

ORDER IN COUNCIL

VIII

1972

ratifying a Projet de Loi

ENTITLED

The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972

(Registered on the Records of the Island of Guernsey
on the 27th day of June, 1972.)



1972.

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 27th day of June, 1972, before John Henry Loveridge, Esquire, C.B.E., Deputy Bailiff; present:—Bertram Guy Blampied, Esquire, O.B.E., Claude Fortescue Nason, Stanley Walter Gavey, Esquires, Gilbert Carey de Jersey, Esquire, C.B., Laurence Francis de Vic Carey, Esquire, C.B., C.B.E., William Burton Fox, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Jean Le Pelley, Walter Francis Robin, Richard Alan Kinnersly, Esquires and Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 24th day of May, 1972, ratifying a *Projet de Loi* entitled "The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 24th day of May 1972

PRESENT,

The Queen's Most Excellent Majesty

LORD PRESIDENT

LORD BALNIEL

MR. WOOD

MR. WYLIE

LORD EMSLIE

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 16th day of May 1972, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That in pursuance of their Resolution of the 24th day of November 1971 the States of Deliberation at a meeting held on the 28th day of January 1972 approved a Bill or “Projet de Loi” entitled “The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972”, which Bill is designed to apply to the Bailiwick of Guernsey, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 22nd day of March 1972 considered the said Bill or “Projet de Loi” when a Resolution was

passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 5th April 1972 considered the said Bill or "Projet de Loi" when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972" and to order that the same shall have force of law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. Agnew

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972

THE STATES, in pursuance of their Resolution of the twenty-fourth day of November, nineteen hundred and seventy-one, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Decrees of divorce and judicial separation granted in the British Islands

1. Subject to section eight of this Law, the validity of a decree of divorce or judicial separation granted after the commencement of this Law shall, if it was granted under the law of any part of the British Islands, be recognised in the Bailiwick.

Recognition in the Bailiwick of divorces and judicial separations granted in the British Islands.

Overseas divorces and legal separations

2. Sections three to five, both inclusive, of this Law shall have effect, subject to section eight of this Law, as respects the recognition in the Bailiwick of the validity of overseas divorces and legal separations, that is to say, divorces and legal separations which—

Recognition in the Bailiwick of overseas divorces and legal separations.

- (a) have been obtained by means of judicial or other proceedings in any country outside the British Islands; and
- (b) are effective under the law of that country.

Grounds for
recognition.

3. (1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained—

(a) either spouse was habitually resident in that country; or

(b) either spouse was a national of that country.

(2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, paragraph (a) of subsection (1) of this section shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, the foregoing provisions of this section (except those relating to nationality) shall have effect as if each territory were a separate country.

Cross-
proceedings
and divorces
following
legal
separations.

4. (1) Where there have been cross-proceedings, the validity of an overseas divorce or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if the requirements of paragraph (a) or paragraph (b) of subsection (1) of section three of this Law are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.

(2) Where a legal separation the validity of which is entitled to recognition by virtue of the provisions of section three of this Law or of subsection (1) of this section is converted, in the country in which it was obtained, into a divorce, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

5. (1) For the purpose of deciding whether an overseas divorce or legal separation is entitled to recognition by virtue of the foregoing provisions of this Law, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall—

Proof of facts relevant to recognition.

- (a) if both spouses took part in the proceedings, be conclusive evidence of the fact found; and
- (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section “finding of fact” includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained; and for the purposes of paragraph (a) of subsection (1) of this section, a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

General Provisions

6. This Law is without prejudice to the recognition of the validity of divorces and legal separations obtained outside the British Islands—

Certain existing rules of recognition to continue in force.

- (a) by virtue of any rule of law relating to divorces or legal separations obtained in the country of the spouses’ domicile or obtained elsewhere and recognised as valid in that country;
- (b) by virtue of any enactment other than this Law;

but, save as aforesaid, no such divorce or legal separation shall be recognised as valid in the Bailiwick except as provided in this Law.

Non-
recognition
of divorce
by third
country no
bar to re-
marriage.

7. Where the validity of a divorce obtained in any country is entitled to recognition by virtue of the foregoing provisions of this Law or by virtue of any rule or enactment preserved by section six of this Law, neither spouse shall be precluded from re-marrying in the Bailiwick on the ground that the validity of the divorce would not be recognised in any other country.

Exceptions
from
recognition.

8. (1) The validity of—

- (a) a decree of divorce or judicial separation granted under the law of any part of the British Islands; or
- (b) a divorce or legal separation obtained outside the British Islands;

shall not be recognised in any part of the Bailiwick if it was granted or obtained at a time when, according to the law of that part of the Bailiwick (including its rules of private international law and the provisions of this Law), there was no subsisting marriage between the parties.

(2) Subject to subsection (1) of this section, recognition by virtue of this Law or of any rule preserved by section six thereof of the validity of a divorce or legal separation obtained outside the British Islands may be refused if, and only if—

- (a) it was obtained by one spouse—
 - (i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or
 - (ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in

the proceedings as, having regard to the matters aforesaid, he should reasonably have been given; or

- (b) if its recognition would manifestly be contrary to public policy.

(3) Nothing in this Law shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

9. In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

Interpretation.

“the Bailiwick” means the Bailiwick of Guernsey;

“country” includes a colony or other dependent territory of the United Kingdom but for the purposes of this Law a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law.

10. The provisions of this Law relating to overseas divorces and legal separations and other divorces and legal separations obtained outside the British Islands apply to a divorce or legal separation obtained before the date of the commencement of this Law as well as to one obtained on or after that date and, in the case of a divorce or legal separation obtained before that date—

Transitional provisions.

- (a) require, or, as the case may be, preclude, the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time; but

- (b) do not affect any property rights to which any person became entitled before that date or apply where the question of the validity of the divorce or legal separation has been decided by any competent Court in the British Islands before that date.

Citation.

11. This Law may be cited as the Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972.

R. H. VIDELO,

Her Majesty's Greffier.