

PROJET DE LOI

ENTITLED

The Housing (Control of Occupation) (Sark) Law, 2011

Note:

This version of the proposed enactment takes the version of the Law put to Chief Pleas at the Christmas meeting and shows the draft amendments which have since been made so as to produce the version which is to be put to Chief Pleas at the Easter meeting:

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THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 23rd April, 2003, the 30th day of September, 2009, the 14th day of April, 2010, and the 19th day of January, 2011^{4th day of May 2011}, 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 Sark.

Register of Restricted Dwellings.

1. (1) There shall be established, compiled and maintained by the Douzaine in accordance with, and for the purposes of, this Law, and any Ordinance made thereunder, a register which shall be called the Register of Restricted Dwellings (“**the Register**”).

(2) Subject to subsection ~~(4)(e),(4)(d)~~ the Douzaine shall, with effect from the date when this law comes into force of commencement of this Law, inscribe on the Register any dwelling the construction of which commenced on or after the 27th day of August 1976 (being the date of commencement of the Housing (Temporary Provisions) (Sark) Law, 1976^a, referred to as “the operative date”) and was completed before the commencement of this Law.

(3) Subject to subsection (4)(ed), the Douzaine shall inscribe on the Register any dwelling –

(a) the construction of which is completed, or

^a Ordres en Conseil, Vol. XXVI, p. 59; amended by Vol. XXIX, p. 340; the operation of the 1976 Law was extended successively by Orders en Conseil, Vol. XXVII, p. 291, Vol. XXXIII, p. 77, No. V of 2001 and by the Housing (Extensions) (Sark) Law, 2011, and the Law was disapplied from Brecqhou by Order in Council No. XXVIII of 2001

(b) which has become used, or converted for use as a dwelling

after the commencement of this Law. ~~after the commencement of this Law, and any premises or part of any premises which become used, or are converted for use, as a dwelling after the commencement of this Law.~~

(4) The Douzaine shall not inscribe on the Register any dwelling (an “**unrestricted dwelling**”) –

(a) which was, immediately before the operative date, in actual use as a dwelling, or

(b) the last use of which, prior to the operative date, was as a dwelling, and which remained usable as a dwelling immediately prior to the operative date, but which was not in actual use as a dwelling immediately prior to that date, ~~or~~

(c) the construction of which began before the operative date

(d) which has, after the operative date, been re-erected or converted into a dwelling, in compliance with any valid permission –

(i) lawfully granted before the commencement of this Law (whether or not the works began before the commencement of this Law) under the Preservation of Natural Amenities and Agricultural Land Control (Sark) Law, 1961^b of the Development Control (Sark) Law, 1991^c (as the case may be), and

(ii) in relation to which, by virtue of section 1 (4) of the Housing (Temporary Provisions) (Sark) Law, 1976 (“the 1976 Law”) (whether in its application prior to or after

^b Ordres en Conseil, Vol. XVIII, p. 303; this law was repealed by the Development Control (Sark) Law, 1991

^c Ordres en Conseil, Vol XXXIII, p. 155, Order in Council No. X of 2009

commencement of the Housing (Temporary Provisions) (Amendment) (Sark) Law, 1986^d), the provisions of section 1 of the 1976 Law did not apply.

~~(c) — which has been altered, extended or re-erected, or converted into a dwelling, after the operative date pursuant to any permission granted under the Development Control (Sark) Law, 1991^e to which section 1(4) of the Housing (Temporary Provisions) Sark Law, 1976^f applied, whether in its application prior to or after the commencement of the Housing (Temporary Provisions) (Amendment) (Sark) Law, 1986^g.~~

(5) Where a dwelling has been inscribed on the Register pursuant to the provisions of this Law, the Douzaine shall serve upon the owner or possessor of that dwelling a notice in writing –

- (a) informing him of the fact of such inscription,
- (b) stating the effect of its being so registered, and
- (c) giving particulars of the right of appeal conferred by section 8.

(6) Where a dwelling has been inscribed on the Register pursuant to the provisions of this Law, it shall remain so inscribed unless the inscription is removed pursuant to an appeal under section 8 or the Douzaine is satisfied that the inscription was made in error.

(7) The Register shall be open for public inspection at the Greffe Office during normal office hours.

^d Ordres en Conseil, Vol. XXIX, p. 349, which amended section 1(4) of the operation of the 1976 Law was extended successively by Orders en Conseil, Vol. XXVII, p. 291, Vol., XXXIII, p. 77 and No. V of 2001, and the Law was disapplied from Brecqhou by Order on Council No. XXVIII of 2001

^e Ordres en Conseil, Vol. XXXIII, p.155; Order in Council No. X of 2009

^f Ordres en Conseil, Vol. XXVI, p.59

^g Ordres en Conseil, Vol XXIX, p. 349, which amended section 1(4); the operation of the 1976 Law was extended successively by Orders en Conseil, Vol. XXVII, p. 291, Vol., XXXIII, p. 77 and No. V of 2001, and the Law was disapplied from Brecqhou by Order on Council No. XXVIII of 2001

(8) The Greffier may from time to time determine the fees payable to the Greffe for the making and supply of copies of entries inscribed on the Register.

