

# ORDER IN COUNCIL

IV  
2017

ratifying a Projet de Loi

ENTITLED

## **The High Hedges (Guernsey) Law, 2016**

(Registered on the Records of the Island of Guernsey  
on the 22nd May, 2017.)



2017

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 22nd day of May, 2017 before Richard James McMahon, Esquire, Deputy Bailiff; present:- Susan Mowbray, Barbara Jean Bartie, John Ferguson, Stephen Murray Jones, Terry George Snell, Esquires, David Percy Langley Hodgetts, Esquire, L.V.O., Niall David McCathie, Terry John Ferbrache, Jonathan Grenfell Hooley, and Steven John Morris, Esquires, Jurats.

The Deputy Bailiff, having this day placed before the Court an Order of Her Majesty in Council dated 12th April, 2017 approving and ratifying a Projet de Loi of the States of Guernsey entitled “The High Hedges (Guernsey) Law, 2016”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED that the said Order be registered on the records of this Island.

J. TORODE  
Her Majesty’s Greffier.



*At the Court at Windsor Castle*

THE 12th DAY OF APRIL 2017

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 31st July 2015, the States of Deliberation at a meeting on 2nd November 2016 approved a *Projet de Loi* entitled the High Hedges (Guernsey) Law, 2016 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the High Hedges (Guernsey) Law, 2016, and to order that it shall have force of law in the Island of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Richard Tilbrook*

# PROJET DE LOI

ENTITLED

## **The High Hedges (Guernsey) Law, 2016**

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# PROJET DE LOI

ENTITLED

## **The High Hedges (Guernsey) Law, 2016**

**THE STATES**, in pursuance of their Resolution of the 31<sup>st</sup> July, 2015<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

### PART I

#### APPLICATION OF LAW

#### **Hedges to which this Law applies.**

1. (1) This Law applies in relation to a hedge (referred to in this Law as a "**high hedge**") which –

- (a) is formed wholly or predominantly by one or more evergreens,
- (b) rises to a height of more than 2 metres above ground level, and
- (c) forms a barrier to light.

(2) For the purposes of subsection (1)(c), a hedge is not to be regarded as forming a barrier to light if it has gaps, which significantly reduce its overall effect as a barrier, at heights of more than 2 metres above ground level.

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<sup>a</sup> Article XXI of Billet d'État No. XIV of 2015.

**Domestic property.**

2. (1) In this Law "**domestic property**" means –

- (a) a dwelling, or
- (b) a garden or yard that is used and enjoyed, or intended to be used and enjoyed, wholly or mainly in connection with a dwelling, whether exclusively or in common with others.

(2) In subsection (1), "**dwelling**" means any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

(3) A reference in this Law to the reasonable enjoyment of domestic property includes a reference to the reasonable enjoyment of part of the property.

**Residential property.**

3. (1) In this Law "**residential property**" means –

- (a) a property, not being a domestic property, that is otherwise used for a residential purpose, or
- (b) a garden or yard that is used and enjoyed, or intended to be used and enjoyed, wholly or mainly in connection with the residential use of such a property.

(2) In subsection (1) –

- (a) "**property**" includes a building, a part of a building or another area of land, in each case, occupied, or intended to be occupied, for a residential purpose, and
- (b) "**residential purpose**" includes both short and long term occupation for a residential purpose and includes holiday occupation.

(3) In subsection (2)(b), "**holiday occupation**" includes occupation by way of use of a tent or caravan or other moveable structure on the property.

(4) A reference in this Law to the reasonable use of residential property for a residential purpose includes a reference to the reasonable use of part of the property for that purpose.

**Complaints to which this Law applies.**

4. (1) This Law applies to a complaint which –
- (a) is made by the owner or occupier of domestic property, and
  - (b) alleges that the reasonable enjoyment of the property for domestic purposes is being adversely affected by the height of a high hedge situated on land owned or occupied by another person.
- (2) This Law also applies to a complaint which –
- (a) is made by the owner of domestic property that is for the time being unoccupied, and

- (b) alleges that the reasonable enjoyment of that property by a prospective occupier of that property for domestic purposes would be adversely affected by the height of a high hedge situated on land owned or occupied by another person.
  
- (3) This Law also applies to a complaint which –
  - (a) is made by the owner or occupier of residential property, and
  - (b) alleges that the reasonable use of the property for a residential purpose is being adversely affected by the height of a high hedge situated on land owned or occupied by another person.
  
- (4) This Law also applies to a complaint which –
  - (a) is made by the owner of residential property that is for the time being unused, and
  - (b) alleges that the reasonable use of that property by a prospective occupier of that property for a residential purpose would be adversely affected by the height of a high hedge situated on land owned or occupied by another person.
  
- (5) For the purposes of this section, the reasonable enjoyment of a property for domestic purposes or the reasonable use of a property for a residential

purpose is not adversely affected by the effect of the height of a high hedge on a private view from the property.

(6) This Law does not apply to a complaint about the effect of the roots of a high hedge.

**Pre-complaint requirements.**

5. (1) Before making a complaint under section 6, a person must take all reasonable steps to resolve the matters in relation to the high hedge which would otherwise be the subject of the complaint.

(2) In complying with the duty under subsection (1), a person must have regard to any guidance issued by the Authority under section 31(a).

PART II

PROCEDURE IN RELATION TO COMPLAINTS

**Procedure for complaints.**

6. This Part has effect where a complaint to which this Law applies –
- (a) is made to the Authority on a form obtained from the Authority, and
  - (b) is accompanied by the fee required under section 25.

**Decision not to proceed.**

7. (1) If the Authority considers –
- (a) that the complainant has not complied with the duty under section 5(1), or

- (b) that the complaint is frivolous or vexatious,

it may decide that the complaint should not be proceeded with.

(2) As soon as reasonably practicable after deciding that a complaint should not be proceeded with, the Authority must notify every complainant of its decision and the reasons for the same.

**Consideration of complaint.**

**8.** (1) This section applies where the Authority decides to proceed with the complaint.

(2) The Authority must give every owner and occupier of the neighbouring land –

- (a) a copy of the complaint, and
- (b) a notice informing the person to whom it is given of the matters mentioned in subsection (3).

