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ROADS LAW

(2000 Revision)

Law 18 of 1974 consolidated with Laws 24 of 1983, 6 of 1988 and 1 of 1997 (part).

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 18 of 1974-15th October, 1974
Law 24 of 1983-13th September, 1983
Law 6 of 1988-20th April, 1988
Law 1 of 1997-14th May, 1997.

Consolidated and revised this 15th day of February, 2000.

Note (not forming part of the Law): This revision replaces the 1998 Revision which should now be discarded.

ROADS LAW

(2000 Revision)

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ROADS LAW

(2000 Revision)

1. This Law may be cited as the Roads Law (2000 Revision). Short title
2. In this Law- Definitions
 - “building” means building as defined in section 2 of the Development and Planning Law (1999 Revision); 1999 Revision
 - “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;
 - “Commissioner” means the Commissioner of Police or any person deputed to act on his behalf;
 - “Committee” means the Assessment Committee referred to in section 7;
 - “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 under the Land Surveyors Law (1996 Revision); and 1996 Revision
 - (b) the registry map as defined in sections 2 and 14 of the Registered Land Law (1995 Revision); 1995 Revision
 - “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;

“Governor” means the Governor in Council;

“Highway Authority” has the meaning assigned to it in section 5;

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“land” means land as defined in section 2 of the Registered Land Law (1995 Revision);

“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 function;

“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 (1995 Revision);

“registered” means registered under the Registered Land Law (1995 Revision);

“Registrar” means the Registrar under the Registered Land Law (1995 Revision);

“road” includes the carriageway, waterways, 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 under 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;

“traffic sign” is a sign erected by the Commissioner in or in the vicinity of a road for the purpose of controlling and regulating traffic and the parking of vehicles; and

“traffic signal” means a device by which illuminated signals in red, green or amber, or combinations of any such colours are intermittently displayed at the centre of side of a road at an intersection or junction or other place where the Commissioner desires to control traffic, in conjunction with a metallic or white line drawn at right angles to the centre line of the road in the path of vehicles approaching the said device.

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-

Notification of proposal
to take land

- (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.

4. (1) Where the Governor deems it desirable to lay out any new public road or to divert or widen any part of an existing road for use by the public he may authorise in writing any person, either alone or accompanied by such assistants and workmen as may be required, to enter at any reasonable times upon lands for the purpose of making such surveys as may be necessary to enable such person to make plans and sections of the proposed works and an estimate of the cost thereof.

Power to enter lands and
survey for roads

(2) No person shall, under subsection (1), enter upon any occupied lands without the consent of the occupier unless three days' notice in writing has been given to such occupier or, where such occupier cannot be found, notice of such entry has been posted conspicuously on the said land.

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

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

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

(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 section 17(3), the Governor may -

- (a) assign or delegate 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-

- (a) primary arterial roads;
- (b) secondary arterial roads;
- (c) collector roads;
- (d) access roads; and
- (e) public 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) repeal, amendment or replacement of the First Schedule.

(7) Until other provision is made under 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.

6. In any case where a declaration has been published under section 3(1), and where the Governor is satisfied that it is in the public interest to lay out, widen or divert a road over the portion of land to which the declaration relates, then, notwithstanding anything contained in any other law, and subject to the provisions of this Law which relate to the payment of compensation, the Governor may, on the expiration of fifteen days from the publication of the declaration, enter upon the said portion of land and cause the said road or portion of road to be commenced or proceeded with without further notification.

Power of Governor to
take land

7. (1) There is established, for the purpose of assessing compensation under this Law, an Assessment Committee.

Assessment Committee

(2) The Committee shall consist of-

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

(3) The Governor shall, from time to time, appoint 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 under paragraph (c) of subsection (2).

(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.

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

Rights 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 otherwise in accordance with, this Law, and compensation for that loss shall, subject to 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 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 does 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) does 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:

Provided that where the notice is given later than the time allowed, 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 thereafter.

(2) A claim for compensation 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 under section 5(1) and shall contain the following particulars -

- (a) the land in respect of which the claim is made;

- (b) the claimant's interest, 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 under 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 such claim shall not be accepted if made after such time as may be prescribed.

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.

Negotiations consequent on claim

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

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 -

Claimant may opt for method of computation of compensation

- (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; and
 - (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; as may be approved by the Assessment Committee, not exceeding seventy-five per cent 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, being not later than one year after the scheduling of the road under 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-
 - (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 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 in the 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 as are specified therein.

