

## Family Law in Jersey

### Introduction

This Briefing is intended to provide answers to some of the key questions that you may have regarding family law proceedings in Jersey. A glossary of terms is to be found at the back of this Briefing.

### Should I consult a lawyer?

If you have relationship problems, you may first want to consider the facilities offered by Relate (2 Charles House, Charles Street, St Helier, (01534) 734980; e-mail: [relate.jersey@jerseymail.co.uk](mailto:relate.jersey@jerseymail.co.uk); [www.relatejersey.com](http://www.relatejersey.com)). Relate work as counsellors and therapists with both couples and individuals, married, unmarried, gay and lesbian.

The Jersey Family Mediation Service (2<sup>nd</sup> Floor, 2 Charles House, Charles Street, St Helier, (01534) 638898; e-mail: [info@jerseyfamilymediation.org.uk](mailto:info@jerseyfamilymediation.org.uk); [www.jerseyfamilymediation.org.uk](http://www.jerseyfamilymediation.org.uk)) can assist separating/divorcing parents who are having difficulty in agreeing arrangements for their children. The service provides a neutral place where both parents can meet and offers impartial fair mediators who will help you negotiate issues relating to children.

If you are a victim of domestic violence, incidents can be reported to the family protection team at the States of Jersey Police on (01534) 612239. However, in an emergency, telephone 999. The team will work with any domestic violence victim sensitively to ensure that he or she is protected and, where appropriate, that charges are brought against the perpetrator of the abuse. If you are a woman who has been a victim of physical and mental abuse, you can contact the Women's Refuge (08007 356836 which is a free line or, alternatively, (01534) 768368); you will not be forced to leave a violent or controlling partner, but the Refuge will work with you through their outreach workers until you feel strong enough to break away.

### Separation

If you decide that you are unable to resolve your differences, you may wish to separate on a trial basis or you may feel that your separation should be made permanent. In the event that you do not wish to commence divorce proceedings or divorce proceedings cannot be commenced because there are no grounds, you may enter into a separation agreement to record the separation with a view to a divorce. Spouses may also reach agreement with respect to the children and certain financial issues; if that is the case, the terms of the separation agreement could be incorporated into a draft consent order for the court's approval at the time of the divorce. However, the court must be satisfied that the agreement is fair and reasonable in the circumstances of the parties.

If matters relating to any children cannot be agreed in a separation agreement, or if divorce proceedings are not appropriate, an application can be made to the court under the Children (Jersey) Law 2002 for an order in respect of financial provision for a child, or for an order providing with which parent a child should reside and for contact with the other parent. The court also has powers to make certain other orders with respect to children in family proceedings.

Separation and maintenance proceedings in the Petty Debts Court may be considered if your spouse fails to provide reasonable maintenance for you and/or for any child of the marriage and the court may make an order for such provision. These proceedings may also be relevant where both parties to the marriage are tenants of the matrimonial home. The court can order a party to vacate the home and for the tenancy to be transferred into the other party's sole name.

## Divorce

Except in cases of exceptional hardship, divorce proceedings cannot be commenced until after the parties have been married for three years. Proceedings are issued by way of a divorce petition and the person seeking the divorce is known as the petitioner; the other spouse is known as the respondent. The petitioner may issue divorce proceedings on any of the following five grounds:

1. The parties have lived apart for a continuous period of at least one year and the respondent consents to the divorce.
2. The parties have lived apart for a continuous period of at least two years; no consent is required from the respondent.
3. The respondent has committed adultery and the petitioner finds it intolerable to live with the respondent. The person with whom the adultery has been committed is named as a co-respondent in the proceedings.
4. The respondent has deserted the petitioner without cause for at least two years.
5. Unreasonable behaviour.

A divorce petition may also be presented to the court on the ground that:

1. the respondent is incurably of unsound mind and has been continuously under care and treatment for at least five years; or
2. the respondent is serving a prison sentence for life or for a term of not less than fifteen years.