(3) The matters are –

- (a) that the Authority is required to make a decision under subsection (5),
- (b) that the person has a right to make written representations to the Authority in relation to the complaint before the expiry of the period of 28 days beginning with the day on which the notice is given,

- (c) that the Authority must give a copy of any such representations to every complainant,
- (d) that the Authority has power –
  - (i) to authorise entry to the neighbouring land under section 18, or
  - (ii) to apply for a warrant to enter neighbouring land under section 20, and
- (e) that it is an offence under section 22(2) to obstruct a person authorised to enter neighbouring land from acting in accordance with the Law.

(4) If any written representations under subsection (3) are received by the Authority during the period mentioned in subsection (3)(b), the Authority must give every complainant a copy of the representations.

(5) After the end of the period of 28 days referred to in subsection (3)(b), the Authority must decide –

- (a) whether the allegation made in the complaint is justified, and
- (b) if the Authority considers it is justified, what action (if any) should be taken in relation to that high hedge, in order to remedy the adverse effect or prevent its recurrence.

(6) In doing so the Authority must have regard to all the relevant circumstances of the case, including, without limitation –

- (a) any written representations made under subsection (3),
- (b) the extent to which the high hedge contributes to –
  - (i) the privacy and enjoyment of neighbouring land, or
  - (ii) the amenity of the area,
- (c) where relevant, the location of the high hedge within a conservation area, and
- (d) the existence of any tree protection order in relation to the high hedge.

**Notice of decision where no action to be taken.**

9. (1) This section applies where the Authority –

- (a) decides under section 8(5)(a) that the allegation made in the complaint is not justified, or
- (b) decides under section 8(5)(b) that no action should be taken.

(2) As soon as reasonably practicable after making its decision the Authority must notify every complainant and every owner and occupier of the

neighbouring land of –

- (a) the decision and the reasons for the same, and
- (b) the right of appeal under section 13.

**High hedge notice.**

10. (1) Where the Authority decides under section 8(5)(a) that the allegation contained in the complaint is justified and that action should be taken, it must issue a high hedge notice, as soon as is reasonably practicable after making that decision.

(2) The Authority must give to every complainant and to every owner and occupier of the neighbouring land a copy of the high hedge notice and notify those persons of the reasons for its decision.

(3) The high hedge notice must specify –

- (a) the high hedge which is the subject of the notice and the domestic property or residential property in relation to which the Authority has decided that an adverse effect exists,
- (b) the date on which the notice is to take effect,
- (c) the initial action which must be taken by the owner or occupier of the neighbouring land and any conditions subject to which it must be taken,
- (d) the period within which the initial action must be

taken,

- (e) any preventative action that must be taken by the owner or occupier of the neighbouring land, after the period specified under paragraph (d), to prevent any recurrence of the adverse effect and any conditions subject to which it must be taken,
  - (f) the possible consequences, under sections 19 and 21, of a failure to comply with the notice, and
  - (g) the right of appeal of an owner or occupier of neighbouring land to appeal against the notice under section 13.
- (4) The Authority may not, by a high hedge notice, require –
- (a) a reduction in the height of a high hedge to less than 2 metres above ground level or the removal of the hedge, or
  - (b) anything to be done by a date that is sooner than 28 days after a copy of the notice has been given to every owner and occupier of the neighbouring land.

**Effect of high hedge notice.**

**11.** A high hedge notice is binding on every person who is for the time being an owner or occupier of the neighbouring land specified in the notice.

**High hedge notice: withdrawal or amendment.**

12. (1) After the Authority issues a high hedge notice, it may –

- (a) withdraw the notice, or
- (b) amend the notice.

(2) Where the Authority withdraws a notice under subsection (1), it must give the persons specified in subsection (3) notification of –

- (a) the withdrawal,
- (b) the reasons for the withdrawal, and
- (c) the right of appeal under section 13(2)(b).

(3) Those persons are –

- (a) every owner and occupier of the neighbouring land,  
and
- (b) every complainant.

(4) The withdrawal of a high hedge notice under subsection (1)(a) does not prevent the issuing of a further high hedge notice in respect of the same hedge.

(5) Where the Authority amends a high hedge notice under subsection (1)(b), it must –

- (a) issue an amended high hedge notice stating the date on which the amended notice takes effect,
- (b) give a copy of the notice to the persons mentioned in subsection (3),
- (c) notify those persons of the reasons for its decision, and
- (d) notify those persons of the right of appeal under section 13(2)(b).

(6) The date referred to in subsection (5)(a) must be at least 28 days after the date on which the amended notice is given to every owner and occupier of the neighbouring land.

(7) For the avoidance of doubt, subsections (1) to (6) apply in relation to an amended high hedge notice as they apply to a high hedge notice.

PART III  
APPEALS

**Appeals.**

**13.** (1) The complainant may appeal to the Planning Tribunal against a decision made by the Authority –

- (a) under section 8(5)(a) that the allegation made in the complaint is not justified, or
- (b) under section 8(5)(b) that no action should be taken in relation to the high hedge.

(2) A person mentioned in subsection (3) may appeal to the Planning Tribunal against –

- (a) the issuing by the Authority of a high hedge notice,
- (b) subject to subsection (4), the withdrawal or amendment of a high hedge notice by the Authority.

(3) Those persons are –

- (a) the owner or occupier of the neighbouring land, and
- (b) the complainant.

(4) The persons mentioned in subsection (3) may only appeal where –

- (a) in the case of the withdrawal or amendment of a high hedge notice, the notice has been withdrawn or amended without the agreement of the person wishing to appeal, or
- (b) in the case of the withdrawal of a high hedge notice, the Authority has not issued a further high hedge notice in respect of the same high hedge.

(5) An appeal under this section must be made within a period of 28 days starting from –

- (a) in the case of an appeal under subsection (1), the date

on which the notification of the decision was given to the appellant by the Authority under section 9(2),

- (b) in the case of an appeal under subsection (2)(a), the date on which the copy of the high hedge notice and notification were given by the Authority to the appellant under section 10(2), and
- (c) in the case of an appeal under subsection (2)(b) –
  - (i) in relation to the withdrawal of a high hedge notice, the date on which the notification was given by the Authority to the appellant under section 12(2), or
  - (ii) in relation to an amendment of a high hedge notice, the date on which the copy of the amended high hedge notice and notification was given by the Authority to the appellant under section 12(5).

