

# **The Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014**

**THE STATES OF ALDERNEY**, in pursuance of their Resolution of 15<sup>th</sup> January, 2014 and in exercise of the powers conferred on them by sections 5(1)(b), 39(3) and 75 of the Building and Development Control (Alderney) Law, 2002<sup>a</sup> and sections 2 and 12 of the States Water Supply (Prevention of Pollution) (Alderney) Law, 1972<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

## **Amendment of Law.**

**1.** (1) The Building and Development Control (Alderney) Law, 2002 ("**the Law**") is amended as follows.

(2) For each reference to "regulations made under section 39" or "a regulation made under section 39" substitute "building regulations".

(3) In section 5(1)(b) (application for permission to develop, etc.) of the Law, delete "in accordance with the Fees (Alderney) Law, 1989".

(4) In section 38 (interpretation of Part V) -

(a) renumber the existing section as subsection (1),

(b) in the definition of "**construction of a dwelling**" -

(i) after the word "means" insert ", subject to

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<sup>a</sup> Order in Council No. XII of 2003; No. XV of 2004; amended by Alderney Ordinance No. III of 2007.

<sup>b</sup> Ordres en Conseil Vol. XXIII, p. 523 as amended by Ordres en Conseil Vol. XXXI, p. 306 and Ordinance No. II of 1997.

subsection (2)", and

(ii) paragraphs (b) and (d) are repealed,

(c) at the end add the following subsection -

" (2) The "**construction of a dwelling**" does not include -

(a) the conversion or alteration of an immovable structure comprising one or more dwellings into an immovable structure comprising a greater number of dwellings,

(b) the use as two or more separate dwellings of a building previously used as a lesser number of dwellings, or

(c) the construction of an immovable structure comprising a single dwelling to replace an existing single dwelling -

(i) on substantially the same site, and

(ii) where the existing

dwelling is to be substantially demolished as part of the same development."

(5) For section 39 (building regulations) substitute the following section -

**"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."

(6) In section 41(1)(b) (powers of entry), for the words "powers of the Committee" substitute "functions of the Committee under the Law and under any building regulations or".

(7) After section 43 (power to require work to be done following conviction) insert the following sections -

**"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.

**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."

(8) In sections 63 and 65 -

(a) after the words "or regulation made under it" insert "or decides to reject plans under the building regulations",

(b) after the words "subject to conditions" insert "or approves plans under the building regulations subject to conditions", and

(c) after the word "such refusal" insert "or rejection".

(9) In section 66(1)(b) (inspection of land), at the end add "or subject to which plans have been approved under the building regulations".

(10) In section 71 (false statements) -

(a) after the words "or regulation under it" insert "or approval of plans under the building regulations", and

(b) for the words "cancel any permission or licence"

substitute "cancel any permission, licence or approval".

(11) In section 76 (interpretation) after the definition of "**Braye Harbour**" insert the following definition -

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

**Fees to accompany applications for permission to carry out development or other work.**

2. An application, made on or after 10<sup>th</sup> February 2014, under section 5 of the Law for permission to carry out development or other work, referred to in the second column of the table set out in the first Schedule to this 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 the first Schedule after the table.

**Fees to accompany applications for preliminary declarations.**

3. An application, made on or after 10<sup>th</sup> February 2014, under section 10A of the Law 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 for an application for permission to carry out the development or other work in question.

**Fees to accompany deposit of full plans.**

4. (1) Subject to subsection (2), a deposit of full plans deposited with the Committee on or after 10<sup>th</sup> February 2014 under the building regulations in respect of building work or a material change of use referred to in the second column of the table set out in the second Schedule to this Ordinance shall be accompanied by the relevant fee, payable to the States, set out in the third column of that table, subject to the notes appearing in the second Schedule after the table.



- (2) No fee is payable where -
- (a) building regulations provide for the Committee to accept, as evidence of compliance with building regulations, certificates to that effect by specified persons, and
  - (b) any requirements of building regulations in that regard are met in relation to the building work or material change of use in question.

**Refund of part of fee.**

5. Where the Committee rejects plans deposited under the building regulations it shall, as soon as reasonably practicable after such rejection, refund to the person by whom, or on whose behalf, such plans were deposited fifty per cent of the fee paid in accordance with section 4.

**Repeal of fees payable under the Fees (Alderney) Ordinance, 1990.**

6. The provisions of the Fees (Alderney) Ordinance, 1990<sup>c</sup> relating to the fees payable to the States in connection with any licence, permit or other matter under the Law are repealed.

