

ORDER IN COUNCIL

XXIV
1989

ratifying a Projet de Loi

ENTITLED

The Historic Buildings and Ancient Monuments (Alderney) Law, 1989

(Registered on the Records of the Island of Guernsey
on the 6th day of February, 1990.)



1989

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of February, 1990 before Sir Charles Frossard, Kt., Bailiff; present:— Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of December, 1989, approving and ratifying a *Projet de Loi* of the States of Alderney entitled "The Historic Buildings and Ancient Monuments (Alderney) Law, 1989", THE COURT after the reading of the said Order and after having heard Her Majesty's Procureur thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island.
2. That an extract of this present Act together with a copy of the said Order in Council be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 19th day of December 1989

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 15th day of November 1989 in the words following, viz:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee a humble Petition of Jon Kay-Mouat Esquire, President of the States of Alderney, setting forth:—

‘That at a meeting of the States of Alderney held on the 1st day of March 1989 the States adopted a Resolution that a Projet de Loi entitled “The Historic Buildings and Ancient Monuments (Alderney) Law, 1989” be approved: That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said Projet de Loi is as set forth in the Schedule hereunto annexed: and most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Projet de Loi entitled “The Historic Buildings and Ancient Monuments (Alderney) Law, 1989” and order that the same shall have force of Law within the Island of Alderney.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the *Projet de Loi* annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said *Projet de Loi*.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said *Projet de Loi*, and to order, and it is hereby ordered, that the same shall have the force of law within the Island of Alderney.

AND HER MAJESTY doth hereby further direct that this Order and the said *Projet de Loi* (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being, of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Historic Buildings and Ancient Monuments (Alderney) Law, 1989

ARRANGEMENT OF SECTIONS

Section

1. Register of Historic Buildings and Ancient Monuments.
2. Registration of historic buildings and ancient monuments.
3. Registration of conservation areas.
4. Amendment and cancellation of Register entries.
5. Consultations prior to registration.
6. Notification of registration etc.
7. Publication of notices of registration.
8. Extension of meaning of "development" in the Control of Development Law in relation to registered buildings.
9. Special considerations under the Control of Development Law in relation to registered buildings etc.
10. Special conditions under Control of Development Law in relation to registered building etc.
11. Control of excavations etc.
12. Causing damage to registered buildings.
13. Appeals.
14. Powers of entry.
15. Offences by bodies corporate.
16. Interpretation.
17. Service of notices.
18. No compensation payable by the States.
19. Citation.

PROJET DE LOI

ENTITLED

The Historic Buildings and Ancient Monuments (Alderney) Law, 1989

THE STATES, in pursuance of their Resolution of the 1st March, 1989, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

Register of Historic Buildings and Ancient Monuments.

1. (1) The Clerk of the States shall maintain at the States Office a register to be called "The Register of Historic Buildings and Ancient Monuments" in which he shall make such entries as may be directed from time to time by the Committee in pursuance of the provisions of this Law.

(2) Every entry made in the Register by the Clerk of the States shall bear the date on which it was made.

(3) The Register shall be open to public inspection at all reasonable times.

Registration of historic buildings

2. (1) If the Committee is of the opinion that the preservation of any building is a matter of public importance by reason of its special historic, architectural, traditional, artistic or archaeological interest, the Committee may direct the Clerk of the States to register the building, and the Clerk of the States shall thereupon make such entry in the Register with respect to the building as the Committee thinks fit.

(2) In considering whether to direct the registration of a building under subsection (1) of this section, the Committee may take into account not only the building itself but also—

- (a) any respect in which its exterior contributes to any such interest of any group of buildings of which it forms part; and
- (b) the desirability of preserving, on the ground of any such interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.

3. If the Committee is of the opinion that any area is an area of special historic or architectural interest the character or appearance of which it is desirable as a matter of public importance to preserve or enhance, the Committee may designate the area as a conservation area and direct that it be registered as such in the Register by the Clerk of the States, and the Clerk of the States shall thereupon make such entry in the Register with respect to the area so designated as the Committee thinks fit.

Registration
of conserva-
tion areas.

4. The Committee may from time to time direct the Clerk of the States to amend or cancel any entry in the Register, and the Clerk of the States shall thereupon amend or cancel the entry in accordance with the direction of the Committee.

Amendment
and
cancellation
of Register
entries.

5. Before directing the registration of any building or conservation area or directing the amendment or cancellation of any entry in the Register relating to any building or conservation area, the Committee may consult such persons or bodies of persons as

Consulta-
tions prior to
registration.

appear to the Committee appropriate as having knowledge of, or interest in, buildings of special historic, architectural, traditional, artistic or archaeological interest.

