

ORDER IN COUNCIL

VIII
1996

ratifying a Projet de Loi

ENTITLED

The Conveyancing (Guernsey) Law, 1996

(Registered on the Records of the Island of Guernsey
on the 17th December, 1996.)



1996

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 17th day of December, 1996 before de Vic Graham Carey, Esquire, Deputy Bailiff; present:—Stanley Walter John Jehan, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin and Alan Cecil Bisson, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 15th day of October, 1996, approving and ratifying a *Projet de Loi* entitled “The Conveyancing (Guernsey) Law, 1996” 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 in Council be registered on the records of this Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 15th day of October, 1996

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 3rd day of October 1996 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

“1. That, in pursuance of their Resolution of the 27th day of September 1995, the States of Deliberation at a meeting held on the 28th day of February 1996 approved a Bill or “Projet de Loi” entitled “The Conveyancing (Guernsey) Law, 1996” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is as set forth in the Scedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Conveyancing (Guernsey) Law, 1996” and to order that the same shall have force of Law in the Island of Guernsey.”:

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. H. Nicholls

(No.VIII - 1996)

PROJET DE LOI

ENTITLED

The Conveyancing (Guernsey) Law, 1996

THE STATES, in pursuance of their Resolution of the 27th day of September, 1995(a), 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.

Agreements for sale of real property to be in writing.

1. (1) An agreement for the sale or other disposition of real property can be made only in writing and only by incorporating all the terms which the parties have expressly agreed in one or more documents or, where conditions of sale are exchanged, in each.

(2) The terms may be incorporated in the documents by being set out in them or by reference to some other document.

(3) The documents incorporating the terms or, where conditions of sale are exchanged, one of the documents incorporating them (but not necessarily the same one), must (except in the case of documents executed devant justice) be signed by or on behalf of each party to the agreement.

(4) This section does not apply in relation to-

(a) an agreement made in the course of a public auction;

(b) an agreement made before this section came into force; or

(a) Article XXII of Billet d'État No. XX of 1995.

- (c) any other agreement of a description specified by order of the Royal Court.

(5) Nothing in this section affects the creation or operation of resulting, implied or constructive trusts.

- (6) In this section-

"disposition" means any of the following dispositions or dealings-

- (a) a disposition or dealing to be completed by the registration of
 - (i) a document set out in the Schedule to the Conveyancing (Guernsey) Law, 1969(b); or
 - (ii) a rectification of such a document;
- (b) the grant of a usufruit or droit d'habitation or any transfer, variation or extinction thereof;
- (c) the making of a devise, bequest or appointment in a will;
- (d) the creation, variation or discharge of a servitude, wayleave or covenant (including a charged covenant within the meaning of section 2 of the Real Property (Reform) (Guernsey) Law, 1987(c));
- (e) any other disposition or dealing in real property of a description specified by order of the Royal Court;

(b) Ordres en Conseil Vol. XXII, p. 23.

(c) Ordres en Conseil Vol. XXX, p. 100.

"real property" means any estate, charge or real interest in or over real property but (for the removal of doubt) does not include a lease.

(7) The Royal Court may by order amend the definitions of "disposition" and "real property" set out in subsection (6).

Royal Court to make rules to facilitate conveyancing.

2. (1) The Royal Court may by order make such rules as it thinks fit to facilitate the conveyancing or other disposition of real property and, without prejudice to the generality of the foregoing, such rules may make provision-

- (a) for the establishment and maintenance by Her Majesty's Greffier of a register or book of cautions;
- (b) prohibiting the registration of any document described in the rules unless a caution has been entered in respect thereof and any other requirements of the rules have been complied with;
- (c) prohibiting the arrest by Her Majesty's Sheriff of monies described in the rules, being monies required to be applied towards the completion of a conveyancing transaction, unless a caution has been entered in respect of the arrest and any other requirements of the rules have been complied with;
- (d) specifying the form of cautions and of the register or book containing them;
- (e) specifying the formalities to be observed and the fees to be paid in relation to the entering of cautions;
- (f) specifying the formalities to be observed in relation to the registration of any lease and the effects of such registration;

- (g) specifying the formalities to be observed in relation to the registration of any other document described in the rules and the effects of such registration;
- (h) specifying the formalities to be observed in relation to the submission of any document described in the rules to Her Majesty's Greffier for the purpose of enabling him to assess the document duty (within the meaning of the Document Duty (Guernsey) Law, 1973, as amended(d)) or other fee payable on it;
- (i) stipulating the time at which or the event upon which a document described in the rules shall become effective in law so as to pass title to real property or otherwise to effect the disposition set out in it;
- (j) specifying, in relation to a bond or other document described in the rules, the real property to which the bond or other document is to apply when registered;
- (k) prescribing the manner in which the priority of bonds or other documents described in the rules presented for registration on the same day and in respect of the same real property is to be determined;
- (l) as to whether a consent properly given before the Conveyancing Court can be withdrawn or annulled by any subsequent event and, if so, as to the conditions subject to which the withdrawal or annulment is to be effective;

- (m) as to the effect upon any purported transaction or registration of a failure to observe any formality prescribed by the rules;
- (n) generally as to the procedures and formalities to be observed in relation to the conveyancing or other disposition of real property by the Conveyancing Court, Her Majesty's Greffier, the parties or their Advocates.

(2) In this section-

"Conveyancing Court" means the Royal Court sitting as a Conveyancing Court;

"disposition" and **"real property"** have the meanings given by section 1(6) (whether as originally enacted or as amended by an order under section 1(7));

"registration" means the registration of documents by Her Majesty's Greffier on the records of the Island.

Amendment.

3. In the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987(e)-

- (a) in section 6(b), for "Part IV of this Law" substitute "the Conveyancing (Guernsey) Law, 1996 and of any rules of the Royal Court made under section 2 thereof";
- (b) Part IV is repealed.

General provisions as to orders.

4. (1) An order of the Royal Court under section 1 or 2-

- (a) may be amended or repealed by a subsequent order thereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the Court to be necessary or expedient; and
- (c) may amend or revoke any Ordinance-
 - (i) which makes provision as to a matter in relation to which the Royal Court may by order make provision under this Law; or
 - (ii) which regulates or otherwise relates to the Greffe or to conveyancing or registration procedures or formalities.

(2) Any power conferred upon the Court by section 1 or 2 to make an order 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;
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Citation.

5. This Law may be cited as the Conveyancing (Guernsey) Law, 1996.

Commencement.

6. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed in respect of different provisions.

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