
LAND REQUISITION ORDINANCE 2016

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LAND REQUISITION ORDINANCE 2016

An Ordinance to make provision for the requisition of land

M. Wigston

21 June 2016

ADMINISTRATOR

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

PART 1

Preliminary

Short title and commencement

1. This Ordinance may be cited as the Land Requisition Ordinance 2016 and comes into force on 4 July 2016.

Interpretation

2. In this Ordinance—

“acquiring authority” means—

(a) the Crown; or

(b) an authority which is an acquiring authority under the corresponding Republican law;

“claim” includes a claim which is deemed to be made under paragraph 12 of Part 2 of the Schedule;

“claimant” means a person who claims, or is deemed to claim, compensation in accordance with Part 2 of the Schedule;

“corresponding Republican law” means the Republic of Cyprus’ Law Number 21 of 1962(a) (Requisition of Property Law 1962) and includes—

- (a) amendments to that law, whether made before or after the coming into force of this Ordinance;
- (b) any law substituting that law, whether made before or after the coming into force of this Ordinance;

“Crown” means Her Majesty in right of the Administration in the Areas and of the Government of the United Kingdom;

“owner” means the person entitled to be registered as the owner of land whether the person is so registered or not;

“public body of the Republic” is to be construed in accordance with the definition of “acquiring authority” in section 2 of the corresponding Republican law;

“purpose of public benefit” is to be construed in accordance with section 3;

“requisition authority” means the Administrator;

“requisitioned land” means land which is subject to a requisition order;

“requisition order” means an order made under section 4, and includes an extension and a further extension to the order;

“requisition period” means the period during which a requisition order has effect;

“tribunal” means the tribunal established under section 3 of the Compensation Assessment Tribunal Ordinance(b).

PART 2

Requisition

Purpose of public benefit

3. A purpose of public benefit includes, but is not limited to—

- (a) military purposes;
- (b) public safety, public order, public health or public morals;
- (c) the supply, maintenance or development of supplies and services, which are necessary to life or to promote public welfare or entertainment;
- (d) agricultural land reform;
- (e) the promotion or development of agriculture, industry, commerce or tourism;
- (f) the promotion or development of the mining industry or of any other industry of a similar nature;
- (g) archaeological excavations or the conservation or use of archaeological monuments or antiquities, including the development of nearby places for a related purpose;
- (h) town planning, allotment of land or the creation of built-up areas;
- (i) the establishment, maintenance or development of any means of land, sea or air communications and related facilities;
- (j) soil conservation or conservation or the development of natural resources, including forests and water and the efficient distribution of water;
- (k) the effective development of property for the public benefit;

(a) Official Gazette of the Republic 22 March 1962.

(b) Cap 216, Statute Laws of Cyprus revised edition 1959, as applied in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/2012) provides for the interpretation of such legislation.

- (l) the construction, maintenance or development of places of entertainment;
- (m) the creation, maintenance or development of public buildings or public works;
- (n) the establishment or promotion of the purposes of co-operatives;
- (o) the establishment or promotion of the purposes of any educational, religious, benevolent or sports organisations falling within the competence of a community council;
- (p) the establishment or promotion of purposes within the competence of a municipal council or other public body or public utility of the Republic;
- (q) the creation, maintenance or development of burial sites.

Requisition order

4.—(1) Where land is required for a purpose of public benefit, the Administrator may make an order requisitioning the land (a “requisition order”).

(2) A requisition order is made as a public instrument.

(3) A requisition order must specify—

- (a) the area of land which is requisitioned;
- (b) the purpose of public benefit for which the land is requisitioned;
- (c) the date on which the requisition order takes effect; and
- (d) the requisition period.

(4) The requisition period may be extended and further extended, any number of times, by order of the Administrator made as a public instrument, but the total period of requisition must not exceed 3 years from the date the requisition order first took effect.

(5) A requisition order must be served on the owner of the requisitioned land and any person the requisition authority considers has or may have an interest in the land.

(6) The Administrator may revoke a requisition order at any time.

(7) A requisition order may include necessarily incidental and supplementary provisions.

Notification of intended requisition

5.—(1) For the purpose of determining whether requisition is necessary, the Administrator may make a notification of intended requisition (a “notification”).

(2) A notification is made as a public instrument.

(3) A notification must specify—

- (a) the area of land to be requisitioned;
- (b) the purpose of public benefit for which the land is to be requisitioned; and
- (c) the proposed requisition period.

(4) A notification must be served on the owner of the land which is the subject of the notification and any person the requisition authority considers has or may have an interest in the land.

