

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Land Planning and Development (Guernsey) Law, 2005

(Registered on the Records of the Island of Guernsey
on the 23rd November, 2005.)



2005

**XVI
2005**

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 23rd day of November, 2005 before Richard John Collas, Esquire, Deputy Bailiff; present:– Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, Susan Mowbray and Barbara Jean Bartie, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 12th day of October, 2005, approving and ratifying the Projet de Loi entitled “The Land Planning and Development (Guernsey), Law, 2005”, 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 in Council be registered on the records of this Island.

At the Court at Buckingham Palace

The 12th day of October, 2005

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 the 22nd day of February 1952 the Committee have considered a Petition of the States of Guernsey:”

“That, in pursuance of their Resolutions of 27th January, 1993 the 27th June, 2002 and the 26th January, 2005, the States of Deliberation at a meeting on 26th January approved a Projet de Loi entitled The Land Planning and Development (Guernsey), Law, 2005, 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 Land Planning and Development (Guernsey), Law, 2005, 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.

G. C. Donald

PROJET DE LOI

ENTITLED

The Land Planning and Development (Guernsey) Law, 2005

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PROJET DE LOI

ENTITLED

The Land Planning and Development (Guernsey) Law, 2005

THE STATES, in pursuance of their Resolutions of the 27th January, 1993^a, the 27th June, 2002^b and the 26th January, 2005^c, 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.

PART I PRELIMINARY

Purposes of this Law.

1. (1) The purposes of this Law are to protect and enhance, and to facilitate the sustainable development of, the physical environment of Guernsey.

(2) In this regard the Law will seek -

(a) to protect and enhance the natural beauty and amenity of Guernsey's coasts, cliffs, countryside and other open spaces,

^a Article V of Billet d'État No. I of 1993.

^b Billet d'État No. XI of 2002.

^c Article I of Billet d'État No. I of 2005.

- (b) to protect and enhance Guernsey's heritage of buildings, monuments and sites of historic, architectural or archaeological importance,
- (c) to preserve and promote biological diversity,
- (d) to achieve quality in the design and implementation of development so as to respect Guernsey's historic, architectural and archaeological heritage and make a positive contribution to the built environment,
- (e) to maintain a balance between the competing demands of the community for the use of land,
- (f) to ensure that all development is carried out in a sustainable manner and in such a way as to achieve a safe and healthy living and working environment.

(3) With a view to achieving these purposes the Law will provide a framework within which development in Guernsey can be planned and regulated in accordance with the strategic policies of the States by -

- (a) the preparation and adoption of Strategic Land Use Plans, Development Plans and Subject Plans and Local Planning Briefs,
- (b) controlling the carrying on of building, engineering, mining and other operations and changes in the use of

land or buildings in the light of such Plans and Briefs,

- (c) applying special and additional controls in relation to areas, sites, buildings and operations of particular importance, interest, sensitivity or concern,
- (d) the preparation and adoption of building regulations.

Application of this Law by reference to its purposes and intent.

2. (1) It is the duty of any person exercising any function under this Law to do so in the light of, and with a view to achieving, its purposes.

(2) In particular, but without prejudice to the generality of subsection (1), no power conferred by or under this Law to make any Ordinance or regulations, give any guidance or enter any agreement may be exercised otherwise than for the purposes of this Law.

(3) The provisions of this section are in addition to the provisions of section 6.

PART II

STRATEGIC AND DEVELOPMENT PLANNING

CHAPTER 1

STRATEGIC LAND-USE PLANNING

Appointment of Strategic Land Planning Group.

3. (1) The Policy Council shall appoint a Strategic Land Planning Group, the members of which shall, subject to the provisions of any resolution under subsection (3), be nominated -

- (a) by the Policy Council,
- (b) by the Environment Department ("**the Department**"),
and
- (c) by any other States departments which appear to the
Policy Council to have significant responsibility in
relation to the environment.

(2) If it appears to the Strategic Land Planning Group to be expedient to do so, it may, subject to the provisions of any resolution under subsection (3), co-opt further members.

(3) The Policy Council shall by resolution determine the constitution of the Strategic Land Planning Group and such rules of procedure for the Group as it considers necessary or expedient; and the resolution may, without limitation, make provision as to -

- (a) the number of members who may be appointed
pursuant to nominations under subsection (1),
- (b) the number of members who may be co-opted under
subsection (2),
- (c) the terms of office and voting rights of any description
of members,
- (d) the appointment of the chairman and his alternate,

- (e) the quorum and other matters of procedure at meetings, and
- (f) the resignation and removal of members and casual vacancies.

Transition from Strategic and Corporate Plan to Strategic Land Use Plan.

4. (1) The Strategic and Corporate Plan shall become, on the commencement of this Law, the Strategic Land Use Plan.

(2) The Strategic Land Use Plan may from time to time be amended and replaced in accordance with the provisions of section 5.

Preparation of Strategic Land Use Plan.

5. (1) It is the duty of the Strategic Land Planning Group from time to time to consider -

- (a) the implications for land planning and use of the strategic, economic, social and environmental objectives for the time being set out in the Strategic Land Use Plan,
- (b) the general guidance and specific directions which should be given to the Department in the Strategic Land Use Plan concerning the exercise of any of its functions under this Law in any circumstances in which, in the opinion of the Strategic Land Planning Group, the exercise of those functions may affect the achievement of the objectives mentioned in paragraph (a), and

- (c) whether any alteration to the Strategic Land Use Plan is necessary.

(2) If -

- (a) it appears to the Strategic Land Planning Group that such an alteration is necessary, or
- (b) it is directed to do so by the Policy Council,

it must prepare a fresh draft Strategic Land Use Plan or draft amendments of that Plan (including such transitional provisions as appear to the Group to be appropriate) and submit the draft Plan or amendments to the Policy Council for the consideration of the States.

(3) The Policy Council must -

- (a) consider the draft so submitted,
- (b) determine whether in its opinion it is consistent with the States Policy and Resource Plan, and
- (c) lay the draft Plan or amendments before the States for their consideration, together with a statement of the Policy Council's opinion as to that consistency.

(4) The States may adopt any draft Plan or amendments laid before them under subsection (3), either without modification or subject to such modifications as they may approve, in accordance with any rules of procedure for

the time being in force.

(5) When preparing any draft Strategic Land Use Plan or any amendments to that Plan, the Strategic Land Planning Group -

- (a) must consult the Department in relation to any such guidance or directions as are mentioned in subsection (1)(b) and take its views into account, and
- (b) may consult any department of the States, individual, body or group.

CHAPTER 2

DEVELOPMENT PLANNING

Environment Department's general duties.

6. For the purposes of this Part, it is the duty of the Department -

- (a) to seek to achieve and, where they conflict, to balance, so far as possible, both the purposes of this Law and the objectives set out in the Strategic Land Use Plan,
- (b) to take into account the general guidance and specific directions given to it in the Strategic Land Use Plan in exercising the functions to which that guidance or those directions relate,
- (c) to keep under review the matters which may be expected to affect the planning of the development of Guernsey, and

- (d) from time to time, as required or authorised by or under this Law, to prepare for the consideration of the States Development Plans, Subject Plans and Local Planning Briefs and amendments of them.

Transition from current plans to Development Plans, Subject Plans and Local Planning Briefs.

7. (1) The Detailed Development Plans prepared under section 6 of the Island Development (Guernsey) Law, 1966^d and listed in Schedule 1 shall, subject to the following provisions of this Law, continue to have effect as they had effect immediately before the commencement of this Law, and shall be known as Development Plans.

(2) The outline planning briefs adopted by the States and listed in Schedule 1 shall, subject to the following provisions of this Law, continue to have effect as they had effect immediately before the commencement of this Law, and shall be known as Local Planning Briefs.

Preparation of draft Development Plans.

8. (1) It is the duty of the Department -

- (a) to secure that the whole of Guernsey is covered by a Development Plan or two or more such Plans taken together,
- (b) to keep those Plans under review,

^d Ordres en Conseil Vol. XX, p. 276; Vol. XXII, p. 573; Vol. XXIII, p. 231; Vol. XXVII, p. 355; Vol. XXXI, p. 61; Vol. XXXII, p. 33.

- (c) from time to time to consider whether any alteration to any of those Plans is necessary, and
- (d) if it appears that any such alteration is necessary, to prepare a fresh Development Plan or draft amendments of that Plan for the consideration of the States.

(2) A draft Development Plan must, in relation to the area covered by it, set out -

- (a) the Department's proposals for managing the physical environment with a view to facilitating the achievement of the objectives of the Strategic Land Use Plan, having regard to the implications for land planning of those objectives,
- (b) the Department's proposals and general policies -
 - (i) for controlling the development and use of land,
 - (ii) for protecting and enhancing the environment, and
 - (iii) where appropriate, for facilitating such development, use, protection or enhancement

by the promotion of planning covenants, and

- (c) any consequential or incidental amendments of any Subject Plan or Local Planning Brief which may be appropriate.

(3) A draft Development Plan must take into account all guidance and directions given to the Department in the Strategic Land Use Plan.

(4) A draft Development Plan must include at least one map of the area covered by it, sufficient to indicate where it is proposed that each of the proposals and policies set out in the Plan pursuant to subsection (2) will be implemented or applied.

Preparation of draft Subject Plans.

9. (1) The Department -

- (a) may at any time prepare a draft Subject Plan to address a particular issue or proposal affecting the development or use of land in Guernsey generally, and
- (b) must do so if required by a direction in the Strategic Land Use Plan.

(2) A draft Subject Plan must set out -

- (a) the Department's assessment of the planning implications of the issue or proposal concerned,
- (b) the Department's opinion as to the way in which any

planning matters relating to, or arising from, that issue or proposal can best be dealt with so as to achieve the purposes of this Law and the objectives of the Strategic Land Use Plan,

- (c) the Department's policies with regard to questions concerning that issue or the implementation of that proposal, and
- (d) any consequential or incidental amendments of any Development Plan or Local Planning Brief or amendments of any other Subject Plan which may be appropriate.

(3) A draft Subject Plan must take into account all guidance and directions given to the Department in the Strategic Land Use Plan.

Preparation of draft Local Planning Briefs.

10. (1) The Department -

- (a) may at any time prepare a draft Local Planning Brief to address planning issues within a locality generally or where a particular form of development is proposed, and
- (b) must do so if so required by the Strategic Land Use Plan, a Development Plan or a Subject Plan.

(2) A draft Local Planning Brief must set out the Department's proposals and policies for the locality concerned, as respects its development,

redevelopment, use or enhancement.

- (3) A draft Local Planning Brief must -
 - (a) take into account all guidance and directions given to the Department in the Strategic Land Use Plan,
 - (b) conform with the objectives of any Development Plan in respect of the locality and of any Subject Plan which is relevant to it, and
 - (c) in so far as they are relevant to the locality concerned and any neighbouring locality which the Department expects to be affected, take into account the matters mentioned in section 6(a) and (c).
- (4) A draft Local Planning Brief must include at least one map showing the locality covered by it.

Further provisions as to the contents of Development Plans, Subject Plans and Local Planning Briefs.

11. (1) A Development Plan or Subject Plan may designate any area as to which the Plan makes special provision, for the purpose of applying any provisions made by or under Part III or IV of this Law or otherwise.

(2) A Development Plan or Subject Plan may, in particular, make provision for the designation in the Plan of -

- (a) a "conservation area" which identifies an area which is of special architectural or historic interest and the

character or appearance of which it is desirable to preserve or enhance by the application of the special provisions in Chapter 3 of Part IV,

- (b) a "**site of special significance**" which identifies any place as having special significance (whether because of archaeological, historical, botanical, geological, scientific, cultural, zoological or any other interest) and which it is desirable to preserve, enhance or manage by the application of the special provisions in Chapter 4 of Part IV.

(3) The States may by Ordinance under this subsection make such provision as they consider appropriate as to the form, content and presentation of Development Plans, Subject Plans and Local Planning Briefs and related matters.

(4) Subject to sections 8(4) and 10(4) and any provisions made by or under this section, the form, content and presentation of a draft Development Plan, Subject Plan or Local Planning Brief (for example, whether it contains maps, diagrams, or illustrations in addition to written statements) are matters for the Department.

Procedure for examination, adoption and revision of Development Plans, Subject Plans and Local Planning Briefs.

12. (1) The States shall by Ordinance under this subsection make such provision as they consider appropriate in connection with the examination and adoption of Development Plans, Subject Plans and Local Planning Briefs and their duration and revision, and providing for a planning inquiry to be held in the case of each such Plan or Brief.

(2) An Ordinance under subsection (1) may, in particular, make provision for -

- (a) the submission of draft Plans or Briefs to the Strategic Land Planning Group and their certification as consistent with the Strategic Land Use Plan,
- (b) their publication,
- (c) the appointment of Inspectors,
- (d) the consideration of the draft Plans and Briefs and written representations about them by Inspectors and, subject to any matters for which provision is made by regulations under subsection (3), the manner in which planning inquiries are to be held by them and the making of reports by them to the Department,
- (e) the procedure for the laying of draft Plans and Briefs before the States,
- (f) the procedure for the consideration and adoption by the States of draft Plans and Briefs,
- (g) the procedure for the amendment of Plans and Briefs and the initiation of new Plans and Briefs, and
- (h) such consequential, transitional, incidental and supplementary matters as the States consider appropriate.

(3) The Department may by regulations under this subsection make such provision as it considers necessary or expedient in relation to -

- (a) the procedure to be adopted before a planning inquiry takes place,
- (b) the procedure to be adopted at a planning inquiry,
- (c) visits to sites affected by the subject-matter of a planning inquiry,
- (d) the powers of Inspectors at planning inquiries,
- (e) the making of reports by Inspectors to the Department,
- (f) such consequential, transitional, incidental and supplementary matters as the Department considers appropriate.

PART III

CONTROL OVER DEVELOPMENT

"Development"

Meaning of "development".

13. (1) Subject to the provisions of this section, **"development"** means -

- (a) the carrying out of building, engineering, mining or

other operations in, on, over or under land, and

(b) the making of any material change in the use of land.

