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CORPORATE SERVICES SCRUTINY PANEL



Marriage and Civil Status (Jersey) Law

Presented to the States on 29th January 2018

S.R.1/2018

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1. Chairman's Foreword

This review has been one of the most technically challenging and complicated matters I have encountered in my 12½ years in politics, raising a variety of ethical and moral dilemmas.

We have made it very clear from the start that the Corporate Services Scrutiny Panel ("CSSP") is not, in any shape or form, challenging the matter of same sex marriage. This has been approved by the States and we will be voting 'pour' Article 2 of the Law, which introduces same sex marriage into our legislation.

This new Law also introduces new administration processes; makes provision for open air marriages, and introduces greater protection against sham or forced marriages.

I stress that we make no criticism of the officers involved in the production of the Law, but it is unprecedented to see 24 amendments being lodged by the Minister just 2 weeks before the original scheduled date of debate.

Our conclusion is that the Law has been rushed, particularly towards the end of the process. In summary, there needs to be a better way to produce law, and allow for proper consultation with stake holders on an iterative basis to allow proper feedback into the process.

The recommendations from our review can be grouped into 4 areas:

- 1) Issues around consultation and drafting (outlined above)
- 2) Matters concerning the Superintendent Registrar
- 3) Church Buildings
- 4) Tolerance Clause

Superintendent Registrar - following a submission from Channel Island Humanists and Deputy Louise Doublet we have recommended that civil celebrants who are meant to represent a particular organisation should have appropriate qualifications from that organisation. Following discussions with the Chief Minister we have recommended that civil celebrants must comply with any guidance issued by the Superintendent Registrar and that guidance should be issued to clarify what is meant by religious content (for civil celebrants).

Church Buildings – during the course of our work, it has become very clear that there is a fundamental conflict between the proposed State Law, and the existing Laws and tenets of religious organisations. For example, Church of England ("C of E") Law (Canons), as approved by the States Assembly, defines marriage as being the union between one man and one woman. This forms a fundamental part of the beliefs and teachings of many religions for both their officials and their congregations. Therefore a Church of England Minister (for example) permitting a same sex wedding in the Church for which they are responsible would break Church of England Law.

Please understand that there is difference in treatment in the legislation between the C of E and all other religious organisations. The C of E is specifically prevented from participating in same sex marriages, whilst all others can 'opt out' but can also 'opt in' from performing such marriages. Therefore in writing this Foreword, I shall try to keep it simple, but the legislation may reflect a technical difference in how it is drafted.

The relevance of this to Church buildings is as follows: places that are 'usual places of religious worship' are basically exempted from any requirement to accept same sex marriages. However,

during our work it became clear that there could be anomalies. E.g: a Chapel that was not used regularly, but was still consecrated, may not be afforded such an exemption. This could potentially cause a lot of issues for any member of the clergy and/or congregation if a same sex couple demanded to be married in such a location, as there would not necessarily be any exemption available under the Law. We have therefore recommended an amendment that allows such Church buildings to be exempted if desired, but equally it can be used for same sex marriages (subject to the conditions already in the Law) if the organisation so wishes. Thus no-one can be forced to act against their beliefs (in respect of the use of a Church building) but they can also facilitate a same sex marriage should they wish to.

A second facet to this is the use of other properties which are not necessarily directly places of religious worship. An example might be a Church Hall which is not directly owned by a Church, or not on the same site as a Church (for example it might be owned by a Trust, or the location might be separated by a public road). Religious organisations are already sensitive about how Church Halls are used. They might not permit anything that would be at odds with the basic tenets of their faith, e.g. spiritual classes, or even rock bands (due to issues around lyrics). The legislation as presently drafted does not exempt such buildings or locations from being forced to be made available for (say) a wedding reception for a same sex couple. We have therefore lodged an amendment which seeks to address this situation by ensuring (again) that no-one can be forced to act against their beliefs (in respect of the use of a Church building) but they can also participate should they wish to. The recent procedural amendment that has been lodged by the CSSP will allow a separate vote on this matter, and also a separate vote on the tolerance clause.

Both of these amendments have been discussed with Liberate who have indicated their acceptance of them.

Tolerance clause

Clearly the most challenging aspect of our review has been the issue of a tolerance clause. Of the 50+ submissions we received, the majority were in support of some form of tolerance clause.

In summary the arguments are as follows – those against a tolerance clause basically say one should not discriminate; how can one define faith; and some of the subtext is around homophobia. Those in favour of some form of tolerance clause suggest that this is a matter of freedom of speech (with references to Human Rights); they seek a balance of rights so that individuals are not forced to act in a way that would contravene their faith; or that they do not want to see individuals fined, made to go bust, or criminalised as a result of their faith. Various examples of cases in the UK or USA where this has happened have been cited. This has generally been because a same sex couple has felt that they had been discriminated against because an individual or religious organisation had been unable to act in a particular way because it went against the teachings of their faith.

The Northern Ireland case of Ashers Bakery was often cited, and even the case in the US where a Satanist Cult (recognised under the law as a religious group) was suing for discrimination against a Christian baker who had refused to bake them a cake bearing Satanic symbols. One piece of evidence presented to us was an article written by Peter Tatchell (a prominent UK gay rights campaigner) which concludes as follows: “In my view, it is an infringement of freedom to require businesses to aid the promotion of ideas to which they conscientiously object. Discrimination against people should be unlawful, but not against ideas”. The article is worth a read (and the link is included in our report).

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To be clear, both sides of the argument who have appeared in front of the Panel have been very respectful of each other's point of view. The individuals who have written to us in favour of same sex marriage have generally talked about love and the wish of two people to be in a loving relationship and to mark that loving relationship. Liberate understand the inclusion of the 'Quadruple Lock'. Equally the JEA (for example) have stated that they condemn any form of bullying or homophobia particularly against minority groups who in the past have endured such unfair treatment.

In the ideal world, all parties would respect each other, and there would be no conflict on this matter. Those involved in the argument have been oppressed at different times in history and continue to be oppressed in different jurisdictions even today. Unfortunately there are individuals on both sides who will push matters much further. Various parties have suffered some form of abuse during very recent times, with 2 individuals who appeared before us having received verbal abuse on this matter in the last few weeks, and 2 individuals (including one panel member) being 'trolled' online as a result of what they had been reported as saying, and comments are sometimes made equating those expressing support for Christian views as being old fashioned, quaint, Nazis or racist.

We have sought to try to understand the various perspectives on these arguments and it has not been easy. In the event, the Panel as a whole has come down on the side of some form of tolerance clause. This is not uncontroversial, and it was a majority decision, as opposed to a unanimous decision. Panel members will no doubt express their own views on the matter during the debate. However it is an important matter that the States SHOULD debate, and it is therefore important that we have lodged an amendment.

The argument surrounding a tolerance clause can perhaps be summarised as to whether it is discrimination against a person (which would therefore be homophobic and would be unanimously condemned by the Panel) or whether it is about giving a section of our society the ability to say 'no' because they do not agree with the principle (i.e. the 'idea') of same sex marriage based on their sincerely held religious beliefs.

Freedom of speech is a basic tenet of our society. It is a balance of competing rights and can be extremely uncomfortable at times, but overall that is what strengthens tolerance and understanding over time. If we force people to comply with ideas they do not agree with, this can ultimately lead to greater (hidden) intolerance and unintended consequences.

There has already been criticism of the Panel for lodging the amendment, but to use a very well-known expression:

"I disapprove of what you say, but I will defend to the death your right to say it"

It will not be an easy debate, but we hope and trust it can be a respectful debate.

I commend our report to the Assembly.

Deputy John Le Fondré

Chairman, Corporate Services Scrutiny Panel

2. Executive Summary

On 3 October 2017, the Chief Minister lodged the Draft Marriage and Civil Status (Amendment No.4) (Jersey) Law 201- (“the Draft Law”) ([P.91/2017](#)).

The Draft Law amends the Marriage and Civil Status (Jersey) Law 2001 (“the 2001 Law”) to implement two previous States of Jersey decisions to increase the number of locations where couples can have their marriage solemnized and to allow same sex couples to get married in Jersey.

In practice, the Draft Law constitutes a substantial rewrite of the original 2001 Law changing the processes associated with the solemnization and registration of marriage, who can solemnize marriage and what content is allowed during marriage ceremonies.

The evidence we received highlighted a number of issues relating to protections for religious people, officials, organisations and their buildings in relation to same sex marriage.

The Draft Law makes provision to protect usual places of public religious worship (such as parish churches). However, we found that other places of religious worship (for example, infrequently used chapels such as La Hougue Bie) may not be protected from having to solemnise same sex marriages. In addition, we found that some buildings, owned by, used by, or in trust of, a religious organisation (such as church halls) may also be compelled to act against their religious conviction and be required to permit the solemnisation of same sex marriages and wedding receptions for same sex couples.

The Draft Law provides certain protection to clergyman of the Church of England, an authorised religious official or a religious organisation who shall not be compelled by any means to consent, certify, be present at, participate in, or solemnise a same sex marriage. However, people who provide goods and services in respect to marriages and wedding ceremonies will be required to comply with all aspects of this law even if it goes against their firmly held religious belief or conviction in respect to same sex marriage.

The Draft Law will allow for the use of some content in civil marriage ceremonies that are also used in religious marriage ceremonies. In the law as drafted civil celebrants will determine what does, and what does not, constitute religious content in relation to a civil marriage ceremony. Evidence we received highlighted that there would be difficulties in defining what is or is not religious content and we have sought to address this in one of our amendments.

Having highlighted these important issues set out above, we lodged a series of amendments¹ which attempt to address these issues.

It is clear from the evidence we have gathered as part of our review that the Draft Law has been rushed, considering the wide ranging implications of the changes it proposes. While we have done our utmost to find and address any outstanding issues we cannot guarantee that more will not be found once the Law has been approved.

¹ [Draft Marriage and Civil Status \(Amendment No. 4\) \(Jersey\) Law 201- \(P.91/2017\): second amendment](#), [Draft Marriage and Civil Status \(Amendment No. 4\) \(Jersey\) Law 201- \(P.91/2017\): second amendment \(P.91/2017 Amd.\(2\)\) – amendment](#), [Draft Marriage and Civil Status \(Amendment No. 4\) \(Jersey\) Law 201- \(P.91/2017\): second amendment \(P.91/2017 Amd.\(2\)\) – second amendment](#)

3. Findings

Finding 1: It is not clear what impact the requirement for the Office of the Superintendent Registrar to be cost neutral will have on the cost of registering a marriage. We are also concerned that there may be wider implications for the cost of registering births and deaths.

Finding 2: We empathise with concerns raised about the potential for civil celebrants to offer marriage ceremonies who have not been deemed qualified by a relevant organisation.

