

**DRAFT AFFILIATION PROCEEDINGS (PRESCRIPTION)  
(JERSEY) LAW 199**

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**Lodged au Greffe on 27th April 1999  
by the Legislation Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

## Report

When a single woman is pregnant or has given birth to an illegitimate child she may enter into an agreement with the child's father that he is to pay her a regular amount of money to maintain the child. If, however, the father will not agree, or disputes paternity, the mother may apply to the Royal Court for an affiliation order determining that he is in fact the father of the child and making him responsible for maintaining it. The action before the Royal Court for this purpose is called, in Jersey law, an action for *pension alimentaire*. Not being an action in tort in the true sense, it continues to be governed by the period of prescription which applied by ancient Norman customary law, namely, a year and a day.

In a case in 1977, the Royal Court held that a mother who had instituted proceedings some 2½ years after the birth of her child was not entitled to proceed with the action and was deprived of any remedy against the defendant, who had not acknowledged paternity and had not implicitly done so by making any maintenance payments. At the conclusion of the Court's judgment, the then Bailiff (Sir Frank Ereaud) said -

*"... having regard to the fact that these actions relate to the right of an illegitimate infant to be maintained by the putative father, we would hope that the Legislation Committee might consider whether it would be desirable to extend the period within which such actions might be brought in Jersey".*

There is no such period of prescription in relation to proceedings for maintenance orders in respect of children born to married parents. Such proceedings are governed by statute and take place either in the Petty Debts Court or in the Family Division of the Royal Court depending upon the type of case involved.

The Legislation Committee sees no good reason for the preservation of the ancient customary time limit for bringing proceedings for an affiliation order. There may be many reasons why a mother is unable or reluctant to bring proceedings within the short period of a year and a day. It is unfair to penalize her (and indeed the child) by cutting off recourse to maintenance payments in this way.

It is unfair also that the father of an illegitimate child should have this chance (which the father of a legitimate child does not) to avoid paying maintenance altogether. If the father is allowed to escape all responsibility, the financial burden from which he is freed may well become that of the State depending on the financial circumstances of the mother. In the opinion of the Committee, it is wrong for there to be any scope at all for the father of a child to unburden his financial responsibility onto the public purse on the strength of a legal technicality.

In England and Wales, there used to be a time limit of 3 years from the date of the birth of the child in which to bring affiliation proceedings. Under legislation passed in the last decade, however, the law affecting the maintenance of children was changed substantially and, now, no time limit applies for bringing an action for maintenance of an illegitimate child. The Committee believes that a similar reform in Jersey is long overdue.

### **Explanatory Note**

The purpose of this draft Law is to provide that an action for the maintenance of an illegitimate child, *pension alimentaire*, may be begun at any time after the birth of the child and the prescriptive period of one year and a day for that action is accordingly abolished.

**AFFILIATION PROCEEDINGS (PRESCRIPTION) (JERSEY)  
LAW 199**

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**A LAW** to abolish the customary law period of prescription for the institution of an action for *pension alimentaire*; sanctioned by Order of Her Majesty in Council of the

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(Registered on the      day of      199 )

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**STATES OF JERSEY**

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The      day of      199

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

**ARTICLE 1**

**Abolition of period of prescription**

(1) The customary law period of prescription for the institution of an action for *pension alimentaire* is abolished and, subject to paragraph (2) of this Article, that action may be instituted at any time after the birth of the child to which it relates.

(2) Nothing in this Article shall revive any right of action which was barred by prescription before the commencement of this Law.

*Draft Affiliation Proceedings (Prescription) (Jersey) Law 199*

ARTICLE 2

**Short title**

This Law may be cited as the Affiliation Proceedings (Prescription) (Jersey) Law 199 .