

PROJET DE LOI

ENTITLED

The Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979 *

[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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* Ordres en Conseil Vol. XXVII, p. 99; 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); the Matrimonial Causes Rules, 1952 (Orders of the Royal Court Vol. I, p. 64).

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SCHEDULE Staying of Matrimonial Proceedings.

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THE STATES, in pursuance of their Resolution of the twenty-sixth day of January, nineteen hundred and seventy-eight, 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.

Amendment to Law of 1939.

1. The Matrimonial Causes Law (Guernsey), 1939, as amended^a, (hereinafter referred to as "**the principal Law**") is hereby further amended as follows –

- (a) in Article 1 thereof immediately after the last paragraph there is inserted the following additional paragraph –

"The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Law throughout the Bailiwick.";

- (b) Article 15 thereof is repealed and the following Article is substituted therefor –

^a 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.

"(1) It shall be a necessary condition of the exercise by the Court of its jurisdiction in divorce causes and matters that either of the parties to the marriage –

(a) is domiciled in the Bailiwick on the date when the proceedings are begun, or

(b) was habitually resident in the Bailiwick throughout the period of one year ending with that date.

(2) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of the last preceding paragraph (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under the last preceding paragraph.";

(c) in Article 21¹ thereof the full stop at the end thereof is deleted and a colon is substituted therefor and immediately thereafter there is inserted the following proviso –

"Provided that –

(i) this Article shall not in any way prevent the exercise by the Court of its jurisdiction in divorce causes and matters where the petitioner –

(a) is domiciled in the Island of Guernsey or the Island of Alderney on the date when the proceedings are begun, or

(b) was habitually resident in the Island of Guernsey or the Island of Alderney throughout the period of one year ending with that date,

notwithstanding that the respondent is domiciled in the Island of Sark or in any of its Dependencies,

(ii) that the Court shall not, in the exercise of its jurisdiction pursuant to the provisions of the last preceding paragraph of this proviso, make any order relating to the vesting, division or occupancy of real property of any party to the proceedings situate in Sark or in any of its Dependencies.";

(d) Article 22 thereof is repealed and the following Article is substituted therefor –

"(1) It shall be a necessary condition of the exercise of original jurisdiction by the Court for Matrimonial Causes and by the Ordinary Court with regard to any suit for judicial separation that either of the parties to the marriage –

(a) is domiciled in the Bailiwick on the date when the proceedings are begun, or

(b) was habitually resident in the Bailiwick

throughout the period of one year ending with that date.

(2) The Court for Matrimonial Causes shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of the last preceding paragraph (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under the last preceding paragraph.";

(e) Article 33 thereof is repealed and the following Article is substituted therefor –

"(1) It shall be a necessary condition of exercise by the Court of its jurisdiction in suits for nullity of marriage that either of the parties to the marriage –

(a) is domiciled in the Bailiwick on the date when the proceedings are begun, or

(b) was habitually resident in the Bailiwick throughout the period of one year ending with that date, or

(c) died before that date and either –

(i) was at death domiciled in the Bailiwick,
or

- (ii) had been habitually resident in the Bailiwick throughout the period of one year ending with the date of death.

(2) The Court shall, at any time when proceedings are pending in respect of which it has jurisdiction by virtue of the last preceding paragraph (or of this paragraph), also have jurisdiction to entertain other proceedings, in respect of the same marriage, for divorce, judicial separation or nullity of marriage, notwithstanding that jurisdiction would not be exercisable under the last preceding paragraph.";

- (f) Article 38 thereof is repealed and the following Article is substituted therefor –

"(1) It shall be a necessary condition of the exercise by the Court of its jurisdiction with regard to the granting of decrees of presumption of death and of dissolution of marriage thereupon that the petitioner –

- (a) is domiciled in the Bailiwick on the date when the proceedings are begun, or

- (b) was habitually resident in the Bailiwick throughout the period of one year ending with that date.";

- (g) ...