**Grounds of appeal.**

**14.** (1) An appeal by a complainant under section 13(1)(a) may be made on the ground that the Authority could not reasonably have decided that the allegation made in the complaint is not justified.

(2) An appeal under section 13(1)(b) may be made on the ground that the Authority, having concluded that the allegation made in the complaint is justified, could not reasonably have concluded that no action should be taken with a view to remedying the adverse effect of the high hedge or preventing its recurrence.

(3) An appeal under section 13(2)(a) against the issue of a high hedge notice may be made on any of the following grounds –

- (a) in the case of an appeal by the owner or occupier of neighbouring land -
  - (i) that the height of the high hedge specified in the high hedge notice is not causing the adverse effect alleged,
  - (ii) that any action specified in the high hedge notice exceeds what is necessary or appropriate to remedy the adverse effect or prevent its recurrence, or
  - (iii) that the period specified in the high hedge notice for taking any action specified in the notice falls short of what should reasonably be allowed, or
- (b) in the case of an appeal by the complainant that any action specified in the high hedge notice is insufficient to remedy the adverse effect of the high hedge or to prevent its recurrence.

(4) An appeal under section 13(2)(b) against the withdrawal or amendment of a high hedge notice may be made on the ground there has been no material change in circumstances since the high hedge notice was issued that justifies its withdrawal or amendment.

(5) An appeal under section 13(2)(b) against the amendment of a high hedge notice may also be made on the ground -

- (a) in the case of an appeal made by the complainant, that the requirements of the notice, as amended, are insufficient to remedy the adverse effect of the high hedge or to prevent its recurrence, or
- (b) in the case of an appeal by the owner or occupier of neighbouring land, that –
  - (i) the requirements of the notice, as amended, exceed what is necessary or appropriate to remedy the adverse effect of the high hedge or to prevent its recurrence, or
  - (ii) the period specified in the high hedge notice, as amended, for taking any action specified in the notice falls short of what should reasonably be allowed.

**Effect of appeal.**

15. Where an appeal is duly made under section 13(2), the high hedge notice or (as the case may be) withdrawal or amendment in question has no effect pending the final determination or withdrawal of the appeal; and an appeal is finally determined when an appeal and any further appeal is finally determined.

**Determination of appeal.**

16. (1) The appellant must establish the grounds of appeal for any

appeal under this Law and, if that person fails to do so, the appeal must be dismissed.

- (2) On an appeal under section 13(1), the Planning Tribunal may—
- (a) confirm the decision to which the appeal relates,
  - (b) quash the decision of the Authority under section 8(5)(a) or (b), with or without issuing a high hedge notice.

- (3) On an appeal under section 13(2), the Planning Tribunal may—
- (a) confirm the high hedge notice or decision to which the appeal relates,
  - (b) quash the high hedge notice or decision, or
  - (c) amend the high hedge notice issued under section 10(1) or, as the case may be, 10(1) and 12(5)(a).

(4) A high hedge notice issued or amended under this section is to be treated as if issued or amended by the Authority.

(5) Where, in consequence of the Planning Tribunal's decision on an appeal, a high hedge notice is confirmed or amended, the date on which the notice takes effect is to be –

- (a) the date of the Planning Tribunal's decision, or
- (b) such later date as the Planning Tribunal may specify in

its decision.

(6) Where the person making an appeal against the issue of a high hedge notice withdraws their appeal, the date on which the notice takes effect is to be the date on which the appeal is withdrawn.

(7) In any case falling within subsection (5) or (6) –

(a) the period specified in the notice within which the initial action must be taken is to run from the date the notice takes effect, and

(b) any period which may have started to run from a date before that on which the appeal was made is to be disregarded.

**Further provision in relation to appeals.**

17. The Schedule makes further provision in relation to appeals under this Law.

PART IV  
ENFORCEMENT

**Power to enter neighbouring land.**

18. (1) Where a complaint has been made or a high hedge notice has been issued, a person authorised by the Authority may enter the neighbouring land to obtain information required by the Authority –

(a) to determine whether this Law applies to the complaint,

- (b) to carry out any of the functions of the Authority under sections 7 to 10 or 12, or
- (c) to determine if a requirement of a high hedge notice has been contravened.

(2) Where an appeal has been made under section 13, a person authorised by the Planning Tribunal may enter the neighbouring land in order to obtain information required by the Planning Tribunal for the purpose of determining the appeal.

(3) A person must not enter land in the exercise of a power under this section –

- (a) unless at least 24 hours' notice of the intended entry has been given to every occupier of the land, and
- (b) without the consent of the occupier, in the case of –
  - (i) any land, or part of any land, used as a dwelling, or
  - (ii) any land within the curtilage of a dwelling,

except under and in accordance with a warrant issued by the Bailiff under section 20.

(4) A person authorised under this section to enter land must, upon request, produce evidence of their authority.

- (5) A person who enters land under this section may –
- (a) be accompanied by such other persons as may be necessary,
  - (b) take onto the land equipment and materials (including vehicles) needed in order to obtain the information required, and
  - (c) take samples of any trees or shrubs that appear to that person to form part of a high hedge.
- (6) The powers in this section do not authorise a person to enter any land by force.

**Power of Authority to take action.**

19. (1) This section applies where –
- (a) a high hedge notice requires the taking of any action, and
  - (b) that action has not been taken in accordance with the high hedge notice.
- (2) Where this section applies a person authorised by the Authority ("**authorised person**") may –
- (a) enter the neighbouring land concerned,
  - (b) take any required action which has not been taken in

accordance with the high hedge notice,

- (c) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purpose of assisting the authorised person to take the required action, and
- (d) do anything else which is reasonably required for the purpose of taking the required action.

(3) Any reasonable expenses incurred in carrying out any action taken under subsection (2) may be recovered by the States as a civil debt from any person who is an owner or occupier of the neighbouring land.

