<u>Written Submission: Review of the Draft Marriage and Civil Partnership (Dissolution and Separation) (Jersey) Law 202- [P.85/2025] – Jersey Family Law Association – 18th January 2026</u>

Many thanks for your email below and for providing the response from the Minister.

Given time constraints, I have kept this response as concise as possible, responding only to those points which are not agreed/accepted and adopt the numbering in the Minister's letter where appropriate. I have also abbreviated references to the Matrimonial Causes (Jersey) Law 1949 ("MCJL") and the Children (Jersey) Law 2002 ("CJL").

Inclusion of the ground of "irretrievable breakdown" in the Law – it is not accepted that the inclusion of the legal ground upon which the Court will have the power to dissolve a marriage/civil partnership might give rise to a potential challenge against an order for dissolution. The law makes no provision for a party to challenge or 'defend' an application for dissolution. We consider it highly unusual that the legal basis would not be set out in the Law. Notably, this wording is included in the English legislation.

2. There has been no explanation as to why it is considered that the legal position in respect of financial provision for children (which is currently capped at the age of 21) should be changed. It would be very unusual for the Court to agree that any financial provision, let alone secured financial provision, should be provided by a parent for a child beyond the end of a first degree. If the law is to be altered, it should be restricted to special/extraordinary circumstances cases.

3. This response misunderstands how child financial provision is dealt with in practice. Financial provision for the children of married parties is (almost always) dealt with under the MCJL, not Schedule 1 of the CJL. We simply wish to ensure that the Court has the power to make orders in respect of children who have already reached the age of 18 – where they are in education/training or where special circumstances apply – at the date of the application for divorce, given the determination in <u>G v J</u> [2022]JRC229 that it does not currently have such powers.

4. This response is noted. Whilst we acknowledge that Jersey has autonomy to determine its own family law provisions, we highlight that both the Royal Court and Family Courts have, in a number of cases, already followed and applied the English legal principles in respect of pre- and post-nuptial agreements, in particular those set out in Radmacher v Granatino and the cases which have followed. It is, however, a misunderstanding to suggest that either of the definitions serve to protect the financially weaker party; the purpose of the wording is to restrict, as far as possible, the claims of the financially weaker party. This is, however, entirely appropriate in circumstances in which the parties intend to enter into a legally binding agreements regulating their financial affairs, with the benefit of full legal advice and financial disclosure.

6. This response misunderstands the point being made. An interim maintenance order does not exist until a Court has determined and granted an application. If the Court refuses the application, the interim maintenance order never exists, rendering Article 33(2)(c) wholly redundant. If the purpose of the provision is to provide the Court with the ability to bring an interim maintenance order to an end after it has been made (in which case, the Court has not refused the order), the more appropriate wording would be 'until further order of the Court'. This is the wording currently used.

8. We fundamentally disagree that the English provisions should, in effect, be adopted in Jersey in respect of legal services orders. Primarily, we disagree that a financially weaker or vulnerable party should have to demonstrate that they are unable to obtain a litigation or personal loan (which typically attracts very significant interest rates), in circumstances in which either i) there are matrimonial funds/assets which could be utilised to meet the financially weaker and/or vulnerable party's legal fees pending final order or until capital can be realised or ii) the other party has the benefit of significant income which can be deployed the financially weaker and/or vulnerable party's legal fees pending final order or until capital can be realised. Why should that party have to bear the interest costs of a loan when the other does not? By way of note, and as previously indicated, we are not aware of any litigation loan companies who currently lend in Jersey (unless there are assets sited in England), and even if they will, their interest rates are c.20%. The Family Judges should be given the widest discretion as to how to deal with these applications on a case-by-case basis. We understand from our counterparts in England that they are unhappy with their LSPO provisions, and we can see no good reason why we should adopt them in Jersey. Whilst we are aware and acknowledge that Judge McFadzean applied a similar test in D v E, her decision in that case was made in the absence of any guiding Jersey legislation or authority, and is not binding.

9.a. This response does not address the query raised. We consider that legal services orders should be extended to cover applications made under Article 10 of the CJL – these are orders in respect of arrangements for children (residence, contact, leave to remove etc), not financial provision for children. Financial provision for children will be captured by the wording of the draft Law, as they fall to be dealt with as part of ancillary relief (and as noted above, are not dealt with under Schedule 1 of the CJL in ancillary relief cases). The proposed amendment to the CJL, whilst welcomed would not therefore have any impact in the case of divorcing parties who require the Family Court's assistance in determining arrangements for their children.

9.b. We would welcome a meeting to discuss this point further.

Please do let me know should you have any queries in respect of the above. I will be in the office tomorrow morning should it be useful to discuss any point by telephone.

Kind regards

On behalf of the JFLA Committee

Advocate Lauren Glynn, JFLA Chair