



Corporate Services Scrutiny Panel

Draft Marriage and Civil Status (Jersey) Law Review

Witness: Chief Minister and Deputy Chief Minister

TUESDAY, 9th JANUARY 2018

Panel:

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman)

Deputy S.M. Brée of St. Clement (Vice-Chairman)

Deputy K.C. Lewis of St. Saviour

Witnesses:

The Chief Minister

The Deputy Chief Minister

Director, Social Policy

[9:33]

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman):

Welcome, everybody, to the Corporate Services Scrutiny Panel on the Draft Marriage and Civil Status (Jersey) Law 201- amendments. Minister, a slightly longer spiel than normal, but before we start, may I draw your attention to the notice in front of you, which sets out that you are covered in this hearing by parliamentary privilege? Obviously we expect members of the public and the media in the public seating to remain quiet at all times while the hearing carries on. As we proceed through the questions we may stop you if we feel you have answered the question sufficiently, because we do need you to be as concise as possible, as ever, and I will do this by raising my hand. I would like to make it clear at the start of the hearing that by undertaking this review we are fulfilling a well-established and important parliamentary process of legislative scrutiny. Our review is focused on the detailed Articles of the Draft Marriage Law and our questions will hopefully reflect this. This review is not about the policy decision to implement

same-sex marriage. The States has already agreed to introduce same-sex marriage and our review does not seek to reopen that debate. The legislative scrutiny we are carrying out is to ensure the law is fit for purpose and it effectively implements the decision made by the Assembly. That extends beyond the proposal for same-sex marriage to cover open-air marriage, obtaining a licence to marry, the role of the Parish Registrar, protections against sham and forced marriages and the ability of the States to increase the age of marriage by regulations. Any comments that may be made may be because we are exploring an argument that has been put to us, rather than expressing any view, which should not be interpreted as expressing either a personal view or a view of the panel. For the benefit of the tape, we will start going around. Deputy John Le Fondré, Chairman of the panel.

Deputy S.M. Brée of St. Clement (Vice-Chairman):

Deputy Simon Brée, Vice-Chairman of the panel.

Deputy K.C. Lewis of St. Saviour:

Deputy Kevin Lewis, panel member.

The Chief Minister:

Ian Gorst, Chief Minister.

The Deputy Chief Minister:

Andrew Green, Minister for Health and Social Services, Deputy Chief Minister.

Director, Social Policy:

Ruth Johnson, Director of Social Policy.

Deputy J.A.N. Le Fondré:

I should have said I have to give apologies from Senator Sarah Ferguson, who is attending a briefing that is being given to States Members, which has been scheduled at the same time. Minister, can you outline the process followed since the States agreed to introduce same-sex marriage in September 2015 leading up to the law being lodged in October 2017?

The Chief Minister:

Just before I do that, can I just explain why Deputy Green is with us? He, acting at my request, has brought forward this legislation and he signed off the decision to lodge the legislation and had the final say over it. I also just wanted to make clear to the panel that one of the submissions - and no doubt we will be talking quite a lot about one of those submissions - is a particular submission that represents a number of churches. I attend one of those churches that that

submission represents and therefore I manage that conflict carefully throughout this conversation. You wanted to ask me about the development of the draft law and consultation. It is fair to say that the majority of the consultation was undertaken at the in-principle stage prior to the launching of the draft law. There were small groups consulted on the draft law. They were some of the small groups that we had met previously during the in-principle stage. We met the Comité and we met religious organisations. I can go into who they were, if you wish.

Deputy J.A.N. Le Fondré:

Yes, please.

The Chief Minister:

The Anglican Dean, representatives of the Baptist Church, the Pentecostal Church, the Freedom Church, the Jehovah's Witnesses, the Catholic Church, the Independent Evangelical Church, the Methodist Church, the Church of Scotland, the United Reform Church, the Salvation Army, representatives of the Quaker community and the Jewish community and delegates of the Superintendent Registrar. We met again in autumn of 2017, inviting the same religious organisations. That meeting was attended only by the 2 representatives of the Evangelical Alliance and the Dean. We met again with the Comité in September 2017, 2 meetings with Parish Registrars and again delegates of the Superintendent Registrar. Throughout this period, we have had various meetings with the Humanist Association, L.G.B.T. (lesbian, gay, bisexual and transgender) groups and across the States of Jersey departments as well.

Deputy J.A.N. Le Fondré:

There was a degree of focus on September and October 2017 and you made reference to, it is fair to say, a lot of the consultation taking place at what you called the principle stage. Was that prior to September 2015 you are talking about? In other words, can you clarify what you mean by principle stage?

The Chief Minister:

There was a lot of consultation and public consultation prior to the in-principle decision and then all of that detailed conversation that I have just spoken about was between the in-principle decision and the final lodging of the draft law. I think what you are trying to drive at is did we consult on the draft law in its final form. The answer is we did a lot of work leading up to it, but we did not have the draft law in our hands to consult on directly.

Deputy J.A.N. Le Fondré:

We will come back to that, I think. When did you issue the Law Officers' Department with law drafting instructions?

Director, Social Policy:

We issued the full set of law drafting instructions, which had been consulted on with all the stakeholder groups, in January 2017.

Deputy J.A.N. Le Fondré:

Okay, thank you. In light of the 8 pages of additional amendments lodged by yourselves, do you think enough time has been allocated to check the draft law?

The Chief Minister:

We were under pressure. You have asked me these questions at normal quarterly hearings and I told you then that I had taken - or we had taken - the decision that we wanted to get the law lodged and meet the commitments that have been made and that we would have to bring forward a number of amendments which were relatively straightforward. That is the approach that we took. We could have waited. We would be criticised whichever way we went.

Deputy J.A.N. Le Fondré:

Are you satisfied that after those 8 pages of amendments, there are no further errors?

The Chief Minister:

It depends what you mean by error, Chairman. There might be ...

Deputy J.A.N. Le Fondré:

Anything that would require a correction.

The Chief Minister:

There might be others who have an interpretation, who would like to see a different word used or a different phrasing used, but might in effect have the same effect as the existing wording.

Deputy J.A.N. Le Fondré:

No, I am talking about changes, errors in the law as presently drafted, not differences of opinion. Are you satisfied that the law, as presently drafted, does not have any errors left in it?

The Chief Minister:

Law evolves.

Deputy J.A.N. Le Fondré:

No, no.

The Chief Minister:

No, it does.

Deputy J.A.N. Le Fondré:

No, I am not talking about opinion.

The Chief Minister:

You lodge a law; you think it is fine. It gets approved by the States, it goes on the statute books and then it sometimes has to come back because it does not work in practice as legislators expected it to do. I think we are satisfied with the law. No, there is a change. Ruth, if you want to ...

Director, Social Policy:

The Law Draftsman has subsequently done another sweep of the law and they have found some errors in terms of some of the references to Articles. Those are references to Articles that remain in the 2001 law.

Deputy J.A.N. Le Fondré:

Has that been notified to you since Friday?

Director, Social Policy:

I was notified of 2 yesterday, but we had already identified another 2 which we were going to inform the Law Draftsman needed to be amended before the law is debated.

Deputy J.A.N. Le Fondré:

We will touch on those in a second, I think, but yes. A further question: have both you and the Deputy Chief Minister read the law? Could you each independently confirm that you have done?

The Deputy Chief Minister:

Yes.

Deputy J.A.N. Le Fondré:

You have read it all the way through?

The Deputy Chief Minister:

I would not sign an M.D. (ministerial direction) without reading it.

Deputy J.A.N. Le Fondré:

No, but just the ...

The Chief Minister:

Post, but obviously, as I said right at the start, Senator Green - I think I referred to you as Deputy Green, I apologise - signed off the final form law.

