

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

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

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* No. II of 1992 (Ordres en Conseil Vol. XXXIV, p. 129); as amended by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010). See also the Children (Guernsey and Alderney) Law, 2008 (No. XIV of 2009).

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ARRANGEMENT OF SECTIONS

1. Amendment to Law of 1988.
2. Amendment to Law of 1927.
3. Repeals.
4. Citation.

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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

^a Article XIV of Billet d'État No. XXIII of 1991.

^b Ordre en Conseil No. XVI of 1988.

provision") substitute "Financial provision and separation",

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

"Orders for financial provision and separation.",

(d) ...

(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 house-hold 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) ...

(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.

NOTES

In section 1, paragraph (d) and paragraph (f) were repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 27, with effect from 4th January, 2010.

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 33 (shown, incorrectly, in the printed version of the 2008 Law as paragraph 32), with effect from 4th January, 2010, this Law is one of those specific enactments that the States may repeal, amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to, by Ordinance made under the said section 123.

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",¹

^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.

(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.

(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^{ef} are repealed.

^d Ordres en Conseil Vol. XVI, p. 173.

^e Ordres en Conseil Vol. XXVIII, p. 418.

Citation.

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

NOTE

The Law received Royal Sanction on 4th June, 1992 and was registered on the Records of the Island of Guernsey and came into force on 25th August, 1992.

¹ For subsequent amendments, see the consolidated text of the Loi relative à l'Entretien des Enfants Illégitimes, 1927.