



Jersey
L.28/2005

CHILD CUSTODY (JURISDICTION) (JERSEY) LAW 2005

Arrangement

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Jersey

CHILD CUSTODY (JURISDICTION) (JERSEY) LAW 2005

A LAW to amend the law relating to the jurisdiction of the Royal Court to make orders with regard to the custody of children; to provide for the recognition and enforcement in Jersey of such orders made in the United Kingdom and for applications to be made for the recognition and enforcement in the United Kingdom of Jersey orders; to make provision as to the imposition, effect and enforcement of restrictions on the removal of children from Jersey or from any part of the United Kingdom; and for connected purposes.

Adopted by the States

5th July 2005

Sanctioned by Order of Her Majesty in Council

12th October 2005

Registered by the Royal Court

28th October 2005

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

PART 1

PRELIMINARY

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“Article 10 order” means an order made by the Court under Article 10 of the Children (Jersey) Law 2002,¹ other than an order varying or discharging such an order;

“certified copy” –

(a) in relation to an order of the Court, means a copy certified by the Greffier to be a true copy of the order or of the official record of the order;

(b) in relation to an order of a court in the United Kingdom, has the meaning given by section 42(1) of the Family Law Act;

“child”, except in Article 19, means a person who has not attained the age of 18 years;

“child of the family” shall be construed in accordance with Article 2;

“Court” means the Royal Court;

“Family Law Act” means the Family Law Act 1986 of the United Kingdom;

“Greffier” means the Judicial Greffier;

“Jersey order” means an Article 10 order, an order mentioned in Article 5(2) or an existing order within the meaning of paragraph 2(1) of Schedule 5 to the Children (Jersey) Law 2002;

“matrimonial proceedings” means proceedings for divorce, nullity of marriage or judicial separation;

“part of the United Kingdom” means England and Wales, Scotland or Northern Ireland;

“Part I order” means an order to which Part I of the Family Law Act applies and includes such an order as varied;

“prescribed” means prescribed by Rules of Court;

“relevant date”, in relation to the making or variation of an order, means –

(a) where an application is made for an order to be made or varied, the date of the application (or the first application, if 2 or more applications are determined together); and

(b) where no such application is made, the date on which the court is considering whether to make or vary the order, as the case may be.

(2) References in this Law to proceedings as continuing shall be construed in accordance with Article 3.

(3) References in this Law to a provision corresponding to a provision of this Law shall be construed in accordance with Article 4.

(4) References in this Law to proceedings in respect of the marriage of the parents of a child shall, in relation to a child who, although not a child of both parties to the marriage, is a child of the family of those parties, be construed as a reference to proceedings in respect of that marriage.

(5) References in this Law to proceedings in respect of the custody of a child include, in relation to proceedings outside Jersey and the United Kingdom, references to proceedings before a tribunal or other authority having power under the law having effect there to determine questions relating to the custody of children.

2 Meaning of “child of the family”

In this Law “child of the family” means any child who has been treated by both parties as a child of their family, except a child placed (whether before or after the commencement of this Law) with those parties as foster parents –

- (a) in Jersey, by the Health and Social Services Committee, the Minister for Health and Social Services or a voluntary organization;
- (b) in England and Wales or Scotland, by a local authority or voluntary organization; or
- (c) in Northern Ireland, by an authority within the meaning of the Children (Northern Ireland) Order 1995 or a voluntary organization.

3 Continuing proceedings

- (1) For the purposes of this Law, matrimonial proceedings (other than proceedings in Scotland) in respect of the marriage of the parents of a child shall, unless they have been dismissed, be treated as continuing until the child concerned attains the age of 18 (whether or not a decree has been granted and whether or not, in the case of a decree of divorce or nullity of marriage, that decree has been made absolute).
- (2) For the purposes of this Law, matrimonial proceedings in a court in Scotland which has jurisdiction in those proceedings to make a part I order with respect to a child shall, unless they have been dismissed or decree of absolvitor has been granted therein, be treated as continuing until the child concerned attains the age of 16.

4 Corresponding provisions

Any reference in this Law to a provision corresponding to a provision of this Law specified in column 1 of the following Table shall be construed, in relation to a part of the United Kingdom, as a reference to the provision of the Family Law Act specified in column 2, 3 or 4 respectively of the Table.