Finding 3: The proposed changes to the processes associated with the solemnization and registration of marriage are appropriate and proportionate, particularly in relation to sham, forced or coerced marriage.

Finding 4: In light of the proposed changes set out in the Draft Law, the Roman Catholic Church is seeking to give up its current privilege of being authorised clergy with registered buildings for weddings, thus separating the civil from the religious ceremony.

Finding 5: There is a risk that buildings owned by, used by, or in trust of, religious organisations may be compelled to act against their religious conviction and be required to permit the solemnisation of same sex marriages and wedding receptions for same sex couples.

Finding 6: Canon Law, which was approved by the States of Jersey and which governs the Church of England, defines marriage as being between one man and one woman.

Finding 7: The so called quadruple lock enshrined within the Draft Law provides certain protection to clergymen of the Church of England, an authorised religious official or a religious organisation who shall not be compelled by any means to consent, certify, be present at, participate in, or solemnise a same sex marriage.

Finding 8: People who provide goods and services in respect to marriages and wedding ceremonies will be required to comply with all aspects of this law, even if it goes against their firmly held religious belief or conviction in respect to same sex marriage.

Finding 9: There is a risk that employees may be compelled to undertake work in relation to same sex marriage or wedding receptions, even if this goes against their firmly held religious belief or conviction.

Finding 10: In the law as drafted civil celebrants will determine what does, and what does not, constitute religious content in relation to a civil marriage ceremony.

Finding 11: Introducing the Draft Law, as lodged, will create a situation where there will be discrimination between same sex couples and heterosexual couples. The examples identified by the Panel include: heterosexual couples will not be able to enter into civil partnerships and same sex couples may not be able to seek a divorce on the grounds of adultery.

Finding 12: After lodging the Draft Law, two weeks before it was due to be debated, the Chief Minister lodged 24 separate amendments to the Draft Law. The majority of these amendments were correcting inaccuracies, typographical errors and spelling mistakes.

Finding 13: The Draft Law is a long and complex piece of legislation. In addition to substantially re-writing the 2001 Law, it will make 31 consequential amendments to other pieces of legislation. There has not been sufficient time to consider the implications of all of these consequential amendments.

Finding 14: Whilst consulting during the early stages and on the law drafting instructions, the Chief Minister and his staff did not directly consult on the Draft Law with all key stakeholders.

Finding 15: We are concerned that not all key stakeholders have had adequate opportunity to review and comment on the Draft Law prior to lodging.

4. Recommendations

Recommendation 1: In response to this report, the Chief Minister should publish the costs of registering a marriage under the existing system, and the new system which will be implemented once the Office of the Superintendent Registrar is required to be cost neutral. In addition, the Chief Minister should publish the justification for requiring the Office to be cost neutral. The Chief Minister should also publish the costs of registering a birth or a death under the existing system and the new system. If there is a change he should justify this change.

Recommendation 2: We recommend that the Draft Law should be amended to require civil celebrants to be qualified when delivering certain types of ceremony (e.g. humanist). The Panel has lodged an amendment on this issue.

Recommendation 3: The Draft Law should be amended to protect buildings owned by, used by, or in trust of, religious organisations who object to same sex marriage on the grounds of their religious conviction and who may be required to permit the solemnisation of same sex marriages and wedding receptions for same sex couples. The Panel has lodged an amendment on this issue.

Recommendation 4: The law should be amended so that a person who, on the basis of their firmly held religious belief or conviction, objects to same sex marriage cannot be compelled to provide goods or services in relation to a same sex marriage or any social event or function associated with a marriage. The Panel has lodged an amendment on this issue.

Recommendation 5: We did not address the concept of reasonable accommodation in the workplace because it was not within the scope of the Draft Law. However, this is an important issue and the Chief Minister should, in response to this report, set out what work he will undertake to address it.

Recommendation 6: The Draft Law should be amended to require the Superintendent Registrar to consult with the Island's main religious organisations on what religious content must or must not be permitted in a civil marriage ceremony. The Superintendent Registrar should then issue detailed guidance on this topic for the avoidance of doubt. The Panel has lodged an amendment to this affect.

Recommendation 7: The Chief Minister should report back to the States Assembly before the Appointed Day Act for the Draft Law and confirm that there are no outstanding inaccuracies, typographical errors and spelling mistakes in the Draft Law. If there are outstanding issues, the Chief Minister should bring forward amendments to correct such matters.

Recommendation 8: In response to this report, the Council of Ministers should commit publically to ensuring that all key stakeholders have the opportunity to review and comment on a proposed final version of a law prior to lodging.

Recommendation 9: The rules governing the process for legislative scrutiny should be reformed so that draft laws are subject to legislative scrutiny and that sufficient time is allowed for the process to be completed.

5. Introduction

1. On 3 October 2017, the Chief Minister lodged the Draft Marriage and Civil Status (Amendment No.4) (Jersey) Law 201- (“the Draft Law”) ([P.91/2017](#)). The Draft Law aimed to amend the Marriage and Civil Status (Jersey) Law 2001 (“the 2001 Law”) and implement two decisions made by the States Assembly.
2. In July 2015, the States agreed, in principle, to allow for the solemnisation of marriages in the open-air including in public spaces ([P.65/2015](#)). In September 2015, the States agreed, in principle, to allow for same sex couples to get married in Jersey and for people in civil partnerships to convert their civil partnerships into marriage (marriage by conversion), whilst ensuring that religious officials and organisations should not be compelled to solemnize same-sex marriage ([P.77/2015](#)).
3. In reviewing the 2001 Law, the Chief Minister decided that a range of further, significant amendments were required to ensure that Jersey’s marriage legislation was “fit-for-purpose”.² As a result, the Draft Law contains a range of additional measures including:
 - streamlining the processes associated with giving notice to marry and the registration of marriage;
 - introducing additional requirements, in relation to certificates of no-impediment and processes for verifying people’s identity, to better help better protect against sham or forced marriage;
 - allowing couples greater choice over the content of their wedding ceremonies; and
 - making better provision in relation to marriage in emergency or special circumstances.
4. The Draft Law also sets out 31 consequential amendments to other legislation, which the Chief Minister argued, was necessitated by the introduction of same-sex marriage.
5. On the 14 November 2017, we called-in the Draft Law for legislative scrutiny in light of the breadth and depth of the proposed changes. The aim of our review was to examine how effectively the Draft Law implements the decisions of the States Assembly. It was not to reopen the debate on same sex marriage and this has remained the case throughout the review.
6. We have undertaken detailed, line-by-line, analysis of the Draft Law. We issued a call for evidence and received 50 written submissions. We held seven public evidence sessions with a range of stakeholders, including the Superintendent Registrar, the Comité des Connétables, religious organisations, equality charities, Ministers and their officials. All written and oral evidence can be found on our website.³ We are grateful to all those who contributed to our review.
7. Our report focuses on the main points of contention highlighted to us during our review. Chapter 2 examines the proposals to streamline the processes associated with the solemnization and registration of marriage. It also examines the proposals to prevent sham,

² States of Jersey, Draft Marriage and Civil Status (Amendment No.4) (Jersey) Law 201-, [P.91/2017](#), p.4

³ www.scrutiny.gov.je

fraudulent or coerced marriage. Chapter 3 scrutinises the proposals to increase the number of locations approved for civil marriage ceremonies. Chapter 4 scrutinises the proposals not to compel religious officials and organisations to solemnise same sex marriage. Chapter 5 assesses the proposals to increase the use of religious content in civil marriage ceremonies. Chapter 6 highlights some of the outstanding issues we found during our review.

6. Processes associated with the solemnization and registration of marriage

8. The report accompanying the Draft Law stated that:

In reviewing the 2001 Law and associated Orders to allow for the introduction of same-sex marriage and open-air marriage, and in dialogue with staff and other key stakeholders, it became evident that the processes set out in the 2001 Law in relation to the solemnization and registration of marriage are overly bureaucratic and unwieldy, and at the same time, fail to provide sufficient safeguards against sham or forced marriage.

The processes associated with the solemnization and registration of marriage have, therefore, been significantly amended in order to ensure they are as straightforward as possible, and that they facilitate online bookings and electronic data capture and process management.

The amended Law also provides better safeguards against forced and sham marriage, which is increasingly important, given the changes in UK legislation which are designed to provide increased protection against marriages being formed in order to bypass immigration controls.⁴

Streamlining administrative processes

9. The Superintendent Registrar, Claire Follain, welcomed the proposals to streamline the administrative processes, stating:

The Draft law, as I see it, will have great benefit to my working practices within my department by streamlining the administrative processes and giving me a much clearer framework within which I can work. Additionally it will also improve the experience from a customer perspective by reducing the number of processes that they have to go through in order to manage it.⁵

10. Tern Events, a wedding and events planning company, expanded on this point stating that the Draft Law will “make the processes involved considerably less onerous and more practical”.⁶ Similarly, a member of the public who submitted evidence and who was at the end of the marriage process stated that she supported “streamlining” the current “archaic” process.⁷

11. The Superintendent Registrar highlighted, as an example, a new I.T. system that will allow members of the public to apply to be married online and will fulfil several of the administrative processes online instead of in person. The Superintendent Registrar continued:

That will allow [couples], if they live abroad particularly, and a third of all those who will marry in Jersey come from abroad, it will improve the processes for them, make

⁴ States of Jersey, Draft Marriage and Civil Status (Amendment No.4) (Jersey) Law 201-, [P.91/2017](#), p.8

⁵ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.3

⁶ [Tern Events](#)

⁷ [H. Quinn](#)

it much easier for them while safeguarding the same level of documentary evidence required.

The I.T. process will also remove some of the human error that can be involved. So we will know exactly which documents have been seen and approved so couples themselves will not have to return time and time again, as they do now, to show the same documents over and over again potentially to different members of the staff.⁸

12. Although most comments about the new administrative process were positive, we did receive one submission which raised concerns that the Draft Law complicated an existing system and would potentially increase costs and cause disruption and delays:

It is our understanding that the States of Jersey generally have adopted a LEAN approach to reduce expenditure and improve services to the public. The current draft legislation appears to complicate an existing service, increasing staff costs and creating an immediate shortage of suitably trained/qualified personnel therefore increasing expenditure immediately and for the foreseeable future, yet service provision is likely to be unduly disrupted and delayed.⁹

13. The Superintendent Registrar said that the cost of the new I.T. system (estimated at just under £20,000) would be neutral as it will be paid for by marriage fees in the future. The Superintendent was testing the I.T. system so that it was ready to be implemented once the Draft Law had come into force.¹⁰

14. The Superintendent Registrar reported that at the end of the current Medium Term Financial Plan (MTFP) her Office had to be cost neutral. This would increase the cost of marriage for members of the public. The Superintendent Registrar gave a preliminary estimate of likely future fees as “in the region of £250”, but cautioned:

I am still calculating the fees at the moment and I am being very careful to, along with the new I.T. system, which does shorten the process massively, to work out the time period it will take for us to accomplish each task and then translate that into a cost at the end. I am mindful that marriage is open to everybody on the Island and off-Island and therefore must be accessible to everybody financially. I need to cover my costs, clearly not make profit out of delivering marriage. [...].¹¹

Finding 1: It is not clear what impact the requirement for the Office of the Superintendent Registrar to be cost neutral will have on the cost of registering a marriage. We are also concerned that there may be wider implications for the cost of registering births and deaths.

