

CAYMAN ISLANDS



Supplement No. 6 published with Gazette No. 19 of 1988

**THE ROADS (AMENDMENT) LAW, 1988
(LAW 6 OF 1988)**

ALAN J. SCOTT

Governor

24th August 1988

A LAW TO AMEND THE ROADS LAW, 1974

ENACTED by the Legislature of the Cayman Islands.

Short title and
construction.

1. This Law may be cited as the Roads (Amendment) Law 1988, and shall be read and construed as one with the Roads Law, 1974, (hereinafter referred to as the principal Law) and all amendments thereto.

Amendment of
Section 2 of principal
Law.

2. Section 2 of the principal Law is hereby amended -

- (a) by deleting the following definitions "access road", "feeder road", "public place", "public road", "road", "service road" and "throughway"; and
- (b) by inserting therein in appropriate alphabetical sequence the following definitions -

"building" means building as defined in Section 2 of the Development and Planning Law (Revised);

"carriageway" means a way constituting or comprised in a public road, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles;

"composite map" means a map (whether or not divided into section maps) prepared by the Lands and Survey Department showing superimposed one upon the other and drawn to the same scale -

- (a) the topographic map prepared under the direction of the Chief Surveyor pursuant to the Land Surveyors' Law; and
- (b) the registry map as defined in Sections 2 and 14 of the Registered Land Law (Revised);

"cycle track" means a way constituting or comprising a public road, being a way over which the public have the following, but no other rights of way, that is to say, a right of way on pedal cycles with or without a right of way on foot;

"declared day" means, in relation to any land, the day on which a declaration under Section 3, as respects that land, is first published in the Gazette;

"footpath" means a public road over which the public have a right of way on foot only, not being a footway;

"footway" means a way comprised in a public road which also comprises a carriageway, being a way over which the public have right of way on foot only;

"functions" includes powers and duties;

"Highway Authority" has the meaning assigned to it in Section 5;

"land" means land as defined in Section 2 of the Registered Land Law (Revised);

"mosquito control trail" means any portion of land developed (whether in relation to a dyke or otherwise) by, or at the direction of, the Mosquito Research and Control Unit to provide access to the land for the purpose of carrying out mosquito research and control functions;

"private road" means a road to which the public does not have access as of right;

"public road" means a road which -

- (a) is maintained at public expense; or
- (b) is dedicated in that capacity to the use of the public as of right,

and which, in either event, is declared by the Highway Authority to be a public road pursuant to this Law;

"register" means the register under the Registered Land Law (Revised);

"registered" means registered under the Registered Land Law (Revised);

"Registrar" means the Registrar under the Registered Land Law (Revised);

"road" includes the carriageway, the waterways, the 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; but does not include a mosquito control trail other than to the extent to which any such trail is declared to be a public road pursuant to this Law;

"statutory undertakers" means persons authorised by any Law to carry on any road transport, water transport, dock, harbour or pier undertaking, or any undertaking for the supply of electricity, water, telephone, telegraphic, sewerage or quarrying services and "statutory undertaking" shall be construed accordingly.

Repeal and
Replacement of
Section 3 of the
principal Law.

3. Section 3 of the principal Law is hereby repealed and the following substituted therefor -

"Notification
of proposal to
take land.

3. (1) Whenever it appears to the Governor that any particular portion of land is needed for the layout of a new public road or the widening or diverting of an existing public road, a declaration to that effect shall be:-

- (a) gazetted;
- (b) sent by registered post to the registered proprietor of the land at his address on the register; and
- (c) published twice per week for three consecutive weeks in a daily newspaper published and circulating in the Islands.

(2) The declaration shall state -

- (a) the intention of the Government to

construct a road or portion of road over the portion of land;

- (b) the locality in which the portion of land is situated, specifying particulars of block and parcel numbers on the Register and, so far as feasible, any name or other information which may be helpful in identifying the land;
- (c) the line and anticipated boundaries of the road or proposed road;
- (d) the approximate area of the portion of land; and
- (e) the place where a plan can be inspected.

(3) The Governor shall cause a detached plan of the proposed new road, or of the part of the road intended to be widened or diverted, and the lands through which it is to pass, to be transmitted to the Registrar to be exhibited to any person who may require to examine it.

(4) The plan produced for the purposes of this section shall be such as to allow correlation of particulars thereon with particulars on the composite map."

Insertion of new
Section 5 in the
principal Law.

4. Section 5 of the principal Law is hereby repealed and the following substituted therefor -

"Governor to
be Highway
Authority with
power to classify
and schedule
roads and to
assign functions.

5. (1) The Governor shall be the Highway Authority under this Law empowered -

- (a) to cause any roads to be classified, named, described and scheduled as public roads;
- (b) to cause the schedules of such public roads to be published in the Gazette from time to time; and
- (c) to ensure the implementation of this Law and regulations hereunder.