Replacement dwellings.

2. Where an unrestricted dwelling (“**the old dwelling**”) is demolished, destroyed or damaged and is replaced by a new dwelling (“**the new dwelling**”), the new dwelling shall be inscribed on the Register unless –

(a) the new dwelling is constructed on substantially the same footprint as the old dwelling,

~~(b) the demolition, destruction or damage was of such extent as to render the old dwelling incapable of being used for the purposes of human habitation, and~~

(b) the construction of the new dwelling was commenced within a period of 24 months, or such longer period as the Douzaine may (on application) in any particular case determine, immediately following the date on which the demolition, destruction or damage took place; and was completed within a period of 24 months, or such longer period as the Douzaine may (on application) in any particular case determine, ~~after such commencement.~~ after the date when construction began.

Alteration to dwellings.

3. (1) Subject to subsection (2), where a single unrestricted dwelling is subdivided by any works, whether of alteration or otherwise, so as to create two or more dwellings, one only of such dwellings so created, at the election of the person who is the owner of the dwelling immediately prior to the completion of the works of subdivision, shall be an unrestricted dwelling, and the other dwelling or dwellings so created shall be required to be inscribed on the Register.

(2) Where a single unrestricted dwelling was itself created by the amalgamation of two or more unrestricted dwellings, and the effect of the works of subdivision described in subsection (1) is to restore the number of dwellings which

existed prior to such amalgamation, or to create a number of dwellings not greater than the number of dwellings so amalgamated, the dwellings so created shall not be required to be inscribed on the register.

(3) Where any works, whether of alteration or otherwise, are carried out in relation to a single unrestricted dwelling, the effect of which, is the enlargement of that dwelling by the incorporation within it, annexation to it, of any accommodation comprised in another dwelling ("the other dwelling"); that dwelling so enlarged shall be inscribed on the Register unless-

(3)(a) the other dwelling was also an unrestricted dwelling, or

(4)(b) the other dwelling had been created by the subdivision of a single unrestricted dwelling, and inscribed on the Register pursuant to subsection (1), and the effect of the works is the restoration of the subdivided dwellings to single dwelling.

(5) (4) Where any works, whether of alteration or otherwise, are carried out in relation to a single unrestricted dwelling (other than by incorporation or annexation under subsection (3)), the effect of which, together with any other works carried out after the date of commencement of this Law, is the enlargement of the footprint of that dwelling as at the date of commencement by more than fifty per cent, that dwelling so enlarged shall be inscribed on the Register.

Duty of disclosure and power of entry.

4. (1) It shall be the duty of the owner or possessor of any dwelling which is constructed after the commencement of this Law to notify the Douzaine of such construction within 28 days following the completion of such construction.

(2) It shall be the duty of the owner ~~or~~ and any possessor of any premises to notify the Douzaine of any alterations to those premises, or of any other circumstances, including (without limitation) a change of the use thereof, which might result in those premises or part thereof being required to be inscribed on the Register, within 28 days

following the completion of such alterations or the occurrence of such other circumstances, and in connection therewith the owner or possessor shall make full and frank disclosure of all facts which may be material.

(3) If, in the opinion of the Douzaine, ~~the~~any owner or possessor of any premises has failed to comply with subsection (1) or (2), the Douzaine may, by notice in writing served on the owner or possessor of such premises, require him to furnish –

(a) within such time as may be specified in the notice, and

(b) verified in such manner (if any) as may be so specified,

such information and documents as may be required for the purpose of ascertaining whether or not those premises or part thereof are required to be inscribed on the Register.

(4) A person authorised in writing in that behalf by the Douzaine may, having obtained a warrant so to do upon information laid on oath before the Seneschal, in accordance with that warrant and on production of it if so required, enter and remain upon any premises and may carry out such inspection and make such photographic or other record as he reasonably considers appropriate for the purposes of establishing whether or not those premises or part thereof are required to be inscribed on the Register.

Control of occupation of restricted dwellings.

5. (1) Where a dwelling has been registered pursuant to the provisions of this Law, no person shall occupy that dwelling unless –

(a) he is a qualified resident,

(b) he is a person of such description as the Chief Pleas may from time to time by Ordinance prescribe,

(c) he was, immediately prior to the commencement of the Law, in lawful occupation of that dwelling, and continues to occupy that dwelling, as his principal residence, or

(d) he is a member of the household of a person who is entitled to occupy that dwelling pursuant to paragraphs (a), (b) or (c).

