

STATES OF JERSEY



HUMANIST AND OPEN-AIR MARRIAGES (P.65/2015): COMMENTS

Presented to the States on 6th July 2015
by the Minister for Home Affairs

STATES GREFFE

COMMENTS

1. Humanist weddings

1.1 Background

The *Equal Marriage and Partnership: Options Paper Report* (R.170/2014) set out the findings from the *Equal Marriage* consultation undertaken in August 2014. That consultation primarily focused on matters relating to the proposed introduction of same-sex marriage¹ but also considered related matters, including whether or not humanist marriage should be introduced in Jersey.

Whilst 50% of consultation respondents answered 'yes' when asked if humanist marriage should be introduced, only a few respondents provided any input or made comments. Those that did varied between –

- Supporters, who expressed the view that humanist and other non-religious belief weddings provided for greater equality and acceptance of people's different beliefs:

“Surely in this day and age EVERYONE should have a choice, whether it be a religious ceremony, a non-religious ceremony, or legal partnership. Everyone has different opinions, beliefs etc. why can't we cater for these?”

“On the basis that I wish to be allowed to practice a religion, I too must respect the right of others to turn their beliefs into (socially acceptable) practice.”

- Opponents, who predominately queried the need for humanist ceremonies given that civil marriages can be followed by a humanist blessing:

“Humanists and non-religious people can already have a secular marriage.”

“Religious beliefs are protected by law, just as someone's right to not have any religious belief is protected by law. However, humanism is not a belief system it is a philosophy, so while there is a need for a religious person to have certain religious aspects to their ceremony (for their deity) there are no such requirements that need to be met for humanism. It might be 'nice' for someone to have a humanist blessing but it cannot be considered a requirement of a belief system since it isn't a belief system. There are a multitude of 'isms' in existence today centring around shared philosophical and ethical stances, and altering the law to allow humanist marriages will just leave the law open to multiple changes in the future.”

¹ It is envisaged that an in-principle report and proposition on same-sex marriage will be lodged by 14th July 2015. It was originally intended that it would be lodged by the end of Q1 2015 but was delayed to allow for more detailed consideration of matters pertaining to divorce and the future of civil partnerships. This includes findings arising from a Jersey Law Commission consultation on divorce reform which has yet to be published.

The *Equal Marriage and Partnership* report, whilst acknowledging the various views expressed, concluded that legislation allowing for humanist and other non-religious belief wedding ceremonies did not need to be brought forward because humanists can already get married in Jersey. They can have a civil wedding ceremony followed, or preceded by, a humanist blessing.

P.65/2015 challenges this conclusion and sets out a number of reasons why humanist weddings should be allowed. Many of which are concurred with –

- humanist weddings are of very high quality and their celebrants undertake a rigorous training programme;
- humanist wedding would doubtless prove popular and support wedding tourism – although that popularity and the associated tourist boost may relate more to open-air ceremonies than humanist weddings per se²;
- the introduction of humanist wedding ceremonies may play a role in supporting the institution of marriage – in Scotland the numbers of couples having a humanist wedding ceremony is increasing year-on-year despite an overall fall in marriage numbers. This does not necessarily mean, however, that people are getting married because they have the option of a humanist ceremony. If those ceremonies were not available, some of those couples would doubtless choose to get married anyway;
- we should not withhold from changing legislation on that basis that only a few people will benefit. As quoted in P.65/2015 it is “perfectly legitimate to legislate in the interests of minority groups, providing it is not detrimental to the wider community”.

1.2 Risk

The primary concern with the introduction of humanist wedding ceremonies relates to the potential risk and determinant to the wider community. This does not necessary arise from humanist ceremonies, but from our ability to control and legislate for other forms of belief ceremonies.

There are other movements, stances or philosophies which, like Humanism, are non-religious beliefs including, for example: the Rationalist Association, the National Secular Society, Freemasons, naturists and Friendly Societies. In extending the right to solemnize marriage to humanist celebrants, consideration must be given to those others groups and the associated risks.

These risks include –

² In England and Wales the National Panel for Registration and local authority registration services have reported increased demand for open-air weddings. They believe that providing for open-air weddings, as opposed to belief marriages, would fill the gap or need in the current provision whilst maintaining established governance arrangements and safeguards.

