

# PROJET DE LOI

ENTITLED

## **The Building and Development Control (Alderney) Law, 2002 \***

[CONSOLIDATED TEXT]

### **NOTE**

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

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\* No. XII of 2003 (Ordres en Conseil Vol. XLIII(1), p. 279); as amended by the Building and Development Control (Alderney) (Amendment) Law, 2004 (No. XV of 2004, Ordres en Conseil Vol. XLIV(1), p. 412); the Building and Development Control (Alderney) (Amendment) Ordinance, 2007 (Alderney Ordinance No. III of 2007); the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014 (Alderney Ordinance No. III of 2014); the Building and Development Control (Alderney) (Amendment) Ordinance, 2016 (Alderney Ordinance No. X of 2016); the Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016 (Alderney Ordinance No. \*\* of 2016); the Building and Development Control (Alderney) (Amendment) Ordinance, 2017 (Alderney Ordinance No. \*\* of 2017). See also the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Fees (Alderney) Ordinance, 1990 (Alderney Ordinance No. V of 1990).

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### ARRANGEMENT OF SECTIONS

#### PART I THE BUILDING & DEVELOPMENT CONTROL COMMITTEE

1. Building and Development Control Committee.
2. Resolutions of States in relation to Committee.
3. Powers and duties of Committee.

#### PART II GENERAL CONTROL OF DEVELOPMENT

4. Restriction on development.
5. Applications for permission to develop, etc.
6. Grant or refusal of permission.
- 6A. Effect of permission.
7. Matters to be taken into account.
8. Additional matters to be taken into account in relation to historic buildings and conservation areas.
9. Special conditions in relation to historic buildings and conservation areas.
10. Register of applications.
- 10A. Preliminary declarations.
11. Exemption for certain signs.

#### PART III ADDITIONAL CONTROL OF DEVELOPMENT

12. Prohibition on building in certain areas.
13. Restricted purposes.
14. ...
15. ...
16. Agreements as to development or use of land.
17. Work done or being done illegally.
18. Removal of structures, etc.
19. Powers in respect of dangerous or derelict land or structures.
20. Completion of development in accordance with planning conditions.
21. Appeals against notices under sections 17 to 20.
22. Completion of works by Committee, and offences, in default.

#### PART IV LAND USE PLANS AND PRELIMINARY DECLARATIONS

- 23. Preparation of Land Use Plans.
- 23A. Supplementary planning guidance.
- 24. Duration of Land Use Plans.
- 25. Review of Land Use Plans.
- 26. Appointment of Inspectors.
- 27. Planning Inquiries.
- 28. Inspectors' Reports.
- 29. Land Use Plans and Inspectors' Reports to be laid before States.
- 30. States' approval of Land Use Plans.
- 31. Departures from, and minor alterations or additions to, Land Use Plans.
- 32. ...

PART V

...

- 33. ...
- 34. ...
- 35. ...
- 36. ...
- 37. ...
- 38. ...

PART VI  
BUILDING REGULATIONS

- 39. Building regulations.
- 40. Work done or being done illegally.
- 41. Powers of entry.
- 42. Penalties for contraventions of Part VI.
- 43. Power to require work to be done following conviction.
- 43A. Right of appeal etc. in respect of decisions under the building regulations.
- 43B. Interpretation of this Part.

PART VII  
HISTORIC BUILDINGS & ANCIENT MONUMENTS

- 44. Register of Historic Buildings and Ancient Monuments.
- 45. Registration of historic buildings.
- 46. Registration of conservation areas.
- 47. Amendment and cancellation of Register entries.
- 48. Consultations prior to registration.
- 49. Notification of registration, etc.
- 50. Publication of notices of registration.
- 51. Control of excavations, etc.
- 52. Causing damage to registered buildings.
- 53. Appeals against registration of historic buildings, etc.
- 54. Powers of entry.
- 55. Interpretation of Part VII.
- 56. No compensation payable by States for decisions under Part VII.

PART VIII  
CLIFF PATHS, CARAVANS AND CAMPING

- 57. Obstruction of cliff paths.
- 58. Restriction on importation of caravans.
- 59. Regulation of camping.

PART IX  
REMOVAL OF MOTOR VEHICLES AND BOATS

- 60. Removal of motor vehicles.
- 61. Removal of boats.

PART X  
APPEALS

- 62. General right of appeal.

PART XI  
OFFENCES AND MISCELLANEOUS PROVISIONS

- 63. No compensation payable by States for refusal of permission, etc.
- 64. Service of notices.
- 65. Notification of refusals and conditions.
- 66. Inspection of land.
- 67. States not bound by certain provisions of this Law.
- 68. General penalty.
- 69. Specific penalties.
- 69A. Defence of due diligence.
- 70. Power to require work to be done.
- 71. False statements.
- 72. Offences by bodies corporate.
- 73. Obstruction.
- 73A. Offences of unlawful development, etc, by agents.
- 74. Exclusion of States' liability.
- 74A. Guidance.
- 75. General provisions as to subordinate legislation.
- 76. Interpretation.
- 77. Repeals and savings, etc.
- 78. Citation.
- 79. Commencement.

SCHEDULE Repeals.

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## **The Building and Development Control (Alderney) Law, 2002**

**THE STATES OF ALDERNEY**, in pursuance of their Resolutions of the 8<sup>th</sup> November, 2000, the 18<sup>th</sup> April, 2001 and the 13<sup>th</sup> and 30<sup>th</sup> December, 2002, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

### PART I

#### THE BUILDING & DEVELOPMENT CONTROL COMMITTEE

##### **Building and Development Control Committee.**

1. (1) The committee of the States established pursuant to section 1 of the Building and Development Control (Alderney) Law, 1975<sup>a</sup> and styled the Building and Development Control Committee shall, subject to the provisions of section 2, continue to be constituted.

(2) The Building and Development Control Committee is referred to in this Law as "**the Committee**".

##### **Resolutions of States in relation to Committee.**

2. The States may by Resolution make such provision as they think fit in relation to the constitution of the Committee.

##### **Powers and duties of Committee.**

3. The Committee shall exercise the powers and perform the duties conferred or imposed upon it by this Law or any Ordinance or regulation thereunder.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 8; there are amendments not material to this section.

PART II  
GENERAL CONTROL OF DEVELOPMENT

**Restriction on development.**

4. (1) Subject to the provisions of any Ordinance made under subsection (2), a person shall not, except under the authority of and in accordance with the conditions of the permission in writing in that behalf of the Committee –

- (a) carry out development of any land,
- (b) place, erect or re-erect on any site, or make any structural alteration to the exterior of, any movable or immovable structure,
- (c) place, erect or re-erect on any site any structure which, when so placed, erected or re-erected, will be visible from any part of the territorial waters adjacent to the Island,
- (d) place, erect or re-erect on any site, or make any structural alteration to the exterior of, any movable or immovable structure on the cliffs, or on land adjacent to the foreshores, of the Island,
- (e) demolish, in whole or in part, any wall, hedge, bank or fence,
- (f) place on any site or attach to the exterior of any movable or immovable structure any sign (which expression shall in this Law include, without limitation, any poster, bill, notice or advertising banner or flag), whether temporary or permanent, which can be seen from any public highway,
- (g) paint on or otherwise exhibit on the exterior of any

movable or immovable structure any sign, whether temporary or permanent, which can be seen from any public highway where such sign bears references either directly or indirectly to any commercial or industrial undertaking,

- (h) cut down, destroy or [...] attempt to destroy any living tree; and in this paragraph "**destroy**" includes any action that –
  - (i) may lead to the death of the tree, or
  - (ii) may endanger its health or stability, whether by excessive pruning or otherwise[,
- (i) cause or permit the cutting down or destruction of any living tree; and in this paragraph "**destruction**" shall be construed in accordance with paragraph (h)].

(2) The States may by Ordinance provide that a person shall not require the permission of the Committee under subsection (1) to carry out any development or other work of a class or description specified in the Ordinance, either generally or in such circumstances, subject to such conditions, and in such areas of the Island as may be so specified.

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**NOTES**

*In section 4,*

*the word omitted in square brackets in paragraph (h) of subsection (1) was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(3), with effect from 20th June, 2007;*

*the punctuation immediately after paragraph (h) of subsection (1) was substituted, and paragraph (i) was inserted, by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(4), with effect from 20th June, 2007.*

*The following Ordinance has been made under section 4:*

*Building and Development Control (Exemptions) (Alderney)  
Ordinance, 2007.*

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**Applications for permission to develop, etc.**

5. (1) A person wishing to obtain permission to carry out any development or other work referred to in section 4 shall apply in that behalf to the Committee; and the application shall be –

- (a) in such form, and accompanied by such information (including specifications [models], plans, elevations and site plans), [and, for the avoidance of doubt, statements or reports of assessments of environmental impacts and other effects,] as the Committee may from time to time require, and
- (b) accompanied by such sums as the States may prescribe by Ordinance [...].

(2) Upon receipt of an application under the provisions of subsection (1), and at any time thereafter, the Committee may require an applicant –

- (a) to supply such further information, including further specifications, [models], plans, elevations and site plans, [and, for the avoidance of doubt, statements or reports of assessments of environmental impacts and other effects,] as the Committee may consider desirable, [...]
- (b) at any reasonable time to permit or secure, in favour of the Committee or any member, officer, servant or agent thereof, access to and entry upon the land, immovable structure or movable structure in respect of which the application is made[,
- (c) to undertake public consultation, in such manner as the Committee may prescribe,



*Consolidated text*

- (d) to comply with any other instruction of the Committee including, without limitation, any instruction regarding the display of notices and site poles.]

[(2A) Subsection (2B) applies where the Committee –

- (a) requires an applicant to supply a statement or report of the assessment of environmental impacts or other effects of the proposed development or other work, and
- (b) is of the opinion that the proposed development or other work –
  - (i) may have significant environmental impacts or other effects, or
  - (ii) is of such a scale, complexity or nature, or is likely to have such effects, that would require the services in subsection (2B)(a).

(2B) Where this subsection applies, the Committee may, subject to subsections (2C) –

- (a) engage the services of an expert (not employed by the States of Alderney) to review and evaluate the assessment of the environmental impacts or other effects of the proposed development or other work, including to thoroughly review any environmental statement setting out the findings of such an assessment and make a written report to the Committee in relation to the application, and
- (b) require the applicant –

*Consolidated text*

- (i) to pay any reasonable fees and charges for, and reasonable costs of, those services, and
- (ii) to give the States security by bond or otherwise for the payment in subparagraph (i).

(2C) Before incurring any fees, charges or costs that may be charged to the applicant under subsection (2B)(b)(i), the Committee must –

- (a) consult the Director of Planning of the States of Guernsey (or the professional head of planning of the States of Guernsey, if known by a different designation), or any other person nominated in place of that person by resolution of the States of Alderney, as to whether the fees, charges and costs likely to be incurred are reasonable, and
- (b) ask the applicant whether the applicant wishes to proceed with the application in light of the likely fees, charges and costs payable under subsection (2B)(b).]

[(3) The Committee is not obliged to consider further an application made under the provisions of subsection (1) until the applicant has fully complied with all requirements of the Committee, required in relation to the application, under subsection (2) [or (2B)(b)].]

[(4) For the avoidance of doubt, the Committee may impose different requirements under subsection (1)(a) or (2) in relation to different cases or circumstances, including, without limitation, in relation to, applications for –

- (a) minor development or other work, or
- (b) development or other work which the Committee considers is of such a nature that it is likely to be of significance for the whole of, or a significant part of, the Island, or which it considers to be very significant

for the Island in any other way.]

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**NOTES**

*In section 5,*

*the words in the first pair of square brackets in paragraph (a) of subsection (1) and in the first pair of square brackets in paragraph (a) of subsection (2), were inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(5), with effect from 20th June, 2007;*

*first, the words in the second pair of square brackets in paragraph (a) of subsection (1), second, the words in the second pair of square brackets in paragraph (a) of subsection (2), third, subsection (2A), subsection (2B) and subsection (2C) and, fourth, the word, parentheses, figure and letters in square brackets within subsection (3) were inserted by the Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016, section 1(2), respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 1st January, 2017;*

*the words omitted in square brackets in paragraph (b) of subsection (1) were repealed by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(3), with effect from 10th February, 2014;*

*the word omitted in square brackets immediately after paragraph (a) of subsection (2) was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(6), with effect from 20th June, 2007;*

*the punctuation immediately after paragraph (b) of subsection (2) (not, as shown incorrectly in the printed version of the 2007 Ordinance, paragraph (h)) was substituted, and paragraph (c) and paragraph (d) were inserted, by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(7), with effect from 20th June, 2007;*

*subsection (3) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 2, with effect from 20th July, 2016 and, in accordance with the provisions of section 10 of the 2016 Ordinance, this amendment shall apply only in relation to an application under this section made on or after 20th July, 2016;*

*subsection (4) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2017, section 2, with effect from 14th June, 2017.*

*The following Ordinance has been made under section 5:*

*Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016.*

*In accordance with the provisions of the Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016, section 2, with effect from 1st January, 2017, an application, made on or after that date, 2017, under this section for permission to carry out development or other*

*work, referred to in the second column of the table set out in Schedule 1 to the 2016 Ordinance, shall be accompanied by the relevant fee, payable to the States, set out in the third column of that table or otherwise calculated by reference to that table, subject to the notes appearing in Schedule 1 after the table.*

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**Grant or refusal of permission.**

6. (1) Upon receipt of an application under the provisions of section 5, the Committee may, subject to the provisions of [section 10(4)] –

(a) grant the permission applied for,

(b) refuse such permission, or

(c) grant such permission subject to –

(i) conditions relating to the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction, [...]