(2) Whenever it becomes necessary or desirable for the purposes of this Law to define any public road or proposed public road by reference to the composite map that function shall be performed by the Highway

Authority; and the composite maps on which roads or proposed roads are so defined are hereinafter referred to as "prescribed composite maps", and, where it is desirable to distinguish between roads as proposed and roads as actually built, the prescribed composite maps may be divided into categories for that purpose.

(3) Subject to the provisions of subsection (3) of Section 17, the Governor may:-

- (a) assign or delegate, as may be appropriate, any of his functions as Highway Authority (other than the power to make regulations) to any public officer or officers or to any statutory corporation; and
- (b) provide, by regulations, for liaison and collaboration between any such assignees or delegates and such other persons as may be prescribed.

(4) The assignment or delegation of any function of the Governor as Highway Authority shall not prevent the exercise of that function by the Highway Authority itself.

(5) Public roads and any proposed public roads shall be classified into the following categories -

- (i) Primary Arterial Roads;
- (ii) Secondary Arterial Roads;
- (iii) Collector Roads;
- (iv) Access Roads; and
- (v) Footpaths.

(6) The Governor may, by regulations provide for -

- (a) prescribing the attributes and characteristics of each category of roads and, without prejudice to the generality of the foregoing, establishing standards for the dimensions, design, maintenance and improvement, and such other features as he thinks fit in relation to such roads;
- (b) controlling the type, weight and other particulars of vehicles which may be used on any such category of road so as to

ensure the proper purpose of that category of road; and

- (c) the repeal, amendment or replacement of any provision in the First Schedule to this Law.

First Schedule

(7) Until other provision is made pursuant to subsection (6), the provisions set out in the First Schedule shall be the attributes and characteristics of the various categories of roads referred to therein."

Amendment of
Section 6 of the
principal Law.

5. Section 6 of the principal Law is hereby amended -

- (a) by deleting the words "Section 5" and substituting therefor the words "Section 3";
- (b) by deleting the words "without payment of compensation therefor";
- (c) by deleting the words "subject to Section 11 (which relates to the payment of compensation in the case of undue damage or severe hardship)" and substituting therefor the words, "subject to the provisions of this Law which relate to the payment of compensation,"; and
- (d) by inserting a full stop immediately after the words "further notification" and deleting all the words following immediately thereafter down to and including the words "angles to the proposed road."

Amendment of
Section 7 of the
principal Law.

6. Section 7 of the principal Law is hereby amended by deleting subsection (2) and substituting therefor the following as subsections (2), (3), (4) and (5):-

"(2) The Committee shall consist of

- (a) a Magistrate, who shall be Chairman of the Committee, designated by the Governor;
- (b) a Justice of the Peace chosen by the Magistrate so designated; and
- (c) one other member chosen by the Magistrate so designated from the panel of persons referred to in subsection (3).

(3) The Governor shall appoint from time to time a panel of six persons appearing to him to be knowledgeable in matters

relating to land values or highways from among whom a member of the Committee shall be chosen pursuant to subsection (2) (c).

(4) Regulations may prescribe the practice and procedure before the Committee and, without prejudice to the generality of the foregoing, may permit two or more such Committees to be constituted at the same time.

Second Schedule.

(5) The provisions of the Second Schedule shall have effect with regard to the powers and duties of the Committee and otherwise as provided therein."

Repeal and
Replacement of
Sections 8, 9, 10, 11,
and 12 of principal
Law.

7. Sections 8, 9, 10, 11 and 12 of the principal Law are hereby repealed and the following substituted therefor -

"Right to
compensation.

8. (1) Any person having an interest in any portion of land to which a declaration under Section 3 relates or which has been taken by the Governor under this Law and who has suffered a net loss by reason thereof, may make a claim within the time limited by, and other wise in accordance with, this law, and compensation for that loss shall, subject to the provisions of this Law, be payable by the Governor to the person making the claim (hereinafter referred to as "the claimant").

(2) For the purposes of this Law a claimant does not qualify for compensation as having suffered a net loss unless, at the time of dispossession of such portion of land under this Law, any damage attributable to -

- (a) loss of any standing crop or trees on the portion of land;
- (b) the severance of such portion of land from the claimant's other land;
- (c) the injurious effect on the claimant's other land of the dispossession of such portion of land; and
- (d) the loss of such portion of land, assessed at its market value,

exceeds

- (e) the value of the advantage to the claimant gained by the presence of the new or improved road adjacent to his land.

(3) Subject to subsection (4), a claimant shall not qualify for compensation if his interest in the portion of land to which his claim relates was acquired after the declared day.

(4) Subsection (3) shall not apply to any interest acquired by inheritance, whether as a direct bequest or an appropriation towards satisfaction of a legacy or other share in the estate of a deceased person.

