

# PROJET DE LOI

ENTITLED

## **Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936 \***

[CONSOLIDATED TEXT]

### NOTE

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. 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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\* Ordres en Conseil Vol. X, p. 308; as amended by the Mental Treatment Law (Guernsey) 1939 (Ordres en Conseil Vol. XI, p. 405). See also the Matrimonial Causes Law (Guernsey), 1939 (Ordres en Conseil Vol. XI, p. 318); the Magistrate's Court (Guernsey) Law, 1954 (Ordres en Conseil Vol. XVI, p. 103); the Marriage (Enabling) (Guernsey) Law, 1961 (Ordres en Conseil Vol. XVIII, p. 312); the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. XIII of 2017); the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 (Sark Ordinance No. II of 2020). This Law has been repealed by the Marriage (Bailiwick of Guernsey) Law, 2020 (No. XVI of 2020).

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## **Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936**

### ARRANGEMENT OF SECTIONS

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2. Marriage Prohibitions (Affinity).
3. Marriage Prohibitions (Divorce).
4. Marriage Prohibitions (Decease).
5. Re-marriage of divorced persons.
6. Non-exemption from ecclesiastical censure.
7. Dignity, title of honour, property, duties, etc.
8. Interpretation.
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## **Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936**

**ATTENDU QU'IL** est expédient de statuer par législation civile (1) sur les cas où la parenté par sang ou par affinité entre des personnes constitue empêchement à leur mariage, et (2) sur la validité sous le droit civil de certains mariages ci-devant empêchés sous le droit canon à cause d'affinité, et (3) sur le transfert de la Cour Ecclésiastique à la Cour Royale de la juridiction dans les causes matrimoniales.

**ATTENDU QUE** les dispositions de la Loi relative au Mariage avec la Sœur d'une femme décédée sanctionnée par l'Ordre de Sa Majesté en Conseil enregistré le 3 août 1909 sont en effet comprises dans cette présente Loi.

**LES ÉTATS** ont approuvé les dispositions suivantes rédigées en anglais lesquelles moyennant la Sanction de Sa Très Excellente Majesté en Conseil, auront force de Loi dans le Bailliage de l'Île de Guernesey.

### **Repeal.**

1. The law relating to marriage with a deceased wife's sister ratified by an Order of His Majesty in Council, registered on the 3<sup>rd</sup> day of August, 1909, is by this present Law repealed, provided that, in so far as this present law relates to marriage between a man and his deceased wife's sister, it shall be deemed to have commenced at the date of the commencement of the said Law hereby repealed.

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## NOTES

*In accordance with the provisions of, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 2, Schedule 2, with effect from 2nd May, 2017, second (in relation to Alderney), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 2, Schedule 2, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020, section 2, Schedule 2, with effect from 23rd April, 2020, section 1(2) and section 2 of, respectively, the Same-Sex Marriage (Guernsey) Law, 2016, the Same-Sex Marriage (Alderney) Law, 2017 and the Same-Sex Marriage (Sark) Law, 2020 do not apply in respect of this Law.*

*The Loi relative au mariage avec la sœur d'une femme décédée,<sup>1</sup> ("the law relating to marriage with a deceased wife's sister") received Royal Sanction on 3rd July, 1909 and was registered on the Records of the Island of Guernsey and came into force in the Bailiwick of Guernsey on 3rd August, 1909.*

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### **Marriage Prohibitions (Affinity).**

2. Every marriage is forbidden and shall be void and of none effect between a man and any one of the following persons, that is to say –

- his mother or his ancestress,
- the widow or divorced wife of his father or of his ancestor,
- the sister of his father, of his mother, or of his ancestor or ancestress,
- his sister,
- his daughter or other descendant,
- the daughter or other descendant of his brother or of his sister,
- the mother or ancestress of his deceased or divorced wife,
- the daughter or other descendant of his deceased or divorced wife, or
- the widow or divorced wife of his son or of any other of his descendants.

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**NOTE**

*In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Article 19(2), with effect from 31st August, 1946, the expression "divorced wife" in this section shall mean a wife in favour of or against whom a decree of divorce has been granted.*

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**Marriage Prohibitions (Divorce).**

3. Subject to the provisions of section 4 of this Law, every marriage is forbidden and shall be void and of none effect between a man and any one of the following persons, that is to say –

his divorced wife's sister,  
his brother's divorced wife,  
his divorced wife's brother's daughter,  
his divorced wife's sister's daughter,  
his father's brother's divorced wife,  
his mother's brother's divorced wife,  
his divorced wife's father's sister,  
his divorced wife's mother's sister,  
his brother's son's divorced wife,  
his sister's son's divorced wife.

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**NOTES**

*In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Article 19(2), with effect from 31st August, 1946, the expression "divorced wife" in this section shall mean a wife in favour of or against whom a decree of divorce has been granted.*

*In accordance with the provisions of the Marriage (Enabling) (Guernsey) Law, 1961, section 1(1), with effect from 16th May, 1961, and subject to the provisions of section 1(2) and section 1(3) thereof, no marriage thereafter contracted (whether in or out of the Bailiwick) between a man and a woman who is the sister, aunt or niece of a former wife of his (whether living or not),*

*or was formerly the wife of his brother, uncle or nephew (whether living or not), shall by reason of that relationship be void or voidable under any enactment or rule of law applying in the Bailiwick as a marriage between persons within the prohibited degrees of affinity.*

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**Marriage Prohibitions (Decease).**

4. No marriage already contracted or hereafter contracted between a man and any one of the following persons, that is to say –