(2) The following operations are included in subsection (1)(a) -

(a) the demolition of the whole or part of -

(i) a building, or

(ii) a wall, hedge, earthbank or other immovable structure,

(b) rebuilding,

(c) alterations of or additions to buildings which materially affect their external appearance,

(d) other operations normally undertaken by a person carrying on business as a builder,

(e) placing on land a moveable structure (for example, a caravan or portacabin),

(f) attaching to or painting or otherwise exhibiting on the exterior of any structure, or placing on land, an advertisement or sign.

(3) The following are material changes of use within subsection (1)(b) (if they would not otherwise be so) -

- (a) any use of land which was previously unused,
- (b) the resumption on any land of a use which has been abandoned,
- (c) any change in the use of land from a use specified in one use class to a use specified in a different use class,
- (d) an increase or decrease in the number of dwellings within a single building.

(4) The States may, by Ordinance under this subsection, make further provision as to the matters which are or are not to constitute development for any of the purposes of this Law.

(5) In particular, an Ordinance under subsection (4) may, in relation to descriptions of activities or circumstances specified in the Ordinance, provide that they are or are not to constitute development -

- (a) in any circumstances,
- (b) in such circumstances as are so specified, or
- (c) subject to such conditions or exceptions as are so specified.

(6) In this section "**use class**" means a class of uses identified as such by Ordinance of the States under this subsection, specifying the uses of land which fall into each such class for the purposes of this Law and for the purposes of

the descriptions used in the Strategic Land Use Plan and any Development Plan.

Planning permission

Requirement for planning permission.

14. Subject to the following provisions of this Part, planning permission is required for the carrying out of any development of land.

Grants of planning permission.

15. Planning permission or outline permission may be granted -

- (a) by the Department on an application duly made to it,
- (b) by Ordinance under section 49(2) or otherwise, or
- (c) on an appeal under section 68.

Applications for planning permission.

16. (1) Where an application for planning permission is duly made to the Department, the Department may -

- (a) grant the application either unconditionally or subject to conditions (including conditions limiting the period for which the permission is effective),
- (b) grant outline permission (that is, planning permission subject to the reservation of particular matters for subsequent approval) either unconditionally or subject to conditions,

- (c) refuse the application, or
- (d) in a case where subsection (2) applies, decline to consider the application;

but where the application is for outline permission or for permission for a limited period, only such permission may be granted.

(2) This subsection applies where -

- (a) within the period of six months ending with the date on which the application is received by the Department, another application has been refused by the Department or an appeal against the refusal of another application has been dismissed, and
- (b) in the opinion of the Department -
 - (i) that other application was in respect of land and development which are substantially the same as the land and development in respect of which the later application is made, and
 - (ii) there has been no significant change in any material circumstances since that refusal or dismissal.

(3) The States may by Ordinance under this subsection make further provision as to -

- (a) the conditions and reservations which may be imposed under subsection (1),
 - (b) the effect of a grant of outline permission,
 - (c) the effect of a grant of permission subject to conditions.
- (4) The grant or refusal of permission takes effect on the date of its issue.
- (5) In determining an application for planning permission or outline permission, the Department must have regard -
 - (a) to the purposes of this Law,
 - (b) subject to the provisions of section 77(9) (which relates to strategically essential development), to any relevant Development Plan, Subject Plan or Local Planning Brief, and
 - (c) to such matters relating to the purposes of this Law as may be specified by Ordinance of the States under this paragraph.
- (6) The States may by Ordinance under this subsection make such further provision as they consider desirable in connection with the making and determination of applications for planning permission or outline permission.
- (7) An Ordinance under subsection (6) may, in particular, make

provision about -

- (a) the publicity to be given to applications including, without limitation, the posting of site notices of applications in such manner and for such period as the Ordinance may provide,
- (b) the circumstances in which the Department may require that an application be accompanied by an assessment of the likely impact of the proposed development on any aspect of the environment, the manner in which such assessments should be made and any further requirements concerning them,
- (c) the arrangements to be made for the application and any documents accompanying it to be available for inspection by the public,
- (d) the procedure to be followed at any meeting of the Department at which an application is considered and, in particular, the requirement for any such meeting to be open to the public, and
- (e) the circumstances in which applications may be resubmitted for consideration.

Building regulations.

17. (1) The Department may make regulations ("**building regulations**") imposing requirements as to -

- (a) the design, construction, reconstruction, structural alteration, repair and maintenance of buildings and roads,
- (b) the planning and development of sites for buildings, and
- (c) the alterations or additions to any building, which are desirable in connection with a change of its use.

(2) Planning permission and outline permission under this Law are subject to the condition -

- (a) that the development to which they relate and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of the building regulations as are applicable to them, and
- (b) that no operation to which such a requirement applies may be commenced or continued unless -
 - (i) plans relating to the operation have been approved by the Department, and
 - (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Department when approving those plans, for the purpose of securing that the building

regulations are complied with.

(3) The States may by Ordinance under this section make provision as to -

- (a) the submission of such plans to the Department,
- (b) the information to be given by applicants,
- (c) the consideration and approval or rejection of such plans,
- (d) the effect and duration of such approvals,
- (e) without prejudice to the generality of paragraph (d), the manner in which requirements imposed under building regulations and approvals of plans in respect of operations affected by those requirements have effect in any case where requirements are also imposed in respect of those operations under any other enactments,
- (f) appeals against and reviews of the Department's decisions as respects the imposition of conditions under subsection (2)(b)(ii) (including matters corresponding to provision in relation to appeals made by or under Part VI or VIII of this Law),
- (g) such incidental, consequential and transitional matters as they think fit.

Effect of planning permission.

18. (1) Planning permission ceases to have effect unless the development permitted by it is commenced within a period of three years immediately following the date on which it is granted (or such shorter period as may be specified in the permission).

(2) Planning permission enures for the benefit of the land concerned and of every person for the time being having an interest in it.

(3) Any conditions subject to which planning permission is issued are enforceable in accordance with the provisions of Part V.

(4) Planning permission for the erection of a building is only permission to use it for the purpose specified in the permission or, subject to any restriction so specified, for any other purpose for which it is designed.

(5) Planning permission is only permission to carry out the development specified in it (subject to any conditions so specified), and does not imply the giving of any other approval or consent required under this Law or any other enactment or under any rule of law.

Completion notices.

19. (1) Where the development permitted by a planning permission is commenced within a period of three years immediately following the date on which it is granted (or such shorter period as may be specified in the permission), but the Department is of the opinion that the development will not be completed within a reasonable period, it may issue a notice ("**a completion notice**") stating that the permission will cease to have effect at the expiry of the period specified in the notice.

(2) That period must be at least 12 months immediately following the date on which the notice is issued and at the expiry of that period the permission becomes invalid, so far as the development which has not been carried out under it before the expiry of that period is concerned.

(3) A copy of the completion notice must be served within a period of 28 days immediately following the date of its issue -

- (a) on the owner of the land concerned,
- (b) on the occupier of that land, if he is not its owner, and
- (c) on every other person appearing to the Department to have an interest in that land which is materially affected by the notice.

Revocation and modification of planning permission.

20. (1) If -

- (a) the Department grants an application for planning permission, and
- (b) it later appears to the Department that by reason of any change in any matter to which it was required to have regard in determining the application for the grant of that permission, it would no longer grant the application,

it may revoke or modify that permission.

(2) A planning permission for a change of use may only be revoked or modified before the change has taken place.

(3) A planning permission for the carrying out of building or other operations may only be revoked or modified before those operations have been completed.

(4) Revocation or modification of a planning permission does not affect the lawfulness of anything already done.

(5) Where permission is revoked or modified under this section, the Policy Council shall, on the application of any person with an interest in the land (the "**complainant**"), appoint a person (the "**assessor**") to hear the complainant and the Department and to determine -

- (a) whether the complainant has suffered any loss or damage as a direct result of the revocation or modification, and
- (b) if so, the appropriate amount of compensation required fully to compensate him for that loss or damage;

and in determining the appropriate amount of compensation under paragraph (b) no account shall be taken of -

- (i) any depreciation in the value of the land resulting from the revocation or modification of permission except to the extent of any consideration paid by the complainant in good

faith for the conveyance of the land to him since the permission was granted, or

- (ii) any expenditure incurred, works carried out or other thing done by the complainant before the permission was granted.

(6) The assessor must be a person appearing to the Policy Council to be suitable, by reason of his qualifications and experience and his independence from the Department and from any person who may be entitled to compensation, to hear the parties and to make a determination under subsection (5).

(7) An appeal shall lie to the Royal Court on a question of law arising out of an assessor's determination under subsection (5); and on such an appeal the Royal Court may -

- (a) confirm, vary or set aside the determination, or
- (b) remit the determination to the reconsideration of the assessor together with the Royal Court's opinion on the question of law.

(8) If, on an application made by the complainant or by the Department, it appears to the Royal Court that a determination under subsection (5) is not or is not sufficiently reasoned, the Royal Court may order the assessor to state his reasons for the determination in sufficient detail to enable the Royal Court, should an appeal be brought under this section, to consider any question of law arising out of the determination.

(9) An appeal to the Royal Court under this section shall be made

within a period of 28 days after the date of the assessor's determination or within such extended time as the Royal Court may allow.

(10) A question of law arising in connection with a hearing and determination by an assessor under this section may, if the assessor thinks fit, be referred for decision to the Royal Court.

(11) An appeal on a question of law shall, with leave of the Royal Court or the Court of Appeal, lie to the Court of Appeal from any decision of the Royal Court under this section.

(12) The States may by Ordinance make further provision as to the appointment of assessors under subsection (5) and their determinations.

Register of applications for planning permission.

21. (1) The Department shall prepare and maintain a register -

- (a) of all applications for planning permission duly made to it, and
- (b) of all decisions made in relation to those application by the Department or any other body or person to whom functions in relation to those applications are given by or under this Law.

(2) The States may, by Ordinance under this subsection, make such provision concerning that register as they consider appropriate.

Planning status: use registration, certificates and opinions

Planning status: use registration, certificates and opinions.

22. (1) The States may, by Ordinance under this subsection, make provision -

- (a) for the registration of the existing use of any land, and
- (b) as to the effect of such registration for the purposes of this Law.

(2) The States may, by Ordinance under this subsection, make provision -

- (a) for applications to be made to the Department for it to give its opinion as to whether any proposed use of, or proposed building or other operations on, any land would constitute or involve development or require planning permission,
- (b) for applications to be made to the Department for it to issue a certificate -
 - (i) as to the lawfulness of any existing use or of any such operations which have been carried out or of any such proposed use or operations, or
 - (ii) as to whether any action or omission is one in respect of which any action may be taken under Part V of this Law,

- (c) as to the giving of such opinions and issuing of such certificates,
- (d) as to the effect of such opinions and certificates for the purposes of this Law or any provisions of it, and
- (e) for such incidental, consequential and transitional matters as they consider appropriate.

Planning covenants

Planning covenants.

23. (1) For the purposes of this Law, the owner of any land may, whether pursuant to an agreement made by the Department under this Law or otherwise, enter into a covenant ("**a planning covenant**") -

- (a) restricting the development or use of land in any specified way,
- (b) requiring specified operations or activities to be carried out in, on, under or over the land,
- (c) requiring the land to be used, maintained or managed in any specified way.

(2) A planning covenant may relate to land at more than one site and, in particular, restrictions or requirements relating to one site may relate to planning purposes connected with another site.

(3) A planning covenant -

- (a) may be entered into unconditionally or subject to specified conditions,
- (b) may impose any restriction or requirement either indefinitely or for such period as may be specified,
- (c) may be entered into for the benefit of any person or description of person (including the general public or any section of the general public) expressed in the covenant to be within its contemplation, and
- (d) may require a sum or sums to be paid to the States or any department of the States on a specified date or dates or periodically to meet -
 - (i) expenses incurred in undertaking public works which are required or desirable as a consequence of any development specified in the covenant, or
 - (ii) other public expenditure attributable to that development.

(4) A planning covenant may only be entered into by an instrument in writing registered at the Greffe in the Livre des Contrats which -

- (a) states that the covenant is a planning covenant for the purposes of this Law,

- (b) identifies the land which is subject to the covenant,
 - (c) identifies the person entering into the covenant as the owner of that land,
 - (d) identifies the person or description of persons for whose benefit the covenant is entered into and any organisation, body or other person by whom it is expressed to be enforceable, and
 - (e) sets out the restrictions and requirements undertaken pursuant to the covenant.
- (5) A planning covenant -
- (a) is not liable to assessment under the Document Duty (Guernsey) Law, 1973^e, and
 - (b) may not be registered in the Livre des Hypothèques, Actes de Cour et Obligations or noted in the index to it.

(6) The States may by Ordinance provide that planning covenants may be entered not only for the purposes of this Law but also for any other purposes specified in the Ordinance.

Enforcement of planning covenants.

^e Ordres en Conseil Vol. XXIV, pp. 74 and 236; Recueil d'Ordonnances Tome XXVI, p. 139; No. IX of 1997; No. XXII of 2000.

24. (1) Subject to subsection (4), a planning covenant is enforceable -

- (a) by the States (acting by and through the Department),
- (b) by any person who is mentioned by name or specific description in the covenant and for whose benefit it is expressed to be entered into, or
- (c) by any organisation, body or other person by whom it is expressed to be enforceable.

(2) A planning covenant is, subject to the provisions of this Law, enforceable in all respects as if it were a charged covenant under Part II of the Real Property (Reform) (Guernsey) Law, 1987^f and as if -

- (a) the land which is subject to the covenant were the servient tenement,
- (b) the person against whom it is enforceable were the owner of the servient tenement, and
- (c) the person seeking to enforce it were the owner of the dominant tenement.

(3) The persons against whom a planning covenant is enforceable are -

^f Ordres en Conseil Vol. XXX, p. 100.

- (a) the person entering into the covenant,
- (b) any person deriving title from that person in respect of his interest in any of the land subject to the covenant, and
- (c) any person deriving title under a person falling within paragraph (a) or (b), in respect of any lesser interest in that land,

and, in the case of a person falling within paragraph (b) or (c), the covenant is enforceable as if that person had also been an original covenanting party in respect of the interest for the time being held by him.

(4) A planning covenant may be expressed so as to cease to bind any person after he ceases to have an interest, or any specified interest, in the land.

Modification and discharge of planning covenants.