Deputy J.A.N. Le Fondré:

Sorry, just to confirm, Senator Green, you have read the law?

The Deputy Chief Minister:

I have read the law.

Deputy J.A.N. Le Fondré:

All the way through?

The Deputy Chief Minister:

Yes.

Deputy J.A.N. Le Fondré:

Good. Chief Minister, you have read it?

The Chief Minister:

It is a lengthy law.

Deputy J.A.N. Le Fondré:

I am aware of that.

The Chief Minister:

It takes time and cross-referencing takes time as well.

The Deputy Chief Minister:

I have read it in the context of as a Member of the States, not as a Law Officer. That has to be ...

Deputy J.A.N. Le Fondré:

That is okay, particularly acting as rapporteur. Simon, do you want to ask your question and then we will sort of wrap up in that area?

Deputy S.M. Brée:

There are a large number of amendments that have been made to consequential laws that are impacted on by these amendments to the draft law. There is one of them that I just do not quite understand, which is relating to the Matrimonial Causes (Jersey) Law 1949 (as amended), which is saying: "After paragraph 4, there should be added the following paragraph." This is then paragraph 5: "Paragraph 4 only applies in relation to the judicial separation of spouses who are of the opposite sex." I thought the whole point behind the law was to remove the distinction of spouses of the opposite sex. Can you explain what that refers to, please?

Director, Social Policy:

That is a technical matter for the Law Officers. The Law Officers sought advice on that and there is a complexity which I would be hesitant to explain to you, because it is beyond my understanding of the legal complexity, which means that there are some issues around legal separation which do face opposite-sex couples rather than same-sex couples. I would need to get Law Officers to explain that to you, but it has been confirmed by Law Officers that that is legally correct post the introduction of same-sex marriage.

Deputy S.M. Brée:

Yet you are expecting States Members to be able to understand, debate and vote on this and yet you are saying that it is sort of outside of your area of expertise anyhow.

[09:45]

It does concern me that the consequential laws that are being amended, there are many, many areas that would need further review, discussion and debate. Do you not think it incorrect that such a vast number of laws having to be amended, that really you are asking an awful lot of States Members to understand the implications of each of these and that really this is possibly not, as we stand today, a sensible move to take and it would be better to withdraw this and change all the errors that you have found and give States Members further time to fully understand the consequences of all of these amendments? It just seems a bit strange that we are talking about a legal complexity here and yet you are expecting States Members to understand it.

The Chief Minister:

I am expecting that Law Officers will be present in the States Assembly. I expect that any Member that has an issue with the subsequent legal changes would invite the Law Officers to address them. This is a normal process when you are making a change to legislation; you have consequential amendments. Because this is, in legal terms, a fundamental change, then it is going to have these consequential legal amendments, which are extremely technical and it is right

that one is advised by lawyers in that regard. I think that it would not be appropriate on the grounds outlined to withdraw it, because there will be legal advice available to Members when they are making the decision.

The Deputy Chief Minister:

I would add to that, extending the time does not change the complexity of the law.

Deputy S.M. Brée:

No, I never suggested it did. I was suggesting that because of the complexity involved, States Members may require further time to digest and understand each consequence of these consequential amendments, not that it would improve the law in any way. I think to suggest, Senator Green, that I was suggesting that is perhaps ...

The Deputy Chief Minister:

No, I was not suggesting about improvement, I was suggesting that this is a very complex law and States Members will need that support of Law Officers, no matter how much time we have.

Deputy J.A.N. Le Fondré:

Just I think hopefully covering the area that perhaps we have both identified, can I ask perhaps, Senator Green, if you could refer to Article 35 of the law? I am assuming this is one that hopefully the Policy Director has referred to, but ...

Director, Social Policy:

Article 35 of the law, as amended?

Deputy J.A.N. Le Fondré:

Yes.

The Deputy Chief Minister:

The requirement for a grant of licence?

Deputy J.A.N. Le Fondré:

Yes. Perhaps, Senator, you could explain to me the relevance of 35(1)(b), which refers to Article 6. Article 6 at the moment refers to: "Persons authorised to solemnise marriages in Jersey." I am hoping you can confirm that this is one of the errors that you have identified.

Director, Social Policy:

It should not relate to Article 6, it should be facing another Article number, yes. That was the one that we had not identified. The Law Draftsman informed us.

Deputy J.A.N. Le Fondré:

Basically we identified it last week and informed law drafting.

Director, Social Policy:

Yes.

Deputy J.A.N. Le Fondré:

Just to work it through for the record, effectively the law, as presently lodged, refers to Article 35 was not amended under the law, as I understand it, but refers to an Article that has been amended.

Director, Social Policy:

The Article number is incorrect.

Deputy J.A.N. Le Fondré:

Incorrect?

Director, Social Policy:

That is correct.

Deputy J.A.N. Le Fondré:

That has happened on 2 occasions in that Article.

Director, Social Policy:

Yes.

Deputy J.A.N. Le Fondré:

Article 35(1)(b) refers to Article 6, which is presently: "Persons authorised to solemnise marriages in Jersey" whereas it should be to do with the marriage of a minor, which is Article 43. Then 35(3) refers to Article 42, which is, as I said, marriage of a minor and should refer to Article 35, which is restriction of a marriage, correct?

Director, Social Policy:

Yes, that is correct. One of those we had already identified. The other the Law Draftsman notified as of last week.

Deputy J.A.N. Le Fondré:

That was, I think, subsequent to a query we raised.

Director, Social Policy:

Yes. Obviously I had already had a conversation about them, because it is for the Law Draftsman to do the checking of the law, about ensuring that there is another double-checking process to ensure that no other errors have been noted.

Deputy J.A.N. Le Fondré:

Obviously from the point of view of a States Member, if we had not been going through this process, there is a risk that that law could have gone through, approved with those errors in it.

Director, Social Policy:

Yes.

Deputy J.A.N. Le Fondré:

Which therefore begs 2 questions, which takes us back to where we were earlier, Chief Minister: are you now absolutely satisfied that there are no further errors in the law?

The Chief Minister:

This is a very complex law.

Deputy J.A.N. Le Fondré:

No, I am absolutely accepting that, Chief Minister.

The Chief Minister:

This is why legislative scrutiny of the sort that you are undertaking is so fundamentally important.

Deputy J.A.N. Le Fondré:

We agree.

The Chief Minister:

Because my officials lived with this, quite literally, and the Law Draftsman, day and night. Ruth did not sleep for I do not know how many weekends because we were working on this thing.

Deputy J.A.N. Le Fondré:

We are not criticising Ruth in any shape or form, Minister.

The Chief Minister:

I think it is right that you are picking up these errors, to use your term, and working with the Law Draftsman, they will be amended. With the caveats that Ruth has given, I think we are satisfied as we can be.

Deputy J.A.N. Le Fondré:

Obviously we have got an amendment drafted to correct that, just so we do not duplicate work, so that is ready to go, but just for the record obviously we have got to be satisfied for States Members with the law, as presently worded, and obviously with the caveat of the amendments we have picked up on. We are not aware of any others, but I think our caveat is that in the time we have had ... as you rightly say, it has been a very complicated law. You will also be aware we had some criticisms when we called it in, not from yourself necessarily, but something like this, I think the point we make, it requires time. I suppose the 2 questions are do you feel satisfied that it has not been rushed? By rushed, I do not mean ... I am just talking about the time pressure to get it in.