(ii) conditions relating to the use of any buildings or other land,

[(iia) conditions limiting the period for which the permission is effective, and]

(iii) such other conditions as the Committee may think it necessary or expedient to impose.

(2) The Committee may, from time to time, revoke or vary any condition attached to any permission granted under the provisions of subsection (1) upon application being made to it in writing in that behalf [...].

(3) ...

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

conditions attached to any permission granted under the provisions of that subsection may –

(a) restrict or regulate the development or use of, or the carrying out of any works upon, any land in the ownership of the applicant (whether or not it is land in respect of which the application was made) or require the carrying out of any development, change of use or works –

(i) on any such land, or

(ii) on any land in the ownership of the States or on the public highway, provided that the development, change of use or works required to be carried out relate to the provision of services (including, without limitation, roads, electricity, water and sewage disposal),

so far as appears to the Committee to be expedient for the purposes of or in connection with the development or other work authorised by the permission,

(b) require the removal of any building or works authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period,

(c) require the carrying out of any works required for the reinstatement of land,

(d) require that any specified building or works on any such land shall be removed or altered,

(e) require that any specified use of any such land shall be discontinued.

(5) The Committee may refuse an application made under the provisions of section 5 –

(a) which is not accompanied by the information or sums referred to in section 5(1) [...],

(b) which is otherwise not made in accordance with the provisions of this Law, [...]

[(ba) in any case where an applicant fails to supply further information required by the Committee in accordance with the provisions of section 5(2)(a), [...] ]

[(bb) if the applicant fails to indicate that the applicant wishes to proceed with the application, after being asked under section 5(2C)(b), or

(bc) if the applicant fails to pay any fee, charge or cost, or fails to give the States security by bond or otherwise for payment of any fee, charge or cost, where required by the Committee under section 5(2B)(b),]

(c) in any case where the Committee or any member, officer, servant or agent thereof is unable to obtain, in accordance with the provisions of section 5(2)(b), access to or entry upon the land, immovable structure or movable structure in respect of which the application is made.

(6) The provisions of subsection (5) are in addition to and not in derogation from any other provision of this Law pursuant to which the Committee may refuse an application made under the provisions of section 5.

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**NOTES**

In section 6,

*first, the word, figures and parentheses in the first pair of square brackets in subsection (1) were substituted, second, the words omitted in square brackets in paragraph (c)(i) of subsection (1) were repealed, third, paragraph (c)(iia) of subsection (1) was inserted, fourth, the words omitted in square brackets in subsection (2) were repealed and, fifth subsection (3) was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 12, respectively paragraph (a)(i), paragraph (a)(ii), paragraph (a)(iii), paragraph (b) and paragraph (c), with effect from 1st January, 2017;*

*first, the words omitted in square brackets in paragraph (a) of subsection (5) and, second, the word omitted in square brackets in paragraph (b) of subsection (5) were repealed and, third, paragraph (ba) of subsection (5) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 3, respectively paragraph (a), paragraph (b) and paragraph (b), with effect from 20th July, 2016 and, in accordance with the provisions of section 10 of the 2016 Ordinance, these amendments shall apply only in relation to an application under section 5 of this Law made on or after 20th July, 2016;*

*first, the word omitted in square brackets within paragraph (ba) of subsection (5) was repealed and, second, paragraph (bb) and paragraph (bc) thereof were inserted by the Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016, section 1(3), respectively paragraph (a) and paragraph (b), with effect from 1st January, 2017.*

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**Effect of permission.**

**6A.** (1) A permission for development or other work granted under section 6(1) ceases to have effect unless the development or other work authorised by it is commenced within –

- (a) a period of three years immediately following the date on which the permission is granted, or
- (b) such shorter period as may be specified by condition under section 6(1)(c)(iia).

(2) A permission enures (except insofar as the permission provides otherwise) for the benefit of the land in question and of every person for the time being having an interest in it.

(3) Where a permission is granted for the erection of a building,

the grant of the permission may specify the purposes for which the building may be used.

(4) If no purpose is so specified, the permission is to be construed as including permission to use the building for the purpose for which it is designed.

(5) For the avoidance of doubt, the provisions of this section apply to a permission referred to in section 12(2).

(6) In this section,

**"land in question"** means the site or other land on which the permission in question authorises the carrying out of the development or other work, and

**"permission"** means permission for development or other work granted under section 6(1).]

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**NOTE**

*Section 6A was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 13, with effect from 1st January, 2017; and, in accordance with the provisions of section 21 of the 2016 Ordinance:*

*first, this amendment in relating to the effect and period of validity of a permission and a preliminary declaration applies only in relation to a permission or preliminary declaration issued by the Committee under section 6(1) or section 10A of this Law, as the case may be, on or after 1st January, 2017; and*

*second, the effect and period of validity of a permission or preliminary declaration issued by the Committee under section 6(1) or section 10A of this Law, as the case may be, before 1st January, 2017 is to be construed in accordance with the provisions of this Law as in force immediately before the 1st January, 2017 and not as amended by Part II of the 2016 Ordinance.*

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**Matters to be taken into account.**

7. (1) In exercising its powers under the provisions of section 6 the Committee shall take into account –



*Consolidated text*

- (a) the effect of the development or other work on the natural beauty of the area and the desirability of keeping land adjacent to the foreshores and cliffs of the Island in its natural state,
- (b) the degree of suitability of the land to which the application relates for residential or industrial purposes,
- (c) whether the movable or immovable structure or other work in relation to which permission is applied for would be incongruous with its surroundings because of its siting, design or exterior appearance or because of the materials to be used,
- (d) in the case of an application for permission to carry out any development of agricultural land –
  - (i) the degree of suitability of the land as agricultural land, and
  - (ii) the loss to the Island (if the application were to be granted) of agricultural land,
- (e) the extent to which the development or other work would detract from the character or the amenity of the locality concerned,
- (f) the effect of the development or other work on roads, traffic, services, public health, parks, playing fields and other open spaces and the effect on adjoining properties,
- (g) the availability of access and the proximity of appropriate services, including roads, electricity, water and sewage disposal, [...]

- [(ga) the effect of the development or other work on the biological diversity of the Island,
- (gb) the desirability of facilitating the sustainable development of land having regard to the competing demands of the community for its use, and]
- (h) the provisions of any Land Use Plan approved by the States.

(2) Nothing in subsection (1) shall be taken to preclude the Committee, in deciding whether or not in the exercise of its powers under the provisions of section 6 to grant permission to carry out any development or other work referred to in section 4, from taking into account such other factors relating to planning, development and land use as the Committee may, from time to time, deem necessary or expedient.

[(3) In this section, "**biological diversity**" means the variety and variability of living organisms and the ecological complexes within which they occur.]

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**NOTE**

*In section 7, first, the word omitted in square brackets in paragraph (g) of subsection (1) was repealed, second, paragraph (ga) and paragraph (gb) of subsection (1) were inserted and, third, subsection (3) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 4, respectively paragraph (a), paragraph (a) and paragraph (b), with effect from 20th July, 2016 and, in accordance with the provisions of section 10 of the 2016 Ordinance, these amendments shall apply only in relation to an application under section 5 of this Law made on or after 20th July, 2016.*

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**Additional matters to be taken into account in relation to historic buildings and conservation areas.**

**8.** (1) In considering whether or not to grant permission under this Law for the carrying out of any development or other work in relation to a building which is registered in the Register of Historic Buildings, the Committee shall have

special regard to the desirability of preserving the building and any features of special historic, architectural, traditional, artistic or archaeological interest which it possesses.

(2) In considering whether or not to grant permission under this Law for the carrying out of –

- (a) any development or other work in relation to any building within a conservation area, or
- (b) any development or other work within a conservation area,

the Committee shall have special regard to the desirability of preserving and enhancing the character and appearance of that area as an area of special historic or architectural interest.

(3) The provisions of this section are in addition to and not in derogation from the provisions of section 7.

**Special conditions in relation to historic buildings and conservation areas.**

9. (1) The conditions which may be attached to a grant of permission under section 6 shall include –

- (a) in the case of any such development or other work as is referred to in section 8(1), conditions relating to –
  - (i) the preservation of particular features of the building, either as part of it or after severance from it,
  - (ii) the making good, after the works are completed, of any damage caused to the building by the works,
  - (iii) the reconstruction of the building or any part of

it following the execution of any works, with the use of original materials, so far as is practicable, and with such alterations of the interior of the building as may be specified in the conditions,

- (b) in the case of any such development or other work as is referred to in section 8(2), conditions relating to the preservation and enhancement of the character and appearance of the conservation area within which such development or other work is intended to be carried out as an area of special historic or architectural interest.

(2) The provisions of this section are in addition to and not in derogation from the provisions of section 6.

**Register of applications.**

**10.** (1) The Committee shall, subject to the provisions of subsection (5), continue to keep a register (referred to in this Law as '**the Register of Applications**') of all applications made under section 5 for permission to carry out any development or other work referred to in section 4.

(2) The Register of Applications shall, subject to the provisions of subsection (5), contain such information in relation to applications made under section 5 as the Committee may, from time to time, think necessary or expedient including the name of the applicant, the date of the application and brief particulars of the development or other work forming the subject of the application.

(3) The Register of Applications shall be available for public inspection at all reasonable hours and extracts therefrom, including at least the name of the applicant and brief particulars of the development or other work forming the subject of the application, shall be published on such occasions and in such manner as the Committee may, from time to time, determine.

(4) The Committee shall not grant or refuse any permission under

section 6 until after the expiration of a period of 14 days commencing on the day on which the extract from the Register of Applications relating to the application for permission was published or was last published in the Alderney Official Gazette in accordance with the provisions of subsection (3).

(5) ...

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**NOTE**

*In section 10, subsection (5) was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 14, with effect from 1st January, 2017.*

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**[Preliminary declarations.]**

**10A.** (1) A person who desires to carry out any development or work for which permission is required under this Law may, before making an application to the Committee in that behalf, apply to the Committee for a preliminary declaration as to whether, in principle, the Committee, on the submission to it of an application with such detailed plans or information or both as the Committee may require, would be likely to grant permission for such development or work.

[(2) A preliminary declaration issued under this section –

- (a) enures (except insofar as the declaration provides otherwise) for the benefit of the land in question and of every person for the time being having an interest in it, and
- (b) shall remain valid for –
  - (i) a period of three years from the date on which it was issued, or
  - (ii) such shorter period as may be specified by the Committee in the preliminary declaration.

(3) In this section, "**land in question**" means the site or other land in relation to which the preliminary declaration was issued.]]

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**NOTES**

*Section 10A was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(8), with effect from 20th June, 2007.*

*In section 10A, subsection (2) was substituted and subsection (3) inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 15, with effect from 1st January, 2017; and, in accordance with the provisions of section 21 of the 2016 Ordinance:*

*first, these amendments in relating to the effect and period of validity of a permission and a preliminary declaration apply only in relation to a permission or preliminary declaration issued by the Committee under section 6(1) or section 10A of this Law, as the case may be, on or after 1st January, 2017; and*

*second, the effect and period of validity of a permission or preliminary declaration issued by the Committee under section 6(1) or section 10A of the Law, as the case may be, before 1st January, 2017 is to be construed in accordance with the provisions of this Law as in force immediately before the 1st January, 2017 and not as amended by Part II of the 2016 Ordinance.*

*In accordance with the provisions of the Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016, section 3, with effect from 1st January, 2017, an application, made on or after that date, under this section for a preliminary declaration in relation to development or other work shall be accompanied by a fee equal to 50% of the fee calculated under section 2 of the 2016 Ordinance for an application for permission to carry out the development or other work in question.*

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**Exemption for certain signs.**

**11.** Nothing in this Part of this Law shall apply to any sign which, under the provisions of any enactment for the time being in force, is required to be exhibited on the exterior of any movable or immovable structure.

**PART III  
ADDITIONAL CONTROL OF DEVELOPMENT**

**Prohibition on building in certain areas.**

**12.** (1) Notwithstanding any of the provisions of Part II of this Law, the States may by Ordinance designate such areas of the Island as may be defined in the Ordinance as being areas within which permission to carry out any development or other work referred to in section 4 shall not be granted by the Committee under

the provisions of section 6.

