

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REFORM OF THE MATRIMONIAL CAUSES LAW

The States are asked to decide:-

Whether, after consideration of The Policy Letter entitled, “Reform of the Matrimonial Causes Law” (dated 7th June 2022) they are of the opinion:-

1. To repeal section 22 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988.
2. To note that the approval of the States of Alderney to the amendments to the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964.
3. To note the inclusion of provisions empowering the Matrimonial Causes division to make orders dividing or charging Sark real property, as agreed by Chief Pleas of Sark in 2021.
4. To approve the Projet de Loi entitled ‘The Matrimonial Causes (Bailiwick of Guernsey) Law, 2022’ and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
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ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REFORM OF THE MATRIMONIAL CAUSES LAW

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

7th June, 2022

Dear Sir,

1 Executive Summary

- 1.1 In February 2020, the States of Deliberation resolved to reform The Matrimonial Causes Law (Guernsey), 1939 (“the 1939 Law”)¹. The reforms aimed to modernise and simplify the 1939 Law to make it more inclusive and reduce conflict within cases of divorce, judicial separation and annulment in the Bailiwick².
- 1.2 This Policy Letter seeks approval of the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022 in Appendix A, in line with the 2020 direction of the States of Deliberation (Proposition 4).
- 1.3 Approval is sought for an additional amendment to the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988 which was identified during the drafting process. The repeal of section 22 of this legislation was not explicitly agreed through the 2020 reforms but is required to ensure alignment with the wider matrimonial causes reforms (Proposition 1).
- 1.4 In 2020, it was identified that there was a need to amend the Separation, Maintenance and Affiliation (Alderney) Law, 1964 so it aligns with the agreed reforms. In January 2020, the States of Alderney directed the preparation of the necessary amendments and the inclusion of these amendments within the Projet de Loi (Proposition 2).

¹ [Resolutions Article 1, Billet d’État IV, of 2020](#)

² [Reform of Matrimonial Causes Law Policy Letter](#)

1.5 Since the approval of the reforms in 2020 it has become apparent that additional provisions need to be made in relation to division and charging of Sark real property. This is necessary to enable the Matrimonial Causes Division to make orders in relation to Sark real property which are consistent with Sark laws of real property. The Chief Pleas of Sark approved the inclusion of the provision at their midsummer meeting in 2021. The special provisions are set out in section 27 of the Projet de Loi (Proposition 3).

2 Background

2.1 The 2020 Policy Letter aimed to set out proposals for changes to the 1939 Law in order to fulfil the Resolution of the States of Deliberation (“the States”) in December 2015³ which recognised the need for the law to be reformed to ensure it was inclusive and reflective of a modern society.

2.2 The review process, which included public consultation, revealed strong support for the reform proposals, particularly:

- moving to ‘no fault’ divorce by removing the fault grounds;
- removal of the ability to contest a divorce;
- removal of the requirement for the court to consider reconciliation; and
- simplifying the procedure to allow couples to process divorces themselves where possible.

2.3 To ensure the proposed reforms were effective in a consistent manner throughout the Bailiwick, the need for consequential amendments to be made to related legislation was identified. Significant among them was the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988, which enables a party to a marriage to apply for a separation order and financial provision. Such applications required the establishment of a ground of fault based on behaviour, desertion or adultery, or the respondent’s failure to provide maintenance for the applicant or the children of the marriage.

2.4 The States directed the necessary amendments be made to enable the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988 to align with the proposals to remove fault grounds.

2.5 Similarly, the States of Alderney were consulted on the need for amendments to the Separations, Maintenance and Affiliations (Alderney) Law, 1964.

2.6 Since the reforms were agreed in 2020, further consultation and direction from the other islands in the Bailiwick was sought to align to these changes, specifically:

³ [Billet d’État XXIII, 2015 - Same-sex marriage](#)

- i. To seek a Resolution from the States of Alderney directing the drafting of the amendments to the Separations, Maintenance and Affiliations (Alderney) Law, 1964; and
- ii. To seek approval from the Chief Pleas of Sark for the inclusion of provisions in relation to Sark real property in the Projet de Loi.

3 Amendments to Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988

3.1 The Committee *for* Home Affairs, as the responsible Committee for the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988, approved the amendments to this Law in January 2022, in line with the extant Resolution 3. This allows the law to align with the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022 in meeting the reforms on removal of grounds of fault in divorce proceedings.

Additional consequential amendment

3.2 A further consequential amendment to the Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988 was identified during the drafting process relating to the need to repeal section 22 of this law.

3.3 Section 22 empowers the court to adjourn an application for separation and maintenance to give the parties an opportunity to consider reconciliation. This is inconsistent with the intention of the reforms which remove the court's involvement in facilitating reconciliation.

3.4 The amendments to the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 are set out in paragraph 6 of Schedule 3 to the Projet de Loi.

4 Separations, Maintenance and Affiliation (Alderney) Law, 1964

4.1 The States of Alderney was advised in 2019 that the Separations, Maintenance and Affiliation (Alderney) Law, 1964 would require amendment in relation to the removal of fault as grounds for separation orders, to align with the matrimonial causes reforms (highlighted in paragraph 13.4 of the 2020 Policy Letter).

4.2 In January 2022, the States of Alderney agreed to the proposed amendments to the Separation, Maintenance and Affiliation (Alderney) Law, 1964 and directed that the necessary amendments be drafted. They are set out in paragraph 2 of Schedule 3 to the Projet de Loi.

5 Special Provisions for Sark

- 5.1 The Matrimonial Causes Law (Guernsey), 1939⁴ included special provisions for Sark in relation to orders of the court as to the division of matrimonial assets. This was necessary because division and charging of Sark real property was not permitted due to the restrictions imposed by the 1611 Letters Patent. The special provisions confirmed that no division of Sark real property was possible and empowered the court instead to grant statutory leasehold interests to a party to a marriage.
- 5.2 In February 2021, the commencement of the Land Reform (Sark) Law, 2019⁵ enabled the division and charging of real property at the option of the landowner, but did not make any provision for compulsory division or charging of such property by order of a court. At the time the matrimonial causes reforms were being formulated the Sark Land Reform legislation had not come into force, so no proposals in relation to Sark real property were included in the 2020 Policy Letter.
- 5.3 In order to achieve consistency with the distribution of Guernsey and Alderney real property, and to give flexibility to the Matrimonial Causes Division in achieving fairness between the spouses where Sark real property is involved, it is recommended that provision be made to enable the court to order the division and charging of Sark real property when considering the distribution of matrimonial assets. In order to enable such orders to be made in respect of Sark real property, special provisions would also be needed to ensure that any conveyance or vesting order, and any order charging Sark real property, is consistent with the requirements of the Land Reform (Sark) Law, 2019, for example in relation to identification of boundaries and registration of charges.
- 5.4 The Chief Pleas of Sark were consulted and resolved that the provisions be included in the Matrimonial Causes (Guernsey) Law, 2022 at their midsummer meeting in 2021. The special provisions are set out in section 27 of the Projet de Loi.

6 Compliance with Rule 4

- 6.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 6.2 The following information is provided in conformity with Rule 4(1):

⁴ [The Matrimonial Causes Law \(Guernsey\), 1939](#)

⁵ [Land Reform \(Sark\) Law, 2019](#)

- a) The Propositions accord with the States' objectives and policy plans to maintain a safe, inclusive and equal community. The conclusion and implementation of the reforms of the 1939 Law including the amendments to the Domestic Proceedings Law was resourced through the Government Work Plan 2021-2025, for progressing in 2021 - 2023.
- b) The Policy & Resources Committee has consulted with the Committee *for* Home Affairs, the Chief Pleas of Sark, and the States of Alderney as relevant to their responsibilities in this regard⁶.
- c) The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) No additional resource requirements are identified to implement these reforms.

6.3 For the purposes of Rule 4(2)(a), it is confirmed that the Propositions relate to the responsibility of the Policy & Resources Committee as set out in section (a) of its mandate, under its responsibility for 'examining issues which expressly do not fall within the mandates of other committees'.

6.4 For the purposes of Rule 4(2)(b), it is confirmed that each of the Propositions is supported unanimously.

Yours faithfully

P Ferbrache
President

H Soulsby MBE
Vice-President

M Helyar
J Le Tocq
D Mahoney

⁶ [Government Work Plan 2021-2025](#)

PROJET DE LOI

ENTITLED

The Matrimonial Causes (Bailiwick of Guernsey) Law, 2022

ARRANGEMENT OF SECTIONS

PART I JURISDICTION IN MATRIMONIAL CAUSES

1. Jurisdiction of Matrimonial Causes Division.
2. Constitution of Matrimonial Causes Division.
3. Staying of matrimonial proceedings.

PART II DIVORCE, NULLITY AND JUDICIAL SEPARATION

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4. Conditions of exercise of jurisdiction.

Abatement of proceedings

5. Abatement of proceedings.

Divorce

6. Divorce on breakdown of marriage.
7. Financial protection for other party in certain cases.

Nullity of marriage

8. Ground on which a marriage is voidable.
9. Nullity of marriage order.
10. Effect of annulment in case of voidable marriage.
11. Savings as to void marriages.

Judicial separation

12. Judicial separation orders.

13. Judicial separation by consent.
14. Termination of judicial separation.
15. Restrictions on divorce, nullity of marriage or judicial separation orders affecting children.

PART III

PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

16. Application for presumption of death and dissolution of marriage.
17. Conditions of exercise of jurisdiction.
18. Rescission of order.
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FINANCIAL PROVISION AND VESTING OR DIVISION OF PROPERTY

20. Judicial sanction necessary for validity of terms of separation.
21. Interim financial provision.
22. Power of Court to make interim occupation order.
23. Financial provision orders.
24. Power of Court to order vesting or division of property.
25. Power of Court to vary settlements etc.
26. Power of Court to award priority.
27. Powers of Court in relation to Sark real property.
28. Matters to which the Court is to have regard in exercising its powers.
29. Exercise of Court's powers in favour of party to marriage on divorce or nullity of marriage order.
30. Commencement of proceedings for ancillary relief etc.
31. Duration of continuing financial provision orders, and effect of remarriage etc.
32. Duration of continuing financial provision orders in favour of children, and age limit on making certain orders.
33. Further powers of Court.
34. Payment of certain arrears unenforceable without leave of court.
35. Power to remit arrears.
36. Avoidance of transactions intended to prevent or reduce financial relief.
37. Payments under order made in favour of person lacking capacity.
38. Enforcement by wage arrest.
39. Interpretation of Part IV.

PART V

DOMICILE

40. Domicile – general provisions.
41. Married women's domicile.
42. Age at which independent domicile can be acquired.
43. Dependent domicile of child not living with father.

PART VI
ENFORCEMENT

44. Powers of enforcement to be in addition to any other powers.
45. Penal notice.
46. Penalties and power to make compensation orders.

PART VII
MISCELLANEOUS AND GENERAL

47. Parties to proceedings.
48. General provisions as to Ordinances.
49. Rules of court.
50. Interpretation.
51. Repeals.
52. Consequential amendments.
53. Transitional provisions.
54. Citation.
55. Commencement.

