

ORDER IN COUNCIL

**VII
2012**

ratifying a Projet de Loi

ENTITLED

The Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010

(Registered on the Records of the Island of Guernsey
on the 2nd July, 2012.)



2012

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

2nd day of July, 2012 before Richard John Collas, Esquire, Bailiff; present:- Stephen Edward Francis Le Poidevin, Esquire, Susan Mowbray, David Osmond Le Conte, Esquire, Constance Helyar-Wilkinson, Terry George Snell, David Percy Langley Hodgetts L.V.O., Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache and David Allan Grut, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 30th May, 2012 approving and ratifying a Projet de Loi entitled “The Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order be registered on the records of this Island.

J. TORODE
Her Majesty’s Greffier



At the Court at Buckingham Palace

THE 30th DAY OF MAY 2012

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 24th June 2009, the States of Deliberation at a meeting on 28th April 2010 approved a *Projet de Loi* entitled the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Ceri King

PROJET DE LOI

ENTITLED

The Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010

THE STATES, in pursuance of their Resolution of the 24th June, 2009^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment to the 1949 Law.

1. The Compulsory Acquisition of Land (Guernsey) Law, 1949, as amended^b (hereinafter referred to as the "**1949 Law**") is further amended as follows.

2. In section 1 of the 1949 Law -

- (a) for "Where the States are", substitute "Subject to the procedures set out in Schedule 2 to this Law, where the Department is",

^a Article IX of Billet d'État No. XVI of 2009.

^b Ordres en Conseil, Vol. XIV, p. 25; Vol XVII, p.54.

- (b) for "they may by Resolution", substitute "it may by order (referred to in this Law as a "**compulsory purchase order**)",
- (c) immediately after "freed and discharged", insert "or, where the compulsory purchase order is temporary in nature, released temporarily",
- (d) for "Resolution", wherever appearing, substitute "compulsory purchase order", and
- (e) for "appoint", substitute "provide".

3. In section 4 of the 1949 Law -

- (a) for "Where the States are", substitute "Subject to the procedures set out in Schedule 2 to this Law, where the Department is",
- (b) for "they may by Resolution", substitute "it may by order (referred to in this Law as a "**temporary possession order**)", and
- (c) for "Resolution", wherever appearing, substitute "temporary possession order".

4. In section 5 of the 1949 Law -

- (a) for "Where the States are", substitute "Subject to the procedures set out in Schedule 2 to this Law, where the Department is",
- (b) for "they may by Resolution", substitute "it may by order (referred to in this Law as a "**control of use order**)",
- (c) for "in the Resolution", substitute "in the control of use order",
- (d) for "the States may by any such Resolution delegate to the Board", substitute "the Department may by any such control of use order delegate to the acquiring department",
- (e) for "the Board to prescribe", substitute "the acquiring department to stipulate", and
- (f) for "Board in the "Gazette Officielle"", substitute "the acquiring department in the "Gazette Officielle" or in any other local publication prescribed from time to time".

5. In the marginal note relating to section 6 of the 1949 Law, for "Resolution" substitute "Order".

6. In section 6 of the 1949 Law -

- (a) for "A", substitute "An",

- (b) for "Resolution", wherever appearing, substitute "Order",
- (c) for "President of the States", substitute "Minister", and
- (d) for "passing", wherever appearing, substitute, "making".

7. In the marginal note relating to section 7 of the 1949 Law, for "Resolutions" substitute "Orders".

8. For section 7 of the 1949 Law, substitute -

"7. The Department may at any time, subject to compliance with the formalities required by the last preceding section -

- (a) rescind any Order made under either of sections 4 or 5 of this Law,
- (b) and, subject to the procedures set out in Schedule 2 to this Law, vary any Order made under either of sections 4 or 5 of this Law, and
- (c) for and on behalf of the States, sell, exchange or let any land acquired under section 1 of this Law, or otherwise part with the possession thereof, whether for value or not."

