



# BILLET D'ÉTAT

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WEDNESDAY, 26th JUNE, 2002

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ISLAND DEVELOPMENT COMMITTEE

REVIEW OF THE ISLAND DEVELOPMENT  
(GUERNSEY) LAWS, 1966-1990

# *BILLET D'ÉTAT*

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**TO THE MEMBERS OF THE STATES OF  
THE ISLAND OF GUERNSEY**

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **26th JUNE, 2002**, at 9.30 a.m.

**ISLAND DEVELOPMENT COMMITTEE****REVIEW OF THE ISLAND DEVELOPMENT (GUERNSEY) LAWS 1966-90**

The President  
States of Guernsey  
Royal Court House  
St Peter Port  
Guernsey

13th May 2002

Dear Sir

**Review of the Island Development (Guernsey) Laws, 1966 - 1990****SUMMARY OF THE PROPOSED NEW LAW**

This policy letter contains the IDC's proposals for the Land, Planning and Development Law and for eight Ordinances to be made under it. Once the policy has been approved by the States, it is proposed that the programme for the drafting and final approval of the Law and the first phase of Ordinances by the States will be arranged so that they can be brought into force simultaneously.

**PROPOSED NEW LAW**

**Part One** will set out the purposes of the Law and the means to achieve them through the planning system.

**Part Two** will provide for strategic land use planning and for development planning in the form of Development Plans, Subject Plans and Local Planning Briefs.

All plans will be considered and adopted by the States before they become operative. All development plans will be subject to Public Inquiry by an independent Inspector before they are presented to the States.

**Part Three** will provide for the control of development in order to ensure that it is carried out in a way that meets acknowledged community objectives and does not adversely affect individuals to an unacceptable degree.

A general definition of development will be set out, with provision to adjust it by Ordinance. The Law will set out the requirement to apply for planning permission for development and the framework within which the IDC will deal with planning applications. Provision will be made for most of the detail to be dealt with by Ordinance.

All planning permissions will be subject to the condition that the Building Regulations will be complied with and there will be provision for Building Regulations to be made.

There will be new provision for completion notices, for the revocation and modification of planning permission in special circumstances, planning covenants and property history searches. The latter are particularly important in relation to the new compliance procedures set out in Part Five.

**Part Four** will deal with the enhanced planning regime for the most sensitive elements of the island's environment. These are protected monuments and buildings, Conservation Areas, Sites of Special Significance and protected trees.

**Part Five** will provide the means to ensure compliance with the Law. The IDC proposes to replace the current prosecution-led system with a compliance-led system of formal notices which would be served on the current owner of the land. (A comprehensive system of property history searches will be provided to protect the successors in title - see Part Three).

**Part Six** will provide a full range of challenges to the decisions of the IDC. Appeals will be made in the first instance to an independent adjudicator who will review the case afresh on its merits. A further appeal on a point of law will lie to the Court.

There will also be provision for decisions and notices to be reviewed by the Court.

**Part Seven** will bring development by the States and public utility suppliers within the planning system. The States of Deliberation, rather than an independent Adjudicator will deal with appeals.

**Part Eight** will deal with administrative matters, such as rights of entry, the service of notices, commencement etc.

#### PROPOSED ORDINANCES

The policy for the following Ordinance is set out in this Policy Letter. Once drafted they will be placed before the States.

**The Plans Ordinance [A]** will set out certain specific matters relating to the content of Plans and Briefs, particularly in relation to the designation of Conservation Areas and Sites of Special Significance. It will also set out procedures for the conduct of Planning Inquiries and deal with matters associated with the duration, adoption and amendment of Plans and Briefs.

**The Control of Development (General Provisions Ordinance) [B]** will put in place the practical details that will enable planning applications to be submitted to the IDC, and sets out the parameters within which the IDC will take its decisions.

**The Control of Development (Exemptions) Ordinance [C]** will exempt certain classes of development from the requirement to seek written planning consent.

**The Control of Development (Use Classes) Ordinance [D]** will amend the Island development (Use Classes) Ordinance, 1991.

**The Environmental Impact Assessment Ordinance [E]** will define the detailed process of Environmental Impact Assessment (EIA) in Guernsey. These procedures will apply to development with major environmental impacts.

**The Special Controls Ordinance [F]** will deal with various provisions relating to protected monuments and buildings, Conservation Areas, Sites of Special Significance and protected trees.

**The Enforcement Ordinance [G]** will be a technical Ordinance containing supplementary provisions relating to the content of Challenge Notices, Compliance Notices and Interim Compliance Notices.

**The Appeals and Review Ordinance [H]** will deal with the appointment of Adjudicators, the procedures for appeals by the submission of written representations and by public hearing. It will also contain provision to request a review by the Royal Court of a decision of the IDC or the Adjudicator.

## **PUBLIC CONSULTATION**

The Public Consultation raised numerous issues, which are summarised, together with the IDC's responses, in Appendix 2.

Most of the comments received were supportive of the IDC's objectives. Many of the questions raised were relatively easily resolved. However, a number of significant issues have emerged and these are dealt with in detail in Section 5 of the policy letter.

The most significant issue relates to the new compliance regime. Whilst there was support for the IDC's objective of moving from a prosecution-led system to a compliance-led system, there was doubt that this could be achieved without making subsequent owners of property liable for illegal development they had not carried out and which they could not have known about. The IDC has discussed this issue with representatives of the industry in some depth, which confirmed an underlying support for the proposition that the IDC's powers should be effective, but that they had to be made to work effectively. As a result, the IDC proposes a number of significant changes to:-

- Emphasise that the IDC should use the powers only where a significant breach has taken place.
- Reduce the period of liability for operational development.
- Avoid the possibility of any retrospective effect.
- Extend the scope of property history searches to enable all potential compliance issues to be resolved before a property is conveyed.

Finally, the IDC proposes to review the procedures and resource requirements necessary to introduce a comprehensive system of property history searches, including the ability to ascertain the compliance status of property. The IDC will ensure that this is in place at the same time as the new compliance procedures.

## **1 INTRODUCTION**

In 1998 the Island Development Committee (IDC), with the support of the Heritage Committee, presented to the States a draft of the proposed new Land, Planning and Development Law. This legislation is intended to replace the Island Development (Guernsey) Laws, 1966-90, the Building (Guernsey) Law, 1956 and the Ancient Monuments and Protected Buildings (Guernsey) Law, 1967. The States resolved: 'to approve the IDC's proposal to undertake a programme of public consultation on the proposals set out in the Report with interested parties and individuals before proceeding with the preparation of detailed legislation for presentation to the States.'

The IDC consulted with States Members, States Committees, professional and amenity organisations and the general public over the period November 1998 - August 1999. The IDC analysed and considered all of the representations made to it during that period and decided upon a number of amendments. The IDC also commenced work on the proposed Ordinances, which would need to come into force simultaneously with the new Law.

In November 2001, the IDC presented the new draft Law to the States together with its proposals for amendments resulting from the consultation exercise. It also set out its proposals for the eight principal Ordinances. The IDC recommended the States to approve the proposals for the Law and Ordinances and to direct the preparation of the necessary legislation.

At the meeting of the States in November 2001, a Sursis was approved directing the IDC 'to consult with all interested parties on the current proposals as published, reporting back to the States within six months including the results of the consultation as part of that Report.'

Following the Sursis, the IDC published a Consultation Document. This consisted of the draft Law (amended to take account of the previous consultation exercise), an explanatory commentary and descriptions of the planned contents of the principal Ordinances. This was made widely available to States Members, professional and other bodies and to the general public. A series of public presentations was then held. A wide range of comments were made which the IDC has carefully analysed and considered (see Section 5 and Appendix 2). In the case of the more substantial areas of concern arising from the public consultation, the IDC has undertaken discussion directly with the relevant respondents.

**This policy letter explains the IDC's proposals for the new Law and the eight principal Ordinances. It reports the results of the consultation exercise and the changes that the IDC has made to its proposals as a result. It seeks the approval of the States for the further detailed preparation of legislation and Ordinances as detailed below.**

There are three Appendices to this policy letter: the revised draft Law as presented in the Consultation Document, a schedule of all the comments made on the draft Law together with the IDC's responses and a copy of the Resolution of 1989 (Billet d'État XIII, 1989), which instigated the review of the Law and set out those matters that the States particularly wished to see included within it.

## **2 GENERAL APPROACH TO THE LEGISLATION**

The proposed legislation has been structured in two tiers. The upper tier contains the principles and primary aspects of the legislation, which are expected to remain constant over time. This tier will be known as The Land, Planning and Development Law and, once finalised, will be laid before the States for its consideration prior to submission to the Privy Council for Royal sanction.

Beneath this is a lower tier of more detailed legislation in the form of Ordinances. Once drafted, these will be laid before the States for consideration and, when they have been approved, will come into force at the same time as the Law in order to form a comprehensive package. The advantage of placing much of the required detail in Ordinances is that, should the need arise, these provisions can be reviewed without the delays brought about when Privy Council sanction is necessary.

The draft Law integrates Planning, Heritage and Building Control functions into a single co-ordinated piece of legislation covering these major aspects of the control of development. This

gives a common legal framework for the preparation of policy, the consideration of applications, as well as for appeals and enforcement. The basic philosophy is that a more tolerant regime will be adopted for the less architecturally and environmentally sensitive areas but with a more effective and detailed level of control for Protected Monuments and Buildings, Conservation Areas and Sites of Special Significance.

### **3 PROPOSALS FOR THE NEW DRAFT LAW**

The following section sets out the IDC's proposals for the new Law. Following approval by the States, the proposals will be subject to the usual procedures leading to the drafting of the final wording of the legislation. Included as Appendix 1 is the draft of the Law that was published as part of the Consultation Document. Where the IDC has decided to propose a further change to the Law as a result of the most recent consultation exercise, this is indicated within the policy letter. To avoid confusion these changes have not been incorporated into the draft Law in Appendix 1. They are intended, however, to form part of the drafting instructions for the final version of the Law.

#### **3.1 Part 1: Preliminary**

Part 1 will set out the purposes of the Law. These will be expressed in terms of facilitating sustainable development, protecting and enhancing the environment and achieving a balance between the various demands on land, all within the strategic policies of the States. The means of achieving these purposes will be set out through Plans, the control of development, special additional controls and through building regulations.

The statement of the purposes of the Law will be an essential reference point for all those exercising any function under the Law.

#### **3.2 Part 2: Strategic and Development Planning**

It is proposed that the Law will provide for both strategic and development planning. The strategic level of planning will provide the framework for development planning. Development plans will provide the policies that will form the basis for decisions on planning applications and for positive proposals for the protection and enhancement of the environment.

##### **3.2.1 Chapter 1: Strategic Land Use Planning**

The proposed provision for strategic planning will update the Island Development (Amendment) (Guernsey) Law, 1990, which introduced the concept of the Strategic and Corporate Plan. It is proposed that the Advisory and Finance Committee will appoint a Strategic Land Planning Group. This Group will be responsible for the preparation of a Strategic Land Use Plan, which will replace Part 2 of the Strategic and Corporate Plan. The Plan will deal with the implications for land use planning of the strategic, economic and social objectives of the Strategic and Corporate Plan.

It is proposed that the Strategic Land Planning Group will review or amend the Strategic Land Use Plan when it considers this necessary, or when required to do so by the Advisory and Finance Committee. There will be provision for appropriate consultation to be undertaken.

The draft Plan or any proposed amendments will be considered by the Advisory and Finance Committee prior to being laid before the States for adoption.

### **3.2.2 Chapter 2: Development Planning**

It is proposed that the new Law will introduce three types of statutory Plan: Development Plans, Subject Plans and Local Planning Briefs, which it will be the responsibility of the IDC to prepare. In preparing these Plans, the IDC must take into account the purposes of the Law, the objectives of the Strategic and Corporate Plan, the Strategic Land Use Plan and any other matters affecting the planning of development in Guernsey.

Development Plans will replace the existing Detailed Development Plans. These will continue to exist under the new title until they are reviewed. The IDC will be required to ensure that the whole Island is covered by one or more Development Plans, and to review and amend them when necessary. It is proposed that the Development Plans will contain the IDC's proposals and policies for the development and use of land, for the protection and enhancement of the environment, for the use of planning covenants where appropriate and for the management of the physical environment so as to facilitate the achievement of the objectives of the Strategic Land Use Plan.

It is proposed to make provision for the preparation of Subject Plans where the IDC or the Strategic Land Use Plan identify a particular issue or proposal affecting the use of land in Guernsey generally. Local Planning Briefs will be prepared to address planning issues within a particular locality and will replace existing Outline Planning Briefs.

Provision is proposed to ensure that the various Plans take account of each other and that, where necessary, they are amended to ensure consistency between them.

It is an essential part of the plan-making process that all Plans should be subjected to an independent Public Inquiry at which any member of the public, States Committee or other body have the right to be heard and their views formally considered. The existing Law provides for Planning Inquiries but does not provide a robust set of principles and procedures to govern their conduct. This is a shortcoming identified in the 1989 States Resolution, which the new Law aims to rectify.

Ordinance powers are proposed to deal with the designation of Conservation Areas and Sites of Special Significance within the statutory Plans. A Conservation Area will be defined as an area of special architectural or historic interest. A Site of Special Significance will be defined as a place of special significance for archaeological, botanical, geological, scientific, cultural, zoological or other special reason.

Ordinance powers are also proposed for other aspects of the content of the Plans and Briefs; certification of their conformity with the Strategic Land Use Plan; their publication; the appointment of Inspectors; the holding of planning inquiries; the laying of Plans before the States; the consideration of Plans by the States and the duration and amendment of Plans. Finally, provision is proposed to enable regulations to be made by the IDC to govern detailed matters relating to the conduct of planning inquiries.

### **3.3 Part 3: Control over Development**

Development control is the process by which decisions are made on applications to develop land or buildings, or to change their use. The purpose of controlling development is to ensure that it is carried out in a way that meets acknowledged community objectives and that does not adversely affect individuals to an unacceptable degree.

### **3.3.1 Meaning of Development**

The foundation of the development control system is the definition of development. It is proposed that the Law will set out a general definition of development in terms of the carrying out of building, engineering, mining or other operations, in, on, over or under land, and the making of any material change in the use of land. It is intended to supplement this with a number of clarifications relating to demolition, rebuilding, alterations that materially alter the external appearance of a building, other building operations, movable structures, advertisements and material changes of use. An Ordinance may make further provision as to the meaning of development and the definition of 'use classes.' (See Section 5.2 of this report for further discussion of this issue.)

### **3.3.2 Applications for Planning Permission**

It is proposed that the new Law will maintain the principle that an application must be made before development is carried out and that the IDC may approve it, with or without conditions, or refuse it. There will in future be two forms of permission; outline and full planning permissions. The former will be able to reserve specified matters for future consent and will be used to establish the principle of development before full details are available.

It is proposed that the IDC may decline to consider an application that is substantially the same as one that has been recently refused by the Committee or by an Adjudicator on appeal. This will prevent the repeated submission of the same application. It will not, however, prevent the IDC from considering applications that contain amendments designed to overcome previous reasons for refusal.

Ordinance powers are proposed to deal with the following: the conditions and reservations that may be applied to planning permissions; the planning matters which the IDC must take into account in determining applications (in addition to the purposes of the Law and the relevant Plans); the form in which an application should be made and the information the IDC may require to assist its assessment; the keeping of a register of planning applications and decisions; publicity for planning applications; requirements for environmental impact assessment; access to information and Committee procedures.

### **3.3.3 Building Regulations**

It is proposed that the IDC may make Building Regulations under the new Law. All planning permissions will be subject to the condition that the development complies with the Building Regulations. This formalises, but does not alter, current practice and integrates this aspect of control into the overall system.

Ordinance powers are proposed to provide for the making of applications under the Building Regulations, but for the time being it is the IDC's intention that the Guernsey Building Regulations, 1992 will continue to be the regulations in force.

It is proposed to clarify a number of matters relating to the effect of planning permission, for example to confirm that permission enures for the benefit of the land.

### **3.3.4 Completion Notices**

It is proposed to introduce a power to issue a Completion Notice where a site has been left in an unacceptable condition because approved development has not been completed. The Notice would specify a date by which completion should take place or the permission would become invalid. This date must be a minimum of 12 months from the date the notice is served. There will be a right to appeal and, if necessary to seek compensation.

### **3.3.5 Revocation and Modification**

It is also proposed to deal with the exceptional situation where a change in circumstances justifies the revocation or modification of planning permission. The provision would be subject to rights of appeal and compensation.

### **3.3.6 Use Registration, Certificates and Opinions**

A power is proposed to enable the IDC to introduce an Ordinance to make provision for the registration of the use of land, and for the IDC to issue formal opinions as to the need for planning permission or the lawfulness of particular uses or operations. It is not intended to bring forward proposals under this Ordinance until a later stage.

### **3.3.7 Planning Covenants**

It is proposed to introduce provision for the IDC to enter into legally binding agreements with applicants whereby they undertake to adhere to a specific agreement in connection with their development proposals. These agreements will be known as planning covenants and will be registered in a prescribed form at the Greffe in the Livre des Contrats. Provision is proposed for the modification and discharge of planning covenants.

An Ordinance making power is proposed to deal with matters of detail relating to planning covenants, including provision for appeals. Proposals for this Ordinance do not form part of the current package, but will be brought forward as soon as possible.

### **3.3.8 Searches in Respect of Property**

It is proposed that a system will be introduced, by means of an Ordinance, to enable information relating to planning matters to be made available to the public, particularly in connection with the conveyance of property. (See Section 5.3 of this report for further discussion of this issue).

Provision is proposed for an Ordinance to deal with supplementary matters and, in particular, with exemptions from the requirement for planning permission.

## **3.4 Part 4: Special Controls**

The purpose of this part of the Law is to provide an enhanced planning regime for the most sensitive elements of the Island's environment: monuments and buildings of special interest, Conservation Areas, Sites of Special Significance and trees.

### **3.4.1 Chapter 1: Monuments and Archaeological Sites**

It is proposed that the States Heritage Committee should maintain a list of protected monuments that are worthy of preservation because of their special interest. Monuments may include structures, artefacts, caves, ruins or remains (whether on or under land). An Ordinance will deal with all procedural matters associated with the way the list is kept, the way properties are selected for listing, rights of appeal against listing and related matters.

There will be a duty on any Committee exercising functions under the Law to secure, so far as possible, the preservation of protected monuments and their settings. In dealing with applications relating to monuments there will be a strong presumption against development, with the exception of alterations for the purpose of enabling access to, or enhancing appreciation of, a protected monument by the public.

It is proposed that it will be possible to define the definition of development in an Ordinance to provide an enhanced level of control for protected monuments. The Ordinance will also deal with provisions to enable the Heritage Committee to deal with the protection of protected monuments which are seriously at risk through disrepair, damage or neglect, including provision for compulsory purchase in certain circumstances. Provision for the making of grants and loans is also proposed.

A provision is proposed to enable the Heritage Committee to publish guidance, which the IDC will have to take into account in assessing any application affecting a protected monument.

It is proposed that it will continue to be an offence to destroy or damage a Protected Monument.

### **3.4.2 Chapter 2: Buildings of Special Interest**

Provision is proposed for the listing of buildings of special historic, architectural, traditional or other interest, the character of which is considered worthy of preservation. These provisions mirror those for protected monuments in every respect, but recognise the different characteristics of buildings which, unlike monuments, are structures in everyday use and therefore need to accommodate adaptation and change over time. The proposed duties of Committees, and the presumption against development that affects the special character of a building, reflect this.

### **3.4.3 Chapter 3: Conservation Areas**

It is proposed that the Law will require special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas in exercising any powers under the Law.

Provision to enable the IDC to set up enhancement proposals and schemes is proposed and, by Ordinance, to introduce grants and loans. There will also be provision for an Ordinance to modify the definition of development within Conservation Areas to give additional protection against development that might adversely affect their special character.

### **3.4.4 Chapter 4: Sites of Special Significance**

As with Conservation Areas, it is proposed that the definition of development may be adjusted within Sites of Special Significance by Ordinance. There will also be additional powers of protection, which would also depend on the introduction of an Ordinance.

It is proposed that, in dealing with applications for development that would affect a Site of Special Significance, the IDC should consider whether to require an assessment of the likely impact of the proposals on the Site.

### **3.4.5 Chapter 5: Trees**

It is proposed that the Law will lay a duty on any Committee exercising functions under the Law to secure the protection of existing trees and the planting of new trees.

Provision is proposed to enable the IDC to select trees that are worthy of protection because of their amenity value and to serve a Tree Protection Order in respect of them. An Ordinance will deal with procedural matters, including how an owner can challenge a proposed Order. It is proposed that the cutting down, topping, lopping, uprooting or destruction of a tree protected

by such an Order will become an operation requiring the IDC's consent. These works may be extended by Ordinance. In dealing with applications relating to protected trees, it is proposed that the IDC should consider whether to require an assessment of the impact of the works on the trees.

An Ordinance may also make further provisions, particularly in relation to the management of trees. It is not intended to bring these proposals forward at this stage.

### **3.4.6 Chapter 6: Other Controls**

It is proposed to make provision for the IDC to control certain uses of land and activities that are the cause of nuisance or impairment of amenity. The detail of how these powers would be used would be dealt with by Ordinance. This Ordinance will not be brought forward as part of the current package.

## **3.5 Part 5: Enforcement**

The purpose of this part of the Law is to provide the means to ensure compliance with the Law, which is an essential part of a fair and effective planning system. The IDC proposes to move away from a system based primarily on the prosecution of those who infringe planning laws (although the Law will still provide for prosecution) to one based on the service of formal notices requiring the owner of property to comply with the Law. The whole of this Part of the draft Law is discussed in relation to the consultation exercise in Section 5.3.

### **3.5.1 Chapter 1: Investigation and Challenge Procedure**

It is proposed that, where it appears to the Committee that there may have been a breach of planning control, it may serve a Challenge Notice. This will enable the IDC to require individuals to explain their actions and, where appropriate, to indicate how an alleged contravention can be remedied. This will assist the investigation process and will encourage the resolution of infringements by agreement. It will also be open to the IDC to invite, and/or for the individual to submit a retrospective application. The form of the notice will be set out in the Law, but further provision may be made by Ordinance.

### **3.5.2 Chapter 2: Compliance Requirements**

Where the IDC considers that a breach of planning control has occurred 'which should be remedied', it is proposed that it should be able to issue a Compliance Notice. In response to concerns expressed in the public consultation exercise, the IDC now proposes to add to this provision that consideration will be given to the provisions of the development plan and any other material matters in deciding whether it is expedient to issue such a Notice. This will make it clear that the Notices should be used only where persuasion and negotiation have failed and the breach is of sufficient significance to warrant compliance action.

It is proposed that any Notice must be served on the owner and occupier of land, and on any other person having an interest in it. This will remain the case whether or not the owner of the land concerned was responsible for the alleged breach, or owned the land at the time of the alleged breach.

In order to be effective, the Compliance Notice must be served on the current owner of land, because these are the only people who have the ability to remedy the breach. If a notice can only be served on the perpetrator of the alleged breach, the loophole in the current Law

whereby the transfer of property effectively circumvents the Law will be perpetuated. It is, however, essential to the fair operation of the Law that the prospective purchaser of a property is provided with effective means to check its planning history, and this facility is provided for in the Law (Clause 27 and the Control of Development (General Provisions) Ordinance). In this way a purchaser can be assured that any particular property is not liable to enforcement action.

The Law will provide for immunity from enforcement action after specified periods of time have elapsed. The IDC has reconsidered the periods of time set out in the draft Law. It is now proposed that these will be four years in the case of building, mining, engineering and other operations and ten years in the case of changes of use. The longer period in the latter case is because the adverse effect of unauthorised changes of use may take some time to become apparent. It is often only when a use intensifies that it becomes a nuisance to neighbours.

The Law will prescribe the basic form of Compliance Notices, with provision for an Ordinance to deal with any additional matters.

In the case of non-compliance or default, the IDC would be enabled to enter land, rectify the breach and charge the individual accordingly or place a legal charge upon the land. The IDC would not be empowered to enter buildings by force, or to enter any dwelling without permission except with a warrant from the Bailiff.

There would be provision to suspend the notice in certain circumstances, for example where an appeal has been lodged.

It is proposed to enable the IDC to apply to the Ordinary Court for the restraint of planning control breaches by injunction. This would allow the IDC to deal with serious cases immediately.

In other cases, where the IDC has already served a Compliance Notice, but considers it necessary to require the immediate cessation of works, it is proposed that an Interim Compliance Notice may be served. Again, the basic form of these notices is contained in the Law, with Ordinance making powers to supplement this. Provision is proposed for anyone who has been served with such a notice to apply to the Bailiff for it to be set aside in certain circumstances.

It is proposed that the IDC will be enabled to create a charge over land for the purposes of seeking compliance with a Compliance Notice. Provision will also be made for such charges to be vacated.

### **3.5.3 Chapter 3: Criminal Proceedings**

It is proposed that it will continue to be an offence to carry out development without permission or without complying with the terms and conditions of planning permission.

It will also be an offence to fail to comply with a Challenge Notice, Compliance Notice or Interim Compliance Notice. Appropriate penalties and defences will be provided, to be advised by the Law Officers of the Crown.

### **3.5.4 Chapter 4: Supplementary Provisions**

Provision is proposed for the maintenance of a register of enforcement notices by the IDC (the detail to be contained in an Ordinance). There will be standard provisions to deal with

simultaneous proceedings, evidential presumptions, offences by bodies corporate, causing and permitting and a new power for the Court to have regard to the level of financial benefit resulting from a breach of planning control when setting the level of fines.

### **3.5.5 Chapter 5: Application to Special Controls**

It is proposed that the States may, by Ordinance, provide that the enforcement powers in this part of the Law may apply to the areas of special control.

### **3.6 Part 6: Appeals and Reviews**

This part of the Law will provide a full range of challenges to the decisions of the IDC and the Heritage Committee. In the case of decisions related to planning applications, it is proposed that the initial appeal will be to an independent Adjudicator who will review the merits of the case. There will also be provision for appeal on a point of Law to the Royal Court, with an ultimate right of appeal to the Court of Appeal. See Section 5.3 of this report for further discussion of the IDC's appeal proposals.

The range of appeals will be set out, and will include appeals against the failure of the IDC to give notice of a decision. Such aspects as the period within which an appeal should be lodged will be set out in the Law, as will the method of appointment and the basic powers, duties and responsibilities of the Adjudicator.

Special provision is proposed for appeals against Compliance Notices, which will include specifying the grounds of appeal. The IDC proposes to extend the grounds of appeal against a compliance notice to include the ground that planning permission should have been granted. This will allow a review of the merits of the case, with the possibility that the Adjudicator could grant consent for the works challenged by a Compliance Notice. It would also act as further emphasis that these notices should be used for cases which, as far as can be reasonably judged, would be unlikely to receive consent. This is discussed further in section 5.3 of this report.

Most procedural matters will be dealt with by Ordinance. These will include appeals involving a hearing and will introduce a new procedure to enable certain appeals to be dealt with by submitting written representations.

Special provisions are proposed for appeals against Compliance Notices relating to the grounds of appeal and the Adjudicator's powers to quash, modify or uphold such a notice. The consequences of the Adjudicator's decision will also be set out.

It is proposed that there will be provision for the review of IDC decisions in the Court, which will apply to planning decisions and compliance notices. These provisions will reflect the development of review by the Courts in the Island's legal system. Procedural matters will be set out in an Ordinance.

### **3.7 Part 7: Development, etc. by the States or Public Utilities Suppliers**

The IDC considers that the interests of good government on the Island require that policy and decisions on States development should be made within an integrated framework. It therefore proposes to bring States development within the same procedures for the submission of applications, for carrying out consultation and publicity and for the assessment of applications that apply to all other forms of development. This will mean that the Strategic Land Use Plan

and the Development Plans, which have to be adopted by the States, will be able to provide for States development requirements.

There will need to be special enforcement, appeal and review provisions. In particular, it is proposed that any Committee of the States which disputes a decision of the IDC may refer the matter to the States, together with full information about the decision concerned, to enable them to decide whether or not to direct the IDC to change its decision. This will ensure that the States remains the final arbiter in the event of conflict.

It is proposed that an Ordinance may exempt the States and public utility suppliers from the requirement for planning permission in certain circumstances.

See Section 5.5 of this report for further discussion of this issue.

### **3.8 Part 8: Administrative, General and Miscellaneous Provisions**

This part of the Law is concerned with general provisions to enable the IDC to carry out its functions under the Law.

It is proposed that an Ordinance could enable any function of the Law to be exercised by any Committee of the States.

There will be provision for the IDC to delegate any of its functions to sub-Committees and officers (as it can presently do under Section 4 of the Island Development (Amendment) (Guernsey) Law, 1990) and, in certain circumstances, to the appropriate Douzaine.

Additional powers to make Ordinances will provide for the charging of fees, application procedures, procedures for Committee meetings and related matters. In relation to fees, the IDC intends to make this section cover fees for services generally, rather than being confined to charging fees for planning applications. See Section 5.6 of this report for further discussion of the issue.

It is proposed to enable the IDC to issue guidance in connection with the administration of the Law.

In order to serve notices under the Law, the IDC needs to gather information about land ownership and related matters. It is proposed that the IDC should be enabled to require the submission of such information in these circumstances. There will be a proportionate sanction against failure to comply and provision will be made for an appropriate defence. This information cannot be readily used in criminal proceedings because of the privilege against self-incrimination.

It is proposed to amend the IDC's powers of entry to land for authorised purposes. The intention is to extend them to the full range of functions of the IDC and the Heritage Committee under the Law. Procedures for authorisation of those entitled to seek entry to land will be set out, as will those for seeking the landowner's agreement, by serving twenty-four hours' notice or, where objection is still made, seeking a warrant from the Bailiff.

It is proposed to set out general provisions relating to the service of notices to cover how, and upon whom, they should be served. These will follow the practice in other recent legislation involving the service of notices.

There will be general provisions (standard provisions in most instances) to deal with Ordinances and regulations (this will clarify, inter alia, that no Ordinance can operate in a retrospective manner); compensation; interpretation and construction; repeals, amendments and general savings; transition; extent (which confirming that the Law will apply to Herm and Jethou); citation and commencement.

## **4 THE ORDINANCES**

### **4.1 Introduction to the Ordinances**

In making its proposals for the Ordinances, the IDC has given priority to those that are essential to the operation of the Law or are required to ensure compliance with human rights principles. It is not the intention of the IDC to use every Ordinance making power immediately. The provisions of the draft Law are designed to give future flexibility, but there is no immediate need to introduce all of them. Where the implementation of an Ordinance making power is desirable but not essential, particularly where it would require considerable additional resources, it has been deferred to a later stage. It is however recognised that the enactment of the provision for planning covenants would be of particular assistance to the improvement of the planning system and the IDC is already working on this Ordinance.

### **4.2 Proposed Plans Ordinance [A]**

The purpose of the proposed Plans Ordinance is to set out certain specific matters relating to the content of statutory Plans and Briefs, particularly in relation to the designation of Conservation Areas and Sites of Special Significance. It will also set out procedures for the conduct of Planning Inquiries and deal with matters associated with the duration, adoption and amendment of Plans.

#### **4.2.1 Content of Plans and Briefs**

The draft Law sets out a flexible framework for the Plans and Briefs and little further provision in relation to their content is required by way of Ordinance. It will however make clear that the Plans and Briefs will contain both policies and text containing the reasoning behind them and that the latter text may be used to assist the interpretation of the policies.

#### **4.2.2 Scope of Policies**

It is also proposed that this Ordinance should clarify that the Plans and Briefs may, in addition to general planning matters, contain policies relating to all the areas of special control, including protected monuments and buildings and trees.

#### **4.2.3 Consultation**

The draft Law provides that, in future, States development will be subject to the Law. It is therefore important that the IDC consults all relevant States Committees both prior to preparing any Plan, and once it has formulated draft policies. It is also proposed that the IDC should consult the providers of public utilities and infrastructure, whether these are Committees of the States or commercialised bodies. The IDC should, in addition, be enabled to consult any person or body who, in its opinion, has the expertise to assist in the preparation of the Plan.

#### **4.2.4 Seeking Initial Views**

When the IDC decides or is directed to produce, review or amend a plan, it is proposed that it should give notice of this fact by advertisement in the local press. It may, in addition, carry out any publicity, which it considers will assist in seeking the views of the general public.

#### **4.2.5 Designation of Special Areas**

When designating a Conservation Area within a Development or Subject Plan, it is proposed that, in addition to its architectural and historic character, the IDC should be permitted to take into account the contribution of open spaces to the quality of the area. The Area may also include buildings and structures of no intrinsic interest but which form part of the area.

When designating a Site of Special Significance within a Development or Subject Plan, it is proposed that the IDC should be required to specify the special interest that it considers to be the reason for the designation.

It is intended that the boundaries of any special area should be shown on a map, which is required to be included in the Plan.

#### **4.2.6 Other Plans**

A draft Plan must address the impact of its policies and proposals on any other adopted Plan or Brief for the area and, if necessary, incorporate proposed amendments to it.

#### **4.2.7 Certification of Consistency with the Strategic Land Use Plan**

It is proposed that, when the IDC is satisfied that a draft Plan or Brief is ready for publication, it should submit it to the Strategic Land Planning Group to assess whether it is consistent with the Strategic Land Use Plan. The Strategic Land Planning Group must then notify the IDC accordingly. If the Plan is not certified, the Strategic Land Planning Group must specify the inconsistency and the IDC must revise the Plan or Brief and resubmit it.

#### **4.2.8 Publication of Draft Plans and Briefs**

Once the Plan or Brief has been certified, it should be published. It is proposed that the IDC should: -

- make the Plan available for inspection and sale at a reasonable charge at its own offices,
- make the Plan available for inspection at the Greffe,
- inform the Constables of the Parish(es) within the area of the Plan of its publication,
- inform the Advisory and Finance Committee of the publication of the Plan, and request the appointment of an Inspector,
- give notice by press advertisement on two consecutive weeks of the publication of the Plan, of where it can be purchased or inspected and of the next steps in the process.

The IDC may take any additional steps it considers appropriate to bring the Plan to public attention.

#### **4.2.9 Appointment of Inspectors**

In order to ensure the impartiality of the process, the Advisory and Finance Committee will be responsible for appointing an Inspector with the appropriate qualifications, skills and experience, paying particular attention to the likely special aspects of any particular Plan or Brief.

Members of the States, of the IDC, the Heritage Committee and the Advisory and Finance Committee, of the Strategic Land Planning Group and their staff will be ineligible for appointment.

The Advisory and Finance Committee will also be responsible for providing all administrative support for the Inspector in organising the Inquiry and its proceedings as well as any information or assistance required by the Inspector.

It is proposed that the Ordinance will clarify that the Inspector will have reference to the existing Strategic Land Use Plan and current Development and Subject Plans and Local Planning Briefs in carrying out the duties of the post but that it is not part of the Inspector's remit to review these Plans.

#### **4.2.10 Planning Inquiries**

Before outlining the proposed new procedures, it may be helpful to provide some background.

The existing Law says very little about the conduct of Planning Inquiries.

Informal procedures have been developed and have proved generally effective. They have, however, proved less adequate to deal with larger and more complex Inquiries. This, together with human rights requirements, leads the IDC to propose more formal procedures. This will clarify the Inspector's authority, give certainty to participants that their case will receive a fair hearing and assist in the efficient conduct of the Inquiry itself.

The principles of the Inquiry system will, however, remain the same. The Inquiry will normally include a public hearing at which all representations and counter representations relating to the Plan will be heard in an orderly and accessible way.

Two particular changes to current procedures are proposed. Firstly that representors will no longer be required to appear at the hearing in order to have their views considered. If they choose, they may make written submissions instead. Secondly, the representor will have a wider choice of persons who are entitled to represent them at the hearing.

Proceedings will remain generally at the Inspector's discretion subject to the provisions of the following sections and any Regulations.

#### **4.2.11 Procedures before Inquiry**

It is proposed that the Inspector will first invite representations to the Plan, and these will be published. Any counter-representations to the Plan, which are received as a result, will also be published. The Inspector may require that all representations are made using a standard form and may request that representors indicate whether they wish to submit written representations or to be heard, whether they are willing to join others who have made similar representations, where appropriate, and who will represent them. The Inspector may set deadlines for the receipt of representations, or these may be set out in Regulations.

A hearing in public must be held unless there are no representations or unless all representors wish to submit written representations. If it is not intended to hold a hearing, this must be publicised before the decision is confirmed.

If it appears to the Inspector that certain issues could be resolved by discussion between parties prior to the Inquiry, he may require that such discussions take place and that a statement is issued of those matters upon which agreement has been reached. It may be that

representations will be withdrawn or the IDC will agree to changes to the draft Plan. Any such agreement must however be published and announced at the beginning of the Inquiry before it is confirmed.

The Inspector will advertise all details of the Inquiry, and will determine the timetable for the hearing and will be responsible for informing all parties. In doing so, representations may be grouped in any way that the Inspector considers appropriate, bearing in mind that some groups of the representors may choose to be heard via a single spokesman.

The Inspector may require any party to submit further information prior to the hearing and may seek any advice or information required to assist in assessing the issues to be raised.

The Inspector will arrange for any written information to be made available to all relevant parties.

The Inspector may hold a pre-hearing meeting where it is considered that this would be helpful to the participants.

The above procedures will be subject to such deadlines as the Inspector lays down, or as set out in Regulations.

#### **4.2.12 The Conduct of the Public Hearing**

It is proposed that the Inspector should decide how to conduct the hearing so that it proceeds in accordance with well-established principles of impartiality openness and fairness. The Inspector will be responsible for ensuring that all evidence is heard, and examined by questioning. If written evidence is submitted the Inspector will make sure that it is copied to all parties and that they are given the opportunity to respond. Written representations will be given the same weight as oral representations.

The representors, any counter representor and the IDC are entitled to be heard on any representation. This may be in person, though an officer or member of a Committee, through an Advocate of the Royal Court or other professional adviser.

