

ORDER IN COUNCIL

VI
1979

ratifying a Projet de Loi

ENTITLED

The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979

(Registered on the Records of the Island of Guernsey
on the 10th July, 1979.)



1979.

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 10th day of July, 1979 before Charles Keith Frossard, Esquire, Deputy Bailiff; present:— Stanley Walter Gavey, Esquire, O.B.E., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Walter Francis Robin, Richard Alan Kinnersly, Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C., Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Donald Pescott Plummer, Esquire and Sydney Haydn Heard, Esquire, M.B.E., Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 23rd day of May, 1979, ratifying a *Projet de Loi* entitled "The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 23rd day of May 1979

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 16th day of May 1979 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 26th day of January 1978, the States of Deliberation at a meeting held on the 21st day of June 1978 approved a Bill or “Projet de Loi” entitled “The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law 1979”, which Bill is designed to apply to the Bailiwick of Guernsey, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 16th day of August 1978 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 4th day of October 1978 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark.

4. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law 1979", and to order that the same shall have force of law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. E. Leigh

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979

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

Amend-
ments 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 immediately after the last paragraph there is inserted the following additional paragraph—

"The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Law throughout the Bailiwick.";

(b) Article 15 thereof is repealed and the following Article is substituted therefor—

" (1) It shall be a necessary condition of the exercise by the Court of its jurisdiction in divorce causes and matters that either of the parties to the marriage—

(a) Ordres en Conseil Vol. XI, p. 318; Vol. XII, p. 278; Vol. XIII, p. 38; Vol. XV, p. 422; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489.

(a) is domiciled in the Bailiwick on the date when the proceedings are begun; or

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

(2) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of the last preceding paragraph (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under the last preceding paragraph.”;

(c) in Article 21 thereof the full stop at the end thereof is deleted and a colon is substituted therefor and immediately thereafter there is inserted the following proviso—

“Provided that—

(i) this Article shall not in any way prevent the exercise by the Court of its jurisdiction in divorce causes and matters where the petitioner—

(a) is domiciled in the Island of Guernsey or the Island of Alderney on the date when the proceedings are begun; or

(b) was habitually resident in the Island of Guernsey or the Island of Alderney throughout the period of one year ending with that date;

notwithstanding that the respondent is domiciled in the Island of Sark or in any of its Dependencies;

(ii) that the Court shall not, in the exercise of its jurisdiction pursuant to the provisions of the last preceding paragraph of this proviso, make any order relating to the vesting, division or occupancy of real property of any party to the proceedings situate in Sark or in any of its Dependencies.”;

(d) Article 22 thereof is repealed and the following Article is substituted therefor—

“ (1) It shall be a necessary condition of the exercise of original jurisdiction by the Court for Matrimonial Causes and by the Ordinary Court with regard to any suit for judicial separation that either of the parties to the marriage—

(a) is domiciled in the Bailiwick on the date when the proceedings are begun; or

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

(2) The Court for Matrimonial Causes shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of the last preceding paragraph (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under the last preceding paragraph.”;

(e) Article 33 thereof is repealed and the following Article is substituted therefor—

“ (1) It shall be a necessary condition of exercise by the Court of its jurisdiction

in suits for nullity of marriage that either of the parties to the marriage—

- (a) is domiciled in the Bailiwick on the date when the proceedings are begun; 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.

(2) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of the last preceding paragraph (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under the last preceding paragraph.”;

- (f) Article 38 thereof is repealed and the following Article is substituted therefor—

“ (1) It shall be a necessary condition of the exercise by the Court of its jurisdiction with regard to the granting of decrees of presumption of death and of dissolution of marriage thereupon that the petitioner—

- (a) is domiciled in the Bailiwick on the date when the proceedings are begun; or

- (b) was habitually resident in the Bailiwick throughout the period of one year ending with that date.”;
- (g) immediately after Article 43 thereof there is inserted the following additional Article numbered “43A”—

“ ARTICLE 43A.—REMOVAL OF
CHILD OUT OF THE BAILIWICK

(1) In any cause begun by petition under this Law the petitioner or the respondent may apply at any time to the Court for an order prohibiting the removal of any child of the marriage under the age of sixteen years out of the Bailiwick or out of any part thereof as may be specified in the order without the leave of the Court except on such terms as may be specified in the order; and an application under this paragraph may be made *ex parte*.

