

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE LAND PLANNING AND DEVELOPMENT (CERTIFICATES OF LAWFUL USE)  
ORDINANCE, 2019**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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 Ordinance makes provision in relation to certificates of lawful use under the Land Planning and Development (Guernsey) Law, 2005 so as to allow an application to be made to regularise unlawful changes of use where a compliance notice cannot be issued in respect of that unlawful change of use under the Law, and the use does not amount to a contravention of a compliance notice in force at the time of the application. It also provides for a right of appeal against the refusal of a certificate, and makes consequential amendments to other planning legislation.



# **The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019**

**THE STATES**, in pursuance of their Resolutions of the 8<sup>th</sup> June, 2017<sup>a</sup>, and in exercise of the powers conferred on them by sections 21, 22, 27, 68(3), 81 and 89 of the Land Planning and Development (Guernsey) Law, 2005<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **PART I**

### **POWER TO PROVIDE FOR CERTIFICATES OF LAWFUL USE**

#### **Amendment of power to provide by Ordinance for certificates.**

1. (1) Section 22 (planning status, certificates and opinions) of the Law is amended as follows.

(2) After subsection (2) insert -

"(3) For the purposes of this Law insofar as it relates to control of development, an existing use is lawful at any time if –

(a) no compliance notice may be issued under this Law in respect of the use because –

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<sup>a</sup> Article VIII of Billet d'État No. XI of 2017.

<sup>b</sup> Order in Council No. XVI of 2005 as amended by Order in Council No. XIII of 2010, Ordinance Nos. XXI, XXII, XXV, XXVII and XXVIII of 2007, No. XVIII of 2011 and Nos. IX and XI of 2016.

- (i) the time for the issuing of a compliance notice has expired, or
  - (ii) the unlawful material change of use occurred before the date of commencement of Part V of the Law, and
- (b) the use –
  - (i) neither constitutes a contravention of any measures required by a compliance notice or an interim compliance notice then in force, nor
  - (ii) is the subject of any proceedings instituted under the repealed enactments.

(4) For the avoidance of doubt, in subsection (3) "use" does not include a use arising from a material change of use within the meaning of the building regulations."

## PART II

### CERTIFICATES OF LAWFUL USE

#### **Application for a certificate of lawful use.**

2. (1) An owner of land may make an application to the Authority for it to issue a certificate as to the lawfulness of any existing use of that land.

- (2) An application under subsection (1) must –
- (a) be made on a form supplied by the Authority and include the particulars specified in that form,
  - (b) be accompanied by -
    - (i) copies of a plan which clearly and accurately identifies the location of the land to which the application relates,
    - (ii) copies of a block layout plan which –
      - (A) clearly and accurately identifies the land to which the application relates, and
      - (B) where the application relates to two or more uses, indicates to which part of the land each use relates,
    - (iii) such evidence verifying the information included in the application as the applicant can provide,
    - (iv) the fee required to accompany the application in accordance with the Land Planning and Development (Fees and Commencement)

Ordinance, 2008<sup>c</sup>,

and in making an application the applicant must have regard to any guidance in relation to the making of an application under this section issued by the Authority from time to time.

- (3) The form supplied by the Authority must –
  - (a) require the applicant to –
    - (i) specify the land to which the application relates,
    - (ii) describe the use to which the application relates,
    - (iii) state the date on which each use began,
    - (iv) specify the name of any use class which the applicant considers applicable to the use,
    - (v) specify the applicant's reasons for regarding the use as lawful, and
  - (b) specify the number of copies of the plans required under subsection (2)(b) for the description of

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<sup>c</sup> Ordinance No. XLI of 2008 as amended by Ordinance No. XVIII of 2011 and No. IX of 2016, G.S.I. No. 6 of 2010, No. 11 of 2012, No. 47 of 2012, and No. 29 of 2017.

application in question.

(4) The Authority may request the applicant in writing to supply such further information in writing, including plans or drawings, as it may consider necessary to determine an application.

**Issuing and effect of certificate of lawful use.**

3. (1) On an application under section 2, the Authority must issue a certificate of lawful use for the relevant use set out in subsection (2), if it is satisfied that it has been provided with information satisfying it of the lawfulness of that use, at the time of the application; and in any other case it must refuse the application.