#### **4.2.13 Site Inspections**

The Inspector may wish to visit those parts of the area covered by the Plan or Brief that are of most relevance before the hearing takes place, so as to deal more effectively with individual objections, including those made by written representations. Normally, site visits will be unaccompanied unless the Inspector needs to enter private land or buildings. Site visits made before the hearing are usually unaccompanied and unannounced. During or after the hearing any site visits may be either unaccompanied, or accompanied by both the objector and representatives of the IDC. On accompanied visits, the Inspector is concerned only with observing physical and environmental characteristics and will not discuss the merits of objections or proposals.

It is proposed that there will be a procedure for the Inspector to gain entry to property in certain circumstances.

#### **4.2.14 The Inspector's Report**

After the Inquiry, the Inspector must consider all the material before him, and submit a written report to the IDC. The report must deal with the representations (although these may be grouped rather than dealt with individually) and with the generality of the Plan or Brief. It may make recommendations as to changes to the Plan or Brief.

The IDC must consider the report and whatever changes it wishes to make to the Plan or Brief in the light of the Inspector's report. It must then lay before the States the draft Plan or Brief, together with the Inspector's Report.

#### **4.2.15 The Adoption of Plans and Briefs by the States**

The States may adopt the Plan or Brief as submitted, may adopt it subject to amendments or may reject it. If the States are minded to amend the Plan or Brief the IDC will be provided with the opportunity to withdraw its proposals in order to consider the implications of the amendment for the integrity of the whole Plan or Brief. In such circumstances, it may be appropriate to hold a further Inquiry before returning to the States with amended proposals.

Once adopted, the Plan or Brief will come into effect immediately as a basis for the IDC's determination of planning applications. The Plan will be published by the IDC, and a copy of the Plan will be lodged at the Greffe.

#### **4.2.16 Duration of Plans**

The normal maximum duration of a Plan will be 10 years, subject to extension by the States.

#### **4.2.17 Amendment of Plans**

A Plan may be amended, in part, rather than reviewed as a whole. The Committee may do this at any time and must do so if directed by the States. The procedures to publish and consider such amendments will be as set out in this Ordinance.

### **4.3 Proposed Control of Development (General Provisions) Ordinance [B]**

This Ordinance will put in place the practical details, which will enable planning applications to be submitted to, and considered by the IDC, and sets out the parameters within which the IDC will take its decisions.

#### **4.3.1 Further Provisions as to Meaning of Development: General**

The facility to adjust the meaning of development will allow the IDC to achieve various levels of control within a unified system. However it is important to avoid any potential confusion by ensuring that the basic definition of development in the draft Law is as clear as possible. These provisions will not therefore contain any further general provisions as to the meaning of development. They will however set out the further special provisions for the extended meaning of development which are proposed for protected monuments and buildings, Conservation Areas, Sites of Special Significance and protected trees. This will ensure that the steps involved to ascertain when a particular operation requires planning permission are as simple as possible.

#### **4.3.2 Extended Meaning of Development: Protected Monuments**

Protected monuments are those historic remains that it is proposed to preserve as they are. This is the strictest form of protection proposed by the Law and, to achieve its objectives, a wide definition of development will be necessary. It is proposed that the following will require consent in addition to the general definition of development: -

- (a) the removal or disturbance of development of any fabric, above or below ground,
- (b) any repair,
- (c) any disturbance of the ground,
- (d) the attachment of any item to the fabric of the monument.

### 4.3.3 Extended Meaning of Development: Protected Buildings

In the case of protected buildings, although careful control to ensure the retention of their fabric, character and special features will be necessary, the definition of development does not need to be as restrictive as that for protected monuments. Protected buildings, unlike monuments, are structures in everyday use and therefore need to accommodate adaptation and change over time. It is proposed that the following will require consent in addition to the general definition of development: -

- (a) any alteration which changes the external appearance of the building or affects its special character internally or externally,
- (b) the removal or alteration of any of the fabric of the building,
- (c) the removal or alteration of any fittings or features of the building,
- (d) repairs only where they alter the special character of the building.

These definitions of development reflect those in the Ancient Monuments and Listed Buildings (Guernsey) Law, 1967. They are more specific in order to avoid the uncertainties that currently occur. In the case of protected buildings, because it is intended in future that listing will normally relate to a building as a whole, it is necessary to qualify certain categories of development so that only repairs and alterations that actually affect the special character of the building will need consent. This will, for example, avoid the need to seek consent for minor alterations to modern additions to a historic building.

### 4.3.4 Extended Meaning of Development: Conservation Areas

Conservation Areas will be designated on the basis of the architectural and historic interest of the area as a whole. The general definition of development, if applied in accordance with the conservation policies of the Development Plans, is adequate to achieve most of the IDC's objectives. The proposed additions to the definition of development within Conservation Areas are therefore relatively minor: -

- (a) any alteration to the appearance of a building including:
  - changing the of material with which any building or structure is faced;
  - painting or treating any surface of a building or structure which has not previously been painted or treated,
- (b) illuminating buildings or other structures,
- (c) erecting or removing street furniture within the central part of St Peter Port Conservation Area only,
- (d) removing or replacing street surfaces within the central part of the St Peter Port Conservation Area only.

### 4.3.5. Extended Meaning of Development: Sites of Special Significance

Sites of Special Significance will be designated for their special characteristics; for example they may contain rare flora, fauna, geological formations, landscape features or archaeological remains. These characteristics are most likely to be adversely affected by alterations to the land itself. It is therefore proposed that the following should be included in the definition of development within Sites of Special Significance: -

- (a) any raising or lowering of the level of land,
- (b) any excavation of land or ground disturbance,
- (c) any clearance of scrub or vegetation.

#### **4.3.6 Extended Meaning of Development: Protected Trees**

The suggestion for the main Law is that the cutting down, topping, lopping, uprooting of a tree which is specified in a tree protection order is development requiring consent. It is proposed that the Ordinance should add any works within the root area of the tree such as excavation, raising of soil levels, laying of surfaces and the storage of plant and machinery etc.

There will be a special form of application whereby the owner of a protected tree or trees may submit a programme of maintenance or management to the IDC which, if approved, will remove the need for repeated applications.

#### **4.3.7 Registration of Planning Applications**

It is proposed that the IDC will be required to keep a register of all applications in written and electronic form. This will contain the applicant's name and address, the date of receipt of the application, brief particulars of the development concerned and of the IDC's decisions in relation to it. It is proposed that the register should be made available for public inspection during normal office hours and that copies should be made available to the public on application, although a charge may be made for this service.

#### **4.3.8 Publicity for Planning Applications**

There is no legal requirement under the current legislation for the IDC to publicise planning applications. However, with the exception of applications for minor development, the IDC's current practice is to publish details of planning applications in the Guernsey Evening Press on a weekly basis. It is the IDC's intention, as part of its implementation of the Review of the IDC in 1999 by the District Audit Commission (the Audit Report), to improve the publicity to be given to planning applications so that members of the public have every opportunity to assess the impact of proposed development on their property and make representation to the IDC.

It is therefore considered that the Ordinance should introduce a duty upon the IDC to give appropriate publicity to planning applications, which, in its judgement, are likely to have an effect on neighbouring property. The Ordinance will provide that the IDC may use the following means of publicity; publication in the press, direct notification of the occupiers of neighbouring property, the posting of site notices and electronic communication. The Ordinance will require the IDC to publish and keep under review its policy for publicity.

It is not intended to specify in the Ordinance the publicity to be given in every given circumstance. Any set of rules that tried to do this would be very complex and could result in legal challenges on technicalities that would undermine the system. The IDC's policy will need to balance the need for publicity against the staff resources and technology available to it and the need to run a system whereby planning decisions can be made in an efficient and timely way. Press publication will be appropriate in most cases, supplemented by direct notification once the IDC's computer system has access to adequate data to identify the addresses to be consulted. In addition, site notices may be posted where a proposal is likely to have an impact outside its immediate environs.

The policy will deal with minor amendments to current applications and to approved plans, further publication when additional information is submitted and special arrangements in cases where an Environmental Impact Assessment (EIA) is submitted.

In the IDC's opinion, the duty to publicise applications lies with itself as the public authority. It has been suggested that that this duty should be transferred to the applicant. However, this would raise problems of verification. For example a neighbour may claim that a notice was removed from site before the statutory period had elapsed, thereby nullifying any permission which may have been given.

#### **4.3.9 Consultations**

It is proposed that the IDC should be enabled to consult any person or body that in its opinion has a legitimate interest in any proposal, or whose expertise may be of assistance in assessing it. It is not intended to make any specific consultations obligatory, but where such a consultation takes place, the IDC should have regard to any representations made insofar as they relate to the planning considerations it is obliged to take into account when coming to a decision.

#### **4.3.10 Requirements as to Applications**

This part of the proposed Ordinance will set out how an application should be made, the information to be submitted and any further information that the IDC may require.

An application for planning permission will be required to be made using a standard application form. It should be accompanied by such plans, elevations and specifications as are necessary to accurately describe and locate the proposals and bearing in mind whether the application is in outline or in detail.

The IDC may require further information if it considers this necessary to assess the application and, in particular, if required by a policy of any statutory Plan and/or where dealing with applications relating to special controls.

Where a proposal is likely to have a substantial effect on traffic in a particular locality, a traffic impact assessment may be required. Similarly, where it is anticipated that a development is likely to have a substantial effect in any particular aspect, such information as landscape and townscape assessments, tree surveys, archaeological assessments, planning and design statements, condition and structural surveys and detailed repair schedules may be required.

The IDC will continue its practice of providing detailed guidance notes for applicants to assist them in making valid applications.

The special case of Environmental Impact Assessments will be dealt with in a separate Ordinance and will be subject to different procedures.

It is proposed that the IDC may decline to register any submission that does not include adequate information, as at present.

#### **4.3.11 Owner's Authority**

It is proposed that the Ordinance will provide that, where an application is made by a person who is not the owner of the land concerned, it should be accompanied by the owner's written authority. In exceptional cases the IDC may accept an application on the basis that every reasonable effort has been made to inform an owner of the submission of the application or, in the case of multiple ownership, that the majority have given written authority. This would of course be without prejudice to the rights of any owner.

#### **4.3.12 Planning Considerations**

These provisions will replace section 17 of the 1966 law which does not adequately cover the whole range of planning considerations and emphasises issues such as “incongruity” at the expense of other, equally important issues.

It is proposed that the IDC should be required to take the following considerations into account: -

- any relevant, adopted statutory Plan or Brief,
- the effect of development on various aspects of the natural and built environment,
- the effect of development on various aspects of amenity,
- the effect of development on public health and safety,
- the effect of development on highway safety and traffic management,
- the effect of development in terms of its appearance, design and materials (both in itself and in relation to the surrounding area),
- the effect of development on the various special
- characteristics of protected monuments and buildings, Conservation Areas and Sites of Special Significance and protected trees,
- the cumulative effect of developments previously approved and proposed,
- published guidance (especially guidance under Clauses 31(4) and 35(3) relating to protected monuments and buildings),
- any relevant environmental assessment or environmental statement.

The IDC may refuse an application on the basis that the information submitted is inadequate to enable it to be properly assessed.

#### **4.3.13 Special Provisions for Statutory Plans and Briefs**

When considering any application, the IDC is required to take into account any relevant, adopted Plan or Brief. On occasion, there may also be in existence a draft Plan or Brief, which, following its adoption by the States, will replace the current document. Where the policies relevant to a previous approval are to change, there will need to be appropriate arrangements to ensure that applicants are not unreasonably disadvantaged. The Ordinance will state how the IDC should deal with applications submitted during this transitional period and with applications for full permission pursuant to an outline permission or for the renewal of consents granted during the lifetime of a previous Plan or Brief.

The provisions will also contain a procedure to deal with cases which, in the opinion of the IDC involve a minor departure from the Plan or Brief, but which it wishes to approve. It is proposed that the Committee should be able to issue such an approval only where it would not be in conflict with the objectives of the Plan. This provision will replace similar powers in Section 18 of the 1966 Law.

#### **4.3.14 Conditions and Reservations**

It is intended that the IDC may grant an application for planning permission, or for outline permission subject to such conditions as it considers appropriate in all the circumstances. Conditions should relate to the development for which permission is granted, to the land concerned (unless specified circumstances exist) and to planning matters. They may include: -

- the reservation of permission for detailed or other aspects of development to a later stage,
- the limitation of the duration of consent,
- the requirement to complete development in accordance with the approved plans,
- the restriction of the applicability of exemption and use class provisions,
- the amelioration of any anticipated adverse effect of the development e.g. by the use of screening, landscaping, sound insulation etc.
- any matters relating to the protection and enhancement of the special characteristics of protected monuments and buildings, Conservation Areas, Sites of Special Significance, or trees,
- any reservations on a full planning permission to be
- discharged prior to the commencement of the development so authorised,
- provision for the phasing of development.

#### **4.3.15 Planning Decisions**

It is proposed that all planning decisions will be conveyed in writing. Where conditions are attached the decision notice will give the reason for their imposition. If the application is refused, the decision notice will give reasons for the refusal.

#### **4.3.16 Failure to Give Notice of a Decision**

Clause 68 of the draft Law provides that an applicant may appeal against the failure of the IDC to give notice of its decision on a planning application. The task of setting the period of time after which such an appeal is made is assigned to the Ordinance.

The IDC included this provision because it recognised that, where an applicant perceives that unreasonable delay has occurred, there should be a procedure to enable him or her to secure a decision from an independent Adjudicator.

The IDC proposes that the period concerned should be 13 weeks for domestic and other minor applications and 26 weeks for other cases, to be calculated from the date of registration. Special provision will be made for the calculation of the date where a series of applications have been made on the same site. This will avoid an applicant being disadvantaged when amended plans are submitted and a previous application withdrawn.

It must be emphasised that the proposed 13 and 26-week periods are not target dates for the IDC to issue its decisions. The IDC's target dates are in practice much shorter than this. The periods are intended to provide a safeguard to applicants when genuine problems occur. If they

were to be made significantly shorter, applicants may well be tempted to appeal rather than wait for the IDC to take a considered decision on what may be a complex case. This would not only undermine confidence in the system, but would simply transfer the workload into the appeal system with all the additional resource implications that would inevitably follow.

#### **4.3.17 Access to Information**

It is proposed that the Ordinance will specify a date after which details of applications, planning decisions, reports and other application related material and correspondence will be available to the public, on application for inspection.

Special provision will also be made to enable planning decisions and approved plans to be inspected prior to that date in connection with the following section.

#### **4.3.18 Searches in Respect of Property Histories**

The proposals for property history searches have been introduced in response to the previous consultation exercise on the draft Law in 1998 and have been further refined in the light of the current consultation exercise.

In order to enable prospective vendors and purchasers of property and others to check the planning history of a site, it is proposed that the Ordinance will require the IDC to prepare a form containing relevant questions relating to the statutory registers of planning and building control applications, enforcement and other notices, to previous recorded uses of the site and previous enforcement complaints. The IDC would be required to respond to such a form on application.

The foregoing section on access to information will ensure that, prior to the introduction of the Law, information on IDC files will be available to enable vendors and purchasers to check the planning history of a property.

If this process raises any queries about the planning status of properties, further inquiries may be made to the IDC. Arrangements will be made to enable the submission of retrospective applications where a search reveals unauthorised works.

There will be provision for the IDC to charge for these additional services.

The proposed property history searches are discussed further in Section 5.3 of this report.

### **4.4 Proposed Control of Development (Exemptions) Ordinance [C]**

The draft Law and Control of Development (General Provisions) Ordinance between them will set out the definition of development for various circumstances, depending upon the level of care and detail required.

In common with other jurisdictions with similar planning legislation, Guernsey has a system for exempting certain classes of development from the requirement to seek written planning permission. This is set out in the Island Development (Exemptions) Ordinance, 1997. The exemptions cover many forms of minor development which are perceived as having very limited impact on immediate neighbours and on the environment generally.

The IDC intends to continue to exempt minor development from the need for planning permission. It would be possible to continue the current Exemptions Ordinance under the new Law. However, the IDC considers that it should be updated and amended to take account of

the proposed new definitions of development within the new Law and to increase their range generally.

In bringing States development within the provisions of the new Law, the IDC also considers that certain additional classes of development will need to be exempted, in particular for public utility suppliers and for States Committees that provide certain types of service.

#### **4.4.1 Exemptions Arising from New Definitions of Development**

Clause 13(2)(d) of the draft Law provides that “other operations normally undertaken by a person carrying on business as a builder” fall within the definition of development. In the Committee’s view this is an essential clarification of the general definition of development but depending upon interpretation, it potentially brings a wide range of minor operations within planning control. It is therefore proposed that, with the exception of protected monuments and buildings, this Ordinance should exempt the maintenance, repair, improvement or other alteration of a building where only its interior is affected and the external appearance of the building is not materially affected.

Protected Monuments and Sites of Special Significance will be designated because of their special interest and future change will need to be subject to careful control. It is therefore proposed that the exemptions within this Ordinance will not apply to protected monuments and buildings or to Sites of Special Significance. The Ancient Monuments and Protected Buildings (Guernsey) Law 1967 makes no provision for exemptions, so this will maintain the current position in respect of monuments and buildings.

Conservation Areas require the careful consideration of development proposals in order to maintain their character but do not need the detailed level of control proposed for protected monuments and buildings. The existing Exemptions Ordinance distinguishes between exemptions, which are generally applicable, and those, which do not apply in Conservation Areas. It is intended to maintain this distinction in the new Ordinance.

Trees will in future be protected by serving tree protection orders on those that are selected for their amenity value. However, it is proposed to exempt certain works to these trees and the IDC’s proposals are outlined in the following section.

#### **4.4.2 Increasing the Range of Existing Exemptions**

The Island Development (Exemptions) Ordinance, 1997 was introduced with the intention of extending the range of exemptions at that particular time.

In bringing forward the Ordinance, the IDC recognised the balance that has to be struck between the protection of amenity and of the environment generally, and the expectation of householders that they should be able to undertake minor development with the minimum of formality. The IDC also recognised that maintaining detailed control of development results in a system overburdened with applications for minor development which can only be dealt with by diverting resources from more substantial planning tasks.

The new Ordinance succeeded in rationalising the existing exemptions and led to a modest reduction in the number of minor applications submitted to the IDC.

The IDC has taken the opportunity presented by the Review of the Law to consider whether to adopt a more radical approach to exemptions within the new regime or whether simply to carry out further modest extensions to existing categories.

The UK equivalent of the Exemptions Ordinance gives extensive permitted development rights within the curtilage of a dwelling house based largely on the precise volume and location of the proposals. However, the scale and proximity of development in Guernsey is very different to the UK. The close and intricate pattern of development on the Island does not lend itself to sweeping reductions in planning control. In addition, a system of complex rules and formulae which have to be checked before a proposal can be judged 'exempt' runs the danger of simply transferring work from actually assessing a minor application, to assessing whether it is exempt or not. The IDC therefore does not propose to adopt the UK approach involving blanket exemptions for significant extensions to existing domestic properties.

The current Exemptions Ordinance has proved to be an effective format and the IDC therefore proposes that the new Exemptions Ordinance should simply relax further the criteria in a number of the categories so as to achieve a modest increase in the opportunities for exempt development.

It is only possible to indicate the IDC's proposals in general terms, not least because the consideration of these detailed proposals is still proceeding. The main opportunities for further relaxation appear to be in the following areas: -

- the introduction of an exemption for single storey domestic, extensions in similar terms to the current exemption for conservatories,
- the extension of the current exemptions relating to porches,
- conservatories or sheds to allow more than one such structure in certain circumstances,
- the introduction of a new exemption for swimming pools within recognised domestic curtilage,
- the extension of the current exemptions relating to patios, paths,
- vehicle driveways and hard-standings to allow a greater range of surfacing materials and to allow minor extensions,
- of the exemption of works to protected trees to include:
  - a) felling or pruning dead, dying or hazardous trees,
  - b) felling or pruning a tree to prevent actionable nuisance or to comply with a statutory obligation,
  - c) felling or pruning a tree where branch and root areas are directly affected by approved operations (excluding excavation for services) only to the minimum necessary extent to implement the permission,
  - d) felling or pruning certain sizes and types of trees, within groups, areas or woodlands.

#### **4.4.3 Exemptions for the States and Public Utility Suppliers**

Should States development be subject to planning control, it will be necessary in future to provide for the exemption of minor forms of States development.

When the States resolved in August 1991 (Billet d'État XX 1991) to require States Committees to consult the IDC on their development proposals, certain development was excepted from the procedure. The excepted development covered the many routine and minor works undertaken

in the day-to-day provision of essential public services. It is proposed that these works should be included in the exemptions Ordinance. However, it is considered that there is potential to extend the scope of the exemptions, particularly within the operational areas of the airport and harbours. A new exemption is proposed for minor works at States schools and hospitals.

The following is a list, set out in general terms, of the areas that it is proposed to cover: -

- underground works to provide, improve, maintain and repair water mains, sewers, gas pipes, electricity and telecommunication wires and cables,
- installation, improvement, maintenance and repair of certain forms of equipment connected with the provision of the above services.
- temporary equipment required during installation and maintenance works,
- road improvements, maintenance and repair,
- street furniture and other, similar equipment,
- minor works connected with the improvement, maintenance and repair of existing cliff paths, coastal defences, watercourses or land drainage works,
- certain works within the operational area of the airport, for the provision of air traffic control services and safe navigation generally and for the provision of air transport services,
- minor alterations and extensions to operational airport buildings.
- certain works within the operational area of the harbours in connection with the safe navigation of ships and of services directly related to the shipping of passengers and freight,
- minor alterations and extensions to operational port buildings,
- minor alterations and extensions to schools and hospitals.
- minor works connected with the fulfilment of statutory requirements for the health and safety of the public

Some of the above exemptions will not apply on land connected with protected monuments, if they affect a protected building, or are within a Site of Special Significance. Applications in relation to street furniture within central St Peter Port will require consent.

Subject to the above however, the IDC intends to provide a range of exemptions relating to the provision of public services.

#### **4.5 Proposed Control of Development (Use Classes) Ordinance [D]**

The definition of development in both the existing and the proposed new Law includes “the making of any material change in the use of land”.

The objective of the Use Classes Ordinance is to set out certain changes of use which are unlikely to have a detrimental effect on the environment which will not require the submission of a planning application. This is achieved by grouping together uses with similar characteristics into “use classes”. Changes of use within each use class will be deemed NOT to require consent. Changes of use between use classes and changes involving unclassified

uses will only require consent if the change is “material”. i.e. has a significant effect on the impact of the use on amenity, the environment and planning considerations generally.

Use classes are currently set out in the Island Development (Use Classes) Ordinance, 1991 and the Island Development (Sheltered Housing Use Class) Ordinance, 2000 which set out sixty different use classes. It is proposed that the Use Classes Ordinance under the new Law should be based on the existing Ordinance. Some of the use classes have been rendered redundant by social and economic change and require rationalisation. These changes have also given rise to the need for new use classes e.g. sheltered housing, “e-commerce” and garden related retailing. The Use Classes will be revised to take account of this.

#### **4.5.1 Matters of Clarification**

As well as grouping uses into classes, the existing Ordinance clarifies a number of related questions. Where there is a principal use of a site, that is regarded as the use for the purposes of the use class. Any ancillary, incidental or minor uses will not affect this classification. It is proposed to retain this clarification.

The existing Ordinance also lists certain uses that fall outside any use class. For the purpose of clarification it is proposed to include in the new Ordinance an extended list of uses that the Committee considers to fall within this category. These will be called ‘sui generis’ uses, a legal term indicating that they are distinct uses outside any recognised category.

Having set out the above matters, the Ordinance will specify the new use classes. It will provide that a change of use from a use specified in a use class to another specified in the same use class does not constitute development.

The following proposals are expressed in terms of the degree of alteration to the existing Use Classes Ordinance which would be involved. This document may be purchased from the Greffe or consulted at the IDC’s offices.

#### **4.5.2 Residential Use Classes**

Some rationalisation of existing residential use classes is proposed together with the addition of the sheltered housing use class which was first introduced in the Island Development (Sheltered Housing Use Class) Ordinance, 2000.

It is proposed that the Ordinance will, in addition, clarify that the change of use of a single dwelling to more than one dwelling, or of more than one dwelling to a single dwelling is regarded as development requiring consent. It will also clarify the uses that may be made of a domestic house and curtilage without involving a change of use.

#### **4.5.3 Tourist Use Classes**

Some rationalisation of the existing tourist use classes is proposed together with the addition of a new class for tourist attractions.

#### **4.5.4 Retail Use Classes**

Some rationalisation of the existing retail use classes is proposed together with the classification of service offices (e.g. banks and estate agents) within this category.

#### **4.5.5 Commercial Use Classes**

Most of the existing commercial use classes will be reclassified as sui generis or industrial uses as appropriate. New use classes are proposed for offices, disaster recovery, conference and training centres, and “e-commerce”.

#### **4.5.6 Public Administration Use Classes**

It is proposed to omit this as a separate use class.

#### **4.5.7 Public Amenity Use Classes**

It is intended to retain the public amenity use classes identified in the existing Ordinance.

#### **4.5.8 Assembly and Leisure Use Classes**

Minor rationalisation of the existing assembly and leisure use classes is proposed and it is intended to include commercial exhibition halls in this group rather than within the ‘sui generis’ group as at present.

#### **4.5.9 Storage and Distribution Use Classes**

It is proposed that the storage and distribution use classes currently defined will be reclassified as storage not involving wholesale, storage with wholesaling, data and archive storage, the storage of hazardous and odorous substances, open storage areas and goods transfer stations.

#### **4.5.10 Industrial Use Classes**

It is proposed that these uses as currently defined should be reclassified as light, general or special industry and that particularly obnoxious processes should become ‘sui generis’ uses. It is proposed to move laundering and dry-cleaning into a use class within this section.

#### **4.5.11 Agricultural Use Classes**

No change is proposed.

### **4.6 Proposed Environmental Impact Assessment Ordinance [E]**

It is proposed that the Ordinance will define the detailed process of Environmental Impact Assessment (EIA) in Guernsey, through which the effects of major proposals on the full range of environmental matters can be identified and measured, and ways to minimise or mitigate any potential negative effects can be provided at an early stage.

It is proposed that EIA procedures should be comparable with best international practice but should be specifically tailored to meet the circumstances in Guernsey. That dual objective already underpins the IDC's informal 'Code of Practice for EIAs in Guernsey', upon which the following procedures are based and which will guide the preparation of EIAs in the Island until the Ordinance comes into force.

#### **4.6.1 Formal opinion**

It is proposed that the Ordinance will make provision for a developer to seek a Formal Opinion from the IDC as to whether an EIA will be necessary.

The Formal Opinion may also set out the scope of issues to be investigated in each EIA.

#### **4.6.2 EIA Required in Support of Planning Application**

It is not proposed that the Ordinance will specify a prescribed list of cases requiring an EIA. Instead, the IDC will be permitted to determine when an EIA is required in support of a planning application. Generally, it is proposed that an EIA will be required only if the proposed development would have significant environmental consequences, such as:-

- a large scale infrastructure project of Island-wide significance,
- a major project which might have significant impacts, such as a major traffic impact, or
- a smaller project with a significant impact on the Island's environment.

#### **4.6.3 EIA in Support of an Amendment to a Development Plan**

It is proposed that the Ordinance may require preparation of a Strategic EIA in support of an amendment to an adopted detailed development plan, to enable an application for specific development to be considered. The purpose of the Strategic EIA will be to demonstrate that the location chosen for the proposed development provides the Best Practicable Environmental Option (BPEO) for the Island, compared with alternatives.

#### **4.6.4 The EIA Procedure**

In those cases where the IDC determines that an EIA is necessary the Ordinance will specify the procedure which comprises the EIA. It is proposed that this will be in five stages: -

Scope of the EIA: This will be the responsibility of the IDC who will provide the developer with a Formal Opinion on what matters should be investigated in the EIA

Environmental Assessment: This will be the responsibility of the developer who will investigate all the matters identified in the IDC's Formal Opinion

Environmental Statement: This should include a description of the proposed development, details of the investigation of alternatives, reasons for choosing the proposed site, the methods and results of environmental investigations, a description of the likely effects of the development, mitigation and monitoring proposals and details of public consultation. The Environmental Statement will be submitted to the IDC for Appraisal at the same time as the submission of the planning application or will be provided in support of a proposed amendment to a Development Plan.

Compliance Document: This will be prepared by the developer and will be submitted alongside the Environmental Statement. The Compliance Document will demonstrate how the developer proposes to mitigate any adverse environmental impacts identified either in the Environmental Statement or in a previous planning condition relating to the proposed development and will set out any required monitoring arrangements.

Appraisal of the EIA: This will be the responsibility of the IDC who will assess, as part of the determination of an application made to it, or in preparing an Amendment to a Development Plan, whether the Environmental Statement adequately addresses the matters identified in the Formal Opinion.

It is proposed that the Ordinance will enable the IDC to require an independent assessment of the adequacy of the Environmental Statement (from, for example, the Institute of Environmental Management and Assessment).

#### **4.6.5 Matters to be Considered in an EIA**

It is proposed that the Ordinance will make provision for the matters to be considered in an EIA. The list will be illustrative, rather than prescriptive and may include the following direct impacts of the proposed development: -

- visual effects,
- noise and emissions,
- roads and transport,
- historic and archaeological heritage, buildings and other human artefacts,
- drainage systems, ground water levels and flows, water courses, coastal
- hydrology, water quality,
- effect on global warming, wind patterns etc.,
- effect on land stability, soil erosion,
- loss of, and damage to, species or their habitats and other ecological consequences.

It may also include indirect impacts.

#### **4.6.6 Publicity for EIA**

It is proposed that the Ordinance will specify the publicity measures to be carried out by both the developer and the IDC in respect of EIA.

#### **4.6.7 Renewal of a Planning Permission where an EIA is necessary**

It is proposed that the Ordinance will require the IDC to consider whether an EIA is necessary where a developer applies for the renewal of a planning permission which is likely to have a significant impact on the environment.

### **4.7 Proposed Special Controls Ordinance [F]**

This Ordinance deals with various provisions relating to Protected Monuments and Buildings, Conservation Areas, Sites of Special Significance and protected trees. The protection of these special aspects of the environment is provided within an integrated planning system, the essential elements of which are described in the draft Law and its commentary.

Because of the integration of the new system, many aspects of it that affect the areas of special control are covered in the more general Ordinances being proposed. The enhanced definitions of development, for example, are contained within the General Provisions Ordinance.

Because the statutory plans will be the vehicle for the designation of Conservation Areas and Sites of Special Significance, the Plans Ordinance will deal with the associated procedural matters.

All areas of special control will be subject to both the enforcement and the appeals provisions of the Law that will be dealt with in the Enforcement and Appeal Ordinances (G and H). Any specific considerations arising from their special status will be dealt with in these Ordinances.

The Special Controls Ordinance is therefore concerned with detailed procedures for the listing of protected monuments and buildings, special measures for their protection, provisions for enhancement proposals for Conservation Areas and Sites of Special Significance and, finally, procedures for making and confirming tree protection orders together with any special associated provisions.

#### **4.7.1 Listing of Monuments in the Protected Monuments List and of Buildings in the Protected Buildings List**

In the following sections, the procedures for the listing of protected monuments and buildings are essentially the same and therefore they are described together wherever possible.

##### **4.7.1.1 The Form of the List**

It is proposed that the protected monuments list and the protected buildings list will be held in written and electronic form and will be available for public inspection.

It is proposed that the list should contain the name and address of the owner, a plan of the location and extent of the monument or building, a brief description and, if a grading system has been established, its grading.

The Heritage Committee may include with the list any further written description or detailed survey of the monument or building but this will not have the status of an exhaustive and conclusive catalogue of all significant aspects and features.

However, if a feature or object is specifically mentioned in the brief description, that will have the full protection of the listing.

##### **4.7.1.2 Assessment of Monuments and Buildings**

In order to assist public understanding of the listing process, it is proposed that the Heritage Committee should formulate and publish the criteria it proposes to adopt when determining whether to list any particular monument or building and what grade to attach to it.

When listing a monument or building, it is proposed that the Heritage Committee should be able to include land necessary to its support or to the preservation of its setting.

##### **4.7.1.3 Consultations**

It is proposed that the Heritage Committee will be permitted to consult any person or body whose expertise may be of assistance in assessing whether or not a monument or building should be placed on the list, and at what grade.

##### **4.7.1.4 The Effect of Listing**

It is proposed that any listing will be effective immediately. Any amendment to or removal from the list will also have immediate effect, including removal as the result of a successful appeal against listing. Where an appeal is lodged, the listing or grading will, however remain operational until the appeal is determined.

It is proposed that, as at present, the listing of a monument or building will have the effect of suspending any existing planning permission, which has not been completed to allow it to be assessed on the new basis. It will be the responsibility of the owner to seek such consent but

the IDC must inform the owner within 14 days of any approach to it, of what will require consent and what additional information it will require to assess the application. There will be provision for compensation where permission is refused.

#### **4.7.1.5 Transfer of the List**

The Ordinance will provide the procedure for transferring the existing Register of Ancient Monuments and Protected Buildings to the new lists. No fresh right to appeal against the listing will arise from this transfer but, where a grading is attached to a monument or building at the time of the transfer, there will be a right of appeal against the grading.

#### **4.7.1.6 Applications for Reassessment**

It is proposed that the Ordinance should provide that, whenever the Heritage Committee publish fresh criteria for listing monuments or buildings or for grading them, or where it gives notice of any specific review of the list(s), the owner of a protected monument or building may request that the property concerned is reassessed.

#### **4.7.1.7 Certification of Exemption from Listing**

It is also proposed that the owner of a non-listed monument or building may apply at any time to the Heritage Committee for certification that the monument or building will not be listed for a period of three years. This provision may be of assistance where a developer requires certainty that his/her plans will not be held up by any unexpected listing. The Heritage Committee may grant certification, refuse to grant certification, or may list the monument or building if it is satisfied that it is of particular importance and would otherwise be under serious threat of destruction. There will be a right of appeal.

#### **4.7.1.8 Temporary (or Emergency) Listing**

A temporary procedure is proposed to enable the Heritage Committee to give the protection of listing (including provisions for offences) in the case of an emergency e.g. where something of value is discovered which is under threat of destruction. After the temporary period (6 months or such time as the Heritage Committee indicates) the protection would lapse. In the meantime the Heritage Committee have the opportunity to decide whether or not to add the monument or building to the permanent list.

#### **4.7.1.9 Preservation Notices**

It is proposed that, if the Heritage Committee is satisfied that a protected monument or building is being damaged or deteriorating or has been put in danger without effective intervention by the owner, it may serve a notice on the owner. The notice would identify the monument or building, specify the nature of the damage, deterioration or danger and of the works to be executed to protect or restore the monument or building, and set a timetable for the works to be carried out. The works specified must only be what is reasonable to make good the damage or deterioration or to prevent the danger and the notice may be challenged on the basis that its requirements are excessive. If the works are not carried out, the Heritage Committee may execute the works and recover the costs as a civil debt.

#### **4.7.1.10 Compulsory Purchase**

In cases of exceptional neglect to a monument or building recognised as being of the highest grade, it is proposed that the Heritage Committee should be able to arrange for its purchase under compulsory powers.

It must be emphasised that these powers are intended to be used in the most exceptional cases and appropriate safeguards will be included to ensure this. For example, the Heritage Committee will have to show that it has taken reasonable steps to prevent the damage or neglect by discussion with the owner, that it has not unreasonably withheld any potentially available grant aid etc. and the public interest will be served. There will also be a basis for assessing values, costs etc. However, it is considered important that powers exist to prevent the wilful neglect of important historic monuments or buildings, particularly where an owner hopes thereby to achieve their redevelopment.

#### **4.7.1.11 Information Duties**

It is proposed that the Heritage Committee will be required to keep a record of finds of archaeological or historic significance. A duty will lie on the finder to inform the Heritage Committee of it and to supply any further information the Committee may request. However, ownership of the find will not be transferred to the Heritage Committee.

#### **4.7.1.12 Powers of Entry**

It is proposed that this Ordinance will give the Heritage Committee powers to enter property for the purposes of assessing whether or not to list it, subject to the service of appropriate notice, etc. as set out in Clauses 84 and 85 of the draft Law.

### **4.7.2 Conservation Areas**

#### **4.7.2.1 Formulation of Enhancement Proposals**

It is proposed that, where the IDC decides to formulate and publish proposals for the enhancement of a Conservation Area, or part of a Conservation Area it should follow procedures designed to ensure adequate publicity and consultation.

The IDC may seek the views of such individuals, bodies and States Committees as it may consider relevant prior to formulating its proposals and must seek views where the powers of another Committee are involved.

The draft proposals themselves should be published in a document, which must include a map showing the area concerned. The document may include policies as to how the IDC intends to use its powers under the Law to achieve certain objectives and guidance to assist private landowners who may wish to arrange development so as to assist those objectives. The document may include positive proposals e.g. to provide landscaping and seating in a public area. These must be supported by the permission of any private, States or other owner of any land concerned and by a statement of how the works are to be funded. The document may include proposals as to how grants or loans may be used to achieve certain objectives, if and when such funds become available. Where the grants or loans concerned are to be administered by a Committee other than the IDC, that Committee must indicate its agreement to the proposals.

The document must be published and publicised, including within the area concerned, and the views of the public invited. A minimum of 4 weeks should be allowed for this purpose and any views received must be considered by the IDC before it adopts and publishes the final proposals. The final document should include a statement of the Committee's response to the views received.

All policies and proposals must be in accordance with any statutory Plan or Brief relating to the area concerned.

#### **4.7.2.2 Preservation Works**

It is proposed that the IDC should have powers in respect of any building or structure within a Conservation Area the condition of which is such as to be seriously detrimental to the amenities of the area which are similar to those of the Heritage Committee in relation to protected monuments and buildings. Similar safeguards and procedures would apply.

#### **4.7.3 Sites of Special Significance**

It is proposed that the IDC should be able to designate a Site of Special Significance on a temporary basis, pending its inclusion in a Plan. The proposed designation must be publicised by the direct notification of landowners. The designation would lapse if the Site is not designated during the next review of the Plan.