9. In the marginal note relating to section 8 of the 1949 Law, for "Board" substitute "Department".

10. For section 8 of the 1949 Law, substitute -

"8. (1) As soon as may be after an Order has been made, the Department shall -

- (a) publish a notice in the "Gazette Officielle" or in any other local publication prescribed from time to time,
- (b) prominently affix a notice to a conspicuous object or objects in or near the land comprised in the Order, and
- (c) serve a notice to each qualifying person known to the Department after making diligent inquiry.

(2) The notice referred to in subsection (1) shall be in the prescribed form and shall -

- (a) describe the land,
- (b) state that the Order has been made,
- (c) state the particulars of the Order,
- (d) demand from any qualifying person the particulars of their estate and interest in such

land, and of the claims made by them in respect thereof,

- (e) state that the Department, acting on behalf of the States, is willing to treat for the purchase, possession or control of the land in the form of compensation,
- (f) name a place where a copy of the Order and the map or plan referred to therein may be inspected, and
- (g) state the existence of the right to appeal under section 19 of this Law.

(3) All notices required by subsection (1) to be served on any person shall either be served personally on such person, or left at, or sent through the post by registered letter to, their last known place of abode, in the case of a company, its registered office, or in the case of a partnership, its principal place of business, if any such can be found, or if any such person, office or place cannot be found after diligent inquiry, notice shall be published on at least two occasions in the "Gazette Officielle" or in any other local publication prescribed from time to time, and such publication shall constitute sufficient service of the notice on any such person."

11. In section 9 of the 1949 Law -

- (a) for "such notice", substitute "the notice referred to in section 8 of this Law",

- (b) for "Board", wherever appearing, substitute "Department",
- (c) for "the Schedule", substitute "Schedule 1",
- (d) after the phrase "Schedule 1 to this Law," insert "or if such person satisfies the criteria under section 17(1) of this Law, in accordance with section 17 of this Law,"
- (e) for "States" substitute "acquiring department", and
- (f) for "Resolution" substitute "compulsory purchase order".

12. In section 10 of the 1949 Law -

- (a) for "Schedule", substitute "Schedules",
- (b) the expression "the Board" is repealed,
- (c) in the definition of the expression "public purposes", after the words "any purpose of public utility", insert "and any purpose that will result in the physical, economic or social well-being of the community", and
- (d) insert the following definitions in the appropriate places alphabetically -

"the expression "**acquiring department**" means the department that will, on behalf of the States, acquire, take possession of, or take control of the use and/or access to, the land by way of an Order;"

"the expression "**chartered surveyor**" means a surveyor who is a member of the Royal Institution of Chartered Surveyors;"

"the expression "**child**" means a person under the age of 18 years;"

"the expression "**compulsory purchase order**" has the meaning given to it under section 1 of this Law;"

"the expression "**control of use order**" has the meaning given to it under section 5 of this Law;"

"the expression "**a department**" means any department, council or committee of the States, however styled;"

"the expression "**Department**" means –

- (a) the States Treasury and Resources Department when the acquiring department is a department other than the States Treasury and Resources Department, and
- (b) the States Policy Council when the acquiring department is the States Treasury and Resources Department;"

"the expression "**draft order**" means a draft compulsory purchase order, a draft temporary possession order, a draft control of use order or a draft variation order, as the case may be, made by the acquiring department under paragraph 1(1) of Schedule 2 to this Law;" ,

"the expression "**interim profits**" has the meaning given to it under section 18 of this Law;" ,

the expression "**Minister**" means -

- (a) the Minister of the States Treasury and Resources Department when the acquiring department is a department other than the States Treasury and Resources Department, and
- (b) the Chief Minister when the acquiring department is the States Treasury and Resources Department;" ,

"the expression "**Order**" means a compulsory purchase order, a temporary possession order, a control of use order or, as the case may be, a variation order;" ,

"the expression "**person under disability**" has the meaning given to it under section 16(1) of this Law;" ,

"the expression "**prescribed**" means prescribed by regulations of the States Treasury and Resources Department under this Law, and the expression "prescribe" shall be construed accordingly;" ,

"the expression "**publication**" means a publication in any media form, and includes a website;"

