

ORDER IN COUNCIL

V
1988

ratifying a Projet de Loi

ENTITLED

The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988

(Registered on the Records of the Island of Guernsey
on the 21st day of June, 1988.)



1988

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 21st day of June, 1988 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present: Brian Ernest Herbert Joy, Harry Wilson Bisson, James de Sausmarez Carey, John Christopher Bulstrode, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss and Charles Anthony Spensley, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 27th day of April, 1988, approving and ratifying a *Projet de Loi* entitled "The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988", 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 of Saint James

The 27th day of April 1988

PRESENT,

The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 28th day of March 1988, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND 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 17th day of March 1988 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—

(a) an humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolutions of the 28th day of July 1983, the 28th day of September 1983, the 29th day of February 1984, the 26th day of September 1984, and the 25th day of September 1985, the States of Deliberation at a meeting held on the 11th day of December 1985, approved a Bill or “Projet de Loi” entitled “The

Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988", 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 Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988", and to order that the same shall have force of Law in the Island of Guernsey.'; and—

- (b) an humble Petition of J. G. Gillow, Esquire, relating to the said Projet de Loi:

"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."

NOW, THEREFORE, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, having taken the said Report into consideration, are pleased, by and with the advice of Her Majesty's 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 do 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 Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988

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PROJET DE LOI

ENTITLED

The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988

THE STATES, in pursuance of their Resolutions of the 28th day of July, 1983, the 28th day of September, 1983, the 29th day of February, 1984, the 26th day of September, 1984 and the 25th day of September, 1985, 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

NURSING HOMES AND LODGING HOUSES

Division of
Housing
Register
into four
Parts.

1. The Housing Register established under section 22(1) of the principal Law shall from the date on which this Law comes into force be divided into four parts respectively designated Part A, Part B, Part C and Part D.

Inscription
in Part C of
the Register.

2. The Authority shall inscribe in Part C of the Housing Register—

- (a) on the date on which this Law comes into force, every dwelling which was on the day immediately preceding that date:
 - (i) inscribed in the Housing Register; and
 - (ii) registered as a residential home or as a nursing home under the Nursing Homes and Residential Homes (Guernsey) Law, 1976(a) (hereafter in this Law

(a) Ordres en Conseil Vol. XXVI, p. 71.

referred to as "the Nursing Homes Law");

(b) as soon as practicable, any dwelling which is for the time being:

- (i) inscribed in the Housing Register; and
- (ii) registered as a residential home or as a nursing home under the Nursing Homes Law.

3. (1) Where any dwelling which is for the time being inscribed in Part C of the Housing Register ceases to be registered under the Nursing Homes Law the Authority shall delete the inscription relating to that dwelling from Part C of the Housing Register. Transfer
from Part C.

(2) Where the inscription relating to a dwelling is deleted from Part C of the Housing Register pursuant to subsection (1) of this section the Authority shall, subject to subsection (3) of this section and to section 4(2) of this Law, inscribe that dwelling—

- (a) in Part A of the Housing Register if that dwelling:
 - (i) is not a dwelling to which paragraph (b) or paragraph (c) of this subsection applies; and either
 - (ii) was immediately prior to its inscription in Part C of the Housing Register inscribed in Part A thereof; or
 - (iii) was immediately prior to its inscription in Part C of the Housing Register inscribed in Part B thereof and is a dwelling to which paragraph (a) or paragraph (b) of section 31(2) of the principal Law applies;

- (b) in Part B of the Housing Register if that dwelling:
 - (i) is a dwelling in respect of which there is for the time being in force a boarding permit granted under the Tourist Law, 1948(b); and
 - (ii) is used, to the satisfaction of the Authority, for the business of providing sleeping accommodation for reward to tourists in accordance with the provisions of the said boarding permit;
 - (c) in Part D of the Housing Register if that dwelling is, in the opinion of the Authority, being used as a lodging house.
- (3) Notwithstanding the provisions of subsection (2) of this section, the Authority shall not thereunder inscribe a dwelling—
- (a) in Part A or Part D of the Housing Register if that dwelling, whether by alteration or otherwise, is used or has been made usable as two or more dwellings; or
 - (b) in any part of the Housing Register if that dwelling, whether by alteration or otherwise, is or has been combined with another dwelling which is not a dwelling to which Part IV of the principal Law applies, so as to be used or usable as a single dwelling.
- (4) Where the inscription relating to a dwelling is deleted from Part C of the Housing Register pursuant to subsection (1) of this section and where

(b) Ordres en Conseil Vol. XIII, p. 329; Vol. XXI, p. 104, No. XIV of 1983.

that dwelling may not thereafter be inscribed in Part A or Part D of the Housing Register by reason of the provisions of paragraph (a) of subsection (3) of this section, the Authority, upon application being made to it in that behalf, may, in its discretion, inscribe that dwelling in the Housing Register as if the application were made under section 28(3) of the principal Law.

