

STATES OF JERSEY



SAME-SEX MARRIAGE, DIVORCE AND DISSOLUTION

Lodged au Greffe on 14th July 2015
by the Chief Minister

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree, in principle, that appropriate legislation should be brought forward for approval to allow same-sex couples to get married in Jersey, with the legislation to –
 - (i) include civil marriage and religious marriage with appropriate safeguards in place to protect the rights of religious organisations and their officials who do not wish to conduct same-sex marriages;
 - (ii) include allowing people in civil partnerships to convert their partnership into marriage;
 - (iii) include retention of terms such as ‘husband and wife’, ‘mother and father’ in legislation;
 - (iv) not include a spousal veto in respect of gender recognition;
- (b) to agree, in principle, that current legislation should be amended to confer parental responsibility automatically on unmarried fathers who are named on birth certificates;
- (c) to agree, in principle, that new legislation should be brought forward for approval to allow for the introduction of a system of divorce and dissolution making it a legal requirement to access and use mediation services subject to appropriate safeguards and human rights considerations;
- (d) to request that the Chief Minister bring forward for approval by the States Assembly, no later than end January 2017, the draft legislation necessary to give effect to these proposals.

CHIEF MINISTER

REPORT

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SECTION 1: BACKGROUND

1.1 Background to report and proposition

In July 2014 the States Assembly asked the Chief Minister to investigate whether it was appropriate for same-sex marriage to be introduced in Jersey ([P.102/2014](#)). On 28th November 2014 – following a public consultation that ran from August to October – the Chief Minister presented to the States a Report entitled: *Equal Marriage and Partnership: Options Paper Report – November 2014* ([R.170/2014](#)) (“the 2014 Equal Marriage Consultation”).

That Report set out a commitment to allow same-sex couples to get married in Jersey by the end of 2017, subject to States’ approval.

It also set out the Chief Minister’s intention to bring forward an ‘in principle’ report and proposition, after more detailed consideration had been given to related matters, including whether –

- civil partnerships should be retained in their current form, abolished or extended to same-sex couples
- it is appropriate to introduce legal rights that provide protection for cohabiting couples
- the grounds for divorce, or dissolution of a civil partnership, should be amended
- the current arrangements relating to parental responsibility should be amended.

These matters are dealt with below.

It was originally intended that this proposition would be lodged by the end of Q1 2015, but it was delayed to allow for more detailed consideration of matters pertaining to divorce. This included the findings arising from a recent Jersey Law Commission consultation on divorce reform.

Note 1: Humanist and non-religious belief weddings

The *2014 Equal Marriage Consultation* stated there was currently no intention to bring forward humanist and non-religious belief weddings. The grounds being that, whilst the law needs to be amended to allow for same-sex marriage, it does not need to be amended to allow humanists to get married. Humanists and all people who ascribe to other non-religious beliefs can already marry via a civil wedding ceremony.

[P.65/2015](#) was, however, subsequently lodged, asking States Members to make an in principle decision to introduce humanist and open-air weddings. Whilst the Minister for Home Affairs is fully supportive of open-air weddings, and agrees that the necessary legislation should be brought, it is recommended that no decision should be taken, with regard to humanist weddings, at this point in time. If humanist weddings were to be introduced, the law would need to make appropriate provision for other non-religious belief groups, and there are inherent risks with opening up the solemnization of marriage too widely. These risks include forced and sham marriage, plus weddings conducted for profit and gain. It is therefore recommended that a decision on humanist marriage is taken after England & Wales and Scotland have completed their proposed reviews of humanist and non-religious belief weddings.

See Ministerial Comments on P.65/2015 ([P.65/2015 Com.](#)) for more details.

1.2 Overarching policy position

This report and proposition is predicated on a simple, clear message: marriage is important. The *2014 Equal Marriage Consultation* found that, despite some very stark differences in opinion as to whether marriage should or should not evolve to include same-sex couples, respondents were clearly in agreement about the importance of marriage in our community.

In bringing forward these proposals, we have given detailed consideration as to how we can best support marriage to flourish, in all its different forms. And, in so doing, we have also focussed on how we can help reduce the conflict associated with relationship breakdown in order to better protect and safeguard children.

The proposals set out in this report and proposition are therefore far-reaching. They extend beyond the issue of same-sex marriage to other related points of principle.

SECTION 2: SAME-SEX MARRIAGE

2.1 Introduction

The question of whether or not to introduce same-sex marriage is one that a number of jurisdictions have grappled with over the last few years.

Same-sex marriage legislation was introduced in England & Wales in 2013 and in Scotland in 2014. In May 2015, the Irish Government held a referendum in which 62% of voters expressed their support for its introduction, and in June this year the U.S. Supreme Court ruled that same-sex marriage is a right protected by the U.S. Constitution in all U.S. states, not just the 19 who have currently legislated for it¹.

In every jurisdiction however, its introduction has been subject to a great deal of debate. This arises from a very clear tension between some people of faith, who believe that marriage can only ever be a union between a man and a woman, and others who believe it is untenable to refuse to allow same-sex couples, who love each other, to marry each other. These differences cannot be readily bridged.

[P.102/2014](#) required the Chief Minister to investigate whether it is ‘appropriate’ to introduce same-sex marriage legislation in Jersey. The report concluded it was. See extract from the *2014 Equal Marriage Consultation* ([R.170/2014](#)) below –

P.102/2014 requires the Chief Minister to report to the States whether it is ‘appropriate’ to introduce same-sex marriage legislation in Jersey.

Appropriateness is a subjective concept. What one person considers appropriate may be regarded as highly inappropriate by another. A determination of ‘appropriateness’ is therefore hard to achieve, particularly given that many Islanders hold very strong, very polarised views and that the evidence or facts used to illustrate or inform those views is often seemingly contradictory.

A number of questions have therefore been considered in order to help conclude whether or not it is appropriate for same-sex marriage to be introduced in Jersey:

Q: Does Jersey have to introduce same-sex marriage legislation?

No. Neither the European Court or any other body requires Jersey to allow for same-sex marriage.

Q: Do Islanders want same-sex marriage?

More said yes in response to the consultation than said no, but only 1.5% of Islanders responded. We really do not know what others think.

¹ *The only known referendum rejecting same-sex marriage was in Croatia in 2013, when people voted to change the constitution to explicitly state that marriage had to be between a man and a woman.*

Q: Will many people benefit from the change?

Only a small number of people will directly benefit (estimated at approximately 44 couples)². This includes same-sex couples who want to get married and their children if that marriage supports their parents' relationship to flourish.

Potentially, all other Islanders will indirectly benefit from living in a community that treats people with greater equality and which takes steps to de-stigmatize same-sex relationships. Although, conversely it could be perceived to not benefit other Islanders if same-sex marriage is seen to damage the institution of marriage.

Q: Will same-sex marriage damage, or potentially bolster, marriage?

Marriage is important. The principles of long-term commitment, responsibility and fidelity that underpin it help bind our community together and make it stronger. From a government perspective we want to support marriage, not undermine it.

We know that marriage rates are already declining and divorce rates are increasing. What we do not know is whether same-sex marriage will have any material impact on that trend. In countries where same-sex marriage has already been introduced, the decline in marriage rates was already underway, so you cannot point to same-sex marriage as the cause.

Similarly we do not know if same-sex marriage will bolster the institution of marriage. There is not sufficient longitudinal evidence to draw robust conclusions about relationship longevity and satisfaction.

What we do know is that children fare better if raised in stable families with two parents. The States of Jersey therefore needs to support all marriages and, where a marriage fails, support children and parents to overcome any potential damage.

Q: Will the Island's reputation benefit from the change?

Jersey can, and does, make independent decisions about legislative changes. It is the case, however, that as more jurisdictions allow for same-sex marriage, it will become increasingly untenable for Jersey not to follow suit.

Whilst many opponents argue that credence should not be given to such matters, it is the case that failure to introduce same-sex marriage could potentially damage our reputation, positioning us as a regressive, as opposed to a progressive, jurisdiction.

Q: The Anglican Church is the Island's established church. Is it right to introduce same-sex marriage when it directly contradicts the teachings of that Church, and the religious beliefs held by many Islanders?

It is unquestionably the case that the introduction of same-sex marriage will be difficult for people whose objections arise from their religious beliefs. Not all people of faith object however.

² 44 couples represent 20% of same-sex couples living in Jersey at the time of the 2011 census. 20% uptake of same-sex marriage is based on survey evidence from the Netherlands; obviously more or less than 20% of same-sex couples may choose to get married.

Whilst the Anglican Church is our established Church, with the Dean sitting in the States Assembly, it does not mean that the teachings of the Church are of paramount consideration in matters of legislation. Whilst acknowledging the position of the Church in Jersey, it is right that the States recognises that not all people prescribe to the teachings of that Church.

That said, the States should vigorously oppose any attempt to undermine the freedom that religions have to hold their own beliefs with regard to marriage and to put those beliefs into practice. Legislation must therefore ensure that no religious organisation or official is compelled to marry same-sex couples.

Q: Will it cost money to allow for the introduction of same-sex marriage in Jersey?

Yes. There will be costs associated with amending legislation and official documents, particularly in relation to staff costs. There will be no additional monies available, so all costs must be found within existing States budgets.

Key Question: Can it be appropriate to refuse people who want to get married, the means to marry?

Yes, if there is a reasoned and valid foundation for that refusal.

Whilst it is absolutely understood that much religious teaching is opposed to same-sex marriage, and that many people of faith find it difficult to support, it is nevertheless the case – as is shown in responses to this consultation – that there are equally as many people, if not more, who believe it would be unreasonable not to allow same-sex couples, who love each, to marry each other.

Similarly, it is believed by some that marriage is union between a man and a woman, primarily for the purposes of procreation. But that argument can be difficult to uphold as a reason for refusing same-sex couples the right to marriage, given that we consider marriages between opposite-sex couples who cannot have children, or choose not to have children, as valid loving marriages.

What would be absolutely unreasonable is to refuse same-sex couples the right to marry on the grounds of entrenched homophobic attitudes. Discrimination on the grounds of sexual orientation is not acceptable.

It would be reasonable to refuse if there was clear evidence that showed that same-sex marriage undermined the institution of marriage or that it was harmful to children, but clear evidence does not exist. What is known, however, is that divorce can have a very detrimental impact on children, so the States must look to support all families and all marriages, not just opposite-sex marriage.

