

Consolidated text

**ORDINANCE
OF THE STATES OF DELIBERATION**

ENTITLED

**The Land Planning and Development (Enforcement)
Ordinance, 2007 ***

[CONSOLIDATED TEXT]

NOTE

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* No. XXVII of 2007.

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ARRANGEMENT OF SECTIONS

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(Made on the 26th September, 2007.)

The Land Planning and Development (Enforcement) Ordinance, 2007

THE STATES, in pursuance of their Resolutions of the 27th June 2002 and of the 26th January 2005^a, and in exercise of the powers conferred on them by sections 47(3), 48(5), 49, 53, 61(2), 81 and 89 of the Land Planning and Development (Guernsey) Law, 2005^b, and of all other powers enabling them in that behalf, hereby order: –

Contents of challenge notice.

1. (1) A challenge notice must specify the following matters in addition to the information required to be given to the Department –

- (a) that it is served under section 47 of the Law,
- (b) the matters which appear to the Department to constitute the suspected breach of planning control including any –
 - (i) condition of a planning permission, or
 - (ii) requirement of building regulations,

in respect of which the breach is suspected,

^a Billet d'État No. XI of 2002 and Article I of Billet d'État No. I of 2005.

^b Order in Council No. XVI of 2005.

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- (c) the land to which it relates (by means of a plan or otherwise), and
- (d) that a failure by a person on whom the notice is served to comply with any requirement of the notice within 21 days beginning with its date of service is an offence in accordance with section 58 of the Law.

(2) For the avoidance of doubt, where it appears to the Department that any requirement of the building regulations may not have been complied with, a challenge notice may require such information to be given which would necessitate the opening up of building work.

Contents of compliance notice.

2. A compliance notice must specify the following matters in addition to those set out in section 49(1) of the Law –

- (a) that it is issued under section 48(1) of the Law,
- (b) that there is a right of appeal to the Planning Tribunal against the notice under section 70(1) of the Law,
- (c) brief particulars of the grounds on which, period within which and manner in which an appeal must be made, and
- (d) that if any measure required by the notice is not taken within the compliance period –
 - (i) every person on whom it is served, and

- (ii) every person who is the owner of the land, after the expiry of that period and whilst the failure to take such measure continues,

will commit an offence under section 59 of the Law.

Modification of section 48(4) of the Law.

3. (1) Section 48(4) (when a compliance notice may be issued) of the Law shall be modified –

- (a) where an alleged breach relates to any development, other than a material change of use, so that the period of 10 years in paragraph (a) reads "4 years", and
- (b) where an immunity certificate has been issued in accordance with the following provisions of this section, so that no action may be taken under Part V of the Law, as a consequence of the issuing of a compliance notice, in respect of land to which the certificate relates where such action is –
 - (i) in respect of a breach occurring on or before the date of the certificate; and
 - (ii) against the persons on whom the certificate confers immunity.

(2) In connection with the purchase of any land, a purchaser may apply to the Department for an immunity certificate in relation to that land.

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- (3) An application for an immunity certificate must be –
 - (a) made on a form supplied by the Department and include the particulars specified on that form which shall include a declaration as to whether or not he has been, in the last 4 years, an owner, occupier or person with an interest in the land in question, and
 - (b) accompanied by such fee as the Department may by Regulations prescribe.

- (4) Upon receipt of an application complying with subsection (3), the Department must, as soon as practicable, search –
 - (a) the register of enforcement notices, and
 - (b) subject to subsection (9), any file of the Department relating to the land in question which is relevant to the taking or potential taking of action under Part V of the Law.

- (5) Where the Department is satisfied, after carrying out such a search that, subject to subsections (6) and (7), it has not taken and is not considering taking, any action under Part V of the Law in relation to the land it must issue an immunity certificate.

- (6) Where the Department is satisfied that all relevant breaches or suspected breaches in relation to which action under Part V of the Law has or might be taken have been remedied, it must issue an immunity certificate.

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(7) For the avoidance of doubt, the Department may, in considering whether or not it is satisfied of the matters in subsection (5), carry out an inspection of the land or take any other action that it may take under the Law to ascertain whether there has been a breach of planning control.

(8) An immunity certificate shall –

(a) identify the land to which it relates,

(b) have effect from its date of issue,

(c) confer immunity on –

(i) the applicant, and

(ii) any person who is the occupier or has an interest in the land who –

(A) becomes such on or after the date of issue of the certificate, and

(B) who has not been such or the owner of the land at any time within a period of four years before the date of issue of the certificate,

in respect of any action which may be taken under Part V of the Law, as a consequence of the issuing of a compliance notice, in relation

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to any breaches or suspected breaches in relation to the land in question which occurred on or before its date of issue,

but, for the avoidance of doubt, shall not prevent the Department taking action under the repealed enactments (in respect of a breach of planning control occurring before the date of commencement of Part V of the Law) in accordance with section 48(8) of the Law.