SCHEDULE 1: STAYING OF MATRIMONIAL PROCEEDINGS

SCHEDULE 2: REPEALS

SCHEDULE 3: CONSEQUENTIAL AMENDMENTS

PROJET DE LOI

ENTITLED

The Matrimonial Causes (Bailiwick of Guernsey) Law, 2022

THE STATES, in pursuance of their Resolutions of the 5th February, 2020^a and *, 2022, of the Resolution of the Chief Pleas of Sark of 7th July, 2021, and of the Resolution of the States of Alderney of 12th January, 2022, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

JURISDICTION IN MATRIMONIAL CAUSES

Jurisdiction of Matrimonial Causes Division.

1. (1) Subject to the provisions of this Law and any other enactment, the Matrimonial Causes Division of the Royal Court of Guernsey ("**the Matrimonial Causes Division**"), established by Article 2 of the 1939 Law, shall have jurisdiction in respect of all matrimonial causes and matters in the Bailiwick, including (without limitation) proceedings for –

(a) divorce and judicial separation,

^a Article No. I of Billet d'État No. IV of 2020.

- (b) nullity of marriage, and
- (c) presumption of death and dissolution of marriage thereupon.

(2) For the avoidance of doubt, the Matrimonial Causes Division shall not have jurisdiction in applications under –

- (a) the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988^b, or
- (b) the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964^c.

(3) The provisions of this section are without prejudice to -

- (a) any jurisdiction conferred on the Matrimonial Causes Division in respect of any matter by any other enactment, and
- (b) the concurrent jurisdiction of the Ordinary Court, the Court of Alderney and the Court of the Seneschal to pronounce a judicial separation where the parties consent (see section 13(2)).

Constitution of Matrimonial Causes Division.

2. (1) Subject to the provisions of this section, the Matrimonial Causes Division shall be constituted by the Bailiff and a minimum of two Jurats.

^b Ordres en Conseil Vol. XXXI, p. 171. This enactment has been amended.

^c Ordres en Conseil Vol. XIX, p. 241. This enactment has been amended.

(2) The Matrimonial Causes Division is properly constituted by the Bailiff sitting unaccompanied by the Jurats; and in such a case the Bailiff is the sole judge of fact.

(3) The Royal Court may, from time to time, appoint a person who has been in practice as –

- (a) an Advocate of the Royal Court of Guernsey,
- (b) a member of –
 - (i) the Bar of England and Wales,
 - (ii) the Bar of Northern Ireland, or
 - (iii) the Faculty of Advocates in Scotland, or
- (c) a Solicitor –
 - (i) of the Supreme Court of England and Wales,
 - (ii) of the Supreme Court of Judicature of Northern Ireland, or
 - (iii) in Scotland,

for not less than ten years (or such shorter period as the Royal Court may agree to in any particular case), as a Judge in Matrimonial Causes who shall have power to exercise concurrently with the Bailiff the functions and jurisdiction of the Matrimonial Causes Division during the period for which the appointment is made.

(4) A Judge in Matrimonial Causes appointed under subsection (3) -

- (a) shall, before entering office, take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court, and
- (b) shall be paid such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff.

Staying of matrimonial proceedings.

3. (1) Schedule 1 to this Law shall have effect as to the cases in which matrimonial proceedings in the Bailiwick are to be, or may be, stayed by the Court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule.

(2) Nothing in Schedule 1 prejudices any power to stay proceedings which is exercisable by the Court apart from that Schedule.

(3) In this section and in Schedule 1, "**matrimonial proceedings**" means any proceedings of the following kinds, namely, proceedings for divorce, judicial separation and nullity of marriage.

PART II

DIVORCE, NULLITY AND JUDICIAL SEPARATION

Jurisdiction

Conditions of exercise of jurisdiction.

4. (1) Subject to subsection (3), it is a necessary condition of the exercise of the Court's jurisdiction in causes and matters relating to divorce or judicial separation that either of the parties to the marriage –

- (a) is domiciled in the Bailiwick on the date when the application for a divorce or judicial separation order,

or for a pronouncement of judicial separation under section 13, is made, or

(b) was habitually resident in the Bailiwick throughout the period of one year ending with that date.

(2) Subject to subsection (3), it is a necessary condition of the exercise of the Court's jurisdiction in causes and matters relating to nullity of marriage that either of the parties to the marriage –

(a) is domiciled in the Bailiwick on the date when the application for a nullity order is made, or

(b) was habitually resident in the Bailiwick throughout the period of one year ending with that date, or

(c) died before that date and either –

(i) was at death domiciled in the Bailiwick, or

(ii) had been habitually resident in the Bailiwick throughout the period of one year ending with the date of death.

(3) In relation to a marriage of a same-sex couple, it is a necessary condition of the exercise of the Court's jurisdiction in causes and matters relating to divorce, judicial separation or nullity of marriage that –

(a) the condition in subsection (1) or (2), as the case may be, is satisfied, or

(b) the following conditions are met –

- (i) the parties to the marriage married each other under the law of the Bailiwick, and
- (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case.

(4) At any time when proceedings are pending in respect of which the Court has jurisdiction by virtue of subsection (1), (2) or (3) (or this subsection), the Court also has jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, even though that jurisdiction would not be exercisable under subsection (1), (2) or (3).

Abatement of proceedings

Abatement of proceedings.

5. (1) For the avoidance of doubt, the death of one of the parties to a marriage in respect of which an application for a divorce, nullity of marriage or judicial separation order has been made and not determined shall abate the proceedings.

(2) For the purposes of subsection (1), an application is determined –

- (a) in the case of an application for a divorce or nullity of marriage order, when the order is made final,
- (b) in the case of an application for a judicial separation order, when the order is made,

or, in any case, when the application is otherwise disposed of.

Divorce

Divorce on breakdown of marriage.

6. (1) Either or both parties to a marriage may apply to the Court for an order ("**divorce order**") which dissolves the marriage on the ground that the marriage has broken down irretrievably.

(2) An application under subsection (1) must be accompanied by a statement by the applicant or applicants that the marriage has broken down irretrievably.

(3) The Court must –

(a) take the statement to be conclusive evidence that the marriage has broken down irretrievably, and

(b) subject to subsection (5), make a divorce order.

(4) A divorce order is, in the first instance, a provisional order.

(5) The Court may not make a provisional order unless the Court has received confirmation from the applicant, or from both applicants in the case of a joint application, that the applicant or applicants, as the case may be, wish the application to continue; and a party may not give confirmation for the purposes of this subsection before the end of the period of 60 days, or such other period as the States may by Ordinance prescribe, from the date of the application under subsection (1).

(6) Rules of court may make provision as to the procedure for an application under subsection (1) by both parties to a marriage to become an application by one party to the marriage only (including provision for a statement made under subsection (2) in connection with the application to be treated as made by one party to the marriage only).

(7) A divorce order may not be made final –

- (a) before the expiration of the period of one month beginning with the date on which the provisional order was made,
- (b) before any application under section 7 has been disposed of, and
- (c) unless the Court has declared that it is satisfied in accordance with section 15.

(8) In a particular case, the Court may by order shorten the period (or periods) that would otherwise be applicable for the purposes of subsection (5) or (7)(a) as it thinks fit.

(9) Where a provisional order ("**the order**") has been made on an application by one party to a marriage and that party has not applied for the order to be made final then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the other party to the marriage may make an application to the Court, and on that application the Court may –

- (a) subject to section 7 and section 15, make the order final,
- (b) rescind the order, or
- (c) otherwise deal with the case as it thinks fit.

Financial protection for other party in certain cases.

7. (1) Where a provisional order has been made on the application of -
- (a) one party to a marriage, or
 - (b) both parties to a marriage, but one of the parties has since withdrawn from the application,

the respondent ("A") may apply to the Court for consideration of A's financial position after the divorce order is made final.

(2) The Court may make the divorce order final despite an application by A under subsection (1) unless it is satisfied that, having regard to all the circumstances, including –

- (a) the matters to which the Court is to have regard under section 28(2) in deciding whether to exercise its powers in favour of or in relation to a party to the marriage,
- (b) the financial position of A as, having regard to the divorce, it is likely to be after the death of the other party ("B") should B die first,

it would be unreasonable to make the order final until B has made, or has made a satisfactory undertaking to make, financial provision for A to the Court's satisfaction.

Nullity of marriage

Ground on which a marriage is voidable.

8. A marriage shall be voidable on the ground only that either party to the marriage did not consent to it, whether in consequence of duress, mistake, incapacity or otherwise.

Nullity of marriage order.

9. (1) Either party to a marriage may apply to the Court for an order annulling the marriage (a "**nullity of marriage order**") on the ground that the marriage is void or voidable.

(2) A nullity of marriage order is, in the first instance, a provisional order.

(3) A nullity of marriage order may not be made final –

- (a) before the expiration of the period of one month beginning with the date on which the provisional order was made, and
- (b) unless the Court has declared that it is satisfied in accordance with section 15.

(4) In a particular case, the Court may by order shorten the period mentioned in subsection (3)(a) as it thinks fit.

(5) Where a provisional order has been made on an application by one party to a marriage and that party has not applied for the nullity of marriage order to be made final then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the other party to the marriage may make an application to the Court, and on that application the Court may –

- (a) subject to section 15, make the order final,
- (b) rescind the order, or
- (c) otherwise deal with the case as it thinks fit.

Effect of annulment in case of voidable marriage.

10. A nullity of marriage order granted in respect of a voidable marriage shall operate to annul the marriage only as respects any time after the order has been made final, and the marriage shall, despite the order, be treated as if it had existed up to that time.

Savings as to void marriages.

11. Nothing in this Part shall be construed as validating any marriage which is by law void but with respect to which a nullity of marriage order has not been made.

Judicial separation

Judicial separation orders.

12. (1) Either or both parties to a marriage may apply to the Court for an order (a "**judicial separation order**") which provides for the separation of the parties to the marriage.

(2) An application under subsection (1) must be accompanied by –

(a) if the application is by one party to the marriage only, a statement by that person that the person seeks to be judicially separated from the other party to the marriage, or

(b) if the application is by both parties to the marriage, a statement by them that they seek to be judicially separated from each other.

(3) The Court may not make a judicial separation order unless –

(a) the Court has received confirmation from the applicant, or from both applicants in the case of a joint application, that the applicant or applicants, as the case may be, wish the application to continue; and a party may not give confirmation for the purposes of this subsection before the end of the period of 60 days, or such other period as the States may by Ordinance prescribe, from the date of the application under subsection (1), and

(b) the Court has declared that it is satisfied in accordance with section 15.

(4) In a particular case, the Court may by order shorten the period that would otherwise be applicable for the purposes of subsection (3)(a) as it thinks fit.

(5) Rules of court may make provision as to the procedure for an application under subsection (1) by both parties to a marriage to become an application by one party to the marriage only (including provision for a statement made under subsection (2) in connection with the application to be treated as made by one party to the marriage only).

