

PROJET DE LOI

ENTITLED

The Affiliation Proceedings (Sark) Law, 2017 *

[CONSOLIDATED TEXT]

NOTE

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No. ** of 2017.

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The Affiliation Proceedings (Sark) Law, 2017

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 4th October, 2017, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

Commencement of affiliation proceedings.

1. (1) A single woman who is pregnant, or who has given birth to a child, may apply to the Court for a summons to be served on the man alleged by her to be the father of the child, such application to be supported by affidavit.

(2) Upon application being made under subsection (1), the Court may order that a summons be served on the person alleged to be the father of the child requiring him to appear before the Court on the day and at the time specified in the summons.

(3) An application under this section may be made by a woman who was a single woman at the date of birth of the child whether or not she is a single woman at the time of the application, and the expression "**single woman**" includes a widow, or a married woman living apart from her spouse if the child is not the child of the woman's spouse.

Powers of the Court.

2. (1) Upon the appearance before the Court of the respondent to the application under section 1, or upon proof that the summons was duly served on him at least 3 clear days prior to the date of the hearing, the Court shall hear any evidence tendered by or on behalf of the respondent.

(2) The Court may, if the evidence of the applicant is corroborated by other evidence to the satisfaction of the Court, adjudge the respondent to be the putative father of the child.

(3) The Court may, having regard to all the circumstances of the case, order the putative father –

- (a) to make such periodical payments for such term (which may run from the date of the summons), or
- (b) to pay such lump sum, or
- (c) to make both such periodical payments and such lump sum,

as the Court thinks fit in respect of –

- (i) the child's maintenance and education,
- (ii) the expenses incidental to its birth,
- (iii) if the child has died before the making of the order, the funeral expenses, and
- (iv) the court fees and other recoverable costs incurred in obtaining the order.

(4) If the summons is issued within 2 months after the birth of the child, the financial provision ordered to be paid under subsection (3) may, if the Court thinks fit, be calculated from the date of birth.

(5) Subject to subsection (6), the person entitled to any payments to be made under this Law shall be the child's mother.

(6) An order made under this Law may, on the application of a person other than the child's mother who has parental responsibility under the Children (Sark) Law, 2016^a in respect of the child, be made or varied by the Court so as to entitle that person to any payments to be made under the order.

Matters to which the Court is to have regard.

^a Order in Council No. VIII of 2016; amended by Ordinance No. IX of 2016.

3. (1) The Court, in deciding whether and in what manner to exercise its powers under section 2, shall have regard to all the circumstances of the case, the paramount consideration being the welfare of the child.

(2) Without prejudice to the generality of subsection (1), the Court shall, in the exercise of its powers under section 2, have regard to the following matters –

- (a) the financial needs of the child,
- (b) the income, earning capacity (if any), property and other financial resources of the child,
- (c) any physical or mental disability of the child,
- (d) the income, earning capacity, property and other financial resources which the applicant and the respondent has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the Court be reasonable to expect either party to take steps to acquire, and
- (e) the financial needs, obligations and responsibilities which the applicant and respondent has or is likely to have in the foreseeable future.

Duration of orders.

4. (1) Subject to subsection (2), no order shall be made under section 2 for the benefit of a child who has attained the age of 18 years.

(2) The term to be specified in an order under section 2 may extend beyond the date on which the child attains the age of 18 years, and an order may be made for the benefit of a child who has attained such age, if it appears to the Court –

- (a) that the child is, or will be, or would be if the term were so extended or such an order were made, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not the child is also, or will also be, in gainful employment, or
- (b) that there are special circumstances that justify so extending the term or making such an order.

(3) An order under section 2 ceases to have effect upon the death of the child or the person liable to make the payments but the order may nevertheless be relied upon in relation to any arrears due under it.

Interim orders.

5. (1) Where on an application under section 2 the Court has power to order the making of periodical payments or the payment of a lump sum, the Court may, at any time before disposing of the application, make an order (an "**interim order**") for the making of such periodical payments as it thinks fit.

(2) An interim order may provide for payments to be made from such date as the Court may specify, not being earlier than the date of the application in question.

(3) An interim order ceases to have effect upon –

- (a) the date specified in the order or, if none, the expiration of 3 months from the making of the order, or
- (b) the disposal of the application,

whichever is earlier.

(4) Before an interim order ceases to have effect by virtue of subsection (3), the Court may by order extend it for a further period, and in that

case it shall cease to have effect upon –

- (a) the date specified in the order providing for the extension or, if none, the expiration of 3 months from the making of that order, or
- (b) the disposal of the application,

whichever is earlier.

(5) No appeal lies from the making, variation, revocation or extension of an interim order or from a refusal to do any of those things.

(6) For the purposes of this section an application is disposed of when the Court makes a final order on, or dismisses, the application.

Variation, etc. of periodical payments.

6. (1) The Court may, upon application, vary or revoke an order under section 2 for the making of periodical payments.

(2) On an application under subsection (1), the Court may make any order for the payment of a lump sum which it could have made when making the order to which the application relates, whether or not a lump sum was ordered to be paid by a previous order under section 2.

(3) Where the Court varies an order for the making of periodical payments –

- (a) the varied payments shall be made from such date as may be specified, not being earlier than the date of the application for the variation, and
- (b) the Court may at the same time vary any order under section 11 for an arrest of wages.

(4) Where, under this Law, the Court has made an order for the

making of periodical payments for the benefit of a child, and such order has ceased to have effect, the Court may, on the application of the child after the child attains the age of 18 but before the child attains the age of 21, order that the order for the making of periodical payments shall be revived subject to such variations and from such date, not being earlier than the date of the application for the revival, as may be specified.

