

ORIGINAL PROPOSITIONS

POLICY & RESOURCES COMMITTEE

ACCESS TO NEIGHBOURING LAND

The States are asked to decide:-

Whether, after consideration of the Access to Neighbouring Land (Guernsey) Law, 2016 Supplementary Policy Letter dated 10th May 2016 and the Projet de Loi entitled "The Access to Neighbouring Land (Guernsey) Law, 2016", they are of the opinion:-

- (a) to approve the proposals that:
 - (i) applications for access orders and related orders under the access to neighbouring land legislation be made in the Magistrate's Court (exercising its civil jurisdiction), with that court having the power to refer applications for determination by the Royal Court sitting as an Ordinary Court; and
 - (ii) the Law should provide for all access orders to be time bound with the States having power to amend the Law by Ordinance to provide for the making of access orders in perpetuity; and
- (b) to approve the Projet de Loi entitled "The Access to Neighbouring Land (Guernsey) Law, 2016", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Law provides for the making of access orders, creates a right of access pursuant to service of a notice in respect of services on land that serve other land, and jointly-owned boundary features, and makes related provision.

Part 1 provides for the making of access orders by the Magistrate's Court in circumstances where a person requires entry onto land for the purpose of carrying out work that is reasonably necessary for the preservation, repair or maintenance of adjoining or adjacent land, and needs but does not have the consent of some other

person to enter upon the land. It specifies the terms and conditions that the court may impose when making such an order.

Part 2 provides that a person may enter upon land for the purpose of preserving, repairing or maintaining –

- a) services which serve other land, or
- b) a party or jointly-owned wall, structure or growing thing,

where he needs but does not have the consent of another person to enter upon the land, subject to service of a notice (a "*servitude tacite* notice") on that person, and, in the case of services, to those services having been installed before the commencement of the Law. The Law makes provision about the contents and service of *servitude tacite* notices, and provides that a person served with such a notice may apply to the Magistrate's Court to challenge the notice, to seek the imposition of different terms and conditions in respect of the proposed entry and work or, after the completion of the work, to claim compensation in respect of any significant financial loss or significant loss of privacy or inconvenience claimed to have been caused by the work. Part 2 also makes provision in relation to unreasonable interference with services installed on land that serve other land.

Part 3 makes general provision, including in respect of the registration and discharge of orders, the referral of applications between the Magistrate's Court and the Royal Court, and appeals. Access orders must specify the period during which access to the relevant servient land may be exercised. Consequently all access orders must be time-limited. Clause 16 in this Part of the Law creates a power for the States to amend the Law by Ordinance, however, to enable access orders to be made that remain in force in perpetuity.

POLICY & RESOURCES COMMITTEE

ACCESS TO NEIGHBOURING LAND - SUPPLEMENTARY POLICY LETTER

The Presiding Officer
States of Guernsey
Royal Court House
St. Peter Port

10th May 2016

Dear Sir

Executive Summary

1. The purpose of this supplementary Policy Letter is to seek approval for two minor amendments to the proposals agreed in May 2014 when the States of Deliberation agreed to introduce legislation to allow the owner of a property access to a neighbouring property to undertake essential repairs when access has otherwise been refused, namely that:
 - applications for orders allowing access to neighbouring land should be made to the Magistrate's Court and not the Royal Court; and
 - the Court should not have the power to make an access order in perpetuity (i.e. an order that is not time-bound), though the States should have power to amend the Law by Ordinance in the future to provide for this.

Background

2. In May 2014, the States approved a Policy Letter¹ recommending the preparation of new legislation to allow the owner of a property access to a neighbouring property to undertake essential repairs when it had otherwise been refused. The Policy Letter explained that:

"New legislation is required because Guernsey customary law does not permit the acquisition of rights to keep services in other people's land by any prescriptive process – i.e. without title or by virtue of statute."

and went on to recommend:

"...the preparation of legislation to overcome issues which are

¹ Article X of Billet d'État X of 2014

increasingly arising because of the limitations within Guernsey's property laws. The proposals are to introduce legislation that is broadly based on the Access to Neighbouring Land Act 1992 but with appropriate modifications to take account that customary law remains a strong influence on the Island's property law."