Response

In conclusion the States of Jersey should bring forward same-sex marriage legislation because it would be unreasonable, and inappropriate, to continue to deny same-sex couples the opportunity to get married.

2.2 Form for same-sex marriage ceremonies

In developing recommendations, consideration has been given as to the form that the same-sex marriage ceremony should take, including whether it should be –

- civil union
- civil marriage ceremony only
- civil marriage and religious marriage ceremony.

2.2(a) Civil union

Civil union, also referred to as Union Civile, is common to many European countries³. It is a system whereby everyone has a civil marriage performed and solemnized by a government official (e.g. a registrar), as opposed to a religious official (e.g. a priest or vicar).

If Jersey were to introduce civil union, all couples, regardless of their gender or their beliefs, would have to have a civil marriage ceremony, although that ceremony could be followed by a religious or non-religious blessing. Moving to a system of civil union in Jersey would require –

- removing the existing right of opposite-sex couples to have a religious marriage ceremony
- removing the existing right of religious organisations and religious officials to conduct marriages
- changing, in part, the historical and long-held role of the Anglican Church⁴ in relation to marriage.

In total, only 16% of respondents to the *2014 Equal Marriage Consultation* supported the introduction of civil union, primarily because of concerns about removing the historic right of people to have a religious marriage ceremony.

2.2(b) Civil and religious marriage ceremonies

When asked if civil and religious, or just civil, marriage ceremonies should be available to same-sex couples, 56% of the *2014 Equal Marriage Consultation* respondents opted for both civil and religious marriage. This echoes the UK position.

Many same-sex couples are people of faith and want a religious marriage, and some faith groups also want to be allowed to marry these couples. Hence there is little sense in developing a law which denies people the ability to have a religious marriage, providing that appropriate safeguards are in place to ensure religious organisations and their officials are not forced to do something which their faith or conscience prohibits.

³ Including, for example, France, Germany and the Netherlands.

⁴ Jersey is a non-secular state and does not purport to be officially neutral in matters of religion. The Anglican Church, as the Island's official established church, is rooted in Jersey's social and political heritage. Under Jersey law, the Anglican Church holds a unique position in that, unlike other religious organisations, it can solemnize a marriage without requiring a certificate from the Superintendent Registrar.

Whilst the Anglican Church holds a special position in the Island, its teachings should not necessarily dictate our response to social or political matters. It would be wrong to determine a course of action solely on the basis that it does not concur with our established Church.

2.2(c) Safeguards

In bringing forward same-sex religious and civil marriage, the States should oppose any attempt to undermine the position that different religions espouse with regard to same-sex marriage. Legislation that allows for same-sex religious marriage must ensure that no religious organisation or religious official is compelled to marry same-sex couples. This will be achieved in the following way –

- The law will state that same-sex religious marriage will only be possible if –
 - the religious organisation has opted-in to conduct same-sex marriages, and
 - the religious official consents to solemnize same-sex marriage, and
 - if the ceremony is in a place of worship, it must be registered for same-sex marriages (this means that those with legal responsibility for the building must consent).
- The law will explicitly state that no religious organisation or religious official can be compelled to opt-in to solemnizing same-sex marriage.
- Our Discrimination Law will be amended so that it explicitly states that it is not unlawful for religious organisations or religious officials to refuse to marry same-sex couples. (This will not extend to other people or service providers see Section 2.6 below on the conscience clause.)
- The existing legal duty of the Anglican Church to marry parishioners will not be extended to same-sex couples. (This duty only applies to the Anglican Church as the Island’s official established church. It does not extend to other religious organisations.)
- Canon Law, which states that marriage is a union between a man and woman, will not be amended.

The safeguards above are based on the UK’s “quadruple lock”. The UK Government is confident that this amounts to a sufficient safeguard and that the “quadruple lock” could be defended if challenged on grounds of its compliance with the European Convention on Human Rights (see Note 2 below).

Note 2: Quadruple lock and the ECHR

Some commentators have expressed concern that the European Court on Human Rights (ECHR) might overturn the quadruple lock, thereby requiring religious organisations and religious officials to solemnize same-sex marriages.

Whilst the ECHR does not require the introduction of same-sex marriage in any jurisdiction, it has stated that where it is introduced it must be considered as analogous to opposite-sex marriage for the purposes of anti-discrimination.

The question therefore arises as to whether the system of “opt-ins” for religious organisations and religious officials could be overturned on the grounds that it is discriminatory for an organisation to marry an opposite-sex couple but not a same-sex couple.

The UK Government is confident however that the ECHR will not take this position – a view which is supported by the UK’s Equality and Human Rights Commission⁵ and by Liberty⁶.

The Commission clearly stated that a religious official cannot be penalised for expressing opposition to same-sex marriage providing that opposition “*accords with the religious doctrines and ethos of the organisation they represent. Religious organisations retain the right to maintain and enforce adherence to their religious tenets*”⁷.

The Commission’s view is based on legal opinion⁸ provided to them which sets out that: “*It does not breach the rights of same sex couples to restrict their opportunities for a religious marriage ceremony to those organisations and individual office-holders who consent to such a ceremony. We consider it to be extremely unlikely that any different view would be taken by the courts, including the ECtHR when considering the provisions of the European Convention on Human Rights (“ECHR”);*”.

Liberty⁹ hold the position that the system of opt-in will stand on the basis that any requirement to compel a religious organisation to conduct same-sex marriages would itself fall foul of human rights protections:

“The Article 9 protection afforded religious organisations is strong [and]... would provide real safeguards to a religious organisation that did not wish to conduct same-sex marriages on doctrinal grounds.”

“Indeed a requirement that a church or other religious organisation conduct same-sex marriages, contrary to their faith, would very likely be regarded as discriminatory ... Treating churches and religious organisations that have doctrinal objections to same-sex marriage in the same way as those that do not, is to fail to make a distinction between the two which will result in a discriminatory outcome.”

Based on these expert views, it is entirely reasonable to assume that the quadruple lock is robust (although it is the case, as with any piece of legislation, that the matter will only be beyond doubt once a case has been determined by the ECtHR).

⁵ The Equality and Human Rights Commission has responsibility for the promotion and enforcement of equality and human rights laws in England, Scotland and Wales.

⁶ Liberty (The National Council for Civil Liberties) is one of the UK’s leading civil liberties and human rights organisations.

⁷ *A Quick Guide to the Marriage (Same Sex Couples) Act 2013* published by the Equality and Human Rights Commission March 2014.

⁸ Legal opinion provided by Robin Allen, Q.C. to Equality and Human Rights Commission.

⁹ Extract from Liberty’s Committee Stage Briefing on the Marriage (Same Sex Couples) Bill in the House of Commons, February 2013. Extract quotes Opinion provided by Q.C., Karon Monaghan, which is appended to the Liberty Briefing.

2.3 Conversion from civil partnerships

Some people, albeit not all, have entered into civil partnerships simply because the law has prevented them from getting married. At the point at which same-sex marriage is introduced, they may wish to convert their civil partnership into a marriage.

The law should allow for this, and should provide for conversion ceremonies where people want to celebrate their marriage with their family and friends. In doing so, it is important to recognise that this option is only intended to support people previously denied access to marriage; it is not intended to provide a facility for people who change their minds. This will therefore –

- only include people who entered into civil partnerships before same-sex marriage was introduced
- not include allowing people to convert their marriages into a civil partnership.

2.4 Language

The *2014 Equal Marriage Consultation* (R.170/2014) reflected some respondents' concerns about the devaluing of words such as "husband" and "wife" in favour of more gender-neutral language. This was often as a result of the changes seen in other jurisdictions since the introduction of same-sex marriage, for example the use of –

- 'Party A' and 'Party B' instead of 'husband' and 'wife' on marriage certificates
- 'Progenitor A' and 'Progenitor B' instead of 'mother' and 'father' on birth certificates.

It is recognised however, that these are important words. They have huge cultural and emotional significance and are used by people to describe their relationship to each other. Same-sex marriage legislation does not need to drive out use of the words; 'husband' will still refer to married men and 'wife' can still refer to married woman.

2.5 Spousal veto

Many people who wish to change their gender (transition) or who are married to someone who wishes to change their gender do not want to end their marriage. They still love their spouse and for emotional, family and financial reasons want to remain married.

Whilst it has previously not been possible to change gender and remain married – as 2 people of the same gender cannot be married – the introduction of same-sex marriage will allow for this to happen.

When same-sex marriage was introduced in England and Wales, the Government brought forward a provision known¹⁰ as the *spousal veto*. This means that someone who is married can only apply for a gender recognition certificate – which is required to legally change their birth gender – if their husband or wife consents to the marriage continuing after the certificate has been issued. This effectively means the husband or wife can veto their spouse's change of gender.

¹⁰ *Marriage (Same Sex Couples Act) 2013*.

The spousal veto has been heavily criticised for a number of reasons, including –

- It effectively forces the non-transgender spouse, who wants to remain married, to endorse their partner’s decision to change gender when they may not wish to. It is sometimes the case that the partner of a transgender person has accepted their partner’s decision to change gender, but they are nevertheless uncomfortable with that decision and do not want to be put in a position whereby they feel obliged to endorse it.
- If the couple break up and lose contact, the transgender person could find themselves in a position whereby their spouse has withheld consent for the gender recognition certificate to be issued (i.e. they have exercised their spousal veto) but they cannot readily seek a divorce because of the lack of contact. This leaves the transgender person in an invidious position, as they are unable to realise their own wishes.
- It arguably violates the spirit of ECHR in that it places the defence of one person’s rights (i.e. the right to remain married to a spouse whose gender remains the same as at the point of marriage) over the rights of another person to change their gender.

In Scotland, the *spousal veto* does not exist (i.e. the husband or wife cannot veto their spouse’s change of gender)¹¹. It is proposed that Jersey should follow the Scottish model.

This will require changes to the Gender Recognition (Jersey) Law 2010 (the “Gender Recognition Law”), and potentially to the associated gender recognition approval process. That process currently requires that a person change their gender in accordance with the law of an approved jurisdiction and then apply to the Royal Court for legal recognition of the resulting gender recognition certificate. Obtaining a gender recognition certificate will typically require evidence from a registered medical practitioner that the applicant, amongst other things, has or has had gender dysphoria (or unhappiness with birth gender). The United Kingdom is an approved jurisdiction for the purposes of the Gender Recognition Law, and in practice Jersey residents are likely to seek treatment in the United Kingdom as there are no professionals qualified to make the required diagnosis in Jersey.

