



States Greffe

Connétable Richard Vibert
Minister for Children and Education

BY EMAIL

7th February 2024

Dear Minister,

Draft Children and Civil Status (Amendments) (Jersey) Law 202- (P.104/2023)

The Children, Education and Home Affairs Scrutiny Panel is considering the Draft Children and Civil Status (Amendments) (Jersey) Law 202- (P.104/2023) (the 'draft Law') that was lodged on 21st December 2023.

We hope that you will be able to assist with a number of queries in writing:

1. Please can you provide your assessment of whether the draft Law will provide parity for every child in Jersey with regards to:
 - (a) Their formal birth registration;
 - (b) Their right to a name;
 - (c) Their right to acquire a nationality; and
 - (d) The right to know and be cared for by their parents.

2. The Panel understands that there will be a large number of consequential amendments required if P.104/2023 is adopted. Please could you provide a list of all the laws which have been identified and, for each of these, also:
 - (a) provide detail about the scale of the changes that will be required;
 - (b) confirm the anticipated timescale for bringing forward the change; and
 - (c) confirm if the amendments will be made by Regulations laid before the States Assembly.

3. From briefings the Panel has received we have been advised that the number of children and families impacted by the issues that the draft Law seeks to resolve is relatively small. Please could you confirm what data is available (from the previous five years) which may help to illustrate numbers impacted by various scenarios?
 - (a) If there is limited data available, please could you confirm if the changes proposed by the draft Law will see the capture of the information in future?

4. The Panel understands that the draft Law has been largely based on legislation in the United Kingdom. Please could you outline whether process and law from other jurisdictions was reviewed and advise why the UK approach was deemed most appropriate?
 - (a) Are there any key differences that you wish to highlight to the Panel?



5. Please can you provide some details about the anticipated resource and funding implications of the draft Law, if it is adopted?
 - (a) The Panel notes that the proposition's accompanying report references that counselling services should be offered to individuals who apply for disclosure of their birth records when they are subject to a parental order and that these are the duty of Minister for Health and Social Services. Please can you advise where this duty is established in the law?
6. Please can you provide details about the discussion and consultation undertaken with stakeholders during the policy development and law drafting process?
7. How will changes which result from the draft Law be communicated to Islanders?
 - (a) Will there be any targeted communications to advise of changes and, if so, where will these be directed?
8. If the draft Law was approved by the States Assembly in 2024, what is your assessment of a realistic timeframe for it being brought into effect?
 - (a) Please can you list the practical matters that would require action before the law is operational (for example, changes to forms / registers / information access, etc) and include details about estimated timescales where possible?
9. If adopted and subsequently brought into effect, how and when would the Government review the adequacy of the law?

Children (Jersey) Law 2022 (Children Law)

10. The Panel understands that some local families have sought parental orders from England and Wales but these have no legal recognition in Jersey. If adopted, how will the draft Law (particularly Article 9N of the Children Law) impact those families?
11. Please could you advise what safeguards would be in place around the acquisition of parental responsibility by a stepparent. For example, will the court have a procedure in place to check for coercion regarding the agreement of legal parent(s) and, if age appropriate, also ask the child's views?
 - (a) Is there any ability for a stepparent to acquire parental responsibility for a child if one of the child's legal parents does not agree?
12. The Panel notes that there has been a deliberate distinction made between "fertility treatment services" and "relevant fertility treatment services" in the draft Law and understands that this is to draw the distinction between couples who have a legal union and those who do not. Therefore, those who are not married or in a civil partnership would require a clinician to formalise the agreed parenthood decisions. Please could you outline why this approach been taken for the draft Law?
 - (a) Please could you provide some details about how a clinician will record and formalise the decision?



- (b) How will the Government, or relevant services, make the distinction of “relevant fertility treatment” clear to prospective parents, or Islanders who might be impacted by this distinction?
13. In November 2023 the United Kingdom’s Human Fertilisation and Embryology Authority (HFEA) made [recommendations](#) for changes to the Human Fertilisation and Embryology Act 1990 (as amended) (the ‘UK Act’). One of these areas was noted to be “*an overhaul of the consent regime in the Act*”. The Panel notes that there are sections of the draft Law relating to consent, for example the agreed parenthood conditions in schedule 1A of the Children Law, which have been drafted based on the current UK Act.
- (a) What are the similarities of the draft Law’s consent regime to that which is outlined in the UK Act?
- (b) Once adopted, would you consider making further updates to the draft Law if there are changes subsequently made to the UK Act around consent and agreed parenthood conditions?
14. The Panel has noted that, under the draft Law there are different routes to acquiring parental responsibility. Please could you provide a summary of the different routes.
15. The report accompanying the proposition details that legal parenthood governs aspects such as inheritance, financial provision for the child, and citizenship. Please can you clarify how the draft Law may change each of these aspects for a child?
16. The draft Law will provide for surrogacy arrangements but does not allow for any non-expense payments to the surrogate mother. How would this aspect be monitored by the court?
17. Please could you outline how the declarations of the father / second parent (per articles 55, 55A, 55B and 55C) will work in practice?
18. Please could you outline how the draft Law impacts a Child’s right to know their biological parents, or doners?
19. Whilst the definition of “parent” under the draft Law is widened, there appear to be differences in the choice of language used to describe parents based on gender, for example:
- (i) “fatherhood conditions” (as per proposed Schedule A1 of the Children Law);
 - (ii) “female parenthood conditions” (as per proposed Schedule A1 of the Children Law);
 - (iii) “biological father” (per Article 3, paragraph (2) (c) of the draft Law);
 - (iv) “mother” (per Article 3, paragraph (2) (g) of the draft Law).

Please could you advise why these are considered to be the most appropriate classifications?

Marriage and Civil Status (Jersey) Law 2001 (‘Civil Status Law’)

20. The legal concept of ‘legitimate’ and ‘illegitimate’ would be retained in new articles proposed for the Civil Status Law, for example, we understand that only the child of a



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married couple where there is a father can be legally registered or re-registered as 'legitimate', therefore providing inconsistency with children of same sex married couples. Why is the law drafted in this way?

- (a) Is this compatible with Children's Rights?
- (b) Will any of the proposed consequential amendments to the Legitimacy law address the definitions of 'legitimate' and 'illegitimate'?

21. Changes to the Civil Status Law will see the abolition of wife's domicile of dependence (per Article 75A). Please could you summarise the reason for this course of action and the impact that it may have?

The Panel looks forward to your formal response and would request this is received by **14th February 2024**. Please direct any response or queries to the Panel through our Committee and Panel Officer, Katherine de Carteret by email at k.decarteret@gov.je and Research and Project Officer, Joseph Brannigan by email at j.brannigan@gov.je.

Yours sincerely,

Deputy Catherine Curtis
Chair, Children, Education and Home Affairs Scrutiny Panel