

ORDER IN COUNCIL

XVI
1988

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey
on the 14th February, 1989.)



1988

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 14th day of February, 1989 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present: Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 21st day of December 1988, approving and ratifying a Projet de Loi of the States of Guernsey entitled "The Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:

At the Court at Buckingham Palace

The 21st day of December 1988

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 14th day of December 1988 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 Resolutions of the 27th day of May 1987 and the 27th day of January 1988, the States of Deliberation at a meeting held on the said 16th day of March 1988, approved a Bill or “Projet de Loi” entitled “The Domestic Proceedings and Magistrate’s Court (Guernsey) Law, 1988”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is 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 Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988", and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.'

"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, and it is hereby ordered, that the same shall have the force of law within the Islands of Guernsey, Herm and Jethou.

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.

G. I. de Deney.

PROJET DE LOI

ENTITLED

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

ARRANGEMENT OF SECTIONS

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PROJET DE LOI

ENTITLED

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

THE STATES, in pursuance of their Resolutions of the 27th day of May, 1987, and the 27th day of January, 1988, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

Financial provision

1. Either party to a marriage may apply to the Magistrate's Court ("the court") for an order under section 2(1) on the ground that the other party to the marriage—

Grounds of application.

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

Orders for
financial
provision.

2 (1) Where an applicant for an order under this section satisfies the court of any ground mentioned in section 1, the court, subject to the provisions of this Law, may order that—

(a) the respondent shall—

- (i) make to the applicant such periodical payments, for such term, as may be specified;
- (ii) pay to the applicant such lump sum as may be specified;
- (iii) make to the applicant for the benefit of a child of the family, or to such a child, such periodical payments, for such term, as may be specified;
- (iv) pay to the applicant for the benefit of a child of the family, or to such a child, such lump sum as may be specified;

(b) the applicant be no longer bound to reside with the respondent (such an order having effect in all respects as a decree of judicial separation granted by the Royal Court).

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

(3) The amount of a lump sum required to be paid by an order under subsection (1)(a) shall not exceed £1,000 or such other sum as the States may prescribe by Ordinance.

3. (1) The court, in deciding whether and in what manner to exercise its powers under section 2, shall have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained full age. Matters to which court is to have regard.

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

- (a) the income, earning capacity, property and other financial resources which each party to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect either party to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the parties before the occurrence of the conduct which is alleged as the ground of the application;
- (d) the age of each party and the duration of the marriage;
- (e) any physical or mental disability of either party;
- (f) the contributions which each party has made or is likely to make in the foreseeable future to the welfare of the family, including any contribution made by looking after the home or caring for the family;

- (g) the conduct of each party if that conduct is such that it would, in the opinion of the court, be inequitable to disregard it.

(3) As regards the exercise of its powers under section 2(1)(a)(iii) or (iv), the court shall in particular have regard to the following matters—

- (a) the financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
- (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
- (f) the matters mentioned in subsections (2)(a) and (b) of this section.

(4) As regards the exercise of its powers under section 2 in favour of a child of the family who is not a child of the respondent, the court shall also have regard—

- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;

- (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own;
- (c) to the liability of any other person to maintain the child.

4. (1) The term to be specified in an order under section 2(1)(a)(i) shall not begin before the date of the application for the order. Duration of orders for financial provision.

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

- (a) the remarriage of the party in whose favour the order was made; or
- (b) the death of either party to the marriage, whichever is earlier.

(3) The term to be specified in an order under section 2(1)(a)(iii) shall not begin before the date of the application for the order or, subject to subsection (5), extend beyond the date on which the child attains full age.

(4) Subject to subsection (5), no order shall be made under section 2(1)(a)(iii) or (iv) for the benefit of a child who has attained full age.

(5) The term to be specified in an order under section 2(1)(a)(iii) may extend beyond the date on which the child attains full age, and an order may be made under section 2(1)(a)(iii) or (iv) for the benefit of a child who has attained full age, if it appears to the court—

- (a) that the child is, or will be, or would be if the term were so extended or such an order were made, receiving instruction at an educational establishment or undergoing

training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

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

(6) An order under section 2(1)(a)(iii) ceases to have effect upon the death of the child or the person liable to make the payments under the order.