Notification
of registra-
tion etc.

6. The Clerk of the States shall, as soon as may be after the registration of any building or the making of any amendment or cancellation under section 4 of an entry in the Register relating to any building, serve a notice in writing on the owner and on the occupier of the building stating that the building has been registered or the entry in the Register relating thereto has been so amended or cancelled, as the case may be.

Publication
of notices of
registration.

7. (1) The Clerk of the States shall, as soon as possible after the registration of any building or conservation area, and after the making of an amendment or cancellation under section 4 of an entry in the Register, cause notices stating that the building or the area has been registered or, as the case may be, that such entry has been amended or cancelled (together with particulars of any amendment)—

- (a) to be published in "*La Gazette Officielle*" on at least two occasions;
- (b) to be affixed for not less than seven consecutive days to the notice-boards outside the Court House and the gate of the Parish Church.

(2) The Committee shall cause a list of all buildings and conservation areas registered under this Law to be published in a *Billet d'Etat* at least once every three years.

8. The provisions of the Control of Development Law shall have effect in all respects as if the definition of the expression "development" in section 34 of that Law were extended, notwithstanding paragraph (i) of the proviso to that definition, so as to include—

Extension of meaning of "development" in the Control of Development Law in relation to registered buildings.

- (a) in relation to any registered building, the carrying out of any work, whether for the maintenance of the building or otherwise, which may affect the external character or appearance of the building; and
- (b) in relation to any building of which the interior is registered under section 2, the carrying out of any work, whether for the maintenance of the building or otherwise, which may affect the character or appearance of the building's interior.

9. (1) In considering whether to grant permission under the Control of Development Law for the carrying out of any work in relation to a registered building, the Committee shall have special regard to the desirability of preserving the building and any features of special historic, architectural, traditional, artistic or archaeological interest which it possesses.

Special considerations under the Control of Development Law in relation to registered buildings etc.

(2) In considering whether to grant permission under the Control of Development Law for the carrying out of any work in relation to any building within a conservation area registered under this Law, the Committee shall have special regard to the desirability of preserving and enhancing the character and appearance of that area as an area of special historic or architectural interest.

(3) The provisions of the Control of Development Law shall have effect in all respects as if sub-

sections (1) and (2) of this section were included in section 7 of that Law.

Special conditions under Control of Development Law in relation to registered buildings etc.

10. Without prejudice to section 6(1) of the Control of Development Law, the conditions which may be attached to a grant of permission under that Law shall—

(a) in the case of such work as is referred to in section 9(1) of this Law, include conditions relating to—

- (i) the preservation of particular features of the building, either as part of it or after severance from it;
- (ii) the making good, after the works are completed, of any damage caused to the building by the works;
- (iii) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials, so far as practicable, and with such alterations of the interior of the building as may be specified in the conditions;

(b) in the case of such work as is referred to in section 9(2) of this Law, include conditions relating to the preservation or enhancement of the character or appearance of the conservation area within which such work is intended to be carried out as an area of special historic or architectural interest;

and the provisions of the Control of Development Law shall have effect accordingly.

Control of excavations etc.

11. (1) The States may from time to time by Ordinance make provision for controlling (by way of licensing or otherwise) the use of any machinery,

equipment or appliance for the purpose of detecting or excavating below the surface of the land any building or object of special historic, traditional, artistic or archaeological interest.

(2) A person who contravenes or fails to comply with any Ordinance made under this section, or any licence granted by the Committee under such an Ordinance, shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the Alderney uniform scale.

12. (1) A person who, without lawful authority or excuse, Causing damage to registered buildings.

(a) intentionally damage, or does any act which is likely to cause damage to, a registered building, or

(b) permits another to do any act which damages, or which is likely to cause damage to, a registered building

is guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

(2) A person convicted of an offence under subsection (1) of this section who fails to take all reasonable steps to prevent any damage or further damage resulting from the offence, is guilty of a further offence and liable, on conviction, to a fine not exceeding £100 for each day on which the failure continues.

13. (1) Any person aggrieved by the registration Appeals. of any building or conservation area, or by the amendment or cancellation of any entry in the Register under section 4, may, within 90 days of the date of the registration or the date on which the

amendment or cancellation was made in the Register, as the case may be, appeal to the Court on the grounds that the decision of the Committee was ultra vires or unreasonable:

Provided that the Court may by order extend the period within which an appeal is required to be made under this subsection and may so extend that period although the application for extension is not made until after the expiration of that period.

