

CAYMAN ISLANDS



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**THE ELECTRICITY (AMENDMENT) LAW, 2002
(LAW 20 OF 2002)**

(4) All the covenants, conditions and agreements of the lease except as to the amount of the rent to be paid shall remain in force with regard to the residue of the land in the same manner as they would have done in the case the residue of the land only had been included in the lease.

Passed by the Legislative Assembly the 5th day of December, 2002.

JULIANNA O'CONNOR - CONNOLLY

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.

ARRANGEMENT OF SECTIONS

1. Short title.
2. Amendment of the Electricity Law (2000 Revision) - definition of main.
3. Repeal of section 19 and substitution.
4. Amendment of the principal Law - insertion of new sections.
5. Repeal of section 20-wayleaves to be registered.
6. Amendment of the principal Law-insertion of Schedule.

CAYMAN ISLANDS

Law 20 of 2002.

I Assent

B.H. Dinwiddy

Governor.

Date: 5 February, 2003

**A LAW TO AMEND THE ELECTRICITY LAW (2000 REVISION) TO
ALLOW UNDERTAKERS TO COMPULSORILY ACQUIRE LAND FOR
THE PURPOSE OF PROVIDING AN ELECTRICAL SUPPLY IN THE
ISLANDS; AND FOR CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

- Short title
1. This Law may be cited as the Electricity (Amendment) Law, 2002.
- Amendment of the Electricity Law (2000 Revision)-definition of main
2. The Electricity Law (2000 Revision), in this Law referred to as “the principal Law”, is amended in section 2-

(a) in the definition “mains” by inserting the words “material, fibre optic lines, fuel lines,” after “apparatus”; and

(b) by inserting the following definition in its appropriate alphabetical order-

“ “Minister” means the Minister responsible for the time being for the administration of this Law;”.
- Repeal of section 19 and substitution
3. The principal Law is amended by repealing section 19 and substituting the following-

“Road works, etc. 19. (1) An undertaker may execute-

(a) the following kinds of works-

(i) installing under, over, in, on, along or across any private land, road or

23. (1) A person interested in a mortgage or charge on land may give notice in writing to the undertaker or to a person authorised by the undertaker within the time specified in the notice after such land has been acquired, of the amount due in respect of the mortgage or charge and the nature and date of the instrument or security under which the mortgage or charge is claimed.

(2) Upon receipt of the notice and verification of the mortgage or charge the undertaker may deduct from the compensation payable in respect of the land or so much of the compensation as is sufficient to pay the amount due in respect of the mortgage or charge with the permission of the Registrar to the Grand Court to the credit of the party having mortgage or charge on the land. The mortgagee or chargee shall provide to the undertaker all necessary papers to remove the charge at the Land Registry.

(3) The compensation deducted pursuant to subsection (2) shall be subject to the control and disposition of the Grand Court.

Special rules as to leases

24. (1) Where land is comprised in a registered lease for a term of years unexpired and part of the land is compulsorily acquired, the rent payable in respect of the land comprised in the lease may, on the application of the lessor or the lessee to a Judge in the Grand Court, be apportioned between the land acquired and the residue of land.

(2) After the apportionment pursuant to subsection (1) the lessee shall, as to all future accruing rent, be liable only to so much of the rent as is so apportioned in respect of the residue of the land.

(3) As against the lessee the lessor shall have all the same rights and remedies for the recovery of that portion of the rent as previously to the apportionment he had for the recovery of the whole rent reserved by the lease.

- other public land; and,
- (ii) from time to time, inspecting, maintaining, adjusting, repairing, altering, replacing or removing,

any main or any structures for housing or covering any such main; and

- (b) any works requisite for the purpose of the works falling within paragraph (a), including for those purposes-
 - (i) opening or breaking up a road or any sewers, drains or tunnels within or under a road;
 - (ii) tunnelling or boring under a road; and
 - (ii) removing or using all earth and materials in or under a road.

(2) Nothing in subsection (1) shall empower an undertaker to lay down or place an electric line or electrical plant into, through or against a building or on any land not dedicated to the public use without a licence from a person whose interest in the land is affected.

(3) The licence of a person interested in private land which may be affected by the works may contain such terms as mutually agreed and where an undertaker and an interested party are unable to reach agreement the provisions of 19C, 19E and 19I shall apply.