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

Orders
which have
been agreed.

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

- (a) the applicant or the respondent, as the case may be, has agreed to make that provision; and

- (b) it would not be contrary to the interests of justice to make the order.

(2) In this section “financial provision” means—

- (a) the making of periodical payments by one party to the other;
- (b) the payment of a lump sum by one party to the other;

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

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

(4) Where on an application under subsection (1) the court decides that—

- (a) it would be contrary to the interests of justice to order the making of the financial provision specified in the application; or
- (b) the financial provision specified in the application, where it is to be made to or for the benefit of a child, does not provide for, or make a proper contribution towards, the financial needs of the child,

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

(5) Section 4 applies to an order—

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

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

Orders
where parties
are living
apart by
agreement.

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

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

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

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

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

(4) Where the court considers that an order under subsection (2)—

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

the court may treat the application as if it were an application under section 1.

(5) Section 4—

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

PART II

Custody, etc., of children

7. (1) Where an application is made to the court— Custody of children.

- (a) by either parent of a child below full age for an order under this section; or
- (b) by either party to a marriage for an order under section 2(1), 5(1) or 6(2) and there is a child of the family below full age,

the court, whether or not in the case of an application for an order under section 2(1), 5(1) or 6(2) it makes the order applied for, may make such order regarding—

- (i) the custody of the child;
 - (ii) access to the child,
- as it thinks fit.

(2) An order under subsection (1) ceases to have effect upon the child attaining full age.

- (3) The court shall not make—
 - (a) an order under subsection (1) if the custody of the child is the subject of an order for the time being in force made by a court in Guernsey;
 - (b) an order under subsection (1)(ii) if the child is in the care of the Children Board.

**Supervision
of children.**

8. (1) Where the court makes an order under section 7(1)(i) in respect of the custody of a child and it appears to the court that there are exceptional circumstances which make it desirable for the child to be under the supervision of an independent person, the court may order that the child be placed under the supervision of a probation officer or of a person nominated for the purpose by or on behalf of the Children Board.

(2) An order under subsection (1) ceases to have effect upon the child attaining full age.

(3) The court shall not make an order under subsection (1) if the child is in the care of the Children Board.

**Committal
of children
to care.**

9. (1) Where the court has power to make an order under section 7(1)(i) in respect of the custody of a child and it appears to the court that there are exceptional circumstances which make it impracticable or undesirable for the child to be entrusted to any person, the court may order that the care of the child be committed to the Children Board.

(2) An order under subsection (1) ceases to have effect upon the child attaining full age.

(3) Before making an order under subsection (1) the court shall—

- (a) notify the Children Board of its proposal to make the order; and
- (b) hear any representations from Her Majesty's Procureur on behalf of the Board, including representations as to the making of an order under section 10(2) regarding the making of periodical payments to the Board or to the child.

(4) Where the court makes an order under subsection (1), it shall not make an order under section 7(1)(ii) in respect of the child.

10. (1) Where the court makes an order under section 7(1)(i) in respect of the custody of a child, other than an order in respect of the custody of an illegitimate child on an application under section 7(1)(a), the court may make such order regarding the making of financial provision as it thinks fit. Maintenance for children.

(2) Where the court makes an order under section 9(1) committing the care of a child to the Children Board, the court may make such order regarding the making of periodical payments to the Board or to the child as it thinks fit.

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

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

(4) Section 4 applies to—

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

(5) Sections 2(2) and (3) apply to an order under subsection (1) for the payment of a lump sum as they apply to an order under section 2(1)(a)(iv).

(6) In subsection (1) “financial provision” means—

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

Representations, and reports of Children Board.

11. (1) The court, before making an order under section 7(1), 8(1) or 9(1), shall give each party to the proceedings (as defined in subsection (9)) an opportunity to make representations.

(2) The court shall not make an order under section 7(1), 8(1) or 9(1) in respect of a child unless it is satisfied that reasonable attempts have been made to give any parent of the child who is not a party to the marriage in question notice of the hearing and of the time and place appointed for it.

