

PROJET DE LOI

ENTITLED

The Separation, Maintenance and Affiliation Proceedings (Alderney) (Amendment) Law, 2018

THE STATES OF ALDERNEY, in pursuance of their Resolution of the *, 2018, 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 Alderney.

Amendments to 1964 Law.

1. The Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964^a ("the Law") is amended as follows.

2. In the Arrangement of Sections, for the headings relating to section 2 to 8 substitute –

- "2. Grounds of application.
3. Orders for financial provision and separation.
4. Matters to which Court is to have regard.
5. Duration of orders for financial provision.
6. Orders which have been agreed.

^a Ordres en Conseil Vol. XIX, p. 241; amended by Vol. XXII, p. 560; Vol. XXIV, p. 150; Vol. XXXI, p. 306; No. II of 2015; Alderney Ordinance No. VII of 1991; Ordinance No. VII of 2010; No. IX of 2016.

7. Orders where parties are living apart by agreement.
8. Maintenance for children.
- 8A. Revocation and variation of orders.
- 8B. Interim orders.
- 8C. Payment of lump sums by instalments."

3. In section 1 of the Law –

- (a) for the definition of "**maintenance order**" in subsection (1), substitute –

""**maintenance order**" means an order of the Court for the payment of money under Part II," and

- (b) insert the following additional definitions in the appropriate places in subsection (1) –

""**child of the family**": see subsection (2),"

""**Committee**" means the Committee for Health & Social Care,"

""**full age**" means the age of 18 years,"

""**respondent**": see section 2(1)," and

- (c) in subsection (2), for "children of the marriage" substitute "a child of the family".

3. For sections 2 to 8 of the Law, substitute the following -

"Grounds of application.

2. (1) Either party to a marriage may apply to the Court for an order under section 3 on the ground that the other party to the marriage (the "respondent") –

- (a) has failed to provide reasonable maintenance for the applicant,
- (b) has failed to provide, or make a proper contribution towards, reasonable maintenance for any child of the family,
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent,
- (d) has deserted the applicant, or
- (e) subject to subsection (2), has committed adultery and the applicant finds it intolerable to live with the respondent.

(2) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of subsection (1)(e).

Orders for financial provision and separation.

3. (1) Where an applicant for an order under this section satisfies the Court of any ground mentioned in section 2, the Court, subject to

the provisions of this Law, may order that –

- (a) the respondent shall –
 - (i) make to the applicant such periodical payments, for such term, as may be specified,
 - (ii) pay to the applicant such lump sum as may be specified,
 - (iii) make to the applicant for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be specified,
 - (iv) pay to the applicant for the benefit of a child of the family, or to such a child, such lump sum as may be specified,
- (b) the applicant be no longer bound to reside with the respondent (such an order having effect in all respects as a decree of judicial separation granted by the Matrimonial Causes Division of the Royal Court).

(2) Without prejudice to the generality of subsection (1)(a), an order thereunder for the payment of a lump sum may be made to enable the applicant to meet any liability or expense reasonably incurred before the

making of the order in maintaining the applicant or any child of the family.

Matters to which Court is to have regard.

4. (1) The Court, in deciding whether and in what manner to exercise its powers under section 3, shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained full age.

(2) As regards the exercise of its powers under section 3(1)(a)(i) or (ii), the Court shall in particular have regard to the following matters –

- (a) the income, earning capacity, property and other financial resources which each party to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the Court be reasonable to expect either party to take steps to acquire,
- (b) the financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future,
- (c) the standard of living enjoyed by the parties before the occurrence of the conduct which is alleged as the ground of the application,

- (d) the age of each party and the duration of the marriage,
- (e) any physical or mental disability of either party,
- (f) the contributions which each party has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution made by looking after the home or caring for the family,
- (g) the conduct of each party if that conduct is such that it would, in the opinion of the Court, be inequitable to disregard it.

(3) As regards the exercise of its powers under section 3(1)(a)(iii) or (iv), the Court shall in particular have regard to the following matters –

- (a) the financial needs of the child,
- (b) the income, earning capacity (if any), property and other financial resources of the child,
- (c) any physical or mental disability of the child,
- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is

alleged as the ground of the application,

- (e) the manner in which the child was being and in which the parties to the marriage expected the child to be educated or trained,
- (f) the matters mentioned in subsections (2)(a) and (b) of this section.

(4) As regards the exercise of its powers under section 3 in favour of a child of the family who is not a child of the respondent, the Court shall also have regard –

- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if so, to the extent to which, the basis on which, and the length of time during which, the respondent assumed that responsibility,
- (b) to whether, in assuming and discharging that responsibility, the respondent did so knowing that the child was not the respondent's own child,
- (c) to the liability of any other person to maintain the child.

Duration of orders for financial provision.

