

STATES OF JERSEY

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DRAFT GENDER RECOGNITION (JERSEY) LAW 200- (P.174/2008): AMENDMENT

Lodged au Greffe on 20th January 2009
by the Chief Minister

STATES GREFFE

1 PAGE 30, SCHEDULE 2 –

After paragraph 2 of Schedule 2 insert the following paragraph –

‘3 Marriage and Civil Status (Jersey) Law 2001

In Part 3 of the Marriage and Civil Status (Jersey) Law 2001, after Article 40 there shall be inserted the following Article –

‘40A Solemnization of marriage of person of the acquired gender

A clergyman is not obliged to solemnize the marriage of a person if the clergyman reasonably believes that the person is of an acquired gender, within the meaning of Article 1(2) of the Gender Recognition (Jersey) Law 200-.’”

CHIEF MINISTER

REPORT

The Draft Gender Recognition (Jersey) Law 200- (P.174/2008) (the “**Law**”) was lodged au Greffe by the Chief Minister on 25th November 2008.

As part of the preparation for the debate on the Law, the Chief Minister and Deputy Chief Minister noted that a provision that had been included in original and subsequent drafts of the Law had, in error, been deleted from the final drafts of the Law.

It is proposed that the missing provision be reinstated into the Law by way of this amendment.

The provision in question amends the Marriage and Civil Status (Jersey) Law 2001 so that it will provide that a clergyman is not obliged to solemnise the marriage of a person if he or she reasonably believes that the person is of an acquired gender within the meaning of Article 1(2) of the Law.

This provision mirrors an equivalent provision of the United Kingdom’s Gender Recognition Act 2004.

It is recognised that some ministers of religion may have deep-seated objections to marrying such couples. In English ecclesiastical law, the clergy of the Church of England have a legal obligation to marry anyone who wishes to be married in their Church. There is no definitive precedent in Jersey law as to whether the same legal obligation exists in Jersey, although it is highly likely that it does so, and even if it does not, it is highly likely that the clergy of the Church of England in Jersey will consider themselves bound by the same constraints as would be imposed upon them in England. For this reason, this amendment provides an exemption to this obligation. A member of the clergy will be able to decline to marry such a couple and ask them to apply elsewhere.

There is no exemption, however, in relation to civil marriages. Persons of an acquired gender within the meaning of Article 1(2) of the Law will have the same rights as anyone else to undergo a civil marriage in their acquired gender.

This amendment seeks to balance the personal consciences of clergy opposed to solemnising such marriages with the rights of transsexual people to be married in their acquired gender.

Financial/manpower implications

There are no financial or manpower implications for the States arising from this proposed Amendment.

European Convention on Human Rights

In the view of the Chief Minister the provisions of this amendment are compatible with the Convention rights and do not affect the statement of compatibility made in the *Projet de Loi* to which this amendment relates.