

PROJET DE LOI

ENTITLED

The Matrimonial Causes Law (Guernsey), 1939 *

[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. XI, p. 318; as amended by the: Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946 (Ordres en Conseil Vol. XII, p. 278); Matrimonial Causes (Amendment) (Guernsey) Law, 1957 (Ordres en Conseil Vol. XVII, p. 249); Royal Court (Costs and Fees) (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 102); Matrimonial Causes (Amendment) (Guernsey) Law, 1972 (Ordres en Conseil Vol. XXIII, p. 489); Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979 (Ordres en Conseil Vol. XXVII, p. 99); Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 (Ordres en Conseil Vol. XXXI, p. 171); Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); Matrimonial Causes (Amendment) (Guernsey) Law, 1990 (Ordres en Conseil Vol. XXXII, p. 85); Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (No. IX of 1996, Ordres en Conseil Vol. XXXVI, p. 639); Matrimonial Causes (Amendment) (Guernsey) Law, 1997 (No. XIX of 1997, Ordres en Conseil Vol. XXXVII, p. 308); Matrimonial Causes (Amendment) (Guernsey) Law, 2002 (No. XI of 2003, Ordres en Conseil Vol. XLIII, p. 269); Matrimonial Causes (Guernsey) (Amendment) Law, 2003 (No. XXXI of 2003, Ordres en Conseil Vol. XLIII, p. 1074); Inheritance (Guernsey) Law, 2011 (No. XIII of 2011); Inheritance (Alderney) Law, 2015 (No. XII of 2015); Same-Sex Marriage (Guernsey) Law, 2016 (No. II of 2017); Same-Sex Marriage (Alderney) Law, 2017 (No. I of 2018); Same-Sex Marriage (Sark) Law, 2020 (No. ** of 2020); Matrimonial Causes (Guernsey) (Amendment) Law, 2019 (No. ** of 2020); Marriage (Bailiwick of Guernsey) Law, 2020 (No. XVI of 2020); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. XIII of 2017); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 (Sark Ordinance No. II of 2020). See also the: Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946 (*supra*); Matrimonial Causes Law (Guernsey) 1939, Amendment Law (No. 2), 1946 (Ordres en Conseil Vol. XIII, p. 38); Reform (Guernsey) Law, 1948 (Ordres en Conseil Vol. XIII, p. 288); Magistrate's Court (Guernsey) Law, 1954 (Ordres en Conseil Vol. XVI, p. 103); Court of Appeal (Guernsey) Law, 1961 (Ordres en Conseil Vol. XVIII, p. 315); Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); Criminal Justice (Bailiwick of Guernsey) Law, 1979 (Ordres en Conseil Vol. XXVII, p. 172); Fees, Charges and Penalties (Guernsey) Law, 2007 (No. VII of 2008); Children (Guernsey and Alderney) Law, 2008 (No. XIV of 2009); Magistrate's Court (Guernsey) Law, 2008 (No. XVIII of 2009); Matrimonial Causes (Guernsey) (Amendment) Law, 2003 (*supra*); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (*supra*); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (*supra*); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 (*supra*); Matrimonial Causes Rules, 1952 (Orders of the Royal Court Vol. I, p. 64).

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The Matrimonial Causes Law (Guernsey), 1939

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PROJET DE LOI

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The Matrimonial Causes Law (Guernsey), 1939

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 en ce Bailliage.

PART I

GENERAL PROVISIONS

Definitions and Interpretation.

1. In this Law, unless the context otherwise requires or the contrary intention appears or it is otherwise specially provided, the following words and expressions have the meanings hereby respectively assigned to them, namely –

"Appeal Court" means the Cour des Jugements et Records,

"Bailiwick" means the Bailiwick of Guernsey,

"Cause" and **"Suit"** each include any proceedings in which there is an applicant, petitioner or plaintiff,

[...]

[...]

"His Majesty's Procureur" and **"His Majesty's Comptroller"**

include any person duly appointed to exercise temporarily the duties of those offices respectively; **"His Majesty's Greffier"** includes any Deputy-Greffier duly appointed and any person duly appointed to exercise temporarily the duties of His Majesty's Greffier; **"His Majesty's Sergeant"** includes any Deputy-Sergeant duly appointed and any person duly appointed to exercise temporarily the duties of His Majesty's Sergeant,

"Island of Guernsey" includes the Islands of Herm and Jethou,

The **"Law of 1930"** means the Law entitled "Loi relative à la Séparation de Mariés en Police Correctionnelle" approved by Order in Council of the 28th July, 1930, and registered on the Records of the Island of Guernsey on the 21st August, 1930,

The **"Law of 1936"** means the Law entitled "Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936", approved by Order in Council of the 3rd March, 1936, and registered on the Records of the Island of Guernsey on the 21st March, 1936,

"Magistrate" means the Police Court Magistrate and includes any person duly appointed to exercise temporarily the duties of the Magistrate,

"Suit" and **"Cause"** each include any proceedings in which there is an applicant, petitioner or plaintiff,

Words importing the masculine gender shall include females,

Words in the singular shall include the plural, and words in the plural shall include the singular.

[Any reference in this Law to children of the marriage, however expressed, shall be construed, in relation to one or both of the parties to a marriage, as including an illegitimate or adopted child of that party or, as the case may be, of both parties and any other child, not being a child who has been boarded-out with those parties by the States [Committee for Health & Social Care] or otherwise, who has been treated by both of those parties as a child of the marriage; and "**adopted**" means adopted in pursuance of –

- (a) an adoption order made under the Adoption (Guernsey) Law, 1960, or
- (b) an adoption order made in any part of the United Kingdom, in the Isle of Man or in the Island of Jersey, or
- (c) subject to sections six and seven of the Adoption (Guernsey) Law, 1970, an overseas adoption within the meaning of section five of that Law.

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.]

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

NOTES

In Article 1,

the words omitted in the first and second pairs of square brackets

were repealed by the *Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(a)(i)*, with effect from 6th March, 1973;

the words in the third pair of square brackets were inserted by the *Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(a)(ii)*, with effect from 6th March, 1973;

the words in square brackets within the third pair of square brackets were substituted by the *Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5*, with effect from 1st May, 2016;¹

the words in the fourth pair of square brackets were inserted by the *Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(a)*, with effect from 1st March, 1980.

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the *Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5*, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

The following cases have referred to this Law:

Price v. Price (1987-88) 6.GLJ.86 (see also Court of Appeal Judgments, 1964-89, p. 402);

E v. E (1998) 25.GLJ.22;

Waterman v. McCormack (2002) (Unreported, Court of Appeal, 20th May) (Guernsey Judgment No. 3/2003);

A v. A 2003-04 GLR 123;

C v. C (2004) (Unreported, Royal Court, 16th June) (Guernsey Judgment No. 27/2004); 2003-04 GLR Note 20;

C v. C 2005-06 GLR 199;

C v. C (2006) (Unreported, Royal Court, 8th March) (Guernsey Judgment No 12/2006); 2005-06 GLR Note 17;

C v. C (2006) (Unreported, Court of Appeal, 12th December) (Guernsey Judgment No 56/2006);

L v. L (2005) (Unreported, Royal Court, 28th April) (Guernsey Judgment No. 25/2005); 2005-06 GLR Note 4;

B. v. B. (2007) (Unreported, Royal Court, 24th July) (Guernsey Judgment No. 21/2007);

D v. D 2007-08 GLR 127;

E v. E 2007-08 GLR 133;

E v. E 2007-08 GLR 374;

Husband v. Wife (2015) (Unreported, Royal Court, 13th February) (Guernsey Judgment No. 29/2015);

A v. B (2017) (Unreported, Royal Court, 4th December) (Guernsey Judgment No. 55/2017).

In accordance with the provisions of the Matrimonial Causes (Guernsey) (Amendment) Law, 2003, section 4, with effect from 18th December, 2003, this Law, when cited together with the amending enactments, may be cited as the Matrimonial Causes Laws, 1939 to 2003.³

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 13, 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.

In accordance with the provisions of the Court of Appeal (Guernsey) Law, 1961, section 13, with effect from 4th June, 1964, the appellate jurisdiction in civil matters which immediately before that date was vested in the Royal Court sitting as a "Cour des Jugements et Records" was vested in, and any civil matter pending immediately before that date was transferred to, the Court of Appeal.

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

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the references in this Article to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

The Loi relative à la Séparation de Mariés en Police Correctionnelle, 1930 has since been repealed by the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, section 37, Schedule 2, with effect from 5th December, 1989, subject to the transitional and savings provisions in section 38 of the 1988 Law.

The Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936 has since been repealed by the Marriage (Bailiwick of Guernsey) Law, 2020, section 67, Schedule, with effect from 1st March, 2021.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Institution of Court for Matrimonial Causes and Matters and Jurisdiction thereof.

2. (1) Subject to the provisions of this Article, on and from the date on which this Law comes into operation –

- (a) the original jurisdiction exercisable by the Royal Court sitting as a Full Court in virtue of the Law of 1936, and
- (b) the original jurisdiction exercisable by the Royal Court sitting as an Ordinary Court (hereinafter in this Law referred to as "**the Ordinary Court**") in respect of matrimonial causes, suits and matters, and
- (c) the appellate jurisdiction exercisable by the Ordinary Court in respect of suits for Judicial Separation and [...] matters in relation thereto or arising thereout originating in the Court of Alderney and the Court of Sark

shall be vested in and exercisable exclusively by a Division of the Royal Court to be designated "The Matrimonial Causes Division of the Royal Court of Guernsey" (hereinafter in general in this Part and Part III (entitled "Judicial Separation") of this Law referred to as "**the Court for Matrimonial Causes**" and in the other Parts of this Law as "**the Court**").

(2) The Court for Matrimonial Causes shall, except as provided by paragraph (3) of this Article [...], have and exercise jurisdiction in respect of all Suits for Divorce, Suits for Judicial Separation, [...] Suits of Nullity of Marriage, Applications by a Husband or Wife for a Decree of Presumption of the Death of the other Spouse and Dissolution of Marriage thereupon and all other causes, suits and matters matrimonial triable under this Law or otherwise in this Bailiwick.

- (3) (a) The Court for Matrimonial Causes shall not have

jurisdiction in applications for temporary separation orders and maintenance orders in pursuance of the Law of 1930 as amended by this Law and by any other Law hereafter in force, and such applications shall as heretofore be made to and determined by the Magistrate.

(b) The Court for Matrimonial Causes shall not have original jurisdiction in Suits for Judicial Separation [...] in respect of which the Court of Alderney or the Court of Sark has heretofore had jurisdiction, and those last-named courts shall as heretofore exclusively exercise original jurisdiction in such suits.

(4) (a) Subject to the provisions of sub-paragraph (b) of this paragraph, the Ordinary Court and the Court for Matrimonial Causes shall have concurrent jurisdiction with regard to –

- (i) pronouncing a judicial separation in cases where the parties to a marriage consent to such judicial separation, and
- (ii) sanctioning terms of separation in such cases.

(b) Where application for a judicial separation has been made to the Ordinary Court in the exercise of its jurisdiction under sub-paragraph (a) of this paragraph and either –

- (i) the parties do not agree regarding the terms of their separation, or
- (ii) the Ordinary Court declines to sanction the terms of separation presented to it by the parties,

the Ordinary Court shall cease to have jurisdiction regarding the matter in difference,

and the Court for Matrimonial Causes shall thereupon and thereafter be seized thereof to the exclusion of the Ordinary Court.

(5) [Where a husband or wife has been deserted by his or her spouse or where the spouse] has been deported from the United Kingdom or from any of the Channel Islands under any enactment relating to the deportation of aliens, and the [spouse] was immediately before the desertion or deportation domiciled in the Bailiwick, the Court for Matrimonial Causes shall have jurisdiction for the purpose of divorce proceedings and any other proceedings under this Law, notwithstanding that the [spouse] has changed his domicile since the desertion or deportation:

Provided that nothing in this paragraph shall impair or abridge or otherwise limit the jurisdiction of any Court where, under this Law, such jurisdiction is exercisable irrespective of the domicile of the parties.

