

**Background to Liberate’s interest in the Draft Marriage and Civil Status (Amendment No. 4)
(Jersey) Law 201- (“the Marriage Law”)**

Liberate is the Channel Islands’ equality and diversity charity. We have branches in Jersey and Guernsey, serving islanders in both Bailiwicks.

Liberate’s mission is to support those who identify as part of a minority or visible minority group (“Minorities”) living in the Channel Islands by, amongst other things, campaigning to reform policies and laws to ensure that Minorities can enjoy the same freedoms and rights as everyone else across the Channel Islands; questioning social attitudes and behaviours which discriminate against Minorities in the Channel Islands; working with government and other providers to ensure equal access to and equal quality of services, such as healthcare, housing and education, for Minorities across the Channel Islands.

It is these elements of our work that are directly relevant to the States of Jersey’s desire to open up marriage to same-sex couples whilst at the same time not compelling those religious organisations and officials, who cannot in all conscience undertake a marriage service for same-sex couples, to do something that goes against their beliefs.

It has been our main concern throughout the consultation process that the rights of LGBT+ citizens and the rights of those of religious faith are not seen as mutually exclusive; that both are preserved by the introduction of a change to marriage legislation; and, that neither one is given more weight than the other under the law. It is a gross simplification and entirely unhelpful to cast the LGBT+ community as diametrically opposed to the faith community. There are large intersections and commonalities between the two groups, not least that both are minorities that experience discrimination within society. There are many within the LGBT+ community who do not support same-sex marriage and there are many within the faith communities who do. The Marriage Law needs to accommodate this multiplicity of views.

We support the exclusion from the Marriage Law and its consequential legislation of a so-called ‘spousal veto’ that has had an adverse effect on the transgender population in England.

We are also supportive of the expansion in venue choice, appointment of civil celebrants, ability to convert a civil partnership to a marriage and implementation of safeguards against forced and sham marriages, as introductions that recognise the diversity of the personal preferences of couples when it comes to the arrangements for their marriage ceremony and the importance of ensuring that those marriages are freely entered into.

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Throughout this document, we refer to the LGBT+ community. For those who are not aware of the term LGBT+ it is an inclusive term that means lesbian, gay, bisexual, transgender and other sexual orientations and gender identities that are not heterosexual and/or non-transgender.

Liberate's response to the Scrutiny Panel's public call for evidence

Do the proposed changes to the Marriage and Civil Status Law as set out in the draft law implement the decisions of the States Assembly in approving the introduction of same-sex marriage?

Resoundingly, yes. Our impression from having been involved in the consultation process from which the Marriage Law has been drafted is that this complex, far-reaching and important piece of legislation has been undertaken with due care and diligence. Part of the reason for the complexity is the polarity of views regarding same-sex marriage that exist, all of which needed to be respected and given equal weight within any amendment to Jersey's marriage law. It is clear that numerous scenarios have been considered to ensure that the maximum number of peoples' personal views on marriage have been accommodated and, where views have been unable to be accommodated, clear explanation has been provided by the Chief Minister's Department.

The delay caused by this complexity has meant that there is still work to do on ancillary matters, none of which are, in our opinion, material enough to delay the passing into law of the changes contained in the Marriage Law. The island was given an undertaking that the Marriage Law would be in force in 2017. This has now been delayed until Spring 2018. Unless there is a serious and fundamental flaw found by the Scrutiny Panel within the Marriage Law, which we doubt from our close study of the draft, we see no good reason for the law not to progress to the revised timescale.

It would be a cruel (and potentially expensive) blow to those people planning for 2018 weddings for there to be any further delays to the law's progress. Delays would not only affect the LGBT+ community but also those planning weddings at locations not currently authorised for marriages, such as beaches. As the Scrutiny Panel will be aware, the booking of wedding venues happens at least a year in advance on an island that is limited in its current choice of venues. Trying to book a venue late, because you had been planning on an open air location, is likely to prove difficult.

In examining the Marriage Law, we are entirely satisfied that same-sex couples can marry under the provisions of the law and that those currently in a civil partnership may convert that civil partnership to a marriage. This does not affect the rights of persons of the opposite-sex to also marry (Article 2).

There is nothing in the restrictions on marriage (Article 3) that is unreasonable or different materially from those restrictions already in place for the marriage of opposite-sex couples.

We support the provisions for marriage in special circumstances (Article 24) that have been included in the Marriage Law as enabling marriages to be solemnised in an unapproved place, outside permitted hours and in a shortened timeframe. This provision exists in Canon Law but not in current marriage legislation for non-Anglican marriages. In legalising same-sex marriage, it is appropriate that marriage in special circumstances, such as one partner not having long to live, is also available to same-sex couples, which it would not be if those powers only resided with the Dean, as presently.

