

Government of Jersey
Union Street | St Helier | Jersey | JE2 3DN

Deputy Catherine Curtis
Chair, CEHA Panel

Via email only

14 January 2026

Dear Chair

**Re: Draft Marriage and Civil Partnership (Dissolution and Separation) (Jersey) Law 202-
(the “draft Law”)**

Thank you for your letter of 7th January with questions regarding the above referenced draft Law. Please find answers to the Panel’s questions, below.

With reference to Article 3, could you confirm whether any advice has been received regarding potential issues arising from the absence of cited grounds in relation to a no fault divorce? The accompanying report notes that the grounds would be “irretrievable breakdown,” yet this is not reflected in the wording of the draft Law itself.

The Law is drafted on the clear assumption of “no-fault” dissolution of a marriage or civil partnership, a position from which I am not prepared to depart. The omission of any reference to “irretrievable breakdown” was deliberate and designed to ensure that this concept could not be relied upon as a ground on which a request for a dissolution might be challenged, particularly by an abusive spouse or civil partner. I am particularly keen to ensure that individuals in abusive marriages or civil partnerships are afforded appropriate protection and an easy route out of such a situation.

The signed statement referred to in Articles 3(2) and 3(3) and an application made in the prescribed form, without indicating the context, will provide the conclusive evidence that the marriage or civil partnership is over and cannot be challenged.

Would you consider amending the wording for clarity?

Based on my comments above I do not believe that there is any need to make an amendment.

- 1. It has been suggested to the Panel that the a “deed”, as referenced in Article 21(1)(b) is not recognised in Jersey Law. Would it be appropriate to amend this to “contract”?**

I accept that the term “deed” although referenced to in several pieces of Jersey legislation, is not formally a term recognised under Jersey Law. However, I am assured that the key point is that Article 21(1)(b) refers to a “deed or instrument”. In Jersey law, the term “instrument” has a broad meaning and can include written documents such as contracts.

In order to ensure clarity, I am willing to amend the draft Law to remove the word “deed” from Article 21(1)(b).

- 2. In relation to Articles 21(2) there is reference to provision for a child after their 21st birthday, however, the Panel understands that no secured provision order should be made which extends beyond the age of 21, as per Article 25(3) of the Matrimonial Causes (Jersey) Law 1949. Could you clarify this point?**

This is a new Law which, if approved, will replace existing provisions in the Matrimonial Causes (Jersey) Law 1949. Therefore, Article 25(3) of that Law would cease to apply. Article 21(2) of the draft Law does enable money to be secured for children beyond the age of 21 if they are in education or training or if special circumstances apply. That would become the new legal position.

- a. Could Article 21 be restructured to provide greater clarity?**

I do not propose making any amendments to this Article because I consider that it sets out the proposed new statutory position clearly.

- 3. Under the draft Law would a child of the family, who had reached the age of 18 at the date of application for ancillary relief be required under any circumstances to issue their own applications for financial provision, or become involved in their parents’ divorce proceedings?**

The purpose of the draft Law is to address the dissolution of the marriage or civil partnership, including ancillary arrangements between spouses or civil partners which may include provision for children. That said children should not be involved in this process.

Matters relating to financial relief for children are already addressed in the Children (Jersey) Law 2002.

- 4. The Panel understands that Jersey has followed the English Law position in respect of pre and post nuptial agreements, however, with regards to Article 22 of the draft Law there is reference to “substantial hardship”, rather than the phrasing used since the Supreme Court’s decision in *Radmacher v Granatino* [2010] of “predicament of real need”. Please could you outline the reason the draft Law uses “substantial hardship”?**

I do not propose to amend the existing wording of “substantial hardship” used in the draft Law.

Both formulation of these legal tests – ‘*substantial hardship*’ and ‘*predicament of real need*’ – serve to protect vulnerable parties in family law proceedings. While the wording differs, both terms are intended to ensure fairness and prevent adverse outcomes.

It is important to note that Jersey has full autonomy to determine its family law provisions and is under no obligation to follow the law of England and Wales even though Jersey’s family law has historically aligned closely with it. Jersey courts retain discretion to interpret the provisions of the draft Law in line with UK case law, should they consider it appropriate.

Furthermore, the use of the term '*substantial hardship*' in Article 22 of the draft Law is supported by the recommendations of the Jersey Law Commission in its 2014 Report on Divorce Reform.

5. Why is Article 20, namely 'Rights of succession cease on dissolution of marriage or civil partnership' referenced in Articles 22(4), 23(3) and 24(3)?

a. What effect would the removal of this have?

Removing the references to Article 20 does not, in itself, create any unintended legal consequences. However, its omission could result in orders that inadvertently conflict with the rights Article 20 was intended to extinguish, potentially leading to inconsistent outcomes if the loss of succession rights is overlooked, however the inclusion of Article 31(1) helps to mitigate against this. I will therefore review the need for the reference to Article 20 in Articles 22(4), 23(3) and 24(3) and will progress any appropriate amendments.