NOTES

In Article 2,

the words omitted in, first, the square brackets in sub-paragraph (c) of paragraph (1), second, the second pair of square brackets in paragraph (2) and, third, the square brackets in sub-paragraph (b) of paragraph (3) were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(b)(i), Article 1(b)(ii) and Article 1(b)(iii), with effect from 6th March, 1973;

the words omitted in the first pair of square brackets in paragraph (2) were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 1, with effect from 16th June, 2003;

first, the words in the first pair of square brackets in paragraph (5) and, second, the word "spouse" in square brackets wherever occurring in that paragraph were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part 1, paragraph 4(a), 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 1, Schedule 1, Part 1, paragraph 3(a), 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 1, Schedule 1, paragraph 3(a), with effect from 23rd April, 2020.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the reference in this Article to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

The Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936 ("the Law of 1936") has since been repealed by the Marriage (Bailiwick of Guernsey) Law, 2020, section 67, Schedule, with effect from 1st March, 2021.

The Loi relative à la Séparation de Mariés en Police Correctionnelle, 1930 ("the Law of 1930") has since been repealed by the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, section 37, Schedule 2, with effect from 5th December, 1989, subject to the transitional and savings provisions in section 38 of the 1988 Law.

Appeals.

3. [(1) An appeal shall lie to the Appeal Court from any award, decree, judgment or order [of the Bailiff or] of the Judge in Matrimonial Causes [as the case may be].

(1a) Save as is set out in subsection (1) of this Article, no appeal shall lie from any finding of fact unmixing with law by the Court for Matrimonial Causes [composed of the Bailiff and any four of the Jurats of the Royal Court] [...].]

(2) [On any question of law, mixed fact and law] [...] or in relation to any order made under Part VII (entitled "Care of Children") or Part VIII (entitled "Property and Contributions for Support") of this Law, other than an interim order, an appeal shall lie from the Court for Matrimonial Causes to the Appeal Court and thence to His Majesty in Council.

(3) Any party having a right of appeal to the Appeal Court under this Law and intending to appeal shall give notice of such intention to His Majesty's

Greffier at the Greffe within seven days after the date of the decision appealed from, and if notice is not so given such right of appeal shall lapse.

(4) No appeal from a decision of the Court for Matrimonial Causes to the Appeal Court shall lie after the expiration of the six calendar months next following the date of that decision, unless within that period the matters in issue in such appeal have been brought in due form to the Appeal Court for adjudication, and it shall be the duty of His Majesty's Greffier, on the expiration of such period, to strike out of the Appeal List any appeal not so brought to the said Court within that period.

(5) Where an appeal has, in accordance with this Law, been brought before the Appeal Court, that Court may make such order as it deems just with regard to costs in the suit, whether in relation to such appeal or otherwise.

(6) Where the Court for Matrimonial Causes has refused to grant a decree and an appeal lies, the Appeal Court may, after hearing an appeal in the suit, make such decree.

(7) In any proceedings under this Law in the Appeal Court, in which any of the parties thereto does not appear either in person or by counsel or other lawful representative, then, unless the Appeal Court otherwise directs, judgment shall be entered against the absent party if it appears to the Appeal Court, by a certificate of service of His Majesty's Sergeant, that a citation to appear has been duly served upon such absent party or his lawful representative; and any such judgment of the Appeal Court shall be definitive against such absent party, any other rule of procedure to the contrary notwithstanding.

(8) (a) The provisions of this Law shall not be deemed to affect the right of any person aggrieved by a decision of the Court for Matrimonial Causes or the Appeal Court, in any matrimonial cause, suit or matter, to seek redress

by way of appeal to His Majesty in Council.

(b) Any rules of law governing the initiation and prosecution of appeals to His Majesty in Council shall apply in the case of appeals in matrimonial causes, suits and matters.

NOTES

In Article 3,

paragraph (1) was substituted and paragraph (1a) was inserted by the Matrimonial Causes Law (Guernsey) 1939, Amendment Law, 1946, Article 1, with effect from 31st August, 1946;

the words in, first, the first and second pairs of square brackets in paragraph (1) and, second, the first pair of square brackets in paragraph (1a) were inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1957, respectively Article 1(a) and Article 1(b), with effect from 12th December, 1957;

the words omitted in the second pair of square brackets in paragraph (1a) were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(c)(i), with effect from 6th March, 1973;

the words in the first pair of square brackets in paragraph (2) were substituted by the Matrimonial Causes Law (Guernsey) 1939, Amendment Law, 1946, Article 2, with effect from 31st August, 1946;

the words omitted in the second pair of square brackets in paragraph (2) were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(c)(ii), with effect from 6th March, 1973.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

[Constitution of Court for Matrimonial Causes.]

4. (1) Subject to the provisions of the next two succeeding sections,

the Court for Matrimonial Causes shall consist of the Bailiff and any four of the Jurats of the Royal Court.

(2) The Bailiff sitting without the Jurats shall have power to exercise concurrently with the Court for Matrimonial Causes composed as aforesaid the functions and jurisdiction of that Court.

(3) The Royal Court may, from time to time, appoint [the Magistrate or an Assistant Magistrate within the meaning of section 7 of the Magistrate's Court (Guernsey) Law, 1954, as amended, or] a person who has been at least ten years in practice at the Bar in Guernsey, whether as a Law Officer of the Crown or otherwise, or in England, Scotland, Northern Ireland or Jersey, as the case may be, as a Commissioner of the Royal Court with power to exercise concurrently with the Court for Matrimonial Causes composed as aforesaid and with the Bailiff the functions and jurisdiction of that Court during the period for which the appointment is made.

(4) A Commissioner appointed under the provisions of the last preceding section shall be styled the Judge in Matrimonial Causes.

(5) In this Law the expressions "**the Matrimonial Causes Division of the Royal Court of Guernsey**", "**the Court for Matrimonial Causes**" and "**the Court**" and in the Royal Court (Seal) Law (Guernsey), 1939, the expression "**the Matrimonial Causes Division**" shall all be deemed to include the Bailiff and the Judge in Matrimonial Causes.

(6) The Judge in Matrimonial Causes shall be paid by the States such remuneration as may, from time to time, be determined by or on behalf of the States.

(7) In this Article and in the next succeeding Article the expression

"the Bailiff" includes the Lieutenant Bailiff and the Judge Delegate.]

NOTES

Article 4 was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1957, Article 1(c), with effect from 12th December, 1957.⁴

In Article 4, the words in square brackets in paragraph (3) were inserted by the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 4, with effect from 1st February, 1997.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the references in this Article to the "Magistrate" and "Assistant Magistrate" shall be construed as references to, respectively, a Judge and a Deputy Judge of the Magistrate's Court within the meaning of the 2008 Law.

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

[Leave for Matrimonial Cause or Matter to be heard by Court for Matrimonial Causes.]

4A. (1) Where in any Matrimonial Cause or Matter it appears that the facts which constitute the cause of action are in dispute, any party to that Cause or Matter may make application to the Bailiff for that Cause or Matter to be heard and determined by the Court for Matrimonial Causes composed of the Bailiff and any four of the Jurats of the Royal Court and if the Bailiff, on being satisfied that the dispute as to the said facts is, due to complexity or otherwise, such that it is necessary or desirable that the action ought to be so heard and determined, grants leave in that

behalf, that Cause or Matter shall be heard and determined by the Court for Matrimonial Causes composed as aforesaid notwithstanding that that Cause or Matter could otherwise have been heard and determined by the Bailiff or the Judge in Matrimonial Causes.

(2) No appeal shall lie from any decision of the Bailiff made in pursuance of the provisions of the last preceding section.]

NOTES

Article 4A was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1957, Article 1(c), with effect from 12th December, 1957.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Causes etc. pending at commencement of this Law.

5. (1) In the case of any Matrimonial Cause or Matter listed as a "Cause en Preuve" of which, when this Law comes into operation, the trial has begun, the court which was then seized of such Cause or Matter shall remain seized thereof and shall hear, determine and deal with the same as fully and effectually as if this Law had not been enacted.

(2) The jurisdiction conferred on the Court for Matrimonial Causes by this Law shall extend to the trial of any Matrimonial Cause or Matter which is pending but of which the trial as a "Cause en Preuve" has not begun when this Law comes into operation.

Power of Royal Court to make Rules of practice and Procedure for Matrimonial

Causes etc.

6. The Royal Court may from time to time by Ordinance make such Rules of Court regulating the Practice and Procedure in Matrimonial Causes and Matters, including the use of prescribed Forms and the service of citations within and without the Bailiwick, as the Royal Court deems necessary.

NOTES

The following Ordinance has been made under Article 6:

Ordinance amending the Matrimonial Causes Rules, 1945.

In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946, Article 4, with effect from 31st August, 1946, Ordinances passed in pursuance of this Law by, as the case may be, the Royal Court, the States of Deliberation or the States Policy & Resources Committee shall not expire by effluxion of time but shall continue in force, subject to such variations and modifications thereof as may be made from time to time, until repealed.

The following Rules have been made by Order of the Royal Court under Article 6:

*Matrimonial Causes Rules, 1952;
Matrimonial Causes (Amendment) Rules, 1973;
Matrimonial Causes (Amendment) (No. 2) Rules, 1973;
Matrimonial Causes (Amendment) Rules, 1980;
Matrimonial Causes (Amendment) Rules, 1983;
Matrimonial Causes (Amendment) Rules, 1986;
Matrimonial Causes (Amendment) Rules, 2001;
Matrimonial Causes (Amendment) Rules, 2017.*

In accordance with the provisions of the Reform (Guernsey) Law, 1948, Article 63, with effect from 17th January, 1949, the powers and functions of a legislative nature previously exercised by the Royal Court (save for the making, variation, modification and revocation of Rules of Procedure) were transferred to and vested in the States of Deliberation, and thenceforth any enactment conferring power on the Royal Court to exercise any such powers and functions by way of Ordinance shall be construed as having conferred the like power on the States of Deliberation or (pursuant to amendments to that Article made by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 8(b), Schedule 2, Part 6, paragraph 2, with effect from 1st May, 2016) on the States Policy & Resources Committee, as the case may be.

Poor Persons.

7. (1) Subject to the provisions of this Article, the Royal Court may from time to time, by Ordinance, make Regulations determining what persons are to be regarded as Poor Persons in matrimonial causes and matters and with regard to –

- (a) the legal assistance to be afforded to poor persons and the manner of making application therefor and the conditions attaching to the grant thereof, and
- (b) costs payable by poor persons,

in such causes and matters.

(2) The Regulations made under this Article may include provisions –

- (a) requiring any poor person who desires legal assistance in instituting, prosecuting or defending a matrimonial cause or matter to apply therefor in the first instance to the Magistrate,
- (b) that upon proof to the satisfaction of the Magistrate that the poor person's circumstances are such that he is unable to pay the cost of instituting, prosecuting or defending the proceedings in such suit but not otherwise, and if the Magistrate is satisfied that there is a prima facie case to be laid before the Court for Matrimonial Causes, the Magistrate shall certify that the applicant is a poor person entitled to legal assistance in accordance with the said Regulations, and

- (c) that, where the applicant is a wife, the Magistrate may grant one or more of the following certificates:
 - (i) a certificate that she is entitled to proceed as a poor person in the matrimonial suit or that she is entitled thus to proceed only in so far as may be necessary to enable her to obtain from her husband security for her costs therein,
 - (ii) a certificate that she is entitled thus to proceed only in so far as may be necessary to obtain from her husband contribution for support pendente lite.

NOTES

The following Ordinances have been made under Article 7:

*Matrimonial Causes (Assisted Persons) Ordinance, 1952;
Matrimonial Causes (Assisted Persons) (Amendment) Ordinance, 1987.*

In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946, Article 4, with effect from 31st August, 1946, Ordinances passed in pursuance of this Law by, as the case may be, the Royal Court, the States of Deliberation or the States Policy & Resources Committee shall not expire by effluxion of time but shall continue in force, subject to such variations and modifications thereof as may be made from time to time, until repealed.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the references in this Article to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

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 paragraph (2)(c) of this Article.

Investigating Officer.

8. (1) The States may, on the recommendation of the Royal Court, appoint, or direct the appointment of, an Investigating Officer to the Court for Matrimonial Causes, invested with the rights and charged with the duties of making such investigations in connexion with any suit for divorce or nullity of marriage or decree of presumption of death and dissolution of marriage thereon as may be proper with a view to aiding justice or preventing abuse of process.

(2) Unless and until an Investigating Officer is appointed under paragraph (1) of this Article, and thereafter, during any vacancy in that office and any absence from duty of the holder thereof, the powers, rights, and duties of Investigating Officer shall be vested in His Majesty's Procureur and His Majesty's Comptroller jointly and severally.

