

COMPULSORY PURCHASE LAW REVIEW

**Lodged au Greffe on 18th December 2001
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

to request the Planning and Environment Committee to prepare for consideration by the States at a future date a draft Law -

- (i) to confer on the Planning and Environment Committee responsibility for procedure in respect of the compulsory purchase of land and the assessment in default of agreement of compensation for land acquired or to be acquired by the Public; and
- (ii) to provide for such procedures.

PLANNING AND ENVIRONMENT COMMITTEE

- Notes:
1. The Legislation Committee's comments are to follow.
 2. The Policy and Resources Committee's comments are to follow.
 3. The Finance and Economics Committee's comments are to follow.

REPORT

The Proposition which is before the States asks the States to request the Planning and Environment Committee to prepare new legislation which would confer upon the Planning and Environment Committee all statutory responsibility for the procedural matters relating to compulsory purchase and the assessment of compensation for land acquired and which would also provide a new statutory framework for the procedures to be followed when land is purchased compulsorily and when compensation is assessed in default of agreement.

In asking the States to agree that the Committee should bring forward this legislation the Committee is also, in effect, asking the States to formally recognise that responsibility for dealing with all compulsory purchase matters on behalf of the States rests with the Planning and Environment Committee.

Why a new procedural Law is needed

The statutory format for compulsory purchase is that a power to acquire land by compulsory purchase is conferred upon the States by a number of different Laws, varying according to the purpose for which the land is to be acquired. Thus, the **Housing (Jersey) Law 1949** confers upon the States a power to acquire by compulsory purchase land which is required for housing, the **Education (Jersey) Law 1999** confers upon the States power to acquire land by compulsory purchase for the purposes of that Law and so on (See Appendix 2).

A Law which confers a power to acquire land by compulsory purchase is called “a special law”.

Whatever the special law which confers the power to acquire the land, the procedure which is followed is laid down in the **Compulsory Purchase of Land (Procedure) (Jersey) Law 1961**. That Law does not confer any power to acquire land by compulsory purchase. What it does is regulate the procedure which is to be followed whenever the States have decided to exercise their power under some special law to acquire land by compulsory purchase.

From a procedural point of view, there are two things wrong with the current statutory framework.

The first is that although the **Compulsory Purchase of Land (Procedure) Law** is intended to prescribe a uniform procedure for the acquisition of land by compulsory purchase whatever the special law, and contains provisions regulating the assessment of compensation, there are some special laws, such as the **Roads (Administration) (Jersey) Law 1960**, which contain additional provisions relating to the assessment of compensation. The result of this is that the way in which compensation is assessed may differ according to the special law under which the acquisition is made. Anomalies of this kind can only serve to create difficulties in the system.

The second reason why a new law of compulsory purchase procedure is required is that the existing statutory provisions are in many ways defective. The statute itself does not create any procedure which would allow the owner of land to make an objection to the service of a compulsory purchase notice. All he can do is refuse to accept the amount offered him, following which his land is taken from him compulsorily. If he wishes to challenge the validity of the notice he can only do so by Court proceedings which may be both expensive and protracted and in which the Court's powers are limited. There is no consultation process nor can the owner request a public inquiry.

In addition to these defects, the law does not provide a mechanism for assessing compensation for land where the owner is a willing seller but the parties cannot agree on the price. In such a case, the owner, even though he is perfectly prepared to sell his land, must be subjected to the compulsory purchase procedure and have the land expropriated from him compulsorily before the assessment of compensation can be referred to a Board of Arbitrators.

In response to a request from the Housing Forum, a small working group undertook a study of the constraints which exist in the use of compulsory purchase as a tool to achieve housing sites. The Group's report to the Housing Forum is attached at Appendix 1.

Why responsibility for Compulsory Purchase procedure should be transferred to the Planning and Environment Committee

The Planning and Environment Committee is the Committee with responsibility for the Property Services Department. The Property Services Department was created in accordance with an Act of the States of 9th April 1991. In that Act, the States decided to rationalise the way in which public property is managed and to concentrate responsibility for property matters in one specialist department, referred to as a property management office. Such matters include valuation of land, negotiations for the acquisition of land and the like. The department is staffed, in accordance with the States decision of April 1991, by qualified professionals who have expertise in these matters.

Under the **Compulsory Purchase of Land (Procedure) Law**, the Committee which has the administration of the relevant special law is the acquiring authority. The **Compulsory Purchase Law** and the Regulations made under that Law then impose upon the acquiring authority a number of responsibilities in respect of the procedure. Most importantly, these include the conduct of the proceedings before the Board of Arbitrators, including the preparation of submissions in respect of the valuation of the land.

These are clearly matters which lie within the ambit of the Property Services Department, and not within the sphere of the Committees which have responsibility for a special law.

