

# PROJET DE LOI

ENTITLED

## **The Compulsory Acquisition of Land (Guernsey) Law, 1949 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

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

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\* Ordres en Conseil Vol. XIV, p. 25; as amended by the Decimal Currency (Bailiwick of Guernsey) Law, 1970 (Ordres en Conseil Vol. XXII, p. 560); the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010 (No. \*\* of 2012); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406). See also the Compulsory Acquisition of Land (Guernsey) Law, 1949, Amendment Law, 1956 (Ordres en Conseil Vol. XVII, p. 54); the Arbitration (Guernsey) Law, 1982 (Ordres en Conseil Vol. XXVII, p. 525); the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 (No. IV of 2008); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

*Consolidated text*

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## **The Compulsory Acquisition of Land (Guernsey) Law, 1949**

### ARRANGEMENT OF SECTIONS

1. Acquisition of land.
2. Transfer of rights from land to compensation.
3. Retrait Lignager.
4. Temporary possession by the States.
5. Control of use of and access to land.
6. Order to designate the land affected.
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# PROJET DE LOI

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## **The Compulsory Acquisition of Land (Guernsey) Law, 1949**

**THE STATES**, in pursuance of their Resolution of the 22<sup>nd</sup> day of September, 1948, have approved the following provisions, which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in this Island and in the Islands of Herm and Jethou.

### **Acquisition of land.**

1. [Subject to the procedures set out in Schedule 2 to this Law, where the Department is] satisfied that it is expedient for the carrying out of any public purpose, that any land should be owned by the States, [it may by order (referred to in this Law as a "**compulsory purchase order**")] declare that land to be vested in the States by virtue of the provisions of this Law, whereupon all right, title and interest in or over such land, other than feudal rights and rights in respect of a "rente, rente hypothèque" or other "droit hypothécaire" shall vest in the States, together with the benefit of any covenant, contract, right of support or other easement or profit à prendre relating to such land or usually enjoyed therewith, and freed and discharged [or, where the compulsory purchase order is temporary in nature, released temporarily] from any right to life or other enjoyment or occupation thereof or of any part thereof, and, to such extent as that [compulsory purchase order] or any subsequent [compulsory purchase order] may [provide], from the burden of any easement or profit à prendre, other than an existing right of support enjoyed by adjacent land or the natural passage of water over or under the

land acquired.

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**NOTES**

*In section 1,*

*the words in the first, second, third and sixth pairs of square brackets were, respectively, substituted, substituted, inserted and substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 2(a), section 2(b), section 2(c) and section 2(e), with effect from 2nd July, 2012;*

*the words in the fourth and fifth pairs of square brackets were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 2(d), with effect from 2nd July, 2012.*

*In accordance with the provisions of the Compulsory Acquisition of Land (Guernsey) Law, 1949, Amendment Law, 1956, section 2, with effect from 23rd June, 1956, this Law and that Law shall be construed as one and may be cited together as the Compulsory Acquisition of Land (Guernsey) Laws, 1949 and 1956.*

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**Transfer of rights from land to compensation.**

2. (1) From and after the date of the vesting in the States of any land by virtue of the last preceding section, that land shall not be subject to any "rente, rente hypothèque" or other "droit hypothécaire" or to any "recours en garantie" previously affecting the same but the compensation payable by way of "rente" in respect of the acquisition of that land in accordance with the provisions of this Law shall thenceforth be alone subject thereto in substitution for that land.

(2) In case the States, after redeeming any sum of compensation expressed as a "rente" are sued as "affieffeurs" in any "saisie" proceedings by reason of such redemption; and the States elect not to become "tenant" of such "saisie", the States may, in lieu of renouncing their "affieffement" pay to the "tenant" of the "saisie" the amount stated in the redemption contract, or such less sum as shall suffice for the payment to him of the amount of his claim, costs and

expenses, so far as the value of the property of the "saisie" of which he has become "tenant" is insufficient to meet that amount.

(3) In case the States, after redeeming any sum of compensation expressed as a "rente" are sued for any claim in "usufruit", dower or other enjoyment affecting the same, the States may satisfy such a claim by paying the claimant, during the period of such "usufruit", dower or other enjoyment, an annual sum equal to the annual value thereof on the date of redemption.