Notice of intent
and claims for
compensation.

9. (1) A claim for compensation shall be entertained only if the claimant gives to the Governor not later than ninety days after the declared day, in such form and manner as may be prescribed, notice of intent to make the claim:

~~And~~ Provided that where the notice aforesaid is given later than the time allowed by this subsection the Governor, if satisfied that the delay was occasioned by illness, absence from the Islands or other good cause, may, in his absolute discretion, accept the notice at any time after the time allowed.

(2) A claim for compensation under this Law may, in such form and manner as may be prescribed, be served on the Governor at any time after the giving of the notice of intent but not later than one year after the proposed road is scheduled as a public road pursuant to subsection (1) of Section 5 and shall contain the following particulars:-

- (a) the land in respect of which the claim is made;
- (b) the claimant's interest and the date on which and the manner in which, it was acquired;
- (c) the claimant's occupation of the land;

- (d) the declaration in the Gazette pursuant to Section 3 in relation to the land, any entry on the land, and works undertaken thereon pursuant to Section 6, or any other action taken under this Law in relation to that land;
- (e) the amount of compensation claimed;
- (f) any land contiguous or adjacent to the land in respect of which the claim is made being land to which the claimant was entitled in the same capacity on the relevant date; and
- (g) such other particulars as may be prescribed.

(3) The Governor may, in his absolute discretion, accept a claim made after the expiration of the claim period specified in subsection (2) if he is satisfied that the delay in submitting the claim is due to illness, absence from the Islands, or some other good cause: Provided that a claim shall not be accepted pursuant to this subsection if made after such time as may be prescribed.

Negotiations
consequent on
claim.

10. (1) A claim made under Section 9 may be settled by agreement between the Highway Authority and the claimant but, in default of such agreement shall, as soon as practicable, be submitted by the Governor to the Assessment Committee.

(2) An agreed settlement of a claim may be wholly in money or wholly in kind or partly in money and kind.

Claimant may
opt for method of
computation of
compensation.

11. (1) The claimant may, within the prescribed time and in the prescribed manner, elect to have his claim assessed under this Law in one of two methods of assessment, hereinafter referred to respectively as:-

- (a) "One stage assessment"; and
- (b) "Two stage assessment".

(2) If a claimant fails to make an election in the prescribed time and manner, he shall be deemed to

have opted for the two stage assessment.

(3) An election once made shall be irrevocable.

(4) The one stage assessment shall have the following features:-

- (a) the assessment shall be made on the assumption that any proposed road development on the land will be built as proposed;
- (b) payment of any compensation awarded will be in full and final settlement of the claim.

(5) The two stage assessment shall have the following features:-

- (a) on a preliminary basis, the assessment shall be based on the assumption that any proposed road development on the land will be built as proposed;
- (b) thereupon payment of such proportion of the award may be approved by the Assessment Committee, not exceeding 75% of the amount assessed, shall be paid as an interim award;
- (c) when the proposed road development is implemented, the Assessment Committee (whether or not constituted in the same manner as the previous Committee) shall, within the prescribed time, not being later than one year after the scheduling of the road pursuant to Section 5, review the interim award (conducting, if the Assessment Committee thinks necessary, a further hearing, and taking into account the actual location and other aspects of the road development) and make a final award; and
- (d) the Governor shall implement the final award as necessary, and accordingly either -
 - (i) supplement the amount paid to the

claimant pursuant to the interim award; or

- (ii) recover from the claimant any excess amount so paid.

Provisions supplementary to the powers and duties of Assessment Committee.

12. (1) An assessment committee, in exercising its powers to make an award under this Law shall be guided by the provisions set out in the Second Schedule.

Second Schedule.

(2) The Second Schedule shall have effect for all purposes connected with the assessment and payment of awards and for such other purposes are specified therein."

Amendment of Section 14 of principal Law.

8. Section 14 of the principal Law is hereby amended -

- (a) by deleting from subsection (3) all the words appearing after the words "thereafter the land over which the said road or portion of road passed shall" and substituting therefor the words "vest in the Crown or be added to such land parcels as the Governor, subject to subsection (4) may by notice in the Gazette decree"; and
- (b) by adding thereto next after subsection (3) the following as subsection (4) -

("4) The Governor in exercising any power pursuant to subsection (3) shall -

- (a) have regard to the interests of all persons whose lands, immediately prior to the discontinuance of a road or portion of a road, were adjacent thereto and, so far as he thinks fair and just, order that the land over which the said road or portion of road passed be added to such adjacent lands on such terms in such a manner and to such a degree as he thinks appropriate; and
- (b) make such provision in the terms aforesaid as he thinks proper having regard to any price or compensation paid on acquiring any portion of that land for road purposes."

