

PROJET DE LOI

ENTITLED

Loi relative aux Douits *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* Ordres en Conseil Vol. X, p. 419; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Loi relative aux Douits (Amendment) Law, 2013 (No. VII of 2014); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Reform (Guernsey) Law, 1948 (Ordres en Conseil Vol. XIII, p. 288); the Court of Chief Pleas (Guernsey) Law, 2004 (No. XVII of 2004, Ordres en Conseil Vol. XLIV(1), p. 423).

PROJET DE LOI

ENTITLED

Loi relative aux Douits

ARRANGEMENT OF SECTIONS

1. Central Committee.
- 2-3. Powers and duties of Central Committee.
- 4-5. Stream Committees.
6. Powers and duties of Stream Committees.
- 6A. Offence of impeding Constable, etc., in execution of his duty.
7. La Turquie—Le Pont Allaire stream.
8. Warning notices.
9. Power of Central Committee to execute work.
10. Appeals.
- 10A. Service of documents.
11. Procedure, etc., as regards alterations and improvements when the cost is not wholly borne by the States.
12. Indemnity.
13. Limitation of actions against States.
14. Application of fines.
15. Ordinances.
16. Interpretation.

PROJET DE LOI

ENTITLED

Loi relative aux Douits

VU LES délibérations des États en date du 18 mars 1936:

LES ÉTATS ont approuvé les dispositions suivantes lesquelles, moyennant la Sanction de Sa Très Excellente Majesté en Conseil, auront force de Loi en cette Île.

Central Committee.

1. The powers and duties specified in the next succeeding section in relation to watercourses in this Island are hereby conferred upon and entrusted to the [States' Trading Supervisory Board] (in this Law referred to as "**the Central Committee**") and all such powers and duties in relation to any watercourse and to the Committee of any watercourse as have hitherto vested in or been exercised by His Majesty's Sheriff shall henceforth cease to so vest or be exercised and shall vest in and be exercised by the Central Committee.

NOTES

In section 1, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016.¹

The functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 12(b), Schedule 2, Part 8, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

Powers and duties of Central Committee.

2. The Central Committee, any sub-committee thereof thereunto authorised by the Central Committee and any States employee thereunto authorised by the Central Committee or by a sub-committee thereof, are hereby authorised at all times between sunrise and sunset to enter with such vehicles, apparatus, implements and materials as may be necessary or expedient in the circumstances upon any land upon which it may be necessary to enter in order to gain access to any watercourse for the purpose of inspecting the same and of executing any work in connection therewith which the Central Committee is authorised by this Law to execute.

3. (1) It shall be the duty of the Central Committee –
- (a) to consider every report submitted to it by a Stream Committee,
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) to report annually to the Court of Chief Pleas at its Christmas session, upon –
 - (i) the condition of the watercourses of this Island,
 - (ii) any failure by a Stream Committee to carry out the duties imposed upon it whether under this Law or under an Ordinance of the Royal Court

or under a mandate otherwise given to such Stream Committee,

- (f) to report to the States upon any scheme for the alteration or improvement of any watercourse which the Central Committee recommends should be carried out at the expense of the States or of some other person or persons or partly at the expense of the States and partly at the expense of such other person or persons,
- (g) to execute such works in relation to the alteration or improvement of any watercourse as may from time to time be authorised by the States and (in so far as sanction of the Royal Court to the execution thereof shall be necessary under the provisions of this Law) as shall be sanctioned by the Royal Court.

(2) Save with the previous written permission of the Central Committee, no alteration shall be made to any part of the bed of a watercourse or to any part of any bank of a watercourse, nor shall a watercourse or any part thereof be covered nor the stream flowing therein or any part thereof be enclosed, whether wholly or partially, by the laying of pipes or otherwise.

(3) Before granting any such permission as may be requisite under the provisions of the last preceding subsection, the Central Committee may require the applicant for such permission to furnish the Central Committee with such plans and other written particulars as the Central Committee may deem necessary or expedient.