(3) In any proceedings to which this Article relates, the Investigating Officer shall be entitled at any stage of the proceedings before the Court for Matrimonial Causes, to intervene in the proceedings, in such manner as he deems likely to assist the court, if, in the opinion of the Investigating Officer, such intervention is advisable in the interests of justice.

(4) Where the Court for Matrimonial Causes deems it necessary or expedient that any matter in relation to any suit for divorce or for nullity of marriage or decree of presumption of death and dissolution of marriage thereon then pending should be investigated by the Investigating Officer or where that Court or the Appeal

Court deems it necessary or expedient that any such matter should be fully argued before it, the Court for Matrimonial Causes or the Appeal Court as the case may be may adjourn the proceedings pending such investigation or argument and may direct all necessary papers in the matter to be sent to the Investigating Officer and thereupon the Investigating Officer shall investigate the matter and report thereon to the court which gave such direction, or shall arrange for the matter to be argued before that court as the case may require.

(5) The Investigating Officer may, in pursuance, of the provisions of this Article, employ such assistance as he deems necessary, and the cost of such assistance and all other expenses incurred by the Investigating Officer in connexion with his duties under this Article shall be defrayed by the States.

(6) Where the Investigating Officer intervenes or shows cause against a decree in any proceedings for divorce or for nullity of marriage or for presumption of death and dissolution of marriage thereon, the court adjudicating therein may make such order as to the payment by other parties to the proceedings of the costs of the services performed by or on behalf of the Investigating Officer in relation to such proceedings in virtue of this Article, as may seem just.

[Provisions designed to encourage reconciliation.]

9. (1) Where any person –
- (i) has petitioned the Court for Matrimonial Causes for a decree of divorce or judicial separation, or
 - (ii) has applied to the Ordinary Court, or to the Court for Matrimonial Causes, for the granting of a judicial separation by consent, or
 - (iii) has applied to the Magistrate for a separation

order,

then, unless the court seized of the case or the Magistrate, as the case may be, is satisfied that an attempt has been made to reconcile the parties or that such an attempt is impracticable or undesirable, such court or the Magistrate, as the case may be, may, for the purpose of affording an opportunity of reconciliation between the parties adjourn the case and may, with the consent of the parties, nominate one or more persons to act as mediators between the parties with a view to their reconciliation.

(2) The Court for Matrimonial Causes shall prepare and maintain a list of persons of repute willing to serve as members of a Panel of Mediators and in that capacity to be called upon by the court or Magistrate from time to time to endeavour to reconcile married persons as provided for in paragraph (1) of this Article.

(3) Any petitioner for divorce or petitioner or applicant for judicial separation or applicant for a separation order, who, in a case in which the court or Magistrate is of opinion that an attempt should be made to reconcile the parties, refuses to go before a mediator shall, unless the court or Magistrate, after considering the circumstances of such refusal, otherwise directs, be disentitled to proceed with the said petition or application.

(4) Where an application is made to the Magistrate for a separation order and the Magistrate is of opinion that an attempt should be made to reconcile the [parties] before the application is finally adjudicated upon, he may, if he thinks fit, make a separation order to take effect during such interval as he directs for the purpose of the making of endeavours to effect such reconciliation.

[(5) Provision shall be made as may be prescribed by Rules of Court under Article 6 of this Law for requiring the Advocate of the Royal Court acting for a petitioner for a decree of divorce or judicial separation to certify to the

Court for Matrimonial Causes whether he has discussed with the petitioner the possibility of a reconciliation and given to the petitioner the names and addresses of persons qualified to help effect a reconciliation between parties to a marriage who have become estranged.

(6) Where the parties to the marriage have lived with each other for any period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery then –

- (a) if the length of that period or of those periods together was six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purposes of sub-paragraph (a) of paragraph (1) of Article 16A of this Law whether the petitioner finds it intolerable to live with the respondent, but
- (b) if the length of that period or those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of the said sub-paragraph (a) of paragraph (1) of Article 16A.

(7) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the Court for Matrimonial Causes to support his allegation, that fact shall be disregarded in determining for the purposes of sub-paragraph (b) of paragraph (1) of Article 16A of this Law whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was six months or less.

(8) In considering for the purposes of paragraph (1) of Article 16A of this Law whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding six months) or of any two or more periods (not exceeding six months in all) during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.

(9) References in this Article to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.]

NOTES

In Article 9,

first, the heading thereto was substituted and, second, paragraph (5), paragraph (6), paragraph (7), paragraph (8) and paragraph (9) were inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(d)(i) and Article 1(d)(ii), with effect from 6th March, 1973;

the word in square brackets in paragraph (4) was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, paragraph 4(b), 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 1, Schedule 1, Part I, paragraph 3(b), 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 1, Schedule 1, paragraph 3(b), with effect from 23rd April, 2020.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the references in this Article to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

Joinder of Co-respondent. [...] And Costs.

10. (1) In the proceedings on any petition, whether by a husband or a wife, for divorce or judicial separation [in which adultery is alleged], or if, in the answer to the petition the husband or wife prays by cross-petition for divorce or judicial separation [alleging adultery], the petitioner or respondent, as the case may be, shall cause any person with whom he or she in such petition or cross-petition alleges that the other spouse has committed adultery to be cited as a co-respondent, unless such citation is excused on special grounds by the court seized of the case.

(2) In proceedings for divorce or judicial separation [in which adultery is alleged] but not otherwise, the Court for Matrimonial Causes may award [...] costs, against a co-respondent, whether male or female, in favour of the party to whom a decree of divorce or judicial separation is granted, and any such award may be made, notwithstanding that such co-respondent is domiciled or resident elsewhere than in the Bailiwick. [...]

(3) ...

NOTES

In Article 10,

the words omitted in, first, the heading thereto and, second, the second and third pairs of square brackets in paragraph (2) were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(e)(i) and Article 1(e)(iii)(b), with effect from 6th March, 1973;

the words in, first, the first pair of square brackets in paragraph (1), second, the second pair of square brackets in paragraph (1) and, third, the first pair of square brackets in paragraph (2) were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(e)(ii)(a), Article 1(e)(ii)(b) and Article 1(e)(iii)(a), with effect from 6th March, 1973;

paragraph (3) was repealed by the Matrimonial Causes

(Amendment) (Guernsey) Law, 1972, Article 1(e)(iv), with effect from 6th March, 1973.

[Abolition of right to claim damages for adultery.]

10A. A person shall not be entitled to petition any Court for, or include in any petition a claim for, damages from any other person on the ground of adultery with the spouse of the first-mentioned person.]

NOTE

Article 10A was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(f), with effect from 6th March, 1973.

Power of Court to allow intervention.

11. In every case in which any person is [alleged to have committed adultery] with any party to a suit or in which the Court for Matrimonial Causes considers that in the interest of any person not already a party to the suit, that person should be made a party to the suit, the court may, if it thinks fit, allow that person to intervene upon such terms as the court thinks just.

NOTE

In Article 11, the words in square brackets were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(g), with effect from 6th March, 1973.

Decrees and Final Orders.

12. (1) Where a decree of divorce or a decree of nullity of marriage has been made by the Court for Matrimonial Causes or the Appeal Court, such decree and any order made thereupon under Part VII (entitled "Care of Children") or Part VIII (entitled "Property and Contributions for Support") of this Law, other than an interim order under Part VII or under paragraph (3) of Article 47 (entitled

"Contributions for Support") of this Law, shall be provisional until –

- (a) a Final Order, as provided for in this Article, has been made, or
- (b) His Majesty in Council has issued an Order (i) disallowing an appeal against the granting of the decree, or (ii) allowing an appeal against a reversal by the Appeal Court of the granting of the decree.

(2) Where a decree of the kinds mentioned in paragraph (1) of this Article has been made by the Court for Matrimonial Causes or has been made or affirmed by the Appeal Court and –

- (a) no appeal allowable against such decree has been lodged within the time allowed for lodging such appeal, or
- (b) an appeal thus allowable and duly lodged has not been prosecuted within the time allowed for its prosecution,

then the Court for Matrimonial Causes shall, on the application, which may be *ex parte*, of either party to the marriage to which the said decree relates, make a Final Order in the suit pronouncing –

in the case of a decree of divorce, that on and after the date of such Final Order the said marriage shall stand dissolved,

in the case of a decree of nullity of marriage, such marriage to be and to have been null and void.

(3) Upon the making, in virtue of this Article, of a Final Order, neither the Final Order nor the decree to which it relates shall thereafter be questioned, whether for lack of jurisdiction or on any ground whatsoever.

(4) The Court for Matrimonial Causes may refuse to make a Final Order if application for the same is not made within a period of twelve calendar months from the date on which application therefor might first have been made.

NOTE

In accordance with the provisions of the Matrimonial Causes Rules, 1952, rule 1, Schedule, rule 42, with effect from 1st May, 1952, if an application for a Final Order under this Article is made after the expiration of twelve calendar months from the date on which it might first have been made, there shall be filed with the statement filed under rule 15 of the 1952 Rules an affidavit by the applicant accounting for the delay; and the application shall not proceed without the leave of the Court.

[Abolition of collusion as a bar to a decree.]

12A. Without prejudice to any provision of this Law which empowers or requires the Court for Matrimonial Causes to dismiss a petition for divorce or judicial separation or to dismiss an application made for a Final Order in a decree of divorce, nothing in any rule of law shall be taken as empowering or requiring the Court for Matrimonial Causes to dismiss such a petition or application on the ground of collusion between the parties in connection with the presentation or prosecution of the petition or the obtaining of the decree or on the ground of any conduct on the part of the petitioner.]

NOTE

Article 12A was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(h), with effect from 6th March, 1973.

Restrictions on decrees of divorce, judicial separation or nullity affecting children.

12B. (1) The Court for Matrimonial Causes shall not make a Final Order on a decree of divorce or of nullity of marriage, or make a decree of judicial separation, unless the Court for Matrimonial Causes, by order, has declared that it is satisfied –

- (a) that for the purposes of this Article there are no children of the marriage to whom this Article applies, or
- (b) that the only children who are or may be children of the marriage to whom this Article applies are the children named in the order and that –
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances, or
 - (ii) it is impracticable for the party or parties appearing before the Court for Matrimonial Causes to make any such arrangements, or
- (c) that there are circumstances making it desirable that a Final Order should be made on the decree of divorce or of nullity of marriage or that a decree of judicial separation should be made, as the case may be, without delay notwithstanding that there are or may be children of the marriage to whom this Article applies and that

the Court for Matrimonial Causes is unable to make a declaration in accordance with sub-paragraph (b) of this paragraph.

(2) The Court for Matrimonial Causes shall not make an order declaring that it is satisfied as mentioned in sub-paragraph (c) of the last preceding paragraph unless it has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children named in the order before the Court for Matrimonial Causes within a specified time.

(3) If the Court for Matrimonial Causes makes a Final Order on a decree of divorce or of nullity of marriage, or makes a decree of judicial separation, without having made an order under paragraph (1) of this Article the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by paragraphs (1) and (2) of this Article were not fulfilled.

(4) If the Court for Matrimonial Causes refuses to make an order under paragraph (1) of this Article in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that paragraph.

(5) This Article applies to the following children of the marriage, that is to say –

- (a) any minor child of the marriage who at the date of the order under paragraph (1) of this Article is –
 - (i) under the age of sixteen years, or
 - (ii) receiving instruction at an educational

establishment or undergoing training for a trade,
profession or vocation, whether or not he is also
in gainful employment, and

- (b) any other child of the marriage to whom the Court for Matrimonial Causes by an order under paragraph (1) of this Article directs that this Article shall apply,

and the Court for Matrimonial Causes may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this Article should apply to him.

- (6) In this Article "**welfare**", in relation to a child, includes the custody and education of the child and financial provision for him.]

NOTE

Article 12B was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(h), with effect from 6th March, 1973.

Variation of Orders.

13. (1) The Court for Matrimonial Causes may from time to time, whether before or after a decree in any matrimonial suit, vary or modify any order previously made under Part VII (entitled "Care of Children") or Part VIII (entitled "Property and Contributions for Support") of this Law, other than an order for the payment outright of a gross sum which has been fully complied with.

(2) As regards any matter of the kinds to which Part VII (entitled "Care of Children") or Part VIII (entitled "Property and Contributions for Support") of this Law relates, the Court for Matrimonial Causes shall have the like powers to vary or modify from time to time any order previously made in an extraneous

jurisdiction in consequence of a decree in a matrimonial suit, wherever such decree was made, if the parties to the variation or modification proceedings are both resident within the Bailiwick at the time of the institution thereof.

