

# PROJET DE LOI

ENTITLED

## **The Compulsory Purchase (Alderney) Law, 1986 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Ordres en Conseil Vol. XXX, p. 156; as amended by the Uniform Scale of Fines (Alderney) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 306). See also the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Retrait Lignager (Abolition) (Alderney) Law, 2015 (No. \*\* of 2015); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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### ARRANGEMENT OF SECTIONS

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## **The Compulsory Purchase (Alderney) Law, 1986**

**THE STATES**, in pursuance of their Resolutions of the 16<sup>th</sup> day of December, 1983 and the 4<sup>th</sup> 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.

**Offer to sell etc.**

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).

**Deemed agreement between States and vendor.**

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 –

- (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<sup>a</sup> (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) 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.

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<sup>a</sup> Ordre en Conseil No. XII of 1983.



(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.

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**NOTE**

*In accordance with the provisions of the Retrait Lignager (Abolition) (Alderney) Law, 2015, section 1(1), with effect from 26th November, 2015 and subject to the provisions of section 1(3) of the 2015 Law, the right of redemption of real property ("droit de retrait lignager") is abolished.*

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**Compensation and restriction on further notices if relevant interest not purchased.**

**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).

(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.

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#### NOTES

*In accordance with the provisions of the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.*

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.*

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#### **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 [level 2 on the Alderney uniform scale] or to imprisonment for a term not exceeding two months or to both.

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**NOTE**

*In section 11, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Alderney) Law, 1989, section 2(2), with effect from 1st October, 1989.*

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**Interpretation.**

**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<sup>b</sup>,

**"owner"** means, in relation to any land, the person who holds the freehold of that land,

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<sup>b</sup> Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; No. XXIV of 1984.

**"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.

(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<sup>c</sup> applies to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment.

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

**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.

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**NOTE**

*The Law was registered on the Records of the Island of Guernsey on 6th May, 1986.*

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