

STATES OF JERSEY



DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 2) (JERSEY) LAW 200- (P.61/2008): AMENDMENTS

**Lodged au Greffe on 19th May 2008
by the Deputy of St. Martin**

STATES GREFFE

DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 2) (JERSEY)
LAW 200- (P.61/2008): AMENDMENTS

1 PAGE 9, ARTICLE 3 –

In the inserted Article 59A, for paragraph (1) substitute the following paragraph –

“(1) The father and mother of a child may, on registering or re-registering their child’s birth, pursuant to Article 51, 52, 55, 56, 57, or 58, choose the name to be registered as the child’s surname.”

2 PAGE 10, ARTICLE 3 –

In the inserted Article 59A, in paragraph (4)(a) for the words “the father’s surname” substitute the words “subject to paragraph (6), a surname that consists of the father’s surname and the mother’s current surname, in their alphabetical order”.

3 PAGE 10, ARTICLE 3 –

In the inserted Article 59A, in paragraph (4)(b) for the words “the mother’s maiden surname” substitute the words “the mother’s current surname”.

4 PAGE 10, ARTICLE 3 –

In the inserted Article 59A, in paragraph (5) for all of the words following the words “the surname of a child” substitute the words “who is not of full age and whose birth was first registered before this Article came into force”.

5 PAGE 10, ARTICLE 3 –

In the inserted Article 59A, after paragraph (5) add the following paragraph –

“(6) Where either the father’s or the mother’s surname is double-barrelled or otherwise consists of more than one word, only the second or, as the case may be, the last, of those words shall be used for the purposes of paragraph (4)(a).”.

6 PAGE 10, ARTICLE 3 –

In the inserted Article 59A, at the end of the Article add the following paragraph –

“(*) For the purposes of this Article, a mother’s current surname is whichever of her maiden name, a surname acquired by her by marriage, or a surname acquired by her by deed poll, is the name by which she is known.”.

7 PAGE 11, ARTICLE 4 –

In paragraph 1 of the inserted Schedule 2A, for all of the words following “in the case of a child” substitute the words “who is not of full age and whose birth was first registered before this Article came into force”

8 PAGE 11, ARTICLE 4 –

In paragraph 2 of the inserted Schedule 2A, for sub-paragraph (1) substitute the following sub-paragraph –

- (1) The registrar shall, upon payment of the prescribed fee, re-register the child’s birth, so as to record the name chosen as the surname for the child by both the father and mother, where the choice of the father and mother of a child is evidenced by –
 - (a) their joint request for re-registration; or
 - (b) where only one of them re-registers the birth –
 - (i) the request of the person registering the birth, and
 - (ii) the production of a declaration made by the other of them stating his or her choice.”.

9 PAGE 11, ARTICLE 4 –

In paragraph 2 of the inserted Schedule 2A, after sub-paragraph (3) add the following sub-paragraphs –

- “(4) When re-registering the surname of a child under this paragraph, the father and mother may also re-register the child’s forenames.
- (5) The choice of forenames of the father and mother shall be evidenced in accordance with sub-paragraph (1)(b).”

10 PAGE 11, ARTICLE 4 –

In paragraph 2 of the inserted Schedule 2A, at the end of the paragraph there shall be added the following sub-paragraph –

- “(*) Where either the father or mother of the child is deceased –
 - (a) any reference in this paragraph (apart from sub-paragraph (3)) to the father and mother shall be construed as a reference to the survivor of them; and
 - (b) the evidence required for the purposes of sub-paragraph (1)(b) shall be the request of the survivor of them for re-registration.”

REPORT

The Minister for Home Affairs has proposed an amendment to the Marriage and Civil Status (Jersey) Law 2001 that allows married and unmarried parents to select between three options for the surname of their child. The three options are the maiden surname of the mother, the surname of the father or a combination of the two. The amendment also allows parents to jointly re-register any child registered after 1st May 2002 with one of the three options.

