determine that it would be in the public interest for some specified public purpose—

- (a) to acquire by purchase any specified land;
or
- (b) to acquire by purchase an existing specified interest in or right over any such land; or
- (c) to acquire by creation a specified new interest in or right over any such land;

and this Law applies in any case in which the States, after the commencement thereof, pass such a resolution.

(2) A resolution under subsection (1) of this section shall not be passed unless—

- (a) the States have, at least 28 days before passing the resolution, served notice on the owner of the specified land, the person having the specified interest in or right over the land or the person having the power to grant the specified interest in or right over the land, as the case may be:

- (i) specifying the land, right or interest in respect of which the resolution may be passed and the public purpose in respect of which the States may determine that it would be in the public interest to acquire the land, right or interest; and
 - (ii) informing the person on whom the notice is served of the date of the meeting at which the States will consider whether to pass the resolution; and
 - (iii) stating that if that person, by notice served on the States at least two days before that meeting, gives written reasons for objecting to the passing of a resolution under subsection (1) of this section, those reasons will be read aloud at that meeting before the States consider whether to pass such a resolution; and
- (b) if the person on whom the notice under paragraph (a) of this subsection is served gives, in accordance with that paragraph, written reasons for objecting:
- (i) those reasons have been read aloud at the meeting of the States at which the resolution is passed; and
 - (ii) the States have given consideration to those reasons.
- (3) It is hereby declared for the avoidance of doubt that nothing in this Law affects the power of the States to enter into any agreement into which they could have entered apart from the provisions of this Law.

Notice to
state a price.

2. (1) In a case falling within paragraph (a) of section 1(1) the States may serve on the owner of the specified land notice requiring him to state in writing, within 28 days after the date of service of the notice on him, a price at which he will sell that land to the States.

(2) In a case falling within paragraph (b) of section 1(1) the States may serve on the person having the specified interest in or right over the land notice requiring him to state in writing, within 28 days after the date of service of the notice on him, a price at which he will sell that interest or right to the States.

(3) In a case falling within paragraph (c) of section 1(1) the States may serve on the person having the power to grant the specified interest in or right over the land notice requiring him to state in writing, within 28 days after the date of service of the notice on him, a price at which he will grant that interest or right to the States.

(4) In this Law—

- (a) a person on whom a notice under this section is served is referred to as “the vendor”;
- (b) the land, interest or right to which such a notice relates is referred to as “the relevant interest”.

Effect of
notice under
section 2 .

3. (1) The vendor may not, after service on him of a notice under section 2, make any valid disposition of the relevant interest until one of the conditions set out in subsection (3) of this section is satisfied.

(2) The Registrar shall, upon receiving a certificate from the Treasurer to the effect that the notice under section 2 has been served, note that fact in the Register against the entry relating to the land which comprises, or in or over which there exists or may be created, the relevant interest; and a note made in accordance with this subsection shall not be cancelled until, but shall be cancelled as soon as, one of the conditions set out in subsection (3) of this section is satisfied.

(3) The conditions referred to in subsection (1) and (2) of this section are either—

- (a) that a binding agreement is deemed, by virtue of section 5(1)(a), section 5(1)(b) or section 7(2), to have been entered into; or
- (b) that the States have served notice on the vendor under section 5(2) or section 7(1)(b) stating that they do not intend to purchase the relevant interest.

4. A price stated by the vendor in compliance with a requirement of a notice served on him under section 2 shall be an offer to sell or grant the relevant interest to the States at that price; and that offer shall remain open for acceptance by the States until the expiration of the period referred to in section 5(1)(a). Offer to sell etc.

5. (1) As soon as may be after service of a notice under section 2, the States shall obtain from a qualified person a valuation of the relevant interest, and— Deemed agreement between States and vendor.

- (a) if that valuation is not lower than the price stated by the vendor in compliance with a requirement of the notice, the States may,

by notice served on the vendor within eight weeks after service on him of the notice under section 2, accept his offer; and a binding agreement, under which the States and the vendor shall each pay their own costs, shall thereupon be deemed to have been entered into;

- (b) if that valuation is lower than the price so stated by the vendor, or if the vendor fails to state a price within the 28 days mentioned in section 2, the States may, by notice served on the vendor within eight weeks after service on him of the notice under section 2, offer to him the amount of valuation in respect of the relevant interest; and if the vendor, within one month after the service on him of such a notice, serves notice on the States stating that he accepts the States' offer, a binding agreement, under which the States and the vendor shall each pay their own costs, shall thereupon be deemed to have been entered into.

