COLLAS CRILL

Family law: Dictionary

FEBRUARY 2021

Abduction
The wrongful removal of a child from the parent with care without their permission.

Adoption
An application to Court for the official transfer of all parental rights that a biological parent has to a child and the assumption by the adopting parent of all such rights.

Adultery
Sexual intercourse with a member of the opposite sex who is not one's spouse.

Affidavit
A formal legal document sworn before a notary public or advocate of five years standing.

Ancillary Relief
All of the financial orders that a Court can make on divorce including maintenance for spouses and children, lump sums and the transfer of property.

Answer
A legal document filed in response to a Petition for divorce or Judicial Separation.

Bond
A legal mechanism for securing monies against real property.

CAFCASS
CAFCASS (Children and Family Court Advisory and Support Service) based in England. The local equivalent is the Safeguarder Service who on the instruction of the Court represent the interests of children.

Calderbank Offer
An offer of settlement made in matrimonial financial proceedings. A Calderbank offer is marked "without prejudice save as to costs". This means that the trial judge will only be made aware of the offer once the case has been concluded and when one party asks that the other should pay the costs of the proceedings because the other side have unreasonably rejected the offer. Calderbank offers are no longer effective in England but remain so in the Bailiwick. Such offers relate only to financial proceedings and not in relation to children.

Care and Control
Custody of a child. This term has now been replaced by a Residence Order which confirms where a child is to

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live on a day to day basis.

Cash Equivalent Transfer Value (CETV)
This is a mechanism for valuing pension rights. Despite its name, the CETV of a pension does not equate to available cash and instead is the value of the pension in the event of a transfer from one scheme to another.

Change of Name Deed
The formal process for change of a surname.

Child
Person under the age of 18.

Clean Break
A financial order which prevents either party from bringing any further financial claims against the other. A clean break may be expressed in relation to claims for income or capital or both.

Co-Respondent
A third party cited usually for adultery as part of divorce proceedings.

Cohabitation
Living together as husband and wife without being married.

Committal
A formal application to Court to commit a person to Prison for breach of a Court Order.

Common Law Marriage
A popular expression for the relationship between couples who are living together without being married. This has no status in Guernsey law.

Consent Order
An order made by the Court in relation to divorce, children or finances where the parties are in agreement.

Contact
The right of a child to have direct or indirect access usually to a parent or to siblings. Direct contact is face to face whereas indirect contact includes access by telephone, email, Skype or webcam.

Contact Centre
A neutral venue to facilitate children seeing parents. The Guernsey Contact Centre is located at Roseville Community Centre, Le Bouet, St Peter Port.

Contact Order
A Court Order requiring the custodial parent to allow the child to have contact with someone else usually a parent or sibling.

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Contempt of Court
The wilful and deliberate breach of a Court Order, judgment or decree punishable by a fine, imprisonment or both.

Conveyance
A formal legal document to convey real property.

CSA Guidelines
These relate to the now defunct Child Support Agency in England. These rules are often adopted as guidelines in Guernsey divorce cases whereby the absent parent is required to pay 15% of his/her net income for the maintenance of a child or 20% if there are two children or 25% if there are three or more children. The Rules are complex and provide for reductions in the level of maintenance where the child or children stay overnight for more than 52 nights per annum.

Custody
A now redundant term previously used to describe where children live or in relation to parental rights. Under The Children (Guernsey and Alderney) Law 2008 joint custody has now been replaced by the term parental responsibility and care and control by residence.

Deed Poll
The formal process for change of a surname.

Defined Contact Order
An Order of the Court fixing the dates, times and places for the children to see the absent parent.

Disclosure
Part of the Ancillary Relief procedure through which information and documentation is exchanged between spouses.

Divorce
The legal ending of a marriage.

Domestic Abuse
This is very widely defined to include physical, verbal and emotional harm. Practice Direction No 6 of 2008 states that "domestic abuse includes physical violence, extreme or excessive threatening, insulting or intimidating behaviour and any other form of abuse which directly or indirectly may have caused harm to the other party or to the child or which may give rise to the risk of harm".