(2) The Committee may, notwithstanding the provisions of subsection (1) and of any Ordinance thereunder but otherwise subject in all respects to the provisions of this Law, permit in any designated area –

(a) the reconstruction of, or [extension] or alteration to, an existing immovable structure,

[(b) the construction of –

(i) a freestanding residential annex for use in conjunction with and ancillary to an existing dwelling, or

(ii) a garage, gate, wall, fence, shed or other structure for use in conjunction with an existing immovable structure,]

(c) the construction of an immovable or other structure designed and intended for use solely for the purposes of a public utility undertaking or for agricultural purposes[.]

[...]

[(3) For the purposes of subsection (2)(a), development or other work shall be considered to be a reconstruction of an existing immovable structure only if –

(a) in the case of development or other work relating to a dwelling within any part of a designated area zoned for residential development under the Land Use Plan, its position, dimensions, external design, external appearance and other characteristics are consistent with any relevant policy relating to such a

reconstruction of a dwelling set out in the Land Use Plan, or

(b) in the case of any other reconstruction in any designated area –

(i) it occupies the same or approximately the same position, and

(ii) it is of comparable dimensions, external design and external appearance,

to the existing immovable structure.

(4) In this section "**dwelling**" means any building or part of a building which is occupied as a dwelling.]

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**NOTES**

*In section 12, first, the word in square brackets in paragraph (a) of subsection (2) and, second, paragraph (b) of subsection (1) were substituted, third, the punctuation in square brackets in paragraph (c) of subsection (2) was substituted and the words omitted in square brackets immediately thereafter were repealed and, fourth, subsection (3) and subsection (4) were inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 5, respectively paragraph (a)(i), paragraph (a)(ii), paragraph (a)(iii) and paragraph (b), with effect from 20th July, 2016.*

*The following Ordinance has been made under section 12:*

*Building and Development Control (Designated Area) (Alderney) Ordinance, 2016.*

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**Restricted purposes.**

**13.** Any person [having the benefit of a permission referred to in section 12(2)] for the construction of an immovable or other structure designed and intended for use solely for the purposes of a public utility undertaking or for agricultural purposes shall not use or attempt to use that structure, or permit the use of that structure, for any purposes other than those for which the Committee



permitted its construction.

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**NOTE**

*In section 13, the words in square brackets were substituted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 16, with effect from 1st January, 2017.*

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**Self-catering tourist accommodation.**

**14.** ...

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**NOTE**

*Section 14 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(9), with effect from 20th June, 2007.*

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**Maximum number of dwellings.**

**15.** ...

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**NOTE**

*Section 15 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 17, with effect from 1st January, 2017.<sup>1</sup>*

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**Agreements as to development or use of land.**

**16.** (1) Without prejudice to the generality of section 6, the Committee, acting for and on behalf of the States, may enter into an agreement with any person as to any of the following matters –

- (a) that the development or use of, or the carrying out of any works on, any land in the ownership of that person (whether or not it is land in respect of which an application under section 5 for permission has been made) shall be restricted or regulated,

*Consolidated text*

- (b) that any specified development, change of use or works shall be carried out –
  - (i) on any such land, or
  - (ii) on any land in the ownership of the States or on the public highway, provided that the development, change of use or works to be carried out relate to the provision of services (including, without limitation, roads, electricity, water and sewage disposal),
- (c) that any works necessary for the reinstatement of land shall be carried out,
- (d) that any specified building or works on any such land shall be removed or altered,
- (e) that any specified use of any such land shall be discontinued,

in such manner, for such period (which may be indefinite), within such time (or at the end of such period), and subject to such terms and conditions, as may be specified; and in this subsection "**specified**" means specified in the agreement.

- (2) An agreement under subsection (1) –
  - (a) may, on the application of the Committee made to the Land Registrar, be registered in the Land Register against the title to the land in respect of which the agreement is made,
  - (b) shall, if so registered, be enforceable against –
    - (i) the person who is the owner for the time being of the land, and

- (ii) any other person acting in contravention of the agreement,

in the same way, and by means of the same remedies, as if it were an agreement between the States and the person described in subparagraph (i) or (ii), as the case may be:

Provided always that if more than one person is the owner for the time being of the land or is acting in contravention of the agreement then the agreement shall be enforceable against them on a joint and several basis,

- (c) without prejudice to the generality of paragraph (b), shall be enforceable against the persons therein mentioned by injunction (which may require them to do, or not to do, any thing).

**Work done or being done illegally.**

17. (1) The Committee may, if it has reason to believe that any development or other work referred to in section 4 is being or has been carried out in contravention of the provisions of section 4, serve notice on the person who is carrying out or has carried out the said development or other work requiring that further development or other works on or in respect of the land, immovable structure or movable structure concerned as the Committee may deem appropriate in the circumstances shall forthwith cease; and any such notice shall inform the person upon whom it is served of the right of appeal conferred by section 21(1).

(2) In a notice served under the provisions of subsection (1) the Committee may, in addition, require within such time as may be specified in the notice such steps to be taken as are, in its opinion, necessary to ensure that the development or other work concerned does not constitute a danger to persons using –

- (a) the said land, immovable structure or movable

structure, or

- (b) any public highway or neighbouring land,

and the expression "**danger**" shall be construed in accordance with the provisions of section 19(2).

**Removal of structures, etc.**

**18.** (1) The Committee may by notice served upon the owner or the occupier of any movable structure, or upon the owner of any land or immovable structure, order –

- (a) the removal of any movable structure from any site where, in the opinion of the Committee, its presence detracts from the amenities of the locality,
- (b) the external decoration or redecoration of any movable structure to the satisfaction of the Committee,
- (c) the removal, effacement, renovation or repainting of any sign which, in the opinion of the Committee, has become dilapidated, out of date or unsightly,
- (d) that that portion of the movable or immovable structure which is exposed following the removal of any sign as aforesaid be decorated to the satisfaction of the Committee,

within such time as may be specified in the notice.

(2) If it appears to the Committee that there is on any land in the open air any article, substance or other thing other than an immovable structure or a movable structure which is detrimental to the amenities of the locality, the Committee may, by notice served on the owner of that land, require the person upon whom the notice is served to take, within such time as may be specified in the notice, such action in relation to that article, substance or thing as may be specified

therein; and any such notice shall inform the person upon whom it is served of the right of appeal conferred by section 21(1).

**Powers in respect of dangerous or derelict land or structures.**

**19.** (1) The Committee may, by notice served upon the owner of any land or immovable structure, or upon the owner or occupier of any movable structure, if the Committee is of the opinion that the land, immovable structure or (as the case may be) movable structure, or anything on it, is in a dangerous or derelict condition, direct that such works shall be carried out in respect of the land, immovable structure or (as the case may be) movable structure (including, without limitation, any works of demolition), within such time, and subject to such terms and conditions, as may be specified in the notice; and any such notice –

- (a) shall inform the person upon whom it is served of the right of appeal conferred by section 21(1), and
- (b) may, on the application of the Committee made to the Land Registrar, be registered in the Land Register against the title to –
  - (i) the land or immovable structure in respect of which the notice was served or, as the case may be,
  - (ii) the land upon which the movable structure in respect of which the notice was served is situated.

(2) In subsection (1) –

- (a) the expression "**dangerous**" means presenting a danger to or a risk to the health and safety of any person (including, without limitation, the person on whom the notice is served), and "**danger**" shall be construed accordingly, and

- (b) the expression "**derelict**" includes being in such a state of repair, or being so unsightly, as to be detrimental to the amenities of the locality or as to affect prejudicially the reasonable enjoyment or value of any neighbouring land.

**Completion of development in accordance with planning conditions.**

**20.** [Where any person having the benefit of a permission to carry out development or other work granted under section 6 –]

- (a) has not completed the development or works in accordance with the terms and conditions of the permission or within the period of validity of the permission, or
- (b) has otherwise contravened any term or condition of the permission,

the Committee may, by notice served upon him, require him –

- (i) where paragraph (a) applies –
  - (A) to complete the development or works in accordance with the terms and conditions of the permission and within such time as may be specified in the notice or, as the case may be,
  - (B) to complete the development or works within such period as may be specified in the notice,
- (ii) where paragraph (b) applies, to comply with the term or condition of the permission within such time as may be specified in the notice,

and any such notice shall inform the person upon whom it is served of the right of appeal conferred by section 21(1).

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**NOTE**

*In section 20, the words in square brackets were substituted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 18, with effect from 1st January, 2017.*

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**Appeals against notices under sections 17 to 20.**

**21.** (1) A person aggrieved by a notice served on him under section 17, 18, 19 or 20 may, within a period of 21 days beginning on the date of the notice, during which period the Committee shall take no further action in the matter under the section in question, apply to the Court to have the notice set aside on the ground that the notice is *ultra vires* or is an unreasonable exercise of the powers of the Committee:

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

(2) Upon the making of an application under subsection (1) to have a notice set aside –

- (a) the Committee shall take no further action in the matter under section 17, 18, 19 or 20 (as the case may be) until the application is finally disposed of or withdrawn, and
- (b) if the notice to which the application relates is not set aside, section 22 shall apply as if for the date of the notice there were substituted the date when the application is finally disposed of or withdrawn,

and for the purposes of this section an application shall be deemed not to have been finally disposed of until the expiration of the time allowed for the institution of an

appeal under section 2 of the Court of Alderney (Appeals) Law, 1969<sup>d</sup> or, if an appeal is instituted within that time, until the determination by the Royal Court of the appeal.

(3) An application under subsection (1) shall be instituted by way of summons served on the Chairman of the Committee setting out the material facts upon which the applicant relies.

**Completion of works by Committee, and offences, in default.**

22. (1) If at the expiration of such time as is specified in a notice served under section 17, 18, 19 or 20 the action required thereby has not been taken, or if any other term or condition of the notice has been contravened, and the notice has not been set aside, then –

- (a) the person on whom the notice was served shall be guilty of an offence and liable on conviction to a fine not exceeding level 5 on the Alderney uniform scale, and
- (b) subject to section 21(1) and (2), the Committee may apply to the Court for an order authorising it to take that action or (as the case may be) to take steps to remedy the contravention of the term or condition, and for that purpose to enter upon any land, immovable structure or movable structure; and where such an order is granted the Committee may recover, as a civil debt due to the States from the person mentioned in subsection (4), the costs reasonably incurred by the Committee in taking the action or (as the case may be) in taking the remedial steps so authorised.

(2) Any person authorised in writing by or on behalf of the Committee may at any reasonable time enter any land, immovable structure or

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<sup>d</sup> Ordres en Conseil Vol. XXII, p. 192; there are amendments not material to this Law.



movable structure for the purpose of exercising any of the powers of the Committee arising by virtue of the making of an order of the Court under subsection (1).

(3) Any person authorised under the provisions of this section to enter upon any land, immovable structure or movable structure shall, if so required, produce evidence of his authority before so entering and shall not demand admission as of right to any land, immovable structure or movable structure which is occupied unless 24 hours' notice of the intended entry has been given to the occupier.

(4) The costs mentioned in subsection (1)(b) shall be recoverable by the Committee from –

- (a) in a case where the Committee has, within a period of 7 days commencing on the date of the relevant Court order (or such longer period as the Court may in any particular case allow on the application of the Committee, which application may be made after the expiration of the said 7 day period), registered the relevant Court order against the title to the land in question in the Land Register, the person who is the owner for the time being of the land in question,
- (b) in any other case, the person against whom the relevant Court order was made,

and the Land Registrar shall, where the Committee requests him to register the relevant Court order within the period referred to in paragraph (a), make the appropriate entry in the Land Register.

(5) In subsection (4) –

**'land in question'** means –

- (a) the land or immovable structure in respect of which the relevant Court order was made or, as the case may be,

- (b) the land upon which the movable structure in respect of which the relevant Court order was made is situated,

**"relevant Court order"** means the order of the Court made under subsection (1)(b) authorising the Committee to take the action or to take the steps therein mentioned.

- (6) If more than one person is, pursuant to subsection (4), liable for the costs mentioned in subsection (1)(b), their liability shall be joint and several.

#### PART IV

#### LAND USE PLANS AND PRELIMINARY DECLARATIONS

##### **Preparation of Land Use Plans.**

**23.** (1) The Committee shall prepare Land Use Plans indicating [the Committee's proposals in respect of development or other work referred to in section 4 or other use of land in the Island together with a reasoned justification of each proposal.]

(2) Land Use Plans may be in sections and embrace such areas [or parts of the Island, or issues relevant to the matters set out in subsection (1),] as the Committee may from time to time decide and shall not be invalidated by overlapping an earlier Plan approved by the States under the provisions of section 30.

[(2A) Land Use Plans may include a section setting out a written statement of the Committee's general policies in respect of development or other work referred to in section 4 or other use of land in the Island.]