**Interpretation.**

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

"**building**" where used in relation to a deposit of full plans under the building regulations has the meaning in section 43B of the Law,

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<sup>c</sup> Alderney Ordinance No. V of 1990 as amended; the latest fees under the Law were substituted by Alderney Ordinance No. XV of 2010.

**"building regulations"** means any regulations made, or having effect as if made, under section 39 of the Law,

**"building work"** has the meaning in the building regulations,

**"dwelling"** includes a dwelling-house and a flat,

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

**"flat"** where used in relation to –

- (a) an application to carry out development or other work, means a self-contained dwelling comprising part of a building and lying wholly or partly above or below some other part of that building, and
- (b) a deposit of full plans under the building regulations has the meaning in the building regulations,

**"full plans"** has the meaning in the building regulations,

**"the Law"**: see section 1(1),

**"material change of use"** -

- (a) where used in relation to an application to carry out development or other work or an application for a preliminary declaration, is construed in accordance with section 76(3) of the Law, and
- (b) where used in relation to a deposit of full plans under

the building regulations, has the meaning in the building regulations,

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

and other expressions have the same meaning as in the Law.

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

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

#### **Amendment of the States Water Supply Ordinance.**

8. In section 1(1) (interpretation) of the States Water Supply (Prevention of Pollution) (Alderney) Ordinance, 1973<sup>e</sup> -

(a) for the definition of "**domestic building**" substitute the following -

**"domestic building"** means a house, shop, office building or any other building which is neither a public building nor a warehouse building but includes

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

<sup>e</sup> Alderney Ordinance No. III of 1973 as amended by Ordres en Conseil Vol. XXXI, p. 306 and Alderney Ordinances No. X of 1980, No. II of 1981, No. VII of 1989, No. VI of 1991 and No. XIII of 1994.

a dwelling used in connection with, but not being structurally part of, any public building," and

- (b) after the definition of "**oil**" insert the following definition –

"**public building**" has the meaning assigned to it by regulation 2(1) of the Building (Alderney) Regulations, 2014,".

**Citation and commencement.**

9. This Ordinance may be cited as the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014 and shall come into force on the 10<sup>th</sup> February, 2014.

FIRST SCHEDULE

Section 2

TABLE OF FEES TO ACCOMPANY APPLICATIONS FOR PERMISSION TO  
CARRY OUT DEVELOPMENT OR OTHER WORK

CATEGORY	DEVELOPMENT OR OTHER WORK TO WHICH APPLICATION RELATES	FEE £
<b>1</b>	<b>The erection of a dwelling or the material change of use of a building to create a dwelling including any associated works.</b>	
A	for each dwelling-house erected or created	580
B	for each flat erected or created	225
<b>2</b>	<b>The erection of a building, or the extension to a building, not falling within category 1 or 4, in relation to, or within the curtilage of, a dwelling-house, including any associated works.</b>	
A	for each building or extension of less than 20 square metres in floor area	115
B	for each building or extension of 20 square metres or more in floor area	£115 for the first 20 square metres and £25 for each additional 10 square metres and for any additional part remaining of less than 10 square metres
<b>3</b>	<b>The erection of a building, or the extension to a building, not falling within category 4, other than in relation to a dwelling-house or within the curtilage of a dwelling-house,</b>	

	<b>including any associated works.</b>	
A	for each building or extension of less than 20 square metres in floor area	135
B	for each building or extension of 20 square metres or more in floor area	£135 for the first 20 square metres and £35 for each additional 10 square metres and for any additional part remaining of less than 10 square metres
4	<b>For the carrying out of any minor or temporary development or other work not falling within category 5 and not involving a structural alteration to a building, for all such development or works</b>	35
5	<b>For a material change of use of a building or other land other than a material change of use to create a dwelling.</b>	100
6	<b>For the carrying out of any development or other work not falling within any other category to this Table, for all such development or work.</b>	100

#### **NOTES TO THE TABLE OF FEES**

##### **Retrospective applications.**

1. Where an application is made in respect of development or other work which has been carried out without permission or in breach of any previous permission, including any condition of approval, the fee payable, to the extent that such application relates to such

development or work, is double that otherwise payable in accordance with this Schedule.

**Proposed development within more than one sub-category.**

2. Where the application includes development or other work falling within more than one sub-category of the fees table then, subject to the other notes to this Schedule, the fee payable is calculated by adding the fees for each relevant sub-category together.

**Demolition and associated works.**

3. Despite paragraph 2 -

- (a) where a category or sub-category of development or other work is described as including works associated with that development or work a separate fee is not payable in respect of those associated works where they also fall within another category or sub-category to the Table, and
- (b) where demolition is necessary to carry out other development or work falling within any category of this Table no additional fee is payable in respect of that demolition.