4. (1) Where in the opinion of the Authority any dwelling which is for the time being inscribed in the Housing Register is being used as a lodging house the Authority may, subject to subsection (2) of this section, delete the inscription relating to that dwelling from Part A, Part B or Part C of the Housing Register, as the case may be, and inscribe that dwelling in Part D of the Housing Register.

Transfer to Part D of dwellings used as lodging houses.

(2) The Authority shall not delete an inscription in pursuance of subsection (1) of this section or inscribe a dwelling in Part D of the Housing Register in pursuance of any provision of this Law unless it has served on the owner thereof not less than 14 days' notice in writing of its intention so to do; and every such notice shall contain a statement that the owner is entitled to appeal to the Royal Court under the provisions of section 5 of this Law.

5. (1) Subject to subsection (2) of this section, any person aggrieved by a decision of the Authority under section 3(2)(c) or section 4(1) of this Law may appeal therefrom to the Royal Court in accordance with the provisions of section 40 of the principal Law.

Appeals in relation to inscription in Part D.

(2) The summons instituting an appeal under this section shall be served on the President of the Housing Authority within 14 days of the service of the notice referred to in section 4(2) of this Law.

(3) Whenever an appeal is instituted under this section in relation to a dwelling the Authority shall not delete any inscription of that dwelling in pursuance of section 4(1) of this Law or inscribe that dwelling in Part D of the Housing Register in pursuance of any provision of this Law until the appeal is finally determined or withdrawn; and for the purposes of this subsection an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under section 40(4) of the principal Law or until the determination of any appeal instituted within that time.

Transfer
from Part D.

6. (1) Where any dwelling which is for the time being inscribed in Part D of the Housing Register ceases in the opinion of the Authority to be used as a lodging house the Authority shall delete the inscription relating to that dwelling from Part D of the Housing Register.

(2) Where the inscription relating to a dwelling is deleted from Part D of the Housing Register pursuant to subsection (1) of this section the Authority shall, subject to subsection (3) of this section, inscribe that dwelling—

(a) in Part A of the Housing Register if that dwelling:

(i) is not a dwelling to which paragraph (b) or paragraph (c) of this subsection applies; and either

(ii) was immediately prior to its inscription in Part D of the Housing Register inscribed in Part A thereof; or

- (iii) was immediately prior to its inscription in Part D of the Housing Register inscribed in Part B thereof and is a dwelling to which paragraph (a) or paragraph (b) of section 31(2) of the principal Law applies;
 - (b) in Part B of the Housing Register if that dwelling:
 - (i) is a dwelling in respect of which there is for the time being in force a boarding permit granted under the provisions of the Tourist Law, 1948; and
 - (ii) is used, to the satisfaction of the Authority, for the business of providing sleeping accommodation for reward to tourists in accordance with the provisions of the said boarding permit;
 - (c) in Part C of the Housing Register if that dwelling is for the time being registered as a residential home or as a nursing home under the Nursing Homes Law.
- (3) Notwithstanding the provisions of subsection (2) of this section, the Authority shall not thereunder inscribe a dwelling—
- (a) in Part A of the Housing Register if that dwelling, whether by alteration or otherwise, is used or has been made usable as two or more dwellings; or,
 - (b) in any part of the Housing Register if that dwelling, whether by alteration or otherwise, is or has been combined with another dwelling which is not a dwelling to which Part IV of the principal Law applies, so as to be used or usable as a single dwelling.

(4) Where the inscription relating to a dwelling is deleted from Part D of the Housing Register pursuant to subsection (1) of this section and where that dwelling may not thereafter be inscribed in Part A of the Housing Register by reason of the provisions of paragraph (a) of subsection (3) of this section, the Authority, upon application being made to it in that behalf, may, in its discretion, inscribe that dwelling in the Housing Register as if the application were made under section 28(3) of the principal Law.