- (h) in Article 60 thereof –

- (i) the heading thereto is repealed and the heading "DOMICIL—GENERAL PROVISIONS" is substituted therefor,
 - (ii) the words "husband's domicile", wherever those words occur therein, are repealed and the words "person's domicile" are substituted therefor,
- (i) immediately after Article 60 thereof there are inserted the following additional Articles numbered "60A", "60B" and "60C" –

**"ARTICLE 60A.—ABOLITION OF WIFE'S DEPENDENT
DOMICIL**

(1) Subject to the next succeeding paragraph, the domicile of a married woman as at any time after the coming into force of this Article shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.

(2) Where immediately before this Article came into force a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after the coming into force of this Article.

ARTICLE 60B.—AGE AT WHICH INDEPENDENT DOMICIL
CAN BE ACQUIRED

The time at which a person first becomes capable of having an independent domicile shall be when he attains the age of sixteen or marries under that age; and in the case of a person who immediately before the coming into force of this Article was incapable of having an independent domicile, but had then attained the age of sixteen or been married, it shall be that date.

ARTICLE 60C.—DEPENDENT DOMICIL OF CHILD NOT
LIVING WITH HIS FATHER

(1) The provisions of the next succeeding paragraph shall have effect with respect to the dependent domicile of a child as at any time after the coming into force of this Article when his father and mother are alive but living apart.

(2) The child's domicile as at that time shall be that of his mother if –

- (a) he then has his home with her and has no home with his father, or
- (b) he has at any time had her domicile by virtue of the last preceding sub-paragraph and has not since had a home with his father.

(3) As at any time after the coming into force of this Article, the domicile of a child whose mother is dead shall be that

which she last had before she died if at her death he had her domicile by virtue of the last preceding paragraph and he has not since had a home with his father.

(4) Nothing in this Article prejudices any existing rule of law as to the cases in which a child's domicile is regarded as being, by dependence, that of his mother.

(5) In this Article, the expression "**child**" means a person incapable of having an independent domicile; and in its application to a child who has been adopted, references to his father and his mother shall be construed as references to his adoptive father and mother."

NOTES

In section 1, paragraph (g) was repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 22(a), with effect from 4th January, 2010.

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 26 (shown, incorrectly, in the printed version of the 2008 Law as paragraph 25), 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.

Proceedings for divorce not to be entertained by the Court in certain cases.

2. No proceedings for divorce shall be entertained by the Court for Matrimonial Causes by virtue of Article 15, paragraph (2) of Article 22 or paragraph (2) of Article 33 of the principal Law while proceedings for divorce or nullity of marriage, begun before the coming into force of this section, are pending (in respect of the same marriage) in the United Kingdom, the Island of Jersey or the

Isle of Man; and provision may be made by Rules of Court as to when for the purposes of this section proceedings are to be treated as begun or pending in any of those countries.

Staying of matrimonial proceedings.

3. (1) The Schedule to this Law shall have effect as to the cases in which matrimonial proceedings in the Bailiwick are to be, or may be, stayed by the Court where there are concurrent proceedings elsewhere in respect of the same marriage, and as to the other matters dealt with in that Schedule; but nothing in that Schedule –

- (a) requires or authorises a stay of proceedings which are pending when this section comes into force, or
- (b) prejudices any power to stay proceedings which is exercisable by the Court apart from that Schedule.

(2) In this section the expression "**the Court**" means any Court in the Bailiwick having jurisdiction to entertain any matrimonial proceedings; and the expression "**matrimonial proceedings**" means any proceedings so far as they are one or more of the following kinds, namely, proceedings for divorce, judicial separation and nullity of marriage.

Interpretation.

4. Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

Savings.

5. Nothing in this Law (including the repeals and amendments made by it) shall affect the jurisdiction of any Court in the Bailiwick to entertain any matrimonial cause under the principal Law begun before the coming into force of any provisions of this Law repealing or amending such jurisdiction.

Construction.

6. This Law shall be construed as one with the principal Law.

Citation.

7. This Law may be cited as the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979.

Collective title.

8. This Law and the Matrimonial Causes (Guernsey) Laws, 1939 to 1972, may be cited together as the Domicil and Matrimonial Causes (Bailiwick of Guernsey) Laws, 1939 to 1979.

Commencement.