- (1) his deceased wife's or deceased former wife's sister,
- (2) his deceased brother's widow or former wife,
- (3) his deceased wife's or deceased former wife's brother's daughter,
- (4) his deceased wife's or deceased former wife's sister's daughter,
- (5) his father's deceased brother's widow or former wife,
- (6) his mother's deceased brother's widow or former wife,
- (7) his deceased wife's or deceased former wife's father's sister,
- (8) his deceased wife's or deceased former wife's mother's sister,
- (9) his brother's deceased son's widow or former wife,
- (10) his sister's deceased son's widow or former wife,

whether in the Bailiwick of this Island of Guernsey or elsewhere, shall be deemed to have been or to be void or voidable as a civil contract by reason only of such affinity:

Provided that in respect of any marriage referred to in this section or of a marriage for which provision is made in section 5 of this Law –

- (a) no priest of the Church of England shall be subject to any proceedings, penalty or censure whether civil or ecclesiastical by reason of anything done or omitted to be done by him in the functions and duties of his office to which proceedings, penalty or censure he would not

have been subject if this present law had not been enacted,

- (b) where, before the commencement of this present law, any of such marriages shall have been annulled, or one of the parties to such marriage (after the marriage and during the lifetime of the other party), shall have legally married another person, such marriage shall be deemed to have become void on the day of its annulment, or on the day on which one of the parties legally married another person as aforesaid.

**Re-marriage of divorced persons.**

5. Where a final decree of divorce has been granted by a competent court in the jurisdiction of the domicile of the divorced parties, the pre-existent marriage between the divorced parties shall henceforth be deemed in the Bailiwick of the Island of Guernsey to have been dissolved upon the grant of such final decree and a marriage contracted by either of such parties after the divorce so decreed, whether before or after the commencement of this law, shall not be deemed to have been or to be void or voidable as a civil contract by reason of the pre-existent marriage so dissolved by such divorce.

**Non-exemption from ecclesiastical censure.**

6. This Law shall not have effect to exempt a priest of the Church of England from any ecclesiastical censure to which he may become subject by contracting a marriage which is authorised by this Law.

**Dignity, title of honour, property, duties, etc.**

7. (1) No right, title, estate or interest, whether in possession or expectancy, and whether vested or contingent at the time of the commencement of this Law, existing in, to, or in respect of, any dignity, title of honour, or property, and

no act or thing lawfully done or omitted before the commencement of this Law shall be prejudicially affected nor shall any will be deemed to have been revoked by reason of any marriage heretofore contracted as aforesaid being made valid by this Law.

(2) No claim by the Crown for duties leviable on or with reference to death, and before the commencement of this Law due and payable, and no payment, commutation, composition, discharge or settlement of account in respect of any duties leviable on or with reference to death before the commencement of this Law duly made or given shall be prejudicially affected by anything herein contained.

(3) Nothing in this Law shall affect the devolution or distribution of the real or personal estate of any intestate, not being a party to the marriage, who at the time of the commencement of this Law shall be, and shall until his death continue to be, a [person of unsound mind], if so found by declaration of the Royal Court.

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**NOTE**

*In section 7, the words in square brackets in subsection (3) were substituted in accordance with the provisions of the Mental Treatment Law (Guernsey) 1939, Article 45(3), with effect from 6th March, 1940.*

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**Interpretation.**

8. In this Law the expression "**brother**" and "**sister**" include respectively half-brother and half-sister by the same father or by the same mother.

**Jurisdiction in matrimonial causes transferred to Royal Court.**

9. Upon this Law coming into force by the registration of the Order of His Majesty in Council ratifying the same all jurisdiction then exercisable by the Ecclesiastical Court in respect of suits for annulment of marriages and other matrimonial causes shall cease excepting only the rights and powers of granting Marriage Licenses which rights and powers shall continue as if this Law had not been



enacted, and the said jurisdiction in respect of suits for annulment of marriages and other matrimonial causes excepting the granting of Marriage Licenses, shall be transferred to and thenceforth exercised by the Royal Court sitting as the Full Court and the said Court shall have jurisdiction in respect of such suits and causes and the same shall be deemed to be civil cases and from a judgement rendered therein an appeal shall lie to His Majesty and the Right Honourable the Lords of His Privy Council.

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**NOTE**

*In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Article 2(1), with effect from 12th July, 1939, the original jurisdiction exercisable by the Royal Court sitting as a Full Court in virtue of this Law was vested in and was to be exercisable exclusively by a Division of the Royal Court to be designated "the Matrimonial Causes Division of the Royal Court of Guernsey" ("the Court for Matrimonial Causes").*

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**Matrimonial causes pending.**

**10.** Every matrimonial cause which may be pending before the Ecclesiastical Court at the time of this Law coming into force shall be transferred to the Royal Court and shall be judged by the Royal Court in the same manner as if it had originally been brought before the Royal Court.

**Separation.**

**11.** The jurisdiction of the Royal Court of first instance, of the Court of Alderney and of the Guernsey Police Court in matters of separation of married persons is not affected by this Law.

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**NOTES**

*The Law received Royal Sanction on 3rd March, 1936 and was registered on the Records of the Island of Guernsey and came into force on 21st March, 1936.*

*In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 1954, section 10(3) (as originally enacted), the expression "Police Court" in this section shall be deemed to refer to the Magistrate's Court, with effect from 17th January, 1955.*

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<sup>1</sup> Orders in Council Vol. IV, p. 284.