

STATES OF JERSEY



DRAFT CIVIL PARTNERSHIP (JERSEY) LAW 201- (P.85/2011): AMENDMENT

**Lodged au Greffe on 27th June 2011
by the Education and Home Affairs Scrutiny Panel**

STATES GREFFE

PAGE 58, ARTICLE 71 –

For Article 71 substitute –

“71 Power to make further provision in connection with civil partnerships

- (1) The States may by Regulations amend this Law so as to permit the solemnization of civil partnerships –
 - (a) in any building used as a place of worship by an established and recognized religion or church;
 - (b) by persons authorized to solemnize civil partnerships in any such building.
- (2) Regulations made under paragraph (1) may include provisions concerning –
 - (a) the registration of a building, or a part of a building, permitted to be used for the solemnization of a civil partnership pursuant to this Law, as amended by paragraph (1);
 - (b) the payment of such fees to the Superintendent Registrar in respect of any application, notice or certificate issued for the registration of such a building, or the attendance of any person at that building, as may be prescribed by Order;
 - (c) the authorization of a person or persons to solemnize or register civil partnerships in such a building;
 - (d) the duties required to be performed by an authorized person in connection with the solemnization of civil partnerships; and
 - (e) any other provision the States consider appropriate for the purposes of paragraph (1).
- (3) The States may by Regulations make such amendments to any enactment, including any provision of Schedule 4 that is not in force, as appear to the States to be expedient –
 - (a) for the general purposes, or any particular purpose, of this Law;
 - (b) in consequence of any provision made by or under this Law; or
 - (c) for giving full effect to this Law or any provision of it.”.

REPORT

1. The Education and Home Affairs Scrutiny Panel fully supports the principles of the Draft Civil Partnership (Jersey) Law 201- (“the draft Law”) which will allow the legalisation of same-sex unions as far as possible on the same basis as married couples.
2. The option chosen by the States in the debate on P.136/2009 in October 2009 was to create a new legal relationship distinct from marriage. The definition of marriage is a contract between man and a woman to live as husband and wife, whereas a civil partnership is available to only same-sex couples. In this the States has chosen to follow the same route as the UK, which passed the Civil Partnership Act in 2004.
3. The intention of the draft Law is to confer as great a level of parity between civil partners and married spouses as possible. The Panel has examined the draft Law in order to satisfy itself that this intention has been realised. (In a separate comment we will describe the other issues we have examined.) We believe, however, that one aspect of the draft Law deserves further consideration, namely the prohibition on civil partnerships taking place in religious premises.
4. Under the draft Law as currently drafted, a civil partnership can only be a civil, and not a religious, procedure and cannot take place on religious premises. Opposite sex couples however, can, in relevant circumstances, choose to have either a religious or a civil marriage ceremony.
5. The specific prohibition on civil partnerships taking place in religious premises has been removed in the UK by the Equality Act 2010, section 202. When section 202 of the Equality Act 2010 is brought into effect, it will become possible in the UK for civil partnerships to be registered on religious premises where religious organisations permit this.
6. The purpose of our amendment is to enable the States to follow the example of the UK at some point in the future and to make Regulations, if so desired, which would allow for –
 - religious buildings to be registered for the solemnization of civil partnerships (Article 71(1)(a));
 - the authorisation of persons nominated by the owner or trustees of such buildings to solemnise civil partnerships (Article 71(1)(b));
 - a register of such buildings (to mirror Article 15 of the Marriage and Civil Status (Jersey) Law 2001 (“the 2001 Law”)) and for persons to be authorized (to mirror Article 16 of the 2001 Law). (Article 71(2)(a) and (b));
 - the payment of relevant fees to the Superintendent Registrar (Article 71(2)(b).
7. Article 71(3) repeats what was in the original Article 71.

