

STATES OF JERSEY



DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202- (P.112/2022): COMMENTS

**Presented to the States on 12th January 2023
by the Children, Education and Home Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Children, Education and Home Affairs Scrutiny Panel ('the Panel') was grateful to receive an initial briefing on the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- ('draft Law') on 15th August 2022. The Panel received a subsequent briefing on 29th November 2022.

The Panel felt that it would be helpful to set out the understanding it has in a comments paper, to assist other Members of the States Assembly ahead of the debate of P.112/2022.

As a result of the briefings, the Panel understands that the draft Law is required in order to amend both the Marriage and Civil Status (Amendment) (No. 5) (Jersey) Law 2022 (P.6/2022) and the Civil Partnership (Amendment) (Jersey) Law 2022 (P.7/2022) ('the Laws'), which were both approved by the States Assembly in March 2022 but are yet to receive Royal Assent.

Why is the amendment proposed by the draft Law needed?

The Panel was advised that following States Assembly approval, the Laws had been sent to the UK Ministry of Justice for review ahead of presentation to the Privy Council. At this point an issue was identified with the schedules used in each of the Laws that made them non-compliant with the European Convention on Human Rights, following the ruling in the case of *B and L v. United Kingdom*.

The purpose of the draft Law is to primarily address this issue (as per the specific details set out in the report accompanying the proposition). The Panel understands that the associated Laws will not be presented to the Privy Council for Royal Assent without compliance with the provisions set out in the European Convention on Human Rights.

Update to the draft Law

The Panel highlights that the draft Law was originally lodged as P.88/2022, but this was withdrawn by the Minister for Home Affairs. The briefing on 29th November 2022 focussed on the reasons for the draft Law being re-lodged.

Marriage and Civil Status (Amendment) (No. 5) (Jersey) Law 202- amended

With reference to Article 1(3)(a) of the draft Law, the Panel was advised that the insertion of "Adoptive grandchild" and "Former adoptive grandchild" to the list of absolute provisions was to correct an omission from the Marriage and Civil Status (Amendment) (No. 5) (Jersey) Law 2022. It was clarified that no consequences had arisen from that omission, as the law has not yet been brought into force.

The Panel's main queries were in relation to Article 1(3)(b) of the draft Law, which proposed the deletion of wording relating to the prohibitions for marriage from Schedule 1 ('Relations whom it is prohibited to marry'), paragraph 2 (qualified provisions) of the Marriage and Civil Status (Amendment) (No. 5) (Jersey) Law 2022.

The Panel queried whether the deletion of the wording from the Schedule removed any protections, however, was assured that the proposed deletions would not cause concern from a safeguarding perspective.

In respect of Article 1(3)(b)(i) of the draft Law, the Panel queried the suitability of deleting the wording specifying the qualified provision from the Schedule, namely: “*unless the younger has not at any time before reaching the age of 18 been a child of the family in relation to the other*”. The Panel was advised that the proposed deletion was due to duplication of the term elsewhere. The Panel was also advised that the “*child of the family*” was a defined term in the Marriage and Civil Status (Jersey) Law 2001 and that, if the draft Law was adopted, Article 3(4) of the amended Marriage and Civil Status (Jersey) Law 2001 would read:

“A marriage between 2 persons is void if one of them is related to the other in a prohibited degree specified in paragraph 2 of Schedule 1 unless the younger has not at any time before reaching the age of 18 been a child of the family in relation to the other”.

The Panel is therefore assured that there remains a qualified prohibition of relationship for a marriage, i.e. if a stepparent – stepchild familial relationship was in place when the younger person was under the age of 18 and has been considered a ‘child of the family’ in relation to the other.

In respect of Article 1(3)(b)(ii) of the draft Law it was clarified to the Panel that the table proposed for deletion in that paragraph in the Schedule of ‘Relations whom it is prohibited to marry’, prevented a person marrying their son or daughters’ previous spouse, or a person marrying the father or mother of their former spouse, save for circumstances where certain individuals (such as a former spouse) had died. This was an aspect that made the draft Law non-compliant with the European Convention on Human Rights, following the ruling in the case of *B and L v. United Kingdom*. It was confirmed that the table did not function to prohibit a stepparent marrying a child to which they have had a stepparent relationship, but there had been a misleading heading on this article in the Marriage and Civil Status (Amendment) (No. 5) (Jersey) Law 2022.

Civil Partnership (Amendment) (Jersey) Law 202- amended

The Panel’s queries on Article 2 of the draft Law in relation to the proposed amendments to the Civil Partnership (Amendment) (Jersey) Law 202- echo those referred to above in reference to Article 1(3)(b)(ii) of the draft Law relating to the ‘Relations whom it is prohibited to marry’.

The Panel understands that Article 2 of the draft Law works to restore Schedule 2 which was originally included in the Civil Partnership (Jersey) Law 2012, but removes the paragraph 5 and table, which prevented a person marrying their son or daughters’ previous civil partner, or a person marrying the father or mother of their former civil partner, save for circumstances where certain individuals (such as a former civil partner, or child) had died. This was an aspect that made the draft Law non-compliant with the European Convention on Human Rights, following the ruling in the case of *B and L v. United Kingdom*.

Conclusion

The Panel is supportive of the draft Law, and notes that its approval will allow the Marriage and Civil Status (Amendment) (No. 5) (Jersey) Law 2022 and the Civil Partnership (Amendment) (Jersey) Law 2022 to be put forward to the Privy Council for Royal Assent.