(3) Any order made by the Court of Alderney or the Court of Sark, consequential upon a decree of judicial separation pronounced in either of those Courts, whether before or after the commencement of this Law, may be varied or modified by the Court by which such order was made.

Abatement of Proceedings.

14. (1) (a) Without prejudice to the operation of any rule of law in force in the Bailiwick governing the abatement of any other proceedings under this Law and subject to the provisions of paragraph (2) of this Article, the death of the petitioner or respondent in an unconcluded suit for Divorce, Judicial Separation or Nullity of Marriage shall abate the suit.

(b) For the purposes of the foregoing sub-paragraph, a suit for Divorce or Nullity of Marriage shall be deemed an unconcluded suit unless –

- (i) a Decree of Divorce or Nullity of Marriage has been granted in that suit, and
- (ii) such Decree, is not merely provisional.

(2) ...

(3) ...

NOTE

In Article 14, paragraph (2) and paragraph (3) were repealed by the

Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(i), with effect from 6th March, 1973.

PART II
DIVORCE

Conditions of exercise of jurisdiction with regard to divorce.

15. [(1) [Subject to paragraph (3), 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.]

[(3) The Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples) has effect.]

NOTES

In Article 15,

paragraph (1) and paragraph (2) were substituted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979,

section 1(b), with effect from 1st March, 1980;⁵

the words in square brackets within paragraph (1) were substituted and paragraph (3) was inserted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, section 5, Schedule, respectively paragraph 3 and paragraph 4, with effect from 2nd May, 2017, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, respectively paragraph 3 and paragraph 4, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, respectively paragraph 3 and paragraph 4, with effect from 23rd April, 2020.

[Breakdown of marriage to be sole ground for divorce.]

16. The sole ground on which a petition for divorce may be presented to the Court by either party to a marriage shall be that the marriage has broken down irretrievably.]

NOTES

Article 16 was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(k), with effect from 6th March, 1973.⁶

The following case has referred to Article 16:

A v. A 2003–04 GLR 123.

[Proof of breakdown.]

16A. (1) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts, that is to say –

- (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent,
- (b) that the respondent has behaved in such a way that the

petitioner cannot reasonably be expected to live with the respondent,

- (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition,
- (d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted,
- (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

(2) On a petition for divorce it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged by the petitioner and into any facts alleged by the respondent.

(3) If the Court is satisfied on the evidence of any such fact as is mentioned in paragraph (1) of this Article, then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, the Court shall, subject to the provisions of Article 12B of this Law, grant a decree of divorce dissolving the marriage.

(4) For the purpose of sub-paragraph (c) of paragraph (1) of this Article the Court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the Court is such that, had that party not been so incapable, the Court would have inferred that his desertion continued at that time.

(5) For the purposes of this Law [the parties to a marriage] shall be treated as living apart unless they are living with each other in the same household.

(6) Provision shall be made as may be prescribed by Rules of Court under Article 6 of this Law for the purpose of ensuring that where in pursuance of sub-paragraph (d) of paragraph (1) of this Article the petitioner alleges that the respondent consents to a decree being granted the respondent has been given such information as will enable him to understand the consequences to him of his consenting to a decree being granted and the steps which he must take to indicate that he consents to the grant of a decree.]

[(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this Article.]

NOTES

Article 16A was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(k), with effect from 6th March, 1973.

In Article 16A,

the words in square brackets in paragraph (5) were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, paragraph 4(c), 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 1, Schedule 1, Part I, paragraph 3(c), 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 1, Schedule 1, paragraph 3(c), with effect from 23rd April, 2020;

paragraph (7) was inserted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, section 5, Schedule, paragraph 5, with effect from 2nd May, 2017, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, paragraph 5, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, paragraph 5, with effect

from 23rd April, 2020.

The following case has referred to Article 16A:

A v. A 2003–04 GLR 123.

Divorce proceedings after grant of judicial separation or separation order.

17. (1) A person shall not be prevented from presenting a petition for divorce, or the Court from pronouncing a decree of divorce, by reason only that the petitioner has at any time been granted, in this jurisdiction or elsewhere, a judicial separation or a separation order upon the same or substantially the same facts as those alleged in the petition for divorce or proved in support thereof.

(2) On any such petition for divorce, the Court may treat the decree of judicial separation or the separation order as sufficient proof of the [fact] on which it was granted, but the Court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of a petition for divorce [in which desertion is alleged] –

- (a) a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or a separation order having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce, and
- (b) where a decree of judicial separation or a separation order having the effect of such a decree has been

granted [in which desertion is alleged] and –

- (i) the period of desertion immediately preceding the institution of proceedings for such decree or order was of less than [two years] duration, and
- (ii) such decree or order was granted not later than [two years] before the presentation of the petition for divorce and has been continuously in force since the granting thereof, and
- (iii) the parties have not resumed co-habitation:

the period of desertion immediately preceding the institution of proceedings for such decree or order shall be deemed to have been of a [duration of two years].

NOTE

In Article 17, the words in, first, the square brackets in paragraph (2), second, the first pair of square brackets in paragraph (3), third, the first and fourth pairs of square brackets in paragraph (3)(b), fourth, the square brackets in paragraph (3)(b)(i) and, fifth, the square brackets in paragraph (3)(b)(ii) were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(1)(i), Article 1(1)(ii)(a), Article 1(1)(ii)(b), Article 1(1)(ii)(c) and Article 1(1)(ii)(d), with effect from 6th March, 1973.

[Decree to be refused in certain circumstances.]

18. (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in sub-paragraph (e) of paragraph (1) of Article 16A of this Law may oppose the grant of a decree of divorce on the ground that the dissolution of the marriage will result in grave financial or other hardship to him and

that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree of divorce is opposed by virtue of this Article, then –

- (a) if the Court is satisfied that the only fact mentioned in the said paragraph (1) of Article 16A on which the petitioner is entitled to rely in support of his petition is that mentioned in sub-paragraph (e) of the said paragraph (1) of Article 16A, and
- (b) if apart from this Article the Court would grant a decree of divorce,

the Court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the Court is of the opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.

(3) For the purposes of this Article hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.]

NOTE

Article 18 was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(m), with effect from 6th March, 1973.

[Financial protection for respondent in certain cases.]

18A. (1) The following provisions of this Article shall have effect where

—

- (a) the respondent to a petition for divorce in which the petitioner alleged any such fact as is mentioned in sub-paragraph (d) or (e) of paragraph (1) of Article 16A of this Law has applied to the Court under this Article for the Court to consider for the purposes of the next succeeding paragraph the financial position of the respondent after the divorce, and
- (b) a decree of divorce has been granted on the petition and the Court has held that the only fact mentioned in the said paragraph (1) of Article 16A on which the petitioner was entitled to rely in support of his petition was that mentioned in sub-paragraph (d) or (e) of the said paragraph (1) of Article 16A.

(2) The Court hearing an application by the respondent under this Article shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and notwithstanding anything in the foregoing provisions of this Law but subject to the next succeeding paragraph, the Court shall not make a Final Order on the decree of divorce unless it is satisfied –

- (a) that the petitioner should not be required to make any financial provision for the respondent, or
- (b) that the financial provision made by the petitioner for the respondent is reasonable and fair or the best that can

be made in the circumstances.

(3) The Court may if it thinks fit proceed without observing the requirements of the last preceding paragraph if –

- (a) it appears that there are circumstances making it desirable that a Final Order should be made on the decree without delay, and
- (b) the Court has obtained a satisfactory undertaking from the petitioner that he will make such financial provision for the respondent as the Court may approve.]

NOTES

Article 18A was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(m), with effect from 6th March, 1973.

In accordance with the provisions of the Matrimonial Causes Rules, 1952, rule 1, Schedule, rule 46B, with effect from 6th March, 1973, an application by the respondent to a petition for divorce under this Article for the Court to consider the financial position of the respondent after the divorce shall be made to the Court in accordance with Form 5A of the 1952 Rules.

[Rules of Court may enable certain agreements or arrangements to be referred to the Court.]

18B. Provision may be made as may be prescribed by Rules of Court under Article 6 of this Law for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the Court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the Court to express an opinion, should it think

it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.]

NOTE

Article 18B was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(m), with effect from 6th March, 1973.

[Power to rescind decree in certain cases.]

18C. Where the Court on granting a decree of divorce held that the only fact mentioned in paragraph (1) of Article 16A of this Law on which the petitioner was entitled to rely in support of his petition was that mentioned in sub-paragraph (d) of the said paragraph (1) of Article 16A, it may, on an application made by the respondent at any time before a Final Order is made on the decree, rescind the decree if it is satisfied that the petitioner misled the respondent (whether intentionally or unintentionally) about any matter which the respondent took into account in deciding to consent to the grant of a decree.]

NOTES

Article 18C was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(m), with effect from 6th March, 1973.

In accordance with the provisions of the Matrimonial Causes Rules, 1952, rule 1, Schedule, rule 46A, with effect from 6th March, 1973, an application by a respondent under this Article for the rescission of a decree of divorce shall be accompanied by an affidavit by the applicant setting out the allegations on which the applicant relies and a copy of the application and of the affidavit shall be served on the petitioner.

Re-marriage of divorced persons.

19. (1) When, in proceedings for the dissolution of a marriage by divorce under this Law,

- (a) a Final Order has been made therein under the provisions of Article 12 (entitled "Decrees and Final Orders") of this Law, or
- (b) there has been registered on the records of this Island an Order of His Majesty in Council, such as is referred to in sub-paragraph (b) of paragraph (1) of the said Article 12, and having the effect of dissolving the marriage,

either of the parties to the marriage may marry again as if the prior marriage had been dissolved by death.

(2) The expression "**divorced wife**", wherever that expression occurs in Articles 2 and 3 of the Law of 1936, shall mean a wife in favour of or against whom a decree of divorce has been granted.

NOTE

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 paragraph (2) of this Article.

The Loi sur les Empêchements au Mariage à cause de Parenté et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales, 1936 ("the Law of 1936") has since been repealed by the Marriage (Bailiwick of Guernsey) Law, 2020, section 67, Schedule, with effect from 1st March, 2021.

Relief to respondent on petition for divorce.

20. If in any proceedings for divorce the respondent in his answer [alleges against the petitioner and proves any such fact as is mentioned in paragraph (1) of Article 16A of this Law] and, in such answer, prays by cross-petition for relief on [any such fact], the Court may give to the respondent the relief sought in such cross-petition as if the cross-petition of the respondent had been an original petition.

NOTE

In Article 20, the words in square brackets were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(n), with effect from 6th March, 1973.

Exclusion of Sark.

21. ...

NOTE

Article 21 was repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 2, with effect from 16th June, 2003.⁷

PART III

JUDICIAL SEPARATION (INCLUDING SEPARATION BY CONSENT)

Conditions of exercise of jurisdiction with regard to judicial separation.

22. [(1) [Subject to the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), 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.]

NOTES

In Article 22,

paragraph (1) and paragraph (2) were substituted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(d), with effect from 1st March, 1980;

the words in square brackets within paragraph (1) were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, Schedule, paragraph 6, with effect from 2nd May, 2017, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, paragraph 6, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, paragraph 6, with effect from 23rd April, 2020.

[Grounds of petition for judicial separation.]

23. (1) A petition for judicial separation may be presented to the Court for Matrimonial Causes by either party to a marriage on the ground that any such fact as is mentioned in paragraph (1) of Article 16A of this Law exists, [subject to paragraph (7) of that Article,] and Article 9, paragraphs (2), (4), (5) and (6) of Article

16A and Article 18B of this Law shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.

(2) The Court for Matrimonial Causes hearing a petition for judicial separation shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in paragraph (1) of Article 16A of this Law, [subject to paragraph (7) of that Article as aforesaid,] the Court for Matrimonial Causes shall, subject to the provisions of Article 12B of this Law, grant a decree of judicial separation.]

NOTES

Article 23 was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(o), with effect from 6th March, 1973.

In Article 23, the words in square brackets within, first, paragraph (1) and, second, paragraph (2) were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, respectively paragraph 4(d) and paragraph 4(e), 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 1, Schedule 1, Part I, respectively paragraph 3(d) and paragraph 3(e), 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 1, Schedule 1, respectively paragraph 3(d) and paragraph 3(e), with effect from 23rd April, 2020.

Duty of Court on presentation of petition for judicial separation.