Domicile
The location of your permanent residence. To issue divorce proceedings it is necessary for either party to be domiciled in the Bailiwick or to have been habitually resident for at least twelve months immediately prior to issue of the divorce proceedings.

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Duxbury Calculation
This is a formula for calculating the lump sum required to achieve a clean break. It takes into account the annual maintenance requirement and life expectancy of the recipient.

Ex-parte Application
An application to the Court made without notice to the other party.

Father
The genetic father of a child (whether or not he has parental responsibility) or an adoptive father.

Final Order
The making of a Final Order terminates a marriage.

Financial Dispute Resolution Hearing (FDR)
An informal hearing before a judge where the Court, having considered all the relevant documentation, gives an indication as to the likely outcome in the event that the matter were to proceed to trial. If no settlement is reached a different judge will deal with the final hearing without being privy to what was said during the FDR hearing.

Financial Provision
This is another name for Ancillary Relief i.e. all the financial orders that can be made on divorce namely maintenance for spouses and children, lump sum orders or the vesting of real property.

Financial Statement (Form E)
This is a standard form providing basic information with regard to each party's circumstances and assets. This is filed together with any Consent Order or Judicial Separation.

Finding of Fact
A hearing fixed by the Court to determine disputed facts of domestic abuse or violence where relevant to issues of residence and contact.

First Appointment
A hearing when the Court will decide what further disclosure is required from each party in relation to financial matters or evidence.

Form A
This is a standard format questionnaire which each party is required to complete in the course of any financial application in divorce proceedings.

Form B
Court application for financial provision/ancillary relief.

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Form C
Court application in relation to children.

Habitual Residence
Where you live. For legal purposes this is important because it can determine in which jurisdiction proceedings are brought. For divorce purposes it is necessary for one party to be either domiciled in the jurisdiction or have lived there for at least the last twelve months.

Harassment
A course of conduct intended to disturb, provoke or upset.

Injunction
A Court Order prohibiting certain types of behaviour or requiring a person to do something, such as to allow a spouse to return to the home. Typical injunction orders are non-molestation orders prohibiting the use or threats of violence or an ouster order requiring one party to vacate the matrimonial home.

Inter-parties Application
An application to the Court where notice is given to the other party. Most Court applications are inter-parties as opposed to an ex-parte application where no such notice is given.

Judicial Separation
There are two types of Judicial Separation: (1) A Judicial Separation by consent. This is an order of the Court granted with the consent of the parties confirming agreement with regard to all financial matters and children. (2) A decree of Judicial Separation. This is similar to a decree of divorce in that the same grounds apply but differs from a divorce in that upon granting of a decree of Judicial Separation the parties are not divorced but are relieved of the obligation to cohabit.

Jurisdiction
The authority of a particular Court to rule on a specific legal matter.

Licitation
An application to the Court for a judicial auction by co-owners of land. It is a fundamental principle of Guernsey Law that co-owners of land cannot be compelled to remain in joint ownership.

Lump Sum
Cash payment of a sum of money.

Maintenance
The regular payment of money by one spouse to another for their financial support. By Court Order, maintenance can be paid for a fixed period of time or indefinitely. Also known as periodical payments.

Maintenance Pending Suit
Temporary financial support of one spouse/children whilst the divorce is pending.

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Mediation
A non-legal means of attempting to resolve family matters with the assistance of a neutral third party.

Mesher Order
A type of Ancillary Relief order made in divorce proceedings which allows for the postponement of the sale of the matrimonial home upon specific triggers. Typically these include the youngest child attaining the age of 18 years or completion of full time education whichever shall be the later or the earlier death of the custodial parent or voluntary sale of the property. The order also provides as to how the net proceeds of sale are to be divided between the parties and who pays what pending sale.

Mirror Order
An order granted in another jurisdiction to reflect the terms of the order granted in the home jurisdiction. Mirror Orders are registered in other jurisdictions to ensure enforceability.

Mother
The woman who gave birth to a child or an adoptive mother.

Non-molestation Order
An injunction order made against a spouse or partner. Such an order usually prevents an individual from using or threatening violence or from encouraging others to do so. Breach of such an order can lead to arrest and a financial penalty or imprisonment for contempt of Court.

