

# **BILLET D'ÉTAT No. IX, 2010**

**28<sup>th</sup> April 2010**

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# PROJET DE LOI

ENTITLED

## **The Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> June, 2009<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### **Amendment to the 1949 Law.**

1. The Compulsory Acquisition of Land (Guernsey) Law, 1949, as amended<sup>b</sup> (hereinafter referred to as the "**1949 Law**") is further amended as follows.

2. In section 1 of the 1949 Law -

- (a) for "Where the States are", substitute "Subject to the procedures set out in Schedule 2 to this Law, where the Department is",

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<sup>a</sup> Article IX of Billet d'État No. XVI of 2009.

<sup>b</sup> Ordres en Conseil, Vol. XIV, p. 25; Vol XVII, p.54.

- (b) for "they may by Resolution", substitute "it may by order (referred to in this Law as a "**compulsory purchase order**)",
- (c) immediately after "freed and discharged", insert "or, where the compulsory purchase order is temporary in nature, released temporarily",
- (d) for "Resolution", wherever appearing, substitute "compulsory purchase order", and
- (e) for "appoint", substitute "provide".

3. In section 4 of the 1949 Law -

- (a) for "Where the States are", substitute "Subject to the procedures set out in Schedule 2 to this Law, where the Department is",
- (b) for "they may by Resolution", substitute "it may by order (referred to in this Law as a "**temporary possession order**)", and
- (c) for "Resolution", wherever appearing, substitute "temporary possession order".

4. In section 5 of the 1949 Law -

- (a) for "Where the States are", substitute "Subject to the procedures set out in Schedule 2 to this Law, where the Department is",
- (b) for "they may by Resolution", substitute "it may by order (referred to in this Law as a "**control of use order**)",
- (c) for "in the Resolution", substitute "in the control of use order",
- (d) for "the States may by any such Resolution delegate to the Board", substitute "the Department may by any such control of use order delegate to the acquiring department",
- (e) for "the Board to prescribe", substitute "the acquiring department to stipulate", and
- (f) for "Board in the "Gazette Officielle"", substitute "the acquiring department in the "Gazette Officielle" or in any other local publication prescribed from time to time".

5. In the marginal note relating to section 6 of the 1949 Law, for "Resolution" substitute "Order".

6. In section 6 of the 1949 Law -

- (a) for "A", substitute "An",

- (b) for "Resolution", wherever appearing, substitute "Order",
- (c) for "President of the States", substitute "Minister", and
- (d) for "passing", wherever appearing, substitute, "making".

7. In the marginal note relating to section 7 of the 1949 Law, for "Resolutions" substitute "Orders".

8. For section 7 of the 1949 Law, substitute -

"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."

9. In the marginal note relating to section 8 of the 1949 Law, for "Board" substitute "Department".

10. For section 8 of the 1949 Law, substitute -

"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.

(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."

**11.** In section 9 of the 1949 Law -

- (a) for "such notice", substitute "the notice referred to in section 8 of this Law",

- (b) for "Board", wherever appearing, substitute "Department",
- (c) for "the Schedule", substitute "Schedule 1",
- (d) after the phrase "Schedule 1 to this Law," insert "or if such person satisfies the criteria under section 17(1) of this Law, in accordance with section 17 of this Law,"
- (e) for "States" substitute "acquiring department", and
- (f) for "Resolution" substitute "compulsory purchase order".

**12.** In section 10 of the 1949 Law -

- (a) for "Schedule", substitute "Schedules",
- (b) the expression "the Board" is repealed,
- (c) in the definition of the expression "public purposes", after the words "any purpose of public utility", insert "and any purpose that will result in the physical, economic or social well-being of the community", and
- (d) insert the following definitions in the appropriate places alphabetically -



"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 "**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 "**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 "**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 "**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;" and

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

**13.** Immediately after section 12 of the 1949 Law, insert the following sections -

**"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 -

- (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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

### **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."

**14.** In the Schedule -

- (a) for the heading "SCHEDULE" substitute "SCHEDULE 1",
- (b) insert "Sections 9, 16 and 17" below the heading "Assessment of Compensation",
- (c) in paragraph 1(1), for "President of the Board" substitute "Minister",
- (d) in paragraph 1(2) -
  - (i) immediately after "the "Gazette Officielle"", insert "or in any other local publication

prescribed from time to time", and

- (ii) for "interested party" substitute "qualifying person",
- (e) in paragraph 1(3), for "President of the Board", substitute "Minister",
- (f) in paragraph 2, immediately after "by either party or by the Royal Court", insert "shall",
- (g) in paragraph 4 -
  - (i) for "a Resolution", wherever appearing, substitute "an Order", and
  - (ii) for "Resolution", substitute "Order",
- (h) for paragraph 6, substitute -

"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.",

- (i) in paragraph 8, for "Board", substitute "acquiring department",
- (j) in paragraph 9, for "a Resolution", wherever appearing, substitute "an Order",
- (k) in paragraph 9(3), immediately after "for any purpose", insert "(other than the special suitability or

adaptability of the land for a person under disability)",

- (l) in paragraph 9(8)(b)(i), for "Resolution", substitute "Order",
- (m) in paragraph 9(8)(b)(ii), for "States", substitute "acquiring department",
- (n) paragraph 10 is repealed,
- (o) in paragraph 11(4), for "sitting in private, unless either party shall require the sitting to be in public", substitute "sitting in public, unless the arbitrators, or in the event that the arbitrators disagree, the umpire directs otherwise",
- (p) in paragraph 12(1), for "States have", substitute "Department has",
- (q) in paragraph 12(2), for "Board", wherever appearing, substitute "Department",
- (r) in paragraph 12(3), for "Board", substitute "States",
- (s) in paragraph 12(6), for "Board, the Board", substitute "States, the Department", and
- (t) in paragraph 12(7), for "Board", wherever appearing, substitute "States".

15. After Schedule 1, insert the following Schedule -

"SCHEDULE 2

*Procedures*

Sections 1, 4, 5, 7, 14 and 17

**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 subparagraphs (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."

### **Interpretation.**

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

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**1949 Law**" means the Compulsory Acquisition of Land (Guernsey) Laws, 1949, as amended<sup>c</sup>, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

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

### **Citation.**

17. This Law may be cited as the Compulsory Acquisition of Land (Guernsey) (Amendment) Law, 2010.

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<sup>c</sup> Ordres en Conseil, Vol. XIV, p. 25; as amended by Ordres en Conseil, Vol XVII, p.54.

**Commencement.**

**18.** This Law shall come into force on the date of its registration on the records of the Island of Guernsey.

# PROJET DE LOI

ENTITLED

## **The Charities and Non Profit Organisations (Registration) (Guernsey and Alderney) (Amendment) Law, 2010**

**THE STATES**, in pursuance of their Resolution of 10<sup>th</sup> December 2009<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

### **Application of Law of 2008 to Alderney.**

1. The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, as amended<sup>b</sup>, and any regulations under it, shall apply to Alderney.

### **Amendment of Law of 2008.**

2. The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, as amended, is further amended as follows.

3. In section 1(5), insert the word "Alderney," immediately after the words "the Island of Guernsey,".

4. In section 13, insert the word "Alderney," immediately after the words "islands of Guernsey,".

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<sup>a</sup> Article XIII of Billet d'État No. XXXIII of 2009

<sup>b</sup> Order in Council No. XXVI of 2008; amended by Ordinance No. XLIX of 2008 and No. XXXVI of 2008 and see No. VII of 2009.

5. In paragraph 2(1)(a) of Schedule 1, insert the word "Alderney," immediately after the words "the Island of Guernsey,".

6. In paragraph 2(1)(b) of Schedule 1, insert the word "Alderney," immediately after the words "the Island of Guernsey,".

**Interpretation.**

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

**Extent.**

8. This Law shall have effect in the islands of Guernsey, Alderney, Herm and Jethou.

**Citation.**

9. This Law may be cited as the Charities and Non Profit Organisations (Registration) (Guernsey and Alderney) (Amendment) Law, 2010.

**Commencement.**

10. This Law shall come into force on the date of its registration on the records of the Island of Guernsey.



## **The Environmental Pollution (Waste Control and Disposal) Ordinance, 2010**

### **ARRANGEMENT OF SECTIONS**

#### **PART I PRESCRIBED OPERATIONS AND LICENSING**

1. Waste disposal etc. to be prescribed operations.
2. Restriction on issue of licences for certain types of prescribed operations.
3. Exemptions.
4. Licence and related applications and fees.
5. Requirements for applications and accompanying plans, maps and other documents.