"the expression "**qualifying person**" means any person interested in any land comprised in a draft order or an Order including, without limitation, owners, lessees and occupiers (except lessees and occupiers under a lease of one month or less);"

"the expression "**Statement of Reasons**" has the meaning given in paragraph 1(2)(b) of Schedule 2 to this Law;"

"the expression "**subordinate legislation**" means any regulation, rule, rule of court, resolution, order (except for an Order), scheme, byelaw or other instrument made under any Law or Ordinance and having legislative effect;"

"the expression "**temporary possession order**" has the meaning given to it under section 4 of this Law;" and

"the expression "**variation order**" means an order to vary any Order passed under either of sections 4 or 5 or this Law."".

13. Immediately after section 12 of the 1949 Law, insert the following sections -

"General provisions as to Ordinances and subordinate legislation."

12A. (1) Any Ordinance, or subordinate legislation, under this Law -

- (a) may be amended, repealed or revoked by a subsequent Ordinance, or subordinate legislation, as the case may be, hereunder,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
- (c) may, without limitation, contain provision -
 - (i) subject to subsection (2), as to the creation of new liabilities, obligations, penalties and offences,
 - (ii) making consequential amendments to this Law and any other enactment, and
 - (iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by virtue of subsection (1)(c)(i) shall not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of any offence, of any term of

imprisonment or of a fine exceeding the limits of jurisdiction imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(3) Any power conferred by this Law to make any Ordinance, or subordinate legislation, 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, and
- (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, and

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Any subordinate legislation made under this Law shall be laid before a meeting of the States as soon as may be after being made and if at that meeting or the next subsequent meeting the States resolve that the legislation be annulled, the legislation shall cease to have effect but without prejudice to anything done under that legislation or to the making of new subordinate legislation.

Date of operation.

13. Subject to section 19 of this Law, an Order shall become operative on the date on which notice of the confirmation or making of the Order is first published in accordance with this Law.

Power to survey land.

14. (1) Subject to subsection (3), any person authorised by the Department may, upon receipt of the draft order from the acquiring department pursuant to paragraph 1 of Schedule 2 to this Law, at any reasonable time -

- (a) survey any land subject to a draft order, and
- (b) for the purpose of surveying any such land, enter on the land.

(2) The power to survey land conferred by subsection (1) includes -

- (a) the power to search, probe and bore on and in the land for the purpose of ascertaining the nature and constituents of the soil or any other prescribed purpose, and
- (b) the power to place and leave on the land, and remove, apparatus for the use of the survey in question.

(3) The Department must give the owners or occupiers of the land not less than fourteen days' notice of their intention to enter on, and survey the land, and such notice must include, if relevant, the Department's intention to search, probe or bore on or in the land and/or to place or leave apparatus on the land.

(4) The Department shall compensate the owners or occupiers of the land for any damage occasioned to them by the survey.

(5) Any dispute as to a person's entitlement to compensation in pursuance of subsection (4) or as to the amount of the compensation shall be determined by the Royal Court.

(6) Subject to subsections (3) and (10), where a person willfully obstructs or attempts to obstruct a person acting pursuant to the authority granted to him under subsection (1), the Royal Court may, on an application by the Department, issue a warrant authorising any representative of the Department to enter on and survey the land at any time within one month from the time of the issue of the warrant.

(7) The costs accruing by reason of the issue and execution of the warrant shall be paid by the person hindering the Department from exercising its powers to survey.

(8) Subject to subsections (3) and (10), a person commits an offence if without reasonable excuse he willfully obstructs or attempts to obstruct a person acting pursuant to the authority granted to him under subsection (1).

(9) A person guilty of any offence under subsection (8) is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(10) The Royal Court shall not exercise the power conferred by subsection (6) and a person shall not commit an offence under subsection (8) unless -

- (a) the period of appeal set out under section 19(3) of this Law has expired, or
- (b) the Royal Court confirms the decision of the Department under section 19(4) of this Law.

Power to enforce entry.