(3) Where the court considers that it has insufficient information to enable it to decide whether or not to make an order under section 7(1), 8(1) or 9(1), the court may request the Children Board or a probation officer to make an oral or written report to the court on any specified matter, and it is the duty of the Board or probation officer to comply with the request.

(4) An oral report under subsection (3) shall be given, and a written report shall (if the court directs) be read aloud, to the court at a hearing of the application; and a copy of any written report shall be given to each party to the proceedings either before or, with the leave of the court, during the hearing.

(5) The court may require the person who made the report to give evidence in respect of it.

(6) Any party to the proceedings may give or call evidence in respect of—

(a) the report;

(b) any evidence given by the person who made the report.

(7) The court may take account of the report and any evidence given under subsection (5) notwithstanding any enactment or rule of law relating to the admissibility of evidence.

(8) Where for the purposes of this section the court adjourns a hearing, the court may resume the hearing at the time and place appointed notwithstanding the absence of any party to the proceedings.

(9) In this section any reference to a party to the proceedings includes a reference to each party to the marriage in question and to any parent of the child who is not a party to the marriage but who is present or represented at the hearing.

Disputes as
to custody.

12. (1) Where an order under section 7(1)(i) in respect of the custody of a child gives rights or duties to two persons jointly, and they disagree on any matter affecting the welfare of the child, either of them may apply to the court which may make such order regarding the matter in disagreement as it thinks fit.

(2) The court may, on the application of either person given the rights or duties jointly, by order vary or revoke an order under subsection (1).

(3) Section 11(3) applies to the exercise by the court of its powers under this section as it applies to the exercise by the court of its powers under sections 7(1), 8(1) and 9(1); and subsections (4) to (8) of section 11 apply accordingly.

Access by
grand-
parents.

13. (1) The court, on making an order under section 7(1)(i) in respect of the custody of a child, or at any time while such an order is in force, may, on the application of a grandparent of the child, make such order regarding access to the child by the grandparent as it thinks fit.

(2) Sections 7(2), 7(3)(b) and 9(4) apply to an order under subsection (1) as they apply to an order under section 7(1)(b).

(3) The court may, on the application of—

(a) the grandparent;

(b) either party to the marriage in question; or

(c) either parent of the child,

by order vary or revoke an order under subsection (1).

(4) Section 11 applies to the exercise by the court of its powers under subsections (1) and (3) as it applies to the exercise by the court of its powers under sections 7(1), 8(1) and 9(1), and any reference to a party to the proceedings in section 11 includes, on an application under subsection (1), a reference to the grandparent who made the application, and on an application under subsection (3), a reference to the grandparent who has access to the child in question.

(5) Where an order under section 7(1)(i) in respect of a child ceases to have effect, any order made under this section in respect of the child also ceases to have effect.

14. In deciding any question relating to the custody or upbringing of a child, the court shall have regard to the welfare of the child as the first and paramount consideration. Court to have regard to welfare of child.

PART III

Domestic violence

15. (1) On the application of either party to a marriage, the court may order that the other party to the marriage— Protection against violence.

- (a) shall not use or threaten to use violence against the applicant;
- (b) shall not use or threaten to use violence against a child of the family or a child living with the applicant;
- (c) shall not enter the matrimonial home or any part of it, or any other specified premises, or any specified area;

- (d) shall permit the applicant to enter and remain in the matrimonial home or any part of it.
- (2) An order under subsection (1)—
 - (a) may be made subject to such conditions and for such term as may be specified;
 - (b) may provide that the respondent shall not incite or assist any other person to use or threaten to use violence against the applicant or, as the case may be, the child.
- (3) Except in so far as it affects rights of occupation, an order under subsection (1) does not affect any estate or interest in the matrimonial home.
- (4) The court may, on the application of either party to the marriage in question, by order vary or revoke an order under subsection (1).

Arrest for
breach of
domestic
violence
order.

16. (1) Where the court makes an order under section 15(1) which provides that the respondent shall not use or threaten to use violence, or shall not enter any premises or area, the court, if satisfied that the respondent has caused actual bodily harm to the applicant or to any child in question and is likely to do so again, may attach a power of arrest to the order.