#### **4.7.4 Tree Protection Orders**

##### **4.7.4.1 Assessment of Trees**

When considering whether or not the amenity value of a tree, group or area of trees, or woodland would justify the making of an order, the IDC must consider the visibility of the tree(s) to the public, the contribution made by the tree(s) to the townscape or landscape within which it is set, the value of the tree(s) in terms of screening and/or shelter, the accessibility of the tree(s) to public enjoyment, any nature conservation value, the rarity of any particular species, any special factor relating to the planting of the trees and the quality of any individual tree. Although the health of a tree and any potential or existing effect on property should be considered this need not be conclusive unless the tree is dead or dangerous.

Where it is proposed to make an Order on trees yet to be planted, the public purpose for which the trees are intended should be taken into account.

##### **4.7.4.2 The Form of a Tree Protection Order**

A Tree Protection Order must identify the tree, group or area of trees or woodland either by a line around the area or by specifying each individual tree. Unless the Order relates to trees yet to be planted, it only applies to trees on the site at the time the Order is made.

##### **4.7.4.3 Exclusion from Tree Protection Orders**

An Order may not be made on trees on operational land within the airport or harbour areas.

##### **4.7.4.4 Consultations**

The IDC must consult the States Horticultural Committee on the health and condition of the tree(s) and must take its comments into account.

##### **4.7.4.5 Publication of the Order**

The Order must be served on the owner of the tree(s) and must be advertised in the press where it might affect the interests of neighbouring owners. The Committee may post a site notice or notify such persons directly.

##### **4.7.4.6 Effect of a Tree Protection Order**

The Order will have immediate effect but will lapse after 3 months (or other period specified in the Order) unless it is confirmed. The IDC may make a temporary Order that specifies a date

on which it will lapse. The making of an Order will not override any permission in existence at the time, but renewal of any such permission may be refused on the grounds of its effect on the trees.

The draft Order and its advertisements must invite comment/objections and allow at least 28 days for these to be received. The IDC must consider any representations before deciding whether or not to confirm the Order. It may not do so before a further 28 days. All parties must be informed of the confirmation or otherwise of the Order and the reasons for it, including responses to any representations.

#### **4.7.4.7 Register of Tree Protection Order**

A public register of all confirmed Orders will be kept and lodged at the IDC's offices and at the Greffe.

#### **4.7.4.8 Provision for Dealing with Applications**

The General Provisions Ordinance will make clear the principles that the IDC must consider in dealing with planning applications including works to protected trees, taking into account that trees are living things, prone to disease and decay and the consequent serious potential for danger and nuisance. This is a matter of balance in each case. That Ordinance also allows for conditions for tree protection during construction, replanting where felled etc.

The General Provisions Ordinance will provide for a special form of permission whereby the owner of the tree(s) may submit a maintenance or management programme to the IDC, which, if approved, will remove the need for repeat applications.

### **4.8 Proposed Enforcement Ordinance [G]**

The draft Law contains the basis of the new investigation, challenge and compliance requirements, which will, in future, constitute the proposed enforcement system. It contains the principles and provisions which, in the IDC's opinion, are fundamental to the system and unlikely to require adjustment or alteration for as long as it remains in operation.

This Ordinance is intended to supplement these provisions, particularly in relation to the contents of the Challenge, Compliance and Interim Compliance Notices.

#### **4.8.1 Challenge Notices**

The object of this type of Notice is to enable an alleged breach of planning control to be accurately investigated and, where appropriate, to instigate discussions with a view to remedying the breach by agreement.

It is proposed that the Ordinance will require that the Notice must identify the land to which it relates and state that the Notice is to be complied with by responding in writing to the IDC.

It is also proposed that the Notice may require the person on whom it is served to supply information regarding the use of the land or any operations or activities, or any matter relating to conditions on any planning consent which may have been granted. This information may include uses, operations and activities that may have occurred or be occurring, dates and times, those responsible for the use operation or activity, ownership details and any permissions relating to the land.

In order to be effective, accurate information is essential; however it is important to remember that information provided under this requirement cannot readily be used in criminal proceedings because it would violate the privilege against self-incrimination. As has been explained in the commentary on the draft Law, the system of Notices should, in most cases, avoid the need for criminal proceedings.

It is proposed that the Notice should also inform the person on whom it is served of the likely consequence of failure to respond. It should also invite any offer the person on whom the Notice is served may wish to make to apply for planning permission, to refrain from anything or to undertake remedial works and/or to make any representation regarding the Notice.

#### **4.8.2 Compliance Notices**

The object of the Compliance Notice is to specify the alleged breach of planning control and to set out the actions the Committee requires the person on whom the Notice is served to take in order to remedy the breach.

Clause 49 of the draft law sets this out in general terms, and it is intended that the Ordinance will amplify this by specifying what a Compliance Notice may request. In any given case, this will depend on the nature of the breach of planning control. The range of possible requirements will include the alteration or removal of any buildings or works, the carrying out of any building or other operations, any activity on the land not to be carried on except to the extent specified in the Notice, or the restoration of land to its previous state. If the breach relates to the deposit of refuse or waste materials or the alteration of ground levels in some other way, the Notice may specify the gradient and contour to which the land should be restored. In some cases this will include the submission of plans before the required work is carried out.

If the breach relates to a protected monument or building, or to a building in a Conservation Area, special provision is proposed to ensure that, so far as is possible, any restoration works are carried out in a manner that maintains the special qualities of the monument, building or area concerned.

If the breach relates to a Site of Special Significance or to a protected tree, the Notice may require replanting or mitigation of damage to vegetation. If the breach relates to non-compliance with a condition, the Notice may specify measures to enable the development to be completed in accordance with the conditions.

#### **4.8.3 Interim Compliance Notices**

This type of Notice is intended for the exceptional occasion when the Committee wishes a particular breach of planning law, on which a Compliance Notice has been served, to cease immediately. This is particularly likely to be the case where a serious nuisance, loss of amenity or potential adverse effect on public health is being caused by the unauthorised works or use. It is proposed that the Ordinance will provide that an Interim Compliance Notice cannot prohibit the use of any building as a dwelling house, or any activity (not including building, engineering, mining or other operations, or the deposit of refuse or waste materials) that has been carried out for more than 4 years ending with the service of the Notice.

Where an Interim Compliance Notice is served, the Committee may display a site Notice on the land concerned giving essential information about the contents of the Notice. (Withdrawal of the Notice will also require the same publicity).

The Ordinance will provide for the Notice to cease to have effect if withdrawn or quashed, if it expires or if the related Compliance Notice is withdrawn (although if the Compliance Notice is merely relaxed, the Interim Compliance Notice will only cease to have effect to that extent).

#### **4.8.4 General Application**

The Ordinance will clarify that the Notices will be available for breaches of both general and special planning controls. Where a Notice applies to an area of special control (protected monuments etc), it will specify the nature of the special designation concerned.

#### **4.8.5 Enforcement Registers**

It is proposed that there be a new requirement for the IDC to keep a public register of the various notices relating to enforcement. This will enable the public generally to inspect it and will also enable prospective purchasers and vendors of property to check whether any enforcement notice, whether completed or outstanding, has been served in relation to a particular property.

It is intended that the Ordinance should specify the contents of the register, to include details of the property and any person on whom a notice has been served, the type of notice and date served and information relating to various actions and decisions taken in connection with it.

It is proposed that the register should be made available for public inspection during normal office hours and that copies should be made available to the public on application, although a charge may be made for this service. All information contained in the register may be assumed to be correct by any person acting upon it.

### **4.9 Proposed Appeals & Reviews Ordinance [H]**

The draft Law provides for a right of appeal against all decisions of the IDC and the Heritage Committee, either by the submission of written cases or by a hearing. A more accessible and affordable appeal system is proposed not involving the Royal Court in the majority of cases. Appeals will be judged on their individual merits by an independent and impartial Adjudicator, who will be able to reach a decision as if it were being made for the first time. That decision will be final.

While this commentary has been kept relatively general, it is intended that the Ordinance will cover a number of different types of appeal, not only against decisions on planning applications, but also against compliance notices, completion notices and the listings and gradings of buildings.

The proposed Ordinance will deal with the procedures associated with the new system of appeals.

#### **4.9.1 Appointment of Adjudicators**

To ensure the impartiality of the process, the Advisory and Finance Committee will be responsible for appointing an Adjudicator with the appropriate qualifications, skills, experience and independence, paying particular attention to any likely special aspects of the appeal.

Members of the States, the Royal Court, the IDC, the Heritage Committee and the Advisory and Finance Committee and of the Strategic Land Planning Group and their staff will be ineligible for appointment.

The Advisory and Finance Committee will be responsible for providing the necessary administrative support for the Adjudicator in organising the appeal process and any subsequent Hearing, and for supplying any additional information or assistance that the Adjudicator may require.

#### **4.9.2 Form of Appeals**

A choice will be offered as to the form of appeal. Where both parties state a preference for the appeal to be disposed of by means of written representations, then the Adjudicator would ordinarily proceed on this basis. A hearing will normally be reserved where either the appellant or the relevant committee states a preference for it, or where the Adjudicator thinks a hearing would be more appropriate. Where the case to be heard is relatively minor the Adjudicator will be able to simplify the hearing process to make it more informal.

#### **4.9.3 Written Representations**

It is envisaged that the majority of appeals will be disposed of by means of written representations. This would entail the appellant submitting the grounds of appeal in writing. The Committee would then have the option of either submitting a counter statement or of submitting all relevant information, by way of a standard pro-forma, to enable the Adjudicator to determine the appeal.

Third parties would also be able to submit representations to the Adjudicator who would then give the appellant and Committee an opportunity to comment on them.

#### **4.9.4 Hearings**

It is proposed that the Adjudicator should decide how to conduct the hearing and to ensure that it is conducted in accordance with well-established principles of impartiality, openness and fairness. The Ordinance will lay down a framework guiding the usual procedure of a hearing, including a requirement for adequate publicity, stating where and when the appeal is to be heard and inviting representations from any other interested parties. The Adjudicator may keep proceedings as informal as possible but will maintain standards of order and discourage unwarranted repetition.

Pre-hearing meetings will be permitted if the Adjudicator thinks they would help to iron out any mis-understandings and, in such meetings, he will try and establish whether there is any common ground between the parties concerned.

The Adjudicator may permit representors whose submissions were received after any stated deadline to appear but may prevent the repetition of issues already covered by others previously heard at the hearing.

The Adjudicator will ensure that all parties are heard and that there is opportunity to ask questions.

The appellant, the Committee and anyone making a third party submission are entitled to be heard at a hearing. This may be in person, through an officer or member of the Committee, through an Advocate of the Royal Court or other professional advisor.

#### **4.9.5 Costs**

It is proposed that applications for costs will be made available at hearings by both the appellant and the Committee. The Adjudicator will determine the application, although the detail in this respect has yet to be determined. It is likely, however, that the reasonableness of the parties in the events leading up to the hearing will be taken into account in taking this decision.

#### **4.9.6 Site Inspections**

The Adjudicator may, at any time, visit the appeal site. Normally, site visits will be unaccompanied, unless the Adjudicator considers it essential to enter private buildings or land. If the Adjudicator elects to make an accompanied site visit, he will concern himself only with observing physical and environmental characteristics and will not discuss any aspect of the merits of the case.

It is also proposed that there will be a procedure for the Adjudicator to gain entry to property in certain circumstances.

#### **4.9.7 The Adjudicator's Decision**

After the hearing, or following receipt of all relevant information in the case of a written representation appeal, the Adjudicator must consider all the material before him and submit a written report to the Committee. The report must deal with the planning merits of the particular case and any representations for or against it in light of the policies of the relevant Development Plan, Subject Plan or Local Planning Brief and of the planning considerations set out in the Control of Development (General Provisions) Ordinance. The report will conclude with a decision which will be final (see Reviews below).

The Adjudicator may uphold, quash or vary the decision or action against which the appeal has been made and will also make the decision as to whether any application for costs has been successful, giving his reasons.

#### **4.9.8 Reviews**

To ensure conformity with human rights principles, it is proposed that it will be possible to request a review by the Royal Court, either after the Committee's decision or after the decision of the Adjudicator has been issued. Reviews by the Court will be on the basis that the decision was unlawful, i.e. not on the basis that the decision was unreasonable.

### **5 PUBLIC CONSULTATION**

#### **5.1 The Current Consultation Exercise**

As described in Section 1, the IDC has carried out a comprehensive consultation exercise as a result of which it received a large number of comments on the draft Law. All these comments are tabulated in Appendix 2. Where it has been possible and appropriate to include the IDC's response in this table, this has been done. However, a number of significant issues elicited a wide range of comments. Where these required a general or more detailed response, they are discussed in this section.

#### **5.2 The Definition of Development**

Comments were made on the definition of development on various grounds, including that it is not sufficiently clear and is too wide ranging. It appears to the IDC that the concerns expressed are the result of not appreciating the proposals in their full context. Accordingly, the best way to respond to these comments is to explain the way the Law is intended to work.

The basic definition of development is contained in Clause 13(1). This is the same as the definition in the 1966 Law which, in turn, was taken from U.K. legislation. It is intentionally

broad because the Law seeks to spell out, as far as possible, what may amount to development. The fact that it is shared with U.K. legislation means that the Guernsey system is able to draw on the jurisprudence of the U.K. courts.

The following sub-clauses add clarification; that is, they set out specific operations and uses that will be regarded as development for the purposes of the law. This approach can also be seen in the 1966 Law which, for example, provides that the placing of a movable structure on any site, and the painting or erection of a sign are regarded as development. The U.K. law follows a similar pattern.

The proposed Law contains enabling powers to refine the definition of development further in an Ordinance. This is particularly relevant within the areas of Special Control. The IDC's proposals for these Ordinance provisions are set out in the Control of Development (General Provisions) Ordinance.

However, the definition of development is tempered by the Exemptions Ordinance, which removes certain minor works and changes of use from the requirement for planning permission.

The precise way that this hierarchy works allows the Law to be adapted to different circumstances in an appropriate way. The whole philosophy behind the Law is to provide a basic level of control that can be enhanced in special circumstances. For example, building operations are included within the general definition of development. Clause 13(2)(d) clarifies that this includes operations normally carried on by a person carrying on a business as a builder. As a result, all internal works, painting etc could be development. This means that, in dealing with the special circumstances of a protected building, a comprehensive level of control is in place. For all other circumstances, building works that affect only the interior of a building are exempted.

Turning to the operations specified in Clause 13(2), the first point to note is that most of them appear in a similar form in Section 14 of the 1966 Law.

Clause 13(2)(a) deals with the demolition of the whole or part of certain structures. It is similar to Section 14(e) of the 1966 Law, but is clearer and more comprehensive.

Clause 13(2)(b) deals with rebuilding. This could be regarded as unnecessary because, if demolition requires consent, it follows that rebuilding will too. It is included for clarification. As with any other term in the Law, it is open to interpretation but its ordinary meaning is clear and implies a complete action.

Clause 13(2)(c) clarifies that the alteration of the exterior appearance of a building is development if it has a material, i.e. a significant effect. Again, this is not essential because very small effects would be regarded as 'de minimis' in any case. It does, however, serve to set the cut off point at a slightly higher level.

Clause 13(2)(d) is included because it allows the Law to cover the activities of builders in special circumstances. As is explained above, this is exempted in most other instances.

Clause 13(2)(e) is similar to Section 14(1)(b) of the 1966 Law and Clause 13(2)(f) to Section 14(1)(g).

All of the above are qualified by exemptions that restrict their scope to what is appropriate in normal circumstances.

### 5.3 Compliance Procedures and Property History Searches

#### 5.3.1 Consultation Replies

The IDC's proposals for a new system of enforcement of planning control have attracted numerous comments, which are set out in Appendix 2. They may be summarised as follows:

- *"The provisions are 'draconian', and possibly contrary to human rights principles."*
- *"The proposed penalties are excessive."*
- *"Innocent parties could find themselves involved in prosecution."*
- *"The Law could have a retrospective effect because the proposed period of liability would be ten years and provision for searches of planning histories have not been routinely carried out during that period."*
- *"The proposals will disrupt the existing system of conveying property because any prospective purchaser will insist on assurance that the property is free of any potential liability to enforcement action."*
- *"The proposed system of property history searches will be inadequate to provide this detailed assurance, and no professional group would be prepared to do so."*

In view of the large numbers of comments from both the public and the professional organisations on this topic, the IDC has, in addition to the consultation exercise, discussed these matters in more depth with representatives of the professional bodies. This has proved extremely valuable and has informed the following discussion.

The response of the IDC must be seen in the context of the existing powers and their shortcomings and its objectives for the new system.

#### 5.3.2 The Existing System and its Shortcomings

The Island Development (Guernsey) Law, 1966 provides that any person who contravenes the Law, or fails to comply with any condition of a planning permission, is guilty of an offence and liable, on conviction, to a fine. After a successful prosecution, the IDC may apply to the Ordinary Court for an order requiring the person convicted to undertake certain specified works to rectify the breach. If such an order is not complied with, the IDC may apply to the Court for permission to enter the premises concerned, carry out the work and recover the cost as a civil debt.

The Law is ineffective or unsatisfactory in a number of respects. It is dependent upon achieving a successful prosecution through the criminal courts. From the point of view of the individuals concerned, this involves the stress of a court appearance and the possibility of a criminal conviction. From the IDC's perspective, the difficulties encountered in satisfying the very high standard of proof required for a criminal conviction as the initial step in the enforcement process results in few instances of successful resolution of apparent planning infringements by this means.

The powers to seek a court order for restitution can only be used after a successful conviction. However, the actions that can be required by notice are limited in scope and are not always capable of remedying the breach. In addition, an order can only be served on the person

actually convicted. If a property changes hands for any reason, no order for restitution can be obtained.

The fact that the transfer of property circumvents the enforcement powers of the existing Law has led to instances where those responsible for a breach have sold property in the knowledge that the IDC will not be able to pursue the matter further. These cases can leave neighbours suffering effects on their amenity that cannot be resolved.

It is also worth noting that the IDC may be made aware of a contravention at an early stage, but has no power to require works to stop while the matter is resolved. As a result, works may be completed before effective action can be taken.

The shortcomings of the system have been acknowledged for some time. The States Resolution of 1989 directs the IDC to enhance the enforcement powers of the Law, including preventing planning infringements being nullified by changes in ownership.

### **5.3.3 Proposals for an Effective System**

The proposals described in section 3.5.1 are based on the following objectives:

- To change the emphasis of the system from prosecuting individuals to securing compliance with planning controls.
- To resolve most enforcement cases outside the criminal process.
- To provide a range of informal and formal responses so that the IDC can respond in an appropriate manner to individual cases.
- To ensure that the Law cannot be evaded by transferring property.
- To provide a corresponding ability for the purchasers of property to carry out effective checks of planning histories to ensure that they do not innocently acquire an enforcement liability.
- To provide emergency powers to stop illegal development proceeding where there is justification to do so.
- To provide a system that is capable of balancing the rights of the individual with those of their neighbours and the community at large.

The IDC has very carefully considered the representations made to it. It has concluded that its current proposals in relation to compliance are the best practical means to achieve its objectives.

The IDC has found a number of ways in which its proposals could be improved, and has worked out future procedures in greater detail so as to demonstrate their effectiveness. These are set out below as part of the IDC's responses to the points made in the consultation exercise.

### **5.3.4 Proposed Compliance Powers**

Criticism has been made that the proposed compliance powers are 'draconian' and contrary to human rights principles, and that the penalties proposed are excessive.

The proposed powers are those that are necessary to move away from a prosecution-led system to a compliance-led system. In one important sense, the proposed powers are less 'draconian' than the existing powers because their objective is to resolve the majority of cases without the involvement of the Courts.

It is not the IDC's policy or intention to use its formal enforcement powers against every minor breach of the Law that comes to its attention. Accordingly, Clause 48(1) requires that the IDC should first consider whether the breach 'should be remedied' before serving a Compliance Notice. The IDC proposes to strengthen the wording of this clause to emphasise this point. However, where a breach causes significant harm to amenity or undermines planning policy, the IDC wishes to be able to take effective but fair action to remedy matters. It considers that its proposals will achieve this and provide a better balance between the rights of the individual, his neighbours and the community at large. The proposals carefully provide checks and balances for this purpose, including rights of appeal and defences against prosecution.

In relation to prosecutions, it must be firmly stated that these are the responsibility of the Law Officers of the Crown. The IDC's responsibility is to respond to complaints, to investigate the facts, to instigate such actions as inviting a retrospective application where a minor breach appears to be causing little harm, and in future to issue challenge and compliance notices. Where appropriate, the IDC may refer its investigation to the Law Officers to decide what, if any, further action should be taken. The Law Officers then assess whether a prosecution is possible or desirable in accordance with well-established criteria.

So far as the proposed penalties are concerned, these have been set at a level advised by the Law Officers. They represent the maximum response open to a Court, following a conviction, and reflect the most serious possible cases. It will be for the Courts to determine what is appropriate in any individual case. However, it is important to remember that the financial advantages of carrying out unauthorised development can be substantial. It is clear that the present level of fines provides little deterrent effect.

Some comment has been made about the possibility of innocent parties being prosecuted. Particular reference has been made to agents and the employees of building firms. The current Law states that 'any person' carrying out illegal development may be liable to prosecution and the same phrase is used in the proposed Law. The proposed Law is more specific about the potential liability of agents but this does not, in practice, change the existing situation. In the future, as now, those undertaking development, in person or as an agent for another, should check that the requisite consent has been granted before proceeding. Attention is drawn to the defence contained in Clause 57(3).

Clause 64, which deals with offences by bodies corporate, is a standard provision dealing with an area where the potential defendant is likely to be a company. It does not make every employee of that body liable but refers to directors and others in similar positions of responsibility.

Finally, some representations refer to the proposed powers to enter property to rectify an infringement. The current Law already provides similar powers. The new proposals are adapted to the different circumstances that will arise where there has been a failure to comply with a compliance notice. The powers will remain under the effective supervision of the court.

### **5.3.5 Avoidance of Retrospective Effects**

It is an established legal principle that new legislation cannot make conduct unlawful that was not previously lawful. Clause 87(3) of the draft Law states this explicitly in relation to the Ordinances. The new criminal penalties cannot be given retrospective effect. The consultation exercise showed that this was an area of public concern such that the IDC has decided to work through some of the detail of the proposed transitional arrangements to provide reassurance that retrospective effects can be avoided.

In the case of prosecutions, the situation is straightforward. Where a breach is alleged to have occurred before the introduction of the new Law, any prosecution would be brought under the existing Law. Where the breach is alleged to have occurred after that date, the prosecution would be brought under the new Law. Once the new Law is in force, however, it will no longer be possible to follow up a successful prosecution with an application for an order requiring restitution. Instead, Compliance Notices will provide the means to achieve the rectification of breaches of the Law.

Compliance notices will only be served on alleged breaches of the Law that take the place after the introduction of the Law. In this way, no liability will be incurred until the proposed system of property history searches has been made fully available.

This will mean that there will be a period of time before the introduction of the new Law during which the existing enforcement problems will continue. The IDC has considered the option of backdating liability to cover this short period. It has, however, rejected this idea in favour of the simpler proposal described in the previous paragraph. This will give a clear cut off date that will be readily understood. It will avoid any possibility of retrospective effect and, because it allows the new system to build up over a period of time, will also avoid such problems as those that may arise from multiple changes of ownership over a short period.

Any breaches of the Law that take place between the present time and the introduction of the new Law will still be liable to prosecution under the old Law. This will act as a form of deterrent to those who might seek to exploit the situation.

The IDC has reconsidered the periods of liability and has decided to reduce them to four years in the case of operational development, and ten years in the case of changes of use. In practice, most complaints about illegal work are made shortly after the work has commenced and a period of four years appears to be adequate for this purpose. Changes of use, whose effects can only become apparent a considerable time after they are first implemented require a longer period if neighbour and other public interests are to be properly safeguarded. This is also discussed in 3.5.2. The shorter periods of liability will make the Law less onerous in the majority of cases (in fact the current Law contains no cut off date), and will make property history searches easier to achieve.

### **5.3.6 Property History searches and the Conveyance of Property**

The IDC is of the firm view that the proposed compliance powers are essential to strengthen the effectiveness of the system and to shift its focus away from prosecution to compliance. It recognises that these powers cannot be introduced until an effective means of checking compliance when property changes hands is made available so that the purchasers of property can ensure that they are not incurring a liability for any planning infringements perpetrated by a previous owner.

In jurisdictions with similar enforcement regimes to that proposed by the IDC, this is successfully achieved through 'property searches'. This is a procedure whereby a purchaser is enabled to research the planning matters affecting a property, including its planning history. As a result, it is possible to check compliance with the Law.

The IDC's original proposal was that a comprehensive system of property history searches would be provided to enable these checks to take place. Property history searches are already carried out in between 25% and 30% of cases, and the intention was to extend this procedure to deal with the greater numbers involved, and to open access to the files to enable more comprehensive checks to be made.

Representations from the public and from the professional bodies involved in property searches have argued that this system would not be capable of delivering the high degree of certainty that the conveyance system in Guernsey requires. They believe that the IDC should underpin the system by providing some form of certification of compliance.

The IDC has very carefully considered this matter and is sympathetic to the concerns that have been expressed. It proposes therefore that, as part of the property history search, prospective vendors and purchasers should be able to request the IDC to confirm whether compliance action will be taken in any particular case.

This will normally involve an inspection of the property. If an infringement is discovered the IDC may request compliance, request that a retrospective application is made, or may indicate its intention not to take compliance action.

Property history searches and inspections will involve substantial extra work for the IDC that it will not be possible to absorb within existing staff resources. Charging fees at an appropriate level could, however, offset the costs of the services. It is proposed that, unlike fees for planning applications, which it is not proposed to charge for at present, fees should be charged for this aspect of the IDC's service. Consequently, the IDC will review its establishment and procedures and will take steps to ensure that the necessary additional resources are made available prior to bringing the new compliance procedures into effect.

#### **5.4 Appeals to an Independent Adjudicator**

There have been comments on the proposal that appeals against Committee decisions should be made in the first instance to a single independent adjudicator who will review the case on its merits. One suggestion is that a panel of adjudicators would be fairer and more approachable. Another is that such a panel should include lay members.

There is no legal reason why appeals should not be made to a panel rather than to an adjudicator. The reasons in favour of the single adjudicator are primarily ones of cost, speed and ease of administration.

A panel would certainly be more costly and more difficult to assemble quickly and this would certainly influence its accessibility to the average appellant. It may prove difficult to assemble a large enough pool of potential adjudicators to make a panel a feasible option in every case. This is likely to be the case because any qualified professional on the Island is likely to have past connections with many sites and potential appellants that would prevent them from being impartial in a significant number of cases.

One solution to this would be to use the U.K. Planning Inspectorate, which operates to very high standards of professionalism and efficiency throughout the British Isles. This solution would give the benefit of accessing a large pool of professional expertise within the overall control of an experienced and respected body.

The introduction of lay panel members would be problematic. The review of a case on its merits requires the application of professional skills. A partly lay panel would need legal and professional advice to be made available to it. There would be a higher risk of legal challenges, especially where there is a split decision, or where the panel appear not to have taken correct advice.

On balance, the IDC believes that a single adjudicator would be the most effective and efficient way of dealing with appeals that involve a hearing. The adjudicator's decision would be subject to a right of appeal to the courts on a point of law. This could include a claim that the adjudicator had not addressed the facts correctly.

### **5.5 States Development**

The draft Law proposes that States development should be brought within planning law. The IDC believes that policy and decisions on States development should be made within an integrated framework. In this way, the objectives of planning, to facilitate the development the island needs in a sustainable way, to protect the natural and built environment and to resolve competing demands for land, can best be achieved. The IDC also believes that this framework should be subject to the direction of the States through the process of ratification of the Strategic Land Use Plan and the Development Plans, Subject Plans and Local Planning Briefs. The States will also be the final arbiter when a Committee of the States wishes to challenge a decision of the IDC rather than the normal adjudication procedure. This will mean that all Committees of the States, including the IDC, will be working within a unified planning system, overseen by the States.

The draft Law provides for the States to set down policies for both strategic and development plan preparation. The Strategic Land Use Plan, prepared by the Strategic Land Planning Group under the Advisory and Finance Committee, will contain policies relating to the Island's strategic needs. The land use plans produced by the IDC must take account of these policies and must be certified as in accordance with them. The land use plans will also contain policies to deal with other non-strategic States requirements. This will be an important step forward. At present, States development is exempt from the Law which means that the IDC is unable to take account of States' needs in its Plans or to integrate them with private demands on land. The integration of States development with the rest of the planning system will, therefore, make it possible for the IDC to prepare Development Plans to reflect all the Island's needs, rather than a partial picture, as at present.

An important consequence of the fact that applications for States development would in future be dealt with within the planning system is that the public generally, and affected neighbours in particular, would then be able to comment and have their comments taken into account on the same basis as private development, which would better meet human rights requirements.

The IDC acknowledges the comments of some States Committees that development should not be subject to undue delay. In the case of minor development, it therefore proposes a wide range of exemptions from planning control within the Exemptions Ordinance. In the case of major development, which is currently subject to consultation procedures, the existence of States agreed policy will reduce time-consuming conflict in future because the ground rules will have been set.

## 5.6 Fees

The draft Law contains provision for the introduction of fees but the IDC does not intend to introduce an Ordinance to implement them at this stage. There has been a number of objections to the principle of including even an enabling power within the Law. Others have expressed the view that it is only fair that the users of the IDC services should pay for them, rather than the costs being borne by general taxation.

The provision arises directly from the States resolution of 1989. The Advisory and Finance Committee has indicated its support for the inclusion of this provision and the IDC proposes to retain it as an enabling power for the future. It proposes to widen its wording to include other aspects of the IDC's services.

## 6 RECOMMENDATIONS

The IDC recommends the States to :-

1. approve the proposals set out in Section 3 of this policy letter concerning the drafting of the Projet de Loi;
2. approve the proposals set out in Section 4 of this policy letter concerning the legislative provision to be made by Ordinance in relation to :-
  - (i) Plans.
  - (ii) Control of Development – General Provisions.
  - (iii) Control of Development – Exemptions.
  - (iv) Control of Development – Use Classes.
  - (v) Control of Development – Environmental Impact Assessments.
  - (vi) Special Controls.
  - (vii) Enforcement.
  - (viii) Appeals and Reviews.

I should be grateful if you would lay this matter before the States with the appropriate propositions, including one directing the preparation of the necessary legislation.

Yours faithfully

JOHN E LANGLOIS

President  
Island Development Committee.

**APPENDIX 1**  
**DRAFT LAND PLANNING AND DEVELOPMENT LAW**  
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22. Planning status: use registration, certificates and opinions.

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23. Planning covenants.
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} Details to  
be inserted  
in due  
course

- APPENDIX 1
- APPENDIX 2

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

<sup>a</sup> Article x of  
Billet d'État  
No. xxx of  
xxx, etc.

PART 1  
PRELIMINARY

Purposes of this Law.

- 1 (1) The purposes of this Law are to protect, enhance and facilitate sustainable development of the physical environment of Guernsey.
- (2) In this regard the Law will seek-
  - (a) to protect and enhance the natural beauty and amenity of Guernsey's coasts, cliffs, countryside and other open spaces;
  - (b) to protect and enhance Guernsey's heritage of buildings, monuments and sites of historic, architectural or archaeological importance;
  - (c) to preserve and promote biological diversity;
  - (d) to achieve quality in the design and implementation of development so as to respect Guernsey's architectural, archaeological and historic heritage and make a positive contribution to the built environment;
  - (e) to maintain a balance between the competing demands of the community for the use of land;
  - (f) to ensure that all development is carried out in a sustainable manner to achieve a safe and healthy living and working environment.
- (3) With a view to achieving these purposes the Law will provide a framework within which development in Guernsey can be planned and regulated in accordance with the strategic policies of the States by-
  - (a) the preparation and adoption of Strategic Land Use, Development and Subject Plans and Local Planning Briefs;
  - (b) controlling the carrying on of building, engineering, mining and other operations and changes in the use of land or buildings in the light of such Plans and Briefs;
  - (c) applying special and additional controls in relation to areas, sites, buildings and operations of particular importance, interest, sensitivity or concern;
  - (d) the preparation and adoption of building regulations.

Application of this Law by reference to its purposes and intent.

- 2 (1) It is the duty of any person exercising any function under this Law, to do so in the light of, and with a view to achieving, its purposes.
- (2) In particular, but without prejudice to the generality of subsection (1), no power conferred by or under this Law to make any Ordinance or regulations, give any guidance or enter any agreement may be exercised otherwise than for the purposes of this Law.

PART 2  
STRATEGIC AND DEVELOPMENT PLANNING

CHAPTER 1  
STRATEGIC LAND-USE PLANNING

Appointment of Strategic Land Planning Group.

- 3 (1) The States Advisory and Finance Committee shall appoint a Strategic Land Planning Group, the members of which shall be nominated-
  - (a) by the States Advisory and Finance Committee,
  - (b) by the Island Development Committee, and
  - (c) by any other States Committees which appear to the States Advisory and Finance Committee to have significant responsibility in relation to the environment.
- (2) If it appears to the Group to be expedient to do so, it may co-opt further members.

Transition from the Strategic and Corporate Plan to the Strategic Land Use Plan.

- 4 The Part of the Strategic and Corporate Plan required to be prepared under section 2 of the Island Development (Amendment) (Guernsey) Law, 1990<sup>b</sup>, which by virtue of the Resolution of the States dated 9th July, 1992, is to be Part 2 of that Plan shall instead become the Strategic Land Use Plan.

<sup>b</sup> Ordres en  
Conseil Vol.  
XXXII, p.33.

Preparation of Strategic Land Use Plan.

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- 5 (1) It is the duty of the Strategic Land Planning Group from time to time to consider-
- (a) the implications for land planning and use of the strategic, economic or social objectives for the time being set out in the Strategic and Corporate Plan for Guernsey, and
  - (b) the general guidance and specific directions which should be given to the Committee concerning the exercise of any of its functions under this Law in any circumstances in which, in the opinion of the Strategic Land Planning Group, their exercise may affect the achievement of those objectives, and
  - (c) whether any alteration to the Strategic Land Use Plan is necessary.
- (2) If-
- (a) it appears to the Strategic Land Planning Group that such an alteration is necessary, or
  - (b) it is directed to do so by the States Advisory and Finance Committee,
- it must prepare a fresh draft Strategic Land Use Plan or draft amendments of that Plan (including such transitional provisions as appear to the Group to be appropriate) and submit the draft Plan or amendments to that Committee for the consideration of the States.
- (3) The States Advisory and Finance Committee must-
- (a) consider the draft so submitted,
  - (b) determine whether in its opinion it is consistent with the Strategic and Corporate Plan, and
  - (c) lay the draft Plan or amendments before the States for their consideration, together with a statement of that Committee's opinion as to that consistency.
- (4) The States may adopt any draft Plan or amendments laid before them under subsection (3), either without modification or subject to such modifications as they may approve, in accordance with any rules of procedure for the time being in force.
- (5) When preparing any draft Strategic Land Use Plan, the Strategic Land Planning Group-
- (a) must consult the Committee in relation to any such guidance or directions as are mentioned in subsection (1)(b) and take its views into account, and
  - (b) may consult any Committee of the States, individual, body or group.

CHAPTER 2  
DEVELOPMENT PLANNING

The Committee's general duties.

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- 6 For the purposes of this Part, it is the duty of the Committee-
- (a) to seek to achieve, so far as possible, both the purposes of this Law and the objectives set out in the Strategic and Corporate Plan;
  - (b) to take into account the general guidance and specific directions given to it in the Strategic Land Use Plan in exercising the functions to which that guidance or those directions relate;
  - (c) to keep under review the matters which may be expected to affect the planning of the development of Guernsey; and
  - (d) from time to time, as required or authorised by or under this Law, to prepare for the consideration of the States Development Plans, Subject Plans and Local Planning Briefs and amendments of them.

Transition from current plans to Development Plans, Subject Plans and Local Planning Briefs.

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- 7 (1) The Detailed Development Plans prepared under section 6 of the Island Development (Guernsey) Law, 1966<sup>d</sup>, as they have effect immediately before the commencement of this Law, shall, subject to the following provisions of this Law, continue to have effect and shall be known instead as Development Plans.
- (2) The outline planning briefs adopted by the States and listed in Schedule 1 to this Law shall, subject to the following provisions of this Law, continue to have effect and shall be known as Local Planning Briefs.

<sup>d</sup> Ordres en Conseil  
Vol. XX,  
p.276;  
Vol. XXII,  
p.573;  
Vol. XXIII,  
p.231;  
Vol. XXVII,  
p.355;  
Vol. XXXI,  
p.61;  
Vol. XXXII,  
p.33.

Preparation of draft Development Plans.

- 8** (1) It is the duty of the Committee-
- (a) to secure that the whole of Guernsey is covered by a Development Plan or two or more such Plans taken together,
  - (b) to keep those Plans under review,
  - (c) from time to time to consider whether any alteration to any of those Plans is necessary, and
  - (d) if it appears that any such alteration is necessary, to prepare a fresh Development Plan or draft amendments of that Plan for the consideration of the States.
- (2) Each draft Development Plan, must, in relation to the area covered by it, set out-
- (a) the Committee's proposals for managing the physical environment with a view to facilitating the achievement of the objectives of the Strategic Land Use Plan, having regard to the implications for land planning of those objectives,
  - (b) the Committee's proposals and general policies-
    - (i) for controlling the development and use of land,
    - (ii) for protecting and enhancing the environment, and
    - (iii) where, appropriate, for facilitating such development, use, protection or enhancement by the promotion of planning covenants, and
  - (c) any consequential or incidental amendments of any Subject Plan or Local Planning Brief which may be appropriate.
- (3) A draft Development Plan must take into account all guidance and directions given to the Committee in the Strategic Land Use Plan.
- (4) Each draft Development Plan must include at least one map of the area covered by it, sufficient to indicate where it is proposed that each of the proposals and policies set out in the Plan pursuant to subsection (2) will be implemented or applied.

Preparation of draft Subject Plans.

