

Island of



Guernsey

Ordinance of the States

III
2002

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Coming into operation	1st February, 2002.

The Matrimonial Causes (Costs and Fees) Ordinance, 2002

**The Matrimonial Causes (Costs and Fees)
Ordinance, 2002**

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The Matrimonial Causes (Costs and Fees) Ordinance, 2002

THE STATES, in pursuance of their Resolution of the 1st November, 2001^a, and in exercise of the powers conferred by article 69 of the Matrimonial Causes Law (Guernsey), 1939^b, hereby order:-

PART I COURT FEES & RECOVERABLE COSTS

Application of Ordinance.

1. The provisions of this Ordinance -
 - (a) apply in relation to proceedings in the Matrimonial Causes Division of the Royal Court ("**the Court**"); and
 - (b) are subject to the provisions of the Matrimonial Causes (Assisted Persons) Ordinance, 1952^c.

Court fees.

2. (1) There shall be payable and (subject to the following provisions of this Ordinance and to any direction of the Court as to the extent to

^a Article XIX of Billet d'État No. XXI of 2001.

^b Ordres en Conseil Vol. XI, p. 318; article 69 was amended by Vol. XXII, p. 102.

^c Recueil d'Ordonnances Tome X, p. 288; Tome XVII, p. 74; and Tome XXIV, p. 85.

which costs are to be paid) recoverable, in respect of a proceeding or matter described in column 1 of the Schedule, the fee specified in relation to that proceeding or matter in column 2 of the Schedule (a "**Court fee**").

(2) Column 2 of the Schedule specifies to whom Court fees are payable.

(3) A Court fee is, unless the Court orders payment by another party, payable by the party at whose instance the proceeding or matter was taken, done or carried out.

(4) The Court may, in respect of any proceedings relating to -

(a) the custody, maintenance or education of children; or

(b) access to children;

order that any Court fee shall (subject to such terms and conditions as may be specified in the order) be waived in whole or in part.

Advocates' fees.

3. (1) In any proceedings the maximum Advocates' fees recoverable shall be (subject to the following provisions of this Ordinance and to any direction of the Court as to the extent to which costs are to be paid) the costs of and incidental to the proceedings which have been incurred by the party to whom costs are awarded and which are reasonable in amount and reasonably incurred.

(2) The maximum Advocates' fees recoverable shall (unless the Court orders otherwise) be limited to £160 per hour.

(3) The hourly rate specified in subsection (2) shall, on the 1st January 2003, and on the 1st January in each succeeding year, be subject to a percentage increase (rounded to the nearest pound) equivalent to the annual percentage increase, if any, in the Guernsey Index of Retail Prices most recently published in a Billet d'État immediately prior to that date.

(4) The provisions of this section are without prejudice to the powers of the Court under sections 6 and 7 (payment of costs or security therefor on a full or partial indemnity basis).

(5) Any doubts which a person appointed under section 9 to conduct a taxation may have as to whether costs are reasonable in amount or reasonably incurred shall, except in relation to costs awarded on a full or partial indemnity basis, be resolved in favour of the paying party.

(6) In relation to costs awarded on a full or partial indemnity basis, all costs shall be allowed except insofar as they are unreasonable in amount or unreasonably incurred; and any doubts which a person appointed under section 9 to conduct a taxation may have as to whether such costs are reasonable in amount or reasonably incurred shall be resolved in favour of the receiving party.

Witnesses' allowances in respect of proceedings.

4. (1) The allowances recoverable on account of and payable to -

- (a) a witness attending to give evidence in any proceedings (whether or not he gives evidence); and
- (b) a witness examined in preliminary proceedings;

shall be determined in accordance with this section.

(2) There may be allowed, in respect of a professional or expert witness, for attending to give professional or expert evidence and for work in connection with its preparation, an allowance of the amount considered reasonable having regard to the nature and difficulty of the case and the work necessarily involved.