Where we are instructed to issue divorce proceedings, we will require your original marriage certificate (which is sent to the court with the divorce petition and not returned) and copies of your children's birth certificates.

If there are children of the family, a statement of arrangements for those children must be completed.

Once the court has received the divorce proceedings, they will be served on your spouse as respondent and, if applicable, on the co-respondent. You will therefore need to provide us with up to date address(es) and, dependent upon the method of service of the divorce papers, a physical description or photograph of your spouse (and the co-respondent, if applicable).

Once proceedings have been served (and provided your spouse does not defend the divorce), we will be able to put your case on the next list of undefended divorces (there are normally six a year). The petitioner does not have to attend court on the hearing date when a *decree nisi* will be obtained. This is the first stage of the divorce and you will not be divorced until you have received the *decree absolute*, which can be obtained, at the earliest, six weeks after the *decree nisi*, although it may be delayed until all issues relating to the children and other financial matters have been resolved.

## Judicial Separation

If you are unable to commence divorce proceedings because you have not been married for the requisite three years, you may commence proceedings for a judicial separation on any of the grounds for divorce or on the ground that the respondent is an habitual drunkard. However, upon the hearing date, you will obtain a decree of judicial separation as opposed to a *decree nisi*, of divorce. Once you have been married for three years, you may commence divorce proceedings on the same ground upon which you obtained a judicial separation which will be sufficient proof of the ground on which it was granted.

## Financial Issues

All financial issues, including: maintenance for the children, maintenance for your spouse, transfer or division of matrimonial assets, must be either agreed or resolved by the court.

In order to advise you on a proposed agreement or in order for the court to reach a decision on financial issues, you and your spouse will need to complete an affidavit of means which is a document sworn on oath setting out income, expenses, assets and liabilities. This procedure is called obtaining full and frank disclosure.

The parent who does not have the day-to-day care of the children must pay maintenance for the children. This is a contribution towards all living expenses, education, clothing and other expenses of the children.

A spouse may also be entitled to maintenance for herself/himself and this will mainly depend on her/his employment position.

Factors relevant to financial issues generally will be:

- Income, earning capacity, property value and other financial resources of each spouse.
- The financial needs, obligations and responsibilities of each spouse.
- Standard of living enjoyed by the family prior to the breakdown of the marriage.
- The age of each spouse.
- Length of the marriage.
- Contributions (financial or otherwise) made by each spouse.

Behaviour of either spouse will only be considered if the court believes that it is so serious that it should affect the division of assets.

It is essential that both parties make full and frank disclosure of all financial matters in order to ensure a fair division of assets in settlement of the divorce. If you decide that you do not wish to proceed in this way then we will not be in a position to be able to advise you as to whether any agreement reached is reasonable. In any event, the court must approve the agreement (whether or not full and frank disclosure has been made), before issuing an order in confirmation of the agreement entered into between the parties. If you are unable able to agree financial issues, then the court will make an order as it sees fit in the circumstances.

## Children

Children are "children of the marriage" if they are born during the marriage of both spouses. "Children of the family" are children of one spouse born before the marriage and who have been "accepted" by the other spouse on marriage as a child of the family.

"Parental responsibility" is a term used to describe the rights of a parent, enabling him/her to have a say in the manner in which his or her children are brought up, what religion they should follow, what school they go to etc.. A mother automatically has parental responsibility, as does a father who was married to a child's mother when the child was born.

The parent with the day-to-day care of a child is described as having "residence"; if this cannot be agreed then the court may make an order stating with whom the child shall live. A residence order lasts until the child reaches the age of sixteen. Residence can be "shared".

"Contact" is the right of the child, where the parents are separated, to know the non-residential parent and his brothers and sisters. There are no set rules about how much contact there should be; it will depend on all the circumstances of the case.

As stated above, maintenance is payable for the children by the parent who does not have residence of the children and the level of maintenance will depend on the financial situation of both spouses and the needs of the children.