#### **PART II APPEALS**

6. Amendment of sections 24 and 25 of the Law.
7. Provisions relating to the Environmental and Public Health Appeals Panel and Tribunal.
8. Designation of President of Panel.
9. Duties of Director following service of summons.
10. Constitution and appointment of Tribunal.
11. Voting in hearings of Tribunal.
12. Hearings of Tribunal to be in public.
13. Procedure of the Tribunal.
14. Costs of the parties.
15. Costs, fees, expenses and allowances of Panel and Tribunal members and expert witnesses.
16. Appointment of secretary to the Panel or the Tribunal.

#### **PART III SPECIFIED MEASURES AND PROCEDURES CONCERNING THE GENERAL DUTY OF CARE**

17. Interpretation for purposes of Part III.
18. Notification to Director to prevent contravention of the Law.
19. Power of Director to make regulations in relation to the duty to transfer waste only as specified in section 36(1)(c) of the Law.
20. Power of Director to make regulations in relation to the duty to prevent the

escape of waste.

#### PART IV PROHIBITIONS ETC. CONCERNING WASTE AND WASTE DISPOSAL

21. Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste.
22. Prohibition on unauthorised entry upon licensed waste site.
23. Prohibition on sorting etc. of materials on a licensed waste site.
24. Defences to offences concerning contraventions of this Part.

#### PART V SPECIALLY CONTROLLED WASTE

25. Interpretation for purposes of Part V.
26. Description of "specially controlled waste".
27. Notification of presence on premises of specially controlled waste.
28. Prohibition on collection or transport of specially controlled waste without consent.
29. Decision of the Director to refuse consent under section 28(4)(b) to be decision against which appeal shall lie.
30. Retention of and other requirements concerning consignment notes.
31. Duties of consignees and others when delivery of a consignment note not accepted.
32. Specially controlled waste on ships.
33. Alteration etc. of approved consignment note.
34. Exemptions.

#### PART VI DIRECTOR'S STATUTORY POWERS OF ENTRY, EXAMINATION, INSPECTION AND INVESTIGATION AND TO ISSUE COMPLIANCE NOTICES

35. Statutory powers of entry upon premises.
36. Warrant to enter dwelling.
37. Statutory powers to make requirements.
38. Statutory powers to take samples and do other necessary things.
39. Results of examination etc. to be furnished by Director.
40. Obtaining information by written notice.
41. Compliance notices.

PART VII  
INTERPRETATION AND GENERAL PROVISIONS

- 42. Interpretation.
- 43. Transitional provision.
- 44. Amendment of the Refuse Disposal Ordinance.
- 45. Extent.
- 46. Citation.
- 47. Commencement.

## **The Environmental Pollution (Waste Control and Disposal) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolutions of the 26<sup>th</sup> February, 1997<sup>a</sup>, 11<sup>th</sup> December 2003<sup>b</sup> and 10th December, 2009<sup>c</sup>, and in exercise of the powers conferred on them by Parts I, III to V, IX and X of the Environmental Pollution (Guernsey) Law, 2004<sup>d</sup> and all other powers enabling them in that behalf, hereby order:-

### PART I

#### PRESCRIBED OPERATIONS AND LICENSING

#### **Waste disposal etc. to be prescribed operations.**

1. (1) Subject to section 3, the following operations, being operations which, in the opinion of the States, may involve a risk of environmental pollution, are prescribed as operations for the carrying on of which a licence is required under Part III of the Law -

- (a) the collection, removal, transportation or handling of waste (other than specially controlled waste), when carried on by way of business or as a public service,
- (b) the sorting, processing, treating, storage or disposal of waste in any circumstances, and

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<sup>a</sup> Billet d'État No. II of 1997.

<sup>b</sup> Article VI of Billet d'État No. XXVIII of 2003.

<sup>c</sup> Article XVI of Billet d'État No. XXXIII of 2009.

<sup>d</sup> Order in Council No. XIII of 2004.

- (c) the provision or operation of any site, plant or equipment for the sorting, treatment, processing or disposal of waste.
- (2) For the avoidance of doubt -
- (a) land-fill and land reclamation operations both involve the provision of a site for the disposal of waste within the meaning of subsection (1)(c), and
  - (b) the expression "**disposal of waste**" in subsection (1)(c), includes disposal of waste by way of its discharge to the sea -
    - (i) using any land-based plant or equipment,
    - (ii) via a sewer, pipe or conduit, or
    - (iii) by any other means.

**Restriction on issue of licences for certain types of prescribed operations.**

**2.** A licence permitting the provision or operation of any site, plant or equipment for the disposal of waste, may not be issued to any person under the Law other than -

- (a) the States, or
- (b) a person authorised in writing for the purpose by the States.

**Exemptions.**

3. (1) The Director may, having regard to any States' Direction or States' Guidance -

- (a) by regulation exempt any description of operation, or
- (b) by written notice exempt any specified operation,

from the requirement to hold a licence under the Law where, in his opinion, the carrying on of the operation does not involve a significant risk of environmental pollution.

(2) An exemption under subsection (1)(a) may be made subject to such terms and conditions as may be specified in the regulation and such a condition may include, without limitation, a requirement for any person carrying on such an exempted operation to be registered with the Director.

(3) The Director may by regulations make provision in relation to the establishment and maintenance by the Director, in accordance with the regulations, of a register of persons carrying on operations exempted under this section including, without limitation, provision with respect to -

- (a) the form and manner in which any register is to be maintained,
- (b) the information which is to be provided by the person carrying on the exempted operation,
- (c) applications for registration,

- (d) the information to be incorporated in any register maintained by the Director,
  - (e) the provision by the Director, to such extent and manner as may be prescribed, of facilities for making the information contained in the entries in the register available for public inspection at such reasonable times during such business days as the Director may from time to time determine, and
  - (f) the Director enabling copies of that information to be taken or obtained by the public upon payment of the relevant fee.
- (4) An exemption under subsection (1)(b) -
- (a) may be granted to a specified person or class of persons,
  - (b) may be granted subject to such terms and conditions as may be specified,
  - (c) when granted to a particular class of persons, shall be published, and
  - (d) unless previously revoked in accordance with any term contained in the exemption, shall continue in force for such period as may be specified, or determined, by or under the exemption.

**Licence and related applications and fees.**

4. (1) An application -
- (a) for a licence,
  - (b) for renewal of a licence,
  - (c) for the surrender of a licence,
  - (d) for the transfer of a licence, or
  - (e) to vary any condition of a licence,

shall be made in such manner as the Director thinks fit including, without limitation, by means of the submission to the Director of a specified form of application completed in such manner as he may approve.

(2) An application of a type mentioned in subsection (1) shall be accompanied by -

- (a) such plans, maps and other documents, including copies of any specified form or other document, as may be specified for the purpose by the Director,
- (b) such evidence, relating to such permission to carry out development under the Island Development (Guernsey)



Law, 1966<sup>e</sup> or the Land Planning and Development (Guernsey) Law, 2005<sup>f</sup>, as may be specified for the purpose by the Director, and

(c) such fee as may be prescribed.

(3) A licensee must pay such annual or other periodic fee as may be prescribed and regulations made under this subsection may include provision as to whom the payment is to be made and for the payment of interest or penalties in the event of default in the due payment of a fee.

**Requirements for applications and accompanying plans, maps and other documents.**

5. (1) The Director is not obliged to consider an application made under this Part unless -

- (a) it complies with the requirements of section 4,
- (b) any specified form of application has been fully completed by the applicant,
- (c) the application satisfies the requirements set out in subsection (2), and

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<sup>e</sup> Ordres en Conseil Vol. XX, p. 276; Vol. XXII, p. 573; Vol. XXIII, p. 231; Vol. XXVII, p. 355; Vol. XXXI, p. 61; Vol. XXXII, p. 33; repealed with savings by Order in Council No. XVI of 2005; see also Recueil d'Ordonnances Tome XXXII, p. 483.

<sup>f</sup> Order in Council No. XVI of 2005 as amended by Recueil d'Ordonnances, Tome XXXII, p. 224, 257, 369, 419 and 439.