(4) Except in cases of emergency or pursuant to the terms of an agreement an undertaker shall not execute any works in connection with a road or other public land by virtue of subsection (1) except with the consent of the Chief Engineer of the Public Works Department; and in the case of private land where the undertaker is of the opinion that emergency works are required the undertaker may execute the works in, under or over the private land without the consent of the owner or occupier provided that as soon as possible after such execution it furnishes the owner with notice in writing of the works executed or the Chief Engineer with a plan of

the emergency works

(5) An undertaker shall do as little damage as possible in the exercise of the powers conferred by subsection (1) and where repairs are required to a road or public land the Chief Engineer shall assess the cost of such repairs and the undertaker shall pay compensation accordingly.

(6) Where repairs are required under subsection (5) to a road or public land the Public Works Department shall carry out such repairs.

(7) An undertaker shall, in exercising the powers conferred by subsection (1), use all reasonable endeavours to ensure that nothing which he installs or keeps installed under, over, in, on along or across any road or other public land becomes a source of danger to the public.

(8) In this section “road” includes-

- (a) the carriage way, waterway, bridges, culverts and fordings on the edge of the road, and the land on each side of the carriageway and waterways up to the boundary of the road;
- (b) a footway;
- (c) a footpath;
- (d) a cycle track; and
- (e) mosquito trail.”.

Amendment of the principal Law-insertion of new sections

4. The principal Law is amended by inserting the following new sections after section 19-

“Alteration of works

19A.(1) An undertaker may execute works in pursuance of section 19 notwithstanding that they involve a temporary or permanent alteration of any of the following-

- (a) an electric line or electrical plant under the control of another party;
- (b) any gas pipe;
- (c) any pipe under the control of a

Payment of reasonable costs etc. by the undertaker

19. (1) The undertaker shall pay all reasonable and proper conveyancing costs, charges and expenses incurred by persons interested.

(2) The undertaker shall not be responsible for the payment of any stamp duty and property transfer tax due on the transfer of the land under this Law.

Payment of compensation into court

20. (1) Where no person is able to give a good discharge for any compensation payable under this Law or no person can be found to receive such compensation after the amount of the compensation has been determined by the undertaker, the undertaker may pay the compensation into the Grand Court.

(2) Compensation paid into court pursuant to subsection (1) may, on the application of a person claiming and proven to be entitled to such compensation be paid out to that person by the order of the court.

Person in possession deemed to be owner

21. Where a question arises respecting the title of a person to land which may be taken or entered for the purposes of this Law or respecting any estate or interest in the land, the person having the ostensible possession or enjoyment of the rents and profits of the land shall, for the purposes of this Law, be deemed the owner of the land until the contrary be proved.

Question of title to be determined by judge

22. (1) A Judge may, upon an application respecting a question of title to lands in respect of which compensation is by this Law authorised to be made summon all relevant parties to appear before the Judge.

(2) Upon the appearance of the parties after proof of due service of the summons, the Judge may hear and determine the question of title to land and for that purpose may examine the parties or any of them and their witnesses upon oath.

(3) The cost of the enquiry under this section shall be in the discretion of the Judge.

Special provisions as to mortgagees

16. (1) No claim for compensation in respect of the compulsory acquisition of land shall be admitted or considered by the undertaker unless it is made in writing to the undertaker within 2 years after the publication in the *Gazette* of the notice of acquisition of land under section 16 of the Land Acquisition Law (1995 Revision).

(2) No claim for compensation for injurious affection shall be admitted or considered by the undertaker unless it is made in writing to the undertaker within 2 years after the publication by the Minister in the *Gazette* of a notification of the completion of work in respect of which the land was acquired.

(3) Where a person fails to make a claim for compensation within the time limits specified in this section, that person may apply in writing to the Governor to extend the time and the Governor may, in his absolute discretion, grant the extension in respect of the whole claim or any part thereof upon such terms and conditions as he sees fit.

(4) An application for an extension under subsection (3) shall be made in writing and shall be made within 6 months from the time when the claim became barred.

Refusal to give up possession

17. Where a person refuses to give up possession of land or hinders the undertaker or a person authorised by the undertaker in taking possession of land which has been acquired for public purposes or on which the undertaker or such other person is authorised by virtue of this Law to do any work or thing, a magistrate may issue his precept or warrant to a constable to enter upon the land and to take possession of the land and to deliver possession of it to the undertaker or such person.

Assault or obstruction of undertaker

18. A person who assaults or obstructs or abets any other person in assaulting or obstructing-

- (a) a constable in the execution of his duties under this Law or
- (b) the undertaker or a person authorised by the undertaker in the exercise or performance of any power or duty conferred or imposed by this Law,

commits an offence and is liable on summary conviction to a fine of one thousand dollars.

- person supplying water or carrying sewage in accordance with a contract or in the exercise of statutory powers; or
- (d) any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the Information and Communications Technology Law, 2002 applies.