6. Is Article 33(2)(c) required? If a court has refused the application for financial support, is an interim financial order relevant?

Yes, Article 33(2)(c) is a necessary component of the Draft Law. Its removal would compromise judicial flexibility, potentially perpetuate inequitable financial obligations, and undermine protections for vulnerable individuals.

Interim financial orders are granted based on the facts available to the Court at the time. Circumstances may later change significantly, such as improved financial independence or altered living arrangements, making continued support unnecessary.

In cases involving abusive marriages or civil partnerships, interim orders may initially be critical for safeguarding the vulnerable party. However, once safety and stability are restored, ongoing financial support may no longer be appropriate. Retaining Article 33(2)(c) ensures the Court has the discretion to adapt orders to evolving realities, preventing unjust outcomes and reducing the risk of unnecessary financial obligations.

7. Do Articles 22(1), 23(1)(a) and 24(2) (note there are two numbered 24(2) refer to conditional order or final order?

Thank you for highlighting the issue about the two number 24(2) - an amendment will be made to address this.

An amendment will also be made so that, where appropriate, the word "final" be added in to the provisions that the Panel has highlighted.

8. In relation to Article 36, 'Orders for payment in respect of legal services', please can you outline what work the Government has done to consider the effectiveness of this system and whether there may be any negative consequences of this on the financially weaker spouse?

a. Could you outline why the provisions in the draft Law are considered suitable?

b. Could the court be given wider discretion (than currently proposed in the draft Law) relating to legal services payment orders?

The provisions of this Article are new to Jersey and were added at the behest of the Jersey Family Law Association and have been included to protect the weaker spouse or civil partner who may lack access to funds for legal services. The provisions largely reflect the content of Article 22ZA of the Matrimonial Causes Act 1973 in England and Wales.

The issue of paying legal fees was covered within the judgement on D v E (Matrimonial) on 11th September 2023 (see paragraph 56) in which the Family Court Judge, Advocate McFadzean, stated that to establish a clear need for this type of interim provision, an applicant must provide sworn evidence showing they cannot reasonably obtain legal advice or representation by any other means. This includes demonstrating that they have no assets to fund representation, cannot secure a loan and cannot arrange legal services through a charge on existing assets.

To give the court flexibility at the final order stage, an amendment will be made to Article 36(8) to provide the court with discretion in deciding how the applicant's costs are handled.

9. Also, in relation to Article 36(1), was any consideration made as to whether inclusion of 'orders pursuant to Article 10 of the Children (Jersey) Law 2002 in respect of any child of the family' would be appropriate in certain circumstances?

a. If not, why not?

I do not consider it necessary to amend Article 36(1). If it is deemed necessary to include such a provision I would suggest that it is more appropriate for a similar albeit more limited provision for the purpose of application for child support to be included under Schedule 1 of the Children (Jersey) Law 2002.

With reference to Article 40, is it correct that the burden of proof will fall to person A (who may be the financially weaker and / or more vulnerable spouse)?

a. If so, would this be more appropriate for there to be a rebuttal presumption against party B to move the burden of proof?

This Article may protect the financially weaker or more vulnerable party but this is not always and, therefore, necessarily the case. The views of the local legal profession on the merits of including a rebuttal provision diverge. There are concerns that the inclusion of such a provision may result in increased litigation and fishing expeditions which is contrary to modern family practice where the primary focus is always on resolution and compromise. I would welcome the opportunity to discuss this in more detail with members from the Jersey Family Law Association (JFLA), in consultation with the Family Court Judge. Officials will convene further meetings to discuss the matter.

I understand that the issues raised in your letter arise from a submission made to the Panel by the JFLA. It is regrettable that these points have been raised at such a late stage and were not all made by the JFLA earlier, prior to the draft Law being lodged. To avoid delays, my officers had previously indicated to family lawyers that, if any amendments to the draft Law were considered necessary, these could and would have been brought forward at a later stage by way of Regulations, and in any event before the Law comes into force. Any amendments made via this route would have been carefully considered; would have rightly taken account of the views of all parties involved in the dissolution of a marriage and civil partnership; and would have been implemented in the main body of the legislation. This route for amendment is still available.

However, I am conscious of the need to ensure that this draft legislation is debated by the States Assembly without delay so that Jersey implements modern practices and also protects those who are in abusive marriages or civil partnerships as soon as possible. In consideration of this, as the Panel will note, I propose to lodge some amendments to the draft Law prior to the debate on 3 February, in response to the Panel's queries, for which I am grateful.

Should you require any further information on the above or on any other matters relating to the draft Law, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'M. R. Le Hegarat', with a stylized flourish at the end.

Deputy Mary Le Hegarat
Minister for Justice and Home Affairs