(2) An appeal under this section shall be instituted by way of a summons served on the Chairman of the Committee and setting out the material facts upon which the appellant relies.

(3) The Clerk of the States shall, if the Court so directs on an appeal brought under this section, amend or cancel any entry in the Register in accordance with the direction of the Court.

**Powers of
entry.**

14. (1) Subject to subsection (2) of this section, any person authorised in writing by the Committee may, upon production, if required, of his authority, at any reasonable time enter any land for the purpose—

- (a) of surveying any building thereon in connection with a proposal to register the same or to amend or cancel any entry in the Register relating to that building under section 4;
- (b) of surveying the buildings within any area in connection with a proposal to designate that area as a conservation area under section 3 or to amend or cancel under section 4 any entry in the Register relating to a conservation area registered under this Law;

(c) of ascertaining whether an offence has been committed under this Law.

(2) The power conferred by subsection (1) of this section does not include power to enter (without the consent of a person entitled to grant it)—

- (a) any building which is occupied, unless at least 24 hours' notice of the intended entry has been given to the occupier; or
- (b) any building used only as a private dwelling, except under and in accordance with a warrant issued under this paragraph by the Chairman of the Court on information laid before him on oath.

(3) A person who wilfully obstructs any person in the exercise of his powers under subsection (1) of this section is guilty of an offence and liable, on conviction, to a fine not exceeding level 2 on the Alderney uniform scale.

15. (1) If an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body corporate, or any person purporting to act as such, then he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

Offences by
bodies
corporate.

(2) In this section—

- “body corporate” includes a body constituted under the law of any country or territory;
- “officer” includes any director, secretary or similar officer and any person in accordance with whose directions or instructions the officers of a body corporate, or any of them, are accustomed to act.

**Interpreta-
tion.**

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

“building” includes any structure, erection or other work above or below the surface of the land, any cave or excavation, and any part or remains of a building as so defined;

“the Committee” means the Building and Development Control Committee as constituted for the time being by Resolution of the States under section 1 of the Control of Development Law;

“conservation area” means an area designated by the Committee under section 4;

“the Control of Development Law” means the Building and Development Control (Alderney) Law, 1975(a);

“the Court” means the Court of Alderney;

“owner”, in relation to a building, includes—

(a) where the building is the subject of a vested right of usufruct, the usufructuary;

(b) where the building is held in trust, the trustees;

“the Register” means the register required to be maintained by section 1 of this Law;

“registered” means registered in the Register and “registration” shall be construed accordingly;

“the States” means the States of Alderney.

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

(a) Ordres en Conseil Vol. XXV, p. 8; Vol. XXVI, p. 560; Nos. II and III of 1985; Nos. III, XII and XXII of 1987.
(b) Ordres en Conseil Vol. XIII, p. 355.

(3) Except where the context otherwise requires, any reference in this Law—

- (a) to another enactment, includes a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law;
- (b) to a numbered provision, is to the provision so numbered in this Law.

17. (1) Subject to the provisions of this section, any notice required to be served under this Law may be served— Service of notices.

- (a) on any person by delivering it to him, or by leaving it or sending it by post addressed to him at his usual or last known place of abode;
- (b) on any body corporate by leaving it at, or by sending it by post addressed to, its registered office, if situate in the Island of Alderney or the Island of Guernsey, or, if its registered office is not so situate, its principal or last known principal place of business in either of those Islands.

(2) Subject to the provisions of this section, where any notice is required to be served on any person as the owner of a building and he is an infant or other person under guardianship, the notice shall be taken to be duly served for the purposes of this Law if, being addressed to the guardian of the infant or other person, it is delivered or sent in the manner specified in paragraph (a) of subsection (1) of this section; and in the case where there is no guardian the Court may, on application being made *ex parte* in that behalf by the Committee, appoint a guardian

for the purpose of enabling the Committee to effect service of the notice in accordance with this subsection.

(3) Where the Court is satisfied, on an application made *ex parte* by the Committee for an order under this subsection, that it is impracticable for any reason to serve on any person in accordance with the foregoing provisions of this section any notice required under this Law to be served on him, the Court may make an order for substituted service of the notice, and in that event the notice shall be taken to be duly served for the purposes of this Law if its service is effected by taking such steps as the Court directs.

No compensation payable by the States

18. No compensation is payable by the States in respect of any loss suffered by any person by reason of any decision taken by the Committee under this Law.

Citation.

19. This Law may be cited as the Historic Buildings and Ancient Monuments (Alderney) Law, 1989.

K. H. TOUGH,

Her Majesty's Greffier.