**Retrait Lignager.**

3. An action "en retrait lignager" shall not lie in respect of the acquisition of any land under section 1 of this Law.

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**NOTE**

*In accordance with the provisions of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006, section 32(1), with effect from 8th May, 2008, the right of redemption of real property ("droit de retrait lignager") is abolished, subject to the saving in section 32(3) of the 2006 Law.*

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**Temporary possession by the States.**

4. [Subject to the procedures set out in Schedule 2 to this Law, where the Department is] satisfied that it is expedient for the carrying out of any public purpose that the States should temporarily take possession of any land, [it may by order (referred to in this Law as a "**temporary possession order**")] so declare, whereupon it shall be lawful for the States and for any person authorised by them to enter and take possession of such land to the exclusion of any other persons for such period as may in the [temporary possession order] have been specified and to make such alterations and generally to do such things on that land as may be requisite for the carrying out of the public purpose.

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**NOTE**

*In section 4, the words in the first, second and third pairs of square brackets were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 3(a), section 3(b) and section 3(c), with effect from 2nd July, 2012.*

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**Control of use of and access to land.**

5. [Subject to the procedures set out in Schedule 2 to this Law, where the Department is] satisfied that it is expedient for the carrying out of any public purpose that the use of or the right of access to or over any land should be controlled by the States, [it may by order (referred to in this Law as a "**control of use order**")]] so declare, and in such case may indicate [in the control of use order] what control it is expedient to impose, and for what period, whereupon the imposition of that control shall have effect:

PROVIDED ALWAYS that [the Department may by any such control of use order delegate to the acquiring department] the exercise of such control of use or access, or of both use and access, as the case may be, and, where such control is to be intermittent and not continuous or is to be of varying character or in respect of varying areas of the land, authorise [the acquiring department to stipulate] from time to time the period of operation of such control, the extent of such control and the area of the land subject thereto and thereupon such control shall have effect to such extent and during such period or periods and as respects such areas of the land as shall be specified in an announcement inserted by the [the acquiring department in the "Gazette Officielle" or in any other local publication prescribed from time to time] not earlier than thirty days nor later than three days before the commencement of any such period of control.

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**NOTE**

*In section 5, the words in the first, second, third, fourth, fifth and sixth pairs of square brackets were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 4(a), section 4(b), section 4(c), section 4(d), section 4(e) and section 4(f), with effect from 2nd July, 2012.*

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**[Order] to designate the land affected.**

6. (1) [An] [Order] proposed under any of sections 1, 4 or 5 of this Law shall designate the land to which it relates by reference to a map, either with or without descriptive matter, to be signed by the [Minister] and deposited at the Greffe, a copy of which map shall be exhibited by His Majesty's Greffier in the Vestibule of the Royal Court for not less than one week prior to the date of the [making] of the [Order].

(2) Any such [Order] as aforesaid shall be registered by His Majesty's Greffier in the Livre des Contrats immediately on the [making] thereof.

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**NOTE**

*In section 6 and the marginal note thereto, the words in, first, the first, second, the second, third, the third, sixth and seventh, fourth, the fourth and, fifth, the fifth and eighth pairs of square brackets were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 5, section 6(a), section 6(b), section 6(c) and section 6(d), with effect from 2nd July, 2012.*

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**Variation of [Orders] and dealings with acquired land.**

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

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

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**NOTE**

*In section 7 and the marginal note thereto, the words in the first and second pairs of square brackets were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 7 and section 8, with effect from 2nd July, 2012.*

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**Notices to be given by the [Department].**

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

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

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

- (a) describe the land,
- (b) state that the Order has been made,
- (c) state the particulars of the Order,
- (d) demand from any qualifying person the particulars of their estate and interest in such land, and of the claims made by them in respect thereof,
- (e) state that the Department, acting on behalf of the States, is willing to treat for the purchase, possession or control of the land in the form of compensation,
- (f) name a place where a copy of the Order and the map or plan referred to therein may be inspected, and
- (g) state the existence of the right to appeal under section 19 of this Law.

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

the "Gazette Officielle" or in any other local publication prescribed from time to time, and such publication shall constitute sufficient service of the notice on any such person.]

