



Royal Court of Jersey
Family Division

**DIVORCE PROCEEDINGS
ARRANGEMENTS FOR CHILDREN**

Judicial Greffe
Royal Court House
Royal Square
St Helier
JE1 1JG
Tel: 01534 441300
Fax: 01534 441399
www.gov.je/familycourt

You may ask the Court staff for information regarding Court procedures, but Court staff are NOT allowed to offer legal advice or advise you about your different legal options.

Why it is better to reach agreement

Before beginning divorce proceedings or separating from your spouse, one of your first concerns will be about your child[ren]'s future. When you separate, you will both continue to be parents.

Try to reach agreement with your husband/wife as to arrangements for the children as a constructive approach through the divorce or separation will help the children to adjust to the changes.

As you know your child[ren]'s best, you should be best able to consider how the break-up of your marriage will affect them, and to make arrangements which best suit their needs. It is better for you to sort matters out yourselves if at all possible, but if you cannot agree on the arrangements, you may be able to sort these out by attending mediation.

Parental Responsibility

As you and your spouse are both parents, you both have parental responsibility, that is, 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'.

The Statement of Arrangements (Form 5)

The person starting any divorce proceedings ("the petitioner") will need to submit a completed Statement of Arrangements for the Children, Form 5.

Before doing this, the petitioner should try and reach agreement with his/her spouse ("the respondent") about those arrangements. The Court will need to know about the child[ren] born to you and your spouse, or any child[ren] treated by you as though they were yours (known as "children of the family"). These include adopted children, but not foster children.

A. What happens if agreement is reached?

The respondent is served with the divorce papers, including a Form 4 Acknowledgement of Service and the Form 5 Statement of Arrangements for the Children. If the respondent agrees with the arrangements for the children, he/she must sign and date Form 5.

Both Forms 4 and 5 are then returned to the Court, and copies are then sent by the Court to the petitioner (or to the petitioner's lawyer). The petitioner (or the lawyer) then applies for 'the Greffier's Certificate',

enclosing the relevant documentation. If the Registrar is satisfied with the paperwork, he/she issues the Greffier's Certificate and, if the petition is undefended, sets a date for the pronouncement of the Decree Nisi.

If the Court is satisfied about the arrangements for each child, this is stated in the Court Minutes, and a Certificate of Satisfaction will be issued to you. Six weeks and a day after the pronouncement of the Decree Nisi, the petitioner can apply to the Registrar for the divorce to be made absolute. If he/she does not do so, the respondent may apply three months after the decree nisi by filing a summons. There may be special cases of urgency when an earlier application may be made.

The divorce will not be made absolute unless the Registrar is satisfied with the arrangements for each child of the family, or unless there are circumstances in which it may be necessary to make the divorce absolute without delay, and there is an undertaking from both parents that the arrangements about the children are to be brought before the Court within a specified time.

B. What happens if you cannot reach agreement about your child/ren

The respondent can file his or her own Statement of Arrangements (also in Form 5), and negotiations can take place to try and reach agreement about the arrangements. However, if this is not possible, either parent can ask the Court to decide on matters of dispute.

The Court will not make any order relating to a child unless it is satisfied that making an order would be better for the child than not making an order.

Even if Court proceedings have started, you can still continue to try and reach agreement with your spouse and attend mediation.

Orders that may be made

A child's welfare is the main consideration when the Court considers the upbringing of a child.

The Court will apply the 'welfare checklist' to help it make a decision as to what is best for a child and it will have regard to the 'welfare checklist' as set out in Article 2 of the Children (Jersey) Law 2002.

Amongst the orders available are so called 'Article 10 orders' -

- i) Residence Order – A residence order states with whom the child is to live. It lasts until the child is 16 or for longer if the Court finds that there are exceptional circumstances.

A residence order can be granted to more than one person. It prevents anyone from changing the surname of the child, or removing the child from Jersey without the agreement of everyone who has parental responsibility or unless there is an order of the Court.

However if you have a residence order, you can take the child out of Jersey for up to one month.

- ii) Contact Order –A contact order requires the person with whom the child lives to allow that child to visit, stay or have contact with the person named in the order.

As with residence orders, contact orders continue until the child is 16 years. The Court will only make contact orders for children over 16 years old in exceptional circumstances.

Direct contact may be ordered, unsupervised or supervised, or the Court may order indirect contact, for example by letter.

Article 10 orders also include 'prohibited steps orders' and 'specific issue orders'. Both these orders are concerned with a specific single issue. Because of the nature of these orders, and because urgent action is often needed you are urged to get legal advice

Article 14 orders. There are two types of Article 14 orders -

- i) Removal from Jersey
- ii) Change of a child's surname

An application is required to change a child's surname or to remove the child from Jersey, if a residence order is in force, (see above) and those who have parental responsibility do not consent. However, the parent with residence can take the child out of Jersey for a period of up to a month.