(2) The use referred to in subsection (1) is –

- (a) the use described in the application under section 2,  
or
- (b) the use described in the application as modified or substituted by the Authority having considered the application.

(3) A certificate under this section must –

- (a) specify the land to which it relates,
- (b) describe the use in question (including, where relevant, the use class),
- (c) give the reasons for determining that the use is lawful,

(d) specify the date of the application for the certificate,  
and

(e) be in the form set out in the Schedule or in a form  
substantially to the same effect.

(4) A certificate under this section may be issued –

(a) for all or part of the land specified in the application,  
and

(b) where the application specifies two or more uses, for  
any one or more of the uses.

(5) The lawfulness of any use, at the time of the application, for  
which a certificate is in force under this section is conclusively presumed.

**Notification of decision on an application for a certificate of lawful use.**

4. (1) The Authority must give the applicant notification of its  
decision on an application under section 2 as soon as reasonably possible after it has  
made its decision.

(2) Where an application for a certificate is refused, in whole or in  
part or where a certificate is issued for a modified or substituted description of use  
from that described in the application to which the certificate relates, the notification  
of the decision must –

(a) state the reasons for the decision,



- (b) specify that there is a right of appeal to the Planning Tribunal against the decision under section 68 of the Law on the ground that the Authority made a material error as to the facts of the case, and
- (c) give brief particulars of the period within which and the manner in which an appeal must be made.

**Revocation of certificate of lawful use.**

5. (1) The Authority may, subject to subsections (2) and (3), revoke in whole or in part a certificate issued under section 3 if, on the application for the certificate –

- (a) a statement was made or document used which was false in a material particular, or
- (b) any material information was withheld.

(2) Before revoking a certificate under subsection (1), the Authority must give notification of the proposed revocation to –

- (a) the owner of the land affected,
- (b) the occupier of the land affected, and
- (c) any other person who in its opinion will be affected by the revocation.

(3) A notification issued under subsection (2), must invite the person on whom the notification is served to make representations on the proposed revocation to the Authority within 14 days starting from the date of service of the notification and the Authority must not revoke the certificate until all such periods for making such representations have expired.

(4) The Authority must give notification of any revocation under this section to every person on whom notification of the proposed revocation was served under subsection (2).

### PART III APPEALS

#### **Right of appeal against decision in relation to a certificate of lawful use.**

6. (1) Where the Authority –

- (a) refuses, or refuses in part, an application for a certificate of lawful use, or
- (b) issues a certificate of lawful use for a modified or substituted description of use from that described in the application to which the certificate relates,

the applicant may appeal to the Planning Tribunal on the ground that the Authority made a material error as to the facts of the case.

(2) In accordance with section 68(3) of the Law, the right of appeal referred to in subsection (1), is for all purposes under the Law, an appeal under section 68 of the Law.

PART IV  
CONSEQUENTIAL AMENDMENTS TO PLANNING LEGISLATION

**Consequential amendments to the Law.**

7. (1) The Law is amended as follows.

(2) After section 48(8) (issue, service and withdrawal of compliance notice), add the following subsection –

"(8A) It is a defence for a person charged with an offence under the repealed enactments in respect of a breach of planning control occurring before the date of the commencement of this Law, to prove that a valid certificate has been issued under section 22, evidencing the lawfulness of anything alleged in the proceedings to be a breach of planning control."

(3) After section 57(3) (unlawful development and breach of the building regulations), add the following subsection –

"(4) It is a defence for a person charged with an offence under subsection (1) to prove that a valid certificate has been issued under section 22, evidencing the lawfulness of anything alleged in the proceedings to be a breach of planning control."

(4) For section 63(4) (evidential presumptions) substitute -

"(4) Without prejudice to subsection (3), the date when a material change in the use of any land occurred need not be proved except in the case of an appeal under –

- (a) section 70(1)(c), or
- (b) section 68 against a decision of the Authority on an application for a certificate of lawful use where the material error alleged relates to the date when a material change in the use of land occurred."