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**NOTES**

*In section 8 and the marginal note thereto, the words in the first and second pairs of square brackets were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 9 and section 10, with effect from 2nd July, 2012.*

*The following Regulations have been made under section 8:*

*Compulsory Acquisition of Land (Guernsey) (Prescribed Forms) Regulations, 2011.*

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**Compensation.**

9. If for twenty-one days after the service of [the notice referred to in section 8 of this Law] any person shall fail to state the particulars of his claim, or to treat with the [Department] in respect thereof, or if such person and the [Department] shall not agree as to the amount of the compensation, such amount shall be valued in accordance with the provisions of [Schedule 1] to this Law, [or if such person satisfies the criteria under section 17(1) of this Law, in accordance with section 17 of this Law,] and the [acquiring department] shall compensate such person accordingly. In respect of land acquired under section 1 of this Law, interest calculated at the rate of three per centum per annum from the date of the [compulsory purchase order] giving rise to the claim for compensation shall be payable on any "rente" created as compensation under this Law until the redemption thereof, and on any outstanding sum of money agreed or awarded as compensation. Sums of money payable periodically shall bear interest at the like rate from the dates on which they respectively became payable.

**NOTE**

*In section 9, the words in, first, the first, second, the second and third, third, the fourth, fourth, the fifth, fifth, the sixth and, sixth, the seventh pairs of square brackets were, respectively, substituted, substituted, substituted, inserted, substituted and substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 11(a), section 11(b), section 11(c), section 11(d), section 11(e) and section 11(f), with effect from 2nd July, 2012.*

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**Interpretation.**

**10.** In this Law and in the [Schedules] thereto, unless the context otherwise requires –

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

[...]

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

[the expression "**child**" means a person under the age of 18 years,]

the expression "**claimants**" means all the persons claiming compensation in respect of land or an interest in land affected by virtue of the provisions of this Law, other than persons who have accepted the compensation offered by the States, and the expression "**claimant**" shall be construed accordingly,

[the expression "**compulsory purchase order**" has the meaning given

to it under section 1 of this Law,]

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

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

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

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

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

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

the expression "**land**" includes houses and buildings, parts of houses or of buildings, land covered with water, highways and public and private rights of way and any easement or other right to use, or do work in relation to, land,

[the expression "**Minister**" means –

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

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

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

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

the expression "**public purposes**" includes any purpose of public utility [and any purpose that will result in the physical, economic or social well-being of the community], and in particular includes any naval, military or air force purpose, or any civil defence purpose, and any educational or other charitable purpose, whether or not such purpose is or is intended to be carried out by a public authority,

[the expression "**publication**" means a publication in any media form,

and includes a website,]

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

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

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

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

[the expression "**temporary possession order**" has the meaning given to it under section 4 of this Law,]

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

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## NOTES

*In section 10,*

*the words in, first, the first pair of square brackets and, second, the words in square brackets in the definition of the expression "public purposes" were, respectively, substituted and inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 12(a) and*

section 12(c), with effect from 2nd July, 2012;

*the words omitted in the third pair of square brackets were repealed by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 12(b), with effect from 2nd July, 2012;<sup>1</sup>*

*the definitions of the expressions "acquiring department", "chartered surveyor", "child", "compulsory purchase order", "control of use order", "a department", "Department", "draft order", "interim profits", "Minister", "Order", "person under disability", "prescribed" and "prescribe", "publication", "qualifying person", "Statement of Reasons", "subordinate legislation", "temporary possession order" and "variation order" were inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 12(d), with effect from 2nd July, 2012.*

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### **Repeal.**

11. The "Loi qui autorise l'Expropriation Forcée pour Cause d'Utilité Publique" registered on the Records of this Island on the 4<sup>th</sup> day of March, 1922, is hereby repealed:

SAVE THAT such repeal shall not –

- (a) affect the previous operation of that Law or anything duly done or suffered thereunder, or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder, or
- (c) affect any proceeding already instituted thereunder,

and any such proceeding may be continued as if this repeal had not been effected.

### **Power to make Ordinances.**

12. Ordinances may from time to time be made for the enforcement of

the provisions of this Law.