(5) Subject to subsections (6) and (8), on or after the day a notification takes effect, a person authorised by the requisition authority (an “authorised person”) may enter, examine and survey the land which is the subject of the notice, and do any other act necessarily incidental to determining whether requisition is necessary.

(6) The authorised person must give the owner of the land, or the person in occupation, or both—

- (a) at least 8 days’ written notice of an intention to enter a building on the land;
- (b) at least 1 day’s written notice of an intention to examine and survey the land.

(7) Written notice under subsection (6) may be given before the day the notification takes effect.

(8) The authorised person must not enter a dwelling house or land within the curtilage of a dwelling house unless the occupant consents to entry or a court has made an order following an application under subsection (9).

(9) The requisition authority or an authorised person may apply to the Resident Judge's Court for an order to enter a dwelling house or land within the curtilage of a dwelling house.

(10) If an authorised person exercising powers under this section causes damage to the land, the requisition authority must pay appropriate compensation for the damage caused.

(11) If the amount of compensation is not agreed, the requisition authority, the owner of the land or the person in occupation of the land may apply to the tribunal for an assessment of the amount.

Taking possession of requisitioned land

6.—(1) On or after the day a requisition order takes effect, the requisition authority may take possession of the requisitioned land.

(2) The requisition authority may remain in possession of the land throughout the requisition period and use the land for the purpose of public benefit specified in the requisition order.

(3) The requisition authority may transfer possession of the requisitioned land to an acquiring authority for all or part of the requisition period, and authorise that authority to use the land for the purpose of public benefit specified in the requisition order.

Use of requisitioned land

7.—(1) Requisitioned land may be used only for the purpose of public benefit specified in the requisition order.

(2) Subsection (1) does not limit the right of the requisition authority to use the land, or to authorise the acquiring authority to use the land, in such a way as is necessarily incidental to the purpose of the requisition.

(3) Limitations which are imposed on the use of land by legislation or as a result of policy or administrative practice do not apply to requisitioned land.

(4) All the rights and interests of the owner of the land during the requisition period are assumed by the requisition authority, or the acquiring authority, where it is in possession of the land pursuant to section 6(3).

PART 3

Compensation

Compensation

8.—(1) Compensation for requisitioned land is payable by the requisition authority.

(2) The amount of compensation is determined in accordance with Part 1 of the Schedule.

(3) Compensation is payable to a claimant following a claim.

Compensation by agreement

9. The requisition authority must take steps to agree the amount of compensation with the claimant as soon as reasonably practicable after a claim is made.

Compensation determined by tribunal

10. Where the amount of compensation has not been agreed 3 months after a claim is made, the requisition authority or the claimant may apply to the tribunal for determination of either or both of the following—

(a) the amount of compensation;

- (b) the apportionment of compensation between claimants.

Apportionment

11.—(1) This section applies where—

- (a) the requisitioned land is subject to legal interest; and
- (b) compensation is payable under paragraph 4 of Part 1 of the Schedule.

(2) The amount of compensation—

- (a) proportionate to the legal interest, and
- (b) sufficient for the repayment of all or part of the legal interest,

is payable to the person with the benefit of the legal interest.

(3) Where there is more than one legal interest, payment is made in accordance with the priority of the legal interest.

(4) In this section “legal interest” means—

- (a) a legal charge;
- (b) a mortgage;
- (c) a security;
- (d) a court order that a person has a right or interest.

Payment of compensation: interest, taxes etc.

12.—(1) Subject to subsection (2), interest on compensation accrues at an annual rate of 4% from the date compensation is claimed until the date of payment or deposit in accordance with subsection (4).

(2) For the purpose of calculating interest on compensation determined in accordance with paragraph 2 of Part 1 of the Schedule, compensation is deemed to be payable each month, with the first date of the payment being the date the requisition order takes effect.

(3) At any time before compensation is agreed or assessed by the tribunal, the requisition authority may pay the claimant up to 75% of the amount, including interest, the authority considers is the amount of compensation payable.

(4) The compensation may be deposited in accordance with the directions of the Chief Officer where—

- (a) a claimant does not accept an amount of compensation;
- (b) a person is unable to make a claim because the person is a minor, under a mental impairment, or absent from the island of Cyprus;
- (c) ownership of the land is uncertain; or
- (d) ownership of the land is in dispute.

(5) Prior to payment of compensation, the requisition authority must deduct all taxes, fees or duty owing on the requisitioned land and pay the taxes, rates or fees to the appropriate authority.

(6) In this section “appropriate authority” is the authority to which the taxes, rates or fees are payable.

PART 4

Miscellaneous

Exclusions and limitations

13. This Ordinance does not apply to land—

- (a) owned or used by the Republic; or

- (b) used as a place of worship.

