

STATES OF JERSEY



DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT NO. 5) (JERSEY) LAW 202- (P.6/2022): COMMENTS

**Presented to the States on 25th February 2022
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction and background

The Children, Education and Home Affairs Panel (hereafter “the Panel”) has reviewed the Draft Marriage and Civil Status (Amendment No. 5) Law 202- [\[P.6/2022\]](#) (hereafter the “draft Marriage and Civil Status Law”) and the Draft Civil Partnership (Amendment) (Jersey) Law 202 – [\[P.7/2022\]](#) (hereafter the “draft Civil Partnership Law”). Both draft Laws were lodged by the Minister for Home Affairs on 17th January 2022. Considering that the draft Marriage and Civil Status Law is a companion law of the draft Civil Partnership Law, the Panel has reviewed the draft Laws in conjunction.

The Panel received two briefings on the draft Laws. The first was received on 30th September 2021 and the second followed on 13th January 2022. The initial briefing was to allow engagement with the Panel prior to the finalisation of the draft Laws and the second to update the Panel on the final versions prior to their lodging for the States’ debate on 1st March 2022. The Panel is thankful to the Minister and Officers who have ensured it has remained abreast of the development of both draft Laws.

It is the Panel’s understanding that the draft Laws propose changes for the following key areas and our Comments aim to address these areas in further detail in respect of the draft Laws as appropriate.

- Raising the age of marriage
- Raising the age of civil partnership
- Alternative location in addition to an open-air location
- Registration of name and confusing, embarrassing or offensive names
- Transfer of relevant registration duties
- Abolition of wife’s domicile of dependence
- Opposite sex civil partnerships
- Alignment of civil partnership entry process to that of marriage
- Fees

Draft Marriage and Civil Status (Amendment No. 5) Law 202- [\[P.6/2022\]](#)

In February 2018, the States Assembly passed [the draft Marriage and Civil Status \(Amendment No. 4\) \(Jersey\) Law 2018](#) to amend and approve the 2001 Law as outlined within [P.6/2022](#). However, at that time, amendments were not made to the [Civil Partnership \(Jersey\) Law 2012](#). Therefore, the draft Marriage and Civil Status Law, if passed by the States Assembly, will ensure that the processes set out in the Marriage and Civil Status (Jersey) Law and those for Civil Partnerships are mirrored to provide equality and that the requirements of the United Nations Convention on the Rights of the Child (UNCRC); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Independent Jersey Care Inquiry are appropriately reflected within the legislation.¹

¹ [P.6/2022](#)

Areas amended: Draft Marriage and Civil Status (Amendment No. 5) Law 202-

Raising the age of marriage

During the briefing², the Panel was informed that currently parties aged 16 years and over could marry or enter a civil partnership with consent. However, as a result of the Government's consultation on the matter during 2018 and 2019 and in consideration of the requirements under the UNCRC it was agreed that the age of consent should be raised to 18 years of age. It was noted that 77% of correspondence received during the public consultation had agreed that the age of consent should be raised. The changes proposed would amend the 2001 Law and the 2012 Law so that both parties must be aged 18 years or older at the time of the marriage or formation of the civil partnership. It was emphasised to the Panel that it would not be possible to convert a civil partnership to a marriage or vice versa if either party was under the age of 18 years when it was formed.

Mindful that marriages and civil partnerships of parties under the age of 18 years is currently possible, the Panel questioned what the position would be for marriages or civil partnerships where parties were under the age of 18 years as a result of those being formed previous to the draft Laws, should the draft Laws be adopted by the States Assembly. The Panel received confirmation that existing marriages and civil partnerships would continue unchanged and those in process would be honoured.