(2) Where a power of arrest is attached to an order made under section 15(1), an officer of police, if he has reasonable cause to suspect that the respondent has disobeyed the order by having used or threatened violence or by having entered any premises or area, may arrest the respondent without warrant.

(3) Where a power of arrest is not attached to an order made under section 15(1), the Magistrate, if satisfied on information on oath that the respondent has disobeyed the order in any respect, may direct the Chief Officer of Police to cause him to be arrested.

(4) A person arrested under subsection (2) or (3)—

(a) shall be brought before the court within 24 hours of his arrest; and

(b) shall not be released within that period except on the direction of the court;

but nothing in this section authorises his detention after the expiry of that period.

(5) In reckoning any period of 24 hours for the purposes of subsection (4)(a), no account shall be taken of Christmas Day, Good Friday or any Sunday.

17. Sections 15 and 16 apply to a man and a woman living together in the same household as husband and wife as they apply to the parties to a marriage, and any reference in those sections to a party to a marriage or to the matrimonial home shall be construed accordingly. **Unmarried persons.**

PART IV

Additional powers of court

18. (1) Where on an application under this Law the court has power to order the making of periodical payments or the payment of a lump sum, or has **Interim orders.**

made an interim custody order within the meaning of subsection (2) (other than an interim custody order in respect of an illegitimate child on an application under section 7(1)(a)), the court, at any time before disposing of the application, may make an order (an "interim maintenance order") for the making of such periodical payments as it thinks fit.

(2) Where on an application under this Law the court has power to make an order in respect of the custody of or access to a child, the court, at any time before disposing of the application, may make an order (an "interim custody order") making any such provision in respect of the custody of and access to the child as the court has power to make under section 7(1).

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

(4) An interim maintenance order or an interim custody order ceases to have effect upon—

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

(b) the disposal of the application,

whichever is earlier.

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

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

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

(7) For the purposes of this section an application is disposed of when the court—

- (a) makes a final order on, or dismisses, the application; or
- (b) declines to make an order on the application by virtue of section 23.

19. (1) The court may by order vary or revoke an order under this Law for the making of periodical payments, or an order under section 31(1)(b) for an arrest of wages, on an application by or on behalf of—

Variation.
etc., of
periodical
payments.

- (a) any person required by the order to make the payments; or
- (b) any person to whom or for whose benefit the payments were ordered to be made, including where appropriate the Children Board.

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

(3) Where under subsection (1) the court varies an order for the making of periodical payments—

- (a) the varied payments shall be made from such date as may be specified, not being earlier than the date of the application for the variation;
- (b) the court may at the same time vary any order under section 31(1)(b) for an arrest of wages.

(4) Where under this Law or under a provision of an enactment repealed by this Law the court has made an order for the making of periodical payments to or for the benefit of a child, including an order for the making of periodical payments to the Children Board in respect of the child, the court, on the application of the child after he attains full age but before he attains the age of 21, may order that the order for the making of the periodical payments shall be revived subject to such variations and from such date, not being earlier than the date of the application for the revival, as may be specified.

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

20. (1) The court may by order vary or revoke an order under this Law in respect of the custody, supervision or care of, or access to, a child, other than an order under section 13, on the application of any person mentioned in subsection (4).

Variation,
etc., of
custody and
other orders.

(2) On an application under subsection (1), the court may make any order which it could have made when making the order to which the application relates.

(3) Section 11 applies to the exercise by the court of its powers under this section as it applies to the exercise by the court of its powers under sections 7(1), 8(1) and 9(1).

(4) An application under subsection (1) may be made by—

- (a) either party to the marriage in question;
- (b) either parent of the child;
- (c) where the court has made an order under section 8(1), the Children Board or the probation officer, as the case may be;
- (d) where the court has made an order under section 9(1), the Children Board;
- (e) any guardian of the child appointed under the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978(a);
- (f) any other person having custody of, or access to, the child;
- (g) Her Majesty's Procureur.

(a) Ordres en Conseil Vol. XXVI, p. 264.

(5) The Court may by order vary or revoke a separation order under section 2(1)(b) on the application of either party to the marriage in question.

Effect of
parties
residing
together.