5. (1) The term to be specified in an order under section 3(1)(a)(i) shall not begin before the date of the application for the order.

(2) An order under section 3(1)(a)(i) ceases to have effect upon –

- (a) the remarriage or civil partnership of the party in whose favour the order was made, or
- (b) the death of either party to the marriage,

whichever is earlier.

(3) The term to be specified in an order under section 3(1)(a)(iii) shall not begin before the date of the application for the order or, subject to subsection (5), extend beyond the date on which the child attains full age.

(4) Subject to subsection (5), no order shall be made under section 3(1)(a)(iii) or (iv) for the benefit of a child who has attained full age.

(5) The term to be specified in an order under section 3(1)(a)(iii) may extend beyond the date on which the child attains full age, and an order may be made under section 3(1)(a)(iii) or (iv) for the benefit of a child who has attained full age, if it appears to the Court –

- (a) that the child is, or will be, or would be if the term were so extended or such an order were made, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not the child

is also, or will also be, in gainful employment, or

- (b) that there are special circumstances that justify so extending the term or making such an order.

(6) An order under section 3(1)(a)(iii) ceases to have effect upon the death of the child or the person liable to make the payments under the order.

(7) Where an order ceases to have effect under subsection (2) or (6), the order may nevertheless be relied upon in relation to any arrears due under it.

Orders which have been agreed.

6. (1) Either party to a marriage may apply to the Court for an order under this section on the ground that the applicant or the other party to the marriage has agreed to make the financial provision specified in the application, and on such an application, subject to subsection (3), the Court may order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application provided it is satisfied that

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- (a) the applicant or the respondent, as the case may be, has agreed to make that provision, and
- (b) it would not be contrary to the interests of justice to make the order.

(2) In this section "**financial provision**" means –

- (a) the making of periodical payments by one party to the other,
- (b) the payment of a lump sum by one party to the other,
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment of a lump sum by one party to a child of the family or to the other party for the benefit of such a child.

(3) The Court shall not order the making of any financial provision under subsection (1) to or for the benefit of a child unless it considers that the provision provides for, or make a proper contribution towards, the financial needs of the child.

(4) Where on an application under subsection (1) the Court decides that –

- (a) it would be contrary to the interests of justice to order the making of the financial provision specified in the application, or
- (b) the financial provision specified in the application where it is to be made to or for the

benefit of a child, does not provide for, or make a proper contribution towards, the financial needs of the child,

then, if both the parties agree to the making of some other financial provision proposed by the Court, the Court may order that the applicant or the respondent, as the case may be, shall make that provision.

(5) Section 5 applies to an order –

(a) for the making of the financial provision mentioned in subsection (2)(a) as it applies to an order under section 3(1)(a)(i),

(b) for the making of the financial provision mentioned in subsection (2)(c) or (d), as it applies respectively to an order under section 3(1)(a)(iii) or (iv).

(6) Section 3(2) applies to an order for the making of the financial provision mentioned in subsections (2)(b) and (d) as it applies to an order under section 3(1)(a).

Orders where parties are living apart by agreement.

7. (1) Where the parties to a marriage have lived apart for not less than 3 months, neither party having deserted the other, and one party has made periodical payments for the benefit of the other party or of a child of the family, the other party may apply to the Court for an order under this section, specifying in the application, so far as possible, the aggregate amount of the

payments made during the period of 3 months immediately preceding the application.

(2) Where on an application under subsection (1) the Court is satisfied that the respondent to the application has made the payments specified in the application, the Court may, subject to the provisions of this Law, order that the respondent shall –

- (a) make to the applicant such periodical payments, for such term, as may be specified,
- (b) make to the applicant for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be specified,

but, subject to subsection (4), the Court shall not order the respondent to make payments which exceed in aggregate in any period of 3 months the aggregate amount paid by the respondent for the benefit of the applicant or the child, as the case may be, during the period of 3 months immediately preceding the application.

(3) Section 4 applies to an application under subsection (1) as it applies to an application under section 3.

(4) Where the Court considers that an order under subsection (2) –

- (a) would not provide reasonable maintenance for the applicant, or

- (b) if the application relates to a child, would not provide or make a proper contribution towards reasonable maintenance for the child,

the Court may treat the application as if it were an application under section 3.

(5) Section 5 –

- (a) applies to an order under subsection (2)(a) as it applies to an order under section 2(1)(a)(i), and
- (b) applies to an order under subsection (2)(b) as it applies to an order under section 3(1)(a)(iii).

Maintenance for children.

8. (1) Where the Court has made an order under section 17 of the Children (Guernsey and Alderney) Law, 2008 in respect of a child, or any order varying such an order, the Court may make such order regarding the making of financial provision as it thinks fit.