(5) In deciding whether and in what manner to exercise its powers under this section, the Court shall have regard to all the circumstances of the case, the paramount consideration being given to the welfare while a minor of the child, and the circumstances of the case include any change in any of the matters to which the Court was required to have regard when making the order to which the application for a variation, revocation or revival relates.

Payments made by mistake.

7. (1) Where an order under this Law for the making of periodical payments by any person ceases to have effect and that person continues to make payments (other than arrears) in the mistaken belief that the order is subsisting, the Court, on the application of that person or his personal representative, may order the person to whom the payments were made, or his personal representative, to repay the amount mistakenly paid or, if it appears to the Court that that would be unjust, such lesser sum, if any, as it thinks fit.

(2) An order under subsection (1) may provide for repayment by instalments of such amount and at such intervals as may be specified.

Payment of lump sum by instalments.

8. Without prejudice to any inherent powers of the Court, where the Court –

- (a) makes an order under this Law for the payment of a lump sum, the Court may, instead of requiring immediate payment, allow time for payment, or order payment by instalments,
- (b) has allowed time for payment, the Court may by order

allow further time or order payment by instalments,

- (c) has ordered payment by instalments, the Court may by order vary the number of the instalments, the amount of any instalment, and the date on which any instalment becomes payable.

Power to remit arrears.

9. (1) Subject to subsection (2), where an order has been made under this Law for the making of periodical payments, or for the payment of a lump sum by instalments, and arrears have accrued, the Court, on an application under this section or in any proceedings (whether under this Law or otherwise) relating to the order or to the arrears, may order that the arrears shall be remitted or reduced.

(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.

Appeals.

10. (1) Subject to section 5(5), where under this Law the Court makes, varies, revokes or revives an order, or refuses to do any of those things, an appeal lies to the Royal Court.

(2) On an appeal under subsection (1), the Royal Court may make any order necessary to give effect to its determination of the appeal (including any order which the Court could have made under this Law) and, before such determination, may make such interim orders as it thinks fit.

(3) On an appeal from a decision relating to the making of periodical payments, the Royal Court may –

- (a) order that its determination of the appeal shall have effect from such date as it thinks fit, not being earlier than the date of the application to the Court from which the decision arose,

- (b) if it reduces the amount of the payments or discharges the order under which they are made, order the person entitled to receive the payments to pay to the person liable to make them such sum in respect of any payments already made as it thinks fit and, if any arrears are due, order that the arrears or any part of them shall not be paid.

(4) Sections 6, 7, 8, 9 and 11 apply to or in relation to an order of the Royal Court made on an appeal under subsection (1) as they apply to an order of the Court; and any power conferred by those sections on the Court may (where appropriate) be exercised in respect of such an order of the Royal Court.

Enforcement.

11. (1) Where the Court makes an order under this Law for the payment of money –

- (a) a copy of the order shall be served on the person liable to make the payment,
- (b) the Court, when making the order or at a later date, may, on an application by or on behalf of the person to whom or for whose benefit the payment was ordered to be made, and having regard to the means of the party liable to make the payment, order that a proportion, not exceeding one half, of the wages of that party shall be arrested to facilitate the recovery of the payment.

(2) A person liable to make a payment under an order made under this Law shall give notice of any change of his address to the person specified in the order or, if none, to the Court, and a person who without reasonable excuse fails to comply with this subsection is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

(3) The provisions of this section are in addition to any other

right of action or remedy, existing independently of this section, in respect of an order under this Law.

Procedure.

12. (1) The Court shall, so far as is consistent with the due dispatch of business, separate the hearing and determination of proceedings under this Law from other business.

(2) Proceedings in the Court and the Royal Court under this Law may be heard and determined in private.

(3) If proceedings are heard in private, the Royal Court may nevertheless give judgment in open court on points of law or principle, provided that the judgment is delivered in such a manner that it does not establish or tend to establish the identity of any party to the proceedings.

Service.

13. (1) An order, notice or summons to be served on any person under this Law is validly served if delivered to him personally, or left at, or sent by ordinary post to, that person's usual or last-known residence in Sark.

(2) Subsection (1) is without prejudice to any rules as to service made by the Court under section 14 of this Law or under section 15 of the Reform (Sark) Law, 2008^b.

Rules of Court.

14. The Court may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

Interpretation.

^b Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; Ordinances Nos. II and VI of 2015.

15. (1) In this Law, unless the context otherwise requires –

"clear day" means a period of 24 hours ending at midnight and does not include any non-business day as defined by the Non-Business Days Order, 1993^c,

"the Court" means the Court of the Seneschal,

"enactment" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"interim order" – see section 5,

"the Royal Court", except in section 14, means the Matrimonial Causes Division of the Royal Court,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"uniform scale" means the scale of fines for offences set out in the Uniform Scale of Fines (Sark) Law, 1989^d.

(2) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification),

^c Guernsey Statutory Instrument No. 28 of 1993.

^d Ordres en Conseil Vol. XXXI, p. 320.

^e Ordres en Conseil Vol. XIII, p. 355.

extended or applied.

Repeal.

16. The Law entitled "Loi relative à L'Entretien des Enfants Illégitimes" of 1868^f is repealed.

Citation.

17. This Law may be cited as the Affiliation Proceedings (Sark) Law, 2017.

Commencement.

18. This Law shall come into force on the date of its registration on the records of the Island of Sark.

NOTE

The Law was registered on the records of the Island of Sark and came into force on 19th January, 2018.

^f Ordres en Conseil Vol. I, p. 466.