2.6 Conscience clause

A number of respondents to the *Equal Marriage* consultation stated that the protection of religious freedoms should be extended beyond religious organisations and religious officials to any organisation or service provider.

This is commonly called a *conscience clause* and would exempt any provider of wedding services (hoteliers, registrars, photographers, etc.) from prosecution if they refused to provide services to same-sex couples. They could only do so on the grounds that same-sex marriage is against their religious beliefs, not because they object to the couples’ sexual orientation (i.e. they hold homophobic views).

¹¹ *The Gender Recognition Act 2004 was amended by the Marriage and Civil Partnership (Scotland) Act 2014 to remove the application in Scotland of the spousal veto provisions.*

If a conscience clause were to be introduced, issues for consideration would include –

- Who would be exempt? A wedding involves a myriad of different service-providers (e.g. registrar, hotelier, waiter, caterer, florist, photographer, dressmaker, hairdresser, chauffeur, marquee hire, wedding gift shop, stationery printer, etc.). Should all be exempt? Or only those immediately involved in the ceremony?
- Would it apply to officials working for public organisations such as Parishes and the States? Could a Connétable refuse to allow a Parish Hall to be used for a wedding venue, even though the people being married live in that parish? If local Parishioners were supportive of same-sex marriage, would the Connétable’s conscience trump theirs? Could the Superintendent Registrar or one of their delegates refuse to marry a same-sex couple even though it is a civil, not a religious, ceremony?
- At what point would the exemption apply? Only at the point of marriage or at any point during that marriage (i.e. can a hotelier refuse to allow their hotel to be used as a venue for the wedding, or can they refuse any same-sex married couple a room at any point¹²)?
- How could it be determined that a service provider is exempt? In most cases it would be extremely difficult to know if a service is being withheld on religious grounds as opposed to homophobic grounds, and this may require evidence of religious beliefs to be presented to a Tribunal.

Whilst it is theoretically possible to scope an exemption, there would clearly be difficulties in defining its scope, and public opinion about such an exemption is likely to be polarised. It is not clear how cases could realistically be determined without resorting to a form of “trial by faith”, taking into account whether or not one person’s right to freedom of belief is greater than another person’s right to be treated in an equal manner.

Note 3: Conscience clause in other jurisdictions

Examples of conscience clauses exist in UK legislation, although not in relation to same-sex marriage. They are restricted to a number of highly emotive areas (for example: nurses do not have to participate in abortion treatment if they regard it to be against their moral, religious or ethical beliefs).

Attempts to introduce a clause relating to same-sex marriage into the Equality Acts in England & Wales and Scotland have failed however, on the grounds that it is contrary to the principle of equal treatment. (It is notable, however, that this view is not upheld by Lady Hale, Deputy President of the Supreme Court, who has publicly stated that the law should protect people’s rights to refuse to do things that go against their belief, even if those beliefs clashed with equality laws).

¹² *Over the last few years there have been a number of cases of service-providers, who disapprove of a customer’s relationship, becoming embroiled in long-running litigation. This can have a very detrimental effect on all the individuals involved.*

In Northern Ireland there has recently been a public consultation on a freedom of conscience clause. Whilst this consultation (which forms part of a private member's bill) has now closed, the findings have yet to be published. It is envisaged that these will be available prior to States Members being asked to adopt same-sex marriage legislation.

Note 4: Impact on system of taxation

The introduction of same-sex marriage would have implications for our existing systems of taxation in Jersey.

We do not currently have independent taxation for people who are married or in a civil partnership. Under the law, a married couple is jointly assessed for tax purposes. (This means a wife's income is treated as belonging to her husband and he is the taxpayer. The husband may be entitled to certain allowances because he is married, and may also be entitled to further reliefs depending on his wife's income position.)

When civil partnerships were introduced, the law was amended so that each partner could be recognised, and concept of civil partner 'A' and civil partner 'B' was introduced. Any specific tax rules that applied to a 'wife' were then applied to civil partner 'B'.

The law allows civil partners to decide who is civil partner 'A' or 'B' for tax purposes (i.e. who they would like to be the lead person, in the couple, in relation to tax), but the law does not allow husbands and wives to make the equivalent decision. Under equality laws this is broadly acceptable because, whilst civil partners and spouses are treated differently, all couples in civil partners are treated the same and all married couples are treated the same.

Same-sex marriage will necessitate fundamental changes to this system. If 2 men or 2 women are married they cannot be allowed to choose who is the lead person for tax purposes, unless all married couples are allowed the same choice.

As a result, consideration will need to be given as to how to ensure parity. This could include –

- allowing all spouses and all civil partners to choose who is the lead person for tax purposes, (this could be a costly option from a Treasury perspective) or,
- introducing blanket rules for all (for example: the older spouse or partner, or the one with the highest income, is always lead person), (this could be a particularly complex administrative option) or,
- moving to a system of independent taxation. (this would require significant work because independent taxation cannot be achieved without some cost to the Treasury or to taxpayers or both).

If independent taxation were deemed to be the most appropriate option (subject to detailed forecasting about the impact on tax-take) there would need to be wholesale changes to our tax laws, systems for assessing tax and our IT infrastructure, none of which can be readily or quickly achieved.

In bringing forward the legislation that allows for changes to marriage, full consideration will need to be given to both interim and long-term solutions with regard to tax.

2.7 Conclusion and recommendations

Recommendations

- States members are asked to agree in principle that the law should be amended to allow same-sex couples to get married in Jersey. This will –
 - include civil marriage and religious marriage with appropriate safeguards in place to protect the rights of religious organisations and officials who do not wish to conduct same-sex marriages
 - include allowing couples currently in a civil partnership to convert that civil partnership into a marriage
 - include retention of terms, such as husband and wife, mother and father
 - not include a spousal veto.

In bringing forward that legislation, further consideration will need to be given to –

- whether the Discrimination (Jersey) Law 2013 should be amended to allow for a consciousness clause, noting that there are some very real complexities associated with any such clause
- how premises, facilities and services connected to churches or religious organisations (for example: church halls) are to be treated in law
- the requirement for both interim and long-term solutions with regard to the management of tax for all married couples and civil partners.

SECTION 3: PARENTAL RESPONSIBILITY

3.1 Introduction

A child's parents have legal rights, duties and responsibilities toward their child, including the right to make decisions about their care and upbringing; for example: where they live, whether the child can have medical treatment, or be adopted, or leave the country either on holiday or permanently.

Everyone who has parental responsibility must be involved in making these decisions.

3.2 Unmarried fathers

Under Jersey law, an unmarried father can be named on a child's birth certificate, but this does not automatically confer him with parental responsibility – a position which is out-of-step with UK law.

It is sometimes only at the point at which a cohabiting couple breaks up that the father realises the implications of not having parental responsibility and seeks to acquire it. He can do this either via a Court Order or with the mother's consent, which can be very challenging to do at a time of high emotion, and often serves only to highlight conflict.

Whilst the absence of parental responsibility does not exempt the father from maintenance payments towards his children, it can create very real tensions around the father's right to have a voice in other decisions.

The law needs to be amended to ensure that fathers, named on birth certificates, are automatically conferred parental responsibility.

(Note: Parental responsibility will still not be automatically conferred on fathers who are not on the birth certificate. These fathers will continue to need the mother's consent or a Court order. This is an important safeguard as it will, for example, include circumstances such as a child being conceived through rape.)

3.3 Same-sex couples

In amending the law, consideration must be given to parental responsibility for same-sex couples who are either married or in a civil partnership. This could include, for example –

- Where a lesbian couple are married or in a civil partnership at the time at which one of them becomes pregnant. Both the birth-mother and the non-birth mother should be allowed to be named on the birth certificate, therefore automatically conferring both with parental responsibility.
- Where a gay couple are married or in a civil partnership at the time at which a child is conceived using sperm from one of them, they should both be allowed to be named on the birth certificate and therefore automatically conferred parental responsibility.

In both cases this will only include where the child is conceived through artificial insemination, as opposed to through sexual intercourse.

In addition, issues relating to parental responsibility must also be considered in relation to same-sex couples who are not married or in a civil partnership but who nevertheless choose to jointly raise children.

3.4 Conclusion and recommendations

Recommendations

- States members are asked to agree in principle that the law should be amended to automatically confer parental responsibility on unmarried fathers who are named on birth certificate.

In bringing forward same-sex marriage legislation, consideration will be given to parental responsibility with regard to same-sex couples who are either married or in a civil partnership.

SECTION 4: DIVORCE AND DISSOLUTION

(NOTE: Throughout this section the term divorce has been used. This is intended to refer to both divorce and dissolution unless otherwise stated. This is simply for ease of reading.)

4.1 Introduction

Divorce is a fact of life^{13,14} Regardless of how much people, and society as a whole, invest in marriage and civil partnerships it is the case that relationships can break down. When they do it is an extremely stressful and traumatic process.

From a policy perspective, it is not in anyone's interest to force people to stay in unhappy relationships or to make the process of divorce or dissolution difficult, particularly when there are children involved. Nor is it in anyone's interest to undermine marriage and civil partnership by making it too easy to walk away.

The law can help us strike the right balance. According to the English Law Commission 1966¹⁵, divorce law should aim to –

“... buttress, rather than undermine, the stability of marriage, and when, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation.”.

The introduction of same-sex marriage necessitates amendments to our existing law creating an opportunity to reflect on whether the law strikes the right balance between upholding the importance of marriage and minimising unnecessary conflict, particularly where that conflict only serves to further damage the couple and any children they may have.

For this reason, it is proposed a new system of divorce and dissolution is introduced in Jersey via a new fit-for-purpose Family Law^{16 17}. It is proposed that this new system focuses on –

- reconciliation: supporting couples who decide to try and reconcile their differences in order to remain married

¹³ Approximately 240 to 260 couples petition for divorce per year in Jersey. Due to the way statistics are collected, it is difficult to draw UK/Jersey comparisons, although it is known that 0.37% of the UK population divorced in 2012, compared to 0.39% of the Jersey population.

¹⁴ Civil partnerships were introduced in Jersey in 2012. 44 couples entered a civil partnership in Jersey in 2012 and 2013. There have been no dissolutions of civil partnerships over that period. 2014 figures are not yet available.