The Chief Minister:

We spent a lot of time on the in principle. Hindsight is a great thing. You could say we spent too long on the in principle, but the States decision, they referred the issue to the Chief Minister and asked the Chief Minister to do all that work. We have done all that work. Have we had enough time from the receiving of the first draft to where we are today? It has been really tough and I do not sit here with any sense that it is anything other than it has been a very tight, rushed timetable. I pay absolute tribute to Ruth and to the Law Draftsman for the work that they have undertaken to meet what is a very tough and difficult timeline. I do not criticise Scrutiny. I want to see more legislative scrutiny and the work that you are doing is extremely valuable, I think, as you have just raised these issues now. Even last week we are finding areas where there are references that need to be changed.

Deputy J.A.N. Le Fondré:

We do agree that the timetable on this has been ... you have used the word “rushed” and I have used the word “rushed”, so we will agree on the word “rushed.”

The Chief Minister:

Rushed and challenging, yes.

Deputy J.A.N. Le Fondré:

I think one would hopefully agree that for future, we should be allowing sufficient time for this type of process to be rounded off, because there has been a lot of good work done on this. I am asking if you will agree ...

The Chief Minister:

I agree.

Deputy J.A.N. Le Fondré:

... but you get to the end of it and you have got to make sure that the law you are lodging is fit for purpose. When I say fit for purpose, it has got that extra time to make sure that we have not missed errors.

The Chief Minister:

Absolutely. We are getting into what would my preference be. My preference would be that we entirely overhaul our system, that you have a first in-principles reading and then it automatically - there is no having to challenge Scrutiny - goes to a committee-type review of legislation, as we see elsewhere across the globe, for this detailed piece of work to be undertaken. What we have seen here with this, it has put unnecessary pressure on officials and the Law Draftsman, negative criticism on both the Council of Ministers and Scrutiny for the process following. None of that is fair. We need underlying change to the system.

Deputy J.A.N. Le Fondré:

Okay, 2 observations and then we will move on. First is for future reference, if we are having such complex laws, it would always be helpful for Scrutiny to receive a final draft before lodging, preferably, which we did not. The second point is our ... no, I will wait for that, because I think it starts to transpose into Simon's next question, but anyway, we can note that and then move on.

Deputy S.M. Brée:

Chief Minister, earlier you explained the consultation process that you went through with the various religious organisations, representative bodies and the like. The statement that you made seems to contradict a statement made by Monsignor France, as head of the Roman Catholic Church in Jersey, with regards to consultation with the Roman Catholic Church. He was saying that other than a very brief meeting held right in the early days, there was no consultation with him or any of his officials. Could you clarify the matter? Who is correct?

The Chief Minister:

We would have to go back and check our records. I would like to think that neither of us are incorrect. I, from time to time, meet with the religious organisations as well and touch on various matters and it might just be an issue of recollection ...

Deputy S.M. Brée:

You cannot confirm how many times you have met?

The Chief Minister:

... where a particular issue was discussed during a meeting.

Deputy S.M. Brée:

The question is were the representatives of the Roman Catholic Church in Jersey extensively consulted with or not on the law?

The Chief Minister:

Extensively? No, let us be clear: I said quite clearly about the law we were not in a position to consult with the draft law prior to lodging. It is the points that we have just been having the discussion about. If that is what Monsignor is referring to, then he is absolutely correct. If he is referring to a number of meetings prior to the lodging of the law, then I think we would have to go back and look at our diaries about the number of times that we have met, but it certainly is more than just once. I said to you that once we had lodged the law, we invited the religious organisations to come in and meet with us to discuss the draft law. I think I said there that the only attendees to that meeting in response to that invitation was ... no, there was more than 2 representatives of the Evangelical Alliance. There were 2 other ladies from the Church of Scotland and ...

Director, Social Policy:

The Dean, yes.

The Chief Minister:

Monsignor Nicholas France and the Catholic Church were not represented at that meeting, which was talking to them about the draft law.

Deputy J.A.N. Le Fondré:

Can I just clarify then? We had the debate in September 2015, which is the principle stage, so we are then post the principle stage, we are then into the law drafting side. Just to clarify, post principles, the law drafting ...

The Chief Minister:

Between January 2016 and January 2017.

Deputy J.A.N. Le Fondré:

Then up to October 2017, the Roman Catholic Church was not consulted on the law?

Director, Social Policy:

Sorry, did you say was or was not?

Deputy J.A.N. Le Fondré:

Was not.

Director, Social Policy:

That is not correct. The Chief Minister and I certainly met with Monsignor France and Monsignor France was invited to 2 meetings. The second meeting was just ...

The Chief Minister:

Yes. The Catholic Church were invited.

Director, Social Policy:

The Catholic Church, sorry.

The Chief Minister:

Let us just make a recollection, because for one of those meetings, Monsignor Nicholas France was not able to attend, but he sent someone who deputised for him, Deacon MacFirbhisigh, if I remember correctly.

Deputy J.A.N. Le Fondré:

Do we have a timing here, roughly?

The Chief Minister:

I do not have it with me.

Deputy J.A.N. Le Fondré:

If you could send that through, that would be helpful.

Director, Social Policy:

Certainly.

Deputy J.A.N. Le Fondré:

The other comment is that I know the Jersey Evangelical Alliance did say to us that the first time they had seen the law was when it was lodged.

Director, Social Policy:

The first time everyone saw the law was when it was lodged, but the Jersey Evangelical Alliance were invited to and did attend a meeting in September 2016 with a large number of other religious organisations, in which I talked them through in great detail the detail of the law drafting instructions that were then turned into the law.

[10:00]

Deputy J.A.N. Le Fondré:

At that point, were you still outlining: "Right, this is where we are going" and were you seeking any comments on any detail or was it very much: "This is what we are going to do"?

Director, Social Policy:

I was seeking comments on the detail. I spent probably about 2 hours, off the top of my head, with the religious organisations and I talked them through the content of the law drafting instructions, for example, the changes to religious content in civil weddings; I talked them through the processes through which religious officials would be registered to solemnise marriage; I asked them their views about a whole range of different issues. I asked them to come back to me and I took feedback at that meeting.

Deputy J.A.N. Le Fondré:

Did they receive an electronic or hard copy of the law drafting instructions?

Director, Social Policy:

No, they did not, because I was working on the law drafting instructions, so they were draft law drafting instructions. That was in September 2016 and I finalised the law drafting instructions in the November/December and they were formally issued to the Law Draftsman in January 2017.

Deputy J.A.N. Le Fondré:

Okay, thank you. I will just say on the record what we have had from both the Roman Catholic Church and the J.E.A. (Jersey Evangelical Alliance) was that it felt like, from what we have seen, what we have been given, that they do not feel that they had been consulted with.

Director, Social Policy:

I did notice that on the transcript and I was slightly surprised to see it on the transcript.

Deputy J.A.N. Le Fondré:

Okay. It may be there is a communication ...

The Chief Minister:

To be fair, I think the point they are making is that they were not consulted on the law because of all the timing issues that we have just explored.

Deputy J.A.N. Le Fondré:

Right, so in other words, they may not have appreciated the issue around law drafting instructions and then the detail of the law, which ...

The Chief Minister:

I think that is right.

Deputy J.A.N. Le Fondré:

Yes, all right. Let us move on. Kevin.

Deputy K.C. Lewis:

Civil celebrants. The draft law introduces civil marriage celebrants and allows couples to choose the celebrant that they would like to have for their ceremony. How will this new system be overseen to ensure that the solemnity and dignity of marriage is respected?

