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STATES OF JERSEY

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Report

The Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000 was enacted at the end of last year. At present Article 4(3) of the Matrimonial Causes (Jersey) Law 1949, as amended (“the 1949 Law”) empowers the Royal Court to delegate the hearing of certain matrimonial matters to the Judicial Greffier. The amending Law replaces this with a power to make Rules of Court authorising the Judicial Greffier to exercise powers and to discharge functions of the Court under such Articles of the 1949 Law as the Rules may prescribe and under the proviso to Article 5 of the Separation and Maintenance Orders (Jersey) Law 1953, as amended. The proviso will be mentioned later in this Report.

The background to this reform was set out in the Report accompanying the relevant *projet de loi*. It read as follows -

“Present System

Ever since the introduction of a divorce Law in Jersey, it has been necessary for the petitioner to apply to the Royal Court for a decree nisi, which, after the expiry of six weeks, may be made absolute. Except in cases of divorce on the ground of separation and consent, the petitioner must still appear in person before the Royal Court and give evidence on oath in order to obtain a decree.

The need for change

It is considered, on balance, that it is unnecessarily stressful to require petitioners to appear before a public Court in order to obtain a decree which could be obtained by application to the Judicial Greffier, which applications will in practice be determined by the Greffier Substitute known as the Registrar of the Family Division.

The contrary argument, that divorce is a serious matter involving a change of status, which should be applied for to a court of law, is acknowledged. However, in practice, the Court is not asked to make any analysed judgment of fact or law. Provided the papers are in order, it grants the decree. In the rare case that the papers are incomplete, it postpones the case until they are satisfactory.

The Royal Court, in common with the Registrar, is of the view that applications for a decree nisi should be able to be dealt with by the Judicial Greffier.

Apart from other considerations, this would release some 6 days a year, which the Royal Court at present sets aside for these matters, for hearing more urgent cases and other business.

The possibility that the Judicial Greffier should have power to grant decrees of divorce was discussed by the Jersey Judicial and Legal Services Review Committee in their second interim report which was presented to the States on 23rd October 1990. Section 6.45 contained, amongst other things, the recommendation that the Judicial Greffier be granted -

“power to pronounce decrees of dissolution of marriage in undefended divorce cases. [This] would reduce the demands upon the time of the Royal Court.”

Proposed new procedure

It is proposed -

- (a) no longer to require petitioners and/or their advocates to be present in Court to obtain a decree nisi; and
- (b) to abolish Court sessions for the pronouncement of decrees nisi other than a nominal calling of the parties’ names and the possibility of dealing with costs.

Instead, the Registrar will review the papers, only issuing the Greffier’s Certificate if he is satisfied that a decree nisi of divorce can be obtained by the petitioner on the basis of the documents filed. A list will be prepared of the cases ready to proceed. If the Registrar has any doubts about any particular case, he will be able to request further information, or otherwise refer the case to the Court. If he is satisfied that the case is ready to proceed, a decree nisi of divorce will be issued in open court on the date for which it was listed.

The following would remain the same -

- The system of converting a decree nisi into a decree absolute after six weeks.

- The filing of a petition and supporting affidavit.
- The issue of the Greffier's Certificate.
- The listing process of cases ready to proceed undefended.

The Registrar would also be empowered to deal with the matter of costs.”

In order to implement the above, the Matrimonial Causes (Amendment No. 7) (Jersey) Rules 2001 were enacted by the Superior Number of the Royal Court on 6th September 2001 and contain provisions setting out the Articles of the 1949 Law under which the exercise of powers and the discharge of the functions of the Court are to be vested in the Judicial Greffier (in practice the Registrar). Also to be vested in him is the power of the Court under the proviso to Article 5 of the Separation and Maintenance Orders (Jersey) Law 1953, as amended, to direct the Petty Debts Court to re-hear and determine proceedings in that Court in cases where there is an ‘overlap’ in proceedings instituted in both Courts, and where the Petty Debts Court is the appropriate forum.

The Rules also set out the documentation to be filed with the application for a Greffier's Certificate and the text of the relevant Forms and affidavits in connection with the hearing of undefended causes.

The Rules go on to set out in detail the procedure to be followed by the Greffier/Registrar in hearing evidence and certifying (or not) that the contents of the petition have been proved, and in pronouncing the decree nisi in open Court and awarding costs (if any).

This Appointed Day Act in respect of the Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000 appoints 15th November 2001 as the date for the coming into force of that Law, which is the same date as the Rules enacted by the Superior Number are to come into force.

This draft Act has no implications for the financial or manpower resources of the States.

Explanatory Note

The purpose of this Act is to appoint 15th November 2001 as the day for the commencement of the Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000 which was adopted by the States on 4th April 2000 (P.28 of 2000).

The Law provides a power for rules of court to authorize the Judicial Greffier to exercise certain functions of the court as prescribed by the rules. Draft Rules have now been prepared which, in essence, enable the Judicial Greffier to pronounce decrees in undefended divorces. These Rules are to be made by the Royal Court to come into force on the same date as the Law.

Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000

MATRIMONIAL CAUSES (AMENDMENT No. 10) (JERSEY) LAW 2000 (APPOINTED DAY) ACT 2001

(Promulgated on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, in pursuance of Article 2(2) of the Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000 ^[1] have made the following Act -

1. The Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000 shall come into force on the fifteenth day of November 2001.

2. This Act may be cited as the Matrimonial Causes (Amendment No. 10) (Jersey) Law 2000 (Appointed Day) Act 2001.

^[1] Recueil des Lois, Volume 2000, page 820.