**[General provisions as to Ordinances and subordinate legislation.]**

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

(a) may be amended, repealed or revoked by a subsequent Ordinance, or subordinate legislation, as the case may be, hereunder,

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and

(c) may, without limitation, contain provision –

(i) subject to subsection (2), as to the creation of new liabilities, obligations, penalties and offences,

(ii) making consequential amendments to this Law and any other enactment, and

(iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

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

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- (a) to provide for offences to be triable only on indictment,
  - (b) to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding the limits of jurisdiction imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
  - (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.
- (3) Any power conferred by this Law to make any Ordinance, or subordinate legislation, may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
  - (b) so as to make, as respects the cases in relation to which it is exercised –
    - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases, or different provision for different cases or classes of

cases, or different provision for the same case or class of case for different purposes, and

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

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

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**NOTE**

*Section 12A was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**[Date of operation.]**

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

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**NOTE**

*Section 13 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**[Power to survey land.]**

**14.** (1) Subject to subsection (3), any person authorised by the

Department may, upon receipt of the draft order from the acquiring department pursuant to paragraph 1 of Schedule 2 to this Law, at any reasonable time –

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

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

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

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

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

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

determined by the Royal Court.

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

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

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

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

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

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

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**NOTE**

*Section 14 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**[Power to enforce entry.]**

- 15.** (1) Subject to subsection (6), where –
- (a) an Order has been made under this Law, and
  - (b) the owner or occupier of any of that land, or any other person, refuses to give up possession or control of it, or hinders the acquiring department, on behalf of the States, from entering on or taking possession of it,

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

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

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

(4) Subject to subsection (6), a person commits an offence if

without reasonable excuse he fails to give up possession or control of any land subject to an Order made under this Law.

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

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

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

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**NOTE**

*Section 15 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**[Children and persons under disability.]**

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

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

from a child or a person under any disability or incapacity who has no power or

capacity to enter into, or carry out, an agreement in relation to compensation or to follow the procedures set out in this Law ("**person under disability**"), the Department shall make an application to the Royal Court for the appointment of a trustee, guardian or legal representative to act on behalf of the child or the person under disability.

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

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**NOTES**

*Section 16 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the reference in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in subsection (1) or subsection (2) of that section are satisfied.*

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**[Untraced, absent and non-compliant owners.]**

17. (1) Where a qualifying person –
- (a) cannot be found or identified by the Department after making reasonable enquiry,
  - (b) has been found, but is unwilling to deal with the Department, or

- (c) has been found, but is prevented from dealing with the Department by reason of illness, absence or other circumstances,

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

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

- (a) pay into the Royal Court that amount which shall be placed to the credit of the qualifying person(s) interested in the land, giving their descriptions so far as the Department is in a position to do so, and
- (b) publish a notice in the "Gazette Officielle" or in any other local publication prescribed from time to time containing a description of the land in respect of which the payment into court was made, and declaring the circumstances under which, and the names, or where that is not reasonably practicable, a description, of the parties to whose credit, the payment into court was made.

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

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

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

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

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

(8) The chartered surveyor shall –

(a) take account of the rules set out in paragraph 9 of Schedule 1 to this Law, and

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

when making his valuation under this section.]

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**NOTE**

*Section 17 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**[Interests omitted from purchase.]**

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

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

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

- (2) The time limit for the purposes of subsection (1) shall be –
- (a) six months after the acquiring department has notice of the estate, right or interest, or
  - (b) if it is disputed by the acquiring department, six months after the right to the estate, right or interest is finally established by law in favour of the claimant.

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

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

(5) In this section, the expression "**interim profits**" means the profits or interest which would have accrued to the persons concerned during the interval between the entry of the acquiring department and the time when the compensation is paid, so far as such profits or interest may be recoverable in any proceedings.]

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**NOTE**

*Section 18 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**Right to appeal.**

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

may appeal to the Royal Court against that decision.

- (2) The grounds of an appeal under this section are that –
- (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section shall be instituted –
- (a) within a period of twenty-eight days immediately following the date of the service or publication of the notice of –
    - (i) any order or decision of the Department described in subsection (1), or
    - (ii) any other class or description of decision as the States may by Ordinance determine under subsection (1)(f),or such greater time as the Royal Court may allow, and
  - (b) by summons served on the Minister stating the grounds and material facts on which the appellant relies.
- (4) On an appeal under this section the Royal Court may either –
- (a) set the decision of the Department aside and, if the Royal Court considers it appropriate to do so, remit the matter to the Department with such directions as the Royal Court thinks fit, or

- (b) confirm the decision of the Department, in whole or in part.