(d) the plans, maps and other documents, which are submitted with the application are accurate, clear and as reasonably up to date as is possible in the circumstances and are -

(i) certified in such manner, and

(ii) supplied together with such number of copies,

as may be specified for the purposes of the relevant application.

(2) The requirements for the purposes of subsection (1)(c) are that the application -

(a) properly identifies -

(i) the relevant licensee or prospective licensee, and

(ii) the owner and occupier of any site, plant, equipment or premises, which are the subject of, or otherwise relevant to, the application, and

(b) contains sufficient information to enable the Director -

(i) to satisfy himself that any site, plant, equipment or premises, which are the subject of, or otherwise relevant to, the application,

will be developed and operated to the standard required under the Law,

- (ii) to impose such conditions as may be reasonably necessary in the circumstances of the application, and
- (iii) to carry out, or arrange for the carrying out of, any appropriate investigatory or supervisory function.

## PART II APPEALS

### **Amendment of sections 24 and 25 of the Law.**

6. (1) The Law is amended as follows.

(2) In section 24(6) of the Law (establishment of the Environmental and Public Health Appeals Panel and Tribunal) -

- (a) for the words "the appointment, constitution, proceedings and powers of the Tribunal" substitute "the establishment, appointment, constitution, proceedings, functions and administration of the Panel or the Tribunal",
- (b) at the end of paragraph (a), omit the word "and",
- (c) in paragraph (b), after the words "members of" insert " the Panel or of", and

(d) at the end add -

", and

(c) the appointment of a secretary or other officers to the Panel or the Tribunal or for the provision of facilities to the Panel or the Tribunal."

(3) For section 25(8) of the Law (effect of decisions pending an appeal) substitute the following subsections -

" (8) The effect of a decision in respect of which an appeal may be made under this section shall not be suspended in consequence of the right of appeal except in respect of a decision to -

(a) refuse to grant an application for a renewal of a licence upon the expiry of a previous licence for substantially the same operations, or

(b) revoke a licence.

(8A) Where the Director makes a decision falling within paragraph (a) or (b) of subsection (8), the decision shall be suspended and the licence in question shall continue to have effect until -

(a) the expiry of the period for appealing under subsection (5), or

- (b) where an appeal is duly instituted, the appeal is finally determined or withdrawn; and the appeal is finally determined when the appeal and any further appeal is finally determined."

**Provisions relating to the Environmental and Public Health Appeals Panel and Tribunal.**

7. The provisions of sections 8 to 16 shall have effect in relation to -

- (a) the Environmental and Public Health Appeals Panel ("**the Panel**") drawn up under the provisions of section 24(1) of the Law, and
- (b) an Environmental and Public Health Appeals Tribunal ("**the Tribunal**") appointed under the provisions of section 24(5) of the Law.

**Designation of President of Panel.**

8. The States shall, when drawing up the Panel under the provisions of section 24(1) of the Law, designate one of the members of the Panel as President and another as vice-President thereof.

**Duties of Director following service of summons.**

9. (1) Where an appeal to the Tribunal against a decision of the Director is instituted by summons in accordance with the provisions of section 25 of the Law the Director shall, within 7 days after service of the summons upon him -

- (a) send a copy thereof to the President of the Panel (or, if he is unavailable, to the vice-President), together with copies of the documents described in subsection (2)

which -

- (i) have been served upon the Director with the summons, or
- (ii) are otherwise available to the Director,
- (b) request the President (or, if he is unavailable, the vice-President) to appoint from the membership of the Panel the members of the Tribunal to hear and determine the appeal, and
- (c) notify the appellant that he has sent a copy of the summons to the President, or the vice-President, as the case may be.

(2) The documents for the purpose of subsection (1)(a) are -

- (a) any statement of the grounds of appeal,
- (b) where the appeal relates to a decision concerning a licence -
  - (i) any relevant form of application,
  - (ii) any plans, maps or other documents accompanying the application, and
  - (iii) any relevant licence,

- (c) where the appeal relates to a decision concerning a determination under section 10(5) of the Law, any statement of the information to which the determination relates,
  - (d) where the appeal relates to a decision to refuse to consent to a collection or transport of specially controlled waste under section 28(4)(b), any proposed consignment note served on the Director under section 28(2),
  - (e) where the appeal relates to a decision concerning the issue of a compliance notice, the notice,
  - (f) any relevant correspondence,
  - (g) any other document the Director believes is relevant for the purpose of enabling the determination of the appeal, and
  - (h) any statement made by, or on behalf of, the appellant indicating whether he wishes the appeal to be dealt with -
    - (i) by way of a hearing, or
    - (ii) on the basis of written representations, without any hearing.
- (3) For the purposes of subsection (2)(b), "**a decision concerning**

**a licence"** includes -

- (a) a decision of a description set out in section 25(3)(b) to (i) of the Law, and
- (b) such other description of decision prescribed by Ordinance under section 25(3)(k) of the Law, which relates to or concerns a licence in any manner whatsoever.

**Constitution and appointment of Tribunal.**

**10.** (1) The Tribunal shall consist of a minimum of three and a maximum of five persons drawn from the Panel and appointed in accordance with subsection (2).

(2) Following receipt of a request under section 9(1)(b), the President or, if he is unavailable, the vice-President of the Panel shall -

- (a) from the members of the Panel, appoint the members of the Tribunal who are to hear and determine the appeal,
- (b) nominate one of the members so appointed to chair the Tribunal, and
- (c) unless he determines otherwise, cause notice to be given in La Gazette Officielle, or in such other manner as he thinks fit, of -
  - (i) the appointment and nomination under



paragraphs (a) and (b), and

- (ii) the reason for which the Tribunal has been appointed.

(3) For the avoidance of doubt, the President or vice-President may appoint and nominate himself under subsection (2)(a) and (b).

**Voting in hearings of Tribunal.**

11. (1) Each member of the Tribunal shall, subject to subsection (2), have one vote, and the decisions of the Tribunal shall be taken by a simple majority.

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

**Hearings of Tribunal to be in public.**

12. (1) A hearing and every part of a hearing before the Tribunal shall be held in public unless the Tribunal directs otherwise on the ground that it is dealing with evidence or representations -

- (a) which are commercially confidential, or
- (b) which, in the opinion of a Law Officer of the Crown, should be treated as confidential for the purpose of safeguarding the security of the British Islands.

(2) The Tribunal may at any time exclude any person who, in its opinion, is acting in a disruptive manner from a hearing or any part thereof and may -

- (a) refuse to permit that person to return, or
- (b) permit him to return only on such conditions as the Tribunal may specify,

but any such person may submit to the Tribunal any evidence or other matter in writing before the close of the hearing.

**Procedure of the Tribunal.**

**13.** (1) The Environment Department may, if requested by the Panel, by order prescribe rules of procedure making such provision as the Department, acting upon the advice of the Panel, thinks fit in relation to -

- (a) the hearing, investigation, settlement and determination by the Tribunal of appeals,
- (b) the proceedings and powers of the Tribunal including, without limitation, provision as to procedure (including the method of pleading, the practice to be followed, the means by which particular facts may be proved and the method by which evidence may be given),
- (c) the summoning of witnesses, the service of documents and otherwise as to the giving of evidence,
- (d) the carrying out by the Tribunal of any of its functions under the Law, and

(e) ancillary matters.

(2) Rules of procedure under subsection (1) may, without limitation -

(a) regulate procedure in connection with matters preparatory to hearings (including the publication of notice of hearings) and subsequent to hearings (including the publication, interpretation and enforcement of decisions and reasons for decisions), as well as in connection with the conduct of hearings,

(b) make provision for the striking out of appeals (or of any claim or application in an appeal), and

(c) make provision as to the representation, and joining, of parties.

(3) The Tribunal shall, subject to the provisions of this Part, and subject also to the provisions of any rules of procedure made by the Environment Department under this section, determine its own procedure.

**Costs of the parties.**

14. Each party to an appeal shall bear its own costs incurred in connection with an appeal and, for the avoidance of doubt, the Tribunal shall not have any power to order that the costs of an appeal incurred by one party shall be paid for by another.

**Costs, fees, expenses and allowances of Panel and Tribunal members and expert witnesses.**

**15.** (1) There shall be paid to the members of the Panel and the Tribunal such allowances as the Environment Department may determine, together with the travelling and other expenses incurred by them in connection with the exercise of their functions under the Law.

