

PROJET DE LOI

ENTITLED

The Matrimonial Causes (Amendment) (Guernsey) Law, 1972^{*}

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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^{*} Ordres en Conseil Vol. XXIII, p. 489; as amended by the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 (Ordres en Conseil Vol. XXXI, p. 171).

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THE STATES, in pursuance of their Resolution of the twenty-eighth day of January, nineteen hundred and seventy-two, 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.

Amendments to Law of 1939.

1. The Matrimonial Causes Law (Guernsey), 1939, as amended^a, (hereinafter referred to as "**the principal Law**"), is hereby further amended as follows –

(a) in Article 1 thereof –

(i) the definitions of the expressions "Finding of fact" and "Habitual drunkard" are repealed,

(ii) immediately after the last paragraph there are inserted the following additional paragraphs –

" Any reference in this Law to children of the marriage, however expressed, shall be construed, in

^a Ordres en Conseil Vol. XI, p. 318; Vol. XII, p. 278; Vol. XIII, p. 38; Vol. XV, p. 422; Vol. XVII, p. 249 and No. X of 1969.

relation to one or both of the parties to a marriage, as including an illegitimate or adopted child of that party or, as the case may be, of both parties and any other child, not being a child who has been boarded-out with those parties by the States Children Board or otherwise, who has been treated by both of those parties as a child of the marriage; and "**adopted**" means adopted in pursuance of –

- (a) an adoption order made under the Adoption (Guernsey) Law, 1960, or
- (b) an adoption order made in any part of the United Kingdom, in the Isle of Man or in the Island of Jersey, or
- (c) subject to sections six and seven of the Adoption (Guernsey) Law, 1970, an overseas adoption within the meaning of section five of that Law.

Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.",¹

- (b) in Article 2 thereof –
 - (i) in sub-paragraph (c) of paragraph (1) the words "Suits

for Restitution of Conjugal Rights and" are repealed,

- (ii) in paragraph (2) the words "Suits for Restitution of Conjugal Rights," are repealed,
- (iii) in sub-paragraph (b) of paragraph (3) the words "and Suits for Restitution of Conjugal Rights" are repealed,

(c) in Article 3 thereof –

- (i) in paragraph (1a) the words "other than the assessment of damages" are repealed,
- (ii) in paragraph (2) the words "or assessment of damages," are repealed,

(d) in Article 9 thereof –

- (i) the heading thereto is repealed and the following heading is substituted therefor –

"ARTICLE 9.—PROVISIONS DESIGNED TO ENCOURAGE RECONCILIATION",

- (ii) immediately after paragraph (4) there are inserted the following additional paragraphs numbered "(5), (6), (7), (8) and (9)" –

" (5) Provision shall be made as may be prescribed by Rules of Court under Article 6 of this Law for requiring the Advocate of the Royal Court

acting for a petitioner for a decree of divorce or judicial separation to certify to the Court for Matrimonial Causes whether he has discussed with the petitioner the possibility of a reconciliation and given to the petitioner the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

(6) Where the parties to the marriage have lived with each other for any period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery then –

- (a) if the length of that period or of those periods together was six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of sub-paragraph (a) of paragraph (1) of Article 16A of this Law whether the petitioner finds it intolerable to live with the respondent, but
- (b) if the length of that period or those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of the

said sub-paragraph (a) of
paragraph (1) of Article 16A.

(7) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the Court for Matrimonial Causes to support his allegation, that fact shall be disregarded in determining for the purposes of sub-paragraph (b) of paragraph (1) of Article 16A of this Law whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(8) In considering for the purposes of paragraph (1) of Article 16A of this Law whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(9) References in this Article to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.",

(e) in Article 10 thereof –

(i) in the heading thereto the word "DAMAGES" is repealed,

(ii) in paragraph (1) –

(a) the words "on the ground of adultery" where those words first occur are repealed and the words "in which adultery is alleged" are substituted therefor,

(b) the words "on the ground of adultery" where those words secondly occur are repealed and the words "alleging adultery" are substituted therefor,

(iii) in paragraph (2) –

(a) the words "on the ground of adultery" are repealed and the words "in which adultery is alleged" are substituted therefor;