21. (1) Unless the court orders otherwise—

- (a) a separation order under section 2(1) is rescinded if the parties to the marriage in question reside together at any time after the making of the order;
- (b) an order under this Law for the making of periodical payments by one party to a marriage to the other party (other than an order for the benefit of a child of the family) is rescinded if the parties reside together for any continuous period of 6 months after the making of the order;
- (c) an order under this Law awarding the custody of a child to one of the parties to the custody proceedings is rescinded if the parties to the proceedings reside together for any continuous period of 6 months after the making of the order.

(2) Subject to subsection (1), no order under this Law is suspended, rescinded or otherwise affected by the fact of any persons residing together, unless the court orders otherwise.

Reconciliation.

22. Where an application is made for an order under section 2 the court, unless satisfied that an attempt has been made to reconcile the parties or that such an attempt is impracticable or undesirable, may adjourn the proceedings to afford an opportunity of reconciliation and may, with the consent of the parties, nominate a person to act as mediator between them.

23. (1) Where on an application under this Law the court considers that any matter in question would be more conveniently or properly dealt with by the Royal Court, the court shall decline to make any order in respect of the matter, and no appeal lies from that decision; but if in proceedings in the Royal Court relating to the matter the Royal Court so orders, the matter shall be reheard and determined by the court, and on so ordering, the Royal Court may make such interim maintenance order or interim custody order as it thinks fit.

Cases more
suitable for
Royal
Court.

(2) Sections 19, 20, 25, 26 and 31 apply to an interim maintenance order or interim custody order of the Royal Court under subsection (1) as they apply to such an order of the court.

24. (1) Where, after the making by the court of an order under this Law, proceedings which touch or concern any matter governed by the order are begun in any division of the Royal Court, the division may, if it thinks fit, revoke the order and any related interim order under section 23(1).

Powers of
Royal
Court in
respect of
certain
orders.

(2) Subsection (1) does not prejudice the effect of an order of any division of the Royal Court which, implicitly or otherwise, supersedes or revokes an order or part of an order made by the court.

25. (1) Where the court makes or has made an order under this Law in respect of the custody or care of a child, the court may order that no person (except such persons as may be specified in the order) shall take the child out of the Bailiwick of Guernsey, or any part thereof specified in the order, without the leave of the court, except on such terms as may be specified in the order.

Removal of
children
from
Guernsey.

(2) An order under subsection (1) has effect for such period as may be specified or, if none, for as long as the order in respect of the custody or care of the child has effect.

(3) The court may by order vary or revoke an order under subsection (1).

(4) An application for an order under subsection (1) or for a variation or revocation of such an order may be made by either party to the marriage in question, by either parent of the child, or by any other person having custody of the child.

Payments
made by
mistake.

26. (1) Where an order under this Law for the making of periodical payments by any person ceases to have effect and that person continues to make payments (other than arrears) in the mistaken belief that the order is subsisting, the court, on the application of that person or his personal representative, may order the person to whom or for whose benefit the payments were made, or his personal representative, to repay the amount mistakenly paid or, if it appears to the court that that would be unjust, such lesser sum, if any, as it thinks fit.

(2) An order under subsection (1) may provide for repayment by instalments of such amount and at such intervals as may be specified.

Payment of
lump sums
by
instalments.

27. Where the court—

(a) makes an order under this Law for the payment of a lump sum, the court may, instead of requiring immediate payment, allow time for payment, or order payment by instalments;

- (b) has allowed time for payment, the court may by order allow further time or order payment by instalments;
- (c) has ordered payment by instalments, the court may by order vary the number of instalments, the amount of any instalment, and the date on which any instalment becomes payable.

28. Where an order has been made under this Law for the making of periodical payments, or for the payment of a lump sum by instalments, and arrears have accrued, the court, on an application under this section or in any proceedings (whether under this Law or otherwise) relating to the order or to the arrears, may order that the arrears shall be remitted or reduced.

Power to
remit
arrears.

29. (1) The Magistrate may, on the application of any person, issue a summons to another person to appear before the court to see the first-mentioned person make an application to the court for an order under this Law.

Power to
issue
summons.