3. Appended to the May 2014 Policy Letter was a detailed analysis of the relevant legal issues prepared by HM Procureur, in which he recommended, *inter alia*, that the legislation provide that applications for the relevant court orders be made in the Royal Court.

Amendments to the May 2014 Proposals

4. HM Procureur has written to the Policy & Resources Committee (see the text of that letter at the Appendix), noting that he has become concerned that the financial implications of having to make a contested application in the Royal Court would serve to discourage people from using the legislation. To address that difficulty, he recommends that the legislation provide instead that applications be made in the Magistrate's Court exercising its civil (Petty Debts) jurisdiction (where a party cannot be ordered to pay another party's legal costs), with that court having the power to refer applications to the Royal Court for determination where necessary.
5. Further, HM Procureur notes that he previously recommended that it should be possible for an access order to be made in perpetuity, and that he has now revised that view. The Policy & Resources Committee supports the proposals set out in that letter.
6. A number of property transactions on the Island are effectively on hold pending the enactment of this legislation, and it is clearly important that it is brought into force as soon as possible. Consequently, your permission has been sought and obtained for the *Projet* to be submitted at the same time as this supplementary Policy Letter.

Consultation

7. As noted above, this Policy Letter has been prepared following recommendations from HM Procureur. The Royal Court has been consulted in respect of those recommendations, a draft of the legislation has been sent to all Judges, and relevant practitioners at the Bar have been consulted in respect of the *Projet*. The main policy proposals given effect in the legislation were the subject of extensive consultation, as set out in the May 2014 Policy Letter.

Financial and Resource Management

8. Compared with the proposal that applications be made to the Royal Court in the May 2014 Policy Letter, the proposal contained in this Policy Letter will result in new work for the Magistrate's Court and less work for the Royal Court; it is not expected to result in an increased workload for the court system overall.

Recommendation

9. The Policy & Resources Committee recommends the States to:
- (a) approve the proposals that:
 - (i) applications for access orders and related orders under the access to neighbouring land legislation be made in the Magistrate's Court (exercising its civil jurisdiction), with that court having the power to refer applications for determination by the Royal Court sitting as an Ordinary Court; and
 - (ii) the Law should provide for all access orders to be time bound with the States having power to amend the Law by Ordinance to provide for the making of access orders in perpetuity; and
 - (b) approve the Projet de Loi entitled "The Access to Neighbouring Land (Guernsey) Law, 2016".

Yours faithfully

G St. Pier
President

A Brouard
J Le Tocq
J Stephens
L Trott

APPENDIX - Text of HM Procureur's letter to the Policy & Resources Committee

On 28 May 2014, the States resolved to approve the proposals set out in the Policy & Resources Committee's policy letter in respect of this matter, and to approve the preparation of the necessary legislation. In the course of the preparation of that legislation, a concern has been raised within these Chambers that I share, regarding which court should have jurisdiction to hear applications made under the legislation.

In the legal analysis that was annexed to the policy letter, I referred to such applications being made to the Royal Court sitting as an Ordinary Court. I did so because the Royal Court is typically where applications relating to real property are determined.

The concern that has subsequently emerged is that the potential exposure to legal costs that applications to the Royal Court ordinarily involve – both the costs of one's own Advocate and, potentially, the Advocate of the opposing party – might serve to discourage some people, especially the less wealthy, from using the legislation, or indeed from opposing unmeritorious applications; and that access to justice, as well as people's ability to sell, or secure a loan on, their property, would thereby be compromised.

In these circumstances, in my view the most appropriate alternative to the Royal Court would be for applications to be determined by the Magistrate's Court, exercising its civil jurisdiction, since Advocates' fees are not recoverable in proceedings before that court, and its procedure is generally simpler. Consequently, we have explored this possibility in some detail with the Royal Court, and the Bailiff has confirmed that in this case, he would be content for jurisdiction to sit with the Magistrate's Court, on the basis that where an application raises a complex point of law, or it is otherwise appropriate, the matter may be referred for determination by the Royal Court sitting as an Ordinary Court, which is consistent with the general power of the Magistrate's Court to refer cases at section 17 of the Magistrate's Court (Guernsey) Law, 2008. If a case was so referred, the presumption would be that the normal Royal Court costs rules would not apply in respect of it. The Royal Court would, in turn, have the power to refer a case so referred back to the Magistrate's Court for determination.