(2) Where an undertaker is proposing to execute works in pursuance of section 19 which involve or are likely to involve any such alteration as is mentioned in subsection (1) (a), (b) or (c), the following provisions of this section shall apply; and in those provisions "the relevant licensee" means the other licensee or the person supplying a service to the public as specified in subsection (1).

(3) The undertaker shall, not less than one month before the works are commenced, give the relevant licensee a notice, addressed to the General Manager or a similar person specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.

(4) Subsections (3) and (5) shall not apply in relation to any emergency works of which the undertaker gives the relevant licensee notice as soon as practicable after commencing the works.

(5) Where a notice has been given under subsection (3) by the undertaker to the relevant licensee, the relevant licensee may within the period of seven days beginning with the giving of the notice give the undertaker a counter notice which may state either-

- (a) that the relevant licensee intends himself to make any alteration necessary or expedient by the undertaker's proposed works; or
- (b) that he requires the undertaker in making such alteration to do so under the

supervision and to the satisfaction of the relevant licensee.

(6) Where a counter notice given under subsection (5) states that the relevant licensee intends himself to make any alteration-

- (a) the relevant licensee shall (subject to subsection (8)) have the right, instead of the undertaker, to execute any works for the purpose of making that alteration to the satisfaction of the undertaker; and
- (b) any reasonable and proper expenses incurred by the relevant licensee directly in or in connection with the execution of those works shall be recoverable by the relevant licensee from the undertaker .

(7) Where a counter notice given under subsection (5) states that any alteration is to be made under the supervision and to the satisfaction of the relevant licensee-

- (a) the undertaker shall not make the alteration except as required by the notice or as permitted under subsection (8); and
- (b) any reasonable and proper expenses incurred by the relevant licensee directly in or in connection with the provision of that supervision shall be recoverable by the relevant licensee from the undertaker.

(8) Where-

- (a) no counter notice is given under subsection (5); or
- (b) the relevant licensee, having given a counter notice falling within that subsection, fails to make any alteration necessary by the undertaker's proposed works within such period (being not less than 48 hours) as the undertaker may by notice specify, or as the case may be, unreasonably fails to provide the

(5) Without prejudice to subparagraph (6), all costs shall be recoverable as though they were costs awarded in an action in the Grand Court.

(6) For the purposes of this paragraph, costs include fees, charges and expenses.

Appeal

13. Either party may appeal to the Court of Appeal and every such appeal shall be made within the time and in the manner laid down by any enactment or rules of court for the purposes of appeals from the Grand Court to the Court of Appeal and shall be subject in all respects to the law relating to such appeals.

Rules

14. The Rules Committee of the Grand Court may make rules for regulating the practice and procedure of the Grand Court and the Court of Appeal in respect of powers under this Law.

Title to land

15. (1) When the amount of compensation to which a person is entitled under this Law has been determined that amount shall be paid to that person when he has-

- (a) made out to the satisfaction of the undertaker a title as at the date of acquisition to the interest in respect of which the compensation is payable;
- (b) produced or surrendered all deeds and documents relating to, or evidencing that title which the undertaker reasonably requires to be produced or surrendered as the case may be; and
- (c) executed such documents as the undertaker reasonably requires.

(2) Subparagraph (1) (a) does not apply where a court has under this Law declared or determined that the person interested had immediately before the date of acquisition of land, the interest in respect of which the compensation is payable.

Limitation

Summons for assessment

11. (1) In any proceedings on a summons for assessment instituted by the undertaker for determining the amount of compensation payable under this Law, every person who has a registered interest in the land in respect of which compensation is payable under this Law, shall be made a party to the proceedings.

(2) Where in any proceedings on a summons for assessment, the Judge is of the opinion that a person by whom or on whose behalf compensation is claimed or who has an interest in the land in respect of which compensation is payable is subject to any disability or incapacity, the Judge may appoint a guardian ad litem to protect the interests of that person.

Costs

12. (1) Subject to this paragraph, the amount of costs to be awarded in the proceedings in the Grand Court and all questions relating thereto shall be determined by the Judge, who may direct to and by whom and in what manner the costs or any part thereof shall be paid, and the Judge may award lump sum costs or may direct that the costs be taxed.

(2) The undertaker shall pay to the person interested the reasonable costs incurred by that person in or about the preparation and submission of his claim unless-

- (a) that person has failed to put forward a proper claim within the time specified in the notice under section 9;
- (b) the claim put forward is grossly excessive; or
- (c) that person has been a party to some deceit or fraud in respect of his claim.

(3) Subject to subsection (2), where a person interested has made an unconditional offer in writing to accept any sum as compensation and has put forward a proper claim in sufficient time to enable the undertaker to make a proper offer and the sum awarded is equal to or exceeds that sum, the Judge shall, unless for special reasons he thinks proper not to do so, order the undertaker to bear his own costs and to pay the costs of the person interested so far as the costs of the person interested were incurred after the offer was made.