**Interpretation.**

4. In this schedule -

"**associated works**" means any works which can reasonably be regarded as necessary in order to carry out the description of development or other work in question and related terms shall be construed accordingly,

"**floor area**" means the gross aggregate of the area of all new floors created or formed by the development or other work, measured internally (from the eaves in the case of additional floor area in a roofspace), including any floor area covered by internal walls or partitions.





SECOND SCHEDULE

Section 4(1)

TABLE OF FEES TO ACCOMPANY DEPOSIT OF PLANS UNDER THE  
BUILDING REGULATIONS

CATEGORY	BUILDING WORK OR MATERIAL CHANGE OF USE TO WHICH PLANS RELATE	FEE £
1	<b>The creation of a new dwelling, by its erection or by a material change of use of a building, including any associated building work.</b>	
A	for each dwelling-house created	260
B	for each flat created	200
2	<b>The –</b>  <b>(a) erection or material change of use of a building, or</b>  <b>(b) extension or other material alteration to a building,</b>  <b>not falling within category 1 including any associated building work.</b>	
A	of less than 20 square metres in floor area	100
B	of 20 square metres or more, but less than 50 square metres, in floor area	120
C	of 50 square metres or more, but less than 100 square metres, in floor area	160
D	of 100 square metres or more, but less than 250 square metres, in floor area	180
E	of more than 250 square metres in floor area	220

F	for the erection of a garage, carport, conservatory or sun lounge within the curtilage of a dwelling, for each such garage, carport, conservatory or sun lounge	60
<b>3.</b>	<b>The carrying out of specified building work not carried out as part of building work falling within any other category to this Table.</b>	
A	for the provision or alteration of a drainage system, including the installation of a cesspit, for any number of such drainage systems	60
B	for the erection of a retaining wall, for any number of such walls	60
C	for building work involving the underpinning of a building, for any number of such buildings underpinned	80
D	for the installation of a swimming pool or spa (including any plant room, pool room or other room required in relation to such swimming pool), for any number of such pools or spas	60
E	for the construction of a road, for any number of such roads	100
F	for the demolition of a building, for any number of buildings demolished	80
G	for the provision or material alteration of a controlled service or fitting not falling within any other sub-category to this category, for any number of the same	40
H	for the material alteration of a building, other than an alteration falling within any other sub-category to this Table, where the estimated cost of the building work is less than £10,000, for each of the same	60
I	for the alteration of a building, other than an alteration falling within any other sub-category to this Table, where the estimated cost of the building work is £10,000 or more, for each of the same	120

## **NOTES TO THE TABLE OF FEES**

### **Retrospective applications.**

1. Where a deposit of full plans is made in respect of building work or a material change of use which has been carried out without approval of plans required under the building regulations the fee payable, to the extent that such plans relate to such work or change of use, is double that otherwise payable in accordance with this Schedule.

### **Building work or a material change of use in more than one sub-category.**

2. (1) Where the deposit of full plans is made in respect of more than one sub-category of building work or material change of use listed in the Table, the fee payable is, subject to the following provisions of this Schedule, the aggregate of all the fees payable in respect of the building work or material change of use in question.

(2) Despite subparagraph (2) -

- (a) where a category or sub-category of building work or material change of use is described as including works associated with that building work or material change of use a separate fee is not payable in respect of those associated building works where they also fall within another category or sub-category of the Table, and
- (b) where demolition is necessary to carry out building work falling within any category of this Table no additional fee is payable in respect of that demolition.

### **Category 2.**

3. (1) Where a deposit of full plans relates to building work falling within category 2A to E in relation to –

- (a) more than one extension to the same building the fee shall be calculated by aggregating the floor area of all extensions created or formed by the building work or material change of use,
- (b) more than one building, a separate fee is payable in respect of each building.

(2) The building work specified in category 2F is charged under that category and not under the appropriate general category for an extension of the appropriate floor space in 2A to E.

**Interpretation of Schedule.**

4. In this Schedule, unless the context requires otherwise -

"**associated building work**" means any building work which can reasonably be regarded as necessary to carry out the description of building work or material change of use in question and related terms shall be construed accordingly,

"**estimated cost**" means such reasonable amount as may be charged by a person in business to carry out the work in question,

"**retaining wall**" means a wall built to support a mass of earth, soil or rocks on one side of it where the difference in level supported is greater than 450 millimetres, and

"**controlled service or fitting**", "**conservatory**", "**demolition**", "**extension**", "**floor area**", "**material alteration**" and "**sun lounge**" have the same meanings as in the building regulations.