Nullity
A Petition filed at Court seeking a declaration that the marriage is either void or voidable e.g. if the marriage was celebrated through fraud, threats or duress or has not been consummated or is bigamous.

Ouster Order
A Court order requiring one party to leave the family home, to prevent re-entry or to come within a specific distance.

Parent
A mother or father who has parental responsibility.

Parental Responsibility
All the rights, duties and responsibilities which by law a parent of a child has in relation to that child.

Paternity
Legal confirmation of the parental relationship between a father and his child.

Periodical Payments
Regular payments of maintenance for a spouse or child.

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Personal Property
All property other than the right of ownership of land and other limited rights in land. Personal property is the opposite of real property.

Petition
A formal Court document seeking a specific remedy from the Court.

Petitioner
A person who issues a Petition for divorce or Judicial Separation.

Post-Nuptial Agreement
A financial settlement agreed between the parties after they have separated.

Power of Arrest
Specific power included in injunction orders enabling a Police Constable to arrest a party who he believes to be in breach of an injunction order.

Practice Direction
A formal directive from the Court stipulating how formal Court procedures are to be undertaken.

Prayer
The part of a Petition where the Petitioner specifies the remedy sought.

Pre-Nuptial Agreement
A written legal agreement between a couple made before they marry which sets out what will happen in the event of divorce.

Private Law Proceedings
Applications between individuals such as applications for parental responsibility, residence and contact. The opposite of private law proceedings, public law, relates generally to care proceedings in relation to children.

Prohibitive Steps Order
An order preventing a specific action such as an order preventing the removal of a child from the jurisdiction.

Protocol
A set of guidelines or rules usually produced by the Court or some other agency.

Provisional Order
An order granted as part of the divorce process whereby the Court confirms that the grounds of divorce are made out. Upon granting of a Provisional Order, the Final Order usually follows 32 days later.

Public Law Proceedings
Proceedings brought by the State against an individual the most common of which is care proceedings.

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Real Property
Land or an interest in land. The opposite of personal property/personalty.

Reasonable Contact Order
An order stating that the children have the right to maintain direct and/or indirect access with the absent parent. A reasonable contact order does not specify the dates, times and places when contact is to take place. See defined contact order.

Residence Order
An order confirming where the child/children shall live.

Respondent
A person against whom a Petition is issued.

Safeguarder Service
A States funded agency which represents the interest of children and young people in public and private law proceedings.

Section 17 Orders
This relates to Section 17 of The Children (Guernsey and Alderney) Law 2008. The orders under Section 17 are residence, contact, specific issue, prohibitive steps and parental responsibility orders.

Section 25 Factors
These are all the factors that can be taken into account by the Royal Court in sharing assets on divorce. Section 25 relates to the Matrimonial Causes Act 1973 which is English law imported into Guernsey divorce law by custom.

Shared Residence
An order of the Court whereby the children reside for part of the time with each parent.

Statement of Arrangements
A form which is sent to the Court with the Petition of divorce if there are children of the family. The form provides the Court with basic details with regard to where the children reside, schooling, maintenance and contact. In cases where there are relevant children, the Court must at the Provisional Order stage of the divorce state that the arrangements for the children are satisfactory or if not the provisional decree will be refused.

Statement of Means
A statement setting out each party's income and list of outgoings.

Surrender Value
The current cash value of a life/endowment policy.

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Trial
A final hearing when the Court will determine the issues that need to be resolved. This is otherwise known as a final or contested hearing.

Undertaking
A solemn promise to the Court to do or not to do something. Breach of an undertaking is punishable as a contempt of Court.

Vesting Order
A formal conveyancing document which will transfer the property between spouses.

Void Marriage
A marriage that legally has no effect and is regarded as invalid from its beginning. It is as if the marriage had never existed.

Voidable Marriage
This is a marriage that is valid when entered into and remains valid until, unless a Court declares that it should be cancelled on specific grounds.

Welfare Checklist
This is a list of considerations that a Court will take into account before making orders in relation to children such as residence or contact see Section 3(2) of The Children (Guernsey and Alderney) Law 2008.

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