Noting that reference is made within the draft Marriage and Civil Status Law to circumstances of marriage where one party is under the age of 18 years and considering that the draft Marriage and Civil Status Law proposes to raise the age to 18 years, the Panel questioned why the draft Law continues to refer to allowing one person to be 16 years and the other 18 years of age when entering marriage or civil partnership. It was confirmed that aspect of the legislation was to ensure that marriages and civil partnerships which were formed under the current legislation, would remain valid, should the new legislation be passed by the States Assembly.³

The Panel was informed that the draft Laws, if passed by the States Assembly, would be required to go through the Privy Council process and receive Royal Assent prior to coming into effect. The Panel raised concern that the eight-to-ten-week window, required to facilitate that process, may result in a flurry of registrations for marriages or civil partnerships of parties under the age of 18 years during that time. However, due to Jersey's size such a situation was not envisaged to be likely. In addition, the Panel was informed that currently marriages or civil partnerships of parties under the age of 18 years were rare in Jersey.

The Minister for Home Affairs emphasised to the Panel that marriages and civil partnerships that were obtained outside of Jersey would also be required to align with Jersey's legislation. Therefore, anyone marrying in Jersey, irrespective of their domicile, would need to be over the age of 18 years. If a person chose to go abroad to marry within a jurisdiction where marriage of a child was legal, that marriage would not be recognised in Jersey. The Panel highlights this aspect as significantly important.

² [Briefing – 13th January 2022](#)

³ [Briefing – 13th January 2022](#)

Alternative location in addition to an open-air location

During the Panel's briefing⁴ it was noted that this provision was in the context of the Draft Marriage and Civil Status Law, however, it would also apply to civil partnerships. It was explained that the provision would allow a couple to provide an alternative location for the ceremony where their first location was an open-air location. As a result, the marriage or civil partnership arrangements could progress with two locations (one of which was an indoor venue) up until two days prior to the ceremony which was not possible under the current legislation. Consequently, it was emphasised that the provision would provide further protection to the public. The Minister for Home Affairs also explained that ultimately a marriage or civil partnership ceremony was a 'public hearing' and, therefore, the location was a legal requirement so that members of the public would be able to attend as witness.

Registration of name and confusing, embarrassing or offensive names

During the briefing⁵ the Panel was informed that under the UNCRC a child had a right to an identity and this provision would ensure that a child is registered with a name within a set time. It is noted that currently it is permitted for a child to remain nameless indefinitely as no statutory provisions require a child to be given a name. The changes being proposed would require the parents of the child to give the child a name within three months of the birth. The Panel was informed that should the child not be provided with a name within that timescale, action would need to be taken within one month by the Office of the Superintendent Registrar and in instances where the child was still not given a name, the legislation would allow for the Minister for Home Affairs to give the child a name. It was confirmed that under such circumstances the parents would have up to one year to change the child's name which had been given by the Minister.⁶

The Panel sought to understand whether the provision offered any flexibility and asked whether exceptions could be made for extreme circumstances where a parent was not in the position to register the name in the set timeframe. It was explained that after the deadline had been reached that the Superintendent Registrar would follow up and if required exceptions to the norm would be possible. For added context, the Panel was informed of a case where a person had reached pension age and could not retrieve their pension as their name had not been registered and therefore no identity existed for that person. It was emphasised that a compulsion on the mother to register the child's name timely was required so that the child was provided with an identity.⁷

The Panel questioned what would be classified as an offensive name. Moreover, it asked whether Jersey would have a list of suitable or non-suitable names from which parents could choose a name. It was noted that a list had proven unworkable within other jurisdictions and that Jersey would not utilise a list as it is not an ideal or serviceable practice. However, it was explained that the Office of the Superintendent Registrar would need to consider whether any name given could be confusing, embarrassing or offensive during the registration process. The Panel was informed that an appeals process will also be available, should the parents wish to appeal a decision.⁸

⁴ [Briefing – 13th January 2022](#)

⁵ [Briefing – 30th September 2021](#)

⁶ [Briefing – 13th January 2022](#)

⁷ [Briefing – 30th September 2021](#)