25. (1) A planning covenant may not be modified or discharged except -

- (a) by agreement between the interested parties, or
- (b) in accordance with subsections (4) to (7) and Part VI.

(2) For the purposes of subsection (1)(a), the interested parties are -

- (a) the States (acting by and through the Department),

- (b) every party to any agreement in pursuance of which the planning covenant is expressed to be entered into,
- (c) every relevant person for whose benefit the planning covenant is expressed to be entered into,
- (d) every person against whom the planning covenant is enforceable, and
- (e) any organisation, body or other person by whom it is expressed to be enforceable.

(3) A person is a relevant person for the purposes of subsection (2)(c) if -

- (a) he is mentioned by name or by specific description in the planning covenant, or
- (b) he falls within a description of persons mentioned in it and is to be treated as an interested party for the purposes of subsection (1)(a) in accordance with an Ordinance made by the States under this subsection.

(4) A person against whom a planning covenant is enforceable may at any time after the expiry of the period of five years beginning with the date on which the covenant is entered into (or such earlier time as the Department may allow) apply to the Department for the covenant -

- (a) to have effect subject to such modifications as may be specified in the application, or

(b) to be discharged.

(5) An application under subsection (4) for the modification of a planning covenant may not specify a modification imposing an obligation on any person against whom the covenant is enforceable (other than the applicant).

(6) Where an application is made to the Department under subsection (4), the Department may determine -

- (a) that the planning covenant shall continue to have effect without modification,
- (b) if the covenant no longer serves a useful purpose, that it shall be discharged, or
- (c) if the covenant continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(7) Before making a determination within subsection (6)(b) or (c), the Department must take reasonable steps to consult -

- (a) all parties to any agreement pursuant to which the planning covenant is expressed to be entered into (other than the applicant),
- (b) every person mentioned by name or by specific

description for whose benefit the planning covenant is expressed to be entered into,

- (c) any person (other than the applicant) against whom the planning covenant is enforceable, and
- (d) any organisation, body or other person by whom the planning covenant is expressed to be enforceable.

Modification of planning covenants: supplemental provisions.

26. (1) Where -

- (a) the Department determines that a planning covenant shall have effect subject to modifications specified in an application made under section 25, or
- (b) a modification is agreed in accordance with section 25,

the covenant as so modified shall be registered in the Livre des Contrats at the Greffe and, as respects any acts or omissions after the time when it is so registered, shall be enforceable in all respects in place of the original covenant in accordance with section 24(2).

(2) For the avoidance of doubt -

- (a) section 25 and this section shall apply in substitution for Part III of the Real Property (Reform) (Guernsey) Law, 1987^g (the provisions of which Part shall not

^g Ordres en Conseil Vol. XXX, p. 100.

apply to planning covenants),

- (b) a planning covenant may lawfully restrict or modify the application of section 25 and this section.

(3) The States may by Ordinance under this subsection make such provisions as they consider desirable in connection with the making and determination of applications under section 25, including provision for appeals.

Searches in respect of properties

Searches in respect of properties.

27. (1) The States may, by Ordinance under this subsection, make such provision as they consider appropriate in connection with permitting access by specified persons to information relating to planning matters held by the Department.

(2) An Ordinance under subsection (1) may, in particular, make provision for -

- (a) the maintenance by the Department of registers or other means of collating and storing planning information about properties,
- (b) the persons to whom access to some or all of that planning information may be permitted,
- (c) the times and places at which persons are able to

search that planning information,

- (d) the weight that can be placed on any planning information available for search, and
- (e) such consequential, transitional, incidental and supplementary matters as the States consider appropriate.

Development Control Ordinances

Development Control Ordinances: exemptions and supplementary provision.

28. (1) The States may, by Ordinance under this subsection, specify descriptions of development which may, notwithstanding any other provision of this Law, be carried out without planning permission -

- (a) in any circumstances,
- (b) in such circumstances as are so specified,
- (c) subject to such conditions or exceptions as are so specified,
- (d) either throughout Guernsey or in such areas thereof as are so specified.

(2) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may provide that development may be carried out without planning permission if any aspect of the development specified in the Ordinance has been approved by any department of the States or any other person

appearing to the States to be appropriate and so specified.

(3) The States may, by Ordinance under this subsection, make such provision as appears to them to be desirable in connection with the provisions of this Part of this Law and to supplement this Part.

PART IV SPECIAL CONTROLS

CHAPTER 1 MONUMENTS AND ARCHAEOLOGICAL SITES

The protected monuments list.

29. (1) The Department shall prepare, maintain and keep under review a list, to be known as "**the protected monuments list**", of such monuments, structures, artefacts, caves, ruins or remains (whether on or below the surface of any land) as in its opinion should, as a matter of public importance, be preserved by reason of their archaeological, historic, traditional, artistic or other special interest.

(2) The Department may insert, amend or delete any entry on the list at any time if in its opinion it is appropriate to do so.

(3) The States may by Ordinance under this subsection make provision as to -

- (a) the manner and form in which the list is to be kept,
- (b) the information to be included in it and, in particular, the area to be regarded as part of the monument, structure, artefact, cave, ruins or remains for the

purposes of this Chapter,

- (c) the publicity to be given to the listing of any monument, structure, artefact, cave, ruins or remains, or to any amendment or deletion of any entry on the list,
- (d) the effect of listing under this section as respects any permission, approval or consent previously granted under this Law and anything taking place by virtue of it, including the payment of compensation for consequential loss, and
- (e) such other matters relating to listing under this section as they consider appropriate.

(4) The States shall by Ordinance under this subsection make such provision as they consider appropriate for appeals to be brought against the listing, or amendment of the listing, of any monument, structure, artefact, cave, ruins or remains, including, in particular, provision as to -

- (a) the persons who may bring such appeals,
- (b) the procedure to be adopted for such appeals, and
- (c) such other matters corresponding to provision made by or under Part VI or VIII of this Law as they consider appropriate.

(5) If it appears to the States that it is appropriate that this

Chapter should apply to anything which could not otherwise be listed under this section, they may by Ordinance under this subsection modify subsection (1) so as to enable it to be listed and make such other consequential amendments as they consider appropriate.

General functions of authorities as respects protected monuments.

30. (1) It is the duty of any department of the States when exercising its functions under this Law -

- (a) to secure so far as possible that monuments, structures, artefacts, caves, ruins and remains listed on the protected monuments list ("**protected monuments**") are protected and preserved, and
- (b) in particular, in exercising its functions with respect to any buildings or other land in the vicinity of a protected monument, to pay special attention to the desirability of preserving the protected monument and its setting.

(2) Subsection (1)(a) is not to be construed as preventing any alteration which is for a purpose connected with enabling or facilitating access to, or enhancing appreciation of, a protected monument by the public.

Further controls and powers as respects protected monuments, etc.

31. (1) There is a strong presumption against planning permission being granted for any development affecting a protected monument.

(2) The States may by Ordinance under this subsection -

- (a) provide that the carrying out of any activity specified in the Ordinance which would not otherwise constitute development does so where it affects or may affect a protected monument,
- (b) provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any activity which is only development by virtue of paragraph (a)), does so where it affects or may affect a protected monument,
- (c) provide for the execution of works for the protection and preservation of protected monuments and the recovery of the costs of such works when executed by or on behalf of the Department,
- (d) provide for the circumstances in which the Department may undertake the compulsory acquisition of any protected monument which in its opinion is seriously at risk of damage or deterioration, and the basis of the compensation payable in the event of such an acquisition, and
- (e) make provision for the reporting and recording of finds of archaeological or historic significance which are -
 - (i) made at or in the vicinity of any protected monument, or

- (ii) likely to be a material consideration in determining whether any monument, structure, artefact, cave, ruin or remain becomes a protected monument or any site is designated as a site of special significance.

(3) The States may by Ordinance under this subsection provide for the Department to make grants or loans to assist with expenditure which has made or will make a significant contribution towards -

- (a) the preservation or enhancement of a protected monument or its setting, or
- (b) the archaeological investigation or recording of a protected monument or land in the vicinity of such a monument.

(4) The Department may issue guidance as to the matters which will be taken into account by the Department for the purposes of this Chapter and the manner in which it proposes to exercise its functions under it.

(5) Subsection (2)(a) and (b) is without prejudice to sections 13(4) and (5) and 28.

Damage to protected monuments, etc.

32. (1) A person who -

- (a) destroys or damages the whole or any part of a protected monument,

- (b) disturbs the ground on, under or over a protected monument or within an area which is specified under section 29(3)(b),
- (c) removes, destroys or damages any item found at, under or over such a monument or within such an area,
- (d) causes or permits any such act as is described in paragraph (a), (b) or (c),

is guilty of an offence.

(2) It is a defence in proceedings for an offence under subsection (1) to prove that the Department has consented in writing to the action which would otherwise constitute the offence.

(3) A person guilty of an offence under this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding 10 times level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

CHAPTER 2

BUILDINGS OF SPECIAL INTEREST

The protected buildings list.

33. (1) The Department shall prepare, maintain and keep under review a list, to be known as "**the protected buildings list**", of buildings with special historic, architectural, traditional or other interest, the preservation of whose character as such is in its opinion a matter of public importance.

(2) In considering whether or not to list any building, the Department may take into account -

- (a) any way in which the exterior of the building contributes to the historic, architectural, traditional or other interest of any group of buildings of which it forms part,
- (b) the desirability of preserving any feature of the building (whether internal or external) consisting of a man-made object or structure fixed to the building or forming part of the land in the vicinity of the building.

(3) The Department may insert, amend or delete any entry on the list at any time if in its opinion it is appropriate to do so.

(4) The States may by Ordinance under this subsection make provision as to -

- (a) the manner and form in which the list is to be kept,
- (b) the information to be included in the list,
- (c) the publicity to be given to the listing of any building

or to any amendment or deletion of any entry on the list,

- (d) the effect of listing under this section as respects any permission, approval or consent previously granted under this Law and anything taking place by virtue of it, including the payment of compensation for consequential loss, and
- (e) such other matters relating to listing under this section as they consider appropriate.

(5) Such an Ordinance may also make provision for the preservation with a protected building of objects not forming part of it.

(6) The States shall by Ordinance under this subsection make such provision as they consider appropriate for appeals to be brought against the listing, or amendment of the listing, of any building, including in particular, provision as to -

- (a) the persons who may bring such appeals,
- (b) the procedure to be adopted for such appeals, and
- (c) such other matters corresponding to provision made by or under Part VI of this Law as they consider appropriate.

(7) If it appears to the States that it is appropriate that this Chapter should apply to anything which could not otherwise be listed under this

section, they may by Ordinance under this subsection modify subsection (1) so as to enable it to be listed and make such other consequential amendments as they consider appropriate.

General functions of authorities as respects protected buildings.

34. It is the duty of any department of the States when exercising its functions under this Law -

- (a) to secure so far as possible that the special historic, architectural, traditional or other special characteristics of buildings listed on the protected buildings list ("**protected buildings**") are preserved, and
- (b) in particular, in exercising its functions with respect to a protected building or any other building or land in the vicinity of a protected building, to pay special attention to the desirability of preserving the protected building's special characteristics and setting.

Further controls and powers as respects protected buildings.

35. (1) There is a strong presumption against planning permission being granted for any development which -

- (a) involves the demolition or destruction of or of any part of a protected building, or
- (b) adversely affects its special character or features.

(2) The States may by Ordinance -

- (a) provide that the carrying out of any work specified in the Ordinance which would not otherwise constitute development does so where it affects or may affect -
 - (i) a protected building,
 - (ii) the setting of a protected building, or
 - (iii) any object as respects the preservation of which an Ordinance under section 33(5) has made provision,
- (b) provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any work which is only development by virtue of paragraph (a)), does so where it affects or may affect a protected building,
- (c) make provision as to the execution of works for the protection and preservation of protected buildings and the recovery of the costs of such works when executed by or on behalf of the Department,
- (d) provide for the circumstances in which the Department may undertake the compulsory acquisition of any protected building which in its opinion is seriously at risk of damage or deterioration or the special character of which is seriously at risk, and the basis of the compensation payable in the event of such an

acquisition,

(e) provide for the reporting and recording of finds of historic significance which are -

(i) made at or in the vicinity of any protected building, or

(ii) likely to be a material consideration in determining whether any building becomes a protected building.

(3) The Department may issue guidance as to the matters which will be taken into account by it for the purposes of this Chapter and the manner in which it proposes to exercise its functions under it.

(4) Subsection (2)(a) and (b) is without prejudice to sections 13(4) and (5) and 28.

Schemes, grants and loans.

36. (1) The Department may -

(a) enter into such agreements, and

(b) promote or participate in such schemes,

as it considers appropriate for the purpose of assisting in the preservation and enhancement of protected buildings and their settings.

(2) Without prejudice to the generality of subsection (1), the

Department may make grants or loans to assist with expenditure which has or will make a significant contribution towards the preservation or enhancement of a protected building or its setting.

(3) Such grants and loans may be made on such terms as the Department considers appropriate.

(4) The States may by Ordinance under this section make such further provision concerning such agreements, schemes, grants and loans as they consider appropriate.

Damage to protected buildings.

37. (1) If any person -

- (a) does any act which causes or is likely to result in any damage to a protected building, or
- (b) causes or permits any such act to be done,

he shall be guilty of an offence.

(2) It is a defence in proceedings for an offence under subsection (1) to prove that the Department has consented in writing to the action which would otherwise constitute the offence.

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

- (a) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding 10 times level 5 on the uniform scale, or to both,

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

(4) Subsection (1) does not apply to any act which constitutes development authorised by planning permission or which is necessarily incidental to such development.

CHAPTER 3 *CONSERVATION AREAS*

General functions of authorities as respects conservation areas.

38. (1) In the exercise, with respect to any buildings or other land in a conservation area, of any powers under this Law or any other enactment, special attention shall be paid to the desirability of preserving and enhancing the character and appearance of that area.

(2) The Department may from time to time -

- (a) formulate and publish proposals for the preservation and enhancement of the character and appearance of the whole or part of any conservation area, and
- (b) set up schemes as it considers appropriate for encouraging such preservation and enhancement.

(3) The States may by Ordinance under this section -

- (a) provide for the Department to make grants or loans to assist with expenditure which has made or will make a

significant contribution towards such preservation and enhancement, and

- (b) make such other provision as they consider appropriate in connection with the exercise of functions as respects such areas.

