

28 January 2024

## **Response to Chair of the Children, Education and Home Affairs Scrutiny Panel regarding the review of the draft Children and Civil Status (Amendments) (Jersey) Law 202-**

### The process

The process by which the draft law has arrived at the stage of being scrutinised has been extremely lengthy.

Whilst we acknowledge that the initial intention of the law (to equalise the position of children born to same-sex parents and different-sex parents) expanded as the legal provision in Jersey was researched, the time the drafting has taken has been drawn out with periods where no or little work appeared to be being carried out to push the project forward.

It is our understanding that the resources of the Law Officers' Department were stretched over the years that it has taken for this draft to be produced (and, of course, COVID caused an impact), however when it became clear that this piece of work was a much bigger task than initially realised sufficient resource should have been temporarily recruited to assist.

The result of a long, drawn out process was to place a number of families under duress and in a position of uncertainty over the status of their child(ren) on the day of their birth. We would remind the Panel that the agreement to change the law was made in principle in 2015 by States Members. It took a further 3 years to commence drafting the law. The oldest children born to same-sex couples since agreeing this law was needed are in Year 4 at school now. This was not 'putting children first'.

### The resulting draft law

That being said, the resulting draft law is a thorough piece of legislation that addresses the original desire to equalise the position of children of same-sex parents and different-sex parents under the law.

Our reading of document p.104-2023 is that the draft proposal has considered a multitude of scenarios in which modern families may be conceived, and provides those families with a straightforward mechanism through which to register the two people who intend to parent that child, which does not penalise certain sections of the community financially by forcing them to undergo a legal process to gain parental responsibility for their own child.

We were concerned a few years ago that the law would not act retrospectively to amend the birth certificates of those children born when their parents could not be both registered, but this has been resolved satisfactorily, enabling parents to simply rectify their child's birth certificate to reflect the position as it was at the time of their birth.

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Directors: James Thompson, Christian May, Russell Nel, Vic Tanner Davy, Jo Mulliner, Kaye Nicholson



The case of Freddy McConnell, a UK transgender man who gave birth in 2018 and who sought a legal means to be registered as his child's *father* or *parent* on the birth certificate, was discussed at length with the team working on this law. Mr McConnell's case failed at the Supreme Court whilst this law was being drafted.

We accept that the use of the word *mother* in the draft legislation is unavoidable at this time without giving effect to a large number of changes to other laws, which would delay the passage of this legislation considerably.

There has not been a case like that of Freddy McConnell in Jersey, but we anticipate there will be one at some point. Mr McConnell is taking his case to the European Court of Human Rights. When the judgement from the ECHR is returned, Jersey may need to revisit its position on this issue to review legislation and consider language that includes families that have a transgender parent, and that seeks to augment rather than replace established words like mother.

## Conclusion

It is entirely possible that there may be a family circumstance that is not covered by the permutations of the law, such is the variety of families, but given the detail and length of the consultation and drafting process, we hope these scenarios will be rare, if at all.

This legislation is urgently needed by a number of families and must be put before the States Assembly without further delay.

Yours faithfully,

Vic Tanner Davy  
CEO

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