8. These provisions would be entirely permissive, meaning that no religious organisation would be forced to host civil partnerships registrations if it did not want to.
9. These provisions would bring civil partnerships into line with heterosexual couples who are permitted to have a religious ceremony in Anglican churches or ‘registered buildings’ (which are any other religious building which the Connétable for the Parish has registered for the solemnisation of marriages). Some faith groups will already allow for a religious ceremony or blessing to take place for a civil partnership, but this has to take place separately from the civil registration. The UK Government consultation document sets out the implications of the proposed change –

“What is new under these proposals is the scope to hold the registration itself on the same – religious – premises. We expect that the religious service will take place after the civil partnership registration to celebrate its formation. This will ensure that there is a clear break between the civil and religious elements and will allow the civil partnership registrar the time to establish in advance of the proceedings whether there is any reason why the registration cannot proceed. The exact details of the ceremony will be a matter for the couple to discuss and agree with the civil partnership registrar and minister leading the religious celebration. The service following the registration could be led by the minister of religion, include readings from religious texts, the singing of hymns or other religious chants; in short, all those religious elements that must not take place during the registration itself.”¹

10. Our amendment allows time for the States to fully consider the implications of the arrangements, as we are not proposing the immediate implementation of the Regulations.
11. Our amendment does not affect civil partnership services taking place in ‘approved’ premises. ‘Approved premises’ is a term which applies to premises in which civil weddings can be celebrated. If premises are approved for civil weddings, no religious wedding can be celebrated there (see Articles 13(5) and 14(5) of the draft Law). In this respect, civil partnerships already reflect civil marriages.
12. We recognise that there are strong sensitivities regarding this issue. The decision by the UK Parliament to remove the prohibition on the registration of civil partnerships in religious premises was championed by a small number of religious organisations that already offered services of blessing and wished to go further by offering their premises for the registration itself. Other faiths are much more cautious about the issue, as they are concerned about a further perceived blurring in the distinction between civil partnership and marriage, and because of a concern that what is portrayed as an option might, over time, become an expectation, and even a duty.

¹ Civil partnerships on religious premises: A consultation, March 2011, Government Equalities office. <http://www.equalities.gov.uk/default.aspx?page=1798>

13. We acknowledge that there is a debate going on in the UK and elsewhere regarding the possibility of allowing same-sex marriages. We do not, however, see our amendment as advancing this argument. The route chosen by the States to have a distinct Law governing civil partnerships maintains the separate legal identity, as we have stated in paragraph 2 above.
14. On the issue of a potential move towards the celebration of civil partnerships in religious premises being seen as a right, we have received a submission from a member of the public expressing concern about the introduction of legislation on what can happen in places of worship (see Appendix 1) and have no doubt that other people locally will share this concern.
15. We note, however, that section 202 of the Equality Act 2010 is quite clear that the change will be entirely voluntary and will not force any religious group to host civil registrations if they do not wish to do so, stating –

“For the avoidance of doubt, nothing in this Act places an obligation on religious organisations to host civil partnership registrations if they do not wish to do so.”

16. The Explanatory Notes published with the Equality Act 2010 provides the following illustration –

“A couple seeking to register their civil partnership in a church that had not been approved for that purpose could not require those responsible for the church to allow them to hold the registration there. Nor could they require the denomination responsible for the church to seek approval to enable this.”

17. The UK Government proposal is to operate an ‘opt-in’ system for those faith groups that wish to host civil partnership registrations on their premises. The Government Equalities Office is currently consulting (ends 23rd June 2011) on the issue which it regards as a part of the Coalition’s commitment to promoting and protecting the rights of lesbian, gay, bisexual and transgender (LGB&T) people. The Government consultation document sets out the changes necessary to allow civil partnerships to be registered on religious premises, where faith groups wish to host them. It asks key questions about a series of practical issues that need to be taken into account in order to make this a reality.
18. The following extract from the Ministerial Foreword to the Consultation makes clear the intentions of the UK Government –

“Over the past ten months we have listened to all those with a key interest in this area and we are immensely grateful to all those who took the time to work with us on this subject. There was clear support for these changes amongst LGB people and faith groups that wish to host civil partnerships. Those faith groups which themselves did not wish to take advantage of these changes were also clear that they did not want to stand in the way of others who wanted to host civil partnerships. That is why these proposals are entirely voluntary. It will be for each faith group to decide whether they wish to host civil

partnership registrations; none can be forced to do so against their will. We believe the proposals set out in this document are a positive step forward for both LGB rights and for religious freedom.”²

19. The Church of England has set out its position with regard to this issue in its response to the Government consultation –

“Given the decision that Parliament has already taken to amend the Civil Partnership Act 2004 in the Equality Act 2010, the response focuses on the need to assure that the forthcoming regulations continue to provide unfettered freedom for each religious tradition to resolve these matters in accordance with its own convictions and its own internal procedures of governance.