(3) There may be allowed, in respect of a witness who attends to give evidence other than professional or expert evidence -

(a) if he thereby loses remuneration or necessarily incurs additional expense (other than expense on account of travelling, lodging or subsistence), an allowance not exceeding the amount of -

(i) the remuneration actually and reasonably lost;
and

(ii) the expense actually and reasonably incurred;
and

(b) if he is not resident in the Island of Guernsey, a subsistence allowance not exceeding the amount of the costs actually and reasonably incurred.

(4) There may be allowed, in respect of a witness who is necessarily absent from his place of residence overnight for the purpose of attending to give evidence, a night allowance not exceeding the amount actually and reasonably incurred for board and lodging for the night.

(5) There may be allowed, in respect of a seaman who is detained on shore for the purpose of attending to give evidence and who thereby misses his ship, for the time during which he is, and is likely to be, necessarily detained on shore -

- (a) an allowance not exceeding the amount of the wages actually and reasonably lost by him; and
- (b) a subsistence allowance and night allowance not exceeding the amounts referred to in subsections (3)(b) and (4);

and paragraphs (2) to (4) do not apply to a person in respect of whom an allowance is made under this subsection.

(6) There shall be allowed, in respect of a witness who necessarily incurs expense in travelling to and from the Court or any other place for the purpose of attending to give evidence, an allowance not exceeding the expense actually and reasonably incurred.

(7) An allowance payable to any person under this section is, unless the Court orders payment by another party, payable by the party on whose behalf that person attends to give evidence.

Other fees and amounts.

5. (1) The amount recoverable on account of a medical inspector appointed by the Court under Rule 51 of the Matrimonial Causes Rules, 1952^d in

^d O.R.C. Vol. I, p. 64; Nos. I and II of 1973; No. I of 1980; No. IV of 1983 and No. I of 1986.

respect of the examination of any party and the report to the Court on the result of such examination is the amount actually and reasonably paid by way of his fee.

(2) A fee referred to in subsection (1) is, unless the Court orders payment by another party, payable by the party at whose instance the inspection was carried out.

(3) The amount recoverable in respect of a fee payable upon the swearing of a declaration shall be the amount of the fee.

(4) Where the cost of any item is recoverable, the amount recoverable is the amount actually and reasonably paid for the item.

Power to award costs on indemnity basis.

6. (1) For the avoidance of doubt, and notwithstanding the provisions of any enactment or rule of court, the Court shall have power (and shall be deemed always to have had power), in the circumstances mentioned in subsection (2), to order that costs or security for costs shall be paid on a full or partial indemnity basis.

(2) The circumstances referred to in subsection (1) are as follows-

(a) where, in the special circumstances of the case, it is the opinion of the Court that costs should be ordered otherwise than on the basis provided by the preceding provisions of this Ordinance; or

(b) where any party has pleaded or otherwise pursued or defended any proceedings unreasonably, scandalously, frivolously or vexatiously, or has otherwise abused the

process of the Court.

Power to award security for costs.

7. (1) For the avoidance of doubt, the Court shall have power (and shall be deemed always to have had power) in any proceedings to order any party to give security for costs, in such amount, on such terms and in such manner, as the Court thinks just.

(2) An order under subsection (1) for the giving of security for costs may provide that -

- (a) the proceedings shall be stayed until the security is given; and
- (b) if the security is not given within such time as may be specified in the order, the proceedings may be dismissed by the Court.

PART II

TAXATION OF COSTS

Request for taxation.

8. (1) Where in any proceedings the Court awards costs against any party, that party may, within a period of one month immediately following the date when he or his Advocate receives the opposing party's bill of costs, submit a written request -

- (a) to the judge who presided over the proceedings ("**the presiding judge**"); or

- (b) if the presiding judge is unavailable, to the Bailiff;

for the costs to be taxed.

(2) The presiding judge or, if he is unavailable, the Bailiff may allow further time for the submission of a request under subsection (1) upon being satisfied that there are exceptional circumstances making it just to do so.

(3) Taxation under this Part of this Ordinance is inapplicable in respect of a party's own costs payable to his Advocate.

Appointment of person to conduct taxation.

