

ORDER IN COUNCIL

II
1992

ratifying a Projet de Loi

ENTITLED

The Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992

(Registered on the Records of the Island of Guernsey
on the 25th August, 1992.)



1992

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 25th day of August, 1992 before Graham Martyn Dorey, Esquire, Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, 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, Kenneth John Rowe and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 4th day of June, 1992, approving and ratifying a *Projet de Loi* entitled “The Domestic Proceedings and Magistrate’s Court (Amendment) (Guernsey) Law, 1992”, 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 of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 4th day of June 1992

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 5th day of May 1992 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 31st day of October 1991 the States of Deliberation at a meeting held on the 12th day of December 1991 approved a Bill or “Projet de Loi” entitled “The Domestic Proceedings and Magistrate’s Court (Amendment) (Guernsey) Law, 1992”, 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 (Amendment) (Guernsey) Law, 1992”, 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 Yqur 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

(No.II - 1992)

PROJET DE LOI

ENTITLED

The Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992

THE STATES, in pursuance of their Resolution of the 31st October, 1991(a), 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.

Amendment to Law of 1988.

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

(a) in Part I of the arrangement of sections -

(i) for the heading thereto
("Financial provision") substitute
"Financial provision and
separation";

(ii) for the entry relating to section
2 substitute -

" 2. Orders for financial
provision and separation.";

(b) in Part I of the Law for the heading
thereto ("Financial provision")
substitute "Financial provision and

(a) Article XIV of Billet d'Etat No. XXIII of 1991.

(b) Ordre en Conseil No. XVI of 1988.

separation";

- (c) for the side-heading to section 2
substitute -

"Orders for financial provision and
separation.";

- (d) in section 14 after "paramount
consideration" insert ", and the court
shall not consider whether from any
other point of view the claim of one
parent in respect of the custody or
upbringing of the child is superior to
that of the other parent";

- (e) for Part III substitute -

"

PART III

Domestic violence

Domestic violence orders.

15.(1) On the application of
either party to a marriage, the court
may grant an order (a "domestic
violence order") requiring the other
party to the marriage ("the
respondent") -

- (a) not to molest or
threaten to molest the
applicant, any child

of the family or any child living with the applicant;

(b) to leave, or not to enter, the matrimonial home or any part thereof, or any other specified premises, or any specified area;

(c) to permit any person described in paragraph (a) to enter and remain in the matrimonial home or any part thereof;

(d) not to do or omit to do any other thing specified in the order the doing or omission of which is, in the court's opinion, likely or calculated to cause harm or distress to any person

described in paragraph

(a);

- (e) not to incite or assist any other person to do anything which, by virtue of the order, the respondent could not lawfully do.

(2) A domestic violence order -

- (a) may be made subject to such conditions as the court considers necessary or expedient to effect the purposes of the order;

- (b) may be made for such term as may be specified; and

- (c) may contain all or any of the requirements set out in paragraphs (a) to (e) of subsection (1).

(3) Except insofar as it affects rights of occupation, a domestic violence order does not affect any estate or interest in the matrimonial home.

(4) The court may by order vary or revoke a domestic violence order on the application of either party to the marriage in question.

Arrest for breach of domestic violence order.

16.(1) The court may attach a power of arrest to a domestic violence order if it considers it necessary to do so for the protection of any person described in section 15(1)(a).

(2) Where a power of arrest is attached to a domestic violence order, an officer of police may arrest the respondent if he has reasonable cause to suspect that the respondent has disobeyed the order in any respect.

(3) Where a power of arrest is not attached to a domestic violence order the Magistrate may, if satisfied

by information on oath that the respondent has disobeyed the order in any respect, direct his arrest by an officer of police.

(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 by direction of the court;

and nothing in this section authorises his detention beyond that period.

(5) In reckoning a period of 24 hours for the purposes of subsection (4), no account shall be taken of -

(a) a Saturday, Sunday, Good Friday or Christmas Day;

(b) a day appointed as a bank holiday by

Ordinance of the
States; or

- (c) a day appointed as a
day of public thanks-
giving or public
mourning.