In that legal analysis I also referred to the legislation providing for the possibility of making access orders in perpetuity as well as for specified periods. Considering this issue again, and in the light of comments from practitioners, I am persuaded that the better course is to provide that all access orders be time bound, but with power for the States to amend the Law by Ordinance to enable orders in perpetuity to be made in future, should a need for them become apparent.

In light of the above, in my view a short supplementary policy letter should be prepared, seeking the approval of the States to these minor changes of policy. The *Projet*, which in other respects gives effect to the proposals set out in the policy letter

and which has been the subject of consultation with practitioners in this area, has been drafted on this basis. I am acutely aware that there are transactions which are on hold, and people unable to secure a loan on a property, pending the enactment of this legislation; and in my view in all these circumstances it would be appropriate for the *Projet* to be submitted for approval at the same time as that policy letter.

PROJET DE LOI

ENTITLED

The Access to Neighbouring Land (Guernsey) Law, 2016

ARRANGEMENT OF SECTIONS

PART 1 ACCESS ORDERS

1. Access orders.
2. Access orders: terms and conditions.
3. Effect of access order.

PART 2 SERVICES AND JOINTLY-OWNED BOUNDARY FEATURES

4. Right of access in respect of services and jointly-owned boundary features.
5. Right of access in respect of services and jointly-owned boundary features: change of occupation, etc.
6. Service of *servitude tacite* notices.
7. *Servitude tacite* notices: declarations, and terms and conditions orders.
8. *Servitude tacite* notices: compensation orders.
9. Services on servient land.
10. Unreasonable interference with services on servient land: compensation and repair.

PART 3 GENERAL

11. Registration of orders, and persons bound by orders.
12. Discharge and variation of orders, and damages for breach.
13. Referral of applications between Magistrate's Court and Ordinary Court.
14. Appeals.
15. *Clameur de Haro*.
16. Power to amend Law by Ordinance for specific purpose.
17. General provisions as to Ordinances.
18. Interpretation.
19. Citation.
20. Commencement.

PROJET DE LOI

ENTITLED

The Access to Neighbouring Land (Guernsey) Law, 2016

THE STATES, in pursuance of their Resolutions of the 28th day of May, 2014^a and the [x] day of [y], 2016^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART 1 ACCESS ORDERS

Access orders.

1. (1) Where a person ("A") –
 - (a) requires entry upon land (the "servient land") for the purpose of carrying out work on adjoining or adjacent land (the "dominant land"), and
 - (b) needs, but does not have, the consent of some other person to that entry,

A may make an application to the Magistrate's Court for an order under this section ("an access order") against that other person ("the respondent").

- (2) Subject to subsection (3), the Magistrate's Court shall make

^a Article X of Billet d'État No. X of 2014.

^b Article [x] of Billet d'État No. [y] of 2016.

an access order if it is satisfied that –

- (a) the work is reasonably necessary for the preservation, repair or maintenance of the dominant land or any part of it, and
- (b) the work cannot be carried out, or would be substantially more difficult or expensive to carry out, without entry upon the servient land.

(3) The Magistrate's Court may not make an access order if it is satisfied that the entry would cause the respondent (or any other person) hardship or prejudice that outweighs A's interest in being allowed to undertake the work.

(4) The work in respect of which an access order may be made includes –

- (a) work in respect of buildings and other structures of preservation, repair and maintenance, and, if the Magistrate's Court is satisfied that exceptional circumstances pertain, the carrying out of such work through demolition or removal and replacement,
- (b) work in respect of buildings and other structures of decoration, alteration, adjustment, renewal or other improvement, where such work is ancillary or consequential to work of the type specified in paragraph (a),
- (c) inspection for the purposes of ascertaining whether any such work is required,

- (d) the treatment, cutting back, felling, removal or replacement of any hedge, tree, shrub or other growing thing,
- (e) the clearance of any *douit*,
- (f) making plans in connection with any such work, and
- (g) work that is necessary for or incidental to any of the above.

