

STATES OF JERSEY



MARRIAGE AND CIVIL STATUS (JERSEY) LAW (S.R.1/2018): RESPONSE OF THE CHIEF MINISTER

Presented to the States on 13th March 2018
by the Chief Minister

STATES GREFFE

**MARRIAGE AND CIVIL STATUS (JERSEY) LAW (S.R.1/2018):
RESPONSE OF THE CHIEF MINISTER**

Ministerial Response to: S.R.1/2018

Ministerial Response required by: 12th March 2018

Review title: Marriage and Civil Status (Jersey) Law

Scrutiny Panel: Corporate Services

INTRODUCTION

The Deputy Chief Minister would like to thank the Panel for its work in reviewing the proposed changes to the [Marriage and Civil Status \(Jersey\) Law 2001](#).

FINDINGS

| | Findings | Comments |
|---|---|---|
| 1 | <p>It is not clear what impact the requirement for the Office of the Superintendent Registrar to be cost-neutral will have on the cost of registering a marriage. We are also concerned that there may be wider implications for the cost of registering births and deaths.</p> | <p>As set out in the 2017 – 2019 Medium Term Financial Plan – and as agreed by the States Assembly – it is intended that the Office of the Superintendent Registrar will be self-funding by 2019. In order to achieve this, there will be an increase in fees in relation to the services provided by the Superintendent Registrar. These fees will be prescribed by Order.</p> <p>The amended Law provides opportunities to create savings, which will help minimise necessary fees increases, for example, through –</p> <ul style="list-style-type: none"> • better use of information technology • the potential relocation of the Superintendent Registrar’s office • use of standard paper sizes to reduce binding and archiving costs. <p>Despite these savings, however, fees will need to rise across the board if the agreed MTFP2 savings target is to be realised.</p> <p>Fees for the registration of births and deaths will remain, except that:</p> <ul style="list-style-type: none"> - Fees for re-registration of births, as opposed to the registration, will increase. Re-registration, which is resource-intensive, is currently only charged at £5. - A new fee will be introduced for ‘express’ services relating to quick turnaround of copy certificates. |

| | Findings | Comments |
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| 2 | We empathise with concerns raised about the potential for civil celebrants to offer marriage ceremonies who have not been deemed qualified by a relevant organisation. | See response to Recommendation 2 below. |
| 3 | The proposed changes to the processes associated with the solemnization and registration of marriage are appropriate and proportionate, particularly in relation to sham, forced or coerced marriage. | Agreed. |
| 4 | In light of the proposed changes set out in the Draft Law, the Roman Catholic Church is seeking to give up its current privilege of being authorised clergy with registered buildings for weddings, thus separating the civil from the religious ceremony. | It is understood that the Roman Catholic Church has decided to separate civil marriage requirements from religious service. The Superintendent Registrar will work with the Church to help support the transition. |
| 5 | There is a risk that buildings owned by, used by, or in trust of, religious organisations may be compelled to act against their religious conviction and be required to permit the solemnisation of same-sex marriages and wedding receptions for same-sex couples. | See response to Recommendation 3 below. |
| 6 | Canon Law, which was approved by the States of Jersey and which governs the Church of England, defines marriage as being between one man and one woman. | The conflict with Canon Law is an acknowledged complexity. Appropriate protections have been provided in law in order that religious organisations and officials cannot be compelled to participate in the solemnization of same-sex marriages. |
| 7 | The so called quadruple lock enshrined within the Draft Law provides certain protection to clergymen of the Church of England, an authorised religious official or a religious organisation who shall not be compelled by any means to consent, certify, be present at, participate in, or solemnise a same sex marriage. | Agreed. |
| 8 | People who provide goods and services in respect to marriages and wedding ceremonies will be required to comply with all aspects of this Law, even if it goes against their firmly-held religious belief or conviction in respect to same-sex marriage. | See response to Recommendation 4 below. |

| | Findings | Comments |
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| 9 | There is a risk that employees may be compelled to undertake work in relation to same-sex marriage or wedding receptions, even if this goes against their firmly-held religious belief or conviction. | See response to Recommendation 5 below. |
| 10 | In the Law as drafted, civil celebrants will determine what does, and what does not, constitute religious content in relation to a civil marriage ceremony. | See response to Recommendation 6 below. |
| 11 | Introducing the Draft Law, as lodged, will create a situation where there will be discrimination between same-sex couples and heterosexual couples. The examples identified by the Panel include: heterosexual couples will not be able to enter into civil partnerships and same-sex couples may not be able to seek a divorce on the grounds of adultery. | As confirmed by the Deputy Chief Minister during the debate on the principles of P.91/2017 (16th November 2017), changes to the Civil Partnership (Jersey) Law 2012 will be brought forward pending the conclusion of a UK Supreme Court hearing. |
| 12 | After lodging the Draft Law, 2 weeks before it was due to be debated, the Chief Minister lodged 24 separate amendments to the Draft Law. The majority of these amendments were correcting inaccuracies, typographical errors and spelling mistakes. | As acknowledged by the Deputy Chief Minister during the debate on the principles of P.91/2017 (16th November 2017), corrections were required. The Deputy Chief Minister pushed to lodge P.91/2017 in order to try and ensure that the amended Law could come into force in the shortest possible timeframe. |
| 13 | The Draft Law is a long and complex piece of legislation. In addition to substantially rewriting the 2001 Law, it will make 31 consequential amendments to other pieces of legislation. There has not been sufficient time to consider the implications of all of these consequential amendments. | See response to Recommendation 9 below. |
| 14 | Whilst consulting during the early stages and on the Law Drafting instructions, the Chief Minister and his staff did not directly consult on the Draft Law with all key stakeholders. | This is acknowledged. There was extensive consultation on both the principles of proposed changes and Law Drafting instructions with key stakeholders, including representatives of religious organisations. Consultation on the draft Law was curtailed in order to try and ensure that the amended Law could come into force in the shortest possible timeframe. |
| 15 | We are concerned that not all key stakeholders have had adequate opportunity to review and comment on the Draft Law prior to lodging. | See above. |