- how to ensure the dignity and solemnity of marriage, and ensure that marriages are not carried out for profit or gain;
- how to combat forced marriage: in forced marriage one or both of the spouses is married against their will;
- how to combat sham marriages: sham marriages are designed to avoid immigration and population controls. This potentially directly effects Jersey and it also effects the UK, given that if a UK resident gets married in Jersey their marriage will be recognised under UK law;

importantly there are reported growing links between sham marriages and human trafficking;

- how to determine which non-religious belief organisations should be able to solemnise marriage: qualifying criteria would have to be developed but, regardless of how well considered those criteria are, there is some concern that ultimately any group which purports to advance non-religious beliefs³ would fall within it or would be able to successfully overturn any decision not to allow them to solemnize marriage.

These concerns are not readily or easily addressed, and it is not known whether the proposed safeguards set out in P.65/2015 would be sufficient. These include a requirement for –

- the organisation to have been in existence for 10 years;
- the organisation to be principally concerned with advancing a non-religious belief;
- accredited and trained celebrants.

Even if such safeguards currently limited the solemnization of marriage to humanist organisations, this position is unlikely to hold true if, in future, other non-religious belief groups centrally organise themselves.

In England and Wales, the Ministry of Justice recently undertook a consultation on humanist marriage. Overall a relatively small number of people responded (1,901 responses in total), but amongst those responses there was very high levels of support for non-religious belief marriage (95.4% of respondents). It is important to note, however that Ministry of Justice reported the greater majority of responses appeared to have been from members or supporters of the British Humanist Association.

Whilst acknowledging the strength of that feedback, plus the popularity of humanist weddings in Scotland⁴, the Ministry of Justice is not currently moving to introduce

³ It would also potentially include pagan and Wicca, although these are strictly religious beliefs as opposed to non-religious beliefs.

⁴ In Scotland in 2013 there were 27,547 marriages of which 3,185 were officiated by Humanist celebrants (c12% of all marriages). Of those 3,185 marriages, 2725 were for couples where both were resident in Scotland, 413 where neither spouse was resident in Scotland.

non-religious weddings. They have instead asked the Law Commission to review whether it should be introduced in light of the risks detailed above.

The Scottish Government is also increasingly concerned about those risks and in 2014 issued an initial discussion paper, focusing on the qualifying criteria for non-religious belief groups (i.e. the controls on who should, or should not, be able to solemnize marriage). This is ahead of a full public consultation that is scheduled to take place later this year.

Humanist weddings are very popular in Scotland, and there is no indication that they will be withdrawn, but their Government is nevertheless concerned about potential risks.

It would be sensible to await the reviews in England and Wales, and Scotland prior to taking any in-principle decision.

1.3 Fairness and equality

P.65/2015 puts forward an argument that it would be fair, and more equal, if humanist weddings were introduced in Jersey, drawing parallels with the introduction of same-sex marriage. It is a however false comparison, given that same-sex couples cannot currently get married in Jersey, whereas humanist couples can (unless they are of the same-sex).

The European Convention on Human Rights (ECHR), which provides a right to freedom of thought, conscience and religion, extends to humanism and other forms of non-religious belief. It does not however include the right to a marriage ceremony based on personal belief, regardless of whether the belief is religious or non-religious. In addition, the form of the wedding ceremony is a matter for individual governments, providing government treats people equally⁵.

In 2013, the UK Government overturned a proposed amendment allowing for the introduction of humanist weddings in England and Wales, on the basis that doing so would fall foul of the ECHR rather than be in accordance with it. The then Attorney General, argued that the introduction of humanist marriage ceremonies would, in fact, be discriminatory, unless the right to solemnize marriage was extended to all other belief groups. P.65/2015 rightly makes reference to other non-religious belief groups, but it is this that gives rise to concerns about the risks detailed in Section 1.2 above.

In addition, consideration needs to be given as to how best to ensure equality and fairness across the board, including with –

- religious belief groups; the law in Jersey imposes both requirements (including legally prescribed declarations) and limitations (including venue) on religious organisations;
- people who do not ascribe to any form of belief group, whether religious or non-religious, but who have desires and aspirations about the form and content of their wedding.

⁵ The extension of marriage to same-sex couples is also a matter for individual governments.

1.4 Marriage Matters

The *Equal Marriage and Partnership* report articulates a very clear principle: Marriage Matters. And, as referenced in P.65/2015 it also states that the States of Jersey “should seek to ...support marriage in all its forms”.