(6) Subject to subsection (3), the Court dealing with an application under subsection (1) must make a judicial separation order.

Judicial separation by consent.

13. (1) The Court may, on the application of both parties to a marriage –

(a) pronounce a judicial separation, and

(b) sanction the terms of separation between them,

provided that it is satisfied in accordance with section 15.

(2) Subsection (1) is without prejudice to the jurisdiction of -

(a) the Ordinary Court,

(b) the Court of Alderney, and

(c) the Court of the Seneschal,

("relevant court") to pronounce a judicial separation, and to sanction the terms of such separation, where both parties consent to such judicial separation.

(3) An application to the Court or the relevant court for pronouncement of a judicial separation must be accompanied by a statement by the parties that they seek to be judicially separated from each other.

(4) The Court or the relevant court (as the case may be) shall, in sanctioning the terms of separation between the parties to a marriage, have the same powers as the Court would have under Part IV when making a judicial separation order, save for the power to make interim orders.

(5) Any order made by the Court or the relevant court (as the case may be) sanctioning the terms of separation between the parties to a marriage may be varied, discharged, suspended in whole or in part or modified by the court by which such order was made; and the provisions of section 33(2) and (4) shall apply in such a case as they apply in relation to the variation, discharge, suspension or modification of an order of the Court under Part IV.

(6) Where the Court or the relevant court (as the case may be) declines to sanction the terms of separation presented to it by the parties, no order shall be made.

Termination of judicial separation.

14. (1) Subject to the provisions of subsection (4), a judicial separation order and a decree or pronouncement of judicial separation shall, as between the parties to the marriage, be rescinded by their resumption of cohabitation.

(2) A judicial separation order and a decree or pronouncement of judicial separation shall continue to be valid and effectual as regards the rights and remedies of third parties despite the resumption of cohabitation of the parties to the marriage, until –

(a) the order, decree or pronouncement has been discharged under subsection (3), or

(b) a Declaration of Rescission of Judicial Separation has been signed by the parties to the marriage in the presence of Her Majesty's Greffier and entered in a register maintained for that purpose.

(3) The Court or (in respect of a judicial separation pronounced by the Ordinary Court, the Court of Alderney or the Court of the Seneschal) the court by which the judicial separation was pronounced, may, on the application of the parties to a marriage, discharge a judicial separation order, or a decree or pronouncement of judicial separation (as the case may be), and may make such order as it thinks fit respecting the terms of separation subsisting between the parties at the time of such discharge.

(4) The rescission or discharge of a judicial separation order or of a decree or pronouncement of judicial separation shall not affect the validity of any act or thing lawfully done by any person before such rescission or discharge pursuant to, or in reliance upon, the terms of separation subsisting between the parties when the act or thing was lawfully done.

(5) In this section "**decree or pronouncement of judicial separation**" means –

- (a) a decree or pronouncement of judicial separation under the 1939 Law, and
- (b) a pronouncement of judicial separation made under section 13(1) or pursuant to the jurisdiction mentioned in section 13(2).

Restrictions on divorce, nullity of marriage or judicial separation affecting children.

15. (1) The Court must not make a divorce order or nullity of marriage order final, make a judicial separation order, or pronounce a judicial separation under section 13, unless it has declared by order that it is satisfied –

- (a) that for the purposes of this section there are no children of the marriage to whom this section applies,
- (b) that the only children who are or may be children of the marriage to whom this section applies are the children named in the order and –
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances, or
 - (ii) it is impracticable for the party or parties appearing before the Court to make any such arrangements, or
- (c) that there are circumstances making it desirable that the divorce order or nullity of marriage order should be made final, or that a judicial separation order should be made, as the case may be, without delay notwithstanding that there are or may be children of the marriage to which this section applies, and that the Court is unable to make a declaration in accordance with paragraph (b).

(2) The Court must not make an order declaring that it is satisfied as mentioned in paragraph (1)(c) unless it has obtained a satisfactory undertaking

from either or both of the parties to the marriage to bring the question of the arrangements for the children named in the order before the Court within a specified time.

(3) If the Court makes a divorce order or nullity of marriage order final, makes a judicial separation order, or pronounces a judicial separation under section 13, without having made a declaration under subsection (1), the order so made shall be void.

(4) If the Court makes a declaration under subsection (1), no person shall be entitled to challenge the finality of the divorce or nullity of marriage order, or of the judicial separation order or pronouncement of judicial separation, on the grounds that the conditions in subsections (1) and (2) were not fulfilled.

(5) If the Court refuses to make a declaration under subsection (1) it must make an order declaring that it is not satisfied as mentioned in that subsection.

(6) This section applies to the following children of the marriage –

(a) any child of the marriage who at the date of the declaration under subsection (1) is –

(i) under the age of 18 years, or

(ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not the child is also in gainful employment, and

(b) any other child of the marriage to whom the Court directs that this section shall apply,

and the Court may give such a direction as is mentioned in paragraph (b) if it is of the opinion that there are special circumstances which make it desirable in the interests of the child that this section should apply to that child.

(7) In this section "the Court" includes, in respect of a pronouncement of judicial separation pursuant to the jurisdiction mentioned in section 13(2), the Ordinary Court, the Court of Alderney or the Court of the Seneschal.

PART III

PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE

Application for presumption of death and dissolution of marriage.

16. (1) Subject to section 17, a married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may apply for an order –

- (a) declaring that the other party to the marriage is presumed to have died, and
- (b) that the marriage is dissolved,

and the Court may, if satisfied that such reasonable grounds exist, grant an order for the presumption of death and dissolution of the marriage.

(2) In any application under subsection (1) the fact that for a period of seven years or more the other party to the marriage has been continuously absent from the applicant, and the applicant has no reason to believe that the other party has been living within that period, shall be evidence that the other party is dead until the contrary is proved.

(3) An order under subsection (1) is conclusive of the end of the marriage, only –

- (a) after the expiration of the period of one month beginning with the date on which the order was made, and
- (b) if the order has not been rescinded under section 18 and proceedings for such rescission are not pending.

(4) In a particular case, the Court may by order shorten the period that would otherwise be applicable for the purposes of subsection (3)(a) as it thinks fit.

Conditions of exercise of jurisdiction.

17. (1) Subject to subsection (2), it is a necessary condition of the exercise of the Court's jurisdiction to hear and determine an application under section 16 –

- (a) that the applicant –
 - (i) is domiciled in the Bailiwick on the date when the application is made, or
 - (ii) was habitually resident in the Bailiwick throughout the period of one year ending with that date, or
- (b) that the other party to the marriage ("**the missing person**") –
 - (i) was domiciled in the Bailiwick on the day on which the missing person was last known to be alive, or

- (ii) had been habitually resident in the Bailiwick throughout the period of one year ending with that day.

(2) In relation to a marriage of a same-sex couple, it is a necessary condition of the exercise of the Court's jurisdiction to hear and determine an application under this Part that –

- (a) the condition in subsection (1) is satisfied, or
- (b) the following conditions are met –
 - (i) the parties to the marriage married each other under the law of the Bailiwick, and
 - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case.

Rescission of order.

18. (1) The Court must rescind an order under section 16 if it is satisfied, on the application of any person, that a person whose death has been presumed is alive.

- (2) Despite the rescission of any order under section 16 -
 - (a) any subsequent marriage lawfully contracted by the applicant for the order under section 16, at a time when the marriage subject of that order ("**the original marriage**") was conclusively deemed under section 16(3) to have ended, shall not be void or voidable by reason of the rescission, and
 - (b) in the event of any such subsequent lawful marriage, the original marriage shall be deemed to have been

dissolved on the date of the order as if the person whose death was presumed had in fact died on that date.

Order in extraneous jurisdiction.

19. Where a decree or order of presumption of death has been made by a court of competent jurisdiction outside the Bailiwick, and such decree or order is proved to the Court in the manner prescribed by rules of court or otherwise to the satisfaction of the Court, the Court must order that the said decree or order shall as from the date of the decree or order have the same effect as an order made under section 16.

PART IV

FINANCIAL PROVISION AND VESTING OR DIVISION OF PROPERTY

Judicial sanction necessary for validity of terms of separation.

20. No agreement for or relating to the terms of separation of the parties to a marriage is valid and enforceable in the Bailiwick unless it is approved by, and set out in an order of, the Court.

Interim financial provision.

21. (1) Subject to subsection (2), on an application ("**the application**") for a divorce, nullity of marriage or judicial separation order, the Court may make an order for interim financial provision, that is to say, an order requiring either party to the marriage –

- (a) to make –
 - (i) to the other party, or
 - (ii) to any person for the benefit of a child of the marriage, or

(iii) to such a child,

such periodical payments as the Court may direct,

(b) to pay –

(i) to the other party, or

(ii) to any person for the benefit of a child of the marriage, or

(iii) to such a child,

such lump sum as the Court may direct.

(2) In deciding whether to exercise its powers under subsection (1) and, if so, in what manner, the Court must have regard to all the circumstances including (without limitation) the financial needs, obligations and responsibilities of each of the parties to the marriage.

(3) An order under subsection (1) –

(a) may be made at any time after the application is made and before the Court determines any application for a definitive order under this Part,

(b) in so far as it has continuing effect -

(i) shall have effect for such term as the Court shall direct, beginning not earlier than the date of the application, or until it is rescinded by the Court, and

- (ii) for the avoidance of doubt, may be varied, discharged, suspended in whole or in part, and revived if so suspended, under section 33(1)(b).

(4) For the purposes of subsection (3)(a), a definitive order is an order which is not an interim order.

Power of Court to make interim occupation order.

22. (1) On an application for a divorce, nullity of marriage or judicial separation order ("**the application**"), the Court may make an order (an "**interim occupation order**") –

- (a) designating any relevant property as property which shall be used for the purpose of providing living accommodation for any child of the marriage who has not attained the age of 18 years,
- (b) granting to a party to the marriage a right (including, where the Court thinks fit, the exclusive right) –
 - (i) as between the parties to the marriage, and
 - (ii) subject to such limitations as the Court thinks fit,to occupy the property with any child of the marriage,
- (c) containing such other provision as the Court thinks fit, including (without limitation) orders –
 - (i) requiring a party to the marriage to leave the property,

- (ii) regulating the occupation of the property by a party to the marriage,
- (iii) requiring a party to the marriage to permit the other party to enter and remain in the property,
- (iv) excluding a party to the marriage from a defined area in which the property is located,
- (v) granting a party to the marriage possession or use of furniture or other contents of the property,
- (vi) requiring a party to the marriage to take reasonable care of any furniture or other contents of the property,
- (vii) requiring a party to the marriage to take reasonable steps to keep the property and any furniture or other contents secure, and

(d) subject to such conditions as the Court thinks fit.

(2) Before making an order under subsection (1) the Court must give both parties an opportunity to be heard unless the Court is satisfied that it is not reasonably practicable to do so.