That means that there needs to be an 'opting in' mechanism of the kind that the Government has proposed. In the case of the Church of England that would mean that its churches would not be able to become approved premises for the registration of civil partnerships until and unless the General Synod had first decided as a matter of policy that that should be possible.”³

20. This statement makes it clear that the governing body of the Church of England, the General Synod, would be responsible for deciding the Church’s policy on the issue. It would not be left to individual congregations to follow their own course. We understand that this would be the position of many religious groups where the relevant governing body would determine the policy for the denomination.
21. We have discussed the above issues with a number of local witnesses, including the Deputy Chief Minister, the Community Relations Trust, the Dean of Jersey and representatives of the Quakers. Full transcripts of our discussion are available on the Scrutiny website.
22. The Dean stressed the importance of preserving Christian marriage as the fundamental building block of society –

“Now, what I would not want to be heard to be saying in any capacity, personal or professional, is that I see civil partnership as identical to marriage, equivalent to marriage or whatever because I do not and the churches do not, and the single biggest thing that we would all want you to hear is that whatever you put into legislation should not be seen in any way to diminish marriage.”

23. On the question of allowing civil partnerships in Anglican churches, he said –

“There might well be some individual ministers who in theory would be happy to do what you suggest but the denomination would prevent that. So, whatever the Church of England in Jersey might think, and I

² Civil partnerships on religious premises: A consultation, March 2011, Government Equalities office. <http://www.equalities.gov.uk/default.aspx?page=1798>

³ <http://www.churchofengland.org/media-centre/news/2011/06/registration-of-civil-partnerships-in-religious-premises.aspx>

think the vast majority would take the traditional line, unless and until the general synod changed its mind then we could not anyway. Exactly the same in the Roman Catholic Church.”

24. The Quakers provided us with a statement which reflected a welcome for the possibility of allowing the celebration of civil partnerships on religious premises (Appendix 2).

25. The Community Relations Trust also provided a statement on the issue (Appendix 3). The Community Relations Trustee told the Panel that the Trust favoured a patient approach to the proposed change –

“I can see in the future, and I think it would be the Trust’s view then in the future, that the line of ‘cannot be performed in churches’ would be deleted. But at this stage I think to protect the people who have very high moral religious beliefs, they will sit quite happily with the Civil Partnership Law as it is, although that may offend one or 2 people who would like it to be in church. I think for the majority of people at the current time, putting it through with the proviso as it stands is the better option.”

26. The Deputy Chief Minister told us that the draft Law had been prepared in a way which reflected the current legislation in the UK –

“The proposal was to bring forward civil partnerships on the same basis as civil partnerships were brought in in the United Kingdom. We have been very clear from the start that the legislation would be presented to the Assembly on the basis that it is purely a secular arrangement.”

27. He said that the proposal to allow for civil partnerships to be registered on religious premises should be discussed with the local leaders of faith groups –

“It would be wrong to almost slip in a Civil Partnerships Law without the provision and the separate distinction between what can be celebrated in terms of a civil partnership and where it can be celebrated. I may well agree with you that, ultimately, civil partnerships ought to be able to be performed on religious premises but I think it would be wrong not to go through a proper process of discussion with faith communities and with the Island about this issue and with the gay and lesbian groups. It is not a casual issue. There is a debate to be had with the established churches as to whether or not they want to have the ability to opt in. This law is not attempting to enter into the debate about marriage in the eyes of the church.”

28. We fully agree with the Minister on this point. This is why we have adopted the approach set out in our amendment, which does not make any immediate change to the prohibition on celebrating civil partnerships in religious premises, but simply allows for the States to make provision in the future after due consultation has taken place. It also allows the Island to step back and consider the outcome of the UK consultation without moving ahead of the changes proposed in the UK.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from this amendment. It is not anticipated that there would be any great number of requests for civil partnerships to be solemnised on religious premises. The Regulations, if approved by the States, allow for the payment of appropriate fees to the Superintendent Registrar to cover the costs of registration of religious buildings and authorised persons for conducting civil partnerships.