- 9** (1) The Committee-
- (a) may at any time prepare a draft Subject Plan to address a particular issue or proposal affecting the use of land in Guernsey generally, and
  - (b) must do so if required by a direction in the Strategic Land Use Plan.
- (2) A draft Subject Plan must set out-
- (a) the Committee's assessment of the planning implications of the issue or proposal concerned,
  - (b) the Committee's opinion as to the way in which any planning matters relating to, or arising from, that issue or proposal can best be dealt with so as to achieve the purposes of this Law and the objectives of the Strategic Land Use Plan,
  - (c) the Committee's policies with regard to questions concerning that issue or the implementation of that proposal, and
  - (d) any consequential or incidental amendments of any Development Plan or Local Planning Brief or amendments of any other Subject Plan which may be appropriate.
- (3) A draft Subject Plan must take into account all guidance and directions given to the Committee in the Strategic Land Use Plan.

Preparation of draft Local Planning Briefs.

- 10** (1) The Committee-
- (a) may at any time prepare a draft Local Planning Brief to address planning issues within a locality generally or where a particular form of development is proposed, and
  - (b) must do so if so required by the Strategic Land Use Plan, a Development Plan or a Subject Plan.
- (2) A draft Local Planning Brief must set out the Committee's proposals and policies for the locality concerned, as respects its development, redevelopment or enhancement.
- (3) A draft Local Planning Brief must-
- (a) take into account all guidance and directives given to the Committee in the Strategic Land Use Plan,
  - (b) conform with the objectives of any Development Plan in respect of the locality and of any Subject Plan which is relevant to it, and
  - (c) in so far as they are relevant to the locality concerned and any neighbouring locality the Committee expects to be affected, take into account the matters mentioned in section 6(a) and (c).
- (4) A draft Local Planning Brief must include at least one map showing the locality covered by it.

Further provisions as to the contents of Development Plans, Subject Plans and Local Planning Briefs.

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- 11** (1) The States may by an Ordinance made under this subsection make such provisions as they consider appropriate as to-
- (a) the designation by a Development Plan or Subject Plan of any area as to which the Plan makes special provision, for the purpose of applying any provisions made by or under Part 3 or 4 of this Law or otherwise, and
  - (b) other matters concerning the content of Development Plans, Subject Plans and Local Planning Briefs.
- (2) An Ordinance under subsection (1)(a) may, in particular, make provision-
- (a) for the designation of a "conservation area" in a Development Plan or Subject Plan which identifies an area which is of special architectural or historic interest and the character or appearance of which it is desirable to preserve or enhance by the application of the special provisions in Chapter 3 of Part 4,
  - (b) for the designation of a "site of special significance" in a Development Plan or Subject Plan which identifies any place as having special significance (whether because of archaeological, botanical, geological, scientific, cultural, zoological or any other interest) and it is desirable to preserve or enhance by the application of the special provisions in Chapter 4 of Part 4.
- (3) Subject to sections 8(4) and 10(4) and any provisions made by or under this section, the form and presentation of a draft Development Plan, Subject Plan or Local Planning Brief (for example, whether it contains maps, diagrams, or illustrations in addition to written statements) are matters for the Committee.

Procedure for examination, adoption and revision of Development Plans, Subject Plans and Local Planning Briefs.

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- 12** (1) The States shall by an Ordinance made under this subsection make such provision as they consider appropriate in connection with the examination and adoption of Development Plans, Subject Plans and Local Planning Briefs and their duration and revision, and providing for a planning inquiry to be held in the case of each such Plan or Brief.
- (2) An Ordinance under subsection (1) may, in particular, make provision for-
- (a) the submission of draft Plans or Briefs to the Strategic Land Planning Group and their certification as consistent with Part 1 of the Strategic and Corporate Plan or the Strategic Land Use Plan,
  - (b) their publication,
  - (c) the appointment of Inspectors,
  - (d) the consideration of the draft Plans and Briefs and written representations about them by Inspectors and, subject to any matters for which provision is made by regulations under subsection (3), the manner in which planning inquiries are to be held by them and the making of reports by them to the Committee,
  - (e) the procedure for the laying of draft Plans and Briefs before the States,
  - (f) the procedure for the consideration and adoption by the States of draft Plans and Briefs,
  - (g) the procedure for the amendment of Plans and Briefs and the initiation of new Plans and Briefs, and
  - (h) such consequential, transitional, incidental and supplementary matters as the States consider appropriate.
- (3) The Committee may by regulations made under this subsection make such provision as it considers necessary or expedient in relation to-
- (a) the procedure to be adopted before a planning inquiry takes place,
  - (b) the procedure to be adopted at a planning inquiry,
  - (c) visits to sites affected by the subject-matter of a planning inquiry,
  - (d) the powers of Inspectors at planning inquiries,
  - (e) the making of reports by Inspectors to the Committee,
  - (f) such consequential, transitional, incidental and supplementary matters as the Committee considers appropriate.

PART 3  
CONTROL OVER DEVELOPMENT

*"Development"*

Meaning of "development".

- 13** (1) Subject to the provisions of this section, "**development**" means-
- (a) the carrying out of building, engineering, mining or other operations, in, on, over or under land, and
  - (b) the making of any material change in the use of land.
- (2) The following operations are included within subsection (1)(a)-
- (a) the demolition of the whole or part of a building or the whole or part of a wall, hedge, earthbank of other immovable structure;
  - (b) rebuilding;
  - (c) alterations of or additions to buildings which materially affect their external appearance;
  - (d) other operations normally undertaken by a person carrying on business as a builder;
  - (e) placing on land a moveable structure;
  - (f) attaching to or painting or otherwise exhibiting on the exterior of any structure, or placing on open land, an advertisement or sign.
- (3) The following are material changes of use within subsection (1)(b) (if they would not otherwise be so)-
- (a) any use of land which was previously unused;
  - (b) the resumption on any land of a use which has been abandoned;
  - (c) any change in the use of land from a use specified in one use class to a use specified in a different use class;
  - (d) an increase or decrease in the number of dwellings within a single building.
- (4) The States may, by an Ordinance made under this subsection, make further provision as to the matters which are or, as the case may be, are not to constitute development for any of the purposes of this Law.
- (5) In particular, an Ordinance made under subsection (4) may, in relation to descriptions of activities or circumstances specified in the Ordinance, provide that they are or are not to constitute development-
- (a) in any circumstances,
  - (b) in such circumstances as are so specified, or
  - (c) subject to such conditions or exceptions as are so specified.
- (6) In this section "**use class**" means a class of uses identified as such by an Ordinance made by the States under this subsection, specifying the uses of land which fall into each such class for the purposes of this Law and of the descriptions used in the Strategic Land Use Plan and any Development Plan.

*Planning permission*

Requirement for planning permission.

- 14** Subject to the following provisions of this Part, planning permission is required for the carrying out of any development of land.

Grants of planning permission.

- 15** Planning permission or outline permission may be granted-
- (a) by the Committee on an application duly made to it, or
  - (b) by an Ordinance made under section 49(2) or otherwise, or
  - (c) on an appeal under section 67 or on a reconsideration of a decision following a review under section 71.

Applications for planning permission.

- 16** (1) where an application for planning permission is duly made to the Committee, the Committee may-
- (a) grant the application either unconditionally or subject to conditions (including conditions limiting the period for which the permission is effective),
  - (b) grant outline permission (that is, planning permission subject to the reservation of particular matters for subsequent approval) either unconditionally or subject to conditions,
  - (c) refuse the application, or
  - (d) in a case where subsection (2) applies, decline to consider the application;
- but where the application is for outline permission or for permission for a limited period, only such permission may be granted.
- (2) This subsection applies where-
- (a) within the period of six months ending with the date on which the application is received by the Committee, another application has been refused by the Committee or an appeal against the refusal of another application has been dismissed, and
  - (b) in the opinion of the Committee-
    - (i) that other application was in respect of land and development which are substantially the same as the land and development in respect of which the later application is made, and
    - (ii) there has been no significant change in any material circumstances that that refusal or dismissal.

- (3) The States may by an Ordinance made under this subsection make further provision as to-
  - (a) the conditions and reservations which may be imposed under subsection (1),
  - (b) the effect of a grant of outline permission,
  - (c) the effect of a grant of permission subject to conditions.
- (4) The grant or refusal of permission takes effect on the date of its issue.
- (5) In determining an application for planning permission or outline permission, the Committee must have regard-
  - (a) to the purposes of this Law;
  - (b) to any relevant Development Plan, Subject Plan or Local Planning Brief; and
  - (c) to such matters relating to the purposes of this Law as may be specified by an Ordinance made by the States under this paragraph.
- (6) The States may by an Ordinance made under this subsection make such further provision as they consider desirable in connection with the making and determination of applications for planning permission or outline permission.
- (7) An Ordinance under subsection (6) may, in particular, make provision about-
  - (a) the publicity to be given to applications,
  - (b) the circumstances in which the Committee may require that an application be accompanied by an assessment of the likely impact of the proposed development on any aspect of the environment, the manner in which such assessments should be made and any further requirements concerning them,
  - (c) the arrangements to be made for the application and any documents accompanying it to be available for inspection by the public,
  - (d) the procedure to be followed at any meeting of the Committee at which an application is considered and, in particular, the requirement for any such meeting to be open to the public, and
  - (e) the circumstances in which applications may be resubmitted for consideration.

#### Building regulations.

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- 17 (1) The Committee may make regulations ("**building regulations**") imposing requirements as to-
  - (a) the design, construction, reconstruction, structural alteration, repair and maintenance of buildings and roads;
  - (b) the planning and development of sites for buildings; and
  - (c) the alterations or additions to any building, which are desirable in connection with a change of its use.
- (2) Planning permission and outline permission under this Law are subject to the condition-
  - (a) that the development to which they relate and all the operations which constitute or are incidental to that development must be carried out in compliance with all such requirements of the building regulations as are applicable to them; and
  - (b) that no operation to which such a requirement applies may be commenced or continued unless-
    - (i) plans relating to the operation have been approved by the Committee, and
    - (ii) it is commenced or, as the case may be, continued, in accordance with that requirement and any further requirements imposed by the Committee when approving those plans, for the purpose of securing that the building regulations are complied with.
- (3) The States may by Ordinance under this section make provision as to-
  - (a) the submission of such plans to the Committee;
  - (b) the information to be given by applicants;
  - (c) the consideration and approval or rejection of such plans;
  - (d) the effect and duration of such approvals;
  - (e) without prejudice to the generality of paragraph (d), the manner in which requirements imposed under building regulations and approvals of plans in respect of operations affected by those requirements have effect in any case where requirements are also imposed in respect of those operations under any other enactments;
  - (f) appeals against and reviews of the Committee's decisions as respects imposition of conditions under subsection (2)(b)(ii);
  - (g) such incidental, consequential and transitional matters as they think fit.

#### Effect of planning permission.

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- 18 (1) Planning permission ceases to have effect unless the development permitted by it is commenced within three years of the date it is granted (or such shorter period as may be specified in the permission).
- (2) Planning permission enures for the benefit of the land concerned and of every person for the time being having an interest in it.
- (3) Any conditions subject to which planning permission is issued are enforceable against every such person.
- (4) Planning permission for the erection of a building is only permission to use it for the purpose specified in the permission or, subject to any restriction so specified, for any other purpose for which it is designed.
- (5) Planning permission is only permission to carry out the development specified in it (subject to any conditions so specified), and does not imply the giving of any other approval or consent required under this Law or any other enactment.

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 Completion notices.
 

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- 19 (1) Where the development permitted by a planning permission is commenced within three years of the date it is granted (or such shorter period as may be specified in the permission), but the Committee is of the opinion that the development will not be completed within a reasonable period, it may issue a notice ("**a completion notice**") stating that the permission will cease to have effect at the expiry of the period specified in the notice.
- (2) That period must be at least 12 months from the date the notice is issued and at the expiry of that period the permission becomes invalid, so far as the development which has not been carried out under it before the expiry of that period is concerned.
- (3) A copy of the completion notice must be served within 28 days after its issue-
- (a) on the owner of the land concerned;
  - (b) on the occupier of that land, if he is not its owner; and
  - (c) on every other person appearing to the Committee to have an interest in that land which is materially affected by the notice.
- (4) The States may by an Ordinance made under this subsection make provision as to-
- (a) appeals against and reviews of completion notices issued by the Committee under this section;
  - (b) the availability and determination of claims for compensation by persons suffering loss or damage as a result of the service of a completion notice;
  - (c) such incidental, consequential and transitional matters as they think fit.

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 Revocation and modification.
 

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- 20 (1) If-
- (a) the Committee grants an application for planning permission, and
  - (b) it later appears to the Committee that by reason of any change in any matter to which it was required to have regard in determining the application for the grant of that permission, it would no longer grant the application, it may revoke or modify that permission.
- (2) A planning permission for a change of use may only be revoked or modified before the change has taken place.
- (3) A planning permission for the carrying out of building or other operations may only be revoked or modified before those operations have been completed.
- (4) Revocation or modification of a planning permission does not affect the lawfulness of anything already done.
- (5) Where permission is revoked or modified under this section, the Advisory and Finance Committee shall appoint a person appearing to it to be suitable, by reason of his qualifications or experience and independence from the Committee and from any person who may be entitled to compensation, to determine-
- (a) whether any person has suffered any loss or damage as a result of the revocation or modification, and
  - (b) if so, the appropriate amount of compensation required fully to compensate him for that loss or damage.
- (6) A determination under subsection (5) shall be final and the Committee shall pay any amount determined under paragraph (b) of that subsection to the appropriate person.
- (7) The States may by Ordinance make further provision as to the appointment of persons under subsection (5) and their determinations.

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 Register of applications for planning permission.
 

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- 21 (1) The Committee shall prepare and maintain a register-
- (a) of all applications for planning permission duly made to it, and
  - (b) of all decisions made in relation to those application by the Committee or any other body or person to whom functions in relation to those applications are given by or under this Law.
- (2) The States may, by an Ordinance made under this subsection, make such provision concerning that register as they consider appropriate.

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*Planning status: use registration, certificates and opinions*


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 Planning status: use registration, certificates and opinions.
 

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- 22 (1) The States may, by an Ordinance made under this subsection, make provision-
- (a) for the registration of the existing use of any land; and
  - (b) as to the effect of such registration for the purposes of this Law.
- (2) The States may, by an Ordinance made under this subsection, make provision-
- (a) for applications to be made to the Committee for it to give its opinion as to whether any proposed use of, or proposed building or other operations on, any land would constitute or involve development or require planning permission;

- (b) for applications to be made to the Committee for it to issue a certificate-
  - (i) as to the lawfulness of any existing use or of any such operations which have been carried out or of any such proposed use or operations, or
  - (ii) as to whether any action or omission is one in respect of which any action may be taken under Part 5 of this Law;
- (c) as to the giving of such opinions and issuing of such certificates;
- (d) as to the effect of such opinions and certificates for the purposes of this Law or any provisions of it; and
- (e) for such incidental, consequential and transitional matters as they consider appropriate.

*Planning covenants*

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**Planning covenants.**

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- 23** (1) For the purposes of this Law, the owner of any land may, whether pursuant to an agreement made by the Committee under this Law or otherwise, enter into a covenant ("**a planning covenant**")-
- (a) restricting the development or use of land in any specified way;
  - (b) requiring specified operations or activities to be carried out in, on, under or over the land;
  - (c) requiring the land to be used, maintained or managed in any specified way.
- (2) A planning covenant may relate to land at more than one site and, in particular, restrictions relating to one site may relate to planning purposes connected with another site.
- (3) A planning covenant-
- (a) may be entered into unconditionally or subject to specified conditions;
  - (b) may impose any restriction or requirement either indefinitely or for such period as may be specified;
  - (c) may be entered into for the benefit of any person or description of person (including the general public or any section of the general public) expressed in the covenant to be within its contemplation; and
  - (d) may require a sum or sums to be paid to the States of any Committee of the States on a specified date or dates or periodically to meet-
    - (i) expenses incurred in undertaking public works which are required or desirable as a consequence of any development specified in the covenant, or
    - (ii) other public expenditure attributable to that development.
- (4) A planning covenant may only be entered into by an instrument in writing registered at the Greffe in the Livre des Contrats which-
- (a) states that the covenant is a planning covenant for the purposes of this Law;
  - (b) identifies the land which is subject to the covenant;
  - (c) identifies the person entering into the covenant as the owner of that land;
  - (d) identifies the person or description of persons for whose benefit the covenant is entered into and any organisation, body or other person by whom it is expressed to be enforceable; and
  - (e) sets out the restrictions and requirements undertaken pursuant to the covenant.
- (5) A planning covenant-
- (a) is not liable to assessment under the Document Duty (Guernsey) Law, 1973<sup>e</sup>; and
  - (b) may not be registered in the Livre des Hypothèques, Actes de Cour et Obligations, or noted in the index to it.

**Enforcement of planning covenants.**

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- 24** (1) Subject to subsection (4), a planning covenant is enforceable-
- (a) by the Committee,
  - (b) by any person for whose benefit it is expressed to be entered into, or
  - (c) by any organisation, body or other person expressed in it to be representative of the interests of the general public or any section of the general public.
- (2) A planning covenant may only be enforced as a charged covenant under Part II of the Real Property (Reform) (Guernsey) Law, 1987<sup>f</sup> and is enforceable in the same manner as a covenant entered into by the owner of a servient tenement and expressed to have been made for the benefit of a dominant tenement owned by the person seeking to enforce it.
- (3) The persons against whom a planning covenant is enforceable are-
- (a) the person entering into the covenant;
  - (b) any person deriving title from that person in respect of his interest in any of the land subject to the covenant; and
  - (c) any person deriving title under a person falling within paragraph (a) or (b), in respect of any lesser interest in that land;
- and, in the case of a person falling within paragraph (b) or (c), the covenant is enforceable as if that person had also been an original covenanting party in respect of the interest for the time being held by him.
- (4) A planning covenant may be expressed so as to cease to bind any person after he ceases to have an interest in the land.

<sup>e</sup> Ordres en Conseil Vol. XXIV, p.74 and 236; Recueil

d'Ordonnances Tome XXVI, p.139; No. IX of 1997; No. XXII of 2000.

<sup>f</sup> Ordres en Conseil Vol. XXX, p.100.

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 Modification and discharge of planning covenants.
 

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- 25 (1) A planning covenant may not be modified or discharged except-
- (a) by agreement between the interested parties, or
  - (b) in accordance with subsections (4) to (7) and Part 6.
- (2) For the purposes of subsection (1)(a), the interested parties are-
- (a) the Committee;
  - (b) every party to any agreement in pursuance of which the planning covenant is expressed to be entered into;
  - (c) every relevant person for whose benefit the planning covenant is expressed to be entered into; and
  - (d) every person against whom the planning covenant is enforceable.
- (3) A person is a relevant person for the purposes of subsection (2)(c) if-
- (a) he is mentioned by name in the planning covenant, or
  - (b) he falls within a description of persons mentioned in it and is to be treated as an interested party for the purposes of subsection (1)(a), in accordance with an Ordinance made by the States under this subsection.
- (4) A person against whom a planning covenant is enforceable may at any time after the expiry of the period of five years beginning with the date on which the covenant is entered into (or such earlier time as the Committee may allow) apply to the Committee for the covenant-
- (a) to have effect subject to such modifications as may be specified in the application; or
  - (b) to be discharged.
- (5) An application under subsection (4) for the modification of a planning covenant may not specify a modification imposing an obligation on any person against whom the covenant is enforceable (other than the applicant).
- (6) Where an application is made to the Committee under subsection (4), the Committee may determine-
- (a) that the planning covenant shall continue to have effect without modification;
  - (b) if the covenant no longer serves a useful purpose, that it shall be discharged; or
  - (c) if the covenant continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- (7) Before making a determination within subsection (6)(b) or (c) the Committee must take reasonable steps to consult-
- (a) all parties to any agreement pursuant to which the planning covenant is expressed to be entered into (other than the applicant); and
  - (b) every person for whose benefit the planning covenant is expressed to be entered into.

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 Modification of planning covenants: supplemental provisions.
 

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- 26 (1) Where-
- (a) the Committee determines that a planning covenant shall have effect subject to modifications specified in an application made under section 25, or
  - (b) a modification is agreed in accordance with section 25,
- the covenant as so modified shall be registered in the Livre des Contrats at the Greffe and, as respects any acts or omissions after the time when it is so registered, shall be enforceable in all respects in place of the original covenant in accordance with section 24(2).
- (2) For the avoidance of doubt-
- (a) section 25 and this section shall apply in substitution for Part III of the Real Property (Reform) (Guernsey) Law, 1987<sup>g</sup> (the provisions of which Part shall not apply to planning covenants),
  - (b) a planning covenant may lawfully restrict or modify the application of section 25 and this section.
- (3) The States may by an Ordinance made under this subsection make such provisions as they consider desirable in connection with the making and determination of applications under section 25 including provision for appeals.

<sup>g</sup> Ordres en  
Conseil Vol.  
XXX, p.100.

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*Searches in respect of properties*


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 Searches in respect of properties.
 

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- 27 (1) The States may, by an Ordinance made under this subsection, make such provision as they consider appropriate in connection with permitting access by specified persons to information relating to planning matters held by the Committee.
- (2) An Ordinance under subsection (1) may, in particular, make provision for-
- (a) the maintenance by the Committee of registers or other means of collating and storing planning information about properties,
  - (b) the persons to whom access to some or all of that planning information may be permitted,
  - (c) the times and places at which persons are able to search that planning information,
  - (d) the weight that can be placed on any planning information available for search, and
  - (e) such consequential, transitional, incidental and supplementary matters as the States consider appropriate.

*Development Control Ordinances*

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**Development Control Ordinances: supplementary provision.**

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- 28** (1) The States may, by an Ordinance made under this subsection, specify descriptions of development which may, notwithstanding any other provision of this Law, be carried out without planning permission-
- (a) in any circumstances,
  - (b) in such circumstances as are so specified, or
  - (c) subject to such conditions or exceptions as are so specified.
- (2) Without prejudice to the generality of subsection (1), an Ordinance under that subsection may provide that development may be carried out without planning permission if any aspect of the development specified in the Ordinance has been approved by any Committee of the States or any other person appearing to the States to be appropriate and so specified.
- (3) The States may, by an Ordinance made under this subsection, make such provision as appears to them to be desirable in connection with the provisions of this Part of this Law and to supplement this Part.

PART 4  
SPECIAL CONTROLS

CHAPTER 1  
MONUMENTS AND ARCHAEOLOGICAL SITES

The protected monuments list.

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- 29 (1) The States Heritage Committee shall prepare, maintain and keep under review a list, to be known as "**the protected monuments list**", of such monuments, structures, artefacts, caves, ruins or remains (whether on or below the surface of any land) as in its opinion it is a matter of public importance by reason of their archaeological, historic, traditional, artistic or other special interest to preserve.
- (2) The States Heritage Committee may insert, amend or delete any entry on the list at any time if in its opinion it is appropriate to do so.
- (3) The States may by Ordinance under this section make provision as to-
- (a) the manner and form in which the list is to be kept,
  - (b) the information to be included in it and, in particular, the area to be regarded as part of the monument, structure, artefact, cave, ruins or remains for the purposes of this Chapter,
  - (c) the publicity to be given to the listing of any monument, structure, artefact, cave, ruins or remains, or to any amendment or deletion of any entry on the list,
  - (d) the effect of listing under this section as respects any permission, approval or consent previously granted under this Law and anything taking place by virtue of it, including the payment of compensation for consequential loss, and
  - (e) such other matters relating to listing under this section as they consider appropriate.
- (4) The States shall by Ordinance under this section make such provision as they consider appropriate for appeals to be brought against the listing, or amendment of the listing, of any monument, structure, artefact, cave, ruins or remains, including, in particular, provision as to-
- (a) the persons who may bring such appeals;
  - (b) the procedure to be adopted for such appeals; and
  - (c) such other matters corresponding to provision made under Part 6 of this Law as they consider appropriate.
- (5) If it appears to the States that it is appropriate that this Chapter should apply to anything which could not otherwise be listed under this section, they may by Ordinance under this section modify subsection (1) so as to enable it to be listed and make such other consequential amendments as they consider appropriate.

General functions of authorities as respects protected monuments.

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- 30 (1) It is the duty of any Committee of the States when exercising its functions under this Law-
- (a) to secure so far as possible that monuments, structures, artefacts, caves, ruins and remains listed on the protected monuments list ("**protected monuments**") are protected and preserved, and
  - (b) in particular, in exercising its functions with respect to any buildings or other land in the vicinity of a protected monument, to pay special attention to the desirability of preserving the monument and its setting.
- (2) Subsection (1)(a) is not to be construed as preventing any alteration which is for a purpose connected with enabling or facilitating access to, or enhancing appreciation of, a protected monument by the public.

Further controls and powers as respects protected monuments, etc.

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- 31 (1) There is a strong presumption against planning permission being granted for any development affecting a protected monument.
- (2) The States may by Ordinance-
- (a) provide that the carrying out of any activity specified in the Ordinance which would not otherwise constitute development does so where it affects or may affect a protected monument;
  - (b) provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any activity which is only development by virtue of paragraph (a)), does so where it affects or may affect a protected monument;
  - (c) provide for the execution of works for the protection and preservation of protected monuments and the recovery of the costs of such works when executed by or on behalf of the States Heritage Committee;
  - (d) provide for the circumstances in which the States Heritage Committee may undertake the compulsory acquisition of any protected monument which in its opinion is seriously at risk of damage or deterioration, and the basis of the compensation payable in the event of such an acquisition; and
  - (e) make provision for the reporting and recording of finds of archaeological or historic significance which are-
    - (i) made at or in the vicinity of any protected monument, or
    - (ii) likely to be a material consideration in determining whether any monument, structure, artefact, cave, ruin or remains becomes a protected monument or any site is designated as a site of special significance.

- (3) The States may by Ordinance under this section provide for the States Heritage Committee to make grants or loans to assist with expenditure which has made or will make a significant contribution towards-
  - (a) the preservation or enhancement of a protected monument or its setting, or
  - (b) the archaeological investigation or recording of a protected monument or land in the vicinity of such a monument.
- (4) The States Heritage Committee may issue guidance as to the matters which will be taken into account by that Committee for the purposes of this Chapter and the manner in which it proposes to exercise its functions under it.
- (5) Subsection (2)(a) and (b) is without prejudice to sections 13(4) and (5) and 28.

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Damage to protected monuments, etc.

- 32 (1) It is an offence-
  - (a) to destroy or damage the whole or any part of a protected monument;
  - (b) to disturb the ground under a protected monument or within an area which is specified under section 29(3)(b);
  - (c) to destroy or damage any item found under such a monument or within such an area or remove any such item from such an area.
- (2) It is a defence in proceedings for an offence under subsection (1) to prove that the States Heritage Committee has consented in writing to the action which would otherwise constitute the offence.
- (3) A person guilty of an offence under this section is liable-
  - (a) on summary conviction, to a fine not exceeding 10 times the amount of level 5 on the uniform scale;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

CHAPTER 2  
BUILDINGS OF SPECIAL INTEREST

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The protected buildings list.

- 33 (1) The States Heritage Committee shall prepare, maintain and keep under review a list, to be known as "**the protected buildings list**", of buildings with special historic, architectural, traditional or other interest, the preservation of whose character as such is in its opinion a matter of public importance.
- (2) In considering whether or not to list any building, that Committee may take into account-
  - (a) any way in which the exterior of the building contributes to the historic, architectural, traditional or other interest of any group of buildings of which it forms part;
  - (b) the desirability of preserving any feature of the building (whether internal or external), consisting of a man-made object or structure fixed to the building or forming part of the land in the vicinity of the building.
- (3) The States Heritage Committee may insert, amend or delete any entry on the list at any time if in its opinion it is appropriate to do so.
- (4) The States may by Ordinance under this section make provision as to-
  - (a) the manner and form in which the list is to be kept,
  - (b) the information to be included in the list,
  - (c) the publicity to be given to the listing of any building or to any amendment or deletion of any entry on the list,
  - (d) the effect of listing under this section as respects any permission, approval or consent previously granted under this Law and anything taking place by virtue of it, including the payment of compensation for consequential loss, and
  - (e) such other matters relating to listing under this section as they consider appropriate.
- (5) Such an Ordinance may also make provision for the preservation with a protected building of objects not forming part of it.
- (6) The States shall by Ordinance under this section make such provision as they consider appropriate for appeals to be brought against the listing, or amendment of the listing, of any building, including in particular, provision as to-
  - (a) the persons who may bring such appeals;
  - (b) the procedure to be adopted for such appeals; and
  - (c) such other matters corresponding to provision made under Part 6 of this Law as they consider appropriate.
- (7) If it appears to the States that it is appropriate that this Chapter should apply to anything which could not otherwise be listed under this section, they may by Ordinance under this section modify subsection (1) so as to enable it to be listed and make such other consequential amendments as they consider appropriate.

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General functions of authorities as respects protected buildings.

- 34 It is the duty of any Committee of the States when exercising its functions under this Law-
  - (a) to secure so far as possible that the special historic, architectural, traditional or other special characteristics of buildings listed on the protected buildings list ("**protected buildings**") are preserved; and
  - (b) in particular, in exercising its functions with respect to a protected building or any other building or land in the vicinity of a protected building, to pay special attention to the desirability of preserving the protected building's special characteristics and setting.

Further controls and powers as respects protected buildings.

- 35 (1) There is a strong presumption against planning permission being granted for any development which-
- (a) involves the demolition or destruction of or of any part of a protected building, or
  - (b) adversely affects its special character or features.
- (2) The States may by Ordinance-
- (a) provide that the carrying out of any work specified in the Ordinance which would not otherwise constitute development does so where it affects or may affect-
    - (i) a protected building,
    - (ii) the setting of a protected building, or
    - (iii) any object as respects the preservation of which an Ordinance under section 33(5) has made provision;
  - (b) provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any work which is only development by virtue of paragraph (a)), does so where it affects or may affect a protected building;
  - (c) make provision as to the execution of works for the protection and preservation of protected buildings and the recovery of the costs of such works when executed by or on behalf of the States Heritage Committee;
  - (d) provide for the circumstances in which the States Heritage Committee may undertake the compulsory acquisition of any protected building which in its opinion is seriously at risk of damage or deterioration or the special character of which is seriously at risk, and the basis of the compensation payable in the event of such an acquisition;
  - (e) provide for the reporting and recording of finds of historic significance which are-
    - (i) made at or in the vicinity of any protected building, or
    - (ii) likely to be a material consideration in determining whether any building becomes a protected building.
- (3) The States Heritage Committee may issue guidance as to the matters which will be taken into account by that Committee for the purposes of this Chapter and the manner in which it proposes to exercise its functions under it.
- (4) Subsection (2)(a) and (b) is without prejudice to sections 13(4) and (5) and 28.

Schemes, grants and loans.

- 36 (1) The States Heritage Committee may-
- (a) enter into such agreements, and
  - (b) promote or participate in such schemes, as it considers appropriate for the purpose of assisting in the preservation and enhancement of protected buildings and their settings.
- (2) Without prejudice to the generality of subsection (1), the States Heritage Committee may make grants or loans to assist with expenditure which has or will make a significant contribution towards the preservation or enhancement of a protected building or its setting.
- (3) Such grants and loans may be made on such terms as the States Heritage Committee considers appropriate.
- (4) The States may by Ordinance under this section make such further provision concerning such agreements, schemes, grants and loans as they consider appropriate.

Damage to protected buildings.

- 37 (1) If any person-
- (a) does any act which causes or is likely to result in any damage to a protected building, or
  - (b) permits any such act to be done,
- he shall be guilty of an offence.
- (2) It is a defence in proceedings for an offence under subsection (1) to prove that the States Heritage Committee has consented in writing to the action which would otherwise constitute the offence.
- (3) A person who is guilty of an offence under subsection (1) is liable-
- (a) on summary conviction, to a fine not exceeding 10 times the amount of level 5 on the uniform scale;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.
- (4) Subsection (1) does not apply to any act which constitutes development authorised by planning permission or is necessarily incidental to such development.

CHAPTER 3  
CONSERVATION AREAS

General functions of authorities as respects conservation areas.

- 38 (1) In the exercise, with respect to any buildings or other land in a conservation area, of any powers under this Law or any other enactment, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- (2) The Committee may from time to time-
- (a) formulate and publish proposals for the preservation and enhancement of the character or appearance of the whole or part of any conservation area, and
  - (b) set up schemes as it considers appropriate for encouraging such preservation or enhancement.
- (3) The States may by Ordinance under this section-
- (a) provide for the Committee to make grants or loans to assist with expenditure which has made or will make a significant contribution towards such preservation or enhancement, and
  - (b) make such other provision as they consider appropriate in connection with the exercise of functions as respects such areas.

Further controls and powers in conservation areas.

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- 39** (1) The States may by Ordinance-
- (a) provide that the carrying out of any work specified in the Ordinance which would not otherwise constitute development does so where it is carried out in a conservation area;
  - (b) provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any work which is only development by virtue of paragraph (a)), does so where it is carried out in a conservation area;
  - (c) make provision indicating the manner in which any discretionary power exercisable under this Law will usually be exercised in relation to such an area (for example, by providing that there is a presumption against any change taking place there);
  - (d) provide for the execution of works for the preservation of buildings or other structures in conservation areas and the recovery of the costs of such works.
- (2) The Committee may issue guidance as to the matters which will be taken into account by the Committee for the purposes of this Chapter and the manner in which it proposes to exercise its functions under it.
- (3) Subsection (1)(a) and (b) is without prejudice to sections 13(4) and (5) and 28.

**CHAPTER 4**  
**SITES OF SPECIAL SIGNIFICANCE**

Control of development, etc. on sites of special significance.

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- 40** (1) Without prejudice to section 13(4) and (5), the States may by Ordinance provide that the carrying out of any activity specified in the Ordinance which would not otherwise constitute development does so where it is carried out on any site of special significance or on a site of special significance which is so designated by reason of any particular description of interest.
- (2) Without prejudice to section 28, the States may by Ordinance provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any activity which is only development by virtue of subsection (1)), does so where it is carried out on such a site.
- (3) In considering an application for planning permission for development on a site of special significance or development which may affect such a site, the Committee must have regard to the desirability of requiring an assessment of the likely impact of the proposed development on any aspect of the environment, unless it is satisfied that the development is of a minor nature and is incapable of having a significant adverse effect on the quality of the environment, the use of natural resources, or biological diversity.

Further powers in relation to sites of special significance, etc.

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- 41** (1) The States may by an Ordinance under this subsection-
- (a) prohibit any operations which appear to them to be likely to involve a risk of damage to the interest of sites of special significance-
    - (i) generally, or in relation to all such sites so designated for any specified feature of interest, or in relation to a specified site of special significance, and
    - (ii) in all circumstances or in specified circumstances;
  - (b) provide for the carrying out of any such operations to constitute an offence; and
  - (c) make such incidental, consequential and transitional provision as they consider appropriate.
- (2) The States may by an Ordinance under this subsection make provision as to-
- (a) the circumstances in which the Committee may undertake the compulsory acquisition of land which is designated (whether alone or together with other land) as a site of special significance, and
  - (b) the basis of the compensation payable in the event of such an acquisition.
- (3) The States may by an Ordinance under this subsection make provision enabling the Committee in cases of urgency to take such steps as it considers are required for the purpose of protecting or preserving something of archaeological, botanical, geological, scientific, cultural, zoological or other special interest in any place, which is not designated as a site of special significance, but which it considers should be so designated for that purpose.

CHAPTER 5  
TREES

General functions of authorities as respects trees.

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- 42 It is the duty of any Committee of the States when exercising its functions under this Law-
- (a) to secure so far as possible that existing trees are protected and, where appropriate, that new trees are planted and protected, and
  - (b) in particular, in exercising its functions with respect to any buildings or other land in the vicinity of a tree or land subject to an order under section 43, to pay special attention to the desirability of protecting that tree or land.

Tree protection orders.

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- 43 (1) If it appears to the Committee that in the interests of amenity it should provide for the protection of any tree, group or area of trees or woodlands, it may make an order (a "tree protection order") under this section.
- (2) A tree protection order-
    - (a) may be made in relation to a tree or group or area of trees which has not been planted when the order is made, but which is required to be planted by a condition subject to which planning permission is granted, a requirement in a planning covenant or an obligation to replant arising under Part 5; and
    - (b) must either specify the tree, group or area of trees to be protected under it or the land where the tree, group, area or woodlands is situated or is to be planted.
  - (3) A tree protection order takes effect at the time it is made.
  - (4) The Committee may at any time by order revoke a tree protection order from such date as may be specified in the order, which may be earlier than the date on which that order is made.
  - (5) The States may, by an Ordinance made under this subsection, make provision as to-
    - (a) the publicity to be given to the making of orders under this section,
    - (b) the making of objections to the making of a tree protection order.

Control of development, etc. as respects protected trees.

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- 44 (1) Without prejudice to section 13(4) and (5), the States may by Ordinance provide that-
- (a) the cutting down, topping, lopping, uprooting or destruction of any tree which-
    - (i) is specified in a tree protection order, or
    - (ii) is part of a group or area of trees or woodland which is so specified, or
    - (iii) is situated on land so specified; or
  - (b) the carrying out of any other activity specified in the Ordinance to, or in the vicinity of, such a tree or on such land, constitutes development.
- (2) Without prejudice to section 28, the States may by Ordinance provide that the carrying out of any development specified in the Ordinance which would not otherwise require planning permission (including any activity which is only development by virtue of subsection (1)), does so where it is carried out to, or in the vicinity of, such a tree or on such land.
- (3) In considering an application for planning permission for development in respect of trees or land subject to a tree protection order, or development which may affect such trees or land, the Committee must have regard to the desirability of requiring an assessment of the likely impact of the proposed development on the trees or land, unless it is satisfied that the development is of a minor nature and is incapable of having a significant adverse effect on the trees or land.

Further powers in relation to protected trees.

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- 45 (1) The States may by an Ordinance under this subsection-
- (a) prohibit any activities or omissions which appear to them to be likely to involve a risk of damage to trees or land subject to a tree protection order; and
  - (b) provide for those activities or omissions to constitute an offence.
- (2) The States may by an Ordinance under this section make provision as to-
- (a) the standard of care and management required in relation to trees or land subject to a tree protection order; and
  - (b) the steps to be taken to remedy any contravention of any requirement imposed under paragraph (a).
- (3) An Ordinance under this section may make such incidental, consequential and transitional provision as the States consider appropriate.