(5) In section 68(4) (time within which appeal must be made) –

- (a) in paragraph (a), at the beginning insert "in the case of an appeal under subsection (1)", and
- (b) at the end of paragraph (a), omit "or", and after paragraph (b) insert –

"or,

- (c) in the case of an appeal under this section against a decision on an application for a certificate of lawful use, the period of 3 months beginning with the date on which the Authority makes its decision."

(6) In section 69(1)(a) (determination by Planning Tribunal of appeals under section 68), after "section 68(1)" insert " or under section 68 against a decision on an application for a certificate of lawful use".

(7) In section 84(1)(b)(i) (entry on land for authorised purposes), for "any permission or approval" substitute "any permission, approval or certificate".

(8) In section 91(1)(a) (general offences: false information and obstruction), for "licence or consent" substitute "licence, consent or certificate".

(9) In Schedule 2 (interpretation), after the definition of "**building regulations**" insert –

""**certificate of lawful use**" means a certificate of lawful use issued by the Authority under section 22 of the Law,".

**Consequential amendments to provisions relating to the register of planning applications.**

8. (1) The Land Planning and Development (General Provisions) Ordinance, 2007<sup>d</sup> is amended as follows.

(2) For the heading to Part III substitute "REGISTRATION AND PUBLICITY".

(3) For the heading to section 9 (register of planning applications) substitute "**Register of applications for planning permission and certificates of lawful use etc.**".

(4) After section 9(2) insert the following subsection –

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<sup>d</sup> Ordinance No. XXI of 2007 as amended by Ordinance No. IX of 2016.

"(2A) The Authority shall also keep on the register to be maintained by it under section 21 of the Law the following information in relation to any application for a certificate of lawful use duly made to the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019 –

- (a) the applicant's name and address,
- (b) the date of the application,
- (c) the address or location of the land to which the application relates,
- (d) the description of the use included in the application,
- (e) brief particulars of any decision made by –
  - (i) the Authority on the application,
  - (ii) the Planning Tribunal concerning a decision of the Authority on the application, and
  - (iii) the Royal Court in relation to a decision of the Planning Tribunal on the application,

and the register may contain such other information and documents in relation

to such applications and any decisions in relation to them as the Authority considers appropriate."

- (5) In section 9(3), for "(1) and (2)" substitute "(1) to (2A)".

**Consequential amendments to the Land Planning and Development (Appeals) Ordinance, 2007.**

9. (1) The Land Planning and Development (Appeals) Ordinance, 2007<sup>e</sup> is amended as follows.

- (2) In section 2(3)(a)(v) (notice of appeal) –

(a) after item (A) omit the word "or",

(b) after item (B) add –

"or,

(C) an application for a certificate of lawful use, the certificate of lawful use, if any, issued in relation to that application,".

(3) In section 21(1) (interpretation), after the definition of "**building regulations**" insert the following definition –

""**certificate of lawful use**" means a certificate of lawful use issued by

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<sup>e</sup> Ordinance No. XXVII of 2007 as amended by Ordinance No. XLI of 2008, No. XVIII of 2011 and Nos. IX and XI of 2016.

the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,".

**Consequential amendments to the Land Planning and Development (Fees and Commencement) Ordinance, 2008.**

10. (1) The Land Planning and Development (Fees and Commencement) Ordinance, 2008<sup>f</sup> is amended as follows.

(2) After Part IIA insert –

"PART IIB

FEES TO ACCOMPANY APPLICATIONS AND APPEALS IN RELATION TO  
CERTIFICATES OF LAWFUL USE

**Fee to accompany application for a certificate of lawful use.**

4F. (1) An application for a certificate of lawful use must be accompanied by a fee of £250.

(2) The Authority may by regulations amend subsection (1) so as to substitute the fee payable.

**Fee to accompany an appeal in relation to an application for a certificate of lawful use.**

4H. (1) A notice of appeal under section 68(5) of the Law in relation to an appeal referred to in section 6 of the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019, must be

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<sup>f</sup> Ordinance No. XLI of 2008 as amended by Ordinance No. XVIII of 2011, No. IX of 2016, G.S.I. No. 6 of 2010, Nos. 11 and 47 of 2012, No. 15 of 2015 and No. 29 of 2017.



accompanied by a fee of £250.

