

STATES OF JERSEY



Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

**Lodged au Greffe on 5th December 2022
by the Minister for Home Affairs
Earliest date for debate: 17th January 2023**

STATES GREFFE



Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Home Affairs has made the following statement –

In the view of the Minister for Home Affairs, the provisions of the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy H.M. Miles of St. Brelade**
Minister for Home Affairs

Dated: 30th November 2022

REPORT

The Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- (the “draft Law”) will, if approved, amend the [Marriage and Civil Status \(Amendment No. 5\) \(Jersey\) Law 202-](#) (the “Amendment No. 5 Law”) and the [Civil Partnership \(Amendment\) \(Jersey\) Law 202-](#) (the “Amendment Law”). These Laws made amendments to the [Marriage and Civil Status \(Jersey\) Law 2001](#) and the [Civil Partnership \(Jersey\) Law 2012](#) respectively.

In March 2022, the States of Jersey approved the Amendment No. 5 Law and the Amendment Law. This draft Law would make four retrospective corrections to provisions in those two amendment Laws. These amendments are minor in nature and are necessary to ensure the amendment Laws both align with Government policy and comply with the European Convention on Human Rights (ECHR) before either amendment Law is brought into force.

It is important to note that because the two amendment Laws are being held back from being brought into force, no unintended consequences have occurred, and the public have not been impacted by any of the provisions that are to be amended by this draft Law.

The amendments relate to the prohibited degrees of relationship that apply to both marriage and civil partnerships.

Article 1 amends Schedule 1 to the Amendment No. 5 Law to remove paragraph 3. Paragraph 3 consists of a table that was inadvertently included in the Amendment No. 5 Law. The table sets out a series of relationships where two people are deemed to be within a prohibited degree of relationship for the purposes of marriage (i.e. they are prohibited from marrying one another). Unless the people mentioned in the right-hand column of that table are dead, two people cannot marry if one of those two people is a:

1. former civil partner of that person’s child;
2. former spouse of that person’s child;
3. parent of that person’s former civil partner; or
4. parent of that person’s spouse.

Article 1 also removes certain repetitious definitions of “child of the family” that are defined elsewhere in the Law and reinserts prohibitions on the marriage of a person with his or her former adoptive grandchild and adoptive grandchild. These prohibitions were inadvertently omitted from the provisions after they were moved into the new Schedule 1 that will be substituted into the 2001 Law by the Amendment No. 5 Law.

Article 2 of the draft Law amends the Civil Partnership (Amendment) (Jersey) Law 202- to restore Schedule 2 of the 2012 Law except for paragraph 5 which is not reinstated. Paragraph 5 consists of a table that was inadvertently included in the Amendment Law. The table sets out a series of relationships where two people are deemed to be within a prohibited degree of relationship. The restoration of Schedule 2 without paragraph 5 would mirror the provisions under Schedule 1 of the Amendment No. 5 Law which are described above. It is necessary to remove paragraph 5 for reasons explained below.

Failing to amend the 2001 Law and the 2012 Law in this manner would place a prohibition on the marriage or civil partnership of a parent-in-law with his or her child-in-law unless their respective spouses or civil partners through whom the relationship is traced are dead. This was found to be incompatible with the ECHR in the case of *B and L v. United Kingdom* (Application 36536/02) in which the European Court of Human

Rights held that such a prohibition could not be maintained as logical or rational. It is, therefore, necessary for these tables to be removed before either the Amendment No. 5 Law or the Amendment Law come into force.

Article 3 provides for the citation and commencement of this draft Law. It will come into force on the day after its registration. It is anticipated that this Law and the two Laws which it amends will all be registered on the same date. The effect is that the provisions being deleted will never take effect.

Financial and resource implications

There are no financial and resource implications for the States arising from the adoption of this draft Law.

Human rights notes

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law, if passed, would amend the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202- (the “Amendment No. 5 Law”), which itself would amend the Marriage and Civil Status (Jersey) Law 2001 (the “2001 Law”), and the Civil Partnership (Amendment) (Jersey) Law 202- (the “Amendment Law”), which itself would amend the Civil Partnership (Jersey) Law 2012 (the “2012 Law”).

The draft Law would, inter alia, have the effect of removing from the Amendment No. 5 Law and the 2012 Law provisions which would have prohibited, or currently do prohibit, former step-relation marriages and civil partnerships, respectively. Such a prohibition, in the case of the provisions in the Amendment No. 5 Law, is incompatible with Article 12 ECHR and, in the case of the provision in the 2012 Law, is likely to be incompatible with Article 8 ECHR (right to private life) and Article 14 ECHR (prohibition against discrimination) when read in conjunction with Article 8 ECHR.