(2) Where the Court has made a community parenting order under the Children (Guernsey and Alderney) Law, 2008, the Court may make such order regarding the making of periodical payments to the Committee or to the child as it thinks fit.

(3) The Court, in deciding whether and in what manner to make an order under subsection (1) or (2), shall have regard to all the circumstances of the case, including the matters to which it is required to have

regard under section 4(3); and, in deciding whether to make an order against a party to the marriage who is not a parent of the child, shall also have regard to the matters to which it is required to have regard under section 4(4).

(4) Section 5 applies to –

- (a) an order under subsection (1) or (2) for the making of periodical payments as it applies to an order under section 3(1)(a)(iv), and
- (b) an order under subsection (1) for the payment of a lump sum as it applies to an order under section 3(1)(a)(iv).

(5) Section 3(2) applies to an order under subsection (1) for the payment of a lump sum as it applies to an order under section 3(1)(a)(iv).

(6) In subsection (1) "**financial provision**" means –

- (a) the making of periodical payments by any person to the child or to another person for the benefit of the child,
- (b) the payment of a lump sum by any person to the child or to another person for the benefit of the child.

Revocation and variation of orders.

8A. (1) The Court may by order vary or revoke an order under

this Part for the making of periodical payments on an application by or on behalf of –

(a) any person required by the order to make the payments, or

(b) any person to whom or for whose benefit the payments were ordered to be made, including where appropriate the Committee.

(2) On an application under subsection (1), the Court may make any order for the payment of a lump sum which it could have made when making the order to which the application relates, whether or not the person required to pay the lump sum was required to pay a lump sum by a previous order under this Part.

(3) Where, under subsection (1), the Court varies an order for the making of periodical payments, the varied payments shall be made from such date as may be specified, not being earlier than the date of the application for the variation.

(4) Where the Court has made an order for the making of periodical payments to or for the benefit of a child, including an order for the making of periodical payments to the Committee in respect of the child, and such order has ceased to have effect, the Court may, on the application of the child after the child attains full age but before the child attains the age of 21, order that the order for the making of periodical payments shall be revived subject to such variations and from such date, not being earlier than the date of the application for the revival, as may be specified.

(5) In deciding whether and in what manner to exercise its powers under this section, the Court shall, so far as it appears just to do so, give effect to any agreement between the parties in relation to the application and, if there is no such agreement, or if the Court decides not to give effect to it, the Court shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained full age, and the circumstances of the case include any change in any of the matters to which the Court was required to have regard when making the order to which the application for a variation, revocation or revival relates.

Interim orders.

8B. (1) Where on an application under this Part the Court has power to order the making of periodical payments or the payment of a lump sum, the Court, at any time before disposing of the application, may make an order (an "**interim maintenance order**") for the making of such periodical payments as it thinks fit.

(2) An interim maintenance order may provide for payments to be made from such date as the Court may specify, not being earlier than the date of the application in question.

(3) An interim maintenance order ceases to have effect upon –

(a) the date specified in the order or, if none, the expiration of 3 months from the making of the order, or

- (b) the disposal of the application, whichever is earlier.

(4) Before an interim maintenance order ceases to have effect by virtue of subsection (3), the Court may by order extend it for a further period, and in that case it shall cease to have effect upon –

- (a) the date specified in the order providing for the extension or, if none, the expiration of 3 months from the making of that order, or
- (b) the disposal of the application,

whichever is earlier.

(5) No appeal lies from the making, variation, revocation or extension of an interim maintenance order, or from a refusal to do any of those things.

Payment of lump sums by instalments.

8C. Where the Court makes, or has made, an order for the payment of a lump sum, the Court may –

- (a) allow time for payment, or order payment by instalments,
- (b) where time for payment has been allowed, allow further time or order payment by instalments,

- (c) vary the number of instalments, the amount of any instalment and the date on which any instalment becomes payable."

Interpretation.

4. (1) In this Law -

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**the Law**" means the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

- (2) The Interpretation (Guernsey) Law, 1948^b applies to the interpretation of this Law.

- (3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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

Repeals.

5. (1) The Separation, Maintenance and Affiliation Proceedings (Amount of Weekly Sum) (Alderney) Ordinance, 1991^c is repealed.

(2) In Schedule 2 of the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, the entry relating to Part II of the Law is repealed.

Transitional and savings provisions.

6. (1) An order of the Court made under Part II of the Law which was in force immediately prior to the commencement of this Law, has effect as if made under this Law.

(2) An application pending at the commencement of this Law shall proceed as if made under the relevant provision of Part II of the Law as amended by this Law.

Citation.

7. This Law may be cited as the Separation, Maintenance and Affiliation Proceedings (Alderney) (Amendment) Law, 2018.

Commencement.

8. This Law shall come into force on the day of its registration on the records of the Island of Alderney.

^c Alderney Ordinance No. VII of 1991.