

ORDINANCE OF THE CHIEF PLEAS OF SARK

Ordinance No. IX of 2020

**The Land Reform (Miscellaneous Provisions) (Sark)**

**Ordinance, 2020**

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# The Land Reform (Miscellaneous Provisions) (Sark)

## Ordinance, 2020

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 11<sup>th</sup> April, 2018 and 30<sup>th</sup> September, 2020, and in exercise of the powers conferred on them by sections 1(2) and 2(3) of the Land Reform (Sark) Law, 2019<sup>a</sup> and section 11 of the Real Property (Transfer Tax, Charging and Related Provisions) (Sark) Law, 2007<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### PART I

#### DIVISION OF REAL PROPERTY

##### **Identification of boundaries.**

1. (1) Where it is intended to divide a parcel of real property from another parcel of real property ("**division**"), by transaction *inter vivos* or by will, the following provisions shall have effect.

(2) Where a division is effected by transaction *inter vivos*, the conveyance documenting the transaction must –

- (a) clearly identify, by reference to physical features which are, or are intended to be, permanently fixed, or to GPS co-ordinates, the boundaries between the parcel of the

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<sup>a</sup> Order in Council No. VII of 2020.

<sup>b</sup> Order in Council No. VI of 2008; amended by No. XXIII of 2010; No. VI of 2020.

real property which is being conveyed, and the parcel which is being retained, and must, where reasonably practicable, attribute ownership to any physical features referred to, and

- (b) have annexed a plan showing the boundaries referred to in paragraph (a), with measurements and GPS coordinates, as the case may be, shown for the purpose of limitation.

(3) Where a division is intended to be effected testamentarily, the will, in identifying and limiting the parcel to be detached, must comply, so far as may be reasonably practicable, with subsection (2).

(4) A conveyance documenting a division shall not be registered unless –

- (a) the requirements of subsection (2) have been fulfilled, and
- (b) it has been consented to by the parties before the Court.

(5) A will effecting a division shall not be registered unless –

- (a) the requirements of subsection (3) have been fulfilled, or
- (b) the Court has made an order under subsection (7).

(6) For the purposes of subsections (4) and (5), the Greffier is not concerned, in the absence of any manifest error, to enquire into the accuracy of the identification or limitation of the respective parcels of real property resulting from the division.

(7) The Court may, on the application of a person who is a beneficiary under a will the intended effect of which is a division of real property, or of the person's successor in title, or (with leave of the Court) of any other interested person, may make such order as it thinks fit in relation to the fulfilment of the requirements of subsection (3), including (without limitation) requiring the beneficiary, or the successor in title of the beneficiary, or the interested person, to lodge at the Greffe, upon registration of the will or otherwise, such documents or information as the Court may direct in order to fulfil those requirements so far as may be reasonably practicable.

(8) The Court may, on the application of -

- (a) the parties to a conveyance documenting a transaction under subsection (2), or their respective successors in title,
- (b) a person who is a beneficiary under a will the intended effect of which is a division of real property, or the person's successor in title, or
- (c) with leave of the Court, any other interested person,

make such order as it thinks fit, including (without limitation) an order requiring the party or parties to the application to execute such document of rectification, or to do or cause to be done any act or thing, as the Court may deem necessary or expedient to fulfil the true intention of the parties to the conveyance by which the division was documented, or the testator of the will by which the division was effected, and to lodge at the Greffe such documents or information as the Court may direct in order to fulfil such intention, so far as may be reasonably practicable.

(9) Any physical features to which ownership is not attributed in the conveyance or will in accordance with subsection (2) or (3), as the case may be, shall be deemed to be in party ownership.

(10) Where the boundary features of a parcel of real property divided pursuant to subsection (2) or (3) alter (except as to extent or limitation) in any material particular, a document evidencing a subsequent transaction of, or relating to, the said parcel must identify the new boundary features and (so far as may be applicable) a new plan shall be annexed to the document.

(11) For the purpose of this section –

"**GPS co-ordinates**" means the Global Positioning System co-ordinates of the survey grid for the Island of Sark, and

"**will**" includes testamentary disposition.

## PART II

### CHARGING OF INTERESTS IN REAL PROPERTY

#### **Register of charges.**

2. (1) The Greffier must establish and maintain a register, which shall be called the "Livre des Obligations et Actes Enregistrés" ("**Charges Register**") and shall be in such form as the Greffier shall from time to time by Practice Direction determine, of charges of interests in real property.

