

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Real Property (Reform) (Guernsey) Law, 1987

(Registered on the Records of the Island of Guernsey
on the 30th day of June, 1987.)



1987

V
1987

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 30th day of June, 1987, before Graham Martyn Dorey Esquire, Deputy Bailiff; present:— Donald Pescott Plummer, Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, and Leonard Arthur Moss, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of May, 1987 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Real Property (Reform) (Guernsey) Law, 1987”, 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 18th day of May 1987

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 12th day of May 1987, 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 1st day of March, 1973 and the 30th day of January, 1986, the States of Deliberation at a meeting held on the 29th day of January, 1987, approved a Bill or “Projet de Loi” entitled “The Real Property (Reform) (Guernsey) Law, 1987”, 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 Schedule 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 Real Property (Reform) (Guernsey) Law, 1987”, 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.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Real Property (Reform) (Guernsey) Law, 1987

THE STATES, in pursuance of their Resolutions of the 1st day of March, 1973 and the 30th day of January, 1986, 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.

PART I

HORIZONTAL DIVISION OF REAL PROPERTY

1. Notwithstanding the provisions of any enactment, instrument or rule of law, it is hereby declared for the removal of doubt that a person is entitled, and shall be deemed always to have been entitled, to own an estate of inheritance in any real property which is, wholly or otherwise, above or below any other real property separately from that other real property; and where, before or after the commencement of this Law, any such real property was or is conveyed for an estate of inheritance, it shall be deemed to have been validly so conveyed, the conveyance being treated in all respects in the same way and attracting the same incidences as a conveyance of land for an estate of inheritance.

Horizontal
division of
real
property.

PART II

ENFORCEMENT OF COVENANTS

2. If the owner of any land (such land being called in this Part of this Law "the servient tenement") enters into a covenant which is expressed in the document in which the covenant is made—

Charged
covenants.

- (a) to be a charged covenant for the purposes of this Law, and
- (b) to have been made for the benefit of other land specified in the document (such other land being called in this Part of this Law "the dominant tenement"),

the covenant is, if the document is registered at the Greffe in the Livre des Contrats, a charged covenant for the purposes of this Part of this Law.

Enforce-
ability of
charged
covenants.

3. A charged covenant is enforceable by the owner for the time being of the dominant tenement against the owner for the time being of the servient tenement in the same way, and by means of the same remedies, as if it were a covenant between them.

Court order
to inspect
servient
tenement.

4. If a charged covenant is made, the owner of the dominant tenement may apply to the court for an order authorising him to enter the servient tenement for the purpose of inspecting it to ascertain—

- (a) whether or not there has been a breach of the covenant, or
- (b) in cases where a signification has been served under section 6, whether or not the measures specified in the signification have been taken within the time so specified.

Grounds on
which order
to be made.

5. The court shall only make an order under section 4 if it is satisfied that—

- (a) such an order is necessary to enable the owner of the dominant tenement to ascertain whether or not there has been a breach of the charged covenant in question or, as the case may be, whether or not the

measures specified in the signification have been taken within the time so specified; and

- (b) it is otherwise just and reasonable in all the circumstances of the case that such an order should be made.

6. If the owner of the dominant tenement is satisfied, whether pursuant to an inspection of the servient tenement by him under the authority of an order made under section 4 or otherwise, that there has been a breach of a charged covenant he may, without prejudice to any other remedy he may have in respect of the breach by virtue of section 3, if the breach is capable of remedy, serve upon the owner of the servient tenement a signification specifying—

Service of signification requiring measures to be taken.

- (a) the breach complained of;
- (b) the measures to be taken by the owner of the servient tenement to remedy the breach; and
- (c) a reasonable time within which the measures must be taken.

7. (1) If the owner of a servient tenement upon whom a signification has been served under section 6 fails to take the measures specified in the signification within the time so specified, the owner of the dominant tenement may, without prejudice to any other remedy he may have by virtue of section 3, apply to the court for an order authorising him to enter the servient tenement for the purpose of taking such measures thereon, being measures necessary to remedy the breach of the charged covenant in question, as are specified in the order, taking with him such persons as are named or described in the order.

Court order to enter servient tenement to take measures in default.

(2) Any expenses reasonably incurred by the owner of the dominant tenement in taking the measures specified in the order are recoverable as a debt from the defendant to the application.

Grounds on which order to be made.

8. The court shall only make an order under section 7 if it is satisfied that—

- (a) there has been a breach of the charged covenant in question;
- (b) if such an order is not made, the breach will not be remedied by the owner of the servient tenement within a reasonable time; and
- (c) it is otherwise just and reasonable in all the circumstances of the case that such an order should be made.

