

# ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey  
on the 8th July, 2005.)



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## ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 8th day of July, 2005 before Geoffrey Robert Rowland, Esquire, Bailiff; present:— David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy Esquires, Susan Mowbray and Barbara Jean Bartie, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 7th day of June, 2005, approving and ratifying the *Projet de Loi* entitled “The Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004”, 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 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 Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively.

# At the Court at Buckingham Palace

The 7th day of June, 2005

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 26th September, 2003 and the 24th November, 2004, the States of Deliberation at a meeting on 24th November, 2004, approved a *Projet de Loi* entitled “The Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. 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 Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004, 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 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 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 Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004**

**THE STATES**, in pursuance of their Resolutions of the 26<sup>th</sup> September, 2003<sup>a</sup> and the 24<sup>th</sup> November, 2004<sup>b</sup>, 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.

### **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 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

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<sup>a</sup> Article XXI of Billet d'État No. XXI of 2003.



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,

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(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

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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 Housing Department 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 Housing Department, 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.

**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<sup>c</sup>,
- (b) the Saisie Procedure (Simplification) (Bailiwick) Order, 1952<sup>d</sup>,
- (c) the Document Duty (Guernsey) Law, 1973<sup>e</sup>,

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<sup>c</sup> Ordres en Conseil Vol. XII, p. 262 and Vol. XVI, p. 41.

<sup>d</sup> Orders of the Royal Court Vol. I, p. 49; no. III of 1982; No. XIV of 1989.

<sup>e</sup> Ordres en Conseil Vol. XXIV, p. 74; No. XXVI of 2002.

- (d) the Dwellings Profits Tax (Guernsey) Law, 1975<sup>f</sup>,
- (e) the Tax on Rateable Values (Guernsey) Law, 1976<sup>g</sup>,
- (f) the Real Property (Reform) (Guernsey) Law, 1987<sup>h</sup>, 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 of succession or retrait lignager.

(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

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<sup>f</sup> Ordres en Conseil Vol. XXV, p. 91; Vol. XXVIII, p. 294; and Vol. XXXI, pp. 307 and 464.

<sup>g</sup> Ordres en Conseil Vol. XXVI, p. 86; No. II of 1995.

<sup>h</sup> Ordres en Conseil Vol. XXX, p. 100.

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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,

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- (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 Housing Department 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.

**Citation.**

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