24. ...

NOTE

Article 24 was repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(p), with effect from 6th March, 1973.

Relief to respondent on petition for judicial separation.

25. In any proceedings for judicial separation in which, under the provisions of this Law, the court seized of the case is the Court for Matrimonial Causes, and the respondent, in his answer, [alleges against the petitioner and proves any such fact as is mentioned in paragraph (1) of Article 16A of this Law], and, in such answer, prays by cross-petition for a decree of judicial separation on [any such fact], the Court for Matrimonial Causes may give to the respondent the relief sought in such cross-petition as if the cross-petition of the respondent had been an original petition.

NOTE

In Article 25, the words in square brackets were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(q), with effect from 6th March, 1973.

Effect of decree for judicial separation.

26. (1) When a judicial separation is decreed or pronounced, it shall no longer be obligatory for the petitioner to cohabit with the respondent.

(2) So long as a separation under a decree, pronouncement or order subsists, the husband shall not be liable in respect of any engagement or contract into which the wife enters after the separation begins, or for any wrongful act or omission by her or for any costs she incurs as plaintiff or defendant:

Provided that where, in relation to a judicial separation or a separation order, the Court or the Magistrate has ordered the husband to make a payment or payments to the wife or for her use to an other person on her behalf, for or towards her maintenance, or the maintenance of any child or children mentioned in the order, and he has not duly made such payment or payments, the husband shall be liable for necessities supplied for the use of the wife, or of such child or children.

NOTES

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), with effect from 1st September, 2009, the reference in this Article to the "Magistrate" shall be construed as a reference to a Judge of the Magistrate's Court within the meaning of the 2008 Law.

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 paragraph (2) of this Article.

Judicial sanction requisite to validity of agreements for separation.

27. No agreement for or in relation to separation between married persons which is made after the commencement of this Law while the parties thereto are resident within the Bailiwick shall have any legal validity in the Bailiwick unless it is sanctioned pursuant to a decree or pronouncement of judicial separation by a court in the Bailiwick competent to make such decree or pronouncement.

NOTE

The following cases have referred to Article 27:

A v. A 2003–04 GLR 123;
D v. D 2007–08 GLR 127.

Reversal, discharge and variation of decrees for judicial separation.

28. (1) The Court for Matrimonial Causes may, on the application by petition of the [party to the marriage] against whom a decree for judicial separation

has been made, and on being satisfied that the material allegations in the petition are true, reverse the decree at any time after the making thereof, on the ground that it was obtained in the absence of the person making the application and that there was good reason for such absence.

The term "**absence**" in this Article means non-appearance as a party in the suit and not merely that the person was not present at the proceedings.

(2) The Court for Matrimonial Causes may, at the instance of either party to the marriage, and after hearing the parties thereto, in person or by counsel, discharge a decree for judicial separation and may make such order as it thinks fit respecting the terms of separation subsisting between the parties at the time, of such discharge.

(3) The Court for Matrimonial Causes may at any time vary a decree for judicial separation for any purpose necessary for giving effect to any provision in Part VII (entitled "Care of Children") or Part VIII (entitled "Property and Contributions for Support") of this Law.

(4) The powers of the Court for Matrimonial Causes under this Article shall extend to any judicial separation made by that Court or by the Appeal Court and to any order made in relation thereto.

(5) The Ordinary Court shall, in respect of judicial separations pronounced by that Court, whether before or after the commencement of this Law, have like powers to the powers conferred by this Article upon the Court for Matrimonial Causes.

NOTE

In Article 28, the words in square brackets in paragraph (1) were substituted

by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, paragraph 4(f), 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 1, Schedule 1, Part I, paragraph 3(f), 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 1, Schedule 1, paragraph 3(f), with effect from 23rd April, 2020.

Provisions regarding termination of separation and the protection of third parties.

29. (1) A judicial separation decreed or pronounced under the provisions of this Law shall, as between the parties to the marriage, be rescinded by their resumption of co-habitation but such judicial separation shall continue to be valid and effectual as regards the rights and remedies of other persons (and, if varied, thus valid and effectual as varied) until –

- (a) in the case of a judicial separation pronounced under the provisions of sub-paragraph (a) (relating to concurrent jurisdiction) of paragraph (4) of Article 2 (entitled "Institution of Court for Matrimonial Causes", etc.) of this Law, such rescission is evidenced by a Declaration of Rescission, made, dated and signed, in accordance with a Form prescribed by the Rules of Court by the said parties or their attorneys in the presence of His Majesty's Greffier, and
- (b) in the case of a judicial separation by decree, the decree has been discharged by the court.

(2) The reversal, discharge or variation of a decree or pronouncement of judicial separation, or the rescission of a judicial separation, or an

order made in virtue of paragraph (2) of Article 28 (entitled "Reversal, discharge and variation of decrees for judicial separation") of this Law, shall not affect –

- (a) the validity of any act or thing lawfully done by any person before the granting or making of the said reversal, discharge, variation or order, and done in virtue of, or in reliance upon, the terms of separation subsisting between the parties to the marriage when such act or thing was thus lawfully done, or
- (b) the rights or remedies which any person would have had, if the decree or pronouncement had not been reversed, discharged or varied or the judicial separation rescinded, or the said order made, in respect of any debts, contracts or acts of the husband or wife incurred, entered into or done between the time of the decree or pronouncement and the reversal, discharge or variation thereof, or the rescission of the judicial separation, or the making of the said order, as the case may be.

NOTE

In accordance with the provisions of the Matrimonial Causes Rules, 1952, rule 1, Schedule, rule 48, with effect from 1st May, 1952, Her Majesty's Greffier shall keep a Register of Declarations of Rescission of Judicial Separations, made conformably to the requirements of sub-paragraph (a) of paragraph (1) of this Article, in accordance with Form 19 or Form 20 of the 1952 Rules, as the case requires.

PART IV

RESTITUTION OF CONJUGAL RIGHTS

[Abolition of right to claim restitution of conjugal rights.]

30. A person shall not be entitled to petition any Court for restitution of conjugal rights.]

NOTE

Article 30 was substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(r), with effect from 6th March, 1973.

Power of Court to decree restitution of conjugal rights.

31. ...

NOTE

Article 31 was repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(r), with effect from 6th March, 1973.

Power of Court to order periodic payments by respondent.

32. ...

NOTE

Article 32 was repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(r), with effect from 6th March, 1973.

PART V

NULLITY OF MARRIAGE

Conditions of exercise of jurisdiction with regard to suits for nullity of marriage.

33. [(1) [Subject to the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), 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.]

NOTES

In Article 33,

paragraph (1) and paragraph (2) were substituted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(e), with effect from 1st March, 1980;

the words in square brackets within paragraph (1) were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, section 5, Schedule, paragraph 6, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, paragraph 6, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, paragraph 6, with effect from 23rd April, 2020.

Grounds for decree of nullity.

34. The Court may[, subject to the provisions of Article 12B of this Law,] decree the nullity of a marriage on any of the grounds mentioned in paragraphs (1) to (9) of this Article, as well as on any other ground on which a marriage is by law void or voidable –

- (1) the continuing impotency of one party or of both parties to the marriage since the celebration thereof,
- (2) that the marriage was celebrated through fraud, threats or duress by the respondent upon or to the petitioner,
- (3) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage,
- (4) that the respondent was at the time of the marriage pregnant by some person other than the petitioner, unless the pregnancy resulted from intercourse which occurred between the respondent and a former husband during the subsistence of their marriage,
- (5) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form,
- (6) that either party to the marriage was at the time of the marriage of unsound mind or a mental defective within the meaning of the "Loi ayant rapport aux Faibles d'Esprit" of 1926,
- (7) that either party to the marriage was at the time of the marriage subject to recurrent fits of insanity or epilepsy,

(8) that the marriage in respect of which the petition is presented was bigamous on the part of the respondent,

(9) (i) that the marriage has been annulled by the competent court of an extraneous jurisdiction in which the party who is the respondent in the proceedings in the Bailiwick was domiciled when the suit for such annulment was instituted in such extraneous jurisdiction, if the annulment was made upon one of the grounds mentioned in paragraphs (1), (3), (4), (5) and (7) of this Article, or upon some other ground whereby the marriage was lawfully voidable in such extraneous jurisdiction, and

(ii) that the marriage has been annulled by the competent court of an extraneous jurisdiction in which –

(a) the party who is the respondent in the proceedings in the Bailiwick was domiciled when the suit for such annulment was instituted in such extraneous jurisdiction, or

(b) the marriage was celebrated,

if the annulment was made upon one of the grounds mentioned in paragraphs (2), (6) and (8) of this Article, or upon some other ground whereby the marriage was void ab initio in such extraneous jurisdiction:

Provided that –

- (a) in the cases specified in paragraphs (1), (3), (4), (5) and (7) of this Article, a decree may be granted only on the petition of a party to the marriage, and
- (b) in the cases specified in paragraphs (4), (5), (6) and (7) of this Article, the Court shall not grant a decree unless it is satisfied –
 - (i) that the petitioner was at the time of the marriage ignorant of the facts alleged,
 - (ii) that proceedings were instituted within a year from the date of the marriage, and
 - (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree[, and
- (c) the grounds specified in paragraphs (1), (3) and (4), and the requirement in sub-paragraph (b)(iii) of this proviso, do not apply in the case of a marriage of a same-sex couple.]

NOTES

In Article 34,

the words and punctuation in square brackets were inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(s), with effect from 6th March, 1973;

the words and punctuation in the second pair of square brackets were inserted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, section 5, Schedule, paragraph 7, with effect from 2nd May, 2017, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, paragraph 7, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, paragraph 7, with effect from 23rd April, 2020.

The Loi ayant rapport aux Faibles d'Esprit, 1926 has since been repealed by the Mental Health (Bailiwick of Guernsey) Law, 2010, section 105, Schedule 5, paragraph 2(a), with effect from 8th April, 2013.

Preservation of legitimacy of children in certain cases.

35. Any child born of a marriage avoided pursuant to paragraphs (2), (5), (6) or (7) (relating respectively to fraud etc.; venereal disease; unsoundness of mind; and recurrent fits of insanity, etc.) of Article 34 (entitled "Grounds for Decree of Nullity") of this Law shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

Saving as to void marriages.

36. Nothing in this Part of this Law shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

Certain evidence in nullity cases to be in camera.

37. In any proceedings for nullity of marriage, evidence on the question of sexual capacity shall be heard in camera unless in any case the Court is satisfied that in the interests of justice any such evidence ought to be heard in open Court.

PART VI

PRESUMPTION OF DEATH AND DISSOLUTION OF MARRIAGE THEREON

Conditions of exercise of jurisdiction with regard to presumption of death and dissolution of marriage thereon.

38. [(1) [Subject to the provisions of the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), 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.]

NOTES

In Article 38,

paragraph (1) was substituted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(f), with effect from 1st March, 1980;

the words in square brackets within paragraph (1) were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, section 5, Schedule, paragraph 8, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, paragraph 8, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, paragraph 8, with effect from 23rd April, 2020.

Proceedings for decree of presumption of death and dissolution of marriage thereon.

39. (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Court to have it presumed that the other party is dead and to have the marriage dissolved, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

Provisions regarding re-marriage after decree of presumption of death.

40. After the expiration of six calendar months from the date of the making of a decree of presumption of death and dissolution of marriage, if the decree has not been rescinded and if proceedings for the rescission of the decree are not sub-judice, the petitioner shall be entitled to marry again as if the previous marriage had been dissolved by death.

Provisions regarding rescission of decree.

41. Upon proof being given to the satisfaction of the Court at the instance of any person that a person, whose death has been presumed by decree, is alive, the Court shall rescind the decree but, notwithstanding the rescission of any such decree

—

- (1) any marriage lawfully contracted by the petitioner for the decree after the granting thereof shall not be deemed to be void or voidable as a civil marriage by reason of the decree being rescinded, and
- (2) if the petitioner has lawfully contracted a marriage after the granting of such decree, the previous marriage of the petitioner shall be deemed to have been dissolved as at the date of such decree as though the person whose death was thereby presumed had died on that date.

Decree in extraneous jurisdiction.

42. Where a decree of presumption of death has been made by a Court of competent jurisdiction in the domicile outside the Bailiwick of the person whose death is thereby presumed, and such decree is proved to the Court for Matrimonial Causes in manner provided in the Rules of Court or directed by the Court, that Court shall order that the said decree shall as from the date of the decree have the same effect as a decree of presumption of death and dissolution of marriage pronounced by that Court.