Amendment of Section 15 of principal Law.

9. Section 15 of the principal Law is hereby amended by -

Amendment of
Section 16 of the
principal Law.

- (a) deleting the word "Governor" wherever it appears in subsections (1) and (2) and substituting therefor in each case the words "Highway Authority";
- (b) deleting from subsections (1) and (2) the words "authorised by him" and substituting therefor in each case the words "authorised by the Authority"; and
- (c) deleting from subsection (3) all the words appearing after the words "assessment of compensation" and substituting therefor the words "in accordance with this Law."

10. Section 16 of the principal Law is hereby amended -

- (a) by deleting the words "encroachments on a public road" and substituting therefor the words "encroachments on a road";
- (b) by deleting from paragraph (a) thereof the word "such" and substituting therefor the word "public"; and
- (c) by adding thereto next after paragraph (c) the following as paragraph (cc):-

"(cc) any pit, cutting or excavation in, upon or under any public road otherwise than pursuant to approval given, and in accordance with any conditions stipulated by, the Highway Authority;"

Amendment of
Section 17 of
principal Law.

11. Section 17 of the principal Law is hereby amended -

- (a) by deleting therefrom the words "encroachment on a road" and substituting therefor the words "encroachment on a public road";
- (b) by substituting for the word "Governor" wherever it appears the words "Highway Authority";
- (c) by deleting from subsection (2)(b) the words "authorised by him" and substituting therefor the words "authorised by the Authority"; and
- (d) by adding next after subsection (2) the following as subsection (3):-

"(3) Where any encroachment consists of a building the powers of the Highway Authority under this section shall not be assigned or delegated to any other person."

Amendment of
Section 18 of
principal Law.

12. Subsection (1) of Section 18 of the principal Law is hereby amended by deleting the word "verge" and substituting therefor the word "carriageway".

Amendment of
Section 21 of
principal Law.

13. Section 21 of the principal Law is hereby amended by adding thereto immediately after the words "Registered Land Law" the words "(Revised) and shall where necessary, be authority for the Registrar to amend the registry map and the register."

Repeal of Section 22
and Addition of
new sections and
Schedules to the
principal Law.

14. The principal Law is hereby amended by repealing Section 22 and adding next after Section 21 the following as Sections 22, 23, 24, and 25 and the First and Second Schedules.

"Use of
prescribed
composite
maps in
defining road
boundaries.

22. (1) The prescribed composite map setting out, pursuant to Section 5, roads as actually built shall be regarded as definitive for all purposes relating to the boundaries of roads and the boundaries of any lands abutting on a road.

(2) When the boundaries of an existing road and the boundaries of any land near to or abutting on that road as established on the ground (hereinafter referred to as "existing land boundaries") do not correspond with the registered boundaries as shown on the prescribed composite map, the Highway Authority may -

- (a) define the line of the road as shown on the prescribed composite map and the boundaries of that road in such manner as it thinks fair and equitable; and
- (b) request the Registrar to make such adjustments in the existing land boundaries as the Registrar thinks necessary to ensure that the boundaries of both the road and any lands near to or abutting on that road correspond with the defined boundaries of the road under paragraph (a).

(3) Pursuant to a request under subsection (2) (b), the Registrar shall make the necessary adjustments in the existing land boundaries and such adjustments shall -

- (a) be notified in the Gazette and in a daily newspaper published and circulating in the Islands; and

- (b) be communicated to the proprietors of lands affected thereby, by registered letters addressed to them at the address shown on the register.

(4) The Highway Authority may, pursuant to any adjustments in boundaries made pursuant to this Section, authorise the removal and relocation, to conform with the adjustment, of any marker on the road or on any existing land boundary in accordance with the Land Surveyors' Law (Revised).

(5) Where any adjustment of the boundaries of a road made pursuant to this section injuriously affects the interest of any person in a portion of land that person may object to the adjustment within one month of the date of publication of the adjustment in the Gazette pursuant to subsection (3) (a) and deliver to the Registrar a statement in writing setting out the basis of his objection.

(6) The Registrar shall consider any objection made pursuant to subsection (5) and notify any decision made to the objector.

(7) Any person aggrieved by a decision of the Registrar with regard to any portion of land under subsection (6) may make a claim for compensation in like manner as if the decision of the Registrar were a declaration made under Section 3 relating to that portion of land.

Power to
exchange land
to adjust
boundaries
of roads.

23. (1) The Highway Authority may, for the purpose of adjusting the boundaries of a road, enter into agreement with the owner of any land the boundaries of which adjoin or lie near to the road, providing for the exchange of any such land for land on which the road is situated with or without payment by either party of money for equality or exchange.

(2) Where no payment by either party is required pursuant to subsection (1) no stamp duty shall be payable on the transaction.