SUBMISSION FROM A MEMBER OF THE PUBLIC

“We would strongly wish to tell your panel that the proposed changes to the law are not welcome in Jersey by the vast majority of ordinary people.

The proposed changes to the law are being promoted by a minority who have a specific viewpoint and do not reflect the wishes of the majority of the people.

Politicians should not legislate what has to happen in places of worship, we live in pluralistic society that values diversity, to legislate to force Christian places of worship to hold marriage ceremonies between single sex couples runs in direct opposition to both pluralistic values and Christian values. There are a plethora of places that single sex couples can have civil ceremonies in, to insist by legislation that this should include Christian places of worship is not a balanced view of recognising the sincerely held views by the Christian population of Jersey. Heterosexual marriages in Christian places of worship are an important bedrock of society and they have sustained our societies for thousands of years. Although not perfect, to weaken this is folly.

Civil Partnerships should most certainly not be legislated for in a place of Christian worship. It goes against what Christian values stand for, irrespective of whether a minority of the population would like to change that. These values have been in existence for thousands of years and to force opposite values onto the Christian population because a cultural whim is not wise government. These values are based on Biblical principles that have not changed during thousands of years of change, many cultural norms have changed during that period but the Biblical principles have not.

We, and many of the Christian population will use our vote at election time and are taking a very keen interest in what may become a dictatorial government if this legislation is approved. The interference by government into Christian practices is something that should be avoided, take note on how the UK government have recognised this sensitivity. We live in a time when the reputation of the Island's politicians is not as high as it should be, please ponder long and hard as to the effect of passing this legislation on both society as a whole and the reputation of the States.

We hope that as representatives of the people of Jersey, you will not allow personal agendas to lead your actions and that you will reflect on the folly of allowing minority views to bludgeon the peaceful acts of assembly and Christian witness. The States legislature is not a place where minority views should take precedence over the majority.

We live in a time when to speak against minority views of all types is easily and mistakenly dismissed as phobic, we wish to stress that this is not the case, there is a place for healthy debate on these matters whilst respecting sincerely held views by all parties, this communication is part of the debate and should not be mistaken as to its purpose.”

APPENDIX 2

SUBMISSION FROM THE QUAKERS

“Quakers would welcome the introduction of a civil partnerships act in Jersey and if possible we would wish to be able to allow such partnership ceremonies to take place in our Meeting House in the manner of Quakers.

Quakers support a balance of equal rights with equal responsibility. For 9 years prior to the UK Civil Partnerships Act of 2005, Quakers were celebrating same sex relationships in their Meeting Houses through official Meetings for Commitment. Following upon the 2005 Act same sex couples in Scotland, England and Wales, who share Quaker beliefs, have been able to opt for a blessing or commitment ceremony after entering a civil partnership. If a Civil Partnerships Act is passed in Jersey we would like to be able to allow civil partnership ceremonies to actually take place in our Meeting House as it seems to us to be a natural progression from the commitment ceremony, after the event, which is practiced currently in the UK.

Quakers take marriage and civil partnership very seriously. To us it is not merely a civil contract but a religious act. As with marriage, only Members of the Meeting, or those who while not in formal membership are in unity with its nature and witness can be joined in a Quaker Meeting. This would also apply to Civil Partnerships.

For Quaker marriage services there has to be a registering officer within the Area Meeting (in Jersey’s case this is the Southampton and Portsmouth Area Meeting) who is authorized to carry out the ceremony. If the Law on Civil Partnerships is enacted and ceremonies are permitted in places of worship, then we would wish the authority of the Quaker registering officer to be extended to include civil partnerships.”

SUBMISSION FROM THE COMMUNITY RELATIONS TRUST

“In an ideal world homosexual couples would have the option of marriage in a place of worship subject to the religious institutions being willing to conduct the ceremonies as this would put them in an equal position with heterosexual couples. However, as long as the legal rights afforded to heterosexual and homosexual couples are the same it is a difference of title rather than a difference of substance. It is perhaps a change to be brought forward in the future after more consultation with the religious institutions.”