(4) The powers conferred by subsection (2) do not empower an authorised person -

- (a) to enter any land by force, or
- (b) to enter any land, or part of any land, used as a dwelling or any land within the curtilage of a dwelling without the consent of the occupier,

except under the authority of a warrant granted by the Bailiff under section 20.

(5) An authorised person –

- (a) must not enter land under this section unless at least 7 days' notice of the intended entry has been given to every occupier of the neighbouring land, and

- (b) must, upon request, produce evidence of their authority.

(6) Expenses recoverable under this section are binding on successive owners and occupiers of the neighbouring land.

(7) Where expenses are recoverable from two or more persons, those persons are jointly and severally liable for the expenses.

**Power of Bailiff to grant warrant.**

20. (1) If the Bailiff is satisfied by information on oath supplied by a person authorised under section 18 or 19 ("**authorised person**") that there are reasonable grounds for the person to enter any neighbouring land to obtain information for a purpose set out in section 18 or to take action under section 19, as the case may be, the Bailiff may grant a warrant conferring any of the powers set out in subsection (2).

(2) A warrant granted under subsection (1) shall authorise an authorised person at any time within one month of the date of the grant –

- (a) to enter the neighbouring land, and
- (b) in the case of an authorised person authorised by –
  - (i) the Authority under section 18, to exercise any power under section 18(1) or (5),
  - (ii) the Planning Tribunal under section 18, to exercise any power under section 18(2) or (5),

or

- (iii) the Authority under section 19, to exercise any power under section 19(2).

(3) The Bailiff must not issue a warrant under subsection (1) unless the Bailiff is satisfied that one or both of the following two conditions are met.

(4) The first condition is that each of the following applies to the occupier of the land -

- (a) the occupier has been informed of the decision to seek entry to the land and of the reasons for that decision,
- (b) the occupier has failed to allow entry to the land on being requested to do so by an authorised person, and
- (c) the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that -

- (a) the land is unoccupied or the occupier is absent, and
- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(6) An authorised person executing a warrant issued under this section may use such reasonable force as may be necessary.

(7) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of PPACE apply in relation to the issue of a warrant under this section to an authorised person as they apply in relation to the issue of a warrant to a police officer.

**Offences in relation to high hedge notices.**

21. (1) A person who, without reasonable excuse, fails to comply with a requirement of a high hedge notice that binds them is guilty of an offence and is liable on conviction to a fine not exceeding level 4 on the uniform scale.

(2) For the purposes of subsection (1), a "**requirement of a high hedge notice**" includes -

- (a) the initial action specified in the notice in accordance with section 10(3)(c), and
- (b) any preventative action specified in the notice in accordance with section 10(3)(e),

and nothing in subsection (1) prevents a person being convicted of a second or subsequent offence under that subsection where that person fails to comply with the same, or any other, requirement of a high hedge notice.

(3) If -

- (a) a person charged with an offence under subsection (1) has not been given a copy of the high hedge notice in accordance with section 10(2) or 12(5)(b), and
- (b) details of the notice are not contained in the Register of High Hedge Notices in accordance with section 29,

it is a defence to show that the person was not aware of the existence of the notice.

(4) Where a person is convicted of an offence under subsection (1) and it appears to the court that –

- (a) a failure to comply with the high hedge notice is continuing, and
- (b) it is within that person's power to secure compliance with the notice,

the court may, in addition to or instead of imposing a punishment, order the person to take the steps specified in the order for securing compliance with the notice.

(5) An order under subsection (4) must require those steps to be taken within a period fixed by the order.

(6) Where a person fails, without reasonable excuse, to comply with an order under subsection (4), the person is guilty of an offence and is liable on conviction to a fine not exceeding level 4 on the uniform scale.

(7) Where a person continues after conviction for an offence under subsection (1) or (6) to fail, without reasonable excuse, to take steps which that person has been ordered to take under subsection (4), that person is guilty of a further offence and liable, on conviction, to a fine not exceeding one-twentieth of level 4 on the uniform scale for each day on which the failure has so continued.

**Offence in relation to false or misleading information etc. or obstruction.**

22. (1) A person who –

- (a) in purported compliance with a requirement imposed by or under any provision of this Law or any notice or warrant made under it, or
- (b) otherwise than as mentioned in paragraph (a) but in circumstances in which they intend, or could reasonably be expected to know, that the statement, information or document provided by them would or might be used by any person for the purpose of exercising that person's functions conferred by or under this Law –

does any of the following -

- (i) makes a statement which they know or have reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly make a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes, or causes or permits to be produced or furnished, any information or document which they know or have reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

commits an offence.

(2) A person who obstructs the Authority or a person authorised under any section of this Law in the exercise of their functions under this Law commits an offence.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 3 on the uniform scale.

**Criminal liability of directors etc.**

23. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described

in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

(3) In this section –

**"foundation"** means -

- (a) a foundation created under the Foundations (Guernsey) Law, 2012<sup>b</sup>, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

**"foundation official"** means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a

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<sup>b</sup> Order in Council No. I of 2013 and Ordinance No. IX of 2016.

foundation official described in paragraph (a) of this definition, and

**"general partner"** means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of **"limited partnership"**, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>c</sup>, and
  - (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of **"limited partnership"**, a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition,
- (4) In this section and in section 24 **"limited partnership"** means-
- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
  - (b) an arrangement entered into under the laws of a

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<sup>c</sup> Ordres en Conseil Vol. XXXVI, p. 264; as amended by Ordres en Conseil Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. IV of 2001, No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003 and IX of 2016.

jurisdiction outside Guernsey between two or more persons, under which -

- (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

**Criminal proceedings against unincorporated bodies.**

24. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any

officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

(4) In this section –

**"limited liability partnership"** means -

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013<sup>d</sup>, or

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<sup>d</sup> Order in Council No. VI of 2014; as amended by Ordinance No. XII of 2015 and No. IX of 2016.

- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

## PART V

### FEES

#### **Fee to accompany a complaint.**

25. (1) Subject to the following provisions of this section, the fee which must accompany a complaint made under section 6 is £350.