Much unnecessary paperwork is generated and much needless work undertaken by reason of this irrational system under which the States have conferred responsibility for property matters on a dedicated Property Department, but the statute confers responsibility for the procedural aspects of compulsory purchase on Committees which have other, very different, responsibilities.

The second reason why the Planning and Environment Committee invites the States to confer upon it responsibility for matters relating to compulsory purchase procedure is that under the law as it stands, the only statutory responsibility of the Planning and Environment Committee is as acquiring authority in respect of land acquired compulsorily under the **Island Planning (Jersey) Law 1964**. Because it has no wider authority, it cannot undertake a comprehensive review of compulsory purchase procedures generally, and yet it is the Committee whose department has the closest involvement in such procedures and the most comprehensive experience of them.

The Planning and Environment Committee believes that Compulsory Purchase is an essential tool for the States of Jersey to ensure the implementation of States' decisions. The current procedures and laws are in urgent need of revision to provide for a consistent and transparent approach. The Committee is ready and willing to undertake the task and seeks only the authority of the States to do so. There is already provision in the Legislation Programme for the drafting of this new legislation and there are no additional financial or manpower implications arising out of this proposition.

**Compulsory Purchase
Presentation to the Housing Forum**

The difficulties which have been recognised in respect of compulsory purchase are as follows -

- The current laws are fragmented.
- There is no opportunity for landowners to challenge the reasonableness of a compulsory purchase proposal.
- Compulsory purchase is not generally favoured by States members unless there is a 'willing' seller and it only remains for an Arbitration Board to establish the price that should be paid.
- The current system, which is seen as unfair to the owners of the land to be acquired, sometimes prevents progress on States initiatives or causes considerable delay whilst further negotiation continues.
- Takes no account of Human Rights legislation.
- The basis for determining compensation differs in at least two particular laws.
- The costs of the current arbitration procedures are high and in certain instances the procedures are unclear and open to lengthy legal argument.
- There is no public consultation process to enable interested parties to express their views.

One beneficial aspect of the current legislation is that it is possible to acquire land in a relatively short period (i.e. 10-12 weeks) once the States has approved the compulsory purchase of any particular piece of land or property and conferred the necessary power on the Committee involved.

A small Working Group has already considered the existing legislation and has recommended a complete review of the compulsory purchase laws and the procedures which they contain. The brief asked the Group to consider the following -

1. The current legislation policies and procedures.
2. Is review necessary?
3. Objectives of any review
 - 'Clean sheet' Review
 - Limited review to remedy specific problems
4. Process
 - Policy Issues
 - Procedural Issues (mechanics of vesting process)
 - Specific working parties (i.e. Agricultural issues)
5. Consultation process
 - Consultation on CP with public generally
 - Consultation with interested bodies (RICS, JAA, Law Society, etc.)
 - Representation on Consultative bodies.
6. Timetable for review.

A large amount of preparatory work has been completed and the Group has made a recommendation as to how the review should be progressed. The timescale for such a review with full public consultation is estimated as eight months prior to completion of brief for law drafting.

LIST OF REFERENCES TO COMPULSORY PURCHASE IN CURRENT JERSEY LAW

As at 23rd October 2000

Procedural law

Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 with amendments.

Special Laws

Civil Aviation Act

(Amendment) (Jersey) Law 1960

Civil Defence (Jersey) Law 1952

Drainage (Jersey) Law 1962

Education (Jersey) Law 1999

Egouts, Loi (1937) sur les

Electricity (Jersey) Law

(Amendment) (Jersey) Law 1954

(Amendment No. 2) (Jersey) Law 1975

Housing (Jersey) Law 1949

(Amendment No. 2) (Jersey) Law 1950

(Amendment No. 3) (Jersey) Law 1966

(Amendment No. 4) (Jersey) Law 1974

(Amendment No. 6) (Jersey) Law 1991

Human Rights (Jersey) Law 2000

Island Planning (Jersey) Law 1964

(Amendment No. 4) (Jersey) Law 1991

Post Office Act 1969

Post Office (Jersey) Law 1969

Queen's Valley Reservoir (Jersey) Law 1988

Roads (Administration) (Jersey) Law 1960

Road Traffic (Jersey) Law 1956

(Amendment) (Jersey) Law 1958

(Amendment No. 2) (Jersey) Law 1962

Road Traffic (Miscellaneous Provisions) (Jersey) Law 1962

Sea Defence (Jersey) Law 1970

Sewerage (Jersey) Law 1937

Amendment of 1938

(Amendment) (Jersey) Law 1953

Telecommunications (Jersey) Law 1972

Water (Jersey) Law 1972

Water Pollution (Jersey) Law 2000