Director, Social Policy:

The draft law provides for the Superintendent Registrar to bring forward ... well, the draft law provides for the Minister to bring forward a scheme under which the Superintendent Registrar will operate with regard to the appointment of a registrar for registration of civil celebrants. That scheme will provide for the training and the oversight of civil celebrants. The way in which it will operate - and the orders are currently being drafted as we speak - is a civil celebrant will apply to the Superintendent Registrar. The Superintendent Registrar will take relevant references. If that celebrant is purporting to be a celebrant representing a certain cohort, for example, the Independent Association of Civil Celebrants or the Humanist Association or the Independent Association of Humanist Celebrants, because there are a myriad of different organisations out there, she will ask for evidence and clarification of their registration with those organisations. Every civil celebrant will have to undergo a training process and only if they are deemed to have met the standards required will they be authorised as a civil celebrant. We are also making

provision in those orders for the Superintendent Registrar and the Assistant Deputy Registrar, who are currently acting delegates, to undertake on the spot checks through attendance at the wedding ceremonies performed by civil celebrants. There is a proper recruitment process and training process at the outset, there are written guidelines that they will be required to follow and there will be monitoring and an ongoing training programme.

Deputy J.A.N. Le Fondré:

Sorry, did you say that the present delegates will be used to perform spot checks on civil celebrants?

Director, Social Policy:

The present delegates, as you probably will ...

Deputy J.A.N. Le Fondré:

We are getting on to that area, but just in terms of what you just said.

Director, Social Policy:

Yes, indeed. Obviously the present delegates, they are not employees of the States of Jersey, so some of them may choose not to participate, but they will be asked to participate within supervising the quality of the performance of registered civil celebrants.

Deputy K.C. Lewis:

You mentioned humanists. Concerns have been raised with us by the Humanist Association about civil celebrants purporting to represent a particular group or organisation, with the example given of the possibility of sham humanists conducting humanist ceremonies. Do you consider that the law offers adequate protection in this area?

Director, Social Policy:

Yes, indeed. That is something that we have given consideration to, which is the reason why the law provides that the Minister must, by order, subscribe to the scheme and why, within that scheme, evidence will be asked for and will be checked to ensure that nobody purports to represent any form of belief or other organisation that they do not represent. The register of civil celebrants that will be in the public domain will only include ... if someone says that they are a humanist celebrant, the register will only advertise them or set out that they are a humanist celebrant if there is absolutely concrete evidence that that is the case and they have been through the appropriate training or registration process with their mothership organisation.

Deputy J.A.N. Le Fondré:

Is that covered in the law?

Director, Social Policy:

That is covered within the orders, which are currently being drafted, and the primary law provides the power to do that within the orders.

Deputy K.C. Lewis:

Transitional arrangements: existing delegates will become Assistant Deputy Superintendent Registrars. Will this be time-limited, such that delegates will eventually need to re-register as civil celebrants?

Director, Social Policy:

They will not re-register as civil celebrants. They are not civil celebrants at the moment. Delegates at the moment have been appointed by, I think it would be fair to say, quite an informal arrangement other than via their swearing in at the court. They are paid on a rota basis, so they are paid per ceremony that they currently solemnise. There is no end to the role of the delegate as it stands at the moment. The law sees them being kind of switched from being delegates into Assistant Deputy Registrars. At that point, for the first time we will bring them within a formal framework, and we will bring them in a formal framework of providing them zero-hours contracts, because that suits the nature of the work that they do. Under those contracts, it will set out obviously the power to terminate that contract as and when it is deemed appropriate.

Deputy K.C. Lewis:

Will this impact on the market for independent celebrants? Will delegates have a competitive advantage if they do not have to go through the training and registration process and pay for it?

Director, Social Policy:

The delegates that we already have, they have gained experience rather than necessarily trained experience, so they are already kind of competent in the role in which they undertake. The Superintendent Registrar, when she does the training for the civil celebrants, will require them to participate within that training, the reason being is they are being trained within a different legal framework. The role of the civil celebrant or the role of the Assistant Deputy Registrar is different from the role of the current delegate as it stands in law at the moment, so yes, they will need to undergo a training process.

Deputy K.C. Lewis:

Just to clarify, will Assistant Deputy Registrars conduct the full marriage ceremony and will the charge for this be commensurate with the fees charged by a civil celebrant?

Director, Social Policy:

The law allows for the Assistant Deputy Registrars to conduct marriage ceremonies. We have done that for a very valid reason, which is that it will take some time for the market of independent civil celebrants to grow in Jersey. In the meantime we need to ensure that there are sufficient people who can legally marry people in Jersey, hence the reason that we have created a continuum of the current role of delegate within the guise of the Assistant Deputy Registrar role. Fees for getting married in Jersey are going to change. You may recall that under M.T.F.P. (Medium Term Financial Plan) 2, as agreed, the Superintendent Registrar's office needs to be cost neutral by 2019 through a user-pays model, so therefore the fees to get married in Jersey will be going up in the round.

Deputy J.A.N. Le Fondré:

Under the law as presently worked, delegates, who will become Assistant Deputy Registrars, will be able to perform the full ceremony?

Director, Social Policy:

Yes.

Deputy J.A.N. Le Fondré:

Whereas presently, for want of a better expression, they just run through the vows, is that correct? It will have to be fairly brief on this, timing-wise.

Director, Social Policy:

In a nutshell, they currently have to, by law, run through the legal part of the ceremony. Depending on what the couple want, they do provide extra support and extra ceremonial duties around it. Because that falls strictly outside the boundaries of the current law, some of them do and some of them do not and it is entirely couple-driven.

Deputy J.A.N. Le Fondré:

I suppose what we are just pushing on slightly is that it seems, and I think you said it at the beginning, that we have got 2 slightly different systems being applied from day one of the law - and I appreciate in 3 years' time it might all converge - in that the delegates, I think they are becoming employees of the States of Jersey, are they not, effectively under this law? Is that correct?

Director, Social Policy:

They do not become employees of the States of Jersey. No, they do not.

Deputy J.A.N. Le Fondré:

I thought the Assistant Deputy Superintendent Registrars are treated as Deputy Superintendent Registrars.

Director, Social Policy:

They are.

Deputy J.A.N. Le Fondré:

Deputy Superintendent Registrars are employees for the purposes of the States of Jersey Employees (Jersey) Law.

Director, Social Policy:

I will just have to check the Article.

Deputy J.A.N. Le Fondré:

Do you want to come back to me on that?

Director, Social Policy:

Yes.

Deputy J.A.N. Le Fondré:

Okay, if you can confirm ...

Director, Social Policy:

Yes, I will do, absolutely.

Deputy J.A.N. Le Fondré:

... and Tom, if you can record that, please. But the question then is that are the delegates not coming through and potentially having a different training regime or may not be obliged to do the training regime compared to the civil celebrants?

Director, Social Policy:

No.

Deputy J.A.N. Le Fondré:

Or are you saying they will all be obliged to undertake the same training regime, it will be the same training regime even if they are coming from 2 different points?

Director, Social Policy:

Yes. The Superintendent Registrar will require them to undergo the same training, because they will have to understand how to operate within the new law, yes, absolutely.

Deputy J.A.N. Le Fondré:

That is fine, I think. That is good. Kevin, do you want to go to question 6?

Deputy K.C. Lewis:

Changing tack slightly, protections for religious buildings.

Deputy J.A.N. Le Fondré:

I think perhaps you ought to direct this to the Deputy Chief Minister.

Deputy K.C. Lewis:

Absolutely. The quadruple lock within the draft law provides protections for religious organisations and officials who do not wish to conduct same-sex marriages. One element of the quadruple lock is the exemption of places of worship from holding same-sex marriages. It has been put to us that the use of the words: "The usual place of public religious worship" may mean that some of the buildings owned by religious organisations are not covered by the quadruple lock, for example, private chapels or some church halls. Why have you not chosen to protect these types of buildings?