(3) The Highway Authority, if proposing to enter into an agreement under this section shall publish once at least in each of two successive weeks in a daily newspaper published and circulating in the Islands, a notice giving particulars of the proposed

agreement and shall not enter into the proposed agreement before the expiration of the period of two months from the date on which the first such notice is published.

(4) The Highway Authority shall take into account any representations made to it by statutory undertakers or any other persons appearing to the Authority to be affected by the proposal.

(5) When a Highway Authority exchanges land pursuant to this section it shall notify the Registrar and furnish to him particulars of the transaction in such detail as the Registrar may require.

Restriction of
laying of mains,
etc. on roads.

24. (1) Subject to the provisions of this section, the power conferred on statutory undertakers by or under any enactment to lay down or erect any apparatus under, in, over, along or across any land shall not be exercisable in relation to any land comprised in the route of a road except with the consent of the Highway Authority:

Provided that, save as otherwise prescribed by regulations, the consent of the Highway Authority shall not be required under this section for the laying down or erection by statutory undertakers of any apparatus for the purpose of repairing or maintaining any apparatus for the time being belonging to or used by them for the purpose of their undertaking.

(2) The consent of the Highway Authority under this section may be given subject to conditions, but those conditions shall not include a condition requiring any payment to be made by the undertakers to the Highway Authority in respect of the exercise of the powers to the exercise of which the consent is given, except that nothing in this section shall limit the power of the Highway Authority to require the reinstatement of the road, or to require payment in lieu of reinstatement, or to enter into an agreement with any undertakers for the payment by those undertakers of any amount towards the cost of works which the Highway Authority agrees to perform for reinstating the road, or to require the giving of any bond or other security for the payment of such sums or the reinstatement of the road.

Modification of
the Development
and Planning Law
(Revised) re the long
term projection of
road corridors.

25. (1) Notwithstanding anything in the Development and Planning Law (Revised), the Governor may, subject to subsection (2), exercise any of the powers of the Central Planning Authority under that Law in relation to the making and implementation of a development plan in so far as those powers relate to:-

- a) the sites of proposed roads; and
- b) the particulars, in relation to roads, in Part 1 of the Second Schedule to that Law,

hereinafter in this Section referred to as a "road corridor".

(2) The Governor shall not exercise his powers under subsection (1) until and unless he receives a recommendation for that purpose from the Central Planning Authority.

(3) Where in furtherance of any provision made for a road corridor in a development plan, it becomes necessary or desirable to designate land as being subject to acquisition for road purposes, the procedure therefor shall be in accordance with Section 3 of this Law and such of the other provisions of this Law as relate to that Section.

(4) A development plan made pursuant to subsection (1) shall have effect as if it were a development plan made under the Development and Planning Law (Revised) subject to modification of that Law, in relation thereto, in the following respects:-

- (a) instead of any procedure under Section 8 of that Law, the development plan shall be brought into operation by the publication of a notice to that effect published by the Governor in the Gazette;
- (b) subsection (2) of Section 6 of that Law (which relates to acquisitions not likely to take place within five years) shall not apply;
- (c) subsection (3) of Section 6 of that Law (which relates to an obligation of the

authority to acquire land in certain circumstances) shall not apply but, in lieu thereof, the provisions of subsection (5) of this section shall have effect;

- (d) Part IV of that Law (which relates to compensation for refusal, or conditional grant of planning permission) shall apply subject to any provision made by, or by regulations prescribed under, this Law.

(5) If, on the application of any person before a relevant Section 3 notice is issued, the Governor is satisfied that, having regard to the small size of the portion of land held by that person or other physical features of that land, the reservation of the road corridor affecting that land will cause that person undue hardship, the Governor shall require that person to submit a claim for compensation to the Assessment Committee as if it were a claim for compensation made pursuant to a declaration under Section 3 and the provisions of this Law shall apply accordingly.

(6) Where pursuant to a claim made under subsection (5) a person is awarded compensation by the Assessment Committee in respect of a portion of land affected by the reservation of a road corridor, that person shall not be entitled to make any further claim for compensation under this Law in respect of that portion of land.

First Schedule (Section 5(7))

Attributes and Characteristics of Categories of Roads

Primary Arterial Roads

These shall be roads -

- (a) designed to carry high traffic volumes between major centres of activity;
- (b) using so far as feasible the most direct routes save where the Highway Authority in its discretion thinks it desirable that the road should, in the interests of the movement of traffic, bypass any urban or developed area; and

- (c) access to which is limited (in general) to points of intersection with secondary arterial roads or other primary arterial roads.

The boundaries of these roads may, in general, be established 125 feet apart and special provision may be made for greater dimensions at intersections, roundabouts and overpass structures.