CHAPTER 6  
OTHER CONTROLS

Power to make provision where special or additional controls required.

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- 46 (1) Where it appears to the States that, in connection with the purposes of this Law, it is expedient that any use of land or any activity or omission in relation to land should be subject to control or to further control under this Law, they may, by an Ordinance made under this subsection, make provision for that control.
- (2) An Ordinance made under subsection (1) may make such provision corresponding to the provision made by or under Parts 3, 5, 6, 7 and 8 or Chapters 1 to 5 of this Part as appears to the States to be appropriate as respects the use, activity or omission in question or may impose additional controls.
- (3) In particular, but without prejudice to the generality of subsection (1), an Ordinance under that subsection may relate-
- (a) to the display of advertisements,
  - (b) to matters connected with the impairment of amenity in any locality, including-
    - (i) the disposal of rubbish,
    - (ii) the abandonment of any vehicle, substance or any other thing on any land,
    - (iii) the presence of any dilapidated or ruinous buildings,
    - (iv) land in an unsightly condition,
    - (v) the placing of caravans on land,
    - (vi) the removal of turf, topsoil or sand from any agricultural land,
    - (vii) the placing or removal of glasshouses on land and their use,
    - (viii) the protection and preservation of cliff paths,
  - (c) to any case where, in the opinion of the States, the cumulative effect of a number of actions or omissions of a particular kind is of substantially more significance than single examples of them.
- (4) An Ordinance under subsection (1) may make different provision as respects areas which are or are not subject to other special controls.
- (5) Without prejudice to the provisions of Chapters 1 to 5 of this Part, the powers under this section may be used to make further provision supplementing those Chapters.

PART 5  
ENFORCEMENT

CHAPTER 1  
INVESTIGATION AND CHALLENGE PROCEDURE

Challenge notices in cases of suspected contraventions.

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- 47 (1) Where it appears to the Committee that there may have been a breach of planning control, it may serve a notice under this section (a "**challenge notice**") on any person on whom a copy of a compliance notice in respect of the suspected breach would be required to be served under section 48, requiring him to give such information as to the suspected breach as may be specified in the notice.
- (2) A challenge notice may contain a statement as to the time when and place where the Committee will consider-
- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from anything or to undertake remedial works, or
- (b) any representations he may wish to make about the notice;
- and where such a statement is included the Committee shall give him an opportunity to make such an offer or representations in person at that time and place.
- (3) The States may by Ordinance make provision as to the matters which must be specified in a challenge notice and as to such other matters connected with such notices as they consider appropriate.

CHAPTER 2  
COMPLIANCE REQUIREMENTS

*Compliance notice procedure*

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Issue, service and withdrawal of compliance notice.

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- 48 (1) The Committee may issue a notice under this section (a "**compliance notice**") where it appears to it that there has been a breach of planning control which should be remedied.
- (2) For the purposes of this Part of this Law there has been a breach of planning control if-
- (a) development has been carried out without planning permission required under this Law; or
- (b) any condition subject to which planning permission has been granted has not been complied with.
- (3) A copy of a compliance notice must be served within 28 days after its issue and not less than 28 days before the date specified in it as the date it takes effect-
- (a) on the owner of the land concerned;
- (b) on the occupier of that land if he is not its owner; and
- (c) on every other person appearing to the Committee to have an interest in that land which is materially affected by the notice.
- (4) A compliance notice may be issued whether or not the owner of the land concerned was responsible for the alleged breach to which the notice relates, and whether or not he was its owner at the time of the alleged breach, but no compliance notice may be issued after the expiry-
- (a) of the period of 10 years beginning with the alleged breach to which it relates, or
- (b) of the period of 4 years beginning with the date on which the facts alleged to constitute that breach are first known by the Committee,
- whichever is the sooner.
- (5) The States may by Ordinance make provision modifying subsection (4) in such cases as they consider appropriate.
- (6) The Committee may withdraw, waive or relax any requirement imposed by a compliance notice whether before or after the notice takes effect (but without prejudice to its powers to serve another); and in that event the Committee must immediately give notice that it has done so to every person on whom a copy of the compliance notice was served.
- (7) Failure to serve a compliance notice on every person mentioned in subsection (3) does not invalidate the notice in relation to any person on whom it has been served.

Contents of compliance notice, etc.

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- 49** (1) A compliance notice must-
- (a) identify the land to which it relates (by means of a plan or otherwise);
  - (b) specify the matters which appear to the Committee to constitute the breach of planning control;
  - (c) specify the steps which the Committee requires to be taken or the activities it requires to cease for the purpose-
    - (i) of remedying the breach of planning control by making any development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring it to its condition before the breach took place;
    - (ii) of remedying or alleviating any injury to amenity caused by the breach;
  - (d) specify the period (in this Law referred to as "**the compliance period**") within which the Committee requires each of those measures to be taken (which may differ where more than one measure is required);
  - (e) specify such additional matters as the States may by an Ordinance under this paragraph provide.
- (2) Without prejudice to the generality of subsection (1)(c) and (e), the States may, by an Ordinance made under this subsection-
- (a) make provision about-
    - (i) the measures which may be required by compliance notices,
    - (ii) the documents which a person on whom a compliance notice is served may be required to submit as evidence of compliance with it, and
    - (iii) the duration and continuing effect of such notices; and
  - (b) provide for matters which would otherwise constitute a breach of this Law to be treated as the subject of a grant of planning permission or a licence or consent where a compliance notice has been served.

Execution and costs of works required by compliance notice.

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- 50** (1) Where any measures required by a compliance notice to be taken (other than the discontinuance of a use) have not been taken within the compliance period, the Committee may-
- (a) enter the land concerned and take those measures; and
  - (b) recover, as a civil debt due to the States from the owner of the land concerned, all expenses reasonably incurred by it in doing so.
- (2) The powers conferred by subsection (1)(a) do not empower the Committee-
- (a) to enter any building by force, or
  - (b) to enter any building used wholly or mainly as a dwelling,
- except under the authority of a warrant granted by the Bailiff under this subsection.
- (3) If in the exercise of its powers under this section the Committee removes anything from any land, it may be disposed of by sale or in such other manner as the Committee thinks fit.
- (4) The proceeds of any sale under subsection (3) may be applied towards the costs reasonably incurred by the Committee in taking any of the measures required by the compliance notice; and if those proceeds exceed those costs the Committee may pay the excess to any person who satisfies it that he was the owner of anything so removed at the time of its removal.
- (5) Where a copy of a compliance notice has been served in respect of a breach of planning control-
- (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and
  - (b) any sums paid to the Committee by the owner of any land under subsection (1)(b) in respect of the expenses reasonably incurred in taking any measures specified in it,
- are deemed to have been incurred or paid for the use and at the request of the person by whom the breach of planning control was committed.

Stay of action and proceedings under this Part.

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- 51** (1) No action may be taken under section 50 and no proceedings may be instituted or continued under Chapter 3 if-
- (a) an appeal against or application for review of the compliance notice under section 69 or, as the case may be, section 72 is duly instituted, or
  - (b) before the expiry of the period within which such an appeal or application could be made or the expiry of the compliance period if later, an application is duly made to the Committee for the grant or variation of such planning permission as would have rendered the alleged breach of planning control lawful if it had been granted before it occurred.
- (2) The reference in subsection (1)(b) to the grant of planning permission includes the variation of such permission.
- (3) Subsection (1) continues to apply until the appeal or application is finally determined or withdrawn; and it is not finally determined until any appeal, further appeal or review is determined or the time for appealing or applying for a review has expired without an appeal or review proceedings being instituted.
- (4) Subsection (1) does not prevent the Committee from applying for permission to create a charge under section 55.

*Injunctions*Restraint of planning control breaches by injunction.

- 52 (1) The Ordinary Court may, on the application of the Committee, grant an injunction restraining any actual or apprehended breach of planning control if it is satisfied that it is just and convenient to do so; and an interim injunction to that effect may be granted in accordance with and subject to Part 1 of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987<sup>h</sup> (whether or not the circumstances are exceptional), even though proceedings have not been and are not to be instituted before the Court.
- (2) The right to apply for an injunction (including an interim injunction) under this section is without prejudice to the exercise by the Committee of any other power conferred on it by this Chapter, or to the effect of Chapter 3.

<sup>h</sup> Ordres en Conseil Vol. XXX, p.145; No. VIII of 1996.

*Interim compliance notice procedure*Interim compliance notices.

- 53 (1) If when the Committee issues or has issued a compliance notice requiring any activity to cease, it considers it expedient that that activity or any activity carried out as part of or associated with that activity should cease before the expiry of the compliance period, then, subject to subsection (2), the Committee may issue a notice (an "**interim compliance notice**") prohibiting the carrying out of that activity on the land to which the compliance notice relates or on any part of it specified in the interim compliance notice.
- (2) The States may by an Ordinance made under this subsection restrict the activities which an interim compliance notice may prohibit.
- (3) An interim compliance notice may be served on any person who appears to the Committee to have an interest in the land concerned or to be engaged in any activity prohibited by the notice.
- (4) An interim compliance notice must refer to the compliance notice to which it relates and have a copy of that notice annexed to it.
- (5) An interim compliance notice cannot be contravened until the time specified in it as the time when it takes effect, which must not be earlier than 24 hours, nor later than 28 days, after it is first served on any person.
- (6) The Committee may at any time withdraw an interim compliance notice (without prejudice to its power to serve another) by serving notice to that effect on those served with the interim compliance notice.
- (7) The States may by an Ordinance made under this subsection make provision-
- (a) as to the time when an interim compliance notice ceases to have effect; and
- (b) as to the publicity to be given to the issue and withdrawal of interim compliance notices.

Application to set aside interim compliance notice.

- 54 (1) Any person on whom an interim compliance notice has been served or who is interested in the land in respect of which such a notice has been issued may apply to the Bailiff for the notice to be set aside.
- (2) Any such application may be dealt with summarily; but, unless the Bailiff otherwise directs in a case of extreme urgency, notice of it must be given to the Committee and it must be supported by evidence on oath (whether given orally or by affidavit).
- (3) If on hearing such an application the Bailiff is satisfied-
- (a) that an appeal against or review proceedings relating to the compliance notice to which the interim compliance notice relates have been or are proposed to be instituted under section 69 or, as the case may be, section 72;
- (b) that the appellant or, as the case may be, the applicant has an arguable case in relation to any ground of appeal under section 69(1)(a) or (b) or review under section 72;
- (c) that the balance of convenience is against requiring compliance with the interim compliance notice, either at all or in part; and
- (d) that, having regard to all the circumstances of the case, it would be reasonable for him to do so, the Bailiff may grant the application and order that the interim compliance notice be set aside, either in whole or in part, and either without condition or on such terms as he considers appropriate.

*Charges over land***Compliance notice land charges.**

- 55** (1) The Court may authorise the Committee to create a charge over any land, for the purpose of securing compliance with a compliance notice in relation to it, by registering the notice and the Act of Court under this section in the Livres des Hypothèques, Actes de Cour et Obligations at the Greffe.
- (2) An application for such authorisation is deemed for the purposes of section 6(2)(a) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950<sup>i</sup> to be a matter of procedure.
- (3) All expenses recoverable by the Committee under section 50(1)(b) are-
- (a) a charge on the land in relation to which a compliance notice is registered under this section, and
- (b) recoverable by the Committee in priority to any amount secured by a rente, hypothèque, bond, judgment or other Act of Court registered on or after the date of registration of the compliance notice.
- (4) Subsection (3) is without prejudice to section 10 of the Real Property (Reform) (Guernsey) Law, 1987<sup>j</sup>.

<sup>i</sup> Ordres en Conseil Vol. XIV, p.388; Vol. XVIII, p.355; Vol. XXII, p.122.

<sup>j</sup> Ordres en Conseil Vol. XXX, p.100.

**Vacation of charges under section 55.**

- 56** (1) Any charge over land created under section 55 must be vacated-
- (a) when the compliance notice concerned has been fully complied with (otherwise than by the Committee in accordance with section 50);
- (b) when the Committee has itself taken measures required by the compliance notice and recovered all expenses recoverable by it under section 50(1)(b);
- (c) when the compliance notice is quashed on an appeal under section 69 or on a review under section 72;
- (d) when such an application as is mentioned in section 51(1)(b) is granted;
- (e) when the Ordinary Court so order under subsection (2).
- (2) The Ordinary Court must order the vacation of a charge created under section 55 if it is satisfied, on the application of any person-
- (a) that all the measures required by the compliance notice have been taken; and
- (b) that all expenses recoverable by the Committee under section 50(1)(b) have been recovered by it.

CHAPTER 3  
CRIMINAL PROCEEDINGS

*Offences***Unlawful development.**

- 57** (1) It is an offence for any person to carry out development of land without planning permission or without complying with the terms of planning permission for the development, including any conditions on which it is granted, (whether he does so on his own behalf or as an agent).
- (2) A person who is guilty of an offence under subsection (1) is liable-
- (a) on summary conviction, to a fine not exceeding twice the amount of level 5 on the uniform scale;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.
- (3) It is a defence for a person charged with an offence under subsection (1) to prove-
- (a) that he carried out the development in question on behalf of another person, and
- (b) that he took all reasonable steps to investigate whether the development was lawful, and
- (c) that he was misled by that other person as to its lawfulness.

**Contravention of challenge notice.**

- 58** (1) If a person on whom a challenge notice has been served has not complied with any requirement of the notice before the end of the period of 21 days beginning with the date it was served, he is guilty of an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for failing to comply with the requirement.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

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 Contravention of compliance notice.
 

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- 59** (1) If any measure required to be taken by a compliance notice has not been taken within the compliance period, every person on whom the notice was served under section 48, and every person who is the owner of the land after the expiry of that period and whilst the failure to take any such measure continues, is guilty of an offence.
- (2) Where by virtue of a compliance notice-
- (a) a use of land is required to be discontinued, or
- (b) any conditions or limitations are required to be complied with in respect of a use of land or the carrying out of operations on land,
- if any person uses the land, or causes or permits it to be used, or carries out those operations, or causes or permits them to be carried out, in contravention of the notice, he is guilty of an offence.
- (3) It is a defence for a person charged with an offence under this section to prove-
- (a) that he took all reasonable steps to secure compliance with the notice or, as the case may be, that the notice was not contravened, or
- (b) that no copy of the compliance notice was served on him and he did not know, and could not reasonably have been expected to know, of its requirements, or
- (c) that the notice was not issued within the period applicable under section 48(4).
- (4) A person guilty of an offence under this section is liable-
- (a) on summary conviction, to a fine not exceeding 10 times the amount of level 5 on the uniform scale;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

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 Contravention of interim compliance notice.
 

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- 60** (1) A person who contravenes an interim compliance notice is guilty of an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that no copy of the interim compliance notice was served on him and he did not know and could not reasonably have been expected to know of its existence.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding 10 times the amount of level 5 on the uniform scale.

**CHAPTER 4**  
**SUPPLEMENTARY PROVISIONS**

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 Register of enforcement notices.
 

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- 61** (1) The Committee shall prepare and maintain a register of all notices issued by it under this Part.
- (2) The States may, by an Ordinance made under this subsection, make such provision concerning that register as they consider appropriate.

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 Simultaneous proceedings.
 

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- 62** (1) The institution of criminal proceedings under Chapter 3 does not-
- (a) prevent the exercise of any power under Chapter 2, or
- (b) prejudice the continuation of any proceeding or taking of any measures under that Chapter.
- (2) If an appeal is instituted under section 70 or a review is instituted under section 73-
- (a) no criminal proceedings shall be begun in respect of an alleged breach of the compliance notice in question, and
- (b) if any such proceedings have already been begun, they shall be suspended until the appeal or review is finally determined or withdrawn.

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 Evidential presumptions.
 

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- 63** (1) In proceedings under this Law any document purporting to be issued by, and signed on behalf of, the Committee may be received in evidence and presumed to be the document which it purports to be, and to be signed on behalf of the Committee by the person by whom it purports to be signed, without proof of that person's identity, signature or capacity, unless the contrary is proved.
- (2) If it is proved in any proceedings (other than criminal proceedings) under this Law that an act requiring the permission of the Committee has been done, that act is to be presumed to have been done without that permission unless the contrary is proved.
- (3) If the court is satisfied that any date is within the knowledge of a person charged with an offence under this Law or could with reasonable diligence be discovered by him, it may presume the date to be that alleged unless he proves the contrary.
- (4) Without prejudice to subsection (3), except in the case of an appeal under section 59(3)(c), the date when a material change in the use of any land occurred need not be proved.

Offences by bodies corporate.

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- 64** (1) Where an offence under this Law 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.
- (3) This section is without prejudice to section 65.

Causing, permitting, etc.

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- 65** A person who causes or permits any act or omission which constitutes an offence under this Law is guilty of that offence and liable to be proceeded against and punished accordingly.

Criminal fines.

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- 66** (1) In determining the amount of any fine to be imposed on a person convicted of an offence under this Law the court must have regard to any financial benefit which appears to it to have accrued or to be likely to accrue to that person or to any person associated with him in consequence of the offence.
- (2) Where a person is convicted of an offence under this Law, the court may order him, in addition to any other penalty which it imposes, to pay a further fine in respect of each day or part of a day during which the circumstances resulting from the offence continues to exist-
- (a) after the date of the conviction, or
- (b) after such future date as the court may specify, not being later than one month after the date of the conviction.
- (3) A fine imposed under subsection (2) is enforceable in the same manner as any other fine.

CHAPTER 5  
APPLICATION TO SPECIAL CONTROLS

Power to make corresponding provision.

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- 67** (1) For the purposes of Part 4 the States may by Ordinance made under this section make such provision corresponding to that made by Chapters 1 to 3 of this Part as they think appropriate.
- (2) An Ordinance under this section may, in particular, apply any provision made by or under those Chapters with such modifications as may be specified in it.

PART 6  
APPEALS AND REVIEWS

*Rights of appeal*

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**Right to appeal against planning decisions and failure to take such decisions.**

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- 68** (1) Where the Committee-
- (a) refuses an application for planning permission or outline permission, grants it subject to conditions (other than a condition ("**a building condition**") imposed under building regulations by virtue of section 17) or, in the case of an application for planning permission, grants outline permission;
  - (b) refuses an application for any consent or approval of the Committee's required by a condition imposed on the grant of such permission (other than a building condition) or grants it subject to conditions;
  - (c) refuses an application for the modification or discharge of a planning covenant under section 25(4)(a); or
  - (d) refuses an application for any approval of the Committee's required under an Ordinance (other than an approval required under section 17) or grants it subject to conditions,
- the applicant may appeal against that decision under this section on the merits.
- (2) A person who has made such an application may also appeal under this section on the merits if the Committee has neither-
- (a) given him notice of its decision on the application, nor
  - (b) in the case of an application for planning permission or outline permission, given him notice under section 16(1)(d) that it has declined to consider the application,
- before the expiry of the period prescribed under section 28.
- (3) An Ordinance under section 22(2) may make provision for an applicant for an opinion or a certificate under that section to appeal under this section on the ground that the Committee made a material error as to the facts of the case.
- (4) An appeal under this section must be made before the expiry-
- (a) of the period of 6 months beginning with the date on which the Committee makes its decision or such other period as may be prescribed by an Ordinance made by the States under this subsection, or
  - (b) in the case of an appeal under subsection (2), of such extended period as the applicant and the Committee may agree in writing.
- (5) An appeal under this section must be made by notice served in such manner as may be so prescribed.
- (6) For the purposes of the application of this section and sections 69 to 71, in relation to an appeal under subsection (2), it shall be assumed that the Committee refused the application in question on the last day of the period prescribed under section 28.
- (7) Where any person appeals against a decision under this section, the Committee may concede the appeal in whole or in part; and where it does so it shall give the appellant notice of the revised decision within such period as may be so prescribed.

**Determination of appeals under section 68.**

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- 69** (1) An appeal under section 68 shall be determined by an Adjudicator appointed by the States Advisory and Finance Committee for the purpose, being a person who appears to that Committee to be appropriate by reason of his qualifications or experience in planning matters and his independence.
- (2) Where such an appeal is brought from a decision of the Committee, the Adjudicator may-
- (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision (whether the appeal relates to that part of it or not), and may deal with the application as if he were the Committee dealing with it in the first instance.
- (3) Subject to section 72, the decision of the Adjudicator on any appeal under this section shall be final.
- (4) If, before or during the determination of such an appeal in respect of an application for planning permission or outline permission to develop land, the Adjudicator forms the opinion that, having regard to the provisions of section 16 or any other provision made by or under this Law, permission for that development-
- (a) could not have been granted by the Committee; or
  - (b) could not have been granted by it otherwise than subject to the conditions imposed by it,
- he may decline to determine the appeal or to proceed with the determination.
- (5) If, before or during the determination of such an appeal, it appears to the Adjudicator that the appellant is responsible for undue delay in the progress of the appeal, he may-
- (a) give him notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are so specified for the expedition of the appeal, and
  - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.
- (6) The States may by Ordinance make further provision as to the determination of appeals under section 68 (including appeals under that section as applied by or under any other provision of this Law).
- (7) Without prejudice to the generality of subsection (6), an Ordinance under that subsection may make provision-
- (a) for the appeal to be determined on the basis of written representations made by the appellant and such other person as may be specified in the Ordinance, or for the holding of a hearing, and
  - (b) for the award of costs.

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 Right to appeal against compliance notices.
 

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- 70** (1) A person on whom a compliance notice has been served may appeal on the ground-
- (a) that the breach of planning control alleged in the notice has not taken place;
  - (b) that the notice was issued after the expiry of the period within which a compliance notice in respect of that alleged breach was required under section 48(4) to be issued;
  - (c) that the measures required by the notice to be taken exceed what is necessary for the purposes specified in section 49(1)(c);
  - (d) that the period specified in the notice for taking any such measure is unreasonably short.
- (2) An appeal under this section must be made within such period as may be prescribed by an Ordinance made by the States under this subsection.

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 Determination of appeals under section 69.
 

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- 71** (1) An appeal under section 70 shall be determined by an Adjudicator appointed by the States Advisory and Finance Committee for the purpose, being a person who appears to that Committee to be appropriate by reason of his qualification or experience in planning matters and his independence.
- (2) On such an appeal, the Adjudicator must-
- (a) if the appellant satisfies him of a ground mentioned in section 70(1)(a) or (b), quash the compliance notice;
  - (b) if the appellant satisfies him of a ground mentioned in section 70(1)(c) or (d), modify the compliance notice so as to substitute such measures as appear to him to be necessary or, as the case may be, such period as appears to him to be reasonable; and
  - (c) otherwise, uphold the compliance notice.
- (3) If a compliance notice is quashed under this section, it ceases to be of any effect and it is the Committee's duty forthwith to vacate any charge created under section 55 in connection with it (but without prejudice to the Committee's powers to issue another compliance notice and apply for permission to create a charge under section 55 in connection with that further notice).
- (4) If a compliance notice is upheld or revised under this section, it takes effect as if it were a compliance notice issued by the Committee (in the revised form where appropriate) and as if served on every person mentioned in section 48(3) on the date of the determination of the appeal.
- (5) Subject to section 73, the decision of the Adjudicator on any appeal under this section shall be final.
- (6) Subsections (5) to (7) of section 69 apply to appeals under this section as they apply to appeals under that section.

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*Review of decisions and notices by the Court*


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 Reviews of certain decisions about permission, etc.
 

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- 72** (1) An applicant for planning permission or outline permission may apply to the Royal Court of Guernsey for a review of any decision by the Committee or the Adjudicator-
- (a) to grant the application subject to conditions (other than a building condition),
  - (b) in a case where the application was for planning permission, to grant outline permission, or
  - (c) to refuse the application,
- or of any decision by the Adjudicator under section 69(4).
- (2) An applicant for the modification or discharge of a planning covenant may apply to the Royal Court of Guernsey for a review of any decision by the Committee or the Adjudicator that the covenant should continue to have effect without modification.
- (3) The Committee may apply to the Royal Court of Guernsey for a review of any decision by an Adjudicator under section 69.
- (4) An application under this section may only be made on the ground that in reaching the decision in question the Committee or, as the case may be, the Adjudicator acted unlawfully (whether by virtue of exceeding their powers or making an error of law or otherwise).
- (5) If the Court is satisfied that an applicant has established that ground, it must-
- (a) specify the respect in which the decision was unlawful, and
  - (b) direct the Committee or, as the case may be, the Adjudicator to reconsider the decision in question.
- (6) An appeal on a question of law shall lie to the Court of Appeal from any decision of the Royal Court of Guernsey under this section.
- (7) An Ordinance under section 22(2) may make provision-
- (a) enabling an applicant for an opinion or a certificate under that section to apply to the Royal Court of Guernsey for a review of the Committee's decision as to the issue of that opinion or certificate on the ground that it was wrong in law, and
  - (b) for the powers of the Court in any case where it is satisfied that an applicant for such a review has established that ground.

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 Reviews of compliance notices.
 

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- 73** (1) A person on whom a compliance notice has been served may apply to the Royal Court of Guernsey for a review of that notice (whether or not an appeal relating to the notice has been determined under section 71).
- (2) Such an application may only be made on the ground-
- (a) that the matters alleged in the notice do not constitute a breach of planning control, or
- (b) that the issue of the notice or, in the case of a notice varied or upheld under section 71, the decision to vary or uphold it, was wrong in law for any other reason.
- (3) The Committee may apply to the Royal Court of Guernsey for a review of any decision by an Adjudicator under section 71 on the ground that in reaching the decision the Adjudicator acted unlawfully (whether by virtue of exceeding his powers or making an error of law or otherwise).
- (4) If the Court is satisfied-
- (a) that an applicant under subsection (1) has established one of the grounds mentioned in subsection (2), or
- (b) that such an application as is mentioned in section 51(1)(b) has been granted, it must quash the compliance notice.
- (5) If the Court is satisfied that the Committee has established the ground mentioned in subsection (3), then unless it is satisfied that such an application as is mentioned in section 51(1)(b) has been granted, it must uphold the compliance notice.
- (6) The production by an applicant under subsection (1) of a valid opinion or certificate issued under section 22, evidencing the lawfulness of anything alleged in the compliance notice to be a breach of planning control, entitles the applicant to require that the compliance notice be quashed as respects that alleged breach.
- (7) An appeal on a question of law shall lie to the Court of Appeal from any decision of the Royal Court of Guernsey under this section.
- (8) Subsections (3) and (4) of section 71 apply to this section as they apply to that section (taking the reference in subsection (4) to the date of determination as the date of the Court's order).

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 Review proceedings: supplementary provisions.
 

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- 74** The States may by an Ordinance made under this section make provision as to-
- (a) the manner in which an application or, as the case may be, an appeal to the Court of Appeal under section 72 or 73 may be instituted;
- (b) the conduct of proceedings on such applications and appeals; and
- (c) such incidental and supplementary matters concerning such applications, appeals and proceedings as they consider appropriate.

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 Residual presumption of validity.
 

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- 75** Except in so far as is specifically provided by this Law or any other enactment, the validity of-
- (a) the Strategic Land Use Plan,
- (b) any Development Plan,
- (c) any Subject Plan,
- (d) any Local Planning Brief, or
- (e) any order, direction, permission, condition, notice or agreement the Committee or any other States Committee, which is or purports to be made, given or imposed under this Law, is not open to question in any legal proceedings whatsoever.

PART 7  
DEVELOPMENT, ETC. BY THE STATES OR PUBLIC UTILITIES SUPPLIERS

*Development, etc. by the States*

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**General application of Law to States.**

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- 76** (1) Subject to the following provisions of this section and sections 77 and 78, Parts 1 to 4 and 8 of this Law apply to the States, and to land owned or occupied by the States, as they apply to any other person and any other land.
- (2) Part 5 of this Law (other than sections 55 and 56 (compliance notice land charges)) only applies to enforcement in respect of matters affecting land owned by the States against persons other than the States, States Committees, their officers, servants and agents.
- (3) Part 6 of this Law only applies to reviews and appeals in respect of matters affecting land owned by the States when they are at the instance of persons other than the States, States Committees, their officers, servants and agents.
- (4) The States may by Ordinance modify any provision made by or under this Law (other than any provision requiring planning permission or any other consent to be obtained) as it applies in relation to any development undertaken by the States for any public purpose.
- (5) In particular, but without prejudice to the generality of subsection (4), such an Ordinance may, notwithstanding section 18(2) and (3), enable conditions to be imposed where planning permission is granted on the application of a Committee of the States which restrict its effect as respects persons other than the States.

**Review of decisions by States.**

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- 77** (1) If any Committee of the States-
- (a) is dissatisfied with a decision as to which section 76(3) prevents an appeal or review at its instance, or
- (b) considers for any other reason that a decision on an application made by it to the Committee ought to be referred to the States,
- it may request the States to direct the Committee to revoke or modify the decision.
- (2) Such a request may only be made in a report by the Committee concerned, which-
- (a) contains or has annexed to it the full text, including reasons, of the decision, and
- (b) if the application concerns a project for which the Committee making the request is also seeking States' approval, forms part of the report on the basis of which that approval is sought.
- (3) The Committee must comply with a direction under this section as soon as practicable.
- (4) A revocation or modification of a decision in compliance with such a direction may not be appealed against or challenged in any legal proceedings whatsoever, notwithstanding that compliance with the direction involves the Committee acting in a manner inconsistent with the purposes of this Law.
- (5) In giving a direction under this section, the States may consider any matter afresh and the restrictions applicable to reviews and appeals under Part 6 do not apply.

*Public utilities suppliers*

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**Public utilities suppliers.**

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- 78** (1) Without prejudice to section 13(4) and (5), the States may by Ordinance make such provision as they consider appropriate-
- (a) for exempting from any requirements imposed by or under this Law the carrying out of any operations or any change of use, which constitutes (or would apart from the Ordinance constitute) development, for the purposes of, or in connection with, providing the public with a public utility service; or
- (b) for modifying any provision made by or under this Law as it applies in relation to any such operations of change of use.
- (2) Without prejudice to subsection (1)(b), an Ordinance under subsection (1) may, notwithstanding section 18(2) and (3), enable conditions to be imposed, where planning permission is granted on the application of a person the primary purpose of whose business is to provide the public with a public utility service, which restrict its effects as respects other persons.
- (3) In this section "**public utility service**" means-
- (a) water, gas, electricity, telecommunications, transport or sewerage disposal services, or
- (b) any other service appearing to the States to be of similar utility.

PART 8  
ADMINISTRATIVE, GENERAL AND MISCELLANEOUS PROVISIONS

*Transfer and delegation of functions*

**Transfer of functions between Committees.**

- 79** If it appears to the States to be appropriate to do so, they may by Ordinance under this section provide that any function exercisable by any specific Committee of the States under Part 3, 4, 5 or 6 of this Law-
- (a) may only be exercised after consultation with, or subject to the consent of, another Committee;
  - (b) may be exercised either by the specific Committee on which it is conferred or by another Committee;
  - (c) instead of being exercisable by that specific Committee, shall be exercisable-
    - (i) by that Committee and another acting jointly; or
    - (ii) by another Committee acting alone.

**Performance of functions by sub-committees, officers, etc.**

- 80** (1) The Committee may by resolution-
- (a) arrange for any of its functions under this Law (other than those under this section) to be performed in its name by a sub-committee composed of not less than two members of the Committee; or
  - (b) arrange for any of its functions under this Law to be performed in its name by the douzaine of the parish in which the land in question falls.
- (2) Notwithstanding any resolution of the States under the States Committees (Constitution and Amendment) (Guernsey) Law, 1991<sup>k</sup>, a function which is so performed is for all purposes performed by the Committee and, in the case of a function requiring to be performed at a quorate meeting of the Committee, has the same effect as if performed at such a meeting. <sup>k</sup> Order in Council No. XX of 1991.
- (3) An arrangement under subsection (1)-
- (a) may be varied or terminated by a further resolution of the Committee (but without prejudice to anything previously done under it or to the making of a new arrangement);
  - (b) in the case of an arrangement under paragraph (a) of that subsection, does not prevent the performance of the function by the Committee in quorate meeting whilst the arrangement subsists.
- (4) This section is without prejudice to the Committee's right under section 4 of the Public Functions (Transfer and Performance) (Guernsey) Law, 1991<sup>l</sup> to arrange for any of its functions to be performed in its name by an officer responsible to it. <sup>l</sup> Order in Council No. XXI of 1991.
- (5) The Committee must from time to time consider the advisability of making arrangements under subsection (1) and such arrangements as are mentioned in subsection (4) and review any such arrangements previously made by it.
- (6) As respects any functions exercisable under this Law by the States Heritage Committee, this section applies to that Committee as it applies to the Committee.

*Administration*

**Administration: powers to make Ordinances.**

- 81** (1) The States may by Ordinance under this subsection make such provision as they consider appropriate in connection with the administration of this Law.
- (2) In particular, but without prejudice to the generality of subsection (1), an Ordinance under that subsection may make provision as to-
- (a) the fees to be paid on the making of any application or otherwise,
  - (b) the procedure to be followed in the consideration of applications,
  - (c) the manner in which the proceedings of meetings of the Committee must be recorded and in which they may be referred to in any review or appeal or in any civil or criminal proceedings,
  - (d) the manner in which notification of the determination of any application must be given,
  - (e) the procedure to be followed where any development or other work requires permission under more than one provision of the Law (including the modification of any relevant provisions in such a case),
  - (f) the manner in which any notice or other document required or authorised by or under this Law to be served may be served, and
  - (g) the circumstances in which any act or omission in connection with the making or consideration of any application is an offence and for the penalties on conviction of such an offence.

Guidance.

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- 82 (1) The Committee may issue such guidance as it considers appropriate in connection with the administration of this Law or any matter relating to it.
- (2) In particular, but without prejudice to the generality of subsection (1), such guidance may give examples-
- (a) of matters which in the opinion of the Committee require planning permission or any other consent under this Law,
  - (b) of the time when development is in the opinion of the Committee to be taken as occurring where two or more matters taken together constitute a change of use,
  - (c) of the circumstances in which the Committee is or is not likely to grant any permission or consent,
  - (d) of the conditions or limitations subject to which any permission or consent is likely to be granted in any particular circumstances,
  - (e) of the measures which may be required by any compliance notice.
- (3) Where any guidance issued by the Committee under this Law so indicates that guidance may be received in proceedings under this Law in evidence as to any matter and presumed to be correct, unless the contrary is proved.
- (4) As respects matters relating to any functions exercisable under this Law by the States Heritage Committee, this section applies to that Committee as it applies to the Committee.

Power to require information as to interest in land.

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- 83 (1) For the purposes of enabling the Committee or the States Heritage Committee to issue or serve any notice or other document which it is required or authorised by or under this Law to issue or serve, it may by notice require-
- (a) any person appearing to be carrying out any operations on any land,
  - (b) the occupier of any land, or
  - (c) any person who directly or indirectly receives rent in respect of any land,
- to give it such written information as to the matters mentioned in subsection (2) as it may specify.
- (2) Those matters are-
- (a) the nature of any operations appearing to have been carried out on the land;
  - (b) the nature of the person's interest in the land;
  - (c) the name and address of any other person known to him as having an interest in the land;
  - (d) the purpose for which the land is being used;
  - (e) the time when that use began;
  - (f) the name and address of any person known to him as having used the land for that purpose.
- (3) If a person on whom a notice under this section has been served has not complied with any requirement of the notice before the end of the period of 21 days (or such longer period as is specified in it) beginning with the date it was served, he is guilty of an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he had a reasonable excuse for failing to comply with the requirement.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

*Rights of entry*Entry on land for authorised purposes.

- 84** (1) A person authorised in writing by the Committee may, subject to section 85, enter any land at any reasonable time for the purpose of-
- (a) the preparation of a draft Development Plan, Subject Plan or Local Planning Brief;
  - (b) considering-
    - (i) any application for any permission or approval under this Law,
    - (ii) an appeal or application for review under this Law;
  - (c) deciding whether and in what manner any powers of the Committee under this Law ought to be exercised;
  - (d) ascertaining whether any conditions attached to a permission or approval granted under this Law have been or are being complied with;
  - (e) investigating any alleged offence under this Law;
  - (f) ensuring that any obligations arising under a notice served, requirement imposed, or planning covenant entered into, under this Law have been or are being complied with.
- (2) The Committee may only authorise-
- (a) an officer of the States,
  - (b) a person specifically appointed by the Committee to advise it (whether for remuneration or not) in relation either to a particular matter or to a particular aspect of the Committee's functions,
  - (c) an Inspector appointed under section 12(2), or
  - (d) an Adjudicator appointed under section 69 or 71.
- (3) An authorisation may be given-
- (a) for all the purposes mentioned in subsection (1) or only for such of them as are specified in it, and
  - (b) in all circumstances or only in relation to such matter, land, or occasion, as is so specified.
- (4) The Committee (in the sense of some or all of its members) is not entitled to enter land without the consent of a person entitled to permit such entry, but if a request for it to do so is refused where the entry is for the purpose of considering an application, then-
- (a) the Committee may decline to consider that application, and inform the applicant accordingly; and
  - (b) there is no right of appeal or review.
- (5) Without prejudice to subsections (1), (2) and (5) of section 46 and to any other powers in this Law, an Ordinance under that section may apply this section and section 85 so as to confer on the States Heritage Committee powers corresponding to those exercisable under it by the Committee, for the purposes of assisting the States Heritage Committee in exercising its functions under this Law.

Restrictions and manner of exercise of entry power.

- 85** (1) A person authorised for the purposes of section 84-
- (a) must, if so required, produce his written authorisation before entering any land,
  - (b) is not entitled under that section to demand admission as of right to any building or part of a building which is occupied as a dwelling unless he gave its occupier notice at least 24 hours before that he proposed to do so.
- (2) Such a person must not seek to enter any building which is occupied solely as a dwelling, or any enclosed land forming part of the curtilage of an occupied dwelling, unless-
- (a) a person appearing to be entitled to permit that entry-
    - (i) has consented to it, or
    - (ii) has been given notice in accordance with subsection (1)(b) and has not objected to the entry; or
  - (b) he is acting in accordance with a warrant to do so obtained by him on his ex parte application to the Bailiff under this subsection and produces that warrant to anybody objecting to his entry.
- (3) A person who has entered any land in accordance with an authorisation under section 84(2) (and, where necessary, with a warrant issued under subsection (2)) may-
- (a) make such examination, conduct such tests, and take such photographs or samples as appear to him to be desirable in connection with the purposes for which he has entered;
  - (b) require any person to answer any questions or produce any documents appearing to him to be relevant to those purposes.

