

STATES OF JERSEY



CIVIL MARRIAGES: SAME SEX COUPLES (P.102/2014) – AMENDMENT

Lodged au Greffe on 25th June 2014
by Senator P.F.C. Ozouf

STATES GREFFE

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After the words “by the States” insert the words “, after public consultation,” and after the words “the proposal” insert the words “with the legislation containing specific provisions that religious and faith communities would not be required to conduct same sex marriages unless they wished to do so”.

SENATOR P.F.C. OZOUF

REPORT

This amendment achieves all that is set out in the proposition of Deputy S.Y. Mézec of St. Helier; however, it puts beyond doubt the requirement for the legislation to be drafted in a way that allows for religious and faith communities to opt in to conducting same sex marriages, if they wish, as opposed to opting out.

I support marriage equality and, like many, believe it is an inevitable progression towards equality. Most people I speak to agree that there is no longer a case for the State to differentiate between two sex or same sex couples' relationships. People do accept that religious groups and faith groups might have opposing views.

I believe that the State should not require faith groups to do something which they do not wish to; and at the same time, faith groups should not prohibit that State from passing legislation to treat all couples equally.

It is accepted however, that it is a very sensitive matter, and that some people, particularly some faith groups, are very strongly opposed. This amendment maintains the principle of agreeing same sex marriage in the eyes of the State, but there should be a requirement that legislation drafted should have proper and meaningful consultation focusing on the detail and impact of that legislation and ensuring there are opt-in arrangements.

We have seen the introduction of same sex marriage legislation in the UK and in other jurisdictions (see **Appendix**) and know it is widely perceived as the right thing to do. We also know, however, that the debate that surrounds it can be heated and, therefore, when we as States Members make a decision about the form of that legislation, it is right that we do so knowing the views of the community we represent.

Consulting on the draft legislation

Publishing the draft legislation before lodging will allow for the legislative approach taken to be properly consulted on. It is the case that whilst there are many similarities between the English and Welsh legislation and the Scottish legislation, there are also some differences that need to be considered.

There is the issue of the Church of England currently being able to marry couples, but maybe wanting only to opt in to conducting future same sex marriages.

Whichever model is adopted, it is important that, as per both the English and Scottish Marriage and Same Sex Couples Act, a central feature of the legislation is the concept of the 'opt-in' for religious organisations that wish to conduct same sex marriages. Religious organisations must be allowed to decide for themselves, as a matter of their conscience, whether or not to marry same sex couples. Achieving this, however, may require protecting religious organisations from legal challenge, on the basis of human rights, where they refuse to marry same sex couples. In the UK this has involved making a commitment to underwrite legal costs associated with all human rights challenges.

Conclusion

The issue of same sex marriage legislation needs to be considered by this Assembly. It is an important part of the equality agenda.

It is accepted that Faith and Church groups, including the established Church of England, might want to opt in or out of the legislation.

It also has to be right that the States consult on legislation and how to enact the decision.

This amendment puts beyond doubt the principle of marriage equality in the eyes of the State, puts beyond doubt the safeguards for religious groups, and additionally proposes that a public consultation process should take place prior to the debate on the legislation.

Financial and manpower implications

It is set out in P.102/2014 that costs associated with the introduction of the [Civil Partnership \(Jersey\) Law 2012](#) was £155,000, but it is anticipated that the costs associated with the introduction of same sex marriages will be considerably less. Financial and manpower implications include –

- approximately 25 days of existing law drafting capacity (Law Draftsman's Office)
- approximately 0.4 FTE existing staff capacity over 6 month period for consultation and development of law drafting instructions (Chief Minister's Department)
- £10,000 of consultation costs.

STATUS OF SAME SEX MARRIAGE IN OTHER JURISDICTIONS

1. Same sex marriage in the UK

Marriage is a devolved matter in UK, and the status of same sex marriages is different in England and Wales, Scotland and Northern Island.

In England and Wales, [The Marriage \(Same Sex Couples\) Act 2013](#) came into force in March 2014. The Act –

- enables same sex couples to marry in civil ceremonies;
- ensures that religious organisations which wish to marry same sex couples can do so (i.e. they can opt in);
- protects religious organisations and their representatives from successful legal challenge if they do not wish to marry same sex couples;
- enables civil partners to convert their partnership to a marriage, if they wish; and
- enables individuals to change their legal gender without having to end their marriage.

It also deals with matters relating to pension rights for married people.

Legislation that is very similar in effect to the English and Wales Act was passed by the Scottish Parliament in February 2014, and it is anticipated that the first same sex marriages are likely to occur in Scotland in the Autumn of 2014. In Northern Ireland, a similar bill has been defeated, although it is anticipated that it will be taken back for another further debate.

2. Same sex marriage in other jurisdictions

Same sex marriages are currently legal in other jurisdictions, including –

- Argentina
- Belgium
- Canada
- Denmark
- France
- Iceland
- Mexico (2 states)
- New Zealand
- Norway
- Portugal
- South Africa
- Spain
- Sweden
- The Netherlands

- United States (19 states)
- Uruguay.

With plans to bring forward legislation in –

- Luxembourg
- Greenland
- Finland.

A referendum is to be held in the Republic of Ireland in 2015, with the Irish Government stating that it will be “actively supporting” the introduction of same sex marriage in that referendum.