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STATES OF JERSEY

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Report

The Legislation Committee has been concerned for some time at the imbalance in the treatment of husbands and wives under the Separation and Maintenance Orders (Jersey) Law 1953. The 1953 Law empowers the Petty Debts Court to make orders with respect to the separation of married persons, the legal custody of children of the marriage and the maintenance of wife and children. The remedies available to a husband are minimal whereas the remedies available to a wife are extensive. The full text of Articles 2 and 3 of the 1953 Law are set out in the Appendix to this report.

The Law of 1953 was based on legislation which was in force in the United Kingdom in the earlier part of the 20th Century. The Summary Jurisdiction (Married Women) Act 1895, the Married Women (Maintenance) Act 1920, the Summary Jurisdiction (Separation and Maintenance) Act 1925 and the Married Women (Maintenance) Act 1949 were the principal Acts in force when the Law of 1953 was enacted. It echoed the cumulative provisions of those Acts and, to this day, its essential structure resembles the *régime* which prevailed in England and Wales shortly after the Second World War.

In England and Wales, a Royal Commission recommended that this branch of the law be codified and a consolidating Bill was introduced in Parliament in November 1957, and eventually led to the enactment of the Matrimonial Proceedings (Magistrates' Courts) Act 1960 under which, amongst other things -

- (a) the grounds of complaint upon which a husband could obtain an order and the relief available to him were made substantially the same as those available to a wife;

- (b) the wife could be ordered to pay maintenance in respect of a child and, in certain circumstances, maintenance for the husband.

The Act of 1960 was in due course replaced by the Domestic Proceedings and Magistrates' Courts Act 1978 which was later amended by the Matrimonial and Family Proceedings Act 1984. The position in England now is that either party to a marriage may apply to a Magistrates' Court for financial provision on the ground that the other party to the marriage -

- (i) has failed to provide reasonable maintenance for the applicant; or
- (ii) has failed to provide, or make proper contribution towards, reasonable maintenance for any child of the family; or
- (iii) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (iv) has deserted the applicant.

As indicated earlier, the position in Jersey is essentially unchanged from the pre-1960 position in England and Wales in so far as the differentiation between the rights of wife and husband are concerned.

The Legislation Committee has consulted widely on this matter and has concluded that the imbalance in the rights of husband and wife in separation and maintenance proceedings is unjustifiable in modern society and the purpose of this draft Law is to rectify that imbalance. To this end, Articles 2 and 3 of the 1953 Law would be replaced by a single *Article 2* conferring upon the Petty Debts Court powers to make orders as to maintenance, custody and other matters on an equal footing as between husband and wife. In place of the old grounds for an application, a party to a marriage would be entitled to apply for a separation and maintenance order on any of the more straightforward grounds that the other party had -

- (a) failed to provide reasonable maintenance for the applicant;
- (b) failed to provide, or make proper contribution towards, reasonable maintenance for any child of the marriage;
- (c) behaved in such a way that the applicant could not reasonably be expected to live with him or her; or
- (d) deserted the applicant.

A further matter relates to liability for debts. Article 13 of the 1953 Law makes provision as to the liability of a husband in respect of his wife's acts and provides that so long as a separation order is in force, the husband shall not be liable in respect of any engagement or agreement into which the wife may enter or for any tort. However, where the Court has ordered the husband to pay maintenance and he has not paid it, he becomes liable for necessaries supplied for the use of the wife or any of the children. In order to place this provision on a reciprocal footing, the draft Law would provide that neither party to the marriage should be so liable.

The Legislation Committee believes that the reforms which the draft Law would introduce are long overdue. Under the existing Law, the discretion of the Court is restricted and thus its ability to take *all* the circumstances of a case into account and to do justice between spouses is impaired. The present position is transparently unfair and this draft Law seeks to eliminate that unfairness.

ARTICLE 2

POWER OF COURT TO MAKE ORDER ON APPLICATION OF WIFE

- (1) Where the husband of a married woman -
- (a) is a habitual drunkard; or
 - (b) has been convicted of an aggravated assault (“assaut grave et criminel”) upon her; or
 - (c) has deserted her; or
 - (d) has been guilty of persistent cruelty to her or her children, or of continued wilful neglect to provide reasonable maintenance for her or her children whom he is legally liable to maintain; or
 - (e) while suffering from a venereal disease and knowing that he was so suffering, has insisted on having sexual intercourse with her; or
 - (f) has compelled her to submit herself to prostitution, or has, in the opinion of the court, been guilty of such conduct as was likely to result, and has resulted, in her submitting herself to prostitution; or
 - (g) has been guilty of adultery;

she shall be entitled to apply to the court for an order under this Article and, upon such application, the Court may make an order or orders containing all or any of the following provisions -