This provision also removes a barrier to marriage for members of the prison population who wish to marry outside of the Anglican faith and those disabled persons who wish to marry outside of the Anglican faith and who have, for example, a life-limiting condition that means they cannot access an approved location. This expansion opens up marriage to some vulnerable minorities for whom options regarding marriage were limited or non-existent before.

Do the proposed changes to the Marriage and Civil Status Law as set out in the draft law implement the decisions of the States Assembly in approving the introduction of open air marriages?

The Marriage Law allows for marriages in various locations approved by the Connétable of the Parish, including open air venues (Article 23). This opening up of the island's beaches and countryside, particularly to visitors to the island who wish to marry, represents a significant new stream of revenue for Jersey's tourism industry and is supported by us.

We recognise the logistical challenges that open air locations present, having produced our own publicly accessible event for three years. The anticipated caveats that will be added to the Marriage Law by an Order around what the Connétable's permission does and does not cover are, we think, sensible and move the burden of being an 'event manager' from the Connétable and onto the organisers of the wedding. It will be the duty of the organisers to ensure that the venue is suitable and available for the ceremony.

Importantly, the Marriage Law specifies that, unless the location is a certified place of religious worship, all locations will be approved for all marriages (Article 23 (4), (6), (7), (8)), i.e. it does not allow for owners of locations to pick and choose whether to allow same-sex or opposite-sex couples to marry at their venue. This is consistent with the requirements of the Discrimination (Jersey) Law 2013 in the provision of goods and services and, naturally, supported by us.

What are the protections afforded to religious organisations and officials under the "quadruple lock" (as defined in the draft law)?

The 'quadruple lock' contained within the Marriage Law consists of the following four conditions:

- protection of religious organisations and religious officials from being compelled by any other law to solemnise same-sex marriages (or marriages where one or both parties are of an acquired gender) against their held beliefs (Article 6 and 7);
- religious officials are presumed not to be able to solemnise same-sex marriages (or marriages where one or both parties are of an acquired gender) unless and until they opt-in, and the religious organisation to which the religious official belongs opts-in, and the location being used is one authorised for same-sex marriages (to be prescribed by Order);
- the religious organisation to which the religious official belongs is also presumed not to be able to solemnise same-sex marriages (or marriages where one or both parties are of an acquired gender) unless and until they opt-in and, if they were to do so, it does not compel members of that organisation's clergy to solemnise marriages against their conscience (Article 7);
- approval will not be granted for a marriage location for same-sex marriages (or marriages where one or both parties are of an acquired gender) where the location is a usual place of public worship unless –
 - every religious organisation that uses the location has given written consent to its use as a location for same-sex marriages;

- the owners/trustees of the location have given written consent to its use as a location for same-sex marriages (Article 23 (7)).

The effect is to create a law whereby those religious organisations that wish to solemnise same-sex marriages, such as the Quakers, have a means to be able to do so and those religious individuals and organisations that do not wish to do so are protected from doing so.

Crucially, does the “quadruple lock” offer sufficient protection to religious organisations and officials, who cannot in all conscience undertake a marriage service for same-sex couples, from being compelled to do something that goes against their beliefs?

It is our view that religious organisations and religious officials have been protected successfully under the Marriage Law from solemnising same-sex marriages where they cannot in all conscience undertake such a service.

There is no means available under the Marriage Law or other consequential legislation for a religious organisation or religious official to be compelled to do something that goes against their beliefs. There is, however, the means for a religious official not to do something that goes against their beliefs.

We would like to record our support for those religious officials, of which there are many within the various faith groups, who support same-sex marriage but whose organisations do not permit them to celebrate such unions. Their right to freedom of belief is currently being denied by those who oppose same-sex marriage. In our view, this position is untenable and religious organisations need to find the means to allow both views to exist side-by-side within their organisations rather than permitting either view to dominate the other.

The Marriage Law has had to reflect the current impasse by requiring that both the religious official *and* their religious organisation consent to the official conducting a same-sex marriage service. In other words, by not permitting a religious official who supports same-sex marriage to solemnise a same-sex marriage you are compelling them to act in a way that goes against their beliefs. But, until such time as religious organisations resolve their internal issues, we cannot see how Jersey’s law could have been drafted differently.

As a result of this, we welcome the inclusion by the Marriage Law of the ability for civil celebrants to incorporate hymns, chants, Bible readings, candles, ribbons etc into their ceremony providing that, in so doing, it does not replicate an act of religious worship, which is, quite rightly, to remain the province of religious organisations and officials (Article 17 (9)).

What ability does the States have to increase the age of marriage by Regulations in the future?