From a policy perspective this is correct. For this reason the States will shortly be asked to agree, in principle, to the introduction of same-sex marriage. Same-sex marriage is however a form of marriage (i.e. the marriage of a same-sex couple) it is not a form of wedding ceremony.

P.65/2015 is about a form of wedding ceremony, not a form of marriage.

2. Open-air weddings

Open-air weddings can readily be introduced in Jersey regardless of whether or not humanist and non-religious belief weddings are introduced.

As set out in P.65/2015 this would require an approval process in order to ensure that appropriate safeguards are in place including –

- ensuring that the location of the wedding is readily identifiable in order that people can attend to cite objections, if they so wish;
- ensuring that the location is both safe and befitting to solemnity of marriage;
- ensuring that the landowner consents;
- ensuring that an appropriate Plan B is in place in case of bad weather.

Before legislation is brought forward, consideration would need to be given as to the forms of wedding ceremony that can be conducted in the open air (e.g.: civil weddings; humanist weddings if introduced at a later date; religious wedding ceremonies). This would require consultation with key stakeholders, including religious leaders with regard to religious wedding ceremonies.

Alongside the introduction of open-air weddings, it is proposed that the law is also amended to allow for more flexibility with regard to the content of civil wedding ceremonies, as the States Assembly original intended when they debated and adopted the Marriage and Civil Status (Jersey) Law 2001⁶.

⁶ In 2001 the Draft Marriage and Civil Status (Jersey) Law 200- (P.89/2001) was lodged for debate. Article 20(5) of draft set out “*No religious service and no music or reading that would ordinarily form part of a religious service shall be used at the solemnization of a marriage on approved premises.*”

The Tourism Committee lodged an amendment stating that, couples must have the “freedom to select music or readings of their choice”. Their amendment was adopted and the words “*and no music or reading that would ordinarily form part of a religious service*” were removed.

The Article however, still states that “*No religious service shall be used at the solemnization of a marriage on approved premises*” which, in practice, has been interpreted as meaning there should be no religious content. This seems at odds with what the States originally intended and requires clarification.

Civil marriage ceremonies account for approximately 70% of all wedding ceremonies in Jersey and it is appropriate that people choosing a civil wedding are allowed greater flexibility about the content of that ceremony, including with regard to music and readings (whether religious or not), plus other popular elements, for example; candle lighting ceremonies, personal statements of commitment (in addition to the legally prescribed vows) etc.

This is of potential benefit to many Islanders, not just those that ascribe to non-religious beliefs.

3. Summary and recommendations

3.1 Humanist weddings – P.65/2015 Part (a)

It would be discriminatory to introduce humanist ceremonies in Jersey without also allowing for other forms of non-religious belief weddings. Any changes in legislation therefore require detailed consideration because of the potential associated risks.

Policy decisions should not be based on a ‘thin end of the wedge’ argument (i.e. it would be wrong to say ‘no’ to humanist ceremonies simply because it might lead to other non-religious belief ceremonies) but in making an in-principle decision, consideration must be given to the potential risks and consequences.

It is strongly recommended that States Members reject P.65/2015 (a), as it is pre-emptive to take an in-principle decision at this time. This matter can be given proper consideration when the reviews in England and Wales, and Scotland have been concluded, as these will provide much greater clarity about risk and mitigation.

3.2 Open-air weddings – P.65/2015 Part (b)

The legislative changes, and associated safeguards, required to allow for open-air weddings and to provide more flexibility within the content of civil weddings are relatively easy to achieve. Given that approximately 60 – 70% of Jersey couples choose civil marriage ceremonies this is likely to be of benefit to significantly more people than just humanists, or others subscribing to specific non-religious beliefs.

It is recommended that P.65/2015 Part (b) is adopted and that, following consultation with key stakeholders, the appropriate legislation is brought forward.

4. Financial and manpower implications

The costs associated with bringing forward future legislation to provide for open-air weddings and for more flexibility in the civil marriage service would be met through existing departmental resources.

There would also be costs associated with the provision of open-air weddings and more flexibility in civil marriage service (site visits, site feasibility reviews, extending planning with the celebrant etc.). These would need to be met through the introduction of an updated user-pays fee scale, ensuring that they did not fall to the tax-payer.