(2) Unless otherwise directed, any order under—

- (a) the last preceding Article;
- (b) paragraph (b) (relating to custody of children) of Article 1 or paragraph (b) of Article 3 of the Law entitled “Loi relative à la Séparation de Mariés en Police Correctionnelle” registered on the twenty-first day of August nineteen hundred and thirty; or
- (c) paragraph (b) of section three or paragraph (b) of section five of the Separation, Maintenance and Affiliation Proceedings (Alderney) Law, 1964;

relating to the custody of a child shall provide for the child not to be removed out of the Bailiwick or out of any part thereof as may be specified in the order without the leave of the Court which made the order except on such terms as may be specified in the order.”;

(h) in Article 60 thereof—

- (i) the heading thereto is repealed and the heading “DOMICIL—GENERAL PROVISIONS” is substituted therefor;
 - (ii) the words “husband’s domicile”, wherever those words occur therein, are repealed and the words “person’s domicile” are substituted therefor;
- (i) immediately after Article 60 thereof there are inserted the following additional Articles numbered “60A”, “60B” and “60C”—

“ ARTICLE 60A.— ABOLITION OF WIFE’S DEPENDENT DOMICIL

(1) Subject to the next succeeding paragraph, the domicile of a married woman as at any time after the coming into force of this Article shall, instead of being the same as her husband’s by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before this Article came into force a woman was married and then had her husband’s domicile by dependence, she 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 coming into force of this Article.

ARTICLE 60B.—AGE AT WHICH INDEPENDENT DOMICIL CAN BE ACQUIRED

The time at which a person first becomes capable of having an independent domicile shall be when he attains the age of sixteen or marries under that age; and in the case of a person who immediately before the coming into force of this Article was incapable of having an independent domicile, but had then attained the age of sixteen or been married, it shall be that date.

ARTICLE 60C.—DEPENDENT DOMICIL OF CHILD NOT LIVING WITH HIS FATHER

(1) The provisions of the next succeeding paragraph shall have effect with respect to the dependent domicile of a child as at any time after the coming into force of this Article when his father and mother are alive but living apart.

(2) The child's domicile as at that time shall be that of his mother if—

- (a) he then has his home with her and has no home with his father; or
- (b) he has at any time had her domicile by virtue of the last preceding sub-paragraph and has not since had a home with his father.

(3) As at any time after the coming into force of this Article, the domicile of a child whose mother is dead shall be that which she last had before she died if at her death he had her domicile by virtue of the last preceding paragraph and he has not since had a home with his father.

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

(5) In this Article, the expression "child" means a person incapable of having an independent domicile; and in its application to a child who has been adopted, references to his father and his mother shall be construed as references to his adoptive father and mother."

2. No proceedings for divorce shall be entertained by the Court for Matrimonial Causes by virtue of Article 15, paragraph (2) of Article 22 or paragraph (2) of Article 33 of the principal Law while proceedings for divorce or nullity of marriage, begun before the coming into force of this section, are pending (in respect of the same marriage) in the United Kingdom, the Island of Jersey or the Isle of Man; and provision may be made by Rules of Court as to when for the purposes of this section proceedings are to be treated as begun or pending in any of those countries.

Proceedings for divorce not to be entertained by the Court in certain cases.

3. (1) The Schedule 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 else-

Staying of matrimonial proceedings.

where in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in that Schedule—

- (a) requires or authorises a stay of proceedings which are pending when this section comes into force; or
- (b) prejudices any power to stay proceedings which is exercisable by the Court apart from that Schedule.

(2) In this section the expression “the Court” means any Court in the Bailiwick having jurisdiction to entertain any matrimonial proceedings; and the expression “matrimonial proceedings” means any proceedings so far as they are one or more of the following kinds, namely, proceedings for divorce, judicial separation and nullity of marriage.

Interpretation.

4. 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.

Savings.

