

# PROJET DE LOI

ENTITLED

## **The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* Ordres en Conseil Vol. XXIII, p. 186; as amended by the Recognition of Divorces and Legal Separations (Amendment) Bailiwick of Guernsey) Law, 1979 (Ordres en Conseil Vol. XXVII, p. 92). This Law is prospectively amended by the Matrimonial Causes (Bailiwick of Guernsey) Law, 2022 (No. \*\* of 2022).

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## **The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972**

### ARRANGEMENT OF SECTIONS

#### *Decrees of divorce and judicial separation granted in the British Islands*

1. Recognition in the Bailiwick of divorces and judicial separations granted in the British Islands.

#### *Overseas divorces and legal separations*

2. Recognition in the Bailiwick of overseas divorces and legal separations.
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## **The Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972**

**THE STATES**, in pursuance of their Resolution of the twenty-fourth day of November, nineteen hundred and seventy-one, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### *Decrees of divorce and judicial separation granted in the British Islands*

#### **Recognition in the Bailiwick of divorces and judicial separations granted in the British Islands.**

1. Subject to section eight of this Law, the validity of a decree of divorce or judicial separation granted after the commencement of this Law shall, if it was granted under the law of any part of the British Islands, be recognised in the Bailiwick.

### *Overseas divorces and legal separations*

#### **Recognition in the Bailiwick of overseas divorces and legal separations.**

2. Sections three to five, both inclusive, of this Law shall have effect, subject to section eight of this Law, as respects the recognition in the Bailiwick of the validity of overseas divorces and legal separations, that is to say, divorces and legal separations which –

- (a) have been obtained by means of judicial or other

proceedings in any country outside the British Islands,  
and

(b) are effective under the law of that country.

**Grounds for recognition.**

3. (1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained –

(a) either spouse was habitually resident in that country, or

(b) either spouse was a national of that country.

(2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce or legal separation, paragraph (a) of subsection (1) of this section shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.

(3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, the foregoing provisions of this section (except those relating to nationality) shall have effect as if each territory were a separate country.

**Cross-proceedings and divorces following legal separations.**

4. (1) Where there have been cross-proceedings, the validity of an overseas divorce or legal separation obtained either in the original proceedings or in the cross-proceedings shall be recognised if the requirements of paragraph (a) or paragraph (b) of subsection (1) of section three of this Law are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.

(2) Where a legal separation the validity of which is entitled to recognition by virtue of the provisions of section three of this Law or of subsection (1) of this section is converted, in the country in which it was obtained, into a divorce, the validity of the divorce shall be recognised whether or not it would itself be entitled to recognition by virtue of those provisions.

**Proof of facts relevant to recognition.**

5. (1) For the purpose of deciding whether an overseas divorce or legal separation is entitled to recognition by virtue of the foregoing provisions of this Law, any finding of fact made (whether expressly or by implication) in the proceedings by means of which the divorce or legal separation was obtained and on the basis of which jurisdiction was assumed in those proceedings shall –

- (a) if both spouses took part in the proceedings, be conclusive evidence of the fact found, and
- (b) in any other case, be sufficient proof of that fact unless the contrary is shown.

(2) In this section "**finding of fact**" includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained; and for the purposes of paragraph (a) of subsection (1) of this section, a spouse who has appeared in judicial proceedings shall be treated as having taken part in them.

*General Provisions*

**Existing common law and statutory rules.**

6. (1) In this section "**the common law rules**" means the rules of law relating to the recognition of divorces or legal separations obtained in the country

of the spouses' domicile or obtained elsewhere and recognised as valid in that country.

(2) In any circumstances in which the validity of a divorce or legal separation obtained in a country outside the British Islands would be recognised by virtue only of the common law rules if either –

- (a) the spouses had at the material time both been domiciled in that country, or
- (b) the divorce or separation were recognised as valid under the law of the spouses' domicile,

its validity shall also be recognised if the next following subsection is satisfied in relation to it.

(3) This subsection is satisfied in relation to a divorce or legal separation obtained in a country outside the British Islands if either –

- (a) one of the spouses was at the material time domiciled in that country and the divorce or separation was recognised as valid under the law of the domicile of the other spouse, or
- (b) neither of the spouses having been domiciled in that country at the material time, the divorce or separation was recognised as valid under the law of the domicile of each of the spouses respectively.

(4) For any purpose of subsection (2) or (3) of this section the expression "**the material time**", in relation to a divorce or legal separation, means

the time of the institution of proceedings in the country in which it was obtained.

(5) Sections two to five of this Law are without prejudice to the recognition of the validity of divorces and legal separations obtained outside the British Islands by virtue of the common law rules (as extended by this section), or of any enactment other than this Law; but, subject to this section, no divorce or legal separation so obtained shall be recognised as valid in the Bailiwick except as provided by those sections.]