(5) If A does not know and cannot reasonably ascertain the name of any person against whom he wishes to apply for an access order, A may make that person a respondent to the application by description instead of by name.

Access orders: terms and conditions.

2. (1) An access order shall specify –

- (a) the work which may be carried out in pursuance of the order ("the specified work"),
- (b) the particular area of servient land that may be entered upon in pursuance of the order, and
- (c) the date on which, or the period during which, the land may be so entered upon.

(2) When making an access order the Magistrate's Court may impose such conditions as appear to it reasonably necessary for avoiding or restricting –

- (a) any loss, damage or injury which might otherwise be caused to the respondent or any other person, and
- (b) any inconvenience or loss of privacy that might otherwise be caused to the respondent or any other person.

(3) Without prejudice to the generality of subsection (2), the conditions which may be imposed under that subsection include provisions with respect to –

- (a) the manner in which the specified work is to be carried out,
- (b) the days on which, and the hours between which, the specified work is to be carried out,
- (c) the persons who may carry out the specified work,
- (d) the taking of any precautions by those persons when carrying out the specified work,
- (e) the taking out of insurance cover in relation to the entry, or the carrying out of the specified work,
- (f) recovery of the payment of professional fees and related expenses by the respondent in relation to the entry, or the carrying out of the specified work,
- (g) compensation for any significant financial loss (in the

value of a building or structure on the servient land or otherwise) suffered by the respondent or any other person by reason of the entry, or the carrying out of the specified work,

- (h) compensation for any substantial loss of privacy or substantial inconvenience suffered by the respondent or any other person by reason of the entry, or the carrying out of the specified work, and
- (i) the giving of security by the applicant for any amount that might become payable to the respondent or any other person under this section or section 3.

Effect of access order.

3. (1) An access order requires the respondent, so far as the respondent has power to do so, to permit the applicant or any of the applicant's servants and agents to do anything which the applicant (or his servant or agent) is authorised or required to do under or by virtue of the order or this section.

(2) Except as otherwise provided by or under this Law, an access order authorises the applicant or any of the applicant's servants and agents, without the consent of the respondent –

- (a) to enter upon the servient land for the purpose of carrying out the specified works, and
- (b) to bring onto that land, leave there during the period permitted by the order and, before the end of that period, remove, such materials, plant and equipment as are reasonably necessary for the carrying out of those

works.

(3) Subject to subsection (4), an access order requires the applicant to –

- (a) secure that any waste arising from the carrying out of the specified works is removed from the servient land without delay,
- (b) secure that, before entry ceases to be authorised under or by virtue of the order, the servient land is, so far as reasonably practicable, made good, and
- (c) indemnify the respondent against any damage which may be caused to the servient land or any goods by the applicant or any of his servants and agents.

(4) In making an access order, the Magistrate's Court may vary or exclude, in whole or in part, any –

- (a) authorisation that would otherwise be conferred by subsection (2)(a) or (b), or
- (b) requirement that would otherwise be imposed by subsection (3).

(5) For the purpose of this section, the applicant's servants and agents are such number of such persons whom the applicant may reasonably authorise under this subsection to exercise the power of entry conferred by the access order as may be reasonably necessary for carrying out the specified works.

PART 2
SERVICES AND JOINTLY-OWNED BOUNDARY FEATURES

Right of access in respect of services and jointly-owned boundary features.

4. (1) Where a person ("B") –
- (a) requires entry to land (the "servient land") for the purpose of preserving, repairing, or maintaining –
 - (i) services which serve other land (the "dominant land"), or
 - (ii) a jointly-owned wall, structure or growing thing that forms a boundary between the dominant and servient land, and
 - (b) needs, but does not have, the consent of some other person to that entry,

then, subject to section 7(2) and (3), B may enter upon the servient land for that purpose, and effect such works of preservation, repair, or maintenance as may reasonably be necessary, provided that the conditions in subsection (2) and, where the entry is for the purpose set out in subparagraph (a)(i), subsection (3), are satisfied.