(4) Where the Judge orders the person interested to pay the costs or any part of the costs of the undertaker the costs may be deducted from the amount of compensation payable to that person.

required supervision,

the undertaker may himself execute the works for the purpose of making the alteration or may execute such works without the supervision of the relevant licensee; but in either case the undertaker shall execute the works to the satisfaction of the relevant licensee.

(9) Except in the case of emergencies if the undertaker or any of his agents-

- (a) executes any works without the notice required by subsection (3) or prior to the expiry of the period from the giving of a counter notice pursuant to subsection (5) or in disregard of the counter notice having been given; or
- (b) unreasonably fails to comply with any reasonable requirement of the relevant licensee under this section,

he shall be liable on summary conviction to a fine not exceeding one thousand dollars.

(10) The undertaker shall not be liable to compensate the relevant licensee for any loss or damage sustained by the relevant licensee as a result of the negligence of the relevant licensee in carrying out any alteration under this section.

(11) A water licensee, a gas licensee, a sewerage licensee or a public telecommunications operator may execute such works, notwithstanding that the works involve a temporary or permanent alteration of any electric line or electrical plant under the control of an undertaker.

(12) Where a relevant licensee is proposing to execute such works as are mentioned in subsection (11) which involve any alteration as is there mentioned, subsections (3) to (10) shall apply as if-

- (a) any reference to the undertaker were a reference to the relevant licensee; and

Protection from
interference

- (b) any reference to the relevant licensee were a reference to the undertaker.

19B. (1) Subject to subsection (2) and any agreement between the undertaker and any other person to whom the Information and Communications Technology Authority Law 2002 applies, an undertaker who installs or alters, or changes the mode of operation of, any main shall take all reasonable precautions for securing that the operation of that main does not interfere with the operation of any telecommunication apparatus which-

- (a) is under the control of a person to whom the Information and Communications Technology Authority Law 2002 applies; and
- (b) is not usually sensitive to interference with its operation.

(2) In the case of any telecommunication apparatus which is subsequently installed or altered or whose mode of operation is changed, the duty imposed by subsection (1) shall not apply in relation to-

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the main, any other interference with its operation.

(3) Subsections (1) and (2) shall be read as also applying in the converse case of any person to whom the Information and Communications Technology Authority Law 2002 applies who installs or alters, or changes the mode of operation of any telecommunication apparatus, and in such a case shall have effect as if-

- (a) any reference to the licence holder were a reference to that person;
- (b) any reference to a main were a reference to such apparatus; and
- (c) any reference to such apparatus under the control of a person to whom that Law applies were a reference to such a main under the control of an undertaker.

Determination of compensation by Grand Court

10. (1) Compensation payable under this Law shall, in default of determination by agreement, by the Assessment Committee or by arbitration shall be determined by a judge of the Grand Court.

(2) Proceedings in respect of a claim to compensation under this Law (other than claims determined by arbitration) may be taken either by a person interested or by the undertaker and shall be instituted by originating summons (referred to in this Law as the "summons for assessment") entitled "In the Matter of the Electricity Law, and of the compulsory acquisition of land".

(3) No person shall institute proceedings under subsection (1) until after the expiration of 14 days from the date of the publication in the *Gazette* of a notice under section 6 of the Land Acquisition Law (1995 Revision).

(4) A summons for assessment shall contain-

- (a) particulars of the land acquired;
- (b) particulars of each person who has an interest in the land acquired and of the nature of the interest; and
- (c) particulars of the compensation claimed including the total amount of the compensation and the amounts distinguished under separate heads which make up the total.

(5) A summons for assessment shall be returnable within 14 days or within such other period as the Judge may allow and shall be served on the undertaker or the person interested or on such other person as the Judge may direct.

(6) Proceedings on a summons for assessment and all matters and things incidental and ancillary thereto shall be had and taken in the same manner, and the powers of the Judge shall be the same as in a trial in an action in the Grand Court.

(7) Without prejudice to the generality of subsection (6), in any proceedings on a summons for assessment-

- (a) the hearing shall be in open court unless the Judge otherwise directs; and
- (b) any award made by the Judge may be enforced in the same manner as a judgement in the Grand Court.

(4) Service upon the Committee of the application shall be effected by sending the application by post to the Permanent Secretary of the Ministry.

(5) The Committee-

- (a) may endeavour, by all reasonable and equitable means, to resolve by conciliation the disagreement that is the subject of the application;
- (b) must take all steps that it considers reasonable and equitable in the circumstances to effect an amicable settlement of an application and may adjourn a proceeding at any stage to enable the parties to negotiate for that purpose.