(3) Land Use Plans shall include [at least one map and such] descriptive matter as may be necessary to make clear the Committee's proposals with such degree of particularity as may be appropriate to [indicate where each of the proposals shall be implemented or applied] and, without prejudice to the generality of [the foregoing provisions of this section, the Plans may] –

- (a) [subject to the prohibition on the Committee granting permission in section 12,] define areas in respect of which the Committee recommends that permission for development under the provisions of Part II of this Law –
  - (i) should not be granted,
  - (ii) should not be granted unless by reason of special considerations relating to the site it would be unreasonable for such permission not to be granted,
  - (iii) should, subject to the provisions of [Part II] of this Law, be granted,
- (b) [provide for policies in respect of roads and other infrastructure], public and other buildings and works, parks, pleasure grounds, nature reserves and other open spaces[, heritage assets, sustainable development or areas important for biological diversity as defined in section 7(3)] or allocate areas of land for use for agricultural, horticultural, residential, commercial, industrial or other purposes of any class specified in the Plan,
- (c) contain such other matters as the Committee may think necessary or expedient.

[(3A) In preparing a Land Use Plan or any alteration or addition to the same the Committee shall have regard to any strategic policy document of the States –

- (a) which is from time to time in force and approved by Resolution of the States, and

- (b) in respect of which the States have by Resolution –
  - (i) agreed that the document has significant implications for land planning and use of land on the Island, and
  - (ii) directed the Committee to have regard to the document in preparing a Land Use Plan or any alteration or addition to the same.]

(4) In the event of any conflict between a map and a written [statement] which are both included in a Land Use Plan, [the written statement] shall prevail.

[(5) For the avoidance of doubt, in this section, "**proposals**" includes general and other policies.]

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## NOTES

*In section 23,*

*first, the words in square brackets in subsection (1) were substituted, second, the words in square brackets in subsection (2) were inserted, third, the words in the first, fourth, the words in the second and, fifth, the words in the third pairs of square brackets in subsection (3) were substituted, sixth, the words in the first pair of square brackets in paragraph (a) of subsection (3) were inserted, seventh, the words in the second pair of square brackets therein were substituted, eighth, the words in the first pair of square brackets in paragraph (b) of subsection (3) were substituted, ninth, the words in the second pair of square brackets therein were inserted, tenth, subsection (3A) was inserted, eleventh, the words in the first and, twelfth, second pairs of square brackets in subsection (4) were substituted and, thirteenth, subsection (5) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2017, section 3, respectively paragraph (a), paragraph (b), paragraph (c)(i), paragraph (c)(ii), paragraph (c)(iii), paragraph (c)(iv)(A), paragraph (c)(iv)(B), paragraph (c)(v)(A), paragraph (c)(v)(B), paragraph (d), paragraph (e)(i), paragraph (e)(ii) and 13 paragraph (f), with effect from 14th June, 2017;*

*subsection (2A) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 6, with effect from 20th July, 2016.*

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**Supplementary planning guidance.**

**23A.** (1) The Committee may adopt and issue guidance, in connection with a Land Use Plan, to be known as supplementary planning guidance.

(2) The Committee, before adopting and issuing any supplementary planning guidance, must take such steps as it considers will ensure that –

(a) adequate publicity is given to the proposed guidance and the opportunity to make written representations under paragraph (b), and

(b) an adequate opportunity is given for any person to make written representations on the guidance within such reasonable period as may be specified by the Committee in writing.

(3) The Committee must, before adopting and issuing the supplementary planning guidance, consider any representations made to them within the period specified under subsection (2).

(4) Supplementary planning guidance may only deal with the provision of further information or detail in respect of the policies set out in a Land Use Plan.

(5) The Committee may issue amendments to or revoke any supplementary planning guidance and subsections (2) and (3) apply, with any necessary amendments, to –

(a) the adoption and issuing of an amendment to any supplementary planning guidance, or

(b) the revocation of any supplementary planning guidance,

as they apply to the adoption and issuing of supplementary planning guidance.

- (6) For the avoidance of doubt –
- (a) supplementary planning guidance is not part of a Land Use Plan but it is required to be taken into account by the Committee in construing the relevant policy in the Land Use Plan to which it relates, and
  - (b) where there is any conflict between the provisions of a Land Use Plan and any supplementary planning guidance the provisions of the Land Use Plan are to prevail.]

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**NOTE**

*Section 23A was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 7, with effect from 20th July, 2016.*

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**Duration of Land Use Plans.**

**24.** Subject to the succeeding provisions of this Part of this Law, a Land Use Plan shall have effect for a period of five years beginning on the day on which the Plan is approved by the States under section 30 and thereafter shall continue to have effect subject to such alterations or additions, if any, as may from time to time be made under the provisions of this Law.

**Review of Land Use Plans.**

**25.** (1) Before the expiration of the five year period beginning on the day on which a Land Use Plan is approved by the States under section 30, and thereafter at least once in every five years, the Committee shall review the Plan and shall, subject to the succeeding provisions of this Part of this Law, report to the States laying before them any alterations or additions to that or any other Land Use Plan which appear to the Committee to be required.

(2) Notwithstanding the provisions of subsection (1) and subject to the succeeding provisions of this Part of this Law, the Committee may at any

time, and shall if so required by Resolution of the States, lay before the States proposals for such alterations or additions to any Land Use Plan or any part thereof as appear to the Committee to be desirable or required by Resolution of the States.

**Appointment of Inspectors.**

26. (1) The Committee shall, before laying before the States a Land Use Plan or any proposal for an alteration or addition thereto whether arising as a result of a review under section 25(1) or otherwise, request the President of the States to appoint a person to be an Inspector to hold a Planning Inquiry to consider the Plan or proposed alteration or addition and to hear any representation or objection made or offered thereto under subsection (2).

(2) When an Inspector has been appointed under subsection (1), the Committee shall cause to be published in the Alderney Official Gazette a notice specifying –

- (a) the fact that it is intended to lay a Land Use Plan or a proposal for an alteration or addition thereto before the States,
- (b) such particulars of the Plan, alteration or addition as the Committee may think necessary or expedient,
- (c) the place where and the times at which the Plan, alteration or addition may be inspected,

and stating that any person who desires to make any representation or offer any objection to the Plan, alteration or addition may, subject to the provisions of section 27, do so at a Planning Inquiry to be held by the Inspector at such place and at such time as shall be specified in the notice.

**Planning Inquiries.**

27. (1) Every Planning Inquiry shall be held in public.

(2) Any person who desires to make any representation or offer any objection to a Land Use Plan or any proposed alteration or addition thereto may

do so –

- (a) in person,
- (b) by an Advocate of the Royal Court of Guernsey, [...]
- [(c) any other person authorised to do so,] [or]
- [(d) by written representation.]

(3) No person may, at a Planning Inquiry, make any representation, or offer any objection, in relation to a Land Use Plan or any proposed alteration or addition thereto unless he, or some other person acting on his behalf and described in subsection (2)(b) or (c), has, not less than ten days prior to the day of the commencement of the Inquiry, given written notice to the Inspector of his intention to make the representation or offer the objection; and any such notice –

- (a) shall give an explanation of the proposed representation or objection sufficient to enable the Inspector to understand the essence of it, and
- (b) shall be published in the Alderney Official Gazette (if there is time before the commencement of the Inquiry), exhibited on the notice board outside the Alderney Court House and made available for inspection in the States Office:

Provided always that –

- (i) the Inspector may, in his absolute discretion, waive all or any of the requirements of this subsection in the case of any person desiring to make any such representation or offer any such objection at a Planning Inquiry,



- (ii) the requirements of this subsection shall not apply to any person desiring to make any representation or objection in relation to such a representation or objection at a Planning Inquiry.
- (4) For the purposes of a Planning Inquiry an Inspector shall have power –
- (a) by summons under his hand to call before him and examine all such persons as he thinks fit,
  - (b) to require any such person to answer any question, furnish any information or produce any book, document, or article which the Inspector may consider relevant,
  - (c) to retain any such book, document or article until after he has submitted his report to the Committee,
  - (d) to take statements from all such persons as he may think fit,
  - (e) to enter and inspect any land, immovable structure or movable structure the entry into or inspection of which appears to him to be necessary for the purposes of the Inquiry.
- (5) Subject to the preceding provisions of this section, the procedure at a Planning Inquiry shall be in the discretion of the Inspector.

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**NOTES**

*In section 27,*

*the word omitted in square brackets in paragraph (b) of subsection (2) was repealed and the word in square brackets after paragraph (c)*

*thereof was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 8, with effect from 20th July, 2016;*

*paragraph (c) of subsection (2) was substituted, and paragraph (d) thereof was inserted, by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, respectively section 1(11) and section 1(12), with effect from 20th June, 2007.*

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**Inspectors' Reports.**

28. After holding a Planning Inquiry the Inspector shall prepare a report in writing containing his recommendations on the Land Use Plan or the proposal for alteration or addition thereto, as the case may be, and shall submit that report to the Committee.

**Land Use Plans and Inspectors' Reports to be laid before States.**

29. On receiving the report of an Inspector under section 28, the Committee shall lay the Land Use Plan or the proposal for alteration or addition thereto, as the case may be, and the report of the Inspector before the States together with any recommendation which the Committee may think desirable.

**States' approval of Land Use Plans.**

30. (1) Upon a Land Use Plan or any proposal for alteration or addition thereto being laid before them the States may approve the Plan, alteration or addition without modification or subject to such modifications as they may consider necessary or expedient.

(2) Every Land Use Plan and every alteration or addition thereto approved by the States shall, for the purposes of identification, be signed and dated by the President of the States and lodged with the Clerk of the States.

**Departures from, and minor alterations or additions to, Land Use Plans.**

31. (1) The Committee may –

- (a) notwithstanding the provisions of section 7(1)(h), but otherwise subject in all respects to the provisions of this Law, grant permission to carry out any development or work involving a departure from a Land Use Plan,

- (b) notwithstanding the preceding provisions of this Part of this Law, itself effect such alterations or additions to any Land Use Plan or any part thereof as appear to the Committee to be desirable,

if, in the opinion of the Committee, it is a departure or, as the case may be, an alteration or addition of a minor nature not warranting specific reference to the States under the provisions of section 29.

(2) Where the Committee is disposed to approve an application for permission to carry out any development or work involving a departure from a Land Use Plan which may not be granted under subsection (1), the Committee may request the President of the States to appoint an Inspector to hold a Planning Inquiry and the provisions of sections 26 to 30 shall thereupon apply as if the application were a proposal by the Committee for an alteration or addition to the Land Use Plan.

(3) A decision by the Committee to refuse permission to carry out development or work involving a departure from a Land Use Plan on the ground that, in the opinion of the Committee, it is not a departure of a minor nature shall, for the avoidance of doubt, be subject to appeal under the provisions of section 62.

**Preliminary declarations.**

32. ...

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**NOTE**

*Section 32 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(13), with effect from 20th June, 2007.*

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PART V  
CONTROL OF CONSTRUCTION OF DWELLINGS

**Control of construction of dwellings.**

33. ...

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**NOTE**

*Part V, and section 33 thereof, were repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 19, with effect from 1st January, 2017.<sup>2</sup>*

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**Power to exempt certain dwellings.**

34. ...

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**NOTE**

*Section 34 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 19, with effect from 1st January, 2017.*

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**Certificate of Clerk of States conclusive.**

35. ...

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**NOTE**

*Section 35 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 19, with effect from 1st January, 2017.*

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**Offences under Part V.**

36. ...

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**NOTE**

*Section 36 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 19, with effect from 1st January, 2017.*

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**Application of Part V to States land.**

37. ...

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**NOTE**

*Section 37 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 19, with effect from 1st January, 2017.*

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**Interpretation of Part V.**

**38.** ...

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**NOTE**

*Section 38 was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 19, with effect from 1st January, 2017.<sup>3</sup>*

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**PART VI**  
**BUILDING REGULATIONS**

**[Building regulations.]**

**39.** (1) The Committee may by regulations make such provision as it may deem necessary or expedient in relation to the prohibition or control of all or any of the following matters –

- (a) the design, construction, reconstruction or the repair or maintenance of, or structural alterations, additions or extensions to, or demolition of, buildings and materials to be used therein,
- (b) the layout, construction, reconstruction, repair, maintenance or extension of roads,
- (c) the planning and development of sites for buildings,
- (d) alterations or additions to any building which are desirable in connection with a change of its use, or
- (e) services, fittings and equipment provided in, or in

connection with, buildings.

(2) Subsection (1) includes a power to make provision in relation to administrative, procedural and enforcement matters in connection with the matters referred to in subsection (1) including, without limitation –

- (a) empowering the Committee to issue or approve codes or guidance in respect of the requirements of building regulations,
- (b) requiring the deposit and approval of plans or the sending of notices to the Committee in connection with the matters referred to in subsection (1) and the issuing of licences by the Committee in connection with the same,
- (c) providing for the Committee to accept, as evidence of compliance with building regulations, certificates to that effect by specified persons,
- (d) the giving of certificates by the Committee in relation to compliance with the requirements of building regulations,
- (e) requiring persons carrying out work, which is subject to requirements of building regulations made under this subsection, to check compliance with such requirements including by the carrying out of tests, and
- (f) providing for the enforcement of building regulations including, without limitation, by the giving of notices, the inspection and testing of work and the taking of samples.