TABLE

Provision of this Law	Provision of Family Law Act		
	<i>England and Wales</i>	<i>Scotland</i>	<i>Northern Ireland</i>
Article 7(3)	section 2A(4)	section 13(6)*	section 19A(4)
Article 8(2)	section 5(2)	section 14(2)	section 22(2)
Article 9	section 6	section 15	section 23
Article 11	section 27(4) and (5)	section 27(4) and (5)	section 27(4) and (5)
Article 16	section 27(1), (2) and (3)	section 27(1), (2) and (3)	section 27(1), (2) and (3)
*Any reference to an order under section 13(6) of the Family Law Act does not include a reference to an order made by virtue of section 13(6)(a)(i) of that Act.			

PART 2**JURISDICTION OF THE ROYAL COURT****5 Jurisdiction other than in matrimonial proceedings**

- (1) The Court shall not have jurisdiction to make an Article 10 order, other than an order to which Article 7 applies, in any proceedings unless the condition in Article 6 is satisfied.
- (2) The Court shall not have jurisdiction to make an order (other than a variation or revocation of such an order) in the exercise of its inherent jurisdiction giving care of a child to, or providing for the child to have contact with, any person or providing for a child's education unless –
 - (a) the condition in Article 6 is satisfied; and
 - (b) the child concerned is present in Jersey on the relevant date and the court considers that the immediate exercise of its powers is necessary for the child's protection.

6 Habitual residence or presence of child

- (1) The condition referred to in Article 5 is that on the relevant date the child concerned –
 - (a) is habitually resident in Jersey; or
 - (b) is present in Jersey and is not habitually resident there nor in any part of the United Kingdom,and, in either case, the jurisdiction of the Court is not excluded by paragraph (2).
- (2) For the purposes of paragraph (1), the jurisdiction of the Court is excluded if, on the relevant date, matrimonial proceedings are continuing in a court in any part of the United Kingdom in respect of the marriage of the parents of the child concerned.
- (3) Paragraph (2) shall not apply if the court in which the other proceedings are continuing has made –
 - (a) an order under a provision corresponding to Article 7(3); or
 - (b) an order under a provision corresponding to Article 8(2) which is recorded as made for the purpose of enabling proceedings for or relating to an Article 10 order with respect to the child concerned to be taken in Jersey,and that order is in force.

7 Jurisdiction in matrimonial proceedings

- (1) Subject to paragraph (2), the Court shall not have jurisdiction to make an Article 10 order in or in connection with matrimonial proceedings unless those proceedings are proceedings in respect of the marriage of the parents of the child concerned and the proceedings –
 - (a) are continuing; or

- (b) have been dismissed after the beginning of the hearing but the Article 10 order is being made forthwith or the application for the order was made on or before the dismissal.
- (2) Where the proceedings mentioned in paragraph (1) are proceedings for judicial separation and after the grant of a decree of judicial separation on the relevant date, proceedings for divorce or nullity in respect of the marriage concerned are continuing in any part of the United Kingdom, the Court shall not have jurisdiction to make an Article 10 order unless the court in the other part of the United Kingdom has made –
 - (a) an order under a provision corresponding to paragraph (3); or
 - (b) an order under a provision corresponding to Article 8(2) that is recorded as made for the purpose of enabling proceedings for or relating to an Article 10 order to be taken in Jersey with respect to the child concerned.
- (3) Where the Court –
 - (a) has jurisdiction to make an Article 10 order in or in connection with any matrimonial proceedings; but
 - (b) considers that it would be more appropriate for matters relating to the custody of the child to be determined outside Jersey,

the Court may by order direct that, while the order under this paragraph is in force, no Article 10 order with respect to the child shall be made in or in connection with those proceedings.

8 Power of Court to refuse application or stay proceedings

- (1) The Court may refuse an application for a Jersey order in any case where the matter in question has already been determined in proceedings outside Jersey.
- (2) Where, at any stage of the proceedings on an application made to the Court for a Jersey order, or for the variation of such an order, it appears to the Court –
 - (a) that proceedings with respect to the matters to which the application relates are continuing outside Jersey; or
 - (b) that it would be more appropriate for those matters to be determined in proceedings to be taken outside Jersey,the Court may order a stay of the proceedings on the application.
- (3) The Court may order the removal a stay granted in accordance with paragraph (2) if it appears to the Court that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that paragraph, or that those proceedings are stayed, sisted or concluded.
- (4) Nothing in this Article shall affect any power exercisable apart from this Article to refuse an application or to grant or remove a stay.