The States may, in line with the recommendations on the UN’s Committee on the Rights of the Child made in June 2016, raise the minimum age of marriage to 18 years (Article 82(1)(a)). The concern being the forced marriage of minors aged 16 and 17 years.

The implementation of Regulations to increase the age of marriage is not of immediate concern in Jersey but may become so if the number of minors marrying were to increase. It is, therefore, right that the States have this ability.

What is the amended appointment process and responsibilities of the Superintendent Registrar and Parish Registrars?

We have no comment to make regarding the appointment process of the Superintendent Registrar.

We support the alternative arrangements for the signing of forms where one or both parties to the marriage are unable to sign their name (Article 80B). This makes the Marriage Law inclusive of those persons with a disability that means they cannot write/sign their name. The provisions to permit a person to nominate someone to sign on their behalf also provide flexibility for different people to sign different forms, which is a practical solution to the problem of, for example, the same carer not always being available. Safeguards already exist within the Capacity and Self-Determination (Jersey) Law 2016 to ensure that someone without the capacity to consent to marriage cannot have consent to marriage given on their behalf.

The revision of the language used on publications by the Superintendent Registrar is also welcome to allow couples to choose the designation used on their forms. This work will be done by the Superintendent Registrar pursuant to the law being enacted. The Marriage Law will satisfy many women who, during the consultation process, commented to us that they did not like the patriarchal nature of marriage. The removal of terms such as 'maiden name' and the ability to register both parents' names, not just the father's details, serves to make marriage less patriarchal.

What is the process for the introduction of civil celebrants to replace delegates of the Superintendent Registrar?

We are pleased that, the Marriage Law in permitting anyone to apply to be an authorised marriage celebrant, the humanist community will be able to solemnise marriages. This opens up the service of marriage to another group, which reflects the diversity of beliefs present in the island. During the consultation period on the proposed changes to marriage in Jersey, we received feedback from the humanist community that this was something they would like to see enabled.

The process for becoming a civil celebrant is not onerous but sufficiently rigorous not to be undertaken lightly, including training, swearing in at the Royal Court and the ability to de-register a celebrant if they do not act in accordance with the Law. The Superintendent Registrar may also refuse to authorise a person if they are not suitable (Article 6 (3)).

What is the process for the conversion of civil partnerships to a marriage?

The ability of those people in a civil partnership currently to convert that civil partnership into a marriage is important, but of equal importance is that those in civil partnerships are not compelled by the law to convert the partnership to a marriage (Article 19, 20, 21, 22).

The conversion process outlined in the Marriage Law allows for an administrative conversion or a conversion ceremony (Article 22 (4) and (5)). This, again, allows couples choice in how they wish to convert. Some will feel that their original ceremony was a sufficient celebration of their union and that they considered themselves married from that day, irrespective of the law; others may feel that it was a 'make-do' ceremony until same-sex marriage was introduced in Jersey.

We also support the ability for same-sex couples to continue to have civil partnerships after the Marriage Law comes in and for those civil partnerships to be able to convert to marriages at a later date.

The Marriage Law acknowledges that same-sex couples may have opted and paid for a civil partnership in the belief that same-sex marriage would never be open to them, consequently the States of Jersey will not, quite rightly in our view, seek to levy a fee for converting the civil partnership to marriage for a period of 2 years after the introduction of the Marriage Law.

We recognise that an inequality currently exists whereby civil partnerships are not available to opposite-sex couples. However, work to review the provisions of the Civil Partnership (Jersey) Law 2012 is ongoing and the passage of the Marriage Law is, merely, the first stage of a staged process.

What are the new safeguards against forced and sham marriage?

The requirement for both parties to sign the notice of intended marriage and the freedom to marry declaration (Article 10 (5)) and for a signature verifier form with a photograph of both parties to the marriage to be signed in the presence of the Superintendent Registrar (Article 13 (3)(a)) is a welcome improvement in the current position and strengthens the institution of marriage by reducing the likelihood of forced or sham marriages.

The Marriage Law also provides the Superintendent Registrar with powers to request additional information (Article 9 (2)), or interview the parties to the marriage (Article 9 (2)), or exchange information with other authorities (Article 14), or forbid a marriage (Article 13), if they feel it is necessary to do so.

The increased notice period to 25 days from 7 days for public notice of a marriage (Article 11) brings Jersey legislation much closer to UK legislation of 28 days for residents. This allows sufficient additional time for any objection to the marriage to be raised and investigated. In our opinion 7 days was inadequate to make the necessary enquiries into what might be a situation complicated by the marriage being sham or forced.