Service of documents

14.—(1) A document to be served on a person under this Ordinance is to be served either by personal service on the person or by registered letter to the last known address of the person (whether or not that address is on the island of Cyprus).

(2) If a document is to be served on a person whose whereabouts cannot be established (whether or not that person is thought to be absent from the island of Cyprus), that document may be served by registered post to the last known address of the person and in addition is to be—

- (a) published in a newspaper with a circulation on the island of Cyprus; and
- (b) attached to a prominent place within the community council or municipal council area where the person to whom it is addressed was last known to reside.

(3) If a document to be served relates to land in respect of which ownership cannot be ascertained, that document is to be served by—

- (a) publishing it in a newspaper with a circulation on the island of Cyprus; and
- (b) attaching it to a prominent place within the community council or municipal council area where the property concerned is situated.

(4) If a document to be served relates to land in respect of which ownership is disputed, that document is to be served on all of the parties to the dispute.

(5) If a document has been served on a person by personal service, a certificate stating the date of service and signed by the person effecting such service is evidence of such service.

(6) If a document has been served in accordance with subsection (2)(b) or (3)(b), a certificate stating the date on which the document was attached and signed by the person attaching the document is evidence of such service.

(7) Subject to subsection (8), a document served by registered post is deemed to have been served on the person to whom it is addressed—

- (a) 7 days after it was posted if addressed to a person on the island of Cyprus; or
- (b) 50 days after it was posted if addressed to a person elsewhere.

(8) Where subsection (2) applies, a document is deemed to have been served on the date which is 50 days after the latest of the following dates—

- (a) the date the document was posted by registered post;
- (b) the date the document was published in a newspaper with a circulation on the island of Cyprus; or
- (c) the date the document was attached to a prominent place within the community council or municipal council area where the person to whom it is addressed was last known to reside.

(9) The provisions of this section may be varied by order of the tribunal, but the tribunal does not have the power to reduce the period of deemed service specified in subsections (7) and (8).

Representatives

15. For the purposes of this Ordinance—

- (a) service of a document is effected if the document is served on a person authorised to represent a person on whom the document is to be served (“authorised representative”);
- (b) any act carried out by a person’s authorised representative is deemed to be the act of the person.

Compensation Assessment Tribunal

16.—(1) The tribunal has exclusive jurisdiction to determine disputes about the amount of compensation payable arising from the requisition or intended requisition of land under this Ordinance.

(2) The Compensation Assessment Tribunal Rules 1956(a) (the “1956 Rules”) apply to proceedings for compensation under this Ordinance as if references to “Acquiring Authority” were references to “requisition authority”, and with all other necessary and incidental modifications.

(3) The Administrator, with the concurrence of the Presiding Judge, may make rules by public instrument to regulate the practice and procedure of the tribunal in respect of proceedings under this Ordinance.

(4) Rules made under subsection (2) may disapply any provision of the 1956 Rules in relation to proceedings under this Ordinance, or make further modifications to the 1956 Rules as they apply to proceedings under this Ordinance.

(5) Without limiting the generality of subsections (3) and (4), the rules may include—

- (a) procedures for the summary trial of any urgent matter;
- (b) the forms and fees for proceedings;
- (c) the assessment of costs;
- (d) procedures for appeals, including granting leave to appeal;
- (e) a power for the Presiding Judge to make practice directions.

Regulations

17.—(1) The Administrator may make regulations for the purpose of giving better effect to this Ordinance.

(2) Regulations are made as a public instrument.

(3) Without limiting the generality of subsection (1), regulations may include—

- (a) procedures for conducting a preliminary investigation to determine if requisition is necessary;
- (b) procedures for taking possession of requisitioned land; and
- (c) the assessment of compensation.

(a) Colonial Subsidiary Legislation No.1151/1956, Cyprus Gazette No. 29 November 1956 as applied in the Areas by the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369, United Kingdom). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/2012) provides for the interpretation of such legislation. Subsidiary legislation no. 1151/1956 was amended by public instruments 13/1979 and 27/1990.