Further controls and powers in conservation areas.

39. (1) The States may by Ordinance -

- (a) provide that the carrying out of any work specified in the Ordinance which would not otherwise constitute development does so where it is carried out in a conservation area,
- (b) provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any work which is only development by virtue of paragraph (a)), does so where it is carried out in a conservation area,
- (c) make provision indicating the manner in which any discretionary power exercisable under this Law will usually be exercised in relation to such an area (for example, by providing that there is a presumption against any change taking place there),
- (d) provide for the execution of works, whether for the preservation of buildings or other structures or otherwise, in conservation areas and the recovery of

the costs of such works.

(2) The Department may issue guidance as to the matters which will be taken into account by the Department for the purposes of this Chapter and the manner in which it proposes to exercise its functions under it.

(3) Subsection (1)(a) and (b) is without prejudice to sections 13(4) and (5) and 28.

CHAPTER 4

SITES OF SPECIAL SIGNIFICANCE

Control of development, etc. on sites of special significance.

40. (1) In the exercise, with respect to any buildings or other land in a site designated as a site of special significance, of any powers under this Law or any other enactment, special attention shall be paid to the desirability of preserving, enhancing and managing the character, appearance and environment of the site or any feature or interest of the site by reason of which it was so designated.

(2) The Department may from time to time -

- (a) formulate and publish proposals for the preservation, enhancement and management of the character, appearance and environment of the whole or part of any site of special significance, and
- (b) set up schemes as it considers appropriate for encouraging such preservation, enhancement and management.

(3) Without prejudice to section 13(4) and (5), the States may by Ordinance under this subsection provide that the carrying out of any activity specified in the Ordinance which would not otherwise constitute development does so where it is carried out on any site of special significance or on a site of special significance which is so designated by reason of any particular description of feature or interest.

(4) Without prejudice to section 28, the States may by Ordinance under this subsection provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any activity which is only development by virtue of subsection (3)), does so where it is carried out on such a site.

(5) In considering an application for planning permission for development on a site of special significance or development which may affect such a site, the Department must have regard to the desirability of requiring an assessment of the likely impact of the proposed development on any aspect of the environment, unless it is satisfied that the development is of a minor nature and is incapable of having a significant adverse effect on the quality of the environment, the use of natural resources or biological diversity.

Further powers in relation to sites of special significance, etc.

41. (1) The States may, by Ordinance under this subsection -

(a) prohibit any operations which appear to them to be likely to involve a risk of damage to any feature or interest of sites of special significance -

(i) generally, or in relation to all such sites so designated for any specified feature or interest,

or in relation to a specified site of special significance, and

(ii) in all circumstances or in specified circumstances,

(b) provide for the carrying out of any such operations to constitute an offence, and

(c) make such incidental, consequential and transitional provision as they consider appropriate.

(2) The States may by Ordinance under this subsection make provision as to -

(a) the circumstances in which the Department may undertake the compulsory acquisition of land which is designated (whether alone or together with other land) as a site of special significance, and

(b) the basis of the compensation payable in the event of such an acquisition.

(3) The States may by Ordinance under this subsection make provision enabling the Department in cases of urgency to take such steps as it considers are required for the purpose of protecting or preserving something of archaeological, botanical, geological, scientific, cultural, zoological or other special interest in any place, which is not designated as a site of special significance, but which it considers should be so designated for that purpose.

CHAPTER 5
TREES

General functions of authorities as respects trees.

42. It is the duty of any department of the States when exercising its functions under this Law -

- (a) to secure so far as possible that existing trees are protected and, where appropriate, that new trees are planted and protected, and
- (b) in particular, in exercising its functions with respect to any buildings or other land in the vicinity of a tree or land subject to an order under section 43, to pay special attention to the desirability of protecting that tree or land.

Tree protection orders.

43. (1) If it appears to the Department that in the interests of amenity it should provide for the protection of any tree, group or area of trees or woodlands, it may make an order (a "**tree protection order**") under this section.

(2) A tree protection order -

- (a) may be made in relation to a tree or group or area of trees which has not been planted when the order is made, but which is required to be planted by a condition subject to which planning permission is granted, a requirement in a planning covenant or an obligation to replant arising under Part V, and

(b) must specify either the tree or the group or area of trees to be protected under it or the land where the tree, group, area or woodland is situated or is to be planted.

(3) A tree protection order takes effect at the time it is made.

(4) The Department may at any time by order revoke a tree protection order from such date as may be specified in the order, which may be earlier than the date on which the order is made.

(5) The States may, by Ordinance under this subsection, make provision as to -

(a) the publicity to be given to the making of orders under this section,

(b) the making of objections to the making of a tree protection order.

Control of development, etc. as respects protected trees.

44. (1) Without prejudice to section 13(4) and (5), the States may by Ordinance provide that -

(a) the cutting down, topping, lopping, uprooting or destruction of any tree which -

(i) is specified in a tree protection order,

- (ii) is part of a group or area of trees or woodland which is so specified, or
 - (iii) is situated on land so specified, or
- (b) the carrying out of any other activity specified in the Ordinance to, or in the vicinity of, such a tree or on such land,

constitutes development.

(2) Without prejudice to section 28, the States may by Ordinance provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any activity which is only development by virtue of subsection (1)), does so where it is carried out to, or in the vicinity of, such a tree or on such land.

(3) In considering an application for planning permission for development in respect of trees or land subject to a tree protection order, or development which may affect such trees or land, the Department must have regard to the desirability of requiring an assessment of the likely impact of the proposed development on the trees or land, unless it is satisfied that the development is of a minor nature and is incapable of having a significant adverse effect on the trees or land.

Further powers in relation to trees, etc.

45. (1) The States may by Ordinance under this subsection -

- (a) prohibit any activities or omissions which appear to them to be likely to involve a risk of damage to trees

or land subject to a tree protection order, and

- (b) provide for those activities or omissions to constitute an offence.

(2) The States may by Ordinance under this section make provision as to -

- (a) the standard of care and management required in relation to trees or land subject to a tree protection order, and
- (b) the steps to be taken to remedy any contravention of any requirement imposed under paragraph (a).

(3) The States may by Ordinance under this section make provision (including general restrictions and requirements and/or provision for the imposition of specific requirements by notice or otherwise) in relation to any, or any description of, trees, shrubs, hedging or plant growth which impair, or which threaten to impair, the amenity or enjoyment of any neighbouring property or locality; and an Ordinance under this section may make any such provision as might be made by an Ordinance under section 46, and such incidental, consequential and transitional provision as the States consider appropriate.

CHAPTER 6

OTHER CONTROLS

Power to make provision where special or additional controls required.

46. (1) Where it appears to the States that, in connection with the purposes of this Law, it is expedient that any use of land or any activity or omission

in relation to land should be subject to control or to further control under this Law, they may, by Ordinance under this subsection, make provision for that control.

(2) An Ordinance made under subsection (1) may make such provision corresponding to the provision made by or under Parts III, V, VI, VII and VIII or Chapters 1 to 5 of this Part as appears to the States to be appropriate as respects the use, activity or omission in question or may impose additional controls.

(3) In particular, but without prejudice to the generality of subsection (1), an Ordinance under that subsection may relate -

- (a) to the display of advertisements,
- (b) to matters connected with the impairment of amenity in any locality, including -
 - (i) the disposal of rubbish,
 - (ii) the abandonment of any vehicle, substance or any other thing on any land,
 - (iii) the presence of any dilapidated or ruinous buildings,
 - (iv) land in an unsightly condition,
 - (v) the placing of caravans on land,
 - (vi) the removal of turf, topsoil or sand from any agricultural land,

(vii) the placing or removal of glasshouses on land and their use,

(viii) the protection and preservation of cliff paths,

(c) to any case where, in the opinion of the States, the cumulative effect of a number of actions or omissions of a particular kind is of substantially more significance than single examples of them.

(4) An Ordinance under subsection (1) may make different provision as respects areas which are or are not subject to other special controls.

(5) Without prejudice to the provisions of Chapters 1 to 5 of this Part, the powers under this section may be used to make further provision supplementing those Chapters.

PART V ENFORCEMENT

CHAPTER 1 INVESTIGATION AND CHALLENGE PROCEDURE

Challenge notices in cases of suspected contraventions.

47. (1) Where it appears to the Department that there may have been a breach of planning control, it may serve a notice under this section (a "**challenge notice**") on any person on whom a copy of a compliance notice in respect of the suspected breach would be required to be served under section 48, requiring him to give such information as to the suspected breach as may be specified in the notice.

(2) A challenge notice may contain a statement as to the time when and place where the Department will consider -

- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from anything or to undertake remedial works, or
- (b) any representations he may wish to make about the notice;

and where such a statement is included the Department shall give him an opportunity to make such an offer or representations in person at that time and place.

(3) The States may by Ordinance under this subsection make provision as to the matters which must be specified in a challenge notice and as to such other matters connected with such notices as they consider appropriate.

CHAPTER 2

COMPLIANCE REQUIREMENTS

Compliance notice procedure

Issue, service and withdrawal of compliance notice.

48. (1) The Department may issue a notice under this section (a "**compliance notice**") where it appears to it that there has been a breach of planning control which should be remedied.

(2) For the purposes of this Part of this Law there has been a breach of planning control if -

- (a) development has been carried out without planning permission required under this Law, or
- (b) any term (including any condition or limitation) of any planning permission has not been complied with.

(3) A copy of a compliance notice must be served within the period of 28 days immediately following the date of its issue and not less than 28 days immediately before the date specified in it as the date on which it is to take effect -

- (a) on the owner of the land concerned,
- (b) on the occupier of that land if he is not its owner, and
- (c) on any other person appearing to the Department to have an interest in that land which is materially affected by the notice.

(4) A compliance notice may be issued whether or not the owner of the land concerned was responsible for the alleged breach to which the notice relates, and whether or not he was its owner at the time of the alleged breach, but no compliance notice may be issued after the expiry -

- (a) of the period of 10 years beginning with the date of the alleged breach to which it relates, or

- (b) of the period of 4 years beginning with the date on which the facts alleged to constitute that breach are first known by the Department,

whichever is the sooner.

(5) The States may by Ordinance make provision modifying subsection (4) in such cases as they consider appropriate.

(6) The Department may withdraw, waive or relax any requirement imposed by a compliance notice whether before or after the notice takes effect (but without prejudice to its powers to serve another); and in that event the Department must immediately give notice that it has done so to every person on whom a copy of the compliance notice was served.

(7) Failure to serve a compliance notice on every person mentioned in subsection (3) does not invalidate the notice in relation to any person on whom it has been served.

(8) A compliance notice may not be served in respect of a breach of planning control occurring before the date of commencement of this Part of this Law; and accordingly the breach may be dealt with in all respects as if the repealed enactments were still in force and as if this Part of this Law were not in force.

(9) For the purposes of this section there is a presumption that a breach of planning control occurred after the date of commencement of this Part of this Law.

Contents of compliance notice, etc.

- 49.** (1) A compliance notice must -

- (a) identify the land to which it relates (by means of a plan or otherwise),
- (b) specify the matters which appear to the Department to constitute the breach of planning control,
- (c) specify the steps which the Department requires to be taken or the activities it requires to cease for the purpose of -
 - (i) remedying the breach of planning control, whether by -
 - (A) making any development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land,
 - (B) discontinuing any use of the land,
 - (C) restoring the land to its condition before the breach took place,
 - or otherwise,
 - (ii) remedying or alleviating any injury to amenity caused by the breach,
- (d) specify the period (in this Law referred to as "**the**

compliance period") within which the Department requires each of those measures to be taken (which may differ where more than one measure is required),

- (e) specify such additional matters as the States may by Ordinance under this paragraph provide.

(2) Without prejudice to the generality of subsection (1)(e), the States may, by Ordinance under this subsection -

- (a) make provision about -
 - (i) the measures which may be required by compliance notices,
 - (ii) the documents which a person on whom a compliance notice is served may be required to submit as evidence of compliance with it, and
 - (iii) the duration and continuing effect of such notices, and
- (b) provide for matters which would otherwise constitute a breach of this Law to be treated as the subject of a grant of planning permission or a licence or consent where a compliance notice has been served.

Execution and costs of works required by compliance notice.

50. (1) Where any measures required to be taken by a compliance notice (other than the discontinuance of a use) are not taken within the compliance

period, the Department may -

- (a) enter the land concerned and take those measures, and
- (b) recover, as a civil debt due to the States from the person who is then the owner of the land concerned, all expenses reasonably incurred by it in doing so.

(2) The powers conferred by subsection (1)(a) do not empower the Department -

- (a) to enter any building by force, or
- (b) to enter any building used wholly or mainly as a dwelling,

except under the authority of a warrant granted under this subsection by the Bailiff on information on oath.

(3) If in the exercise of its powers under this section the Department removes anything from any land, it may be disposed of by sale or in such other manner as the Department thinks fit.

(4) The proceeds of any sale under subsection (3) may, subject to subsection (5), be applied towards the expenses reasonably incurred by the Department in taking any of the measures required by the compliance notice; and if the proceeds of sale exceed the expenses the Department may pay the excess to any person who satisfies it that he was the owner of the thing removed at the time of its removal.

(5) The proceeds of any sale under subsection (3) may not be applied towards the expenses reasonably incurred by the Department in taking any of the measures required by the compliance notice if a person (other than the person who, under subsection (1)(b), is liable to the States for the expenses) satisfies the Department that he was the owner of the thing removed at the time of its removal; and in any such case the Department shall pay the proceeds to that person.

(6) Where a copy of a compliance notice has been served in respect of a breach of planning control -

- (a) any expenses incurred by the owner or occupier of the land in question, or by any other person having an interest in the land, for the purpose of complying with the notice, and
- (b) any sums paid to the Department by the owner of the land under subsection (1)(b) in respect of the expenses reasonably incurred by the Department in taking any measures specified in the notice,

are deemed to have been incurred or paid for the use and at the request of the person by whom the breach of planning control was committed, and shall be recoverable from him by the owner, occupier or other person accordingly.

Stay of action and proceedings under this Part.