9 Duration and variation of orders

- (1) If a Part I order (or a variation of such an order) comes into force with respect to a child at a time when a Jersey order has effect with respect to that child, the Jersey order shall cease to have effect so far as it makes provision for any matter for which the same or different provision is made by (or by the variation of) the Part I order.
- (2) Where by virtue of paragraph (1) a Jersey order has ceased to have effect so far as it makes provision for any matter, the Court shall not have jurisdiction to vary that order so as to make provision for that matter.
- (3) The Court shall not have jurisdiction to vary a Jersey order if, on the relevant date, matrimonial proceedings are continuing in any part of the United Kingdom in respect of the marriage of the parents of the child concerned.
- (4) Paragraph (3) shall not apply –
 - (a) if the Jersey order was made in or in connection with matrimonial proceedings in respect of the marriage of the parents of the child concerned and those proceedings are continuing and, in the case of proceedings for judicial separation, the decree of judicial separation has not yet been granted;
 - (b) if the court in which the proceedings are continuing has made an order under –
 - (i) a provision corresponding to Article 7(3), or
 - (ii) an order under a provision corresponding to Article 8(2) which is recorded as made for the purpose of enabling proceedings for or relating to a Jersey order with respect to the child concerned to be taken in Jersey,and that order is in force; or
 - (c) in the case of a variation of an order mentioned in Article 5(2) if the child concerned is present in Jersey on the relevant date and the Court considers that the immediate exercise of its powers is necessary for the child's protection.
- (5) Where –
 - (a) a residence order;
 - (b) an existing order under which a person is entitled to actual possession of the child; or
 - (c) an order made in the exercise of the Court's inherent jurisdiction with respect to children by virtue of which a person has care of a child,

ceases to have effect by virtue of paragraph (1), any family assistance order made under Article 16 of the Children (Jersey) Law 2002 with respect to the child shall also cease to have effect.

PART 3**ENFORCEMENT OF ORDERS MADE IN THE UNITED KINGDOM****10 Recognition of Part I orders**

- (1) Where a Part I order is in force with respect to a child who has not attained the age of 16 then, subject to paragraph (2), the order shall be recognized in Jersey as having the same effect in Jersey as if it had been made by the Court and as if the Court had had jurisdiction to make it.
- (2) Where a Part I order includes provision as to the means by which rights conferred by the order are to be enforced, paragraph (1) shall not apply to that provision.
- (3) The Court shall not enforce an order which is recognized in accordance with paragraph (1) unless it has been registered in the Court under Article 11 and proceedings for enforcement are taken in accordance with Article 13.

11 Registration of Part I order

- (1) Where the Greffier receives a certified copy of a Part I order under a provision corresponding to Article 16, the Greffier shall forthwith cause the order, together with particulars of any variation, to be registered in the Court in the prescribed manner.
- (2) An order shall not be registered under this Article in respect of a child who has attained the age of 16, and the registration of an order in respect of a child who has not attained the age of 16 shall cease to have effect on the attainment by the child of that age.

12 Cancellation and variation of registration

- (1) Where the Greffier receives notice from a court in any part of the United Kingdom of the revocation, recall or variation of a Part I order registered in the Court under Article 11, the Greffier shall –
 - (a) in the case of the revocation or recall of the order, cause the registration to be cancelled; and
 - (b) in the case of the variation of the order, cause particulars of the variation to be registered in the prescribed manner.
- (2) Where an order registered under Article 11 ceases (in whole or in part) to have effect in the part of the United Kingdom in which it was made, otherwise than because of its revocation, recall or variation, the Court may, of its own motion or on the application of any person who appears to the Court to have an interest in the matter, cancel the registration or, if the order has ceased to have effect in part, cancel the registration so far as it relates to the provisions which have ceased to have effect.