(3) The States may by Ordinance prescribe the fees and charges –

- (a) which are to accompany the deposit of full plans with the Committee, or
- (b) which are payable in connection with any application, notice, inspection, service or other matter provided for, under any building regulations.]

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**NOTES**

*Section 39 was substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(5), with effect from 10th February, 2014.*

*The following Ordinance has been made under section 39:*

*Building and Development Control (Alderney) (Amendment No. 2 and Fees) Ordinance, 2016.*

*The following Regulations have been made under section 39:*

*Building (Alderney) Regulations, 2014.*

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**Work done or being done illegally.**

- 40.** (1) The Committee may, if it has the reason to believe that –
- (a) any work is being or has been carried out in contravention of the provisions of any [building regulations], or
  - (b) any work is being or has been carried out in contravention of any requirement of the Committee imposed under the provisions of any such regulations,

serve notice on the person who has carried out or is carrying out the said work requiring that further work on or in respect of the land, immovable structure or movable structure concerned as the Committee may deem appropriate in the circumstances shall forthwith cease; and any such notice shall inform the person upon whom it is served of the right of appeal conferred by subsection (3).

(2) In a notice served under the provisions of subsection (1) the Committee may, in addition, require within such time as may be specified in the notice such steps to be taken as are, in its opinion, necessary to ensure that the work concerned does not constitute a danger to persons using –

- (a) the said land, immovable structure or movable structure, or
- (b) any public highway or neighbouring land,

and the expression "**danger**" shall be construed in accordance with the provisions of section 19(2).

(3) Any person aggrieved by a notice served on him under the provisions of subsection (1) may, within a period of 21 days beginning on the date of the notice, during which period the Committee shall take no further action in the matter under this section, apply to the Court to have the notice set aside on the ground –

- (a) that the work to which the notice relates is not being, or has not been, carried out in contravention of –
  - (i) the provisions of any [building regulations], or
  - (ii) any requirement of the Committee imposed under the provisions of any such regulations, or
- (b) that the notice is an unreasonable exercise of the powers of the Committee:

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



(4) Upon the making of an application under subsection (3) to have a notice set aside –

- (a) the Committee shall take no further action in the matter under this section until the application is finally disposed of or withdrawn, and
- (b) if the notice to which the application relates is not set aside, subsection (5) shall apply as if for the date of the notice there were substituted the date when the application is finally disposed of or withdrawn,

and for the purposes of this section an application shall be deemed not to have been finally disposed of until the expiration of the time allowed for the institution of an appeal under section 2 of the Court of Alderney (Appeals) Law, 1969<sup>g</sup> or, if an appeal is instituted within that time, until the determination by the Royal Court of the appeal.

(5) If at the expiration of such time as is specified in a notice served under this section the action required thereby has not been taken, or if any other term or condition of the notice has been contravened, and the notice has not been set aside, then, subject to subsections (3) and (4), the Committee may apply to the Court for an order authorising it to take that action or (as the case may be) to take steps to remedy the contravention of the term or condition, and for that purpose to enter upon any land, immovable structure or movable structure; and where such an order is granted the Committee may recover, as a civil debt due to the States from the person mentioned in subsection (7), the costs reasonably incurred by the Committee in taking the action or (as the case may be) in taking the remedial steps so authorised.

(6) An application under subsection (3) shall be instituted by way of summons served on the Chairman of the Committee setting out the material facts

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<sup>g</sup> Ordres en Conseil Vol. XXII, p. 192; there are amendments not material to this Law.

upon which the applicant relies.

(7) The costs mentioned in subsection (5) shall be recoverable by the Committee from –

- (a) in a case where the Committee has, within a period of 7 days commencing on the date of the relevant Court order (or such longer period as the Court may in any particular case allow on the application of the Committee, which application may be made after the expiration of the said 7 day period), registered the relevant Court order against the title to the land in question in the Land Register, the person who is the owner for the time being of the land in question,
- (b) in any other case, the person against whom the relevant Court order was made,

and the Land Registrar shall, where the Committee requests him to register the relevant Court order within the period referred to in paragraph (a), make the appropriate entry in the Land Register.

(8) In subsection (7) –

**'land in question'** means –

- (a) the land or immovable structure in respect of which the relevant Court order was made or, as the case may be,
- (b) the land upon which the movable structure in respect of which the relevant Court order was made is situated,

**'relevant Court order'** means the order of the Court made under subsection (5) authorising the Committee to take the action or to take the

steps therein mentioned.

(9) If more than one person is, pursuant to subsection (7), liable for the costs mentioned in subsection (5), their liability shall be joint and several.

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**NOTE**

*In section 40, the words "building regulations" in square brackets, wherever occurring, were substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(2), with effect from 10th February, 2014.*

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**Powers of entry.**

**41.** (1) Any person authorised in writing by or on behalf of the Committee may at any reasonable time enter upon any land, immovable structure or movable structure for the purposes of –

- (a) ascertaining whether there is or has been any contravention of –
  - (i) any of the provisions of any [building regulations],
  - (ii) any requirement imposed on any person by the Committee under the provisions of any such regulations, or
  - (iii) any notice served on any person under the provisions of section 40(1), or
- (b) exercising any of the [functions of the Committee under the Law and under any building regulations or] arising by virtue of the making of an order of the Court under section 40(5).

(2) Any person authorised under the provisions of this section to enter upon any land, immovable structure or movable structure shall, if so required,

produce evidence of his authority before so entering and shall not demand admission as of right to any land, immovable structure or movable structure which is occupied unless 24 hours' notice of the intended entry has been given to the occupier.

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**NOTES**

*In section 41,*

*the words "building regulations" in square brackets, wherever occurring, were substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(2), with effect from 10th February, 2014;*

*the words in square brackets in paragraph (b) of subsection (1) were substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(6), with effect from 10th February, 2014.*

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**Penalties for contraventions of Part VI.**

**42.** (1) Any person who contravenes any provision of [building regulations] shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

(2) Any person who contravenes –

- (a) any requirement imposed by the Committee under any provision of [building regulations], or
- (b) any provision of a notice which has been served under section 40 and which has not been set aside under subsection (3) of that section,

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

(3) Any person who refuses or fails to supply any information or document which he is required to supply to the Committee under any provision of [building regulations] or who in supplying any such information or document –

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

shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale, imprisonment for a term not exceeding 3 months or both.

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**NOTE**

*In section 42, the words "building regulations" in square brackets, wherever occurring, were substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(2), with effect from 10th February, 2014.*

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**Power to require work to be done following conviction.**

**43.** (1) Where any person has been convicted in respect of a contravention of –

- (a) the provisions of any [building regulations],
- (b) any requirement imposed by the Committee under the provisions of any [building regulations], or

(c) any provision of any notice served under section 40,

the Committee may apply to the Court for an order requiring the person convicted to effect such alterations to any work to which the conviction relates, or to carry out such other works, as may be necessary to effect compliance with any such regulations, requirement or notice, as the case may be.

(2) If a person in respect of whom an order has been made under the provisions of subsection (1) fails to comply with the order within such period as the Court may direct or such longer period as the Court may, on the application of that person, allow, the Committee may apply to the Court for authority to effect such alterations or other works as may be necessary to give effect to the said order, and for that purpose to enter upon any land, immovable structure or movable structure.

(3) The Court, after hearing evidence as to the estimated cost of the alterations or works referred to in subsection (2), may make such order as to it seems just.

(4) Any person authorised in writing by or on behalf of the Committee may at any reasonable time enter upon any land, immovable structure or movable structure for the purposes of exercising any of the powers of the Committee arising by virtue of the making of an order of the Court under subsection (3).

(5) Any person authorised under the provisions of this section to enter upon any land, immovable structure or movable structure shall, if so required, produce evidence of his authority before so entering and shall not demand admission as of right to any land, immovable structure or movable structure which is occupied unless 24 hours' notice of the intended entry has been given to the occupier.

(6) Where an order of the Court under subsection (3) is granted the Committee may recover, as a civil debt due to the States from the person mentioned in subsection (7), the costs reasonably incurred by the Committee in effecting the alterations or works authorised by the order.

(7) The costs mentioned in subsection (6) shall be recoverable by the Committee from –

- (a) in a case where the Committee has, within a period of 7 days commencing on the date of the relevant Court order (or such longer period as the Court may in any particular case allow on the application of the Committee, which application may be made after the expiration of the said 7 day period), registered the relevant Court order against the title to the land in question in the Land Register, the person who is the owner for the time being of the land in question,
- (b) in any other case, the person against whom the relevant Court order was made,

and the Land Registrar shall, where the Committee requests him to register the relevant Court order within the period referred to in paragraph (a), make the appropriate entry in the Land Register.

(8) In subsection (7) –

**'land in question'** means –

- (a) the land or immovable structure in respect of which the relevant Court order was made or, as the case may be,
- (b) the land upon which the movable structure in respect of which the relevant Court order was made is situated,

**'relevant Court order'** means the order of the Court made under subsection (3) authorising the Committee to effect the alterations or works referred to in subsection (2).

(9) If more than one person is, pursuant to subsection (7), liable for the costs mentioned in subsection (6), their liability shall be joint and several.

(10) The provisions of this section are in addition to, and not in derogation from, the preceding provisions of this Part of this Law.

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**NOTE**

*In section 43, the words "building regulations" in square brackets, wherever occurring, were substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(2), with effect from 10th February, 2014.*

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**Right of appeal etc. in respect of decisions under the building regulations.**

**43A.** (1) Any person aggrieved by any decision of the Committee under any building regulations –

- (a) to reject plans deposited with the Committee, other than in relation to controlled work,
- (b) to approve such plans with modifications or subject to conditions and to grant a licence to execute building works, other than controlled work, subject to those modifications or conditions,
- (c) in relation to work including or consisting of controlled work –
  - (i) to reject plans or fix, or refuse to extend, a period on the expiration of which a building or part of a building must be removed, or
  - (ii) to impose or vary a condition with respect to the use of a building or part of a building or with respect to controlled work, may, within a period of 42 days beginning on the date of the



said decision, appeal therefrom to the Court on the grounds that the decision of the Committee was *ultra vires* or was an unreasonable exercise of its powers:

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

(2) Any appeal under this subsection shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and shall be served on the Chairman of the Committee.

(3) In this section, "**controlled work**" shall be construed in accordance with the building regulations.]

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**NOTE**

*Section 43A was inserted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(7), with effect from 10th February, 2014.*

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**[Interpretation of this Part.**

**43B.** In this Part of this Law, unless the context requires otherwise, "**building**" includes any well, cistern, cesspit, cellar or other excavation below surface level or any wall or permanent hoarding whether or not, in each case, they comprise a structure.]

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**NOTE**

*Section 43B was inserted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(7), with effect from 10th February, 2014.*

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PART VII

HISTORIC BUILDINGS & ANCIENT MONUMENTS

**Register of Historic Buildings and Ancient Monuments.**

44. (1) The Clerk of the States shall continue to maintain at the States Office the register called the "Register of Historic Buildings and Ancient Monuments" (originally established by section 1 of the Historic Buildings and Ancient Monuments (Alderney) Law, 1989<sup>h</sup> and referred to in this Part of this Law as the "**Register of Historic Buildings**") in which he shall make such entries as may be directed from time to time by the Committee under the provisions of this Part of this Law.

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

(3) The Register of Historic Buildings shall be open to public inspection at all reasonable times and a copy thereof shall be lodged with the Land Registrar.

**Registration of historic buildings.**

45. (1) If the Committee is of the opinion that the preservation of any building is a matter of public importance by reason of its special historic, architectural, traditional, artistic or archaeological interest, the Committee may, subject to the provisions of section 48, direct the Clerk of the States to register the building, and the Clerk of the States shall thereupon make such entry in the Register of Historic Buildings with respect to the building as the Committee thinks fit.

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

- (a) any respect in which its exterior contributes to any such interest of any group of buildings of which it forms part, and

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<sup>h</sup> Ordres en Conseil Vol. XXXI, p. 487.

- (b) the desirability of preserving, on the ground of any such interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.

**Registration of conservation areas.**

46. If the Committee is of the opinion that any area is an area of special historic or architectural interest the character or appearance of which it is desirable as a matter of public importance to preserve or enhance, the Committee may, subject to the provisions of section 48, designate the area as a conservation area and direct that it be registered as such in the Register of Historic Buildings by the Clerk of the States, and the Clerk of the States shall thereupon make such entry in the Register of Historic Buildings with respect to the area so designated as the Committee thinks fit.

**Amendment and cancellation of Register entries.**

47. The Committee may, subject to the provisions of section 48, from time to time direct the Clerk of the States to amend or cancel any entry in the Register of Historic Buildings, and the Clerk of the States shall thereupon amend or cancel the entry in accordance with the direction of the Committee.