¹⁵ Law Commission of England and Wales, *Reform of the Grounds of Divorce: The Field of Choice*, Law Com No. 6.

¹⁶ A new Family Law is proposed due to the complexities associated with trying to grafting changes and amendments onto existing divorce and dissolution law. This would replace the *Matrimonial Causes (Jersey) Law 1949* and the *Matrimonial Causes Rules 2005*.

¹⁷ Family Law is a working title only. It could be subject to change as the new draft Law is developed.

- mediation; a couple use an independent and impartial person to help them discuss and agree arrangements in the event they have been unable to reconcile. Mediation can also involve a process known as early neutral evaluation, whereby an independent and impartial person advises a couple of the types of arrangements, relating to children and finances, that the Court may make if required to do so. This is in order for the couple to try to discuss and agree their own arrangement prior to full mediation.

The mediation process bring spouses together in order to try and jointly find a solution, as opposed to each person engaging their own separate lawyer who will only represent the interests of that person, or having to resort to the Courts.¹⁸

The proposed new system is not intended to make divorce easy. It will, instead, help diffuse some of the potential conflict, building in time for reflection and do away with “quick” divorce.

Note 5: Quick divorce

Our existing system of divorce in Jersey facilitates the quick divorce. Providing a couple have been married for at least 3 years, and that the grounds for divorce relate to fault (see section 5.3 below), it can take as little as 9 weeks to move from filing for divorce to being divorced. A period which allows no time for reflection, in a legal process that currently fails to encourage either reconciliation or mediation.

The proposed new system of divorce/dissolution will do away with quick divorce, by providing safeguards which support people to reflect on the viability of their marriage and on conflict minimisation.

Note 6: Mediation

In bringing forward requirements relating to mediation, consideration needs to be given to –

- appropriate safeguards and exemptions: for example in the event of domestic violence, or where divorce is urgently sought because one of the spouses has participated in serious criminal activity;
- human rights considerations: Under the ECHR, consideration must be given to ensuring that there are no disproportionate restrictions in relation to people’s ability to access the Courts or get divorced (for example, a person could not be denied a divorce or suffer financial sanctions on the grounds that either they, or their spouse, have refused to participate in mediation or that they had failed to reach agreement via mediation).

In England and Wales, couples are therefore only required to attend a mediation information and assessment meeting, they are not actually required participate in mediation. Other European countries employ a variety of

¹⁸ *In Sweden it is estimated that 90% of divorcing parents resolve issues relating to custody and residency either on their own, or via mediation, with only 10% reverted in the Courts.*

different incentives and sanctions and, in some, mediation is mandatory under prescribed circumstances (for example, in many Nordic countries and in certain areas of Spain). What is critically important is that where mediation is mandatory, it does not impede access to the judicial system.

In America, where the ECHR does not apply, participation in mediation is a legal requirement in 13 States, and judges are provided discretion to order couples to enter mediation in 22 States.

4.2 Three year bar

In Jersey, couples must be married (or in a civil partnership) for a least 3 years before they can file for divorce or dissolution. It is only one year in England & Wales, and there is no time limit in Scotland or in Guernsey.

This can be 3 very long and unhappy years for people, who may well be living separate lives, but who are stuck in relationships that have irrevocably broken down¹⁹.

Using the law to force people to remain in a bad relationship does nothing to uphold the institution of marriage, support reconciliation or minimise the distress to the couple and any children they may have.

It has been argued that the 3 year bar is a safeguard against irresponsible or hasty marriages. There is no evidence to support this. Indeed it is not clear if a person embarking on an irresponsible marriage would have knowledge of the bar and, even if they did, whether it would act as any form of deterrent.

The 3 year bar does not support marriage; it only acts to punish people whose relationship has broken down.

4.3 Grounds for divorce and dissolution

4.3(a) Background

In Jersey, a divorce or dissolution can be granted on grounds relating to “fault” or grounds relating to a period of separation. Jersey is one of only a few jurisdictions²⁰ that have fault-based grounds for divorce, as opposed to no-fault divorce, or broader-based grounds such as irretrievable breakdown.

The grounds in Jersey are currently –

¹⁹ *Note: A divorce can be granted in less than three years if there is exceptional hardship or depravity, but this does not include all forms of abuse or adultery.*

²⁰ *England and Wales maintains a fault-based system, as do Scotland, various US States, Canada and France, although the grounds for fault do vary between jurisdictions. In some, adultery is a “fact” used to demonstrate a fault such as “irretrievable breakdown”, rather than a fault in its own right.*

Marriage	Civil Partnership
<p><u>Adultery</u>: a spouse has committed adultery and the other finds it intolerable to live with them</p> <p>Adultery is defined as –</p> <ul style="list-style-type: none"> • an act between a man and a woman. It cannot be cited if a spouse has an affair with someone of the same-sex (i.e. a man who is married to a woman cannot cite adultery if his wife has an affair with another woman, only if she has an affair with another man) • as a penetrative act. It does not include other sexual acts. <p>In Jersey, unlike in England & Wales, the law requires the co-respondent to be named as part of the divorce proceedings (i.e. the person with whom the spouse committed adultery).</p>	No equivalent
<u>Desertion</u> : a spouse has deserted the other for two years for more	Direct equivalent
<u>Unreasonable behaviour</u> : a spouse has behaved in such a way that it is unreasonable to expect the other to live with them (e.g. violence or abuse, drunkenness or drug-taking, refusing to financially contribute)	Direct equivalent
<u>Mental disorder</u> : a spouse has a mental disorder for which they have been continually receiving care or treatment for at least 5 years	Direct equivalent
<u>Imprisonment</u> : a spouse has been sentenced to life imprisonment or for not less than 15 years	No equivalent.
The spouses have lived apart continuously for at least <u>1 year</u> and both agree to get a divorce (1 in Jersey)	Direct equivalent
The spouses have lived apart continuously for at least <u>2 years</u> but one spouse disagrees with the divorce	Direct equivalent

Grounds based on fault

Grounds based on period of separation

4.3(b) Grounds based on fault

Fault-based divorce can be a major contributor to conflict, as one partner is required to prove the other is at fault.

In truth, however, it cannot be assumed that the “innocent party” did not substantially or almost wholly contribute to the marriage breakdown. They are merely the person who filed for divorce and cited the fault. And, where fault is cited by one partner, the other rarely defends their self even if the accusations are unfair. This is usually because of expense incurred (i.e. the legal fees), and also because there are no financial benefits to so doing. Contrary to common assumptions, the Courts do not award the ‘innocent’ party any greater proportion of assets. As a result, contested

divorces are a thing of the past. There have been none in Jersey for approximately 20 years.

Given that fault-based divorce provides no financial benefit and can be grossly unfair, it is reasonable to question whether it should be retained in its current form. Most importantly, fault-based divorce does nothing to support forgiveness and the development of cordial relations – which are critical if the couple have children and are to successfully co-parent in future.

In bringing forward a new system of divorce and dissolution, consideration must be given as to whether our existing fault-based grounds should be retained, or whether a less adversarial approach should be taken.

In so doing, it is important to recognise that many people believe that adultery should remain as a grounds for divorce (see Note 7 below) and should also potentially be extended to civil partnerships (which would require a new definition), because adultery speaks to sexual fidelity, and sexual fidelity is seen as a central commitment of marriage and civil partnership.

Note 7: Adultery

The 2014 *Equal Marriage Consultation* (August 2014) did not directly explore issues about the introduction of no-fault divorce, but it did raise questions about adultery as a ground for divorce and dissolution, prompted by consideration of the differences between same-sex and opposite-sex marriage in the UK. The questions included whether –

- the existing differences in grounds for divorce and dissolution should be removed?
- adultery should be introduced as a ground for dissolution or removed as a ground for divorce?
- the definition of adultery should be amended so that it applies to both opposite-sex and same-sex relations²¹?

65% of people who responded to the consultation stated that there should be no differences between the grounds for divorce and the grounds for dissolution. And, of that 65%, only 11% felt that parity should be achieved by removing adultery as a ground for divorce, i.e. the majority believe that spouses, and in some cases civil partners, should have the right to cite adultery. The key reason being that adultery speaks to sexual fidelity.

A small number of respondents felt adultery should be removed as a ground for divorce, arguing that –

- ault-based grounds only perpetuate cycles of blame, compounding the pain of divorce²²
- adultery is so limited a definition that it is of little value. It does not cover sex between people of the same gender; many physical and sexual acts, acts of emotional betrayal.

²¹ *The current definition of adultery arises from common-law and it can only relate to an act between a man and a woman.*

²² *This focus on a move towards no-fault divorce was central to a recent Jersey Law Commission consultation on Divorce Reform. Whilst the full consultation feedback report is yet to be published, it is fully anticipated that it will uphold the position that there should be a move towards no-fault divorce.*

4.3(c) Grounds based on period of separation

The periods of separation in relation to divorce are currently one year where both parties consent, or 2 years without consent²³. These must, however, be continuous periods, which mean that if the couple want to spend a single night together, the clock needs to start again. This does nothing to support couples who want to see if they can reconcile their differences. Indeed, it actually deters attempts at reconciliation which cannot be right.

If periods of separation are required, these should not be continuous. There needs to be an ability to stop and restart the clock.

4.4 Grounds for annulment

Divorce or dissolution are declarations that a marriage or civil partnership has ended. Annulment is a declaration that a marriage or civil partnership never existed.

Jersey law allows for annulment at any time after the wedding or civil partnership ceremony, whereas for divorce or dissolution spouses or civil partners currently have to wait at least 3 years. An annulment will only be granted if the marriage or civil partnership –

- (1) was not valid in the first place (e.g. the spouses/partners were under 16 years, close family relatives or in a bigamous relationship) or,
- (2) it was ‘defective’ for one, or more, of the reasons set out below. It is notable that there are differences between marriage and civil partnerships, with a far greater emphasis on sexual activity in relation to marriage. It is arguable that this emphasis is seemingly redundant in an era when people often live together, or at least have sex together, before marriage/civil partnership.

In amending the law to accommodate same-sex marriage, the grounds for annulment, like the grounds for divorce and dissolution should, as far as is possible and allowing for biological differences –

- be the same for same-sex and opposite-sex couples
- be up-to-date to reflect the fact that there has been a notable shift in attitudes towards sexual relations.