(2) A person is a qualified resident if he has been ordinarily resident in the Island for a period of, or periods amounting in the aggregate to, at least fifteen years.

(3) A person is a member of the household of a person who is entitled to occupy a dwelling under subsection (1)(a), (b) or (c) if –

(a) he normally occupies that dwelling together with the person so entitled,

(b) he is related to that person (by blood, marriage or adoption) or he is treated by that person as a member of his household, and

(c) he does not have a principal residence elsewhere.

(4) Nothing in subsection (1) shall prevent a bona-fide tourist from occupying, for any period or periods not exceeding a total of 90 days in any 12 month period, any dwelling, as the guest of a person who is entitled to occupy that dwelling under subsection (1)(a), (b) or (c).

(5) Nothing in subsection (1) shall prevent a person who is not ordinarily resident in the Island from occupying as a paying guest, for any period or periods not exceeding a total of 90 days in any 12 month period, any dwelling in respect of which a valid accommodation permit, granted pursuant to the provision of the Tourism (Sark) Law, 1982^h, is in force.

(6) An Ordinance under subsection (1)(b) may confer upon the Douzaine powers, exercisable in such circumstances as the Chief Pleas may by Ordinance specify –

(a) to permit a person to occupy a restricted dwelling, notwithstanding that he is not otherwise entitled to occupy that

^h [Ordres en Conseil, Vol. XXVII, p. 576; Vol. XXIX, P. 488](#)

dwelling pursuant to subsection (1), for such period and subject to such conditions as the Douzaine thinks fit, and

- (b) to revoke or vary –
 - (i) any such permission,
 - (ii) the duration of any such period, and
 - (iii) any such conditions.

(7) Any person who occupies a dwelling contrary to subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding level 4 on the Sark uniform scale.

(8) Any person who, being the owner or possessor of a dwelling (whether alone or jointly with another), causes or permits another person to occupy that dwelling in contravention of subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding level 4 on the Sark uniform scale.

(9) If, in proceedings under subsections (7) or (8), a person claims that he or another person whom he causes or permits to occupy the dwelling to which the proceedings relate is in lawful occupation of the dwelling, being a person within any of the categories set out in subsections (1), (4) or (5), the burden of proving that fact shall lie upon the person who so claims.

Application for declaration that dwelling is unrestricted.

6. (1) The owner or possessor of any premises may apply to the Douzaine for a declaration that those premises, or any part thereof, constitute an unrestricted dwelling within the meaning of this Law.

(2) An application under this section shall be made in such form and manner, and accompanied by such information and documents, and such reasonable fee, as the Douzaine may require for the purpose of determining the application.

(3) Upon receipt of an application under this section, the Douzaine may require the applicant to provide such additional information and documents as the Douzaine may reasonably require for the purpose of determining the application.

(4) The Douzaine shall, having duly considered an application under this section, serve notice on the applicant stating its decision as to whether or not the premises, or part thereof, constitute an unrestricted dwelling and, where the decision of the Douzaine is that those premises do not constitute an unrestricted dwelling, shall state the reasons for its decision and shall give particulars of the right of appeal conferred by section 8.

(5) The Douzaine may at any time rescind a declaration made under this section if it is satisfied that the information provided by the applicant for the purposes of this section was inaccurate or insufficient in any material particular.

Application for declaration that a person is a qualified resident.

7. (1) A person may apply to the Douzaine for a declaration that he is a qualified resident within the meaning of this Law.

(2) An application under this section shall be made in such form and manner, and accompanied by such information and documents, and such reasonable fee, as the Douzaine may require for the purpose of determining the application.

(3) Upon receipt of an application under this section, the Douzaine may require the applicant to provide such additional information and documents as the Douzaine may reasonably require for the purpose of determining the application.

(4) The Douzaine shall, having duly considered an application under this section, serve notice on the applicant stating its decision as to whether or not he is a qualified resident and, where the decision of the Douzaine is that he is not a qualified resident, shall state the reasons for its decision and shall give particulars of the right of appeal conferred by section 8.

(5) The Douzaine may at any time rescind a declaration made under this section if it is satisfied that the information provided by the applicant for the purposes of this section was inaccurate or insufficient in any material particular.

Appeals.

8. (1) The owner or possessor of any dwelling which has been inscribed on the Register under this Law may appeal to the Court of the Seneschal (“**the Court**”).

(2) A person aggrieved by a decision of the Douzaine under any other provision of this Law, or any Ordinance thereunder, may appeal to the Court.

(3) The grounds of an appeal under this section are that –

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(4) An appeal under this section shall be instituted –

- (a) within a period of 28 days, or such longer period as the Court may (on application for reasonable cause) determine, immediately following the date of the notice of the inscription or the date of the notice of the decision, as the case may be, and
- (b) by summons served on the Chairman of the Douzaine stating the grounds and material facts on which the appellant relies.

