Minister for Children
and Education

Government of JERSEY

19-21 Broad Street | St Helier
Jersey | JE2 3RR

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

BY EMAIL

23rd February 2024

Dear Chair,

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

Further to your letter of 7th of February and my initial response of 14th February, please see below the answers to the remaining 4 questions numbered 5, 8, 11 and 16 in your original letter. I do appreciate the extra time you allowed for me to provide these for you.

Please do not hesitate to contact me again if you require anything further.

5. **Please can you provide some details about the anticipated resource and funding implications of the draft Law, if it is adopted?**

Details regarding the resource and funding implications of the draft Law have been set out in Section K of the report that accompanies the draft Law. As mentioned, there are a number of one-off actions to be taken so that services are ready for the coming into force of the draft Law. The Judicial Greffier's answer to Question 8 further touches on some of the additional activities required to implement the draft Law if it was adopted. I also understand that the Superintendent Registrar has provided, under separate cover, further additional details of the implications of the draft Law on the Office of the Superintendent Registrar.

The Assisted Reproduction Unit will be required to:

- Create application and consent forms (based on forms that exist in the UK)
- Provide guidance for prospective parents including updates to webpages to provide information and explain the procedure and process for members of the public.

The clinicians overseeing the ARU have extensive senior expertise in the discharge of functions under the Human Fertilisation and Embryology Act 2008 and as such are confident that they can create the required documentation and procedures to enable compliance with the provisions in the draft Law.

(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?

During the lifecycle of the project the duty in Law for providing counselling services, as set out in Article 30(4)(a) of the Adoption (Jersey) Law 1961, was transferred from the Minister for Health and Social Services to the Minister for Children and Education.

Whilst the report references that the duty to provide counselling services is the duty of the Minister for Health and Social Services this is an oversight that is limited to the report only.

The draft Law places the duty to provide counselling services in respect of individuals subject to a parental order on the Minister for Children and Education, this is correct and mirrors the approach required by the adoption Law currently, the counselling services are provided by the Fostering and Adoption service. The first parental order that concerns a Jersey born child was made in 2014, as such, the earliest these counselling services will be required will be 2032. Furthermore, given the nature of parental orders it is less likely that counselling services will be requested, as a child's parents who is subject to a parental order are more likely to discuss the matter with the child as they grow up. This has been experienced and evidenced in England and Wales.

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?**

As this answer is concerned with Court process the Judicial Greffier was asked to provide a response to this question. The Judicial Greffier stated:

"The Judicial Greffier has responsibility for drafting the instructions which in the usual way will result in the subsequent drafting of the rules to accompany the law.

This process was commenced prior to the current Judicial Greffier taking office in September 2023. The work was outsourced to a KC in England and Wales because there was not a member of staff with sufficient expertise or capacity to undertake this piece of work internally. Draft law drafting instructions have been provided to the Judicial Greffier, and work is progressing towards the finalisation of the instructions. Once finalised the instructions will then be passed to the Law Drafters, who will draft the instructions.

It should be noted that in any event, the process of providing the drafting instructions cannot be completed until the draft Law has been agreed by the States, following the debate. This is for the reason that any drafting instructions will need to change if any proposed legislative provisions are amended.

Following the drafting of the Rules, it is anticipated that a one-off piece of work will need to be carried out to ensure that the following items are drafted:

- *Application forms*
- *Notes for guidance for applicants*
- *Publication of information on the Courts.je website*
- *Any other documents needed to enable the Law/Rules to take operational effect.*

Subject to the drafting instructions being successfully finalised and the Law Drafters being able to draft these rules, there are no concerns from the Judicial Greffier, in respect of operational issues which might cause a delay in the implementation of this law."

I also understand that the Superintendent Registrar has provided, under separate cover, the details of the steps required to enable the Office of the Superintendent Registrar to be ready for the coming into force of the draft Law.

I understand that the Superintendent Registrar is confident in meeting the proposed timescales based on the provisions of the draft Law as currently drafted.

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?

As this answer is concerned with Court process the Judicial Greffier was asked to provide a response to this question. The Judicial Greffier stated:

"At present, a step-parent is not able to make an application for parental responsibility on a stand-alone basis. Only legal parents are able to make such an application. Parental responsibility agreements are presently dealt with under the Children (Parental Responsibility Agreement) Rules 2005.

Step-parents are currently only allowed to make applications for residence orders which result in parental responsibility being granted on the limited basis that the child must continue to reside with the step-parent. The parental responsibility part of that order falls away when the child stops living with the step-parent.

These are very rare, with there being less than 5 applications per year and no applications at all in some years.

The Draft Law provides for a significant departure from the current position, in that step-parents will now be allowed to make an application for PR on a stand-alone basis, in two ways:

1. *Either with the consent of the legal parents; or*
2. *In the event of a dispute with one or other of the legal parents by application to the court.*

It is anticipated that these applications will be dealt with by the Family Judge rather than by the Royal Court.

In an agreed application, it is proposed that the Rules will contain a series of checks aimed at ensuring that:

a. *It is clear that both legal parents are aware of the application and have been served with it;*
b. *That in the case of an agreed application, the agreement is both genuine and reasonable. This would be done with the assistance of a JFCAS safeguarding letter, which requires checks to be carried out by JFCAS, but which stops short of a full report;*
c. *That there is a short hearing in which the Court is able to hear evidence from the parties.*

In the event of an application which is not agreed, similar rules would be put in place and additional rules would be added to ensure that the Family Judge would require a report to be prepared by an independent agency such as JFCAS, who would seek the views of the legal parents, the step-parents, any interested parties and the child's view, if appropriate. This report would be paid for by the party making the application."

16. The draft Law will provide for surrogacy arrangements but does not allow for any nonexpense payments to the surrogate mother. How would this aspect be monitored by the court?

As this answer is concerned with Court process the Judicial Greffier was asked to provide a response to this question. The Judicial Greffier stated:

"The Court will only be able to monitor cases which are before it. It will not be able to monitor any other case. The only cases which will come before the Court are those where the child was born locally.

There are therefore limits to the monitoring that the court is able to provide.

In respect of those cases, Article 9I(6) of the Draft Law provides that the court " must be satisfied" that no money or other benefit (other than expenses reasonably incurred) has been given or received by the surrogate mother, or in various other circumstances set out in that article.

In general terms, in any application, the court adopts a number of methods to ensure that it is satisfied. Those methods can involve the receipt of Affidavit evidence, oral evidence which might be challenged in cross-examination by another party, or perhaps the receipt of documentary evidence. This list is not intended to be exhaustive.

Consideration was given to setting out in terms what evidence might be given to satisfy the Court, but that was thought to be undesirable as it risked limiting the discretion that the Royal Court would otherwise have. It is also acknowledged that the Royal Court is able to take account of the practice in England and Wales in this area, which is a developing area."

Yours sincerely,

Connétable Richard Vibert
Minister for Children and Education