Marriage	Civil Partnership
One of the spouses: <ul style="list-style-type: none">➤ has had ongoing impotency since the point of marriage➤ had a sexually transmitted disease at the time of the marriage.	No equivalent.
The marriage was not consummated.	No equivalent.
The wife was pregnant by another man at the point of the marriage (unless the “other man” was a former husband who	One of the female partners only needs to be pregnant, the identity of the other parent is irrelevant.

²³ *These periods of separation are lower than England & Wales which currently stand at 2 years and 5 years.*

Marriage	Civil Partnership
she was still married to when she became pregnant).	
Either of the spouses got married under duress (fraud, threats, etc.).	Direct equivalent.
Either of the spouses was of unsound mind at the time of the marriage, or has subsequently suffered to such an extent as to be unfit for marriage and the procreation of children or subject to recurrent attacks of insanity or epilepsy.	Either partner, at the time of the formation of the civil partnership, was suffering from a mental disorder of a kind or to such an extent as to be unfit for civil partnership.
The grounds relating to marriage needs updating so it reflects the civil partnership grounds (i.e. removes references to epilepsy, procreation of children and disorders arising after the point of marriage)	
Since being married, either spouse has been issued an interim gender recognition certificate (i.e. is changing their gender).	Direct equivalent.

4.5 Minimising conflict

4.5(a) Background

As set out in the *2014 Equal Marriage Consultation* (R.170/2014), it is important to minimise conflict in divorce and dissolution, not just because of the effect it has on adults, but also on any children that they may have. There is a body of research evidence which clearly shows that conflict between parents has a detrimental effect on children's outcomes, increasing the risk of anxiety, depression, aggression and anti-social behaviour²⁴. It is therefore essential that we look to reduce harm.

When a couple is breaking up, much of the conflict relates to –

- their children (for example, access or where they will live)
- financial arrangements, division of assets, etc.

There are potential benefits to be gained from providing some clarity about these matters in the law.

4.5(b) Children

Jersey law currently states that in divorce, as in all matters relating to children, the *welfare of the child is paramount*. This is the guiding principle that should underpin all arrangements that divorcing spouses make in relation to their children.

It is extremely difficult to be prescriptive about arrangements relating to children. All children have different needs, and those needs change over time – they do not remain static. Their parents' circumstances also change (re-marriage; new children; moving off-Island). Any arrangements prescribed at the point of divorce may well become redundant or contrary to child's welfare within a short space of time. The Courts therefore require flexibility to respond to each individual set of circumstances.

²⁴ See the *2014 Equal Marriage Consultation* ([R.170/2014](#)).

That does not preclude, however, more information being provided in an easily accessible format to support the mediation process. If parents know, upfront, the types of arrangements that are likely to be considered, it may help them make more informed choices.

Also see Section 4: Parental responsibility

4.5(c) Money and assets

The law should not seek to be prescriptive about financial matters or set ‘formulas’, as the Courts must retain the right to make judgements on a case-by-case basis. The law can, however, articulate broad principles. Doing so will support mediation and neutral evaluation processes, plus provide more clarity to couples and their legal advisors.

In developing the proposed new Family Law, consideration will be given as to whether the following presumptions, or others, should be established, subject to the discretion of the Court –

- assets will be divided equally on divorce
- pensions will be shared equally on divorce
- pre-acquired assets, inheritances and gifts will stay separate once needs have been met (for example; if a husband or wife owned a house prior to the marriage or inherited a house during the course of that marriage, this house should not be divided equally on divorce, providing there are other sufficient assets to meet the other spouse’s needs and the children’s needs. If there are not sufficient assets, the house should form part of the assets to be divided equally).

4.5(d) Pre-marital agreements (also known as prenuptial agreements)

In addition, it is proposed that consideration should be given to making pre-marital agreements legally binding in event of divorce. Prenuptial agreements are often viewed with a great deal of scepticism, they can be seen as coercive and unfair, particularly to the spouse with less assets. Many also regard them as undermining the institution of marriage; how can you make a commitment to marriage if you are making divorce arrangements upfront?

Whilst it is understood that many people are uncomfortable with such agreements, they exist, and they can be of real value where there is an asset which needs to be protected for specific purposes; for example where there are children from a previous relationship.

For this reason it is proposed that there is a legal presumption that they stand, subject to the following safeguards –

- neither spouse was coerced or put undue pressure to sign the agreement
- the agreement was signed at least 6 weeks before the marriage (i.e. there was sufficient time to reflect between the signing of the agreement and the marriage)
- both spouses received independent legal advice before signing
- both spouses fully disclosed their assets prior to signing
- enforcing the agreement would not create financial hardship for either spouse or their children.

4.6 Conclusions and recommendations

It is proposed that an entirely new system of divorce and dissolution is introduced in Jersey via a proposed new Family Law.

That system should focus on reconciliation (supporting and encouraging couples to consider whether they should stay together) and on mediation (supporting couples to overcome unnecessary conflict).

This will include a legal requirement to access and use mediation services subject to appropriate safeguards and human rights considerations.

Subject to further consultation, it is envisaged that the proposed new system of divorce/dissolution may include –

- removing the 3 year bar: couples should be able to file for divorce or dissolution at any point
- couples being able to jointly file a statement stating that they are seeking divorce/dissolution, removing the need for one to instigate proceedings against the other where both recognise that their relationship has irretrievably broken down (this will not preclude one spouse/partner initiating proceedings where the other does not agree)
- greater access to high quality reconciliation and mediation services, including information on parenting plans, legal principles relating to children and finances, etc.
- appropriate incentives or powers in law to support and encourage couples to participate in mediation processes prior to any matters being brought before the Court (this would be subject to appropriate safeguarding, for example in the event of domestic abuse)
- between filing for divorce/dissolution and it being granted, the couple will not need to live separately; they can continue to live together or just spend time together, as this will potentially help facilitate reconciliation
- updating grounds relating to the annulment of marriage
- presumptions relating to the management and division of assets at the point of divorce
- a presumption that pre-marital agreements are binding unless a safeguard is breached.

Further consideration will also be given as to whether fault-based divorce should be retained, revised to include limited fault-based grounds (e.g. adultery), or abolished. If the grounds of adultery for divorce is to be retained –

- the requirement to name the co-respondent will be removed (i.e. the person with whom the spouse committed adultery) and,
- consideration will be given to potentially seeking to create a new definition of sexual fidelity, which is equivalent to the existing definition of adultery, but includes both same-sex and opposite-sex physical relations.

Recommendations

- States members are asked to agree, in principle, that new legislation is brought forward allowing for the introduction of a system of divorce and dissolution which makes it a legal requirement to access and use mediation services subject to appropriate safeguards and human rights considerations.

In developing this proposed draft law consideration will be given to –

- ensuring that robust mediation processes and services are available on Island
- removing obsolete or unnecessary grounds for divorce, dissolution and annulment; this will include consideration of whether adultery should be retained and/or whether we should seek to create a new definition which is applicable to same-sex and opposite-sex relations
- removing the 3 year bar; couples should be able to file for divorce or dissolution at any point
- allowing couples being able to jointly file a statement stating that they are seeking divorce/dissolution
- allowing couples to live together or spend time together during the proceedings
- seeking to reduce conflict and provide increased clarity through appropriate presumptions.

SECTION 5: CIVIL PARTNERSHIPS

5.1 Background

The introduction of same-sex marriage creates a conundrum about the future status of civil partnerships.

The consultation paper (August 2014) stated that consideration would not be given to abolishing civil partnerships. That position was later revised in the *2014 Equal Marriage Consultation* (R.170/2014) which made a commitment to review civil partnership status, as it was considered “desirable to avoid creating a 2nd tier of marriage”.

In framing a recommendation about the future of civil partnerships, a number of options have been considered –

- should civil partnerships be abolished altogether when same-sex marriage is introduced?
- should civil partnerships be closed to new couples but retained for existing civil partners? If so, what are the implications vis-à-vis the status of UK civil partners²⁵?
- if civil partnerships are retained, should they be extended to opposite-sex couples?
- should civil partnership legislation simply be left unchanged until more is known about the demand for them once same-sex marriage has been introduced?

Note 8: Status of civil partnerships in the UK

England & Wales: the Government undertook a public consultation about the future of civil partnerships during 2014. Over 10,000 responses were received, of which –

- less than a third of respondents supported the abolition of civil partnership
- the majority were against closing civil partnership to new couples
- over three-quarters were against opening up civil partnership to opposite-sex couples.

Several important organisations thought it too soon to make changes to civil partnership, whereas others put forward the case for opening up civil partnerships to opposite-sex couples.

Given this lack of consensus from key organisations and the lack of data about the uptake of Civil Partnerships since the introduction of same-sex marriage²⁶, the Government in England & Wales is not proposing to make any changes at this stage.

Scotland: the Scottish Government is to consult later in 2015 on the future of civil partnerships in Scotland. In the meantime, they have not made any changes to existing civil partnership legislation.

²⁵ Whilst reference is made to UK civil partners throughout this section, the issue raised also applies to civil partners from other jurisdictions.

²⁶ It is anticipated the data should be available in July/August 2015.



The decision to retain civil partnership legislation, as opposed to either abolishing it or extending to opposite-sex couples is subject to challenge. In February 2015, the High Court gave permission for a legal challenge, that is aimed at extending civil partnerships to opposite-sex couples in the UK, to proceed.

5.2 Abolishing civil partnerships

It is proposed that when same-sex marriage is introduced in Jersey, couples currently in a civil partnership will be able to choose to convert that civil partnership to a marriage. Whilst some will choose to do so, it cannot be presumed that all will.

Abolishing civil partnerships altogether would significantly harm couples currently in a civil partnership who do not want to convert their partnership into marriage. It is unfair to do so and has potential human rights implications.

5.3 Closing civil partnerships to new couples but retaining for existing civil partners

5.3(a) Matters for consideration

Whilst existing civil partnerships cannot be abolished, the law could be amended to prevent people entering into new civil partnerships in Jersey. Doing so would go some way to removing a legal framework which is seen by some as a second-rate form of marriage.