(2) There shall be paid to any expert or other advisor, appointed by the Tribunal to advise in connection with the determination of any particular appeal, the reasonable charges claimed by that expert or advisor, together with any travelling and other expenses incurred by him in connection with the provision of his advice.

(3) The costs, fees, expenses and allowances described in this section shall be paid by the Environment Department from the general revenue account of the States.

**Appointment of secretary to the Panel or the Tribunal.**

**16.** The Environment Department may -

- (a) appoint a secretary to the Panel or to the Tribunal on such terms and conditions and with such functions, and
- (b) provide such other officers and facilities to the Panel or the Tribunal as the Department thinks fit.

**PART III**

**SPECIFIED MEASURES AND PROCEDURES CONCERNING THE GENERAL  
DUTY OF CARE**

**Interpretation for purposes of Part III.**

17. In this Part, unless the context requires otherwise -

"**relevant person**" means a person to whom the statutory duties apply, and

"**statutory duties**" mean the duties imposed by section 36(1) of the Law.

**Notification to Director to prevent contravention of the Law.**

18. (1) This section sets out specified measures and procedures to be followed to facilitate observance of that part of the statutory duties requiring a relevant person to take all such measures as are reasonable in the circumstances to prevent contravention of the Law and of any Ordinance or instrument made under it by any other person.

(2) Subject to subsection (4), a relevant person, who has reasonable cause to believe that another person -

(a) is, or has been, producing, keeping, handling, sorting, processing, transporting or disposing of, or

(b) is likely to keep, handle, sort, process, transport or dispose of,

waste, in a manner which is inconsistent with the statutory duties, shall notify the Director as soon as reasonably practicable of such of the matters set out in subsection (3) as are known to him.

(3) The matters for the purpose of subsection (2) are -

- (a) the type of waste concerned,
- (b) the type of activity which the other person has undertaken or applied in relation to the waste concerned,
- (c) the place where that activity was undertaken or applied,
- (d) the date upon which that activity was undertaken or applied, and
- (e) the current location of the waste concerned.

(4) Subsection (2) does not apply to a relevant person who does not have, and never has had, control of the waste concerned.

**Power of Director to make regulations in relation to the duty to transfer waste only as specified in section 36(1)(c) of the Law.**

**19.** (1) The Director may by regulations prescribe the measures and procedures that a relevant person must implement, adopt and follow to facilitate observance of a relevant person's duty to take all such measures as are reasonable in the circumstances to transfer waste only -

- (a) to a person who may lawfully handle the waste under the Law, and
- (b) with sufficient information about it to enable other persons to avoid a contravention of the Law and of any Ordinance or instrument made under it.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may specify the measures and procedures to be adopted, implemented and followed in connection with -

- (a) the information that must be provided in connection with waste, including in particular information to be provided about the waste, whether by way of a document or otherwise,
- (b) the display and dissemination of information that must be provided in connection with waste, and
- (c) the furnishing and keeping of documents or copies of documents containing information that must be provided in connection with waste.

**Power of Director to make regulations in relation to the duty to prevent the escape of waste.**

**20.** (1) The Director may by regulations prescribe the measures and procedures that a relevant person must adopt, implement and follow to facilitate observance of a relevant person's duty to take all such measures as are reasonable in the circumstances to prevent the escape of waste from his control.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may specify the measures and procedures to be adopted, implemented and followed in connection with -

- (a) the packaging and re-packaging of waste,

- (b) the types of containers in which waste is to be placed or secured,
- (c) the types of waste that may be, or shall not be, stored or mixed together,
- (d) the security of sites, vehicles and containers which are used in connection with the producing, keeping, handling, sorting, processing, transporting or disposing of waste, and
- (e) the working practices of those employees and agents of a relevant person who are working with waste and its production, keeping, handling, sorting, processing, transporting or disposal.

#### PART IV

#### PROHIBITIONS ETC. CONCERNING WASTE AND WASTE DISPOSAL

##### **Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste.**

**21.** (1) Subject to subsections (2) and (3) and to any exemption under section 3, a person shall not -

- (a) deposit any waste, or knowingly cause or permit any waste to be deposited in or on any land unless -
  - (i) that land is part of a licensed waste site, and
  - (ii) the deposit is in accordance with the licence



granted by the Director under Part III of the Law in respect of that site,

(b) treat, keep or dispose of any waste, or knowingly cause or permit any waste to be treated, kept or disposed of -

(i) in or on any land, or

(ii) by means of any mobile plant,

except under and in accordance with a licence granted by the Director under Part III of the Law, or

(c) treat, keep or dispose of any waste in a manner likely to cause environmental pollution.

(2) Subsection (1) does not apply to household waste -

(a) which is not specially controlled waste, and

(b) which is kept or disposed of within the curtilage of the dwelling where it was produced, by or with the permission of the occupier of that dwelling.

(3) The Director may prescribe circumstances in which subsections (1)(a), (b) or (c) do not apply.

(4) Where waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall, for

the purposes of subsection (1)(a), be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.

**Prohibition on unauthorised entry upon licensed waste site.**

22. (1) Unless authorised by the licensee, the Director or by law to do so, a person shall not enter upon a licensed waste site.

(2) A person who enters upon a licensed waste site under the authority of the licensee or the Director shall comply with -

- (a) the provisions of the licence granted by the Director under Part III of the Law in respect of that site, and
- (b) the reasonable requirements of, or conditions specified by, the licensee or the Director, as the case may be, concerning entry upon the site.

**Prohibition on sorting etc. of materials on licensed waste site.**

23. (1) Subject to subsections (2) and (3), a person shall not sort, interfere with, remove from or otherwise handle any material lying in, on or under, a licensed waste site licensed for the disposal of waste.

(2) Subsection (1) does not apply where the person -

- (a) has the authority of the appropriate licensee, or the Director, to sort, interfere with, remove or otherwise handle the material concerned or is authorised by law to do so, and

- (b) acts, where relevant, in accordance with any conditions subject to which the authority is granted.

(3) The Director may by regulations prescribe further circumstances in which subsection (1) does not apply.

**Defences to offences concerning contraventions of this Part.**

**24.** In any proceedings for an offence relating to a contravention of this Part, in addition to the defence available under section 69(1) of the Law, it shall be a defence for the accused to prove -

- (a) that he acted under instructions from his employer and neither knew, nor had reason to suppose, that the acts done by him constituted an offence under the Law, or
- (b) that the acts alleged to constitute the offence were done in an emergency in order to avoid danger to the public and that, as soon as reasonably practicable after they were done, particulars of them were furnished to the Director in writing.

**PART V**

**SPECIALLY CONTROLLED WASTE**

**Interpretation for purposes of Part V.**

**25.** (1) In this Part, unless the context requires otherwise -

"**approved consignment note**" in relation to a consignment or multiple consignments of specially controlled waste, means a consignment note issued by the Director under section 28(4)(a),

**"carrier"** in relation to a consignment or multiple consignments of specially controlled waste, means the person who collects that waste from the premises at which it is being held and transports it to another place,

**"consignee"** in relation to a consignment or multiple consignments of specially controlled waste, means the person to whom that waste is to be transported,

**"consignment note"** means a consignment note in the specified form, or in a form substantially similar thereto,

**"consignor"** in relation to a consignment or multiple consignments of specially controlled waste, means the person who causes that waste to be removed from the premises at which it is being held,

**"description of specially controlled waste"** or **"description of waste"** means the description by reference to the descriptions of specially controlled waste set out in section 26(1) and in any regulations made under that section and related expressions shall be construed accordingly,

**"premises"** includes buildings, structures, land in the open air and a ship,

**"producer"** in relation to a consignment or multiple consignments of specially controlled waste, means the person from whose premises the waste is being collected for transportation to the consignee, and

**"ship"** includes every description of vessel used in navigation.

(2) For the avoidance of doubt, unless the context requires otherwise, where the terms "**carrier**", "**consignee**" or "**producer**" are used in this Part in relation to multiple consignments of waste, they include each person who is the "**carrier**", "**consignee**" or "**producer**" for each consignment of waste.

**Description of "specially controlled waste".**

26. (1) A waste prescription only medicine and such other substances as may be prescribed are, subject to subsection (2), specially controlled waste for the purposes of section 37 of the Law.

(2) Specially controlled waste does not include waste arising or created in such circumstances as the Director may prescribe.

(3) Regulations made by the Director under this section may authorise him to issue guidance to which regard shall be had in determining whether or not waste is specially controlled waste.