(3) In deciding whether to exercise its powers under subsection (1) and, if so, in what manner, the Court must have regard to all the circumstances including (without limitation) –

- (a) the housing needs and housing resources of each of the parties to the marriage and of any child of the marriage who has not attained the age of 18 years, including any

- particular needs in consequence of any physical or mental disability,
- (b) the financial needs, obligations and responsibilities of each of the parties to the marriage,
 - (c) the likely effect of any order, or any decision of the Court not to exercise its powers under subsection (1), on the health, safety or well-being of the parties to the marriage and any such child of the marriage, and
 - (d) the conduct of each of the parties to the marriage, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it.
- (4) An interim occupation order –
- (a) may be made at any time after the application is made and before the Court determines any application for a definitive order under this Part,
 - (b) may, in so far as it has continuing effect, have effect –
 - (i) for a specified period,
 - (ii) until the occurrence of a specified event, or
 - (iii) until further order, and
 - (c) may, for the avoidance of doubt, be varied, discharged, suspended in whole or in part, and revived if so suspended, under section 33(1)(b).

(5) For the purposes of subsection (4)(a), a definitive order is an order which is not an interim order.

(6) In this section "**relevant property**" includes such part of such property as may be specified in the order (and see section 39(1)).

Financial provision orders.

23. (1) On making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final) the Court may make any one or more of the following orders ("**financial provision orders**") –

- (a) an order that one party to the marriage must make to the other such periodical payments, for such term, as the Court may direct,
- (b) an order that one party to the marriage must secure to the other to the satisfaction of the Court such periodical payments, for such term, as the Court may direct,
- (c) an order that one party to the marriage must pay to the other such lump sum or sums as the Court may direct,
- (d) an order that a party to the marriage must make to any person for the benefit of a child of the marriage, or to such a child, such periodical payments, for such term, as the Court may direct,
- (e) an order that a party to the marriage must secure to any person for the benefit of such a child, or must secure to such a child, to the satisfaction of the Court, such periodical payments, for such term, as the Court may direct,

- (f) an order that a party to the marriage must pay to any person for the benefit of such a child, or to such a child, such lump sum as the Court may direct,

subject, however, in the case of an order under paragraph (d), (e) or (f), to the restrictions imposed by section 32.

(2) The Court may also, subject to those restrictions, make any one or more of the orders mentioned in subsection (1)(d), (e) or (f) –

- (a) in any proceedings for divorce, nullity of marriage or judicial separation, before making a divorce order, nullity of marriage order or judicial separation order (as the case may be), and
- (b) where any such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.

(3) The power of the Court under subsection (1) or (2)(a) to make an order in favour of a child of the marriage shall be exercisable from time to time; and where the Court makes an order in favour of a child under subsection (2)(b), it may from time to time, subject to the restrictions mentioned in subsection (1), make a further order in favour of the child of any of the kinds mentioned in subsection (1)(d), (e) or (f).

(4) Where an order is made under subsection (1)(a), (b) or (c) on or after making a divorce or nullity of marriage order, the order is not to take effect unless the divorce or nullity of marriage order has been made final.

(5) Without prejudice to the generality of subsection (1)(c) or (f), an order under this section for the payment of a lump sum may provide for the payment of that sum by instalments of such amounts as may be specified in the order and may –

- (a) require the payment of the instalments to be secured to the satisfaction of the Court,
- (b) order that the instalments shall carry interest at such rate, and from such date, as the Court may think fit.

Power of Court to order vesting or division of property.

24. (1) On making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final) the Court may make any one or more of the orders described in subsection (2), subject, however –

- (a) in the case of an order which affects Sark real property (within the meaning of section 27), to section 27, and
- (b) in the case of an order for the benefit of any children of the marriage, to the restrictions imposed by section 32.

(2) The orders are –

- (a) an order directing that the interests of the parties to the marriage in any relevant property shall vest in –
 - (i) such party to the marriage,
 - (ii) such child of the marriage,
 - (iii) such person for the benefit of such a child, or
 - (iv) any one or more of the persons included in subparagraphs (i) to (iii), in such proportions, as the Court may direct,

- (b) an order directing that the interests of the parties to the marriage in any relevant property shall be held on trust for the benefit of such of the parties to, and any children of, the marriage, and for such purposes as the Court may direct; and in such a case the Court may order that any such property shall be held on trust for sale with or without the power to postpone the sale –
 - (i) for a fixed period,
 - (ii) until the occurrence of a certain event, or
 - (iii) until further order,
- (c) an order directing that any trust or settlement of any relevant property for the benefit of one party or both parties to the marriage be varied or modified in such manner as the Court may direct,
- (d) an order directing that any relevant property be sold, and that such lump sum, or periodical payments, be paid out of the proceeds of sale of such property to –
 - (i) such party to the marriage,
 - (ii) such child or children of the marriage,
 - (iii) such person for the benefit of such a child or children, or
 - (iv) any one or more of the persons included in subparagraphs (i) to (iii), in such proportions as the Court may direct,

- (e) an order suspending the right of a party to the marriage to demand licitation of any relevant property on such terms, and for such period, as the Court may direct,
- (f) an order creating, extinguishing or varying a usufruit, droit d'habitation, lease, licence or right of occupation for the benefit of such of –
 - (i) a party to the marriage, and
 - (ii) a child or children of the marriage,and on such terms and conditions, as the Court may direct.

(3) Where the Court makes an order under subsection (2)(f) granting a lease, and the terms and conditions include a proviso or stipulation giving the lessor under such lease a right of re-entry or forfeiture for breach of any covenant or condition –

- (a) that right shall not be enforceable except pursuant to and in accordance with the terms of an order of the Court, and
- (b) the Court may, on an application by the lessor for an order under paragraph (a), grant such relief to the lessee as the Court thinks fit, having regard to all the circumstances of the case, and on such terms and subject to such conditions as it thinks fit.

(4) Where the Court makes an order described in subsection (2), it may order that one party to the marriage must –

- (a) pay to the other party, for the other party's absolute benefit, such lump sum, or periodical payments, or both, or
- (b) secure to the other party, for the other party's benefit, such lump sum, or periodical payments, or both, for any term not exceeding the life of the party in favour of whom the same is secured,

as the Court may direct and, without prejudice to the generality of this subsection, an order for the payment of a lump sum may provide for the payment of that sum by instalments pursuant to section 23(5) in the same way as an order under section 23.

(5) Where a party to a marriage has an interest in any relevant property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has an interest in that property, or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the Court to give that other person an opportunity to make representations with respect to the order, and any such representations shall be included among the circumstances to which the Court should have regard under section 28(1).

(6) Where an order is made under this section on or after making a divorce or nullity of marriage order, the order is not to take effect unless the divorce or nullity of marriage order has been made final.

Power of Court to vary settlements etc.

25. (1) Without prejudice to section 24(2)(c), on making a divorce, nullity of marriage or judicial separation order or at any time after making such an order (whether, in the case of a divorce or nullity of marriage order, before or after the order is made final) the Court may, on the application of either party to the marriage

or upon the application of any person beneficially interested, make any one or more of the orders described in subsection (2) (a "**variation of settlements order**").

(2) The orders are –

(a) an order cancelling, varying or modifying, or terminating the trusts of, any marriage contract, or any ante-nuptial or post-nuptial settlement (including such a settlement made by will or conveyance), or any other agreement, trust or arrangement for the benefit of the parties to the marriage and of the children of the marriage or either or any of them,

(b) an order extinguishing or reducing the interest of either of the parties to the marriage under any such contract, settlement, agreement, trust or arrangement,

subject, however, in the case of an order for the benefit of any children of the marriage, to the restrictions imposed by section 32.

(3) The Court may exercise the powers conferred by this section notwithstanding that the contract, settlement, trust or arrangement, as the case may be, was made or entered into in an extraneous jurisdiction.

(4) Where an order is made under this section on or after making a divorce or nullity of marriage order, the order is not to take effect unless the divorce or nullity of marriage order has been made final.

Power of Court to award priority.

26. (1) Where the Court orders a party to a marriage –

- (a) to pay to the other party, for the other party's benefit, or to any person for the benefit of a child of the marriage, a lump sum, or
- (b) to secure to the other party, for the other party's benefit, or to secure to any person for the benefit of a child of the marriage, any lump sum, or periodical payments, or both,

the Court may direct that the charge to which such an order may, if registered, give rise shall, subject to subsection (2), have priority as regards such sum or sums specified in the order or such part thereof as the Court directs, with effect from such earlier date as the Court may direct.

(2) In making such a direction as is mentioned in subsection (1), the Court must have regard to the rights and interests of the registered creditors of the person whose real property will be affected by the charge to which the registration of the order gives rise, and must give any such registered creditors the priority of whose charge would be adversely affected by the proposed direction an opportunity to make representations.

Powers of Court in relation to Sark real property.

27. (1) Subject to the provisions of this section, the Court may make an order under this Part in relation to a Sark tenement or freehold ("**Sark real property**"), despite the provisions of the 1611 Letters Patent.

(2) Where the Court makes a property adjustment order which has the effect, whether directly or indirectly, of dividing a parcel of Sark real property from another parcel of Sark real property –

- (a) the order, or

- (b) any conveyance or other document or instrument directed by the Court to be executed, made or done for the purpose of giving effect to such order,

must comply with section 1(2)(a) and (b) of the Land Reform (Miscellaneous Provisions) (Sark) Ordinance, 2020^d (the "**Land Reform Ordinance**"), and the provisions of section 1 of the Land Reform Ordinance shall apply, to the extent that they relate to transactions effecting the division of real property *inter vivos*, to any such conveyance, document or instrument.

(3) Where the Court makes an order under subsection 24(2)(f) granting a lease which is a chargeable leasehold interest within the meaning of section 7 of the Land Reform Ordinance, the Court may direct that such chargeable leasehold interest should be deemed to be real property in accordance with Part III of that Ordinance and, if the Court so directs, such chargeable leasehold interest must be registered on the Chargeable Leasehold Interests Register, which registration shall be valid –

- (a) for such period as may be specified by the Court,
- (b) until the occurrence of an event specified by the Court,
or
- (c) until further order,

and section 11 of the Land Reform Ordinance shall apply to such chargeable leasehold interest for the duration of the validity of such registration.

^d Sark Ordinance No. IX of 2020.

(4) Where the Court makes an order which operates as a charge secured on an interest in Sark real property, such charge –

(a) shall operate as a charge secured over such parcels of real property as shall be specified and particularised in the order, and

(b) shall be entered in the Charges Register upon payment of the fee prescribed by regulations of the Policy & Finance Committee of the Chief Pleas made under section 18 of the Land Reform Ordinance.

(5) Section 3(4) of the Land Reform Ordinance shall apply in the case of a charge registered under subsection (4) of this section in the same way as it applies to a charge registered pursuant to section 3(1)(a) of the Land Reform Ordinance.

