

# STATES OF JERSEY

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## DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT) (JERSEY) LAW 200-

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Lodged au Greffe on 7th September 2007  
by the Minister for Home Affairs

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STATES GREFFE





Jersey

## **DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT) (JERSEY) LAW 200-**

### **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 Status (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

## REPORT

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Article 12 of the European Conventions of Human Rights (“the Convention”) secures for men and women of marriageable age “... *the right to marry and to found a family, according to the national laws governing the exercise of this right*”.

On 13th September 2005 judgment was given by the European Court of Human Rights (“the European Court”) in the case of *B and L v. the United Kingdom* (Application No. 36536/02). The case involved a challenge to the prohibition, in the United Kingdom Marriage Act 1949, of the marriage of parents-in-law to children-in-law. The applicants were a couple, B and L, who by virtue of marriage were father-in-law and daughter-in-law. Over the course of time both parties’ marriages broke down and both ended in divorce. Some time after the breakdown of those marriages, B and L formed a relationship and started to cohabit. L’s son shared the home with B and L, and although B was his grandfather, the child called him “dad”. Some years later, B and L decided that they wished to formalise their relationship by getting married; however, the superintendent registrar of deaths and marriages at the local register office correctly informed them that such a marriage would be impossible unless both their former spouses were dead.

The same impossibility would exist under Jersey law.

The couple argued that the relevant provisions in the United Kingdom Act were incompatible with article 12 of the Convention. The European Court found that there had been a violation of article 12 in that the prohibition on marriages between a person and the parent of their former spouse and between a person and the former spouse of their child could not be supported as rational and logical.

The United Kingdom Government accepted the judgment and, using the power conferred on the Lord Chancellor by section 10 of the Human Rights Act 1998, an Order was made entitled “Marriage Act 1949 (Remedial) Order 2007” which came into force on 1st March 2007. To remedy their incompatibility with a Convention Right, the Order repealed provisions in section 1 of, and Schedule 1 to, the Marriage Act 1949 forbidding the marriage of person to the parent of his or her former spouse and the marriage of a person to the former spouse of his or her child.

Article 5 of the Marriage and Civil Status (Jersey) Law 2001 (“the 2001 Law”) is of the same effect as the provisions of the Marriage Act 1949 Act thus repealed. It is headed “***Restriction on marriage with former son-in-law, daughter-in-law etc.,***” and provides that –

“(1) *Subject to paragraph (2) a marriage solemnized –*

(a) *between a man and –*

(i) *his former wife’s mother; and*

(ii) *his son’s former wife; or*

(b) *between a woman and –*

(i) *her former husband’s father; or*

(ii) *her daughter’s former husband,*

*shall be void.*

(2) *Any marriage to which paragraph (1) applies shall not be void by reason only of that paragraph if both the parties to the marriage are of full age at the time of the marriage and the marriage is solemnised –*

(a) *in the case of a marriage between a man and his former wife’s mother, after the death of both the former wife and her father;*

(b) *in the case of a marriage between a man and his son’s former wife, after the death of both of his son and his son’s mother;*

(c) *in the case of a marriage between a woman and her former husband’s father, after the death of both her former husband and his mother;*

(d) *in the case of a marriage between a woman and her daughter’s former husband, after the*

*death of both her daughter and her daughter's father."*

In the light of the judgment of the European Court referred to above, it is clear that the prohibition contained in Article 5 would not be held by the European Court to be supportable as rational or logical. It is therefore necessary to amend the 2001 Law remedially in the same way that the Marriage Act 1949 of the United Kingdom has been amended, and thereby to enable there to be marriages between parents and children-in-law.

This *projet de loi* would make the necessary amendments.

**Financial/manpower statement**

This Draft Law has no financial or manpower resource implications for the States.

**European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention rights (as defined by Article 1 of the Law). On 31st August 2007 the Minister for Home Affairs made the following statement before Second Reading of this *Projet* in the States Assembly –

In the view of the Minister for Home Affairs the provisions of the Draft Marriage and Civil Status (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

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This Law would repeal a provision of the Marriage and Civil Status (Jersey) Law 2001 (that prohibits marriages of parents-in-law to children-in-law) that has been found to be inconsistent with human rights and make consequential amendments to the Law.





Jersey

# DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT) (JERSEY) LAW 200-

## Arrangement

### Article

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- 1      Interpretation
- 2      Article 5 repealed
- 3      Article 8 amended
- 4      Article 35 amended
- 5      Schedule 3 amended
- 6      Citation and commencement







Jersey

## **DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT) (JERSEY) LAW 200-**

A **LAW** to amend the Marriage and Civil Status (Jersey) Law 2001.

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

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

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### **1 Interpretation**

In this Law “the principal Law” means the Marriage and Civil Status (Jersey) Law 2001<sup>[1]</sup>.

### **2 Article 5 repealed**

Article 5 of the principal Law is repealed.

### **3 Article 8 amended**

In Article 8 of the principal Law –

- (a) in paragraph (4) for the words “Subject to paragraphs (5) and (6)” there is substituted the words “Subject to paragraph (5)”; and
- (b) paragraph (6) is deleted.

### **4 Article 35 amended**

Article 35(4) of the principal Law is deleted.

### **5 Schedule 3 amended**

In Schedule 3 to the principal Law paragraph 2 is deleted.

### **6 Citation and commencement**

- (1) This Law may be cited as the Marriage and Civil Status (Amendment) (Jersey) Law 200-.

(2) It shall come into force 7 days after it is registered.