I believe that six further changes to the Minister's amendment are necessary to remove unfairness and inequality. The first amendment gives parents a free choice of surname. The second amendment deals with what happens where the married parents of a child do not agree on the child's surname, i.e. the default position. The third amendment deals with the situation where unmarried parents cannot agree on a surname. The fourth amendment deals with the extent of the retrospective effect of the changes. The fifth amendment deals with the position where one of the parents has deceased between the birth of the child and the date of re-registration. The sixth amendment allows for consequential amendments to the child's forenames.

Relevant International Conventions and Recommendations

In proposing these amendments I have taken into particular consideration two international provisions. The first is the Council of Europe Recommendation No. 1271 (1995) on Discrimination Between Men and Women in the Choice of a Surname and in the Passing on of Parent's Surnames to Children. The Council of Europe is the body that passed the European Convention on Human Rights. While the Recommendation is not legally binding, it is certainly something that the States should take into consideration in passing new legislation.

The Recommendation states:

1. 1. *The Assembly recalls that a name is an element which determines the identity of individuals and that, for this reason, the choice of name is a matter of considerable importance. Continued discrimination between men and woman in this area is therefore unacceptable.*
2. 2. *Many countries have introduced legislative reforms in recent decades with the aim of gradually achieving equality between the sexes in respect of the legal system governing surnames. Other countries have, however, retained the traditional legal systems based on criteria which are often double discriminatory, discriminatory between mother and father and discriminatory in terms of whether the child is born in or out of wedlock. Accordingly, a determined effort needs to be made to ensure that the legislation of all council of Europe member states is quickly brought into line with the major principles of equality.*

Also relevant is the United Nations Convention on the Rights of the Child. While Jersey is one of the few countries in the world not to have signed up to the Convention, it is of course important that the States should try as far as possible to ensure that the provisions of the Convention are complied with.

Article 2 of the Convention states:

1. 1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
2. 2. *States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members.*

Article 7 of the Convention deals with registration at birth and the right to a name:

1. *1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
2. *2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Read together, Articles 2 and 7 of the Convention mean that there must be no discrimination in the registration of a name at birth and in particular no discrimination on the basis of sex or birth.

In light of the above Recommendation and Convention it is important that in changing the law on registration, as far as possible all discrimination between men and women and between married and unmarried parents should be removed.

First Amendment (1 and 8)

Under the Minister's amendment a child can only be given a mother's maiden name, a father's surname or a combination of those two names. In my view the amendment is too restrictive and should be changed to allow the parents of a child to jointly choose any surname. I have been informed by Senator Ozouf that a completely free choice of surname was what he as President of the Etat Civil Committee intended to implement when the Marriage and Civil Status (Jersey) Law 2001 was passed.

It is important to note that both parents must agree on the surname. If they do not agree (or if there is no father recorded on the register) the default position described below applies. My reasons for believing that there should be a free choice of name are set out below.

- (i) Parents are already free to change their child's name by deed poll if they so desire. It is inconsistent to allow parents a free choice when they change a child's surname by deed poll, but not to allow a free choice at the time of registration.
- (ii) The fact that a woman cannot register her child with her actual surname rather than her maiden surname is wrong. A woman is entitled to retain her married surname upon divorce or becoming a widow. That name is her name as much as her former husband's and the woman should be permitted to pass that surname onto any child she may subsequently have. A particular reason for doing this could be that a woman wishes all of her children to have the same surname. Furthermore, a woman may change her surname by deed poll. Again, there is no reason why that name should not be passed to her children.
- (iii) Other cultures have different naming traditions. For example, in Iceland a child will generally take the father's forename with a different suffix for a boy or girl. Thus the son of Magnus will take the surname Magnusson. There is no reason why people living in Jersey from different cultural traditions should not be able to follow those traditions, especially where their stay in Jersey is only temporary.
- (iv) Ultimately, parents are the best judges of what is in the best interests of their own children. If they feel that a surname other than that of the biological parents is in the best interests of the child then they should be free to choose that name.
- (v) Parents in the UK have been free since at least 1953 to choose any surname for their child. The Minister has not presented any evidence to suggest that there has been any problem with the law in the UK or that parents act inappropriately or cause embarrassment to their children or others.
- (vi) If Jersey adopts a more restrictive approach than other countries, parents moving to Jersey may find that children born in Jersey are registered with different surnames than children in the same family born outside Jersey. It is obviously in

the interests of children that as far as possible children born of the same parents should be registered with the same surname.