51. (1) No action may be taken under section 50 and no proceedings may be instituted or continued under Chapter 3 if -

- (a) an appeal against the compliance notice under section 70 is duly instituted, or

(b) before the expiry of the period within which such an appeal could be made or (if later) the expiry of the compliance period, an application is duly made to the Department for the grant or variation of such planning permission as would have rendered the alleged breach of planning control lawful if it had been granted before it occurred.

(2) The reference in subsection (1)(b) to the grant of planning permission includes the variation of such permission.

(3) Subsection (1) continues to apply until the appeal is finally determined or withdrawn; and it is not finally determined until any appeal or further appeal is determined or the time for appealing has expired without an appeal being instituted.

(4) Subsection (1) does not prevent the Department from applying for permission to create a charge under section 55.

Planning injunctions

Restraint of planning control breaches by planning injunction.

52. (1) The Royal Court may, on the application of the Department, grant such an injunction as the Court thinks appropriate for the purpose of restraining any actual or apprehended breach of planning control; and an injunction under this section is called a "planning injunction".

(2) A planning injunction -

- (a) may be final or interim,
- (b) may be addressed to such persons as the Royal Court thinks necessary to restrain the actual or apprehended breach of planning control,
- (c) may specify those persons by name or by description,
- (d) may require those persons to do or not to do any thing,
- (e) may be granted subject to such conditions as the Royal Court may specify,
- (f) shall remain in force until -
 - (i) it is discharged under subsection (9),
 - (ii) in the case of an interim planning injunction, a final planning injunction is granted in the proceedings, or
 - (iii) such other time, or the occurrence of such other event, as the Royal Court may specify, and
- (g) may be registered in the Livre des Hypothèques, Actes de Cour et Obligations against the owner of the land in respect of which the injunction is made.

(3) The Royal Court may require the Department to give an undertaking on such terms as the Court may specify including, where the planning injunction is an interim one, but subject to the provisions of subsection (7), an undertaking to institute proceedings for a final planning injunction within such period as the Court may specify.

(4) A person who contravenes -

(a) a planning injunction or any condition of it, or

(b) any undertaking given by him under subsection (3),

is, in addition to any penalty to which he may be liable under subsection (5), guilty of a contempt of court and may be proceeded against and punished accordingly.

(5) The Royal Court may grant a planning injunction subject to a penalty (which, in the case of a monetary penalty, may be of any amount); and if a person contravenes the injunction or any condition of it the penalty is enforceable against him.

(6) Proceedings under subsection (4) for a contempt of court or under subsection (5) for the enforcement of a penalty shall be instituted by way of summons issued by the Department (or, as the case may be, against the Department) and shall be dealt with by the Royal Court.

(7) An interim planning injunction may be granted notwithstanding that the Department does not intend to institute proceedings for a final planning injunction.

(8) An interim planning injunction may in exceptional

circumstances be granted ex parte.

(9) The Royal Court may by order, on the application of the Department or any person to whom a planning injunction is addressed, vary or discharge -

- (a) a planning injunction or any condition or penalty subject to which it was granted, or
- (b) any undertaking given by the Department under subsection (3).

(10) The Royal Court may, subject to such terms and conditions as it thinks fit -

- (a) direct that an application for an interim planning injunction or for an order under subsection (9) may be heard notwithstanding that notice of the application has not been served on the other party, or
- (b) direct that the period of time which must elapse between service of notice of such an application and the hearing of the application shall be reduced to such period as the Court may specify.

(11) The right to apply for a planning injunction is without prejudice to -

- (a) the exercise by the Department of any other power conferred on it by this Chapter or Chapter 1, and

(b) the effect of Chapter 3.

(12) For the purpose of performing its functions under this section-

(a) the Royal Court may, at the direction of the Bailiff, be constituted by the Bailiff sitting unaccompanied by the Jurats, and

(b) the Royal Court may, where it is constituted by the Bailiff sitting alone, sit -

(i) otherwise than in open court, and

(ii) whether or not any other officer of the court (including the Greffier and any of his deputies) is present.

(13) Any order or finding made or other thing done pursuant to subsection (12) has effect for all purposes as if made or done by the Royal Court.

(14) Where the Department intends to apply for a planning injunction for the purpose of restraining any actual or apprehended breach of planning control it may, by written notice served on any person to whom the injunction may be addressed, and in order immediately to restrain that breach, require that person to refrain from doing anything specified in the notice.

(15) A notice under subsection (14) shall cease to have effect on the earlier of -

- (a) the expiration of 24 hours from the time of service, or
- (b) the time when the Royal Court grants or refuses the planning injunction.

(16) A person who without reasonable excuse contravenes any provision of a notice under subsection (14) is guilty of an offence and liable -

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

Interim compliance notice procedure

Interim compliance notices.

53. (1) If, when the Department issues or has issued a compliance notice requiring any activity to cease, it considers it expedient that the activity or any activity carried out as part of or associated with the activity should cease before the expiry of the compliance period, then, subject to subsection (2), the Department may issue a notice (an "**interim compliance notice**") prohibiting the carrying out of that activity on the land to which the compliance notice relates or on any part of it specified in the interim compliance notice.

(2) The States may by Ordinance under this subsection restrict the activities which an interim compliance notice may prohibit.

(3) An interim compliance notice may be served on any person

who appears to the Department to have an interest in the land concerned or to be engaged in any activity prohibited by the notice.

(4) An interim compliance notice must refer to the compliance notice to which it relates and have a copy of that notice annexed to it.

(5) An interim compliance notice cannot be contravened until the time specified in it as the time when it takes effect, which must not be earlier than 24 hours, nor later than 28 days, immediately after the time at which it is first served on any person.

(6) The Department may at any time withdraw an interim compliance notice (without prejudice to its power to serve another) by serving notice to that effect on those served with the interim compliance notice.

(7) The States may by Ordinance under this subsection make provision -

- (a) as to the time when an interim compliance notice ceases to have effect, and
- (b) as to the publicity to be given to the issue and withdrawal of interim compliance notices.

Application to set aside interim compliance notice.

54. (1) Any person on whom an interim compliance notice has been served or who is interested in the land in respect of which such a notice has been issued may apply to the Royal Court, constituted by the Bailiff sitting alone, for the notice to be set aside.

(2) Any such application may be dealt with summarily; but, unless the Royal Court directs otherwise in a case of extreme urgency, notice of it must be given to the Department and it must be supported by evidence on oath (whether given orally or by affidavit).

(3) If on hearing such an application the Royal Court is satisfied -

- (a) that an appeal against the compliance notice to which the interim compliance notice relates has been or is proposed to be instituted under section 70,
- (b) that the appellant has an arguable case in relation to any ground of appeal under section 70(1)(a), (b) or (c), and
- (c) that, having regard to all the circumstances of the case, it would be unreasonable or disproportionate for the Royal Court not to do so,

the Royal Court may grant the application and order that the interim compliance notice be set aside, either in whole or in part, and either without condition or on such terms as it considers appropriate.

Charges over land

Compliance notice land charges.

55. (1) The Royal Court may authorise the Department to create a charge over any land, for the purpose of securing compliance with a compliance notice in relation to it, by registering the notice and the Act of Court under this section in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe

against the owner of the land.

(2) An application for such authorisation is deemed for the purposes of section 6(2)(a) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950^h to be a matter of procedure.

(3) All expenses recoverable by the Department under section 50(1)(b), together with the legal costs incurred by the Department in making its application to the Royal Court for such authorisation, are -

- (a) a charge on the land in relation to which the compliance notice is registered under this section, and
- (b) recoverable by the Department in priority to any amount secured by any rente, hypothèque, bond, Act of Court or obligation registered in the said Livre in respect of that land on or after the date of registration of the compliance notice.

(4) Subsection (3) is without prejudice to section 10 of the Real Property (Reform) (Guernsey) Law, 1987ⁱ.

Vacation of charges under section 55.

56. (1) Any charge over land created under section 55 must be vacated by the Department -

^h Ordres en Conseil Vol. XIV, p. 388; Vol. XVIII, p. 355; Vol. XXII, p. 122.

ⁱ Ordres en Conseil Vol. XXX, p. 100.

- (a) when the compliance notice concerned has been fully complied with (otherwise than by the Department in accordance with section 50),
- (b) when the Department has itself taken measures required by the compliance notice and recovered all expenses recoverable by it under section 50(1)(b),
- (c) when the compliance notice is quashed on an appeal under section 70,
- (d) when such an application as is mentioned in section 51(1)(b) is granted,
- (e) when the Royal Court so orders under subsection (2).

(2) The Royal Court must order the vacation of a charge created under section 55 if it is satisfied, on the application of any person -

- (a) that all the measures required by the compliance notice have been taken, and
- (b) that all expenses recoverable by the Department under section 50(1)(b) have been recovered by it.

CHAPTER 3

CRIMINAL PROCEEDINGS : OFFENCES

Unlawful development.

57. (1) It is an offence for any person to carry out development of land without planning permission or without complying with the terms of planning permission for the development, including any conditions and limitations subject to which it is granted, (whether he does so on his own behalf or as an agent).

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

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding twice level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

(3) It is a defence for a person charged with an offence under subsection (1) to prove -

- (a) that he carried out the development in question on behalf of another person,
- (b) that he took all reasonable steps to investigate whether the development was lawful, and
- (c) that he was misled by that other person as to its lawfulness.

Contravention of challenge notice.

58. (1) If a person on whom a challenge notice has been served has not complied with any requirement of the notice before the end of the period of 21 days beginning with the date on which it was served, he is guilty of an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

Contravention of compliance notice.

59. (1) If any measure required to be taken by a compliance notice is not taken within the compliance period -

- (a) every person on whom the notice was served under section 48, and
- (b) every person who is the owner of the land after the expiry of that period and whilst the failure to take any such measure continues,

is guilty of an offence.

(2) Where by virtue of a compliance notice -

- (a) a use of land is required to be discontinued, or
- (b) any conditions or limitations are required to be complied with in respect of a use of land or the carrying out of operations on land,

if any person uses the land, or causes or permits it to be used, or carries out those

operations, or causes or permits them to be carried out, in contravention of the notice, he is guilty of an offence.

(3) It is a defence for a person charged with an offence under this section to prove -

- (a) that he took all reasonable steps to secure compliance with the notice, or
- (b) in the case of a person described in subsection (1)(b) or (2), that no copy of the compliance notice was served on him and he did not know, and could not reasonably have been expected to know, of its requirements.

(4) A person guilty of an offence under this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding 10 times level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

Contravention of interim compliance notice.

60. (1) A person who contravenes an interim compliance notice is guilty of an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that no copy of the interim compliance notice was served on

him and he did not know and could not reasonably have been expected to know of its existence.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding 10 times level 5 on the uniform scale, or to both.

CHAPTER 4
SUPPLEMENTARY PROVISIONS

Register of notices.

61. (1) The Department shall prepare and maintain a register of all notices issued by it under this Part.

(2) The States may, by Ordinance under this subsection, make such provision concerning that register as they consider appropriate.

Simultaneous proceedings.

62. (1) The institution of criminal proceedings under Chapter 3 does not -

- (a) prevent the exercise of any power under Chapter 2, or
- (b) prejudice the continuation of any proceeding or the taking of any measures under that Chapter.

(2) If an appeal is instituted under section 70 -

- (a) no criminal proceedings shall be begun in respect of an alleged breach of the compliance notice in question,

and

- (b) if any such proceedings have already been begun, they shall be suspended until the appeal is finally determined or withdrawn.

Evidential presumptions.

63. (1) In proceedings under this Law any document purporting to be issued by, and signed on behalf of, the Department may be received in evidence and presumed to be the document which it purports to be, and to be signed on behalf of the Department by the person by whom it purports to be signed, without proof of that person's identity, signature or capacity, unless the contrary is proved.

(2) If it is proved in any proceedings (other than criminal proceedings) under this Law that an act requiring the permission of the Department has been done, that act is to be presumed to have been done without that permission unless the contrary is proved.

(3) If the court is satisfied that any date is within the knowledge of a person charged with an offence under this Law or could with reasonable diligence be discovered by him, it may presume the date to be that alleged unless he proves the contrary.

(4) Without prejudice to subsection (3), except in the case of an appeal under section 59(3)(c), the date when a material change in the use of any land occurred need not be proved.

Offences by bodies corporate.

64. (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of,

or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) This section is without prejudice to section 65.

Causing, permitting, etc.

65. A person who causes or permits any act or omission which constitutes an offence under this Law is guilty of that offence and liable to be proceeded against and punished accordingly.

Criminal fines.

66. (1) In determining the amount of any fine to be imposed on a person convicted of an offence under this Law the court must have regard to any financial benefit which appears to it to have accrued or to be likely to accrue, in consequence of the offence, to that person or to any person associated with him.

(2) Where a person is convicted of an offence under this Law, the court may order him, in addition to any other penalty which it imposes, to pay a further fine in respect of each day or part of a day during which the circumstances resulting from the offence continue to exist -

(a) after the date of conviction, or

(b) after such future date as the court may specify, not

being later than 28 days after the date of conviction.

- (3) A fine imposed under subsection (2) -
 - (a) may not exceed the amount of the fine which may be imposed by the court in respect of the original offence, and
 - (b) is enforceable in the same manner as any other fine.

CHAPTER 5

APPLICATION TO SPECIAL CONTROLS

Power to make corresponding provision.

67. (1) For the purposes of Part IV the States may by Ordinance under this section make such provision corresponding to that made by Chapters 1 to 4 of this Part as they think appropriate.

(2) An Ordinance under this section may, in particular, apply any provision made by or under those Chapters with such modifications as may be specified in it.

PART VI

APPEALS AND REVIEWS

Rights of appeal to Planning Tribunal

Right of appeal against planning decisions and failure to take such decisions.

68. (1) Where the Department -

- (a) refuses an application for planning permission or outline permission,
- (b) grants such an application subject to conditions (other than a condition (a "**building condition**") imposed under building regulations by virtue of section 17),
- (c) in the case of an application for planning permission, grants outline permission,
- (d) refuses an application for any consent or approval of the Department required by a condition imposed on the grant of planning permission or outline permission (other than a building condition) or grants it subject to conditions,
- (e) refuses an application for the modification or discharge of a planning covenant under section 25(4)(a) or (b), or
- (f) refuses an application for any approval of the Department required under an Ordinance (other than an approval required pursuant to section 17) or grants it subject to conditions,

the applicant may appeal to the Planning Tribunal against that decision on the merits.