(9) In searching any file of the Department under subsection (4)(b) the Department shall –

- (a) notwithstanding section 93(6) of the Law, not be required to search any file relating to any action under the repealed enactments,
- (b) be required to search any file relating to action under Part V of the Law only for –
 - (i) where an alleged breach relates to a material change of use, any action which has been taken or which the Department is considering taking within a period of 10 years beginning with the date of that breach, and
 - (ii) where an alleged breach relates to development other than a material change of use, any action which has been taken or which the Department is considering taking within a period of 4 years beginning with the date of that breach.

NOTE

The following Regulations have been made under section 3:

Land Planning and Development (Immunity Certificate Fee) Regulations, 2009.

Restriction on activities an interim compliance notice may prohibit.

4. (1) An interim compliance notice shall not prohibit –
- (a) the use of any building as a dwelling-house, or
 - (b) subject to subsection (2), the carrying out of any activity if the activity has been carried out (whether continuously or not) for a period of more than four years ending with the date of service of the notice,

and for the purposes of paragraph (b) no account is to be taken of any period during which the activity was authorised by planning permission.

(2) Subsection (1)(b), does not prevent an interim compliance notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or operations constituting development under sections 1 to 5 of the Land Planning and Development (General Provisions) Ordinance, 2007^c.

Interim compliance notice: supplementary provisions.

5. (1) Where an interim compliance notice has been served, the Department may place a notice on or near the land to which the interim compliance

^c Approved by resolution of the States on 26th September, 2007.

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notice relates ("**site notice**") specifying –

- (a) that an interim compliance notice has been issued requiring a specified activity to cease, and
- (b) the date when the interim compliance notice takes effect.

(2) If an interim compliance notice, in respect of which a site notice was placed on land under subsection (1), is withdrawn by the Department, the Department must place a notice of the withdrawal in place of the site notice.

(3) An interim compliance notice shall cease to have effect when

–

- (a) the compliance notice to which it relates is withdrawn or quashed, or
- (b) the compliance period, in the compliance notice to which it relates, expires.

(4) Where the Department withdraws, waives or relaxes a requirement in a compliance notice that an activity shall cease, then any interim compliance notice, issued in relation to that activity or any activity carried out as part of or associated with that activity –

- (a) in the case of a withdrawal or waiver, shall cease to have effect to the extent that the interim compliance notice applies to any such activity, and

- (b) in the case of a relaxation, shall cease to have effect to the extent that the requirement is relaxed and to the extent that the notice applies to any such activity.

Register of enforcement notices.

6. (1) Such of the following details and documents as are relevant in relation to any challenge notice served or compliance notice or interim compliance notice issued by the Department, must be contained on the register of notices maintained by the Department pursuant to section 61 of the Law –

- (a) the type of notice issued or served,
- (b) in relation to a challenge notice, the date of service and in relation to a compliance notice and an interim compliance notice, the date of issue and of service of the notice and of any copies,
- (c) brief particulars, including the address, of the land to which it relates,
- (d) brief particulars, including the date, of any withdrawal, waiving or relaxation of any requirement in the notice or of any setting aside, in whole or in part, of the notice,
- (e) whether or not the notice has been contravened, and
- (f) a copy of any decision made by –
 - (i) the Planning Tribunal, and

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- (ii) the Royal Court in relation to a decision of the Planning Tribunal,

on any appeal against the notice,

and the register may contain such other details and documents in relation to such notices and any decisions made in relation to them as the Department considers appropriate.

(2) The register must be kept at the principal office of the Department, made available for inspection by the public free of charge at all reasonable times and the details referred to in subsection (1) must be kept on the register for 10 years.

(3) The Department must provide copies of any details on the register to any person upon written request and upon payment of a reasonable fee.

Amendment of the Law in relation to the building regulations etc.

7. (1) The Law shall be amended as follows.

(2) In the arrangement of sections, for the entry relating to section 57 substitute –

"Unlawful development and breach of the building regulations.".

(3) In section 17 (building regulations) –

(a) in subsection (1) –

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- (i) in paragraph (a), for the words "and maintenance" substitute ", maintenance and demolition",
 - (ii) in paragraph (b), the word "and" is repealed, and
 - (iii) at the end add –

"and,

(d) services, fittings and equipment provided in or in connection with buildings.",
- (b) in subsection (3) –
- (i) for paragraph (f) substitute –

"(f) appeals to an Adjudicator (including matters corresponding to provision in relation to appeals to a Tribunal made by or under Part VI or VIII of this Law) against –

(i) further requirements imposed under subsection (2)(b)(ii), and

(ii) decisions of the Department under the building regulations

including, in particular,
decisions –

- (A) to reject plans, or approve them with modifications or subject to conditions, or
- (B) to grant a licence to execute works subject to modifications to plans for such works or subject to conditions,
- (C) to give notice that a licence is no longer valid,
- (D) in relation to work including or consisting of controlled work, to fix or refuse to extend any period on the expiration of which a building or part of a building must be removed or to impose or refuse to vary any conditions in relation to such work or building, or

