

# PROJET DE LOI

ENTITLED

## **The Leasehold Reform (Miscellaneous Provisions) (Sark) Law, 2019**

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 11<sup>th</sup> April, 2018 and 3<sup>rd</sup> July 2019, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

### PART I

#### RELIEF FROM FORFEITURE

##### **Relief from forfeiture.**

1. (1) A right of re-entry or forfeiture under the terms of a lease for breach of any covenant in the lease, including non-payment of rent, shall not be enforced except in accordance with the following provisions of this section.

(2) The provisions of this section are without prejudice to the rights of a landlord in respect of goods present in or upon the demised premises which are, by operation of law, subject to "*tacite hypothèque*" for the payment of any rent owing to the landlord.

(3) Where a tenant has breached a covenant of the lease, the landlord must, before taking any steps to enforce such right of re-entry or forfeiture,

serve on the tenant a notice –

- (a) specifying the breach complained of,
- (b) if the breach is capable of remedy, requiring the tenant to remedy the breach, and
- (c) in any case where it is reasonable to do so, requiring the tenant to make compensation in money for the breach,

and such notice shall specify such reasonable period within which, and such reasonable conditions subject to which, the breach must be remedied or compensation shall be payable, or both, as the case may be.

(4) Should a notice be served in accordance with subsection (3), and should the tenant fail, within such reasonable period, and in accordance with such reasonable conditions, as may be specified in the notice, to cease the conduct which constitutes the breach, to remedy the breach if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the landlord, for the breach, the landlord may take steps in accordance with the terms of the lease to enforce such right of re-entry or forfeiture.

(5) Where a landlord is taking steps, by proceedings or otherwise, to enforce such a right of re-entry or forfeiture, the tenant may, in the landlord's proceedings, if any, or in any proceedings brought by the tenant, apply to the Court for relief, and the Court may grant or refuse relief, as the Court, having regard to the conduct of the parties under the provisions of this section, and to all the other circumstances of the case, thinks fit.

(6) Where the Court grants relief under subsection (5), it may do so on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any such breach in the future, as the Court, in all the circumstances of the case, thinks fit.

(7) Where a breach giving rise to a right of re-entry or forfeiture is waived by the landlord, at the request of the tenant, or where a tenant is relieved from such a breach under this section, the landlord is entitled to recover from the tenant as a civil debt all reasonable costs and expenses, including professional fees, properly incurred by the landlord in respect of that breach.

(8) Where a landlord is taking steps, by proceedings or otherwise, to enforce a right of re-entry or forfeiture under the terms of a lease, the Court may, on application by any person claiming as sub-tenant any interest in the property comprised in the lease or any part thereof, whether in the landlord's proceedings, if any, or in any proceedings brought by the sub-tenant, make an order under subsection (9).

(9) An order under this sub-section may grant to the sub-tenant a lease in respect of the property or part thereof in which the sub-tenant had an interest, for such term (not exceeding the term of the original sub-lease), and subject to such conditions as to execution of any document, payment of rent, costs, expenses, compensation, giving security or otherwise, as the Court in the circumstances of the case thinks fit.

(10) This section applies only to breaches of covenant –

(a) occurring after, or

- (b) which occurred before but are continuing as at the date of,

its commencement and applies notwithstanding any stipulation to the contrary.

## PART II

### CONSENT TO ASSIGNMENT, SUB-LETTING ETC.

#### Duty to consent to assignment, sub-letting etc. of premises

2. (1) Subsection (2) applies in any case where the terms of a lease include –

- (a) a covenant (however expressed) on the part of the tenant not to enter one or more of the following transactions ("**proposed transaction**"), that is –
  - (i) selling,
  - (ii) assigning,
  - (iii) sub-letting,
  - (iv) charging, or
  - (v) otherwise disposing of, or parting with or sharing the possession or occupation of,

the demised premises or any part thereof, or any interest therein, or

- (b) a covenant on the part of the tenant not to enter one or more of the proposed transactions without the consent of the landlord or some other person.

(2) Where this subsection applies, such a covenant shall be construed and take effect as if the covenant is subject to the qualification –

- (a) in the case of a covenant mentioned in subsection (1)(a), that the tenant may enter one or more of the proposed transactions with the consent of the landlord, such consent not to be unreasonably withheld or delayed,
- (b) in the case of a covenant mentioned in subsection (1)(b), that the consent of the landlord, or other person whose consent is required, is not to be unreasonably withheld or delayed.

(3) Where there is served on the landlord, or other person whose consent is required, a written application by the tenant for consent to the proposed transaction, the person served owes a duty to the tenant within a reasonable time –

- (a) to give consent, except where it is reasonable not to give consent,
- (b) to serve on the tenant notice of the decision whether or

not to give consent, specifying in addition –

- (i) if the consent is given subject to conditions, those conditions,
- (ii) if the consent is withheld, the reasons for withholding it.

(4) The duty in subsection (3)(a) is not satisfied by giving consent subject to a condition that is not a reasonable condition.

