

STATES OF JERSEY



DRAFT MAINTENANCE ORDERS (ENFORCEMENT) (AMENDMENT No. 3) (JERSEY) LAW 201-

**Lodged au Greffe on 26th September 2017
by the Chief Minister**

STATES GREFFE



Jersey

**DRAFT MAINTENANCE ORDERS
(ENFORCEMENT) (AMENDMENT No. 3) (JERSEY)
LAW 201-**

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Maintenance Orders (Enforcement) (Amendment No. 3) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 25th September 2017

REPORT

This draft Law relates to a recommendation of the Jersey Law Commission (“the Commission”) contained in its Topic Report of 2008 concerning security on immovable property. The Commission made several far-reaching recommendations in that Report, including suggested reforms of bankruptcy laws where immovable property was involved (*i.e.* the Laws relating to *dégrévement* and *désastre*). Some of the recommendations have already been carried into effect, *e.g.* the abolition of the widower’s right of *viduité* in favour of uniform rights of usufruct (life-enjoyment) over part of the estate of the deceased for all surviving spouses or civil partners, irrespective of gender.

The Report also recommended that provision be made to enable orders of the Family Division of the Royal Court to be registered in the Public Registry, thus giving to the recipient security over any immovable property (*i.e.* land) of the payer for ongoing payments under such orders. The Report set out the proposal that: “*A judicial hypothec [should be able to] be obtained ... for any payment or series of payments ordered by the Family Division of the Royal Court to be made under any provision of the Matrimonial Causes (Jersey) Law 1949 or the Children (Jersey) Law 2002.*”. It should be noted that the Commission’s proposal pre-dated the [Civil Partnership \(Jersey\) Law 2012](#), but it may be taken as read that the proposal holds good in relation to equivalent orders under that Law; and this *Projet de Loi* has been drafted on that assumption. The draft Law has also been prepared in consultation with the professional sector, including the Registrar of the Family Division within the Judicial Greffe.

The categories of maintenance order to which the draft Law would apply are defined in Article 1 of the [Maintenance Orders \(Enforcement\) \(Jersey\) Law 1999](#).¹

The rationale behind the Commission’s recommendation was expressed in its Report² as follows –

“Though orders of the Family Division in divorce cases can in theory already be registered under Article 29(1)(d) of the Matrimonial Causes (Jersey) Law 1949³ ..., ... this is only practicable if the order is for payment of a lump sum. In general we do not favour allowing periodic payments to be secured by judicial hypothec, but after consultation with the Family Division Registrar we are satisfied that an exception should be made in respect of orders under the Matrimonial Causes Law⁴ and the Children Law so that, for example, a divorced woman who is owed ... arrears ... of maintenance by her ex-husband will have security dating from the registration of the maintenance order, thus ranking above creditors who have since registered their claims on his

¹ “maintenance order” means an order for the payment of a sum, or periodic sums, of money made –

- (a) by the Royal Court –
 - (i) under Article 25, 29, 31, 32 or 33 of the Matrimonial Causes (Jersey) Law 1949, or
 - (ii) under Schedule 1 to the Children (Jersey) Law 2002; or
 - (iii) under Article 44, 49, 51, 52 or 53 of the Civil Partnership (Jersey) Law 2012; or
- (b) by the Petty Debts Court under Article 2, 4, 5 or 7 of the Separation and Maintenance Orders (Jersey) Law 1953.

² See paragraph 22.3(c) of the Topic Report.

³ The equivalent provision in the Civil Partnership (Jersey) Law 2012 is Article 49(1)(d).

⁴ And now also under the Civil Partnership (Jersey) Law 2012.

property. We think it best to treat Family Division orders as a special category with a self-contained procedure for their registration and cancellation. [... These] provisions ... are intended to supersede those in Article 29(1)(d) of the Matrimonial Causes Law.”⁵

The main purpose of the proposed reform, therefore – and now taking into account civil partnership proceedings – is that a former spouse/civil partner who is owed maintenance by his/her ex-spouse/civil partner will have security dating from the registration of the maintenance order, thus ranking above creditors who have since registered their claims on his/her property. This is intended to overcome the perceived weakness in the existing legislation whereby the recipient ex-spouse/civil partner is liable to lose out to subsequent creditors who are able to obtain a hypothec that gives them priority in subsequent bankruptcy proceedings. The ability to register the maintenance order, and so create a hypothec in respect of liability under the order, will ensure that the recipient ex-spouse/civil partner secures his/her rightful ranking amongst the creditors in a bankruptcy affecting the immovable property thus charged.

