

STATES OF JERSEY



DRAFT MARRIAGE AND CIVIL PARTNERSHIP (DISSOLUTION AND SEPARATION) (JERSEY) LAW 202- (P.85/2025): COMMENTS

**Presented to the States on 21st November 2025
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Children, Education and Home Affairs Scrutiny Panel (the 'Panel') welcomed receiving a briefing on 26th September 2025 about the Draft Marriage and Civil Partnership (Dissolution and Separation) (Jersey) Law 202- (the 'draft Law') in advance of lodging.

The Panel was advised that the purpose of the Proposition was to act on a previous States decision from 2015, which agreed, in principle, to the concept of a "no fault" divorce. The terminology used in the draft Law (other than the title) uses the phrase "dissolution" rather than "divorce", which aligns with the Civil Partnership legislation. The Panel was advised that the Covid-19 pandemic had pushed back the legislative development process, which was why the changes to legislation had not been brought to the Assembly sooner.

In summary, the draft Law will:

- repeal the current divorce legislation, namely, the Matrimonial Causes (Jersey) Law 1949 (the '1949 Law');
- repeal the Recognition of Divorces and Legal Separations (Jersey) Law 1973; and
- amend twenty-one other pieces of legislation, most notably Part 3 and Part 4 of the Civil Partnership (Jersey) Law 2012 (the '2012 Law').

These changes will modernise the legislative provisions in place for the dissolution of a marriage or civil partnership and, also, provide for scenarios such as legal separation, annulment, orders presuming death of a party to a marriage or civil partnership and matters relating to financial provision.

Changes proposed

It was emphasised to the Panel during the briefing that the draft Law was not intended to undermine the legal union of a marriage or civil partnership but, instead, was to help with the ending of the legal union in a way that would not create additional stress for the involved parties due to process and lengthy procedure.

The most significant changes proposed by the draft Law are summarised below:

Removal of the time bar

If the draft Law is approved there will be no minimum time period for the duration of a marriage or civil partnership before a dissolution can be applied for. The current laws (the 1949 Law and the 2012 Law) required a three-year time period before filing for divorce or dissolution, with some exceptions for a shorter time period. However, the Panel was advised that the threshold for the exceptional circumstances was high, for example, evidence of abuse was not sufficient in many cases.

The Panel sought assurance that the removal of a time bar before dissolution of a marriage or civil partnership would not create situations where people could get a marriage or civil partnership under false pretences and was advised that there were robust processes already in place before the marriage or civil partnership took places where this point was checked.

It was detailed that the current three-year time period was higher than in other jurisdictions (a table detailing comparisons with other jurisdictions is provided in Appendix 1 to the report accompanying the proposition).

Whilst the draft Law removes the time bar for applying for a dissolution, it is noted that a two-stage process will be retained. The current 1949 law has a two-stage process for divorce. The initial stage is known as the “decree nisi” and the final stage is the “decree absolute”. For the dissolution of a marriage the terms will be updated to be consistent with the 2012 Law and known as a “conditional order” and a “final order”. A dissolution order under the draft Law would initially be a “conditional order”, and this would only become a “final order” after either a period of at least six months, or at a date decided by the court. Therefore, even though there is an ability to apply immediately for a dissolution, there is a time period where financial matters can be settled before a final order is made, or if an application is made for the conditional order to be revoked.

Application

The current law only allows the application for a divorce or dissolution to be made by one party, even if the decision has been made jointly by a couple. The draft Law changes this by permitting a joint application for the dissolution of a marriage or civil partnership, or both parties could file individually. The Panel was advised that the changes proposed would provide better flexibility and help to create a more conciliatory process.

It was explained that the draft Law will remove the ability for another party to contest the dissolution application, which was in line with legislation in other jurisdictions. It was explained that this would be beneficial in scenarios where domestic abuse or coercive control was a factor in the relationship, where if the dissolution was contested, could create more trauma for the victim.

In response to Panel queries it was confirmed that the court fees charged for application for a dissolution order were being reviewed and these would be brought forward before the draft Law was enacted.

Introduction of a no-fault divorce

Divorce or dissolution currently required ‘grounds’ or reasons for ending the legal relationship. Whilst grounds are still required for the annulment of a marriage, the draft Law does not require them to be listed for the application of a dissolution order. Additionally, there is no longer a requirement for a period of separation, which was previously necessary when no other grounds for divorce were established.

Furthermore, where there are currently fault-based grounds for divorce or dissolution, certain terms, such as ‘unreasonable behaviour’ or ‘unsound mind’, are not necessarily considered appropriate in modern culture or language. Removal of these terms will help to reduce conflict and blame, while promoting respect, mental well-being and dignity for all parties involved.

Alternative dispute resolution services

The draft Law introduces the ability for the court to defer proceedings and refer couples to “alternative resolution services”, in certain circumstances, for example, around financial matters or provisions for children. It was explained to the Panel that this was not a service intended or aimed at reconciliation between the couple, but is a way to support mediation and, where possible, avoid litigation. The court would also have the ability to decide the allocation of costs for this service between the parties.

Interim Occupation Orders

If approved, the draft Law will provide the ability to make an interim occupation order, which would permit the court to make decisions about living arrangements in scenarios where this might be contested or create conflict. For example, the court may provide for one party to the marriage or partnership the right to remain in accommodation for specific reasons, for example, if the home had specific adaptations for their needs or mobility and / or if one of the parties did not have Jersey residency and would find it difficult to get suitable accommodation elsewhere.

It also provides a further protection for children. For example, the court may specify that the children should remain in the family home with one of their parents. Article 34 provides the court with various other provisions and conditions it can consider as part of the interim occupation Order. For example, requiring the non-occupying party to leave the dwelling with permission to visit, or not. Furthermore, it can require the occupying party to ensure the safety and security of the dwelling and its contents.

It was explained to the Panel that this provision would be helpful in scenarios where there were differences in the financial, residential status, or conduct of the parties to the marriage or civil partnership and if these were relevant to the circumstances of the dissolution. The interim occupation order would remain in place until the time agreed by the court.

It was acknowledged in the briefing to the Panel that this would be a new power in Jersey, but that it was a mechanism that existed in other jurisdictions such as England.

Domicile

Before the repeal of Article 77A of the Marriage and Civil Status (Jersey) Law 2001, in 2023 it was customary law that a wife’s domicile followed that of her husband. The 1949 Law and the 2012 Law each required both parties to be domiciled in Jersey. However, now as a couple in a legal union may now have different domiciles, the draft Law reflects this by requiring one of the parties to be domiciled in Jersey.

The Panel was assured that the court rules will have discretion and be used to manage any potential misuse of this.

No changes to pension sharing at this time

One of the major aspects that has not been included in the draft Law is related to pension sharing. The Panel was advised that this was excluded due to the fact that incorporating its complexity into the dissolution legislation would have extended the timeframe for the draft Law further as significant further work was required.

However, the draft Law does include specific provisions which will codify existing practices for lump sum payments for pensions and also provides powers to the Minister for Justice and Home Affairs to introduce pension sharing arrangements to the law in future.

Timeframe and next actions

The Panel notes that commencement of the draft Law can be made in due course by Ministerial Order. However, further work is required in the interim to develop updated Court Rules and in relation to the review of court fees and costs.

Conclusion

The Panel is supportive of the draft Law and welcomes the development of this legislation after initial consultation in 2015. The Panel notes the commentary about further work being required to consider future pension sharing arrangements. Whilst the Panel understands that this is not possible to complete during this term of Government, it notes that it will be something for a future Government to consider and schedule on their legislative programme of work.