There are, however, legitimate reasons for keeping civil partnerships, including –

- Civil partnerships provide a social and legal framework that stops short of marriage, but which supports couples to articulate their commitment to each other. (It is clear from the 2014 *Equal Marriage* consultation that most people perceive civil partnerships and marriage to be different. If they were perceived as being the same, there would be no need to introduce same-sex marriage.)
- Civil partnerships are seen as a viable secular alternative to marriage. Whilst civil marriage, as opposed to religious marriage, is free from religious elements, it is still marriage and carries with it traditional associations that some are uncomfortable with.
- If civil partnerships are retained, those who believe that marriage is a union between man and a woman, and therefore do not want to get married, can still access a social and legal framework that recognises their relationship.

5.3(b) Implications for civil partners from UK and other jurisdictions

The UK government has decided to keep civil partnerships for the time being (see Note 8). That decision, and the inevitable fact that civil partners living in the UK may wish to relocate to Jersey at some point in the future, has implications for Jersey due to a legal principle known as *comity*.

Under comity – which is, in effect, legal reciprocity – different jurisdictions recognise the validity and effect of each other’s executive legislative and judicial acts. For example, if a couple get married in Sweden and then move to Jersey, Jersey automatically recognises that couple as married. They do not need to marry again under Jersey law. Comity also applies to civil partnerships. If a UK couple have a civil partnership, their status as civil partners is recognised in Jersey.

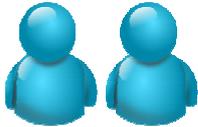
If, after a given date, no new civil partnerships could be formed in Jersey, there would be implications for couples from other jurisdictions as their civil partnership status which is legally recognised in the country where it is entered into, could not be recognised in Jersey. This would mean their relationship would have no status OR it would have to be recognised as equivalent to marriage.

This is problematic as illustrated in the following scenarios.

5.3(c) Scenarios

Scenario 1: assume that 31st December 2017 is a cut-off date and that from that point –

- same-sex couples can get married in Jersey
- same-sex couples can no longer form civil partnerships in Jersey, but still can in the UK
- no civil partnerships formed after the cut-off will be recognised in Jersey regardless of where they were formed.

 <p>Couple A</p> <p>Live in Jersey</p>	<p>Couple A become civil partners in Jersey before the cut-off date. They do not want to convert their civil partnership to a marriage because they believe that marriage has negative cultural and historical associations.</p> <p>Their civil partnership will continue, up until their deaths, to be legally recognised in UK and in Jersey, because it was formed before the cut-off date.</p>
 <p>Couple B</p> <p>Live in Jersey</p>	<p>Couple B met in early 2017. They decide in early 2018 that they want to make a commitment to each other by becoming civil partners. They do not want to get married because they are Christians and believe that marriage is a union between a man and a woman.</p> <p>They are not able to form a civil partnership in Jersey, as it is after the cut-off date, so they take up “residency” in a hotel in London for 8 days²⁷ before the ceremony and return to Jersey the next day.</p> <p>Their civil partnership would be recognised in the UK but would have no legal status in Jersey, unlike Couple A.</p>

²⁷ Jersey couples can form civil partnership in the UK providing they have been resident there for 8 days or more prior to the ceremony.

 <p>Couple C</p> <p>Live in Jersey</p>	<p>Couple C met in 2018. Like Couple B, they also want to make a commitment to each other but cannot get married because of their religious beliefs. They, however, being unemployed, cannot afford to take up “residency” in the UK for 8 days in order to enter into a civil partnership. They also wish to have a ceremony in the Island because this is their home.</p> <p>Couple C are left with no options to formalise their commitment to each other.</p>
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 <p>Couple D</p> <p>Live in the UK</p>	<p>Couple D are UK residents. They enter into a civil partnership in the UK after the cut-off date. One of them is then offered a job as a nurse at Jersey General Hospital.</p> <p>As their civil partnership will not be recognised in Jersey, they decide they cannot live here.</p>
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Scenario 2: this is the same as Scenario 1, except that civil partnerships formed in the UK after the cut-off date will be recognised in Jersey (there will however be no ability to form new civil partnerships in Jersey).

 <p>Couple B</p> <p>Live in Jersey</p>	<p>As set out above, Couple B became civil partners in London after the cut-off date.</p> <p>Their civil partnership will now be recognised in Jersey, because it was formed in the UK.</p>
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 <p>Couple C</p> <p>Live in Jersey</p>	<p>As set out above, Couple C cannot afford to go to the UK to form a civil partnership, nor do they want to. Therefore it is not possible for Couple C to formalise their relationship, and they are left with a different legal status to Couple B.</p> <p>It is questionable as to whether this is fair.</p>
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 <p>Couple D</p> <p>Live in the UK</p>	<p>Couple D can now move to Jersey, as their civil partnership will be recognised here.</p>
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Scenario 3: this is the same as Scenario 1, except that civil partnerships formed in the UK after the cut-off date will be recognised as marriages in Jersey, as opposed to civil partnerships.

 <p>Couple B</p> <p>Live in Jersey</p>	<p>Their civil partnership will automatically be recognised as a marriage in Jersey, not a civil partnership. This is contrary to their religious beliefs.</p>
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 <p>Couple D</p> <p>Live in the UK</p>	<p>Couple D have to make a decision as to whether they wish their civil partnership to be recognised as a marriage.</p>
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As illustrated above, there are inherent difficulties with –

- (1) not recognising any new civil partnerships regardless of where they are formed: this option does not provide for people moving to or away from Jersey;
- (2) recognising UK civil partnerships but not Jersey civil partnerships: this option treats people unequally and is particularly unfair to people from Jersey;
- (3) recognising UK civil partnerships as marriage: this option diminishes people’s decision not to marry.

If civil partnerships formed in other jurisdictions are not recognised as marriage in Jersey, the only way to ensure parity between same-sex couples is to continue to allow people to enter into new civil partnerships in Jersey and to continue to recognise civil partnerships formed overseas (i.e. maintain the status quo).

<p>Note 9: Jurisdictions not retaining civil partnership legislation</p> <p>Whilst the UK has maintained civil partnerships, Nordic countries such as Sweden have closed them to new couples since the introduction of same-sex marriage. They have adopted this approach in response to very different attitudes towards same-sex marriage amongst religious organisations and the broader community. In Sweden, for example, the established church has voted in favour of marrying same-sex couples. This approach helps overcome some people’s belief that the church is excluding them, providing greater legitimacy to the concept of same-sex marriage and doing away with the need for an alternative legal framework of rights and responsibilities.</p>
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5.4 Extending to opposite-sex couples

72% of respondents to the *2014 Equal Marriage Consultation* stated that civil partnerships should be made available to opposite-sex couples. Reasons cited include concerns about a lack of legal rights for cohabiting couples and the need to introduce opposite-sex civil partnerships on the basis of equality.

Arguments about whether or not civil partnership should be extended to opposite-sex couples have abounded since civil partnership legislation was first introduced. The key reason for not extending initially hinged on the notion that a civil partnership was the same as a marriage and, as opposite-sex couples could get married, they did not need civil partnerships.

The introduction of same-sex marriage in Jersey and in other jurisdictions has fundamentally challenged the notion that marriage and civil partnerships are the same, and therefore sparks the debate on opposite-sex civil partnerships.

Reasons for extending civil partnerships to opposite-sex couples include –

- Civil partnerships provide a legal framework of rights and responsibilities for cohabiting opposite-sex couples who do not want to get married. Both same-sex and opposite-sex couples will be able to choose the form of legal relationship which is most relevant to them.
- Extending civil partnership will promote fairness and equality and help eliminate discrimination between opposite-sex and same-sex couples. It is argued that all couples should have the same options for formalising their relationship in law.

Reasons for not extending to opposite-sex couples include –

- It is possible that allowing opposite-sex couples to have a civil partnership will discourage them from marrying. This is perceived by some as a potential threat to marriage. Although some do see it as a potential benefit, in that couples who do not want to marry will not feel forced into marriage for want of legal recognition of their relationship (see Note 10 below).
- The existence of two separate but almost identical legal relationships could be confusing to the public and will be more complex to administer.
- It is unclear as to whether or not people will want to enter into civil partnerships if they can marry, in which case it is a very significant change for very little benefit. A consultation undertaken in England & Wales found that 63% of unmarried heterosexual respondents said they would rather marry, compared to only 20% who would prefer to form a civil partnership. We do not know if similar attitudes are held in Jersey.
- On a practical level, if Jersey were to extend civil partnerships to opposite-sex couples, those couples would not be recognised as civil partners in the UK, because the UK does not have the necessary legislation in place. The effect of the legislation would therefore be very limited (unless the UK choice to recognise Jersey opposite-sex civil partners as married spouses).

Note 10: Would opposite-sex civil partnerships undermine marriage and families?

The argument most commonly cited for not introducing opposite-sex civil partnerships is that it will undermine the institution of marriage. Civil partnerships are perceived by some as representing a lesser commitment than marriage and potentially a less stable environment in which to raise children.

If opposite-sex civil partnership were to prove to be less stable, this would be a matter for concern. There is, however, no evidence to suggest that same-sex civil partnerships are less stable than marriage, therefore it should not be presumed that opposite-sex civil partnerships will be.

Civil partnerships were introduced as an alternative to marriage, not as a lesser form of marriage (although they are often perceived as such). Their aim was to provide a mechanism for recognising, in law, people's commitment to each other and, in so doing, provide an appropriate framework of legal rights and responsibilities.

Those reasons can apply to any couple, regardless of gender, that want to make a life-long commitment to each other but do not want to get married. They are potentially particularly pertinent to couples who have children because the associated rights and responsibilities can help protect those children in the event of relationship breakdown.



The decision as to whether to extend civil partnerships to opposite-sex couples should not be based on the notion that they might undermine marriage and families. We do not know if this will happen. In addition, the whole argument hinges on the notion that civil partnerships are a lesser form of commitment, as opposed to a viable alternative to marriage. A view that is not universally shared.

Note 11: Opposite-sex civil partnerships in other jurisdictions

The jurisdictions detailed below are recognised in Jersey law²⁸ as having a legal structure which is broadly equivalent to a civil partnership. It shows where those civil partnerships are extended to include opposite-sex couples and whether or not same-sex marriage is available.

If Jersey were to introduce opposite-sex civil partnerships it is likely that these partnerships would be recognised in those jurisdictions, even if they are not recognised in the UK.