(2) Where two or more complaints are made and submitted together in relation to the same high hedge by two or more complainants, in respect of separate domestic properties or residential properties, the fee is £150 per complaint (subject to a minimum total fee of £350 shared equally between all the complainants).

(3) For the avoidance of doubt, the fee payable under subsection (2) may apply in relation to complaints made by different complainants in relation to separate domestic properties or residential properties in the same building or within the curtilage of the same building.

(4) The Authority may by Regulations amend or substitute any fee payable under this section.

#### **Fee to accompany a notice of appeal.**

26. (1) Subject to the following provisions of this section, the fee which must accompany a notice of appeal made under this Law is £350.

(2) Where two or more notices of appeal are given and submitted together in relation to a decision of the Authority in relation to the same high hedge

by two or more appellants in respect of separate domestic properties or residential properties, the fee which must accompany each such notice of appeal is £150 per appeal (subject to a minimum total fee of £350 shared equally between all the appellants).

(3) For the avoidance of doubt, the fee payable under subsection (2) may apply in relation to notices of appeal made by different appellants in relation to separate domestic properties or residential properties in the same building or within the curtilage of the same building.

(4) The States Committee for the Environment & Infrastructure may by Regulations amend or substitute any fee payable under this section.

**Reduction or waiver of complaint fee or appeal fee.**

27. Where it appears to -

- (a) the Authority, in the case of a complaint to the Authority, or
- (b) the Chairman of the Planning Panel, in the case of an appeal to the Planning Tribunal,

that the payment of any fee payable under this Part would, owing to the exceptional circumstances of the particular case, involve undue financial hardship to the appellant, the Authority or the Chairman of the Planning Panel, as the case may be, may reduce or waive the fee payable in that case.

**Power to refund whole or part of appeal fee.**

28. The Planning Tribunal may, where it thinks fit, refund any fee, in whole or in part, paid in accordance with section 26 where any of the following

occurs in relation to an appeal –

- (a) the Authority concedes the appeal, in whole or in part,
- (b) the Planning Tribunal declines to determine, or to proceed with the determination of, the appeal in accordance with paragraph 3(3) of the Schedule, or
- (c) the Planning Tribunal dismisses the appeal under section 69(5) of the 2005 Law as applied by paragraph 13(1)(a) of the Schedule.

PART VI  
GENERAL PROVISIONS

**Register of High Hedge Notices.**

29. (1) The Authority must establish and maintain a register, called the Register of High Hedge Notices, of each high hedge notice that the Authority has issued and is still in force.

- (2) Each entry in the register must record –
  - (a) brief particulars of the high hedge to which it relates,
  - (b) brief particulars, including where relevant the address, of the neighbouring land to which it relates,
  - (c) brief particulars of the initial action and any preventative action that must be taken by the owner or occupier of the neighbouring land,

- (d) brief particulars of any amendment of the notice,
- (e) whether or not any action required by the notice has not been taken,
- (f) brief particulars of any action taken by the Authority under section 19, and
- (g) a copy of any decision made by –
  - (i) the Planning Tribunal, or
  - (ii) the Royal Court in relation to a decision of the Planning Tribunal,on any appeal under section 13.

(3) The register may be prepared and maintained in any form and may contain such other information in relation to high hedge notices and any decisions made in relation to them as the Authority considers appropriate.

(4) The register must be made available for inspection by the public free of charge at reasonable times.

(5) The Authority must provide copies of any information on the register to any person upon written request and payment of a reasonable fee.

**Permissions or consents required under the 2005 Law or other enactments.**

30. Any permission or consent (however described) required under the 2005 Law or any other enactment is deemed to be given to the extent it is required for any action required or authorised to be carried out under this Law in relation to a high hedge.

**Guidance.**

31. The Authority may, after consulting such persons as it considers appropriate, issue guidance about this Law including guidance on –

- (a) the duty imposed by section 5(1), and
- (b) any other provision of this Law.

**Service of documents.**

32. (1) This section applies to any complaint, notice, notification or other document required or authorised to be given or served under this Law, other than a notice of appeal.

(2) For the avoidance of doubt, where a document is given or served in accordance with this section it is taken to be given or served, subject to subsection (8), on the day it is delivered to, sent by post, transmitted or otherwise given or served in accordance with subsection (3) or (4).

(3) A document to be given or served under this Law may be given or served –

- (a) on an individual by being delivered to, or being left at, or sent by post or transmitted to the premises to which the notice relates,

- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
  - (c) on an unincorporated body, by being given to or served on any partner, member, manager or officer of the body by being left at, or sent by post or transmitted to, their usual or last known place of abode, or
  - (d) on the Authority or a person authorised by the Authority under any section of this Law, by being left at or transmitted to, the principal offices of the Authority in Guernsey.
- (4) Where under this Law –
- (a) a document is required to be given to or served on a person who is an owner or occupier of any land, and
  - (b) the name or address of that person cannot be ascertained after reasonable inquiry,

the document may be given or served either by leaving it in the hands of a person who is, or appears to be, resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) A document sent by post is, unless the contrary is shown,

deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting, or
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding any day which is not a working day.

(7) Service of a document sent by post is proved by showing the date of posting, the address on it and the fact of prepayment.

(8) Despite the provisions of subsections (1) to (7) and any other enactment or rule of law in relation to the service of documents no document to be given to or served on the Authority, or a person authorised by the Authority under the Law, for the purposes of this Law is deemed to have been given or served before it is received.

(9) In this section –

**"a document to be given or served"** includes, for the avoidance of doubt, a document to be sent to a person or a complaint to be made to the Authority,

**"by post"** means by Special Delivery post, recorded delivery service or ordinary letter post,

**"transmitted"** means transmitted by electronic

communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document is regarded as served when it is received, and

"**working day**" is any day other than a Saturday, Sunday or a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>e</sup>.

**Power to amend certain provisions by Ordinance or Regulations.**

33. (1) The Authority may by Regulations –
- (a) amend section 1 to amend the definition of "**high hedge**", or
  - (b) amend section 4 to extend the scope of complaints relating to high hedges to which this Law applies.
- (2) The States may by Ordinance make the same provision as may be made by Regulations of the Authority under this section.