(2) The Magistrate may refuse to issue a summons if he considers the intended application to the court to be frivolous or vexatious, or for any other reason whatsoever, and no appeal lies from the refusal.

(3) The Magistrate, before issuing a summons—

- (a) may require the applicant to swear an affidavit as to any fact or matter which the Magistrate considers to be relevant to the intended application;
- (b) for that purpose, may administer the oath.

PART V

Appeals and enforcement

Appeals.

30. (1) Subject to sections 18(6) and 23, where under this Law the court makes, varies, revokes or revives an order, or refuses to do any of those things, an appeal lies to the Royal Court.

(2) On an appeal under subsection (1) the Royal Court may make any order necessary to give effect to its determination of the appeal (including any order which the court could have made under this Law) and, before such determination, may make such interim maintenance orders and interim custody orders as it thinks fit.

(3) On an appeal from a decision relating to the making of periodical payments, the Royal Court may—

- (a) order that its determination of the appeal shall have effect from such date as it thinks fit, not being earlier than the date of the application to the court from which the decision arose;
- (b) if it reduces the amount of the payments or discharges the order under which they are made, order the person entitled to receive the payments to pay to the person liable to make them such sum in respect of any payments already made as it thinks fit and, if any arrears are due, order that the arrears or any part of them shall not be paid.

(4) Where on an appeal under subsection (1) the Royal Court varies or revokes an interim custody order, it may vary or revoke any interim maintenance order made in connection with that order.

(5) Sections 12(2), 13(3), 15(4), 19, 20, 21, 24, 25, 26, 27, 28 and 31 apply to or in relation to an order of the Royal Court made on an appeal under subsection (1) as they apply to an order of the court; and any power conferred by those sections on the court may (where appropriate) be exercised in respect of such an order of the Royal Court.

(6) Section 14 of the Magistrate's Court (Guernsey) Law, 1954(b) applies to an appeal under this section as it applies to an appeal under the said section 14.

31. (1) Where the court makes an order under this Law for the payment of money— Enforce-
ment.

(a) a copy of the order may be served on the person liable to make the payment; and if he does not comply with the order in any respect the court, on an application by or on behalf of the person to whom or for whose benefit the payment was ordered to be made, including where appropriate the Children Board, may commit him to prison until he has remedied his default, and may, having regard to the means of the parties, order that no arrears shall accrue while he is in prison;

(b) the court, when making the order or at a later date, may, on an application by or on behalf of the person to whom or for whose benefit the payment was ordered to be made, and having regard to the means of the party liable to make the payment, order that a proportion, not exceeding one half, of the

wages of that party shall be arrested to facilitate the recovery of the payment; and such an order has effect as an arrêt de gages to which the Ordonnance relative à l'arrêt de Gages des Employés, 1933(c) and the Ordonnance provisoire relative aux gages d'Ouvriers, 1860(d) apply;

- (c) the court may direct that payment shall be made at the place, to the person, and at the times specified in the order.

(2) Where the court makes an order under this Law awarding the custody of a child to any person, or awarding the care of a child to the Children Board, or awarding supervision of or access to a child to any person, and another person has the actual custody of the child, a copy of the order may be served on that other person and thereupon has effect as if it were an order of the court requiring him to give up the child to the person entitled to custody or to the Children Board, or to permit supervision of or access to the child in accordance with the terms of the order, as the case may be; and if he does not comply with the order in any respect the court, on the application of the person entitled to custody, or the Children Board, or the person to whom supervision of or access to the child was awarded by the order, as the case may be, may commit him to prison until he has remedied his default.

(3) No person shall be committed to prison under subsection (1) or (2) for a period of, or for periods totalling, more than 3 months in respect of any one default.

(c) Recueil d'Ordonnances Tome VIII, p. 298.

(d) Recueil d'Ordonnances Tome III, p. 459.

(4) A person liable to make a payment under an order made under this Law shall give notice of any change of his address to the person specified in the order or, if none, to the court, and a person who without reasonable excuse fails to comply with this subsection is guilty of an offence and liable on summary conviction to a fine not exceeding £100.

(5) A person who disobeys an order under section 15(1) is liable to a fine not exceeding £500, imprisonment for a term not exceeding 3 months, or both.