15. (1) Subject to subsection (6), where -

- (a) an Order has been made under this Law, and
- (b) the owner or occupier of any of that land, or any other person, refuses to give up possession

or control of it, or hinders the acquiring department, on behalf of the States, from entering on or taking possession of it,

the Royal Court may, on an application by the Department, issue a warrant to Her Majesty's Sheriff to deliver possession of such land to the person appointed in the warrant to receive it.

(2) On receipt of the warrant Her Majesty's Sheriff shall forthwith execute the warrant and deliver possession of any such land.

(3) The costs accruing by reason of the issue and execution of the warrant shall be paid by the person refusing to give possession, and where applicable, the amount of those costs shall be deducted and retained by the acquiring department from the compensation, if any, payable by the department to that person.

(4) Subject to subsection (6), a person commits an offence if without reasonable excuse he fails to give up possession or control of any land subject to an Order made under this Law.

(5) A person guilty of any offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(6) The Royal Court shall not exercise the power conferred by subsection (1) and a person shall not commit an offence under subsection (4) unless -

- (a) the period of appeal set out under section 19(3) of this Law has expired, or
- (b) the Royal Court confirms the decision of the Department under section 19(4) of this Law.

Children and persons under disability.

16. (1) Where the Department wishes, by way of an Order –

- (a) to acquire land, or an interest in land, or
- (b) to take possession or control of any land,

from a child or a person under any disability or incapacity who has no power or capacity to enter into, or carry out, an agreement in relation to compensation or to follow the procedures set out in this Law ("**person under disability**"), the Department shall make an application to the Royal Court for the appointment of a trustee, guardian or legal representative to act on behalf of the child or the person under disability.

(2) The Royal Court, in making any appointment under subsection (1), may give such directions with respect to the disposal, application or investment of any compensation payable under this Law as it deems necessary in order to secure the interests of the child or the person under disability.

Untraced, absent and non-compliant owners.

17. (1) Where a qualifying person –

- (a) cannot be found or identified by the Department after making reasonable enquiry,
- (b) has been found, but is unwilling to deal with the Department, or
- (c) has been found, but is prevented from dealing with the Department by reason of illness, absence or other circumstances,

the Department may apply to the Royal Court for an order of the court appointing a chartered surveyor to undertake a valuation of the amount of compensation to be paid in respect of the qualifying person's interest in the land.

(2) Within fourteen days after the amount of compensation has been determined under subsection (1), the Department shall -

- (a) pay into the Royal Court that amount which shall be placed to the credit of the qualifying person(s) interested in the land, giving their descriptions so far as the Department is in a position to do so, and
- (b) publish a notice in the "Gazette Officielle" or in any other local publication prescribed from time to time containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under

which, and the names, or where that is not reasonably practicable, a description, of the parties to whose credit, the payment into court was made.

(3) It shall be lawful for the Department to make an Order provided that the procedures set out in subsection (2) and, as far as reasonably possible, Schedule 2 to this Law, have been completed prior to the Order having been made.

(4) On the application of any person claiming any part of the amount paid into court under subsection (2), or of the land or any interest in the land in respect of which it was paid into court, the Royal Court may order its distribution according to the respective estates, titles or interests of the claimants, and may make such order as the court sees fit.

(5) If a person mentioned in subsection (1) is dissatisfied with the chartered surveyor's valuation he may, before applying under subsection (4) to the Royal Court for payment of the amount of any compensation paid into court, by notice in writing to the Department require the submission to the Royal Court of the question whether the amount paid into court was sufficient, and/or whether any and what further sum should be paid into court.

(6) If the Royal Court determines that the amount of compensation paid into court was insufficient and therefore awards a further sum, the acquiring department shall pay into court that further sum within fourteen days of the making of the award and, if they make default, that further sum shall be recoverable as a civil debt due to the person mentioned in subsection (1) from the acquiring department.

(7) The costs of, and incidental to, the proceedings before the Royal Court shall be in the discretion of the Royal Court.

