

STATES OF JERSEY



Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

**Lodged au Greffe on 22nd August 2022
by the Minister for Home Affairs
Earliest date for debate: 4th October 2022**

STATES GREFFE



Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy H.M. Miles of St. Brelade**
Minister for Home Affairs

Dated: 22nd August 2022

REPORT

The Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- (“the draft Law”) will, if approved, amend the [Marriage and Civil Status \(Amendment No. 5\) \(Jersey\) Law 202-](#) (the “Amendment No. 5 Law”) and the [Civil Partnership \(Amendment\) \(Jersey\) Law 202-](#) (the “Amendment Law”). These Laws amended the [Marriage and Civil Status \(Jersey\) Law 2001](#) (the “2001 Law”) and the [Civil Partnership \(Jersey\) Law 2012](#) (the “2012 Law”) respectively.

In March 2022, the States of Jersey approved the Amendment No. 5 Law and the Amendment Law. This draft Law would make four retrospective corrections to provisions in those two amendment Laws. These amendments are minor in nature and are necessary to ensure the amendment Laws both align with Government policy and comply with the European Convention on Human Rights (ECHR) before either amendment Law is brought into force.

It is important to note that because the two amendment Laws are being held back from being brought into force, no unintended consequences have occurred, and the public have not been impacted by any of the provisions that are to be amended by this draft Law.

The amendments relate to the prohibited degrees of relationship that apply to both marriage and civil partnerships.

Article 1 amends Schedule 1 to the Amendment No. 5 Law to remove paragraph 3. Paragraph 3 consists of a table that was inadvertently included in the Amendment No. 5 Law. The table sets out a series of relationships where two people are deemed to be within a prohibited degree of relationship for the purposes of marriage (i.e. they are prohibited from marrying one another). Unless the people mentioned in the right-hand column of that table are dead, two people cannot marry if one of those two people is a:

1. former civil partner of that person’s child;
2. former spouse of that person’s child;
3. parent of that person’s former civil partner; or
4. parent of that person’s spouse.

Article 1 also reinserts a prohibition on the marriage of a person with his or her former adoptive grandchild. This was inadvertently omitted from the provisions after they were moved into new Schedule 1 that will be substituted into the 2001 Law by the Amendment No. 5 Law.

Article 2 of the draft Law amends Schedule 1 to the Amendment Law to delete paragraph 3 of the Schedule. Paragraph 3 consists of a table that was inadvertently included in the Amendment Law. The table sets out a series of relationships where two people are deemed to be within a prohibited degree of relationship. It mirrors the provisions under Schedule 1 to the Amendment No. 5 Law which are described above.

Failing to amend the 2001 Law and the 2012 Law in this manner would place a prohibition on the marriage or civil partnership of a parent-in-law with his or her child-in-law unless their respective spouses or civil partners through whom the relationship is traced are dead. This was found to be incompatible with the ECHR in the case of *B and L v. United Kingdom* (Application 36536/02) in which the European Court of Human Rights held that such a prohibition could not be maintained as logical or rational. It is, therefore, necessary for these tables to be removed before either the Amendment No. 5 Law or the Amendment Law come into force.

Article 3 provides for the citation and commencement of this draft Law. It will come into force on the day after its registration. It is anticipated that this Law and the two Laws which it amends will all be registered on the same date. The effect is that the provisions being deleted will never take effect.

Financial and manpower implications

There are no financial and resource implications for the States arising from the adoption of this draft Law.

Human Rights Notes

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Re-issue Note

Due to the death of Her Majesty Queen Elizabeth II, this Projet is re-issued in order to change references to "Her Majesty" to "His Majesty" in the draft Law.

APPENDIX TO REPORT**Human Rights Notes on the draft Marriage and Civil Partnership (Amendments)
(Jersey) Law 202-**

These Notes have been prepared in respect of the draft Marriage and Civil Partnership (Amendment) (Jersey) Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law, if passed, would amend the Marriage and Civil Status (Amendment No.5) (Jersey) Law 202- (the “Amendment No.5 Law”), which itself would amend the Marriage and Civil Status (Jersey) Law 2001 (the “2001 Law”), and the Civil Partnership (Amendment) (Jersey) Law 202- (the “Amendment Law”), which itself would amend the Civil Partnership (Jersey) Law 2012 (the “2012 Law”).

The draft Law would remove from the Amendment No.5 Law and the Amendment Law a provision which would have prohibited marriages and civil partnerships between parent-in-law and children-in-law. The removal of the prohibition is compatible with Article 12 ECHR (right to marry).

The draft Law would, if passed, also re-insert, in the substituted list of absolute prohibitions to marriage in the Amendment No.5 Law (in the Schedule, to be substituted for Schedule 1 to the 2001 Law) a marriage between two people one of whom is the former adoptive grandchild of the other. A prohibition on marriage between two people one of whom is the former adoptive grandchild of the other is considered to be compatible with Article 12 ECHR, coming within the permitted scope of national law prohibiting marriages of certain degrees of affinity.

EXPLANATORY NOTE

The draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- will, if passed, amend the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202- and the Civil Partnership (Amendment) (Jersey) Law 202-.

Article 1 amends Schedule 1 to the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202- (“the amending Law”) to delete paragraph 3 of the substituted Schedule 1 to the Marriage and Civil Status (Jersey) Law 2001, and also paragraph (5) of Article 3 of the 2001 Law (which gives effect to paragraph 3 in Schedule 1 to the 2001 Law. The effect of these changes is to remove the prohibition on the marriage of a parent-in-law with his or her child-in-law unless their respective spouses or civil partners through whom the relationship is traced are dead. This is because of the decision of the European Court of Human Rights in the case of *B and L v. United Kingdom* (Application 36536/02) in which it was held that the prohibition of marriages between a person and the parent of his or her former spouse or between a person and the former spouse of his or her child could not be maintained as logical or rational.

The Article also reinserts a prohibition on the marriage of a person with his or her former adoptive grandchild, which was inadvertently omitted from the amending Law.

Article 2 amends the Civil Partnership (Amendment) (Jersey) Law 202- to delete paragraph 3 of substituted Schedule 2 to the Civil Partnership (Jersey) Law 2012 for the same reasons as the analogous deletion from the substituted Schedule 1 to the 2001 Law.

Article 3 provides for the citation and commencement of this draft Law. It will come into force 7 days after its registration. It is anticipated that this Law and the 2 Laws which it amends will all be registered on the same date. The effect is that the provisions being deleted will never take effect.



Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

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Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

A LAW to amend further the law relating to marriage and civil partnership.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

1 Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202- amended

- (1) This Article amends the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202-.
- (2) In Article 3, substituted paragraph (5) of Article 3 of the [Marriage and Civil Status \(Jersey\) Law 2001](#) is deleted.
- (3) In Schedule 1, in substituted Schedule 1 to the [Marriage and Civil Status \(Jersey\) Law 2001](#) –
 - (a) in paragraph 1(2) after the entry “Former adoptive child” there is inserted “Former adoptive grandchild”;
 - (b) paragraph 3 is deleted.

2 Civil Partnership (Amendment) (Jersey) Law 202- amended

In Schedule 1 to the Civil Partnership (Amendment) (Jersey) Law 202-, in substituted Schedule 2 to the [Civil Partnership \(Jersey\) Law 2012](#), paragraph 3 is deleted.

3 Citation and commencement

This Law may be cited as the Marriage and Civil Partnership (Amendments) (Jersey) Law 202- and comes into force 7 days after it is registered.