⁸ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.4

⁹ [Anonymous 4](#)

¹⁰ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.4-6

¹¹ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.7

Recommendation 1: In response to this report, the Chief Minister should publish the costs of registering a marriage under the existing system, and the new system which will be implemented once the Office of the Superintendent Registrar is required to be cost neutral. In addition, the Chief Minister should publish the justification for requiring the Office to be cost neutral. The Chief Minister should also publish the costs of registering a birth or a death under the existing system and the new system. If there is a change he should justify this change.

Role of parish registrars

15. The Draft Law will change the role of parish registrars in respect to marriage. Under the new system the parish registrar will remain the custodian of the parish registers and will keep them up to date. The registrar will no longer be required to write in the register – they will just include the marriage schedule as signed at the ceremony. The registrar will no longer prepare the marriage documents and will no longer meet the couple getting married. This will be done by the Superintendent Registrar.
16. The Superintendent Registrar said that the parish registrars would “remain the master register of marriages in their Parish” and hold the original signed marriage schedule but that their other roles in relation to marriage will be “diminished”. She continued:

The result of removing those two actions - visiting the Registrar in their own home and the handwriting - does mean that the role of the Registrar is diminished and that is unfortunate for the Registrars, but I think that in my role as Superintendent one of the primary focuses must be customers and the members of the public who wish to marry, as well as the protection of civil registration in the Island.¹²

17. The Chairman of the Comité des Connétables, Connétable Len Norman, highlighted that the parish registrar was an ancient role that had worked well.¹³ Nevertheless, Connétable Norman acknowledged that the role had to change and that, “we have had to move into the modern world and some people do not like that, of course, but the reality is it has to happen”.¹⁴ He said that the Draft Law had recognised the “importance of the Parishes to Island life” and so he supported the proposals:

What I am pleased about with the reforms that have been proposed, it recognises the value of the Parishes, the involvement of the Parishes and the importance of the Parishes and that is why the Constables are supporting the legislation, or that part of the legislation as amended.¹⁵

Introduction of civil celebrants

18. The Draft Law determines who can solemnize marriages in Jersey. These include the Superintendent Registrar and Deputy Superintendent Registrars, Church of England

¹² Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.12

¹³ Public hearing with the [Comité des Connétables](#), 6 December 2017, p.3-4

¹⁴ Public hearing with the [Comité des Connétables](#), 6 December 2017, p.4

¹⁵ Public hearing with the [Comité des Connétables](#), 6 December 2017, p.4

clergymen, an authorised religious official (other than from the Church of England), and an authorised civil celebrant.

19. Civil celebrants are a new category within the Draft Law and will replace existing delegates who currently solemnize civil marriages in addition to the Superintendent Registrar or her deputies. The Superintendent Registrar said that this change was being made in response to feedback from couples who wanted greater choice in who conducts their ceremony. She explained:

[...] at the moment when a couple are married they have no choice about the person who conducts their ceremony. That does cause complaint at the moment with couples who would like to have some input to the person that married them and be it they would like a gentleman to do it or they would like a lady to do it or a younger person or an older person or a specific person.

At the moment it is me who assigns a delegate to a wedding and that will be according to, potentially, where that delegate has just been previously. Where possible I do accommodate people's requests, it is not always possible and also the couple are not permitted to meet their delegate before because it is not included in the fee. They meet the delegate on the day they marry, an hour or half an hour before they marry, that is why celebrants will be able to meet with the couple, they will be able to help them plan the wedding, give them advice on the content of the ceremony and play a much more personal role, so the couple will have all the control over the person who marries them.¹⁶

20. The Draft Law will provide transitional arrangements to enable this change to take place. Existing delegates, if they choose to continue to solemnize marriage, may choose to become Assistant Deputy Superintendent Registrars and may then choose to become civil celebrants in the future.¹⁷ Assistant Deputy Superintendent Registrars are needed to ensure there is enough capacity to marry couples during busy periods of the year. They will also take on an additional function, observing some civil celebrant led ceremonies to ensure they are compliant with the law.¹⁸

21. One submission we received raised concerns about how civil celebrants would be treated compared to Assistant Deputy Superintendent Registrars, and that civil celebrants would incur more costs and be subject to additional training.¹⁹ The Superintendent Registrar informed us that new Assistant Deputy Superintendent Registrars would have to be retrained and sworn in at the Royal Court and that civil celebrants would be subject to a new scheme for approving and governing them.²⁰ She explained:

It is envisaged that there will be a recruitment process for celebrants, which will involve an interview as there would be for any job. Subsequent to that, those who pass that stage will go through a training process where they will be obviously informed of the law and their requirements. Those who, at the end of that training

¹⁶ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.12

¹⁷ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.20-21

¹⁸ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.17-18

¹⁹ [Anonymous 4](#)

²⁰ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p21, and email to the Panel dated 8 December 2017

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process I consider will be able to act as celebrants, in a way I think they will be able to follow the processes required, will then be licensed.

Once licensed there is a provision, as there are in many other jurisdictions around the world, for complaints, investigations to be launched against any celebrants who may not be complying with their statutory obligations or the terms of their licence. That investigation will be carried out by myself and the appeal will be to the Minister.²¹

22. The Superintendent Registrar suggested that civil celebrants would have more flexibility to provide services that couples wanted, determine their own prices for their services and that couples would have more choice about who could officiate their wedding:

[...] there will be on my website a register and a short biography of every single celebrant. They can then look at the biographies, see which of them they wish to use. They can follow that to the celebrant's website or Facebook page, to see how much they charge and what services they offer and make their choice freely that way.²²

23. Liberate Jersey, an equality and diversity charity, said that it thought the proposed process for approving and governing civil celebrants was appropriate. It stated:

The process for becoming a civil celebrant is not onerous but sufficiently rigorous not to be undertaken lightly, including training, swearing in at the Royal Court and the ability to de-register a celebrant if they do not act in accordance with the Law. The Superintendent Registrar may also refuse to authorise a person if they are not suitable (Article 6 (3)).²³

24. Liberate was also positive about the introduction of civil celebrants because it would “open up” marriage to the humanist community “which reflects the diversity of beliefs present in the Island”. The Channel Island Humanists – an organisation that trains celebrants who deliver marriage ceremonies – was also positive about the introduction of civil celebrants. They were concerned, however, about the lack of safeguards around who will be able to establish themselves as a humanist celebrant. It stated:

We are worried that the legislation, as it stands, could lead to ‘sham humanists’ conducting ‘humanist ceremonies’ and this is something we wish to see prevented by adding a requirement for an authorizing organization.²⁴

25. The Channel Island Humanists argued that the Draft Law should be amended to add a similar safeguard requirement for belief celebrants to have an authorising organisation as is the case with religious celebrants.²⁵ Addressing this issue, the Director of Social Policy in the Chief Minister’s Department stated:

That is something that we have given consideration to, which is the reason why the law provides that the Minister must, by order, subscribe to the scheme and why, within that scheme, evidence will be asked for and will be checked to ensure that

²¹ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.11

²² Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.41-42

²³ [Liberate](#)

²⁴ [Channel Island Humanists](#)

²⁵ [Channel Island Humanists](#)

nobody purports to represent any form of belief or other organisation that they do not represent. The register of civil celebrants that will be in the public domain will only include ... if someone says that they are a humanist celebrant, the register will only advertise them or set out that they are a humanist celebrant if there is absolutely concrete evidence that that is the case and they have been through the appropriate training or registration process with their mothership organisation.²⁶

Finding 2: We empathise with concerns raised about the potential for civil celebrants to offer marriage ceremonies who have not been deemed qualified by a relevant organisation.

Recommendation 2: We recommend that the Draft Law should be amended to require civil celebrants to be qualified when delivering certain types of ceremony (e.g. humanist). The Panel has lodged an amendment on this issue.

Sham, fraudulent or coerced marriage

26. The Superintendent Registrar welcomed the proposals to help prevent sham, fraudulent or coerced marriage in Jersey.²⁷ On sham marriage, the Superintendent Registrar said that there were “constant attempts” by people to use marriage in Jersey to obtain UK or EU immigration rights. She reported that there were several cases of this in 2017 and that it was a “constant and real problem” that she faced.²⁸ The 2001 Law did not help to rebut those attempts. The Superintendent Registrar continued:

The new amended law will allow me, with the assistance of the I.T. application, to have greater input with and relationship with Customs and Immigration so that these can be identified at an early stage and those attempts blocked and that is very welcome, from my perspective.²⁹

27. The Superintendent Registrar said that the Draft Law will remove current data protection issues so that she will be better able to check the status of applicants. The new I.T. system will automatically check the immigration status of the applicants with Customs and Immigration.³⁰

28. On forced or coerced marriage, the Superintendent Registrar said that the 2001 Law only requires one of the two parties to the marriage to attend her office throughout the process. This means that, “we may not have met one of the two parties until the day of the wedding and at that stage it is very difficult to have built any relationship or have any understanding whether that person is being forced or coerced into a marriage”.³¹

29. The Superintendent Registrar said that the Draft Law will require both parties to attend, either together or separately, and sign their declarations of freedom to marry in the presence of the Superintendent Registrar. In addition, any non-resident will need to prove to the

²⁶ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.17

²⁷ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.22

²⁸ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.24

²⁹ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.22

³⁰ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.24

³¹ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.24

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Superintendent that there is no reason why they cannot marry. It will also allow the Superintendent Registrar to check that the applicants who attend her office are the same as the people who are actually getting married.³²

Finding 3: The proposed changes to the processes associated with the solemnization and registration of marriage are appropriate and proportionate, particularly in relation to sham, forced or coerced marriage.

³² Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.24

7. Location of marriage ceremonies

Open-air marriages

30. The Draft Law makes provision for the solemnization of marriages in the open-air, including in public spaces. This implements the decision taken by the States of Jersey in July 2015 ([P.65/2015](#)).