(5) On an appeal under this section the Court may –

- (a) set the decision of the Douzaine aside and, if the Court considers it appropriate to do so, remit the matter to the Douzaine with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

False statements etc.

9. (1) If any person for the purpose of evading any prohibition under this Law or for any other purpose connected with this Law –

- (a) knowingly makes any false statement or false representation, or
- (b) —produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular, or
- (c) unreasonably fails to produce or furnish any information which he is required to produce or furnish under the provisions of this Law or any Ordinance made under it,

he commits an offence and is liable, upon conviction, to a fine not exceeding level 4 on the Sark uniform scale or to imprisonment for a term not exceeding six months, or to both such fine and such imprisonment.

Service of notices

10. Any notice which may be served for the purposes of this Law or of any Ordinance made hereunder shall be validly served:-

- (a) on any person, if delivered to him personally or left at, or sent by post to, his usual or last known place of abode,
- (b) on any firm, or other unincorporated body, if delivered to any partner, director, manager or other similar officer of the firm or

unincorporated body personally; or if left at, or sent by post to, any place of business of the firm or unincorporated body in the Island of Sark,

- (c) on any body corporate, if left at, or sent by post to, its registered office or any place of business of the body corporate in the Island of Sark.

Interpretation.

11. (1) In this Law, unless the context otherwise requires –

"**Douzaine**" means the Douzaine elected pursuant to section 43 of the Reform (Sark) Law, 2008ⁱ,

"**dwelling**" means any premises, or any part of any premises, which are suitable for use for the purposes of human habitation as a separate unit, including, without limitation, a flat (which means separate and self-contained premises constructed as a dwelling and forming part of a building from some other part of which it is divided horizontally and/or vertically),

"**footprint**", in relation to a dwelling, means the outline of the total surface area of land occupied by the dwelling and surrounded by its exterior walls, exclusive of any courtyard or building.

"**member of the household**" has the meaning given in section 5(3).

"**operative date**" means the date specified in section 1(2)(a),

"**owner**" and "**possessor**" have the meanings respectively given to them in the Direct Taxes (Sark) Law, 2002^j,

"**qualified resident**" has the meaning given to it in section 5(2).

ⁱ Order in Council No.V of 2008; amended by No. VI of 2008 and NO. XXVII of 2008, No. XIV of 2010 and by the Reform (Sark) (Amendment) (No. 2) Law, 2010

^j Order on Council No. VII of 2003.

"**the Register**" means the Register of Restricted Dwellings established under section 1(1),

~~"qualified resident" has the meaning given to it in section 5(2),~~

"**restricted dwelling**" means a dwelling which has been, or is required to be, inscribed on the Register under this Law,

"**Sark uniform scale**" has the same meaning as in the Uniform Scale of Fines (Sark) Law, 1989^k, and

"**unrestricted dwelling**" means a dwelling which is not required to be inscribed on the under this Law.

(2) For the purposes of this Law, the construction of a dwelling, or works of alteration, subdivision, extension or conversion in respect thereof, shall be deemed to have been completed, whether or not all the proposed works have in fact been completed, if the dwelling is usable as, or is in actual use as, a dwelling.

(3) Except where the context otherwise requires, any reference in this Law to any other enactment includes a reference to that enactment as amended, repealed or replaced by or under any other enactment.

(4) The Interpretation (Guernsey) Law, 1948^l shall apply to the interpretation of this Law, and of any Ordinance made thereunder.

General provisions as to Ordinances.

12. (1) Any Ordinance made under this Law –

(a) may be amended or repealed by a subsequent Ordinance or subordinate legislation made hereunder, and

^k Ordres en Conseil Vol. XXI, p. 320

^l Ordres en Conseil, Vol. XIII, p. 355

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make any Ordinance or subordinate legislation 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,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Disapplication from Brecqhou.

13. This Law shall not apply to the Island of Brecqhou.

Repeals.

14. The Housing (Temporary Provisions) (Sark) Law, 1976, as amended and extended^m, the Housing (Disapplication from Brecqhou) (Sark) Law, 2001ⁿ, and the

^m Ordres en Conseil Vol. XXVI, p.59; Vol. XXIX, p. 349; Order in Council No. V of 2001

ⁿ Order in Council No, XXVIII of 2001

Housing (Temporary Provisions) (Prescribed Persons) Ordinances, ~~1978~~, 1989 and 1990^o are hereby repealed.

Citation.

15. This Law may be cited as the Housing (Control of Occupation) (Sark) Law, 2011.

Commencement.

16. This Law shall come into force on a date to be appointed by Ordinance of the Chief Pleas, and different dates may be appointed for different provisions of this Law and for different purposes.

^o Ordinances of the Chief Pleas Nos. 49, 87 and 90