(2) If in any case the States do not serve notice on the vendor under either paragraph (a) or paragraph (b) of subsection (1) of this section, they shall, immediately upon the expiration of the period allowed for service of such a notice, serve notice on the vendor stating that they do not intend to purchase the relevant interest; and the provisions of section 9 shall thereupon have effect.

Reference to
arbitration.

6. (1) If in any case to which section 5(1)(b) applies the vendor does not accept the States' offer in the manner and within the period prescribed therein, the States shall, as soon as reasonably practicable

after the expiry of that period, serve on him notice to refer to arbitration under this section the value of the relevant interest.

(2) An arbitration under this section shall not be conducted by—

- (a) the President or a member of the States;
- (b) the person or a partner of the person who has made the valuation under section 5.

(3) The value of the relevant interest shall be determined by the arbitrator upon the footing of a sale by agreement between a willing vendor and a willing purchaser entered into on the date of the arbitrator's award.

(4) If the value determined by the arbitrator under subsection (3) of this section exceeds by more than 10 per centum the valuation obtained under section 5, the arbitrator shall add to that value the costs of the arbitration, including his own remuneration, and in any other case the arbitrator shall deduct those costs, including that remuneration, from the value so determined; and the amount of the arbitrator's award (in this Law called the "awarded price") shall be that value with the addition or after the deduction required by this subsection to be made.

(5) Section 30 of the Arbitration (Alderney) Law, 1983(a) (which applies certain provisions in Part I of that Law to statutory arbitrations) shall have effect in relation to an arbitration under this section subject to the modifications that—

(a) Ordre en Conseil No. XII of 1983.

- (a) sections 13, 16, 18 and 28 of that Law shall not apply; and
- (b) nothing in section 14 or section 26 of that Law shall be taken as derogating from section 7 of this Law.

Notices
following
award.

7. (1) The States shall, not later than six weeks after the final determination of the awarded price, serve notice on the vendor stating either—

- (a) that they agree to purchase the relevant interest at the awarded price; or
- (b) that they do not intend to purchase the relevant interest.

(2) If the States serve notice pursuant to paragraph (a) of subsection (1) of this section, a binding agreement shall thereupon be deemed to have been entered into.

(3) If the States serve notice pursuant to paragraph (b) of subsection (1) of this section, the provisions of section 9 shall thereupon have effect.

(4) For the purposes of this section the final determination of the awarded price shall be deemed not to have occurred until the expiration of the time allowed for any appeal or application to be made to the Court or, if in any particular case the Court or the Royal Court gives leave, for any appeal to the Royal Court.

Consequences
of deemed
agreement.

8. Where, by virtue of section 5(1)(a), section 5(1)(b) or section 7(2), a binding agreement is deemed to have been entered into at a specified time—

- (a) the States shall be deemed to have acquired that interest at that time but shall not be liable for any breach of covenant by the vendor before that time;

- (b) the States may enter upon the land which comprises, or in or over which there exists, the relevant interest, and may do all things necessary or expedient for the purposes of the resolution referred to in section 1;
- (c) the price under the agreement deemed to have been entered into under section 5 or, as the case may be, the awarded price shall be a debt due from the States to the vendor and shall carry interest from that time at the same rate as a judgment debt;
- (d) the Registrar shall, upon receiving a certificate from the Treasurer to the effect that the relevant interest has been acquired by the States, register the States as the transferee of the relevant interest or, as the case may be, note the relevant interest in the Register against the entry relating to the land in or over which the relevant interest exists;
- (e) the right of *retrait lignager* shall not be exercisable in respect of the relevant interest.

9. (1) This section applies to any case in which the States serve notice on a vendor under section 5(2) or under section 7(1)(b). Compensation and restriction on further notices if relevant interest not purchased.

(2) In a case to which this section applies the States shall, subject to subsection (3) of this section, be liable to pay to the vendor compensation for any loss or expense occasioned to him in consequence of the service on him of the notice under section 2.

(3) Nothing in subsection (2) of this section shall make the States liable to pay compensation to a vendor who failed to state a price as required by

a notice served under section 2 in respect of any expenses incurred by him after the expiration of the period of 28 days referred to in that section.

(4) The amount of any compensation payable under subsection (2) of this section shall, in default of agreement, be determined by arbitration; and subsection (2) of section 6 shall apply to such an arbitration as it applies to an arbitration under that section.

(5) In a case to which this section applies the States shall not without the consent of the vendor serve on him notice under section 2 in relation to the relevant interest until the expiration of three years after service on him of the notice under section 5(2) or section 7(1)(b), as the case may be.

Service of
notices.