(6) In this section –

(a) "**Chargeable Leasehold Interests Register**" means the register established by the Sark Greffier under section 9 of the Land Reform Ordinance,

(b) "**Charges Register**" means the register established by the Sark Greffier under section 2(1) of the Land Reform Ordinance,

(c) "**Sark real property**" includes a chargeable leasehold interest which is deemed to be real property in accordance with Part III of the Land Reform Ordinance.

Matters to which the Court is to have regard in exercising its powers.

28. (1) It shall be the duty of the Court in deciding whether to exercise its powers under sections 21 to 25 and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the marriage who has not attained the age of 18 years.

(2) As regards the exercise of the powers of the Court under section 23(1)(a), (b) or (c) to make a financial provision order in favour of a party to a marriage, or the exercise of its powers under section 24 or 25 in relation to a party to the marriage, the Court must in particular have regard to the following matters –

- (a) the income, earning capacity, property and other financial resources which each of the parties 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 a party to the marriage to take steps to acquire,
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future,
- (c) the standard of living enjoyed by the family before the breakdown of the marriage,
- (d) the age of each party to the marriage and the duration of the marriage,
- (e) any physical or mental disability of either of the parties to the marriage,

- (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family,
- (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it,
- (h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

(3) As regards the exercise of the powers of the Court under section 23(1)(d), (e) or (f) to make a financial provision order in relation to a child of the marriage, or the exercise of its powers under section 24 or 25 in relation to a child of the marriage, the Court must 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 manner in which the child was being and in which the parties to the marriage expected the child to be educated or trained,

- (e) the considerations mentioned in relation to the parties to the marriage in paragraphs (a), (b) (c) and (e) of subsection (2).

(4) As regards the exercise of the powers of the Court under section 23(1)(d), (e) or (f), 23(2) or (3), 24 or 25 against a party to the marriage in favour of a child of the marriage who is not the child of that party, the Court must also have regard –

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

(5) As regards the exercise of the powers of the Court under this Part respecting any relevant property which, by reason of any marriage settlement, or any ante-nuptial or post-nuptial settlement (including such a settlement made by will or conveyance), or any other agreement, trust or arrangement, is subject to the law of an extraneous jurisdiction, the Court must have regard to the question of the legal effectiveness, outside the jurisdiction of the Court, of the order or orders which the Court might make.

Exercise of Court's powers in favour of party to marriage on divorce or nullity of marriage order.

29. (1) Where on or after the making of a divorce or nullity of marriage order the Court decides to exercise its powers under section 23(1)(a), (b) or (c), or 24 or 25 in favour of a party to the marriage, it shall be the duty of the Court to consider whether it would be appropriate so to exercise those powers that the financial obligations of each party towards the other will be terminated as soon after the making of the order as the Court considers just and reasonable.

(2) Where the Court decides in such a case to make a periodical payments order or secured periodical payments order in favour of a party to the marriage, the Court must in particular consider whether it would be appropriate to require those payments to be made or secured only for such term as would in the opinion of the Court be sufficient to enable the party in whose favour the order is made to adjust without undue hardship to the termination of that party's financial dependence on the other party.

(3) Where on or after the making of a divorce or nullity of marriage order an application is made by a party to the marriage for a periodical payments order or secured periodical payments order in that party's favour, then, if the Court considers that no continuing obligation should be imposed on either party to make or secure periodical payments in favour of the other, the Court may dismiss the application with a direction that the applicant shall not be entitled to make any future applications in relation to that marriage for an order under section 23(1)(a) or (b).

Commencement of proceedings for ancillary relief etc.

30. (1) Where an application for a divorce, nullity of marriage or judicial separation order has been made then, subject to subsection (2), proceedings for an interim financial provision order, for an interim occupation order, for a financial provision order, for a property adjustment order or for a variation of settlements order

may be begun, subject to and in accordance with rules of court, at any time after the making of the application.

(2) Without prejudice to the generality of subsection (1), rules of court may provide, in such cases as may be prescribed by the rules –

- (a) that applications for any such relief as is mentioned in subsection (1) must be made in the application or answer, and
- (b) that applications for any such relief which are not so made, or are not made until after the expiration of such period following the making of the application or the filing of the answer as may be so prescribed, shall be made only with leave of the Court.

Duration of continuing financial provision orders, and effect of remarriage etc.

31. (1) An order for the payment of periodical payments or secured periodical payments in favour of a party to a marriage shall continue for such term as the Court thinks fit provided that the term –

- (a) in the case of a periodical payments order, shall not begin earlier than the date of the making of an application for that order, nor extend beyond the death of either of the parties to the marriage or, where the order is made on or after the making of a divorce or nullity of marriage order, the remarriage of, or formation of a civil partnership by, the party in whose favour the periodical payments order is made, and
- (b) in the case of a secured periodical payments order, shall not begin earlier than the date of the making of an

application for that order, nor extend beyond the death of, or where the order is made on or after the making of a divorce or nullity of marriage order, the remarriage of, or formation of a civil partnership by, the party in whose favour the secured periodical payments order is made.

(2) If, after the grant or making of a decree or order dissolving or annulling a marriage, either party to that marriage remarries, whether at any time before or after the commencement of this Part, or forms a civil partnership, that party shall not be entitled to apply, by reference to the grant or making of that decree or order, for a financial provision order in that party's favour, or for a property adjustment order, or for a variation of settlements order, against the other party to that marriage.

Duration of continuing financial provision orders in favour of children, and age limit on making certain orders.

32. (1) Subject to subsection (3), no financial provision order, no property adjustment order and no variation of settlements order shall be made in favour of a child who has attained the age of 18 years.

(2) Subject to subsection (3), no order for periodical payments to be made to or for the benefit of a child shall have effect beyond the date of the child's 18th birthday.

(3) Subsections (1) and (2) shall not apply in the case of a child in respect of whom it appears to the Court that –

(a) the child is, or will be, 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) there are special circumstances which justify the making of an order without complying with those subsections.

(4) Any periodical payments order in favour of a child shall, despite anything in the order, cease to have effect on the death of the person liable to make payments under the order, except in relation to any arrears due under the order on the date of the death.

Further powers of Court.

33. (1) An order under this Part –

(a) may contain such consequential, ancillary, incidental or supplementary provisions as the Court thinks fit, and

(b) may be varied, discharged, suspended in whole or in part, and revived if so suspended, as the Court thinks fit.

(2) In exercising the powers conferred by subsection (1)(b), the Court must have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the marriage who has not attained the age of 18, and the circumstances of the case shall 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 relates.

(3) The Court may exercise the powers conferred by subsection (1)(b) to vary, discharge, suspend and revive, as the case may be, an order made in a jurisdiction outside the Bailiwick in consequence of a decree or order in a matrimonial cause or matter if the parties to the proceedings under subsection (1)(b) are both resident in the Bailiwick at the date of the application under that subsection.

(4) An order made under subsection (1)(b) may take effect from such date as the Court shall direct, being not earlier than the date of the application as a result of which such order is made.

(5) Where the Court decides to make a financial provision order requiring any payments to be secured, a property adjustment order or a variation of settlements order ("**ancillary relief order**"), and any person neglects or refuses to comply with an order directing the person to execute or make any conveyance, assignment or other document or instrument ("**instrument**") necessary for giving effect to the order, the Court may, on such terms and conditions as it thinks fit, order that the instrument must be executed, made or done by such person as the Court nominates for the purpose, at the cost of the person in default, or otherwise, as the Court directs, and that such instrument shall have effect as if it had been executed, made or done, by the person in default.

(6) In making an ancillary relief order as is mentioned in subsection (5), the Court may, if it thinks fit, where that order is made in proceedings for divorce, nullity of marriage or judicial separation, defer the making of the divorce, nullity of marriage or judicial separation order until the instrument has been duly executed.

Payment of certain arrears unenforceable without leave of court.

34. (1) A person shall not be entitled to enforce the payment of any arrears due under an interim financial provision order or a financial provision order without the leave of the court before which payment of the arrears is sought to be enforced if those arrears became due more than 12 months before proceedings to enforce payment are begun.

(2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for the payment or the making of

payment by instalments), as that court thinks proper, or may remit the payment of the arrears or of any part thereof.

Power to remit arrears.

35. (1) Subject to subsections (2) and (3), where a periodical payments order or secured periodical payments order has been made, or provision is made for the payment of a lump sum by instalments, and in any such case arrears have accrued, the Court may, upon the application of the payer or of its own initiative, order that the arrears shall be remitted or reduced.

(2) Before making an order under subsection (1) the Court must give both parties an opportunity to be heard unless the Court is satisfied that it is not reasonably practicable to do so.

(3) An order under subsection (1) must not be made in respect of any sum comprised in a judgment debt.

Avoidance of transactions intended to prevent or reduce financial relief.

36. (1) Where proceedings for financial relief are brought by one person ("A") against another ("B"), the Court may, on the application of A –

(a) if it is satisfied that B is, with the intention of defeating a claim for financial relief, about to make any disposition or to transfer out of the jurisdiction, or otherwise deal with, any relevant property, make such order as it thinks fit for restraining B from so doing or otherwise for protecting the claim,

(b) if it is satisfied that B has, with that intention, made a reviewable disposition and that if the disposition were set aside financial relief or different financial relief

would be granted to A, make an order setting aside the disposition,

- (c) if it is satisfied, in a case where an order for financial relief has been obtained by A, that B has, with that intention, made a reviewable disposition, make an order setting aside the disposition.

(2) Where the Court makes an order under subsection (1)(b) or (c) setting aside a disposition, it must give such consequential directions as it thinks fit for giving effect to the order (including directions requiring the making of any payments or the disposal of any property).

(3) Where an application is made under this section with respect to a disposition which took place less than three years before the date of the application, or with respect to a disposition or other dealing with property which is about to take place, and the Court is satisfied –

- (a) in a case falling within subsection (1)(a) or (b), that the disposition or other dealing would (apart from this section) have the consequence, or
- (b) in a case falling within subsection (1)(c), that the disposition has had the consequence,

of defeating A's claim for financial relief, it shall be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of defeating A's claim for financial relief.

(4) In this section –

"**disposition**" does not include –

- (a) any provision contained in a will or codicil, any donation à cause de mort (*donation mortis causa*), or any nomination by B in accordance with any pension scheme or policy of insurance of any person to receive a sum of money or other property on B's death, or
- (b) any appointment of property, otherwise than by will, in the exercise of a special power of appointment,

but includes any payment of money (including the payment of a premium under a policy of assurance) and any conveyance, assurance, appointment or gift of property of any description, whether made by an instrument or otherwise,

"**financial relief**" means relief under any of the provisions of sections 23, 24, 25 and 33(1)(b), and any reference in this section to defeating a person's claim for financial relief is a reference to preventing financial relief from being granted to that person, or to that person for the benefit of a child of the marriage, or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be or has been made at the instance of that person under any of those provisions,

"**reviewable disposition**" means any disposition made by B, whether before or after the commencement of the proceedings in question, unless it was made for valuable consideration to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of any intention on the part of B to defeat A's claim for financial relief.

Payments under order made in favour of person lacking capacity.