PART VII CARE OF CHILDREN.

Power of Court to make orders for [...] maintenance [...] of children.

43. (1) The Court may from time to time, after the making in the Island of Guernsey of a decree of divorce or judicial separation or nullity of marriage, make such orders as appear just with respect to the [maintenance of] the children, the marriage of whose parents is the subject of the said decree, and the Court shall have like power, after the commencement of any proceedings in relation to any such decree, [...] to make interim orders under this Part of this Law.

(2) ...

NOTES

In Article 43,

the words omitted in the square brackets in the title thereto were repealed, and the words in the first pair of square brackets in paragraph (1) thereof were substituted, by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, respectively paragraph 9(a)(i) and paragraph 9(a)(ii), with effect from 4th January, 2010, subject to the savings and transitional provisions in section 4 of, and Schedule 2 to, the 2009 Ordinance;

paragraph (2), and the words omitted in the second pair of square brackets in paragraph (1), were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(t)(ii) and Article 1(t)(i), with effect from 6th March, 1973.

The following cases have referred to Article 43:

C v. C (2004) (Unreported, Royal Court, 16th June) (Guernsey Judgment No. 27/2004); 2003-04 GLR Note 20;
E v. E 2007-08 GLR 133.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the reference in this section to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental responsibility in respect of the child.

[Removal of child out of the Bailiwick.

43A. ...]

NOTE

Article 43A (which was originally inserted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(g), with effect from 1st March, 1980) was repealed by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 9(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.⁸

[Power of court to make interim occupation order.

43B. (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 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.]

NOTES

Article 43B was inserted by the Matrimonial Causes (Guernsey) (Amendment) Law, 2003, Article 1, Schedule, paragraph 1, with effect from 18th December, 2003.

The following case has referred to Article 43B:

L v. L (2005) (Unreported, Royal Court, 28th April) (Guernsey Judgment No. 25/2005); 2005–06 GLR Note 4.

PART VIII

PROPERTY AND CONTRIBUTIONS FOR SUPPORT

Successoral interests to cease on divorce etc.

44. Where a marriage –

- (a) in the case of proceedings for divorce, has been dissolved, or
- (b) in the case of proceedings for nullity, has been

dissolved or declared void,

neither of the parties whose marriage is thus dissolved or declared void shall be entitled, upon the death of the other, to any legal successorial share or interest in the real or personal estates of the deceased[, nor shall a divorced woman, or a woman whose marriage has been so dissolved, or declared void, be entitled to any rights of dower, arising by reason of that marriage, in the real estate of any other person].

NOTES

In Article 44, the words in square brackets were repealed, first, by the Inheritance (Guernsey) Law, 2011, section 2(c), with effect from 2nd April, 2012 (as they applied in the Island of Guernsey) and, second, by the Inheritance (Alderney) Law, 2015, section 57(e), with effect from 16th December, 2015 (as they applied in the Island of Alderney).

In accordance with the provisions of the Matrimonial Causes Rules, 1952, rule 1, Schedule, rule 37, with effect from 1st May, 1952, no respondent may, except by leave of the Court, make an application under this Part later than six calendar months next after the making of the decree in the suit out of which the application arises.

Power of Court to vary settlements etc.

45. (1) The Court, after the making in the Island of Guernsey of a decree of divorce or nullity of marriage, may, upon the application of either party to the marriage which is the subject of such decree, or upon the application of any person beneficially interested, –

- (a) cancel, vary or modify, or
- (b) terminate the trusts of

any marriage contract, marriage settlement, postnuptial settlement, or terms of separation subsisting between the parties to such marriage, in any manner which, having regard to the means of the parties, the conduct of either of them or the

interests of any children of such marriage appears to the Court to be just.

(2) The Court shall have jurisdiction under this Article notwithstanding that the marriage referred to in paragraph (1) of this Article was contracted, and the marriage contract, marriage settlement, postnuptial settlement or terms of separation was or were made or entered into, in an extraneous jurisdiction.

NOTE

The following cases have referred to Article 45:

A v. A 2003–04 GLR 123;

B. V. B. (2007) (Unreported, Royal Court, 24th July) (Guernsey Judgment No. 21/2007);

Husband v. Wife (2015) (Unreported, Royal Court, 13th February) (Guernsey Judgment No. 29/2015).

Power of Court to order vesting or division of property.

46. [(1) Where a decree of divorce or nullity of marriage or a decree or pronouncement of judicial separation has been granted, the Court may, if it thinks fit and subject to Article 57A, as regards any relevant property, make an order of any type described in paragraph (3).]

(2) An order made under this Article, in so far as such order relates to a judicial separation, shall be deemed to be part of the terms of separation between the parties within the meaning of this Law.

[(3) The orders are –

(a) an order directing that the interests of the parties to the marriage in any relevant property shall vest –

(i) in one party to the marriage,

- (ii) in a child of the marriage, or
- (iii) in any other person for the benefit of a child of the marriage,

or that such interests shall be vested in one or more of such persons in such proportions as the Court may direct,

- (b) an order directing that the interests of the parties to the marriage in any relevant property shall be held on trust for the benefit of such of the parties to, and any children of, the marriage, and for such purposes, as the Court may direct; and in such a case the Court may order that any such property shall be held on trust for sale with or without the power to postpone the sale –

- (i) for a fixed period,
- (ii) until the happening of a certain event, or
- (iii) until further order,

- (c) an order directing that any trust or settlement of any relevant property for the benefit of one party or both parties to the marriage be varied or modified in such manner as the Court may direct,
- (d) an order directing that any relevant property be sold, and that such gross, or periodic, sum of money be paid

out of the proceeds of sale of such property to –

- (i) such party to the marriage, or
- (ii) such child or children of the marriage, or
- (iii) such person for the benefit of such child or children of the marriage, or
- (iv) any one or more of the persons included in subparagraphs (i) to (iii),

as the Court may direct,

- (e) an order suspending the right of a party to the marriage to demand licitation of any relevant property on such terms, and for such period, as the Court may direct,
- (f) an order creating, extinguishing, or varying a usufruit, droit d'habitation, lease, licence, or right of occupation for the benefit of such of –

- (i) a party to the marriage, and
- (ii) a child or children of the marriage,

and on such terms and conditions, as the Court may direct.

- (4) Where the Court makes an order described in paragraph (3), it may order that one party shall –

- (a) pay to the other party to the marriage, for his or her absolute benefit, such gross or periodic sum, or both, or
- (b) secure to the other party for his or her benefit, such gross or periodic sum, or both, for any term not exceeding the life of the party in favour of whom the same is secured,

as the Court may direct.

(5) An order made under this Article –

- (a) may contain such consequential, ancillary, incidental or supplementary provisions as the Court thinks fit, and
- (b) may be varied or modified from time to time in such manner as the Court thinks fit.

(6) Where a party to a marriage has an interest in any relevant property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has an interest in that property, or in the proceeds of sale thereof, then, before deciding whether to make an order under this Article in relation to that property, it shall be the duty of the Court to give that other person an opportunity to make representations with respect to the order, and any such representations shall be included among the circumstances to which the court should have regard.

(7) In this Article "**relevant property**" means real and personal property in which each or either of the parties to the marriage has an interest, present, prospective or conditional.]

NOTES

In Article 46, first, paragraph (1) was substituted and, second, paragraph (3), paragraph (4), paragraph (5), paragraph (6) and paragraph (7) were inserted by the Matrimonial Causes (Guernsey) (Amendment) Law, 2019, section 2, respectively paragraph (a) and paragraph (b), with effect from 4th November, 2020.⁹

The following cases have referred to Article 46:

Price v. Price (1987-88) 6.GLJ.86 (see also Court of Appeal Judgments, 1964-89, p. 402);

Waterman v. McCormack (2002) (Unreported, Court of Appeal, 20th May) (Guernsey Judgment No. 3/2003);

A v. A 2003–04 GLR 123;

C v. C 2005–06 GLR 199;

C v. C (2006) (Unreported, Royal Court, 8th March) (Guernsey Judgment No 12/2006); 2005–06 GLR Note 17;

L v. L (2005) (Unreported, Royal Court, 28th April) (Guernsey Judgment No. 25/2005); 2005–06 GLR Note 4;

D v. D 2007–08 GLR 127;

E v. E 2007–08 GLR 133;

E v. E 2007–08 GLR 374.

Contributions for Support.

47. (1) Where a decree for divorce, judicial separation, [...] or nullity of marriage has been granted, the Court may, if it thinks fit, having regard to the circumstances of the case, including the financial position and conduct of the parties, order that the one party shall pay or make provision for the payment to the other party during any term not exceeding the life of such other party of such annual or other periodic sum of money for or towards the support of such other party as the Court may deem reasonable, and that the party against whom such order is made shall secure the payments to be made under such order in manner directed by the Court.

(2) The Court may, if it thinks fit, order that a gross sum of money shall be paid or secured in lieu of or in addition to the annual or other periodic sum referred to in the preceding paragraph of this Article.

(3) On a petition for divorce, judicial separation, [...] or nullity of marriage, the Court may, if it thinks fit, by interim order, direct payments to be made by [one party to the other, for or towards the support of the other,] and any such interim order shall remain in force until it is rescinded by the Court or until the Court makes a definitive order in respect thereof, or until the relief sought in the petition is refused.

NOTES

In Article 47,

the words omitted in square brackets in paragraph (1) and in the first pair of square brackets in paragraph (3) were repealed by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(u), with effect from 6th March, 1973;

the words in the second pair of square brackets in paragraph (3) were substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, paragraph 4(g), 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 1, Schedule 1, Part I, paragraph 3(g), 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 1, Schedule 1, paragraph 3(g), with effect from 23rd April, 2020.

The following cases have referred to Article 47:

*A v. A 2003–04 GLR 123;
C v. C 2005–06 GLR 199;
C v. C (2006) (Unreported, Royal Court, 8th March) (Guernsey Judgment No 12/2006); 2005–06 GLR Note 17;
C v. C (2006) (Unreported, Court of Appeal, 12th December) (Guernsey Judgment No 56/2006).*

Contribution order against wife of husband of unsound mind.

48. When a decree of divorce or judicial separation is granted to a wife on the ground that her husband is of unsound mind, the Court may, if it thinks fit, direct that the wife shall, for the benefit of her husband, make any payment or give any

security which the Court is by Article 47 (entitled "Contributions for Support") of this Law empowered to order a party to make or give.

NOTE

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 Article.

Payment over of contributions for support to persons having charge of mentally afflicted respondent.

49. Where a decree of divorce or judicial separation or nullity of marriage is granted on the ground of the respondent's unsoundness of mind or mental deficiency, the Court may direct that any payments of contributions for support which it orders to be made shall be made to such persons having charge of the respondent as the Court directs.

Power of Court to order settlement of wife's property in favour of husband and children.

50. Where, on the petition of the husband, a decree of divorce or judicial separation, or nullity of marriage is granted, the Court may, if it thinks fit [and subject to Article 57A], order that such settlement as it deems reasonable shall be made of the wife's real and personal property, or any part thereof, for the benefit of the children of the marriage and for the benefit of such husband or any of them.

NOTES

In Article 50, the words in square brackets were inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 4, with effect from 16th June, 2003.

The following case has referred to Article 50:

E v. E 2007–08 GLR 374.

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 Article.

Ascertainment of assets and liabilities of parties.

51. (1) For the purposes of this Part of this Law, the Court may require each of the parties to a suit to file a sworn detailed declaration of his or her assets and liabilities and of particulars of all charges against such assets.

(2) The Court may sit in private for the verification of the assets and liabilities of the parties and for the purpose of deciding upon the nature and extent of the order or orders, if any, proper to be made in the case in pursuance of this Part of this Law, and may refer to one or more Commissioners appointed by the Court and sitting in private the consideration of such assets and liabilities and the drafting for submission to the Court of any such orders.

NOTE

The following case has referred to Article 51:

C v. C 2005–06 GLR 199.

Power of Court to award particular priority to "hypothèque".