(2) The Greffier must, on the application of any person and payment of the prescribed fee –

(a) permit the person to inspect the Charges Register at any reasonable time during normal working hours, and

- (b) supply to such person a copy of any entry, whether certified or otherwise, in the Charges Register.

**Registration of charges.**

3. (1) A charge of an interest in real property may be entered in the Charges Register ("**registered charge**") by the Greffier pursuant to –

- (a) a written document, confirmed and ratified by a person ("**the debtor**") before the Court, whereby –
  - (i) the debtor, whether alone or jointly with another person, is or may become liable (whether as principal, surety or otherwise) to another person ("**the creditor**"), and
  - (ii) the debtor's liability under or pursuant to the obligation is secured by the debtor by way of charge to the creditor over such parcels of the real property of the debtor as must be specified and particularised in the document, or
- (b) a person ("**judgment creditor**"), having obtained judgment in the Court ("**judgment**") in any proceedings against another person ("**judgment debtor**"), causing the Greffier to register the judgment in the Charges Register, such judgment, when registered, to operate as a charge secured –
  - (i) on all the real property owned by the judgment debtor on the date of registration, or

(ii) on the application of the judgment debtor or, with leave of the Court, of any other person, on such of the said real property of the judgment debtor as the Court shall prescribe, having regard in particular (without limitation) to the amount of the judgment debt and to the circumstances of the judgment debtor, including the extent or amount of the real property of the judgment debtor.

(3) For the avoidance of doubt, where a judgment debtor acquires real property after the date of registration of a judgment pursuant to subsection (2)(b), such after-acquired property will not be charged by the prior registration but will only be charged by the judgment creditor causing the judgment to be registered as a charge secured over the after-acquired real property.

(4) The Charges Register must, in respect of each registered charge under subsection (1)(a), contain the following particulars –

- (a) the date on which the charge was registered,
- (b) the name and address of the person in whose favour the charge is registered and of the person whose real property is charged,
- (c) a description specifying and particularising the real property charged as referred to in subsection (1)(a)(ii),
- (d) the date of and parties to the instrument (if any) creating the charge or (where the charge was not created by an instrument) particulars sufficient to identify the charge, and

(e) the maximum sum secured by the charge.

(5) For the purposes of subsection (1)(a), any charge by which a debtor attempts or purports to charge all the real property of the debtor without specifying and particularising the parcels of real property to be charged shall be void and of no effect but without prejudice to the validity or enforceability of the obligation intended to be secured by the charge.

(6) The Charges Register must, in respect of each registered charge under subsection (1)(b), contain the following particulars –

(a) a copy of the judgment giving rise to the judgment debt, including the date of the judgment,

(b) the amount of the judgment debt or, if that is not set out in the judgment, the amount by which the judgment debtor is indebted to the judgment creditor pursuant to the judgment at the date of registration,

(c) if the judgment does not set out details of the obligation giving rise to the judgment, such additional documents and information which are in the public domain, as the Court, on the application of any interested person, may determine, so as to give effective notice to third parties of the obligation giving rise to the registration, and

(d) any order of the Court made pursuant to paragraph (c).

**Priority of charges.**

4. (1) Subject to subsections (2) and (3), priority between registered charges affecting the same real property is determined by the order of registration.

(2) Subject to subsection (3), charges registered on the same day have equal priority.

(3) As between charges registered on the same day, the respective creditors may agree priority, provided that such agreed priority shall not be effective unless noted by the Greffier on the Charges Register pursuant to a joint application by the creditors.

**Cancellation of charges.**

5. (1) An entry relating to a registered charge, or a part thereof, may be cancelled by the Greffier –

(a) on the application of –

(i) the person in whose favour the charge is registered, or

(ii) a person whom the Greffier is satisfied has authority to apply for such cancellation,

where the Greffier is satisfied that the application has been properly made, or

(b) on the authority of an order of the Court.

(2) Where an application or order of the Court relates to –

(a) the whole of an entry, the Greffier must remove the reference to the registered charge,

(b) part only of an entry, the Greffier must note on the Charges Register the effect of the cancellation.

**Interpretation of Part II.**

6. In this Part, "**registered charge**" has the meaning given in section 3(1).

PART III

CHARGING OF CHARGEABLE LEASEHOLD INTERESTS

**Charging of chargeable leasehold interests to be lawful.**

7. (1) It shall be lawful to charge any chargeable leasehold interest if it is deemed to be real property for that purpose in accordance with this Part.

(2) For the purposes of this Part, "**chargeable leasehold interest**" means a lease granted, at its inception -

- (a) for a term certain of 20 years or more, or
- (b) for a term certain of a period shorter than 20 years but which may be renewed at the option of the tenant so that the aggregate of two or more successive terms may be a period of 20 years or more.