Unmarried couples.

17. Sections 15 and 16 apply in relation to a man and woman who live or have lived together in the same household as husband and wife as they apply in relation to the parties to a marriage, and references in those sections to a party to a marriage, to a child of the family and to the matrimonial home shall be construed accordingly.";

- (f) in section 20(4)(a) after "in question" insert "(whether or not the marriage is still subsisting)";
- (g) in section 25(1) after "care of a child," insert "or where, in exceptional circumstances, the court considers it necessary in the interests of justice to do so,";

- (h) in section 25(2) after "child has effect" insert "or, as the case may be, until an order in respect of the custody or care of the child is made";
- (i) renumber section 28 as section 28(1) and insert immediately thereafter the following subsection -
 - " (2) An order under subsection (1) for the reduction or remission of arrears shall not be made in respect of any sum comprised in a judgment debt of any amount.";
- (j) in section 31(1)(b) for the words and figures following "1933(c)" substitute "applies";
- (k) in section 33 -
 - (i) after "notice" insert "or summons";
 - (ii) after "abode" insert "; and rules under section 34 may make any additional provision whatsoever as to service";
- (l) in Schedule 1 repeal the entries relating to the Law entitled "Loi relative à l'Entretien des Enfants

Illégitimes, 1927" and to the
Maintenance and Affiliation Orders
(Amendment) Law, 1955.

Amendment to Law of 1927.

2. In the Law entitled "Loi relative à
l'Entretien des Enfants Illégitimes, 1927", as
amended(c) -

(a) in Article 1 repeal the words following
"or at any time thereafter," and
preceding "make application to the
Magistrate";

(b) for Article 2 substitute -

"ARTICLE 2

(1) After the birth of the said
child the Magistrate shall, upon the
appearance of the man so summoned, or
upon proof that the summons was duly
served on him or was left at his usual
or last-known place of abode in either
case not less than three clear days
prior to the date of the hearing, hear
any evidence tendered by or on behalf
of the parties.

(c) Ordres en Conseil Vol. VIII, p.130; Vol. XVI,
p.173; Vol. XXVIII, p.418; No. XX of 1986; and No.
XVI of 1988.

(2) The Magistrate may, if the mother's evidence is satisfactorily corroborated in some material particular, adjudge the man to be the child's putative father.

(3) The Magistrate may thereupon, having regard to all the circumstances of the case, order the putative father to make such periodical payments for such term (which may run from the date of the summons), or to pay such lump sum, or both, as the Magistrate thinks fit in respect of the child's maintenance and education, the expenses incidental to its birth, its funeral expenses (if it has died before the making of the order) and the costs incurred in obtaining the order.

(4) If the summons is issued within two months of the child's birth, such financial provision may, if the Magistrate thinks fit, be calculated from the date of birth.

(5) Sections 2(2) and (3), 3(1) and (3), 4(4) to (7), 18(1) and (3) to

- (7)(a), 19, 24, 26 to 29, 30(1) to (3), (5) and (6), 31(1), (3), (4) and (8) and 32 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, as amended, shall apply in relation to an order under this Law for the making of periodical payments or for the payment of a lump sum as they apply respectively in relation to an order under section 2(1)(a)(iii) or (iv) of the said Law of 1988; and references in those sections (however expressed) to the parties to the marriage or to any child of the family shall be construed respectively as references to the mother and putative father and to the child in question.";
- (c) repeal Articles 3, 4, 9 and 10;
 - (d) in Article 5(2) repeal the proviso and the paragraph immediately following it; and
 - (e) any reference (however expressed) to a bastard child shall be construed as a reference to an illegitimate child.

Repeals.

3. The Maintenance and Affiliation Orders (Amendment) Law, 1955(d) and the Maintenance and Affiliation Orders (Amendment) (Guernsey) Law, 1984(e) are repealed.

Citation.

4. This Law may be cited as the Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992

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

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

(e) Ordres en Conseil Vol. XXVIII, p.418.