Arbitration and revocation of agreement to arbitrate

9 (1) Where the undertaker and a person interested are unable to agree on the quantum of compensation payable in respect of the acquisition of the land, they may, as an alternative, agree to submit the determination of the compensation to arbitration.

(2) The Arbitration Law (2001 Revision) shall apply to the determination by arbitration of any compensation payable by virtue of this Law.

(3) Where at any time after an agreement for arbitration is made in relation to a claim by a person interested in land and before the award is made upon arbitration in pursuance of that agreement, another person makes a claim for compensation in relation to that land or the undertaker learns of another person who may be entitled to make a claim under this Law, the undertaker may revoke the agreement.

(4) Where the undertaker revokes an agreement under subparagraph (3), the undertaker is liable to pay the reasonable costs of and incidental to the agreement and, if the arbitration has commenced, of and incidental to the arbitration.

(4) Any conflict under this section between an undertaker and a person to whom the Information and Communications Technology Authority Law 2002 applies shall be referred to arbitration by an arbitrator in accordance with the Arbitration Law (2001 Revision).

(5) In this section “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

**Acquisition of
wayleaves**

19C. (1) This section applies where-

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his contract to carry on it is necessary or expedient for an undertaker to install and keep installed a main, under or over any land; and
- (b) the owner or occupier of the land having been given a notice requiring him to give the necessary wayleave within a period (not being less than 21 days) specified in the notice-
 - (i) has failed to give the wayleave before the end of that period; or
 - (ii) has given the wayleave subject to terms and conditions to which the undertaker objects,

and in this section as it so applies “the necessary wayleave” means consent for the undertaker to carry out activities to which this Law applies.

(2) Subject to subsections (3) and (4), the Minister may, on the application of the undertaker, grant the necessary wayleave subject to such terms and conditions as he sees fit; and a necessary wayleave so granted shall, unless previously terminated in accordance

with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Minister shall not entertain an application under subsection (2) in any case where-

- (a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
- (b) the main is to be installed on or over the land.

(4) Before granting the necessary wayleave, the Minister shall afford-

- (a) the occupier of the land; and
- (b) where the occupier is not also the owner of the land, the owner,

an opportunity of being heard.

(5) A necessary wayleave granted under this section or by an agreement between the undertaker and the owner of land-

- (a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligation affecting the land; and
- (b) shall bind any person who is at any time the owner and occupier of the land.

(6) In this section "dwelling" means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part of a building.

Provisions
supplementary to
section 19C

19D. (1) Where a wayleave is granted to an undertaker under section 19C-

with the court in accordance with this Schedule to the date upon which the compensation is so deposited.

(2) The rate at which interest is payable under subsection (1) is at the US prime interest rate plus two per cent.

(3) Where the amount of compensation determined upon an arbitration or by a court does not exceed an amount offered by the undertaker, interest is payable only up to the date upon which the offer of the undertaker was received by the person interested.

(4) Where compensation (not being compensation deposited in the court) is determined upon an arbitration or is determined or ordered to be paid by a court, interest continues to accrue under this section to the date of payment.

(5) Where a person interested and the undertaker agrees to the amount of compensation, the undertaker shall not pay interest on the compensation where-

- (a) there has been an unreasonable delay on the part of the person interested in submitting a proper claim; or
- (b) the person interested continued in beneficial enjoyment of the land in whole or in part after the date of acquisition until the date of payment.

Assessment Committee

8. (1) Where the undertaker and a person interested are unable to agree on the quantum of compensation payable in respect of the acquisition of the land, they may agree to submit the determination of that amount to the Assessment Committee in accordance with this paragraph.

(2) The Assessment Committee referred to in subparagraph (1) shall comprise-

- (a) the Chief Engineer or his designate;
- (b) the Permanent Secretary of the Ministry responsible for the administration of this Law or his designate; and
- (c) a member of the public appointed by the Governor in Council and who, in his opinion, is a person qualified as having had experience and shown capacity in arbitration or land valuation.

(3) The undertaker or the person interested shall apply to the Committee in writing and such application shall set out details of the acquisition including the amount of compensation offered, if any.

- (b) in relation to an injurious factor caused by the use of land or of anything constructed on land, the first anniversary of the commencement of that use; and
- (c) in relation to an injurious factor caused by the intensification of the use of land or of anything constructed on land, the first anniversary of the completion of the construction as a result of which the use was intensified.

