

ORDER IN COUNCIL

**XI
2003**

ratifying a Projet de Loi

ENTITLED

The Matrimonial Causes (Amendment) (Guernsey) Law, 2002

(Registered on the Records of the Island of Guernsey
on the 16th June, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 16th day of June, 2003 before Sir de Vic Carey, Bailiff; present:—
David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence
Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis
Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard,
OBE, Esquires, The Reverend Peter Gerald Lane, Michael John
Wilson, and Michael Henry De La Mare, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 8th day of May, 2003, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Matrimonial Causes (Amendment) (Guernsey) Law, 2002”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island.
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Seneschal of Sark for registration on the records of that Island.

At the Court at Buckingham Palace

The 8th day of May, 2003

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 the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of 28th September, 2000, the States of Deliberation at a meeting on 27th November, 2002 approved a Projet de Loi entitled “The Matrimonial Causes (Amendment) (Guernsey) Law, 2002” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 22nd January 2003, considering the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 22nd January 2003 considered the Projet de Loi when a Resolution was passed agreeing to its application to Sark. 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 Matrimonial Causes (Amendment) (Guernsey) Law, 2002” and to order that it shall have force of law in the Bailiwick 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 of and ratify the said 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 Bailiwick 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.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Matrimonial Causes (Amendment) (Guernsey) Law, 2002

THE STATES, in pursuance of their Resolution of the 28th day of September, 2000^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 Bailiwick of Guernsey.

Amendments.

1. The Law of 1939 is amended as set out in the Schedule.

Interpretation.

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

"the Law of 1939" means the Matrimonial Causes Law (Guernsey), 1939, as amended^b; and

"the Schedule" means the schedule to this Law.

^a Article XIII of Billet d'État No. XX of 2000.

^b Ordres en Conseil Vol. XI, p. 318; Vol. XII, p. 278; Vol. XIII, p. 38; Vol. XV, p. 422; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489; Vol. XXVII, p. 99 and Order in Council No. IX of 1996 and XIX of 1997.

(2) Except where the context otherwise requires, references in the Schedule to Articles and paragraphs are to articles and paragraphs of the Law of 1939.

Citation.

3. This Law and the Matrimonial Causes Laws, 1939 to 1997 may be cited together as the Matrimonial Causes Laws, 1939 to 2002.

SCHEDULE

Amendment of the Law of 1939

Amendment of Article 2.

1. In Article 2 delete "and by Article 21 (entitled "Exclusion of Sark"), of this Law".

Repeal of Article 21.

2. Article 21 is repealed.

Amendment of Article 46.

3. In paragraph 46(1) after "if it thinks fit" insert "and subject to Article 57A".

Amendment of Article 50.

4. In Article 50 after "if it thinks fit" insert "and subject to Article 57A".

New Articles 57A and 57B.

5. After Article 57 insert -

"ARTICLE 57A. - EFFECT OF ORDERS OF COURT IN RELATION TO SARK REAL PROPERTY

(1) No order made by the Court under this Law shall have effect to the extent that it derogates from or infringes or purports to derogate from or infringe the rule of the law or custom of Sark relating to the partibility and division of Sark real property.

(2) Where the Court exercises any power under -

- (a) Articles 46 and 47 for the securing of a gross or periodic sum or other payment of money; or
- (b) Article 52 (power of Court to award particular priority to hypothèque),

in respect of Sark real property, it may direct that any order or declaration of the Court shall be registered on the public records of the island of Sark.

(3) The Court of the Seneschal may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, regulating and prescribing the manner in which an order or declaration of the Court -

- (a) made in the exercise of a power under Articles 46, 47 or 52; and
- (b) in respect of which the Court makes a direction under paragraph (2),

may be registered on the public records of the Island of Sark.

ARTICLE 57B. - POWER OF COURT TO GRANT LEASEHOLD INTEREST IN SARK REAL PROPERTY

(1) Where a decree of divorce or nullity of marriage or a decree or pronouncement of judicial separation has been granted, the Court may, if it thinks

fit, grant to a party to the marriage, a leasehold interest ("**a statutory leasehold interest**") in respect of all or part of any Sark real property which is vested -

- (a) jointly in that party and the other party; or
- (b) solely in the other party.

(2) A statutory leasehold interest shall create, as between the statutory lessor and the statutory lessee, the relationship of landlord and tenant of the property in respect of which it is granted -

- (a) at such rent or premium;
- (b) for such term; and
- (c) subject to such covenants, conditions and other matters,

as the Court may by order direct.

(3) Where a statutory leasehold interest is granted subject to a proviso or stipulation giving the statutory lessor a right of re-entry or forfeiture for breach of any covenant or condition, that right shall not be enforceable, except in accordance with the terms of an order of the Court.

(4) Where a statutory lessor applies for an order under paragraph (3), the statutory lessee may apply to the Court for relief; and the Court may grant or refuse the relief, as the Court, having regard to -

- (a) the proceedings and conduct of the parties; and

(b) all other circumstances,

thinks fit.

(5) Where the Court decides to grant relief under paragraph (4), it may do so on such terms and subject to such conditions as it thinks fit.

(6) The Court may, at any time during which a party to the marriage is a statutory lessee -

(a) upon the application of either party to the marriage;

(b) upon such terms; and

(c) subject to such conditions as it thinks fit;

by further order vary an order made under paragraph (2), where it appears to the Court just and equitable so to do.

(7) The Court of the Seneschal may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, regulating and prescribing the manner in which an order under paragraph (2) or (6) may be registered on the public records of the Island of Sark.

(8) In this Article and, insofar as concerns the meaning of "**Sark real property**", Article 57A, except where the context otherwise requires -

"freehold" has the same meaning as in the Real Property

(Succession) (Sark) Law, 1999^c;

"Sark real property" means a tenement or a freehold;

"statutory leasehold interest" means a leasehold interest granted under paragraph (1) of this Article;

"statutory lessee" means a person lawfully entitled to possession of Sark real property in accordance with the terms and conditions of a statutory leasehold interest which is in force in respect of that real property;

"statutory lessor" means the lawful owner for the time being of Sark real property in respect of which there is in force a statutory leasehold interest; and

"tenement" has the same meaning as in the Real Property (Succession) (Sark) Law, 1999."

^c Order in Council No. XIII of 1999.