52. The Court may, having regard to the deprivation suffered under Article 44 (entitled "Successoral Interests to cease on Divorce etc.") of this Law, of a successoral share or interest in real estate and to the deprivation suffered, by reason of orders made under Article 45 (entitled "Power of Court to vary Settlements etc.") and Article 46 (entitled "Power of Court to order vesting or division of property") of this Law or either thereof, of an interest, present, prospective or conditional, in any real property, declare that, as regards any gross sum ordered to be paid or any gross sum or periodic sum ordered to be secured for a term, the "hypothèque" to which the registration of any such order for payment or the giving of security may give rise shall, if such order be registered at any time before the Greffe closes on the day on which it is next open for general public business after the day on which the order is made, instead of having priority as at the date of its registration, have priority, as regards the sum or sums specified in the order or such part thereof as the Court directs, at such earlier date as the Court directs:

Provided that in making any such declaration as aforesaid the Court shall have regard to the rights and interests of registered creditors of the person whose realty will be affected by the "hypothèque" to which the registration of the order gives rise and that, where, at the time of the making of the decree, there is in existence any registration or priority against or over the successoral share or interest or other interest, present, prospective or conditional, of the person in whose favour such "hypothèque" will take effect, in any such realty, then, notwithstanding any such declaration as aforesaid, such "hypothèque" shall be deemed to be posterior in date to any such registration or priority.

Court to have regard to benefits accruing to party.

53. In making any order under Article 47 or Article 48 of this Law, (which

Articles relate respectively to Contributions for Support and Contribution Order against Wife of Husband of Unsound Mind), the Court shall have regard to the benefits accruing to the party in whose favour such first-mentioned order is made, under any other order made in pursuance of this Part of this Law.

Death of party after decree.

54. (1) In the event of the death of either of the parties to a suit for a decree of divorce or nullity of marriage, after the marriage has been dissolved or declared void but before any definitive order under this Part of this Law has been made, the Court may make any such order as aforesaid which it could lawfully have made if such death had not occurred, and the said order shall take effect as if it had been made immediately before the death.

(2) The Court may make an order under this Article on the application of any person who is, in the opinion of the Court, an interested person, if the Court is satisfied that notice of the proceedings has been given to every person whose interests may be affected by the order or to the Attorneys of such persons.

Priority of rights under orders of Court.

55. Upon the grant of a decree of divorce or judicial separation or nullity of marriage [or a pronouncement of judicial separation] and until the Court has made an order or orders under this Part of this Law or has refused to make any such order, any rights in real property acquired by third parties from either of the parties to the suit, or from his or her successors in title, shall be subordinated to such rights thereto as may vest under any such order or orders.

NOTE

In Article 55, the words in square brackets were inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1990, Article 1(b), with effect from 23rd April, 1990.

Jurisdiction consequential on past decrees.

56. The powers of the Court under this Part of this Law may be exercised in any cause, suit or matter consequential upon a judicial decision made in the Island of Guernsey in a matrimonial suit before the commencement of this Law.

Execution of instruments by order of Court.

57. Where any person neglects or refuses to comply with an order of the Court directing him to execute or make any conveyance, assignment, or other document or instrument or indorsement for giving effect to any Act of Court under this Part of this Law, the Court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other document or instrument or indorsement shall be executed, made or done by such person as the Court nominates for the purpose, at the cost of the person in default, or otherwise, as the Court directs, and a conveyance, assignment, document, instrument or indorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it.

NOTE

The following case has referred to Article 57:

E v. E 2007–08 GLR 374.

[Effect of orders of Court in relation to Sark real property.]

57A. (1) No order made by the Court under this Law shall have effect to the extent that it derogates from or infringes or purports to derogate from or infringe the rule of the law or custom of Sark relating to the partibility and division of Sark real property.

(2) Where the Court exercises any power under –

(a) Articles 46 and 47 for the securing of a gross or

periodic sum or other payment of money, or

- (b) Article 52 (power of Court to award particular priority to hypothèque),

in respect of Sark real property, it may direct that any order or declaration of the Court shall be registered on the public records of the island of Sark.

(3) The Court of the Seneschal may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, regulating and prescribing the manner in which an order or declaration of the Court

—

- (a) made in the exercise of a power under Articles 46, 47 or 52, and
- (b) in respect of which the Court makes a direction under paragraph (2),

may be registered on the public records of the Island of Sark.]

NOTE

Article 57A was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 5, with effect from 16th June, 2003.

[Power of Court to grant leasehold interest in Sark real property.]

57B. (1) Where a decree of divorce or nullity of marriage or a decree or pronouncement of judicial separation has been granted, the Court may, if it thinks fit, grant to a party to the marriage, a leasehold interest ("**a statutory leasehold interest**") in respect of all or part of any Sark real property which is vested —

- (a) jointly in that party and the other party, or
- (b) solely in the other party.

(2) A statutory leasehold interest shall create, as between the statutory lessor and the statutory lessee, the relationship of landlord and tenant of the property in respect of which it is granted –

- (a) at such rent or premium,
- (b) for such term, and
- (c) subject to such covenants, conditions and other matters,

as the Court may by order direct.

(3) Where a statutory leasehold interest is granted subject to a proviso or stipulation giving the statutory lessor a right of re-entry or forfeiture for breach of any covenant or condition, that right shall not be enforceable, except in accordance with the terms of an order of the Court.

(4) Where a statutory lessor applies for an order under paragraph (3), the statutory lessee may apply to the Court for relief; and the Court may grant or refuse the relief, as the Court, having regard to –

- (a) the proceedings and conduct of the parties, and
- (b) all other circumstances,

thinks fit.

(5) Where the Court decides to grant relief under paragraph (4), it may do so on such terms and subject to such conditions as it thinks fit.

(6) The Court may, at any time during which a party to the marriage is a statutory lessee –

- (a) upon the application of either party to the marriage,
- (b) upon such terms, and
- (c) subject to such conditions as it thinks fit,

by further order vary an order made under paragraph (2), where it appears to the Court just and equitable so to do.

(7) The Court of the Seneschal may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, regulating and prescribing the manner in which an order under paragraph (2) or (6) may be registered on the public records of the Island of Sark.

(8) In this Article and, insofar as concerns the meaning of "**Sark real property**", Article 57A, except where the context otherwise requires –

"freehold" has the same meaning as in the Real Property (Succession) (Sark) Law, 1999,

"Sark real property" means a tenement or a freehold,

"statutory leasehold interest" means a leasehold interest granted under paragraph (1) of this Article,

"statutory lessee" means a person lawfully entitled to possession of Sark real property in accordance with the terms and conditions of a statutory leasehold interest which is in force in respect of that real property,

"statutory lessor" means the lawful owner for the time being of Sark real property in respect of which there is in force a statutory leasehold interest, and

"tenement" has the same meaning as in the Real Property (Succession) (Sark) Law, 1999.]

NOTE

Article 57B was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 5, with effect from 16th June, 2003.

[Enforcement by wage arrest.]

57C. (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),

- [(aa) payment of a gross, or periodic, sum of money under Article 46,]
- (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
- (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.]

NOTES

Article 57C was inserted by the Matrimonial Causes (Guernsey) (Amendment) Law, 2003, Article 1, Schedule, paragraph 2, with effect from 18th December, 2003.

In Article 57C, paragraph (aa) of the definition of the expression "a relevant order" in paragraph (2) was inserted by the Matrimonial Causes (Guernsey) (Amendment) Law, 2019, section 3, with effect from 4th November, 2020.

The Ordonnance relative aux Gages d'Ouvriers¹⁰ has since been repealed by the Ordonnance relative à l'arrêt de Gages des Employés, 1933, with effect from 8th July, 1933.

[Power to remit arrears.]

57D. (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.]

NOTE

Article 57D was inserted by the Matrimonial Causes (Guernsey) (Amendment) Law, 2003, Article 1, Schedule, paragraph 2 with effect from 18th December, 2003.

PART IX

PRIVATE INTERNATIONAL LAW

Property subject to extraneous law.

58. In determining whether to make or decline to make an order or orders under Part VIII (entitled "Property and Contributions for Support") of this Law, respecting any property which, by reason of a marriage contract or other agreement, trust, arrangement or otherwise, is subject to the law of an extraneous jurisdiction, the Court shall have regard to the question of the legal effectiveness, outside the jurisdiction of the Court, of the order or orders which the Court might make.

Decrees in extraneous jurisdictions.

59. (1) A final decree of divorce made by a court of competent jurisdiction in an extraneous jurisdiction shall be recognised as a valid decree in the Bailiwick –

- (i) if the husband was domiciled in such extraneous jurisdiction when the proceedings resulting in such decree were instituted, or
- (ii) if the competent courts of the husband's domicile would recognise the decree as valid although the extraneous jurisdiction in which the decree was made was not the jurisdiction of the husband's domicile,

and a marriage contracted by either of the parties to a marriage so dissolved by divorce, whether before or after the commencement of this Law, shall not be deemed to have been or to be void or voidable by reason of the pre-existent marriage so dissolved by such divorce:

Provided that the proceedings in the forum of the decree did not, according to the principles of legal process in the Bailiwick, involve substantial injustice.

(2) Where the marriage was lawfully celebrated in the Bailiwick, a decree of nullity made by a court in an extraneous jurisdiction on the ground that some formality, not required by law in the Bailiwick, was not observed, shall not, except as a ground for the making of a decree in pursuance of Article 34 (entitled "Grounds for Decree of Nullity") of this Law, be recognised by the courts of the Bailiwick.

(3) A decree of judicial separation made by a competent court in

an extraneous jurisdiction in which the parties were either domiciled or resident when the proceedings resulting in such decree were instituted shall be recognised as valid in the Bailiwick.

NOTE

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 Article.

[Domicil—general provisions.]

60. (1) Subject to the provisions of paragraph (2) of this Article, a [person's domicil] of choice shall be taken to be the country or place in which, in the opinion of the Court, he has last resided with the intention of there having his settled home.

(2) Where it is necessary, for the purpose of giving effect to any provision in this Law, for the Court to recognise or decline to recognise the validity of a decree made by a court in an extraneous jurisdiction and a [person's domicil] is a relevant consideration for the Court, the [person's domicil] shall be taken to be the country or place in which, in the opinion of the Court, he resided with the intention of there having his settled home, when the proceedings resulting in the said decree were instituted.

(3) Unless the contrary is proved, the Court shall presume the

continuance of a proved domicil of origin or choice, as the case may be.

NOTE

In Article 60, and the heading thereto, the words in square brackets were substituted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, respectively section 1(h)(ii) and section 1(h)(i), with effect from 1st March, 1980.

[Abolition of wife's dependent domicil.]

60A. (1) Subject to the next succeeding paragraph, the domicil 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 domicil.

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

NOTES

Article 60A was inserted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(i), with effect from 1st March, 1980.

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 Article.

[Age at which independent domicile can be acquired.]

60B. 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.]

NOTE

Article 60B was inserted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(i), with effect from 1st March, 1980.

[Dependent domicile of child not living with his father.]

60C. (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.]

NOTE

Article 60C was inserted by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(i), with effect from 1st March, 1980.

PART X
MISCELLANEOUS

[Evidence in unopposed proceedings.]

60D. In any proceedings under this Law in which a petition for divorce, judicial separation or nullity of marriage is unopposed by the respondent and, where applicable, by the co-respondent or any other party to the proceedings, as the case may be –

- (a) the petitioner shall not be required by the Court to attend the hearing of the petition, and

- (b) an affidavit filed by or on behalf of the petitioner shall be accepted by the Court as unchallenged evidence upon which it may grant the decree or pronouncement sought,

unless the Court otherwise directs.]

NOTE

Article 60D was inserted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1997, Article 1, with effect from 6th October, 1997.

Evidence.

61. (1) The parties to any proceedings [in which adultery is alleged] and the husbands and wives of the parties shall be competent to give evidence in the proceedings.

(2) A witness who, in a matrimonial suit, has given evidence in disproof of adultery on his or her part, shall, if such adultery is a matter in issue in that suit, but not otherwise, be liable to be asked and be bound to answer questions put, in the course of that suit, tending to show that he or she has in fact [committed] such adultery.

NOTE

In Article 61, the words in the first and second pairs of square brackets were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, respectively Article 1(v)(i) and Article 1(v)(ii), with effect from 6th March, 1973.

Indecent Evidence.

62. In any proceedings under this Law in which any evidence of an indecent character is about to be tendered, the court before which the proceedings are taking place may, if the court thinks it necessary in the interest of the administration of justice or of public decency, direct that all or any persons, not being members or officers of the court or the parties to the case or other persons directly concerned in the case, shall be excluded from the court during the taking of that evidence.

Relief for Clergy of Church of England.

63. ...