37. (1) Where the Court makes an order under this Part requiring payments (including a lump sum payment) to be made, or property to be transferred,

to a party to a marriage and the Court is satisfied that the person in whose favour the order is made ("P") lacks capacity within the meaning of the Capacity (Bailiwick of Guernsey) Law, 2020^e ("**the Capacity Law**") in relation to the provisions of the order then, subject to any order, direction or authority made or given in relation to P under that Law, the Court may order the payments to be made or the property to be transferred (as the case may be) to such person ("D") as it may direct.

(2) In carrying out any functions in relation to an order made under subsection (1), D must act in P's best interests (within the meaning of the Capacity Law).

Enforcement by wage arrest.

38. (1) The Court may make a wage arrest order to secure payments under any financial provision order –

- (a) which is subsisting, whether or not any arrears have accrued, or
- (b) which has been discharged or has otherwise ceased to operate, if any arrears are recoverable thereunder (subject to section 34(1)).

(2) The Court may, for the purposes of subsection (1) –

- (a) order the person ("A") against whom the financial provision order was made to provide to the Court, within a specified period, a statement of –

^e Order in Council No. II of 2021. This enactment has been amended.

- (i) the name and address of any person by whom earnings are paid to A,
 - (ii) specified particulars as to A's earnings and anticipated earnings, and as to A's resources and needs, and
 - (iii) specified particulars for the purpose of enabling A to be identified by any employer of A's,
- (b) order any person ("B") appearing to the Court to have A in B's employment to give to the Court, within a specified period, a statement signed by B or on B's behalf of specified particulars of A's earnings and anticipated earnings.

(3) The Court may, on the application of A or B, or of its own motion, vary or discharge a wage arrest order.

(4) This section has effect notwithstanding the provision of any enactment or rule of customary law relating to wage arrests ("**arrêts de gages**") including –

- (a) the Ordonnance provisoire relative aux Gages d'Ouvriers of 1860^f, and
- (b) the Ordonnance relative à l'arrêt de Gages des Employés of the 8th July, 1933^g,

^f Recueil d'Ordonnances Tome III, p. 459. This enactment has been amended.

^g Recueil d'Ordonnances Tome VIII, p. 298. This enactment has been amended.

but without prejudice to any other power vested in the Court pursuant to the provisions of any enactment or rule of customary law.

Interpretation of Part IV.

39. (1) In this Part, unless the context otherwise requires -

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

"**interim order**" means an order under section 21 or 22,

"**property adjustment order**" means an order for the vesting or division of property under section 24,

"**relevant property**" means real and personal property in which each or either of the parties to a marriage has an interest, present, prospective or conditional, and for the purposes of section 22 includes such part of such property as may be specified in an interim occupation order,

"**variation of settlements order**" means an order for the variation of settlements etc. under section 25.

(2) In sections 23(1) and (4), 24(1) and (6), 25(1) and (4), and 29(1) and (3) –

(a) a reference to a divorce order includes a decree of divorce,

(b) a reference to a nullity of marriage order includes a decree of nullity of marriage,

(c) a reference to a judicial separation order includes a decree of judicial separation,

- (d) a reference to making includes granting.

PART V
DOMICILE

Domicile – general provisions.

40. (1) Subject to subsection (2), a person's domicile of choice shall be taken to be the country or place in which, in the opinion of a court, that person last resided with the intention of there having the person's settled home.

(2) Where it is necessary, for the purpose of giving effect to any provision of this Law, for a court ("**the court**") to recognise or decline to recognise the validity of a decree or order made in an extraneous jurisdiction and a person's domicile is a relevant consideration for the court, the person's domicile shall be taken to be the country or place in which, in the opinion of the court, that person resided, with the intention of there having the person's settled home, when the proceedings resulting in the said decree or order were instituted.

(3) Unless the contrary is proved, a court must presume the continuance of a proved domicile of origin or choice, as the case may be.

Married women's domicile.

41. (1) For the avoidance of doubt, and subject to subsection (2), the domicile of a married woman shall be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) In considering the domicile of a woman at any date prior to 1st March, 1980, if (at that prior date) a woman was married and then had her husband's domicile by dependence, that woman is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the said 1st March, 1980.

Age at which independent domicile can be acquired.

42. (1) A person first becomes capable of having an independent domicile when that person attains the age of 16 or marries under that age.

(2) In the case of a person who immediately before 1st March, 1980 was incapable of having an independent domicile, but had (before that date) attained the age of 16 or been married, that person first became capable of having an independent domicile on the said 1st March, 1980.

Dependent domicile of child not living with father.

43. (1) Subsection (2) shall have effect with respect to the dependent domicile of a child on or after 1st March, 1980 when the child's father and mother are alive but living apart.

(2) The child's domicile at any such time shall be that of the child's mother if –

(a) the child then has a home with the child's mother ("**the mother**") and has no home with the child's father ("**the father**"), or

(b) the child has at any time had the mother's domicile by virtue of paragraph (a) and has not since had a home with the father.

(3) At any time on or after 1st March, 1980, a child whose mother is dead shall have the domicile which the mother had immediately before the mother's death if –

(a) at the mother's death, the child had the mother's domicile by virtue of subsection (2), and

(b) the child has not subsequently had a home with the father.

(4) Nothing in this section prejudices any existing rule of law as to the cases in which a child's domicile is regarded as being, by dependence, that of the mother.

(5) In this section "**child**" means a person incapable of having an independent domicile; and for the avoidance of doubt, in its application to a child who has been adopted, references to the child's father and the child's mother shall be construed as references to the child's adoptive father and mother.

PART VI ENFORCEMENT

Powers of enforcement to be in addition to any other powers.

44. (1) For the avoidance of doubt, the powers of enforcement created under this Part are in addition to, and not in substitution for, any other powers available to the Court enabling that Court –

(a) to enforce compliance with any order or judgment, or

(b) to punish any person for contempt of court.

(2) Rules of court may make provision as to the procedures for enforcement of orders of the Court including (without limitation) the powers created under this Part.

Penal notice.

45. (1) On the making of an order under this Law, or at any time thereafter, the Court may attach a penal notice to that order.

(2) An order to which a penal notice is attached must, unless the Court directs otherwise, be served personally on the respondent ("A").

(3) Where A, without reasonable excuse, fails to comply with the requirements of a penal notice, A is in contempt of court.

(4) Where the Court is satisfied, on an application supported by affidavit evidence –

(a) that an order to which a penal notice is attached has been served on A, unless the Court dispenses with personal service, and

(b) that A has failed to comply with the requirements of the penal notice,

it may direct the arrest of A by an officer of police.

(5) A person arrested under subsection (4) must be brought before the Court within 24 hours of the arrest and must not be detained beyond that period.

(6) For the purposes of subsection (5), no account shall be taken of any Saturday, Sunday, Christmas Day, Good Friday or any day which is a public holiday.

(7) In this section, a "**penal notice**" means a notice addressed to a person –

(a) requiring that person to comply with the provisions of the order insofar as they relate to that person, and

(b) warning that person as to the consequences of any failure to comply.

Penalties and power to make compensation orders.

46. (1) Where the Court, having given the respondent ("A") the opportunity to be heard, is satisfied beyond reasonable doubt that A is in contempt of court, A is liable –

- (a) to imprisonment (whether immediate or suspended) for such period, not exceeding six months, as the Court thinks fit, or
- (b) to a penalty (which, for the purposes of enforcement shall be treated as if it were a fine imposed upon a conviction) not exceeding level 5 on the uniform scale, as the Court thinks fit,

or to both.

(2) Where a person is found to be in contempt of court in accordance with subsection (1), the Court may in addition, or as an alternative, to making an order under subsection (1), make a compensation order, in such amount as the Court thinks fit, in favour of any person who has suffered financial loss as a consequence of the failure to comply with the penal notice.

(3) A person ("A") in whose favour a compensation order is made under subsection (2), may recover the amount of compensation payable as a civil debt due to A from the person against whom the order is made.

(4) An appeal from a decision of the Court under this Part shall lie to the Court of Appeal, and such appeal may be instituted in such manner, and upon such grounds, as rules of court may provide.

PART VII
MISCELLANEOUS AND GENERAL

Parties to proceedings.

47. (1) Rules of court may make provision with respect to who may be parties to proceedings under this Law.

(2) Without prejudice to the generality of subsection (1), rules may make provision as to the joinder as parties to proceedings under this Law of persons involved in allegations of improper conduct made in those proceedings, and with respect to the dismissal from such proceedings of any parties so joined.

(3) In every case in which the Court considers, in the interest of any person not already a party to the proceedings, that that person should be made a party to the proceedings, the Court may if it thinks fit allow that person to intervene upon such terms, if any, as the Court thinks fit.

General provisions as to Ordinances.

48. (1) The States may by Ordinance make such provision as they think fit for the purpose of carrying this Law into effect, including (without limitation) such transitional or savings provisions and such consequential amendments to any enactment or rule of custom as they think fit.

(2) The Policy & Resources Committee of the States must, before recommending the States to agree to make an Ordinance under this Law (other than an Ordinance under section 55), consult –

- (a) the Policy & Finance Committee of the States of Alderney, and
- (b) the Policy & Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this section shall not invalidate any Ordinance made under this Law.

(3) An Ordinance made under this Law (other than an Ordinance under section 55) ceases to have effect -

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(4) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with the provisions of subsection (3), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to –

(a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or

(b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(5) In this section "**approval date**" means the date of the approval of the Ordinance by the States of Deliberation.

Rules of court.

49. (1) The Royal Court has power to make rules of court under this Law.

(2) In addition to rules of court made under powers created under any other provision of this Law, rules of court may provide for all procedural, practical and incidental matters which may be necessary for bringing this Law into effect.

(3) Without prejudice to the generality of subsection (2), rules of court may provide for the costs and fees payable in respect of proceedings taken and things done under this Law.

(4) Rules of court under this Law may apply any other rules of court, including (without limitation) civil procedure rules and family proceedings rules, which relate to courts other than the Court, or to proceedings other than matrimonial causes and matters, and in such a case those other rules may be applied –

- (a) to any extent,
- (b) with or without modification, and
- (c) as amended from time to time,

as the Royal Court thinks fit.

(5) Rules of court under this Law may, instead of providing for any matter, refer to provision made or to be made about that matter by practice direction.

Interpretation.

50. In this Law, unless the context otherwise requires -

"**the 1939 Law**" means the Matrimonial Causes Law (Guernsey), 1939^h,

"**child of the marriage**", in relation to the parties to a marriage, means a child of both of them and any other child, not being a child placed with them

^h Ordres en Conseil Vol. XI, p. 318. This enactment has been amended.

as foster carers, who has been treated by both of them as a child of their marriage,

"**civil partnership**" means a civil partnership formed under the Civil Partnership Act 2004ⁱ ("**the 2004 Act**"), or under the Civil Partnership (Jersey) Law 2012^j, or which is treated under the 2004 Act as having been formed by virtue of an overseas relationship being registered, and which has not been dissolved or annulled,

"**the Court**" means the Matrimonial Causes Division,

"**financial provision order**" means an order for periodical or lump sum payments in favour of a party to a marriage or in favour of a child of the marriage under section 23,

"**foster carers**" means Departmental foster carers appointed as such by the States Committee for Health & Social Care,

"**interim financial provision order**" means an order for periodical payments or payment of a lump sum in favour of a party to a marriage or in favour of a child of the marriage under section 21,

"**judicial separation order**": see section 12(1),

"**Matrimonial Causes Division**": see section 1(1),

"**Ordinary Court**" means the Royal Court sitting as an Ordinary Court,

ⁱ An Act of Parliament (2004 c. 33).

