

STATES OF JERSEY

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DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 2) (JERSEY) LAW 200-

**Lodged au Greffe on 21st April 2008
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 2) (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 No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

This amendment to the Marriage and Civil Status (Jersey) Law 2001 allows parents to choose the surname of their children, selecting either the maiden surname of the mother, the surname of the father or a combination of the two. This applies both to parents who are married to each other and to parents who are not.

Where the two parents do not jointly make a choice of one of the above options, then the default position prevails, as follows. When parents are married to each other the child is registered in the surname of the father. When parents are not married to each other the default is that the child takes the maiden surname of the mother.

This legislation is of social importance. The Home Affairs Minister received several representations from parents who wish to register their children as set out above but who are currently prohibited from doing so. This will enable them to choose either the maiden name of the mother or the surname of the father or a combination of the two in the order chosen by the parents.

Other jurisdictions have different rules which vary across Europe. In England and Wales and Northern Ireland parents may choose any surname they wish when registering the birth of a child although parents are discouraged from choosing surnames that differ from either that of the mother or the father. In contrast there are different approaches elsewhere in Europe. Thus, in Switzerland a child of a married couple can only take the father's surname.

Whilst the English approach has simplicity there are important public policy issues to be considered, in that in England the surname chosen could be unrelated to the surname of the father or the maiden name of the mother. In some circumstances this could cause embarrassment to the child or others particularly in a small community. The amendment to the Marriage and Civil Status (Jersey) Law 2001 has been prepared on the basis that the surname of the child should be linked to the child's mother or father.

A number of European jurisdictions impose restrictions on the parent's right to choose a surname. The English approach is at one end of the European continuum. The European Court of Human Rights has considered the Swiss approach in the case of *GMB and MK v Switzerland* (27th September 2001). In that case it was decided that the prohibition on the child of a married couple taking the mother's surname was compatible with Article 8 – the right to respect for private and family life – and Article 14 – the right not to be discriminated against. This proposed legislation will adopt a middle position, giving parents freedom of choice to choose a name linked to one or both of them.

The proposed amendment has been under consideration since before the matter became the subject of a court case. The case of *Moran and Kemp v Deputy Registrar for the Parish of St. Helier* ([2007] JRC 151) is of importance because it does highlight the need for the amendment, although at first instance the court ruled against the parents application for review of the Registrar's decision and revision of the register entry.

The amendment is to be retrospective to 1st May 2002 when the Marriage and Civil Status (Jersey) Law 2001 came into force.

The opportunity has also been taken to make a minor amendment which reduces the number of working days between a request for a marriage licence and the marriage being solemnized.

Financial and Manpower Implications

It is not possible to estimate how many parents might wish to take advantage of this amendment; however, the costs of additional staff and resources would be met by the Parish of St. Helier and be offset by a re-registration fee. The precise re-registration fee will be discussed with the Connétable of St. Helier before the amendment comes into force, but it is likely to be in the region of £50.

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 15th April 2008 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 No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Article 1 defines the Marriage and Civil Status (Jersey) Law 2001 as the “principal Law”.

Article 2 amends Article 11 of the principal Law so as to reduce from 3 to 2 the number of working days that must elapse between a person requesting the issue of a marriage licence and the marriage being solemnized.

Article 3 inserts Article 59A in the principal Law.

59A Surname of child

Paragraph (1) introduces a new entitlement for the father and mother of a child, jointly, to register a surname for the child other than the surname required by the default rules. The choice is limited to the father’s surname, the mother’s maiden surname, or a combination of the two, such as Wilson-Jones or Jones-Wilson. If the parents are not married, the father must be recorded in the register as the child’s father in order to join in the registration of a surname under this paragraph.

If the parents do not, jointly, make a choice under paragraph (1), the default rules as to the surname to be registered for a child are as follows –

- a child born to a married couple is registered with the father’s surname
- a child born to parents who are not married to each other is registered with the mother’s maiden surname.

Article 4 inserts Schedule 2A in the principal Law.