31. The Superintendent Registrar informed us that “there is considerable demand for marriages outside of a roofed structure”.³³ Liberate expressed its view that “this opening up of the Island’s beaches and countryside, particularly to visitors to the island who wish to marry, represents a significant new stream of revenue for Jersey’s tourism industry and is supported by us”.³⁴

32. Despite increasing the number of approved locations available, the Superintendent Registrar said that the importance of maintaining the solemnity and dignity of marriage would remain unchanged:

*[...] The law is not going to be changed in the sense that the basic tenet of marriage will remain that I must consider whether the marriage is a solemn and dignified occasion, and that is a core principle that will remain unchanged. [...] If there are marriages in the open-air I will take consideration of or I will ask the celebrants to consider what the couples will be wearing, for example, and to ensure that they are not attired in something that is not solemn and dignified and representative of the dignity of the occasion. [...].*³⁵

33. The Superintendent Registrar confirmed to us that other requirements would also remain the same including, for example, ensuring that the location is publically accessible. She continued:

*For example, if they wish to marry on a boat it must be anchored in a marina, not leave the marina for one hour before the wedding or during the wedding itself, so that everybody would be able to access the wedding. [...]. Homeowners must always be aware, whether they are using their garden or their lounge or their garden room, that a wedding in their home is a public event and they cannot refuse entry to anybody. In that sense, that will not change.*³⁶

34. The Chairman of the Comité des Connétables reflected on sites in his own Parish of St Clement and said that he would be delighted to approve a location such as Samarès Manor, a location which he considered to be solemn and dignified, provided it was open to the public.³⁷

³³ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.25

³⁴ [Liberate](#)

³⁵ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.25

³⁶ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.26

³⁷ Public hearing with the [Comité des Connétables](#), 6 December 2017, p.17

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35. The Superintendent Registrar advised that there will be transitional arrangements for ensuring continuity between the 2001 Law and the Draft Law:

In terms of the licences for venues, those licences can be one-off licences, they can be one year or 3 years. The arrangements are that those licences, for those who have a licence, for example, that they begin today, that will carry through for 3 years, so that is not going to come to an end; they will not have to get a brand new 3-year licence and pay again on the day the law comes into force. But what we have transmitted is that where currently venues must licence themselves for marriages and civil partnerships and/or, you get a choice, going forward they will have to be licensed for marriages, which includes same-sex marriages and civil partnerships, so there is no longer those 2 provisions.

It will be that those who wish to add an outdoor venue to their licence will add on that area to their current licence. Any hotel, for instance, who has several lounges licensed will add on a supplementary outdoor room, which may be their garden, for example [...]. They will have to specifically apply to the Connétable for that additional area within their licence.³⁸

Use of religious buildings

36. The Draft Law provides protections for religious organisations (other than Church of England churches which already have an absolute exemption). The Draft Law sets out that a usual place of religious worship according to the rites of the Church of England cannot be approved for the solemnization of same-sex marriage and that other usual places of religious worship can be approved but only with appropriate consent. This constitutes part of the “quadruple lock” which is discussed more in the next chapter.

37. It is a matter of great concern to some religious organisations that they should not be compelled to participate in same sex marriage. The Roman Catholic Church in Jersey, for example, underlined how important it found this protection.³⁹ In written evidence it stated that it would give up its current privilege of being authorised religious officials with registered buildings – and therefore separate civil and religious ceremonies – if it was ever asked to solemnise same sex marriage:

If ever there was any pressure or expectation on us, through our not being willing to officiate at a same-sex marriage in a Catholic Church, we would be happy to give up our current privilege of being authorised clergy with registered buildings for weddings, thus separating the civil from the religious ceremonies, as in France and other countries. This is already commonplace with us, in marriages between men and women, where the civil wedding always takes place before the religious wedding.⁴⁰

38. The Roman Catholic Dean, Monsignor France, confirmed that he has submitted proposals to his Bishop to separate the two forms of marriage:

³⁸ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.26

³⁹ Public hearing with the [Roman Catholic Dean](#), 18 December 2017, p.5

⁴⁰ [Roman Catholic Church](#)

[...] we are putting forward in a proposal to our Bishop that he allow us to withdraw and to separate the 2 forms of marriage, as in France. So we would have a civil marriage and a church marriage. We still do that occasionally, for all sorts of reasons, they want to do all the technical stuff before going to get married in a church in Poland.⁴¹

39. The consequence of Monsignor France's proposals mean that the Roman Catholic Church would not perform the legal element of a marriage ceremony for any couple. Couples who wish to have a Roman Catholic marriage ceremony will have to have two ceremonies, one civil and one religious.

Finding 4: In light of the proposed changes set out in the Draft Law, the Roman Catholic Church is seeking to give up its current privilege of being authorised clergy with registered buildings for weddings, thus separating the civil from the religious ceremony.

40. Despite the protection set out in the quadruple lock, we received evidence that was concerned about the limitations of this protection. In particular, there was a concern about protections for buildings which were owned by, or in the trust of, religious organisations, that were not the usual place of public worship. This included, for example, church halls. There was a concern that the owners of these buildings may not be protected from solemnising same sex marriages or hosting wedding receptions for same sex marriages. The Jersey Evangelical Alliance (JEA) asked us to look into this issue as part of our inquiry:

Can the scrutiny panel also kindly look at the matter of the buildings and community centres that are made available by a number of religious and non-profit organisations? These organisations need to be reassured that they will be able to continue to hire their premises out only on the basis that the core beliefs of the organisations aren't denigrated or disrespected through the use of the premises.⁴²

41. In relation to the solemnisation of marriage in a building owned by a religious organisation but which was not a usual place of public religious worship, it was made clear to us that if a location was approved for solemnising civil marriages then the owner would have to allow it to be used for same sex and opposite sex marriages.

42. The Superintendent Registrar reported that:

Primary places of worship will be registered buildings in the way that they are now, so they will be subject to the quadruple lock. [...]. Therefore, a religious organisation or location or individual minister will have the ability to opt out or opt in of a same-sex marriage. If the primary purpose of that building is not for religious worship, they would not be able to licence that building as a registered building for religious marriages. It would become a building that you would register under the alternative law, therefore, you would not have a choice; you either licence it for marriages and marry everybody or you do not, if the primary purpose of the building is not religious worship.⁴³

⁴¹ Public hearing with the [Roman Catholic Dean](#), 18 December 2017, p.5

⁴² [Jersey Evangelical Alliance](#)

⁴³ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.27

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43. This was also noted by Liberate which stated in its written submission:

Importantly, the Marriage Law specifies that, unless the location is a certified place of religious worship, all locations will be approved for all marriages (Article 23 (4), (6), (7), (8)), i.e. it does not allow for owners of locations to pick and choose whether to allow same-sex or opposite-sex couples to marry at their venue. This is consistent with the requirements of the Discrimination (Jersey) Law 2013 in the provision of goods and services and, naturally, supported by us.⁴⁴

44. In relation to hosting wedding receptions for same sex marriages in buildings owned by religious organisations, we discovered that these organisations would not be protected if they refused to allow the use of their property for this purpose. The JEA highlighted an example they had seen. It suggested that church halls and other buildings owned by religious organisations may not be protected by the Draft Law:

[...] when you read the paper by the Jersey Advisory Conciliation Service on the Discrimination Act.⁴⁵ They do allude to church halls and different premises that if that was turned down for a reception, let us say, after a same-sex marriage celebration, if someone chose to turn that down, on page 7 there is a worked example which says that would be considered as discrimination. So, we are unsure whether faith-based organisations are or are not protected in the law as it is written.⁴⁶

45. The Chair of the JEA, the Reverend Martyn Shea, described why it was important for religious organisations to sometimes turn down requests to use their facilities when they conflict with the religious values of the organisation:

[...] because they are often held in a trust, held in a charitable trust, and there is a clear legal framework to that trust to uphold the Christian faith and to uphold the religious and moral values of that organisation. So, sometimes we do turn down maybe a Halloween party or a new-age healing group. There is a spectrum. One might turn down a band that has derogatory lyrics to what they sing, or we might have to in certain cases turn down a ... I would not want a racist group to speak either in a parish hall or particularly in a faith-based owned hall. Again, there will be a spectrum of opinions here and there will be a spectrum of charitable trusts, but we are asking that those charitable trusts that do have a moral code and a moral framework, that they are able to not be asked to ... or to be able to not let out their premises based on their faith.⁴⁷

46. The Freedom Church Jersey reported that many religious groups in the Island “open up” their facilities for general use, serving the community and also sometimes for hire. It argued that being forced to let their facilities for any purpose could result in the facilities being withdrawn for use. The Freedom Church stated:

Buildings registered for public worship, as well as ancillary buildings owned by the religious organisation, are used for multiple purposes, interacting with and serving the wider community. If there were to be a legal imposition that these buildings are

⁴⁴ [Liberate](#)

⁴⁵ [Jersey Citizens Advice Bureau – Discrimination Law \(not in employment\) – Guide](#)

⁴⁶ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.15

⁴⁷ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.16

*required to be used for any purpose, whether or not they are contrary to the belief and moral viewpoints of the religious organisation, then the result could or would be that these facilities would no longer be made available for use for wider purposes in the community. This would be completely in contrast to our desire to connect with and serve community purposes.*⁴⁸

47. For this reason the Freedom Church argued that, “there should be provision within the Discrimination Law relating to the use of buildings owned by religious organisations, this law should have a conscience clause relating to use of their building(s) beyond marriage solemnization”. The Chair of the JEA agreed, telling us, “that is why we think there potentially needs to be an amendment to the Discrimination Act so that faith-based organisations who do sometimes need to make difficult decisions about who to hire their premises out to, that that would give limited and contained protection”.⁴⁹

Finding 5: There is a risk that buildings owned by, used by, or in trust of, religious organisations may be compelled to act against their religious conviction and be required to permit the solemnisation of same sex marriages and wedding receptions for same sex couples.

Recommendation 3: The Draft Law should be amended to protect buildings owned by, used by, or in trust of, religious organisations who object to same sex marriage on the grounds of their religious conviction and who may be required to permit the solemnisation of same sex marriages and wedding receptions for same sex couples. The Panel has lodged an amendment on this issue.