^j Ch. 12.260.

"**periodical payments order**" means an order under Part IV requiring the payment of periodical payments which are not secured periodical payments,

"**Royal Court**" means the Royal Court of Guernsey,

"**secured periodical payments order**" means an order under this Part requiring a person to secure periodical payments in favour of another person,

"**the States**" means the States of Guernsey.

Repeals.

51. The enactments set out in the first column of the Table in Schedule 2 are repealed to the extent set out in the second column of that Schedule.

Consequential amendments.

52. The enactments set out in Schedule 3 are amended as described in that Schedule.

Transitional provisions.

53. Despite the repeal of the 1939 Law, the provisions of and under that Law shall continue to apply to proceedings in any application for divorce, nullity of marriage or judicial separation or for presumption of death and dissolution of marriage where the application was made before commencement of this Law.

Citation.

54. This Law may be cited as the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022.

Commencement.

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

SCHEDULE 1

Section 3

STAYING OF MATRIMONIAL PROCEEDINGS

1. In this Schedule –
 - (a) "**another jurisdiction**" means any country outside the Bailiwick,
 - (b) "**related jurisdiction**" means any of the following countries, namely, the United Kingdom, Jersey and the Isle of Man,
 - (c) "**prescribed**" means prescribed by rules of court,
 - (d) references to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only,
 - (e) proceedings in the Court are continuing if they are pending and not stayed, and
 - (f) proceedings in another jurisdiction shall include –
 - (i) proceedings in a court of that jurisdiction, and
 - (ii) any proceedings in that jurisdiction which are not instituted in a court of that jurisdiction, if they are instituted before a tribunal or other authority having power under the law having effect there to determine questions of status,

and proceedings which are continuing in another jurisdiction are proceedings which have been begun and have not been finally disposed of.

Duty to furnish particulars of concurrent proceedings in another jurisdiction

2. While matrimonial proceedings are pending in the Court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is an applicant in those proceedings, or is a respondent and has in the respondent's answer included a prayer for relief, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which –

- (a) the person knows to be continuing in another jurisdiction, and
- (b) are in respect of that marriage or are capable of affecting its validity or subsistence.

Obligatory stays

3. (1) Where before the beginning of the trial or first trial in any proceedings for divorce which are continuing in the Court it appears to the Court on the application of a party to the marriage –

- (a) that, in respect of the same marriage, proceedings for divorce or nullity of marriage are continuing in a related jurisdiction, and
- (b) that the parties to the marriage have resided together after they entered into the marriage, and
- (c) that the place where they resided together when the proceedings in the Court were begun or, if they did not

then reside together, where they last resided together before those proceedings were begun, is in that jurisdiction, and

- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the Court were begun,

it shall be the duty of the Court, subject to paragraph 5(2), to order that the proceedings in the Court be stayed.

(2) References in subparagraph (1) to the proceedings in the Court are, in the case of proceedings which are not only proceedings for divorce, to the proceedings so far as they are proceedings for divorce.

Discretionary stays

4. (1) Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the Court it appears to the Court –

- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction, and
- (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the Court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the Court may then, if it thinks fit, order that the proceedings in the Court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of subparagraph (1)(b), the Court must have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(3) In the case of any proceedings so far as they are proceedings for divorce, the Court must not exercise the power conferred on it by subparagraph (1) while an application under paragraph 3 in respect of the proceedings is pending.

(4) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the Court, the Court declares by order that a person has failed to perform the duty imposed on that person in respect of the proceedings by paragraph 2, subparagraph (1) shall have effect in relation to those proceedings, and to the other proceedings by reference to which the declaration is made, as if the words "before the beginning of the trial or first trial" were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

Supplementary

5. (1) Where an order staying any proceedings is in force in pursuance of paragraph 3 or 4, the Court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the Court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

(2) If the Court discharges an order staying any proceedings made in pursuance of paragraph 3, the Court must not again stay those proceedings in pursuance of that paragraph.

6. (1) The provisions of subparagraphs (2) and (3) shall apply (subject to subparagraph (4)) where proceedings for divorce, judicial separation or nullity of marriage are stayed by reference to proceedings in a related jurisdiction for divorce, judicial separation or nullity of marriage; and in this paragraph –

- (a) "**the other proceedings**", in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed,
- (b) "**lump sum order**" means such order as is mentioned in section 23(1)(f) (lump sum payment for children), being an order made under section 23(1) or (2)(a), or an order for payment of a lump sum made in equivalent circumstances under section 14(4)(b) of the Children (Guernsey and Alderney) Law, 2008^k ("**the Children Law**") or under section 13(4)(b) of the Children (Sark) Law, 2016^l ("**the Sark Children Law**"),
- (c) "**relevant order**" means
 - (i) an interim financial provision order,
 - (ii) such order as is mentioned in section 23(1)(d) or (e) (periodical payments for children) being an order made under section 23(1) or (2)(a), or an order for periodical payments made in

^k Order in Council No. XIV of 2009. This enactment has been amended.

^l Order in Council No. VIII of 2016. This enactment has been amended.

equivalent circumstances under section 14(4)(b) of the Children Law or under section 13(4)(b) of the Sark Children Law,

(iii) an order under section 17 of the Children Law or section 16 of the Sark Children Law, and

(iv) except for the purposes of subsection (3), any order restraining a person from removing a child out of the Bailiwick or out of the care of another person, and

(d) "**stayed**" means stayed under this Schedule.

(2) Where any proceedings are stayed, then, without prejudice to the effect of the stay apart from this paragraph –

(a) the Court shall not have power to make a relevant order or a lump sum order in connection with the stayed proceedings except under paragraph (c), and

(b) subject to paragraph (c), any relevant order made in connection with the stayed proceedings shall, unless the stay is previously removed or the order previously discharged, cease to have effect on the expiration of the period of three months beginning with the date on which the stay was imposed, but

(c) if the Court considers that, for the purpose of dealing with circumstances needing to be dealt with urgently, it is necessary during or after that period to make a relevant order or a lump sum order in connection with the stayed proceedings or to extend or further extend

the duration of a relevant order made in connection with the stayed proceedings, the Court may do so and the order shall not cease to have effect by virtue of paragraph (b).

(3) Where any proceedings are stayed and at the time when the stay is imposed an order is in force, or at a subsequent time an order comes into force, which was made in connection with the other proceedings and provides for any of the following matters, namely, periodical payments for a party to the marriage in question or periodical payments for a child of the marriage, or any provision which could be made by an order under section 17 of the Children Law or section 16 of the Sark Children Law, then, on the imposition of the stay in a case where the order is in force when the stay is imposed and on the coming into force of the order in any other case –

- (a) any relevant order made in connection with the stayed proceedings shall cease to have effect in so far as it makes for a party to the marriage or a child of the marriage any provision for any of those matters as respects which the same or different provision for that party or child is made by the other order,
- (b) the Court shall not have power in connection with the stayed proceedings to make a relevant order containing for a party to the marriage or child of the marriage provision for any of those matters as respects which any provision for that party or child is made by the other order, and
- (c) if the other order contains provision for periodical payments for a child, the Court shall not have power in

connection with the stayed proceedings to make a lump sum order for that child.

(4) If any proceedings are stayed so far as they consist of matrimonial proceedings of a particular kind but are not stayed so far as they consist of matrimonial proceedings of a different kind, subparagraph (2) and (3) shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the Court shall not have the power to make a relevant order or a lump sum order in connection with the proceedings so far as they are stayed.

(5) Nothing in this paragraph affects any power of the Court –

- (a) to vary or discharge a relevant order so far as the order is for the time being in force, or
- (b) to enforce a relevant order as respects any period when it is or was in force, or
- (c) to make a relevant order or a lump sum order in connection with proceedings which were but are no longer stayed.

SCHEDULE 2

Section 51

REPEALS

| (1) ENACTMENT | (2) PROVISIONS REPEALED |
|--|----------------------------|
| Matrimonial Causes Law (Guernsey), 1939 | The whole Law |
| Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946 ^m | The whole Law |
| Matrimonial Causes Law, (Guernsey) 1939, Amendment Law (No. 2), 1946 ⁿ | The whole Law |
| Matrimonial Causes (Assisted Persons) Ordinance, 1952 ^o | The whole Ordinance |
| Matrimonial Causes (Amendment) (Guernsey) Law, 1957 ^p | The whole Law |

^m Ordres en Conseil Vol. XII, p. 278. This enactment has been amended.

ⁿ Ordres en Conseil Vol. XIII, p. 38.

^o Recueil d'Ordonnances Tome X, p. 288. This enactment has been amended.

^p Ordres en Conseil Vol. XVII, p. 249.

| | |
|---|----------------------|
| Matrimonial Causes (Amendment) (Guernsey) Law, 1972 ^q | The whole Law |
| Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979 ^r | The whole Law |
| Matrimonial Causes (Assisted Persons) (Amendment) Ordinance, 1987 ^s | The whole Ordinance. |
| Matrimonial Causes (Amendment) (Guernsey) Law, 1990 ^t | The whole Law |
| Matrimonial Causes (Amendment) (Guernsey) Law, 1997 ^u | The whole Law |
| Matrimonial Causes (Amendment) (Guernsey) Law, 2002 ^v | The whole Law |
| Matrimonial Causes (Costs and Fees) Ordinance, 2002 ^w | The whole Ordinance |

^q Ordres en Conseil Vol. XXIII, p. 489. This enactment has been amended.

^r Ordres en Conseil Vol. XXVII, p. 99. This enactment has been amended.

^s Recueil d'Ordonnances Tome XXIV, p. 85.

^t Ordres en Conseil Vol. XXXII, p. 85.

^u Ordres en Conseil Vol. XXXVII, p. 308.

^v Order in Council No. XI of 2003.

^w Ordinance No. III of 2002. This enactment has been amended.

| | |
|---|--|
| Matrimonial Causes (Guernsey) (Amendment) Law, 2003 ^x | The whole Law |
| Inheritance (Guernsey) Law, 2011 ^y | Section 2(c) |
| Inheritance (Alderney) Law, 2015 ^z | Section 57(e) |
| Same-Sex Marriage (Guernsey) Law, 2016 ^{aa} | Paragraphs 2 to 9 of the Schedule |
| Same-Sex Marriage (Alderney) Law, 2017 ^{bb} | Paragraphs 2 to 9 of the Schedule |
| Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 ^{cc} | Paragraph 4 of Schedule 1 and the entry relating to the Matrimonial Causes Law (Guernsey) 1939 in Schedule 2 |

^x Order in Council No. XXXI of 2003.