SCHEDULE

Compensation

Section 8

PART 1

Amount of compensation

- 1.** Compensation in relation to requisitioned land (“land”) consists of the following amounts.
- 2.** The amount that would have been payable by a lessee under a lease for the land for the requisition period determined as follows—
 - (a) by reference to the market rental value of the land on the valuation date; and
 - (b) where the market rental value is determined on the basis that the lessee has undertaken to pay for maintenance, repairs and insurance and any other expenses necessarily incurred in connection with the land.
- 3.** Where the land was used in the course of business on the valuation date the amount directly arising from the loss of business use during the requisition period.
- 4.** The amount equal to any reduction in the value of the land resulting from—
 - (a) a building or other structure placed on the land by the requisition authority or the acquiring authority during the requisition period;
 - (b) damage to the land caused by the requisition authority or the acquiring authority, but excluding natural wear and tear and any damage rectified by the requisition authority or the acquiring authority.
- 5.** Where the land is agricultural land, the amount which an incoming lessee would reasonably expect to pay for the benefit of previous cultivation and the existing crops on the valuation date.
- 6.** The reasonable expenses incurred for the purpose of complying with the requisition order.
- 7.** For the purpose of determining the amount payable—
 - (a) under paragraph 2, 3 or 5, the effect of the requisition order must be ignored;
 - (b) under paragraph 4 the reduction in value is assessed by reference to the open market value of the land on the valuation date.
- 8.** Paragraph 7(a) does not apply where the land is to be used for mining.
- 9.** The amount payable under paragraph 4 must not exceed the value of the land on the valuation date, not taking into account any increase in value resulting from the requisition order.
- 10.** For the purpose of this Part—
 - (a) “market rental value” means the estimated amount for which an interest in the land should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;
 - (b) “estimated amount” in paragraph (a) is determined by reference to the lawful use of the land on the valuation date with no account taken of anything which happens after that date; and
 - (c) “valuation date” means the day before the requisition order takes effect.

PART 2

Payment of compensation

11. Compensation under paragraph 2 (lease of land) is payable to the owner of the requisitioned land.

12. For the purpose of payment of compensation under paragraph 2, a claim is deemed to have been made on the day the requisition order takes effect.

13. Compensation under paragraph 2 is determined for each day of the requisition period and is payable at monthly intervals, or such longer period as may be agreed between the claimant and the requisition authority.

14. A claim for compensation under paragraph 3 (loss of business use) must be made by the person who suffered the loss, as soon as reasonably practicable after the loss has occurred.

15. A claim for compensation under paragraph 4 (reduction in value caused by building etc.) must be made as soon as reasonably practicable after the end of the requisition period by the owner of the land, or by a person who may be entitled to all or part of the compensation under section 11 (apportionment).

16. A claim for compensation under paragraph 5 (agricultural land) must be made by the person in possession of the land immediately before the requisition period, as soon as reasonably practicable after a requisition order takes effect.

17. A claim for compensation under paragraph 6 (compliance with requisition order) must be made by the person by whom or on whose behalf the expenses were incurred as soon as reasonably practicable after the expenses were incurred.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

Introduction

1. This explanatory note relates to the Land Requisition Ordinance 2016 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

Summary

3. The Ordinance reflects the Republic’s Law Number 21 of 1962 (Requisition of Property Law) with necessary modification for the Areas. It provides a power for the Administrator to requisition land by order for a purpose of public benefit, and sets out the rules for determining the amount of compensation payable. If compensation cannot be agreed, the Compensation Assessment Tribunal may determine the amount.

Particular points

4. Section 3 defines purpose of public benefit, and section 4 provides the power to make a requisition order by public instrument. Land may be requisitioned for a maximum of 3 years. Section 5 provides a power for the Administrator to make a notice of intended requisition for the purpose of investigating whether the requisition is necessary. Following such a notice an authorised person may enter the land to make the necessary investigations. A court order is required to enter a dwelling house unless the occupier consents.
5. When the requisition order takes effect the Administrator may authorise the acquiring authority to take possession of the land (section 6). The land may be used only for the purpose, including any necessary incidental purpose, specified in the requisition order (section 7).
6. Section 8 and the Schedule make provision for the assessment of compensation. It is assessed as the amount which would have been payable under a lease based on the market rental value of the land. There is also provision for compensation for loss of business use, loss of value caused by buildings placed on the land during the requisition period, damage to the requisitioned land and, in the case of agricultural land, losses related to the benefit of cultivation.
7. Section 9 requires the requisition authority to take steps to agree the amount of compensation, with the right for either party to refer the matter to the Compensation Assessment Tribunal if the amount is not agreed (section 10). Section 11 makes provision for apportionment between persons with an interest in the land including the mortgagee, and section 12 provides that interest on unpaid compensation is payable at an annual rate of 4%.
8. Section 13 excludes land owned by the Republic or used as a place of worship from the provisions of the Ordinance.
9. There are rules for service of documents set out in section 14, and section 15 makes provision for authorised representatives to act on behalf of a person. Section 16 provides that the Compensation Assessment Tribunal has exclusive jurisdiction to determine disputes about compensation and a power for the Administrator to make rules to regulate the practice and procedure of the tribunal. Section 17 is a general regulation making power.

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