(4) Any person carrying out, whether in whole or in part, without the previous written permission of the Central Committee, any work for the carrying

out of which such permission is required under subsection (2) of this section shall be guilty of an offence and shall be liable upon conviction before the Royal Court sitting as an Ordinary Court to a fine not exceeding [level 1 on the uniform scale] and, upon any such conviction, the Court may, in addition to imposing a fine, direct that such work as may be necessary to restore the watercourse to the state in which it was before the commission of the offence shall be carried out by the offender at his cost within such period and upon such penalty in the event of non-compliance as the Court may prescribe.

NOTES

In section 3,

paragraph (b), paragraph (c) and paragraph (d) of subsection (1) were repealed by the Loi relative aux Douits (Amendment) Law, 2013, section 1(2), with effect from 1st September, 2015, subject to the savings and transitional provisions in section 2 of the 2013 Law;

the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

In accordance with the provisions of the Court of Chief Pleas (Guernsey) Law, 2004, section 2, with effect from 6th December, 2004, the receipt of the annual report of the States' Trading Supervisory Board ("the Central Committee"), formerly dealt with at the January sitting of the Court of Chief Pleas, may be dealt with by the Royal Court.

Stream Committees.

4. Where in the case of any watercourse there is in existence at the commencement of this Law a Committee entrusted with the supervision thereof, that Committee shall, subject to the provisions of this Law, continue to exercise its functions in accordance with the provisions of the Ordinance or other instrument from which its powers and duties are derived.

Provided that nothing herein contained shall be construed so as to prevent the modification from time to time of any such Ordinance or instrument as is mentioned

in the foregoing section.

5. Where in the case of any watercourse or of some part thereof there is in existence no Committee having supervisory powers with respect thereto, the Constables and Douzaine of the Parish in which such watercourse or part thereof is situate shall be the Stream Committee in respect thereof.

Provided that it shall be lawful for the Constables and Douzaine of any parish to appoint a Committee of not less than five persons resident in that Parish as the Committee having supervisory powers in respect of the watercourses situate in that parish and upon notification by the Constables of that Parish to the Central Committee of the appointment in that Parish of any such Committee and for so long as that Committee shall continue in existence, that Committee shall be vested with and shall carry out as regards that Parish the powers and duties by this Law conferred upon Stream Committees in the place and stead of the Constables and Douzaine of that Parish.

Provided also that as regards any part of any watercourse forming in whole or in part the boundary between any two parishes, the Constables and Douzaines of such parishes shall together be the Stream Committee in respect thereof unless in one of such parishes there is in existence a Committee appointed under the last foregoing proviso, in which case that Committee and the Constables and Douzaine of the other of such parishes shall together be the Stream Committee in respect thereof, or unless in each of such parishes there is in existence a Committee appointed under such proviso, in which case those Committees shall together be the Stream Committee in respect thereof.

Powers and duties of Stream Committees.

6. (1) It shall be the duty of the President of every Stream Committee in existence at the commencement of this Law to forward to the Central Committee before the expiration of two months after the commencement of this Law a statement

containing the names and addresses of the members of that Stream Committee and the name and address of the President or other member thereof to whom communications from the Central Committee to the Stream Committee are to be addressed.

(2) It shall be the duty of the Constables of each Parish upon the appointment of a Stream Committee in that parish to forward to the Central Committee a notification of the appointment of that Stream Committee together with a statement of the names and addresses of the members of that Committee and of the name and address of the President or other member of that Committee to whom communications from the Central Committee to that Committee are to be addressed.

(3) Changes in the personnel of any Stream Committee and any change of the member thereof to whom communications are to be addressed shall be notified to the Central Committee by the President of that Stream Committee as and when such changes occur.

(4) It shall be the duty of each Stream Committee at least once in each calendar year to inspect the watercourse or watercourses as regards which it has supervisory powers and thereafter to prepare and forward to the Central Committee a report concerning the condition of such watercourse or watercourses. An inspection shall be made between the thirtieth day of September and the fifteenth day of October of each year and the report concerning such inspection shall be forwarded so as to reach the Central Committee not later than the thirty-first day of October next following. The report shall contain details of all obstructions to the free flow of the stream in any such watercourse and of any lack of repair of the banks thereof and the situation thereof and shall set out the names and addresses of the persons responsible for the removal of such obstructions and for the repair of such banks.

