

PROJET DE LOI

ENTITLED

The Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004 *

[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

* No. X of 2005 (Ordres en Conseil Vol. XLV, p. 195); as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Loi relative au Retrait Lignager, aux Appropriements, et à la Lecture des Contrats aux Plaids d'Héritage (Ordres en Conseil Vol. VII, p. 176); the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 (No. IV of 2008).

PROJET DE LOI

ENTITLED

The Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004

ARRANGEMENT OF SECTIONS

1. Ordinances as to housing schemes.
2. Ordinances as to leasehold interests.
3. Interpretation.
4. Additional provision as to Ordinances.
5. Citation.

PROJET DE LOI

ENTITLED

The Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004

THE STATES, in pursuance of their Resolutions of the 26th September, 2003^a and the 24th November, 2004^b, 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.

Ordinances as to housing schemes.

1. The States may by Ordinance make such provision as they think fit for the purpose of implementing, or facilitating the implementation of, housing schemes.

NOTE

The following Ordinances have been made under section 1:

*Real Property (Housing Schemes and Miscellaneous Provisions)
(Guernsey) Ordinance, 2006;*

*Real Property (Housing Schemes and Miscellaneous Provisions)
(Guernsey) (Amendment) Ordinance, 2006.*

Ordinances as to leasehold interests.

2. The States may by Ordinance make such provision as they think fit –

(a) as to the circumstances in which, the purposes for

^a Article XXI of Billet d'État No. XXI of 2003.

^b Article IV of Billet d'État No. XX of 2004.

which, the conditions and formalities subject to which, and the methods (whether by registration or otherwise) by which, a leasehold interest, whether or not treated as or deemed to be real property by virtue of an Ordinance under this Law, may be charged,

- (b) for providing that a leasehold interest is to be treated as or deemed to be real property, either generally or in specified circumstances or for specified purposes, and any such Ordinance may specify –
 - (i) the term, covenants, conditions or other attributes which will qualify a leasehold interest to be so treated or deemed,
 - (ii) the classes or descriptions of leasehold interest which will so qualify,
 - (iii) the classes or descriptions of property which may be subject to leasehold interests which will so qualify, and
 - (iv) the classes or descriptions of reversioner and leaseholder of leasehold interests which will so qualify,
- (c) as to the priorities and protections that may be created, respectively, for the reversioner, leaseholder and chargee, and for any other person claiming a right or interest in, or in property subject to, a leasehold interest which is charged,

- (d) as to –
 - (i) the disapplication or modification of any rule of privity of contract or estate between the original parties to a lease, and
 - (ii) the respective rights and obligations of and between an assignor of a leasehold interest, the reversioner and the assignee in the event of an assignment of the interest, and
- (e) for providing for relief against forfeiture of a leasehold interest in the event of any breach by the leaseholder of any covenant, condition or other provision of the lease (whether or not charged) by which the leasehold interest was created.

Interpretation.

3. (1) In this Law –

"agreement" includes any arrangement or transaction,

"assisted purchase" means an arrangement whereby a qualifying individual acquires a property made available under a housing scheme with funds provided in whole or in part by a housing provider,

"charged" includes secured, encumbered, mortgaged and hypothecated, and related expressions shall be construed accordingly,

"enactment" means any Law, ordinance, rule of court or other

legislative instrument having effect in Guernsey, and includes any provision of this Law,

"housing provider" includes the States and any other person or body approved by the States [Committee for Employment & Social Security] to provide or facilitate the provision of affordable housing for qualifying individuals for the purposes of a housing scheme,

"housing scheme" means a scheme the rules of which are laid down by a housing provider and approved by the States [Committee for Employment & Social Security], being a scheme whereby –

- (a) housing providers make available or otherwise facilitate the provision of affordable housing in Guernsey for qualifying individuals,
- (b) qualifying individuals may acquire that housing, whether by taking an estate of inheritance or a leasehold interest or otherwise, and whether by way of partial ownership, assisted purchase or otherwise,
- (c) that housing may (but need not) be retained in a pool reserved by housing providers for qualifying individuals,

"leasehold interest" means any interest in or in respect of real property which confers or vests rights of possession or enjoyment and which, apart from the provisions of an Ordinance under section 2(b), is treated by law as or deemed to be personal or movable property,

"partial ownership" means an arrangement whereby a qualifying

individual and a housing provider own a property made available under a housing scheme jointly (whether in undivided shares or otherwise) or in any other way,

"qualifying individuals" means individuals of a class or description specified in the rules of a housing scheme,

"real property" includes immovable property.

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

NOTES

In section 3, the words "Committee for Employment & Social Security" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 7(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Housing Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 7(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Additional provision as to Ordinances.