Proceedings may be noted in Livre.

9. Any person instituting proceedings to enforce a charged covenant under section 3, or for an order under section 4 or 7, may require a note of the proceedings to be made in the Livre on the day of the tabling of the proceedings before the Court.

Costs etc. to be a charge on servient tenement.

10. If a note of any proceedings is made in the Livre in accordance with section 9, then—

- (a) any costs (including, in the case of proceedings for an order under section 4(b) or 7, the costs of serving the signification), and any damages in respect of a breach of a charged covenant, awarded in the proceedings by a decision of the court to the person who instituted the proceedings (referred to in this section as “the applicant”),
- (b) any such costs and damages payable to the applicant under any settlement of the proceedings, and

- (c) where the court has made an order under section 7, any expenses reasonably incurred by the applicant in taking the measures specified in the order

are, subject to section 16(a), a charge on the servient tenement in question and recoverable by the applicant in priority to any amount secured by any rent or obligation registered in the Livre in respect of the servient tenement on or after the date of registration of the document in which the charged covenant was made.

11. Any person who without reasonable excuse obstructs a person acting under the authority of an order of the court made under section 4 or 7 is guilty of an offence and liable, on summary conviction, to a fine not exceeding £500. Obstruction of entry.

12. If the ownership of part of a dominant tenement or servient tenement vests in a person who is not the owner of the other part of the tenement, the rights conferred by section 3 on the owner for the time being of the dominant tenement are exercisable— Division of land.

- (a) in the case of a division of the dominant tenement, by the owner for the time being of whichever part of the dominant tenement continues to be benefited by the charged covenant in question;
- (b) in the case of a division of the servient tenement, against all the owners for the time being of the servient tenement jointly or severally.

13. A covenant shall be considered for the purposes of section 2 to be expressed in the document in which it is made— Words to create charged covenant.

- (a) to be a charged covenant for the purposes of this Law, and
- (b) to have been made for the benefit of other land specified in the document,

if words to that effect are used in the document.

Other remedies not prejudiced.

14. Nothing in this Part of this Law derogates from any remedy, right or power arising otherwise than under this Part.

Summary applications.

15. The court may deal with an application for an order under section 4 or 7 summarily.

General provisions as to charged covenants.

16. A charged covenant—

- (a) may limit the amount of the liability which, in the event of a breach, is chargeable on the servient tenement under section 10;
- (b) is not liable to assessment under the Document Duty (Guernsey) Law, 1973(a); and
- (c) may not be registered in the Livre or noted in the index thereto.

Interpretation of this Part.

17. In this Part of this Law—

- “charged covenant” has the meaning given by section 2;
- “the court” means the Royal Court sitting as an Ordinary Court;
- “dominant tenement” has the meaning given by section 2;

(a) Ordres en Conseil Vol. XXIV, p. 74.

“land” includes any real property which is, wholly or otherwise, above or below any other real property;

“the Livre” means the Livre des Hypothèques, Actes de Cour et Obligations;

“obligation” means any hypothec, bond, judgment or other act of court registered in the Livre; and

“servient tenement” has the meaning given by section 2.

PART III

DISCHARGE AND MODIFICATION OF COVENANTS

18. An owner of any land who, by virtue of his ownership thereof, is bound to comply with or has the benefit of a covenant, may apply to the court for an order that the covenant be discharged or modified in the manner specified in the order.

Power of court to discharge or modify covenants.

19. The court shall only make an order under section 18 if having considered all the circumstances of the case, including where appropriate the matters set out in section 20, it is satisfied that it would be oppressive or unreasonable if the covenant were not to be discharged or modified.

Grounds of making order.

20. The matters mentioned in section 19 which the court is to consider amongst the circumstances of the case are—

Matters court is to consider.

- (a) whether the cost or burden of compliance with the covenant is likely to be disproportionate to any advantage or benefit which would be derived from such compliance;

- (b) whether, since the covenant was created, the cost or burden of compliance with the covenant has increased so as to throw a fresh and unexpected burden onto the land;
- (c) whether the covenant, by reason of changes in the character or nature of the land in question or the neighbourhood or other circumstances, is obsolete;
- (d) whether the covenant impedes some reasonable use of the land;
- (e) whether the covenant secures any practical advantage to any person entitled to the benefit of it;
- (f) whether the persons of full age and capacity entitled to the benefit of the covenant have agreed, expressly or by implication, to the discharge or modification of the covenant;
- (g) whether, if the covenant were to be discharged or modified, money would be an adequate compensation for any loss or disadvantage likely to be suffered by any person entitled to the benefit of the covenant as a result of the discharge or modification.

Compensation.