(b) the words "damages, if claimed in the petition or cross-petition, and" and "Such damages shall be

compensatory and not exemplary or punitive."
are repealed;

(iv) paragraph (3) is repealed;

(f) immediately after Article 10 there is inserted the following additional Article numbered "10A" –

"ARTICLE 10A.—ABOLITION OF RIGHT TO CLAIM DAMAGES FOR ADULTERY

A person shall not be entitled to petition any Court for, or include in any petition a claim for, damages from any other person on the ground of adultery with the spouse of the first-mentioned person.",

(g) in Article 11 thereof the words "charged with adultery" are repealed and the words "alleged to have committed adultery" are substituted therefor;

(h) immediately after Article 12 thereof there are inserted the following additional Articles numbered "12A" and "12B" –

"ARTICLE 12A.—ABOLITION OF COLLUSION AS A BAR TO A DECREE

Without prejudice to any provision of this Law which empowers or requires the Court for Matrimonial Causes to dismiss a petition for divorce or judicial separation or to dismiss an application made for a Final Order in a decree of divorce, nothing in any rule of law shall be taken as

empowering or requiring the Court for Matrimonial Causes to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree or on the ground of any conduct on the part of the petitioner.

ARTICLE 12B.—RESTRICTIONS ON DECREES OF DIVORCE, JUDICIAL SEPARATION OR NULLITY AFFECTING CHILDREN

(1) The Court for Matrimonial Causes shall not make a Final Order on a decree of divorce or of nullity of marriage, or make a decree of judicial separation, unless the Court for Matrimonial Causes, by order, has declared that it is satisfied –

- (a) that for the purposes of this Article there are no children of the marriage to whom this Article applies, or
- (b) that the only children who are or may be children of the marriage to whom this Article applies are the children named in the order and that –
 - (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 for Matrimonial Causes to make any such arrangements, or

(c) that there are circumstances making it desirable that a Final Order should be made on the decree of divorce or of nullity of marriage or that a decree of judicial separation should be made, as the case may be, without delay notwithstanding that there are or may be children of the marriage to whom this Article applies and that the Court for Matrimonial Causes is unable to make a declaration in accordance with sub-paragraph (b) of this paragraph.

(2) The Court for Matrimonial Causes shall not make an order declaring that it is satisfied as mentioned in sub-paragraph (c) of the last preceding paragraph unless it has

obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the Court for Matrimonial Causes within a specified time.

(3) If the Court for Matrimonial Causes makes a Final Order on a decree of divorce or of nullity of marriage, or makes a decree of judicial separation, without having made an order under paragraph (1) of this Article the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by paragraphs (1) and (2) of this Article were not fulfilled.

(4) If the Court for Matrimonial Causes refuses to make an order under paragraph (1) of this Article in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that paragraph.

(5) This Article applies to the following children of the marriage, that is to say –

(a) any minor child of the marriage who at the date of the order under paragraph (1) of this Article is –

(i) under the age of sixteen years, or

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

- (b) any other child of the marriage to whom the Court for Matrimonial Causes by an order under paragraph (1) of this Article directs that this Article shall apply,

and the Court for Matrimonial Causes may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this Article should apply to him.

(6) In this Article "**welfare**", in relation to a child, includes the custody and education of the child and financial provision for him.";

- (i) paragraphs (2) and (3) of Article 14 thereof are repealed,
- (j) in the second Proviso to Article 15 thereof the words "adultery or cruelty, such adultery or cruelty" are repealed and the words "on such fact as is mentioned in sub-paragraph (a) or (b) of

paragraph (1) of Article 16A of this Law, such fact" are substituted therefor,²

- (k) Article 16 thereof is repealed and the following two Articles numbered "16" and "16A" are substituted therefor –

"ARTICLE 16.—BREAKDOWN OF MARRIAGE TO BE
SOLE GROUND FOR DIVORCE

The sole ground on which a petition for divorce may be presented to the Court by either party to a marriage shall be that the marriage has broken down irretrievably.

ARTICLE 16A.—PROOF OF BREAKDOWN

(1) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts, that is to say –

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent,
- (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent,
- (c) that the respondent has deserted

the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition,

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted,

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

(2) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(3) If the Court is satisfied on the evidence of any such fact as is mentioned in paragraph (1) of this Article, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, the Court shall, subject to the provisions of Article 12B of this Law, grant a decree of divorce dissolving the marriage.

