

# ORDER IN COUNCIL

**XI**  
**2007**

ratifying a Projet de Loi

ENTITLED

## **The Personal Property (Succession) (Sark) Law, 2007**

(Registered on the Records of the Island of Guernsey  
on the 2nd July, 2007.)



---

2007

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

2<sup>nd</sup> day of July, 2007 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- David Charles Lowe, OBE, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, and David Osmond Le Conte, Esquire Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 13 June 2007 approving and ratifying a Projet de Loi entitled the Personal Property (Succession) (Sark) Law 2007, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ORDERED: -

1. That the said Order in Council be registered on the records of this Island; and
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 Sénéchal of Sark for registration on the records of that Island.



*At the Court at Buckingham Palace*

THE 13th DAY OF JUNE 2007

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 22 February 1952 the Committee have considered a Petition of the Chief Pleas of the Island of Sark:

"That, in pursuance of their Resolution of 19th January 2006, the Chief Pleas of the Island of Sark at a meeting on 18th January 2007 approved a *Projet de Loi* entitled the Personal Property (Succession) (Sark) Law 2007. 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 Personal Property (Succession) (Sark) Law 2007, and to order that it shall have force of law in the Island of Sark.

"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 and ratify the *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 Island of Sark 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.

*Meriel McCullagh*

# PROJET DE LOI

ENTITLED

## **The Personal Property (Succession) (Sark) Law, 2007**

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 19th day of January, 2006, 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 Sark.

### **Removal of discrimination against illegitimate persons.**

1. (1) The provisions of this section shall apply to -

- (a) the intestate succession to the personal estate of a person dying after the date of commencement of this section ("the said date"),
- (b) the testamentary succession to, and légitime in, the personal estate of a person whose will of personalty is executed after the said date,
- (c) the provisions of any relevant instrument.

(2) Any rule of law (whether statutory or otherwise) or custom by or pursuant to which, for the purposes of succession to any personal property, an illegitimate person is, by reason of his illegitimacy, distinguished from a legitimate person, is abolished.

(3) Any reference in any will of personal property or relevant instrument, however expressed, to any relationship between two persons shall be

construed, unless the contrary intention appears, without regard to whether either of those persons, or any person through whom the relationship is deduced, is legitimate or illegitimate.

(4) For the purposes of this section an illegitimate person shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

(5) For the purposes of this section -

- (a) the fact that a person is named as the father of an illegitimate person in that person's birth certificate or in an official register of births shall constitute prima facie evidence of paternity,
- (b) subject to paragraph (c), a finding in affiliation proceedings that a person is the father of an illegitimate child shall constitute conclusive evidence of paternity,
- (c) the Court may make a declaration as to paternity on the application of a person claiming to be entitled to succeed to any personal property or, with the leave of the Court, any other interested person, provided that no such application shall, except with the leave of the Court (which shall only be granted in exceptional circumstances), be commenced after the expiration of one year beginning on the date of the death of the person in respect of whose personal property the application is made,
- (d) the burden of proving paternity shall be on the person

seeking to establish the fact.

(6) Nothing in this section shall affect the succession to the personal property of a person who has died prior to the commencement of this Law.

(7) For the avoidance of doubt, the provisions of this section do not apply to the testamentary succession to the personal estate of a person whose will was executed before the said date notwithstanding that one or more codicils to that will were executed after the said date.

(8) For the purposes of this section, the time of a person's birth shall be taken to include any time during the period beginning with -

(a) the insemination resulting in his birth, or

(b) where there was no such insemination, his conception,

and (in either case) ending with his birth.

#### **Power to make Ordinances.**

2. The Chief Pleas may, by Ordinance -

(a) amend the provisions of section 1(5),

(b) make provision for proof of paternity,

(c) amend the definition of "**affiliation proceedings**" in section 3, and

(d) amend the definition of "**relevant instrument**" in section 3 so as to amend or add to the classes of instrument included in that definition.

### Interpretation.

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

**"affiliation proceedings"** means proceedings in a court of competent jurisdiction by or as a result of which a person is declared by the court to be the father of an illegitimate child, whether or not the principal purpose of those proceedings was to establish the paternity of the child, but excluding proceedings the recognition or enforcement of which would be contrary to public policy,

**"the Court"** means the Court of the Seneschal,

**"illegitimate child"** and **"illegitimate person"** shall mean a person whose father and mother were not married to each other at the time of his birth and who has not been legitimated or adopted and who is not otherwise treated in law as legitimate, and **"illegitimate"** shall be construed accordingly,

**"official register of births"** means -

- (a) the register of births kept by the Registrar-General of Births and Deaths of the Island of Guernsey, or
- (b) a register of births kept elsewhere by an authority with functions comparable to those of the Registrar-General,

**"relevant instrument"** means an instrument executed after the said date and which is -

- (a) an instrument by which a trust is created, whether immediately or with effect from a future date, or



(b) a policy of insurance effected by any person for the benefit of his children, whether or not his spouse is also a beneficiary, pursuant to the provisions of section 12 of the Married Women's Property Law, 1928, as amended<sup>a</sup>, as extended to Sark by the Married Women's Property (Sark) Law, 1975<sup>b</sup>,

and includes any instrument which is made pursuant to, or for the purposes of, any instrument or policy of insurance referred to in subsections (a) or (b) above.

(2) Unless the context otherwise requires, a reference in this Law to any other enactment is a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

#### **Citation.**

4. This Law may be cited as the Personal Property (Succession) (Sark) Law, 2007.

#### **Commencement.**

5. This Law shall come into force on the day next following the expiration of one calendar month from the date of registration.

---

<sup>a</sup> Ordres en Conseil, Vol. VIII, p. 215; Vol. XXVII, p. 50.

<sup>b</sup> Ordres en Conseil, Vol. XXV, p. 69.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.