RECOMMENDATIONS

| | Recommendations | To | Accept/ Reject | Comments | Target date of action/ completion |
|---|--|-----|-------------------|--|---|
| 1 | In response to this report, the Chief Minister should publish the costs of registering a marriage under the existing system, and the new system which will be implemented once the Office of the Superintendent Registrar is required to be cost-neutral. In addition, the Chief Minister should publish the justification for requiring the Office to be cost-neutral. The Chief Minister should also publish the costs of registering a birth or a death under the existing system and the new system. If there is a change he should justify this change. | CMD | Accept | Information about existing and new costs will be published. All cost increases will be justified. As increases will be more than 2.5%, the agreement of the Minister for Treasury and Resources will be sought. | To coincide with Appointed Day Act |
| 2 | We recommend that the Draft Law should be amended to require civil celebrants to be qualified when delivering certain types of ceremony (e.g. humanist). The Panel has lodged an amendment on this issue. | CMD | Accept | As per previous responses provided to the Panel during its review, this concern had been identified and was to be addressed via secondary legislation. It is, however, now a requirement in primary Law, as per the Panel's amendment to P.91/2017, which was adopted by the States on 1st February 2018 (P.91/2017 Amd.(2)) . | N/A part of primary Law |
| 3 | The Draft Law should be amended to protect buildings owned by, used by, or in trust of, religious organisations who object to same-sex marriage on the grounds of their religious conviction, and who may be required to permit the solemnisation of same-sex marriages and wedding receptions for same-sex couples. The Panel has lodged an amendment on this issue. | CMD | Accept in part | It is acknowledged that it would be appropriate to provide limited protections for church halls and similar, but this does not include all buildings owned by religious organisations. The Deputy Chief Minister lodged the 3rd amendment to P.91 (P.91/2017 Amd.(3)) to address this issue. This amendment was, however, subsequently withdrawn with the Assembly's agreement. | Options for resolution to be considered prior to enactment of amended Law |

| | Recommendations | To | Accept/ Reject | Comments | Target date of action/ completion |
|---|--|-----------|---------------------------|--|--|
| | | | | This matter will be given further consideration prior to enactment of amended Law. | |
| 4 | The Law should be amended so that a person who, on the basis of their firmly-held religious belief or conviction, objects to same-sex marriage, cannot be compelled to provide goods or services in relation to a same-sex marriage or any social event or function associated with such a marriage. The Panel has lodged an amendment on this issue. | CMD | Reject | The Scrutiny Panel's proposed amendment, introducing a no compulsion clause, was rejected by the Assembly. | N/A |
| 5 | We did not address the concept of reasonable accommodation in the workplace, because it was not within the scope of the Draft Law. However, this is an important issue and the Chief Minister should, in response to this report, set out what work he will undertake to address it. | CMD | Reject | It is not clear how this can be achieved, given that the States Assembly rejected the Panel's proposed no compulsion clause. | N/A |
| 6 | The Draft Law should be amended to require the Superintendent Registrar to consult with the Island's main religious organisations on what religious content must or must not be permitted in a civil marriage ceremony. The Superintendent Registrar should then issue detailed guidance on this topic for the avoidance of doubt. The Panel has lodged an amendment to this affect. | CMD | Reject | The Panel's proposed amendment, introducing a requirement to consult appropriate religious authorities was rejected. | N/A |
| 7 | The Chief Minister should report back to the States Assembly before the Appointed Day Act for the Draft Law and confirm that there are no outstanding inaccuracies, typographical errors and spelling mistakes in the Draft Law. If there are outstanding issues, the Chief Minister should bring forward amendments to correct such matters. | CMD | Accept | – | To coincide with Appointed Day Act |

| | Recommendations | To | Accept/ Reject | Comments | Target date of action/ completion |
|---|---|-----------|---------------------------|--|--|
| 8 | In response to this report, the Council of Ministers should commit publicly to ensuring that all key stakeholders have the opportunity to review and comment on a proposed final version of a Law prior to lodging. | CMD | Reject | The copy of the draft Law, as amended, will be circulated to stakeholders for information. Some of those stakeholders may choose to comment on that draft. Given, however, that the Assembly have adopted the draft Law, it is not clear how those comments can be considered – unless they relate to processes that are not a matter for the Law. | N/A |
| 9 | The rules governing the process for legislative scrutiny should be reformed so that draft Laws are subject to legislative scrutiny and that sufficient time is allowed for the process to be completed. | PPC | N/A | Legislative scrutiny is a vital and necessary function. The review of the Marriage and Civil Status Law highlights the need to reform the processes. | N/A |

CONCLUSION

The Minister notes the Panel's findings and recommendations. The Minister's response to those findings and recommendations is informed by the decisions taken by the States Assembly with regard to proposed changes to the Marriage and Civil Status (Jersey) Law 2001 as set out in P.91/2017 and the subsequent amendments thereto.