(4) For the purpose of sub-paragraph (c) of paragraph (1) of this Article the Court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the Court is such that, had that party not been so incapable, the Court would have inferred that his desertion continued at that time.

(5) For the purposes of this Law a husband and wife shall be treated as living apart unless they are living with each other in the same household.

(6) Provision shall be made as may be prescribed by Rules of Court under Article 6 of this Law for the purpose of ensuring that where in pursuance of sub-paragraph (d) of paragraph (1) of this Article the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.",

(l) in Article 17 thereof –

(i) in paragraph (2) the words "adultery, desertion or other ground" are repealed and the word "fact" is substituted therefor,

(ii) in paragraph (3) –

(a) the words "on the ground of desertion" are

repealed and the words "in which desertion is alleged" are substituted therefor,

- (b) in sub-paragraph (b) the words "on the ground of desertion" and "duration of three years" are repealed and the words "in which desertion is alleged" and "duration of two years" are respectively substituted therefor,
 - (c) in sub-paragraph (b) (i) the words "three years" are repealed and the words "two years" are substituted therefor,
 - (d) in sub-paragraph (b) (ii) the words "three years" are repealed and the words "two years" are substituted therefor,
- (m) Article 18 thereof is repealed and the following four Articles numbered "18", "18A", "18B" and "18C" are substituted therefor –

"ARTICLE 18.—DECREE TO BE REFUSED IN CERTAIN CIRCUMSTANCES

(1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in sub-paragraph (e) of paragraph (1) of Article 16A of this Law may oppose the grant of a decree of divorce on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree of divorce is opposed by virtue of this Article, then –

(a) if the Court is satisfied that the only fact mentioned in the said paragraph (1) of Article 16A on which the petitioner is entitled to rely in support of his petition is that mentioned in sub-paragraph (e) of the said paragraph (1) of Article 16A, and

(b) if apart from this Article the Court would grant a decree of divorce,

the Court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the Court is of the opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this Article hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

ARTICLE 18A.—FINANCIAL PROTECTION FOR

RESPONDENT IN CERTAIN CASES

(1) The following provisions of this Article shall have effect where –

- (a) the respondent to a petition for divorce in which the petitioner alleged any such fact as is mentioned in sub-paragraph (d) or (e) of paragraph (1) of Article 16A of this Law has applied to the Court under this Article for the Court to consider for the purposes of the next succeeding paragraph the financial position of the respondent after the divorce, and
- (b) a decree of divorce has been granted on the petition and the Court has held that the only fact mentioned in the said paragraph (1) of Article 16A on which the petitioner was entitled to rely in support of his petition was that mentioned in sub-paragraph (d) or (e) of the said paragraph (1) of Article 16A.

(2) The Court hearing an application by the respondent under this Article shall consider all the

circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and notwithstanding anything in the foregoing provisions of this Law but subject to the next succeeding paragraph, the Court shall not make a Final Order on the decree of divorce unless it is satisfied –

- (a) that the petitioner should not be required to make any financial provision for the respondent, or
- (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can be made in the circumstances.

(3) The Court may if it thinks fit proceed without observing the requirements of the last preceding paragraph if –

- (a) it appears that there are circumstances making it desirable that a Final Order should be made on the decree without delay, and
- (b) the Court has obtained a

satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the Court may approve.

ARTICLE 18B.—RULES OF COURT MAY ENABLE CERTAIN AGREEMENTS OR ARRANGEMENTS TO BE REFERRED TO THE COURT

Provision may be made as may be prescribed by Rules of Court under Article 6 of this Law for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the Court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the Court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

ARTICLE 18C.—POWER TO RESCIND DECREE IN CERTAIN CASES

Where the Court on granting a decree of divorce held that the only fact mentioned in paragraph (1) of Article 16A of this Law on which the petitioner was entitled to rely in support of his petition was that mentioned in sub-paragraph (d) of the said paragraph (1) of Article 16A, it may, on an application

made by the respondent at any time before a Final Order is made on the decree, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to consent to the grant of a decree.",