Secondary Arterial Roads

These shall be roads that -

- (a) interconnect with and augment the functioning of primary arterial roads;
- (b) accommodate trips of moderate length at a lower level of mobility than is prescribed for primary arterial roads; and
- (c) permit more opportunities for access than primary arterial road although, so far as feasible or practicable, access to the secondary arterial road shall be by way of collector roads.

The boundaries of these roads may, in general, be established 80 feet apart.

Collector Roads

These shall be roads that -

- (a) provide direct access to residences and other private property;
- (b) permit convenient circulation of traffic within residential neighbourhoods and commercial and industrial areas; and
- (c) provide access to the arterial system of roads.

The boundaries of these roads may, in general, be established 60 feet apart.

Access Roads

These shall be roads supplementary to collector roads providing -

- (a) access to residences and other private property; and
- (b) links to other roads in the system.

The boundaries of these roads may, in general, be established 40 feet apart.

Public Footpaths

These shall be public roads on which pedestrians may walk but on which vehicles may not be driven or parked except to such limited extent as the Highway Authority may authorise.

Second Schedule (Sections 7 and 12)

Assessment and Payment of Compensation

Part I - General

Interpretation of this
Schedule.

1. (1) In this Schedule, unless the context otherwise requires -

“Chairman” means the Chairman of the Committee;

“person interested” as respects any portion of land, includes the claimant and any other person accepted by the Governor as having an interest in the land likely to be affected by the claim;

“market value” means the amount which the land if sold on the open market by a willing seller might be expected to realise;

“might be expected to realise” refers to the expectation of properly qualified persons who are informed of all particulars ascertainable about the property and its capabilities, the demand for it, and likely buyers;

“profits” includes profits in the nature of rents but does not include profits a prendre or such profits as may have been made by carrying on a business upon the land;

“willing seller” means a person selling as a free agent, as distinct from one who is forced to sell under compulsory powers.

- (2) For the purposes of this Law a person entitled to two interests in land shall be taken to be entitled to them in the same capacity if, but only if, he is entitled -

- (a) to both of them beneficially;
- (b) to both of them as trustee of one particular trust; or
- (c) to both of them as personal representative of one particular person.

Proceedings of the
Committee.

2. (1) The assembling of members of the Committee for the purpose of determining eligibility for and the amount of compensation

payable in respect of any claim and the proceedings thereat are hereinafter in this Schedule referred to as "proceedings".

(2) The proceedings shall be held in public:

Provided that the amount of compensation awarded (if any) shall not be communicated by the Committee to any person other than the Governor or his representative and a person interested or any other person representing, pursuant to this paragraph, the person interested.

(3) The Chairman shall preside over the proceedings and may adjourn the proceedings from time to time as he thinks fit.

(4) Any public officer duly authorised in that behalf by the Governor and any person interested or any person bona fide claiming to be interested in the land to be acquired, or enabled to sell and convey the land, shall be entitled to give evidence at the proceedings and to make representations to the Committee either directly or through an attorney-at-law or through any other person whom the Chairman allows to make representations in that behalf.

(5) Evidence taken in the proceedings shall be on oath or affirmation.

(6) The Committee may order that the costs of any proceedings incurred by any party shall be paid by any other party and may tax or settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed.

(7) Not more than one expert witness on either side shall be heard unless the Committee otherwise directs.

(8) Except as otherwise provided in this Law, the procedure at the proceedings shall be such as the Committee, in its discretion, shall determine.

Power to summon
witnesses, etc.

3. (1) Pending or during the proceedings the Chairman may summon any person to give evidence at the proceedings.

(2) If any person summoned to give evidence at the proceedings fails without reasonable excuse to attend the proceedings as directed by summons, or refuses to give evidence when required by the Chairman to do so, he shall be guilty of an offence against this Law, and shall be liable on conviction by a court of summary jurisdiction to a fine not exceeding five hundred dollars:

Provided that a person required to give evidence at the proceedings shall be entitled to all the protection and privileges to which

he would have been entitled if the proceedings had been proceedings before the Grand Court.

Inspection of Land by
the Committee.

4. (1) The Committee, before determining the amount of compensation payable in respect of any land, may inspect the land and for that purpose may at any reasonable hour enter that land and any building thereon.

(2) Any person who obstructs any member of the Committee in the exercise of his duties under sub-paragraph (1) shall be guilty of an offence and liable on conviction in a Summary Court, to a fine not exceeding five hundred dollars.

Preliminary
determination of
qualification to
claim compensation.

5. (1) Before proceeding with a claim for compensation the Committee shall determine whether the claimant qualifies to make a claim for compensation having regard to the provisions of Sections 8 and 9 of this Law.

(2) If the Committee decides that the claimant qualifies as aforesaid it shall proceed to determine the amount of the compensation in accordance with this Law.