^y Order in Council No. XIII of 2011. This enactment has been amended.

^z Order in Council No. XII of 2015.

^{aa} Order in Council No. II of 2017. This enactment has been amended.

^{bb} Order in Council No. I of 2018. This enactment has been amended.

^{cc} Ordinance No. XIII of 2017. This enactment has been amended.

| | |
|---|--|
| Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 ^{dd} | Paragraph 3 of Schedule 1 and the entry relating to the Matrimonial Causes Law (Guernsey) 1939 in Schedule 2 |
| Matrimonial Causes (Guernsey) (Amendment) Law, 2019 ^{ee} | The whole Law |
| Same-Sex Marriage (Sark) Law, 2019 ^{ff} | Paragraphs 2 to 9 of the Schedule |
| Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 ^{gg} | Paragraph 3 of Schedule 1 and the entry relating to the Matrimonial Causes Law (Guernsey) 1939 in Schedule 2 |

^{dd} Alderney Ordinance No. VIII of 2018. This enactment has been amended.

^{ee} Order in Council No. XI of 2020.

^{ff} Order in Council No. IX of 2020. This enactment has been amended.

^{gg} Sark Ordinance No. II of 2020. This enactment has been amended.

SCHEDULE 3

Section 52

CONSEQUENTIAL AMENDMENTS

Court of Appeal (Guernsey) Law, 1961.

1. In the Court of Appeal (Guernsey) Law, 1961^{hh} –
 - (a) in section 15(1)(b), for "decree" in each place where it occurs substitute "provisional order",
 - (b) in section 15(1)(e)(ii), for "a decree" substitute "an order", and
 - (c) in section 46, the definition of "**judgment**" is repealed.

Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964.

2. In the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964 -
 - (a) for the heading to section 2 substitute "**Application for separation order.**",
 - (b) in section 2(1), the words from "on the ground" to the end are repealed,
 - (c) section 2(2) is repealed,
 - (d) in section 3(1), for the words "Where an applicant for an order under this section satisfies the Court of any

^{hh} Ordres en Conseil Vol. XVIII, p. 315. This enactment has been amended.

ground mentioned in" substitute "On an application under",

- (e) in section 3(1)(b), for "decree of judicial separation" substitute "judicial separation order",
- (f) in section 4(2)(c) and 4(3)(d), the words "occurrence of the conduct which is alleged as the ground of the" are repealed,
- (g) section 7 is repealed.

Legitimacy (Guernsey) Law, 1966.

3. In section 2(3) of the Legitimacy (Guernsey) Law, 1966ⁱⁱ, after "jurisdiction" in the first place where it occurs insert "to make a nullity of marriage order or".

Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972.

4. In the Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972^{jj} –

- (a) in section 1, for "a decree of divorce or judicial separation" substitute "an order or decree of divorce or judicial separation",
- (b) in section 8(1)(a), for "a decree of divorce or judicial separation" substitute "an order or decree of divorce or judicial separation".

ⁱⁱ Ordres en Conseil Vol. XX, p. 267. This enactment has been amended.

^{jj} Ordres en Conseil Vol. XXIII, p. 186. This enactment has been amended.

Successions (Personal Estates of Married Persons) (Sark) Law, 1975.

5. In section 9 of the Successions (Personal Estates of Married Persons) (Sark) Law, 1975^{kk}, after "decree granted under the Matrimonial Causes Law (Guernsey), 1939," insert "or an order made under the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022,".

Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988.

6. In the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 -

- (a) for the heading to section 1 substitute "**Application for separation order.**",
- (b) in section 1(1), the words from "on the ground" to the end are repealed,
- (c) section 1(2) is repealed,
- (d) in section 2(1), for the words "Where an applicant for an order under this section satisfies the court of any ground mentioned in" substitute "On an application under",
- (e) in section 2(1)(b), for "decree of judicial separation" substitute "judicial separation order",
- (f) in section 3(2)(c) and 3(3)(d), the words "occurrence of the conduct which is alleged as the ground of the" are repealed,

^{kk} Ordres en Conseil Vol. XXV, p. 75.

- (g) sections 6 and 22 are repealed.

Children (Guernsey and Alderney) Law, 2008.

- 7. In the Children (Guernsey and Alderney) Law, 2008 -
 - (a) in section 15(1)(b)(ii) –
 - (i) in subparagraph (A), the words "on decree" are repealed,
 - (ii) for the words in subparagraph (B) substitute "a judicial separation order, or", and
 - (iii) in subparagraph (C), for "a decree of" substitute "an order for",
 - (b) in section 21(1)(b)(i), for "Article 43 of the Matrimonial Causes (Guernsey) Law, 1939" substitute "Part IV of the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022",
 - (c) in section 122(1), in the definition of "**family proceedings**", for "Loi ayant rapport au Divorce et à d'autres Causes Matrimoniales, 1939" substitute "Matrimonial Causes (Bailiwick of Guernsey) Law, 2022".

Inheritance (Guernsey) Law, 2011.

- 8. In the Inheritance (Guernsey) Law, 2011 -
 - (a) in section 6(2), for "decree of divorce" substitute "divorce order",
 - (b) for section 17 substitute –

"17. (1) Where, within 12 months from the date on which a final order in relation to divorce or nullity of marriage is made, or from the date on which a judicial separation order is made, a party to the marriage dies and –

- (a) an application for the vesting or division of property or for financial provision under Part IV of the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022 has not been made by the other party to that marriage, or
- (b) such an application has been made but the proceedings thereon have not been determined at the time of the death of the deceased,

then, if an application for an order under section 5 is made by that other party, the Court shall, despite anything in section 4 or 6, have power, if it thinks it just to do so, to treat that party for the purpose of that application as if the divorce or nullity of marriage order had not been made final or the judicial separation order had not been made, as the case may be.

(2) This section shall not apply to a judicial separation order unless at the date of death of the deceased the order was in force and the separation was continuing.",

(c) for section 18(1) substitute –

"(1) On the making of a divorce, nullity of marriage or judicial separation order, or at any time thereafter, the court making that order may, if it considers it just to do so, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 5.",

(d) for section 18(2) substitute –

"(2) In the case of a divorce or nullity of marriage order, an order may be made under subsection (1) before or after the order is made final, but if it is made before that order is made final it shall not take effect until that order is made final.",

(e) in section 18(3), the words "decree or" are repealed,

(f) in section 19, for "Part VIII of the Matrimonial Causes Law (Guernsey), 1939, as amended" substitute "Part IV of the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022",

(g) in section 23(1), in the definition of "**Matrimonial Causes Division**", for "Matrimonial Causes Law (Guernsey), 1939, as amended" substitute "Matrimonial Causes (Bailiwick of Guernsey) Law, 2022",

(h) after section 23(3), insert –

"(3A) In this Part –

(a) a reference to a divorce order includes a decree of divorce,

(b) a reference to a nullity of marriage order includes a decree of nullity of marriage,

(c) a reference to a judicial separation order includes a decree or pronouncement of judicial separation, and

- (d) in relation to decrees of divorce and of nullity of marriage, and in relation to decrees and pronouncements of judicial separation, a reference to making includes granting.",
- (i) in section 30(1), in the definition of "**dissolved or annulled**", for "decree of divorce" substitute "divorce order", and for "decree of nullity of marriage" substitute "nullity of marriage order".

Inheritance (Alderney) Law, 2015.

9. In the Inheritance (Alderney) Law, 2015 -

- (a) in section 36(2), for "a decree of divorce" substitute "divorce",
- (b) for section 47 substitute –

"47. (1) Where, within 12 months from the date on which a final order in relation to divorce or nullity of marriage is made, or from the date on which a judicial separation order is made, a party to the marriage dies and –

- (a) an application for the vesting or division of property or for financial provision under Part IV of the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022 has not been made by the other party to that marriage, or
- (b) such an application has been made but the proceedings thereon have not been determined at the time of the death of the deceased,

then, if an application for an order under section 35 is made by that other party, the Court shall, despite anything in section 34 or 36, have power, if it thinks it just to do so, to treat that party for the purpose of that application as if the divorce or nullity of marriage order had not been made final or the judicial separation order had not been made, as the case may be.

(2) This section shall not apply to a judicial separation order unless at the date of death of the deceased the order was in force and the separation was continuing.",

(c) for section 48(1) substitute –

"(1) On the making of a divorce, nullity of marriage or judicial separation order, or at any time thereafter, the court making that order may, if it considers it just to do so, on the application of either party to the marriage, order that the other party to the marriage shall not on the death of the applicant be entitled to apply for an order under section 35.",

(d) for section 48(2) substitute –

"(2) In the case of a divorce or nullity of marriage order, an order may be made under subsection (1) before or after the nullity of marriage order is made final, but if it is made before that order is made final it shall not take effect until that order is made final.",

(e) in section 48(3), the words "decree or" are repealed,

(f) in section 49, for "Part VIII of the Matrimonial Causes Law (Guernsey), 1939, as amended" substitute "Part IV of the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022",

- (g) in section 53(1), in the definition of "**Matrimonial Causes Division**", for "Matrimonial Causes Law (Guernsey), 1939, as amended" substitute "Matrimonial Causes (Bailiwick of Guernsey) Law, 2022",
- (h) after section 53(3), insert –
 - "(3A) In this Part –
 - (a) a reference to a divorce order includes a decree of divorce,
 - (b) a reference to a nullity of marriage order includes a decree of nullity of marriage,
 - (c) a reference to a judicial separation order includes a decree or pronouncement of judicial separation, and
 - (d) in relation to decrees of divorce and of nullity of marriage, and in relation to decrees and pronouncements of judicial separation, a reference to making includes granting.",
- (i) in section 56(1), in the definition of "**dissolved or annulled**", for "decree of divorce" substitute "divorce order", and for "decree of nullity of marriage" substitute "nullity of marriage order".

Children (Sark) Law, 2016.

10. In the Children (Sark) Law, 2016 –

- (a) in section 14(1)(b)(ii) –

- (i) in subparagraph (A), the words "on decree" are repealed,
 - (ii) for the words in subparagraph (B), substitute "a judicial separation order, or", and
 - (iii) in subparagraph (C), for "a decree of" substitute "an order for",
- (b) in section 45(1), in the definition of "**family proceedings**", for "Loi ayant rapport aux Divorce et à d'autres Causes Matrimoniales, 1939" substitute "Matrimonial Causes (Bailiwick of Guernsey) Law, 2022".

Child Protection (Sark) Law, 2020.

11. In section 87(1) of the Child Protection (Sark) Law, 2020^{II} in the definition of "Matrimonial Causes Division", for "Matrimonial Causes Law, 1939" substitute "Matrimonial Causes (Bailiwick of Guernsey) Law, 2022".

^{II} Order in Council No. XIII of 2020. This enactment has been amended.