

STATES OF JERSEY



LEGAL PARENT STATUS AND PARENTAL RESPONSIBILITY FOR SAME SEX PARENTS

Lodged au Greffe on 15th February 2022
by Deputy L.M.C. Doublet of St. Saviour
Earliest date for debate: 29th March 2022

STATES GREFFE

PROPOSITION

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

to request the Minister for Children and Education to prioritise work on legislation to remove the discrimination in our law with regards to legal parent status and parental responsibility for same sex parents, so that a draft Law on the matter can be lodged in time for debate before the election

DEPUTY L.M.C. DOUBLET OF ST. SAVIOUR

REPORT

Our current laws discriminate against same-sex couples

Members may be surprised to discover that same-sex couples do not have the same rights in respect of legal parent status and parental responsibility for their children as heterosexual/mixed-sex couples.

Imagine watching your wife going through a difficult birth to bring your child into the world and knowing that if anything happened to the baby you would not have the right to make decisions about your own child's medical care.

Imagine working overtime and saving money for years to fund IVF treatment and then when registering the birth of your child with your wife, you are told that your name will not be on the birth certificate.

Imagine watching your wife go through major surgery soon after giving birth and knowing that you do not have parental responsibility for your child who you are left caring for at home.

Imagine your own child being denied travel rights to your home country because the law does not recognise them as your child.

Imagine coming home from work one day to be told by your partner that they are leaving you and fearing that you cannot stop your child being taken away with them off the island.

These are taken from real-life examples from couples here in Jersey.

LGBTQ+ families I have spoken to tell me of the costs, stress, and the lengthy court process required to ensure that both parents have parental responsibility for their child. Total costs for lawyers and court fees are usually hundreds of pounds and often thousands, up to around £3,000 or more. The processes are not always straightforward and families report feeling humiliated, disempowered and exhausted by the legal processes they are forced to undertake.

Political commitments have been made

The then Chief Minister told me in a response to an Oral Question in April 2016 that the law would be “updated in 2017 to allow same sex parents who are named on the birth certificate to also automatically be granted parental responsibility and this will form part of the package of changes being brought forward in relation to same sex marriage”. That deadline was not met.

In 2019 the Jersey Law Commission commissioned an independent report authored by Marisa Allman (Barrister, England and Wales).¹ This report clearly identified the anomalies in Jersey's legislation and how to remove the discrimination in the current law. The summary of this report stated:

¹ [Jersey Law Commission: The Law Relating to Parentage, Donor Conception and Surrogacy](#)

“Jersey now has discrimination legislation but the law itself discriminates against many parents.”

I continued campaigning for this legislation to be prioritised and other members also shared my views, including Ministers and members of the Children, Education and Home Affairs Scrutiny Panel. At almost every turn when I have enquired about this work or pressed for it to be progressed, I have been informed of delays. In February 2021 I asked a written question about progress with the legislation. I was told:

“Law drafting instructions are currently subject to consultation with key professional stakeholders including;

- *Children’s Services*
- *JFCAS*
- *Family Court Registrar*
- *Law Officers’ Safeguarding and Advice Teams*

It is anticipated that the law drafting instructions will be issued to the law draftsman before the end of February.”

That deadline – the end of February 2021 – came and went.

I was kept informed by the then Minister Deputy Maçon and attended a number of meetings including one with him and his officers on the 22nd February 2021. I was confident at this point that the work was progressing at pace and there was no question of it being delayed beyond the current political term. However here we are in 2022, weeks from the final sitting of the term, and still I understand that the law is not ready. This is not good enough.

Conclusion

The Deputy Chief Minister, in response to a question about this legislation on the 8th February 2022, confirmed that *“it is important so **must remain a priority** for this ... Government.”*

There are families who are due to give birth shortly who have been advised that this law will be in place in time for their child, who are going to discover that both parents do not have parental responsibility for their child without a lengthy court process to achieve this. There are also families who have not yet been through the court processes to acquire legal parent status for their existing child and are in limbo waiting for this legislation. Worse still, of course, there is nothing to say that a new States Assembly and a new Council of Ministers will not again delay this reform.

To be clear, the policy officer tasked with this work has, I believe, been diligent and focused, and I am grateful to him for his efforts. It is my view that this is a resourcing issue and that had sufficient political importance been placed on this work, it could surely have been completed in the nearly 6 years since Senator Gorst made his commitment as the Chief Minister at the time.

I cannot help wondering whether this legislation has not been prioritised because it affects a group of people who have historically been marginalised and therefore do not seek to campaign loudly when their rights are denied. The lack of equality between

same-sex and mixed-sex couples is hurtful and discriminatory and could finally be addressed if this legislation were brought forward.

I believe that this legislation is not ready because it has been de-prioritised. We have a few weeks left before the last sitting of the Assembly. I am calling on the Assembly to instruct the Minister that this issue is a priority and that the draft Law should be lodged for debate before the election. As we were told that this legislation was in the work programme for 2017, and again would be with the legislative drafters in February 2021, I am struggling to see why this deadline should be a challenge.

Financial and manpower implications

It is hard to say what the financial and manpower implications of this proposition might be as it is unclear what further work is required to bring this legislation to the Assembly. I am asking for the Minister and his team to prioritise this matter and, if necessary, for the legislative drafters to give precedence to this legislation over other projects, rather than for any additional money to be spent. However, if there is a blockage in terms of law drafting, I understand that consultant law drafters can be employed relatively easily to complete individual projects.