9. (1) This Law shall come into force on such day as the States of Guernsey may by Ordinance appoint and different days may be so appointed for different provisions of this Law.

(2) Any powers conferred by any provisions of this Law to make Rules of Court may be exercised at any time after the registration of this Law and before the day on which the provisions under which such Rules of Court are made shall come into force:

Provided that such Rules of Court shall not come into force until the provisions of this Law under which they are made shall come into force.

NOTE

The Law was brought into force on 1st March, 1980 by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979 (Commencement) Ordinance, 1980, section 1.

SCHEDULE
STAYING OF MATRIMONIAL PROCEEDINGS

Section Three

Interpretation

1. The following four paragraphs shall have effect for the interpretation of this Schedule.

2. (1) The expression "**another jurisdiction**" means any country outside the Bailiwick.

(2) The expression "**related jurisdiction**" means any of the following countries, namely, the United Kingdom, the Island of Jersey and the Isle of Man.

3. (1) References to the trial or first trial in any proceedings do not include references to the separate trial of an issue as to jurisdiction only.

(2) For purposes of this Schedule, proceedings in the Court are continuing if they are pending and not stayed.

4. Any reference in this Schedule to proceedings in another jurisdiction is to proceedings in a court of that jurisdiction, and to any other proceedings in that jurisdiction, which are of a description prescribed for the purposes of this paragraph; and provision may be made by Rules of Court as to when proceedings of any description in another jurisdiction are continuing for the purposes of this Schedule.

5. The expression "**prescribed**" means prescribed by Rules of Court.

Duty to furnish particulars of concurrent proceedings in another jurisdiction

6. While matrimonial proceedings are pending in the Court in respect of a marriage and the trial or first trial in those proceedings has not begun, it shall be the duty of any person who is a petitioner in the proceedings, or is a respondent and has in his answer included a prayer for relief, to furnish, in such manner and to such persons and on such occasions as may be prescribed, such particulars as may be prescribed of any proceedings which –

- (a) he knows to be continuing in another jurisdiction, and
- (b) are in respect of that marriage or capable of affecting its validity or subsistence.

Obligatory stays

7. (1) Where before the beginning of the trial or first trial in any proceedings for divorce which are continuing in the Court it appears to the Court on the application of a party to the marriage –

- (a) that in respect of the same marriage proceedings for divorce or nullity of marriage are continuing in a related jurisdiction, and
- (b) that the parties to the marriage have resided together after its celebration, and
- (c) that the place where they resided together when the proceedings in the Court were begun or, if they did not then reside together, where they last resided

together before those proceedings were begun, is in that jurisdiction, and

- (d) that either of the said parties was habitually resident in that jurisdiction throughout the year ending with the date on which they last resided together before the date on which the proceedings in the Court were begun,

it shall be the duty of the Court, subject to sub-paragraph (2) of paragraph 9 of this Schedule, to order that the proceedings in the Court be stayed.

(2) References in the last preceding sub-paragraph to the proceedings in the Court are, in the case of proceedings which are not only proceedings for divorce, to the proceedings so far as they are proceedings for divorce.

Discretionary stays

8. (1) Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the Court it appears to the Court –

- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction, and
- (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the

proceedings in the Court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the Court may then, if it thinks fit, order that the proceedings in the Court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) of this paragraph, the Court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expenses which may result from the proceedings being stayed, or not being stayed.

(3) In the case of any proceedings so far as they are proceedings for divorce, the Court shall not exercise the power conferred on it by sub-paragraph (1) of this paragraph while an application under the last preceding paragraph in respect of the proceedings is pending.

(4) If, at any time after the beginning of the trial or first trial in any matrimonial proceedings which are pending in the Court, the Court declares by order that it is satisfied that a person has failed to perform the duty imposed on him in respect of the proceedings by paragraph 6 of this Schedule, sub-paragraph (1) of this paragraph shall have effect in relation to those proceedings and, to the other proceedings by reference to which the declaration is made, as if the words "before the beginning of the trial or first trial" were omitted; but no action shall lie in respect of the failure of a person to perform such a duty.