**Consultations prior to registration.**

48. (1) Before directing the registration of any building or conservation area or the amendment or cancellation of any entry in the Register of Historic Buildings relating to any building or conservation area –

- (a) the Committee shall –
  - (i) in the case of a building, serve written notice of its intention to register the building (or, as the case may be, to amend or cancel the entry relating thereto) on the owner and (if different) the occupier thereof, inviting them to make representations in respect of the proposed registration, amendment or cancellation within

a period of 28 days from the date of the notice,

- (ii) in the case of a conservation area, publish notice of its intention to register the area (or, as the case may be, to amend or cancel the entry relating thereto) in the Alderney Official Gazette, and cause such notice to be affixed for not less than seven consecutive days to the notice boards outside the Court House and the gate of the Parish Church, inviting any person to make representations in respect of the proposed registration, amendment or cancellation within a period of 28 days from the date of publication of the notice in the Alderney Official Gazette, and

- (b) the Committee may also consult such persons or bodies of persons as appear to the Committee appropriate as having knowledge of, or interest in, buildings of special historic, architectural, traditional, artistic or archaeological interest or areas of special historic or architectural interest.

(2) The Committee shall, after considering –

- (a) any representations received within the period of 28 days set out in subparagraph (i) or (ii), as the case may be, of subsection (1)(a), and
- (b) the views of any person consulted under subsection (1)(b),

proceed to make its decision as to whether or not to direct the registration of the building or conservation area or the amendment or cancellation of the entry in the Register of Historic Buildings.

**Notification of registration, etc.**

49. The Clerk of the States shall, as soon as may be after the registration of any building or the making of any amendment or cancellation under section 47 of an entry in the Register of Historic Buildings relating to any building, serve a notice in writing on the owner and on the occupier of the building stating that the building has been registered or that the entry in the Register of Historic Buildings relating thereto has been so amended or cancelled, as the case may be.

**Publication of notices of registration.**

50. (1) The Clerk of the States shall, as soon as possible after the registration of any building or conservation area, and after the making of an amendment or cancellation under section 47 of an entry in the Register of Historic Buildings, cause notices stating that the building or the area has been registered or, as the case may be, that such entry has been amended or cancelled (together with particulars of any amendments) –

- (a) to be published in the Alderney Official Gazette, and
- (b) to be affixed for not less than seven consecutive days to the notice boards outside the Court House and the gate of the Parish Church.

(2) The Committee shall cause a list of all buildings and conservation areas which are for the time being registered under this Part of this Law to be published in a Billet d'État at least once every three years.

**Control of excavations, etc.**

51. (1) The States may by Ordinance make provision for controlling (by way of licensing or otherwise) the use of any machinery, equipment or appliance for the purpose of detecting or excavating below the surface of the land any building or object of special historic, architectural, traditional, artistic or archaeological interest.

(2) A person who contravenes any provision of an Ordinance made under this section, or of any licence granted by the Committee under such an Ordinance, shall be guilty of an offence and liable, on conviction, to a fine not

exceeding level 5 on the Alderney uniform scale.

**Causing damage to registered buildings.**

52. (1) A person who, without lawful authority or reasonable excuse –
- (a) damages, or does any act which is likely to cause damage to, a registered building, or
  - (b) permits another to do any act which damages, or which is likely to cause damage to, a registered building,

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

(2) A person convicted of an offence under subsection (1) who fails to take all reasonable steps to prevent any damage or further damage resulting from the offence is guilty of a further offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

**Appeals against registration of historic buildings, etc.**

53. (1) Any person aggrieved by the registration of any building or conservation area, or by the amendment or cancellation of any entry in the Register of Historic Buildings under section 47, may, within a period of 42 days beginning on the date of the registration or the date on which the amendment or cancellation was made in the Register of Historic Buildings, as the case may be, appeal to the Court on the grounds that the decision of the Committee to direct the registration, amendment or cancellation (as the case may be) was *ultra vires* or was an unreasonable exercise of the Committee's powers:

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

(2) An appeal under this section shall be instituted by way of summons served on the Chairman of the Committee setting out the material facts

upon which the appellant relies.

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

**Powers of entry.**

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

- (a) surveying any building thereon in connection with a proposal to register the same or to amend or cancel any entry in the Register of Historic Buildings relating to that building under section 47,
- (b) surveying the buildings within any area in connection with a proposal to designate that area as a conservation area under section 46 or to amend or cancel under section 47 any entry in the Register of Historic Buildings relating to a conservation area registered under this Part of this Law,
- (c) ascertaining whether an offence has been committed under this Part of this Law.

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

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

(or, if he is unavailable, by any Jurat of the Court) on information laid before him on oath.

(3) A person who without lawful authority or reasonable excuse obstructs any person in the exercise of his powers under subsection (1) is guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

**Interpretation of Part VII.**

**55.** In this Part of this Law, unless the context otherwise requires –

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

**"registered"** means registered in the Register of Historic Buildings and the expression **"registration"** and related expressions shall be construed accordingly.

**No compensation payable by States for decisions under Part VII.**

**56.** No compensation shall be payable by the States in respect of any loss suffered by any person by reason of any decision taken by the Committee under this Part of this Law.

PART VIII

CLIFF PATHS, CARAVANS AND CAMPING

**Obstruction of cliff paths.**

**57.** (1) A person shall not, without lawful authority or reasonable excuse, obstruct or cause to be obstructed the passage of pedestrians on any cliff path.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 3 on the Alderney uniform scale.



**Restriction on importation of caravans.**

**58.** (1) A caravan shall not be imported into the Island except under the authority of and in accordance with the conditions of a licence granted by the Committee in that behalf.

(2) The Committee may attach to any licence granted under this section such conditions as it thinks fit to impose.

(3) A person shall not transfer the ownership or possession of a caravan imported under the authority of a licence granted under this section without the permission in that behalf of the Committee; and the Committee may attach to any such permission such conditions as it thinks fit to impose.

(4) If any person –

- (a) imports a caravan in contravention of the provisions of this section,
- (b) fails to comply with any condition attached to a licence authorising the importation of a caravan,
- (c) contravenes the provisions of subsection (3), or
- (d) fails to comply with any condition attached to any permission granted under the provisions of subsection (3),

he shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the Alderney uniform scale; and the Court may, in the case of an offence under paragraph (a), require the caravan to be re-exported.

**Regulation of camping.**

**59.** (1) The States may by Ordinance make such provision as they deem necessary or desirable to regulate or prohibit camping or camping sites in the Island.

(2) Any person who contravenes or attempts to contravene any of the provisions of –

- (a) an Ordinance made under subsection (1), or
- (b) any licence or direction given, or requirement imposed, under or by virtue of any such Ordinance,

shall, subject to the provisions of the Ordinance, be guilty of an offence under the Ordinance.

(3) The States may by Ordinance prescribe the penalties which shall be incurred by any person guilty of an offence under an Ordinance made under subsection (1), and different penalties may be so prescribed for different offences.

## PART IX

### REMOVAL OF MOTOR VEHICLES AND BOATS

#### **Removal of motor vehicles.**

**60.** (1) The General Services Committee may –

- (a) remove or cause to be removed from any public highway for safe custody any motor vehicle, or remove or cause to be removed from one position on a public highway to another position on that or another public highway any motor vehicle, which is on a public highway –
  - (i) in contravention of any enactment,
  - (ii) in such position, in such condition or in such circumstances as to cause obstruction to other persons using the public highway or as to be likely to cause danger to such other persons, or
  - (iii) in such position, in such condition or in such

circumstances as to appear to the General Services Committee to have been abandoned,

or which has broken down and has not been removed within a reasonable time thereafter,

- (b) if it appears to the General Services Committee that a motor vehicle has been abandoned, sell or otherwise dispose of it,
- (c) apply any sum received on a sale of a motor vehicle under paragraph (b) in or towards the satisfaction of any costs incurred by the General Services Committee in connection with the removal, storage and disposal thereof,
- (d) recover as a civil debt due to the States any such costs as aforesaid so far as are not satisfied by virtue of paragraph (c).

(2) Any sums received by the General Services Committee on a sale of a motor vehicle under the provisions of subsection (1)(b) shall, after deducting any sum applied thereout by virtue of subsection (1)(c), accrue to the States.

**Removal of boats.**

**61.** (1) The General Services Committee may –

- (a) remove or cause to be removed from any part of Braye Harbour for safe custody any boat, or remove or cause to be removed from one position in the said Harbour to another such position any boat, which is in the said Harbour –
  - (i) in contravention of any enactment,

- (ii) in such position, in such condition or in such circumstances as to cause obstruction to other persons using the said Harbour or as to be likely to cause danger to such other persons, or
  - (iii) in such position, in such condition or in such circumstances as to appear to the General Services Committee to have been abandoned,
- or which has broken down and has not been removed within a reasonable time thereafter,
- (b) if it appears to the General Services Committee that a boat has been abandoned in the said Harbour or is so unsound as to be unlikely to be restored to a seaworthy condition, sell or otherwise dispose of it,
  - (c) apply any sum received on a sale of a boat under paragraph (b) in or towards the satisfaction of any costs incurred by the General Services Committee in connection with the removal, storage and disposal thereof,
  - (d) recover as a civil debt due to the States any such costs as aforesaid so far as are not satisfied by virtue of paragraph (c).

(2) Any sums received by the General Services Committee on a sale of a boat under the provisions of subsection (1)(b) shall, after deducting any sum applied thereout by virtue of subsection (1)(c), accrue to the States.

## PART X APPEALS

### **General right of appeal.**

- 62.** (1) Any person aggrieved by any decision of the Committee or of

the General Services Committee to refuse any permission or licence applied for under any provision of this Law or any Ordinance or regulation made under it or to grant any such permission or licence subject to conditions may, within a period of 42 days beginning on the date of the said decision, appeal therefrom to the Court on the grounds that the decision of the Committee or, as the case may be, of the General Services Committee was *ultra vires* or was an unreasonable exercise of its powers:

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

(2) Any appeal under this section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and which shall be served on the Chairman of the Committee or, as the case may be, of the General Services Committee.

(3) The provisions of this section do not apply to decisions of the Committee or General Services Committee against which a right of appeal or review is conferred by any other provision of this Law or any Ordinance or regulation made under it.

## PART XI

### OFFENCES AND MISCELLANEOUS PROVISIONS

#### **No compensation payable by States for refusal of permission, etc.**

**63.** If the Committee refuses to grant any permission or licence applied for under any provision of this Law or any Ordinance or regulation made under it [or decides to reject plans under the building regulations], or grants any such permission or licence subject to conditions [or approves plans under the building regulations subject to conditions], no compensation shall be payable by the States in respect of any loss suffered by the applicant for such permission or licence or by any other person by reason of such refusal [or rejection] or by reason of the imposition of such conditions.

**NOTE**

*In section 63, the words in the first, second and third pairs of square brackets were inserted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(8), respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 10th February, 2014.*

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**Service of notices.**

**64.** (1) Any notice to be given or served for the purposes of this Law or any Ordinance or regulation made under it shall be validly given or served –

- (a) in the case of an individual, by being delivered to him, or by being left at, or sent by post to, his usual or last known place of abode,
- (b) in the case of a company with a registered office in the Island, by being left at, or sent by post to, that office,
- (c) in the case of a company without a registered office in the Island, by being left at, or sent by post to, its principal or last known principal place of business in the Island or, if there is no such place, its registered office or principal or last known principal place of business outside the Island,
- (d) in the case of an unincorporated body, by being given to or served on any partner, member, manager, director or other similar officer thereof in accordance with paragraph (a), or by being left at, or sent by post to, the body's principal or last known principal place of business in the Island or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) in the case of the Committee or General Services Committee, by being left at, or sent by post to, the States Office,

and in this section the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post.

(2) If a person notifies the Committee of an address for service within the Island for the purposes of this Law or any Ordinance or regulation made under it, any notice to be given to or served upon him may be given or served by being left at, or sent by post to, that address.

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

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

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to service, no notice to be given to or served on the Committee or General Services Committee or their respective Chairmen for the purposes of this Law or any Ordinance or regulation made under it shall be deemed to have been given or served until it is received.

(6) If a person upon whom a notice is to be served for the purposes of this Law or any Ordinance or regulation made under it is an infant or person under guardianship, the notice shall be served on his guardian; and if there is no guardian, the Committee or General Services Committee may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law or any Ordinance or regulation made under it.

(7) A notice sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law or any Ordinance or regulation made under it to have been received –

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

- (b) in the case of a document sent elsewhere by airmail, on the fourteenth day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended<sup>i</sup>.

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

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

(10) If the name or address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "**owner**" or "**occupier**" of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of or about the premises.

(11) In this section the expression "**notice**" means any notice (other than a summons) or other document.

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<sup>i</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.