PART II

DECLARATIONS OF REGISTRATION

Application
for declara-
tion of
registration.

7. (1) The owner of a dwelling which is for the time being inscribed in the Housing Register, or any other person authorised in writing in that behalf by the said owner, may make application to the Authority in such form and accompanied by such information as the Authority may from time to time require, for a declaration (hereinafter referred to as "a declaration of registration") that the dwelling concerned is validly and properly inscribed in Part A, Part B, Part C or Part D of the Housing Register, as the case may be.

(2) Upon receipt of an application under subsection (1) of this section, and at any time thereafter, the Authority may require the applicant to supply the Authority with such information, in addition to any information supplied pursuant to that subsection, as the Authority may require.

Issue of
Declaration
of Registra-
tion.

8. (1) The Authority shall, upon receipt of an application in relation to a dwelling under section 7 of this Law, if it is satisfied that the dwelling is

validly and properly inscribed in Part A, Part B, Part C or Part D of the Housing Register, issue to the applicant a declaration of registration, in writing, signed by the President or by a member of the Authority authorised in that behalf by the Authority, stating its decision that on the date specified in that declaration the dwelling was validly and properly so inscribed.

(2) If the Authority is not satisfied as mentioned in subsection (1) of this section, it shall serve on the applicant a notice stating its decision and the reasons why it is not so satisfied.

(3) Subject to subsection (4) of this section, in any proceedings for a contravention of this Law or of the principal Law a declaration of registration stating that, on the date specified in that declaration, the dwelling was validly and properly inscribed in Part A, Part B, Part C or Part D of the Housing Register, as the case may be, shall be conclusive evidence of that fact.

(4) Where a person is convicted of an offence under section 42(a) of the principal Law in connection with an application for a declaration of registration any such declaration issued in consequence of that application shall thereupon cease to be valid and shall not be evidence of any fact stated therein.

9. (1) Any person aggrieved by a decision of the Authority stated in a declaration of registration under section 8(1) of this Law may appeal therefrom to the Ordinary Court on the ground that the decision of the Authority was wrong.

Appeal
against
refusal of
declaration
of registra-
tion.

(2) Any person aggrieved by a decision stated in a notice served by the Authority under section 8(2) of this Law may appeal therefrom to the

Ordinary Court on the grounds that the Authority ought to have issued a declaration of registration.

(3) An appeal under this section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and which shall be served upon the President of the Authority to show cause why the decision appealed from should not be set aside or varied.

(4) An appeal on any question of law shall lie to the Court of Appeal from any decision in first instance of the Ordinary Court under this section within such period and in such manner as may be prescribed by Order of the Royal Court.

PART III

AMENDMENTS TO THE PRINCIPAL LAW

Amend-
ments to
principal
Law.

10. The Housing (Control of Occupation) (Guernsey) Law, 1982(c), is amended in accordance with the following provisions of this section (in which references to a numbered provision are to the provision which is so numbered in that Law)—

- (a) in section 9(2)(f), for the words “paragraph (d) or paragraph (e)” in each place where those words appear, there is substituted “any paragraph”;
- (b) in section 9(2)(j)(i), immediately after the words “under or by virtue of a licence” there is inserted “, other than a licence for the occupation of a dwelling then inscribed in Part C of the Housing Register.”;

(c) Ordre en Conseil No. VIII of 1982.

- (c) for the semi-colon at the end of section 9(2)(j)(iii) there is substituted “, or”; and the following additional paragraph is inserted immediately thereafter:

“(iv) otherwise than under or by virtue of such a licence or licences as is or are mentioned in sub-paragraph (i) of this paragraph but in circumstances that are, in the opinion of the Authority which opinion shall be served by notice in writing on that person, such that his period of such occupation should be treated as being occupation under or by virtue of such a licence or licences as is or are mentioned in that sub-paragraph;”;

- (d) for the fullstop at the end of section 9(2)(l) there is substituted a semi-colon; and the following two additional paragraphs are inserted immediately thereafter:

“(m) a person—

- (i) who was born otherwise than in this Island;
- (ii) whose birth took place otherwise than in this Island by reason of a need for special medical or surgical care or treatment at or in connection with the birth or for such other reasons or in such other circumstances whatsoever beyond the control of the mother of that person;
- (iii) whose mother was ordinarily resident in this Island at the time of the birth of that person; and