The Deputy Chief Minister:

The advice on that was very clear. To some extent, we are mirroring the quadruple lock in the U.K. (United Kingdom) as well. The advice on that was clear, that if it was a public place of worship then it should come under this; if it is a private place of worship, then it need not necessarily. But if they wanted to become registered as a public place, then they would come under that as well.

Deputy J.A.N. Le Fondré:

Just to be clear on your point of view, if it is a public place of worship, it should be captured by the quadruple lock?

The Deputy Chief Minister:

Yes.

Deputy J.A.N. Le Fondré:

The advice that we have got is as presently worded, not all public places of worship will get captured, so because of the word “usual”, it will not capture certain buildings. I think we will have to have a discussion on that separately.

The Deputy Chief Minister:

We need to discuss that, because that is contrary to what I thought.

Deputy J.A.N. Le Fondré:

Moving on. We are up to 7.

Deputy S.M. Brée:

One of the areas that we have been looking at is the use of religious content in civil ceremonies.

[10:15]

Now, it does seem to be slightly contradictory because the Superintendent Registrar has told us that religious content in civil marriage ceremonies was added into the law following consultation. On what basis did you decide to permit religious content in civil marriage ceremonies? What was the basis of that decision?

Director, Social Policy:

I cannot remember exactly at what stage, but at the point at which the States debated the in-principle decision to introduce same-sex marriage and a decision was made to amend the Marriage and Civil Status (Jersey) Law, we were notified by the then Greffier of the States that the 2001 law contained an error. That error related to the restrictions on religious content within the civil marriage ceremony. The States, when they debated the 2001 law, the then Tourism Committee had brought forward a proposed amendment which was about allowing religious content with civil ceremonies. The States Assembly agreed to that, but the way in which the changes were reflected in the 2001 law meant that it was crudely reflected as a complete ban and a complete restriction on religious content, rather than what the States decided they wanted to happen at that particular time. Being aware of that and having listened to that, we then had conversations with the then Superintendent Registrar, who was very clear that from her feedback from couples and her feedback from her delegates that the restriction on all religious content, many couples were very unhappy about it. The issue about religious content, because it is such a broad definition, it covers things like ribbon-tying ceremonies, candle-lighting ceremonies, it covers hymns, and for many people hymns are not about an act of faith, they are about an act of identity. The feedback was that people were very unhappy about that. In the consultation meeting in September 2016, which I mentioned earlier, I discussed this with the religious organisations.

While there was some concern expressed by some of the organisations, the overriding view and the overriding feedback from that meeting was that they were happy for religious content, providing it did not fall into being a replication of a religious service or religious rites. I then worked with the previous Dean to develop the law drafting instructions, which he was cited on throughout the whole of the process and was supportive of the ability under the law to allow certain forms of religious content.

Deputy J.A.N. Le Fondré:

Did the previous Dean or the present Dean see the draft proposed Articles before lodging?

Director, Social Policy:

The previous Dean saw the extract from the law drafting instructions.

Deputy J.A.N. Le Fondré:

No, I said the actual Articles.

Director, Social Policy:

No, because we did not have those Articles at that time.

Deputy J.A.N. Le Fondré:

The present Dean, did he see the draft Articles?

Director, Social Policy:

No, he did not, once again because we did not have the draft law, but the previous Dean, I think it must have been end of 2016, beginning of 2017, worked with me and commented on the law drafting instructions.

The Chief Minister:

No, because we do know now that the current Dean takes a different view, so let us just be ...

Deputy J.A.N. Le Fondré:

Yes.

Deputy S.M. Brée:

If we look at Article 17(8) and effectively the following clause (9), we have heard concerns from a number of organisations that there seems to be a conflict between the 2. Article 17(8) says: "A civil marriage celebrant must not permit any marriage solemnised by him or her to include any religious ritual or any religious worship or service to be conducted during the marriage ceremony"

but (9) then goes on to say if that civil marriage celebrant is satisfied that the content of the marriage ceremony does not contravene paragraph (8) that they can allow hymns, songs, chants, whether or not they contain any references of a religious nature, then readings from the Bible or other holy books or any other reading that contains any reference of a religious nature. There seems to be a conflict between the 2 as to on the one hand you have it saying it is not permitted, but on the other hand, you are saying it can be permitted. I think clarity needs to be sought on this one, because it is slightly confusing as to what the difference between each clause is.

Director, Social Policy:

Obviously we have developed these Articles, the Law Draftsman has written them and we have sought legal advice on them. It is very standard for a law to say you cannot do something, except in these particular circumstances. That is where the interface of those 2 Articles work. One of the complexities always with what is or is not an act of religious worship or what is or is not religious ritual is that these things are not absolutes and different people hold slightly different views on them. What Article (8) stands to do is to say it is not permitted except for within the circumstances described in Article (9), for example, hymns, songs and chants.

Deputy S.M. Brée:

But the law itself, in both clauses of this Article, states that it is the civil celebrant who determines whether or not something is of a religious nature. How are they qualified to make that decision?

Director, Social Policy:

As I mentioned before, there is a training programme for celebrants and there is also written guidance in which they need to work. One of the things that will be required of every civil celebrant solemnising marriage in Jersey is they must agree in writing with the couple the form of the ceremony that they are going to be presiding over and the content of that ceremony that is going to be presided over. If the couple want a particular reading, if the couple want a particular song, that needs to be agreed in writing with the civil celebrant. The civil celebrant, under the guidance to be brought forward and as a requirement of their continuation as a civil celebrant in Jersey, if they have any doubts or any concerns at all, they must seek advice from the Superintendent Registrar. If the Superintendent Registrar has any doubt at all, the Superintendent Registrar will seek advice from the appropriate religious authority. In most cases it will be writ clear, because the laws permit them. The main issues here, in virtually every case, are wanting to sing hymns, people wanting ribbon-tying and people wanting candles. Those are the absolute key issues. In most cases the civil celebrant will know, because the law expressly permits those things, so it will not be an issue, but there are always, as we know, those odd and difficult and complex cases that arise in everything we do. What we are doing is we are placing the requirement on the civil celebrant, a requirement of their registration, to ensure that they get it

written down, to ensure that they seek advice if they have any doubt and then the Superintendent Registrar will seek onwards advice.

Deputy S.M. Brée:

Where within the law does it state that the Superintendent Registrar is required to seek guidance from the relevance religious organisations?

Director, Social Policy:

It does not. What the law does is the law says that the Minister will bring forward a scheme by order. As I said, the law drafting instructions have already been drafted for those and that is very clear within those orders.

The Chief Minister:

It is a difficult area. You take the Corinthians reading about love, if you take it out of its context, it is a poem or a bit of writing about love. It means 2 different things to 2 different people. "Guide me, O thou great Jehovah" to a Christian means one thing, but to an atheist Welsh rugby supporter it means something else entirely, who might want it in their civil ceremony. It is trying to get that balance and having the control through the writing down of what the service will be.

Deputy J.A.N. Le Fondré:

We might have another discussion on that front. Just one point of clarification from me. You made reference to the meeting you had with the various religious organisations, I think you said September 2016 ...

Director, Social Policy:

September 2016.

Deputy J.A.N. Le Fondré:

... and where this was one of the areas that was raised, I think. You said the overarching approach was where you had gone. It is very difficult to judge, because you can have 15 people in a room and 11 of them have a particular view, but if the other 4 represent - for want of a better expression - the mainstream religious organisations and they disagree, who do you listen to? In other words, when you say the overarching view of the room, was that taking into account, as I have understood it, that about 50 per cent of the population of the Island define themselves as either Anglican Church of England or Roman Catholic and would the overarching view of the people in the room encompass that proportion of the people they represent?