**Notification of presence on premises of specially controlled waste.**

27. (1) Subject to section 34, where any description of specially controlled waste is present on any premises at the date this section is commenced, the occupier of those premises must, subject to the following provisions of this section, within 28 days starting from the date of the commencement of this section, notify the Director of the presence of the specially controlled waste at those premises, whether as a result of being produced there or otherwise.

(2) Subject to section 34, where any description of specially controlled waste becomes present on any premises at any time after the date of commencement of this section, the occupier of those premises must, subject to the following provisions of this section, within 14 days starting from the date such waste becomes so present, notify the Director of the presence of the specially

controlled waste at those premises, whether as a result of being produced there or otherwise.

(3) A notification under subsection (1) or (2) must -

- (a) include a description of the specially controlled waste, and
- (b) state the quantity of each description of specially controlled waste present on the premises.

(4) The requirements to notify the Director under subsections (2) and (5) do not apply where the specially controlled waste is present on the premises as a result of a transport of such waste to those premises in respect of which the Director has issued an approved consignment note under section 28.

(5) Subject to section 34 and to subsections (4) and (6), where there is -

- (a) a change in the descriptions of specially controlled waste, or
- (b) a change of more than 25% in the quantity of any one description of specially controlled waste,

present on any premises, the occupier of those premises must notify the Director in writing of such changes and specify in such notification the descriptions and quantities of each description of specially controlled waste held on the premises following such changes.

(6) Where a particular description of specially controlled waste is present on premises on a regular basis, but is not continually present on those premises, the occupier of those premises need only notify the Director of the presence of such waste under subsection (2) on the first occasion, after the date of commencement of this section, that it becomes so present provided that such notification -

- (a) identifies any description of waste which is likely to be present on a regular but not continuous basis, and
- (b) indicates the periods of time during which such description of waste is likely to be present at the premises.

**Prohibition on collection or transport of specially controlled waste without consent.**

28. (1) Subject to section 34, a person shall not collect or transport specially controlled waste, otherwise than in accordance with the conditions of a written consent issued by the Director under this section.

(2) Subject to section 34, the proposed consignor of a consignment of specially controlled waste shall -

- (a) at least 10 days before it is intended to collect and transport that waste, or
- (b) where multiple consignments of waste may be approved as set out in subsection (3), at least 10 days before it is intended to collect and transport the first consignment of waste,

give notice to the Director of the intended collection and transportation, by way of the service upon him of a consignment note containing the specified particulars relating to the consignment or multiple consignments in question.

(3) Multiple consignments of specially controlled waste may be approved by the Director if a person proposes to collect and transport 3 or more consignments of waste within a 12 month period and each consignment of waste is of -

- (a) the same description and quantity and the carrier, consignee and producer are the same for each consignment, or
- (b) substantially the same description and quantity and the Director has indicated in writing, before the proposed consignor gives notice to him under subsection (2), that he considers that he may grant consent for multiple consignments of such waste taking into account all the relevant circumstances.

(4) Following service upon him of a consignment note under subsection (2), the Director shall, by the time referred to in subsection (5) -

- (a) grant consent for the purposes of subsection (1) by issuing to the proposed consignor an approved consignment note, with the Director's consent endorsed thereon in writing, together with any conditions subject to which his consent is given, or



- (b) refuse consent by sending to the proposed consignor a notice in writing with the reasons for refusal indicated thereon.

(5) The time referred to in subsection (4) is -

- (a) at least 3 days before it is intended to collect and transport the waste referred to in the note, or
- (b) in the case of consignment notes relating to multiple consignments of waste, at least 3 days before it is intended to collect and transport the first consignment of waste.

(6) An approved consignment note relating to multiple consignments of waste remains valid for 12 months from its date of issue.

**Decision of the Director to refuse consent under section 28(4)(b) to be decision against which appeal shall lie.**

**29.** A decision of the Director to refuse consent under section 28(4)(b) is a decision which is prescribed, for the purposes of section 25(3) of the Law, as a decision against which an appeal shall lie under that section.

**Retention of and other requirements concerning consignment notes.**

**30.** (1) Where an approved consignment note is issued by the Director under section 28(4)(a), the consignor shall send a copy of the note to the persons referred to in subsection (2).

(2) The persons for the purpose of subsection (1) are -

- (a) the carrier,
- (b) the consignee, and
- (c) the producer.

(3) The persons referred to in subsection (2) shall retain the copy of any approved consignment note received by them under this section, and the consignor shall retain the approved consignment note issued to him, for a period of at least 5 years from the date of issue of the note.

(4) The producer, consignor, carrier and consignee shall, if requested by the Director -

- (a) produce any approved consignment note or copy note in their possession to him for inspection, and
- (b) provide him with a copy of the consignment note or copy note.

(5) The producer shall ensure that -

- (a) the copy of the approved consignment note which -
  - (i) has been received by him under this section, or
  - (ii) where he is both producer and consignor, has been issued to him by the Director,

is signed by or on behalf of the carrier at the time that

the consignment is collected for transportation, and

- (b) the time and date of the collection of the consignment are marked on the copy of the approved consignment note.

(6) The carrier shall ensure that -

- (a) the copy of the approved consignment note which has been received by him under this section -

- (i) accompanies the consignment for the duration of its journey, and

- (ii) is signed by or on behalf of the consignee upon delivery, and

- (b) the time and date of the delivery of the consignment are marked on the copy of the approved consignment note.

(7) The carrier and the consignee shall, subject in the case of the consignee to section 31, sign an approved consignment note produced to them for signature by the producer or carrier for the purposes of subsection (5) or (6), as the case may be.

(8) For the avoidance of doubt, where an approved consignment note relates to more than one consignment of waste, the requirements of subsections (5) to (7) in relation to signing, and marking of information on, the note must be met in relation to each consignment of the waste approved by the note.

**Duties of consignees and others when delivery of a consignment not accepted.**

**31.** (1) This section applies where the consignee does not accept delivery of a consignment of specially controlled waste including, for the avoidance of doubt, a consignment approved as one of multiple consignments of waste.

(2) In a case to which this section applies -

(a) the carrier -

(i) need not comply with section 30(6)(a)(ii) and (b),

(ii) shall inform the Director and the consignor that delivery has not been accepted by the consignee, and

(iii) shall take all reasonable steps to ensure that such of the alternative instructions concerning the transportation and storage of the consignment set out in subsection (3), and notified to him by the consignor, are carried out,

(b) the consignee -

(i) need not comply with section 30(7), and

(ii) shall send a written explanation of his reasons for not accepting delivery, including -

(A) such details of the consignment and of the carrier, and

(B) such information concerning the location of the consignment,

as are known to him, to the Director, and

(c) the consignor, upon being informed that the consignee will not accept delivery of the consignment shall -

(i) inform the Director that delivery has not been accepted by the consignee, and

(ii) give notice in writing to the carrier of one of the alternative instructions concerning the transportation and storage of the consignment set out in subsection (3).

(3) For the purposes of subsection (2)(a)(iii) and (c)(ii), the alternative instructions are -

(a) delivery of the consignment to the premises from which it has been collected,

(b) delivery of the consignment to the premises at which it has been produced,

(c) delivery of the consignment to premises in respect of

which there is held a licence, granted by the Director under Part III of the Law, to store or dispose of specially controlled waste of the type comprising the consignment.

**Specially controlled waste on ships.**

32. For the avoidance of doubt, the provisions of this Part apply in relation to the landing in Guernsey of specially controlled waste from ships and to the subsequent collection and transportation of that waste.

**Alteration etc. of approved consignment note.**

33. A person shall not alter, write upon or deface an approved consignment note, or any details or specified particulars comprised within, or forming part of, an approved consignment note, unless the alteration, writing or defacement is -

- (a) authorised by the Director, or
- (b) necessary in order to discharge or comply with any duty, obligation or requirement imposed under this Part.

**Exemptions.**

34. The Director may by regulations provide for exemptions from the requirements of this Part including, without limitation, exemptions applying in particular circumstances, to particular persons or to particular descriptions of specially controlled waste.