⁸ [Briefing – 13th January 2022](#)

It was highlighted that these provisions were commonplace across most jurisdictions, however, they are absent in Jersey legislation. Therefore, the provision would bring Jersey in line with other jurisdictions and would update Jersey's legislation as a strict provision exists regarding this aspect under the UNCRC to protect the child.⁹

Transfer of relevant registration duties

During the briefing¹⁰ the Panel was informed that currently the Office of the Superintendent Registrar was only able to act in the capacity of a Parish Registrar. However, this provision would enable the transfer of relevant registration duties from a Parish to the Office of the Superintendent Registrar. It is noted that relevant registration duties include all responsibility, liability and costs associated with civil registration functions.

It was also confirmed that the proposals for the provision had been developed with the Comité des Connétables who had agreed that Parishes should be able to choose whether to allow the Office of the Superintendent Registrar to act in the capacity of the Parish or to retain the duties with the Parish. It is further noted that of the 12 Parishes, only two (St Saviours and St Brelade) had chosen to retain the registration duties with the Parish. However, it was clarified that the legislation would allow for the registration duties to be transferred from the Office of the Superintendent Registrar back to the Parish within an agreed notice period if the Parish so wished. The Panel was informed that the notice period was not yet finalised and would be made through an Order in early June 2022.

Noting that only two Parishes had requested to continue to provision the duties instead of transferring the responsibility to the Office of the Superintendent Registrar, the Panel sought to understand the rationale for that decision. It was explained that the registration duties traditionally would be dealt with by the Parish and that some Parishes had preferred to maintain that tradition. However, as the registration process involved additional administration and resources, many of the Parishes had chosen the pragmatic approach to transfer the duties to the Office of the Superintendent Registrar and would therefore no longer be required to provision the service or manage the potential associated liabilities. It was further highlighted that under the current legislation that volunteers provisioning the service for the Parish could commit offences and that was a risk to Parishes.

Considering the above, the Panel sought to understand whether there were any advantages of provisioning the registration duties at a Parish level. It was thought not. It was explained that the registration process had been transferred to the Office of the Superintendent Registrar during the Covid-19 pandemic and the accuracy of the process had improved during that time. It was noted that should a Parish wish to continue to provision the service, the Parish would be required to maintain the same level of accuracy which was available as a result of the service being provisioned by the Office of the Superintendent Registrar.

The Panel raised concern that should provision of the service be undertaken by either the Parish or the Office of the Superintendent Registrar, that clarity would need to be

⁹ [Briefing – 30th September 2021](#)

¹⁰ [Briefing – 13th January 2022](#)

provided in order for people to be aware of the process and of who would be responsible for administering it.¹¹

Abolition of wife's domicile of dependence

During the briefing¹² the Panel was informed that, currently, according to Jersey's Customary Law a wife's domicile was that of her husband. It was emphasised that the current position was discriminatory and did not comply with Article 15(4) of the CEDAW. As such Jersey was required to enter a reservation on this Article and an agreement with the UK was reached whereby Jersey would update its legislation. It was noted that the legislation will be amended to abolish the Customary Law concept so that a wife's domicile will not be required to change and thereby married women have a domicile of choice. It was emphasised that England and Wales had made this change in the 1970s. The Minister for Home Affairs explained that the change would also impact divorce, whereby the wife once divorced would not be required to keep her ex-husband's domicile, which is the current process.

The Panel sought to understand the impact of the provision and asked what application domicile had. It was explained that the Customary Law concept decided the legal system that the person would be governed by.¹³ The Panel is supportive of the change being proposed.