The Court procedure in contested cases

Completing the Forms

How you ask the Court to make a decision

You apply to the Registrar of the Family Division, Judicial Greffe for an order, by filling in Form C100. You may apply for more than one order, but must use the same form. **In emergency cases, the Court may allow you to apply without telling the other party or parties, (ex parte) but in such circumstances you are advised to seek legal advice.** Make sure you keep copies of the forms. If you fail to provide the full details as required on the form(s), your case will be delayed for the information to be provided by you.

Court Fees

Court fees will be payable, but your financial circumstances may be such that you are not required to pay. Further information can be obtained on request from the Viscount's Department. The court fees payable are shown at <http://www.gov.je/LifeEvents/SeparationDivorce/Pages/index.aspx>

Filing your papers at Court

When the Court gets your C100 form it will process it, and if you have given all the information required, and where necessary, provided the Court fee, the Court will give you a file number and the date and time when the Court will first consider (hear) your case. This is called a **Preliminary directions hearing ('PDH')**. The processed forms will be returned to you for service.

Security

If you are worried about security at Court, please let the Court staff know.

Serving the Forms

You must then **serve the form(s) on the respondent(s)**, and if there are other persons to whom notice must be given to them. The forms must be served so that you give at least two clear working days notice before the PDH. **YOU ARE RESPONSIBLE FOR SERVICE.**

There are rules about service, and if someone has a lawyer acting for them, you **must serve the lawyer.**

In an emergency, the Court may allow you to apply ex-parte (i.e. without serving the forms on the respondent(s)).

If you do not want the case to continue

When you have given your forms to the Court, you may subsequently apply for leave to withdraw your case.

The Preliminary Directions Hearing ('PDH')

If you have lawyers acting for you, only they need attend. However if you do **NOT** have lawyers you **MUST** attend.

The Registrar will find out firstly whether you are both willing to attend mediation. If so, the application is likely to be adjourned so that mediation can take place.

If mediation is not possible (or fails), then a date for a Case Review Hearing will be given when the parties and their lawyers (if instructed) must attend. The Registrar normally requires each party to speak to a Jersey Family Court Advisory Service (JFCAS) Officer before the Case Review hearing (see below) and will, unless not appropriate, expect parties to attend the “Keeping Children In Mind” course.

Meeting with a JFCAS Officer

You will be required to attend a meeting with a JFCAS officer. JFCAS look after the interests of children involved in family proceedings and advise the Court on what they consider are the best interests of the children. They carry out checks with other organisations in particular the Children’s service and the police and you will be required to complete police check forms. The court expects parents to attend the “Keeping Children In Mind” course, but the JFCAS office will inform the Court if someone should not attend the course.

The Case Review Hearing (‘CRH’)

The parties **AND** their lawyers **MUST** attend.

The purpose of the Case Review Hearing is to determine whether anything can be done to sort out the dispute, and find out what outstanding areas of disagreement need to be addressed.

Sometimes, as a result of this process, agreed orders can be made. Even if there is not full agreement, there may be agreement as to certain aspects of the dispute, and interim or full orders may be made.

However, it may be necessary for a welfare report to be ordered and a date set for a final full hearing of the case. Directions may be made as to the filing of evidence, including what witnesses, if any, are to attend and if necessary, medical reports.

A welfare report will be prepared by a JFCAS officer.

The Final Hearing

You, your lawyer and the witnesses, together with the JFCAS officer must attend the final hearing. Difficult or lengthy cases may be referred to the Inferior Number of the Royal Court (i.e. the Bailiff or the Deputy Bailiff sitting with two Jurats).

Privacy in Children Cases

You can only talk about your case and show court papers to your lawyer (if you have one) other party, the JFCAS officer, a children's guardian (if appointed) and an expert authorized by the Court or in mediation.

USEFUL NUMBERS

The Family Mediation Jersey – EMAIL: www.fmj.je; TEL: 638898

Acting Bâtonnier (responsible for the allocation of lawyers to litigants under the Legal Aid Scheme) TEL: 0845 8001066

THE LAW AND RULES

Links to the Law and Rules can be found within the Divorce, separation and relationship breakdown guidance section at www.gov.je/familycourt.

- see the Children (Jersey) Law 2002, the Children Rules 2005, the Matrimonial Causes Law 1979 as amended and the Matrimonial Causes Rules 2005.

Other Matrimonial Guidance Notes available from within the Divorce, separation and relationship breakdown guidance section at www.gov.je/familycourt

Procedural Guide for Divorce Proceedings

Guidance Notes for completing a Divorce Petition

Draft Divorce Petition

Divorce Proceedings - Financial Orders