	Legislation broadly similar to a civil partnership	Available to same-sex couple	Available to opposite-sex couple	Same-sex marriage
Andorra	Stable union	Yes	Yes	No
	Civil union	Yes	No	
Australia	<i>De facto</i> relationship	Yes	Yes	No
	Civil partnership equivalent (varies by state – including ‘civil partnership’; ‘deed of relationship’; ‘domestic relationship’; ‘registered relationship’)	Yes	Yes	
Belgium	cohabitation légale	Yes	Yes	Yes
Canada	Civil Union (Quebec only)	Yes	Yes	Yes
Finland	Rekisteröity Parisuhde (civil partnership)	Yes	No	Yes*
France	PACS	Yes	Yes	Yes
Germany	No	n/a	n/a	No
Greenland	No**			Yes**
Luxembourg	Partenariat	Yes	Yes	Yes
Netherlands	Registrert Partnerskap (Registered Partnership)	Yes	Yes	Yes
New Zealand	Civil union (separate to marriage)	Yes	Yes	Yes
USA (certain states)	Civil union & domestic partnerships (certain states only)	Yes	Yes	Yes

* approved December 2014 – comes into force March 2017

**Law will be repealed when same-sex marriage legislation comes into force in October 2015

²⁸ *Civil Partnership (Jersey) Law 2012.*

5.5 Conclusion and recommendations

As outlined above, abolishing civil partnerships in their entirety would be inherently unfair on people who entered into a civil partnership before the introduction of same-sex marriage.

Retaining for existing civil partners but closing to new couples is also difficult because it creates real disparities and challenges for people moving to and from Jersey. Most importantly, it would mean that same-sex couples who do not want to get married because they believe that marriage is a male/female union (or because they feel excluded due to other peoples' attitudes), would lack legal recognition of their relationship.

Extending to opposite-sex couples is also far from an ideal option due to the lack of recognition that those civil partners would receive in the UK.

In the round there is no obvious way forward. It is therefore recommended that no action should be taken at this point. The States of Jersey should focus its resources on the introduction of same-sex marriage and deal with civil partnerships at a later date.

Recommendations

The introduction of same-sex marriage creates inherent complexities with regard to the future status of civil partnerships. There is no clear or obvious solution. It is therefore recommended that no changes are brought forward at this time. Civil partnership legislation should remain unaltered until –

- more is understood about the uptake of civil partnerships once same-sex marriage is introduced and/or
- the UK and/or European Courts make a ruling on whether civil partnerships should be extended to same-sex couples.

SECTION 6: COHABITING COUPLES

6.1 Introduction

In Jersey, a significant number of adults live together without being married, and a significant number of children are either born to unmarried parents and/or live with unmarried adults (this includes children living with one parent and that parent's partner, or both their unmarried parents) –

- approximately 40% of children born in Jersey have unmarried parents²⁹
- approximately 22% of all couples who live together are not married³⁰
- of all households that include a couple and children, 15% of those couples are not married¹⁰.

Cohabitation is more prevalent than marriage amongst younger age-groups. Around half of people aged 16 to 34 who live together are cohabiting as opposed to being married¹⁰.

The death of one of the partners, or the breakdown of the relationship, is as traumatic for cohabiting partners as it is for those who are married or in a civil partnership. It can also bring added challenges when people realise that, despite having lived together for years and even having children together, their “common-law” relationship has no legal status and that rights of spouses or civil partners do not apply to them. This includes in relation to –

- Property ownership: the Court has no power to override the strict legal ownership of the property and cannot divide it as they may do on divorce or dissolution. It may, in some very limited circumstances, be possible to demonstrate beneficial ownership, but this is neither a simple nor cheap process in terms of legal fees.
- Inheritance: if one of the partners dies without having made a Will, the other partner does not have an automatic right to inheritance regardless of how long they have lived together or even if they have children together. This can be contested in Court, but there are obvious emotional and financial implications.
- Contributory benefits: some benefits, for example survivor's benefits, do not extend to cohabiting couples, nor can people rely on their former partner's contribution for the purposes of the state pension.³¹

²⁹ Based on analysis of the register of births.

³⁰ The Jersey figures have been calculated using 2011 Census data, and are based on the more common household types such as adult couples with or without children. The Jersey figures exclude couples from 'other' household types (for example three generation households, house-sharing or households with a live in au-pair) as the relevant inter-relationship information is not available.

³¹ There are some benefits, for example income support and long-term care, that recognise cohabiting couples and those who live together in a marriage or civil partnership-type relationship.

- Exemption to testify: spouses and civil partners are exempt from testifying against each other in Court. This does not apply to cohabiting partners.
- Parental rights (see Section 3.1).

Because cohabiting couples lack status in law, at the point of break-up, there is no strict recognition of the financial contribution that either partner may have made (for example: paying toward the mortgage even though the family home was owned by the other partner), or of the economic sacrifices that either partner may have made (for example; not working in order to bring up children). This can result in one of the partners, and potentially their children, suffering serious economic disadvantage.

The *2014 Equal Marriage Consultation* recognised that it would be desirable to provide better protection for cohabiting couples, although it also noted that it is not necessarily straightforward to do so, as a variety of issues need to be addressed, including –

- How are cohabiting rights acquired? Unlike marriage or civil partnership, there is no clear start date to the relationship (i.e. wedding or civil partnership ceremony). It is not always clear as to when cohabitation starts (for example: when one person moves in with the other, or when the couple jointly rent or buy, or set up utility bills in joint names, etc.).
- How can cohabiting couples opt in or out of such rights? The attraction of a cohabiting relationship for some couples is the freedom from legal rights and responsibilities towards each other. How would couples, who did not want these rights, opt out? How would any opt-out be reviewed or changed, either with or without the agreement of both partners, in light of changing circumstances (for example, the birth of children or longevity of the relationship)?
- Can a balance be struck between providing adequate protection for cohabiting couples whilst avoiding replicating rights of spouses and civil partners? For example, should the law provide the Court with the powers³² to –
 - transfer property from one person to another, or
 - award one-off capital payments in order to create a clean financial break between the couple?

6.2 Cohabiting rights in other jurisdictions

6.2(a) England & Wales, and Scotland

In Scotland, the Family Law (Scotland) Act 2006 provides some financial protection for cohabiting couples (see Note 11 below); however, there are concerns about its effectiveness. The need to prove and quantify the extent of economic advantage and disadvantage over the course of the relationship – plus the width of the Court’s discretion, for example in considering the length of the relationship – can make it difficult for couples and lawyers alike to determine whether a claim is worth pursuing.

³² *The Children (Jersey) Law 2002 already provides the Court with wide powers to make orders against either or both parents of a child for periodical financial payments, lump sum payments, for the transfer of property or for a settlement to be made for the benefit of the child.*

Overall in Scotland, the numbers of people bringing forward cases is very small in comparison to the numbers of cohabiting couples who break up every year³³.

The Ministry of Justice has reviewed the Scottish system and determined not to bring forward similar rights in England and Wales despite the UK Law Commission³⁴ recommending the introduction of a statutory scheme specifically designed to protect cohabiting couples whose relationship has broken down.

Note 11: Cohabitation provisions in Family Law (Scotland) Act 2006

Scottish Law provides for the following (which couples can opt out of at any time by agreement) –

- A cohabiting couple are a couple who live together as if they were husband and wife or civil partners. There is no specified time period. It is for the court to determine if they are cohabitants, based on the nature and duration of their relationship.
- Household goods acquired whilst the couple lived together will be presumed to be jointly owned unless it can be proved otherwise (this excludes: money, securities, cars, pets, or goods acquired as gifts or by inheritance).
- Assets bought from a housekeeping allowance, paid by one person to the other, will be presumed to be jointly owned (this excludes the family home, if there is an agreement stating otherwise).
- The Court can order the payment of a capital sum following separation, to assist with caring for the couple's children or to correct any imbalance in economic advantage and disadvantage between the couple.
- If one of the partners dies without making a Will, the surviving partner may make a claim for a share of their estate.

6.2(b) Other jurisdictions

There are a number of other jurisdictions that provide varying degrees of protection for cohabiting couples, including Australia, Canada and 9 U.S. states³⁵. Most provide some degree of recognition in relation to spousal benefits (for example: pensions, benefits, tax), but treat matters relating to property and children as separate.

³³ *It was estimated that only around 1,000 cases has be brought forward by 2010.*

³⁴ *UK Law Commissioner 2007 proposed the establishment of a voluntary 'opt-in' scheme for which couples would be eligible if they had a child together or had lived together for minimum period of time of between 2 to 5 years. It was envisaged that the scheme would provide some financial remedy based on what each partner could prove they had financially contributed during the course of their relationship (as opposed to what the financial needs of each person as is the case in divorce or dissolution).*

³⁵ *Nine states in the U.S.A. provide varying degrees of recognition and protection for cohabiting couples: Alabama, Colorado, Iowa, Kansas, Montana, Rhode Island, South Carolina, Texas, and Utah.*

6.3 Living together agreements

Any cohabiting couple in Jersey can set up a living together agreement³⁶ (also known as a cohabitation agreement) setting out what will happen if the relationship breaks down, particularly in relation to the sharing of property. These agreements do not extend to matters such as pensions and benefits however, as these are a matter for law, nor to matters of inheritance, which are governed by the terms of a validly executive Will or, in the absence of a Will, by the law of succession.

There is currently no presumption in Law that these agreements will be recognised (although there are also no indicators that they will not), and like pre-marital agreements they are sometimes regarded in poor light. This is, however, mainly due to people's discomfort with setting up such agreements at the very point at which they are embarking on a life together.

Living together agreements, if they are fair and reasonable, and have been entered into willingly by both partners, can be extremely beneficial in helping to minimise conflict at the point of break-up, particularly where a home, or an asset, needs to be secured or shared for the wellbeing of any children.

Living together agreements can be set up as a form of legal deed and, where they are, it is proposed that there should be a presumption in law that they stand, subject to the discretion of the Court and appropriate safeguards which may, for example, include –

- neither partner was coerced or put undue pressure to sign the agreement
- the agreement was signed at least 12 weeks before the relationship broke down (or potentially a longer period of time)
- both partners received independent legal advice before signing
- both partners provided correct information
- enforcing the agreement would not create financial hardship for their children.

6.4 Conclusion and recommendations

We want to provide an appropriate degree of legal protection for cohabiting couples in the event that their relationship breaks down, especially if there are children involved.

It is, however, not our intention to equate the status of cohabiting couples to spouses or civil partners or to provide the associated rights and responsibilities.