NOTE

Article 63 was repealed by the Marriage (Bailiwick of Guernsey) Law, 2020, section 67, Schedule, with effect from 1st March, 2021.

Publication of Acts of Court, etc.

64. At the end of every calendar week, His Majesty's Greffier shall cause to be exhibited on a notice board in the vestibule of the Royal Court a tabular statement giving short particulars, in respect of that week's proceedings and records, of –

- (1) any Act of Court granting a decree of divorce, separation, nullity of marriage, or presumption of death and dissolution of marriage thereon, or making a temporary separation order,
- (2) any Final Order made under Article 12 (entitled "Decrees and Final Orders") of this Law,
- (3) any Order in Council such as is referred to in sub-paragraph (b) of paragraph (1) of the said Article 12,

- (4) any Declaration of Rescission of a judicial separation, made under Article 29 (entitled "Provisions regarding termination of separation" etc.) of this Law, and
- (5) any reversal or discharge of any such Act of Court.

The tabular statements provided for in this Article shall be exhibited in the manner hereby prescribed during one calendar week.

Regulation of reports.

65. (1) It shall not be lawful to print or publish, or cause or procure to be printed or published, in relation to any judicial proceedings for dissolution of marriage, for the separation of married persons, [or for nullity of marriage], any particulars other than the following –

- (a) the names, addresses and occupations of the parties and witnesses,
- (b) a concise statement of the charges, defences and countercharges in support of which evidence has been given,
- (c) submissions on any point of law arising in the course of the proceedings, and the decision of the court thereon,
- (d) the summing-up, the judgment of the court and observations made by members of the court in giving judgment:

Provided that nothing in this Article shall be held to permit the publication of any details or other matter likely to injure public morals.

(2) If any person acts in contravention of the provisions of this Article, he shall, in respect of each offence, be liable, on conviction, to a fine not exceeding [level 2 on the uniform scale] or to imprisonment for a term not exceeding six months, with or without hard labour, or to both such fine and imprisonment:

Provided that no person, other than a proprietor, editor, master printer or publisher of the newspaper or other vehicle of publication of the matter in respect of which a prosecution is instituted shall be liable to be convicted under this Article.

(3) Nothing in this Article shall apply to the printing of any pleadings, transcript of evidence or other document for use in connexion with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Court or of the Appeal Court or of His Majesty or of the Lords of His Privy Council; or to the printing or publication of any matter in any separate volume or part of any bona fide series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or in any publication of a technical character bona fide intended for circulation among members of the legal or medical professions.

NOTES

In Article 65,

the words in square brackets in paragraph (1) were substituted by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, Article 1(w), with effect from 6th March, 1973;

the words and figure in square brackets in paragraph (2) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

In accordance with the provisions of the Criminal Justice (Bailiwick of Guernsey) Law, 1979, section 2(2), with effect from 21st January, 1980, and subject to the provisions of section 2(3) of that Law, no person shall be

sentenced by a Court to imprisonment with hard labour and accordingly the power conferred under this Article shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before that date.

Use of English Language.

66. In all proceedings, whether oral or written, in pursuance of this Law or of any Ordinance or Rule of Court passed or made in virtue of this Law, any member of any Court and any party or person engaged or concerned in any such proceedings or giving evidence therein shall if he choose employ the English language.

Power of Royal Court to pass Ordinances.

67. [(1)] The Royal Court may pass such Ordinances as it deems necessary for giving effect to this Law.

[(2) Without prejudice to the generality of paragraph (1), an Ordinance may make provision prescribing the matters of which the Court shall, or may, take into account when exercising its powers under Article 43 and Part VIII of this Law.]

NOTES

In Article 67, first, paragraph (1) was renumbered and, second, paragraph (2) was inserted by the Matrimonial Causes (Guernsey) (Amendment) Law, 2019, section 4, respectively paragraph (a) and paragraph (b), with effect from 4th November, 2020.

In accordance with the provisions of the Reform (Guernsey) Law, 1948, Article 63, with effect from 17th January, 1949, the powers and functions of a legislative nature previously exercised by the Royal Court (save for the making, variation, modification and revocation of Rules of Procedure) were transferred to and vested in the States of Deliberation, and thenceforth any enactment conferring power on the Royal Court to exercise any such powers and functions by way of Ordinance shall be construed as having conferred the like power on the States of Deliberation or on the States Policy & Resources Committee, as the case may be.

Power of Court to award costs and impose penalties.

68. The powers exercisable at its discretion by the Royal Court, sitting judicially,

- (a) to award costs, and
- (b) to enforce compliance with its orders by the imposition of penalties and otherwise

shall be in like manner vested in and exercisable by the Court for Matrimonial Causes in respect of the jurisdiction of the last mentioned Court.

Costs and Court Fees chargeable.

69. (1) The Royal Court may by Ordinance determine the Costs and Court Fees to be chargeable in respect of proceedings taken and things done pursuant to or in. virtue of this Law.

(2) ...

(3) ...

NOTES

In Article 69, paragraph (2) and paragraph (3) were repealed by the Royal Court (Costs and Fees) (Guernsey) Law, 1969, section 2(1), Schedule, with effect from 1st November, 1969, subject to the saving in section 2(2) of the 1969 Law.

The following Ordinance has been made under Article 69:

Matrimonial Causes (Costs and Fees) Ordinance, 2002.

In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946, Article 4, with effect from 31st

August, 1946, Ordinances passed in pursuance of this Law by, as the case may be, the Royal Court, the States of Deliberation or the States Policy & Resources Committee shall not expire by effluxion of time but shall continue in force, subject to such variations and modifications thereof as may be made from time to time, until repealed.

In accordance with the provisions of the Reform (Guernsey) Law, 1948, Article 63, with effect from 17th January, 1949, the powers and functions of a legislative nature previously exercised by the Royal Court (save for the making, variation, modification and revocation of Rules of Procedure) were transferred to and vested in the States of Deliberation, and thenceforth any enactment conferring power on the Royal Court to exercise any such powers and functions by way of Ordinance shall be construed as having conferred the like power on the States of Deliberation or on the States Policy & Resources Committee, as the case may be.

In accordance with the provisions of the Fees, Charges and Penalties (Guernsey) Law, 2007, section 1, Schedule, with effect from 19th May, 2008, the power to prescribe by Ordinance the fees therein referred to and payable under this Law may be exercised by Regulation.

Amendment of Loi relative à la séparation de marié en police correctionnelle.

70. ...

NOTE

Article 70 was repealed by the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, section 37, Schedule 2, with effect from 5th December, 1989, subject to the transitional and savings provisions in section 38 of the 1988 Law.

Commencement.

71. (1) On the day on which this Law is registered on the Records of the Island of Guernsey, the undermentioned Articles and paragraph thereof shall come into operation, viz –

<i>Article</i>	<i>Title</i>	<i>Extent of Operation</i>
1	Definitions and Interpretation	The whole Article
2	Institution of Court for Matrimonial Causes and	" "

	Matters and Jurisdiction thereof		
4	Constitution of Court for Matrimonial Causes and Matters	"	"
6	Power of Royal Court to make Rules etc.	"	"
7	Poor Persons	"	"
21	Exclusion of Sark	"	"
67	Power of Royal Court to pass Ordinances	"	"
69	Costs and Court Fees chargeable	Paragraph (1) of the Article	
71	Commencement	The whole Article	
72	Short Title	"	"

(2) The Articles and paragraphs of this Law other than those specified in paragraph (1) of this Article shall come into operation on such day or days as the Royal Court by Ordinance appoints.

NOTES

The Law was registered on the Records of the Island of Guernsey and came into force in the Bailiwick of Guernsey on 12th July, 1939.

The Law, other than those Articles and paragraphs specified in paragraph (1) of this Article, were brought into force on 31st August, 1946 by the Matrimonial Causes Law (Guernsey), 1939, Commencement Ordinance, 1946.

The following Ordinance has been made under this Article:

Matrimonial Causes Law (Guernsey), 1939, Commencement Ordinance, 1946, Application to Sark Ordinance, 1946.

In accordance with the provisions of the Matrimonial Causes Law (Guernsey), 1939, Amendment Law, 1946, Article 4, with effect from 31st August, 1946, Ordinances passed in pursuance of this Law by, as the case may be, the Royal Court, the States of Deliberation or the States Policy &

Resources Committee shall not expire by effluxion of time but shall continue in force, subject to such variations and modifications thereof as may be made from time to time, until repealed.

Short Title.

72. This Law may be cited as the Matrimonial Causes Law (Guernsey), 1939.

NOTE

In the printed version of this enactment, the Law is styled the "Loi ayant rapport au divorce et à d'autres Causes Matrimoniales".

[SCHEDULE Articles 15(3), 22(1),
33(1) and 38

JURISDICTION IN RELATION TO MARRIAGE OF SAME-SEX COUPLES

1. This Schedule shall have effect with respect to the jurisdiction of the Court in the following proceedings in relation to the marriage of a same-sex couple –

- (a) proceedings for divorce, judicial separation or nullity of marriage, and
- (b) proceedings for the grant of a decree of presumption of death and of dissolution of marriage thereupon.

2. The Court shall have jurisdiction in divorce causes and matters under Part II, in any suit for judicial separation under Part III, or in suits for nullity of marriage under Part V, in relation to the marriage of a same-sex couple, if –

- (a) the condition in Article 15(1), 22(1) or 33(1) (as the case may be) is satisfied, or
- (b) the following conditions are met –
 - (i) the parties to the marriage married each other under the law of Guernsey, and
 - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case.

3. The Court shall have jurisdiction with regard to the granting of decrees of presumption of death and of dissolution of marriage thereupon, in relation to the marriage of a same-sex couple, if –

- (a) the condition in Article 38(1) is satisfied, or
- (b) the following conditions are met –
 - (i) the parties to the marriage married each other under the law of Guernsey, and
 - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case.]

NOTE

The Schedule was inserted by, first (in relation to Guernsey), the Same-Sex Marriage (Guernsey) Law, 2016, section 5, Schedule, paragraph 9, with effect from 2nd May, 2017, second (in relation to Alderney), the Same-Sex Marriage (Alderney) Law, 2017, section 5, Schedule, paragraph 9, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Sark) Law, 2020, section 5, Schedule, paragraph 9, with effect from 23rd April, 2020.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 8, with effect from 6th May, 2004.

² The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Children Board and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 8, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

³ Previously, collective title provisions were made by the Matrimonial Causes (Amendment) (Guernsey) Law, 1957, section 3, with effect from 12th December, 1957; the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 8, with effect from 1st March, 1980; the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, section 5, with effect from 6th March, 1973; the Matrimonial Causes (Amendment) (Guernsey) Law, 1990, section 5, with effect from 23rd April, 1990; the Matrimonial Causes (Amendment) (Guernsey) Law, 1997, section 3, with effect from 6th October, 1997; the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, section 3, with effect from 16th June, 2003.

⁴ Prior to its substitution, Article 4 was amended by the Matrimonial Causes Law (Guernsey) 1939, Amendment Law, 1946, Article 3, with effect from 2nd August, 1946.

⁵ Prior to this substitution, Article 15 was amended by the Matrimonial Causes (Amendment) (Guernsey) Law, 1972, section 1(j), with effect from 6th March, 1973.

⁶ Prior to its substitution, Article 16 was modified by the Matrimonial Causes Law (Guernsey) 1939, Amendment Law (No. 2), 1946, with effect from 29th March, 1947.

⁷ Prior to its repeal, Article 21 was amended by the Domicil and Matrimonial Causes (Amendment) (Bailiwick of Guernsey) Law, 1979, section 1(c), with effect from 1st March, 1980.

⁸ Prior to its repeal, Article 43A was amended by the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, section 37, Schedule 2, with effect from 5th December, 1989, subject to the transitional and savings provisions in section 38 of the 1988 Law.

⁹ Prior to its substitution, paragraph (1) was amended by the Matrimonial Causes (Amendment) (Guernsey) Law, 1990, respectively Article 1, with effect from 23rd April, 1990, subject to the provisions of Article 2 of the 1990 Law; the Matrimonial Causes (Amendment) (Guernsey) Law, 2002, Article 1, Schedule, paragraph 3, with effect from 16th June, 2003.

¹⁰ Recueil d'Ordonnances Tome III, p. 459 & Tome IV, p. 10; the Ordinance was made on 25th August, 1860, renewed at Chief Pleas after Michaelmas, held on 1st October, 1860 and renewed at Chief Pleas after Easter, held on 13th April, 1863.