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

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

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

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to any other rule of law empowering the Royal Court to dismiss the appeal or the application for want of prosecution.

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

assessor may be a chartered surveyor.

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

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**NOTE**

*Section 19 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

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**[Appeals to the Court of Appeal.**

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

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**NOTES**

*Section 20 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 13, with effect from 2nd July, 2012.*

*The Law received Royal Sanction on 4th March, 1949 and was registered on the Records of the Island of Guernsey and came into force on 1st April, 1949.*

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*Assessment of Compensation*

1. (1) Where any question of disputed compensation required by this Law to be settled in accordance with the provisions of this Schedule shall have arisen, each party shall nominate and appoint in writing an arbitrator, to whom the dispute shall be referred. Every appointment of an arbitrator shall be made, on behalf of the States, by the [Minister], and, on behalf of the claimants, by all the claimants or, failing agreement among them and notification of such agreement and of the name and address of the agreed arbitrator to the Law Officers of the Crown or either of them, within one month of the date of service of the last of the notices required by section 8 of this Law, then by the Royal Court on the application of the said Law Officers or either of them.

(2) The Law Officers of the Crown shall, before making application to the Court for the appointment by the Court of an arbitrator under the provisions of the last preceding sub-paragraph, cause to be published in the "Gazette Officielle" [or in any other local publication prescribed from time to time] not less than one week prior to the date of the application, a notice of their intention so to apply, and of the intended date of application. At the making of any such application any [qualifying person] shall be entitled to be heard.

(3) If an appointment of an arbitrator be made by the claimants, that appointment shall be delivered to him, and the claimants shall not have power to revoke the same without the consent of the [Minister], nor shall the death of any of the claimants operate as a revocation.

2. If before the matter referred to arbitration shall be determined any arbitrator appointed by either party or by the Royal Court [shall] die, or become

incapable, or refuse or for seven days neglect to act, the party, or the Court, as the case may be, by whom that arbitrator was appointed, may nominate and appoint some other person to act in his place, and if for the space of seven days after notice in writing from the remaining arbitrator for that purpose no appointment be made, the Royal Court shall make an appointment on the application of the remaining arbitrator; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability or refusal or neglect to act as aforesaid:

PROVIDED ALWAYS that a notice to be given under this paragraph to the Royal Court shall be given to the Law Officers of the Crown or either of them, who shall inform the Court thereof.

3. The arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they differ; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and if the arbitrators shall refuse or shall for seven days after request of either party to the arbitration neglect to appoint an umpire, the Royal Court, sitting as an Ordinary Court, shall, on the application of either party, appoint an umpire.

4. (1) The arbitrators shall sit and determine the matters referred to them –

(a) in the case of land affected by [an Order] under either section 1 or section 4 of this Law, subject to the provisions of clause (b) of sub-paragraph (2) of paragraph 9 of the Schedule, as soon as possible after their appointment,

- (b) in the case of land affected by [an Order] under section 5 of this Law, at such times as they shall think fit, not being less often than once in every calendar year during which the land in question has been affected by the [Order].

(2) In the cases referred to in clause (b) of the last preceding subparagraph, a separate award shall be made in respect of each of the periods envisaged by that clause.

(3) If the arbitrators shall fail to make their award –

- (a) in the case of land affected by [an Order] under either section 1 or section 4 of this Law, within twenty-eight days after the last of such arbitrators shall have been appointed or as regards an arbitration in respect of a diminution of value caused during temporary possession, within twenty-eight days after the termination of that possession, and
- (b) in the case of land affected by [an Order] under section 5 of this Law, within twenty-eight days after the termination of the period for which an award is to be made,

or, in case there shall be a reference to the Royal Court under the provisions of paragraph 6 of this Schedule, then within twenty-eight days after the Royal Court shall have given its decision thereon, or if appeal be made from that decision, then within twenty-eight days after the decision of that appeal the matters referred to

them may be determined by the umpire to be appointed as aforesaid.

5. The arbitrators or the umpire may call such witnesses as they or he may think necessary and may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

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

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

may appeal to the Royal Court against that decision.