9. (1) On receipt of a request under section 8(1), the presiding judge or, as the case may be, the Bailiff shall appoint -

- (a) himself;
- (b) any other person or persons whomsoever (hereinafter called "**Commissioners**"); or
- (c) both himself and one or more Commissioners;

to conduct either the entirety of the taxation or such part thereof as he may specify.

(2) An appointment under subsection (1) -

- (a) shall, subject to subsection (3), be final;
- (b) may be made for all purposes of the taxation or for such limited purposes thereof as may be specified by

the presiding judge or, as the case may be, by the Bailiff; and

- (c) may be made subject to such terms and conditions as may be so specified.

(3) The presiding judge or, if he is unavailable, the Bailiff may at any time, if satisfied that it is just to do so, rescind or amend an appointment under subsection (1) or make a new such appointment.

Conduct of taxation.

10. (1) The person conducting the taxation shall make such decision in respect of the taxation as he thinks just; and, in making his decision, he may, without limitation, take into account the seniority and experience of the Advocate whose costs are to be taxed.

(2) The person conducting the taxation may, in his absolute discretion, accept oral or written representations from any of the parties to the proceedings or from any of their Advocates.

(3) The party whose costs are to be taxed shall submit his bill of costs and all necessary papers and vouchers to the person conducting the taxation.

Appeal against taxation decision.

11. (1) The decision of the person conducting the taxation, which may confirm, reduce or disallow any of the costs in question, shall be subject to appeal, by any party aggrieved by the decision, as follows -

- (a) where the decision is that of the presiding judge himself, the decision shall be deemed to be part of the

Court's award as to costs, and appealable as such;

- (b) where the decision is not that of the presiding judge himself, the decision shall be subject to appeal to the Ordinary Court constituted by the Bailiff sitting alone.

(2) An appeal under subsection (1)(b) shall be instituted, within a period of one month immediately following the date of the decision, by way of summons served on the other party.

(3) The grounds of the appeal shall be that the decision was wrong in law.

(4) In all other respects the decision of the person conducting the taxation shall be final.

Amount recoverable.

12. The amount recoverable in respect of costs shall not exceed the amount stated in the decision of the person conducting the taxation (as varied, where applicable, on appeal).

Costs of person conducting taxation.

13. (1) The person conducting the taxation -

- (a) may make an award as to his own costs, fees and expenses; and
- (b) may order any party to give security for costs in such amount, on such terms and in such manner as he thinks just; and an order under this paragraph for the

giving of security for costs may provide that -

- (i) the taxation proceedings shall be stayed until the security is given; and
- (ii) if the security is not given within such time as may be specified in the order, the taxation proceedings may be dismissed by the person conducting the taxation.

(2) An award under subsection (1)(a) -

- (a) shall be final;
- (b) shall be recoverable by the person conducting the taxation as a civil debt;
- (c) shall direct by which of the parties, or by which of the parties' Advocates, the award is to be borne; and
- (d) shall not exceed £160 per hour (subject to increase in the manner set out in section 3(3) above) unless the Ordinary Court, constituted by the Bailiff sitting alone, upon being satisfied that there are exceptional circumstances making it just to do so, orders otherwise.

(3) An application for an order under subsection (2)(d) shall be made by the person conducting the taxation and shall be heard inter partes.

(4) An order under subsection (2)(d) shall be final.

PART III
GENERAL PROVISIONS

Interpretation.

14. (1) In this Ordinance, unless the context requires otherwise -

"**Advocates' fees**" means Advocates' fees and disbursements;

"**Commissioner**" means a person appointed under section 9(1)(b) to conduct a taxation;

"**costs**", in Part II of this Ordinance, includes -

(a) recoverable Advocates' fees and recoverable allowances;

(b) costs on a full or partial indemnity basis under section 6;

"**Court fees**" means fees payable under section 2;

"**Court**" means the Matrimonial Causes Division of the Royal Court;

"**items**" means models, plans, photographs, transcripts, documents and other things, in each case used for the purposes of proceedings;

"**presiding judge**" has the meaning given by section 8(1)(a);

"proceedings" means proceedings in the Court, whether in open court or in chambers, and includes ex parte proceedings, preliminary or incidental proceedings, and other matters;

"recoverable", in relation to Court fees, Advocates' fees and other fees, allowances and amounts referred to in this Ordinance, means recoverable by a party to whom costs are awarded by the Court from the party against whom costs are awarded;

"witness", in relation to proceedings, includes a party to the proceedings.