- (4) The power to require a person to produce documents includes power-
  - (a) to require him to reproduce in legible form any record maintained in another form;
  - (b) to copy or require him to furnish a copy of any documents which are produced;
  - (c) to require any person who has failed to produce a document to state to the best of his knowledge and belief where it is.
- (5) An authorisation under section 84(2) does not entitle a person acting under it to damage or, subject to paragraph (3)(a) of that section, interfere with, land or anything on it.
- (6) Any information of a personal, financial, or commercial nature which is obtained as a result of an entry authorised under section 84(2) is confidential to the Committee and may not be used or disclosed except to the extent that its use or disclosure is necessary for the purposes of this Law.

*General and miscellaneous provisions*

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**Service of notices.**

- 86** (1) Any document other than a summons to be given or served under this Law may be given to or served upon-
- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode;
  - (b) a company with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office;
  - (c) a company without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered office or principal or last known principal place of business outside the Bailiwick;
  - (d) 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 or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere;
  - (e) a Committee of the States, by being left at, or sent by post or transmitted to, the principal offices of that Committee in Guernsey;
- and in this section the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post and the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication, in which event the document shall be regarded as served when it is received.
- (2) If a person notifies a Committee of the States of an address for service within the Bailiwick for the purposes of this Law, any document other than a summons to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.
  - (3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in *La Gazette Officielle*.
  - (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 the service of documents, no document to be given to or served on a Committee of the States under this Law shall be deemed to have been given or served until it is received.
  - (6) If a person upon whom a document is to be served under this Law is a minor or a person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court of Guernsey for the appointment of a person to act as guardian for the purposes of this Law.
  - (7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received-
    - (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting;
    - (b) in the case of a document sent elsewhere, on the seventh day after 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>m</sup>.
  - (8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

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

### Ordinances and regulations.

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- 87** (1) Any Ordinance or regulations made under any provision of this Law-
- (a) may be amended, or repealed or, as the case may be, revoked by a subsequent Ordinance or, as the case may be regulations;
  - (b) may include incidental, consequential, supplementary and transitional provisions;
  - (c) may require the approval, licence or permission of any Committee of the States to be obtained in circumstances specified in it; and
  - (d) may confer power on any person to issue guidance or refer to existing guidance issued by any person and, in the case of an Ordinance, may confer power on any Committee of the States to make regulations under it.
- (2) Any power conferred by this Law to make an Ordinance or regulations may be exercised-
- (a) in relation to all cases to which the power extends, 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 less provision (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 but for different purposes;
    - (iii) any such provision either unconditionally or subject to specified conditions.
- (3) An Ordinance or regulations made under subsection (1)(a) must not-
- (a) render unlawful anything which has already been done and which was lawful when it was done; or
  - (b) remove from any person a right exercisable by him under this Law before it comes into effect; and any provision purporting to do so is void to that extent, but the Ordinance or regulations are otherwise valid and enforceable.
- (4) The reference in subsection (3) to a right is to a right enforceable in law and does not include an expectation, however legitimate.
- (5) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

### Compensation.

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- 88** Except where specifically provided for by this Law or by a planning covenant, no compensation is payable by the States in respect of any loss or damage alleged to have been suffered by any person by reason of the refusal, modification or revocation of any permission required by or under this Law or the imposition of conditions on it.

### Interpretation and construction.

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- 89** (1) This Law is to be construed as a whole, with a view to achieving its purposes both generally and in the light of the special objectives and considerations mentioned in it in particular contexts or in the Strategic Land Use Plan, and as always speaking in the context of circumstances as they occur, so that effect may be given to it in accordance with its true spirit, intent and meaning.
- (2) A reference in this Law to any other enactment is, unless the context otherwise requires, a reference to that enactment as from time to time amended, repealed or replaced, extended or applied, by or under any other enactment, including this Law.
- (3) For the purposes of section 19 of the Interpretation (Guernsey) Law, 1948<sup>n</sup>, this Law is to be regarded as an enactment which repeals and re-enacts (albeit with significant modifications and extensions) the enactments repealed by section 90(1) and Part 2 of Schedule 3. <sup>n</sup> Ordres en Conseil Vol. XIII, p.355.
- (4) Unless the context otherwise requires-
- (a) a reference in this Law to a numbered Part, Chapter, section, subsection or paragraph by a number or combination of numbers or numbers and letters, is to the Part, Chapter, section, subsection or paragraph so identified; and
  - (b) a reference within a section of or a Schedule to this Law to a subsection or paragraph or other subdivision by one or more numbers or letters is to the subdivision so identified in that section or Schedule.
- (5) In this Law except where the context otherwise requires-
- (a) references to a person from whom title is derived by another person include references to any predecessor in title of that other person;
  - (b) references to a person deriving title from another person include references to any successor in title of that other person;
  - (c) references to deriving title are references to deriving title either directly or indirectly.
- (6) In this Law, except where the context otherwise requires, a word or expression for which there is an entry in the first column of Schedule 2 has the meaning given in the second column of that entry, or is to be construed in accordance with directions given against it in that column; and related words and expressions are to be construed accordingly.

**Repeals, amendments and general savings.**

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- 90** (1) The enactments listed in Part 1 of Schedule 3 are repealed.  
 (2) Part 2 of that Schedule has effect for the purpose of making minor and consequential amendments and repeals.  
 (3) The substitution of this Law for the repealed enactments does not affect the continuity of this Law with previous planning control.  
 (4) A reference in any other enactment to any of the repealed enactments is to be construed, unless the contrary intention appears, as including a reference to this Law.  
 (5) Any document which refers, expressly or by implication, to a provision of the repealed enactments is to be construed, so far as is necessary for preserving its effect, as referring, or as including a reference, to the corresponding provisions of this Law.  
 (6) Any reference in an enactment or document to any provision of this Law is to be construed, so far as the context permits, as including, in relation to the times, circumstances and purposes at, in and for which a corresponding provision of a repealed enactment had effect, a reference to that corresponding provision.  
 (7) Anything done or having effect as if done under or for the purposes of a provision of the repealed enactments has effect, if and to the extent that it could have been done under or for the purposes of a corresponding provision of this Law, as if done under or for the purposes of that corresponding provision.  
 (8) Where any period of time specified in a provision of a repealed enactment is current at the commencement of a corresponding provision of this Law, this Law shall have effect for determining the date of the expiration of that period as if the corresponding provision of this Law had been in force when the period began to run.  
 (9) References in this section to this Law include provisions made under it.

**Particular saving and transitional provisions.**

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- 91** Schedule 4 has effect for the purposes of preserving the effect of the repealed enactments for the purposes and to the extent specified in that Schedule, and providing for the application of certain provisions of this Law to circumstances existing at the commencement of those provisions.

**Extent.**

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- 92** This Law applies to the islands of Guernsey, Herm and Jethou, including, for the avoidance of doubt-  
 (a) any land reclaimed from the sea, and  
 (b) all islands, islets and rocks lying between or adjacent to any of those three islands, whether or not they are connected at any state of the tide to one of those islands.

**Citation.**

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- 93** This Law may be cited as the Land Planning and Development (Guernsey) Law, 2002.

**Commencement.**

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- 94** (1) This Law shall come into force on such date as the States may by Ordinance appoint.  
 (2) Such an Ordinance may-  
 (a) appoint different dates for different provisions of this Law and for different purposes; and  
 (b) contain such saving and transitional provisions as the States think appropriate.

SCHEDULE 1	Section 7(2)	LOCAL PLANNING BRIEFS CONTINUED UNDER THIS LAW
SCHEDULE 2	Section 89	INTERPRETATION
SCHEDULE 3	Section 90(1)	REPEALED ENACTMENTS PART 1 REPEALS PART 2 MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS
SCHEDULE 4	Section 91	SAVINGS AND TRANSITIONALS

## Appendix 2: Public Consultation 2002

Clause Number	Respondent	Comment or Question	Committee Response
01	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
02	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
03	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
03	Guernsey Chamber of Commerce	How many members will the Strategic Land Planning Group have? Who will be eligible to become members and how long will they serve? What will be the full extent of the group's powers? How will Chair elections and voting be arranged?	This will be a matter for A&F to determine within the parameters set by the Law. Procedures will be in accordance with normal conventions.
03	Guernsey Chamber of Commerce	Full support of the concept of a Strategic Land Planning Group, but unhappy that its appointment will be left to A&F - why not the States as a whole? How about some private sector input to this eg Chamber of Commerce, IoD, National Trust, La Société?	A&F is responsible for strategic planning and is therefore the most appropriate Committee to appoint the Strategic Land Planning Group. Private sector members could be nominated or co-opted.
03 (1) [3.2]	Douzaine Representative R A R Evans	There should be a defined upper limit to numbers in the Strategic Land Planning Group (suggest 7).	This will be a matter for A&F.
03 (1) [5 (5) (b)]	La Société Guernesiaise	The Strategic Land Planning Group is very welcome and it is hoped that La Société can be involved either as a member of the group or as a consultee.	Private sector members could be nominated or co-opted - this could include local organisations such as La Société.
03 (2)	National Trust of Guernsey	This section refers to co-opted members. Could it be made clear that this includes Non Government Organisations such as the National Trust and La Société?	It is not considered necessary to specify non-governmental organisations on the face of the legislation to achieve this effect.
03-05	Deputies Lowe, Jones and Trott	As part of the Strategic Land Use Plan, it is imperative that covenants do not sterilise areas of land that may have strategic importance to the future requirement of our Island.	Changes in Strategic Policy would be a reason to seek modification or discharge of a covenant so that this should not be an issue.

Clause Number	Respondent	Comment or Question	Committee Response
04	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
05	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
05 (1) [05 (5)]	Deputy M E Best	Is the proposed Strategic Land Planning Group a partial substitute for Planning Inquiries, as it would seem that Planning Inquiries are not needed for Group recommendations?	No. The Strategic Land Use Plan is submitted to the States for adoption. As it does not contain site specific policies, a Planning Inquiry is not essential.
06	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
06 (d)	Guernsey Chamber of Commerce	What are the "States Development Plans"? Would the wording be better if the words "for the consideration of the States" were put at the end of this sub-clause?	This comment has revealed an error in the text which will be corrected. There should be a comma between States and Development Plans.
07	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
08	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
08	Peter Falla & Associates Ltd	Does the draft new UAP take into account the draft Law?	The revised UAP has been drafted with the new Law in mind. However, Development Plans can be amended if necessary.
08	Deputies Lowe, Jones and Trott	It is important that the procedures regarding Development Plans display that no advantage, political or otherwise, can be obtained from this information in advance of its publication into the public domain.	The IDC has had procedures in place for many years to deal with this issue, which relates to matters of probity rather than the Law.
08 [12 (b), A]	Mr M Willis	The Clause does not appear to place a duty on the IDC to consult interested parties and to take the results of these consultations into account. Would suggest a sub-clause is inserted setting out these responsibilities.	The Law enables rather than requires consultation and this is felt to be the most appropriate course.

Clause Number	Respondent	Comment or Question	Committee Response
08 [12 (g), A]	Deputy M E Best	At the moment DDP's have a five year life (subject to States extension). Why in the proposed Plans Ordinance (A) has the life been doubled to ten years?	This figure is the maximum life for a Plan. Some policy based plans may not need frequent review. The Committee is seeking additional flexibility in this area. The Committee will still be subject to the requirements of Clauses 8-10, for example in relation to the Strategic Land Use Plan.
09	La Société Guernesiate	Can subject plans include matters of conservation and habitat protection?	Yes.
09	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
09 [11, A]	Mr M Willis	This clause on Subject Plans does not place a duty on the Committee to consult. Suggest that an additional sub-clause be inserted setting out these responsibilities.	The Law enables rather than requires consultation and this is felt to be the most appropriate course.
10	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
10 (2)	Guernsey Chamber of Commerce	Instead of the words "as respects" used in this section, could the words "regarding" or "concerning" be used?	This is solely a matter of drafting style.
10 [A, B]	National Trust of Guernsey	The local knowledge of the National Trust would aid the Committee in its desire to protect and enhance the environment.	The Law enables the Committee to consult widely, including the National Trust of Guernsey.
11 (2) [A,F]	La Société Guernesiate	SSIs are welcome, especially the delineation of the sites. However, the criteria for selecting them need to be set down somewhere.	The criterion is simply that the SSS has the requisite special interest; their selection may be challenged at Inquiry.
11-12	Guernsey Society of Architects	It is desirable for the Committee to exercise additional powers but the onus should be on the Committee to make a strong case and prove prior to implementation that they are necessary and desirable.	The IDC considers that there is a strong case for Conservation Areas and SSSs. The former are already established in non-statutory form. The latter were directed by the 1989 States Resolution.
12 (1)	Deputy M E Best	Do the words "States shall" mean that the IDC has a statutory duty to bring forth Ordinances relating to the whole clause?	This means that there must be an Ordinance under this Clause in order for the Law to be operable. That Ordinance may cover all or any of the matters set out in 12 (2).

Clause Number	Respondent	Comment or Question	Committee Response
12 (3)	La Société Guernesiale	The Inquiries are supposed to be independent of the IDC. Should the IDC be making regulations as to the appointment of inspectors and procedures? Perhaps A&F should make these proposals to the States.	Yes. Regulations are a form of subordinate legislation which have to be made by a Committee of the States and laid for approval by the States. The Regulations would simply set out procedural rules and therefore would in no way compromise the independence of the Inspector. They could, however, be made by A&F, or by any other Committee of the States.
12 (3)	Deputy M E Best	Does the word "legislation" refer to regulations? In (d) and (e) how may the IDC be seen to be impartial if it controls the activities of the Inspector?	Yes. Regulations are a form of subordinate legislation which have to be made by a Committee of the States and laid before the States. The Regulations would simply set out procedural rules and therefore would in no way compromise the independence of the Inspector. They could, however, be made by A&F, or by any other Committee of the States.
13	Guernsey Farmers' Association	Would like to see control exercised to prevent people incorporating fields into their gardens.	It will still be necessary to demonstrate that a material change of use has occurred.
13	La Société Guernesiale	Perhaps Schedule 2 (Interpretation) should be included in the consultation as interpretation is a vital part of the Law.	The Interpretation section is not complete.
13	La Société Guernesiale	Is the clause sufficiently strong to prevent incorporation of open land into domestic curtilage, eg by repeated mowing of agricultural fields until they become lawns?	It will still be necessary to demonstrate that a material change of use has occurred.
13	Deputies Lowe, Jones and Trott	Unconvinced that the definition of development needs to extend to such minor and petty detail, which infringes upon people's liberty and the natural enjoyment of their property.	Please refer to Section 5.2 of the Policy Letter.
13 (2) (a)	Deputy J A B Gollop	Concerned with compliance and restitution problems regarding listed buildings, as in Jersey there has been legal problems in defining when a structure is demolished.	Please refer to Section 5.2 of the Policy Letter.
13 (2) (a),(b),(d),(e)	Guernsey Society of Architects	These definitions appear to be too inclusive or too wide sweeping. A list of exclusions should be provided to avoid the IDC from becoming involved with matters of maintenance and minor repair.	Please refer to Section 5.2 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
13 (2) (b) [C]	Anonymous	"Rebuilding" is a highly subjective term and could include minor repairs and reinstatements that should not require permission. Unless the scope and extent of future exemptions is specified, the inclusion of this term is unacceptable.	Please refer to Section 5.2 of the Policy Letter.
13 (2) (d)	Deputies Lowe, Jones and Trott	This section is far too subjective and should be removed. All work carried out by builders are contracts between them and the client, who ultimately is the responsible body who must seek IDC approval where necessary.	Please refer to Section 5.2 of the Policy Letter.
13 (2) (d) [C]	Anonymous	"Operations normally undertaken by a ...builder" could include all manner of minor repairs. It is impractical and unworkable to include such as widely drawn term.	Please refer to Section 5.2 of the Policy Letter.
13 (2) (d) [C]	Deputy M E Best	If one were to employ a builder to replace a chimney pot and at the same time he supplies and fits a smoke cowl, all as part of his business, are either or both of these activities "development"?	Please refer to Section 5.2 of the Policy Letter.
13 (2) (d)-(f)	Douzaine Representative R A R Evans	Clause 13 (2) (d) (e) and (f) are overkill and should be left out as still have 13 (4).	Please refer to Section 5.2 of the Policy Letter.
13 (2) (e) [C]	Anonymous	"A moveable structure" could include any multitude of domestic structures that one might reasonably expect to have in the garden. This catch-all term should be removed.	Please refer to Section 5.2 of the Policy Letter.
13 (2) (e)-(f) [C]	States Recreation Committee	13 (2) (e) and (f) could cause difficulties for sporting or social events being arranged at short notice. The Committee would wish to see appropriate exemptions for signs, tents etc of a clearly temporary nature.	Exemptions for temporary uses will continue to appear in the Exemptions Ordinance B. Please refer to Section 5.2 of the Policy letter.
13 (2) (f)	La Société Guerneslaise	How is "open land" defined?	This will be defined in the Interpretation schedule.
13 (2) (f) [46 (3) (a)]	Deputy M E Best	If a person exhibits a sign by hanging from his upper windows a piece of material with the words "Mary is 40 today" painted thereon, is this classed as development?	No - this will continue to be exempt. Please refer to Section 5.2 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
13 (3) (a)	Anonymous	Cannot believe there is any land in Guernsey that could be considered "unused". Returning land to cultivation that has at any time been cultivated should not require permission.	There is land, notably cliff land, which is unused. Please also refer to Section 5.2 of the Policy Letter.
13 (3) (b)	Anonymous	This clause does not specify what constitutes "abandoned" or after what timescale abandonment will be presumed.	This will be dealt with in Ordinance C.
13 (3) (b)	La Société Guernesiaise	How is "abandoned land" defined?	This will be dealt with in Ordinance C.
13 (3) [D]	States Tourist Board	Concerns regarding change of use and what would be considered to be "material" in these circumstances. Full consultations should be carried out with the Tourist Board as to the contents of the proposed Ordinance.	There is no change proposed to the definition of development contained in the current Law as regards change of use. What is considered "material" will remain a matter of fact and degree in the circumstances of each case. The States' Tourist Board will be consulted on any proposed changes to the use classes related to Tourism.
14	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
15	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
16	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
16 (1) (a) [18 (1), B]	Anonymous	There needs to be some safeguard to ensure the timescale provided in permissions is not unrealistically short, as it can take time to commence building works.	The power to limit the validity of consents is already contained in the Island Development (Amendment) (Guernsey) Law 1990. In practice the IDC uses this to limit the validity of consents to 1 year when a Plan is published. Any unreasonable exercise of this power would be open to challenge through the appeal system.
16 (2)	Deputies Lowe, Jones and Trott	The restrictions on the time limit of applications must be lifted. IDC applicants have gained permission for development after re-submission of more detailed drawings and it is every persons right to resubmit as and when they see fit.	The power to limit the validity of consents is already contained in the Island Development (Amendment) (Guernsey) Law 1990. In practice the IDC uses this to limit the validity of consents to 1 year when a draft Plan is published. Any unreasonable exercise of this power would be open to challenge through the appeal system.
16 (2) (a)-(b)	Anonymous	It seems highly unreasonable that the Committee may refuse to consider another application for a period of six months if it is considered "substantially the same".	The IDC does not consider it desirable to respond within such a short space of time to the same, or substantially the same, application, when it has previously rejected it. Where an applicant is making a revised application, it will be dealt with.

Clause Number	Respondent	Comment or Question	Committee Response
16 (2) (b)	Guernsey Society of Architects	The final scheme approved by the IDC can be similar to the original application and minor changes to subsequent applications are therefore necessary. This power should not be included in the new Law.	The IDC does not consider it desirable to respond within such a short space of time to the same, or substantially the same, application, when it has previously rejected it. Where an applicant is making a revised application, it will be dealt with
16 (2) (b) (ii)	Anonymous	This clause does not make sense - words missing?	This is a misprint - the sentence should end "since that refusal or dismissal".
16 (7) [B]	Deputy E W Walters	If neighbours have not seen Press notices and been able to complain, could a permission in principle be revoked?	Current proposals do not envisage third party appeals. Even if the neighbour agrees the IDC always considers applications from a 'property' point of view.
16 (B)	La Société Guernesaise	It is difficult to see where either in this clause or Ordinance B conditions attached to development can be made to stick, unless this matter is dealt with in Clause 23.	Failure to comply with a condition can be made the subject of a compliance notice.
17	Deputy M E Best	Will self certification (by the project architect) be accepted?	There are no proposals at present for self certification.
17	Deputy M E Best	Will the building regulations be so restrictive as to prohibit the use of specifications proven in other jurisdictions?	No. However it is important to note that this legislation does not alter the current regulations.
17	Deputies Lowe, Jones and Trott	It is essential that the issue of a building licence follows within 4 weeks of planning permission to ensure that the planning process does not cease to function, to the detriment of those desperate for an affordable home.	There is no change proposed to the way the present system works at this time.
18	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
19	CA Duquemin Ltd	What will the time scale for Completion notices be?	The Law sets out a compliance period for completion of "at least" 12 months.
19	Guernsey Society of Architects	Concern at the timescales mentioned in this clause. A more detailed analysis of the time required to put into effect measures in response to a completion notice should be examined by the Committee.	The Law sets out a minimum period of "at least" 12 months. The IDC will set a reasonable time in all the circumstances. There will be a right of appeal and provision for compensation where appropriate.
19	Royal Institute of Chartered Surveyors	Suggest that before a completion notice is issued, the matter should be referred to A&F. This would be similar to the procedure in the UK and would enable A&F and IDC to consider the wider implications of the action.	This is not an appropriate function for A&F. If the person on whom such a notice is served wishes to challenge it, he will be able to appeal.

Clause Number	Respondent	Comment or Question	Committee Response
19 (3)	Anonymous	As a completion notice may only give 12 months to complete development work, it seems unreasonable that the Committee may take up to a month to serve it. The period of the completion notice should run from when it is served.	The period will run from the date the notice is issued, ie when it is served and will be a minimum of 12 months.
19 (4)	Anonymous	It is unacceptable to relegate rights of appeal against a completion notice to an Ordinance. The additional powers that may be given to the IDC must be balanced by clearly defined rights of appeal, which come into effect simultaneously.	To be Human Rights compliant, the appeal procedures must be available when the Law comes into effect. It is the intention of the IDC to bring all essential Ordinances into effect simultaneously with the Law and this particular procedure will be covered in Ordinance H.
20	Guernsey Chamber of Commerce	Although it states in the explanatory notes that this would only be used in extreme circumstances, the actual clause does not state this and leaves the clause open to interpretation that revocation could be used at the IDC's whim.	It is important to note that the use of these powers is open to challenge by appeal and is subject to compensation provisions, both of which provide checks and balances.
20	Guernsey Society of Architects	Considerable reservations concerning the granting of powers for the IDC to revoke or retrospectively modify planning consent. This should not be necessary if the IDC are forward planning in a professional manner.	Clause 20 (1) makes it clear that the IDC can only use this power where there has been a change in any matter to which it was required to have regard in granting the application, not simply to rectify a "mistake".
20	Royal Institute of Chartered Surveyors	Suggest it would be appropriate for the IDC to refer the contemplation of the issue of revocation or modification of orders to A&F prior to issue.	This is not considered to be an appropriate role for A&F.
20	Guernsey Chamber of Commerce	There are concerns regarding planning applications being approved prior to the review of an Area Plan and that a change in zoning could result in the IDC revoking an approval. This needs to be clarified.	A change in policy could justify using these powers, subject to rights of appeal and compensation. The IDC would not however do this on a routine basis simply because a new Plan had been adopted.
20 (5)	Royal Institute of Chartered Surveyors	Is there a contradiction in the drafting of 20 (5), relating to matters of compensation as 88 seems to suggest that no compensation will be payable in respect of the modification or revocation of any planning permission? Is this the case?	Clause 88 states that "except where specifically provided for by this Law...no compensation is payable". Clause 20 (5) specifically provides for compensation and therefore takes precedence.
21	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	

Clause Number	Respondent	Comment or Question	Committee Response
21	Mr M Willis	The clause sets out that a register of applications shall be maintained, but does not make it clear that this will be publicly available on demand. This may be the intention of the Ordinance, but it is not clear.	The Ordinance states that this will be a public register.
21	Deputy T M Le Pelley	Concern about the idea of revocation of permits.	Please refer to the IDC's responses regarding Clause 20.
22	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
22	Royal Institute of Chartered Surveyors	Welcome this provision and would like to see this service provided. Feel that equal priority should be given to sections which seek to exert positive control.	The IDC will bring these proposals forward when resources allow.
22	Ozannes	This section is a highly desirable additional service to the public and should not be deferred because of lack of resources. These resources ought to be made available.	Resources will be required both to research the Ordinance and to provide the services. They will, however, be introduced as soon as resources allow. In the meantime queries will continue to be dealt with by exchange of correspondence.
22	Mr M Willis	See no reasons why these provisions should have serious resource implications. Certificates of Authorised Use are highly desirable for all parties. It needs to be made clear where the burden of proof will lie and what that burden will be.	Resources will be required both to research the Ordinance and to provide the services. They will, however, be introduced as soon as resources allow. In the meantime queries will continue to be dealt with by exchange of correspondence.
22 (2) (a)	Deputy T M Le Pelley	Clearly defined guidelines are needed rather than woolly opinions, which have, in the past, given hope of agreement subsequently dashed by refusal.	This clause relates to opinions on the need for planning permission, not advice given by planning officers on the likelihood of permission being granted. The effectiveness of such advice could be improved by issuing more written guidelines. This is being provided for elsewhere in the Law and is intended as resources allow.
23-26	States Housing Authority	The Authority is aware that in the UK, planning covenants have been successfully used as a means of providing a proportion of affordable housing, but has not been without criticism. A joint review of this matter would be beneficial.	A joint review has been arranged.
23-26	States Recreation Committee	The Committee welcomes this new concept for Guernsey, which could have some implications of a positive nature.	

Clause Number	Respondent	Comment or Question	Committee Response
23-26	Anonymous	If the grant of planning permission is conditional on agreement to a covenant, in practice an applicant may have little choice but to agree. Clearly defined rights of appeal are therefore important.	A covenant is an agreement freely entered into between the IDC and landowners and what can be included is set out in 23 (1) (2) and (3). There is no form of duress involved. However, the IDC will set out clear, transparent policies and procedures for their use in the future Ordinance and, where appropriate, in the policies of Development Plans.
23-26	Mr K Bown	Concern that the proposed power for the IDC to modify/discharge Planning Covenants would be used against existing restrictive covenants over land (and registered at the Greffe), which would seriously affect the value of such property.	This is not the intent nor the effect of the Law.
23-26	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
23-26	La Société Guernesaise	Do covenants include provision for ancillary works to be carried out, eg on public land or highways, by developers?	This could form the basis of a covenant.
23-26	Mr M Willis	If the Committee is to be free of accusations of selling planning consents then Planning Covenants must be placed on a public register.	The proposed registration procedures will ensure this.
23-26	Olsen Ferbrache Morgan	Will there be problems with Planning Covenants?	A covenant is an agreement freely entered into between the IDC and landowners and what can be included is set out in 23 (1) (2) and (3). There is no form of duress involved. However, the IDC will set out clear, transparent policies and procedures for their use in the future Ordinance and, where appropriate, in the policies of Development Plans.
23-26	Deputy L S Trott	Planning Covenants could cause sterilisation of the land. If there was a change in Strategic direction, would the IDC be able to exert compulsory purchase over land covered by a covenant?	Most covenants will be naturally time limited because they require a specific action to be carried out. There is however provision for the modification and discharge of covenants if circumstances change. The Ordinance which is currently under consideration may usefully clarify matters in this area.
24 (3) (c)	Deputy T M Le Pelley	A person owning a rente on the covenanted property may not know of its existence and should not be included.	This would be a matter between the landowner and the rentier. It is right that everyone with an interest in land should be informed to enable any appropriate action to be taken by each.
27	Anonymous	This Law is a litigators dream. How will buyers and sellers reach agreement on a meaningful conveyance? The IDC should provide a service to inspect a property and issue a certificate.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
27	Mr G Cullington	The Law will allow for the IDC property record to be checked but to be sure prospective purchasers would need to have the property surveyed and this would mean outrageous costs.	Please refer to Section 5.3 of the Policy Letter.
27	Anonymous	Is the advocate liable if he did not do a proper search? Prosecution would be costly.	Please refer to Section 5.3 of the Policy Letter.
27	Anonymous	How can one tell if a piece of work has been carried out before the Law was introduced?	Please refer to Section 5.3 of the Policy Letter.
27	Guernsey Chamber of Commerce	Why should access to the information concerned be available only to "specified persons"?	Please refer to Section 5.3 of the Policy Letter.
27	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
27	Royal Institute of Chartered Surveyors	Welcome this section, but feel that the implementation of this provision is extremely important, especially against the backdrop of compliance and control of development.	Please refer to Section 5.3 of the Policy Letter.
27	Royal Institute of Chartered Surveyors	Anxious that the conveyance of property is not unduly delayed by planning matters. Would like to see access to IDC files made relatively quick and simple.	Please refer to Section 5.3 of the Policy Letter.
27	Olsen Ferbrache Morgan	Will access be given to older IDC files?	Please refer to Section 5.3 of the Policy Letter.
27	Mr M Willis	Not clear why access to property information should be restricted to "specified persons". This is all information that should be in the public arena. Searches are sometimes carried out by both lawyers and individuals.	Please refer to Section 5.3 of the Policy Letter.
27	Deputy B J Gabriel	Members of the general public have reported their concern over house purchasing, given the extra costs involved in conveyancing checks going back ten years.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
27	Deputies Lowe, Jones and Trott	Grave doubts that this clause will be Human Rights compliant. The professional bodies have already stated publicly that they have similar concerns.	Please refer to Section 5.3 of the Policy Letter.
27	Deputy M M Lowe	Consideration should be given to withdrawing the section on advocates checking IDC's property records for outstanding contraventions before new ownership of a property.	Please refer to Section 5.3 of the Policy Letter.
27	Deputy T M Le Pelley	Property search provisions should cover the applications and enforcements register and should be made available to heirs as well as prospective purchasers.	Please refer to Section 5.3 of the Policy Letter.
27	Deputy T M Le Pelley	For a small fee, the IDC should release copies of all information held relating to property which is for sale. For an additional fee the staff should inspect the property and issue a "clean bill of health".	Please refer to Section 5.3 of the Policy Letter.
27	Deputy D B Jones	Advocate searches will add costs to purchase costs for first time buyers.	Please refer to Section 5.3 of the Policy Letter.
27 (2) (b)	Guernsey Chamber of Commerce	The words "some or" should be deleted.	Please refer to Section 5.3 of the Policy Letter.
27 [B]	Guernsey Chamber of Commerce	It is noted that objectors to an application will not be allowed to see the files on a property. However, if the application was taken to appeal full details on the property would come to light.	Please refer to Section 5.3 of the Policy Letter.
27 [B]	Deputy T M Le Pelley	Suggest that once planning files become open to public, all decision letters should be sent with a copy of the Planning Officer's report to Committee and the minutes of the Committee's decision.	Please refer to Section 5.3 of the Policy Letter.
28 [C]	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole. However, view the potential list of matters that could be exempt from planning applications as being incomplete.	

<b>Clause Number</b>	<b>Respondent</b>	<b>Comment or Question</b>	<b>Committee Response</b>
29	Douzaine Representative R A R Evans	Do not think "artefacts" should be included. If they are they should be defined. 29 (5) should be deleted.	In the context of monuments, the use of the term "artefacts" is considered reasonable. No Ordinance under 29 (5) is proposed but it is considered that it should be retained to give flexibility for the future.
29 (3) (b)	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
29 (3) [F]	Deputy T M Le Pelley	People should not need to apply for assurance that their property is not going to be listed.	This provision is designed to enable people to seek certainty in relation to the possible listing of their property before embarking on some future action such as carrying out development.
29 (4) [33 (4)]	Board of Administration	The Board is concerned that the States should have defined powers to over-rule a decision of the States Heritage Committee where there are clear public-interest factors.	It is proposed that all appeals against the listing of monuments and buildings should be to an independent adjudicator and thereafter to the Royal Court. (The current right to appeal is to the Royal Court).
29 (4) [33 (4)]	Deputy M E Best	Is it envisaged that the proposed Ordinance will echo the existing legislation (Vide the recent Courts redevelopment debacle)?	It is proposed that all appeals against the listing of monuments and buildings should be to an independent adjudicator and thereafter to the Royal Court. (The current right to appeal is to the Royal Court).
29-37	Deputy M E Best	Will the provisions of Chapter 1 and 2 of Part 4, Special Controls, require the complete rewriting of the present legislation relating to "Heritage, of amendments"?	The new Law will supersede the Ancient Monuments and Protected Buildings Law.
29-46	States Tourist Board	Wecome the proposed "Special Controls" for Monuments, Conservation Areas and Sites of Special Significance as the Island's environment and heritage are important assets for the Tourist Industry.	
30	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
30 (1) [31 (1), F]	Dr J Monaghan	The majority of archaeological sites are not "protected monuments" - it is important that Ordinance F has sufficient teeth to protect "hidden" archaeological remains.	This is dealt with primarily in Ordinance B.
30 (a)	Deputy M E Best	Please explain and define the words ".....So far as possible...".	This simply acknowledges that there may be practical or other impediments to achieving an absolute standard of preservation and protection of monuments. It sets a high, but not unachievable standard.

Clause Number	Respondent	Comment or Question	Committee Response
31	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
31	Mr M Willis	The provisions in 31 (2) (e) should go on to make provision for the information gathered and recorded to be made available to the public.	Ordinance F will make it clear that the Register of Finds will be a public register.
31	Mr M Willis	Appears to be too tightly drawn to offer sufficient flexibility or protection. Suggest amendment of 31 (1) to "development adversely affecting the character or setting of a protected monument" and the addition of "adversely" to 31 (2) (a) and (b).	The current wording is considered sufficiently flexible.
31 (2) (d)	La Société Guernesiale	Are the States going to grant the Heritage Committee compulsory acquisition powers? Should there be provision for restitution of damage to protected buildings and monuments?	Yes. Please refer to Ordinance F.
31 (2) (e)	Dr J Monaghan	Unless the provision for reporting has a very short timescale, an archaeological site can be destroyed before such information has been assessed by the Heritage Committee.	Noted. Most "hidden" archeology will come to light during development and the IDC will rely on planning conditions to ensure it is recorded or on emergency listing should it appear to be of exceptional value.
31 (2) (e)	La Société Guernesiale	Will archaeological finds or potential finds be afforded sufficient protection? Will there be provision for them to be protected during development and will access to sites be permitted to archaeologists?	See above.
31 (3)	Dr J Monaghan	The Heritage Committee does not have the resources to make such grants. In the UK, financial burden falls on the developers.	These grants are not intended to fund archeological work. "Hidden" archeology will be dealt with through conditions of planning applications.
31 (4)	Deputy M E Best	Is the "guidance" to be enforceable?	The IDC will be required to take into account any guidance issued by the Heritage Committee under this clause when assessing planning applications. The guidance will not be binding, but taken together with Clauses 1, 31 (1) and 35 (1), adequate protection for the Island's heritage will be achieved.
31 (4) [35 (3)]	National Trust of Guernsey	It would appear that the role of the Heritage Committee is reduced to that of an advisory panel and that all power will be vested in the IDC. In the UK power is shared between Planning and English Heritage and other bodies are consulted.	In the UK, the local planning authority determines almost all applications relating to listed buildings. In so doing it may consult English Heritage and other bodies (and must do so in certain circumstances) and must have regard to government advice. The proposed system is very similar to this, but taking into account the different situation in Guernsey.

Clause Number	Respondent	Comment or Question	Committee Response
32	Mr M Norman	Welcome the proposal to increase the penalties for damage and destruction.	
32	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
32 (1)	Deputy M E Best	Is the offence to relate to acts of commission or will it include acts of omission?	It will not relate to acts of omission as these cannot be made an offence. Acts of omission, such as neglect can be dealt with by Preservation Notices or, in an extreme situation, compulsory purchase (Ordinance F).
33	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
33 (1)-(2)	National Trust of Guernsey	In Section 33 (2) (a), the planning perspective appears to only consider the outside and not the whole of the building.	These provisions say that the Committee may list buildings of special interest (as defined) and may take into account the additional factors in 33 (2). This is sufficiently clear.
33 (1)-(2)	National Trust of Guernsey	The wording in this section is too vague. The public should know that the Heritage Committee "will take into account" external and internal features.	These provisions say that the Committee may list buildings of special interest (as defined) and may take into account the additional factors in 33 (2). This is sufficiently clear.
33 (2) [B]	Deputy W M Bell	Concern over the proposed listing of the whole building, which would mean that all internal works would need the permission of the Heritage Committee.	Proposals for listed buildings include the whole of the building for the avoidance of doubt but Ordinance B will provide that only works affecting the special character needs consent, ie alterations to modern additions will no longer require consent. The Heritage Committee will be enabled to list parts of buildings, but the "default" position is the whole building.
34	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
34	Mr M Willis	The clause could propose that protected buildings must be "preserved or enhanced". This would give the Committee greater scope to accommodate adaption and change.	It would be very difficult to impose a duty on any Committee to enhance - preservation is the highest level of duty that could properly be imposed.
35	Royal Institute of Chartered Surveyors	Concern with the wording of this clause which states that "there is strong presumption against planning permission being granted". The effect of this will be to discourage investment in the development of listed buildings, particularly in town.	This presumption is qualified by 35 (1) (a) and (b).