A vital feature of this hypothec would be that it operated to secure amounts payable as the liability for the payments accrued (and not merely an amount payable as a single sum).⁶

The draft Law is intended to give effect to the Commission’s recommendation; but in one respect the draft Law goes further; that is, by providing that orders of the Petty Debts Court under the relevant Articles of the [Separation and Maintenance Orders \(Jersey\) Law 1953](#) also fall within the remit of the draft Law.

The draft Law would insert a new Article 2B in the Maintenance Orders (Enforcement) (Jersey) Law 1999 empowering the Court on the application of the recipient to direct that the maintenance order be registered in the Public Registry. It is important to note that the Court would not be able to make a direction for registration unless it had given the payer an opportunity to be heard.

Registration of an order would take effect as a judicial hypothec upon the immovable property of the payer as if it were an act or judgment of the Court to which Article 13 of the [Loi \(1880\) sur la propriété foncière](#) applied; and on the basis that it secured the amounts due for payment on an ongoing basis.

Cancellation of registration would take place only upon a further direction of the Court, on the application of the recipient or the payer.

Collective Responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

⁵ And in Article 49(1)(d) of the Civil Partnership (Jersey) Law 2012.

⁶ This feature would have been novel to Jersey law but for the enactment of the [Social Security Hypothecs \(Jersey\) Law 2014](#), under which the hypothec of the Minister for Social Security operates to “secure such amount as accrues from time to time that a debtor is liable to pay pursuant to an income support debt or a long-term care loan, as the case may be”. This has afforded a helpful precedent in drafting terms.

Human Rights

No human rights notes are annexed because the Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

This draft Law would amend the Maintenance Orders (Enforcement) (Jersey) Law 1999 to empower the Royal Court or the Petty Debts Court, as the case may be, to direct the registration of maintenance orders in the Public Registry, and to provide that an order so registered would take effect as a judicial hypothec on the property of a person subject to an order (*Article 1*).

Articles 2 and 3 would make consequential amendments to, respectively, the Civil Partnership (Jersey) Law 2012 and the Matrimonial Causes (Jersey) Law 1949.

Article 4 would give the title by which this Law may be cited, and provides for it to come into force 7 days after registration.



Jersey

**DRAFT MAINTENANCE ORDERS
(ENFORCEMENT) (AMENDMENT No. 3) (JERSEY)
LAW 201-**

A LAW to amend the Maintenance Orders (Enforcement) (Jersey) Law 1999

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

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

1 Maintenance Orders (Enforcement) (Jersey) Law 1999 amended

After Article 2A of the Maintenance Orders (Enforcement) (Jersey) Law 1999¹ there shall be inserted the following Article –

“2B Direction for registration of maintenance order

- (1) The Royal Court or the Petty Debts Court, as the case may be, may –
 - (a) when making a maintenance order or at any time after that; and
 - (b) on the application of the recipient,direct that the maintenance order be registered in the Public Registry.
- (2) Upon registration pursuant to a direction under paragraph (1), the maintenance order shall take effect as a judicial hypothec upon the immovable property of the payer as if –
 - (a) it were an act or judgment of the Court to which Article 13 of the Loi (1880) sur la propriété foncière² applied; but
 - (b) securing such amounts, accruing from time to time, as the payer is liable to pay pursuant to the order.

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- (3) A registration under this Article shall be cancelled only if the Court gives, on the application of the recipient or the payer, a further direction to such effect.
 - (4) The Court shall not make a direction for registration under paragraph (1) unless it has given the payer an opportunity to be heard.”.

2 Civil Partnership (Jersey) Law 2012 amended

In Article 49(1) of the Civil Partnership (Jersey) Law 2012³, sub-paragraph (d) shall be deleted.

3 Matrimonial Causes (Jersey) Law 1949 amended

In Article 29(1) of the Matrimonial Causes (Jersey) Law 1949⁴, sub-paragraph (d) shall be deleted.

4 Citation and commencement

This Law may be cited as the Maintenance Orders (Enforcement) (Amendment) (Jersey) Law 201- and shall come into force 7 days after the day on which it is registered.

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- ¹ *chapter 12.500*
 - ² *chapter 18.495*
 - ³ *chapter 12.260*
 - ⁴ *chapter 12.650*