**General provisions as to Ordinances and Regulations.**

34. (1) The States may by Ordinance –
- (a) amend section 2, 3, 21, 23, 24, 32 or 35 so as to amend the meaning of any expression defined in any of those sections or to define any other expression,

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<sup>e</sup> Ordres en Conseil Vol. XVII, p. 384; as amended by Vol. XXIV, p. 84, Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367; and Ordinance No. IX of 2016.

- (b) amend section 13 to add a further right of appeal or make such amendments to any of the following provisions relating to appeals under this Law –
  - (i) section 14 relating to grounds of appeal, or
  - (ii) the Schedule setting out further provisions in relation to appeals,

as they think fit,

- (c) make such other provision as they think fit for the purposes of carrying this Law into effect, and
- (d) make such amendments to any other enactment as they think fit where it is necessary to do so for the purpose of giving proper effect to that enactment and as are consequential upon the enactment of this Law.

(2) The power in subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances (or vice versa).

- (3) An Ordinance or Regulations made under this Law may -
  - (a) be amended or repealed by a subsequent Ordinance or Regulations, as the case may be, under this Law, and
  - (b) contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary

or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(4) Any power conferred under this Law to make an Ordinance or Regulations may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes, or

(iii) any such provision either unconditionally or subject to any specified conditions.

(5) Without prejudice to the generality of the foregoing provisions of this Law an Ordinance made under this Law may -

- (a) repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (b) make any such provision of any such extent as might be made by Projet de Loi.

(6) Any Regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul them, they shall cease to have effect, but without prejudice to anything done under them or the making of new Regulations.

**Interpretation.**

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

"**adverse effect**" means the adverse effect on the reasonable enjoyment or reasonable use of a property that the complaint alleges is occurring or would occur,

"**the Authority**" means the States Development & Planning Authority,

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff, the Juge-Délégué and a Judge of the Royal Court,

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

"**Chairman of the Planning Panel**" means the person who is designated, from time to time, as the Chairman of the Planning Panel pursuant to section 86(3)(c) of the 2005 Law or if they are unavailable the Deputy Chairman of the Planning Panel,

**"complainant"** means, in relation to a complaint –

- (a) a person by whom the complaint is made, or
- (b) if every person who made the complaint ceases to be–
  - (i) in the case of a complaint under section 4(1) or 4(3), an owner or occupier of the domestic property or residential property specified in the complaint, any other person who is for the time being an owner or occupier of the property, or
  - (ii) in the case of a complaint under section 4(2) or 4(4), an owner of the domestic property or residential property specified in the complaint, any other person who is for the time being an owner of the property,

and references to the complainant include references to one or more of the complainants,

**"complaint"** means a complaint to which this Law applies under section 4,

**"conservation area"** has the meaning in Schedule 2 to the 2005 Law,

**"contravene"** includes fail to comply and related expressions are construed accordingly,

**"Deputy Chairman of the Planning Panel"** means the person who is designated, from time to time, as the Deputy Chairman of the Planning Panel pursuant to section 86(3)(d) of the 2005 Law,

**"domestic property"** : see section 2,

**"enactment"** includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

**"evergreen"** means an evergreen tree or shrub or a semi-evergreen tree or shrub,

**"high hedge"** : see section 1,

**"high hedge notice"** means a notice issued under section 10(1) and, for the avoidance of doubt, includes an amended high hedge notice issued under section 10(1) and 12(5),

**"initial action"** means remedial action or preventative action, or both,

**"Judge of the Royal Court"** means a person appointed to the office of that name under section 3 of the Royal Court (Reform) (Guernsey) Law, 2008<sup>f</sup>,

**"the 2005 Law"** means the Land Planning and Development

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<sup>f</sup>

Order in Council No. XXII of 2008.

(Guernsey) Law, 2005<sup>g</sup>,

**"neighbouring land"**, in relation to a high hedge, means –

- (a) the land on which the hedge is situated, and
- (b) for the purposes of sections 18 to 20, any land to which access is reasonably required to access land on which the hedge is situated,

**"notice"** means notice in writing,

**"notify"** means notify in writing,

**"owner"** includes a usufrutier and a person with a droit d'habitation,

**"person"** includes -

- (a) an individual,
- (b) a body corporate,
- (c) any other legal person, and
- (d) an unincorporated body of persons,

**"Planning Panel"** means the Panel established under section 86 of the

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<sup>g</sup> Order in Council No. XVI of 2005; as amended by No. XIII of 2010; Ordinance Nos. XXI, XXII, XXV and XXVIII of 2007; No. XVIII of 2011; Nos. IX and XI of 2016 and to which there are other amendments not relevant to this Law.

2005 Law,

**"Planning Tribunal"** means the Tribunal appointed under section 87 of the 2005 Law as applied by paragraph 13 of the Schedule,

**"police officer"** means a member of the salaried police force of the Island of Guernsey or, within the limits of their jurisdiction, a member of the special constabulary of the Island of Guernsey,

**"PPACE"** means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>h</sup>,

**"preventative action"** means action to prevent the recurrence of the adverse effect of the height of the high hedge,

**"remedial action"** means action to remedy the adverse effect of the height of the high hedge,

**"residential property"** : see section 3(1),

**"residential purpose"**: has the meaning in section 3(2)(b),

**"the States"** means the States of Guernsey,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

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<sup>h</sup> Ordres en Conseil Vol. XLIII(2), p. 617; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; and No. IX of 2016 and to which there are other amendments not relevant to this Law.

statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

"**tree protection order**" has the meaning in Schedule 2 to the 2005 Law, and

"**uniform scale**" means means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>i</sup>.

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

**Citation.**

36. This Law may be cited as the High Hedges (Guernsey) Law, 2016.

**Commencement.**

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

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<sup>i</sup> Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; and Ordinance No. XXIX of 2013; for the current scale of fines see Ordinance No. XXIX of 2006.