(2) Where the value of land has been depreciated by an injurious factor caused by-

- (a) the existence of anything constructed on land vested in the undertaker the construction of which was completed after the commencement of this Law and after the land became vested in the undertaker;
- (b) the use of the land vested in the undertaker or of anything constructed on land vested in the undertaker being a use that commenced after the commencement of this Law and after the land became vested in the undertaker; or
- (c) a substantial intensification in the use, whenever commencing, of land vested in the undertaker, being an intensification that results from the completion of construction on the land after the commencement of this Act and after the land became vested in the undertaker,

the person interested in that land on the relevant day, has a right to compensation in respect of the depreciation in the value of the interest.

(3) The compensation payable under this section to a person interested is the amount by which the market value of the land on the relevant day is less than the amount that would have been the market value of the land on the relevant day if the depreciation in value caused by the existence of the thing constructed, by the commencement of the use or by the substantial intensification of the use, as the case may be, had not occurred.

(4) No person shall be paid compensation under this section in respect of depreciation of land by an injurious factor unless the source of the injurious factor is on land vested in the undertaker.

Interest on compensation

7. (1) Compensation payable in respect of an acquisition under this Law bears interest from the date of acquisition of the land to the date on which payment is made to the person interested or, where the compensation is deposited

- (a) the occupier of the land; or
- (b) where the occupier is not also the owner of the land, the owner,

may recover from the undertaker reasonable compensation in respect of the grant in accordance with subsection (2).

(2) Where in the exercise of any right conferred by a wayleave granted to an undertaker under section 19C any damage is caused to land or to moveables, any person interested in the land or moveables may recover from the undertaker reasonable compensation in respect of that damage or, at the option of the undertaker, agree with the undertaker that the undertaker shall repair the damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or moveables he may recover from the undertaker compensation in respect of that disturbance.

(3) Compensation under this section may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

19E. (1) This section applies where at any time such a wayleave as is mentioned in section 19C (whether granted under that section or by agreement between the parties)-

- (a) is determined by the expiration of a period specified in the wayleave; or
- (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave.

(2) The owner or occupier of the land may-

- (a) in a case falling within subsection (1)(a), at any time after or within three months before the end of the period specified in the wayleave; or
- (b) in a case falling within subsection (1)(b), at any time after the wayleave has been

Temporary
continuation of
wayleaves

terminated by him,

give to the undertaker a notice requiring him to remove the main from the land; but the undertaker shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this section.

(3) Where within the period of three months beginning with the date of the notice under subsection (2) the undertaker makes neither-

- (a) an application for the grant of the necessary wayleave under section 19C; nor
- (b) an order authorising the compulsory purchase of the land made by virtue of this Law,

the undertaker shall comply with the notice at the end of that period.

(4) Where-

- (a) within the period mentioned in subsection (3) the undertaker makes an application for the grant of the necessary wayleave under section 19C; and
- (b) the application is refused by the Minister,

the undertaker shall comply with the notice under subsection (2) at the end of the period or one month beginning with the date of the Minister's decision or such longer period as the Minister may specify.

(5) Where-

- (a) within the period mentioned in subsection (3) the undertaker makes an order by virtue of this Law authorising the compulsory purchase of the land; and
- (b) the order is not confirmed by the Governor,

- (a) interest upon the amount of principal included in that compensation at the lowest rate provided by the mortgage from the date of acquisition to the date of payment of compensation or, where payment is delayed through a default of the mortgagee, the date when payment would have been made but for the default; and
- (b) where the principal is not repayable at the date when interest ceases to be payable under this section, the cost to the mortgagee of reinvesting the principal and a reasonable allowance for loss of interest until the date on which the principal would have been repayable.

(4) The compensation payable to a mortgagee under subparagraph (1) shall be deducted from the compensation that would have been payable to the mortgagor if the mortgage did not exist, and interest under section 23 is payable to the mortgagor on the reduced amount only.

Injurious affection

6. (1) For the purposes of this paragraph -

“injurious factor” includes-

- (a) noise;
- (b) vibration;
- (c) smell;
- (d) smoke;
- (e) fumes;
- (f) artificial lighting;
- (g) discharge of substance;
- (h) heat;
- (i) gas;
- (j) vapour;
- (k) loss of support;
- (l) restriction or prevention of access between the relevant land and a public road, waterway or seashore; or
- (m) anything in relation to which, in the absence of statutory authority or immunity, there exists a right of action for nuisance by an owner of land against the owner or occupier of other land;

“relevant day” means-

- (a) in relation to an injurious factor caused by the existence of anything constructed on land, the first anniversary of the completion of the construction of that thing;

- (a) the length of the term of the leasehold interest and the portion of the term remaining unexpired at the time at the date of acquisition;
- (b) any right or reasonable prospect of renewal of the term that the owner of the leasehold interest had; and
- (c) any investment in the land by the owner of the leasehold interest and the nature of any business carried on by him on the land.