Any concerns over a 25 day notice period being much less than the 70 days for non-EEA nationals is allayed sufficiently by the fact that, unlike in the UK, the Superintendent Registrar does not require 70 days under the Marriage Law in which to check the immigration status of the couple getting married as they will have already done those checks before they can issue the notice to marry form and enter the notice to marry in the notices of intended marriages book (Article 10 (2), (3), (4)).

The introduction of the requirement for the Superintendent Registrar to see a certificate of freedom to marry from non-Jersey residents is also a welcome addition to ensure that Jersey is not seen as a 'soft' jurisdiction in which to marry under false pretences (Article 14).

What are the consequential changes to other legislation, including the Discrimination (Jersey) Law 2013?

Discrimination (Jersey) Law 2013

The proposed changes to the Discrimination Law required by the Marriage Law are essential to maintaining consistency between two pieces of legislation with regard to the inability of a same-

sex couple or person of an acquired gender to compel, through a Discrimination Tribunal, a religious official or organisation to solemnise their marriage.

Gender Recognition (Jersey) Law 2010

The changes being proposed to the Gender Recognition Law by the introduction of the Marriage Law are in order to deal with the complications that arise for those currently in a civil partnership who, on the advent of one partner acquiring their GRC, would end up in an opposite-sex civil partnership, a vehicle that does not currently exist and will not exist after the introduction of the Marriage Law.

Provision has, therefore, been made by the Marriage Law and Gender Recognition Law for an interim GRC to be issued to those people in this position. This is valid for a six month period during which time the couple are expected to convert their civil partnership to a marriage at which point a full GRC will be issued.

Income Tax (Jersey) Law 1961

Many women find the current taxation regime whereby they are treated as adjunct of their husband on his tax return archaic and insulting. However, the introduction of the Marriage Law does not herald the introduction of individual taxation, which would resolve this old complaint.

The proposed changes to the Income Tax Law retain the status quo for opposite-sex couples and institute a new system for same-sex couples whereby the elder of the couple is treated as the primary taxpayer, in place of the husband for opposite-sex couples.

In seeking a taxation system that is as randomised as the selection of the husband as the primary taxpayer in an opposite-sex couple, the consequential amendments required to the Income Tax Law by the Marriage Law, which select the elder of the same-sex couple as the primary taxpayer, seem as fair as any.

The reason for requiring this distinction is that it is the husband or elder of the couple who carries the burden for a couple's joint tax liability. Should the couple default on their taxes, it will be this spouse who is personally liable for the debt.

The Income Tax Law allows those couples who do not wish to have their tax affairs assessed in this way to elect to be assessed separately. There is no financial advantage/disadvantage to being assessed separately, but it does mean that each party is separately liable for their assessed portion of their joint taxation bill.

Until such time as individual assessment is introduced in Jersey, this is a fair and unbiased means of assessing married couples and civil partnerships.

Matrimonial Causes (Jersey) Law 1949

We recognise that work to amend this law is ongoing and that anything currently proposed does not sufficiently address the question of what adultery and/or non-consummation of a marriage looks like in a same-sex marriage. However, the proposed changes as a consequence of introducing the Marriage Law allow for same-sex couples to divorce and, as such, are an acceptable interim solution.

In conclusion

In our opinion, the Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- should not be delayed any further and should be passed into law as soon as possible because it translates successfully into legislation proposition (a) put before the Assembly in July 2015, which was supported by the States Chamber 37 votes to 4.

To agree, in principle, that appropriate legislation should be brought forward for approval to allow same-sex couples to get married in Jersey, with the legislation to –

(i) include civil marriage and religious marriage with appropriate safeguards in place to protect the rights of religious organisations and their officials who do not wish to conduct same-sex marriages;

(ii) include allowing people in civil partnerships to convert their partnership into marriage;

(iii) include retention of terms such as ‘husband and wife’, ‘mother and father’ in legislation;

(iv) not include a spousal veto in respect of gender recognition;

It is regrettable that proposition (a) took longer than anticipated due to its complexity, which has not allowed propositions b, c or d to yet happen. However, we trust that the Chief Minister will continue to progress these propositions as of equal importance to proposition (a) in reforming Jersey’s marriage legislation. We do not consider that the passing into law of proposition (a) is dependent on propositions b, c and d also being in place, so would not be a sufficient reason to delay the legislative progress of the Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201-.

Footnote

We have also reviewed the amendment lodged with the Greffe on 30 October 2017. We can find nothing in the amendment that alters our view, given above.

We do not agree that the lodging of this amendment by the Chief Minister is sufficient reason to delay the passage of this legislation.

For the Scrutiny Panel to seek to further scrutinise the draft law, following its debate in the States Chamber on 14 November, on the grounds of this amendment being lodged appears unreasonable. The panel has had over a month to scrutinise the Marriage Law prior to its debate and there is nothing in the amendment that changes the substance of the law.