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**NOTES**

*In accordance with the provisions of the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.*

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

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**Notification of refusals and conditions.**

**65.** If the Committee or the General Services Committee decides to refuse any permission or licence applied for under any provision of this Law or any Ordinance or regulation made under it [or decides to reject plans under the building regulations], or to grant any such permission or licence subject to conditions [or approves plans under the building regulations subject to conditions], notice of such refusal [or rejection] or such conditions shall be served upon the applicant within a period of 14 days beginning on the date of the meeting of the Committee at which the decision was taken.

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**NOTE**

*In section 65, the words in the first, second and third pairs of square brackets were inserted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(8), respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 10th February, 2014.*

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**Inspection of land.**

**66.** (1) Any person authorised in writing by or on behalf of the Committee may, at any reasonable time, enter upon any land, immovable structure or movable structure for the purposes of ascertaining whether there is or has been any contravention of –

- (a) any provision of this Law or of any Ordinance or

regulation made thereunder,

- (b) any condition attached to any permission or licence granted to any person under any such provision [or subject to which plans have been approved under the building regulations], or
- (c) any notice served upon any person under any such provision.

(2) Any person authorised under the provisions of this section to enter upon any land shall, if so required, produce evidence of his authority before so entering and shall not demand admission as of right –

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

(3) The provisions of this section are in addition to, and not in derogation from, any other provision of this Law dealing with powers of entry.

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**NOTE**

*In section 66, the words in square brackets were inserted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(9), with effect from 10th February, 2014.*

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**States not bound by certain provisions of this Law.**

**67.** (1) Nothing in Parts II, III and VIII of this Law shall apply –

- (a) to the States, or
- (b) to any servant or agent of the States when acting for or on behalf of the States within the course of his employment or agency.

(2) The provisions of any Land Use Plan for the time being in force under Part IV of this Law shall not apply in relation to –

- (a) any development carried out, or
- (b) any use of land (being a use not constituting development),

by the States, or by any public utility company, for the purposes of the provision of public utility services; and accordingly, notwithstanding the provisions of section 7(1)(h), but otherwise subject in all respects to the provisions of this Law, permission may be granted in respect of any such use or development, or (where permission is not required in respect thereof) the use or development may be carried out, irrespective of the provisions of the Land Use Plan.

(3) In this section –

- (a) the expression "**provision of public utility services**" includes, without limitation, works of installation, maintenance, repair, modification, improvement and replacement,
- (b) the expression "**public utility company**" means –
  - (i) Alderney Electricity Limited,
  - (ii) Guernsey Telecoms Limited,
  - (iii) Guernsey Post Limited, and

*Consolidated text*

- (iv) any other body prescribed for the purposes of this section by Ordinance of the States,
- (c) the expression "**public utility services**" means –
  - (i) electricity services (including, without limitation, electricity mains, electricity poles, distribution mains, distribution feeder pillars, electricity substations, switch stations and inspection chambers),
  - (ii) sewage disposal services (including, without limitation, public sewers, connecting drains, inspection chambers, pumping facilities, discharge pipes, septic tanks and sewage treatment works),
  - (iii) terrestrial telecommunications services (including, without limitation, telephone cables and service wires, poles and inspection chambers, but excluding towers with attached equipment, receiver dishes and transmitters),
  - (iv) water services (including, without limitation, water mains, service pipes, reservoirs, wells and pumping stations), and
  - (v) such other services as may be prescribed for the purposes of this section by Ordinance of the States.
- (4) The States may by Ordinance amend the provisions of this section.

**General penalty.**

**68.** Except where otherwise specifically provided by section 69, any

person who contravenes –

- (a) the provisions of section 4, or
- (b) any condition attached to any permission granted under the provisions of section 6, or
- (c) the provisions of section 13,

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

**Specific penalties.**

**69.** (1) Any person who contravenes the provisions of section 4(1)(e) shall be guilty of an offence and liable on conviction to a fine not exceeding level 4 on the Alderney uniform scale.

(2) Any person who contravenes the provisions of section 4(1)(f) or (g) shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 3 on the Alderney uniform scale.

**[Defence of due diligence.**

**69A.** In any proceedings for an offence under section 68(a), it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.]

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**NOTE**

*Section 69A was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(16), with effect from 20th June, 2007.*

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**Power to require work to be done.**

**70.** (1) Where any person has been convicted in respect of –

*Consolidated text*

- (a) a contravention of section 4,
- (b) a contravention of any condition attached to a permission granted under the provisions of section 6,

the Committee may apply to the Court for an order requiring the person convicted –

- (i) to demolish, or carry out structural alterations or modifications to, any land or immovable structure to which the conviction relates, as the Court may require,
  - (ii) to re-site or to remove from any site any movable structure to which the conviction relates,
  - (iii) to rebuild, in whole or in part, any wall, hedge, bank or fence to which the conviction relates,
  - (iv) to remove from any site, or from the exterior of any movable or immovable structure whether attached thereto or painted or otherwise exhibited thereon, any sign to which the conviction relates,
- [iv) (A) to replant or plant with trees the land, or such other land as may be agreed between the Committee and that person, and
- (B) to maintain those trees for a period, not exceeding ten years, or such other period as may be specified by the Committee,]

- (v) to comply with any condition to which the conviction relates and which was attached to any permission granted under the provisions of this Law,

as the case may require.

(2) If a person in respect of whom an order has been made under the provisions of subsection (1) fails to comply with the order within such period as the Court may direct or within such longer period as the Court may, on the application of that person, allow, the Committee may apply to the Court for authority to do such works as may be necessary to give effect to the order, and for that purpose to enter upon any land, immovable structure or movable structure; and where such authority is granted the Committee may recover, as a civil debt due to the States from the person mentioned in subsection (5), the costs reasonably incurred by the Committee in carrying out the works.

(3) Any person authorised in writing by or on behalf of the Committee may at any reasonable time enter upon any land, immovable structure or movable structure for the purpose of exercising any of the powers of the Committee arising by virtue of the making of an order of the Court under subsection (2).

(4) Any person authorised under the provisions of this section to enter upon any land, immovable structure or movable structure shall, if so required, produce evidence of his authority before so entering and shall not demand admission as of right to any land, immovable structure or movable structure which is occupied unless 24 hours' notice of the intended entry has been given to the occupier.

(5) The costs mentioned in subsection (2) shall be recoverable by the Committee from –

- (a) in a case where the Committee has, within a period of 7 days commencing on the date of the relevant Court order (or such longer period as the Court may in any particular case allow on the application of the Committee, which application may be made after the

expiration of the said 7 day period), registered the relevant Court order against the title to the land in question in the Land Register, the person who is the owner for the time being of the land in question,

- (b) in any other case, the person against whom the relevant Court order was made,

and the Land Registrar shall, where the Committee requests him to register the relevant Court order within the period referred to in paragraph (a), make the appropriate entry in the Land Register.

- (6) In subsection (5) –

**"land in question"** means –

- (a) the land or immovable structure in respect of which the relevant Court order was made or, as the case may be,
- (b) the land upon which the movable structure in respect of which the relevant Court order was made is situated,

**"relevant Court order"** means the order of the Court made under subsection (2) authorising the Committee to do the works therein mentioned.

- (7) If more than one person is, pursuant to subsection (5), liable for the costs mentioned in subsection (2), their liability shall be joint and several.

- (8) The provisions of this section are in addition to and not in derogation from the provisions of sections 17 to 22.

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**NOTE**

*In section 70, the second paragraph (iv) in subsection (1) was inserted by*



*the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(17), with effect from 20th June, 2007.*

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**False statements.**

**71.** Any person who for the purpose of obtaining any permission or licence under any provision of this Law or any Ordinance or regulation under it [or approval of plans under the building regulations], or in supplying any information which he is required to supply under any such provision to the Committee or General Services Committee, or otherwise for any purpose connected with any such provision –

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

shall be guilty of an offence and liable on conviction to a fine not exceeding level 5 on the Alderney uniform scale, imprisonment for a term not exceeding three months or both; and the Court may, in addition to any such penalty, [cancel any permission, licence or approval] to which the conviction relates.

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**NOTE**

*In section 71, the words in the first and second pairs of square brackets were, respectively, inserted and substituted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(10), paragraph (a) and paragraph (b), with effect from 10th February, 2014.*

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**Offences by bodies corporate.**

72. (1) Where an offence under this Law or any Ordinance or regulation made under it is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

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

**Obstruction.**

73. Any person who without lawful authority or reasonable excuse obstructs any person exercising any power or performing any duty conferred or imposed on him by or under this Law or any Ordinance or regulation made under it shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale.

**[Offences of unlawful development, etc, by agents.**

73A. (1) A person is guilty of an offence under section 42(1) or (2), 68(a) or (b) or 69 whether he contravenes the provision, requirement or condition in question as principal, agent or in any other capacity whatsoever.

(2) The provisions of subsection (1) are for the avoidance of doubt and are without prejudice to any other offence, whether arising under this Law or otherwise.]

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**NOTE**

*Section 73A was inserted by the Building and Development Control (Alderney) (Amendment) Law, 2004, section 2, with effect from 15th November, 2004.*

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**Exclusion of States' liability.**

- 74.** (1) No liability shall be incurred –
- (a) by the States or by any committee thereof, or
  - (b) by any member, officer or servant of the States or any committee thereof,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of any function conferred by or under this Law, or any Ordinance or regulation made under it, unless the thing is done or omitted to be done in bad faith.

(2) The provisions of this section are in addition to and not in derogation from the provisions of sections 56 and 63.

**[Guidance.**

**74A.** (1) The Committee may issue such guidance as it considers appropriate for the purpose of providing practical guidance, advice and information in connection with provisions under this Law.

(2) Before issuing, revising or withdrawing guidance under this section the Committee shall consult with such persons as it considers appropriate.

- (3) The Committee may –
- (a) revise guidance under this section by giving further guidance, or
  - (b) withdraw guidance under this section by giving further guidance or by notice.

(4) Guidance issued under subsection (1) may, without limitation, contain guidance –

(a) in relation to applications under this Law including in relation to –

- (i) informal pre-application discussions or advice,
- (ii) the information required by the Committee to accompany an application under section 5(1),
- (iii) the circumstances in which the Committee is likely to require a statement or report of assessments of environmental impacts or other effects to accompany an application under section 5(1),
- (iv) the information which the Committee may require to be included in a statement or report of assessments of environmental impacts or other effects of proposed development or other work required to accompany an application under section 5(1), or
- (v) the public consultation the Committee is likely to require an applicant to undertake under section 5(2)(c),

in different cases or circumstances, and

(b) in relation to the circumstances in which the Committee considers that permission would be required for a material change in the use of a building or any other land.

(5) Any person preparing or making an application or appeal, or considering whether or not it is necessary to make an application, under this Law shall take into account any relevant guidance issued under this section.

(6) Guidance under this section –

(a) shall be taken into account by the Committee in exercising its functions under this Law but –

(i) is not binding on the Committee or on any other person,

(ii) is merely indicative of the Committee's likely approach to any particular issue,

(iii) does not prejudice the Committee's discretion to decide any particular case differently according to its merits,

(iv) does not relieve any person of any obligation, restriction or liability imposed by or under this Law, and

(b) may, subject to the limitations set out in paragraph (a), be received in proceedings under this Law.

(7) Nothing in this section authorises –

(a) the issuing of any guidance about a particular application or otherwise about a particular case,

(b) the issuing of guidance which purports to provide further information or detail in respect of policies set out in a Land Use Plan, or

(c) the issuing of guidance in relation to the requirements

of building regulations.

(8) The Committee shall publish any guidance or notice issued by it under this section in such manner as it considers appropriate for bringing the guidance to the attention of persons likely to be affected by it.

(9) For the avoidance of doubt, in this section "**under this Law**" includes in any Ordinance or regulation made under it.]

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**NOTE**

*Section 74A was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2017, section 4, with effect from 14th June, 2017.*

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**General provisions as to subordinate legislation.**

**75.** (1) [The States may by Ordinance amend any provision of this Law; and any Ordinance] of the States or regulations of the Committee made under this Law –

- (a) may be amended or repealed by a subsequent Ordinance or, as the case may be, by subsequent regulations under this Law,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States or, as the case may be, the Committee to be necessary or expedient,
- (c) shall, in the case of regulations, be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect but without prejudice to anything done under them or to the making by the Committee of new regulations.

(2) Any power conferred upon the States or the Committee by this Law to make an Ordinance or, as the case may be, to make regulations 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,
- (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,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions,
- (c) so as to prohibit the doing of anything in relation to which the Ordinance or regulations may be made except under the authority of and in accordance with the conditions of a permission granted, subject to the satisfaction of such criteria and the payment of such fee as may be specified in the Ordinance or regulations, by such person or body as may be so specified.

