

PROJET DE LOI

ENTITLED

The Land Reform (Sark) Law, 2019 *

[CONSOLIDATED TEXT]

NOTE

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* No. VII of 2020.

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ARRANGEMENT OF SECTIONS

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The Land Reform (Sark) Law, 2019

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 11th April, 2018, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

Division of real property.

1. (1) Notwithstanding the provisions of the 1611 Letters Patent, it shall be lawful for the owner of a tenement or a freehold to divide such tenement or freehold and to dispose of any portion thereof, whether –

- (a) by transaction *inter vivos*, or
- (b) by will, in accordance with sections 6, 7 and 8 of the Real Property (Succession) (Sark) Law, 1999^a.

(2) The Chief Pleas may by Ordinance make such provision as they think fit for the purpose of giving effect to subsection (1), including (without limitation) any provision –

- (a) facilitating and evidencing the identification of any portion of a tenement or freehold resulting from the division of such tenement or freehold in accordance with subsection (1), and
- (b) necessary for the purpose of facilitating the provision of any services, and the grant or reservation of any rights of way or other servitudes, for the benefit of each

^a Ordres en Conseil Vol. XXXIX, p. 351; amended by Order in Council No. V of 2008.

portion of land resulting from such division.

NOTE

The following Ordinance has been made under section 1:

Land Reform (Miscellaneous Provisions) (Sark) Ordinance, 2020.

Charging of interests in real property.

2. (1) Notwithstanding the provisions of the 1611 Letters Patent, subject to the following provisions of this section and the provisions of any Ordinance made under subsection (3), it shall be lawful for the owner of a tenement or a freehold to charge, or cause or permit to be charged, such tenement or freehold by way of obligation registered at the Greffe.

(2) Nothing in subsection (1) shall affect the prohibition in the 1611 Letters Patent against the creation of a rente, however described, which is an interest in real property ("*immeuble*").

(3) The Chief Pleas may by Ordinance make such provision as they think fit for the purpose of giving effect to the charging of real property under this section including (without limitation) provision for, or concerning, the following matters –

- (a) the circumstances in which, the purposes for which, and the conditions and formalities subject to which, real property may be charged,
- (b) the establishment and maintenance by the Greffier of a Register of Obligations for the purpose of recording charges created against real property,

and such Ordinance may for this purpose revoke, amend, extend, adapt, modify or disapply (so far as it has effect in Sark) any enactment or rule of customary law.

(4) In this section "**charge**" includes secure, encumber, mortgage and hypothecate.

(5) Nothing in this section, or in any Ordinance made under this section, is to be construed as, of itself, rendering unlawful or ineffective any arrangement entered into before the commencement of this section.

NOTE

The following Ordinance has been made under section 2:

Land Reform (Miscellaneous Provisions) (Sark) Ordinance, 2020.

Saisie proceedings.

3. (1) The Chief Pleas may by Ordinance make such provision as they think fit for the purpose of facilitating the enforcement of judgments against real property including (without limitation) –

- (a) the circumstances in which judgment may be executed against the real property of a judgment debtor,
- (b) the procedures ("**saisie proceedings**") and formalities necessary for the purpose of such execution,

and, subject to subsection (2), such Ordinance may for this purpose revoke (in its application to Sark) and re-enact, with such modifications as they may think fit, the

Saisie Procedure (Simplification) (Bailiwick) Order, 1952^b ("the 1952 Order"); and may revoke, amend, extend, adapt, modify or disapply (so far as it has effect in Sark) any other enactment or rule of customary law.

(2) Where any Ordinance proposed to be made under subsection (1) includes provision revoking, amending, extending, adapting, modifying or disapplying (in its application to Sark) the 1952 Order, or any other Order of the Royal Court, the Royal Court must consent to the inclusion of such provision prior to the Ordinance being submitted for approval to the Chief Pleas.

NOTES

The following Ordinance has been made under section 3:

Saisie (Sark) Ordinance, 2021.

The Saisie Procedure (Simplification) (Bailiwick) Order, 1952 has since been revoked, in its application to the Island of Sark, by the Saisie (Sark) Ordinance, 2021, section 26(1), with effect from 1st November, subject to the savings in section 28 of the 2021 Ordinance.

Amendment of 1999 Law.

4. The Real Property (Succession) (Sark) Law, 1999 ("the 1999 Law") is amended as follows.

5. Section 1 of the 1999 Law is repealed.

6. In section 6 of the 1999 Law –

(a) in subsection (1), immediately after the words "give the

^b Order of the Royal Court No. III of 1952; amended by Ordres en Conseil Vol. XXII p. 560; O.R.C. No. I of 1960; No. III of 1973; No. III of 1982; No. XIV of 1989; No. I of 1995.

property" insert ", or any portion thereof,"

- (b) in subsection (2), immediately after the words "any one or more of the properties" insert ", or any portion or portions thereof,".

7. In section 7 of the 1999 Law –

- (a) in subsection (1), immediately after the words "give the property" insert ", or any portion or portions thereof,"
- (b) in subsection (2), immediately after the words "any one or more of the properties" insert ", or any portion or portions thereof,".

8. In section 8(1)(a) of the 1999 Law, immediately after the words "any one or more of the properties" insert ", or any portion or portions thereof,".

9. In section 11(4) of the 1999 Law, immediately after "property" –

- (a) in the first place where it appears, insert ", or any portion thereof",
- (b) in the second place where it appears, insert ", or portion thereof,".

10. In section 18(1) of the 1999 Law –

- (a) in the definition of "freehold", after paragraph (d), insert –

"but includes, for the avoidance of doubt, any real property formerly forming part of a tenement or freehold which tenement or freehold has been divided pursuant to the provisions of the Land Reform (Sark) Law, 2019 or by will pursuant to section 6, 7 or 8 of this Law,"

- (b) in the definition of "tenement", delete "the Chief Pleas" in the second place where it occurs.

Repeal.

11. Section 11(2) of the Real Property (Transfer Tax, Charging and Related Provisions) (Sark) Law, 2007^c is repealed.

Interpretation.

12. In this Law –

"1611 Letters Patent" means the Letters made Patent by King James I of England on 12th August, 1611,

"the 1999 Law" means the Real Property (Succession) (Sark) Law, 1999,

"freehold" has the meaning given in section 18 of the 1999 Law,

"real property", except in section 2(2), means a tenement or freehold,

"Royal Court" means the Royal Court of Guernsey.

^c Order in Council No. VI of 2008; amended by No. XXIII of 2010.

Citation.

13. This Law may be cited as the Land Reform (Sark) Law, 2019.

Commencement.

14. This Law shall come into force on the day appointed by Ordinance of the Chief Pleas; and different dates may be appointed for different provisions and for different purposes.

NOTE

The Law was brought into force on 1st February, 2021 by the Land Reform (Sark) Law, 2019 (Commencement) Ordinance, 2020, section 1.