(5) It shall be the duty of the Stream Committee upon being requested so to do by the Central Committee to make such further inspections of any

watercourse over which that Stream Committee has supervisory powers as the Central Committee may require to be made and to furnish the Central Committee with all such written particulars concerning any such watercourse as the Central Committee from time to time may reasonably require.

(6) A Stream Committee is hereby authorised at all times between sunrise and sunset to enter upon any land upon which it may be necessary to enter in order to gain access to any watercourse for the purpose of inspecting the same.

[Offence of impeding Constable, etc., in execution of his duty.]

6A. (1) A person who obstructs or impedes –

- (a) a Constable or Douzenier in the execution of the functions and duties of a Stream Committee under this Law, or
- (b) a States employee or contractor instructed and authorised to enter property and execute work by the Central Committee under section 9, in the entry of property for that purpose or in the execution of such work,

is guilty of an offence.

(2) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding level 5 on the uniform scale.]

NOTE

Section 6A was inserted by the Loi relative aux Douits (Amendment) Law, 2013, section 1(3), with effect from 1st September, 2015.

La Turquie—Le Pont Allaire stream.

7. For the purposes of this Law, the holder from time to time of the office of Prévôt du Valle shall be deemed to be a Stream Committee as regards the watercourse containing the stream which flows from La Turquie to Le Pont Allaire and as regards that watercourse it is hereby declared that such reports concerning the same as are required by this Law to be made to the Central Committee shall be made to His Majesty's Receiver General for transmission to the Central Committee.

[Warning notices.

8. (1) A Stream Committee may serve a notice (a "**warning notice**") signed by two or more Constables or Douzeniers, on a person who in their opinion has failed to carry out any duty upon him, whether under this Law or otherwise, in relation to –

- (a) the cleaning of a watercourse,
- (b) the clearing of obstructions to the free flow of water in a watercourse, and
- (c) the repair of the banks of a watercourse.

(2) A warning notice must –

- (a) contain an explanation of why it has been served, including a description of the alleged failure,
- (b) explain that the person has, from the date of service of the warning notice, seven days to remedy the failure,
- (c) explain the consequences of failing to remedy the

failure within the seven day period, including the imposition of a civil penalty and ongoing daily penalty pursuant to subsection (3), and the possibility of a demand for payment of work executed under section 9, and

- (d) set out the person's right to appeal under section 10 against the service of the notice and any penalty subsequently imposed.

(3) A person who has been served with a warning notice and who continues to fail to carry out the duty shall be liable, on the eighth day after service of the warning notice, to a civil penalty of £50; and he shall in addition be liable to a further ongoing penalty of £5 for every day after the date of the imposition of the original penalty, during which the failure continues.

(4) A penalty imposed under this section shall be collected by the Constables of the relevant Parish, and on collection shall form part of the general funds of that Parish.

(5) In default of payment of a penalty under this section, the Constables may proceed to enforce payment as if the amount due were a civil debt.]

NOTE

Section 8 was substituted by the Loi relative aux Douits (Amendment) Law, 2013, section 1(4), with effect from 1st September, 2015.

[Power of Central Committee to execute work.]

9. (1) Subject to the provisions of this section, where a warning notice has been served on a person ("A") under section 8, and A continues to fail to

carry out the duty, the Central Committee may, at the request of the Stream Committee or otherwise, and only if it considers it necessary in all the circumstances, instruct and authorise a States employee or a contractor to enter upon the property where the relevant watercourse is situated and execute the relevant work; and the costs of that work shall be recoverable from A as a civil debt, in addition to any penalty imposed under section 8.

(2) Subject to subsection (3), the Central Committee must serve a notice on A at least five days before the work is to be executed, informing A that it has instructed and authorised a States employee or contractor under subsection (1), of the time and date when the work will be executed, and of A's right to appeal under section 10.