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**NOTES**

*In section 75, the words in square brackets in subsection (1) were substituted by the Building and Development Control (Alderney) (Amendment) Law, 2004, section 3, with effect from 15th November, 2004.*

*The following Ordinances have been made under section 75:*

*Building and Development Control (Alderney) (Amendment) Ordinance, 2007;*

*Building and Development Control (Alderney) (Amendment) Ordinance, 2016.*

*The following Ordinance has effect as if made under section 75:*

*Housing (Exemptions) Repeal Ordinance, 1999.*

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### **Interpretation.**

**76.** (1) In this Law, unless the context requires otherwise –

**"agricultural land"** means any land used or, with the application of good husbandry, capable of being used for the purpose of any trade or business of dairy farming, the producing, rearing or maintenance of livestock, fish and crustacea, market gardening or the outdoor cultivation of flowers, bulbs or nursery stock and includes land which was, but no longer is, covered by a glasshouse if the land is capable of being used as aforesaid and land which is covered by a glasshouse but does not include land used as a garden other than a market garden,

**"boat"** means anything made for the carriage by water of human beings or of property and includes any gear therein and the hull, engine and any other part of a boat,

**"Braye Harbour"** means the area bounded by –

- (a) the Alderney Breakwater, including the submerged portion thereof,
- (b) a line drawn from the north-eastern end of the submerged portion of the Alderney Breakwater to the Outer Grois Rock,



- (c) a line drawn due south of the Outer Grois Rock as far as the high water line of ordinary spring tides on the northern coast of Alderney, and
- (d) the high water line of ordinary spring tides on the northern coast of Alderney,

and includes the quays, jetties, slipways, hards and roads adjacent to that Harbour and under the administration of the General Services Committee and the beaches adjacent to that Harbour,

[**"building regulations"** means any regulations made, or having effect as if made, under section 39,]

**"caravan"** means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted, but does not include a marquee or a tent,

[**"cliff path"** means any path bordering the coast or cliffs which, for the avoidance of doubt may be shown marked in red on a map of the island which may be produced by the Committee and made available for inspection at the States office,]

**"Clerk of the States"** means the Clerk of the States appointed under section 52(1) of the Government of Alderney Law, 1987<sup>j</sup>,

**"Committee"** means the Building and Development Control Committee of the States,

**"conservation area"** means an area designated as a conservation area by the Committee under section 46,

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<sup>j</sup> Ordres en Conseil Vol. XXX, p. 37.

**"contravention"** includes failure to comply, and cognate expressions shall be construed accordingly,

**"Court"** means –

- (a) the Court of Alderney, or
- (b) in any provision of this Law conferring a right of appeal to the Court (and in any provision of this Law ancillary thereto) –
  - (i) the Court of Alderney, or
  - (ii) such other tribunal as may for the time being be charged with the determination of appeals under that provision,

and for the purposes of this paragraph the expression **"right of appeal"** includes a right to apply to the Court to have a notice of the Committee set aside, and **"appeal"** shall be construed accordingly,

**"designated area"** means any area of the Island defined in any Ordinance made under the provisions of section 12,

**"development"** means the carrying out of any building, engineering, mining or other operation in, on, over or under land and includes –

- (a) the making of any material change [...] in the use of any building or land,
- (b) in relation to a building which is registered within the meaning of Part VII of this Law, and in relation to any building within a conservation area, the carrying out of any work, whether for the maintenance of the building or otherwise, which may affect the external character or appearance of the building,

- (c) in relation to a building the interior of which is registered within the meaning of Part VII of this Law, the carrying out of any work, whether for the maintenance of the building or otherwise, which may affect the character or appearance of the building's interior,
- (d) for the avoidance of doubt, and without limitation, any works of demolition,

Provided that the following operations or use shall be deemed, for the purposes of this Law, not to involve development, that is to say –

- (i) the carrying out of works for the maintenance of any building, other than work falling within paragraph (b) or (c) above,
- (ii) the carrying out by Alderney Electricity Limited or Guernsey Telecoms Limited (or such other person or body as may be prescribed by Ordinance of the States) of any works for the purpose of laying new mains or of inspecting, repairing or renewing any mains, pipes or other apparatus or the making of connections to any mains including the breaking open of any public highway or other land for that purpose,
- (iii) the use of any building or land within the curtilage of a dwelling for a purpose relating to the enjoyment of the dwelling as such,

**"documents"** includes information recorded in any form (including, without limitation, in an electronic communication) and, in relation to information recorded otherwise than in legible form, references to its

production, howsoever expressed, include references to the production of a copy of the information in legible form,

**"dwelling"** means[, except in section 12,] any premises, or any part of any premises, wholly or principally used or usable for the purposes of human habitation, and includes –

- (a) any part of such a dwelling, and
- (b) for the avoidance of doubt, and without limitation –
  - (i) a nursing home or a residential home within the meaning of the Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987<sup>k</sup>,
  - (ii) ...
  - (iii) a hotel,

**"hotel"** means a hotel, guest house, lodging house or other premises in respect of which an accommodation permit is held under the Tourist (Alderney) Law, 1956<sup>l</sup>,

**"immovable structure"** means any building or structure, of whatever material, in whatever manner constructed and whether permanent or temporary, which is, or on the erection of which will become, realty,

**"Island"** means the Island of Alderney,

**"Land Register"** means the Alderney Land Register compiled

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<sup>k</sup> Ordres en Conseil, Vol. XXX, p. 371; there are amendments not relevant to this section.

<sup>l</sup> Ordres en Conseil, Vol. XVII, p. 29; there are amendments not relevant to this section.

pursuant to Part III of the Alderney Land and Property, etc., Law, 1949<sup>m</sup>,

**"Land Registrar"** means the person styled Land Registrar pursuant to section 13(2) of the Alderney Land and Property, etc., Law, 1949,

**"motor vehicle"** means a mechanically propelled vehicle intended or adapted for use on a public highway,

**"movable structure"** means a caravan and any structure (not being an immovable structure and other than a marquee or a tent) used or intended for any one or more of the following purposes, namely –

- (a) human habitation or purposes ancillary thereto,
- (b) housing animals or birds,
- (c) the sale of refreshments,
- (d) as a store, shed, workshop, work place or shelter,

[...]

**"owner"**, in relation to any land or immovable structure, means –

- (a) where the land or immovable structure is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour the order has been made,
- (b) where the land or immovable structure is not the subject of such saisie proceedings but is the subject of a vested right of usufruct, the usufructuary,

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<sup>m</sup> Ordres en Conseil Vol. XIX, p. 67; there are amendments not relevant to this section.

- (c) where the land or immovable structure is not the subject of such saisie proceedings or vested right of usufruct –
  - (i) if the land or immovable structure is held in trust, the trustees, or
  - (ii) if the land or immovable structure is not held in trust, the person in whom there is for the time being vested, whether solely or jointly with another person, an estate of inheritance therein,

and cognate expressions shall be construed accordingly,

**"public highway"** includes any road, street, lane or other place to which the public have or are permitted to have access, whether on payment or otherwise,

**"Register of Applications"** means the register of applications kept under the provisions of section 10(1),

**"Register of Historic Buildings"** means the Register of Historic Buildings and Ancient Monuments required to be maintained under the provisions of section 44(1),

**"sign"** shall be construed in accordance with section 4(1)(f),

**"States"** means the States of Alderney,

**"tree"** means a tree the circumference over bark of which is 19 inches or more when measured at ground level (which means, in the case of sloping ground, the uphill side of the tree).

(2) The Interpretation (Guernsey) Law, 1948<sup>n</sup> shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

(3) For the purposes of the definition of the expression "development" in subsection (1), and without limitation –

- (a) the use as two or more separate dwellings of any building previously used as a lesser number of dwellings,
- (b) the use as a private dwelling of any building previously used as a nursing home or as a residential home within the meaning of the Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987<sup>o</sup>,
- (c) ...
- (d) the use as a private dwelling of any building previously used as a hotel,

involves a material change in the use of that building and of each part thereof which is so used.

(4) Any reference in this Law to entry to or upon any movable structure includes a reference to entry to or upon any land upon which the movable structure is situated.

(5) ...

(6) Any reference in this Law to an enactment is a reference

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

<sup>o</sup> Ordres en Conseil Vol. XXX, p. 371.

thereto as amended, re-enacted (with or without modification), extended or applied.

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**NOTES**

*In section 76,*

*the definition of the expression "building regulations" in subsection (1) was inserted by the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(11), with effect from 10th February, 2014;*

*the definition of the expression "cliff path" in subsection (1) was inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(18)(a), with effect from 20th June, 2007;*

*first, the words omitted in square brackets in paragraph (a) of the definition of the expression "development" in subsection (1) were repealed and, second, the words in square brackets in the definition of the expression "dwelling" therein were inserted by the Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 9, respectively paragraph (a) and paragraph (b), with effect from 20th July, 2016;*

*subparagraph (ii) of paragraph (b) of the definition of the expression "dwelling" in subsection (1) was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(18)(b), with effect from 20th June, 2007;*

*first, the words omitted in square brackets immediately after the definition of the expression "moveable structure" in subsection (1) and, second, subsection (5) were repealed by Building and Development Control (Alderney) (Amendment) Ordinance, 2016, section 20, respectively paragraph (a) and paragraph (b), with effect from 1st January, 2017;*

*paragraph (c) of subsection (3) was repealed by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(19), with effect from 20th June, 2007.*

*The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.*

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**Repeals and savings, etc.**

**77.** (1) The Laws and provisions of Laws set out in the Schedule to this Law are repealed.

(2) Any subordinate legislation made or other thing done under an enactment repealed by this Law, or having effect as if so made or done, which could have been made or done under a provision of this Law shall have effect, after



the date of commencement of this Law, as if made or done under that provision.

**Citation.**

**78.** This Law may be cited as the Building and Development Control (Alderney) Law, 2002.

**Commencement.**

**79.** This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.

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**NOTE**

*The Law was brought into force on 1st August, 2003 by the Building & Development Control (Alderney) Law, 2002 (Commencement) Ordinance, 2003, section 1.*

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SCHEDULE  
REPEALS

Section 77

1. The Building and Development Control (Alderney) Law, 1975<sup>p</sup>.
2. The Building (Alderney) Law, 1978<sup>q</sup>.
3. The Building and Development Control (Amendment) (Alderney) Law, 1978<sup>r</sup>.
4. The Building and Development Control (Amendment) (No. 2) (Alderney) Law, 1985<sup>s</sup>.
5. The Building and Development Control (Amendment) (Alderney) Law, 1987<sup>t</sup>.
6. In the Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987<sup>u</sup> –
  - (a) the entry in Schedule 1 relating to the Building and Development Control (Alderney) Law, 1975, and
  - (b) Schedule 2.
7. In the Uniform Scale of Fines (Alderney) Law, 1989<sup>v</sup>, the entry in the Schedule relating to the Building and Development Control (Alderney) Law,

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<sup>p</sup> Ordres en Conseil Vol. XXV, p. 8.

<sup>q</sup> Ordres en Conseil Vol. XXVI, p. 505.

<sup>r</sup> Ordres en Conseil Vol. XXVI, p. 560.

<sup>s</sup> Ordres en Conseil Vol. XXIX, p. 18.

<sup>t</sup> Ordres en Conseil Vol. XXX, p. 21.

<sup>u</sup> Ordres en Conseil Vol. XXX, p. 371.

<sup>v</sup> Ordres en Conseil Vol. XXXI, p. 306.

1975.

8. In the Fees (Alderney) Law, 1989<sup>w</sup>, the entry in the Schedule relating to the Building and Development Control (Alderney) Law, 1975.
9. The Historic Buildings and Ancient Monuments (Alderney) Law, 1989<sup>x</sup>.
10. Section 24 of the Water (Control) (Alderney) Law, 1994<sup>y</sup>.
11. The Housing (Control of Occupation and Development) (Alderney) Law, 1994<sup>z</sup>.
12. The Housing (Control of Occupation and Development) (Amendment) (Alderney) Law, 1997<sup>aa</sup>.
13. The Building and Development Control (Alderney) (Amendment) Law, 1997<sup>bb</sup>.
14. The Housing (Control of Occupation and Development) (Alderney) (Amendment) Law, 1999<sup>cc</sup>.

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<sup>w</sup> Ordres en Conseil Vol. XXXI, p. 396.  
<sup>x</sup> Ordres en Conseil Vol. XXXI, p. 487.  
<sup>y</sup> Order in Council No. XII of 1994.  
<sup>z</sup> Order in Council No. XXI of 1994.  
<sup>aa</sup> Order in Council No. VII of 1997.  
<sup>bb</sup> Order in Council No. XXVI of 1997.  
<sup>cc</sup> Order in Council No. X of 1999.

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<sup>1</sup> Prior to its repeal, section 15 was amended by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(10), with effect from 20th June, 2007.

<sup>2</sup> Prior to its repeal, section 33 was amended by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(14), with effect from 20th June, 2007.

<sup>3</sup> Prior to its repeal, section 38 was amended by the Building and Development Control (Alderney) (Amendment) Ordinance, 2007, section 1(15), with effect from 20th June, 2007; the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014, section 1(4), with effect from 10th February, 2014.