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**NOTE**

*Section 6 was substituted by the Recognition of Divorces and Legal Separations (Amendment) Bailiwick of Guernsey) Law, 1979, section 1(a), with effect from 1st March, 1980.*

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**Non-recognition of divorce by third country no bar to re-marriage.**

7. Where the validity of a divorce obtained in any country is entitled to recognition by virtue of [sections one to five or subsection (2) of section six] of this Law or by virtue of any rule or enactment preserved by [subsection (5) of section six] of this Law, neither spouse shall be precluded from re-marrying in the Bailiwick on the ground that the validity of the divorce would not be recognised in any other country.

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**NOTE**

*In section 7, the words in the first and second pairs of square brackets were substituted by the Recognition of Divorces and Legal Separations (Amendment) Bailiwick of Guernsey) Law, 1979, respectively section 1(b)(i) and section 1(b)(ii), with effect from 1st March, 1980.*

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**[Non-judicial divorces.**

7A. (1) No proceeding in any part of the British Islands shall be regarded as validly dissolving a marriage unless instituted in the courts of law of one

of those parts.

(2) Notwithstanding anything in section six of this Law, a divorce which –

- (a) has been obtained elsewhere than in any part of the British Islands, and
- (b) has been so obtained by means of a proceeding other than a proceeding instituted in a court of law, and
- (c) is not required by any of the provisions of sections two to five of this Law to be recognised as valid,

shall not be regarded as validly dissolving a marriage if both parties to the marriage have throughout the period of one year immediately preceding the institution of the proceeding been habitually resident in the Bailiwick.

(3) This section does not affect the validity of any divorce obtained before its coming into force and recognised as valid under rules of law formerly applicable.]

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**NOTE**

*Section 7A was inserted by the Recognition of Divorces and Legal Separations (Amendment) Bailiwick of Guernsey) Law, 1979, section 1(c), with effect from 1st March, 1980.*

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**Exceptions from recognition.**

8. (1) The validity of –

- (a) a decree of divorce or judicial separation granted under

the law of any part of the British Islands, or

- (b) a divorce or legal separation obtained outside the British Islands,

shall not be recognised in any part of the Bailiwick if it was granted or obtained at a time when, according to the law of that part of the Bailiwick (including its rules of private international law and the provisions of this Law), there was no subsisting marriage between the parties.

(2) Subject to subsection (1) of this section, recognition by virtue of [sections two to five or subsection (2) of section six of] this Law or of any rule preserved by [subsection (5) of section six] thereof of the validity of a divorce or legal separation obtained outside the British Islands may be refused if, and only if –

- (a) it was obtained by one spouse –
  - (i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken, or
  - (ii) without the other spouse having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to the matters aforesaid, he should reasonably have been given, or
- (b) if its recognition would manifestly be contrary to public policy.

(3) Nothing in this Law shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce or separation or of any maintenance, custody or other ancillary order made in any such proceedings.

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**NOTE**

*In section 8, the words in the first and second pairs of square brackets in subsection (2) were, respectively, inserted and substituted by the Recognition of Divorces and Legal Separations (Amendment) Bailiwick of Guernsey) Law, 1979, section 1(d)(i) and section 1(d)(ii), with effect from 1st March, 1980.*

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**Interpretation.**

9. [ (1) ] In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

**"the Bailiwick"** means the Bailiwick of Guernsey,

**"country"** includes a colony or other dependent territory of the United Kingdom but for the purposes of this Law a person shall be treated as a national of such a territory only if it has a law of citizenship or nationality separate from that of the United Kingdom and he is a citizen or national of that territory under that law.

[ (2) ] Any reference in this Law to any other enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

(3) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Law throughout the Bailiwick.]

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**NOTES**

*In section 9, subsection (1) was renumbered, and subsections (2) and (3) were inserted, by the Recognition of Divorces and Legal Separations (Amendment) Bailiwick of Guernsey) Law, 1979, section 1(e), with effect from 1st March, 1980.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**Transitional provisions.**

**10.** The provisions of this Law relating to overseas divorces and legal separations and other divorces and legal separations obtained outside the British Islands apply to a divorce or legal separation obtained before the date of the commencement of this Law as well as to one obtained on or after that date and, in the case of a divorce or legal separation obtained before that date –

- (a) require, or, as the case may be, preclude, the recognition of its validity in relation to any time before that date as well as in relation to any subsequent time, but
- (b) do not affect any property rights to which any person became entitled before that date or apply where the question of the validity of the divorce or legal separation has been decided by any competent Court in the British Islands before that date.

**Citation.**

**11.** This Law may be cited as the Recognition of Divorces and Legal Separations (Bailiwick of Guernsey) Law, 1972.

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**NOTE**

*The Law received Royal Sanction on 24th May, 1972 and was registered on the Records of the Island of Guernsey and came into force on 27th June, 1972.*

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