13 Enforcement

- (1) Where a Part I order has been registered under Article 11, the Court shall have the same powers for the purpose of enforcing the order as it would have had if it had itself made the order and had had jurisdiction to make it, and proceedings for or with respect to enforcement may be taken accordingly.
- (2) Where an application has been made to the Court for the enforcement of an order registered under Article 11, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned or of preventing changes in the circumstances relevant to the determination of the application.
- (3) The reference in paragraph (1) to a Part I order does not include a reference to any provision of the order as to the means by which rights conferred by the order are to be enforced.

14 Staying of enforcement proceedings

- (1) Where in accordance with Article 13 proceedings are taken in the Court for the enforcement of an order registered in the Court, any person who appears to the Court to have an interest in the matter may apply for the proceedings to be stayed on the grounds that the person has taken or intends to take other proceedings (in Jersey or elsewhere) as a result of which the order may cease to have effect, or may have a different effect, in Jersey.
- (2) If, after considering an application under paragraph (1), the Court considers that the proceedings for enforcement should be stayed in order that other proceedings may be taken or concluded, it shall stay the proceedings for enforcement accordingly.
- (3) The Court may remove a stay granted in accordance with paragraph (2) if it appears to the Court –
 - (a) that there has been unreasonable delay in the taking or prosecution of the other proceedings referred to in that paragraph; or
 - (b) that those other proceedings are concluded and that the registered order, or a relevant part of it, is still in force.
- (4) Nothing in this Article affects any power exercisable apart from this Article to grant or remove a stay.

15 Dismissal of enforcement proceedings

- (1) Where in accordance with Article 13 proceedings are taken in the Court for the enforcement of an order registered in the Court under Article 11, any person who appears to the Court to have an interest in the matter may apply for those proceedings to be dismissed on the ground that the order has (in whole or in part) ceased to have effect in the part of the United Kingdom in which it was made.

- (2) If, after considering an application under paragraph (1), the Court is satisfied that the registered order has ceased to have effect, it shall dismiss the proceedings for enforcement or, if it is satisfied that the order has ceased to have effect in part, it shall dismiss the proceedings so far as they relate to the enforcement of provisions which have ceased to have effect.

PART 4

REGISTRATION IN UNITED KINGDOM OF JERSEY ORDERS

16 Recognition of Royal Court order in the United Kingdom

- (1) Any person on whom any rights are conferred by a Jersey order may apply to the Court for the order to be registered in any part of the United Kingdom under any provision corresponding to Article 11 and having effect in that part.
- (2) An application under paragraph (1) shall be made in the prescribed manner, contain the prescribed information and be accompanied by such documents as may be prescribed.
- (3) On receiving an application under this Article, the Court shall, unless it appears to it that the order is no longer in force, cause the following documents to be sent to the appropriate court in the part of the United Kingdom specified in the application, namely –
- (a) a certified copy of the order; and
 - (b) where the order has been varied, prescribed particulars of any variation which is in force; and
 - (c) a copy of the application and of any accompanying documents.
- (4) Where the Court revokes or varies an order which is registered in any part of the United Kingdom under a provision corresponding to Article 11, the Court shall cause notice of the revocation or variation to be given in the prescribed manner to the court in which it is registered.
- (5) In this Article “appropriate court” means –
- (a) in relation to England and Wales, Her Majesty’s High Court of Justice in England;
 - (b) in relation to Scotland, the Court of Session;
 - (c) in relation to Northern Ireland, Her Majesty’s High Court of Justice in Northern Ireland.

PART 5**MISCELLANEOUS AND SUPPLEMENTAL****17 Power to order disclosure of child's whereabouts**

- (1) Where in proceedings for or relating to a Jersey order in respect of a child there is not available to the Court adequate information as to where the child is, the Court may order any person who it has reason to believe may have relevant information to disclose it to the Court.
- (2) A person shall not be excused from complying with an order under paragraph (1) by reason that to do so may incriminate the person or the person's spouse; but a statement or admission made in compliance with such an order shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

18 Power to order recovery of child

- (1) Where –
 - (a) a person is required by a Jersey order, or an order for the enforcement of a Part I order, to give up a child to another person; and
 - (b) the Court is satisfied that the child has not been given up in accordance with the order,the Court may make an order authorizing the Viscount or a police officer to take charge of the child and deliver the child to that other person.
- (2) The authority conferred by an order under paragraph (1) includes authority –
 - (a) to enter and search any premises where the person acting in pursuance of the order has reason to believe the child may be found; and
 - (b) to use such force as may be necessary to give effect to the purpose of the order.
- (3) This Article is without prejudice to any power conferred on the Court by or under any other enactment or rule of law.