9. (1) Where an order staying any proceedings is in force in pursuance of paragraph 7 or 8 of this Schedule, the Court may, if it thinks fit, on the application of a party to the proceedings, discharge the order if it appears to the Court that the other proceedings by reference to which the order was made are stayed or concluded, or that a party to those other proceedings has delayed unreasonably in prosecuting them.

(2) If the Court discharges an order staying any proceedings and made in pursuance of paragraph 7 of this Schedule, the Court shall not again stay those proceedings in pursuance of that paragraph.

10. (1) The provisions of sub-paragraphs (2) and (3) of this paragraph shall apply (subject to sub-paragraph (4)) where proceedings for divorce, judicial separation or nullity of marriage are stayed by reference to proceedings in a related jurisdiction for divorce, judicial separation or nullity of marriage; and in this paragraph –

"custody" includes access to the child in question,

"the other proceedings", in relation to any stayed proceedings, means the proceedings in another jurisdiction by reference to which the stay was imposed,

"relevant order" means –

(a) ...

(b) an interim order under paragraph (3) of Article 47 of the principal Law (contributions for support of wife),
and

(c) ...

"stayed" means stayed in pursuance of this Schedule.

(2) Where any proceedings are stayed, then, without prejudice to the effect of the stay apart from this paragraph –

- (a) the Court shall not have power to make a relevant order in connection with the stayed proceedings except in pursuance of sub-paragraph (2)(c) of this paragraph, and
- (b) subject to sub-paragraph (2)(c) of this paragraph, any relevant order made in connection with the stayed proceedings shall, unless the stay is previously removed or the order previously discharged, cease to have effect on the expiration of the period of three months beginning with the date on which the stay was imposed, but
- (c) if the Court considers that, for the purpose of dealing with circumstances needing to be dealt with urgently, it is necessary during or after that period to make a relevant order in connection with the stayed proceedings or to extend or further extend the duration of a relevant order made in connection with the stayed proceedings, the Court may do so and the order shall not cease to have effect by virtue of sub-paragraph (2)(b) of this paragraph.

(3) Where any proceedings are stayed and at the time when the stay is imposed an order is in force, or at a subsequent time an order comes into force, which was made in connection with the other proceedings and provides for any of the four following matters, namely, periodical payments for a spouse of the marriage in question, periodical payments for a child, the custody of a child and the education of a child then, on the imposition of the stay in a case where the order is in force when the stay is imposed and on the coming into force of the order in any other case –

- (a) any relevant order made in connection with the stayed proceedings shall cease to have effect in so far as it makes for a spouse or child any provision for any of those matters as respects which the same or different provision for that spouse or child is made by the other order, and
- (b) the Court shall not have power in connection with the stayed proceedings to make a relevant order containing for a spouse or child provision for any of those matters as respects which any provision for that spouse or child is made by the other order.

(4) If any proceedings are stayed so far as they consist of matrimonial proceedings of a particular kind but are not stayed so far as they consist of matrimonial proceedings of a different kind, sub-paragraphs (2) and (3) of this paragraph shall not apply to the proceedings but, without prejudice to the effect of the stay apart from this paragraph, the Court shall not have power to make a relevant order in connection with the proceedings as far as they are stayed.

- (5) Nothing in this paragraph affects any power of the Court –
- (a) to vary or discharge a relevant order so far as the order is for the time being in force, or
 - (b) to enforce a relevant order as respects any period when it is or was in force, or
 - (c) to make a relevant order in connection with proceedings which were but are no longer stayed.

NOTES

In the Schedule, items (a) and (c) of the definition of the expression "relevant order" in paragraph 10(1) were repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 22(b), with effect from 4th January, 2010, subject to the savings and transitional provisions in section 4 of, and Schedule 2 to, the 2009 Ordinance.

In accordance with the provisions of the Matrimonial Causes Rules, 1952, rule 1, Schedule, rule 40A, with effect from 1st March, 1980, applications in the proceedings therein referred to for an order under paragraph 7, paragraph 8 or paragraph 9 of this Schedule shall be made to the Court for its decision as if they were applications for ancillary relief.

¹ Article 21 has since been repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 2, with effect from 8th May, 2003.