(3) If the Central Committee is satisfied that there would be a risk to life or a risk of serious damage to property if a notice were served under subsection (2), a notice may be served on A fewer than five days before the work is to be executed, on such a day as the Central Committee thinks appropriate in all the circumstances, informing A that it has instructed and authorised a States employee or contractor under subsection (1), and of the time and date when the work will be executed; and such a notice may be served on A by the States employee or contractor who is to execute the work at any time before that work is begun.

(4) A States employee or contractor acting under this section shall, if so required, produce some duly authenticated document showing his authority so to act.

(5) If it appears to such an employee or contractor that any person with whom he is dealing while acting for the purposes of this Law does not know that he is so acting, he shall identify himself as such to that person.]

NOTE

Section 9 was substituted by the Loi relative aux Douits (Amendment) Law, 2013, section 1(4), with effect from 1st September, 2015.

[Appeals.]

- 10.** (1) A person aggrieved by a decision to –
- (a) serve a warning notice under section 8,
 - (b) impose a civil penalty under section 8, including an ongoing daily penalty,
 - (c) serve a notice under section 9, or
 - (d) demand payment for work executed under section 9,

may appeal to the Parochial Appeals Tribunal established under the Parochial Administration Ordinance, 2013, by way of service of a notice of appeal on that Tribunal.

(2) The making of an appeal under subsection (1) does not affect the validity of the penalty, notice or demand in question, save that –

- (a) an ongoing daily penalty shall stop accruing from the date of the service of a notice of appeal under subsection (1), and
- (b) subject to subsection (3), if the appeal relates to a decision of the Central Committee to serve a notice of intent to execute work under section 9, no such work may be executed until the final determination of the

appeal.

(3) Subsection (2)(b) does not apply where the notice of intent has been served under section 9(3).]

NOTE

Section 10 was substituted by the Loi relative aux Douits (Amendment) Law, 2013, section 1(4), with effect from 1st September, 2015, subject to the savings and transitional provisions in section 2 of the 2013 Law.³

[Service of documents.

10A. (1) A warning notice under section 8, and a notice under section 9(2) or (3), may be served by being delivered to, or being left at, or sent by post to the property to which the notice in question relates.

(2) A notice of appeal under section 10 may be served on the Tribunal by being delivered to, or being left at, or sent by post to the Tribunal's published address for service.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) In subsections (1) and (2) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post.

(5) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received on the third day after the day of posting, excluding any day which is not a working day.

(6) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.]

NOTE

Section 10A was inserted by the Loi relative aux Douits (Amendment) Law, 2013, section 1(4), with effect from 1st September, 2015.

Procedure, etc., as regards alterations and improvements when the cost is not wholly borne by the States.

11. (1) Where the States have approved a scheme for the execution of any alteration or improvement of any watercourse or some part thereof and have approved a proposition that the cost of such alteration or improvement or part thereof should be borne otherwise than by the States, then, unless the person or persons at whose expense the cost of such alteration or improvement or part thereof is proposed to be borne shall have agreed to bear the same, it shall be the duty of the Central Committee to publish on two occasions in *La Gazette Officielle* a notice containing a general description of the scheme of alteration or improvement, a statement as to the estimated cost thereof, as to the amount of such cost which it is proposed should be borne otherwise than by the States and as to the person, persons or class or classes of persons by whom it is proposed that the cost should be wholly or partially borne and of the method of determining the amount of the contributions thereto of those persons or of the persons of that class or of those classes and to the effect that the Central Committee will apply to the Royal Court sitting as a Full Court on and at a particular date and time for sanction to proceed with the execution of the scheme upon the basis that the cost thereof which it is not proposed should be borne by the States shall be borne in the manner indicated in the notice.

(2) On the date of the making of such application, the Royal Court shall hear the representations of any person who, in the event of the scheme being sanctioned, would be a contributor to the cost thereof and, if the Court is of opinion that the cost of executing the scheme will not bear unfairly on any proposed contributor, the Court may sanction the execution of the scheme.