10. (1) A notice required or permitted to be served under any provision of this Law shall be validly served—

- (a) on any person, if delivered to him, left, or sent by registered post or by recorded delivery service to him, at his usual or last known place of abode;
- (b) on a firm, if delivered to any partner of the firm, or left at, or sent by registered post or by recorded delivery service to, the principal or last known principal place of business of the firm;
- (c) on a body corporate, if left at or sent by registered post or by recorded delivery service to, its registered office if situate in Alderney or, if its registered office is not so situate, its principal or last known principal place of business in Alderney.

(2) A statement in writing required to be made by virtue of a notice served under section 2 shall be made by notice served on the States; and a notice required or permitted under any provision of this Law to be served on the States shall be served on the Clerk of the States and shall be validly served if delivered to him, left, or sent by registered post or by recorded delivery service to him, at the office of the Clerk of the States.

(3) If in any case the States, after making reasonable enquiries, are unable to ascertain the name of any person on whom they desire to serve a notice under this Law, or are for any other reason unable to serve a notice in accordance with subsection (1) of this section, any such notice shall be validly served if a copy of the notice is—

- (a) affixed to some conspicuous part of the land to which the notice relates; and
- (b) published on at least two occasions in *La Gazette Officielle*; and
- (c) affixed to the notice board outside the Court House;

and a notice served under this subsection shall be sufficient if it is addressed to the person having, or to the person having the power to grant, as the case may be, the relevant interest in the land (describing that interest and that land).

(4) If a person upon whom the States desire to serve a notice under this Law is an infant or a person under guardianship, that notice shall be served on the guardian of that person; and in any case in which there is no guardian the States may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

Power of
entry and
offence of
obstruction.

11. (1) For the purpose of obtaining a valuation pursuant to section 5(1) the States may authorise any qualified person, at any reasonable time and upon production if so required of his authority so to do,—

- (a) to enter on any land specified in the resolution referred to in section 1 or any land adjacent thereto;
- (b) subject to subsection (2) of this section, to carry out on any such land such surveys and tests as may be so authorised.

(2) The States shall be liable to pay compensation in respect of any damage occasioned by a qualified person acting pursuant to an authority granted to him by the States under subsection (1) of this section; and the amount of any compensation payable under this subsection shall, in default of agreement, be determined by an arbitration to which subsection (2) of section 6 shall apply as it applies to an arbitration under that section.

(3) Any person who wilfully obstructs or attempts to obstruct a qualified person acting pursuant to an authority granted to him by the States under subsection (1) of this section shall be guilty of an offence and liable, on conviction, to a fine not exceeding £100 or to imprisonment for a term not exceeding two months or to both.

Interpreta-
tion.

12. (1) In this Law, unless the context otherwise requires,—

“awarded price” has the meaning assigned by section 6(4);

“building”, when used in relation to acquisition includes the site and curtilage of the building;

- “Court” means the Court of Alderney;
- “land” includes buildings;
- “the Law of 1949” means the Alderney Land and Property, &c., Law, 1949(*b*);
- “owner” means, in relation to any land, the person who holds the freehold of that land;
- “the President” means the President of the States of Alderney;
- “qualified person” means a member of the Royal Institution of Chartered Surveyors;
- “the Register” means the Alderney Land Register compiled pursuant to Part III of the Law of 1949;
- “Registrar” means the person styled Land Registrar under section 13(2) of the Law of 1949;
- “relevant interest” has the meaning assigned by section 2(4)(*b*);
- “Royal Court” means the Royal Court of Guernsey sitting as an Appellate Court from the Court of Alderney;
- “the States” means the States of Alderney;
- “vendor” has the meaning assigned by section 2(4)(*a*).

(2) Any reference in this Law to any other enactment shall, unless the context otherwise requires, be construed as including a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

(*b*) Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; No. XXIV of 1984.

(*c*) Ordres en Conseil Vol. XIII, p. 355.

(3) Any reference in this Law to a numbered or lettered section, subsection or paragraph shall, unless the context otherwise requires, be construed as a reference to the section, subsection or paragraph which is so numbered or lettered in this Law.

(4) The Interpretation (Guernsey) Law, 1948(c) applies to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment.

Repeals and savings. 13. (1) Parts V and X of the Law of 1949 are repealed.

(2) Nothing in subsection (1) of this section affects the operation of any provision thereby repealed—

(a) in relation to any resolution passed by the States before the commencement of this Law;

(b) in relation to any agreement deemed to have come into existence or any awarded price fixed under the Law of 1949.

Citation. 14. This Law may be cited as the Compulsory Purchase (Alderney) Law, 1986.

Commencement. 15. This Law shall come into force at the expiration of one month following the date on which it is registered on the records of the Island of Guernsey.

D. J. ROBILLIARD,
Her Majesty's Deputy Greffier.