- (i) a provision that the applicant be no longer bound to cohabit with her husband;
- (ii) a provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of sixteen years, be committed to the applicant;
- (iii) a provision that the husband shall pay to the applicant personally, or to an officer of the court or third person on her behalf, such weekly sum (not exceeding such amount as the States shall by regulations prescribe) for the maintenance of herself and of each such child until the child attains the age of sixteen years as the court shall, having regard to the means of both the husband and the wife, consider reasonable;
- (iv) a provision -
 - (a) where the wife is the tenant of the matrimonial home, that the husband shall vacate the premises within such period as the court shall, in all the circumstances, consider reasonable; or
 - (b) where the husband is the tenant, or the husband and wife are joint tenants, of the matrimonial home, that the husband shall vacate the premises within such period as the court shall in all the circumstances consider reasonable and, subject to the agreement of the owner of the property, that the rights of tenancy possessed by the husband or by the husband and wife jointly shall be assigned to the wife.

(2) Where the court makes an order containing either of the provisions mentioned in clause (iv) of paragraph (1) of this Article, the husband shall, from the time the order is made, be deemed to have forfeited all his rights as a tenant or as a “locataire réfractaire” within the meaning of the Loi (1946) concernant l’expulsion des locataires réfractaires.

ARTICLE 3

POWER OF COURT TO MAKE ORDER ON APPLICATION OF HUSBAND

Where the wife of a married man -

- (a) is a habitual drunkard; or
- (b) has been guilty of persistent cruelty to his children; or
- (c) has been guilty of adultery;

he shall be entitled to apply to the court for an order under this Article and, upon such application, the court may make an order or orders containing all or any of the following provisions -

- (i) a provision that the applicant be no longer bound to cohabit with his wife;
- (ii) a provision for the legal custody of any children of the marriage;
- (iii) a provision that the applicant shall pay to the wife personally, or to an officer of the court or third person on her behalf, such weekly sum (not exceeding such amount as the States shall by regulations prescribe) for the maintenance of herself as the court shall, having regard to the means of both the husband and wife, consider reasonable.

Explanatory Note

This draft Law further amends the Separation and Maintenance Orders (Jersey) Law 1953 (“the 1953 Law”). The 1953 Law does not treat husbands and wives equally, in that the court has no power to order a wife to pay maintenance to her husband or for children of the marriage in his custody, and the grounds on which wives and husbands respectively may apply to the court under the Law are different. The principal purpose of this draft Law is to introduce equality of treatment for husbands and wives before the court under the 1953 Law.

Article 1 amends the long title of the 1953 Law consequentially upon the amendments made by *Article 2*.

Article 2 substitutes the existing Articles of the 1953 Law whereby wives and husbands may apply to the court on different grounds and for different orders with a single Article applicable to both husbands and wives. The new Article -

- (a) replaces the grounds on which an application may be made under the Law and introduces a right to apply to the court on the ground that the respondent has failed to maintain the applicant or any child of the marriage;
- (b) enables the court, on an application from either party to the marriage, to order that one party pay maintenance to the other or for any child of the family or order that either party vacate the matrimonial home or transfer a tenancy of the matrimonial home to the other party.

The amendments made by *Articles 3, 4, 5, 6, 7, 8, 9 and 10* are consequential upon the amendments made by *Article 2*.

Article 11 substitutes Article 13 of the 1953 Law. The substituted Article has the effect that, whilst a separation order under the Law has effect, neither party to the marriage is liable for the other party’s liabilities in contract or tort, or for their costs.

Article 12 is the short title. If adopted, the draft Law will come into force on its registration in the Royal Court.

SEPARATION AND MAINTENANCE ORDERS (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to further amend the Separation and Maintenance Orders (Jersey) Law 1953; 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

In the long title of the Separation and Maintenance Orders (Jersey) Law 1953, as amended^[1] (hereinafter referred to as “the principal Law”), for the words “the wife and children” there shall be substituted the words “either party to and the children of the marriage”.

ARTICLE 2

For Articles 2 and 3 of the principal Law^[2] there shall be substituted the following Article -

“ARTICLE 2

POWER OF COURT TO MAKE ORDER ON APPLICATION OF EITHER PARTY

(1) A party to a marriage shall be entitled to apply to the court for an order under this Article on the ground that the other party to the marriage -

- (a) has failed to provide reasonable maintenance for the applicant;
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the marriage;
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with him or her; or
- (d) has deserted the applicant.

