
DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT NO. 4) (JERSEY) LAW

Response from Channel Islands Humanists, 2 November 2017

ABOUT CHANNEL ISLANDS HUMANISTS AND HUMANISTS UK

Channel Islands Humanists is a section of Humanists UK. We want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted by over 65,000 members and supporters across the UK and the Crown dependencies to promote humanism. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We've been conducting non-religious funerals, weddings, and baby-namings since we were founded 121 years ago. Our highly trained celebrants support individuals to create authentic, bespoke ceremonies that put people and their stories at the heart of every occasion. Our ceremonies consistently receive extremely high ratings from those who request them.

We are a human rights-based organisation, with expertise in the 'religion or belief' strand. Working with our member, Deputy Louise Doublet, we have pushed for legal recognition for humanist marriages in Jersey for a number of years now, prompting the inclusion of such recognition in the present Draft Law. We have led on similar work on both humanist and same-sex marriages across the UK.

On same-sex marriages, Humanists UK were one of two organisations (alongside Stonewall) thanked during the conclusion of the passage of the Marriage (Same-Sex Couples) Act 2013 for its work in support of the legislation - having helped establish the Coalition for Equal Marriage, the pro-reform coalition.

On humanist marriages, Humanists UK secured a section in the 2013 Act giving the UK Government power to extend legal recognition to humanist marriages in England and Wales, a power we are optimistic will be used soon; and it prompted the ongoing legal challenge to Northern Ireland's lack of recognition of humanist marriages, which was successful at the High Court and is presently before the Court of Appeal.

SUMMARY OF RESPONSE

We strongly welcome the proposals to extend legal recognition to both humanist and same-sex marriages - moves we have long campaigned for and very much support.

However, upon close inspection of the detail within the proposed legislation, we are concerned we are concerned about the categorisation of humanist marriages as a type of civil marriage - a move that would be likely to cause widespread confusion.

We also are concerned about the lack of safeguards around who will be able to establish themselves as a humanist celebrant, when compared to religious officiants. 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.

Therefore we recommend amending the Law to properly recognise belief marriages as a third category of marriage, and to add a similar safeguard requirement for belief celebrants to have an authorizing organization as is the case with religious celebrants.

We focus on these two issues in our remaining response.

HUMANIST CELEBRANTS AS A TYPE OF CIVIL CELEBRANT

We are concerned by the categorisation of humanist marriages as a type of civil marriage, and the likely confusion this will cause.

The Draft Law defines 'religious marriage' as meaning 'a marriage solemnized according to religious rites or usages', while 'civil marriage' is defined as meaning 'a marriage that is not solemnized according to any religious rites or usages'. Coupled with the very high level of flexibility found in the Draft Law around who can be a celebrant, the content of ceremonies, and the range of locations in which ceremonies can occur, this does mean that an individual could theoretically train under the 'civil celebrant' process but have the flexibility to operate as a humanist celebrant.¹

However, such an approach is unique to Jersey. No country in the UK allows a similar level of flexibility within civil marriages, nor does any define civil marriages so plainly to be everything that religious marriages are not.

In England and Wales, for instance, there is no flexibility over choice of celebrant (marriages have to be conducted by registrars who must be secular state employees), venue (marriages have to occur in certain premises), or script (marriages are typically required to follow certain scripts, and can't include explicitly humanist content), to mean that someone can have something similarly of a humanist nature.² In Northern Ireland, pending the outcome of the ongoing court case, there are similar issues. The law specifies, for instance, that 'A person shall not solemnise a civil marriage except in accordance with a form of ceremony which is of a secular nature'³ - which under most definitions of 'secular' humanist marriages are not. Scottish law used to be similarly inflexible until it was reinterpreted in 2005 so that references to religious marriages were read as referring to religious or belief marriages⁴ - something that the law subsequently caught up with in 2014.⁵

Such a labeling of humanist celebrants as a type of civil celebrant is therefore likely to

¹ One relatively minor issue is that page 14 of the consultation paper says that all humanist celebrants would 'need to be sworn in at the Royal Court'. Presumably they would be expected to affirm instead of swear in.