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

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.
- (3) An appeal under this section shall be instituted –
- (a) within a period of twenty-eight days immediately following the date of the decision or such greater time as the Royal Court may allow, and
  - (b) by summons served on the arbitrators or the umpire, as the case may be, stating the grounds and material facts on which the appellant relies.
- (4) On an appeal under this section the Royal Court may either–
- (a) set the decision of the arbitrators, or the umpire, as the case may be, aside and, if the Royal Court considers it appropriate to do so, remit the matter to the arbitrators, or the umpire, as the case may be, with such directions as the Royal Court thinks fit, or
  - (b) confirm the decision of the arbitrators, or the umpire, as the case may be, in whole or in part.
- (5) For the purposes of determining an appeal under this section, the Royal Court may appoint one or more assessors to assist it, and any such assessor may be a chartered surveyor.
- (6) The Royal Court may make an order as to the costs of the

proceedings as it sees fit.

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

7. The arbitrators, or the umpire, as the case may be, shall deposit their or his final award, in writing under their or his hand, with the Law Officers of the Crown, who shall cause the same to be registered in the Livre des Contrats at the Greffe.

8. Moneys payable under the provisions of this Law to any person who, whether by reason of absence from this Island or otherwise, is unable to give a valid receipt therefor, may be paid by the [acquiring department] to His Majesty's Sheriff, who shall retain the same until those moneys shall be applied in payment to any party entitled thereto.

9. In assessing compensation, the arbitrators, or the umpire, as the case may be, shall act in accordance with the following rules –

(1) No allowance shall be made, save as is in these rules provided, on account of the acquisition or injurious affection of the land being compulsory.

(2) (a) The value of land acquired by virtue of [an Order] under section 1 of this Law shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise, plus fifteen per centum of such amount.

- (b) Temporary possession taken by virtue of [an Order] under section 4 of this Law shall be compensated as though the possession had been taken under a lease at a rent made between a willing Lessor and a willing Lessee, and fifteen per centum shall be added to the amount so found due. Compensation shall also be payable in respect of any diminution in the value of the land caused by the States or any person holding under the States during such possession, and such compensation shall be assessed on the termination of such possession.
  
- (c) Any interference with an easement or a profit à prendre under section 1 of this Law or with an interest in land under section 5 of this Law shall be compensated to such an extent as shall reasonably recoup to the claimant any loss or expenditure attributable to the interference, but no account shall be taken of inconvenience not involving pecuniary loss or expenditure or depreciation in value to property.

(3) The special suitability or adaptability of the land for any purpose [(other than the special suitability or adaptability of the land for a person under disability)] shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of powers granted by enactment, or for which there is no market apart from the special needs of a particular purchaser or the requirements of the States.

(4) Where the value of the land is increased by reason of the use

thereof or of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

(5) Where land is, and but for the compulsory acquisition or disturbance, would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, in the case of an acquisition under section 1 of this Law, if the arbitrators, or umpire, as the case may be, are or is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement, or in case possession is acquired under section 4 of this Law, compensation shall be assessed on the basis of a letting to a Lessee intending to carry out a like purpose.

(6) Compensation shall be assessed and paid in respect of any depreciation in value of any land retained by a person having land or an interest in land affected by the operation of this Law, provided that such depreciation is directly attributable to the parcelling of that person's land.

(7) The provisions of rule (2) of this paragraph shall not affect the assessment of compensation for disturbance, loss of earnings or loss of goodwill, which assessment shall be separately made, and compensation paid accordingly in cash.

(8) (a) The compensation payable in respect of the value of any land or interest in land acquired by the States under [an Order] in accordance with section 1 of this Law shall be expressed in "rente" at the rate of one quarter of rente to each twenty pounds of the amount.

- (b) The "rente" so expressed –
- (i) shall be payable by the States on the 10<sup>th</sup> day of October of each year at the rate of [60 new pence] per quarter of rente commencing to accrue on the day after the date of the relevant [Order],
  - (ii) shall be redeemable by the [acquiring department] at any time at the rate of twenty pounds per quarter and upon payment of the proportion accrued in respect of the year then current at the time of such redemption,
  - (iii) shall be redeemed by the States (payment of the proportion accrued to date in respect of the year then current being made at the time of such redemption) upon the States being required by the "crédi-rentiers" to redeem the same and upon clearance to the reasonable satisfaction of the States of the charges (if any) secured against such "rente".