⁴⁸ [Freedom Church Jersey](#)

⁴⁹ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.16

8. No compulsion to participate in same sex marriages

Quadruple lock

48. There are a number of religions for which same sex marriage is not permissible according to the teachings of those religions. In the case of the Church of England marriage is defined in Canon Law as follows:

The Church of England affirms, according to Our Lord's teaching, that marriage is in its nature a union permanent and life-long, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side [...].⁵⁰

49. The Draft Law introduces a “quadruple lock” to protect religious organisations and officials from having to solemnize same sex marriages. The four elements of the quadruple lock, as set out in the Draft Law are:

- Article 7 clarifies that a clergyman of the Church of England, an authorised religious official or a religious organisation shall not be compelled by any means to consent, certify, be present at, participate in, or solemnise a same sex marriage;
- Article 15(3)(d) requires that the Superintendent Registrar must not issue a marriage schedule unless the religious official named in the schedule consents to solemnising the marriage;
- Article 4 in Schedule 2 (New Article 24A of the Discrimination Law 203) makes provision so that a person does not discriminate if they comply with Article 7(1) of the Draft Law.; and
- Article 23(6 to 10) prohibits a marriage from being solemnised at a location that is the usual place of public religious worship.⁵¹

50. The Chair of the JEA said that he thought the quadruple lock was well drafted:

We are very thankful for that quadruple lock. I think it is, again, well written. It protects members of the clergy or ministers from legal proceedings against them, and we are very thankful for that quadruple lock. It also gives options to opt in or out as well where there is a spectrum of opinion, too. I think that quadruple lock is well written.⁵²

51. The Honorary CEO of Liberate, Vic Tanner Davey, said that the quadruple lock would enable those religious organisations who wanted to solemnize same sex marriage to opt in and those who did not to opt out:

[...] the so-called quadruple lock is to create a law whereby those religious organisations that wish to solemnise same-sex marriages, such as the Quakers, have a means to be able to do so and those religious individuals and organisations that do not wish to do so are protected from doing so. It is our view that religious organisations and religious officials have been protected successfully under the

⁵⁰ [Canons of the Church of England in Jersey](#)

⁵¹ Article 23 (6) provides an absolute exemption for Church of England churches.

⁵² Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.6

*Marriage Law from solemnising same-sex marriages where they cannot in all conscience undertake that service. There is no means available under the Marriage Law or other consequential legislation for a religious organisation or a religious official to be compelled to do something against their beliefs. [...].*⁵³

52. The Dean of Jersey, The Very Reverend Michael Keirle, clarified that clergy of the Church of England and their churches were not able to “opt in” to solemnising same sex marriage because it was prohibited by Canon Law. The Dean said:

*[...] Canon B31 defines marriage in a way that would not allow any Anglican clergy to opt in to conducting marriages of same sex.*⁵⁴

Finding 6: Canon Law, which was approved by the States of Jersey and which governs the Church of England, defines marriage as being between one man and one woman.

Finding 7: The so called quadruple lock enshrined within the Draft Law provides certain protection to clergymen of the Church of England, an authorised religious official or a religious organisation who shall not be compelled by any means to consent, certify, be present at, participate in, or solemnise a same sex marriage.

Tolerance clause

53. The 2015 Annual Social Survey found that 54% of adults in Jersey regarded themselves as having a religion. The majority of these people identified as Christian and roughly half were Catholic or Roman Catholic and the other half were Anglican or Church of England.⁵⁵

54. A significant proportion of the evidence we received expressed concern that the Draft Law did not protect people who had a conscientious objection to same sex marriage on the basis of their religion, but who were not religious officials or clergy. A number of submissions from members of the public made this clear using similar wording in each of their submissions. They stated:

*I would like to submit that I am very much against any proposed changes to the marriage laws. Specifically, because there are no provisions in the proposed changes which would protect private citizens, government employees or businesses who are conscientious objectors to same-sex marriage.*⁵⁶

55. This concern was raised because of several legal and disciplinary cases where peoples’ religious conviction had come into conflict with the law. These cases were summarised by the Jersey Baptist Church which stated:

[...] In chapter 1, section C, paragraph 3, footnote 2, the draft law notes that “over the last few years there have been a number of cases of service providers who disapprove of a customer’s relationship, becoming embroiled in long-running

⁵³ Public hearing with [Liberate Jersey](#), 7 December 2017, p.7

⁵⁴ Public hearing with the [Dean of Jersey](#), 9 January 2018, p.3

⁵⁵ [States of Jersey, Annual Social Survey \(2015\)](#)

⁵⁶ Over 15 written submissions were received which used the same or similar wording. These are available on the Scrutiny website: www.scrutiny.gov.je.

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litigation. This can have a very detrimental effect on all the individuals involved.” In each of these cases these lawsuits were due to a lack of clarity in the law. Had a conscientious objector exemption been in place, there would be no basis for litigation.

Moreover, the evidence suggests that the detrimental effect caused by this litigation has largely been borne by those defending their right to exercise their freedom of conscience. In Oregon, a baker was fined \$135,000 for refusing to bake for a gay wedding. The fine had its intended effect, because the bakery has shut down. And this is not an isolated case. Photographers, florists, caterers, wedding planners, civil servants, and landlords have been fined, fired, and sued for not participating in gay weddings.

In the UK, a Northern Irish baker was fined £500, two English registrars were fired, a teacher in London was demoted, and several Catholic adoption agencies have shut, simply for standing by their religious convictions. Convictions that can't be written off lightly, since they're shared by billions worldwide and are articulated in every major faith tradition—including that of the established church in Jersey. [...].⁵⁷

56. The Chair of the JEA highlighted a specific example where a Christian baker had been asked to bake a cake with satanic symbols on it. He said:

[...] in Colorado there is an example of a cake baker, again, who has been asked to bake one with satanic symbols on it. I mean, which of us would want a Christian baker to bake a cake with satanic upside-down crosses on it? Surely that is offensive to some and there is then this balancing of rights, is it not? Does someone have to be compelled to produce this cake that is against their faith, against their conscience? Are they compelled as an artist to do something or do they have a right to refuse to provide that service in these very limited and unusual cases?⁵⁸

57. With the aim of preventing similar cases occurring in Jersey, submissions from representatives of St. Mark's Church, St. Paul's Church, the Christian Portuguese Mission, the Roman Catholic Church, Jersey Baptist Church, Les Quennevais Evangelical Church, the Town Church, Freedom Church, the Lighthouse Church and the Jersey Evangelical Alliance called for the introduction of a tolerance clause (also referred to as a conscience clause) in the Draft Law.⁵⁹

58. There were three separate but interrelated elements to the tolerance clause that were raised during our review, including:

- protecting freedom of speech and the rights of religious people to express their views;
- establishing the principle of “reasonable accommodation”. This principle would require an accommodation of religious practice to be made by employers and public sector bodies. This concept was highlighted by a number of respondents to our

⁵⁷ [Jersey Baptist Church](#)

⁵⁸ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.11-12

⁵⁹ These submissions are available on the Scrutiny website: www.scrutiny.gov.je.

review. It was originally proposed by Dr James Orr in a paper titled, *Beyond Belief*;⁶⁰ and

- not compelling a person to provide goods or services for or in relation to a same sex marriage event who objects on the grounds of religious conviction.

59. The Chair of the JEA highlighted that:⁶¹

*[...] our aim is [...] to assure that in this process there is a balance of rights so that individuals are not compelled to speak or act in a way that would violate their conscience or their faith. So, our primary aim is for a narrow exclusion to be provided for individuals who would choose not to celebrate, promote or consecrate same-sex marriage. This exclusion is already given to religious officials in this legislation and we would like to see that extended to all good and respectful people of faith.*⁶²

60. The Chair of the JEA was also keen to clarify the JEA's position and highlight what it was not advocating:

In this debate, no Christian group or leader on the Island has called for a number of things which have been reported in the press. No one has stood in the way of the passage of this legislation. No one has advocated for the homophobic bullying of LGBT people. In fact, the JEA would condemn any form of bullying or homophobia particularly against minority groups who in the past have endured such unfair treatment.

We are only asking for a limited conscience clause which means that churches and faith-based organisations would not be forced to hire out their premises for activities not in line with their moral and faith-based ethos. No one has suggested any form of conscience exclusion would allow discrimination against same-sex people in the provision of general services.

*What we are seeking is a narrow provision to allow individuals to be exempt from the celebration, promotion or consecration of same-sex marriages. Our desire is not to discriminate against individuals but to seek reasonable accommodation which assures that people of faith are not compelled to participate in activities or speech that runs contrary to their faith.*⁶³

61. The Dean of Jersey argued that it was the task of legislation to accommodate contested views in society:

[...] it is the task of legislation to accommodate contested loyalties surrounding religion and conscience and not to give public endorsement to one group while silencing another.

In other words, in a democratic liberal society we should ensure that the freedom of speech and expression of one group should not happen at the expense of another

⁶⁰ Dr James Orr, [Beyond Belief: Defending religious liberty through the British Bill of Rights](#), November 2016

⁶¹ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.6

⁶² Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.4

⁶³ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.4-5

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and I touched upon that in my speech in the Assembly and in my written submission to you.

How we do that is a very difficult road to navigate. I honestly do not know a single person with whom I have had a conversation who wants to block this legislation, in any form or shape or prevent individuals from exercising their personal freedoms.

But I think we have to recognise that recent history has clearly shown that when provisions like this kick in, that we are talking about today, it is nearly always the faith voice that is silenced.

Sometimes it is silenced quite brutally and I must say I have deep concerns about that.

I think as I said in my speech that the democratic liberal society that we so value sometimes becomes a parody of that and, as I think I said, it becomes a “like me” liberal society which insists that we all share the same world view or suffer the consequences really.

So when Christians express - just express - a voice that is different and express it from a faith perspective, they often find themselves in hot water. [...].⁶⁴

62. We received evidence that was concerned about the consequences of introducing a conscience clause into the Draft Law. Liberate was keen to avoid the LGBT+ community being seen as “diametrically opposed” to the Christian community. The Honorary CEO of Liberate highlighted the “large intersections and commonalities between the two groups, not least that both are minorities that experience discrimination within society”.⁶⁵ However, with regard to the conscience clause, the Honorary CEO said:

[...] it is a huge job and there are no easy solutions.

It has ramifications that will adversely affect sections of the population who have fought for decades and continue to fight for the basic human right to the same freedoms and opportunities as the rest of us enjoy, including the freedom to walk into a shop or request a service without having a degrading conversation about their sexuality followed by a refusal to serve them based on a personal characteristic that they can do nothing about. Maybe they should grow a thicker skin? Tough, you know, life is like that; we do not always get what we want. Yes, life can be like that quite often for those in a minority in Jersey.

This is not an issue that can be lightly dismissed as common sense. For anyone who has been discriminated against in Jersey because of their sexual orientation the idea that their Government would even countenance a change to the Law to allow people to refuse to serve them legally must be deeply worrying. We have anti-discrimination legislation for very good reasons [...].⁶⁶

63. The Jersey Baptist Church and the Les Quennevais Evangelical Church both highlighted that other Laws had included conscience clauses:

⁶⁴ Public hearing with the [Dean of Jersey](#), 9 January 2018, p.7-8

⁶⁵ Public hearing with [Liberate Jersey](#), 7 December 2017, p.4

⁶⁶ Public hearing with [Liberate Jersey](#), 7 December 2017, p.8

Similar conscience exemptions are already given to doctors with regards to abortion, to pacifists with regards to military service, and to vicars with regards to gay marriage (the proposed changes to the law exempts religious leaders, but not religious people). Despite the protestations expressed in chapter 1, section C, paragraph 3 of the draft law, where it is suggested that “there are complexities with defining the scope” of a conscience clause, I would submit that a number of jurisdictions have managed to draft legislation that defines the scope of a potential conscience clause.