(3) For the avoidance of doubt, it is immaterial, for the purpose of subsection (2) -

- (a) how many years of the term of the lease are left to run, and
- (b) whether the option referred to in subsection (2)(b) has been exercised.

**Election by tenant.**

8. (1) A chargeable leasehold interest shall, if the tenant so elects, and subject to registration of such election under section 10, be deemed to be real property

for the purpose of eligibility to be charged as an interest in real property under Part II.

(2) A tenant must give the landlord notice in writing of the tenant's intention to make an election under subsection (1).

(3) Any covenant or provision in any lease or any agreement for a lease, or in any agreement or arrangement relating to the grant, renewal or assignment of, or sub-letting under, a lease which prevents or restricts, or attempts or purports to prevent or restrict, a person from exercising the right to elect under subsection (1), or from exercising such right without the consent of the landlord or any other person, or which purports to qualify or limit that right, shall be void and of no effect.

**Register of chargeable leasehold interests.**

9. The Greffier must establish and maintain a register of chargeable leasehold interests ("**Chargeable Leasehold Interests Register**") in respect of which an election by the tenant under section 8 is in force.

**Registration of election.**

10. (1) An application for registration of an election under section 8 shall be made by the tenant to the Greffier in such form as the Greffier may determine, and such application must be accompanied by -

- (a) a copy of the notice in writing under section 8(2),
- (b) the original lease, or a certified true copy thereof,
- (c) any additional document or documents whereby the chargeable leasehold interest became vested in the applicant, or certified copies thereof,

- (d) a statement identifying the owner of the real property subject to the chargeable leasehold interest, and the date and means by which the owner acquired the said real property,
- (e) where the terms of the lease include a covenant on the part of the tenant not to charge the demised premises or any part thereof, or any interest therein, or not to charge the said premises without the consent of the landlord or some other person (or in words of like effect or purport) –
  - (i) evidence of the consent of the landlord or other person, or
  - (ii) an order of the Court pursuant to section 5(2) of the Leasehold Reform (Miscellaneous Provisions) (Sark) Law, 2019<sup>c</sup> the effect of which is to dispense with the requirement for the consent of the landlord or other person, or
- (f) any other document or information relevant to the application so as to give effective notice to third parties of the interest of the tenant in the chargeable leasehold interest.

(2) Where a tenant is unable to produce an original or certified copy of a document referred to in subsection (1)(b) or (c), the Court may, if it is satisfied that

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<sup>c</sup> Order in Council No. X of 2020.

a copy of such document is authentic, order that such copy may be produced in satisfaction of the requirement in the said subsection (1).

(3) If the Greffier is satisfied that there is no reason why the application for registration should not be granted, the Greffier must –

- (a) enter on the Chargeable Leasehold Interests Register –
  - (i) the date on which the election under section 8 was registered,
  - (ii) the name and address of the tenant, the landlord and, if different, the owner of the real property subject to the chargeable leasehold interest,
  - (iii) a description sufficient clearly to identify the real property subject to the chargeable leasehold interest, and
- (b) file and retain copies of the documents referred to in subsection (1).

**Effect of registration.**

11. For the avoidance of doubt, a chargeable leasehold interest which is deemed to be real property under this Part shall be deemed to be real property for the purposes of –

- (a) eligibility to be charged as an interest in real property under Part II, and

- (b) the Saisie Procedure (Simplification) (Bailiwick) Order, 1952<sup>d</sup> or any other enactment of the Chief Pleas relating to enforcement of judgments,

but shall not be deemed to be real property for any other purpose.

**Duration of registration.**

12. (1) Subject to the provisions of this section, a registration under section 10 shall be valid until –

- (a) subject to subsection (2), it is cancelled by the Greffier on the application of the tenant, or
- (b) the chargeable leasehold interest is assigned, sub-let or otherwise disposed of by the tenant upon whose application the registration was effected.

(2) A registration under section 10 may not be cancelled under subsection (1)(a) at any time when a charge in respect of the chargeable leasehold interest is registered in the Charges Register under section 2.

(3) For the purpose of subsection (1)(b), it is the duty of a tenant to notify the Greffier of any assignment, sub-letting or other material change in the nature or extent of the interest of the tenant in the chargeable leasehold interest.

(4) Upon the death of a tenant whose chargeable leasehold interest is the subject of an election which is registered under section 10, the registration shall continue and shall be binding on the tenant's personal representative until such registration is cancelled or otherwise terminated in accordance with this section.