19 Effect of orders restricting removal

- (1) This Article applies to any order made by a court in the United Kingdom prohibiting the removal of a child from Jersey, the United Kingdom or any part of the United Kingdom.
- (2) An order to which this Article applies shall have effect in Jersey –
 - (a) as if it had been made by the Court; and
 - (b) in the case of an order which has the effect of prohibiting the child's removal to Jersey, as if it had included a prohibition on the child's further removal to any place except one to which the child could be removed consistently with the order.

- (3) The references in paragraphs (1) and (2) to prohibitions on a child's removal include references to prohibition subject to exceptions; and in a case where removal is prohibited except with the consent of the court making the order, nothing in paragraph (2) shall be construed as enabling the Court to give that consent.
- (4) In this Article "child" means a person who has not attained the age of 16; and this Article shall cease to apply to an order once the child attains that age.

20 Surrender of passports

- (1) Where there is in force an order prohibiting or otherwise restricting the removal of a child from Jersey, the United Kingdom or any part of the United Kingdom, the Court (where it made the order or is treated under Article 19 as having made it) may require any person to surrender any United Kingdom passport which has been issued to, or contains particulars of, the child.
- (2) In this Article "United Kingdom passport" means a current passport issued by or on behalf of the Government of the United Kingdom.

21 Duty to furnish particulars of other proceedings

Parties to proceedings for or relating to a Jersey order shall, to such extent and in such manner as may be prescribed, give particulars of other proceedings known to them which relate to the child concerned (including proceedings instituted abroad and proceedings which are no longer continuing).

22 Habitual residence after removal without consent

- (1) Where a child who –
 - (a) has not attained the age of 16; and
 - (b) is habitually resident in Jersey,becomes habitually resident outside Jersey in consequence of circumstances of the kind specified in paragraph (2), the child shall be treated for the purposes of this Law as continuing to be habitually resident in Jersey for the period of one year beginning with the date on which those circumstances arise.
- (2) The circumstances referred to in paragraph (1) exist where the child is removed from or retained outside, or leaves or remains outside, Jersey –
 - (a) without the agreement of the person or all the persons having the right to determine where the child is to reside; or
 - (b) in contravention of an order made by the Court or a court in any part of the United Kingdom.
- (3) A child shall cease to be treated by virtue of paragraph (1) as habitually resident in Jersey if, during the period there mentioned the child –
 - (a) attains the age of 16; or

- (b) becomes habitually resident outside Jersey with the agreement of the person or persons mentioned in paragraph (2)(a) and not in contravention of any order made by the Court or a court in any part of the United Kingdom.

23 Application to Guernsey, Isle of Man, etc.

- (1) The States may by Regulations modify or amend this Law for the purposes of recognizing and enforcing, as between Jersey and the Bailiwick of Guernsey, the Isle of Man or any British Overseas Territory as mentioned in Schedule 6 to the British Nationality Act 1981 of the United Kingdom, Jersey orders or orders corresponding to such orders.
- (2) Regulations under this Article may contain such consequential, incidental and supplementary provisions as appear to the States to be necessary or expedient, and in particular may amend or repeal any enactment other than this Law which appears to the States to be inconsistent with, or to have become unnecessary or to require modification in consequence of, the Regulations.

24 Amendment consequential on changes in United Kingdom legislation

The States may by Regulations amend this Law to take account of any change in the law of any part of the United Kingdom.

25 Rules of Court

Rules of Court made under Article 13 of the Royal Court (Jersey) Law 1948² may make provision for anything that may be prescribed under this Law or that appears to be necessary or expedient to give effect to this Law.

26 Citation and commencement

- (1) This Law may be cited as the Child Custody (Jurisdiction) (Jersey) Law 2005.
- (2) This Law shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions of this Law.

M.N. DE LA HAYE

Greffier of the States.

¹ *Chapter 12.200.*

² *Chapter 07.770.*