In protecting cohabiting couples, we will encourage use of living together agreements, plus, in developing the proposed new Family Law, we will consider bringing forward limited protections relating to matters such as household goods. Any such provisions will, however, be subject to consideration of potential to drive cohabiting couples in Court. This is not desirable, as it generates conflict.

We will protect children through changes to parental responsibility (see Section 3.1).

³⁶ See Appendix 2, for a copy of UK a living together agreement

Recommendations

In bringing forward the proposed new Family Law, consideration should be given to whether –

- a Jersey equivalent to a living together agreement should be developed and promoted
- the law should be amended to include a presumption that living together agreements, set up as a legal deed, will be binding unless a safeguard is breached (see pre-marital agreements, section 4.5)
- the proposed draft Law should bring forward limited protections for cohabiting couples.

SECTION 7: TIMEFRAME

The legislative and process/systems changes required to bring forward the proposals set out in the report and proposition are significant (See **Appendix 1**). As set out in the *2014 Equal Marriage Consultation* (November 2014), the Chief Minister is, however, committed to making same-sex marriage a reality in Jersey by the end of 2017.

In order to achieve this, the legislative changes needed will be developed during Q1–Q4 2016 and debated in early 2017. Process and systems changes will then be implemented during 2017.

SECTION 8: FINANCIAL AND MANPOWER IMPLICATIONS

Costs associated with developing and bringing forward the necessary legislation to give effect to these proposals will be found from within existing departmental resource allocations

Costs associated with bringing forward revisions to our tax system (IT and processes), plus any associated impact on tax receipts will be quantified and set out at the point at which legislation is brought forward for States debate.

Couples getting married or forming civil partnerships in Jersey will meet costs incurred by the States through a schedule of user-pays fees. Couples getting a divorce/dissolution in Jersey will meet their own costs.

APPENDIX 1

LEGISLATION TO BE AMENDED

The following Laws will require amending to give effect to this report and proposition –

Children (Jersey) Law 2002
Civil Partnership (Jersey) Law 2012
Gender Recognition (Jersey) Law 2010
Income Tax (Jersey) Law 1961
Marriage and Civil Status (Jersey) Law 2001
Matrimonial Causes (Jersey) Law 1949.

In addition, other Laws will need to be reviewed to ensure that the changes brought forward to facilitate the introduction of civil partnerships in 2012 were sufficient to also allow for same-sex marriage and opposite-sex civil partnerships. These include –

Adoption (Jersey) Law 1961
Anatomy and Human Tissue (Jersey) Law 1984
Banking Business (Jersey) Law 1991
Bankruptcy (Désastre) (Jersey) Law 1990
Burials and Exhumations (Jersey) Law 2004
Child Abduction and Custody (Jersey) Law 2005
Child Custody (Jurisdiction) (Jersey) Law 2005
Companies (Jersey) Law 1991
Consumer Safety (Jersey) Law 2006
Discrimination (Jersey) Law 2013
Employment (Jersey) Law 2003
Fatal Accidents (Jersey) Law 1962
Financial Services (Jersey) Law 1998
Goods and Services Tax (Jersey) Law 2007
Health and Safety at Work (Jersey) Law 1989
Interpretation (Jersey) Law 1954
Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations
Loi (1864) réglant la procédure criminelle
Loi (1880) sur la propriété foncière
Loi (1908) au sujet des témoins et informateurs
Loi (1991) sur la copropriété des immeubles bâtis
Maintenance Orders (Enforcement) (Jersey) Law 1999
Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000
Mental Health (Jersey) Law 1969
Nursing and Residential Homes (Jersey) Law 1994
Police Procedures and Criminal Evidence (Jersey) Law 2003
Probate (Jersey) Law 1998
Protection of Employment Opportunities (Jersey) Law 1988
Shipping (Jersey) Law 2002
Separation and Maintenance Orders (Jersey) Law 1953
Social Security (Jersey) Law 1974
Stamp Duties and Fees (Jersey) Law 1998
Taxation (Land Transactions) (Jersey) Law 2009
Wills and Successions (Jersey) Law 1993

LIVING TOGETHER AGREEMENT TEMPLATE

<p>THE DATE OF THIS DEED OF AGREEMENT is: </p>
<p>THE TWO PEOPLE MAKING THIS AGREEMENT ARE: </p>
<p>THE BASIS OF OUR AGREEMENT:</p> <ul style="list-style-type: none"> (a) We have decided to live together OR We have been living together since..... (b) We want to enter into an agreement that sets out our rights and duties to each other (c) We intend that this agreement shall be legally binding on both of us (d) We have [both] taken legal advice about making this agreement (e) We have honestly and frankly told each other about our individual financial positions and have set out this information in Schedule A at the end of this agreement
<p>INFORMATION ABOUT OUR CHILDREN: We have no children at present OR We have the following children of whom we are both parents – OR already has [a] child[ren] from a previous relationship: The other parent [<i>insert his or her name</i>]..... is still alive/has died.</p>
<p>INFORMATION ABOUT OUR HOUSING: We [intend to] live at which is referred to as “the Home” in the rest of this agreement. The Home is rented/owned in our joint names/’s sole name. The way in which it was purchased is set out in Schedule B at the end of this agreement.</p>
<p>OWNING THE HOME:</p> <ul style="list-style-type: none"> • We [will] own the Home in our joint names as a joint tenancy. We intend to continue to have equal shares in the Home even if we do not make equal contributions. • We [will] own the Home in our joint names as a tenancy in common. <ul style="list-style-type: none"> - We [will] own equal shares and we intend to continue to have equal shares in the Home even if we do not make equal contributions, OR - We [will] own the following shares:.....: %: % • owns [will own] the Home in his/her sole name and [<i>the name</i>] understands that s/he will not get any share in the Home rights over the property even if s/he makes a contribution to paying for the Home or the household.

BUYING A NEW HOME: If we decide to sell the Home and buy another we will own the new property on the same terms, or we will renegotiate the terms on which we hold it.

ENDOWMENT POLICY:

Any surplus profits from the endowment policy with in the name[s] of [and] are to belong to jointly/solely

HOUSEHOLD EXPENSES AND DEBTS:

We have opened/will open a joint bank account with Bank, Branch.

We [will] pay the following amounts into this account:

[name]: £..... a month/week/

[name]: £..... a month/week*

[We regard these as equal contributions.] [We agree to hold any balance in equal shares.]

[We will hold any balance in the following shares –

[name]% [name]%]

Either of us may draw cheques on this account with [out] the signature of the other.

Out of this account we will pay the following household bills –

- water rates/council tax/items of furniture and equipment for the home, etc.

OR: We will individually be responsible for the following payments:

[name]..... will pay for

[name]..... will pay for

OR: We have been living together since

We have pooled our finances in a joint account and have paid for everything jointly.

DEBTS: We will each remain liable for any debts that we have incurred individually.

We cannot be liable for each other's debts, (except for utilities bills/Council Tax where the law gives the supplier the right to pursue anyone who uses the service).

Savings: We have a savings account/ISA with:

..... Bank, Branch.

The account is in’s name.

[They alone own the contents of the account] [We agree to hold any balance in equal shares.]

[We will hold any balance in the following shares – [name]%]

[name]%]

OWNERSHIP OF CONTENTS: These are the rules that we intend to apply to personal property and contents of the home –

- If one of us owned something before we lived together, it belongs to that person
- If one of us bought something with his or her own money it belongs to that person
- If either of us inherited something, or was given it as a gift, it belongs to that person
- If one of us buys something and gives it to the other, it belongs to the person to whom it is given
- If we buy something out of a joint bank account, it belongs to us equally/in the shares in which we hold the account.
- Etc.

CAR[S]: The car registered in the name of belongs to alone and will continue to do so even if contributes to its maintenance, repair or running costs.
OR belongs to us both jointly. It will do so even if we do not make equal contributions to its maintenance, repair or running costs.

CHILDREN:

- While our child[ren] are under the age of [5] will not work [full-time] outside the home, but will bring up the child[ren] We intend to treat this as a contribution equal in value to the financial contribution of during this period.
- While is not working because of child-care responsibilities will maintain her/him as far as s/he is able.
- While our child[ren] are under the age of we both intend to work part-time and share child-care. During this period we will treat each other's contributions in earnings and child-care and domestic responsibilities as being of equal value.
- Since is/are not 's children and receives maintenance for them, we agree that
- If we have [a] child[ren] it is our intention to share Parental Responsibility and so [name of mother] will make sure that [name of father] is registered on the birth certificate. Failing this we will make a Parental Responsibility Agreement.

PENSIONS: We each will/have nominate[d] each other to receive% of the pension and death in service benefits to which we may each be entitled. If this agreement ends for any reason we shall both be free to cancel these nominations.

ENDING THIS AGREEMENT: This agreement shall come to an end if any of the following events happens –

- One of us dies/we get married/We make a joint decision to stop living together.
- If this happens the transitional arrangements set out below will apply.

If we cannot agree we intend to seek the help of mediation or solicitor negotiation rather than using the courts.

TRANSITIONAL ARRANGEMENTS:

- We will stop paying into the joint household account.
- We will pay any outstanding bills out of the joint household account.
- We will divide any balance left over between us equally.
- We will divide any furniture/other items bought together. We achieve an equal split by dividing items up, or one person giving the other a payment in compensation.
- [*the non-owner*] will leave the home as soon as possible.
- We will sell the home as soon as possible and divide the proceeds of sale (after paying the mortgage, etc.).

- If, instead of a sale of the home, one of us wishes to buy the other's share, we will have the home valued by a local valuer. We will choose the valuer together and give joint instructions, and split any cost of the valuation equally. If we cannot agree about the choice of valuer we will ask the President of the Institute of Chartered Surveyors to appoint a valuer.

If one of us dies – [*iname of owner of the home*]
 will instruct the executors that if s/he dies before [*insert name of non-owner*]
 they must allow her/him a period of
 6 months before s/he has to leave the home.

RENEGOTIATIONS AND CHANGES: We will reconsider this agreement from time to time and change it if appropriate. We will also do this if: we have a[nother] child/either of us changes job, becomes unemployed, becomes seriously ill, or disabled.

If we make changes to this agreement, we will write them down.

SIGNED [AS A DEED]:

by the said [insert full name of first person]:

.....
 in the presence of (here a witness should write his/her name):

.....
 [signature and address]:

.....