² Marriage Act 1949

³ <http://www.legislation.gov.uk/nisi/2003/413/article/19>

⁴ See e.g. section 8: <http://www.legislation.gov.uk/ukpga/1977/15>

⁵ See e.g. the definition of a belief body in section 12: <http://www.legislation.gov.uk/asp/2014/5/enacted>

cause widespread confusion, amongst Jersey residents; amongst British citizens looking to get married in Jersey and more familiar with (for example) the legal picture in England and Wales; and amongst wider stakeholders, for instance the governments of the UK.

We therefore recommend that a definition of belief marriages is added to the Draft Law, and that references to 'civil marriage' or 'civil celebrant' are generally changed to be to 'civil or belief marriage' or 'civil or belief celebrant'.

For the definitions, where more care is needed, this would mean:

- the definition of 'authorized civil celebrant' stays as is, but an identical definition of 'authorized belief celebrant' is added alongside
- the definition of 'civil marriage' becomes "'civil marriage" means a marriage that is not solemnized according to any religious rites or usages or the usages of any belief organisations'
- a new definition of 'belief marriage' is added saying "'belief marriage" means a marriage that is solemnized according to the usages of belief organizations, that is to say, the usages of organizations whose principal or sole purpose is the advancement of a system of non-religious beliefs which relate to morality or ethics' - which reflects the definition in England and Wales and is very close to that in Scotland. This could of course easily be split into two definitions, one for 'belief marriage' and one for 'belief organization'
- the definition of 'civil marriage celebrant' is left unchanged
- the definition of 'register of authorized civil celebrants' stays as is but a near-identical definition of 'register of authorized belief celebrants' is created - and a new subclause is inserted after 24B(2)(b) accordingly, specifying that the Superintendent Registrar shall keep 'a register of authorized belief celebrants, and the belief organization that applied for the authorization of the belief celebrant'. This is particularly important, and means the changes we are suggesting are for more reasons than simply clarifying terminology. Our reasons are outlined in what follows.

AUTHORIZING ORGANIZATIONS FOR BELIEF CELEBRANTS

We are concerned about the lack of any protections in the law at all to stop anybody declaring themselves a humanist celebrant and marketing off the humanist brand - whilst not holding any humanist beliefs themselves, perhaps having no actual awareness of humanist beliefs, or having affinity to humanism.

Draft clause 24B provides a safeguard for religious organizations on this front by requiring that 'The Superintendent Registrar shall keep... a register of authorized religious officials, and the religious organization that applied for the authorization of the religious official'.

For civil (and therefore humanist) celebrants, however, all that is required is that 'The Superintendent Registrar shall keep... a register of authorized civil celebrants'.

Therefore, for religious organizations, there is some protection to ensure that it isn't possible for anyone to simply declare themselves to be a religious officiant of any religion. But for humanist celebrants there is no analogous protection. It is hard to see a justification from a human rights point of view for this difference in treatment between the two groups, who of course are treated analogously by the European Convention on

Human Rights.⁶

Of course, there is effectively protection for religious organizations in other ways too: for instance ownership of places of worship, of which there is no analogy for humanists. And adding similar protection for belief groups wouldn't stop individuals from setting up sham humanist organizations simply to be able to perform 'humanist marriages'. But it would discourage it and so would be a welcome step.

Therefore we recommend that belief celebrants are required, like religious celebrants, to have an authorizing organisation.

OTHER MATTERS

One area where we would like clarity in due course is as to the content of the proposed training course for celebrants/officiants. We have our own training processes and are intending to train a new group of humanist celebrants in Jersey in recognition of the new law. But if some things in our training will also be found in the state's own training, we would clearly be keen to modify our training to avoid this duplication.

However, this is for now a less pressing concern than the legislation itself.

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■ [REDACTED]ly the difference in treatment in the law between religious celebrants and others is sensible, focused as it is on places of worship and no compulsion to conduct same-sex marriages. But in this one place we do not think the difference in treatment is sensible or justified.