For instance, when same-sex marriage was passed in the Netherlands in 2001, the Dutch government allowed civil marriage registrars with conscientious objections to opt out. Similar protection is available to registrars in a number of state jurisdictions in the United States. Additionally, the legislature of Mississippi in the United States has passed a comprehensive conscience statute with regard to gay marriage.⁶⁷ The Mississippi law has been upheld in the fifth circuit federal appellate court. While these laws have raised the ire of gay advocacy groups there is no evidence that conscience clauses, have prevented same-sex couples from getting married or exercising their new-found rights.⁶⁸

64. The Honorary CEO of Liberate, however, argued that there was a difference between existing conscience clauses and the one proposed for same sex marriage:

I think there are some interesting examples from law in the U.K. (United Kingdom). So the 1967 Abortion Act conscience clause allows medical staff to abstain from abortion procedures for ethical reasons.

However, it is subject to the next subsection, which maintains the duty to participate in treatment that is necessary to save the life or prevent grave permanent injury to the physical or mental health of a pregnant woman. Under the National Service Armed Forces Act in 1939 about 60,000 people were exempted or partially exempted from service in the Armed Forces during World War II if they could demonstrate they were opposed to using warfare as a means of settling international disputes, conscientious objectors were still required to serve of course, often in the most menial and dangerous roles.

There are other clauses in U.K. law that permit, for example, Sikhs to dispense with crash helmets on motorbikes or hard hats on building sites and Jehovah's Witnesses to refuse a blood transfusion. The point about all these conscience clauses is that the exemption for the religious belief is not at the expense of someone else's wellbeing. The problem here is that you are not objecting to marriage as a concept; you are objecting to marriage when it is between 2 people who are gay; a personal characteristic the people concerned can do nothing about.

The action driven by religious belief is then discriminatory because it does harm to someone else. A Jehovah's Witnesses does not refuse a blood transfusion from white people; they refuse a blood transfusion from everyone. A conscientious objector does not object to war between particular countries, they object to all war.

⁶⁷ <http://billstatus.ls.state.ms.us/documents/2016/html/HB/1500-1599/HB1523SG.htm>

⁶⁸ [Jersey Baptist Church](#), [Quennevais Evangelical Church](#)

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*A Catholic doctor does not object to performing abortions for unmarried mothers, they object to performing abortions for all women. That is I think the difference.*⁶⁹

65. The Deputy Chief Minister, Senator Andrew Green, expanded on Liberate's point and said:

*It is quite simple, really. First of all, experience from other jurisdictions tells us the conscience law does not work properly, but the one that is always cited to me is the conscience provision, if you like, for nurses around abortion. They have the right to say that they do not participate in that. The difference is that they select not to participate for belief reasons in abortion. They do not select to say: "I will not participate in an abortion for somebody of a different ethnic background or somebody who is not married." They have been allowed to opt out completely. We know from experience, looking at other jurisdictions, that that works there, but that does not transfer over.*⁷⁰

66. The Deputy Chief Minister, said that his understanding of how the conscience clause works was based on experience from the UK.⁷¹ He continued:

*The problem is that with the conscience clause, as I see it, if it is not constructed properly - and I have not seen any evidence that it could be constructed in the right way - it encourages and allows for discrimination rather than someone opting out for a particular reason. As I say, a nurse can walk out from participating in a particular process completely, but she - or he, because we have male nurses as well - does not select which ones they will do and which ones they will not.*⁷²

67. The Chief Minister, Senator Ian Gorst, said that he did not want to criminalise people on the basis of their faith and did not want to see legal cases which have occurred elsewhere happening in Jersey. However, he recognised the difficulties in implementing an effective conscience clause:

*Finding a remedy in the law ends up being quite difficult and I have read again with interest some of the submissions because I have to say I do not want to criminalise people who have a religious objective or on religious grounds object and see marriage as shown in canon law. But creating a legal framework through the Equal Marriage Law that provides that protection, which is a protection for those religious beliefs and not for discrimination, is a real challenge.*⁷³

68. The Chair of the JEA highlighted the view of Peter Tatchell, an equalities campaigner, who in February 2016, published an article in relation to the Ashers Bakers court case. In this case, the Christian owners of a bakery were taken to court for refusing to bake a cake decorated with the slogan "support gay marriage". The Chair of the JEA said:

We would love to add to that the comments made by famed equalities campaigner Peter Tatchell when the Ashers Bakery case was decided. In a way he changed his view in the papers and he said this: "This judgment opens a can of worms. It means that a Muslim printer could be obliged to publish cartoons of Mohammed and a Jewish printer could be required to publish a book that propagates holocaust

⁶⁹ Public hearing with [Liberate Jersey](#), 7 December 2017, p.11

⁷⁰ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.26-27

⁷¹ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.26-27

⁷² Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.26-27

⁷³ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.29

denial. What the court has decided here sets a dangerous, authoritarian precedent that is open to serious debate.” He goes on to contend for a limited conscience clause.⁷⁴

69. Balancing the rights of people to enjoy a family life with the rights of people to live by their religious conviction is no easy task and one that has been debated in several other jurisdictions. We have listened to all the arguments for and against implementing a so called tolerance or conscience clause. We do not take on this subject lightly and appreciate the concerns of people who have misgivings about its adoption. However, we are concerned about the absence of protections in the law, if a tolerance clause is not adopted, for people who believe they cannot participate in same sex marriage on the basis of their religious conviction. We do not believe it is acceptable to leave this until after the Draft Law has been passed which is why we have lodged an amendment on this issue.

70. We also received evidence on the concept of reasonable accommodation in the workplace. We have not addressed this concept in our amendment as it is not within the scope of the Draft Law. We believe that this concept has merit and should be explored once the Draft Law has been agreed.

Finding 8: People who provide goods and services in respect to marriages and wedding ceremonies will be required to comply with all aspects of this law, even if it goes against their firmly held religious belief or conviction in respect to same sex marriage.

Recommendation 4: The law should be amended so that a person who, on the basis of their firmly held religious belief or conviction, objects to same sex marriage cannot be compelled to provide goods or services in relation to a same sex marriage or any social event or function associated with a marriage. The Panel has lodged an amendment on this issue.

Finding 9: There is a risk that employees may be compelled to undertake work in relation to same sex marriage or wedding receptions, even if this goes against their firmly held religious belief or conviction.

Recommendation 5: We did not address the concept of reasonable accommodation in the workplace because it was not within the scope of the Draft Law. However, this is an important issue and the Chief Minister should, in response to this report, set out what work he will undertake to address it.

⁷⁴ Public hearing with the Jersey Evangelical Alliance, 7 December 2017, p.4; Peter Tatchell, [I've changed my mind on the gay cake row. Here's why](#), Guardian, 1 February 2016

9. Use of religious content in civil ceremonies

71. The Draft Law will allow for the use of some content in civil marriage ceremonies that are also used in religious marriage ceremonies. Couples entering into a civil marriage will not be allowed to include any religious ritual or symbol, prayers or any religious worship or service during the marriage ceremony. They will, however, be allowed to use hymns, songs or chants, readings from the Bible or other holy books, vows or statements of commitment that contain references of a religious nature provided they do not replicate a religious marriage ceremony. Couples will also be able to use candles, lights, incense, ribbons and other decorations. These provisions are contained within Article 17 of the Draft Law.

72. The Director of Social Policy in the Chief Minister's Department, Ruth Johnson, explained that the change proposed in the Draft Law was to correct an error in the 2001 Law. Restrictions on the use of religious content in the 2001 Law had been, "crudely reflected as a complete ban and a complete restriction on religious content, rather than what the States decided they wanted to happen at that particular time".⁷⁵ Ms Johnson continued:

[...] Being aware of that and having listened to that, we then had conversations with the then Superintendent Registrar, who was very clear that from her feedback from couples and her feedback from her delegates that the restriction on all religious content, many couples were very unhappy about it. The issue about religious content, because it is such a broad definition, it covers things like ribbon-tying ceremonies, candle-lighting ceremonies, it covers hymns, and for many people hymns are not about an act of faith, they are about an act of identity. The feedback was that people were very unhappy about that. [...].⁷⁶

73. The Superintendent Registrar described the types of requests she received from couples planning for civil marriage ceremonies:

I receive customer feedback from our couples, is that they would like to have a spiritual element to their marriage. [...]. There are regular requests for hymns and songs of a religious nature that may have a personal significance to them and, potentially, using readings; we have very few requests for religious readings but it is mostly in the song choice, I would say. There are sometimes requests for traditional hand-fasting ceremonies where there are ribbons tied around wrists, which is quite an ancient marriage ritual. I know that, at the moment, is not permitted under the law. The law will allow some element of spirituality but, very importantly, my overriding principle with that provision in the law is that it should not in any way mimic a religious marriage, so allowing some element of spirituality or religious content to give expression to people's personal religious beliefs but not in any way mimicking a religious service.⁷⁷

74. Liberate said that it welcomed the use of religious content in civil marriage ceremonies. It stated:

[...] we welcome the inclusion by the Marriage Law of the ability for civil celebrants to incorporate hymns, chants, Bible readings, candles, ribbons etc into their

⁷⁵ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.22

⁷⁶ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.22

⁷⁷ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.32

ceremony providing that, in so doing, it does not replicate an act of religious worship, which is, quite rightly, to remain the province of religious organisations and officials (Article 17 (9)).⁷⁸

75. The Honorary CEO of Liberate expanded upon Liberate's written response and argued that it could help to expose more people to religion:

I think what weddings provide as well for a lot of people is one of the very few opportunities to attend a church within what is quite a secular life and I think anything that opens up the idea of having slightly religious content within a civil ceremony could, potentially, then, therefore, open it up for people investigating religion a little bit more.⁷⁹

76. Liberate Board Member and Superintendent of the Jersey Methodist Circuit, Reverend Graeme Halls, said that he understood the anxiety some had about using religious content in civil weddings. In his view, some religious content was also cultural which justified allowing religious content in civil marriage ceremonies:

What is interesting is if I could go to a different aspect of my work in terms of funerals, there are civil celebrants here conducting funerals. I would say to that a bit early, crematorium and they have just finished saying the Lord's Prayer and they are singing All Things Bright and Beautiful. Clearly, the family have asked: "We do not want a religious service but we do want the Lord's Prayer and we do want All Things Bright and Beautiful." I think there is a muddle in that sense in that world. I know there is some anxiety in the church about civil celebrants being able to conduct what looks like a religious ... even if they do not have the formal religious version of perfecting it, for rich or for poor, in sickness and health, if those are not included because that is what I think you were talking about earlier, would make no difference at all. But if those words are sandwiched by two hymns or something, what does it look like? I know there is some anxiety about that but I think that a lot of this stuff is religious but it is also cultural. How do you draw distinctions? It has always seemed to be a bit mad that you cannot have some sort of religious music before a civil ceremony.⁸⁰

77. The Director of Social Policy in the Chief Minister's Department reported feedback she had received from religious groups at a consultation meeting in September 2016:

[...] I discussed this with the religious organisations. While there was some concern expressed by some of the organisations, the overriding view and the overriding feedback from that meeting was that they were happy for religious content, providing it did not fall into being a replication of a religious service or religious rites. I then worked with the previous Dean to develop the law drafting instructions, which he was cited on throughout the whole of the process and was supportive of the ability under the law to allow certain forms of religious content.⁸¹

78. Despite, this, we received a number of submissions from religious groups which expressed concern about the use of religious content in civil marriage ceremonies.