Director, Social Policy:

These things are always difficult, are they not, as with any consultation we undertake? Because we get the views back from the people we ask questions to and we do not necessarily hear from other people. I think from the perspective of a piece of policy development, it had the support of the then Dean. Obviously the Dean has a slightly different role, because they have a different role within the States Assembly and we have canon law in Jersey. The previous Dean was supportive.

Deputy J.A.N. Le Fondré:

Okay, thank you. Right, I think possibly a question for you, Chief Minister, but you may want to pass it to the Deputy Chief Minister. It is quite convenient you mentioned canon law. Obviously the States voted and agreed to Jersey canon law in 2010. Obviously that was an update; canon law has been around for quite some time before that. The law refers to marriages being between a man and a woman, as I am sure you are aware. Do you think there is a conflict between the canons and the draft law? I do not need to go into the major issues, but ...

The Chief Minister:

On one hand, yes, on the hand that what we are trying to balance here - and it will come out, no doubt, during other conversations - is the traditional biblical view of marriage and holy matrimony and that right and the desire of the community to present legislation which as far as possible is non-discriminatory in allowing couples of the same sex to marry. On the one hand you have got canon law, which describes the traditional view as the Bible or church teaches around holy matrimony, and on the other hand, you have got the desire of the community to have the same legal ability to marry for same-sex couples. What the draft law seeks to do is to manage that conflict through the quadruple lock.

Deputy J.A.N. Le Fondré:

We will move on to that. It was really just an overarching introductory area to where we are going, which is all around the conscience clause issue. One of the issues we have had of course is that we have received evidence about the perceived need for a conscience clause in the law to protect people of faith who consciously object to same-sex marriage. Now, the report to the proposition, to your proposition, explains why this has not been included. Could one of you just briefly explain that now?

The Deputy Chief Minister:

It is quite simple, really. First of all, experience from other jurisdictions tells us the conscience law does not work properly, but the one that is always cited to me is the conscience provision, if you like, for nurses around abortion. They have the right to say that they do not participate in that. The difference is that they select not to participate for belief reasons in abortion.

[10:30]

They do not select to say: "I will not participate in an abortion for somebody of a different ethnic background or somebody who is not married." They have been allowed to opt out completely. We know from experience, looking at other jurisdictions, that that works there, but that does not transfer over.

Deputy J.A.N. Le Fondré:

Just picking up, you said conscience clauses in other jurisdictions. Just briefly, what other jurisdictions?

The Deputy Chief Minister:

The U.K. was the one I was particularly ...

Deputy J.A.N. Le Fondré:

The U.K. does not have a conscience clause for same-sex marriage.

The Deputy Chief Minister:

Yes, but it has been proved not to be successful.

Deputy J.A.N. Le Fondré:

No, you referred to other jurisdictions having it, so what other jurisdictions?

The Deputy Chief Minister:

That is what I asked about when I was receiving my briefings.

Deputy J.A.N. Le Fondré:

Just the U.K.?

The Deputy Chief Minister:

Yes.

Deputy J.A.N. Le Fondré:

Have you looked at the U.S. (United States) or Canada or Switzerland or anywhere?

The Deputy Chief Minister:

I have not.

Deputy J.A.N. Le Fondré:

How much consideration therefore did you give to implementing a conscience clause and did you explore ways that it might work in practice?

The Deputy Chief Minister:

I will have to answer your question slightly differently, I believe, because it is something that I spent some time looking at and asking questions about. The problem is that with the conscience clause, as I see it, if it is not constructed properly - and I have not seen any evidence that it could be constructed in the right way - it encourages and allows for discrimination rather than someone opting out for a particular reason. As I say, a nurse can walk out from participating in a particular process completely, but she - or he, because we have male nurses as well - does not select which ones they will do and which ones they will not.

Deputy J.A.N. Le Fondré:

I suppose the question is that in the U.K. we have seen examples of people going to court or being dismissed from work because they have conscientiously objected to same-sex marriage. Do you think we are likely to see similar cases in Jersey as a result of this law?

The Deputy Chief Minister:

My understanding of that - and I could be wrong, I could stand to be corrected - was that it was nothing to do with the marriage ceremony or similar things, it was a problem between the employer and the employee.

Deputy J.A.N. Le Fondré:

No, I said to same-sex marriage as a principle, rather than a same-sex marriage as an event. The point is do you think we could see that kind of issue arising in Jersey?

The Deputy Chief Minister:

I hope not. I cannot say definitely that it will not arise, but again, most of the high-profile cases that we have seen in the U.K. media particularly have been around the relationship between the employer and the employee.

Deputy J.A.N. Le Fondré:

Hopefully you have been copied an article by Peter Tatchell, which was sent to yourselves in the last few days, which was one provided to us as one of the submissions. In the article, following the ruling against the Ashers Bakery in Belfast, which I assume you are aware of ...

The Deputy Chief Minister:

Yes.

Deputy J.A.N. Le Fondré:

... which obviously was not necessarily an employment issue, Peter Tatchell stated: "In my view, it is an infringement on freedom to require businesses to aid the promotion of ideas to which they conscientiously object." Obviously for the record, as I understand it, Peter Tatchell is a prominent gay rights campaigner: "Discrimination against people should be unlawful, but not against ideas." Do you believe that the draft legislation should be amended to reflect such a view?

The Deputy Chief Minister:

I think the legislation as drafted is the most appropriate for Jersey.

Deputy J.A.N. Le Fondré:

You do not think that legislation should be amended to reflect that type of view?

The Deputy Chief Minister:

No, I do not.

Deputy J.A.N. Le Fondré:

The report does anticipate that might be an area the States would want to give more consideration, suggesting that they will be able to take that as a separate piece of work. Why is this?

The Chief Minister:

I have to be very careful here. I gave the conflict that I gave right at the start of this hearing for those very reasons, and Ruth knows that throughout this process I have kept revisiting this issue, much to her chagrin, I think, to find a way. Because I think what we see, we do see elsewhere cases that we would not want replicated here. We discussed this months ago. Finding a remedy in the law ends up being quite difficult and I have read again with interest some of the submissions because I have to say I do not want to criminalise people who have a religious objective or on religious grounds object and see marriage as shown in canon law. But creating a legal framework through the Equal Marriage Law that provides that protection, which is a protection for those religious beliefs and not for discrimination, is a real challenge. Even if we think about some of the things that Lady Hale has said, there is an exploration of a form of words taking place elsewhere that might be usable in the future, but I do not see anything currently which is fully formed which gets that balance right. It is interesting, the Deputy Chief Minister talks about nurses or midwives who do not perform abortions or do not attend theatre for those abortions, but again 2 Christian

people of traditional biblical view can take a different view on where that line for them lies. Some would support in theatre, some would not.

Deputy J.A.N. Le Fondré:

I think it has been made clear there is a spectrum of people across this anyway.