(2) The first condition is that B has given the person referred to in subsection 1(b) reasonable written notice of the entry, in which notice (a "*servitude tacite* notice") must be specified –

- (a) the nature and location of the specified work,

- (b) the manner in which it is proposed the specified work be carried out,
- (c) the day or days on which, and the hours between which, it is proposed that the specified work is to be carried out,
- (d) the persons it is proposed shall carry out the specified work, and
- (e) any other matter which it is reasonable to specify in all the circumstances.

(3) The second condition is that the services in question were installed on the servient land before the coming into force of this provision.

(4) For notice to be reasonable under subsection (2), it must be reasonable in all the circumstances of the case, and in any event greater than seven days except in a case where B has reasonable grounds to believe that there is a risk of injury to persons or significant damage to property unless a shorter period of notice is given.

(5) A *servitude tacite* notice may not specify a proposed day of work that is a non-business day, or hours of work that are outside normal working hours, except in a case where B has reasonable grounds to believe that otherwise there would be a risk of injury to persons or significant damage to property.

(6) Work undertaken under this section may –

- (a) in exceptional circumstances be carried out through demolition or removal and replacement, and

- (b) include alteration, adjustment, renewal or other improvement, where such work is ancillary or consequential to work of the type specified in subsection (1)(a).

(7) References in this section and section 7 to B entering upon land include references to such number of B's servants and agents whom B may reasonably authorise under this subsection to exercise the power of entry conferred by this section as may be reasonably necessary for carrying out the specified works.

(8) In this section, "non-business day" means a Saturday, a Sunday, or a public holiday, and "normal working hours" means between 8am and 6pm.

Right of access in respect of services and jointly-owned boundary features: change of occupation, etc.

5. (1) In circumstances where –

- (a) B has, in the circumstances set out in section 4(1)(a) and (b), served a *servitude tacite* notice on a person in accordance with the requirements of section 4 and the provisions of section 6,
- (b) B has not completed the work specified within that notice, and
- (c) B is put on notice by another person that B requires, and does not have, the consent of that person to enter upon the servient land,

B continues to be permitted to enter upon the servient land and to undertake work pursuant to and in accordance with the *servitude tacite* notice referred to in paragraph (a), provided that the condition in subsection (2) is satisfied.

(2) The condition is that as soon as practicable after being put on notice by a person under subsection (1)(c), B serves on that person a copy of the *servitude tacite* notice referred to in subsection (1)(a), in accordance with the provisions of section 6.

(3) In circumstances where –

(a) B has, in the circumstances set out in section 4(1)(a) and (b), served a *servitude tacite* notice on a person in accordance with the requirements of section 4 and the provisions of section 6,

(b) B has not completed the work specified within that notice, and

(c) another person ("C") then takes occupation of the dominant land or otherwise requires entry upon the servient land for the purposes set out in the *servitude tacite* notice referred to in paragraph (a) in place of B,

C may enter upon the servient land and undertake work without the consent of the person referred to in section 4(1)(b), in reliance on and in accordance with the *servitude notice* served on that person by B.

(4) References in this section to B or C entering upon land include references to such number of that person's servants and agents whom that person may reasonably authorise under this subsection to exercise the power of

entry conferred by this section as may be reasonably necessary for carrying out the specified works.

Service of *servitude tacite* notices.

6. (1) A *servitude tacite* notice may be served -
- (a) on an individual ("P"), by being delivered to P, or by being left at, or sent by post or transmitted to, P's usual or last known place of abode,
 - (b) on a body corporate, by being left at, or sent by post or transmitted to, its registered office,
 - (c) on a Guernsey limited partnership -
 - (i) by being left at, or sent by post to, the partnership's registered office, or
 - (ii) by being delivered to any general partner thereof, or by being left at, or sent by post to, his address shown in the Register of Limited Partnerships established and maintained under section 7 of the Limited Partnerships (Guernsey) Law, 1995^c,
 - (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being

^c Ordres en Conseil Vol. XXXVI, p. 264; there are amendments not relevant to this enactment.

left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick, and

- (e) on a Guernsey foundation –
 - (i) by being left at, or sent by post to, the foundation's registered office, or
 - (ii) by being delivered to any councillor thereof, or by being left at, or sent by post to, his address shown in the Register of Foundations established and maintained under paragraph 4 of Schedule 1 to the Foundations (Guernsey) Law, 2012^d.