Draft Civil Partnership (Amendment) (Jersey) Law 202- [P.7/2022]

Civil Partnerships were introduced in Jersey in 2012 to provide same sex couples with the same rights and responsibilities that would be acquired through marriage of opposite sex couples. Following an equal marriage Government consultation into same sex marriage, the issue of civil partnerships of opposite sex couples was also explored. Although the States Assembly debated marriage reform in 2015, the Civil Partnership Law remained unchanged. Subsequently, in 2018 the Supreme Court ruled that the Civil Partnership Act 2004 for England and Wales was discriminatory in that opposite sex couples were excluded from entering civil partnerships. Therefore, this draft Civil Partnership Law, if passed by the States Assembly, will amend Jersey's legislation to remove the same discrimination.¹⁴

Areas amended - Draft Civil Partnership (Amendment) (Jersey) Law 202-

Opposite sex civil partnerships

Further clarity regarding opposite sex civil partnerships was provided to the Panel during the briefings it received. The Panel was informed that this proposed change had been driven by the supreme court decision in the United Kingdom which had ruled that it was discriminatory to not allow opposite sex civil partnerships. It was confirmed that through Government consultation undertaken and the feedback received the consensus was in favour of allowing civil partnerships irrespective of the gender profile. It was noted that in 2016 when same sex marriage was enabled, it could be converted to a civil partnership. Therefore, it was now being proposed that an opposite sex marriage could be converted to a civil partnership to ensure an equitable arrangement.

¹¹ [Briefing – 13th January 2022](#)

¹² [Briefing – 13th January 2022](#)

¹³ [Briefing – 30th September 2021](#)

¹⁴ [P.7/2022](#)

Noting that the provision would enable a couple to convert their marriage to a civil partnership, the Panel was informed that no fees would be implemented for a couple to convert their marriage to a civil partnership within two years of the legislation coming into effect. It was explained that the option to enter a civil partnership instead of a marriage was not accessible to opposite sex couples under the current legislation and therefore charging a fee for the conversion was not deemed a fair approach to follow.

The Panel asked whether the conversion from a marriage to a civil partnership would require a ceremony or if it was just an administrative change. It was noted that the process was left to the couple to decide.

Raising the age of civil partnership

It was confirmed to the Panel that raising the age to 18 years was addressed equivalently within both the draft Laws.¹⁵

Alignment of civil partnership entry process to that of marriage

During the briefing¹⁶ the Panel was informed that this proposed provision would align the process for entry into marriage or civil partnership so that the robustness, safeguards and anti-sham provisions for civil partnerships were improved and equivalent to that of a marriage process. It was further explained that as a marriage and a civil partnership were equivalent legal unions with the same rights and responsibilities within Jersey - the process to enter either a marriage or a civil partnership should also be equal. It was highlighted that in some jurisdictions civil partnerships were recognised differently to marriage in a legal context, however that was not the case for Jersey.

Noting that although there was no legal difference between a civil partnership and a marriage in Jersey, the Panel emphasised that a cultural difference was apparent. The Panel was of the opinion that culturally the perception was that marriage held more meaning and weight than a civil partnership. The Panel also highlighted that some opposite sex couples would prefer to disassociate themselves from the patriarchal ideas of marriage and, consequently, a civil partnership would be a preferred arrangement in such instances.

The Panel asked whether, like marriages, there was a requirement for ‘a specific set of words’ to be said when entering a civil partnership. It was explained that a civil partnership required a declaration which was different to that of marriage and that would remain unchanged.

Noting that the intention was to provide equality of the entry process for marriage and civil partnership, the Panel asked whether the process was different for marriage and civil partnership in respect of the exit process. It was explained that dissolution was used for civil partnership and not divorce. However, it was noted that work on divorce reform had commenced and that the intention was to align the exit process in respect of marriage and civil partnership in the same way as the proposed changes were intending to align the entry into marriage or civil partnership. It was confirmed that the intention was to enable complete equality in respect of marriage and civil partnership processes for both the entry and exit processes.