- (n) in Article 20 thereof the words "opposes the relief sought on the ground of the adultery, cruelty or desertion of the petitioner" and "any such ground" are repealed and the words "alleges against the petitioner and proves any such fact as is mentioned in paragraph (1) of Article 16A of this Law" and "any such fact" are respectively substituted therefor,
- (o) Article 23 thereof is repealed and the following Article is substituted therefor –

"ARTICLE 23.—GROUND OF PETITION FOR JUDICIAL SEPARATION

(1) A petition for judicial separation may be presented to the Court for Matrimonial Causes by either party to a marriage on the ground that any such fact as is mentioned in paragraph (1) of Article 16A of this Law exists, and Article 9, paragraphs (2), (4), (5) and (6) of Article 16A and Article 18B of this Law shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.

(2) The Court for Matrimonial Causes hearing a petition for judicial separation shall not be concerned to consider whether the marriage has broken down

irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in paragraph (1) of Article 16A of this Law, the Court for Matrimonial Causes shall, subject to the provisions of Article 12B of this Law, grant a decree of judicial separation.",

- (p) Article 24 thereof is repealed,
- (q) in Article 25 thereof the words "opposes the relief sought, on the ground of the adultery, cruelty or desertion of the petitioner" and "any such ground" are repealed and the words "alleges against the petitioner and proves any such fact as is mentioned in paragraph (1) of Article 16A of this Law" and "any such fact" are respectively substituted therefor,
- (r) Articles 30, 31 and 32 thereof are repealed and the following Article is substituted therefor –

**"ARTICLE 30.—ABOLITION OF RIGHT TO CLAIM
RESTITUTION OF CONJUGAL RIGHTS**

A person shall not be entitled to petition any Court for restitution of conjugal rights.",

- (s) in Article 34 thereof immediately after the words "The Court may" the words ", subject to the provisions of Article 12B of this Law," are inserted,
- (t) in Article 43 thereof –
 - (i) in paragraph (1) the words "or in relation to a decree for

restitution of conjugal rights," are repealed,

- (ii) paragraph (2) is repealed,
- (u) in paragraph (1) and in paragraph (3) of Article 47 thereof the words "restitution of conjugal rights" are repealed,
- (v) in Article 61 thereof –
 - (i) in paragraph (1) the words "instituted in consequence of alleged adultery" are repealed and the words "in which adultery is alleged" are substituted therefor,
 - (ii) in paragraph (2) the words "been guilty of" are repealed and the word "committed" is substituted therefor,
- (w) in paragraph (1) of Article 65 thereof the words "for nullity of marriage, or for restitution of conjugal rights" are repealed and the words "or for nullity of marriage" are substituted therefor.

Amendments to Law of 1930.

2. ...

NOTE

Section 2 was repealed by the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, section 37, Schedule 2, with effect from 5th December, 1989.

Savings for petitions presented and facts alleged to have arisen before the coming into force of this Law.

3. (1) This Law (including the repeals and amendments made by it)

shall not have effect in relation to any petition for divorce, judicial separation or nullity of marriage presented before the coming into force of this Law.

(2) A petition for divorce or judicial separation may be presented, and the Court for Matrimonial Causes may pronounce a decree of divorce or judicial separation under the provisions of the principal Law, notwithstanding that any such fact as is mentioned in paragraph (1) of Article 16A of the principal Law alleged in the petition arose or began before the coming into force of this Law.

Citation.

4. This Law may be cited as the Matrimonial Causes (Amendment) (Guernsey) Law, 1972.

Collective title.

5. This Law and the Matrimonial Causes (Guernsey) Laws, 1939 to 1957, may be cited together as the Matrimonial Causes (Guernsey) Laws, 1939 to 1972.

Commencement.

6. This Law shall come into force on such date as the States may by Ordinance appoint.

NOTE

The Law was brought into force on 6th March, 1973 by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972 (Commencement) Ordinance, 1973, section 1.

¹ For subsequent amendments, see the consolidated text of the Matrimonial Causes Law (Guernsey), 1939.

² For subsequent amendments, see the consolidated text of the Matrimonial

Causes Law (Guernsey), 1939.