**PART VI**

**DIRECTOR'S STATUTORY POWERS OF ENTRY, EXAMINATION,**

INSPECTION AND INVESTIGATION AND TO ISSUE COMPLIANCE  
NOTICES

**Statutory powers of entry upon premises.**

**35.** (1) Subject to subsection (3), the Director may enter any premises without the consent of the owner or occupier thereof for the purposes indicated in subsection (2) and the power to enter created by this section includes the power, exercisable by the Director, to take with him on to the premises concerned -

- (a) any person authorised by the Director including, where he has reasonable cause to apprehend any serious obstruction in the carrying out of his functions, a police officer, and
- (b) any equipment or materials required for any purpose for which the power of entry is being exercised.

(2) The purposes are -

- (a) establishing whether any prohibition, restriction, requirement or condition -
  - (i) imposed by or under this Ordinance, or the Law, and
  - (ii) for which he is responsible for regulating,

is being, or has been, complied with,

(b) where the Director reasonably believes that any premises or activity is a source, or potential source, of environmental pollution or nuisance -

(i) inspecting or examining any -

(A) plant or equipment,

(B) substance or article, or

(C) any waste or by-product,

(ii) investigating any contravention of this Ordinance or the Law or any instrument made under the Law, or

(iii) taking any sample,

located upon or relating to those premises or that activity, and

(c) exercising any other power conferred on the Director by or under this Ordinance, or the Law.

(3) The power of entry under subsection (1) shall not be exercisable -

(a) in the case of private premises (other than in a case of emergency), unless -



(i) it is exercised at a reasonable time of the day,  
and

(ii) the Director -

(A) gives to the owner or occupier of the premises concerned at least 24 hours notice of his intention to enter the premises, and

(B) if requested by the owner or occupier of the premises, produces evidence of his authority, or

(b) in the case of premises used wholly as a dwelling except under, and in accordance with -

(i) the authority of a warrant issued by the Bailiff under, and

(ii) the provisions of,

section 36.

(4) In this section "**private premises**" means all premises other than premises -

(a) which are wholly owned and occupied by the States,

(b) which are used wholly as a dwelling, or

- (c) which are, or have been (and the condition of which is reasonably believed to be such as to give rise to a significant risk of environmental pollution), used for the purposes of a prescribed operation.

**Warrant to enter dwelling.**

**36.** (1) If the Bailiff is satisfied by information on oath supplied by the Director that there are reasonable grounds for suspecting that any premises used wholly as a dwelling (or any articles or substances or other thing which may be in or on such dwelling) is in a condition giving rise to a significant risk of environmental pollution, he may grant a warrant to the Director.

(2) A warrant granted under subsection (1) shall authorise the Director and any person authorised by the Director including, where he has reasonable cause to apprehend any serious obstruction in the carrying out of his functions, a police officer, at any time within 28 days of the date of the grant -

- (a) to enter the dwelling, and
- (b) to exercise in respect of the dwelling (and any substances or articles or other things found in or on the dwelling), all such powers as he, and any person authorised by him, may exercise in respect of any other premises under this Part,

for the purposes indicated in section 35(2).

(3) The Bailiff shall not issue a warrant under subsection (1) unless he is satisfied -

- (a) that the Director has given 7 days' notice in writing to the occupier of the dwelling in question demanding access to the dwelling, and
- (b) that either-
  - (i) access was demanded at a reasonable hour and was unreasonably refused, or
  - (ii) although entry to the dwelling was granted, the occupier unreasonably refused to comply with a request by the Director or any person authorised by the Director to permit the Director or person to do any of the things referred to in subsection (2), and
- (c) that the occupier has, after the refusal, been notified by the Director of the application for the warrant and has had an opportunity of being heard by the Bailiff on the question whether or not it should be issued.

(4) Subsection (3) shall not apply if the Bailiff is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.

(5) A person executing a warrant issued under this section may use such reasonable force as may be necessary.

(6) A warrant issued under this section shall be executed at a

reasonable hour unless it appears to the person executing it that there are grounds for suspecting that any material evidence of environmental pollution would not be found if it were so executed.

(7) If the person who occupies the dwelling in respect of which a warrant is issued under this section is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant shall be left in a prominent place on the dwelling.

(8) A person seizing anything in pursuance of a warrant under this section shall give a receipt for it if asked to do so.

**Statutory powers to make requirements.**

37. (1) Where the Director reasonably believes that any premises or activity is a source, or potential source, of environmental pollution or nuisance he may require -

- (a) the occupier of those premises, or
- (b) any person reasonably believed by the Director to be carrying on, or to have carried on, that activity,

to comply with any of the requirements indicated in subsection (2).

(2) The requirements for the purpose of subsection (1) are -

- (a) to make available for examination by the Director any-
  - (i) plant or equipment,

(ii) substance or article, or

(iii) waste or by-product,

used, stored or produced at those premises or in connection with that activity,

(b) to furnish the Director with such information, including records and other documents, relating to the premises or to that activity as the Director may reasonably require, and

(c) to answer such questions relating to those premises or to that activity as he may reasonably ask.

(3) Anything provided or made available to the Director in compliance with a requirement under this section may be detained by the Director for so long as is necessary for all or any of the following purposes, namely -

(a) to take it for further examination (including dismantling it or subjecting it to any process or test (but not so as to damage or destroy it unless this is necessary)),

(b) to ensure that it is not tampered with before his examination of it is completed, or

(c) to ensure that it is available for use -

- (i) as evidence in any proceedings for an offence under the Law, or
- (ii) in connection with the enforcement of the requirements of a compliance notice.

**Statutory powers to take samples and do other necessary things.**

**38.** Where the Director reasonably believes that any premises or activity is a source, or potential source, of environmental pollution or nuisance he may, as regards any premises which he has power to enter under section 35 -

- (a) direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under this Part,
- (b) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under this Part,
- (c) take samples of any article or substance found in or on any premises, and of the air, water or land in, on, or in the vicinity of, the premises,
- (d) in the case of any article or substance found in or on any premises, being an article or substance which appears to him to have caused or to be likely to cause environmental pollution, to cause it to be dismantled

or subjected to any process or test (but not so as to damage or destroy it unless this is necessary), and

(e) in the case of any such article or substance as is mentioned in paragraph (d), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely -

(i) to examine it and do to it anything which he has power to do under that paragraph,

(ii) to ensure that it is not tampered with before his examination of it is completed,

(iii) to ensure that it is available for use -

(A) as evidence in any proceedings for an offence under the Law, or

(B) in connection with the enforcement of the requirements of a compliance notice.

**Results of examination etc. to be furnished by Director.**

**39.** (1) Where, under this Part, the Director takes, is furnished with or obtains any -

(a) plant or equipment,

(b) substance or article, or

- (c) waste or by-product,

he shall, so far as is reasonably practicable, comply with the requirements of subsection (2).

- (2) The requirements are -

- (a) that the results of any examination of anything referred to in subsection (1) are made available to any person who, in the opinion of the Director, has a material interest in those results,

- (b) that duplicates of any -

- (i) substance or article, or

- (ii) waste or by-product,

are provided to any person who, in the opinion of the Director, has a material interest in those duplicates, and

- (c) that except in the case of waste, or any substance or article required to establish the commission of any offence under the Law, anything referred to in subsection (1) is returned to the person who, in the opinion of the Director, appears to be the rightful owner of the thing.



**Obtaining information by written notice.**

40. For the purpose of carrying out any function of his under this Ordinance or Parts II, III, V or IX of the Law, the Director may serve a written notice on any person requiring that person to furnish such information specified in the notice as the Director reasonably considers he needs -

- (a) in such form, and
- (b) within such period following service of the notice,

as is specified in the notice.

**Compliance notices.**

41. (1) If the Director is of the opinion that -

- (a) a licensee -
  - (i) is contravening, or
  - (ii) is likely to contravene,

any term or condition to which his licence is subject under the Law, or
- (b) as respects the carrying on of a prescribed operation for which a valid licence has been issued, that -
  - (i) to continue to carry it on, or
  - (ii) to continue to carry it on in a particular way,

gives rise to an imminent risk of environmental pollution or nuisance,

(c) a person carrying on an operation which is exempt under section 3 from the requirement to hold a licence -

(i) is contravening, or

(ii) is likely to contravene,

any term or condition to which such exemption is subject under the Law, or

(d) as respects the carrying on of a prescribed operation by a person without holding a valid licence in contravention of section 13(4) of the Law, that the carrying on of that operation without a licence gives rise to a risk of environmental pollution or nuisance,

he may serve a compliance notice on the licensee or the person carrying on the operation.

