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by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

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REPORT

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 judgement 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.

Legislative changes necessary

Article 3 of the Matrimonial Causes (Jersey) Law 1949 will be amended, in accordance with the accompanying draft, to provide the Judicial Greffier with the necessary power to pronounce decrees of divorce.

Consequential amendments will thereafter have to be made to the Matrimonial Causes (General) (Jersey) Rules 1979.

Capabilities of the Judicial Greffe to cope with the demand

In 1998 a total of 327 decrees nisi were granted. Whilst being an added responsibility, the Judicial Greffe has the duty to provide these divorce decrees in any event, and if the new system were to be introduced, the Registrar could prepare for the production of divorce decrees at any time convenient to him. In the long run, the new system could provide a smoother system of working at the Judicial Greffe. There are no additional resource implications.

Explanatory Note

This Law replaces the power in Article 4(3) of the Matrimonial Causes (Jersey) Law 1949 for the Royal Court to delegate the hearing of certain matrimonial matters to the Judicial Greffier, with a power for rules of court to authorize the Judicial Greffier to exercise such powers or to discharge such functions of the court under this Law or under the proviso to Article 5 of the Separation and Maintenance Orders (Jersey) Law 1953, as amended, in relation to such proceedings as the rules may prescribe.

(The reference to officers of the Judicial Greffe has been removed because there is already power in the Departments of the Judiciary and Legislature (Jersey) Law 1965 for any sworn member of the Judicial Greffe to discharge the functions of the Greffier. The proviso to Article 3(4) of the 1949 Law has also been removed because it is no longer used in practice as there is already power in rules for the court or Greffier to order or refuse to order a stay).

MATRIMONIAL CAUSES (AMENDMENT No. 10) (JERSEY) LAW 200-

A LAW to amend further the Matrimonial Causes (Jersey) Law 1949; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

For paragraphs (3) and (4) of Article 3 of the Matrimonial Causes (Jersey) Law 1949, as amended^[1] (hereinafter referred to as “the principal Law”) there shall be substituted the following paragraphs -

“(3) Rules of court may make provision authorizing the Judicial Greffier to exercise such powers or to discharge such functions of the court under this Law or under the proviso to Article 5 of the Separation and Maintenance Orders (Jersey) Law 1953, as amended, as may be prescribed in relation to such proceedings as may be prescribed.

(4) Any order made or direction given by the Judicial Greffier in pursuance of rules of court made under paragraph (3) of this Article shall be subject to appeal in the first instance to the court.”.

ARTICLE 2

(1) This Law may be cited as the Matrimonial Causes (Amendment No. 10) (Jersey) Law 200- and this Law and the principal Law may together be cited as the Matrimonial Causes (Jersey) Laws 1949 to 200-.

(2) This Law shall come into force on such day as the States may by Act appoint.

^[1] Tome VII, page 582, Volume 1979-1981, page 1 and Volume 1986-1987, page 21.