(8) The chartered surveyor shall -

- (a) take account of the rules set out in paragraph 9 of Schedule 1 to this Law, and
- (b) have the same powers granted to the arbitrators and the umpire as set out in paragraphs 5, 9(9) and 11(3) of Schedule 1 to this Law,

when making his valuation under this section.

Interests omitted from purchase.

18. (1) Subject to subsection (3) if, after the acquiring department, on behalf of the States, has entered on any of the land subject to an Order, it appears that it has failed or omitted to purchase or to pay compensation for any estate, right or interest in that land the acquiring department shall remain in undisturbed possession of the land provided that within the time limited by subsection (2) -

- (a) it purchases or pays compensation for the estate, right or interest in the land, and
- (b) it also pays to any person who establishes a right to it, full compensation for the interim profits,

and the compensation shall be agreed or awarded and paid (whether to claimants or into court) in the manner in which, under this Law, it would have been agreed or awarded and paid if the acquiring department had purchased the estate, right or interest before entering on the land, or as near to that manner as circumstances permit.

(2) The time limit for the purposes of subsection (1) shall be -

- (a) six months after the acquiring department has notice of the estate, right or interest, or
- (b) if it is disputed by the acquiring department, six months after the right to the estate, right or interest is finally established by law in favour of the claimant.

(3) Subsection (1) shall only be applicable if the acquiring department has notice of the estate, right or interest within one year of the Order being made.

(4) In assessing compensation under this section, the value of the land, and of any estate or interest in the land, or any interim profits of the land, shall be taken to be the value at the time when the acquiring department, on behalf of the States, entered on the land, and without regard to any improvements or work made in or upon the land by the acquiring department, and as though the works had not been constructed.

(5) In this section, the expression "**interim profits**" means the profits or interest which would have accrued to the persons

concerned during the interval between the entry of the acquiring department and the time when the compensation is paid, so far as such profits or interest may be recoverable in any proceedings.

Right to appeal.

- 19.** (1) A person aggrieved by a decision of the Department -
- (a) to make a compulsory purchase order,
 - (b) to make a temporary possession order,
 - (c) to make a control of use order,
 - (d) to make a variation order,
 - (e) to survey the land, in which they have an interest, pursuant to section 14 of this Law, or
 - (f) such other class or description of decision as the States may by Ordinance determine,

may appeal to the Royal Court against that decision.

- (2) The grounds of an appeal under this section are that -
- (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

(a) within a period of twenty-eight days immediately following the date of the service or publication of the notice of -

(i) any order or decision of the Department described in subsection (1), or

(ii) any other class or description of decision as the States may by Ordinance determine under subsection (1)(f),

or such greater time as the Royal Court may allow, and

(b) by summons served on the Minister stating the grounds and material facts on which the appellant relies.

(4) On an appeal under this section the Royal Court may

either -

- (a) set the decision of the Department aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Department with such directions as the Royal Court thinks fit, or
- (b) confirm the decision of the Department, in whole or in part.

(5) On an appeal under this section the Royal Court may, upon the application of the appellant, and on such terms as the Royal Court thinks just, suspend or modify the operation of the condition, direction, notice, appointment or order in question, or the variation thereof, either generally or in so far as it affects any land of the appellant, pending the determination of the appeal.

(6) The Department may, where an appeal under this section is not determined by the Royal Court within a period of three months immediately following the date of the summons served on the appellant, apply to the Royal Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Royal Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Royal Court may direct), or
- (b) make such other order as the Royal Court considers just,

and the provisions of this subsection are without prejudice to the inherent

powers of the Royal Court or to any other rule of law empowering the Royal Court to dismiss the appeal or the application for want of prosecution.

(7) For the purposes of determining an appeal under this section, the Royal Court may appoint one or more assessors to assist it, and any such assessor may be a chartered surveyor.

(8) The Royal Court may make an order as to the costs of the proceedings as it sees fit.

Appeals to the Court of Appeal

20. A person aggrieved by a decision of the Royal Court on an appeal under section 19 of this Law may appeal to the Court of Appeal on a question of law."