Clause Number	Respondent	Comment or Question	Committee Response
35	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
36	Mr M Norman	Welcome the proposal to implement grants/loans schemes. Listing places a burden of responsibility on the owner, but it should also place a moral obligation on the authority to support them. Implementation of these clauses should be without delay.	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
36	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
36	National Trust of Guernsey	How successful will grant aid be and what percentage of costs will it be?	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
36	National Trust of Guernsey	It is imperative that a basic scheme of grants and loans be established.	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
36	Guernsey Bar Council	Grants and loans should be available for protected buildings as soon as the Law is approved.	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
36	Deputy J A B Gollop	Support for grant aid but perhaps loan aid is more appropriate.	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
36	Douzaine Representative R A R Evans	The maintenance and repair of listed buildings becomes extremely expensive. Before the new provisions for listing come into force, the public should be aware how the powers conferred by Clause 36 will be exercised and what funds will be available.	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
36 [35 (2) (d)]	L P Brehaut	Would it not be preferable to provide assistance to property owners not in a financial position to carry out repairs by means of loans and/or grants? A charge could remain against the property.	This is an enabling power. Detailed proposals for a scheme of grants and loans have not yet been worked out and the necessary financial provision has not yet been allocated.
37	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	

<b>Clause Number</b>	<b>Respondent</b>	<b>Comment or Question</b>	<b>Committee Response</b>
37	Royal Institute of Chartered Surveyors	From a practical point of view, the drafting of this clause seems very broad and likely to lead to litigation. The clause should be diluted so as to deal with minor incidents.	The term "litigation" is inappropriate. The decision to prosecute will lie with the Law Officers, who will assess whether there is sufficient grounds for such action.
37 (4)	La Société Guernesiaisie	This clause does not appear to be strong enough.	It is both necessary and reasonable that the Law makes it clear that you cannot be prosecuted for something that has planning consent.
38	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
38	Mr M Willis	It is not clear that Conservation Area status will only be conferred through the Development Plan process. As this status restricts the rights of property owners it should be through a Plan so it is open to challenge via a Planning Inquiry.	Conservation Areas can only be designated through a Development Plan. There is no other mechanism within the Law.
38 (2)	Board of Administration	The Board is concerned that this provision may conflict with the Board's Environment Section, who manage conservation areas. Provision should require the Board to develop management plans in liason with the IDC. A&F must provide the finance to allow the Board to implement any work as resources for such projects are small.	There appears to be confusion here about what is a Conservation Area. These areas are designated through the Development Plan process, primarily for their historic and architectural character. These particular proposals will not therefore affect the open, coastal or other land managed by the Board of Administration, which will continue to carry out its mandate in that respect. Such land may however be designated a Site of Special Significance, which would affect the operations requiring planning permission.
38-39	States Committee for Horticulture	Conservation Areas appear only to make reference to buildings and not also to trees. In the UK "notice" of any proposed works must be given for any tree situated in a Conservation Area.	Conservation Areas are designated primarily for their historic and architectural character. Trees may make a contribution, but this is incidental. The IDC may however serve Tree Protection Orders on trees that make a particular contribution.
39	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
40	Mr M Wood	Provision in the planning process must be made for known as well as unknown archaeological remains. How will sites ever become "known" if provision is not made for their existence?	"Hidden" archeology will be dealt with when planning applications are assessed. Ordinance B makes provision for requesting archeological assessments in appropriate circumstances.
40	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	

Clause Number	Respondent	Comment or Question	Committee Response
40	National Trust of Guernsey	Archaeology is mentioned under the section for Sites of Special Significance, but what about undiscovered material? This section of the law is not strong enough as there is only one States Archaeologist.	Sites of Special Significance can be designated for archaeological reasons, giving strong powers. Unscheduled archaeology will be covered by the General Provisions Ordinance, where the Committee could require a site to be surveyed and examined.
40 (3)	Mr M Norman	The Law fails to address the threat posed by development to Guernsey's archaeological heritage. Archaeological assessments should be a pre condition of the granting of permission and the cost for this should be born by the developers, as in the UK.	Ordinance B makes provision for requesting archeological assessments in appropriate circumstances.
40-41	Board of Administration	The proposals cite areas as Sites of Special Significance. This does not fit with internationally recognised terminology. Conservation areas are normally designated as SSSIs and/or SNCIs.	This unique term is used because it may apply to various types of special interest such as archaeology, which would not be covered by "Site of Special Scientific Interest" or "Site of Nature Conservation Interest". These terms are creations of UK legislation, not international terms. With Guernsey's small land mass, the simplicity of a single, unique category has been decided on.
40-41	National Trust of Guernsey	Modern construction methods entail the total destruction of archaeological evidence. No provision is made to give any safeguards or give any time for archaeological investigation prior to development.	Ordinance B makes provision for planning conditions, which could include mitigating measures and prior recording of a site before development.
41	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
42	Mr V Watson	Why not restrict the height of hedges, eg Leylandii?	The IDC has considered this and looked at UK proposals. It has concluded however that the control of nuisance trees is not appropriate for a planning law.
42	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
42-45	States Committee for Horticulture	It is important to be clear on definitions, particularly the definition of "woodland". Should woodland have a distinct definition compared to an "area of trees"? What constitutes damage?	Both trees and woodland will be defined and the advice of the States' Committee for Horticulture will be sought on these matters.

Clause Number	Respondent	Comment or Question	Committee Response
42-45	Board of Administration	The States should be exempt from the provisions of these proposals. If not, an exemption should allow the States to carry out tree surgery work if it is necessitated for health and safety reasons or to maintain CAA requirements.	The IDC will only control works on trees subject to a Tree Protection Order. Where trees are actively managed, the IDC would not normally make such an order. In dealing with applications, whether States or private, the IDC will take into account health and safety issues and there will be exemptions for dead and hazardous trees etc, and for works required to comply with a statutory obligation. The IDC proposes that no TPO may be made on operational harbour or airport land and this could be extended to areas essential to maintaining safe navigation.
42-45	States Committee for Horticulture	What criteria would be used to judge a tree's value? How would that value be measured and what approaches would be taken to ensure consistency?	This is a matter of policy, not Law. The Law does however require Tree Protection Orders to be justified on grounds of amenity.
42-45	Guernsey Chamber of Commerce	The IDC should be encouraged to protect existing and new trees where appropriate. However, there is concern that the planting of large trees immediately adjacent to buildings should be resisted.	The IDC does not control the planting of trees. Where trees are part of a landscaping scheme required by a condition of consent, the IDC will follow accepted practice in relation to distances from buildings.
42-45	Mr M Willis	It is not clear that information regarding to Tree Protection Orders and decisions in respect of trees will be made available in a register for public scrutiny.	This is provided for in general terms in 43 (5) (a) and details of the public register will be set out in Ordinance F.
42-45	Alderney Representative Mrs P M Jorgensen	Estate agents would need to be forced to tell prospective buyers that existing trees on the property cannot be felled.	There will be a public register of Tree Protection Orders so that these matters can be checked. The Property History search will include a search of this register.
43	States Committee for Horticulture	What transitional arrangements will be made for trees now considered worthy of protection, between the repeal of the existing law and the introduction of the new Law?	It is likely that the existing protection will be extended for a period to enable initial Tree Protection Orders to be made.
43	States Committee for Horticulture	Will a Protection Order panel be set up to determine which trees need protection?	This is not envisaged at present.
43	States Committee for Horticulture	Will there be a provision in the Law to protect both landscape and environment in general terms and if so how will Tree Protection Orders be linked to such protection?	This is normally covered by Development Plan policies and, in future, these may include matters relating to Tree Protection Orders.
43	States Committee for Horticulture	Who decides which trees should have Tree Protection Orders?	The IDC in consultation with the States' Committee for Horticulture.

Clause Number	Respondent	Comment or Question	Committee Response
43	States Committee for Horticulture	How long would a Tree Protection Order last?	Until the end of its validity in the case of a temporary Tree Protection Order or until rescinded in the case of a Tree Protection Order.
43	States Committee for Horticulture	What happens to mistakes in Tree Protection Orders? These will occur in the practical operations of the Orders and could lead to prosecutions failing on a technicality.	If a mistake is made, the effectiveness of the Tree Protection Order will, inevitably, be compromised.
43	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
43 (5) (a) [27]	States Committee for Horticulture	Will Tree Protection Orders be recorded in such a way that they can be detected in searches made during the conveyance of property? In the UK this is achieved by making them a land charge.	Yes, through the public register.
43 (5) (b) [F]	States Committee for Horticulture	What opportunity will be provided to challenge the Tree Protection Order or its validity? How will appeals and adjudications be dealt with and what system is envisaged for their operation?	There will be opportunity to object to a Tree Protection Order before it is confirmed. The procedural details are still under consideration.
43-45	States Committee for Horticulture	At what point in the Planning process would a Tree Protection Order become effective? What mechanisms would be in place to prevent unscrupulous developers from removing trees prior to development permission?	A Tree Protection Order will be effective immediately but will lapse unless confirmed. Trees can only be protected by a Tree Protection Order or by a condition of consent. There may be opportunity to identify likely development sites and serve Tree Protection Orders in good time.
44	Mr M Norman	Clause 44 states that the Committee can require an assessment of the likely impact of development on trees or surrounding land. This clause should also apply to archaeological sites and the built heritage.	Ordinance B will deal with circumstances in which an archaeological (or other) assessment may be requested.
44	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
44	Guernsey Farmers' Association	Against controlling the lopping of trees surrounding fields as they can interfere with tractors. Against tree planting in fields that are otherwise productive.	If the IDC selects trees appropriately and deals with applications in a sensitive manner, no problems should occur.

Clause Number	Respondent	Comment or Question	Committee Response
44 (3)	States Committee for Horticulture	Will an impact assessment be done on site automatically for all proposed development? Will this extend to automatic assessments for land which is zoned for development, or being considered for development?	This clause relates to applications for works to trees which are subject to a Tree Protection Order, where the IDC will consider whether an impact assessment should be undertaken. Where a development application affects trees (whether or not subject to a Tree Protection Order) the IDC will have to assess, or require an assessment of the effect on the trees.
44 (3) [C]	States Committee for Horticulture	The exemptions need to include hazardous trees as a tree can become a hazard without being dead or diseased. Conversely a dead or diseased tree may not necessarily become hazardous.	The IDC will take account of this in finalising Exemptions (Ordinance C)
45	States Committee for Horticulture	How would the compliance mechanisms operate and what level of resource would be available to ensure compliance?	Clause 48 could be used where the situation is retrievable eg storage of heavy plant under tree, surfacing over root area.
45	States Committee for Horticulture	What are the proposed penalties for felling or damaging a tree under a Tree Protection Order?	This would be unlawful development and is dealt with in Clause 57.
45	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
45 (1)	States Committee for Horticulture	At what point will it be deemed an infringement has taken place? Who will be liable and who is open to prosecution?	This is a decision for the Law Officers.
45 (2)	Board of Administration	The Board is very concerned about the financial implications of this clause. In making any recommendation in respect of trees on Board property, the IDC would need to consult the Board and A&F in respect of the allocation of additional finances.	This is an Ordinance making power and the Committee has stated that it does not intend to implement it at this time.
46	States Tourist Board	Welcome the increased control over environmental degradation caused by unauthorised tipping and derelict glasshouses. Such eyesores detract from the Island's attractiveness to visitors.	
46	Guernsey Society of Architects	It could follow from the granting of additional powers that members of the community could be forced to upgrade or improve their property without reference to their financial means.	As with any power of this nature, the means of individuals will have to be taken into account before using it, along with all other considerations. Having said that, the IDC does not propose to enact these powers at this stage.

Clause Number	Respondent	Comment or Question	Committee Response
46 (3)	Board of Administration	Why does the IDC consider that it needs to be responsible for special or additional controls for the protection and preservation of cliff paths, which are managed by the Board?	This proposal is a response to the States' Resolution of 1989. It is not, however, proposed to introduce these provisions at this stage.
47	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
47	Mr M Willis	Challenge Notice is a confrontational title for a process designed to elicit information where there is a suspected contravention. At this stage in the enforcement process it may be possible to reach compliance without resort to formal action.	The term is relatively neutral and is appropriate to a notice which may suggest the certain actions be taken. It is true, that many cases are resolved without formal action.
47-48	Lovell Ozanne & Partners Ltd	Will Enforcement Notices be served on owners and agents?	Please refer to Section 5.3 of the Policy Letter.
47-54	Royal Institute of Chartered Surveyors	Generally welcome the enforcement proceedings. The concept of a challenge notice is similar to planning contravention notices and breach of condition notices, commonly used in the UK.	Please refer to Section 5.3 of the Policy Letter.
47-75	E W Nial	Consider part 5 on Enforcement to be very draconian and not in the good spirit of dealing with the public that the IDC generally has at present.	Please refer to Section 5.3 of the Policy Letter.
47-75	E W Nial	The whole issue of enforcement just passes the responsibility of control from the IDC to the public, which is clearly wrong.	Please refer to Section 5.3 of the Policy Letter.
47-75	Guernsey Chamber of Commerce	There is concern that some of the proposals are far reaching and that until the Law is approved, it is almost impossible to say how rigidly various sections of the Law would be applied. It is hoped that there would be some degree of latitude.	Please refer to Section 5.3 of the Policy Letter.
48	States Recreation Committee	The Committee leases land where there is likely to be archaeological remains and would seek assurances that prosecution for any offence would be limited to the perpetrators and not the owners of the land in question.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
48	Mrs P Wisher	Agree with compliance notices where there has been a breach of planning law but it is unfair to pass responsibility onto a new owner. Why can not the notice be served on the previous owner?	Please refer to Section 5.3 of the Policy Letter.
48	Mr S L Gill	The State cannot punish a new owner of a property just because a previous owner, maybe up to ten years earlier, broke the law. This is surely against Human Rights. This section should be removed.	Please refer to Section 5.3 of the Policy Letter.
48	Guernsey Chamber of Commerce	An area which is causing concern is where work has been carried out on a property without permission and who will be responsible for putting right the problems caused, as it appears that this is trying to be made retrospective.	Please refer to Section 5.3 of the Policy Letter.
48	Guernsey Chamber of Commerce	There will be situations where a property owner will be seen to be carrying out minor works without knowingly knowing that permission is necessary. It will be obvious where building works have been carried out knowingly without permission.	Please refer to Section 5.3 of the Policy Letter.
48	Royal Institute of Chartered Surveyors	Where the Committee compels a person to do something (a Compliance notice) there should be a mechanism whereby that individual could establish with certainty matters of fact held on file by the IDC.	Please refer to Section 5.3 of the Policy Letter.
48	Guernsey Chamber of Commerce	Which IDC Law does the wording refer to and which area of the Urban Area Plans and Rural Area Plans - Building Control section of the Law or Heritage section? It is felt that there is no way these matters can be made retrospective.	Please refer to Section 5.3 of the Policy Letter.
48	Guernsey Chamber of Commerce	It is recognised that because of the weakness of the present law there must be many property owners who have carried out work without permission and perhaps there could be an amnesty period.	Please refer to Section 5.3 of the Policy Letter.
48	Mr J R Thompson	Introducing a system of compliance notices could in effect be retrospective, going back ten years. This is transferring the problem to an innocent party. Surely it is against Human Rights?	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
48	Martel Maides	Recommend a planning amnesty on the date of the application of the Law to deal with an anticipated rush of retrospective applications.	Please refer to Section 5.3 of the Policy Letter.
48	Mr M Willis	This clause sets out a very exact test for the Committee. Suggest greater flexibility eg "if it appears to the Committee that there has been a breach". Also in 48 (3) (a) and (b) it should be clear that each owner and occupier must receive a copy.	Please refer to Section 5.3 of the Policy Letter.
48	Ozannes	If the IDC is to enforce compliance by the present owner of property, it has no alternative but to make available a swift and cheap means of checking whether that property complies with the Law.	Please refer to Section 5.3 of the Policy Letter.
48	Douzaine Representative W Le R Robilliard	It is iniquitous that the current owner should be held responsible for the actions of the previous owner.	Please refer to Section 5.3 of the Policy Letter.
48	Deputy J A B Gollop	Support for a tough line on illegal work but this could cause a property blight. Hope that the IDC will have the teeth to prosecute for gross infringements.	Please refer to Section 5.3 of the Policy Letter.
48	Deputy M E W Burbridge	If I bought a property last year with an unauthorised extension is it correct that I will not be liable when the new law comes in? The document should be made clearer for transitional cases.	Please refer to Section 5.3 of the Policy Letter.
48	Alderney Representative Mrs P M Jorgensen	This provision might have serious repercussions on house-sales. It would need to be widely and openly publicised and Estate Agents forced to tell clients that they need to investigate.	Please refer to Section 5.3 of the Policy Letter.
48	Deputy R C Berry OBE	The section reads as though the existing owner of the land will have a notice issued against him. Is it Human Rights compliant to serve a notice on someone who has not done illegal work?	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
48	Deputies Lowe, Jones and Trott	This section is the most contentious in the proposals. It should be removed completely from the proposals at this stage pending further appraisal of the ramifications this proposal may have on the community.	Please refer to Section 5.3 of the Policy Letter.
48	Douzaine Representative W Le R Robilliard	48 (4) should be deleted and 48 (3) amended so that a current owner cannot be required to remedy illegal work. If a former owner can be traced a penalty could be instituted but without a requirement to undo works.	Please refer to Section 5.3 of the Policy Letter.
48	Deputy M E Best	Wholeheartedly support the thrust of Part 5 and ask if it will see the end of "Retrospective applications". However, until a person who acquires realty by way of inheritance is exempt, have a great difficulty in accepting Part 5.	Please refer to Section 5.3 of the Policy Letter.
48 (2)	Guernsey Chamber of Commerce	It appears vague as to what is considered work to be carried out "without permission".	Please refer to Section 5.3 of the Policy Letter.
48 (3)	Guernsey Society of Architects	The proposed compliance notices should only be served on the person(s) who are involved in a breach of planning law. To include owners in such legal action is unjust and unreasonable.	Please refer to Section 5.3 of the Policy Letter.
48 (3)	Deputy J A B Gollop	What will happen in the case of a company owning a property and the shareholders changing?	Please refer to Section 5.3 of the Policy Letter.
48 (3) (c) [18.3]	Anonymous	There needs to be some safeguard for the protection of minority ownership of land, as could arise from the laws of inheritance.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	States Tourist Board	The Board would request that the administration of provisions related to the change of ownership of properties should not be unnecessarily cumbersome, particularly as respects hotels, as it is important not to discourage investment.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Anonymous	Surely the responsibility for illegal development is with the seller? A law abiding citizen has the right to certainty as a purchaser.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
48 (4)	L P Brehaut	Retrospective legislation is not acceptable. Would this comply with Human Rights Legislation?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Anonymous	Opposed to powers of enforcement being applied to someone who was not the owner at the time of the alleged breach. It is possibly a contravention of Article 8 for sanctions to be applicable to an innocent party.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Anonymous	It is nonsense to suggest that an "innocent party" caught by a retrospective compliance notice might be able to claim redress against their advocate or surveyor. The professional is no more able to determine the previous planning history.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Anonymous	The power to issue a compliance notice in respect of works undertaken up to 10 years previously is completely unacceptable. People who have bought property in the last ten years have no ability to make searches about planning history.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Anonymous	A proposed Ordinance will make provision for searches and maintenance of registers but as it has not been drafted it provides no safeguards against the law. These will not be retrospective so retrospective enforcement is unacceptable.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	N G Wilkinson	Unreasonable to make an owner liable for defaults of his predecessors without a mechanism to provide absolute assurance that the property is free from planning defects. Certificate of planning compliance should be issued by the IDC.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Guernsey Society of Architects	The compliance procedure should not be made retrospective. The Law should only apply to matters that occur subsequently to the enactment of the Law.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Guernsey Chamber of Commerce	A system could be put in place so that it is not the new property owner who is penalised, but through the Courts the property owner who undertook the work could be forced to pay to rectify the problems.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
48 (4)	Guernsey Chamber of Commerce	There is concern that within the Law a new property owner could be forced to rectify work that was carried out without permission by a previous property owner. Assurance is required that this would not be the case.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Guernsey Chamber of Commerce	It is assumed that this Law will not be retrospective. Assuming it becomes Law later on in 2002, then one assumes that compliance notices will be issued at some point in the future after the date of the new Law.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Royal Institute of Chartered Surveyors	Still unclear from which date the period of either ten years or four years begins and what transitional arrangements will be made. Will the resources be available to provide access to records?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Royal Institute of Chartered Surveyors	Could a similar system to that adopted in the UK be implemented, (Planning and Compensation Act 1991) whereby a Certificate of Lawfulness for an existing development can be issued?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Guernsey Chamber of Commerce	To be realistic the IDC must provide a cut off date. Architects, surveyors, advocates and property owners should not be penalised for what has happened in the past. However, past this date work carried out "without permission" can be eliminated.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Royal Institute of Chartered Surveyors	The commencement date for the time period to commence should be the date upon which the Law comes into operation. Over a period of time the Law will tighten up on compliance but will not prejudice those who have unwittingly breached regulations.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Guernsey Bar Council	There are practical problems in binding successors in title.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Guernsey Bar Council	The Draft Law causes problems with conveyancing. The IDC needs to issue a certificate confirming that all parts of the development have planning permission.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
48 (4)	Guernsey Chamber of Commerce	Concerns within the architectural, surveying and advocate's practices that when properties are conveyed the new Law could make these professionals at risk.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Constables of St Pierre du Bois	Concern by the Douzaine that retrospective action was proposed up to ten years after unauthorised development. Five years would be more acceptable. These proposals would add extra costs to house purchase and ownership.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Mr J R Thompson	Will work undertaken by a previous owner create criminal liability?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Advocate R Ogier	In pursuing the next owner, will this mean that the IDC will produce a report for each house sale or will we rely on property searches?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Advocate N Le Poidevin	There is a good argument for legislation to prevent abuse. Any legislation that seeks to enforce against a purchaser rectification of past infractions needs careful wording and sensitive application.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Martel Maides	Concern that the proposals will stifle the existing successful and efficient conveyancing system because of the inability of professional bodies to certificate and protect owners of property from possible breaches of the laws by third parties.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Martel Maides	Suggest the IDC provide a service that can carry out inspections and issue either certificates of compliance or notices of challenge/compliance.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Martel Maides	Concern that any new property owner can be exposed to the full penalty of the Law for illegal development carried out by any number of previous owners spanning the preceding ten years.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Falla Associates International	The concern about retrospective nature is because searches do not exist as in the UK. Purchasers over the last ten years will be in trouble as their Advocates would not have done a search. You should clarify the Law over transitional arrangements.	Please refer to Section 5.3 of the Policy Letter.

<b>Clause Number</b>	<b>Respondent</b>	<b>Comment or Question</b>	<b>Committee Response</b>
48 (4)	Advocate N Le Poidevin	Fear that the responsibility for checking for these matters will rest with conveyancers and a knock-on effect may well be an increase in conveyancing costs. The matter will not be solved by making IDC files more transparent.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Deputy J A B Gollop	A compromise cannot work. Almost every property has at least one previous breach of planning law	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Deputy L S Trott	The time period given for compliance notices is 4 years from the time the Committee first knows about it. What constitutes notification to the Committee?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Douzaine Representative W Le R Robilliard	Concern regarding the provisions of 48 (4). It is iniquitous, undemocratic and surely has Human Rights implications.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Deputy P J R Roffey	I am pleased that successors in title are to be responsible for putting things right. Although some may be innocent, so are the neighbours affected by illegal development.	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Deputy W M Bell	Concern over the issue of successor in title and how far this should be backdated. Should the period of ten years be reconsidered?	Please refer to Section 5.3 of the Policy Letter.
48 (4)	Deputy L S Trott	Section 48 (4) (a) is the main problem as an overwhelming number of cases have been known to the Committee for 4 years and therefore they will be exempt.	Please refer to Section 5.3 of the Policy Letter.
48-56	Board of Administration	It is understood that action cannot be taken against States' Committees in respect of compliance notice and charges. However, the Board would be grateful to receive confirmation.	The States will not be subject to Enforcement procedures.
49-56	Guernsey Society of Architects	Very careful and more detailed consideration should be given to ensure that any additional powers given to the IDC are proportionate to the alleged breaches.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
50	Douzaine Representative W Le R Robilliard	If 48 (4) was deleted, the Committee would not be empowered to have works carried out, nor to recover any costs from the present owner.	Please refer to Section 5.3 of the Policy Letter.
50 (1) (a)-(b)	Anonymous	It is completely unacceptable that the Committee should be able to enter land, undertake the required works and then pursue the owner (who may not be responsible) for the cost. Such powers can only be permitted under the direction of the Royal Court.	Please refer to Section 5.3 of the Policy Letter.
50 (3)	Anonymous	There is no way that appropriation of private property by a government agency without a court order can be justified. Clause 50 has to go.	Please refer to Section 5.3 of the Policy Letter.
51 (4)	Anonymous	Cannot be justification for the Committee applying for permission to create a charge when an appeal is in progress. It implies scant regard for the appeals process.	Please refer to Section 5.3 of the Policy Letter.
53	Guernsey Society of Architects	Careful consideration should be given to the practical provision of time allowances for interim compliance.	Please refer to Section 5.3 of the Policy Letter.
53	Royal Institute of Chartered Surveyors	Concern that if the notice is withdrawn, there should be a provision for compensation for loss to be paid to the injured party.	Please refer to Section 5.3 of the Policy Letter.
53 (3)	E W Nial	Regarding property sales, who will carry out compliance?	Please refer to Section 5.3 of the Policy Letter.
55	Anonymous	Do not believe the Committee should be able to apply for a charge to be created over land. Existing bond holders would probably be reluctant to consent to the creation of a charge, and this clause is probably therefore impractical.	Please refer to Section 5.3 of the Policy Letter.
57	Mrs P Fining	Will the new proposals reduce the number of retrospective applications to the IDC? Will the fines be high enough to "hurt"?	Please refer to Section 5.3 of the Policy Letter.
57	Anonymous	Will some of the smaller builders (some of whom are semi-literate) be prosecuted? What about Human Rights legislation?	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
57	Advocate N Le Poidevin	Express extreme disquiet about introducing imprisonment as an optional penalty for a planning infraction. Surely public money is better spent in remedying the infraction?	Penalties are as recommended by the Law Officers of the Crown. They are maxima which the courts will apply as appropriate. Maxima are, by their nature, designed for the worst imaginable case.
57	Mr A Hall	If there is no intent to "crucify" small builders, then why not strike this clause out of the Law?	Please refer to Section 5.3 of the Policy Letter.
57 (1)	Anonymous	Building conditions imposed under building regulations cannot be appealed so proceedings could be instituted for non-compliance with conditions without the opportunity for defence or redress.	The Law simply makes it a condition that any consent is on condition the Building Regulations are complied with. This is currently a requirement in any case. The remedy is to appeal against the legislation.
57 (2) [58-60]	Deputy B J Gabriel	Members of the Public have reported their concerns over the severity of penalty the Court may offer for a breach of the Laws, particularly the maximum penalties.	Penalties are as recommended by the Law Officers of the Crown. They are maxima which the courts will apply as appropriate. Maxima are, by their nature, designed for the worst imaginable case.
57 (3)	Anonymous	The burden of proving innocence is extremely onerous and of very limited application. Perhaps "and" at the end of each sub clause should be replaced by "or"?	The Law is acceptable as drafted.
57 (3) (a)	Guernsey Building Trades Employers Association	It is unacceptable that builders can be criminally responsible for any breaches of IDC Law. It has to be the property owner or developer who takes full responsibility for planning matters and this should be made clear in the new Law.	Please refer to Section 5.3 of the Policy Letter.
57 (3) (a)	La Société Guernesiale	Contractors should be made responsible for ensuring that their employer has the relevant IDC permission.	Please refer to Section 5.3 of the Policy Letter.
57-60	Deputies Lowe, Jones and Trott	A two year imprisonment together with a heavy fine goes far beyond what can be considered reasonable retribution for offences of this nature. It is recognised that it is the Courts that sentence, but the proposals for the Law include such penalties.	Penalties are as recommended by the Law Officers of the Crown. They are maxima which the courts will apply as appropriate. Maxima are, by their nature, designed for the worst imaginable case.
58 (1)	Anonymous	There does not appear to be any provision for the "reasonableness" of any requirement of the notice to be independently assessed.	The appeal procedures would cover this.

Clause Number	Respondent	Comment or Question	Committee Response
58-75	Guernsey Society of Architects	Feel these measures are inappropriate and disproportionate and will not be good for the community as a whole.	
59	Anonymous	This clause creates a criminal offence for non-compliance, but clause 30 would permit compliance notices to be served on innocent owners of properties where unauthorised works had been undertaken by the previous owner.	Please refer to Section 5.3 of the Policy Letter.
59	Anonymous	In the case of a retrospective application the act or omission may not have been an offence at the time it was committed. This is a flagrant breach of Article 7 (of Human Rights Legislation).	Please refer to Section 5.3 of the Policy Letter.
59	Mr J R Thompson	What happens if the enforcement notice is not carried out? This is an unreasonable transfer of liability.	Please refer to Section 5.3 of the Policy Letter.
59	Deputies Lowe, Jones and Trott	This section should be removed and reworded. Any compliance notice which is ignored by the receiver should be referred to the Law Officers and Police, who are the right bodies to investigate and interview offenders.	Please refer to Section 5.3 of the Policy Letter.
59 (4) [60 (3)]	Deputy T M Le Pelley	The maximum fine is proposed to be ten times Level 5. What is this?	Level 5 equals £5,000.
61	Lovell Ozanne & Partners Ltd	It will be difficult to read the relevant files for reasons of confidentiality, as you cannot take the files away and you cannot copy them.	Please refer to Section 5.3 of the Policy Letter.
61	Mr M Willis	The register of Enforcement Notices must be publicly available on request. This should be made clear.	Please refer to Section 5.3 of the Policy Letter.
63 (2)	Anonymous	This Clause does not appear to take any account of the Exemptions Law or Ordinances.	Please refer to Section 5.3 of the Policy Letter.
68	E W Nial	The existing Law works well and in particular is very fair as a wholly independent body (the Jurats) have the final say.	Please refer to Section 5.3 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
68 (1) (a)	Anonymous	It is quite unreasonable that a building condition cannot be appealed against.	The Law simply makes it a condition that any consent is on condition the Building Regulations are complied with. This is currently a requirement in any case. The remedy is to challenge the provisions of the legislation.
68 (2)	Guernsey Bar Council	Need for a specific length of time within which an application can be determined.	"Drop dead" dates are not appropriate. The time taken to deal with applications is a result of their complexity and the resources available to deal with them. In every case the IDC must consider the views of neighbours. However, Clause 68 and Ordinance B do give an opportunity to appeal in the case of unreasonable delay.
68 (2)	Guernsey Chamber of Commerce	Should it not be possible to determine applications the IDC should be able to contact the applicant/agent and request an extension of the consultation period. This would eliminate the need for an appeal and keep the applicant informed.	It is estimated that an obligation to contact applicants in this way would introduce a compulsory procedure that will absorb scarce resources. The IDC is, however, looking at ways of improving the way it keeps applicants informed, which it will implement as resources allow.
68 (2)	Guernsey Chamber of Commerce	This clause gives the applicant the right to appeal if an application is not determined but the definition of reasonable timescale is not determined. Can it be incorporated that the IDC will seek to determine applications within an 8 week period?	"Drop dead" dates are not appropriate. The time taken to deal with applications is a result of their complexity and the resources available to deal with them. In every case the IDC must consider the views of neighbours. However, Clause 68 and Ordinance B do give an opportunity to appeal in the case of unreasonable delay.
68 (2)	Lovell Ozanne & Partners Ltd	The system should include "drop dead dates", because there are commercial pressures on applications.	"Drop dead" dates are not appropriate. The time taken to deal with applications is a result of their complexity and the resources available to deal with them. In every case the IDC must consider the views of neighbours. However, Clause 68 and Ordinance B do give an opportunity to appeal in the case of unreasonable delay.
68 (2)	Douzaine Representative R A R Evans	In 68 (2) and 68 (6) there is a reference to "the period prescribed under Section 28", but Section 28 does not prescribe any period.	28 (3) is a general enabling power. The Ordinance under it will specify the period (see Ordinance B).
68 (7)	Mr M Willis	If this provision is to work effectively the Committee would need to be very clear about why it has decided to change its mind, or face a legal challenge.	Agreed.
68-71 [29.4]	Deputy M E Best	Will the appeals procedure in Part 6 also apply to the Heritage provisions in Part 4, Chapter 1?	Yes.

Clause Number	Respondent	Comment or Question	Committee Response
68-75	Advocate N Le Poidevin	Abolishing appeals to the Royal Court might be attractive from an administrative point of view but would not be acceptable to the general public who look to the Royal Court as the final arbiter.	Please refer to Section 5.4 of the Policy Letter.
68-75	Strappini & Co	Opposed to the reforms, which would effectively remove the Jurats from the appeal process. The "professionalisation" of the judicial process will inevitably favour the IDC. Instead the Jurats should be able to rehear appeal cases on their merits.	Please refer to Section 5.4 of the Policy Letter.
68-75	Deputies Lowe, Jones and Trott	Applaud the idea of saving appellants the huge costs of a Royal Court hearing, but if adjudication is the way forward it must be completely independent. The appointment of any adjudication panel must be the collective responsibility of the States.	Please refer to Section 5.4 of the Policy Letter.
68-75	Deputies Lowe, Jones and Trott	Direct appeal to the Royal Court should remain an absolute right for any individual in any instance.	Please refer to Section 5.4 of the Policy Letter.
68-75	Deputy M M Lowe	The adjudication process should be amended to a panel of three judges, not one as proposed.	Please refer to Section 5.4 of the Policy Letter.
69	Guernsey Chamber of Commerce	Further clarification is needed as to how within the new Law a fair way of achieving who is an "independent person" will be provided.	Please refer to Section 5.4 of the Policy Letter.
69	Guernsey Chamber of Commerce	There are concerns whether without the involvement of the Royal Court and an Advocate, individuals who do not have the proper knowledge of the IDC Law can get a fair hearing.	Please refer to Section 5.4 of the Policy Letter.
69	Mr M Willis	There does not appear to be any provision for the preparation of a Statement of Common Ground between the main parties, which is proving useful in the UK, although it could be made in an Ordinance.	Please refer to Section 5.4 of the Policy Letter.
69 (7)	Guernsey Bar Council	Appeal costs should be awarded on an indemnity basis.	Please refer to Section 5.4 of the Policy Letter.

<b>Clause Number</b>	<b>Respondent</b>	<b>Comment or Question</b>	<b>Committee Response</b>
69 (7)	Lovell Ozanne & Partners Ltd	If costs are awarded on appeal, would they compensate for the delay in development?	Please refer to Section 5.4 of the Policy Letter.
69-71	Mrs E Male	How will you ensure that the Adjudicator is independent and holds appropriate qualifications?	Please refer to Section 5.4 of the Policy Letter.
69-71	Mr J R Thompson	The adjudicator should be someone with local knowledge.	Please refer to Section 5.4 of the Policy Letter.
69-71	Falla Associates International	Planning Inspectors in the UK deal with very complex cases alone and having one very experienced expert works well. This is a very positive change as a review can deal with the merits of a decision.	Please refer to Section 5.4 of the Policy Letter.
69-71	Deputy E W Walters	With Rights of Appeal other than through the Royal Court, do applicants always need to have an Advocate?	Please refer to Section 5.4 of the Policy Letter.
69-71	Deputy E W Walters	People will still think they need an advocate for appeal cases.	Please refer to Section 5.4 of the Policy Letter.
69-71	Deputy E W Walters	Why is it proposed to change from the Jurats to one person adjudicating?	Please refer to Section 5.4 of the Policy Letter.
69-71	Deputy J A B Gollop	Support for adjudicator as it is important to take cases away from the Royal Court. Jurats are often not conversant with Planning Law and prone to make decisions on old fashioned concepts.	Please refer to Section 5.4 of the Policy Letter.
69-71	Deputy M M Lowe	An adjudicator will be good, but why not a panel of 3 rather than one person?	Please refer to Section 5.4 of the Policy Letter.
70	States Committee for Horticulture	Procedures for notices could be abused by transgressors if appeals are requested, withdrawn and then re-requested, tying up staff time (as it does in the UK) and making prosecutions difficult.	Please refer to Section 5.4 of the Policy Letter.
70	Royal Institute of Chartered Surveyors	It would appear to be inequitable to have the power to issue compliance notices without there being a mechanism for compensation for loss, if it can be proven that the Authority acted on incorrect information, or similar.	Please refer to Section 5.4 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
70	Mr M Willis	The Clause does not appear to allow an appellant to enter a defence that planning permission should be granted for the development or that the alleged breach of planning control does not constitute development.	Please refer to Section 5.4 of the Policy Letter.
71 (3)	Anonymous	After a successful appeal against them, the Committee should not be able to issue a further compliance notice. There need to be significant new grounds for the issue of a further notice.	Please refer to Section 5.4 of the Policy Letter.
72 (4)	Anonymous	It appears that under the new Law an appeal to the Royal Court can only be made on the grounds that a decision is unlawful. The right to appeal against a decision considered unreasonable should be retained.	Please refer to Section 5.4 of the Policy Letter.
75	Anonymous	It is surely fundamental to the appeals system that the validity of conditions imposed by the Committee should be open to challenge.	Please refer to Section 5.4 of the Policy Letter.
76	Board of Administration	The Board understands that the States will have the final say in respect of policies relating to States development, but is far from confident that this will be the case.	The Law is clear that it is the States that considers and adopts the Strategic Land Use Plan and Development Plans.
76	States Recreation Committee	Committee accepts that the new Law should officially bring States development under control. However, it is unclear who should make applications when States owned premises are let.	Either the States Committee (as agents) or the lessee may make the application.
76	States Housing Authority	The Authority supports the proposal that all States development be subject to the Law.	Please refer to Section 5.5 of the Policy Letter.
76	Board of Administration	The Board is unanimously of the view that States developments should be exempt from the proposed Law. The current system of seeking IDC comments has its merits. Many of the Boards schemes are automatically referred to the States to approve their funding.	The IDC believes that States development should be dealt with in an integrated system for both public and private development. Please refer to Section 5.5 of the Policy Letter.
76	N G Wilkinson	Concerned that dealing with States development will take up IDC staff time and inevitably decisions on private sector applications will take longer.	Please refer to Section 5.5 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
76	N G Wilkinson	The Law could require the IDC to take account of States needs without making States developments subject to the Law. The proposed Strategic Land Planning Group should go a long way towards ensuring the IDC plans for the States needs.	Please refer to Section 5.5 of the Policy Letter.
76	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	Please refer to Section 5.5 of the Policy Letter.
76	Guernsey Chamber of Commerce	There is a general opinion that the States of Guernsey should fall in line with the Law as applied to private individuals, but there may be exceptional circumstances where this may not apply and this should be clarified.	Please refer to Section 5.5 of the Policy Letter.
76	Deputy L S Trott	Strongly disagree with this provision.	Please refer to Section 5.5 of the Policy Letter.
76	Deputies Lowe and Jones	Support these proposals in the new Law. It can never be right for Government bodies to be exempt from any Law that the general public are forced to abide by.	Please refer to Section 5.5 of the Policy Letter.
76	Deputy P J R Roffey	Delighted that it is proposed to bring States development within the Law.	Please refer to Section 5.5 of the Policy Letter.
76	Deputy M A Ozanne	Happy for States development to become subject to Planning Law, but how will the IDC manage the inevitable increase in Planning Inquiries in a speedy way?	Please refer to Section 5.5 of the Policy Letter.
76	Deputy W M Bell	Serious concern with regard to the deletion of the possibility of fast tracking States issues. If this cannot be accommodated would not support including States development in the Law.	Please refer to Section 5.5 of the Policy Letter.
76 [C]	Board of Administration	The Board is concerned that the proposed definitions of development will bring many minor forms of development within planning control and that this will hinder the safe and efficient operation of the Ports and Airport. It wishes to see adequate exemptions for development required for health and safety.	The IDC considers that all development should be properly assessed in the light of all planning considerations. However, it agrees that adequate exemptions should be provided for essential minor development and has stated its intention to do this. It will consult further with the Board on these matters.