The Chief Minister:

This is where we talk about the Northern Ireland cake-baking incident. There is a company offering a good and a service - very difficult for a clause - which would allow that company not to offer that good and service in a non-discriminatory way along these lines. I note with interest the submission or when the J.A.E. attended upon Scrutiny. Some of the things that I think they acknowledged there did not quite translate into the form of words that they have sent me - and I think they have probably sent you - around they are saying they are not suggesting any form of conscience clause, exclusion would allow discrimination against same-sex people in the provision of general services, what they are seeking is a narrow provision to allow individuals to be exempt from the celebration, promotion or consecration of same-sex marriages. Now, the quadruple lock was premised on the basis that it would allow that sort of exclusion and we followed, to a large extent, what happened in the U.K. around the quadruple lock. But as these things develop and as case law develops, and I think we have said you are going to come back to us with some suggestions about places of worship that may or may not be covered, which in effect is a refinement of that quadruple lock, if there is a refinement of the quadruple lock, we may not call it a conscience clause, but an enhancement of it, which will give further protection, then I think that is something that is worth looking at. I note also from the Dean's submission about a conscience clause and that section of his submission ends by saying: "It is clear that this would be a challenging task" and I think I said that to you a few months ago. However, it is an option that is worth exploring. That is the view I have always pushed back on and asked Ruth to find out what the developments were in Northern Ireland, where the legislature there was looking at a conscience clause, but no longer have taken it forward as worth exploring. The Dean's view here is not dependent on the progress of the Draft Marriage Law. Now, I am not sure that is a view that would be shared by the J.A.E., but I also know from the consultation that we have had with the religious organisations throughout this period, not all of the Christian denominations are at one on whether this law is something that should be embraced and brought forward; they are not at one about whether their denomination should perform same-sex ceremonies in their places of worship. But again we would fall back on that is why we have the quadruple lock for those Christian and religious organisations to make the decisions themselves and when they are ready or feel it is right to do that, they can do so. It is how do we present legislation which is non-discriminatory on both sides of the view, but also is human rights compliant? The Deputy Chief Minister outlines quite clearly the current position as drafted in the law. If the panel have other suggestions, then we are

more than happy to consider those, but we would need to do it with lawyers and look at the human rights implications as well as the non-discriminatory implications as well, because I think you, Chairman, just quoted a view from Peter Tatchell. These things are very easy to say and we can desire an outcome which can be extremely complex to deliver well.

Deputy J.A.N. Le Fondré:

Let us try to wrap up this area. Okay, 2 observations and then we will hopefully move on to the next bit because we are slightly behind time. Just a point in the submission from Liberate, so at least in their public hearing they also made the point that not everybody from the groups they represent are universally supportive of the legislation. It is irrespective, it is across spectrums here. The other point really is that I think in summary, I do not want to put words in your mouth, but is it reasonable to say that there is a risk under the law that because of the absence of a wider conscience clause, there is a risk that certain people of faith may be put into a difficult position as a result of the implementation, but it is how it is going to be difficult to address that?

The Chief Minister:

Let us be honest, it is about the interplay of this legislation with the discrimination legislation. When you have the overlay, you can see that not offering services around this piece of legislation shows that you are breaching the discrimination legislation. It is far more difficult around the offering of goods and services than it is about a refinement of the quadruple lock about the ceremony itself, where it takes place and who performs and does what in that ceremony.

Deputy J.A.N. Le Fondré:

We will move on. Okay, Simon.

Deputy S.M. Brée:

There are other areas of law that have not been included, either within the amendments or within the consequential amendments, and one of those is the Civil Partnership Law. At the moment, the Civil Partnership Law only extends to same-sex couples. If the States were to approve and pass all of these amendments, it would mean that same-sex couples had the option to either marry or enter into a civil partnership, but heterosexual couples only had the option to marry. Is that not discriminatory?

The Chief Minister:

We did initially start on this journey saying we were going to remove civil partnerships as well, did we not, and it was only as we went through the process and we came up against some very strong legal objections around its removal, rather than extending it, that we had to stop short. The view we took was we know that this is an issue elsewhere, they are slightly further along the line than

we are, and we will watch with interest the cases, which I think are currently going through the U.K. court system to see what the result there is. Because if we started out on this journey, which some of us did, about marriage being good for society, then we are trying to encourage everyone to get married, which is why we were going to take away civil partnerships and convert them into marriage. We know that in France there is an issue with that conversion as well, which the French state currently does not acknowledge, and so we are looking to see what happens elsewhere before we make any other changes. But there are a number of consequential changes that when we started we wanted to make. This was one; divorce reform was another.

Deputy S.M. Brée:

Just to clarify, you fully appreciate that by lodging this proposition and asking the States to approve it, you are creating discrimination against heterosexual couples? You are quite happy with that?

[10:45]

The Chief Minister:

Currently there is no other option open to us. It is not an ideal position, but that is what we are proposing, this approach.

Deputy S.M. Brée:

The proposition passed by the States in 2015 included an agreement to introduce, as you touched on, divorce reform. Once again, those changes have not been brought forward. Why not?

The Chief Minister:

Because I was left with a decision before the summer that we could either carry on with the full piece of work - and it was going to take a lot longer than initially envisaged - or deliver on the States decision about equal marriage and therefore we would have to separate out some of those pieces of work. That was the decision that we took.

Deputy S.M. Brée:

Yet you have amended part of the Matrimonial Causes (Jersey) Law 1949 (as amended). The particular one that I would ask why is: "For the purposes of this Article, only conduct between the respondent and a person of the opposite sex may constitute adultery." You have quite clearly changed part of it, so effectively made couples within a same-sex marriage again discriminated against, that they cannot sue for divorce if one partner or the other commits an adulterous act with a member of the same sex. You are attempting to change bits and yet you have left out large chunks of change that should have happened. Why is that?

The Chief Minister:

Some of these are consequential and that we gave commitment to making the change. The Divorce Law change, which would have required a lot more work and a lot more consultation, was whether we would move through to a no-fault divorce. There has been a strong call from the Law Commission to do that. I think there are other reasons why that might not be the approach that we would want to take. What this change does is mean that couples of the same sex would need to use the ground of unreasonable behaviour. There are many acts that one could commit with another human which was not adultery, which could still constitute, I think, in a relationship, unreasonable behaviour towards another person. We are just trying to get that balance. In effect, a different sex ...

Deputy S.M. Brée:

Why make that particular amendment then? Why are you saying that same-sex couples cannot sue for divorce on the grounds of adultery, where an adulterous act is committed with a person of the same sex, and yet heterosexual couples can?

The Chief Minister:

Again, it is my understanding that this is a problem that the United Kingdom have. Defining what is an adulterous act in a same-sex relationship in law I do not think has been done elsewhere. What has happened elsewhere is that they have gone and done the bigger piece of legislative change. It is quite a few months since we had the conversation and thought about the policy implications. Ruth, I do not know if it is ...

Director, Social Policy:

The difficulty just on the definition of adultery, adultery has a common law definition and the common law definition of adultery is that it is a sexual act between a man and a woman and it has to involve penetration by the penis. As a result of that, it by definition cannot apply to same-sex couples. A vast number of divorces happen at the moment where one of the spouses has been unfaithful, has been physically unfaithful in a way that most people would consider to be adulterous, but legally it is not adulterous. Therefore if they are going to get divorced and they are going to use fault-based grounds, they have to use "unreasonable behaviour."

Deputy S.M. Brée:

Can I just then clarify, if a couple are in a same-sex marriage under the proposed law and one partner commits an adulterous act with a member of the opposite sex, then adultery can be used?

Director, Social Policy:

Yes, it can be. It can be ...

Deputy S.M. Brée:

That seems a somewhat perverse situation.

Director, Social Policy:

Absolutely, and that is one of the reasons why we need a wholesale reform of our Divorce Law.

Deputy S.M. Brée:

Then why was that not done? Basically I am asking the question again, despite what you have said, Chief Minister. In 2015 the States agreed that we should look at divorce reform. We are now 2018. You have attempted obviously with consequential amendments to adapt the existing laws to suit same-sex marriage and the common law problems with definitions, yet you have not attempted to bring through proper divorce reform. Once again I would go back to my earlier question of surely this should be done as part of this overall project and to leave it out is wrong.