14. In the Schedule -

- (a) for the heading "SCHEDULE" substitute "SCHEDULE 1",
- (b) insert "Sections 9, 16 and 17" below the heading "Assessment of Compensation",
- (c) in paragraph 1(1), for "President of the Board" substitute "Minister",
- (d) in paragraph 1(2) -
 - (i) immediately after "the "Gazette Officielle"", insert "or in any other local publication

prescribed from time to time", and

- (ii) for "interested party" substitute "qualifying person",
- (e) in paragraph 1(3), for "President of the Board", substitute "Minister",
- (f) in paragraph 2, immediately after "by either party or by the Royal Court", insert "shall",
- (g) in paragraph 4 -
 - (i) for "a Resolution", wherever appearing, substitute "an Order", and
 - (ii) for "Resolution", substitute "Order",
- (h) for paragraph 6, substitute -

"6. (1) The Minister or any of the claimants aggrieved by a decision of the arbitrators or the umpire, as the case may be -

- (a) to make an award,
- (b) in relation to the amount of the award, and/or
- (c) in relation to any question of law, fact or mixed law and fact arising in the course of proceedings,

may appeal to the Royal Court against that decision.

(2) The grounds of an appeal under this paragraph are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

- (a) within a period of twenty-eight days immediately following the date of the decision or such greater time as the Royal Court may allow, and
- (b) by summons served on the arbitrators or the umpire, as the case may be, stating the grounds and material facts on which the appellant relies.

(4) On an appeal under this section the Royal Court may

either-

- (a) set the decision of the arbitrators, or the umpire, as the case may be, aside and, if the Royal Court considers it appropriate to do so, remit the matter to the arbitrators, or the umpire, as the case may be, with such directions as the Royal Court thinks fit, or
- (b) confirm the decision of the arbitrators, or the umpire, as the case may be, in whole or in part.

(5) For the purposes of determining an appeal under this section, the Royal Court may appoint one or more assessors to assist it, and any such assessor may be a chartered surveyor.

(6) The Royal Court may make an order as to the costs of the proceedings as it sees fit.

(7) A person aggrieved by a decision of the Royal Court on an appeal under this paragraph of this Schedule may appeal to the Court of Appeal on a question of law.",

- (i) in paragraph 8, for "Board", substitute "acquiring department",
- (j) in paragraph 9, for "a Resolution", wherever appearing, substitute "an Order",
- (k) in paragraph 9(3), immediately after "for any purpose", insert "(other than the special suitability or

adaptability of the land for a person under disability)",

- (l) in paragraph 9(8)(b)(i), for "Resolution", substitute "Order",
- (m) in paragraph 9(8)(b)(ii), for "States", substitute "acquiring department",
- (n) paragraph 10 is repealed,
- (o) in paragraph 11(4), for "sitting in private, unless either party shall require the sitting to be in public", substitute "sitting in public, unless the arbitrators, or in the event that the arbitrators disagree, the umpire directs otherwise",
- (p) in paragraph 12(1), for "States have", substitute "Department has",
- (q) in paragraph 12(2), for "Board", wherever appearing, substitute "Department",
- (r) in paragraph 12(3), for "Board", substitute "States",
- (s) in paragraph 12(6), for "Board, the Board", substitute "States, the Department", and
- (t) in paragraph 12(7), for "Board", wherever appearing, substitute "States".

15. After Schedule 1, insert the following Schedule -

"SCHEDULE 2

Procedures

Sections 1, 4, 5, 7, 14 and 17

Draft order.

1. (1) The acquiring department shall submit -
 - (a) in the case of the proposed acquisition of land under Section 1 of this Law, a draft compulsory purchase order;
 - (b) in the case of the proposed temporary possession of land under Section 4 of this Law, a draft temporary possession order;
 - (c) in the case of the proposed control of use and/or access of land under Section 5 of this Law, a draft control of use order; or
 - (d) in the case of the proposed variation of an existing temporary possession order or control of use order under Section 7 of this Law, a draft variation order;

to the Department.