(2) On an application made under this Article, the court may make an order or orders containing all or any of the following provisions -

- (a) a provision that the applicant be no longer bound to cohabit with the other party to the marriage;
- (b) a provision for the legal custody of any child of the marriage who is under the age of sixteen years;
- (c) a provision that one party to the marriage shall pay to the other party to the marriage personally, or to an officer of the court or third person on behalf of the other party to the marriage, such weekly sum (not exceeding such amount as the States shall by regulations prescribe) for the maintenance of the other party to the marriage and any child of the marriage in the other party's legal custody, until the child attains the age of sixteen years, as the court, having regard to the means of both parties to the marriage, considers reasonable;
- (d) where either or both of the parties to the marriage are tenants of the matrimonial home, a provision that either party to the marriage shall vacate the matrimonial home within such period as the court, in all the circumstances, considers reasonable; and
- (e) where the party required to vacate the matrimonial home under sub-paragraph (d) is the sole tenant or the parties to the marriage are joint tenants of the matrimonial home, that, subject to the agreement of the owner of the property, the rights of tenancy possessed by the vacating party to the marriage be transferred to the other party to the marriage.

(3) Where the court makes an order containing the provision described in sub-paragraph (d) of paragraph (2), from the time the order is made, the vacating party to the marriage shall be deemed to have forfeited all his or her rights as a tenant or as a '*locataire réfractaire*' within the meaning of the Loi (1946) concernant l'expulsion des locataires réfractaires."

ARTICLE 3

Article 4 of the principal Law^[3] shall be repealed.

ARTICLE 4

In Article 5 of the principal Law,³ the words "or Article 3" shall be deleted.

ARTICLE 5

In Article 6 of the principal Law^[4] -

- (a) the words "or Article 3" shall be deleted;
- (b) for the words "the husband shall pay to the wife personally, or to any officer of the court or third person on her behalf" there shall be substituted the words "one party to the marriage shall pay to the other party to the marriage personally, or to an officer of the court or third person on behalf of the other party to the marriage"; and

- (c) for the words “the wife and any children in her custody” there shall be substituted the words “the other party to the marriage and any children of the marriage in the legal custody of the other party”.

ARTICLE 6

In Article 6A of the principal Law⁴ -

- (a) the words “or Article 3” shall be deleted;
- (b) for the words beginning “the wife, may order” and ending “by regulations prescribe)” there shall be substituted the words “one of the parties to the marriage, may order the other party to the marriage to pay to the party having custody of the children personally, or to an officer of the court or third person on behalf of the party to the marriage having custody of the children, such weekly sum”.

ARTICLE 7

In Article 7 of the principal Law,^[5] the words “, Article 3” shall be deleted.

ARTICLE 8

In Article 8 of the principal Law⁵ -

- (a) in paragraphs (1) and (3), the words “, Article 3” shall be deleted; and
- (b) paragraph (2) shall be deleted.

ARTICLE 9

In Article 9 of the principal Law,^[6] in paragraph (2), for the words “the wife, it appears to the court that a child for whose maintenance provision is made by the order ” there shall be substituted the words “the party to the marriage having legal custody of a child for whose maintenance provision is made by the order, it appears to the court that the child”.

ARTICLE 10

In Article 12 of the principal Law^[7] -

- (a) in paragraph (1) -
- (i) for the words “whilst the wife with respect to whom the order was made resides with her husband” there shall be substituted the words “whilst the parties to the marriage reside together”, and
- (ii) for the words “the wife continues to reside with her husband” there shall be substituted the words “the parties to the marriage continue to reside together”;
- (b) in paragraph (2) -
- (i) for the words “a wife” there shall be substituted the words “a party to a marriage”, and
- (ii) for the words “her husband after living apart from him” there shall be substituted the words “the other party to the marriage after living apart from that person”.

ARTICLE 11

For Article 13 of the principal Law^[8] there shall be substituted the following Article -

“ARTICLE 13

LIABILITY FOR ACTS OF OTHER PARTY TO MARRIAGE

So long as a separation under an order made under this Law subsists, neither party to the marriage shall be liable in respect of any engagement or agreement entered into by the other party to the marriage after the separation begins or for any wrongful act or omission by the other party to the marriage or for any costs which the other party to the marriage may incur as plaintiff or defendant:

Provided that where the court has ordered a party to the marriage to pay any sum for the maintenance of the other party to the marriage or of any children of the marriage, and the firstmentioned party has not duly paid such sum, that party shall be liable for necessaries supplied for the use of the other party to the marriage or of any such children.”.

ARTICLE 12

This Law may be cited as the Separation and Maintenance Orders (Amendment No. 2) (Jersey) Law 200-.

[1] Tome VIII, page 199.

[2] Tome VIII, pages 200 and 201.

[3] Tome VIII, page 202.

[4] Tome VIII, page 203.

[5] Tome VIII, page 204.

[6] Tome VIII, page 205.

[7] Tome VIII, page 207.

[8] Tome VIII, page 207.