(2) A compliance notice shall -

(a) as respects a notice served on a licensee, or a person carrying on an operation, as the case may be, under subsection (1)(a) or (c) -

- (i) state that the Director is of the opinion that a contravention of a term or condition of a licence or an exemption, as the case may be -
  - (A) is taking place, or
  - (B) is about to take place,
- (ii) specify the matters -
  - (A) constituting the contravention, or
  - (B) making it likely that a contravention will take place,
- (iii) specify the steps that must be taken -
  - (A) to remedy the contravention, or
  - (B) to remedy the matters making it likely that the contravention will arise,
- (iv) identify by name or description the person required to take the steps specified under subparagraph (iii), and
- (v) specify the period within which the steps specified under subparagraph (iii) must be taken, and

(b) as respects a notice served on a person carrying on the operation under subsection (1)(b) -

(i) state that the Director is of the opinion that -

(A) to continue to carry on a prescribed operation, or

(B) to continue to carry on a prescribed operation in a particular way,

gives rise to an imminent risk of environmental pollution or nuisance,

(ii) specify the nature of the risk involved,

(iii) specify the steps that must be taken to eliminate or remove the risk involved,

(iv) identify by name or description the person required to take the steps specified under subparagraph (iii),

(v) specify the period within which the steps specified under subparagraph (iii) must be taken, and

(vi) direct that the licence relating to the prescribed operation is, insofar as it authorises the activity giving rise to the risk involved,

suspended until the steps specified under subparagraph (iii) have been taken to the satisfaction of the Director, and

(c) as respects a notice served on a person carrying on the operation under subsection (1)(d) -

- (i) state that the Director is of the opinion that the carrying on of the prescribed operation without a licence gives rise to a risk of environmental pollution or nuisance,
- (ii) specify the nature of the risk involved,
- (iii) specify the steps that must be taken to eliminate or remove the risk involved,
- (iv) identify by name or description the person required to take the steps specified under subparagraph (iii),
- (v) specify the period within which the steps specified under subparagraph (iii) must be taken,
- (vi) specify the provision of this Ordinance and the Law under which the notice is served, and
- (vii) specify that a person who causes or permits the occurrence or the risk of environmental

pollution, by contravening section 13(4) of the Law, is guilty of an offence under section 65(2) of the Law, and

(d) as respects a notice served on any person under subsection (1) -

(i) specify that the notice is a compliance notice within the meaning of section 62(1) of the Law and that -

(A) if a requirement of it is not adequately complied with, within the relevant period specified in the notice, the Director may take action to secure compliance under section 63 of the Law, and

(B) a person who contravenes it is guilty of an offence under section 66(1) of the Law, and

(ii) inform the person served with the notice of his right of appeal under section 25 of the Law.

(3) The institution of criminal proceedings under sections 65 to 68 of the Law does not -

(a) prevent the exercise by the Director of the power to issue a compliance notice, or

- (b) prejudice the continuation of any proceeding or the taking of any action under section 62 or 63 of the Law.

## PART VII

### INTERPRETATION AND GENERAL PROVISIONS

#### **Interpretation.**

42. (1) In this Ordinance, unless the context requires otherwise -

"**air**": see section 2(4)(a) of the Law,

"**the Bailiff**" includes the Deputy Bailiff and any person appointed as Juge-Délégué, Lieutenant Bailiff or as a Judge of the Royal Court<sup>g</sup>,

"**business day**" has the meaning given by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>h</sup>,

"**commercial waste**" means waste arising from any activity carried on by way of business, and includes agricultural and horticultural waste other than such waste arising from use of the curtilage of a dwelling house for purposes connected with the use of that dwelling house,

"**compliance notice**": see section 62(1) of the Law and section 41,

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<sup>g</sup> The office of Judge of the Royal Court was established by Order in Council No. XXII of 2008.

<sup>h</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367 and Order in Council No. IX of 2001.

**"the Director"** means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Law,

**"dwelling house"** means a building or part of a building used as a permanent residence for members of one household, and includes the curtilage of such a building, but does not include a hotel, hospital or other place where persons may temporarily live,

**"enactment"** includes an instrument,

**"environmental pollution"**: see section 2(2) of the Law,

**"Environment Department"** means the States of Guernsey Environment Department,

**"Guernsey"** includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coasts of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

**"household waste"** means waste arising from the normal use of a dwelling house as such and does not include commercial waste arising thereon,

**"instrument"** means any order (including any order of the Royal Court), regulation, rules or other subsidiary legislative instrument,

**"land"**: see section 2(4)(c) of the Law,

**"the Law"** means the Environmental Pollution (Guernsey) Law,



2004,

**"Law Officer of the Crown"** means Her Majesty's Procureur or Her Majesty's Comptroller,

**"licence"** means a licence to carry on a prescribed operation granted under section 15 of the Law,

**"licensed waste site"**: see section 38(1)(a) of the Law,

**"licensee"** means a person who holds a licence,

**"medicinal product"** has the meaning in section 133 of the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008<sup>i</sup>,

**"notify"** means notify in writing,

**"nuisance"** has the meaning given by section 1(4) of the Loi relative à la Santé Publique<sup>j</sup>,

**"owner"** in relation to premises, includes an usufruitier,

**"Panel"**: see section 7(a),

**"person"** includes any body or authority,

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<sup>i</sup> Order in Council No. V of 2009 as amended by the Medicines (Human and Veterinary) Law, 2008 (Commencement and Amendment) Ordinance, 2009.

<sup>j</sup> Ordres en Conseil Vol. XI p. 386 and Vol. XXXIX p. 64.

**"plant"** includes any type of machinery, implement or apparatus, whether affixed to or at a specific site or capable of being operated at more than one site,

**"police officer"** means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

**"premises"**, except in Part V, includes buildings, structures and land in the open air,

**"prescribed"** means prescribed by regulations made by the Director<sup>k</sup>,

**"a prescribed operation"**: see section 13(1) of the Law and section 1,

**"prescription only medicine"** means a medicinal product of a description or falling within a class specified in section 2 of the Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009<sup>l</sup>,

**"President of the Panel"** means the person designated as President of the Environmental and Public Health Appeals Panel under section 8,

**"relevant fee"** means any fee or charge payable under regulations made by the States Treasury and Resources Department under section 8 of the Law,

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<sup>k</sup> See also section 1 of this Ordinance.

<sup>l</sup> Ordinance No. XXV of 2009.

**"sea"** includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river,

**"specially controlled waste"**: see section 37(1) of the Law and section 26,

**"specified"** means specified in writing by the Director,

**"States' Direction"** means a direction given by the States under section 5(1)(b) of the Law,

**"States' Guidance"** means guidance given by the States under section 5(1)(a) of the Law,

**"the Tribunal"**: see section 7(b),

**"vice-President"** means the person designated as vice-President of the Environmental and Public Health Appeals Panel under section 8,

**"waste"** has the meaning in the Law except that it does not include -

- (a) radioactive waste, or
- (b) any substance which is explosive within the meaning of the Explosives (Guernsey) Law, 1905<sup>m</sup>,

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<sup>m</sup>

Ordres en Conseil Vol. III, p. 414 and Vol. XXXIV p. 586.

"water": see section 2(4)(b) of the Law,

and other words or expressions which are defined in the Environmental Pollution (Guernsey) Law, 2004 have the same meanings as in that Law.

(2) Unless the context requires otherwise, a reference in this Ordinance to an enactment includes a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948<sup>n</sup> applies to the interpretation of this Ordinance throughout the territory in which it has effect.

**Transitional Provision.**

**43.** (1) Subject to subsection (2), where a prescribed operation is being carried on immediately before the commencement of this Ordinance, such operation shall, on or after the commencement of this Ordinance, be deemed to be one in respect of which a licence has been issued under Part III of the Law to the person carrying on the operation provided that an application for a licence to carry on such operation is made to the Director -

(a) in accordance with sections 4 and 5 of this Ordinance, and

(b) within two months starting from the date of the commencement of this Ordinance.

(2) The person carrying on the operation in question shall be treated as a licensee for the operation in question under subsection (1) until -

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

- (a) the application to carry on the prescribed operation in question is granted by the Director (whether or not subject to conditions), or
- (b) if such an application is refused -
  - (i) the expiry of the period for appealing against the refusal under section 25(5) of the Law, or
  - (iii) where an appeal is duly instituted against the refusal, the date the appeal is finally determined or withdrawn; and an appeal is finally determined when the appeal and any further appeal is finally determined.