(3) As regards any such scheme as is mentioned in this section the execution of which has been sanctioned by the Royal Court, upon the completion of the work to which the schemes relates, the Central Committee shall be entitled to recover the contributions to the cost thereof of the person or persons by whom it was proposed in the notice that such cost or part thereof should be borne as though each of such contributions was a simple contract debt due by the contributor thereof to the Central Committee.

Indemnity.

12. Where in relation to any watercourse work is or has been undertaken by the States whether wholly or partly at the expense of the States or of any person or persons and, whether by reason of the acceleration of the flow of the stream in that watercourse or of any other happening which may arise out of such work, the supply of water from that stream to any person is diminished or any person is deprived of a supply of water from that stream, no action shall lie against the States at the instance of any person claiming to have suffered such diminution or deprivation of supply.

Limitation of actions against States.

13. Where as regards any watercourse the States have canalised any part of the same or have undertaken the work of maintaining such watercourse or part thereof clear of obstructions whether wholly or partly at the expense of the States or otherwise and by reason of any failure by the States to maintain the same clear of obstructions flooding of the land of any person results, no action whether in damages or otherwise arising out of the claim of any person that he has suffered loss or damage by reason of such flooding shall lie against the States unless it be shown therein that within seven days after the date on which such flooding commenced the claimant served upon the Central Committee a notice in writing giving a description of the land so flooded and the situation thereof and indicating the watercourse from the obstruction of which the flooding results and that, for the space of seven days after the receipt of such notice by the Central Committee, the Central Committee failed to

take all reasonable steps to clear that watercourse of such obstructions as existed therein and were the cause of such flooding.

Application of fines.

14. The amount of all fines recovered under the provisions of this Law shall be applicable half to His Majesty and half to the States.

Ordinances.

15. The Royal Court sitting as a Court of Chief Pleas is hereby authorised to pass such Ordinances for the carrying out of this Law as may be necessary.

NOTES

The following Ordinances have been made under section 15:

*Watercourses Ordinance, 1957;
Watercourses Ordinance, 1961;
Watercourses (No. 2) Ordinance, 1961;
Watercourses Ordinance, 1969;
Watercourses Ordinance, 1970;
Watercourses Ordinance, 1972;
Watercourses Ordinance, 1980;
Watercourses Ordinance, 1986;
Watercourses Ordinance, 1988;
Watercourses Ordinance, 1995.*

In accordance with the provisions of the Reform (Guernsey) Law, 1948, Article 63, with effect from 17th January, 1949, the powers and functions of a legislative nature previously exercised by the Royal Court (save for the making, variation, modification and revocation of Rules of Procedure) were transferred to and vested in the States of Deliberation, and thenceforth any enactment conferring power on the Royal Court to exercise any such powers and functions by way of Ordinance shall be construed as having conferred the like power on the States of Deliberation or (pursuant to amendments to that Article made by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 8(b), Schedule 2, Part 6, paragraph 2, with effect from 1st May, 2016) on the States Policy & Resources Committee, as the case may be.

Interpretation.

16. In this Law, save as, regards sections 4, 11, 12 and 13 thereof, the expressions "**watercourse**" and "**watercourses**" shall only apply to such watercourse or watercourses as are declared by Ordinance of the Royal Court sitting as a Court of Chief Pleas to be a watercourse or watercourses subject to the application of the provisions of this Law[; and "**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989].

NOTES

In section 16, the words in square brackets were inserted by the Loi relative aux Douits (Amendment) Law, 2013, section 1(5), with effect from 1st September, 2015.

The Law received Royal Sanction on 27th October, 1936 and was registered on the Records of the Island of Guernsey and came into force in the Island of Guernsey on 14th November, 1936.

The following Ordinance has been made under section 16:

Ordonnance relative aux Douits (1937)⁴.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 23, with effect from 6th May, 2004.

² The functions, rights and liabilities of the Public Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Public Thoroughfares Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 23, with effect from 6th May,

2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

³ Prior to its substitution, section 10 was amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

⁴ Recueil d'Ordonnances Tome VII, p. 34; the Ordinance was made on 17th April, 1937.