(6) A person who contravenes, or attempts to contravene, an order under section 25(1) is guilty of an offence and liable on summary conviction to a fine not exceeding £500, imprisonment for a term not exceeding 3 months, or both.

(7) Any parent or guardian of a child in the care of the Children Board by virtue of an order under section 9(1) shall give notice to the Children Board of any change of his address, and a person who without reasonable excuse fails to comply with this subsection is guilty of an offence and liable on summary conviction to a fine not exceeding £100.

(8) The provisions of this section are in addition to any other right of action or remedy, existing independently of this section, in respect of an order under this Law.

PART VI

Miscellaneous and general

32. (1) The court shall, so far as is consistent with Procedure, the due dispatch of business, separate the hearing and determination of proceedings under this Law from other business.

(2) Proceedings in the court and the Royal Court under this Law may be heard and determined in camera.

(3) If proceedings are heard in camera, the Royal Court may nevertheless give judgment in open court on points of law or principle, provided that the judgment is delivered in such a manner that it does not establish or tend to establish the identity of any party to the proceedings.

Service.

33. An order or notice to be served on any person under this Law is validly served if delivered to him, left, or sent by registered post or by recorded delivery service to him, at his usual or last known place of abode.

Rules of Court.

34. The Royal Court sitting as a Full Court may by Order make rules dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

Interpretation.

35. (1) In this Law, unless the context otherwise requires—

(a) “adopted” means adopted under—

- (i) an adoption order made under the Adoption (Guernsey) Law, 1960(e);
- (ii) an adoption order made in any part of the United Kingdom, in the Isle of Man, or in the Island of Jersey; or
- (iii) an overseas adoption within the meaning of section 5 of the Adoption (Guernsey) Law, 1970(f);

(e) Ordres en Conseil Vol. XVIII, p. 192.

(f) Ordres en Conseil Vol. XXII, p. 380.

“child”, in relation to one or both of the parties to a marriage, includes an illegitimate or adopted child of that party or, as the case may be, of both parties;

“child of the family”, in relation to the parties to a marriage, means—

- (i) a child of both those parties; and
- (ii) any other child, not being a child who is being boarded out with those parties by the Children Board or otherwise, who has been treated by both of those parties as a child of their family;

“the court” means the Magistrate’s Court established under the Magistrate’s Court (Guernsey) Law, 1954;

“full age” means the age of 18 years;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“interim custody order” has the meaning given by section 18(2);

“interim maintenance order” has the meaning given by section 18(1);

“Magistrate” means the Magistrate appointed under section 2(2) of the Magistrate’s Court (Guernsey) Law, 1954;

“officer of police” means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey; and

“ the Royal Court ” means the Royal Court sitting as an Ordinary Court;

- (b) any reference to an enactment is a reference to that enactment as amended, repealed, replaced, extended or applied by or under any other enactment, including this Law; and
- (c) any reference to an order or application under this Law or a provision of this Law includes a reference to an order, injunction or application which, by virtue of section 38, has effect as if made under this Law or that provision.

(2) For the purposes of this Law, an application to the court is considered to be made on, and the date of such an application is considered to be, the date on which the application first comes before the court.

Amendments.

36. The enactments set out in Schedule 1 to this Law are amended in the manner set out in the second column of that Schedule.

Repeals.

37. The enactments set out in Schedule 2 to this Law are repealed to the extent set out in the second column of that Schedule.

Transitional and savings provisions.

38. (1) An order or injunction of the court or the Royal Court which was made under a provision of an enactment repealed by this Law, and which was in force immediately prior to the commencement of this Law, has effect as if made under the provision of this Law under which such an order or injunction could be made.

(2) An application outstanding at the commencement of this Law for an order or injunction of the court under a provision of an enactment repealed by this Law has effect as if made under the provision of this Law under which an application for such an order or injunction could be made.

(3) An appeal outstanding at the commencement of this Law instituted under a provision of an enactment repealed by this Law may proceed and be determined as if the provision had not been repealed.