(2) In subsection (1) -

- (a) the expression "by post" means by recorded delivery service or ordinary letter post, and
- (b) the expression "transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

^d Order in Council No. I of 2013.

(3) If P is a child or person under a legal disability, the document shall be served on P's guardian; and if there is no guardian, B may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of this Law.

(4) A *servitude tacite* notice sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received on the third day after the day of posting, excluding any day which is not a working day.

(5) Service of a *servitude tacite* notice sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) If B does not know and cannot reasonably ascertain, the name of any person on whom B desires to serve a *servitude tacite* notice, B may address the notice by description instead of by name.

(7) If B cannot, after reasonable enquiry, effect service of a *servitude tacite* notice in accordance with this section, the notice may be served by being published in La Gazette Officielle on two occasions falling in successive weeks.

(8) References in this section to a *servitude tacite* notice include, for the purposes of section 5(2), references to a copy of a *servitude tacite* notice.

Servitude tacite notices: declarations, and terms and conditions orders.

7. (1) A person served with a *servitude tacite* notice may apply to the Magistrate's Court –

- (a) for a declaration that section 4(1)(a) or (b) does not apply in respect of the entry and specified work,

- (b) for a declaration that the condition in section 4(2) or, where it applies, the condition in section 4(3), is not satisfied in respect of it (and in this regard, the condition at section 4(2)(c) is not satisfied in respect of a notice that contravenes section 4(5)), or
- (c) for an order imposing terms and conditions on B in respect of the entry and specified work that are different from, or in addition to, those set out in the notice.

(2) On being given notice that an application has been made under subsection (1), B may not enter upon the servient land pending the determination of that application.

(3) Where B has already entered upon the servient land when given notice that an application has been made under subsection (1), B and his servants and agents must withdraw from that land pending the determination of that application.

(4) In the circumstances set out in section 5(3), references to B in this section include references to C; and in this section and section 8, "a person served with a *servitude tacite* notice" includes a person who has been served with a copy of a *servitude tacite* notice pursuant to section 5(2).

Servitude tacite notices: compensation orders.

8. (1) Subject to subsection (2), a person served with a *servitude tacite* notice may apply to the Magistrate's Court at any time within the period of three months after the conclusion of the specified work for an order making provision with respect to compensation for any –

- (a) significant financial loss (in the value of a building or structure on the servient land or otherwise) suffered by the applicant or any other person in consequence of the entry, or the carrying out of the specified work, and
- (b) substantial loss of privacy or substantial inconvenience suffered by the applicant or any other person in relation to the entry, or the carrying out of the specified work.

(2) If the person in subsection (1) is applying for an order for compensation in excess of the sum specified in section 15(1) of the Magistrate's Court (Guernsey) Law, 2008^e ("**the Magistrate's Court Law**"), then that person shall apply to the Royal Court.

Services on servient land.

9. (1) For the avoidance of doubt, where services have been installed on land ("servient land") and they serve other land ("dominant land"), they shall not be subject to unreasonable interference.

(2) Neither this section nor any other provision of this Law affects the right of any person whose consent is required for services to be installed on servient land to refuse to give that consent, or to give consent subject to conditions or other requirements or restrictions.

^e Order in Council No. XVIII of 2009; there are amendments not relevant to this enactment.

Unreasonable interference with services on servient land: compensation and repair.

10. (1) Subject to subsection (2), the owner of the dominant land and any other person affected by the destruction of, damage to or other unreasonable interference with services falling within section 9(1) may apply to the Magistrate's Court for -

- (a) an order for compensation for any financial loss and inconvenience arising from that interference, and
- (b) an order in respect of the repair or replacement of the services.