Schedule 2A Reregistration of surname of child

This Schedule allows the parents of a child whose birth was registered on or after 1st May 2002 (the day that the principal Law came into force) but before the new Article 59A comes into force to jointly request the re-registration of the child’s surname in accordance with paragraph (3) of that Article.

Article 5 provides for the citation and commencement of the Law.



Jersey

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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 11 amended</u>
<u>3</u>	<u>Article 59A inserted</u>
<u>4</u>	<u>Schedule 2A inserted</u>
<u>5</u>	<u>Citation and commencement</u>



Jersey

DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 2) (JERSEY) LAW 200-

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

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law, “principal Law” means the Marriage and Civil Status (Jersey) Law 2001^[1].

2 Article 11 amended

In Article 11(1) of the principal Law for the words “3 working days” there shall be substituted the words “2 working days”.

3 Article 59A inserted

After Article 59 of the principal Law there shall be inserted the following Article–

“59A Surname of child

- (1) Where a child’s father and mother both so choose, the surname registered or re-registered for the child, pursuant to Article 51, 52, 55, 56, 57 or 58 shall be one of the following, chosen by them –
 - (a) the father’s surname;
 - (b) the mother’s maiden surname; or
 - (c) a surname that consists of the father’s surname and the mother’s maiden surname, in the order indicated by the father and mother.
- (2) In the case of a child whose father and mother were not married to each other at the time of the child’s birth, and who has not been legitimated by their subsequent marriage, a surname shall not be registered or re-registered pursuant to paragraph (1) unless, at the time paragraph (3) is complied with, the father is, or is being, recorded in the register pursuant to Article 55 or 56, as the father of the child.

- (3) The choice of the father and mother under paragraph (1) shall be evidenced by–
 - (a) their joint request for registration or, as the case may be, re-registration; or
 - (b) where only one of them registers or, as the case may be, re-registers the birth –
 - (i) the request of the person registering or re-registering the birth, and
 - (ii) the production of a declaration made by the other of them stating his or her choice.
- (4) Where the father and mother of a child do not, in accordance with paragraphs (1) to (3), jointly choose a surname for the child, the surname registered or, as the case may be, re-registered for the child under this Law shall be –
 - (a) if the father and mother of a child were married to each other at the time of the child’s birth, or the birth is re-registered under Article 57, the father’s surname;
 - (b) if the father and mother of a child were not married to each other at the time of the child’s birth and have not subsequently married, the mother’s maiden surname.
- (5) Schedule 2A shall have effect to enable an application for re-registration to be made in respect of the surname of a child whose birth was first registered on or after 1st May 2002 but before this Article came into force”.

4 Schedule 2A inserted

After Schedule 2 to the principal Law there shall be inserted the following Schedule–

“SCHEDULE 2A

(Article 59A(5))

RE-REGISTRATION OF SURNAME OF CHILD

1 Application of Schedule 2A

This Schedule applies in the case of a child whose birth was first registered on or after 1st May 2002 but before Article 59A came into force.

2 Re-registration of surname

- (1) The registrar shall, upon payment of the prescribed fee, re-register the child’s birth, so as to record the surname chosen by both the father and mother where –
 - (a) the surname chosen conforms to Article 59A(1)(a), (b) or (c);
 - (b) the choice of the father and mother of a child is evidenced by –
 - (i) their joint request for re-registration, or
 - (ii) where only one of them re-registers the birth –
 - (A) the request of the person registering the birth; and
 - (B) the production of a declaration made by the other of them stating his or her choice.
- (2) On the re-registration of a birth so as to record the surname chosen by the father and mother, in addition to the requirements of Article 72, the register of births shall be signed by the registrar.
- (3) In the case of a child whose father and mother were not married to each other at the time of the child’s birth and who has not been legitimated by their subsequent marriage, a

surname shall not be re-registered under this paragraph unless the father is recorded in the register, pursuant to Article 55 or 56, as the father of the child”.

5 Citation and commencement

This Law may be cited as the Marriage and Civil Status (Amendment No. 2) (Jersey) Law 200 and shall come into force 7 days after it is registered.

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