(2) A person who has made an application described in subsection (1) may also appeal to the Planning Tribunal on the merits if the Department has

neither -

- (a) given him notice of its decision on the application, nor
- (b) in the case of an application for planning permission or outline permission, given him notice under section 16(1)(d) that it has declined to consider the application,

before the expiry of the period referred to in subsection (8).

(3) An Ordinance under section 22(2) may make provision for an applicant for an opinion or certificate under that section to appeal to the Planning Tribunal under this section on the ground that the Department made a material error as to the facts of the case.

(4) An appeal to the Planning Tribunal under this section must be made before the expiry of -

- (a) the period of 6 months beginning with the date on which the Department makes its decision, or
- (b) in the case of an appeal under subsection (2), the period of 6 months immediately after the expiry of the period referred to in subsection (8) or such extended period as the applicant and the Department may agree in writing.

(5) An appeal to the Planning Tribunal under this section must be made by notice served on the Minister of the Department stating the grounds and

material facts on which the appellant relies; and the Department shall immediately transmit the notice to the Chairman of the Planning Panel to enable him (or, if he is unavailable, the Deputy Chairman) to appoint, from the membership of the Panel, the members of the Tribunal to hear and determine the appeal.

(6) For the purposes of the application of this section and sections 69 to 71 in relation to an appeal under subsection (2), it shall be assumed that the Department refused the application in question on the last day of the period referred to in subsection (8).

(7) Where any person appeals against a decision under this section, the Department may concede the appeal in whole or in part; and where it does so it shall give the appellant notice of the revised decision within such period as may be prescribed by Ordinance.

(8) The period mentioned in subsections (2), (4) and (6) is a period of three months immediately after the date when the application in respect of which the Department has failed to give notice of its decision was duly made; and for the purposes of this subsection an application is not considered to be duly made until all information and documents required by or under this Law to accompany the application have been submitted to the Department.

Determination by Planning Tribunal of appeals under section 68.

69. (1) An appeal under section 68 shall be determined by the Planning Tribunal on the basis of the materials, evidence and facts which were before the Department -

- (a) in the case of an appeal under section 68(1), when it made the decision appealed against, or

- (b) in the case of an appeal under section 68(2), at the expiry of the period mentioned in that section.

(2) On an appeal under section 68 against a decision of the Department, the Planning Tribunal may -

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision (whether the appeal relates to that part of it or not),

and may deal with the application which is the subject of the appeal as if it were the Department dealing with it in the first instance.

(3) The decision of the Planning Tribunal on an appeal under section 68 is subject to appeal to the Royal Court in accordance with the provisions of section 72.

(4) If, before or during the determination of an appeal under section 68 in respect of an application for planning permission or outline permission to develop land, the Planning Tribunal forms the opinion that, having regard to the provisions of section 16 or any other provision made by or under this Law, permission for that development -

- (a) could not have been granted by the Department, or
- (b) could not have been granted by it otherwise than subject to the conditions imposed by it,

it may decline to determine the appeal or to proceed with the determination.

(5) If, before or during the determination of an appeal under section 68, it appears to the Planning Tribunal that the appellant is responsible for undue delay in the progress of the appeal, it may -

- (a) give the appellant notice that the appeal will be dismissed unless he takes, within the period specified in the notice, such steps as are so specified for the expedition of the appeal, and
- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.

Right of appeal against compliance notices and completion notices.

70. (1) A person on whom a compliance notice has been served under section 48 may appeal to the Planning Tribunal on the ground -

- (a) that the breach of planning control alleged in the notice has not taken place,
- (b) that the matters alleged in the notice do not constitute a breach of planning control,
- (c) that the notice was issued after the expiry of the period within which a compliance notice in respect of that alleged breach was required under section 48(4) to be issued,
- (d) that the measures required by the notice to be taken exceed what is necessary for the purposes specified in

section 49(1)(c),

- (e) that the period specified in the notice for taking any such measure is unreasonably short, or
- (f) that the issue of the notice was (for any other reason) ultra vires or unreasonable.

(2) A person on whom a completion notice has been served under section 19 may appeal to the Planning Tribunal on the ground -

- (a) that the period specified in the notice at the expiry of which the permission will cease to have effect is unreasonably short, or
- (b) that the issue of the notice was (for any other reason) ultra vires or unreasonable.

(3) An appeal under this section must be made -

- (a) within such period and in such manner as may be prescribed by Ordinance of the States under this subsection, and
- (b) by notice served on the Minister of the Department stating the grounds and material facts on which the appellant relies; and the Department shall immediately transmit the notice to the Chairman of the Planning Panel to enable him (or, if he is unavailable, the Deputy Chairman) to appoint, from the membership of

the Panel, the members of the Planning Tribunal to hear and determine the appeal.

Determination by Planning Tribunal of appeals under section 70.

71. (1) On an appeal under section 70(1) against a compliance notice, the Planning Tribunal must -

- (a) if the appellant satisfies it of a ground mentioned in section 70(1)(a), (b), (c) or (f), quash the notice,
- (b) if the appellant satisfies it of a ground mentioned in section 70(1)(d) or (e), modify the notice so as to substitute such measures as appear to it to be necessary or, as the case may be, such period as appears to it to be reasonable, and
- (c) otherwise, uphold the notice.

(2) On an appeal under section 70(2) against a completion notice, the Planning Tribunal must -

- (a) if the appellant satisfies it of the ground mentioned in section 70(2)(a), modify the notice so as to substitute such period as appears to it to be reasonable,
- (b) if the appellant satisfies it of a ground mentioned in section 70(2)(b), quash the notice, and
- (c) otherwise, uphold the notice.

(3) The production by a person appealing against a compliance notice of a valid opinion or certificate issued under section 22, evidencing the lawfulness of anything alleged in the notice to be a breach of planning control, entitles the appellant to require that the notice be quashed as respects that alleged breach.

(4) If a compliance notice or completion notice is quashed under this section -

(a) it ceases to be of any effect,

(b) in the case of a compliance notice, the Department must forthwith vacate any charge created under section 55 in connection with it,

but without prejudice to the Department's powers to issue another notice and, in the case of a compliance notice, to apply for permission to create a charge under section 55 in connection with that other notice.

(5) If a compliance notice or completion notice is upheld or revised under this section, it takes effect as if it were such a notice issued by the Department (in the revised form where appropriate) and as if served on every person mentioned in section 48(3) or (as the case may be) section 19(3) on the date of the determination of the appeal.

(6) The decision of the Planning Tribunal on an appeal under section 70 is subject to appeal to the Royal Court in accordance with the provisions of section 72.

(7) Section 69(5) applies to appeals under section 70 as it applies

to appeals under section 68.

Review of Planning Tribunal's decisions by Court

Appeals to Royal Court against decisions of Planning Tribunal.

72. (1) A person aggrieved by a decision of the Planning Tribunal made on an appeal under section 68 or 70 may appeal to the Royal Court on a question of law.

(2) The Department may appeal to the Royal Court under subsection (1) as if it were a person.

(3) No decision of the Planning Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the appeal from presenting his case fairly before the Planning Tribunal.

(4) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 73.

(5) An appeal on a question of law shall, with leave of the Royal Court or the Court of Appeal, lie to the Court of Appeal from any decision of the Royal Court under this section.

(6) Subsections (4) and (5) of section 71 apply to this section as they apply to that section (taking the reference in subsection (5) to the date of determination as the date of the Court's order).

Reference of points of law to Royal Court.

73. (1) A question of law arising in connection with the hearing and

determination by the Planning Tribunal of an appeal may, if the Planning Tribunal thinks fit, be referred for decision to the Royal Court.

(2) An appeal from a decision of the Royal Court made on a reference under this section shall, with leave of the Royal Court or the Court of Appeal, lie to the Court of Appeal.

Review proceedings: rules of Court.

74. The Royal Court sitting as a Full Court may by rules under this section make provision as to -

- (a) the manner and period in which -
 - (i) an appeal or reference to the Royal Court, or
 - (ii) an appeal to the Court of Appeal,under section 72 or 73 may be instituted,
- (b) the conduct of proceedings on such appeals, and
- (c) such incidental and supplementary matters concerning such appeals and proceedings as it considers appropriate.

Residual presumption of validity.

75. Except in so far as is specifically provided by this Law or any other enactment, the validity of -

- (a) the Strategic Land Use Plan,

- (b) any Development Plan,
- (c) any Subject Plan,
- (d) any Local Planning Brief, or
- (e) any order, direction, permission, condition, notice or agreement of the Department or any other States department, which is or purports to be made, given or imposed under this Law,

is not open to question in any legal proceedings whatsoever.

PART VII DEVELOPMENT, ETC. BY THE STATES & PUBLIC UTILITY PROVIDERS

Application of Law to States, & strategically essential development

General application of Law to States.

76. (1) Subject to the provisions of this section and sections 77 and 78, Parts I to IV and VIII of this Law apply to the States, and to land owned or occupied by the States, as they apply to any other person and any other land.

(2) Part V of this Law, other than sections 55 and 56 (compliance notice land charges), only applies to enforcement, in respect of matters affecting land owned by the States, against persons other than the States, States departments and their officers, servants and agents.

(3) Part VI of this Law only applies to appeals in respect of matters affecting land owned by the States when they are at the instance of persons other than the States, States departments and their officers, servants and agents.

(4) In the application of this Law to the States and to land owned or occupied by the States, the States may act by and through its individual departments, notwithstanding that those departments are not legal persons; and accordingly anything which may be done under or for the purposes of this Law by a legal person (including, without limitation, and by way only of illustration, the making of an application for planning permission) may, in relation to the States when acting by and through an individual department, be done by that department.

(5) The States may by Ordinance under this subsection modify any provision made by or under this Law (other than any provision requiring planning permission or any other consent to be obtained) as it applies in relation to any development undertaken by the States or in relation to land owned by the States.

(6) An Ordinance under subsection (5) may, without limitation, and notwithstanding section 18(2) and (3), enable conditions to be imposed, where planning permission is granted on the application of the States or a department thereof, which restrict the effect of that permission as respects persons other than the States.

(7) If any department of the States -

(a) is dissatisfied with a decision as to which subsection (3) prevents an appeal at its instance, or

(b) considers for any other reason that a decision on an

application made by it to the Department ought to be referred to the States,

it may request the States to direct the Department to revoke, reverse or modify the decision.

(8) Such a request must contain or have annexed to it the full text, including reasons, of the decision.

(9) The Department must, subject to subsection (10), comply with a direction under this section as soon as practicable.

(10) The States may not under this section direct the Department to make a decision which would contravene any policy or other provision of any relevant Development Plan, Subject Plan or Local Planning Brief.

(11) A direction under this section, and a revocation, reversal or modification of a decision in compliance with such a direction, may not be appealed against or challenged in any legal proceedings whatsoever, notwithstanding that compliance with the direction involves the Department acting in a manner inconsistent with the purposes of this Law.

(12) In giving a direction under this section, the States may consider any matter afresh.

Special procedure in respect of strategically essential development.

77. (1) Planning permission is needed for development which is strategically essential development, but subject to the modifications set out in subsection (9) as to the matters to which the Department must have regard.

(2) Development is strategically essential development only if the States, on the recommendation of the Policy Council (and of no other department), have resolved that the particular operations to be carried out or the particular change of use to be made are strategically essential.

(3) Where a department of the States believes -

- (a) that a particular development ought to be carried out (whether by the States or by any other person), and
- (b) that the development is strategically essential, but
- (c) that the granting of planning permission or outline permission for the development would be prevented by any policy or other provision of any relevant Development Plan, Subject Plan or Local Planning Brief,

it may refer the matter to the Policy Council and request it to submit the question of whether the development is strategically essential to the States.

(4) If, on receipt of a request under subsection (3), the Policy Council agrees that the development is strategically essential and that the matter ought to be submitted to the States, it shall -

- (a) submit the matter to the States accordingly, and
- (b) at the same time recommend the States to agree that a special planning inquiry shall be held by an inspector, with a view to making recommendations as to the

amendment, modification or disapplication of any policy or other provision of any relevant Development Plan, Subject Plan or Local Planning Brief which would prevent the granting of planning permission or outline permission for the development.

(5) The States may pass a resolution that a development is strategically essential only if in their opinion the development -

- (a) will be of overriding benefit to the community at large (even though, in practice, only a section of the community will derive direct benefit),
- (b) is comprised within a strategy of the States, whether or not that strategy -
 - (i) is to be delivered by the States, or
 - (ii) is expressed in the Strategic Land Use Plan, and
- (c) is of such essentiality to the community or any section thereof as to justify overriding any policy or other provision of any relevant Development Plan, Subject Plan or Local Planning Brief which would prevent the granting of planning permission or outline permission for the development.

(6) A recommendation of the Policy Council under subsection (4)(b) must set out the proposed terms of reference of the inquiry and may contain

provision as to -

- (a) the appointment and powers of the inspector (including his powers to obtain or request information),
- (b) the procedure to be adopted before, during and after the inquiry,
- (c) the publicity to be given to the inquiry or any stage thereof,
- (d) the manner in which representations are to be made,
- (e) any conditions and restrictions subject to which the inquiry is to be held,
- (f) the making of the inspector's report,
- (g) the proposed timetable for the convening of the inquiry and the completion of the report, and
- (h) any other matters corresponding to those for which provision can be made under section 12 in relation to planning inquiries.

(7) A special planning inquiry may not hear any representations as to the question of whether the development is strategically essential; and the inspector's report may not contain any findings or recommendations as to that question.

(8) The inspector shall furnish his report to the Policy Council which shall then (after such consultation as it thinks fit) -

- (a) adopt the report in its entirety, or
- (b) submit the report to the States with a recommendation that the report be approved, or rejected, in its entirety; and when the States vote on the proposition they may resolve to approve, or not to approve, the report in its entirety, but may not resolve to amend the proposition.