(3) If the Committee decides that the claimant does not qualify as aforesaid it shall, subject to any appeal to the Grand Court, not proceed further with the case.

(4) For the purposes of any appeal to the Grand Court, the decision of the Committee under this paragraph shall be treated as if were an award.

Assessment of
compensation.

6. (1) In determining the amount of compensation to be awarded in respect of any portion of land under this Law the Committee shall take into consideration -

- (a) the market value of the land at the declared day;
- (b) the damage sustained by the claimant by reason of the taking of any standing crops or trees which are on the land at the time of the taking possession thereof;
- (c) any damage sustained by the claimant at the time of the taking possession of the land, by reason of the severing of such land from his other land;
- (d) any damage sustained by the claimant at the time of the taking of the portion of land, by reason of the dispossession injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

- (e) if, in consequence of the dispossession, the claimant is compelled to change his residence or place of business, the reasonable expenses incidental to such change;
- (f) any damage bona fide resulting from diminution of the profits of the land between the declared day and the time of the taking possession of the land;
- (g) any increase in the value of the claimants interest -
 - (i) in any remaining portion of the land in respect of which the claim is made; and
 - (ii) in other land contiguous or adjacent to (whether or not actually touching) any land mentioned in sub paragraph (i) to which the claimant was entitled in the same capacity on the declared day,

which is likely to accrue from the use to which the land subject of the claim will be put.

(2) In determining the amount of compensation to be awarded in respect of any portion of land under this Law, the Committee shall not take into consideration -

- (a) the fact that the action taken is compulsory;
- (b) the degree of urgency which has led to the action taken;
- (c) any disinclination on the part of the claimant to part with the land taken;
- (d) any damage sustained by the claimant which, if caused by a private person, would not render such person liable to a suit;
- (e) any damage which is likely to be caused to the portion of the land after the declared day by or in consequence of the use to which it will be put;
- (f) any increase to the value of the portion of land likely to accrue from the use to which it will be put after dispossession;
- (g) any outlay or improvements on, or disposal of, the portion of land commenced, made or effected without the sanction of the Governor after the declared day;

- (h) the special suitability or adaptability of the portion of the land for any purpose if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser.

(3) The following assumptions shall be made in assessing the value of any interest in respect of which the claim is made -

- (a) it shall be assumed that planning permission would be granted in respect of the land in which the interest subsists ("the relevant land") for a use which conforms with the planning use outline in the development plan for that location and for which it is reasonable to assume that planning permission would have been granted;
- (b) where an order has been made under Section 15 of the Development and Planning Law (Revised) in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, it shall be assumed that planning permission would not be granted in respect of the relevant land or any part thereof for the rebuilding of that building or the resumption of that use;
- (c) it shall be assumed that planning permission would not be granted in respect of the relevant land or any part thereof for any development other than such development as is mentioned in paragraph (a) hereof; and if planning permission has been granted for such other development it shall be assumed that the planning permission has not been granted in so far as it relates to development that has not been carried out.

(4) Where, upon a claim being made, the Assessment Committee is satisfied that the portion of contiguous land remaining to the claimant is less than one-half acre, and considers that the amount due to the claimant in respect of sub-paragraphs (1) (a), (c) and (d) exceeds or is likely to exceed the market value of the whole portion (being the portion taken or to be taken, together with the land remaining to the claimant), the Assessment Committee shall signify this to the Governor, who may then proceed to acquire the whole portion and pay therefor compensation calculated in accordance with this paragraph, with the exception of sub-paragraphs (1) (c) and (d).

Award of the
Committee.

7. (1) The Committee, after determining the total amount of compensation (if any) in accordance with the provisions of paragraph 6 shall embody their conclusions in a written award signed and dated by the Chairman, and, as far as is practicable, shall show in the award the several amounts awarded as compensation under headings corresponding to the several matters which are required to be taken into consideration by the provisions of paragraph 6.

(2) If the Committee are not unanimous, their decisions shall be governed by the votes of the majority.

(3) The Chairman shall deliver the award and the record of the proceedings to the Governor, and the Governor shall, within seven days of the date of the award cause a certified copy of the award to be given to each person interested and to the Financial Secretary; and thereupon, subject to Section 11 of this Law, the total amount of the award shall become payable in accordance with the provisions of this Law to the persons entitled thereto.

Appeal to the Grand
Court.

8. (1) The Governor or any person interested in the portion of land or having a right over such land, who is aggrieved by an award of the Committee under this Law may, within twenty-one days of the date of the award or such longer period as the Grand Court may for good cause allow, appeal to the Grand Court on any of the following grounds:-

(a) that the extent of the interest or right in the portion of land has been wrongly determined; or

(b) that the Committee has erred in a matter of law.

(2) Proceedings pursuant to sub-paragraph (1) may be regulated by rules of Court.