(2) The Planning Tribunal need not take any further action in relation to the appeal until the whole of the fee is paid including, for the avoidance of doubt, publication of the notice of appeal under section 14 of the Appeals Ordinance.

(3) The Committee for the Environment and Infrastructure may by regulations amend subsection (1) so as to substitute the fee payable."

(3) In sections 9A and 9B (relating to reduction, waiver or refund of appeal fees) for each reference to "Part IIA" substitute "Part IIA or IIB".

(4) In section 13 (interpretation), before the definition of "Chairman of the Planning Panel" insert –

""**certificate of lawful use**" means a certificate of lawful use issued by the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,".

**Consequential amendments to the Land Planning and Development (Appeals) Regulations, 2008.**

11. (1) The Land Planning and Development (Appeals) Regulations, 2008<sup>g</sup> are amended as follows.

(2) In regulation 1(a) (refusal by appellate body to hear appeals), for subparagraph (i) substitute –

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<sup>g</sup> G.S.I. No. 8 of 2008 as amended by Ordinance No. IX of 2016.

"(i) with respect to an appeal under section 68 or 70 of the Law in accordance with –

(A) the Law and the Appeals Ordinance,  
and

(B) the Land Planning and Development  
(Certificates of Lawful Use)  
Ordinance, 2019, in the case of an  
appeal under section 68 of the Law  
against a decision on an application  
for a certificate of lawful use,".

(2) In regulation 9 (interpretation), after the definition of  
"**building**" insert –

""**certificate of lawful use**" means a certificate of lawful use issued by  
the Authority under the Land Planning and Development (Certificates of  
Lawful Use) Ordinance, 2019,".

## PART V

### GENERAL PROVISIONS

#### **Interpretation.**

12. In this Ordinance, unless the context requires otherwise –

"**the Law**" means the Land Planning and Development (Guernsey)  
Law, 2005,

"**lawfulness**" is construed in accordance with section 22(3) and (4) of the Law,

"**notification**" means notification in writing, and

"**owner**" includes a usufruitier or a person with a droit d'habitation.

**Citation.**

13. This Ordinance may be cited as the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019.

**Commencement.**

14. This Ordinance shall come into force on the 6<sup>th</sup> May, 2019.

SCHEDULE

Section 3(3)(e)

CERTIFICATE OF LAWFUL USE

The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,  
section 3(3)

CERTIFICATE OF LAWFUL USE

The Development & Planning Authority hereby certify that on [*insert date of application for certificate*] the use[s]\* described in Appendix 1 to this certificate in respect of the land specified in Appendix 2 to this certificate and edged/hatched/coloured\* [*insert colour*] on the plan attached to this certificate, was/were\* lawful within the meaning of section 22(3) and (4) of the Land Planning and Development (Guernsey) Law, 2005 for the following reason(s):

.....  
.....  
.....

Signed.....(for and on behalf of the  
Development & Planning Authority)

Date.....

Appendix 1

[*insert full description of the use, if necessary, by reference to details in the application or submitted plans, including a reference to the use class, if any, specified in the Land Planning and Development (Use Classes) Ordinance, 2017, within which the use referred to in this certificate falls.*]

Appendix 2

[*insert address or location of the site.*]

## Notes

1. This certificate is issued solely for the purposes of section 22 of the Land Planning and Development (Guernsey) Law, 2005 ("the Law") and section 3 of the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019.
2. It certifies that the use[s]\* specified in Appendix 1 taking place on the land described in Appendix 2 was/were\* lawful within the meaning of section 22(3) and (4) of the Law on the date of the application to the Authority for the certificate and, therefore, a compliance notice may not be served in respect of those use[s] under Part V of the Law on that date.
3. This certificate applies only to the extent of the use[s]\* described in Appendix 1 and to the land specified in Appendix 2 and identified on the attached plan. Any use[s]\* which is/are\* materially different from that/those\* described or which relate/s\* to other land may render the owner or occupier liable to enforcement action.
4. This certificate does not certify the lawfulness of any use arising from a material change of use within the meaning of the Building (Guernsey) Regulations, 2012<sup>h</sup>.

\* = delete where appropriate

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<sup>h</sup> G.S.I. No. 11 of 2012 as amended by Ordinance No. IX of 2016.