Severance

4. In assessing severance regard shall be had to-

- (a) the amount of any reduction in the market value of the land caused by its severance from the acquired land; and
- (b) the fact that any specified works, crossings, or access agreed to by or on behalf of the undertaker shall be erected, provided and allowed; and any such agreement shall be reduced in writing and signed by the undertaker and the person interested.

Mortgages

5. (1) The compensation payable to a mortgagee is an amount equal to the sum of-

- (a) the principal secured by the mortgage at the date of the acquisition, and
- (b) the interest, costs or charges due to the mortgagee under the mortgage at the date of acquisition, but not exceeding the compensation payable to the mortgagor in respect of the land.

(2) For the purposes of this paragraph the compensation payable to the mortgagor shall be-

- (a) where there was only one mortgage over the land, the compensation that would have been payable to the mortgagor if there had been no mortgage over the land; or
- (b) where there were more than one mortgage over the land, the compensation that would have been payable to the mortgagor if there had been no mortgage over the land less the amount, or the sum of the amounts, of principal, interest, costs and charges due at the date of acquisition to a mortgagee in respect of a mortgage having priority over the mortgage of which the compensation is to be determined.

(3) In addition to the compensation payable in accordance with subparagraph (1) the mortgagee shall be paid-

the undertaker shall comply with the notice under subsection (2) at the end of the period of one month beginning with the date of the Governor's decision or such longer period as the Governor may specify.

Felling and lopping of trees etc.

19F. (1) This section applies where a tree is or will be in such close proximity to a main which is kept installed or is being or is to be installed by an undertaker-

- (a) in such a manner as to obstruct or interfere with the installation, maintenance or working of the main; or
- (b) in such a manner as to constitute an unacceptable source of danger;

and in this section "land" means the land on which the tree is growing.

(2) The undertaker may, except in the case of an emergency, give notice to the occupier of the land requiring him to fell or lop the tree or to cut back its roots so as to prevent it from having the effect mentioned in subsection (1) (a) or (b).

(3) Where the occupier is not the owner of the land, a copy of a notice under subsection (2) shall also be served on the owner.

(4) If within fourteen days from the giving of a notice under subsection (2) the requirements of the notice are not complied with or in the case of an emergency the undertaker may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in subsection (1) (a) or (b) and the undertaker shall recover the cost of carrying out such work from the owner of the land .

(5) An undertaker may upon the request of the owner or occupier of land fell or lop the tree or cut back its roots subject to payment to the undertaker of the expenses incurred in carrying out the request.

(6) Where the undertaker exercises any power

conferred under subsection (4) or (5) he shall-

- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
- (b) cause felled trees, lopped boughs or root cuttings to be removed unless otherwise directed by the owner or occupier; and
- (c) make good any damage done to the land.

(7) In this section "tree" includes any shrub and references to felling or lopping, felled trees and lopped boughs shall be construed accordingly.

(8) For the purposes of this section-

- (a) any notice required to be given by the undertaker to any person for the purposes of any provision of this section must be in a form approved by the Minister as adequate for indicating to that person the effect of the notice;
- (b) the notice may be given to -
 - (i) the person either by delivering it to him or by leaving it at his proper address or by post; or
 - (ii) the notice may be given to an incorporated company or body by serving it at the registered office of the company; or
- (c) if it is not practicable, for the purposes of giving any notice under this section, after reasonable inquiries to ascertain the name and address-
 - (i) of the person who is for the purposes of any provision of this section the occupier of any land; or
 - (ii) of the owner of any interest in any land, and

a notice may be given by addressing it to a person by the description of "occupier" of the land (describing it) or,

- (ii) the reasonable and proper costs, expenses and losses arising out of, or incidental to, the owner's disturbance, including moving to other premises.

(3) Where the costs, expenses and losses referred to in subsection (2) cannot practically be estimated or determined there may be allowed in lieu a percentage, not exceeding fifteen, of the market value as set out in subsection (1), together with the value to the owner of any element of special economic advantage to that owner arising out of, or incidental to, the owner's occupation of the land.

(4) In determining the value of land regard shall also be had to-

- (a) any damage caused by the severance of the land from other land in which the owner had an interest at the date of the acquisition; and
- (b) any planning permission which has been granted in accordance with the Development and Planning Law (1999 Revision) and which is in force at the date of acquisition in respect of the land.

(5) Where other land of the person interested adjoins the land acquired and the value of the other land is enhanced or depreciated by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land is acquired, the enhancement or depreciation shall be set off against, or added to, as the case may require, the amount of the compensation otherwise payable to the person interested.