## SCHEDULE

Section 17

## FURTHER PROVISION IN RELATION TO APPEALS

*Procedure applying to all appeals***Notice of appeal.**

1. (1) A notice of appeal under this Law must be –
    - (a) made on a form obtained from the Secretary to the Planning Panel for the type of appeal in question ("**appeal form**"), and
    - (b) accompanied by copies of the supporting documents required in accordance with the appeal form.
  - (2) The appellant must, at the same time as they give notice to the Planning Panel under subparagraph (1), send to the Authority a copy of the notice of appeal and of the supporting documents required to accompany the notice of appeal.
  - (3) The appeal form must ask the appellant whether they wish the appeal to be determined –
    - (a) without a hearing on the basis of written representations, or
    - (b) following the holding of a hearing,
- and in either case by a full Tribunal or a Tribunal constituted by one professional member.

**Preliminary information.**

2. The Authority must forthwith, on receipt of a notice of appeal under paragraph 1, inform the Secretary to the Planning Panel and the appellant of –

- (a) the name and address of every person, other than the appellant, who is –
  - (i) a complainant,
  - (ii) an owner or occupier of the land where the high hedge is situated, and
- (b) whether it wishes the appeal to be determined –
  - (i) without a hearing on the basis of written representations, or
  - (ii) following the holding of a hearing,

and in either case by a full Tribunal or a Tribunal constituted by one professional member.

**Determination of appeals by a single Planning Tribunal member or on written representations.**

3. (1) The Chairman of the Planning Panel may –

- (a) appoint a Planning Tribunal to determine specified appeals under this Law without a hearing on the basis of written representations, or

- (b) appoint single professional members of the Planning Panel to constitute the Planning Tribunal to –
  - (i) hear and determine specified appeals under this Law, or
  - (ii) determine specified appeals under this Law without a hearing on the basis of written representations,

and, for the avoidance of doubt, where a single member of the Planning Panel is appointed under this section, section 87(2) and (5) of the 2005 Law, as applied by paragraph 13, shall not apply.

(2) In making an appointment under subsection (1), the Chairman of the Planning Panel must have regard to –

- (a) the nature and complexity of the issues raised,
- (b) the questions of law (if any) involved,
- (c) the extent to which any matter of public interest may arise in the proceedings,
- (d) the views of the appellant and the Authority made, respectively, on the appeal form and in the preliminary information, and
- (e) any other circumstances of the appeal.

(3) The Planning Tribunal may decline to determine an appeal if it considers that–

- (a) the notice of appeal has not, in any respect, been duly made and served in accordance with this Law, or
- (b) the appeal appears to be frivolous or vexatious,

and it must notify the parties and the Chairman of the Planning Panel as soon as possible after such a decision.

**Starting date.**

4. (1) As soon as practicable after its appointment in relation to the appeal in question and the receipt of the preliminary information, the Planning Tribunal must –

- (a) notify the parties of –
  - (i) the reference number allocated to the appeal,
  - (ii) the address to which written communications to the Planning Tribunal about the appeal are to be sent, and
  - (iii) whether the appeal is to be determined –
    - (A) without a hearing on the basis of written representations, or

(B) following the holding of a hearing,

and in either case by a full Tribunal or a Tribunal constituted by one professional member, and

(b) supply to the Authority a questionnaire.

(2) As soon as reasonably practicable after receipt of sufficient information to enable it to entertain the appeal, the Planning Tribunal must notify the parties of the starting date.

**Questionnaire.**

5. (1) The Authority must, within such period as the Planning Tribunal may specify in writing, being not less than 21 days starting from the date on which the questionnaire is supplied to the Authority, submit to the Planning Tribunal and copy to each of the other parties a completed questionnaire.

(2) The questionnaire must state the date on which it is submitted to the Planning Tribunal.

**Exchange of evidence.**

6. (1) If any of the parties wish to make any representations in relation to the appeal, that party must send three copies of those representations (including any evidence in support) in writing to the Planning Tribunal so as to be received within a 6 week period beginning on the starting date and the Planning Tribunal must, as soon as practicable after receipt, send a copy of the representations to each of the other parties.

(2) If any of the parties wish to comment on any representations

made under this paragraph, that party must send three copies of the comments in writing to the Planning Tribunal to be received within a 9 week period beginning on the starting date.

(3) The Planning Tribunal may disregard information received from any of the parties under this section which it has not received within the 9 week period referred to in subparagraph (2).

*Procedure applying to appeals on the basis of written representations*

**Appeals determined on the basis of written representations.**

7. (1) This paragraph applies to appeals determined on the basis of written representations.

(2) The Planning Tribunal may, after the expiration of any relevant time limits within which any step is required or allowed to be taken in accordance with this Schedule, and after giving to the appellant and the Authority notice of its intention to do so, proceed to a decision on the appeal.

(3) The Planning Tribunal may proceed to a decision on an appeal taking into account only such written representations and other documents as have been received within the relevant time limits.

*Procedure applying to appeals determined following a hearing*

**Appeals determined following the holding of a hearing.**

8. (1) This paragraph and paragraphs 9 to 11 apply to appeals to be determined following the holding of a hearing.

(2) The Planning Tribunal must give not less than four weeks'

notice to the parties of the date, time and place fixed for the hearing.

- (3) A notice of a hearing must contain –
  - (a) a statement of the date, time and place of the hearing,
  - (b) a brief description of the subject matter of the appeal, and
  - (c) details of where and when copies of documents relevant to the appeal may be inspected (which may be by electronic means).

(4) The Planning Tribunal may vary the date fixed for a hearing and must give reasonable notice to the parties of any such variation.

**Persons entitled or permitted to attend hearing.**

9. The parties are entitled to take part in the hearing and the Planning Tribunal may permit any other persons to do so.

**Procedure at a hearing.**

10. (1) A party may be represented at a hearing by any person, whether or not legally qualified, except that if in a particular case the Planning Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified, to represent a party.

(2) A hearing is to take the form of a discussion led by the person presiding and cross-examination is not to be permitted unless the person presiding considers that it is required to ensure proper examination of the issues relevant to the appeal.

(3) At the start of the hearing, the person presiding must identify the issues which appear to that person to be the main issues to be considered at the hearing and any matters on which the Planning Tribunal requires further explanation from any person entitled or permitted to appear.