(9) For the purposes of this paragraph the arbitrators or the umpire, as the case may be, shall be entitled to be furnished with such returns and assessments as they or he may require.

**10.** ...

**11.** (1) In any proceedings before the arbitrators or the umpire, as the case may be, not more than one expert witness on either side shall be heard unless the arbitrators or umpire, as the case may be, otherwise direct.

(2) The arbitrators or the umpire, as the case may be, shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

(3) The arbitrators or the umpire, as the case may be, and any person authorised by them or him, shall be entitled to enter on and inspect any land which, or an interest in which, is the subject of proceedings before them or him.

(4) Proceedings under this Schedule shall be heard by the arbitrators or the umpire, as the case may be, [sitting in public, unless the arbitrators, or in the event that the arbitrators disagree, the umpire directs otherwise].

(5) The fees to be charged in respect of proceedings before the arbitrators or the umpire, as the case may be, shall be such as may from time to time be prescribed by Ordinance.

(6) Subject as aforesaid, rules may from time to time be made by Ordinance regulating the procedure before arbitrators or before an umpire.

**12.** (1) Where the [Department has] made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded to that claimant does not exceed the sum offered, the arbitrators or the umpire, as the case may be, shall, unless for special reasons they or he think proper not to do so, order the claimant to bear his own costs and to pay the costs of the States so far as such costs were incurred after the offer was made.

(2) If the arbitrators or the umpire, as the case may be, are satisfied that a claimant has failed to deliver to the [Department] a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the [Department] to make a proper offer, the foregoing provisions of this paragraph shall apply as if an unconditional offer had been made by the [Department] at the time when in the opinion of the arbitrators or the umpire, as the case may be, sufficient particulars should have been furnished, and the claimant had been awarded a sum not exceeding the amount of such offer.

The notice of claim shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated.

(3) Where a claimant has made an unconditional offer in writing to accept any sum as compensation, and has complied with the provisions of the last preceding subsection, and the sum awarded is equal to or exceeds that sum, the arbitrators or the umpire, as the case may be, shall, unless for special reasons, they or he think proper not to do so, order the [Department] to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4) Subject as aforesaid the costs of an arbitration under this Schedule shall be in the discretion of the arbitrators or the umpire, as the case may be, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and they or he may in any case disallow the cost of an advocate.

(5) The arbitrators or the umpire, as the case may be, shall tax

the amount of costs ordered to be paid.

(6) Where the arbitrators or the umpire, as the case may be, order the claimant to pay the costs, or any part of the costs, of the [States, the Department] may deduct the amount so payable by the claimant from the amount of the compensation payable to him.

(7) Without prejudice to any other method of recovery, the amount of costs ordered to be paid, or, in the case of costs payable to the [Department], such part thereof as is not covered by such deduction as aforesaid, shall be recoverable by the [Department] or by the claimant, as the case may be, as a civil debt.

(8) For the purposes of this paragraph, costs include any fees, charges and expenses of the arbitration or award.

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## NOTES

*In Schedule 1,*

*the heading thereto was substituted, and the words and figures "Sections 9, 16 and 17" were inserted, by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 14(a) and section 14(b), with effect from 2nd July, 2012;*

*the words in the first, second, third and fourth pairs of square brackets in paragraph 1 were, respectively, substituted, inserted, substituted and substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 14(c), section 14(d)(i), section 14(d)(ii) and section 14(e), with effect from 2nd July, 2012;*

*the words in square brackets in, first, paragraph 2 and, second, the third pair of square brackets in paragraph 4 were, respectively, inserted and substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 14(f) and section 14(g)(ii), with effect from 2nd July, 2012;*

*the words "an Order" in square brackets, wherever occurring in paragraph 4 and paragraph 9, were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 14(g)(i) and section 14(j), with effect from 2nd July, 2012;*

*paragraph 6 was substituted and paragraph 10 was repealed by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 14(h) and section 14(n), with effect from 2nd July, 2012;*

*the words in, first, square brackets in paragraph 8, second, the third, sixth and seventh pairs of square brackets in paragraph 9 and, third, square brackets in paragraph 11 were, respectively, substituted, inserted, substituted, substituted and substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 14(i), section 14(k), section 14(l), section 14(m) and section 14(o), with effect from 2nd July, 2012;*