- (iv) who, but for the fact that he was born otherwise than in this Island, would be such a person as is described in paragraph (c) or paragraph (d) of this subsection;
- (n) a person who is the child or spouse of such a person as is described in the last preceding subsection (hereafter in this paragraph referred to as "the principal person") and who, but for the fact that the principal person was born otherwise than in the Island, would be such a person as is described in paragraph (e) or paragraph (f), as the case may be, of this subsection.”;
- (e) in section 13, for the words “or (l)” there is substituted “, (l), (m) or (n)”;
- (f) in section 16, immediately after the words “inscribed in” there is inserted “Part A or Part B of”;
- (g) section 16 is renumbered as section 16(1) and immediately thereafter there is inserted the following additional subsection:

“(2) A person shall not require a housing licence to occupy a dwelling of which he is the owner and which is for the time being inscribed in Part C or Part D of the Register established, compiled and maintained under the provisions of Part IV of this Law.”;
- (h) in section 20(1)(c) and in section 20(2)(c), immediately after the words “subsection (1) of section fifteen” wherever those words appear there is inserted “or subsection (2) of section sixteen”;

(i) in section 21, immediately after the words "section twenty of this Law" there is inserted "or section eleven of the Law of 1985";

(j) subsection (2) of section 22 is repealed and the following subsection is substituted therefor:

" (2) The Housing Register shall be divided into four Parts, which shall be respectively designated Part A, Part B, Part C and Part D.;"

(k) section 31(2)(e) and the reference to paragraph (e) in section 31(3) are repealed;

(l) section 40 is repealed and the following section is substituted therefor:

"Appeals

40. (1) Subject to the provisions of section twelve of this Law and section nine of the Law of 1988, any person aggrieved by any decision of the Authority under any of the provisions of this Law may appeal therefrom to the Royal Court on the grounds that the decision of the Authority was ultra vires or was an unreasonable exercise of its powers.

(2) Any appeal under this section shall be instituted by way of summons which shall set out the material facts upon which the appellant relies and

which shall be served upon the President of the Authority to show cause why the decision appealed from should not be set aside or varied.

(3) In any appeal under this section the appellant shall have the final right of reply.

(4) An appeal on any question of Law shall lie to the Court of Appeal from any decision in first instance of the Royal Court under this section within such period and in such manner as may be prescribed by Order of the Royal Court.”;

(m) in section 42(a), immediately after the words “status declaration” there is inserted “, in connection with an application for a declaration of registration under section seven of the Law of 1988”;

(n) at the end of section 47(1)(d) there is inserted the word “or”; and the following two additional paragraphs are inserted immediately thereafter:

“(e) that any dwelling for the time being inscribed in the Housing Register is being used wholly for purposes other than human habitation; or

(f) that any dwelling for the time being inscribed in the Housing Register is being used as a lodging house;”;

(o) in section 52(1),—

- (i) the following definition is inserted immediately after the definition of “ the Law of 1975 ”:

“ “ the Law of 1988 ” means the Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988;”;

- (ii) the definition of “ spouse ” is repealed.

PART IV

GENERAL AND SUPPLEMENTARY

11. Notwithstanding any other provision of this Law or of the principal Law a person shall not require a housing licence to occupy a dwelling which is for the time being inscribed in Part C or Part D of the Housing Register if:

Saving for existing occupation.

- (i) he was on the 6th day of September, 1984, occupying that dwelling in accordance with the provisions of the principal Law in force on that date; and
- (ii) he has continuously occupied that dwelling in the same circumstances since that date.

12. (1) In this Law—

Interpretation and construction.

“lodging house” includes any dwelling in which one or more rooms are occupied by a person other than the owner or principal tenant thereof under a tenancy, a contract of lodgement, or other similar arrangement but does not include any premises for the time being eligible to be inscribed in Part B of the Housing Register;

“the principal Law” means the Housing (Control of Occupation) (Guernsey) Law, 1982;

and other expressions have the meanings assigned by the principal Law.

(2) Unless the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

(3) This Law and the principal Law shall be construed as one.

Citation. 13. This Law may be cited as the Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988.

Collective title. 14. This Law and the principal Law may be cited together as the Housing (Control of Occupation) (Guernsey) Laws, 1982 and 1988.

Commencement. 15. This Law shall come into force at the expiration of the period of one month commencing on the date on which it is registered on the Records of the Island of Guernsey.

K. H. TOUGH,
Her Majesty's Greffier.