5. Nothing in this Law (including the repeals and amendments made by it) shall affect the jurisdiction of any Court in the Bailiwick to entertain any matrimonial cause under the principal Law begun before the coming into force of any provisions of this Law repealing or amending such jurisdiction.

Construction.

6. This Law shall be construed as one with the principal Law.

Citation.

7. This Law may be cited as the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979.

8. This Law and the Matrimonial Causes (Guernsey) Laws, 1939 to 1972, may be cited together as the Domicil and Matrimonial Causes (Bailiwick of Guernsey) Laws, 1939 to 1979. Collective title.

9. (1) This Law shall come into force on such day as the States of Guernsey may by Ordinance appoint and different days may be so appointed for different provisions of this Law. Commencement.

(2) Any powers conferred by any provisions of this Law to make Rules of Court may be exercised at any time after the registration of this Law and before the day on which the provisions under which such Rules of Court are made shall come into force: Provided that such Rules of Court shall not come into force until the provisions of this Law under which they are made shall come into force.

SCHEDULE Section Three

STAYING OF MATRIMONIAL PROCEEDINGS

Interpretation

1. The following four paragraphs shall have effect for the interpretation of this Schedule.

2. (1) The expression "another jurisdiction" means any country outside the Bailiwick.

(2) The expression "related jurisdiction" means any of the following countries, namely, the United Kingdom, the Island of Jersey and the Isle of Man.

3. (1) 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.

(2) For purposes of this Schedule, proceedings in the Court are continuing if they are pending and not stayed.

4. Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by Rules of Court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.

5. The expression "prescribed" means prescribed by Rules of Court.

*Duty to furnish particulars of concurrent proceedings
in another jurisdiction*

6. 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 a petitioner in the proceedings, or is a respondent and has in his 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) he knows to be continuing in another jurisdiction; and
- (b) are in respect of that marriage or capable of affecting its validity or subsistence.

Obligatory stays

7. (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 its celebration; 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 sub-paragraph (2) of paragraph 9 of this Schedule, to order that the proceedings in the Court be stayed.

(2) References in the last preceding sub-paragraph 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

8. (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 sub-paragraph (1) (b) of this paragraph, the Court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expenses 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 shall not exercise the power conferred on it by sub-paragraph (1) of this paragraph while an application under the last preceding paragraph 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 it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 6 of this Schedule, sub-paragraph (1) of this paragraph 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

9. (1) Where an order staying any proceedings is in force in pursuance of paragraph 7 or 8 of this Schedule, 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 and made in pursuance of paragraph 7 of this Schedule, the Court shall not again stay those proceedings in pursuance of that paragraph.

10. (1) The provisions of sub-paragraphs (2) and (3) of this paragraph shall apply (subject to sub-

paragraph (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—

“custody” includes access to the child in question;

“the other proceedings”, in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed;

“relevant order” means—

- (a) an interim order under Article 43 of the principal Law (orders for the custody, maintenance, education and access to children);
- (b) an interim order under paragraph (3) of Article 47 of the principal Law (contributions for support of wife); and
- (c) except for the purposes of sub-paragraph (3) of this paragraph, any order restraining a person from removing a child out of the Bailiwick or out of any part thereof or out of the custody of another person; and

“stayed” means stayed in pursuance of 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 in connection with the stayed proceedings except in pursuance of sub-paragraph (2) (c) of this paragraph; and
- (b) subject to sub-paragraph (2) (c) of this paragraph, 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 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 sub-paragraph (2) (b) of this paragraph.

(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 four following matters, namely, periodical payments for a spouse of the marriage in question, periodical payments for a child, the custody of a child and the education of a child 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 spouse or child any provision for any of those matters as respects which the same or different provision for that spouse or child is made by the other order; and

(b) the Court shall not have power in connection with the stayed proceedings to make a relevant order containing for a spouse or child provision for any of those matters as respects which any provision for that spouse or child is made by the other order.

(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, subparagraphs (2) and (3) of this paragraph shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the Court shall not have power to make a relevant order in connection with the proceedings as 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 in connection with proceedings which were but are no longer stayed.

K. H. TOUGH,
Her Majesty's Deputy Greffier.