- (2) The draft order shall be in the prescribed form and shall -

- (a) describe by reference to a plan or map the land to which it applies;
- (b) contain a statement of reasons ("**Statement of Reasons**"), prepared by the acquiring department setting out a compelling case for the

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- (i) compulsory purchase of land and the public purpose or public purposes for which the land is proposed to be compulsorily purchased;
- (ii) temporary possession of land and the public purpose or public purposes for which the temporary possession of the land is required;
- (iii) control of use and/or access of land and the public purpose or public purposes for which the control of use and/or access of land is required; or
- (iv) variation of an existing temporary possession order or control of use order and the public purpose or public purposes which justify the proposed variation; and

- (c) contain any other information or document which may be prescribed from time to time.

(3) As soon as may be after the draft order has been prepared and submitted to the Department, and before the Order can be made by the Department, the Department shall comply with paragraphs 2 and 3 below.

Service of notice to qualifying persons.

2. (1) The Department shall serve a notice, in the prescribed form, on every qualifying person known to the Department after making diligent inquiry.

(2) The notice referred to in sub-paragraph (1) shall -

- (a) attach the draft order (including the Statement of Reasons);
- (b) state the effect of the draft order and that it is about to be made; and
- (c) specify the time (not being less than twenty-eight days from the date of service of the notice) within which, the person to whom, and the manner in which, written objections to the draft order can be made.

Publication and affixation of notice.

3. (1) The Department shall, during the period of two consecutive weeks -

- (a) publish a notice at least twice in the "Gazette Officielle" or in any other local publication prescribed from time to time; and
- (b) prominently affix a notice to a conspicuous object or objects in or near the land comprised in the draft order.

(2) The notice referred to in sub-paragraph (1) shall be in the prescribed form and shall -

- (a) be addressed to persons occupying or having an interest in the land;
- (b) state that an Order has been prepared in draft and is about to be made;
- (c) describe the land and state the purpose for which the land is required;
- (d) state where a copy of the draft order and map or plan referred to therein may be inspected; and
- (e) specify the time (not being less than twenty-eight days from the date of service of the notice) within which, the person to whom, and the manner in which, written objections to the draft order can be made.

Making an Order.

4. (1) The Department may, subject always to subparagraphs (2) and (3), either -

- (a) make an Order, with or without modification from the draft order; or
- (b) reject the draft order.

(2) In determining whether an Order should be made, the Department must -

- (a) examine each objection received by the Department;
- (b) examine the contents of the draft order (including the Statement of Reasons); and
- (c) have regard to any other document, information and/or factor prescribed by Ordinance from time to time.

(3) The Department shall not make an Order under this Law unless it -

- (a) believes that it is not reasonably possible to acquire, possess or control the use and/or access to, the land other than by way of an Order on the grounds that -

- (i) one of the circumstances set out in Section 17(1) of this Law exists; or
 - (ii) negotiations between a qualifying person and the Department have been unsuccessful;
- (b) believes that the land should be acquired, possessed or controlled by way of an Order, in order to fulfil a public purpose or public purposes;
- (c) believes that on balance the individual interest or interests are outweighed by the public purpose or public purposes; and
- (d) is satisfied that the proper notices have been published and served in accordance with paragraphs 2 and 3.

(4) As soon as the Department has reached a decision, it shall set out its decision and the reasons for its decision in a decision letter.

(5) The Department shall send, within five working days from the date of its decision, a copy of the decision letter referred to in sub-paragraph (4), to -

- (a) the acquiring department;

(b) every person who made an objection to the Department pursuant to paragraphs 2 and 3; and

(c) every qualifying person.

(6) An Order may be temporary or permanent in nature."

Interpretation.

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

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**1949 Law**" means the Compulsory Acquisition of Land (Guernsey) Laws, 1949, as amended^c, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

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

Citation.

17. This Law may be cited as the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010.

^c Ordres en Conseil, Vol. XIV, p. 25; as amended by Ordres en Conseil, Vol XVII, p.54.

Commencement.

18. This Law shall come into force on the date of its registration on the records of the Island of Guernsey.

J. TORODE,
Her Majesty's Greffier.

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