*the figures and words in the fifth pair of square brackets in paragraph 9 were substituted by the Decimal Currency (Bailiwick of Guernsey) Law, 1970, section 8, with effect from 15th February, 1971;*

*the words in, first, the first, second, the second, third and fourth, third, the fifth, fourth, the sixth and, fifth, the seventh and eighth pairs of square brackets in paragraph 12 were substituted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, respectively section 14(p), section 14(q), section 14(r), section 14(s) and section 14(t), with effect from 2nd July, 2012.*

*In accordance with the provisions of the Compulsory Acquisition of Land (Guernsey) Law, 1949, Amendment Law, 1956, section 1, with effect from 23rd June, 1956, where land is acquired by virtue of an Order under section one of this Law, and the buildings comprised therein are in such a state of disrepair as to be unserviceable, then, for the purpose of assessing compensation under the provisions of paragraph 9 of this Schedule, the value of that land shall be as provided in sub-rule (a) of rule two of that paragraph save that, at the end of that sub-rule, the words "plus five per centum of such amount" shall be substituted for the words "plus fifteen per centum of such amount".*

*In accordance with the provisions of the Arbitration (Guernsey) Law, 1982, section 30(1), with effect from 11th April, 1983, Part I of that Law, save for sections 2(1), 3, 5, 16(2), 24, 25 and 27, shall apply to every arbitration under this Law as if the arbitration were pursuant to an arbitration agreement and as if this Law were an arbitration agreement, except in so far as the 1982 Law is inconsistent with this Law or with any rules or procedure authorised or recognised thereby: provided that in any arbitration under this Law any reference to the award made by an*

*arbitrator or umpire being final and binding on the parties and the persons claiming under them respectively shall be deemed to include a reference to such provisions being subject to the provisions of section 19 of the 1982 Law.*

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*Procedures*

**Draft order.**

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

to the Department.

- (2) The draft order shall be in the prescribed form and shall –
  - (a) describe by reference to a plan or map the land to which it applies,

- (b) contain a statement of reasons ("**Statement of Reasons**"), prepared by the acquiring department setting out a compelling case for the –
  - (i) compulsory purchase of land and the public purpose or public purposes for which the land is proposed to be compulsorily purchased,
  - (ii) temporary possession of land and the public purpose or public purposes for which the temporary possession of the land is required,
  - (iii) control of use and/or access of land and the public purpose or public purposes for which the control of use and/or access of land is required, or
  - (iv) variation of an existing temporary possession order or control of use order and the public purpose or public purposes which justify the proposed variation, and
- (c) contain any other information or document which may be prescribed from time to time.

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

**Service of notice to qualifying persons.**

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

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

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

**Publication and affixation of notice.**

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

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

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

prescribed form and shall –

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

**Making an Order.**

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

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

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

- (a) examine each objection received by the Department,
  - (b) examine the contents of the draft order (including the Statement of Reasons), and
  - (c) have regard to any other document, information and/or factor prescribed by Ordinance from time to time.
- (3) The Department shall not make an Order under this Law unless it –
- (a) believes that it is not reasonably possible to acquire, possess or control the use and/or access to, the land other than by way of an Order on the grounds that –
    - (i) one of the circumstances set out in section 17(1) of this Law exists, or
    - (ii) negotiations between a qualifying person and the Department have been unsuccessful,
  - (b) believes that the land should be acquired, possessed or controlled by way of an Order, in order to fulfil a public purpose or public purposes,
  - (c) believes that on balance the individual interest or interests are outweighed by the public purpose or public purposes, and

(d) is satisfied that the proper notices have been published and served in accordance with paragraphs 2 and 3.

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

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

(a) the acquiring department,

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

(c) every qualifying person.

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

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**NOTES**

*Schedule 2 was inserted by the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010, section 15, with effect from 2nd July, 2012.*

*The following Regulations have been made under Schedule 2:*

*Compulsory Acquisition of Land (Guernsey) (Prescribed Forms) Regulations, 2011.*

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<sup>1</sup> Prior to their repeal, these words were previously amended by the

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Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 3(d), with effect from 6th May, 2004; and the functions, rights and liabilities of the Board of Administration and of its President arising under or by virtue of this Law were previously transferred to and vested in, respectively, the Treasury and Resources Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 3(d), Schedule 2, paragraph 2(d), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.