

PROJET DE LOI

ENTITLED

The Law giving the Court increased power to stay execution in actions for eviction *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. 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.

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* Ordres en Conseil Vol. XII, p. 262. This Law is applied to Herm by the Herm Laws Ordinance, 1948 (Recueil d'Ordonnances Tome IX, p. 247). See also the Stay of Evictions (Amendment) Law, 1954 (Ordres en Conseil Vol. XVI, p. 41); the Population Management (Guernsey) Law, 2016 (No. VI of 2016); the Real Property (Housing Schemes and Miscellaneous Provisions) (Guernsey) Ordinance, 2006 (No. XIII of 2006).

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Repeal.

1. The "Loi ayant rapport aux pouvoirs de la Cour de remettre dans certains cas l'exécution d'un Acte de Cour" which was registered on the records on the fourth day of May in the year One thousand Nine Hundred and Eighteen is hereby repealed.

NOTES

The following cases have referred to this Law:

Auto-Tune Ltd. v. Pearce (1985) 1.GLJ.26;
Marshall v. Camp (1987-88) 6.GLJ.142;
Savage v. Moulin Huet Holdings Ltd. (1995) 19.GLJ.33;
Westlands Holdings Limited v. Daish (1999) 27.GLJ.140;
Cotterill v Ozanne (2010) (Unreported, Court of Appeal, 23rd August) (Guernsey Judgment No 33/2010).

This Law is applied to the Island of Herm by the Herm Laws Ordinance, 1948, Article 1, Schedule, Part IF, with effect from 13th March, 1948.

In accordance with the provisions of the Stay of Evictions (Amendment) Law, 1954, section 2, with effect from 13th November, 1954, this Law, when together referred to with the 1954 Law, may be referred to as the Stay of Evictions Laws, 1946 and 1954.

Powers of Court.

2. When the tenant or sub-tenant of a dwelling house or other premises is proceeded against for eviction from any dwelling house or premises, the Court may, having taken into consideration the position of the parties and all the circumstances of the case, make an order that execution of any order for eviction from the said premises be suspended during such time and upon such conditions as the Court may consider reasonable.

NOTES

The following case has referred to section 2:

Westlands Holdings Limited v. Daish (1999) 27.GLJ.140.

In accordance with the provisions of the Stay of Evictions (Amendment) Law, 1954, section 1, with effect from 13th November, 1954, the power of the Court hereunder to suspend execution of an order for the eviction of a tenant or sub-tenant shall henceforth extend to enable the Court to suspend, during such time not exceeding six months as the Court may consider reasonable, execution of any order for the eviction of an occupier of any premises other than an occupier whose occupation was in its inception unlawful.

In accordance with the provisions of the Real Property (Housing Schemes and Miscellaneous Provisions) (Guernsey) Ordinance, 2006, section 8, with effect from 26th April, 2006, a "qualifying individual", as defined in the 2006 Ordinance, shall be considered, in respect of any real property occupied by him, to be an occupier of real property and not a tenant or sub-tenant and, accordingly, is not entitled to a stay of execution of any order for his eviction from the real property for a period exceeding 6 months.

Matters to be taken into account.

3. In considering the position of the parties and the circumstances of the case, with a view to deciding whether the Court should suspend execution of an eviction order, and if so, during what times and upon what terms such execution should be delayed, the Court shall take into account the following matters, *inter alia* –

- (a) Whether any rent lawfully due from the tenant or sub-tenant has not been paid, or any other obligation of the tenancy has been broken or not performed.
- (b) Whether there is suitable alternative accommodation available for the tenant or subtenant, or whether such accommodation be available when the judgment or order takes effect.
- (c) Whether the tenant or sub-tenant or any person residing or lodging with him, or being his sub-tenant, has been guilty of conduct which is a nuisance or

annoyance to adjoining occupiers.

- (d) Whether the condition of the premises has in the opinion of the Court deteriorated owing to the act, neglect or default of the tenant or sub-tenant or of any such person, and where such person is himself a lodger or sub-tenant of such tenant or sub-tenant, whether the Court is satisfied that such tenant or sub-tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to take for the removal of such person.
- (e) Whether the tenant or sub-tenant has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose.
- (f) Whether the tenant or sub-tenant has given notice to quit, and in consequence the landlord has contracted to sell or let the house, or has taken other steps as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession.
- (g) Whether the premises consist of or include premises licensed for the sale of intoxicating liquor and the tenant or sub-tenant has committed an offence as holder of the licence, or has not conducted the premises to the satisfaction of the Court.
- (h) Whether the dwelling-house is so overcrowded as to be dangerous or injurious to the health of the inmates, and the Court is satisfied that the overcrowding could have been abated by the removal of any lodger or sub-tenant whom it would in all the circumstances of the case, including the question whether alternative accommodation is available for him, have been

reasonable to remove, and the tenant or sub-tenant has not taken such steps as he ought reasonably to have taken for his removal.

NOTE

In accordance with the provisions of the Population Management (Guernsey) Law, 2016, section 31(7), with effect from 3rd April, 2017, upon an application by the States Committee for Home Affairs pursuant to section 31(3) of the 2016 Law for an eviction order, the Ordinary Court shall not be bound to take into account any of the matters referred to in this section.

Variation of order.

4. When the Court shall have made an order for delay of execution by virtue of the provisions of section 2 of this law, any person in respect of which the order was made, shall be at liberty to apply to the Court, on showing a change of circumstances arising since the making of such order, to vary such order, and thereupon the Court may vary such order as to the Court may seem reasonable.

NOTES

The Law received Royal Sanction on 2nd August, 1946 and was registered on the Records of the Island of Guernsey and came into force on 31st August, 1946.

The following cases have referred to section 4:

*Savage v. Moulin Huet Holdings Ltd. (1995) 19.GLJ.33;
Westlands Holdings Limited v. Daish (1999) 27.GLJ.140.*