(6) Where the land is, and but for the compulsory acquisition would continue to be devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, compensation may be assessed on the basis of the reasonable cost of equivalent reinstatement.

(7) No allowance shall be made on account of-

- (a) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;
- (b) any disinclination of the person interested to part with the land acquired.

Assessment of leasehold interest

3. In determining the value of a leasehold interest where the whole of the leased premises has been compulsorily acquired regard shall be had to-

Amendment of the
principal Law-insertion
of Schedule

6. The principal Law is amended by inserting the following Schedule-
“Section 19J

SCHEDULE

Application of the Land Acquisition Law (1995 Revision)

1. (1) The following sections of the Land Acquisition Law (1995 Revision) shall have effect with the necessary modifications necessary to make it apply to an undertaker’s compulsory acquisition of land in the Islands-
- (a) section 2;
 - (b) section 3;
 - (c) section 4;
 - (d) section 5;
 - (e) section 6;
 - (f) section 7; and
 - (g) section 8.

(2) Compensation may be determined by agreement, by arbitration if mutually agreed between the parties or by a Judge in the Grand Court.

Assessment of compensation

2. (1) Subject to this paragraph, the value of land compulsory acquired by an undertaker is the amount which the land might be expected to realise if, in the condition in which it was at the date of acquisition, it had been sold in the open market by a willing seller to a willing buyer.
- (2) Where the owner of the land is in occupation of the land at the date of acquisition, and as a result of the acquisition, it has been necessary for the owner to give up occupation of the land, the value of the land is the greater of-
- (a) the market value of the land determined as set out in subsection (1), and
 - (b) the aggregate of -
 - (i) the market value of the land determined on the basis that the use to which the land was being put at the time of its acquisition was at its highest and best use; and

as the case may be, “owner” of the interest (describing both the interest and the land) and by delivering it to some person on the land or, if there is no person on the land to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous object on the land or by publishing the notice in two consecutive issues of a daily local newspaper .

Entry on land for
purposes of
exploration

19G.(1) Subject to the following provisions of this section and without prejudice to any other right of entry, a person authorised in writing by an undertaker may, at any reasonable time, enter upon and survey any land for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the undertaker is authorised by his contract to carry on.

(2) A person authorised to enter upon land under this section shall not demand to do so as of right unless-

- (a) fourteen days notice of the intended entry (or such shorter period as may be agreed) has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) The power to survey land conferred by this section includes power to search and bore for the purposes of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless-

- (a) notice of the proposed works is included in the notice under subsection (2); and
- (b) where land is held by statutory licensees who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their operations, the Minister gives his consent.

Provisions
supplementary to
subsection 19C to
19G

(4) Where any person exercises any powers conferred by this section, the undertaker by whom he was authorised shall make good any damage done to the land.

19H.(1) Any person who intentionally obstructs a person acting in the exercise of any power or duty conferred under sections 19C to 19G shall be liable on summary conviction to a fine not exceeding one thousand dollars.

(2) Where in the exercise of any power conferred by or under sections 19C to 19G any damage is caused to land and to moveables, the undertaker may, at its option, either repair the damage or pay reasonable compensation to any person interested in the land or moveables for the damage; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or moveable he may recover from that undertaker compensation in respect of that disturbance.

Compulsory
acquisition of land by
undertaker

19I The Governor may, upon the application in writing by an undertaker and where it is in the interests of the public so to do, permit an undertaker to compulsorily acquire any land required for any purpose connected with the carrying on of the activities which an undertaker is authorised by his contract to carry on.

(2) For the purposes of this Law “land” includes rights over land and the power of the undertaker under this section includes power to authorise the acquisition of rights over land by creating new rights as well as acquiring existing ones.

(3) Where for any purpose an undertaker has acquired, or proposes to acquire any land to which this section applies or any right over any such land, and any other land is required for the purpose of being given in exchange for the land or right in question, the Governor may authorise the undertaker to purchase that other land

Procedure and
compensation-
respecting
compulsory
acquisition by
undertaker

compulsorily or he may acquire it by agreement.

(4) Where an undertaker has acquired any land by virtue of this section he shall not dispose of that land or of any interest in or right over it except with the consent of the Governor.

19J. The procedure for the acquisition of land and for the payment of compensation for such land by an undertaker is set out in the Schedule to the Law.

Superfluous lands

19K. Where land acquired under this Law has become superfluous, the undertaker may with the consent of the Governor, sell, lease, exchange, license or otherwise dispose of such land.”.

5. The principal Law is amended by repealing section 20.

Repeal of section 20-
wayleaves to be
registered