## Court Procedure

As stated above, the petitioner in undefended divorce proceedings does not have to attend court to obtain a *decree nisi*. The *decree absolute* is obtained by filing an application and no court attendance is required. However, the parties must expect to attend court if matters relating to the children or financial issues cannot be agreed between them.

An affidavit is a document sworn on oath before an advocate or solicitor of the Royal Court of Jersey and the contents must therefore be absolutely correct and true. It is similar to giving evidence in court. A spouse will have to swear an affidavit stating that the contents of the divorce petition and statement of arrangements for children are true when the divorce is set down for hearing, and also an affidavit of means in respect of financial circumstances. Essential documentation which you will be required to provide in support of your affidavit of means include property, pension and insurance policy valuations, tax assessments, bank statements, wage slips etc.. It is therefore important to keep as much documentation as you can to support your claims; in addition to the above essential documents, these can be receipts for expenses you allege you have, letters, diary records etc..

## Illegitimate Children

An illegitimate child is a child born of non-married parents. The mother of an illegitimate child automatically has parental responsibility, but a father does not automatically have parental responsibility if he was not married to the child's mother when the child was born; however, he may acquire it either by entering into a parental responsibility agreement with the mother or by obtaining a parental responsibility order through the court.

The father may have contact with the child and, if agreement cannot be reached with the mother, then he may apply to the court for a contact order; the welfare of the child is the court's paramount consideration in the event of any dispute.

If there is a dispute over the identity of the father of the child, DNA tests can be carried out to ascertain paternity; blood samples are taken from the mother, child and alleged father.

In the event that the mother subsequently marries the father of the child, the child will be legitimated by the marriage and will thereafter be treated as a child of the marriage.

A child born or conceived during the subsistence of a valid marriage is a legitimate child and the husband of the mother is presumed to be the father of the child. This effectively means that a child conceived before a *decree absolute* of divorce is obtained will be presumed a legitimate child of the husband, even if the mother and her husband have been separated for a long time. This presumption can be rebutted on certain grounds and proceedings before the court will be necessary to ensure that the husband is not legally the father of the child. The child would then become an illegitimate child, until legitimated by subsequent marriage.

## Glossary

**Petitioner:** the person who issues divorce proceedings.

**Respondent:** the person who is on the receiving end of divorce proceedings, ie the spouse who does not issue the proceedings.

**Co-respondent:** the person with whom the respondent has committed adultery.

**Decree nisi:** the end of the "first stage" of a divorce. You will not be divorced at this stage.

**Decree absolute:** the "final stage" of the divorce; you will be divorced, no longer your former husband's/wife's spouse and will be free to re-marry. A *decree absolute* is obtained by a simple application to the court made by the lawyer acting for the petitioner 6 weeks after the *decree nisi*. In cases involving children, or where financial matters are outstanding, the court may not grant the *decree absolute* until such time as the outstanding issues have been resolved.

**Maintenance:** is payable by a spouse to the parent with whom the children reside or to a spouse who cannot maintain herself/himself.

**Matrimonial assets:** any property (house, bank accounts, investments, motor vehicles, furniture, etc.) acquired during the marriage by either spouse.

**Affidavit:** a document sworn on oath before an advocate or solicitor of the Royal Court of Jersey which is equivalent to giving evidence on oath in court. An affidavit of means will set out your financial position.

**Spouse:** a husband is the wife's spouse and the wife is the husband's spouse until a *decree absolute* is granted by the Royal Court of Jersey, even if there is a period (of whatever length) of separation.

**Draft consent order:** is an agreement reached between the parties which is sent to the court for approval.

**For further information in relation to the above, please contact:**

**Anthony Robinson**  
T +44 (0) 1534 814782  
anthony.robinson@bedellgroup.com

**Julie Baudains**  
T +44 (0) 1534 814786  
julie.baudains@bedellgroup.com

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