39. This Law may be cited as the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988. Citation.

40. This Law comes into operation on the day appointed by Ordinance of the States. Commencement.

SCHEDULE 1

Section 36

| Enactment | Amendment |
|---|---|
| <p>Loi relative à l'Entretien des Enfants Illégitimes, 1927(g).</p> | <p>In Article 2, for the second paragraph thereof substitute—</p> <p>“Sections 19, 26, 28, 29 and 31 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 apply to or in relation to an order under this Article or Article 5 or 6 of this Law for the making of payments as they apply to or in relation to an order under that Law for the making of periodical payments.”.</p> <p>In Article 3—</p> <p>(i) for “fourteen” substitute “18”;</p> <p>(ii) repeal the words beginning with “provided that” and ending with “that period”.</p> <p>In Article 5(2), for “sixteen” substitute “18”.</p> <p>In Article 10, for “the Full Court” substitute “an ordinary Court”.</p> |
| <p>Maintenance and Affiliation Orders (Amendment) Law, 1955(h).</p> | <p>In section 5(2), for “sixteen” substitute “18”.</p> <p>In section 5(3), repeal the words following “so made”.</p> |

(g) Ordres en Conseil Vol. VIII, p. 130.

(h) Ordres en Conseil Vol. XVI, p. 173.

| Enactment | Amendment |
|---|---|
| <p>Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978.</p> | <p>In section 20(6), for "section thirteen of this Law, as applied by this section," substitute "section 7(1)(i) of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988".</p> |
| <p>Maintenance Orders (Reciprocal Enforcement) (Bailiwick of Guernsey) Law, 1984⁽ⁱ⁾.</p> | <p>In section 25(1), for "Article one of the Law of 1930" substitute "the Law of 1988 by a married woman".</p> <p>In section 25(2)—</p> <ul style="list-style-type: none"> (i) for "an order under Article one of the Law of 1930" substitute "such an order"; (ii) for paragraphs (a) and (b) substitute— <ul style="list-style-type: none"> "(a) a provision for the making of payments by the husband to the wife; and (b) a provision for the making of payments by the husband to or for the benefit of any child of the marriage;" (iii) for "Article one of the Law of 1930", where those words secondly appear, substitute "the Law of 1988". |

⁽ⁱ⁾ No. XV of 1984.

| Enactment | Amendment |
|-----------|---|
| | <p>In section 38(1), for "such as is mentioned in paragraph (c) (which relates to payments by the husband to the wife) of Article one of the Law of 1930 or" substitute "for the making of payments by the husband to the wife, or a provision such as is mentioned in".</p> <p>In section 42(1), repeal the definition of "the Law of 1930" and insert—</p> <p>" "the Law of 1988" means the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988;".</p> |

SCHEDULE 2

Section 37

| Enactment | Extent of repeal |
|---|--|
| Loi relative à la Separation de Mariés en Police Correctionnelle, 1930(<i>j</i>). | The whole Law. |
| Matrimonial Causes Law (Guernsey), 1939(<i>k</i>). | Article 70. Article 43A(2)(<i>b</i>). |
| Maintenance and Affiliation Orders (Amendment) Law, 1955. | Sections 1, 2 and 3. |
| Matrimonial Causes (Amendment) (Guernsey) Law, 1972(<i>l</i>). | Section 2. |
| Maintenance and Affiliation Orders (Maximum Weekly Payments) Ordinance, 1975(<i>m</i>). | The whole Ordinance. |
| Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978. | Sections 13 and 14. In section 17(1), the word "thirteen". Sections 18, 20(3) and 20(4). |
| The Domestic Violence and Separation Proceedings (Guernsey) Law, 1983(<i>n</i>). | The whole Law. |
| Maintenance and Affiliation Orders (Amendment) (Guernsey) Law, 1984(<i>o</i>). | Sections 1, 2 and 6(1). |

(*j*) Ordres en Conseil Vol. VIII, p. 452.

(*k*) Ordres en Conseil Vol. XI, p. 318; and Vol. XXVII, p. 99.

(*l*) Ordres en Conseil Vol. XXIII, p. 489.

(*m*) Recueil d'Ordonnances Tome XX, p. 145.

(*n*) No. IV of 1983.

(*o*) No. X of 1984.

D. R. DOREY,
Her Majesty's Deputy Greffier.