(3) On the hearing of an appeal brought under this paragraph the Grand Court may make such order (including an order for costs) as it thinks fit.

Part II - Payment of Compensation Money

Interpretation of Part
II.

9. In this part of this Schedule -

(a) "the land" means any portion of land which has been the subject of an award by the Committee;

(b) "compensation money" means the amount of the award of the Committee, or any part thereof;

(c) "person entitled" means any person whom the

Committee or the Grand Court, as the case may be, determines to be a person who has a good title to compensation money.

Interest.

10. (1) Any compensation awarded for an interest in land pursuant to this Law shall carry interest, at the rate of six (6) per cent per annum, from the date of the award until the compensation is paid or paid into Court in accordance with the provisions of this Law.

(2) Where assessment is made on the basis of the two stage assessment referred to in Section 11 reference in sub-paragraph (1) to the award shall be construed as reference to the final award.

(3) The Governor may, from time to time by order in the Gazette, change the rate of interest payable pursuant to this paragraph and, notwithstanding anything to the contrary, the changed rate shall apply to awards bearing interest at the date on which the order has effect.

Payment of
compensation money
to persons entitled.

11. (1) Subject to the provisions of this paragraph compensation money shall be paid by the Governor to the person entitled according to the estate, interest or right which he possessed in or over the land.

(2) Where there are two or more persons entitled who had varying estates or interests in the land, then if such persons agree among themselves as to the apportionment of the compensation money the Governor shall pay them the compensation money in accordance with their agreement and the terms of any such agreement shall be notified to the Governor in writing signed by all of the parties thereto.

(3) Subject as hereinafter provided, in any case where -

- (a) a person entitled refuses to accept compensation money tendered to him by the Governor; or
- (b) a person entitled cannot after reasonable enquiry be found; or
- (c) a person entitled is a person under a legal disability; or
- (d) there are two or more persons entitled who had varying estates or interests in the land and who are unable to agree among themselves as to the apportionment of the compensation money; or
- (e) there is no person entitled to the compensation money or no person entitled to compensation money in respect of some particular estate or interest in the land,

then in any such case the Governor shall pay the compensation money into the Grand Court:

Provided that in the case of a person under a legal disability the Governor may pay compensation money to any person who is empowered by law to receive and give a valid discharge for such money on behalf of the person under legal disability.

Disposal of money
paid into Court.

12. Any money paid into the Grand Court under the provisions of this Law may, on the application of any person claiming to be entitled thereto, or of any person lawfully representing any such person, be dealt with and disposed of as the Court may think fit; and the Court in directing payment out of Court of any such money may impose such terms and conditions as to the investment of the money or the creation of a trust in respect thereof or otherwise as the Court may think proper having regard to the circumstances.

Procedure on
non-payment of
compensation.

13. (1) Where a person is by virtue of an award of the Committee or an order of the Grand Court made under paragraph 8 entitled to compensation money, that person may apply to the Grand Court for an order that the compensation money be paid forthwith.

(2) On an application made under subsection (1) the Grand Court may grant the order or refuse the order and make such order as to costs as it thinks just.

(3) Where the Grand Court makes an order that compensation money shall be paid forthwith, the sum due shall thereupon become a charge on the Revenues of the Islands and shall be paid from the Revenues by the Financial Secretary to the person named in the order of the Grand Court within seven days of the date of the order.

Part III - Supplemental Provisions

Service of
Notices.

14. (1) Any notice, order or other document which is required to be served under this Schedule on any person may be served -

- (a) by delivering it to the person on whom it is to be served; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it by prepaid post addressed to that person at his usual or last known postal address; or
- (d) in the case of a body corporate, by delivering it or sending it by prepaid post to the secretary or clerk of that body at its registered office or other place of business; or

- (e) if it is not practicable to effect service by any of such methods as aforesaid, by addressing it to him by the description of "owner" or as the case may be "occupier" of the land to which it related and by delivering it to some person occupying any premises on the land; or if there is no such person to whom it can be delivered, by affixing it or a copy thereof to some conspicuous part of the premises.

(2) Service effected by delivery pursuant to sub-paragraph (1) (a) or (1) (d) shall have effect from the time of delivery.

(3) Service effected otherwise than by delivery shall be deemed to have been effected three days after the steps taken pursuant to any of the provisions of sub-paragraph (1) have been taken unless and to the extent that the contrary is proved.

Proof of Service.

15. In any proceedings a certificate purporting to be under the hand of a public officer and specifying the steps taken under paragraph 14 (1) to effect service of any notice, order or other document on any person on any date shall be prima facie evidence of the facts stated therein.

Passed the Legislative Assembly this 20th day of April, 1988.

ALAN J. SCOTT
President.

WENDY LAUER EBANKS
Acting Clerk of the Legislative Assembly.