21. An order under section 18 to discharge or modify a covenant may direct the person who applied for the order to pay to any person who is entitled to the benefit of the covenant, and who is likely to suffer any loss or disadvantage as a result of the discharge or modification, such compensation as may be specified.

Restrictions on making covenants more onerous.

22. The powers of the court to make an order under section 18 shall not be exercised in such a manner as to increase the cost or burden of compliance with the covenant in question unless—

- (a) the covenant is one requiring the payment of sums of money towards the maintenance, repair or insurance of any land;
- (b) those sums have, since the covenant was created, become inadequate for that purpose; and
- (c) the person bound to make the payments has the benefit of a covenant requiring the person to whom the sums of money are to be paid to maintain, repair or as the case may be insure that land, being a covenant which is mutual with the covenant requiring the payment of sums of money.

23. If any person institutes proceedings to enforce a covenant, the person against whom the proceedings are taken may, if he applies or has applied for an order under section 18 that the covenant be discharged or modified, apply to the court for an order staying the proceedings to enforce the covenant until the application for the discharge or modification has been determined.

Staying of proceedings to enforce covenant.

24. The court may deal with an application for an order under section 18 or 23 summarily.

Summary applications.

25. In this Part of this Law—

Interpretation of this Part.

“covenant” includes a charged covenant within the meaning of Part II of this Law;

“the court” means the Royal Court sitting as an Ordinary Court;

“land” includes any real property which is, wholly or otherwise, above or below any other real property.

PART IV

MINIMUM OBLIGATIONS

Model
schemes of
covenants
for flats, etc.

26. (1) The States may by Ordinance provide model schemes of rights and obligations which may be adopted in respect of relevant premises.

(2) Without prejudice to the generality of the power conferred by subsection (1) of this section, a model scheme may—

- (a) make provision as to the management of relevant premises;
- (b) confer powers of management upon any person;
- (c) contain charged covenants within the meaning of section 2.

(3) A model scheme may be adopted with or without amendment.

(4) Part III of this Law applies to rights and obligations which are contained in a model scheme and which have been adopted as it applies to covenants within the meaning of section 25.

Minimum
rights and
obligations
applying to
flats, etc.

27. (1) The States may by Ordinance provide that the rights and obligations specified in the Ordinance, being rights and obligations which in the opinion of the States are essential for the ordinary enjoyment of relevant premises, shall be conferred or imposed upon the owners for the time being of relevant premises in respect of those premises.

(2) Without prejudice to the generality of the power conferred by subsection (1) of this section, an Ordinance under that subsection may—

- (a) confer or impose rights and obligations as to—
 - (i) the provision and maintenance of shelter and support by, or for the benefit of, relevant premises;
 - (ii) the passage of gas, water, electricity, soil and other usual services to, from or through relevant premises;
 - (iii) access to relevant premises to effect necessary repairs;
 - (iv) the recovery of the expenses of such repairs;
 - (v) the making of contributions by the owners of relevant premises towards the expense of repairing, maintaining and insuring any building of which the relevant premises form part and any land going with it;
 - (b) make different provision for different premises or different doors of premises;
 - (c) make provision which is to have effect in the event of any conflict between the rights and obligations conferred or imposed by the Ordinance and the rights and obligations conferred or imposed otherwise than by the Ordinance.
- (3) On the making of an Ordinance under subsection (1) of this section—
- (a) any right conferred upon any person by the Ordinance shall be enforceable by him against the owner for the time being of the premises over which the right is exercisable or upon which the burden of the right falls;

- (b) any obligation imposed upon any person by the Ordinance shall be enforceable against him by the owner for the time being of the premises for the benefit of which the obligation was imposed,

in the same way, and by means of the same remedies, as if the right were conferred, or as the case may be as if the obligation were imposed, by a covenant between them.

General provisions as to Ordinances.

28. An Ordinance under section 26 or 27—

- (a) may contain such incidental or supplementary provision as in the opinion of the States is necessary or expedient for the purposes of the Ordinance;
- (b) may be amended or repealed by a subsequent Ordinance thereunder.

Interpretation of this Part.

29. In this Part of this Law—

“obligations” includes liabilities and restrictions;

“relevant premises” means real property which is, wholly or otherwise, above or below any other real property and which is owned separately from that other real property.

PART V—MISCELLANEOUS

Interpretation.

30. Any reference in this Law to a section bearing a number is a reference to the section of this Law bearing that number.

Citation.

31. This Law may be cited as the Real Property (Reform) (Guernsey) Law, 1987.

Commencement.

32. This Law shall come into force on the day appointed by an Ordinance of the States.

A. G. LE CHEMINANT,
Her Majesty's Deputy Greffier.