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- (E) to give notice requiring work to be cut into, laid open or pulled down to ascertain whether or not building regulations have been contravened,

whether or not in each case planning permission is also required for the works in question.",

- (ii) after paragraph (f) add –

"(fa) the enforcement, or in relation to the enforcement, of building regulations by whatsoever means as they consider appropriate," and

- (c) at the end add –

"(4) In this section –

- (a) "**building**" includes any well, cistern, cesspit, cellar or other excavation below surface level or any wall or permanent hoarding whether or not, in each case, they comprise a structure,

- (b) "**controlled work**" shall have the meaning in regulation 12(8) of the

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Building Regulations, 1992, and

(c) "road" includes any path or way, not maintained at public expense, which is laid out or constructed to provide access or improved access –

(i) to two or more dwelling-houses,
or

(ii) to any building where that path or way is constructed as part of the same development project as that building.".

(4) In section 48(2) (construction of breach of planning control) –

(a) at the end of paragraph (a) the word "or" is repealed,
and

(b) at the end add –

"or,

(c) any relevant requirement of the building regulations has not been complied with.".

(5) In section 48(4) (when compliance notice may be issued) for the words "the owner of" substitute "the owner, occupier or other person with an interest in" and after the words "its owner" insert the words "or occupier, or had

that interest, " .

(6) In section 51(1) (stay of action and proceedings under this Part), for paragraph (b) substitute the following paragraph –

"(b) before the expiry of the period within which such an appeal could be made or (if later) the expiry of the compliance period –

(i) 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, or

(ii) plans are duly deposited with the Department pursuant to the building regulations the approval of which would have rendered the alleged breach of planning control lawful if such plans had been approved before it occurred." .

(7) In section 53 (interim compliance notices) –

(a) in subsection (5) after the words "which must not" insert "(subject to subsection (5A))" , and

(b) after subsection (5) insert the following subsection –

"(5A) An interim compliance notice may have

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immediate effect insofar as an activity which it prohibits is –

(a) an activity which the compliance notice to which it relates requires to cease for the purpose of remedying a breach of a requirement of the building regulations, or

(b) an activity carried out as part of or associated with such an activity."

(8) In section 57 (unlawful development) –

(a) for the heading substitute –

"Unlawful development and breach of the building regulations.",

(b) after subsection (1) insert –

"(1A) it is an offence for any person without reasonable excuse, to breach any requirement of the building regulations (whether he does so on his own behalf or as an agent).",
and

(c) In subsection (2), for the words, "subsection (1)" substitute "subsection (1) or (1A)".

(9) In section 68 (right of appeal against planning decisions and failure to take such decisions), in subsection (1) –

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(a) for paragraph (b) substitute –

"(b) grants such an application subject to any conditions other than a building condition",
and

(b) in paragraph (f) after the words "other than an approval" insert "of plans".

(10) In Schedule 2 (interpretation), for the definition of "building condition" substitute –

"**building condition**" means a condition imposed by virtue of section 17(2),".

Interpretation.

8. (1) In this Ordinance, unless the context otherwise requires –

"**breach of planning control**" shall be construed in accordance with the provisions of section 48(2) of the Law and related expressions shall be construed accordingly,

"**building regulations**" means regulations made by the Department under section 17 of the Law^d,

"**building work**" shall have the meaning in regulation 5 of the

^d By virtue of section 93(7) of the Law, the Building Regulations, 1992, as amended (Guernsey S.I. No. 27 of 1992, as amended by G.S.I. No. 39 of 2006), have effect as if made under section 17 of the Law.

Building Regulations 1992^e,

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

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

"compliance period" means the period within which the Department requires measures to be taken under a compliance notice,

"Department" means the States of Guernsey Environment Department,

"development" shall be construed in accordance with section 13(1) of the Law and Part I of the General Ordinance,

"immunity certificate" shall be construed in accordance with section 3(8),

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

"the Law" means the Land Planning and Development (Guernsey) Law, 2005,

^e Guernsey S. I. No. 27 of 1992 as amended by Guernsey S.I. No. 39 of 2006.

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

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

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

"register of notices" means the register of notices prepared and maintained pursuant to section 61 of the Law,

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

"site notice" shall be construed in accordance with section 5(1),

"under the Law" includes provisions made under the Law,

and other terms used in this Ordinance which are not defined in it but are defined in the Law shall have the same meaning as in the Law.

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

Citation.

9. This Ordinance may be cited as the Land Planning and Development (Enforcement) Ordinance, 2007.

Commencement.

- 10.** This Ordinance shall come into force on the same date as the Law.

NOTE

The Law was brought into force on 6th April, 2009 by the Land Planning and Development (Fees and Commencement) Ordinance, 2008, section 15.