(9) In determining an application for planning permission or outline permission in relation to a development which is strategically essential, the Department must have regard, in particular, to the resolution of the States under subsection (2), and also to -

- (a) the inspector's report, if adopted under subsection (8) by the Policy Council or by the States,
- (b) any relevant Development Plan, Subject Plan or Local Planning Brief, as amended, modified or disapplied in accordance with the inspector's report, if so adopted, and
- (c) any other matter to which the Department is required to have regard by or under section 16 or any other provision of this Law.

(10) Where the States has passed a resolution classifying a development as strategically essential, the resolution is conclusive as to the matter,

and accordingly the classification of the development as strategically essential may not be called into question in any legal proceedings (including appeal proceedings under this Law).

Public utility providers

Application of Law to public utility providers.

78. (1) Without prejudice to section 13(4) and (5), the States may by Ordinance make such provision as they consider appropriate -

- (a) for exempting from any requirements imposed by or under this Law the carrying out of any operations or change of use which constitutes (or would apart from the Ordinance constitute) development, for the purposes of, or in connection with, providing the public with a public utility service, or
- (b) for modifying any provision made by or under this Law as it applies in relation to any such operations or change of use.

(2) An Ordinance under subsection (1) may, without limitation, and notwithstanding section 18(2) and (3), enable conditions to be imposed, where planning permission is granted on the application of a person the primary purpose of whose business is to provide the public with a public utility service, which restrict the effect of that permission as respects other persons.

(3) In this section "**public utility service**" means -

- (a) water, gas, electricity, telecommunications, transport

or sewerage disposal services, or

- (b) any other service appearing to the States to be of public utility.

PART VIII

ADMINISTRATIVE, GENERAL AND MISCELLANEOUS PROVISIONS

Transfer and delegation of functions

Transfer of functions between departments.

79. (1) If it appears to the States to be appropriate to do so, they may by Ordinance under this section provide that any function exercisable by any specific department of the States under Part III, IV, V or VI of this Law -

- (a) may only be exercised after consultation with, or subject to the consent of, another department,
- (b) may be exercised either by the specific department on which it is conferred or by another department,
- (c) instead of being exercisable by that specific department, shall be exercisable -
 - (i) by that department and another acting jointly, or
 - (ii) by another department acting alone.

- (2) This section is without prejudice to the provisions of the

Public Functions (Transfer and Performance) (Guernsey) Law, 1991^j.

Performance of functions by subcommittees, officers, etc.

80. (1) The Department may by resolution arrange for any of its functions under this Law (other than those under this section) to be performed in its name by -

- (a) a subcommittee composed of not less than two members of the Department, at least two of whom shall be voting members thereof, or
- (b) any officer responsible to the Department named or described in the resolution.

(2) A function which is performed pursuant to an arrangement under subsection (1) is for all purposes performed by the Department; and every decision taken or other thing done pursuant to such an arrangement has the same effect as if taken or done at a quorate meeting of the Department.

(3) An arrangement under subsection (1) -

- (a) may be varied or terminated at any time by a further resolution of the Department, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the performance of the function by

^j Order in Council No. XXI of 1991.

the Department whilst the arrangement subsists.

(4) This section is without prejudice to the provisions of the Public Functions (Transfer and Performance) (Guernsey) Law, 1991^k.

(5) The Department must from time to time consider the advisability of making arrangements under subsection (1) and under the provisions mentioned in subsection (4) and review any such arrangements previously made by it.

Administration

Administration: powers to make Ordinances.

81. (1) The States may by Ordinance under this subsection make such provision as they consider appropriate in connection with the administration of this Law.

(2) In particular, but without limitation, an Ordinance under subsection (1) may make provision as to -

- (a) the fees to be paid on the making of any application or otherwise,
- (b) the procedure to be followed in the consideration of applications,
- (c) the manner in which the proceedings of meetings of

^k Order in Council No. XXI of 1991.

the Department must be recorded and in which they may be referred to in any review or appeal or in any civil or criminal proceedings,

- (d) the manner in which notification of the determination of any application must be given,
- (e) the procedure to be followed where any development or other work requires permission under more than one provision of the Law (including the modification of any relevant provisions in such a case),
- (f) the manner in which (notwithstanding the provisions of section 88) any notice or other document required or authorised by or under this Law to be served may be served, and
- (g) the circumstances in which any act or omission in connection with the making or consideration of any application is an offence and for the penalties on conviction of such an offence.

Guidance.

82. (1) The Department may issue such guidance as it considers appropriate in connection with the administration of this Law and any matter relating to it.

(2) In particular, but without limitation, guidance under this section may give examples -

- (a) of matters which in the opinion of the Department require planning permission or any other consent under this Law,
 - (b) of the time when development is in the opinion of the Department to be taken as occurring where two or more matters taken together constitute a change of use,
 - (c) of the circumstances in which the Department is or is not likely to grant any permission or consent,
 - (d) of the conditions or limitations subject to which any permission or consent is likely to be granted in any particular circumstances, and
 - (e) of the measures which may be required by any compliance notice.
- (3) Guidance under this section -
- (a) must be taken into account by the Department in exercising its functions under this Law but, unless the guidance provides otherwise -
 - (i) it is not binding on the Department or on any other person,
 - (ii) it is merely indicative of the Department's likely approach to any particular issue,

- (iii) it does not prejudice the Department's discretion to decide any particular case differently according to its merits, and
 - (iv) it does not relieve any person of any obligation, restriction or liability imposed by or under this Law, and
- (b) may, subject to the limitations set out in paragraph (a), be received in proceedings under this Law.

Power to require information as to interest in land.

83. (1) For the purposes of enabling the Department to issue or serve any notice or other document which it is required or authorised by or under this Law to issue or serve, it may by notice require -

- (a) any person appearing to be carrying out operations on any land,
- (b) the occupier of any land,
- (c) any person who directly or indirectly receives rent in respect of any land, or
- (d) any other person appearing to the Department to have an interest in any land,

to give it such written information as to the matters mentioned in subsection (2) as it may specify.

(2) Those matters are -

- (a) the nature of any operations being or appearing to have been carried out on the land,
- (b) the nature of the person's interest in the land,
- (c) the name and address of any other person known to him as having an interest in the land,
- (d) the purpose for which the land is being used,
- (e) the time when that use began,
- (f) the name and address of any person known to him as having used the land for that purpose.

(3) If a person on whom a notice under this section is served does not comply with any requirement of the notice before the end of a period of 28 days (or such longer period as is specified in it) beginning with the date of the notice, he is guilty of an offence.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable excuse for failing to comply with the requirement.

(5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

Rights of entry

Entry on land for authorised purposes.

84. (1) A person authorised in writing by the Department may, subject to section 85, enter any land at any reasonable time for the purpose of -

(a) the preparation of a draft Development Plan, Subject Plan or Local Planning Brief,

(b) considering -

(i) an application for any permission or approval under this Law, or

(ii) an appeal under this Law,

(c) deciding whether and in what manner any powers of the Department under this Law ought to be exercised,

(d) ascertaining whether any conditions attached to a permission or approval granted under this Law have been or are being complied with,

(e) investigating any alleged offence under this Law, and

(f) ensuring that any obligations arising under a notice served, requirement imposed, or planning covenant entered into under this Law have been or are being complied with.

(2) The Department may only authorise -

- (a) an officer or servant of the States,
- (b) a person specifically appointed by the Department to advise it (whether for remuneration or not) in relation either to a particular matter or to a particular aspect of the Department's functions,
- (c) an Inspector appointed under section 12(2) or 77, or
- (d) a member of the Planning Tribunal appointed to hear and determine an appeal under section 68 or 70.

(3) An authorisation may be given -

- (a) for all the purposes mentioned in subsection (1) or only for such of them as are specified in it, and
- (b) generally in all circumstances or only in relation to any matter, land, or occasion as is so specified.

(4) The Department (in the sense of some or all of its members) is not entitled to enter land without the consent of a person entitled to permit such entry, but if a request for it to do so is refused where the entry is for the purpose of considering an application, then -

- (a) the Department may refuse to consider that application, and inform the applicant accordingly, and
- (b) there is no right of appeal or review against that

refusal.

Other provisions as to power to enter and power to obtain information.

85. (1) A person authorised for the purposes of section 84 -

- (a) must, if so required, produce his written authorisation before entering any land,
- (b) is not entitled under that section to demand admission as of right to any building or part of a building which is occupied as a dwelling unless he gave its occupier notice at least 24 hours before that he proposed to do so.

(2) Such a person must not seek to enter any building which is occupied solely as a dwelling, or any enclosed land forming part of the curtilage of an occupied dwelling, unless -

- (a) a person appearing to be entitled to permit that entry -
 - (i) has consented to it, or
 - (ii) has been given notice in accordance with subsection (1)(b) and has not objected to the entry, or
- (b) he is acting in accordance with a warrant to do so obtained by him on his ex parte application to the Bailiff under this subsection and produces that warrant to anybody objecting to his entry.

(3) A person who has entered any land in accordance with an authorisation under section 84(2) (and, where necessary, with a warrant issued under subsection (2)) may -

- (a) make such examination, conduct such tests, and take such photographs or samples as appear to him to be desirable in connection with the purposes for which he has entered, and
- (b) require any person to answer any questions or produce any documents appearing to him to be relevant to those purposes.

(4) The power to require a person to produce documents includes power -

- (a) to require him to reproduce in legible form any record maintained in another form,
- (b) to copy or require him to furnish a copy of any documents which are produced,
- (c) to require any person who has failed to produce a document to state to the best of his knowledge and belief where it is.

(5) An authorisation under section 84(2) does not entitle a person acting under it to damage or, subject to subsection (3)(a) of this section, interfere with any land or anything on it.

(6) Any information of a personal, financial or commercial nature which is obtained as a result of an entry authorised under section 84(2) is confidential to the Department and may not be used or disclosed except to the extent that its use or disclosure is necessary for the purposes of this Law.

(7) A statement made by a person in response to a requirement imposed by or under this Law may not be used in evidence against him except -

- (a) in proceedings for an offence under section 91; or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(8) A requirement imposed by or under this Law has effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

The Planning Panel and the Planning Tribunal

Establishment of Planning Panel.

86. (1) The States shall, on the recommendation of the Policy Council, draw up and maintain a panel to be called the Planning Panel which shall consist of six independent persons and from which the members of the Planning Tribunal shall, from time to time, be appointed.

(2) A recommendation of the Policy Council under subsection (1) may be amended by resolution of the States to the intent that persons other than

those recommended by the Policy Council may be elected to the Planning Panel.

(3) Of the members of the Planning Panel -

- (a) not less than four shall be permanently resident within the Channel Islands,
- (b) not less than two, who shall be designated by States' resolution as the "**professional members**", shall be persons with such qualifications and experience in planning matters as in the opinion of the States is necessary for the hearing and determination of appeals to the Planning Tribunal,
- (c) one shall be designated by States' resolution as the Chairman of the Planning Panel, and
- (d) one shall be designated by States' resolution as the Deputy Chairman thereof.

(4) The members of the Planning Panel shall, subject to the provisions of subsection (5), hold office for a term of six years, and a person may be elected for more than one term of office.

(5) Of the six persons first elected as members of the Planning Panel -

- (a) two, who shall be specified by States' resolution, shall hold office for a term of two years,

(b) two others, who shall also be specified by States' resolution, shall hold office for a term of four years, and

(c) the remaining two shall hold office for a term of six years.

(6) A member of the Planning Panel may resign his office at any time by notice in writing to the Policy Council.

(7) The States may remove any member of the Planning Panel from office on the recommendation of the Policy Council.

(8) A member of the Planning Panel elected to fill a casual vacancy shall hold office only for the unexpired portion of the term of office of the member he replaces.

(9) The members of the Planning Panel -

(a) shall be entitled to receive such allowances in respect of their services as the Policy Council may from time to time recommend, and

(b) may, at the discretion of the Policy Council, be reimbursed in respect of their reasonable expenses (if any).

(10) The States may by Ordinance make such provision as they think fit in relation to the establishment, appointment and constitution of the Planning Panel, and such an Ordinance may amend this section.

Appointment and proceedings of Planning Tribunal.

87. (1) When an appeal to the Planning Tribunal is instituted, the Chairman of the Planning Panel (or, if he is unavailable, the Deputy Chairman) shall, from the membership of the Panel, appoint the members of the Tribunal to hear and determine the appeal.

(2) Subject to the provisions of any Ordinance under subsection (9), the Planning Tribunal shall consist of three persons of whom one, who shall be one of the professional members of the Planning Panel, shall be designated by the Chairman of the Panel (or, as the case may be, by the Deputy Chairman) to preside in the Tribunal.

(3) For the avoidance of doubt the Chairman or Deputy Chairman of the Planning Panel may so appoint and designate himself.

(4) Each member of the Planning Tribunal shall, subject to subsection (5), have one vote, and decisions shall be taken by a simple majority.

(5) The person presiding in the Planning Tribunal shall not have a vote except where there is an equality of votes, in which case he shall have a casting vote.

(6) A hearing and every part of a hearing before the Planning Tribunal shall be held in public unless the Tribunal directs otherwise.

(7) The Planning Tribunal may at any time exclude any person from a hearing or any part thereof.

(8) The Policy Council may -

- (a) appoint a secretary to the Planning Tribunal on such terms and conditions and with such functions, and
- (b) provide such other officers and facilities,

as the Policy Council thinks fit.

(9) The States may by Ordinance make such provision as they think fit in relation to the appointment, constitution, proceedings and powers of the Planning Tribunal and as to the determination of appeals under sections 68 and 70 including, without limitation, provision as to -

- (a) procedure, including -
 - (i) the determination of appeals on the basis of written representations or by the holding of hearings,
 - (ii) the method of pleading,
 - (iii) the practice to be followed,
 - (iv) the means by which particular facts may be proved,
 - (v) the taking of evidence on oath,
 - (vi) the method by which evidence may be given, and

- (vii) the hearing and determination of specified classes or descriptions of appeals by the Planning Tribunal constituted by a single member, and
- (b) costs, fees, expenses and allowances (including the expenses and allowances of the members of the Tribunal) and the payment and recovery thereof,

and such an Ordinance may amend the provisions of this section or modify the application of any of those provisions.

General and miscellaneous provisions

Service of notices.