Powers of Governor

13. The Governor may cause -

- (a) traffic to be diverted from any road for the purpose of altering or improving the same;
- (b) temporary roads to be made over land adjoining public roads to be made and used as public roads while alterations or repairs are being made to such public roads;
- (c) drains to be cut on any land adjoining a public road for the purpose of intercepting water which would otherwise flow onto such road or for carrying off water from such road;

- (d) deposits to be made of any spoil, surplus material or refuse from any road, landslip or excavation; and
- (e) quarries to be opened and worked and excavations to be made and stones and materials gathered for the construction or repair of any road.

14. (1) Wherever it appears to the Governor that it is expedient to close a public road or portion of such road he shall publish a declaration to that effect in the Gazette, and such declaration shall specify- Discontinuance of roads

- (a) the road or portion of road proposed to be discontinued;
- (b) the date from after which such road or portion of road shall cease to be a road; and
- (c) the place where a plan of such road or portion of road may be inspected.

(2) The Governor shall cause a plan of such road or portion of road proposed to be discontinued to be transmitted to the Registrar and to be exhibited to any person who may require to examine it.

(3) From the date specified in a declaration made under subsection (1), such road or portion of road specified in such declaration shall cease to be a road and all public rights of way over the same shall cease after the said date, and thereafter the land over which the said road or portion of road passed shall 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.

(4) The Governor, in exercising any power under 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.

15. (1) For any one or more purposes specified in section 13, the Highway Authority or any person authorised by the Authority in writing, may, at any time, without previous notice, payment, tender or deposit, enter upon any land not being any house, yard or garden, or provision ground attached to a house and not being a park, avenue or ground ornamentally planted and without acquiring such

Powers of entry and
occupation of private
lands

land, occupy and use the said land so long as may be necessary for any of the said purposes, or any work connected therewith.

(2) In exercising the powers conferred by subsection (1), the Highway Authority or any person authorised by the Authority in writing may -

- (a) make such openings as may be necessary in any fence;
- (b) erect fences to separate any portions of the land so entered upon from the remainder;
- (c) deposit and prepare upon such land materials of any kind used in the work; and
- (d) erect thereupon temporary workshops, stores, sheds and other buildings.

(3) The owner or occupier of or any person interested in any land occupied or used under this section may, at any time not later than three months after the commencement of such occupation, deliver to the Governor an application in writing for assessment of compensation in accordance with this Law.

Encroachments

16. The following are, for the purpose of this Law, encroachments on a road -

- (a) any fence erected upon or extending on or over any public road;
- (b) any tree or shrub projecting upon, overhanging, fallen upon, placed or planted upon any such road;
- (c) any obstruction caused by debris or refuse resulting from works carried out by occupiers of land adjoining such road;
- (d) 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;
- (e) any pit, cutting or excavation, in, upon or under any land adjoining such road which is not sufficiently fenced or otherwise made safe;
- (f) any stone, earth, timber or other substance thrown into or placed in any watercourse, which impedes or may impede the drainage of water from such road;
- (g) any artificial canal, conduit, pipe or raised structure from which any water or other liquid escapes on to any road which would not but for the existence of such canal, conduit, pipe or raised structure have done so, whether or not such canal, conduit, pipe or raised structure adjoins the said road;
- (h) any earth, stone or other substance dropped, left or deposited upon such road otherwise than deposits authorised to be deposited in the course of road construction or improvement;

- (i) any pipe, drain or discharge of water or other liquid on the road from any premises adjoining such road;
- (j) any discarded or abandoned vehicle or portion thereof dumped or parked within sight from any public road; and
- (k) any obstruction of a view contrary to section 18(1).

17. (1) Wherever there exists any encroachment on a public road, the owner or occupier of the land or thing from which such encroachment proceeds, or the owner of the thing constituting the encroachment shall, after receiving a notice thereof in writing from the Highway Authority, forthwith remove or abate the same at his own cost and in the event of non-compliance with such a notice by the owner or occupier, as the case may be, the Highway Authority may cause the encroachment to be removed in such a manner as the Authority may think fit.