**Amendment of the Refuse Disposal Ordinance.**

**44.** (1) The Refuse Disposal Ordinance, 1959<sup>o</sup> is amended as follows.

(2) Sections 4 (dumping of refuse) and 5 (dumping of refuse in quarries) are repealed.

(3) In section 7(1) (power to order destruction, removal, covering or screening of refuse dumps), after the words "on any land" insert ", other than a licensed waste site within the meaning of the Environmental Pollution (Guernsey) Law, 2004, ".

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<sup>o</sup> Receuils d'Ordonnances Tome XII, p. 97 as amended by Tome XIII, p. 290, Tome XXV p. 75 and 259, Tome XXVI p. 430.

(4) In section 12 (States refuse tips) -

(a) in subsection (1), at the beginning insert "Subject to subsection (4),", and

(b) at the end add the following subsection -

"(4) This section shall not apply in relation to a place which is a licensed waste site within the meaning of the Environmental Pollution (Guernsey) Law, 2004.".

**Extent.**

45. This Ordinance has effect in Guernsey.

**Citation.**

46. This Ordinance may be cited as the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010.

**Commencement.**

47. This Ordinance shall come into force on the 1<sup>st</sup> June, 2010.

## **The Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> March, 2010<sup>a</sup>, and in exercise of the powers conferred on them by section 14 of the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of the Law.**

1. The Law is amended as follows.
2. In Part I of the Law for "police officer", wherever appearing, substitute "prescribed police officer".
3. Immediately after section 3 of the Law, insert the following section -

### **"Disclosure under section 1(13), 2(8) or 3(10)."**

**3A.** (1) Disclosure under section 1(13), 2(8) or 3(10) includes disclosure of -

- (a) any information or document relating to the knowledge, suspicion or reasonable grounds for suspicion that the person in respect of whom the disclosure is made is engaged in money laundering, and

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<sup>a</sup> Article XII of Billet d'État No. VI of 2010.

<sup>b</sup> Order in Council No. XVI of 2007; amended by Ordinance No. XXXIX of 2008 and the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

- (b) any fact or matter upon which such knowledge, suspicion or reasonable grounds for suspicion is based.

(2) For the purposes of subsection (1), "**information or document**" includes any information or document relating to -

- (a) any money or property,
- (b) any transaction concerning such money or property, and
- (c) the parties to any such transaction."

4. In section 4(4) -

- (a) immediately after "subsection (1),", insert "where a contravention of paragraph (b)(i) of that subsection is alleged,", and
- (b) for "(b)", substitute "(b)(i)".

5. In section 17(1) of the Law insert the following definitions in the appropriate places -

"**Financial Intelligence Service**" means the division of the Financial Investigation Unit, comprising those police officers and other persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of



disclosures under Part I, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,"

**"Financial Investigation Unit"** means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime," and

**"prescribed police officer"** means a police officer who is a member of the Financial Intelligence Service,".

#### **Interpretation.**

6. In this Ordinance, **"the Law"** means the Disclosure (Bailiwick of Guernsey) Law, 2007, as amended.

#### **Repeals.**

7. The following enactments are repealed -

- (a) the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995<sup>c</sup>,
- (b) the Money Laundering (Disclosure of Information) (Alderney) Law, 1998<sup>d</sup>, and
- (c) the Money Laundering (Disclosure of Information)

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<sup>c</sup> Ordres en Conseil Vol. XXXVI, p. 111.

<sup>d</sup> Ordres en Conseil Vol. XXXVIII, p 226.

(Sark) Law, 2001<sup>e</sup>.

**Extent.**

8. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation.**

9. This Ordinance may be cited as the Disclosure (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010.

**Commencement.**

10. This Ordinance shall come into force on the 28<sup>th</sup> April, 2010.

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<sup>e</sup> Order in Council No. XXXII of 2001.

## **The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> March, 2010<sup>a</sup>, and in exercise of the powers conferred on them by section 81A of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of the Law.**

1. The Law is amended as follows.
2. In sections 12, 15 and 15A of the Law for "police officer", wherever appearing, substitute "prescribed police officer".
3. Immediately after section 15A of the Law, insert the following section -

### **"Disclosure under section 12(10), 15(13) or 15A(8)."**

**3A.** (1) Disclosure under section 12(10), 15(13) or 15A(8) includes disclosure of -

- (a) any information or document relating to the knowledge, suspicion or reasonable grounds

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<sup>a</sup> Article XII of Billet d'État No. VI of 2010.

<sup>b</sup> Order in Council No. XVI of 2002; amended by Order in Council No. XIII of 2006 and by Recueil d'Ordonnances Tome XXIX, p. 406 and Tome XXXII, p. 648 and the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

for suspicion that the person in respect of whom the disclosure is made is engaged in terrorist financing, and

- (b) any fact or matter upon which such knowledge, suspicion or reasonable grounds for suspicion is based.

(2) For the purposes of subsection (1), "**information or document**" includes any information or document relating to -

- (a) any money or property,
- (b) any transaction concerning such money or property, and
- (c) the parties to any such transaction."

4. In section 40(5) of the Law, for "(2) or (4)" substitute "(2)(a)(i), (2)(b), (4)(a)(i) or (4)(b)".

5. In section 79(1) of the Law, insert the following definitions in the appropriate places -

**"Financial Intelligence Service"** means the division of the Financial Investigation Unit, comprising those police officers and other persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under section 12, 15 or 15A, which are more commonly known or referred to as suspicious transaction reports or suspicious

activity reports,"

**"Financial Investigation Unit"** means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime," and

**"prescribed police officer"** means a police officer who is a member of the Financial Intelligence Service,".

**Interpretation.**

6. In this Ordinance, **"the Law"** means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, as amended.

**Extent.**

7. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation.**

8. This Ordinance may be cited as the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010.

**Commencement.**

9. This Ordinance shall come into force on the 28<sup>th</sup> April, 2010.

## **The Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2010**

**THE STATES**, in exercise of the powers conferred on them by section 30 of the Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006<sup>a</sup>, hereby order:-

### **Commencement of Law.**

1. The Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 shall come into force on the 28<sup>th</sup> April, 2010.

### **Citation.**

2. This Ordinance may be cited as the Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2010.

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<sup>a</sup> Approved by the States of Deliberation on the 26<sup>th</sup> July 2006 and registered on the Records of the Island of Guernsey on 1<sup>st</sup> March 2010.

## **The Public Holidays (Liberation Day in 2010) Ordinance, 2010**

**THE STATES**, in pursuance of their Resolution of the 24<sup>th</sup> March, 2010<sup>a</sup>, and in exercise of the powers conferred on them by section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Liberation Day in 2010.**

1. Notwithstanding the provisions of section 1(f) of the Public Holidays Ordinance, 1994, as amended<sup>c</sup>, Sunday, the 9<sup>th</sup> May, 2010 shall not be a public holiday.

### **Citation.**

2. This Ordinance may be cited as the Public Holidays (Liberation Day in 2010) Ordinance, 2010.

### **Commencement.**

3. This Ordinance shall come into force on the 28<sup>th</sup> April, 2010.

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<sup>a</sup> Article XIII of Billet d'État No. VI of 2010.

<sup>b</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 504; and Vol. XXXV(1), p. 367.

<sup>c</sup> Recueil d'Ordonnances Tome XXVI, p.289 and the Public Holidays Ordinance, 2009.

## **The Bar (Amendment) Ordinance, 2010**

**THE STATES**, on the representations of the Policy Council, hereby order:-

### **Amendment of exam fees.**

1. In section 5 of the Bar Ordinance, 1949, as amended<sup>a</sup>, for "£250" and "£60" there is respectively substituted "£600" and "£100".

### **Repeal.**

2. The Bar (Amendment) Ordinance, 2006<sup>b</sup> is repealed.

### **Citation**

3. This Ordinance may be cited as the Bar (Amendment) Ordinance, 2010.

### **Commencement.**

4. This Ordinance shall come into force on the 28<sup>th</sup> April, 2010.

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<sup>a</sup> Recueil d'Ordonnances Tome X, p. 39; Tome XX, p. 269; Tome XXVII, p. 54; Tome XXIX, p. 73; Tome XXIX, p. 304; Tome XXIX, p. 467; Tome XXX, p. 2; and Tome XXXI, p. 385.

<sup>b</sup> Recueil d'Ordonnances Tome XXXI, p. 385.