88. (1) Any document other than a summons to be given or served under this Law may be given to or served upon -

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a company with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) a company without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in

Guernsey or, if there is no such place, its registered office or principal or last known principal place of business outside Guernsey,

- (d) an unincorporated body, by being given to or served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) a department of the States, by being left at, or sent by post or transmitted to, the principal offices of that department in Guernsey;

and in this section -

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post,
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication, in which event the document shall be regarded as served when it is

received, and

- (iii) the expression "**summons**" includes any document compelling a person's attendance before the court.

(2) If a person notifies a department of the States of an address for service within Guernsey for the purposes of this Law, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(4) Subsections (1), (2) and (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on a department of the States under this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is a minor or a person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of this Law.

(7) A document sent by post shall, unless the contrary is shown,

be deemed for the purposes of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after posting,

excluding in each case any non-business day.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) Without prejudice to any other provision of this section, any document (other than a summons) required or authorised to be served on, or given to, the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to him and delivering it to some responsible person who is or appears to be resident or employed in the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of or about the premises; and in this and the next subsection "**premises**" includes any land or building.

(10) If the name or address of any owner or occupier of premises on or to whom any such document as aforesaid is to be served or given cannot after reasonable inquiry be ascertained, the document may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "**owner**" or "**occupier**" of the premises (describing them) to which the document relates, and by delivering it to some responsible person who is or

appears to be resident or employed in the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of or about the premises.

Ordinances and regulations.

89. (1) The States may by Ordinance -

- (a) make provision for the purpose of carrying this Law into effect,
- (b) amend any provision of this Law,

and the provisions of this subsection are without prejudice to any other provision of this Law conferring power to enact Ordinances (and vice versa).

(2) Any Ordinance, regulation or rule of court made under any provision of this Law -

- (a) may be amended or repealed by a subsequent Ordinance, regulation or, as the case may be, rule,
- (b) may include incidental, consequential, supplementary and transitional provisions,
- (c) in the case of an Ordinance or regulation -
 - (i) may require the approval, licence or permission of a department of the States to be obtained in circumstances specified in it,

(ii) may confer power on any person to issue guidance or refer to existing guidance issued by any person, and

(d) in the case of an Ordinance -

(i) may confer power -

(A) on any department of the States to make regulations, and

(B) on the Royal Court to make rules,

in relation to any matter as to which an Ordinance may make provision, and

(ii) may include provision as to the creation and punishment of offences.

(3) Any power conferred by this Law to make an Ordinance, regulation or rule of court may be exercised -

(a) in relation to all cases to which the power extends, in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any less provision (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 but for different purposes,
- (iii) any such provision either unconditionally or subject to specified conditions.

(4) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Compensation.

90. Except where specifically provided for by this Law or by a planning covenant, no compensation is payable by the States in respect of any loss or damage alleged to have been suffered by any person by reason of the refusal, modification or revocation of any permission required by or under this Law or the imposition of conditions on it.

General offences: false information and obstruction.

91. (1) If a person -

- (a) in connection with an application for, or for the purposes of obtaining, any permission, licence or consent under this Law,

- (b) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, any provision of this Law or of any Ordinance, regulation or rule made under it, or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Department for the purpose of exercising its functions conferred by or under this Law,

does any of the following -

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

- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) A person who -

- (a) fails without reasonable excuse to comply with a requirement imposed by, or to answer a question asked by, an officer of the Department or other person exercising any power conferred by or under this Law,
- (b) prevents or attempts to prevent another person from complying with any such requirement or answering any such question,
- (c) assaults such an officer or person while exercising any

power conferred by or under this Law, or

- (d) wilfully obstructs such an officer or person in the exercise of any such power

is guilty of an offence and liable -

- (i) on conviction on indictment, to a fine, or
- (ii) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

and in the case of an assault under paragraph (c) the offender is, instead of or in addition to such a fine, liable to imprisonment for a term not exceeding six months on summary conviction or two years on conviction on indictment.

Interpretation and construction.

92. (1) In this Law a word or expression for which there is an entry in Schedule 2 has, except where the context otherwise requires, the meaning given by that entry, and related words and expressions are to be construed accordingly.

(2) A reference in this Law to another enactment is, unless the context otherwise requires, a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) In this Law, except where the context otherwise requires -

- (a) references to a person from whom title is derived by another person include references to any predecessor in title of that other person,

- (b) references to a person deriving title from another person include references to any successor in title of that other person, and
- (c) references to deriving title are references to deriving title either directly or indirectly.

(4) In this Law words importing the neuter gender include the masculine and the feminine, and words importing the masculine gender include the feminine and the neuter.

(5) Except where the context otherwise requires, references to this Law include references to provisions made under it.

Repeals, amendments and general savings.

93. (1) The enactments listed in Part I of Schedule 3 are repealed.

(2) Part II of that Schedule has effect for the purpose of making minor and consequential amendments and repeals.

(3) The substitution of this Law for the repealed enactments does not affect the continuity of this Law with previous planning control.

(4) A reference, however expressed, in any enactment, statutory instrument or rule of court to any of the repealed enactments or any provision thereof shall be construed, unless the contrary intention appears, as a reference to this Law or, as the case may be, the corresponding provision of this Law.

(5) A document which refers, expressly or by implication, to any

of the repealed enactments or any provision thereof shall be construed, so far as is necessary for preserving its effect, as so referring to this Law or, as the case may be, the corresponding provisions of this Law.

(6) Any reference in an enactment, statutory instrument, rule of court or document to any provision of this Law shall be construed, so far as the context permits, in relation to the times at which, circumstances in which and purposes for which a corresponding provision of a repealed enactment had effect, as including a reference to that corresponding provision.

(7) Any subordinate legislation made or other thing done or having effect as if made or done under or for the purposes of a provision of the repealed enactments has effect, if and to the extent that it could have been made or done under or for the purposes of a corresponding provision of this Law, as if made or done under or for the purposes of that corresponding provision.

(8) Where any period of time specified in a provision of a repealed enactment is current at the commencement of a corresponding provision of this Law, this Law shall have effect for determining the date of the expiration of that period as if the corresponding provision of this Law had been in force when the period began to run.

(9) Notwithstanding the repeal by this section of the Island Development (Guernsey) Law, 1966, an appeal instituted under section 26 of that Law before the commencement of this section shall be determined as if that Law had not been repealed and as if this Law were not in force.

(10) A reference in this section to a provision or a corresponding provision of this Law includes a reference to a provision or a corresponding provision of any subordinate legislation made under this Law.

Extent.

94. (1) This Law applies to the island of Guernsey, including, for the avoidance of doubt -

- (a) the foreshore, and any land reclaimed from the sea, and
- (b) all islands, islets and rocks lying adjacent to the island of Guernsey, whether or not they are connected at any state of the tide to it.

(2) The States may by Ordinance provide that any provision of this Law shall apply to -

- (a) the islands of Herm and Jethou, or either of them, and
- (b) the territorial waters adjacent to the islands of Guernsey, Herm and Jethou, and the seabed beneath them,

subject to such exceptions, adaptations and modifications as may be specified in the Ordinance.

(3) A department of the States shall, before recommending the States to agree to make an Ordinance under subsection (2) in respect of Jethou, or in respect of the seabed beneath the territorial waters, consult Her Majesty's Receiver-General in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate the Ordinance.

(4) The requirement imposed by subsection (3) to consult Her Majesty's Receiver-General includes a requirement to inform the States of his views when making any recommendation to the States as to the matter consulted upon.

Citation.

95. This Law may be cited as the Land Planning and Development (Guernsey) Law, 2005.

Commencement.

96. (1) This Law shall come into force on such date as the States may by Ordinance appoint.

(2) Such an Ordinance may -

- (a) appoint different dates for different provisions of this Law and for different purposes, and
- (b) contain such saving and transitional provisions as the States think appropriate.

SCHEDULE 1

Section 7(2)

DETAILED DEVELOPMENT PLANS & OUTLINE PLANNING BRIEFS TO BE CONTINUED UNDER THIS LAW AS DEVELOPMENT PLANS & LOCAL PLANNING BRIEFS

PART I - DETAILED DEVELOPMENT PLANS

1. Urban Area Plan: Review No. 1, July 2002.
2. Rural Area Plan (Phase 1), October 1994.
3. Rural Area Plan (Phase 2), July 1997.

PART II - OUTLINE PLANNING BRIEFS

1. Bulwer Avenue Housing Target Area (1998).
2. Le Bouet Mixed Use Redevelopment Area (1998).
3. Glategny Esplanade Mixed Use Redevelopment Area (1999).
4. Hauteville Action Area (1999).
5. Longue Hougue Land Reclamation Site and Key Industrial Area: Phase 1 (2002).
6. Leale's Yard Mixed Use Redevelopment Area (2004).

SCHEDULE 2

Section 92

INTERPRETATION

"Biological diversity" means the variety and variability of living organisms and the ecological complexes within which they occur,

"breach of planning control" shall be construed in accordance with the provisions of section 48(2),

"building condition" means a condition imposed under building regulations by virtue of section 17,

"building regulations" means regulations made by the Department under section 17,

"challenge notice" shall be construed in accordance with the provisions of section 47(1),

"commencement", in relation to the commencement of development, has such meaning as may be given by Ordinance of the States,

"completion notice" means a notice issued by the Department under section 19(1) stating that a planning permission will cease to have effect at the expiry of the period specified in the notice,

"compliance notice" shall be construed in accordance with the provisions of section 48(1),

"compliance period" means the period within which the Department

requires measures to be taken under a compliance notice,

"conservation area" means an area which is identified in a Development Plan or Subject Plan as being of special architectural or historic interest and the character or appearance of which it is desirable to preserve or enhance by the application of the special provisions in Chapter 3 of Part IV,

"contravention" includes failure to comply (and vice versa),

"Department" means the States of Guernsey Environment Department,

"department" of the States includes any council or committee (however called) thereof,

"development" has the meaning given by section 13(1),

"deriving title", and references to persons deriving title and cognate expressions, shall be construed in accordance with section 92(3),

"Development Plan" has the meaning given by section 7(2),

"Guernsey" means the island of Guernsey, as construed in accordance with section 94(1),

"interim compliance notice" means a notice issued by the Department under section 53(1) prohibiting the carrying out of an activity on land to which a compliance notice relates,

"Local Planning Brief" has the meaning given by section 7(2),

"material change of use" shall be construed in accordance with section 13(3),

"non-business day" means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^I,

"outline permission" means planning permission subject to the reservation of particular matters for subsequent approval,

"planning control", in the expression **"breach of planning control"**, shall be construed in accordance with the provisions of section 48(2),

"planning covenant" has the meaning given by section 23(1),

"planning injunction" has the meaning given by section 52(1),

"Planning Panel" means the Panel established under section 86,

"planning permission" means the permission which is required under section 14 for the carrying out of any development of land,

"Planning Tribunal" means the Tribunal the members of which are appointed under section 87 to hear and determine an appeal under section 68

^I Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; No. XIV of 1994.

or 70,

"Policy Council" means the States of Guernsey Policy Council,

"protected buildings" means buildings which are of special historic, architectural, traditional or other interest and which are listed on the protected buildings list,

"protected buildings list" means the list of protected buildings prepared, maintained and kept under review by the Department under section 33(1),

"protected monuments" means monuments, structures, artefacts, caves, ruins and remains which are of archaeological, historic, traditional, artistic or other special interest and which are listed on the protected monuments list,

"protected monuments list" means the list of protected monuments prepared, maintained and kept under review by the Department under section 29(1),

"public utility service" has the meaning given by section 78(3),

"repealed enactments" means the enactments listed in Part I of Schedule 3 which are repealed by this Law,

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"site of special significance" means an area which is identified in a Development Plan or Subject Plan as having special significance (whether because of archaeological, botanical, geological, scientific, cultural, zoological or any other interest) and which it is desirable to preserve, enhance or manage by the application of the special provisions in Chapter 4 of Part IV,

"States" means the States of Guernsey,

"Strategic and Corporate Plan" means the Plan -

- (a) which was required to be prepared under section 2 of the Island Development (Amendment) (Guernsey) Law, 1990^m, setting out the strategic, economic and social objectives to be followed in relation to the development of Guernsey, and
- (b) which is replaced by the Strategic Land Use Plan,

"Strategic Land Planning Group" means the Group appointed under section 3(1),

"Strategic Land Use Plan" means the Plan established pursuant to section 4 to replace the Strategic and Corporate Plan,

"strategically essential development" shall be construed in accordance with section 77,

^m Ordres en Conseil Vol. XXXII, p. 33.

"Subject Plan" has the meaning given by section 9(1),

"tree protection order" means an order under section 43(1) for the protection of any tree, group or area of trees or woodlands,

"use class" means a class of uses identified as such by Ordinance of the States under section 13(6).

SCHEDULE 3

Section 93(1)

PART I REPEALS

1. Building (Guernsey) Law, 1956ⁿ.
2. Island Development (Guernsey) Law, 1966^o.
3. Ancient Monuments and Protected Buildings (Guernsey) Law, 1967^p.
4. Island Development (Amendment) (Guernsey) Law, 1970^q.
5. Island Development (Amendment) (Guernsey) Law, 1972^r.
6. Island Development (Special Provisions) (Guernsey) Law, 1974^s.
7. Island Development (Amendment) (Guernsey) Law, 1988^t.
8. Island Development (Amendment) (Guernsey) Law, 1990^u.

PART II MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

1. In the Building Control (Transfer of Functions) Ordinance, 1992^v -

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- ⁿ Ordres en Conseil Vol. XVII, p. 56.
^o Ordres en Conseil Vol. XX, p. 276.
^p Ordres en Conseil Vol. XXI, p. 219.
^q Ordres en Conseil Vol. XXII, p. 573.
^r Ordres en Conseil Vol. XXIII, p. 231.
^s Ordres en Conseil Vol. XXIV, p. 227.
^t Ordres en Conseil Vol. XXXI, p. 61.
^u Ordres en Conseil Vol. XXXII, p. 33.
^v Recueil d'Ordonnances Tome XXVI, p. 57.

- (a) in Schedules 1 and 2, the references to the Building (Guernsey) Law, 1956 are repealed, and
 - (b) in Schedule 3, paragraphs 1 to 4 are repealed.
- 2. In the Heritage Committee Ordinance, 1994^w, sections 1(a) and 2(2) are repealed.

^w Recueil d'Ordonnances Tome XXVI, p. 306.