Removal of
encroachments

(2) Where the Highway Authority directs the removal of an encroachment under subsection (1)-

- (a) the Highway Authority may, without giving notice, authorise any persons to enter upon any land for the purpose of removing the encroachment;
- (b) neither the Highway Authority nor any person authorised by the Authority shall be liable for any damage occasioned by the removal unless the same is caused by such person's wilful neglect or default;
- (c) the cost of removal shall be defrayed by the person responsible for the encroachment and shall be recoverable as a civil debt; and
- (d) anything constituting the encroachment shall be forfeited, and the Highway Authority may sell or otherwise dispose of it unless the owner previously redeems it by paying all the costs of the removal,

without prejudice to the penal and civil liabilities of any person responsible for an encroachment.

(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.

18. (1) No person owning or occupying land adjoining any public road shall permit to be on such land within thirty feet of any road junction or intersection or the inside of any bend in such road, measured from the nearest boundary of such road, any hedge, bank, fence or other thing constituting a natural or artificial obstruction of view from the road of a height greater than two feet from the level

Obstruction of view

of the carriageway of such road, unless permitted so to do by any other provision of this Law:

Provided that this subsection shall not apply to buildings lawfully erected before the 20th January, 1975.

(2) Anything unauthorised by subsection (1) which causes an obstruction of the view along any public road is an encroachment for the purpose of section 16.

Regulations

19. The Governor may make regulations -

- (a) prohibiting the use of certain classes of vehicles on specified roads;
- (b) prescribing conditions upon which certain classes of vehicles may be used on certain roads;
- (c) exempting specified roads or portions of roads from the provisions of section 18;
- (d) for the erection of distance markers and sector markers for the measurement of roads;
- (e) prescribing speed limits in public roads and portions of such roads when road works are projected or in progress and the design, location and erection of signs notifying such limits;
- (f) for the establishment or confirmation of footpaths and pedestrian precincts; and
- (g) generally for the better implementation of this Law.

Offences and penalties

20. Whoever -

- (a) having caused or permitted to be caused any encroachment under paragraphs (a) to (k) of section 16 fails to remove the same after notice served;
- (b) causes or permits any encroachment under section 16;
- (c) causes or permits an unauthorised encroachment under section 18(1);
- (d) other than in the course of roadworks or removing an obstruction, drags in direct contact with the surface of a public road any sled, log, tree or other article likely to do damage to the said road;
- (e) hinders or obstructs the Governor or any person authorised by him while carrying out this Law;
- (f) having knowingly caused or permitted any tree, large stone or other potentially dangerous thing to fall upon a public road, fails promptly to remove it;

- (g) takes for his own purposes any materials from any road or from any deposit made for the building, maintenance or repair of any road;
- (h) contravenes any other provision of this Law or the regulations; or
- (i) moves, defaces or otherwise interferes with any road marker or sign or any traffic sign or signal,

is guilty of an offence and liable on summary conviction to a fine of five hundred dollars and to imprisonment for six months.

21. Any matter notified in the Gazette under this Law shall constitute notice thereof to the Registrar for all purposes of the Registered Land Law (1995 Revision) and shall, where necessary, be authority for the Registrar to amend the registry map and the register.

Notice under Law to be
notice to Registrar
1995 Revision

22. (1) The prescribed composite map setting out, under 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.

Use of prescribed
composite maps in
defining road boundaries

(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 paragraph (b) of subsection (2), the Registrar shall make the necessary adjustments in the existing land boundaries and such adjustments shall be-

- (a) notified in the Gazette and in a daily newspaper published and circulating in the Islands; and
- (b) communicated to the proprietors of lands affected thereby, by registered letters addressed to them at the address shown on the register.

1996 Revision

(4) The Highway Authority may, pursuant to any adjustments in boundaries made under 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 (1996 Revision).

(5) Where any adjustment of the boundaries of a road made under 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 under paragraph (a) of subsection (3) and deliver to the Registrar a statement in writing setting out the basis of his objection.

(6) The Registrar shall consider any objection made under 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 of exchange.

(2) Where no payment by either party is required under 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 Highway Authority to be affected by the proposal.

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

24. (1) Subject to subsection (2), the power conferred on statutory undertakers by or under any law 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:

Restriction of laying of
mains, etc., on roads

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 subsection (1) 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, 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.

25. (1) Notwithstanding the Development and Planning Law (1999 Revision), 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 insofar as those powers relate to -

Modification of
Development and
Planning Law (1999
Revision) *re* long term
projection of road
corridors

- (a) the sites of proposed roads; and
- (b) the particulars, in relation to roads in Part I 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 and such other sections as relate to that section.

