

# Finances when your marriage/civil partnership ends:

## Why an order is needed

It is in your interests to get financial matters sorted out and a Court order made. If not, it could/may lead to a future claim being made against you for a share of the wealth you may have acquired after the divorce or end of your civil partnership.

## The Law

See Articles 25 to 31 of the [Matrimonial Causes \(Jersey\) Law 1949](#) as amended and Articles 44 to 51 of the [Civil Partnership \(Jersey\) Law 2012](#). Jersey courts take into account the factors set out in section 25 of the Matrimonial Causes Act 1973 (“MCA”).

## What the Court looks at

There is no mathematical formula and the Registrar looks at each case on an individual basis.

- The Registrar’s first consideration will be for the welfare and arrangements for your child/ren under 18 years old, to include where they live
- The Registrar will decide on the division of assets based on factors such as:-
  - your ages – e.g are you able to get work due to your age and what will happen on retirement
  - length of marriage/civil partnership – is it a short marriage/civil partnership as if so, there is less likelihood the Registrar will share out money and property equally, particularly if one of you brought money or property in to the marriage/civil partnership. Did you live together before the marriage/civil partnership and for how long?
  - income and ability to earn now and in the future and any other income. If not in work, can you or your spouse /civil partner get work and is there an impact due to child care responsibilities?
  - present and future financial needs and responsibilities, to include paying child maintenance for the children of the family or if you or your ex have other children
  - property and money which each of you have now or in the foreseeable future and any debts. What is the cost of renting or buying? Can you get a mortgage and if so, for how much?

- living expenses now and in the future. What child care arrangements are needed to enable parents to work to meet financial needs?
- standard of living –often neither you nor your ex will be able to afford the same standard of living as there are now two households
- role in the marriage or civil partnership, e.g. if you were the breadwinner or primary carer but generally each person’s contribution is seen as equally important
- any physical or mental illness of either of you and /or the children and its impact on earning capacity and housing needs
- value of any benefit that may be lost e.g. pension. If one of you has pension funds the other may want to get a bigger share of any remaining assets
- conduct i.e. behaviour is rarely taken into account. Is it so extreme that it has to be taken into account? You will need legal advice if you want to allege conduct is relevant to the financial arrangements as only in very rare cases will it be taken into account
- A Court has to apply the objective of fairness. If there are limited assets, fairness begins and ends in considering needs, particularly housing needs.
- There does not have to be equal sharing. The assets may not be enough to exceed joint needs, and /or one of you may have greater needs. The main need in most cases is for housing. Housing and capital and income needs are linked and may be considered in the round.
- The Registrar may try to arrange a ‘clean break’, so you no longer have any financial ties to one another. However a clean break does not end responsibilities for children.

## **Assets – orders that can be made**

The Registrar can:-

- Order a sale of a property and decide how much each of you gets from the proceeds of sale.
- Transfer a property from both of you to one of you or from one to the other.
- Let one of you live in a property for a specified time or until a particular event, the property then to be sold. The Registrar will also decide how much each of you gets from the proceeds of sale and who pays for the mortgage and upkeep etc. in the meantime.
- Order one of you pays a lump sum to the other.

- Order a transfer of shares.

There are no pension sharing or pension attachment orders in Jersey.

## **Special circumstances**

There may be special circumstances where you need legal advice as soon as possible:-

- Complicated businesses or trusts
- You made a pre-nuptial agreement
- You are worried about your spouse or civil partner hiding assets or getting rid of them
- Someone else (a third party) claims they own part or all of your or your spouse or civil partner's property
- Where there are high value assets
- "Non-matrimonial" assets which have not been "mixed" with matrimonial assets.

## **Child Maintenance payments**

- The Court uses The Child Support Agency 2000 as a guide i.e. 15% of net income for the first child, 20% for the second and 25% for the third and subsequent children if the paying parent has no other children. The rate however is checked for overall fairness. The amount of maintenance depends on all the circumstances.
- The Court will consider some of the factors as set out in the section on how courts split assets and also:-
  - the financial needs of your child/ren
  - their income and earning capacity (if any)
  - property and other financial resources of your child/ren
  - any physical or mental disability of the child/ren
  - are you or the other parent already paying child maintenance for other children
  - the manner in which you expect your child/ren to be educated or trained
- Child maintenance is normally paid until your child reaches the age of 16 or finishes full-time secondary education, with a review if your child goes on to tertiary education.

- Orders regarding school fees, child care costs, activities both in and out of school can be made.
- The level of child maintenance may be varied e.g. if the payer loses a job, gets better work or is unable to work.

## **Spousal or civil partner maintenance**

- Be aware that once child maintenance payments are calculated, it may not also be possible to pay spousal/civil partnership maintenance.
- The Registrar is likely try to arrange a ‘clean break’, so you no longer have any financial ties to one another and are financially independent.
- Sometimes this is not possible, especially if one of you is older and has not worked for many years i.e. an award is made by reference to needs, except in exceptional cases.
- The Registrar may tell the person with a higher income to make regular payments to help with the other’s living costs. i.e. by reference to needs. An outgoings/expenditure schedule should therefore accurately describe needs.
- The Registrar has to consider whether the amount of proposed maintenance is a fair proportion of the payer’s available income and what the payer’s needs are, bearing in mind that the payer may be paying child maintenance.
- Maintenance can be for:
  - a limited period so there can be a lead up to financial independence
  - until one of you dies, marries or enters into a new civil partnership
- It may be varied if one of you loses a job, gets better work or is unable to work.
- There is no set formula so the Registrar has to consider respective incomes from all sources and expenditure including mortgage payments or rent.

## **Consent order**

- If you and your partner have reached an agreement about finances, you can ask the Court to make it legally binding, by applying for a “consent order”. You should try to get legal advice before doing this and get a lawyer to draft a “consent order”.
- The legal document may include details on division of your assets, and arrangements for maintenance payments, including child maintenance.
- You and your former spouse or civil-partner have to sign the draft consent order and complete [a statement of information form](#). See Practice Direction FD12/07. See Family Division practice directions in the Divorce,

Separation and Relationship Breakdown section on [www.gov.je/familycourt](http://www.gov.je/familycourt).

- You do not normally have to attend court but the Registrar may want both of you to attend if something is not clear.
- A final order cannot be made (except for interim maintenance for yourself or child maintenance) until the pronouncement of the decree nisi. The order cannot come into force until the divorce is finalised (made absolute).

### **If you can't agree**

- consider Family Mediation Jersey [www.fmj.je](http://www.fmj.je) or tel **01534 638898**:
  - family mediation can be faster, cheaper and easier than you going through the stress of a court hearing/s
  - Family Mediation Jersey ("FMJ") have qualified independent mediators who can help you with arguments about your children money and finances
  - you can still see a mediator with the other party even if your case has started
  - as the Court is required to encourage you to settle through mediation, you will be asked what steps you have taken to mediate.
- if mediation is unsuccessful or partly unsuccessful, see [Divorce Proceedings Procedure For Obtaining Financial Orders \(Ancillary Relief\)](#) or [Dissolution of a Civil Partnership Procedure For Obtaining Financial Orders \(Ancillary Relief\)](#)