(4) Nothing in subparagraph (3) is to preclude any person entitled or permitted to take part from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the person presiding.

(5) A person entitled to take part in a hearing may, subject to the following provisions of this paragraph, call evidence, but the calling of evidence is otherwise at the person presiding's discretion.

(6) The person presiding may refuse to permit the giving of oral evidence or the presentation of any other matter which the person presiding considers to be irrelevant or repetitious but, where the person presiding refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit any evidence or other matter in writing to the person presiding before the close of the hearing.

- (7) The person presiding may –
- (a) require any person attending or taking part in a hearing who is behaving in a disruptive manner to leave, and
  - (b) refuse to permit that person to return or permit that person to return only on such conditions as the person presiding may specify,

but any such person may submit any evidence or other matter to the Planning Tribunal before the close of the hearing.

(8) The Planning Tribunal may allow any person to alter or add to a statement so far as may be necessary for the purposes of the hearing, but the Planning Tribunal must give every other person who is both entitled to take part and does take part in the hearing an adequate opportunity to consider any fresh document or matter.

(9) The Planning Tribunal may proceed with a hearing in the absence of any person entitled or permitted to take part in it providing that, in the case of a person entitled to appear, the Planning Tribunal is satisfied that the person has been notified of the place, date and time of the hearing.

(10) The Planning Tribunal may take into account any written representation, evidence or any other document which the Planning Tribunal has received from any person before a hearing opens or during a hearing provided that the person presiding discloses it at the hearing.

(11) The Planning Tribunal may adjourn any hearing from time to time as it thinks fit.

**Decision following the holding of a hearing.**

11. The Planning Tribunal may disregard any written representations, evidence or other documents received after the hearing has closed.

*Decision on all appeals*

**Notice of decision.**

12. (1) As soon as reasonably practicable after determining an appeal the Planning Tribunal must –

- (a) where it has made a determination in accordance with section 16(2)(b) and is to issue a high hedge notice –
  - (i) issue the high hedge notice,
  - (ii) give a copy of the high hedge notice to the parties, and
  - (iii) notify the parties of the reasons for its decision.
  
- (b) where it has made a determination in accordance with section 16(3)(c) –
  - (i) issue an amended high hedge notice,
  - (ii) give a copy of the high hedge notice to the parties, and
  - (iii) notify the parties of the reasons for its decision,
  
- (c) where it has made any other determination, notify the parties of its decision and the reasons for its decision.

**Application of provisions under the Land Planning and Development (Guernsey) Law, 2005.**

13. (1) The following provisions under the 2005 Law apply to an

appeal under this Law as they apply to an appeal under section 68 or 70 of the 2005 Law—

- (a) section 69(5) (appellant responsible for undue delay) of the 2005 Law,
- (b) sections 72(1) to (5) and 73 (review of planning tribunal's decisions by Court) of the 2005 Law,
- (c) section 87(1) to (8) (appointment and proceedings of Planning Tribunal) of the 2005 Law with the modification that subsection (2) is to be read as if it is subject to any contrary provision under this Law instead of subject to the provisions of any Ordinance under subsection (9) of section 87 of the 2005 Law,
- (d) sections 5 (appointment of Planning Tribunal), 7 (technical adviser), 16 (consolidation of appeals) and 20 (offences in relation to hearings etc.) of the Land Planning and Development (Appeals) Ordinance, 2007<sup>j</sup>, and
- (e) regulations 7 (allowances and expenses of members of the Appellate Body) and 8 (costs-which gives effect to Schedule 3-payment and recovery of costs) of the Land Planning and Development (Appeals) Regulations,

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<sup>j</sup> Ordinance No. XXVIII; as amended by Ordinance No. XLI of 2008, No. XVIII of 2011 and Nos. IX and XI of 2016.

2008<sup>k</sup> with the modification that –

- (i) references to the Appellate Body are to be construed as references to the Planning Tribunal, and
- (ii) references to a party or parties (however expressed) are to be construed in accordance with the definition of "the parties" in this Schedule.

(2) The provisions of section 74 (review proceedings; rules of Court) of the 2005 Law apply in relation to an appeal or reference under section 72 or 73 of the 2005 Law, as applied by subparagraph (1), as they apply to an appeal or reference under section 72 or 73 of the 2005 Law.

(3) The provisions of section 80 (performance of functions by subcommittees, officers etc.) of the 2005 Law apply in relation to any function under this Law as they apply to any function under the 2005 Law.

**Planning Tribunal's power to allow further time and determine procedure etc.**

14. (1) The Planning Tribunal may in a particular case allow further time for the taking of any step which is required or enabled to be taken under this Schedule.

(2) Subject to the provisions of this Law, the Planning Tribunal may determine its own procedure in relation to an appeal under this Law and give such directions, subject to such terms and conditions, as it thinks fit for the purposes

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<sup>k</sup>

G.S.I. No. 8 of 2008; as amended Ordinance No. IX of 2016.

of the determination of the appeal.

**Interpretation of this Schedule.**

15. In this Schedule, unless the context requires otherwise –

"**parties**" in relation to an appeal, means the appellant, the Authority and every person, other than the appellant who is –

- (a) a complainant, or
- (b) an owner or occupier of the land where the high hedge is situated,

"**person presiding**" means –

- (a) the member of the Planning Tribunal designated to preside under section 87(2) of the 2005 Law, or
- (b) where a single member of the Planning Tribunal constitutes the Planning Tribunal, that single member,

"**preliminary information**" means the information of which the Secretary to the Planning Panel is required to be informed under paragraph 2,

"**professional members**" means the members of the Planning Panel designated as professional members in accordance with section 86(3)(b) of the 2005 Law,

"**questionnaire**" means a document in the form supplied by the Planning Tribunal for the purposes of this Schedule or a document

containing all the information required by that form,

**"relevant time limits"** means the relevant time limits set out in this Schedule subject to any further time allowed by the Planning Tribunal under paragraph 14(1),

**"Secretary to the Planning Panel"** means the secretary to the Planning Panel appointed under section 18 of the Land Planning and Development (Appeals) Ordinance, 2007, and

**"starting date"** means the date notified by the Planning Tribunal under paragraph 4(2).

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