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<sup>d</sup> Order of the Royal Court No. III of 1952; amended by No. XIV of 1989.

(5) For the purposes of subsection (4), "**personal representative**" means an executor, original or by representation, or an administrator for the time being of the personal estate of the tenant.

**Searches of register.**

13. The Greffier must, on the application of any person and payment of the prescribed fee, at any reasonable time during normal working hours –

- (a) permit the person to inspect the Chargeable Leasehold Interests Register,
- (b) in respect of any entry in that register, to make available for such inspection the documents referred to in section 10(1), and
- (c) supply a copy, whether certified or otherwise, of any entry, and of the documents referred to in section 10(1), to such person.

**Interpretation of Part III.**

14. In this Part, unless the context otherwise requires –

"**chargeable leasehold interest**" has the meaning given in section 7(2),

"**demised premises**" means premises which are subject to a lease,

"**landlord**", in relation to a chargeable leasehold interest, means the person who for the time being is immediately entitled to the reversion expectant on the term of the lease, and includes any person deriving title under the landlord,

"**lease**" includes a sub-lease, and any agreement or arrangement by which a landlord grants possession or occupation of real property,

"tenant" means any person for the time being entitled to possess or occupy the demised premises pursuant to a lease which qualifies as a chargeable leasehold interest under section 7(2), and includes a sub-tenant.

#### PART IV

#### GENERAL AND MISCELLANEOUS

##### **Rectification of errors in register.**

15. (1) Where it appears to the Greffier that an entry in the Charges Register or in the Chargeable Leasehold Interests Register contains an error of form or of substance, other than a clerical error or an error which is not of material significance, the Greffier must apply to the Court for permission to rectify the error.

(2) The Greffier must notify the parties to the document or transaction in respect of which there is an error in the entry in the Charges Register or in the Chargeable Leasehold Interests Register, or their respective successors in title, of the Greffier's intention to apply to the court under subsection (1), and the Court shall not grant permission to rectify the error without giving the said parties or successors in title a reasonable opportunity to be heard.

(3) If, on an application under subsection (1), the Court grants permission to rectify an error, the Greffier must mark the register in question so as to indicate the original entry and the amendments.

(4) Any such rectification made by the Greffier must include the signature of the Greffier, the date the rectification is made and the date when permission under subsection (1) is granted.

(5) The Greffier must notify the persons referred to in subsection (2)

- (a) the order of the Court in relation to an application under subsection (1), and
- (b) the terms of the rectification made by the Greffier pursuant to such order.

**Savings.**

16. Nothing in subsections (7) and (8) of section 1, or in section 15, shall be taken to prejudice or affect any other power of the Court, whether statutory, customary, inherent or otherwise.

**Protection of Greffier.**

17. Except in a case of an application for cancellation or rectification, the Greffier shall not be concerned to inquire into or otherwise verify the accuracy of any matter or thing stated or appearing in any application or document made to the Greffier.

**Fees.**

18. The Committee may by regulations prescribe fees and charges payable in connection with the registration of charges of interests in real property under section 3, and registration of elections under section 10, including fees payable upon -

- (a) applications for registration,
- (b) registration of a charge of an interest in real property or of an election,
- (c) rectification of any entry on a register,
- (d) cancellation of a charge under section 5 or of a tenant's election under section 12(1)(a), and
- (e) searches of the registers and supply of copies of entries.

### **Rules of Court.**

19. The Court may, from time to time, make rules making provision for all procedural and incidental matters which may be necessary or expedient for bringing this Ordinance into effect.

### **General interpretation.**

20. In this Law, unless the context otherwise requires –

"**Chargeable Leasehold Interests Register**": see section 9,

"**Charges Register**": see section 2(1),

"**the Committee**" means the Policy & Finance Committee of the Chief Pleas,

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

"**Greffe**" means the offices of the Greffier,

"**Greffier**" means the person appointed to act as Greffier pursuant to section 49 of the Reform (Sark) Law, 2008<sup>e</sup> and includes the Deputy Greffier,

"**normal working hours**" means the hours of opening of the Greffe,

"**prescribed**" means prescribed by regulations of the Committee.

### **Citation.**

21. This Ordinance may be cited as the Land Reform (Miscellaneous Provisions) (Sark) Ordinance, 2020.

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<sup>e</sup> Order in Council No. V of 2008; amended by No. IX of 2016. There are other amendments not relevant to this enactment.

**Commencement.**

22. This Ordinance shall come into force on the 1<sup>st</sup> February, 2021.