(2) Any reference in this Ordinance to an enactment or rule is, unless the context requires otherwise, a reference thereto as from time to time amended, extended, applied, repealed or re-enacted.

Amendment of Assisted Persons Ordinance.

15. In regulation 5 set out in the schedule to the Matrimonial Causes (Assisted Persons) Ordinance, 1952^e, after the words "of the Law" insert "or under an Ordinance made under article 69 (entitled "Costs and Court fees chargeable") of the Law".

Repeal.

16. The Matrimonial Causes (Costs and Fees) Ordinance, 1981^f and the Matrimonial Causes (Costs and Fees) (Amendment) Ordinance, 1994^g are repealed.

^e Recueil d'Ordonnances Tome X, p. 288; Tome XVII, p. 74; and Tome XXIV, p. 85.

^f Recueil d'Ordonnances Tome XXII, p. 116.

^g Recueil d'Ordonnances Tome XXVI, p. 301.

Transitional provisions.

17. This Ordinance shall have effect in relation to costs incurred on or after the date of commencement specified in section 18, whether the proceeding or matter in relation to which the costs were incurred began or occurred before, on or after that date.

Citation and commencement.

18. This Ordinance may be cited as the Matrimonial Causes (Costs and Fees) Ordinance, 2002 and shall come into force on the 1st February, 2002.

SCHEDULE

Section 2

1. DESCRIPTION OF PROCEEDING OR MATTER	2. FEES PAYABLE TO COURT, GREFFIER & SERGEANT
1. Applications, including trials of causes or issues, whether defended or undefended: hearing of.	Court: £60 per hour or part thereof (provided that where the hearing lasts for one half hour or less the fee shall be £40).
2. Commission: issuing of.	Greffier: £30.
3. Copy of decree or order: issuing of.	Greffier £15.
4. Declarations, sworn: examination by the Court of person who should have made.	Court: £40.
5. Document, including any item of correspondence, but not including petition and supporting documents filed therewith: filing.	Greffier: £15.
6. Final order: application for.	Court: £30.
7. Guardian of minor or person of unsound mind: appointment of.	Court: £20.
8. Interim injunctions: application for.	The fees specified in paragraph 12(b) of the Schedule to the Royal Court (Costs and Fees) Rules, 2000.
9. Judicial separation, rescission of: witnessing declaration of.	Greffier: £15.
10. Medical inspection of parties: filing of inspector's report.	Greffier: £15.

11. Medical inspection of parties: issuing copy of inspector's report.	Greffier: £4.50 per A4 side or part thereof.
12. Notices: publication in La Gazette Officielle.	Greffier: £15 and cost of publication.
13. Petition, including supporting documents filed therewith: filing.	Greffier: £50.
14. Petition, supplemental, including supporting documents filed therewith: filing.	Greffier: £20.
15. Search at Greffe.	Greffier: £10.
16. Service of notice of petition.	Sergeant: £30 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £18 otherwise.
17. Service of document other than notice of petition.	Sergeant: £30 for expedited or special service at request of Advocate or in cases where acknowledgement of service required; £18 otherwise.
18. Service: certificate of service.	Sergeant £10.
19. Service: sealing document to be served.	Greffier: £15.
20. Service: transmission of document to be served to His Excellency the Lieutenant-Governor.	Sergeant: £10.
21. Service: certificate of transmission of document to be served to His Excellency the Lieutenant-Governor.	Sergeant: £10.
22. Trial of cause or issue: listing of.	Greffier: £15.

<p>23. Trial of cause or issue: reserving or setting down a date for.</p>	<p>Court: £60 per day or part thereof set down.</p> <p>Provided that:-</p> <p>(a) if and only if the date is vacated on the 14th day before the appointed day (or earlier), the fee shall be refunded;</p> <p>(b) the fee shall be credited against any fee chargeable under paragraph 1.</p>
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