



Jersey

SEPARATION AND MAINTENANCE ORDERS (JERSEY) LAW 1953

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SEPARATION AND MAINTENANCE ORDERS (JERSEY) LAW 1953

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A **LAW** to empower the Petty Debts Court to make orders with respect to the separation of married persons or civil partners, and the maintenance of either party to and the children of the marriage or civil partnership, and for other purposes in connection therewith¹

Commencement [[see endnotes](#)]

1 Interpretation

In this Law unless the context otherwise requires –

“court” means the court known as the “Cour pour le recouvrement de menues dettes” or the “Petty Debts Court” constituted in pursuance of the [Loi \(1891\) sur la Cour pour le recouvrement de menues dettes](#);

“habitual drunkard” means a person who habitually and intemperately drinks intoxicating liquor, or habitually takes or uses, otherwise than in accordance with medical advice, opium or any other dangerous drug;

“Royal Court” means the Matrimonial Causes Division of the Royal Court.

2 Power of court to make order on application of either party²

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

- (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 or civil partnership;
- (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.³

- (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 or civil partnership;
 - (b)
 - (c) a provision that one party to the marriage or civil partnership shall pay to the other party to the marriage or civil partnership personally, or to an officer of the court or third person on behalf of the other party to the marriage or civil partnership, such weekly sum (not exceeding such amount as the States shall by Regulations prescribe) for the maintenance of the other party to the marriage or civil partnership and any child of the marriage or civil partnership living with that other party, until the child attains the age of 16 years, as the court, having regard to the means of both parties to the marriage or civil partnership, considers reasonable;
 - (d) where either or both of the parties to the marriage or civil partnership are tenants of the matrimonial home or civil partnership home, a provision that either party to the marriage or civil partnership shall vacate the matrimonial home or civil partnership home within such period as the court, in all the circumstances, considers reasonable; and
 - (e) where the party required to vacate the matrimonial home or civil partnership home under sub-paragraph (d) is the sole tenant or the parties to the marriage or civil partnership are joint tenants of the matrimonial home or civil partnership home, that, subject to the agreement of the owner of the property, the rights of tenancy possessed by the vacating party to the marriage or civil partnership be transferred to the other party to the marriage or civil partnership.⁴
- (3) Where the court makes an order containing the provision described in paragraph (2)(d), from the time the order is made, the vacating party to the marriage or civil partnership 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](#).⁵

3 Power of court to refuse order in cases more fit for the Royal Court

If, on an application for an order under Article 2, the court considers that the matters in question between the parties would be more conveniently dealt with by the Royal Court, the court may refuse to make an order, and, in any such case, no appeal shall lie from the decision of the court:

Provided that the Royal Court shall have power, in any proceeding in that court relating to or comprising the same subject matter as the application so refused as aforesaid, or any part thereof, to direct the court to rehear and determine the same.⁶

4 Power of court to order interim payments where application is adjourned

Where, on the hearing of an application for an order under Article 2, the application is adjourned for any period exceeding one week, the court may order that one party to the marriage or civil partnership shall pay to the other party to the marriage or civil partnership personally, or to an officer of the court or third person on behalf of the other

party to the marriage or civil partnership, a weekly sum (not exceeding such an amount as might be ordered to be paid under a final order) for the maintenance of the other party to the marriage or civil partnership and any children of the marriage or civil partnership living with the other party until the final determination of the case:

Provided that the order directing such payment shall not remain in operation for more than 3 months from the date on which it is made.⁷

5 Power of court with respect to children on dismissal of application⁸

Where an application for an order under Article 2 is dismissed at any stage after the commencement of the hearing, the court may order one party to the marriage or civil partnership to pay to the other party to the marriage or civil partnership, if any child of the marriage or civil partnership is living with that other party, or to an officer of the court or third person on behalf of such other party, such weekly sum (not exceeding such amounts as the States shall by Regulations prescribe) for the maintenance of each such child until the child attains the age of 16 years as the court shall, having regard to the means of both parties to the marriage or civil partnership, consider reasonable.

6 ⁹

7 Power of court to alter, vary or discharge order, or to remit payments

(1) Where an order under Article 2 or 5 has been made, then, on the application either of the husband or of the wife or, in the case of a civil partnership, either of the civil partners, the court may, on cause being shown upon fresh evidence to the satisfaction of the court at any time, alter, vary or discharge any such order, and may, on any such application, from time to time increase or diminish the amount of any weekly sum ordered to be paid, so, however, that the same does not in any case exceed the maximum amount which the court might have ordered to be paid on the making of the original order:

Provided that fresh evidence shall not be required as a condition of the exercise of the power of the court to increase or diminish the amount of any weekly sum ordered to be paid.¹⁰

(2) On any application for the alteration, variation or discharge of an order made under Article 2 or 5, or on any proceedings for the recovery of a sum due under such an order, the court may remit the payment of any such sum or of any part thereof.¹¹

8 Continuance of payments for maintenance of children in certain cases

(1) The power of the court to vary an order made under Article 2 or 5 shall, notwithstanding anything in those Articles, include power to vary the order in accordance with the following provisions of this Article.

(2) If, upon the application of the party to the marriage or civil partnership having legal custody of a child for whose maintenance provision is made by the order, it appears to the court that the child is or will be engaged in a course of education or training after attaining the age of 16 years and that it is expedient for that purpose that the payments required by the order should continue, the court may by order direct that those payments shall continue for such period after the child attains that

age, not exceeding 2 years from the date of the order, as may be specified in the order.¹²

- (3) The period specified in the order made under this Article may from time to time be extended by a subsequent order made under this Article, but shall not be extended beyond the date on which the child attains the age of 21 years.