1999 Revision

(4) A development plan made under subsection (1) shall have effect as if it were a development plan made under the Development and Planning Law (1999 Revision) subject to modification of that law, in relation thereto, in the following respects -

- (a) instead of any procedure under section 14 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) section 12(2) of that law (which relates to acquisitions not likely to take place within five years) shall not apply;
- (c) section 12(3) of that law (which relates to an obligation of the authority to acquire land in certain circumstances) shall not apply but in lieu thereof, subsection (5) shall have effect; and
- (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 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 are 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 one hundred and twenty-five feet apart and special provision may be made for greater dimensions at intersections, roundabouts and overpass structures.

Secondary Arterial Roads

These are 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 roads 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 eighty feet apart.

Collector Roads

These are 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 sixty feet apart.

Access Roads

These are 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 forty feet apart.

Public Footpaths

These are 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

Definitions and
interpretation

1. (1) In this Schedule-

“chairman” means the chairman of the Committee;

“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:

“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;

“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; and

“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.

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 referred to as “proceedings”. Proceedings of the Committee

(2) 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 presides 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, is 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 is on oath.

(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, determines.

3. (1) Pending or during the proceedings, the chairman may summon any person to give evidence at the proceedings. Power to summon witnesses, etc.

(2) Whoever, 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, is guilty of an offence and liable on summary conviction to a fine of 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
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) Whoever obstructs any member of the Committee in the exercise of his duties under subparagraph (1) is guilty of an offence and liable on summary conviction to a fine of 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 sections 8 and 9.

(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 it 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; and
- (g) any increase in the value of the claimant's 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 subparagraph (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 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; or
- (h) the special suitability or adaptability of the portion of 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) In assessing the value of any interest in respect of which the claim is made, it shall be assumed-

1999 Revision

- (a) 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 (1999 Revision) in respect of the relevant land or any part thereof, requiring the removal of any building or the discontinuance of any use, 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; and
- (c) 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); and if planning permission has been granted for such other development it shall be assumed that the planning permission has not been granted insofar 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-subparagraphs (a), (c) and (d) of subparagraph (1) 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-subparagraphs (c) and (d) of subparagraph (1).

Award of Committee

7. (1) The Committee, after determining the total amount of compensation, if any, under 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 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, the total amount of the award shall become payable in accordance with this Law to the persons entitled thereto.

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 the ground that-

Appeal to Grand Court

- (a) the extent of the interest or right in the portion of land has been wrongly determined; or
- (b) the Committee has erred in a matter of law.

(2) Proceedings under subparagraph (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

9. In this Part -

Definitions in Part II

“compensation money” means the amount of the award of the Committee, or any part thereof;

“Court” means the Grand Court;

“land” means any portion of land which has been the subject of an award by the Committee; and

“person entitled” means any person whom the Committee or the Court, as the case may be, determines to be a person who has a good title to compensation money.

10. (1) Any compensation awarded for an interest in land under this Law shall carry interest, at the rate of six per cent per annum, from the date of the award until the compensation is paid or paid into court under this Law.

Interest

(2) Where assessment is made on the basis of the two-stage assessment referred to in section 11, reference in subparagraph (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 under 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 subparagraph (2), 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 the parties thereto.

Subject as hereinafter provided, in any case where -

- (a) a person entitled refuses to accept compensation money tendered to him by the Governor;
- (b) a person entitled cannot after reasonable enquiry be found;
- (c) a person entitled is a person under a legal disability;
- (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,

the Governor shall pay the compensation money into the 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 the legal disability.

Disposal of money paid
into Court

12. Any money paid into the Court under 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.

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

Procedure on non-payment of compensation

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

(3) Where the 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 Court within seven days of the date of the order.

PART III- Supplemental Provisions

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

Service of notices

- (a) by delivering it to the person on whom it is to be served;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it by prepaid post addressed to that person at his usual or last known postal address;
- (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 relates 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 under subparagraphs (a) or (d) of subparagraph (1) 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 under subparagraph (1) have been taken unless and to the extent that the contrary is proved.

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

Proof of service

any notice, order or other document on any person on any date shall be *prima facie* evidence of the facts stated therein.

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Carmena H. Watler
Clerk of Executive Council