Second Amendment (2, 5 and 6)

The second amendment relates to the position where married parents cannot agree upon a surname for their child. Under the Minister's proposal where the parents are married, but cannot agree on a surname, the default position is that the child will take the father's surname. In other words, a married father has a veto on what the child's surname will be.

I believe that giving a married father a veto is inherently wrong. It is demeaning for the woman for her choice of surname to be given less value than the man's. As far as possible, married parents should be put in an equal position. If they cannot agree (which is only likely to happen where the parents have different surnames) the child should take a combination of both surnames in alphabetical order. The mother's surname will be the surname by which she is currently known. If one or both parents have a double-barrelled name, the child should take the final surname from each. Thus, the child of Helen Smith-Brown and John Vine will take the surname Brown-Vine.

While it will not be possible to change the child's surname on the register at a later date, it will be possible if the parents agree or by order of the Court for the child's surname to be changed by deed poll.

Third Amendment (3 and 6)

Under the Minister's proposal, where the parents are unmarried and cannot agree on a surname the child takes the mother's maiden name. While this involves an element of prejudice against an unmarried father, it reflects the factual reality that unless a mother has agreed to share responsibility for the child with the father prior to registration (in which case there is unlikely to be a dispute over the child's surname) it is unlikely that the father will be able to acquire by Court order any rights in relation to the child prior to registration. As a result, while the treatment of the unmarried father is unfair I cannot see a practical alternative at the current time.

However, what is not acceptable is the Minister's suggestion that the child should take the maiden surname of the mother rather than the surname by which she is currently known. A woman who is widowed or divorced will often retain her married surname. There is no obligation on a divorced or widowed woman to revert to her maiden surname. Indeed, a woman will often choose to retain her married surname because she has children who share that name. Furthermore, a woman may change her surname by deed poll for a multitude of reasons. Not to allow a woman to pass her actual surname to her child is demeaning to the woman and will result in the ridiculous situation of the child being registered with a different surname from the mother.

The default position for unmarried parents should be that the child takes the current surname of the mother. If a woman has never married or changed her name by deed poll her current surname and maiden surname will be the same.

Again, if the parents agree or by way of a Court Order the child's surname can be changed at a later date by deed poll. The only circumstances in which the child's surname can be re-registered are if the parents subsequently marry.

Fourth Amendment (4 and 7)

The Minister has proposed that at the joint request of both parents a child registered after 1st May 2002 can be re-registered. If this amendment is passed, the practical effect will be that only children under the age of about 6½ years can be re-registered. I see no reason why the retrospective effect of the amendment should be limited in this way. I propose that any child can be re-registered with the consent of the parents (or if one parent is deceased the surviving parent) as long as the child is under the age of 18 years at the date of re-registration. The additional cost of allowing all children to be re-registered will be met by the re-registration fees.

Fifth Amendment (10)

Under the Minister's amendment, a child can not be re-registered if one of the parents has died between the date of birth and the date of re-registration. The fifth amendment rectifies this omission and allows the surviving parent to re-register the child.

Sixth Amendment (9)

The Minister's amendment does not allow for consequential changes to a child's forenames. A child may have been registered with the previously forbidden surname as a forename. In this case the parents will no doubt wish to remove the forename when it is added as a surname. This will avoid Jane Emily Smith Jones becoming Jane Emily Smith Smith.

It is also possible that parents will want a removed surname to be added as a forename. Thus, Jane Emily Smith Jones could become Jane Emily Jones Smith. The purpose of this amendment is simply to allow these consequential changes to the forenames to be made.

Financial and manpower implications

On page 5 of the Home Affairs Report, the Minister for Home Affairs states that it is not possible to estimate how many parents might wish to take advantage of the amendments; however, the cost of additional staff and resources would be met by the Parish of St. Helier and be offset by a re-registration fee. The precise re-registration fee will be discussed with the Connétable of St. Helier before the amendments come into force, but it is likely to be in the region of £50.

Whether the Minister's or my amendments are approved there should not be any variation in what the Minister is stating.