9 Appeals

- (1) Save as is provided by Article 3, an appeal from any order made under this Law or the refusal to make any such order shall lie to the Royal Court.
- (2) The power to make rules of court under the [Royal Court \(Jersey\) Law 1948](#), shall include a power to make rules regulating practice and procedure in appeals under this Article.

10 Proceedings for the recovery of sums due

- (1) Notwithstanding any enactment or rule of law to the contrary, proceedings for the recovery of any sum payable by virtue of an order made under this Law shall be within the competence of the court.
- (2) Proceedings under this Law for the maintenance of a child may, if the child or the parent of the child having care and control of that child is resident outside Jersey, be brought on behalf of the child by any person who is, by the law of the country or territory of residence, competent to bring those proceedings.¹³

11 Power of an officer of court to recover in own name payments in arrear¹⁴

- (1) Where an order made under this Law requires payment of a weekly sum to an officer of the court and the payments are at any time in arrear, the said officer shall, if the person for whose benefit the payment should have been made so requests in writing, and unless it appears to the said officer that it is unreasonable in the circumstances to do so, proceed in his or her own name for the recovery of those sums.
- (2) Where an officer of the court institutes proceedings in his or her own name under paragraph (1), the person for whose benefit the payment should have been made shall have the same liability for all the costs properly incurred in and about the proceedings as if the proceedings had been instituted by him or her.
- (3) Nothing in this Article shall affect any right of a person to proceed in his or her own name for the recovery of any sum payable to him or her on his or her behalf by virtue of an order made under this Law.

12 Relief of collecting officer¹⁵

Where an order made under this Law requires payment of a weekly sum to an officer of the court and it is proved that the person on whose behalf the order was made has persistently received the payments direct from the person liable to make them, the court may, on the application of the said officer, vary the order so as to require the payments to be made direct.

13 Order revoked *ipso facto* by continued residence or resumption of cohabitation and suspended during periods of residence

- (1) No order made under this Law shall be enforceable and no liability shall accrue under this Law whilst the parties to the marriage or civil partnership reside together, and any such order shall cease to have effect if for a period of 3 months after it is made the parties to the marriage or civil partnership continue to reside together.¹⁶
- (2) Where a party to a marriage or civil partnership with respect to whom an order under this Law has been made resumes cohabitation with the other party to the marriage or civil partnership after living apart from that person the order shall cease to have effect on the resumption of such cohabitation.¹⁷

14 Liability for acts of other party to marriage or civil partnership¹⁸

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

Provided that where the court has ordered a party to the marriage or civil partnership to pay any sum for the maintenance of the other party to the marriage or civil partnership or of any children of the marriage or civil partnership, and the first mentioned 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 civil partnership or of any such children.

15 Citation

This Law may be cited as the Separation and Maintenance Orders (Jersey) Law 1953.

ENDNOTES

Table of Legislation History

| Legislation | Year and No | Commencement |
|---|---------------------------|---|
| Separation and Maintenance Orders (Jersey) Law 1953 | L.6/1953 | 1 October 1953 (R&O.3361) |
| Civil Proceedings (Jersey) Law 1956 | L.30/1956 | 1 April 1957 (R&O.3778) |
| Separation and Maintenance Orders (Amendment) (Jersey) Law 1971 | L.2/1972 | 4 February 1972 |
| Separation and Maintenance Orders (Amendment No. 2) (Jersey) Law 2000 | L.31/2000 | 20 October 2000 |
| Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000 | L.32/2000 | 2 June 2003 (R&O.41/2003) |
| Children (Jersey) Law 2002 | L.50/2002 | 1 August 2005 (R&O.74/2005) |
| Civil Partnership (Jersey) Law 2012 | L.4/2012 | 2 April 2012 |

Table of Renumbered Provisions

| Original | Current |
|----------|--|
| 3 | repealed by L.31/2000 |
| 4 | repealed by L.31/2000 |
| 5 | 3 |
| 6 | 4 |
| 6A | 5 |
| 7 | 6 |
| 8 | 7 |
| (2) | repealed by L.31/2000 |
| (3) | 7(2) |
| 9 | 8 |
| 10 | 9 |
| 11 | 10 |
| 11A | 11 |
| 11B | 12 |
| 12 | 13 |
| 13 | 14 |
| 14 | spent, omitted from this revised edition |
| 15(1) | 15 |
| (2) | spent, omitted from this revised edition |

Table of Endnote References

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- ¹ *Long title* amended by L.31/2000, L.50/2002, L.4/2012
- ² *Article 2* substituted by L.31/2000;
- ³ *Article 2(1)* amended by L.4/2012
- ⁴ *Article 2(2)* amended by L.50/2002, L.4/2012
- ⁵ *Article 2(3)* amended by L.4/2012
- ⁶ *Article 3* substituted by L.31/2000
- ⁷ *Article 4* amended by L.31/2000, L.50/2002, L.4/2012
- ⁸ *Article 5* substituted by L.50/2002, amended by L.4/2012
- ⁹ *Article 6* repealed by L.50/2002
- ¹⁰ *Article 7(1)* amended by L.31/2000, L.4/2012
- ¹¹ *Article 7(2)* amended by L.31/2000
- ¹² *Article 8(2)* amended by L.31/2000, L.4/2012
- ¹³ *Article 10(2)* inserted by L.32/2000
- ¹⁴ *Article 11* inserted by L.2/1972
- ¹⁵ *Article 12* inserted by L.2/1972
- ¹⁶ *Article 13(1)* amended by L.31/2000, L.4/2012
- ¹⁷ *Article 13(2)* amended by L.31/2000, L.4/2012
- ¹⁸ *Article 14* substituted by L.31/2000, amended by L.4/2012