



Jersey divorce reform

Service area / [Dispute Resolution and Litigation, Civil and Family Disputes](#)

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In December 2014, the Jersey Law Commission delivered a consultation paper entitled “Divorce Reform”, which is refreshingly straightforward and surprisingly comprehensive. In an area of law in which the primary source of legislation dates from 1949, this firm believes that the overhaul proposed by the paper is long overdue.

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The overarching theme behind the changes put forward for consideration by the Commission is the enablement of parties to a marriage or civil partnership to be treated as responsible adults, who can, not only determine how and when their marriage is to end, but also agree in advance, subject to certain safeguards, the financial provision which will be made for them on divorce or dissolution of their relationship.

As to the potential changes to divorce itself, specifically, the Commissioners propose that:

- The current three year period during which parties must remain married or in a civil partnership before presenting a Petition of divorce or dissolution to the Court should be abolished. The Commission is canvassing a change in legislation which will enable parties to issue a divorce petition at any time after their marriage or civil partnership.
- “No fault” divorce should be introduced.

- Lawyers should be required, as they already are in England and Wales, actively to advise those considering divorce about reconciliation. Proposed changes would also mean that the period of one year’s separation required by current legislation, before proceedings on that ground can be commenced, should not preclude, as it currently does, the parties spending even one night together in an effort to explore reconciliation.

Welcome and significant recommendations have been put forward in relation to the thorny issue of resolving financial disputes on divorce or dissolution of a civil partnership. These include:

- The introduction of legislation to enable the Court to set aside financial dispositions intended to put assets beyond the reach of a spouse or partner.
- Statutory provision to enable the Court to make orders against pensions, known in England and Wales as pension earmarking and pension sharing orders.
- A legislative presumption in favour of upholding the terms of any pre-nuptial agreement, provided certain safeguards are in place (see link to previous briefing note [here](#)).

The Commission also considers the role and importance of alternative dispute resolution in family law, in particular arbitration, mediation and collaborative law.

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Comment

The legislative framework surrounding the dissolution of marriage and civil partnerships is in urgent need of reform.

The Royal Court has often closely followed developments in the matrimonial law and practice in England and Wales, but Carey Olsen believe the Commission's proposals, if implemented, would create a modern divorce law which would offer this jurisdiction a law in advance of its time, inasmuch as it would enable Jersey residents, subject to safeguards, to have a far greater say in how and when they divorce and manage the financial issues arising on divorce.

Although the Law Commission's final report was published in October 2015, legislative reform has been subject to some delay. In England in Wales and in Jersey, the legislators' appetite to introduce divorce reform needs sharpening.

Carey Olsen will report on legislative developments as and when they happen.



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