(2) If the person in subsection (1) is applying for an order under paragraph (a) for compensation in excess of the sum specified in section 15(1) of the Magistrate's Court Law, then that person shall apply to the Ordinary Court.

PART 3
GENERAL

Registration of orders, and persons bound by orders.

11. (1) Upon submission of a true copy of –

- (a) an access order, or
- (b) an order under section 7(1)(c),

it shall be registered in the Livre des Contrats at the Greffe.

(2) In addition to the respondent –

- (a) an access order registered under subsection (1) shall be binding on any of the respondent's successors in title to the servient land, and
- (b) an order under section 7(1)(c) registered under subsection (1) shall be binding on any of the respondent's successors in title to the dominant land,

and references to the respondent shall be construed accordingly.

(3) In this section, in respect of orders under section 7(1)(c) "applicant" means the person who has applied for the order, and "respondent" means the person referred to in section 7(1)(c).

(4) In addition to the applicant –

- (a) an access order registered under subsection (1) shall be enforceable by any of the applicant's successors in title to the dominant land, and
- (b) an order under section 7(1)(c) registered under subsection (1) shall be enforceable by any of the applicant's successors in title to the servient land,

and references to the applicant shall be construed accordingly.

Discharge and variation of orders, and damages for breach.

12. (1) Where an access order, an order under section 7(1)(c) or section 8, or an order under this subsection has been made, the Magistrate's Court may, on the application of any party to the proceedings in which the order was made or of any other person on whom the order is binding –

- (a) discharge or vary the order or any of its terms or conditions,
- (b) suspend any of its terms or conditions, or
- (c) revive any term or condition suspended under paragraph (b),

and any order under this subsection which relates to an access order, or an order under section 7(1)(c), shall be treated for the purpose of section 11 as included in that access order or order under section 7(1)(c) (as the case may be).

(2) If a person ("D") contravenes or fails to comply with any requirement, term or condition imposed on D by or under this Law, the Magistrate's Court or, where the amount claimed exceeds the sum specified in section 15(1) of the Magistrate's Court Law, the Ordinary Court, may, without prejudice to any other remedy available, make an order for the payment of damages by D to any person affected by the contravention or failure who makes an application for relief under this subsection.

Referral of applications between Magistrate's Court and Ordinary Court.

13. (1) The Magistrate's Court may, at any time prior to or during the hearing of an application under this Law, refer the application or any issue in dispute in the application (including, without limitation, any issue of fact, law or procedure) to the Ordinary Court for hearing and determination if it is of the opinion that it is desirable to do so –

- (a) because a question of law of general importance has arisen, or

- (b) for any other reason, in all the circumstances of the case and in the interests of justice,

and references in this Law to the Magistrate's Court shall be construed accordingly.

(2) Where the Magistrate's Court refers an application or any issue in dispute in the application to the Ordinary Court under subsection (1), the Ordinary Court may, at any time prior to or during the hearing of the application, refer the application or any issue in dispute in the application (including, without limitation, any issue of fact, law or procedure) to the Magistrate's Court for hearing and determination if it is of the opinion that it is desirable to do so in the interests of justice.

(3) A referral under subsection (1) or (2) may be made on such terms and conditions, and may contain such ancillary and consequential directions, as the Magistrate's Court or (as the case may be) the Ordinary Court thinks fit.

(4) Subject to subsections (5) and (6), and notwithstanding the provisions of the Royal Court Civil Rules, 2007^f, the Royal Court (Costs and Fees) Rules, 2012^g and any other enactment, no –

- (a) Advocates' fees, or
- (b) amount in respect of a professional or expert witness that may be allowed under rule 3(2) of the Royal Court

^f Order of the Royal Court No. IV of 2007; as amended by the Royal Court Civil Rules (Amendment) Order, 2008 (Order of the Royal Court No. II of 2008); the Family Proceedings (Guernsey and Alderney) Rules, 2009 (Order of the Royal Court No. IV of 2009).

^g O.R.C. No. III of 2012; as amended by the Royal Court (Costs and Fees) (Amendment) Rules, 2014 (O.R.C. No. II of 2014).

(Costs and Fees) Rules, 2012,

shall be recoverable in any proceedings referred to the Ordinary Court under subsection (1).