¹⁵ [Briefing – 13th January 2022](#)

¹⁶ [Briefing – 13th January 2022](#)

Considering that the intention was to align the processes of marriage and civil partnership, the Panel asked whether the fees for civil partnership would increase. It was noted that the fees would mirror those of marriage.¹⁷ The Panel highlighted that the Office of the Superintendent Registrar was self-funding and that the fees facilitated that function. However, it was noted at the time of the briefing that it had not received any complaints regarding the fee structures for marriage or civil partnership.

The Panel sought to understand whether the processes would have consideration for the notification of gender in respect of transgender individuals and asked whether that aspect had been considered. It was noted that a provision already existed within legislation to allow the removal of a former gender name and to include the current gender name on the marriage certificate. It was also emphasised that the provision had been used and had worked well.¹⁸

The Panel sought clarity on whether humanist ceremonies would be impacted by the draft Laws. Particularly should a celebrant fall ill on the day of a union and whether a replacement celebrant would be available under such circumstances. The Panel was informed that in such circumstances it was the responsibility of the celebrant to find a replacement. The Panel raised concern that in respect of a humanist union that only a humanist celebrant could undertake the ceremony. It was explained that from a legal context there was no difference between a civil partnership celebrant or a humanist celebrant and therefore it was the responsibility of the celebrant and the couple to resolve as was necessary. Moreover, it was noted that the celebrant was not named in the process (like the location was) and that the only prerequisite was for the partnership to be solemnized by an authorised celebrant.¹⁹ The Panel received further confirmation that any provisions provided within the draft Laws that would impact marriage and civil partnership would equally impact humanist ceremonies.

Transfer of relevant registration duties

The process for the transfer of relevant registration duties from the Parish to the Office of the Superintendent Registrar is addressed equivalently within both the draft Laws. The Panel is content with the proposed changes to civil registration processes.

Fees

During the briefing²⁰ the Panel was informed of the fees that would be associated with the changes being proposed under the draft Laws. It was noted that the fees would be outlined within the accompanying reports of the draft Laws and that they would reflect equally across both unions (marriage and civil partnership) as both processes would be equal and would require the same level of administration.

Moreover, the Panel was informed that the Draft Marriage and Civil Status Law proposes the introduction of a new £55 fee in respect of the re-registration of a birth where the parents of the child were not married at the time of the birth and that the introduction of the fee was a result of the requirement for the Office of the Superintendent Registrar to be cost neutral as decided by the States Assembly as part of

¹⁷ [Briefing – 30th September 2021](#)

¹⁸ [Briefing – 30th September 2021](#)

¹⁹ [Briefing – 30th September 2021](#)

²⁰ [Briefing – 13th January 2022](#)

the Medium-Term Financial Plan (P.68/2016). However, it was noted that the fee of £55 was the same as all the other fees for registering a birth in different circumstances.²¹

Key issues raised and discussed

Legitimacy and Illegitimacy

Amongst other provisions, the draft Marriage and Civil Status Law will consequently amend provisions of the [Legitimacy and Illegitimacy \(Re -Registration of Births\) \(Jersey\) Regulations 1974](#) to provide an equal position for married and civil partner couples. The Panel raised concern regarding the terminology used within the legislation including the terms ‘legitimacy’ and ‘illegitimacy’.

During the briefing²² the Panel was informed that the concept of recognition of legitimacy had changed, and the changes being proposed would equalise the recognition of legitimacy for same sex couples and civil partnerships until such time the term could be reviewed.

The Panel asked whether, if the child’s parents were not married or not in a civil partnership if the child was still recognised as not legitimate. That was confirmed as the case. The Panel raised concern regarding the use of the terminology and asked whether the UNCRC approved of the concept and questioned why the concept was still being used within Jersey’s legislation. It was explained that the intention was to review its use, however, the term was impacted by other Jersey Laws.

It is the view of the Panel that such terminology should not be used. It was discussed during the briefing that although within a cultural context the terms may no longer be considered as suitable, within a legal context the terms were a necessary requirement. Although understanding of the rationale for using the terms in respect of their function in a legal context, the Panel endeavoured to make it known that it was not accepting of the use of such terminology. The Panel was informed that the legal definition and the cultural definition of the terms clashed which brought challenges when drafting legislation.