4. (1) An Ordinance under this Law may amend, extend, adapt, modify or disapply (so far as it has effect in Guernsey) any enactment, including (without limitation) –

(a) the Stay of Evictions Laws, 1946 and 1954^c,

^c Ordres en Conseil Vol. XII, p. 262 and Vol. XVI, p. 41.

- (b) the Saisie Procedure (Simplification) (Bailiwick) Order, 1952^d,
 - (c) the Document Duty (Guernsey) Law, 1973^e,
 - (d) the Dwellings Profits Tax (Guernsey) Law, 1975^f,
 - (e) the Tax on Rateable Values (Guernsey) Law, 1976^g,
 - (f) the Real Property (Reform) (Guernsey) Law, 1987^h,
and
 - (g) this Law.
- (2) An Ordinance under this Law may –
- (a) amend, extend, adapt, modify or disapply any rule of customary law, and
 - (b) notwithstanding that the effect of the Ordinance is to provide that leasehold interests are to be treated as or deemed to be real property, provide that such interests are to be personal or movable property for the purposes

^d Orders of the Royal Court Vol. I, p. 49; No. III of 1982; No. XIV of 1989.

^e Ordres en Conseil Vol. XXIV, p. 74; No. XXVI of 2002.

^f Ordres en Conseil Vol. XXV, p. 91; Vol. XXVIII, p. 294; and Vol. XXXI, pp. 307 and 464.

^g Ordres en Conseil Vol. XXVI, p. 86; No. II of 1995.

^h Ordres en Conseil Vol. XXX, p. 100.

of succession or retraits lignagers.

(3) An Ordinance under this Law is valid notwithstanding that it makes provision which is of general application and the purpose of which is not limited to implementing, or facilitating the implementation of, housing schemes, or providing for the matters set out in section 2.

(4) An Ordinance under this Law –

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
- (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit.

(5) Any power conferred by this Law to make an Ordinance 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.

(6) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law –

- (a) may make provision as to –
 - (i) the enforcement of the rules of housing schemes laid down by housing providers,
 - (ii) the enforcement of covenants, conditions, options and rights (whether of pre-emption or otherwise) by the original parties to the agreement by which they were created and by their respective successors in title and assigns,
 - (iii) joint interests in real property and in leasehold interests, and agreements in respect of such joint interests, and the termination or severance of such joint interests and the consequences thereof, and
 - (iv) the remedies available to the parties to any agreement concerning real property (including property which is treated as or deemed to be real

property by virtue of an Ordinance under this Law) including, without limitation, declarations, injunctions, specific performance, rectification and rescission,

- (b) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (c) may make provision for matters arising out of or related to housing schemes, real property (or any interest therein) or leasehold interests,
- (d) may empower the States [Committee for Employment & Social Security] or any other department, committee or council of the States, or the Royal Court, to make regulations or rules as to any matter in respect of which an Ordinance may be made under this Law, and
- (e) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi* (including provision amending any enactment), but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

NOTES

In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 7(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Housing Department and of its

Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 7(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The following Ordinances have been made under section 4:

Real Property (Housing Schemes and Miscellaneous Provisions) (Guernsey) Ordinance, 2006;

Real Property (Housing Schemes and Miscellaneous Provisions) (Guernsey) (Amendment) Ordinance, 2006.

In accordance with the provisions of the Dwellings Profits Tax (Suspension of Law) (Guernsey) Ordinance, 2009, section 1, with effect from 25th March, 2009 and subject to the savings in section 2 of the 2009 Ordinance, the operation of the Dwellings Profits Tax (Guernsey) Law, 1975, as amended, is suspended during the period of operation of the 2009 Ordinance.

In accordance with the provisions of the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006, section 32(1), with effect from 8th May, 2008, the "droit de retrait lignager" (right of redemption of real property) is abolished, subject to the provisions of section 32(3) of the 2006 Law.¹

The Document Duty (Guernsey) Law, 1973, in its application to the Island of Guernsey, has since been repealed by the Document Duty (Guernsey) Law, 2017, section 15, with effect from 15th November, 2017.

The Tax on Rateable Values (Guernsey) Law, 1976 has since been repealed by the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007, section 47, Schedule 2, with effect from 1st January, 2008.

Citation.

5. This Law may be cited as the Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004.

NOTE

The Law received Royal Sanction on 7th June, 2005 and was registered on the Records of the Island of Guernsey and came into force on 8th July, 2005.

¹ The right of redemption of real property ("droit de retrait lignager") was previously abolished, in part, by the Loi sur les Successions, 1840, Article 27 (in the case of "vente d'immeubles à l'enchère devant Justice"), with effect from 3rd August, 1840; and by the Loi relative au Retrait Lignager, aux Appropriements, et à la Lecture des Contrats aux Plaids d'Héritage, 1924, Article I, with effect from 12th January, 1924, save for the exceptions in paragraph (a) and paragraph (b) of the said Article I.