(5) Notwithstanding subsection (4), in any proceedings referred to the Ordinary Court under subsection (1) the Court may make an award of costs for the recovery of –

- (a) Advocates' fees, including an order that costs or security for costs be paid on a full or partial indemnity basis, or
- (b) the allowance of an amount described in subsection (4)(b),

where –

- (i) it is the opinion of the Court that such an award is appropriate in light of the special circumstances of the case, or
- (ii) any party has made or responded to an application or pleaded or otherwise pursued or defended an application or any claim or counterclaim relating thereto unreasonably, scandalously, frivolously or vexatiously, or has otherwise abused the process of the Court.

(6) Notwithstanding subsection (4), in any proceedings referred to the Ordinary Court under subsection (1) the Court may make an award of costs

for the recovery of an amount in respect of a professional or expert witness, where that amount does not exceed the amount that would, in the opinion of the Court, have been recoverable had the proceedings been heard and determined in the Magistrate's Court.

- (7) For the avoidance of doubt –
- (a) the power of referral conferred by subsection (2) is a matter of procedure within the meaning of section 6 of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950^h, and
 - (b) section 17 of the Magistrate's Court Law does not apply in respect of applications under this Law.

Appeals.

14. (1) For the avoidance of doubt, section 18(1) of the Magistrate's Court Law applies in respect of decisions of the Magistrate's Court made under this Law.

(2) An appeal from a decision of the Royal Court made under this Law shall, with leave of the Ordinary Court or the Court of Appeal, lie to the Court of Appeal.

(3) An application made to the Court of Appeal for leave to appeal under subsection (2) shall be treated, for the purposes of section 21 of the Court of Appeal (Guernsey) Law, 1961ⁱ, in respect of -

^h Ordres en Conseil Vol. XIV, p. 388; as amended by Vol. XVIII, p. 355; Vol. XXII, p. 122; and No. XXII of 2008.

ⁱ Ordres en Conseil Vol. XVIII, p. 315; there are amendments not relevant to this enactment.

- (a) the powers that may be exercised by a single judge under section 21(1) of that Law, and
- (b) the entitlement of an applicant under section 21(2) of that Law,

as if it were an application made under Part II of that Law.

Clameur de Haro.

15. Nothing in this Law affects the right of any person to raise the *Clameur de Haro*.

Power to amend Law by Ordinance for specific purpose.

16. The States may amend this Law by Ordinance for the purpose of providing that an access order may be made under this Law that does not specify a date on which entry upon servient land pursuant to that order ceases to be authorised.

General provisions as to Ordinances.

17. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any power conferred by this Law to make an Ordinance may be exercised at any time after the registration of this Law and before Commencement; provided that no Ordinance so made shall come into force until Commencement.

Interpretation.

18. (1) In this Law -

"**access order**": see section 1(1),

"**Advocates' fees**" means Advocates' fees and disbursements,

"**body corporate**" means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

"**child**" means a person under the age of 18 years,

"**Commencement**" means the coming into force of this Law,

"**the Court of Appeal**" means the Royal Court established by the Royal Court of Appeal (Guernsey) Law, 1961,

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

"**Guernsey foundation**" means a foundation created in accordance with section 1 of the Foundations (Guernsey) Law, 2012,

"**Guernsey limited partnership**" means a limited partnership formed in accordance with section 1 of the Limited Partnerships (Guernsey) Law, 1995,

"**jointly-owned**" property includes property owned in common and property in party ownership,

"**the Magistrate's Court**" means the Magistrate's Court exercising its civil jurisdiction pursuant to Part III of the Magistrate's Court (Guernsey) Law, 2008,

"**the Ordinary Court**" means the Royal Court sitting as an Ordinary Court,

"the Royal Court" means the Royal Court of Guernsey, and

"services" includes sewers, drains, gutters, pipes, cables, wires, service pipes or lines, and conduits, and references to services installed on land include references to services placed in the ground and to services suspended over land.

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

Citation.

19. This Law may be cited as the Access to Neighbouring Land (Guernsey) Law, 2016.

Commencement.

20. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.