Opposite sex couples versus mixed sex couples

It is the Panel’s understanding that the terminology in respect of opposite sex and mixed sex is often used interchangeably within legislation depending on the jurisdiction and noting that the draft Laws reference the term opposite sex, the Panel discussed²³ whether the term mixed sex was a more inclusive term. The Panel sought to understand the rationale for the use of the term opposite sex within the legislation and raised this. The Panel received the following clarification from Officers of the Department for Justice and Home Affairs:

At present the Law Jersey and in both England and Wales recognises only two sexes, male and female. Whilst the Discrimination (Jersey) Law refers to intersex as a protected characteristic, for all other purposes there remain only two sexes. English speakers and the Law itself have for so long referred to

²¹ [Briefing – 13th January 2022](#)

²² [Briefing – 30th September 2021](#)

²³ [Panel Meeting – 24th January 2022](#)

“persons of the opposite sex” (reflecting what I accept is the traditional binary view) and because of the current state of the Law on registration of a person’s sex (i.e. in Jersey the Law only provides for the registration of a person at birth as male or female), it was deemed appropriate to continue to use the term opposite sex for the purpose of clarity.

Solemnize same sex marriage or acquired gender marriage

During its review of the draft Laws, the Panel was made aware that the draft Marriage and Civil Status Law would not compel clergymen, authorised religious officials and religious organisations to solemnize; attend; consent to; apply for authorisation for a person to solemnize; or certify any matter relating to a same sex marriage or acquired gender marriage.²⁴ This aspect was previously agreed in 2018 when the States Assembly debated and voted in favour of the [Draft Marriage and Civil Status \(Amendment No.4\) Jersey Law 2018](#). Therefore, it is the Panel’s understanding that the draft Marriage and Civil Status Law continues to ensure protection for the religious freedoms of religious organisations and officials against compulsion in matters relating to same sex marriage through substitution of Article 7 (marriages according to religious rites: no compulsion to solemnize marriages etc.). It is the Panel’s understanding that through replacing the existing Article 7 with the new Article 7, the draft Marriage and Civil Status Law aims to provide further clarity as to the position in relation to a religious official who has a personal objection to conducting a same sex marriage, or a marriage of a person who is of an acquired gender and the classes of people entitled to object to only religious officials. It is the Panel’s understanding that the proposed changes will not change the underlying policy and only endeavours to provide clarification.

Conclusion

Subject to the areas of concern raised, the Panel is supportive of both the draft Marriage and Civil Status Law and the draft Civil Partnership Law. The Panel is understanding of the intricacies involved regarding the use of terminologies within the draft Laws which would not enable changes to be made without impacting broader Jersey legislation. Due to the notable changes that the draft Laws would allow, should they be passed by the States Assembly, the Panel does not wish to delay the legislation as a result of terminologies used alone.

Noting that Jersey has fallen behind many other jurisdictions including England and Wales in respect of the changes being proposed, the Panel agrees that the provisions proposed within the draft Laws will assist to update and better align Jersey’s legislation with the requirements of the UNCRC and CEDAW through addressing the legislative gaps resultant of the conventions that Jersey abides to. The Panel is of the opinion that ultimately the draft Laws will provide positive, tangible change for Jersey’s society.

Finally, the Panel would like to place on record that it has highlighted during its briefing the importance of Children’s Rights Impact Assessments (CRIA) being undertaken in respect of the draft Laws and although it was informed at the time that it would not be possible for CRIAs to be produced prior to the lodging of the draft Laws, it was suggested that a CRIA would be produced to accompany the draft Laws.²⁵

²⁴ [Panel Meeting – 31st January 2022](#)

²⁵ [Briefing – 13th January 2022](#)