Clause Number	Respondent	Comment or Question	Committee Response
76-78	Board of Administration	Many States developments are costly and the Board would wish to be assured that there will be very specific time limits for the various actions of the IDC in relation to States developments.	In general, it is considered that States proposals should be considered in the same way as private proposals. The IDC responds as speedily as possible to all applications with resource limitations. However, a States Committee will be able to refer any matter to the States if it feels there has been inordinate delay.
76-78	Anonymous	Object to reduced responsibility for the States to develop their own land - look at Frossard House!	Please refer to Section 5.5 of the Policy Letter.
76-78	Lovell Ozanne & Partners Ltd	The States should not have to go through the same consultation process as developers.	Please refer to Section 5.5 of the Policy Letter.
77	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	Please refer to Section 5.5 of the Policy Letter.
77 [29.4]	Deputy M E Best	Will this clause apply to all preceding including Part 4, Chapter 1?	It will not apply to Part 4, Chapter 1.
78	Board of Administration	The Board considers that Exemptions for the States and Public Utility Suppliers should include the emergency services, States' providers of health and education services, Customs, the Prison service and waste management.	The IDC has stated its intention to provide exemptions for minor development and will consider the categories set out.
78	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	Please refer to Section 5.5 of the Policy Letter.
78	Mr M Willis	This could be taken to mean that non-operational development not directly related to the supply of public utilities might be exempt from the Law.	This is a possibility - it depends on the terms of the Exemptions Ordinance.
80	Guernsey Society of Architects	Important functions including legal action should not be delegated to small sub-committees, as serious consequences could flow from the potential misjudgement of small numbers of members.	Powers to delegate to sub-committees or officials already exist and operate successfully, to the benefit of consistency of decision making and the efficiency of the IDC generally. The accountability of the Committee is not reduced, because it sets policy and guidelines within which sub-committees and officials take decisions and takes these decisions itself that turn on complex or contentious interpretation of policy. Human rights principles mean all decisions must be open to challenge and the reasons for a particular decision must be clearly known. In practice this is based on the professional rather than political assessment. In any event, the question of how these powers are used is one of Committee policy. The Law is simply enabling.

Clause Number	Respondent	Comment or Question	Committee Response
80	Deputies Lowe, Jones and Trott	The issue of delegated powers to officers of the IDC is far reaching. Accountability of elected members of the IDC must not be abrogated to non-elected officials.	Powers to delegate to sub-committees or officials already exist and operate successfully, to the benefit of consistency of decision making and the efficiency of the IDC generally. The accountability of the Committee is not reduced, because it sets policy and guidelines within which sub-committees and officials take decisions and takes these decisions itself that turn on complex or contentious interpretation of policy. Human rights principles mean all decisions must be open to challenge and the reasons for a particular decision must be clearly known. In practice this is based on the professional rather than political assessment. In any event, the question of how these powers are used is one of Committee policy. The Law is simply enabling.
80 (1)	Mr J R Thompson	Will the IDC continue to brief the Douzaines on controversial developments in their areas and to seek their advice? Has the IDC considered using the Douzaines to help in the application process?	There are no current plans to delegate any functions to Douzaines. In the case of planning decisions, this Delegation to Douzaines would lead to inconsistency throughout the island. The IDC has qualified full time planning staff to do this job. The IDC will continue to consult the Douzaines on planning applications.
80 (1)	Douzaine Representative W Le R Robilliard	If minor applications were delegated to the Douzaines, IDC staff would be free to deal with larger matters.	There are no current plans to delegate any functions to Douzaines. In the case of planning decisions, this Delegation to Douzaines would lead to inconsistency throughout the island. The IDC has qualified full time planning staff to do this job.
80 (1)	Deputy T M Le Pelley	Support delegation to the Douzaines of certain applications	There are no current plans to delegate any functions to Douzaines. In the case of planning decisions, this Delegation to Douzaines would lead to inconsistency throughout the island. The IDC has qualified full time planning staff to do this job.
80 (1) (b)	Douzaine Representative W Le R Robilliard	This clause is welcome. However, the parameters of delegation are not defined. To ensure consistency among Douzaines, clear guidelines should be set by the Committee.	There are no current plans to delegate any functions to Douzaines. In the case of planning decisions, this Delegation to Douzaines would lead to inconsistency throughout the island. The IDC has qualified full time planning staff to do this job.
81	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
81 (2) (a)	Mr S L Gill	Do not agree that those applying for development permission should have to pay. The IDC are servants of the people not a commercial body.	Please refer to Section 5.6 of the Policy Letter.

Clause Number	Respondent	Comment or Question	Committee Response
81 (2) (a)	Mr G Cullington	Charging for planning applications would add to the already costly development process and will encourage people to do minor works without consent.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Mrs P Wisher	I agree with fees being charged for planning applications, this is long overdue.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Anonymous	Submission charges would be a good thing to stop applicants submitting incorrect drawings knowing they will be corrected by the IDC	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	L P Brehaut	This would only serve to increase the already high cost of building in Guernsey.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Guernsey Chamber of Commerce	A fee structure could make certain individuals think twice about making an application unless it is realistic, but it could encourage many individuals to carry out work without permission.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Guernsey Chamber of Commerce	Concern because whether or not fees would be introduced in the future is a totally unknown factor. Who decides whether it should be introduced and what would be the appropriate level of fees?	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	MOOArc	Introduction of fees may help prevent the submission of dual applications.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	MOOArc	Why will fees be introduced incrementally and not on enactment of the Law?	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy L S Trott	Planning Authorities in the UK have a reduced fee for planning and a greater fee for the building licence. This would be an advantage under the IDC proposals.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy D B Jones	Planning fees are a form of indirect taxation. This element should be removed from the Policy letter as it will cause problems.	Please refer to Section 5.6 of the Policy Letter.

<b>Clause Number</b>	<b>Respondent</b>	<b>Comment or Question</b>	<b>Committee Response</b>
81 (2) (a)	Deputy J A B Gollop	Changes with regard to fees could be welcomed in certain contexts. The IDC should look at whether costs should be applied in the commercial context rather than on residential properties.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy M E W Burbridge	In terms of costs, what is envisaged re charges?	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy T M Le Pelley	The consideration of Planning Applications is a core function of the IDC and should be a free service to the public. Charges might be appropriate for additional services not currently provided.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy P J R Roffey	Fees should be introduced now for certain circumstances. A lot of people profit from development on the Island because the planning service is free.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy D B Jones	Charging should be removed from the Law.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputy M M Lowe	Consideration should be given to withdrawing the proposed charges for planning applications in the future.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (a)	Deputies Lowe, Jones and Trott	Charging for any submitted application is in effect an indirect tax and should be the responsibility of A&F. This section should be deleted from any future IDC Policy letter.	Please refer to Section 5.6 of the Policy Letter.
81 (2) (b) [16 (7) (a) R1	Winter Palmer & Denziloe	What publicity will there be for applications?	Please refer to Section 5.6 of the Policy Letter.
82	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
83	Dr J Monaghan	21 days is too long for any kind of stop notice to be served as an archaeological site can be destroyed in hours.	This clause would not prevent a Compliance and Interim Compliance Notice being served more quickly in an emergency. It is for use where the IDC has adequate time to seek information in the manner set out and therefore must set reasonable time scales.

Clause Number	Respondent	Comment or Question	Committee Response
83	Guernsey Society of Architects	This power should only arise following an alleged breach of planning law. Unless these matters relate to a serious planning breach, they are disproportionate and an infringement of privacy.	The current drafting has this effect - the power is to be used in connection with the service of a notice under 83 (1).
83	Deputies Lowe, Jones and Trott	The ability to "require any person to answer any questions or produce any documents appearing to him to be relevant to those purposes", infringes on Human Rights. The Police and the Courts are already empowered to carry out these functions.	It is not the function of the police or the Courts to check planning compliance. It is for the IDC to conduct initial investigations and to refer them to the Law Officers for action. It is for these investigations that these powers are required. The police and Courts have their own roles in the preparation and adjudication of any action that is decided upon.
83 (3)	Anonymous	This seems extremely harsh. There could be many situations where a person will not necessarily be able to answer the questions arising from Clause 83 (2). There should only be a penalty for failing to provide any response.	There is a defence of reasonable excuse that would cover this.
84	Anonymous	This section does not appear to address the issue of liability, either for damage caused by a person authorised by the Committee entering land/premises, or for any accident/injury suffered by that person.	
84 (4)	Anonymous	It is unreasonable for the Committee to decline to consider an application if they are refused entry as there could be reasonable or conceivable grounds.	If the IDC is unable to assess the effects of an application because the owner of a site refuses access for whatever reason it is entirely reasonable that it decline to consider an application. Indeed it would be irresponsible to do otherwise.
84-85	Guernsey Society of Architects	This power should only arise following an alleged breach of planning law. Unless these matters relate to a serious planning breach, they are disproportionate and an infringement of privacy.	The IDC believes that rights of entry are necessary for the full range of functions.
84-85	Deputy M E W Burbridge	Who will issue a warrant authorising right of entry?	The Bailiff.
84-85	Deputy L S Trott	Does not the proposed law significantly increase the powers of entry regarding the Heritage Committee's powers?	The proposed powers of entry will be extended to all functions of the Committee, but entry into people's houses would only be by warrant, thus giving householders an extra safeguard.
85 (3)	Anonymous	This clause conflicts with Article 8 (of Human Rights Legislation), possibly Data Protection Legislation and does not allow for the professional privilege of communications.	The IDC's legal advice is otherwise.

Clause Number	Respondent	Comment or Question	Committee Response
86	Guernsey Society of Architects	Tighter provisions are required to ensure that any notices are issued personally or by recorded delivery. It is important that anyone involved in enforcement matters does not find that action is taken in their absence.	These are the same standard practices used for similar purpose in other Guernsey legislation and are considered adequate.
87	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
88	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
88 [20]	Anonymous	It is quite unacceptable that there should be no grounds for the subsequent modification or revocation of a permission that has been granted.	There is express provision in Clause 20 for compensation. The wording of Clause 88 makes explicit exception for this.
90	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
91	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
92	Board of Administration	The Board is of the view that Crown land should be exempt from the provisions of the Law, in the same way it considers States development should be exempt.	It is proposed to include Crown land within the Law in order to ensure a comprehensive, co-ordinated planning system for Guernsey and the islands in it's immediate vicinity. The UK government intends to bring Crown land within planning law and it is considered that the opportunity should be taken to do the same in Guernsey
92	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
92	La Société Guernesiale	Consider that the Law should cover the intertidal zone as it seeks to protect Guernsey's biodiversity. In Jersey, development law does include the intertidal zone.	The Law has not challenged the assumptions of the past and stops at the High water mark. There are intrinsic problems in including land that is periodically covered by the tide. Once land is reclaimed, by whatever means, it is subject to the law.
92	La Société Guernesiale	In line One of the Law, does the definition of "physical environment" include intertidal areas or just to the High water mark?	The Law has not challenged the assumptions of the past and stops at the High water mark. There are intrinsic problems in including land that is periodically covered by the tide. Once land is reclaimed, by whatever means, it is subject to the law.

Clause Number	Respondent	Comment or Question	Committee Response
93	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
94	Guernsey Society of Architects	Supportive of this feature. This measure is felt to be good for the community as a whole.	
B	Guernsey Chamber of Commerce	In regard to the "Registration of Planning Applications", the "particulars of the development concerned" should not be brief. The location of the proposed development and the date and full details of the Committee's decision should also be provided.	A summary description will be adequate as further details can be consulted in the application papers and plans.
B	Guernsey Chamber of Commerce	With regard to "Planning Decisions", copies of the full decision of the Committee (including reasons for refusal or conditions of approval) should be sent to all those persons who make representations on an application.	The IDC currently informs representors of the Committee's decisions. Extending this service may be considered, but does not need an extension to the Law.
B	Guernsey Chamber of Commerce	With regard to "Conditions and Reservations", it should state in the introductory text that all conditions of approval must be (a) necessary; (b) reasonable and relevant; (c) enforceable.	These are the standard "tests" and appear in UK government advice. The IDC uses these "tests" in drafting conditions as non-compliance would increase the likelihood of successful appeal. However, it is not considered necessary to include these terms in the Ordinance.
B	Guernsey Chamber of Commerce	With regard to proposed "Planning Considerations", should the IDC not also be required to take into account the Law itself?	Yes. In fact Clauses 2 and 16 (5) require that the purposes of the Law should be taken into account. The Ordinance considerations are additional and do not need to repeat the provisions of the Law itself.
B	Robert W Le Page	What is a "reasonable" time scale for dealing with applications?	Clause 68 (b) will allow for a right of appeal against Committee's failure to issue a decision within a specified period (Ordinance B would specify the period).
B	Deputy L S Trott	Ordinance B features a reference to "incongruity". It was thought this was being dropped but the new explanation means exactly the same.	The design and appearance of development, including its visual relationship with its surroundings, are legitimate planning considerations. The elements of subjectivity can never be eliminated, but the application of professional assessment and the development of policy and guidance will maximise the consistency and high quality of decision making.
B [16 (7) (a)]	Mrs P Wisher	Planning Applications should also be displayed on site.	This will be done in suitable circumstances which the IDC will set out in the policy.

Clause Number	Respondent	Comment or Question	Committee Response
C	States Committee for Horticulture	What would be the nature and extent of the exemptions applied where a Tree Protection Order had been served on an owner, where that owner wants to carry out work on the tree or its roots?	These are set out in principle in Ordinance C and will be developed further in consultation with the States' Horticulture Committee.
C	States Committee for Horticulture	Although the exemptions allow work to approved standards to be carried out on protected trees without permission, a mechanism to stop works which do not meet the standard should be included.	This will need to be considered further in consultation with the States' Horticultural Committee.
C	E W Nial	There should be an area related to permitted development, as in the UK	The provisions of the Law would enable exemptions to be applied to specific areas and this could be used in the future.
C	Mrs P Wisher	The Exemptions Ordinance could be made more user friendly if it were illustrated.	The Ordinance itself must follow a standard form. The IDC will publish additional guidelines as resources allow.
C	Guernsey Chamber of Commerce	Within the present Exemptions Ordinance conservatories up to certain dimensions can be constructed without IDC approval. There should be some form of control to ensure that a conservatory extension is of a design appropriate to the property.	It is not possible simultaneously to retain and to exempt from control.
C	La Société Guerneslaise	Believe that the workload of IDC staff could be reduced by increasing the number of exemptions, including an exemption if no objection has been made within a certain period of time.	Exemptions will be extended, but the concept of an exemption if no objection has been made is considered unworkable.
C	Falla Associates International	Will permitted development change and will this be discussed publicly? Why is Guernsey seen as different from the UK in scope for exemptions?	All live in a small area in Guernsey, where small things can affect neighbours significantly, but there will be changes to the Exemptions Ordinance.
C	Deputy T M Le Pelley	Why would internal works require exemptions?	The main body of the law defines development as all works carried out by the builder, so the Exemptions Ordinance removes most of these except in the case of Listed Buildings and Monuments.
C	Douzaine Representative W Le R Robilliard	It would be desirable to publish a definite list of exemptions so that they are known prior to further debate in the House.	The general policy is set out for the forthcoming debate on the policy letter. If approved this will provide the drafting instructions. The full text will be brought back to the States once drafted.

Clause Number	Respondent	Comment or Question	Committee Response
D	Guernsey Chamber of Commerce	A total review of all Use Classes and subsections should be made so as to take away many grey areas, particularly those around horse ownership, garden centres and light industry.	The Ordinance will be made as clear as possible.
D	Robert W Le Page	Any thought of a 3-tier Industrial Use Class?	If there is a need to reserve sites for a particular type of activity this can be done through rezoning or amending the Development Plan.
E	Mr J Shute	With regard to EIAs, what about small development that has large environmental impacts? Who carries out an EIA and would the IDC be beholden to take note of that person's report?	EIAs are a mechanism for putting the onus on the developer to do research to demonstrate that proposals are acceptable. The Committee will decide what is appropriate in each case, within general parameters. In practice, they will be limited to projects with major effects such as Longue Hougue. As with other areas of the Law, there are means for the requirements of the IDC to be challenged.
E	Guernsey Chamber of Commerce	With regard to EIAs, there is a concern that these could be used to delay projects that people do not like. Assurance is required that the appropriate wording will be provided to prevent this from happening.	EIAs are a mechanism for putting the onus on the developer to do research to demonstrate that proposals are acceptable. The Committee will decide what is appropriate in each case, within general parameters. In practice, they will be limited to projects with major effects such as Longue Hougue. As with other areas of the Law, there are means for the requirements of the IDC to be challenged.
E	Deputy W M Bell	EIAs may be necessary on occasion but should not be mandatory as this may cause delays.	It is anticipated that generally, EIAs will be limited to projects with major effects such as Longue Hougue.
E	Deputy M E Best	The States by Ordinance may provide the circumstances by which the IDC may require an EIA. Concerned that the IDC could use EIAs as a block, as the proposed Ordinance does not specify parameters within which EIA's can be required.	EIAs are a mechanism for putting the onus on the developer to do research to demonstrate that proposals are acceptable. The Committee will decide what is appropriate in each case, within general parameters. In practice, they will be limited to projects with major effects such as Longue Hougue. As with other areas of the Law, there are means for the requirements of the IDC to be challenged.
F	Dr J Monaghan	It is crucial that this Ordinance is drafted by Heritage experts, in line with current UK and EU practice. The "Temporary Listing" and "Information Duties" proposals are crucial.	The IDC has sought expert advice in drafting its proposals.

Clause Number	Respondent	Comment or Question	Committee Response
F	Mr M Wood	Planning Provision concerning archaeology, in particular "unknown" archaeology requires more explicit statements. Terms such as "preservation" need clarification; there is a great difference between preservation by record and "in situ".	Ordinance F deals with the listing of known monuments and archeological remains where the normal objective is preservation in situ. Unknown archeology is dealt with as part of the planning application system (See Ordinance B). The difference between preservation and recording is well understood.
Misc	N G Wilkinson	Strongly agree that third party appeals should not be permitted. It is a system that is susceptible to serious abuse.	
Misc	Anonymous	The practical application of the Law for individuals is too much - it has too many teeth.	Please refer to Section 5.3 of the Policy Letter.
Misc	Dr J Monaghan	If the Heritage Committee has responsibility for protected monuments, the IDC would appear to have responsibility for all other sites (buried, not scheduled). Where is the expertise at the IDC for such an assessment to be made?	The new Law marks the end of a long process of integration between Heritage and IDC and the Conservation and Design Team will continue to advise both Committees.
Misc	Mr M Dorey	What is the timetable for the Ordinances and what happens if the Ordinances are not ready when the Law is enacted?	The Law will not come into force as one block but as and when the Ordinances are ready. Eight Ordinances are proposed at the same time as the Law is commenced.
Misc	Guernsey Bar Council	Hope that drafts of the Ordinances will be made available for comment prior to their enactment.	Once the States has approved the policy, the Ordinances will be drafted and brought back to the States.
Misc	Guernsey Chamber of Commerce	The Committee should identify which Ordinances will need to be immediately implemented with the Law. The Committee should publish working drafts of these and undertake public consultation, which should be presented to the States with the new Law.	The IDC has identified the essential Ordinances (A-H). Once the States has approved the policy, the Ordinances will be drafted and brought back to the States.
Misc	Guernsey Chamber of Commerce	It is felt that there should be a procedure for fast tracking minor applications. These could be dealt with by Planning Officers on a rota basis.	The IDC does use a fast-tracking system for minor applications. This is an administrative measure and does not need alterations to the Law. However, the IDC has a small staff and must ensure adequate staff for other forms of application.
Misc	Guernsey Farmers' Association	Would like provision in the law for farmers to build dwellings on their farms in order to tend to the well being of their animals.	This is a matter of Development Plan policies rather than of the Law
Misc	National Trust of Guernsey	Does the New Law supersede the 1967 Ancient Monuments Law?	Yes.

Clause Number	Respondent	Comment or Question	Committee Response
Misc	Guernsey Building Trades Employers Association	Guernsey Builders' Association is 95% happy with the draft Law, apart from the enforcement and criminal proceedings section.	Please refer to Section 5.3 of the Policy Letter.
Misc	Guernsey Chamber of Commerce	It is not acceptable that a qualified Conservation Officer will not be provided on the Heritage staff. Concerns that the Protected Buildings Officer's role will not be maintained.	The new Law marks the end of a long process of integration between Heritage and IDC and the Conservation and Design Team will continue to advise both Committees.
Misc	Mr J R Thompson	Within the terms of the law could you have a service satisfaction questionnaire for ordinary members of the public?	This was put to Committee and we hope it can be done.
Misc	Falla Associates International	In the UK local authorities issue guidance notes about Urban Design - could this be done?	The IDC intends to do this as resources allow.
Misc	Lovell Ozanne & Partners Ltd	How does the Draft Law take account of Human Rights legislation?	The most important issue has been that all Committee decisions must be open to challenge. All Procedures have to be open to scrutiny ultimately via the Courts. The Law has been assessed for compliance and the working practices of the IDC have been, and will continue to be, assessed against the Convention rights.
Misc	Cresswell Cuttle & Dyke	Will there be a conservation officer to give advice on the repair and maintenance of historic buildings?	We intend to have appropriate professional staff for every discipline.
Misc	Cresswell Cuttle & Dyke	Will enactment of the Law require more staff for both Heritage and the IDC? If this is not possible will this result in further delays in application?	More staff may be required but this has to be approved by CSB, and housing licences gained for UK staff. We acknowledge that this is a serious constraint.
Misc	Robert W Le Page	Will minor applications be fast-tracked?	IDC tries to do this anyway, but care still needs to be taken on all applications.
Misc	Lovell Ozanne & Partners Ltd	How will Heritage issues be addressed?	The new Law marks the end of a long process of integration between Heritage and IDC and the Conservation and Design Team will continue to advise both Committees.
Misc	Olsen Ferbrache Morgan	Does the Law embody Audit Commission recommendations?	We are committed to greater openness, and the new Law will make provision for open meetings, but this is a decision for the States.

Clause Number	Respondent	Comment or Question	Committee Response
Misc	Advocate R Ogier	The aims of the Draft Law are laudable, but until the Ordinances are drafted it is difficult to give a complete overview of the Law and its effects.	The draft Law and Ordinance explanations provide an overall picture of the IDC's policy. Once approved, legal drafting will take place and the Law and Ordinances will be brought back to the States.
Misc	Douzaine Representative W Le R Robilliard	Concern that will not have a chance to see the contents of the Ordinances, particularly the Exemptions Ordinance (C).	The draft Law and Ordinance explanations provide an overall picture of the IDC's policy. Once approved, legal drafting will take place and the Law and Ordinances will be brought back to the States.
Misc	Douzaine Representative W Le R Robilliard	When plans are submitted, there should be opportunity for an indication of what will be acceptable.	Pre-meetings with the IDC's officers are available for this purpose.
Misc	Deputy D B Jones	There is much in the proposals to be commended. Would support 80 percent of the proposals.	
Misc	Deputy W M Bell	Congratulations on the approach of the IDC and the Heritage Committee.	
Misc	Douzaine Representative R A R Evans	The Ordinances (at least B, C, D, F, G, H) should be prepared and available in draft form by the time the Law returns to the States.	If the Ordinances have to be drafted before seeking States' approval of the Projet de Loi, the legislative process will be extended beyond what is feasible. The Policy Letter sets out the way in which the Ordinances will develop in some detail. Their full text will be submitted to the States in due course when the final text of the Law will also be available. The Law will only be brought into force when the planned Ordinances are available for simultaneous commencement.
Resources	E W Nial	The cost of implementing enforcement procedures are clearly going to be substantial, but there is no mention of the additional staffing required. Extra costs will be accrued by additional surveyors and advocates fees etc.	The IDC will concentrate on the first eight ordinances, which are essential to implementing the Law. The remaining six will not be implemented without additional resources. In implementing the 8 essential Ordinances the IDC will have to be very careful in the decisions it takes about policies and procedures to ensure that it manages within existing resources. The IDC applied for more staff in 1990 and still need substantial new resources.
Resources	Guernsey Chamber of Commerce	There are concerns regarding the new Law and concerns that extra staff will be needed to administer it and concerns that perhaps these will not be provided. Concerns that it appears that no staff will be available for on site advice.	See above

Clause Number	Respondent	Comment or Question	Committee Response
Resources	Falla Associates International	If new staff resources do not come, what will happen?	See above.
Resources	Advocate N Le Poidevin	Will the costs of administering the proposed legislation increase or decrease the costs of running the IDC? Any change in the legislation should be aimed at reducing costs rather than increasing them.	See above.
Resources	Advocate R Ogier	The IDC is under pressure for staff. If the law is fully implemented, will there be enough staff, particularly to draw up subject plans?	See above.
Resources	Deputy J A B Gollop	Most Heritage issues have been transferred to a combined planning department. Will the IDC consider having more professionals and greater consultation with local learned societies?	See above.

## Summary of Public Consultation 2002

**On 12 February 2002, a supplement entitled "The New IDC Law: A Consultation Summary" was included within the Guernsey Evening Press.**

**All members of the public were invited to the Presentations of the Law proposals on the 14 and 19 February 2002 at St Peter Port School and Les Cotils Christian Centre.**

**Copies of the Consultation Document and explanatory notes were sent to all of the following:**

States Committees

States Members

Parish Constables and Douzaines

Local Organisations:

Guernsey Bar Council

Guernsey Building Trades Employers Association

Guernsey Chamber of Commerce

Guernsey Farmer's Association

Guernsey Society of Architects

La Société Guernesiaise

Friends of the Earth, Guernsey

Committee of Guernsey Clearing Banks

Guernsey Consumer Group

National Trust of Guernsey

Royal Institute of Chartered Surveyors

Town Centre Partnership

Town Traders Association

Local Architects, Agents, Surveyors, Advocates and other development professionals

Respondents to the 1998 Consultation exercise

**Written or verbal comments on the draft Law proposals were received from the following known groups or individuals:**

Board of Administration

States Housing Authority

States Recreation Committee

States Committee for Horticulture

Deputy B J Gabriel

Deputy D B Jones

Deputy E W Walters

Deputy J A B Gollop

Deputy L S Trott

Deputy M A Ozanne

Deputy M E Best

Deputy M E W Burbridge

Deputy M M Lowe

Deputy P J R Roffey

Deputy R C Berry OBE

Deputy T M Le Pelley

Deputy W M Bell

Douzaine Representative R A R Evans

Douzaine Representative W Le R Robilliard

Alderney Representative Mrs P M Jorgensen

Constables of St Pierre du Bois

Guernsey Bar Council

Guernsey Building Trades Employers Association

Guernsey Chamber of Commerce

Guernsey Farmers' Association

Guernsey Society of Architects

La Société Guernesiaise

National Trust of Guernsey

Royal Institute of Chartered Surveyors

CA Duquemin Ltd

Cresswell Cuttle and Dyke

Falla Associates International

Lovell Ozanne and Partners Ltd

Martel Maides

MOOArc

Olsen Ferbrache Morgan

Ozannes

Peter Falla and Associates

Robert W Le Page

Strappini & Co

Winter Palmer and Denziloe

Mr M Willis, Willis and Co Chartered Town Planners

Mr M Norman, Ashmolean Museum, Oxford

Mr M Wood, PISA Ltd (Professional Independent Services for Archaeology)

Dr J Monaghan

Advocate N Le Poidevin

E W Nial

L P Brehaut

Mr A Hall

Mr G Cullington

Mr J R Thompson

Mr J Shute

Mr K Bown

Mr S L Gill

Mr V Watson

Mrs E Male

Mrs P Fining

Mrs P Wisher

N G Wilkinson

**APPENDIX 3**  
**REVIEW OF ISLAND DEVELOPMENT COMMITTEE**  
**FINDINGS AND ACTIVITIES (1989)**

Resolution 5 Billet D'Etat XIII, 1989

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5. To direct the Island Development Committee to review the Island Development (Guernsey) Law, 1966, and to produce detailed proposals for its amendment, such proposals to include, inter alia, the following:-
  - (1) the deletion of all references to Outline Development Plan and to include where appropriate references to Detailed Development Plans;
  - (2) a review of section 10 of the Island Development (Guernsey) Law, 1966, to improve Planning Inquiry procedures;
  - (3) to require the taking into account of the Strategic and Corporate Plan when reaching decisions under the provisions of the Law;
  - (4) the strengthening of the powers of enforcement along the lines set out in the Consultants' report including:-
    - (a) the introduction of "Enforcement and "Stop" notices; and
    - (b) the ability to place a charge on the affected land or building(s) until unauthorised work is rectified in order to ensure that planning infringements are not nullified by a change of ownership;
  - (5) the preparation of appropriate legislation for the purpose of identifying and protecting Sites of Special Interest;
  - (6) to make provision to enable the introduction, by Ordinance, at such time as the States may deem appropriate, of fees relating to:-
    - (a) applications for planning permission; and
    - (b) applications under the provisions of Building Control Regulations in force from time to time;
  - (7) to make provisions to enable the Island Development Committee to delegate duties as necessary to sub-Committees constituted by a lesser number of members than required to constitute a quorum of the full Committee, and to co-opt appropriate persons as necessary to serve on the sub-Committees;
  - (8) to make provision for the Island Development Committee, upon application made to it, to grant certification of established use in relation to buildings or land;
  - (9) to make provision for the Island Development Committee, upon application made to it, to determine whether planning permission is required for the particular form of development proposed;
  - (10) the strengthening of the powers of control relating to dumping and the indiscriminate tipping of waste material, the repair or demolition of dilapidated buildings and other structures, and the proper maintenance of land;
  - (11) a review of those areas of the Island Development (Guernsey) Law 1966, and the Island Development (Guernsey) (Exemptions) Ordinance, 1982, as are relevant to the preservation of trees in order to extend such powers of preservation throughout the Island irrespective of whether or not development permission has been granted on the land concerned;
  - (12) the strengthening of the powers of control relating to signs and advertisements, whether permanent or temporary;
  - (13) the production of detailed proposals for such other amendments as may be considered expedient or necessary.

The President,  
States of Guernsey,  
Royal Court House,  
St Peter Port,  
Guernsey.

16th May, 2002.

Dear Sir,

I refer to the letter dated 13th May 2002 addressed to you by the President of the Island Development Committee (IDC) on the subject of the Review of the Island Development (Guernsey) Laws, 1966 – 1990.

The Committee first considered the IDC's proposals for a new planning law last Autumn prior to the submission of an earlier policy letter to the November 2001 States meeting. The Committee remains of the view it expressed at that time, that the comprehensive updating of the Island's land use planning legislation is essential if we, as a community, are to deal effectively with the challenges and opportunities that face us in the new century.

The Committee commends the IDC for the positive and timely way in which it has responded to the sursis imposed on the original policy letter requiring it to undertake a further round of consultations with all interested parties. The current policy letter sets out very helpfully the many queries that have been raised about the new law and the IDC's response in each case. The Committee also welcomes the thorough explanation of the proposed legislation contained in the policy letter and hopes that other States Members will agree that concerns about the form, content and purposes of the law have now been very fully addressed.

One of the issues raised in consultation and addressed in Section 5 of the policy letter, concerns the proposal in Part 7 of the draft law to extend the scope of the land use planning system to include development carried out by the States. When the Committee commented on the IDC's previous policy letter, it explained that members were of different opinions on this matter:

**“One view held by members of the Committee is that by bringing States development within the ambit of the law it should be possible in future, to plan more effectively for all the development needs of the community whether these are to be met by the public or private sectors. It should also be easier to ensure that there is full integration between the Strategic Property Plan for States Committees and the Strategic Land Use Plan guiding the preparation of Development Plans. This is consistent with achieving a corporate approach to the management of resources as promoted in the Policy and Resource Planning Report 2001.**

**Nevertheless, the Committee is divided on this approach. The alternate view is that the present position has served the Island well and should be maintained. At present, developments carried out by the States are exempt from the law, but by States Resolution committees are required to consult the IDC on development proposals and in the event of an objection being raised, refer the matter to the States for decision.**

**Given the divided views of the Committee on this matter, the Committee considers that States Members should come to their own view on which approach best serves the interests of good government”.**

The IDC's intentions for dealing with States development are explained in Section 5 including the committee's response to concerns about potential delay to States' projects if they are brought within the scope of the planning system. Whilst the Committee welcomes this streamlining of the process to exempt States developments on points of detail, the Committee's main concern relates to the absence of a mechanism whereby the States are able to give direction to vary the planning environment to expedite States developments where the States consider it to be to the strategic benefit of the community as a whole to do so.

The Committee has therefore unanimously agreed to propose an amendment to the proposals instructing the IDC to revert to the States with proposals to provide the States with such a mechanism. The Committee recognises that the process for exercising such a mechanism will need to be carefully thought out in order not to conflict with human rights principles.

In conclusion, the Advisory and Finance Committee supports the Island Development Committee's proposals for new planning legislation subject to the above comments on States development. The Committee considers that the concerns about consultation with interested parties expressed through the successful sursis when the matter was previously debated have now been satisfactorily addressed.

Yours faithfully,

L. C. MORGAN,

President,

States Advisory and Finance Committee.

The States are asked to decide:—

Whether, after consideration of the Report dated the 13th March, 2002, of the Island Development Committee, they are of opinion:—

1. To approve the proposals set out in section 3 of that Report concerning the drafting of the Projet de Loi.
2. To approve the proposals set out in section 4 of that Report concerning the legislative provision to be made by Ordinance in relation to:—
  - (i) Plans.
  - (ii) Control of Development – General Provisions.
  - (iii) Control of Development – Exemptions
  - (iv) Control of Development – Use Classes.
  - (v) Control of Development – Environmental Impact Assessments.
  - (vi) Special Controls.
  - (vii) Enforcement.
  - (viii) Appeals and Reviews.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

DE V. G. CAREY,  
Bailiff and President of the States.

The Royal Court House,  
Guernsey.  
The 31st May, 2002.

IN THE STATES OF THE ISLAND OF GUERNSEY

ON THE 27TH DAY OF JUNE, 2002

(Meeting adjourned from the 26th June, 2002)

The States resolved as follows concerning Billet d'Etat No. XI  
dated 31st May, 2002

**ISLAND DEVELOPMENT COMMITTEE**

REVIEW OF THE ISLAND DEVELOPMENT (GUERNSEY) LAWS 1966-90

After consideration of the Report dated the 13th March, 2002, of the Island Development Committee:-

1. To approve the proposals set out in section 3 of that Report concerning the drafting of the Projet de Loi, save that, instead of a single independent adjudicator as proposed in paragraphs 3.6 and 5.4 of that Report and currently set out in Part 6 of the draft Law in Appendix 1 thereto:
  - (i) the States of Deliberation shall appoint a panel of 6 independent persons, each for a six year term, and of whom 2 shall retire (but may be re-appointed) every other year;
  - (ii) 4 of the panel members shall be permanently resident within the Channel Islands, and at least 2 shall have appropriate qualifications or experience in planning matters ("professional panel members");
  - (iii) the States Advisory and Finance Committee shall place nominations for panel membership before the States; the States may propose alternative persons for appointment;
  - (iv) every appeal shall be determined by a chairman who is a professional panel member and by 2 other panel members.
  
- 1A That any reference to Herm, Jethou or any offshore Crown Rocks or Islets shall be deleted until consultations between the Crown and the States are completed and resolved, and to report back to the States with the results.

2. To approve the proposals set out in section 4 of that Report concerning the legislative provision to be made by Ordinance in relation to:-
  - (i) Plans
  - (ii) Control of Development – General Provisions - save that the proposed Ordinance shall, contrary to the proposals in paragraph 4.3.8 of that Report, make specific provision concerning the posting of site notices concerning planning applications, including a requirement that such notices shall be posted at least 21 days before any decision is made
  - (iii) Control of Development – Exemptions
  - (iv) Control of Development – Use Classes
  - (v) Control of Development – Environmental Impact Assessments
  - (vi) Special Controls.
  - (vii) Enforcement.
  - (viii) Appeals and Reviews
- 2A. To instruct the Island Development Committee to report back to the States, as soon as is practical, with proposals to provide a mechanism, which is Human Rights compliant, to enable the States to exempt strategically essential developments from some or all of the provisions of the proposed Land Planning and Development Law.
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

S. M. D. ROSS  
HER MAJESTY'S DEPUTY GREFFIER