The draft Law would, if passed, also include, in the substituted list of absolute prohibitions to marriage in the Amendment No. 5 Law (in the Schedule, to be substituted for Schedule 1 to the 2001 Law) a marriage between two people one of whom is the adoptive grandchild, or former adoptive grandchild, of the other. A prohibition on marriage between two people, one of whom is in either of these relations to the other, is not known to be incompatible with Article 12 ECHR, and is considered as falling within the permitted scope of national law prohibiting marriages of certain degrees of affinity. It can be noted that these prohibitions are contained in the 2001 Law presently, and the amendment to the Amendment No. 5 Law in this respect operates to continue those prohibitions in the 2001 Law, as amended by the Amendment No. 5 Law.

EXPLANATORY NOTE

The draft Marriage and Civil Partnership (Amendments) (Jersey) Law 202- (the “Law”) will, if passed, amend the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202- and the Civil Partnership (Amendment) (Jersey) Law 202-. The amendments will insert some omitted provisions and remove certain unnecessary provisions including those that are not compliant with the European Convention on Human Rights.

Article 1 amends Schedule 1 to the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202- (the “amending Law”) to delete paragraph 3 of the substituted Schedule 1 to the Marriage and Civil Status (Jersey) Law 2001 (the “2001 Law”). Substituted paragraph (5) of Article 3 of the 2001 Law (which gives effect to paragraph 3 in substituted Schedule 1 to the 2001 Law) is also deleted from the amendment Law. The effect of these changes is to remove the prohibition on the marriage of a parent-in-law with his or her child-in-law unless their respective spouses or civil partners through whom the relationship is traced are dead. This is because of the decision of the European Court of Human Rights in the case of *B and L v. United Kingdom* (Application 36536/02) in which it was held that the prohibition of marriages between a person and the parent of his or her former spouse or between a person and the former spouse of his or her child could not be maintained as logical or rational.

Article 1 also removes certain repetitious definitions of “child of the family” and reinserts some inadvertent omissions from the amending Law in respect of the relationships that are absolutely prohibited from marrying.

Article 2 amends the Civil Partnership (Amendment) (Jersey) Law 202- to restore Schedule 2 to the Civil Partnership (Jersey) Law 2012, except for paragraph 5 of that Schedule which is deleted for the same reasons as the analogous deletion from the substituted Schedule 1 to the 2001 Law.

Article 3 gives the title by which the Law may be cited and for it to come into force 7 days after its registration. It is anticipated that this Law and the 2 Laws which it amends will all be registered on the same date. The effect is that the provisions being deleted will never take effect and the provisions being amended will take effect as amended.



Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

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Jersey

DRAFT MARRIAGE AND CIVIL PARTNERSHIP (AMENDMENTS) (JERSEY) LAW 202-

A **LAW** to amend further the law relating to marriage and civil partnership.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

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

- (1) This Article amends the Marriage and Civil Status (Amendment No. 5) (Jersey) Law 202-.
- (2) In Article 3 (Article 3 (restriction on marriage) amended) –
 - (a) in substituted paragraph (4) of Article 3 of the [Marriage and Civil Status \(Jersey\) Law 2001](#), “(within the meaning of paragraph 2(2) of that Schedule)” is deleted;
 - (b) substituted paragraph (5) of Article 3 of the [Marriage and Civil Status \(Jersey\) Law 2001](#) is deleted.
- (3) In Schedule 1 (relations whom it is prohibited to marry), in substituted Schedule 1 to the [Marriage and Civil Status \(Jersey\) Law 2001](#) –
 - (a) in paragraph 1 (absolute prohibitions), in the list in sub-paragraph (2), after “Grandchild” there is inserted –
 - “Adoptive grandchild
 - Former adoptive grandchild”;
 - (b) in paragraph 2 (qualified prohibitions) –
 - (i) in sub-paragraph (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” is deleted,
 - (ii) sub-paragraph (3) is deleted;

- (c) paragraph 3 (qualified prohibition on marriage with a former step-parent) is deleted.

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

- (1) This Article amends the Civil Partnership (Amendment) (Jersey) Law 202-.
- (2) For the text of Article 41 (Schedule 2 (prohibited degrees of relationship) amended) there is substituted –
“In Schedule 2 paragraph 5 (and the table referred to in that paragraph) is deleted.”.
- (3) Schedule 1 (Schedule 2 substituted) is deleted.

3 Citation and commencement

This Law may be cited as the Marriage and Civil Partnership (Amendments) (Jersey) Law 202- and comes into force 7 days after it is registered.