The Chief Minister:

In an ideal world, I agree with you. That is why I have set off and I have very clearly put into the in-principle decision that divorce reform would be included, because I felt it was an important change as well. But you will appreciate from the legislative scrutiny that you are doing and the conversations that we are having across the table that these are very challenging technical legal areas. It became apparent to me that opening up again another Pandora's box of divorce reform would just have pushed this even further into the long grass and would have required more and further consultation because there was not even a minute on what we should do in regard to divorce reform. I am sorry that we are here and we do not have those proposals before you. The point you are making I absolutely accept. But I do not think it is grounds for us not continuing with this piece of legislation, because other jurisdictions - and this is never a defence, of course - have just changed their legislation in this regard and decoupled it from divorce reform, but they have left in the very issues that you have just been raising with us.

Deputy J.A.N. Le Fondré:

We have 3 questions left and I appreciate your total time, Chief Minister.

Deputy K.C. Lewis:

It is a tricky one, gender recognition certificates, and I make reference to Article 7(1)(b). How would the law apply to those couples where one individual has changed their gender and is legally recognised as having done so? Do you think religious organisations or religious officials should

have to marry a couple if one of the 2 has fully transitioned to the opposite sex and holds a gender recognition certificate so that the couple are now legally of the opposite sex?

The Chief Minister:

Sorry, what are you trying to ask?

Deputy K.C. Lewis:

In 7(1)(b): “Marriage a point of religious rights, no compulsion to solemnise. A person shall not be compelled by any means, including enforcement of a contract [et cetera] if the person reasonably believes to be a person of acquired gender.” If, for instance, for argument’s sake, a man transitions to a woman at some point in their life and later on decides to marry a man, then surely they are legally entitled to do so.

The Chief Minister:

This comes back to what we have spent quite a lot of time talking about and that is the biblical view of holy matrimony and what, in a modern-day community, citizens in that community find acceptable. What this does is again follow the models from elsewhere and acknowledges that the traditional Christian view of changing gender, it is evolving. Members might take the view that they do not want that.

Deputy K.C. Lewis:

Obviously the law recognises transgender people, but apparently here they do not.

The Chief Minister:

No, it is the ability for ...

Deputy K.C. Lewis:

Well, the ability to discriminate against.

The Chief Minister:

But some would argue, and I have had it argued to me, that the quadruple lock gives the church the ability to discriminate anyway and this is another element of - I am not sure if “conflict” is the right word, but maybe it is - tension of the traditional Christian view with what in our modern community we think is an acceptable and appropriate and non-discriminatory approach to take.

Deputy K.C. Lewis:

So transgender people do not have full recognition in that sense?

The Chief Minister:

No, they do, but not if they want to get married in one of these organisations that falls within the quadruple lock, just in the same way that people of the same sex who want to get married under this legislation cannot do unless that religious organisation changes and says: “No, we are changing our approach and we are going to say yes, we are going to allow it.”

Deputy K.C. Lewis:

So transgender can be treated as same sex?

The Chief Minister:

These are very difficult areas.

Deputy K.C. Lewis:

I agree.

Deputy S.M. Brée:

He was just trying to clarify the point the Chief Minister was making that under canon law marriage is between a man and a woman, so we will take the Church of England in Jersey, for example, that is the stance they are taking. Under the Gender Recognition Law, provided that person has gone through full reassignment and transition and been provided with a gender recognition certificate, they are legally of the gender they have acquired, so that is, legally speaking, a heterosexual marriage. I believe, Chief Minister, what you were saying was irrespective of the legal position of an individual as to their gender, as confirmed by the courts, you still believe that the religious organisations and officials have the right to say: “No, we do not accept that.”

The Chief Minister:

Albeit you have been critical - and I accept criticism, that is part of the job - of the engagement we have had with the religious organisations, we have tried to work constructively with all of the organisations as well as individuals who have an interest, a very close interest, in this legislation. I accept that some members of our community will feel and do feel that the quadruple lock, as written elsewhere and is now being proposed to be written into Jersey legislation, is inappropriate, because it comes back to your point, Deputy, about there appears to be discrimination across this law. I cannot do anything other than suggest there is a tension between other pieces of legislation and this piece of legislation in this regard. I think you have the Dean coming to speak to you later. You might wish to pick up with him what the church’s view is in this particular regard.

Deputy J.A.N. Le Fondré:

Final question, you will be delighted to know, and hopefully ... I will not say an easier one, but anyway ...

The Chief Minister:

I do not think there are any easy questions in this legislation.

Deputy J.A.N. Le Fondré:

We know that, Chief Minister. When I say it is easier, it is a technical question, I think. In the original proposition, which is P.77/2015, it states specifically: "Agree to retain terms such as 'husband' and 'wife' and 'mother' and 'father' in any consequential amendments." But there are, it would seem, numerous consequential amendments which change these terms to "spouse" and "parents." I will caveat the question in terms of I can understand there may be convenience from a law drafting perspective, however, given that it was a specific States decision, because it was specifically identified in the States proposition approved, why has that decision not been upheld?

[11:00]

Director, Social Policy:

It is about law drafting complexities, you probably will not be surprised to hear.

Deputy J.A.N. Le Fondré:

But convenience is not quite what the States signed up to.

Director, Social Policy:

But the Interpretation Law of the States of Jersey will interpret "spouses" as husbands and wives, husbands and husbands, wives and wives. Flowing from this law are significant changes to virtually every form used by the Superintendent Registrar's process about the whole of booking marriages and registering marriage. Every single one of those forms we are providing couples with the facility to adapt those forms so that if 2 men are getting married they can use "husband and husband" or they can choose to use the term "spouse." Similarly, we will make sure that birth certificate forms will be able to be changed as well so they can refer to a "mother and a mother" and a "father and a father" or a "parent and a parent." We are ensuring that in all documents which the public interface with, the public have absolute choice of the terms that they wish to use to describe themselves and their relationship to their spouse.

Deputy J.A.N. Le Fondré:

For many people who will still prefer to use the terms "husband and wife" or "mother and father" they will still have that option to do so?

Director, Social Policy:

Yes, they can do.

Deputy J.A.N. Le Fondré:

However, while I accept the point about convenience in terminology in law drafting, it is not quite what the States agreed. Do you accept that?

Director, Social Policy:

I do accept that, but it is also the case that lots of our laws already refer to spouses, so some of the laws we have amended and we have used the term “spouse” because that has already been used within the law. There are laws that refer to husbands and wives and there are laws that refer to people who are married and there are laws that refer to spouses. So we do use the term “people who are married” and “spouses” in other legislation.

Deputy J.A.N. Le Fondré:

But, for example, the Agricultural Lands (Jersey) Law, being the first one on the schedule at the back, we are replacing the words “husband and wife” with “spouses” but technically that is against what the States approved.

Director, Social Policy:

We have tried as far as we can to uphold the terms “husbands and wives” and ...

Deputy J.A.N. Le Fondré:

Could you have not just inserted the words “or spouses” just to keep being consistent, for example?

Director, Social Policy:

As a non-Law Draftsman, I would say that might be possible, but I am not a Law Draftsman.

Deputy J.A.N. Le Fondré:

I think the point we are making is that the States agreed a certain thing. Surely, from my perspective as a politician, I think it should have been accommodated rather than just for convenience say: “We will do it the other way.” I know it is a minor irrelevant thing, but I know it is an issue, from what I have understood, like we all do reading around these subjects sometimes, it has caused concern in other jurisdictions. But I rather suspect you are not going to be in a position to amend the 30-odd laws accordingly by next Tuesday. I think on that matter, Chief Minister, Deputy Chief Minister and of course the Director, thank you very much for your time. I

hope you appreciate the grilling you have had, but it has also identified the complexities we are all grappling with.

The Chief Minister:

Chairman, as I said at the start, it is a wide process.

Deputy J.A.N. Le Fondré:

Yes, thank you very much for your time. That concludes the hearing.

[11:03]