⁷⁸ [Liberate](#)

⁷⁹ Public hearing with [Liberate Jersey](#), 7 December 2017, p.28

⁸⁰ Public hearing with [Liberate Jersey](#), 7 December 2017, p.26-27

⁸¹ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.22-23

79. The Dean of Jersey argued that civil marriage ceremonies should remain civil and should not include material that is specifically of a Christian nature. In his written submission, he questioned whether a civil celebrant or Registrar is able to define or decide what is, or is not, religious worship:

We believe that paragraphs (8) and (9) [of the Draft Law] are contradictory and lack clarity. A hymn, by its very definition, is an act of worship, as is a reading from the Bible. How can a civil celebrant or Registrar define or decide what is, or is not, worship? Surely, this is outside of their gift and remit? This to our minds is conflicting in and of itself, in that it is a non-religious celebrant who makes the decision as to what is religious and gives such a broad latitude to the celebrant conducting the ceremony, that it allows almost anything and simply becomes a quasi-religious ceremony! It is our clear view that civil ceremonies should remain civil and should not include material that is specifically of a Christian nature, namely hymns and Bible readings. This is dressing up a ceremony to be what it is not.⁸²

80. The Chair of the JEA shared an example of how things are done in the UK:

[...] It is slightly clearer in the way that is handled in the U.K. Having been recently to a civil wedding of a wonderful member of our family, I was quite surprised as a clergyman, because I had been asked to pray at it, that the civil registrar said: "I would have to leave the building before you are involved." Sometimes I think that clarity and that clear difference between a civil celebration and a religious celebration, I think that clarity could ... certainly is handled more clearly in the U.K. than is presented here in this legislation.⁸³

81. The Roman Catholic Dean said that the distinction made in the UK was correct. He recognised that making decisions on this matter were difficult and questioned whether it was possible to determine in law:

[...] in England it was - it might be changing - very clear that a civil wedding had no religious content and I felt that was correct. [...].

When is a pop song a pop song and not a religious song? Very difficult. I had this dispute already with some of the brides and you are saying: "Is that really appropriate?" "Yes, but you should print a couple of words" and they play it to me and I think it is very difficult. I am not saying those things are easy but I do not know whether the law can lay that down.⁸⁴

82. In response to concerns about the use of religious content in civil marriage ceremonies and how the Draft Law would determine what is and is not allowed, the Superintendent Registrar informed us that the Law was very prescriptive:

I think it provides the ability to have religious content, which I welcome and I think it is very prescriptive. It very clearly says you can have hymns, [...], you can have hymns, you can have Bible readings but you cannot have prayers or indeed any religious ritual that mimics or recreates any of the rites of any religious organisation.

⁸² [The Dean of Jersey](#)

⁸³ Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.17

⁸⁴ Public hearing with the [Roman Catholic Dean](#), 18 December 2017, p20-23

*You can have candles, you can have ribbons, so it allows the expansion of the service to include spiritualising or religion but without copying or recreating. It maintains each church wedding to be a church wedding and a civil wedding to be a civil wedding.*⁸⁵

83. When asked about who will determine what religious content should or should not be allowed, the Superintendent Registrar said:

*When I am writing my guidelines for my staff and the celebrants and the Assistant Deputy Superintendent Registrars, that is something that I will be giving a great deal of care and attention to, with the policy director and with the law officers as well, to ensure that there is a very prescribed understanding of what is and is not permitted, so that there is consistency for the general public, that there will not be an occasion where one couple are permitted one thing and another couple are not permitted ...*⁸⁶

84. The Superintendent Registrar said that she would arbitrate on religious content in the first instance but she recognised that this was a sensitive topic. She conceded that she would be happy to “take advice from any stakeholder on this subject” including, for example, the Dean of Jersey.⁸⁷

85. The Director of Social Policy at the Chief Minister’s Department explained to us how the process would work in practise and that a scheme would be set out in a subsequent Ministerial Order once the Draft Law had been agreed. She explained:

*One of the things that will be required of every civil celebrant solemnising marriage in Jersey is they must agree in writing with the couple the form of the ceremony that they are going to be presiding over and the content of that ceremony that is going to be presided over. If the couple want a particular reading, if the couple want a particular song, that needs to be agreed in writing with the civil celebrant. The civil celebrant, under the guidance to be brought forward and as a requirement of their continuation as a civil celebrant in Jersey, if they have any doubts or any concerns at all, they must seek advice from the Superintendent Registrar. If the Superintendent Registrar has any doubt at all, the Superintendent Registrar will seek advice from the appropriate religious authority.*⁸⁸

86. We understand the policy rationale for allowing greater use of some content in civil marriage ceremonies which are also used in religious marriage ceremonies. However, we are concerned that the Draft Law has attempted to define religious content without consulting adequately the appropriate religious representatives on the Island. Still more, the Draft Law will allow civil celebrants to make these decisions in practice. It is not our place to define religious content, which is why we have lodged an amendment to ensure that appropriate religious organisations play a role in this decision.

Finding 10: In the law as drafted civil celebrants will determine what does, and what does not, constitute religious content in relation to a civil marriage ceremony.

⁸⁵ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.32

⁸⁶ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.32

⁸⁷ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.34-36

⁸⁸ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.24

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Recommendation 6: The Draft Law should be amended to require the Superintendent Registrar to consult with the Island's main religious organisations on what religious content must or must not be permitted in a civil marriage ceremony. The Superintendent Registrar should then issue detailed guidance on this topic for the avoidance of doubt. The Panel has lodged an amendment to this affect.

10. Issues outstanding

87. During our review, we undertook detailed line-by-line scrutiny of the Draft Law. As part of our work we found some inaccuracies, typographical errors and spelling mistakes. These have been included in the amendments we have tabled. In light of these errors, we asked the Chief Minister if he thought the Draft Law had been rushed. The Chief Minister, underlined the amount of work his officials had put into preparing the Draft Law but agreed that it had been “rushed and challenging”.⁸⁹

88. The Draft Law amends 31 additional pieces of legislation. These appear to range in scope considerably. Some are minor, including for example, the Agricultural (Loans) (Jersey) Regulations 1974 where the terms “husband and wife” are substituted for the words “spouses”. Some appear to be more substantive, including for example, the Matrimonial Causes (Jersey) Law 1949 which among other things clarifies the definition of adultery as between two people of the opposite sex. Given the timeframe for conducting this review, we have not been able to assess the amendments to these 31 additional pieces of legislation. When we asked the Chief Minister about the implication of this, he responded:

*I am expecting that Law Officers will be present in the States Assembly. I expect that any Member that has an issue with the subsequent legal changes would invite the Law Officers to address them. This is a normal process when you are making a change to legislation; you have consequential amendments. Because this is, in legal terms, a fundamental change, then it is going to have these consequential legal amendments, which are extremely technical and it is right that one is advised by lawyers in that regard. I think that it would not be appropriate on the grounds outlined to withdraw it, because there will be legal advice available to Members when they are making the decision.*⁹⁰

89. We were keen to ensure that the Draft Law implemented the decisions made by the States Assembly. This includes, for example, reforming Jersey’s divorce legislation or the Civil Partnership (Jersey) Law 2012. The report accompanying the Draft Law indicated that this work will be done in due course once the Draft Law is agreed. This situation, however, leaves several anomalies and inconsistencies between the Draft Law and the other Laws.⁹¹ When we raised this issue with the Chief Minister he said:

In an ideal world, I agree with you. That is why I have set off and I have very clearly put into the in-principle decision that divorce reform would be included, because I felt it was an important change as well. But you will appreciate from the legislative scrutiny that you are doing and the conversations that we are having across the table that these are very challenging technical legal areas. It became apparent to me that opening up again another Pandora’s box of divorce reform would just have pushed this even further into the long grass and would have required more and further consultation because there was not even a minute on what we should do in regard to divorce reform. I am sorry that we are here and we do not have those proposals before you. The point you are making I absolutely accept. But I do not

⁸⁹ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.11

⁹⁰ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.7-8

⁹¹ [N. Sawyer](#)

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think it is grounds for us not continuing with this piece of legislation, because other jurisdictions - and this is never a defence, of course - have just changed their legislation in this regard and decoupled it from divorce reform, but they have left in the very issues that you have just been raising with us.⁹²

Finding 11: Introducing the Draft Law, as lodged, will create a situation where there will be discrimination between same sex couples and heterosexual couples. The examples identified by the Panel include: heterosexual couples will not be able to enter into civil partnerships and same sex couples may not be able to seek a divorce on the grounds of adultery.

90. The States Assembly agreed to retain terms such as “husband and wife” and “mother and father”. However, many of the consequential amendments change these terms into “spouses” and “parents”. The Director of Social Policy in the Chief Minister’s Department reported that this was done for technical legal reasons and highlighted that these terms already appeared in other Laws.⁹³ She highlighted that they intended to provide flexibility on how people were referred to in public facing documents. The Director of Social Policy explained:

Flowing from this law are significant changes to virtually every form used by the Superintendent Registrar’s process about the whole of booking marriages and registering marriage. Every single one of those forms we are providing couples with the facility to adapt those forms so that if 2 men are getting married they can use “husband and husband” or they can choose to use the term “spouse.” Similarly, we will make sure that birth certificate forms will be able to be changed as well so they can refer to a “mother and a mother” and a “father and a father” or a “parent and a parent.” We are ensuring that in all documents which the public interface with, the public have absolute choice of the terms that they wish to use to describe themselves and their relationship to their spouse.⁹⁴

91. The Draft Law is a very long and complex piece of legislation. The Chief Minister has agreed that the Draft Law has been rushed. During our review we have taken evidence from a range of stakeholders and, based on this information, sought to identify, understand and correct as many deficiencies as we can in the time available. While we have found several errors, we cannot guarantee that the Draft Law does not contain any more errors.

Finding 12: After lodging the Draft Law, two weeks before it was due to be debated, the Chief Minister lodged 24 separate amendments to the Draft Law. The majority of these amendments were correcting inaccuracies, typographical errors and spelling mistakes.

