

# ORDER IN COUNCIL

XXXI  
2003

ratifying a Projet de Loi

ENTITLED

## The Matrimonial Causes (Guernsey) (Amendment) Law, 2003

(Registered on the Records of the Island of Guernsey  
on the 18th December, 2003.)



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2003

## ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 18th day of December, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, Michael Henry De La Mare and Michael John Tanguy, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 13th day of November, 2003, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Matrimonial Causes (Guernsey) (Amendment) Law, 2003”, THE COURT, after the reading of the said Order in Council and having heard Her Majesty’s Comptroller thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island and
2. 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.

# At the Court at Buckingham Palace

The 13th day of November, 2003

PRESENT,

## The Queen's Most Excellent Majesty in Council

THE FOLLOWING, report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“IN ACCORDANCE WITH YOUR MAJESTY’S General Order of Reference of the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of the 25th of September, 2002, the States of Deliberation at a meeting on the 26th March, 2003, approved a Projet de Loi entitled “The Matrimonial Causes (Guernsey) (Amendment) Law, 2003” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 21st May, 2003 considered the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on the 2nd July, 2003 considered the Projet de Loi when a Resolution was passed agreeing to its application to Sark. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Matrimonial Causes (Guernsey) (Amendment) Law, 2003” and to order that it shall have force of law in the Bailiwick of Guernsey.

“THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”



HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Matrimonial Causes (Guernsey) (Amendment) Law, 2003**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> day of September 2002<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Amendments.**

1. The Law of 1939 is amended as set out in the Schedule.

### **Interpretation.**

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

“**the Law of 1939**” means the Matrimonial Causes (Guernsey) Law, 1939, as amended<sup>b</sup>; and

“**the Schedule**” means the schedule to this Law.

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<sup>a</sup> Resolutions 1 and 3 of Article IX on Billet d'État No. XX of 2002.

<sup>b</sup> 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; Vol. XXVII, p. 99 and Orders in Council No. IX of 1996; No. XIX of 1997 and No. \*\* of 2003.

**Citation.**

3. This Law may be cited as the Matrimonial Causes (Guernsey) (Amendment) Law, 2003.

**Collective title.**

4. This Law and the Matrimonial Causes Laws, 1939 to 2002 may be cited together as the Matrimonial Causes Laws, 1939 to 2003.

## SCHEDULE

### *Amendment of the Law of 1939*

#### **Insertion of Article 43B in the Law of 1939.**

1. Immediately after Article 43A of the Law of 1939<sup>c</sup>, insert the following article -

#### **"ARTICLE 43B - POWER OF COURT TO MAKE INTERIM OCCUPATION ORDER**

(1) At any stage during proceedings commenced under this Law which involve any child of the marriage, the Court may, before the making of a decree of divorce, judicial separation or nullity of marriage, upon the application of either party or of its own motion (having, where reasonably practicable and possible, given both parties the opportunity to be heard), make an order (an “**interim occupation order**”) -

- (a) designating any relevant property as property which shall be used for the purposes of providing living accommodation for any child of the marriage;
- (b) granting to a party to the marriage a right (including, where the Court thinks fit, the exclusive right) -
  - (i) as between the parties to the marriage; and
  - (ii) subject to such limitations as the Court thinks

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<sup>c</sup> Article 43A was inserted by Ordres en Conseil Vol. XXVII, p. 99.

fit,

to occupy the property with any child of the marriage;

(c) containing such further or consequential orders as the Court thinks fit, including, without limiting the generality of the foregoing -

(i) an order requiring a party to the marriage to leave the property;

(ii) an order regulating the occupation of the property by a party to the marriage;

(iii) an order requiring a party to the marriage to permit the other party to enter and remain in the property;

(iv) an order excluding a party to the marriage from a defined area in which the property is located;

(v) an order granting a party to the marriage possession or use of furniture or other contents of the property;

(vi) an order requiring a party to the marriage to take reasonable care of any furniture or other contents of the property; and

(vii) an order requiring a party to the marriage to take reasonable steps to keep the property and any furniture or other contents secure; and



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

(2) In deciding whether to exercise its powers under subsection (1) and (if so) in what manner, the Court shall have regard to all the circumstances, including, without limiting the generality of the foregoing -

(a) the housing needs and housing resources of each of the parties to the marriage and of any child of the marriage;

(b) the financial resources of each of the parties to the marriage;

(c) the likely effect of any order, or any decision of the Court not to exercise its powers under subsection (1), on the health, safety or well-being of the parties to the marriage and any child of the marriage; and

(d) the conduct of the parties to the marriage in relation to each other and otherwise.

(3) An interim occupation order may, in so far as it has continuing effect, be made-

(a) for a specified period;

(b) until the occurrence of a specified event; or

(c) until further order.

(4) For the purposes of this Article, “**relevant property**” means

property of a type described in Article 46 or such part of such property as is specified in an interim occupation order."

**Insertion of Articles 57C and 57D in the Law of 1939.**

2. Immediately after Article 57B<sup>d</sup> of the Law of 1939 insert the following articles -

"ARTICLE 57C - ENFORCEMENT BY WAGE ARREST

(1) When making a relevant order or at any time thereafter, the Court may, upon the application of or on behalf of the payee, or of its own motion (having, where reasonably practicable and possible, given both parties the opportunity to be heard), make a wage arrest order.

(2) For the purposes of this Article -

**"payee"** means the person to whom or for whose benefit any payment is ordered to be made under a relevant order;

**"a relevant order"** means an order of the Court for -

- (a) maintenance made under Article 43(1);
- (b) payment of an annual or periodic sum of money under Article 47(1);
- (c) payment of a sum of money under Article 47(2); or

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<sup>d</sup> Article 57B was inserted by Order in Council No.\*\* of 2003.

(d) payments under Article 47(3); and

“**a wage arrest order**” means an order that a proportion, not exceeding one half, of the wages of the party liable to make payment under a relevant order, having regard to that party's means, shall be arrested to facilitate the recovery of the payment as an arrêt de gages to which the Ordonnance relative à l'arrêt de Gages des Employés, 1933 and the Ordonnance relative aux Gages d'Ouvriers apply.

#### ARTICLE 57D - POWER TO REMIT ARREARS

(1) Subject to paragraph (2), where a relevant order has been made and arrears have accrued under that order, the Court may, upon the application of the payer or of its own motion (having, where reasonably practicable and possible, given both parties the opportunity to be heard), order that the arrears shall be remitted or reduced.

(2) An order under paragraph (1) shall not be made in respect of any sum comprised in a judgment debt.

(3) For the purposes of this Article -

“**payer**” means any person who is ordered to make any payment to or for the benefit of another under a relevant order; and

“**relevant order**” has the same meaning as it has in Article 57C.”.