(5) For the purposes of this Part it is reasonable for a person not to give consent to a proposed transaction only in a case where, if the person withheld consent and the tenant completed the transaction, the tenant would be in breach of a covenant.

- (6) It is for the person who owes any duty under subsection (3) –
- (a) if the person gave consent and the question arises whether it was given within a reasonable time, to show that it was,
  - (b) if the person gave consent subject to any condition and the question arises whether the condition was a reasonable condition, to show that it was,
  - (c) if the person did not give consent and the question arises whether it was reasonable not to do so, to show that it was reasonable,

and, if the question arises whether notice was served under that subsection within a reasonable time, to show that it was.

**Duty to pass on applications.**

3. (1) If, in a case where section 2 applies, any person ("A") receives a written application by the tenant for consent to a proposed transaction, and A –

- (a) is a person who may consent to the transaction or (though not such a person) is the landlord, and
- (b) believes that another person, other than a person who A believes has received the application or a copy of it, is a person who may consent to the transaction,

A owes a duty to the tenant (whether or not A owes the tenant any duty under section 2) to take such steps as are reasonable to secure the receipt within a reasonable time by the other person of a copy of the application.

(2) The reference in section 2(3) to the service of an application on a person who may consent to a proposed transaction includes a reference to the receipt by that person of an application or a copy of an application (whether it is for that person's consent or that of another).

**Qualified duty to approve consent by another.**

4. (1) This section applies in any case where the terms of a lease include a covenant (however expressed) on the part of the tenant not without the approval of the landlord to consent to the sub-tenant –

- (a) selling,
- (b) assigning,
- (c) sub-letting,
- (d) charging, or
- (e) otherwise disposing of, or parting with or sharing the possession or occupation of,

the premises comprised in the sub-tenancy or any part thereof, or any interest therein, and such covenant is not subject to the qualification that the approval of the landlord is not to be unreasonably withheld or delayed.

(2) Where subsection (1) applies, such a covenant is to be construed and take effect as if the covenant is subject to the qualification that the approval of the landlord is not to be unreasonably withheld or delayed.

(3) Where there is served on the landlord a written application by the tenant for approval or a copy of a written application to the tenant by the sub-tenant for consent to a transaction to which the covenant relates the landlord owes a duty to the sub-tenant within a reasonable time –

- (a) to give approval, except in a case where it is reasonable not to give approval,
- (b) to serve on the tenant and the sub-tenant written notice of the landlord's decision whether or not to give

approval specifying in addition –

- (i) if approval is given subject to conditions, the conditions,
- (ii) if approval is withheld, the reasons for withholding it.

(4) Giving approval subject to any condition that is not a reasonable condition does not satisfy the duty under subsection (3)(a) above.

(5) For the purposes of this section it is reasonable for the landlord not to give approval only in a case where, if the landlord withheld approval and the tenant gave consent, the tenant would be in breach of covenant.

(6) It is for a landlord who owes any duty under subsection (3) –

- (a) if the landlord gave approval and the question arises whether it was given within a reasonable time, to show that it was,
- (b) if the landlord gave approval subject to any condition and the question arises whether the condition was a reasonable condition, to show that it was,
- (c) if the landlord did not give approval and the question arises whether it was reasonable not to do so, to show that it was reasonable,

and, if the question arises whether notice was served under that subsection within a reasonable time, to show that it was.

**Breach of duty.**

5. (1) A claim that a person has broken any duty under this Part may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty.

(2) Without prejudice to the generality of subsection (1), a tenant or a sub-tenant may apply to the Court for a declaration that a person who owes the tenant or sub-tenant, as the case may be, a duty under this Part, has unreasonably withheld or delayed a consent or approval, as the case may be, and where the Court makes such a declaration it may in addition make such orders as it thinks fit, including directing the person who owes the duty to take steps to comply with that duty, or ordering the payment of compensation to the tenant or sub-tenant, as the case may be, or both.

**Application of Part II.**

6. This Part applies only to applications for consent made after its commencement.

**Power to amend by Ordinance.**

7. The Chief Pleas may by Ordinance amend the definitions in section 8 for the purposes of their application to this Part.

PART III  
GENERAL

**Interpretation.**

8. In this Law –

"**breach**" includes failure to comply,

"**consent**" includes permission and licence,

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

"**covenant**" includes condition and agreement,

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

"**landlord**", in relation to a lease, 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**", means an agreement or arrangement, however described, whereby the tenant has the right to possess or occupy the demised premises for a term, whether fixed or periodic, and (for the avoidance of doubt) includes –

(a) a sub-lease,

(b) a licence, and

(c) an agreement for a lease where the tenant has become entitled to have the lease granted,

"**sub-lease**" includes an agreement for a sub-lease where the sub-tenant has become entitled to have the sub-lease granted,

"**sub-tenant**" includes any person deriving title under a sub-tenant,

"**tenant**" means any person for the time being entitled to possess or occupy the demised premises under a lease and includes a sub-tenant.

**Citation.**

9. This Law may be cited as the Leasehold Reform (Miscellaneous Provisions) (Sark) Law, 2019.

**Commencement.**

10. 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.