Finding 13: The Draft Law is a long and complex piece of legislation. In addition to substantially re-writing the 2001 Law, it will make 31 consequential amendments to other pieces of legislation. There has not been sufficient time to consider the implications of all of these consequential amendments.

⁹² Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.34

⁹³ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.38

⁹⁴ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.37

Recommendation 7: The Chief Minister should report back to the States Assembly before the Appointed Day Act for the Draft Law and confirm that there are no outstanding inaccuracies, typographical errors and spelling mistakes in the Draft Law. If there are outstanding issues, the Chief Minister should bring forward amendments to correct such matters.

Consultation

92. During the course of our review, we were interested to understand how much the Chief Minister and his officials engaged with key stakeholders throughout the process building up to and after lodging the Draft Law.

93. The Chief Minister reported that, prior to lodging the Draft Law, he or his officials had met with the Comité des Connétables, delegates of the Superintendent Registrar, and a range of religious organisations.⁹⁵ The Chief Minister also said that they had met with the Humanist Association, LGBT+ groups and States of Jersey departments.⁹⁶ The Chief Minister said, however, that:

There was a lot of consultation and public consultation prior to the in-principle decision and then all of that detailed conversation that I have just spoken about was between the in-principle decision and the final lodging of the draft law. I think what you are trying to drive at is did we consult on the draft law in its final form. The answer is we did a lot of work leading up to it, but we did not have the draft law in our hands to consult on directly.⁹⁷

Finding 14: Whilst consulting during the early stages and on the law drafting instructions, the Chief Minister and his staff did not directly consult on the Draft Law with all key stakeholders.

94. The Superintendent Registrar reported that, over the past 11 months when she began in post, the Draft Law had been “constantly” on her desk. She said on what basis she had been consulted:

So, this year, when I began, the law was just about to be drafted. So, there has been a small amount of consultation with me in relation to the process of marriage, to ensure that the law allows me to administer marriage in a manner which is streamlined and improved. In particular, the input I have had is moving to more digital online applications to help reduce staff costs and the time that is spent in duplication of work. That, I would say, is the primary input that I have had. Because,

⁹⁵ The religious organisations quoted by the Chief Minister include: the Anglican Dean of Jersey, representatives of the Baptist Church, the Pentecostal Church, the Freedom Church, the Jehovah’s Witnesses, the Catholic Church, the Independent Evangelical Church, the Methodist Church, the Church of Scotland, the United Reform Church, the Salvation Army, representatives of the Quaker community and the Jewish community.

⁹⁶ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.3

⁹⁷ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.3

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*as I said, the policy document had already been produced before my tenure began. So, it is more of a practical input.*⁹⁸

95. The Chairman and the Secretary of the Comité des Connétables reported that they had received two presentations from the Superintendent Registrar on the Draft Law in March 2016, December 2016 and then two more in September and October 2017. The Chairman informed us that the Comité got more involved with the Draft Law when they understood the implications for the parish registrars.⁹⁹ The Chairman felt that the Comité des Connétables had been “briefed very well” and that he had “no complaints”.¹⁰⁰

96. The Honorary CEO of Liberate said that his organisation had had roughly four meetings in relation to the Draft Law over the course of two years:

[...] I think our journey started by us responding to the public consultation process. That is, I think, where we got on board with it. I do not think we had an invitation from the Chief Minister’s to specifically get involved. I think we got involved because we saw it out there and we responded. From that point onwards we have been kept in the loop as much as, I guess, anybody who has been on board from that point.

*[...] I think meetings we have probably had 4 in total over the course of 2 years at key points where something has been about to happen. It may be the draft is about to be released or something like that. So, yes, maybe about 4 meetings, I think. I have had a few email conversations back and forth with Ruth Johnson where I have said: “Have you thought about this?” and she has come back with: “Yes, we have thought about it” mostly. [...].*¹⁰¹

97. The Chair of the JEA said that while the Dean of Jersey had been consulted on behalf of the Church of England, his organisation had only got involved once the Draft Law was published. He felt there had not been enough consultation:

*So we feel that, one, there are quite a lot of errors in the legislation when we started to look at it and that the process to some degree feels relatively rushed and maybe there has been a slight lack of consultation with major parties for whom this is going to impact. Therefore, I think our suggestion would be that we could do with taking a bit more time over this to get this right for all the faith-based groups and for all groups here in Jersey, particularly over this area of reasonable accommodation and mutual respect and possibly an amendment to the Discrimination Act.*¹⁰²

98. The Roman Catholic Dean said that he had not been consulted on the Draft Law:

None at all. [...] No. Bob [the former Dean of Jersey] and I have talked about it, we have discussed it with Graeme Halls and others, we do not always agree with each other on this; Bob and I used to. Yes, and among our own clergy and people, have discussed it at times. No, otherwise nothing official. [...] . Yes, we had that meeting with Ian Gorst, I remember up in his office, it must be 2 years ago and he said: “It is going to take a long time to implement this, this has a lot of complications. You

⁹⁸ Public hearing with the [Superintendent Registrar](#), 6 December 2017, p.39

⁹⁹ Public hearing with the [Comité des Connétables](#), 6 December 2017, p.22

¹⁰⁰ Public hearing with the [Comité des Connétables](#), 6 December 2017, p.23

¹⁰¹ Public hearing with [Liberate Jersey](#), 7 December 2017, p.34-35

¹⁰² Public hearing with the [Jersey Evangelical Alliance](#), 7 December 2017, p.19

cannot just change it because there is all sorts of other issues connected with the law.” We said: “Okay” and we knew that process was going to be taking place. But until the other day and until your invitation, no.¹⁰³

99. In response to concerns from some religious organisations, including the Roman Catholic Dean, that they had not been sufficiently consulted, the Chief Minister and the Director of Social Policy maintained that they had either invited, or had meetings with, the Catholic Dean or one of his representatives.¹⁰⁴ We note, however, that the Chief Minister had not consulted any stakeholder on the Draft Law.

Finding 15: We are concerned that not all key stakeholders have had adequate opportunity to review and comment on the Draft Law prior to lodging.

Recommendation 8: In response to this report, the Council of Ministers should commit publically to ensuring that all key stakeholders have the opportunity to review and comment on a proposed final version of a law prior to lodging.

Recommendation 9: The rules governing the process for legislative scrutiny should be reformed so that draft laws are subject to legislative scrutiny and that sufficient time is allowed for the process to be completed.

¹⁰³ Public hearing with the [Roman Catholic Dean](#), 18 December 2017, p24-25

¹⁰⁴ Public hearing with the [Chief Minister and Deputy Chief Minister](#), 9 January 2018, p.13-14

Appendix

Panel Membership

Deputy John Le Fondré (Chairman)

Deputy Simon Brée (Vice Chairman)

Deputy Kevin Lewis

Senator Sarah Ferguson

Terms of Reference

1. To conduct detailed legislative scrutiny of the Draft Marriage and Civil Status (Amendment No.4) (Jersey) Law to ensure the accuracy and adequacy of the Draft law. This will include:
 - Examining whether the proposed changes to the Marriage and Civil Status Law as set out in the Draft law implement the decisions of the States Assembly in approving the introduction of same-sex marriage and open-air marriages;
 - Examining the protections afforded to religious organisations and officials under the “quadruple lock” (as defined in the Draft law);
 - Examining the other proposed changes to the marriage and registration process, including;
 - The ability for the States to increase the age of marriage by Regulations in the future;
 - The amended appointment process and responsibilities of the Superintendent Registrar and parish registrars;
 - The introduction of civil celebrants to replace delegates of the Superintendent Registrar;
 - The conversion of civil partnerships to a marriage;
 - New safeguards against forced and sham marriage.
2. To examine the consequential changes to other legislation, including the Discrimination (Jersey) Law 2013.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Panel’s website: www.scrutiny.gov.je.

Wednesday 6 December 2017

C. Follain, Superintendent Registrar, Office of the Superintendent Registrar; **T. Walker**, Chief Officer, Community and Constitutional Affairs

Connétable L. Norman, Chairman, Comité des Connétables; **S. De Gruchy**, Secretary, Comité des Connétables

Thursday 7 December 2017

The Reverend M. Shea, Chair, Jersey Evangelical Alliance; **Reverend D. Waller**, Pastor, Jersey Baptist Church; **Reverend Canon P. Brooks**, Vicar, St. Paul's Church and Vice Dean of Jersey

V. Tanner Davy, Honorary C.E.O, Liberate Jersey; **Reverend G. Halls**, Board Member, Liberate Jersey and Superintendent of the Jersey Methodist Circuit

Monday 18 December 2017

Monsignor N. France, Catholic Dean of Jersey

Tuesday 9 January 2018

Senator I. Gorst, Chief Minister; **Senator A. Green M.B.E.**, Deputy Chief Minister

The Very Reverend Mike Keirle, Dean of Jersey

Published written evidence

The following written evidence was received and can be viewed on the Panel's website: www.scrutiny.gov.je.

N. Sawyer

N. Ferraby

R. Mari

St Paul's Church

Tern Events

Town Church

Christian Legal Centre

Anonymous 1

Anonymous 2

Anonymous 3 (not published)

Anonymous 4

Anonymous 5

Marriage and Civil Status (Jersey) Law

Freedom Church

Ecclesiastical Court

Methodist Church

Catholic Church

St Mark's Church Jersey

Jersey Evangelical Alliance

P. Willis

P. Slatter

Rev'd H and E Le Ruez

P. Le Cheminant

Superintendent Registrar

S. Taylor

T. Charlton

T. Medeiros

Quennevais Evangelical Church

Dean of Jersey

Comite des Connetables

Christian Portuguese Mission

E. Waller

D. Roszczenko

D. Cross

B. Whitchurch

B. Miles

G. Ryan

G. Medeiros

H. Morton

H. Quinn

J. Gordon

Jersey Baptist Church

Jewish Congregation

Lighthouse Church

L. Daniel

L. Sousa

M. Green

M. Vieira

R. Le Breton

Channel Islands Humanists

Liberate

Amendments lodged by the Corporate Services Scrutiny Panel

1. Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment. ([http://www.statesassembly.gov.je/assemblypropositions/2017/p.91-2017amd\(2\).pdf](http://www.statesassembly.gov.je/assemblypropositions/2017/p.91-2017amd(2).pdf))
2. Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) – amendment ([http://www.statesassembly.gov.je/assemblypropositions/2017/p.91-2017amd\(2\)amd.pdf](http://www.statesassembly.gov.je/assemblypropositions/2017/p.91-2017amd(2)amd.pdf))
3. Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (P.91/2017): second amendment (P.91/2017 Amd.(2)) – second amendment ([http://www.statesassembly.gov.je/assemblypropositions/2017/p.91-2017amd\(2\)amd\(2\).pdf](http://www.statesassembly.gov.je/assemblypropositions/2017/p.91-2017amd(2)amd(2).pdf))