

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy M. Tadier of St. Brelade

Deputy J.M. Maçon of St. Saviour

Witnesses:

Nina Benest (Advocate)

In attendance

Mr. M. Haden, Scrutiny Officer

[12:30]

Deputy R.G. Le Hérissier:

Okay, thank you very much, Advocate Benest, hopefully you do not need to read it but there is the witness advice in terms of how evidence is given. Good, well I would like to thank you very much for coming. While you have obviously a broad interest as you have just demonstrated, we know that you have a particular issue you wish to raise about housing so I wonder if you would just like to tell the panel what it is.

Advocate:

Well, on my review of the draft law it struck me that no provisions had been made in the draft law, either to amend the existing Housing Regulations or else to incorporate the ethos behind this draft law into the new draft Work and Housing Control Law. So, there is a potential there for a lacuna and for there to be discrimination between spouses as opposed to civil partners when it comes to housing issues. At the moment, under the Housing Regulations, spouses, unqualified spouses can piggyback on the back of their spouses insofar as if you have a qualified spouse and an unqualified spouse under the Housing Law, the unqualified spouse is entitled under the 1(1)(n) to join in a purchase of land and become joint owners, and that will have a legal interest in the property. As things stand without an amendment either to those regulations or without an amendment to the Draft Control of Work and Housing Law, that right would not be afforded to civil partners. So, you would have a situation where potentially you have a civil partnership with one person qualified under the law to buy and sell property, the other person is not qualified and the unqualified person would not be able to join into that purchase by virtue of the fact that they were civil partners.

Deputy R.G. Le Hérissier:

Okay, and you have as I understand it ... have you made a representation?

Advocate:

No, I have not.

Deputy R.G. Le Hérissier:

Okay, but have you ...?

Advocate:

This is something that occurred to me, I have to confess, last week as I was reviewing matters.

Deputy R.G. Le Hérisier:

We have obviously asked the adviser to the Chief Minister, about this issue and apparently there are changes being looked at.

Advocate:

Right.

Deputy R.G. Le Hérisier:

From your point of view, do you think the changes could be implemented simply or would it involve a major change to the law?

Advocate:

I think, certainly as far as the Draft Control of Work and Housing Law is concerned, it can probably be affected very simply. Every time you have mention of “spouse” you would say “and/or civil partner” and there are only a few occasions where it arises. In terms of the Housing Regulations, if we still have in place the old Housing Law, again it is an amendment to Regulation 1(1)(n). So again, I would have thought it could have been done fairly quickly and simply but looking at the new Draft Housing Law, there is also an implication for the qualified affected to property as far as I noticed under the law, that a property will become a qualified property in the event of inheritance. Now, that could be achieved for civil partners under a will. If we have the amendments going through, which are envisaged to the Wills and Successions Law, it would also mean that there is an impact in case of intestacy. So, civil partners would be able to inherit or would have rights to property under intestacy as well. So, it would have an impact on the quality of that property and the designation of that property as a qualified property in those circumstances, and it would then seem silly not to afford civil partners other rights with the remainder of the law. So, they could get in under inheritance but not by virtue of their civil partnership.

Deputy R.G. Le Hérisier:

Yes. No, that seems to be illogical. Are there any questions?

Deputy M. Tadier:

No, but I think it is something we need to pursue.

Deputy R.G. Le Hérisier:

Yes, we were certainly ... but I have to say because the technical implications, and as you probably know there is a massive list of laws being drawn up plus subsidiary legislation, which is all apparently underway but obviously we have not been able to examine every aspect of this but it is certainly something we could follow up.

Deputy J.M. Maçon:

Maybe the only thing I would like to add, is that I happen to be a Member currently scrutinising the Draft Work and Housing legislation coming through so I thank you for your comments on what is likely to be there.

Deputy M. Tadier:

Good, just as an aside what I am concerned about, and this probably may not be a legitimate concern, is that I would worry that they may not be putting these, the regulations with regard to housing, through because they are waiting for the actual change, bringing in a new law. The trouble is we do not know how long that might take so I think in the meantime it is absolutely imperative we have parity, whether it is for a month or for 2 years, you know, until that principle is done.

Deputy J.M. Maçon:

Even if it is only a temporary provision until they can get the thing officially done.

Deputy M. Tadier:

Yes.

Advocate:

I have noticed from the agenda of the States, clearly the debate on the civil partnership is scheduled to happen after the Draft Housing and Work Law, and so from that point of view I thought maybe they are just sort of parking the need to amend the Housing Regulations as exists because they will play catch up. But of course depending on whether or not things do get passed and how long it then takes to hit the statute books and be enforceable, it could end up with a situation where you have that discrimination arising and it does not make sense. Certainly in the 2009 proposition it was envisaged that the Housing Law would be amended, it is there, it is listed and so it seems strange that that listing did not carry through into the draft legislation.

Deputy M. Tadier:

Yes, we are slightly slow, we did not ask why it had not, why it had been taken out.

Deputy R.G. Le Hérissier:

No, he said it was under way but no we did not, we failed to follow up the communication. No, that is a very good point. I suspect there are going to be other points like this because obviously it is so complex a law but they kept reassuring us they had looked at every affected law and changes are underway but anyway we will try and get specific assurance in that regard.

Advocate:

Well certainly I am not privy to the minutiae of the drafting procedure.

Deputy R.G. Le Hérissier:

No.

Advocate:

It may be that things are well in hand, it is just something that shrieked at me when I reviewed the law.

Deputy M. Tadier:

Yes, well we need people to flag these sort of things up, and even if we are erring to the side of caution I think it is better.

Deputy R.G. Le Hérissier:

Okay, well thank you very much, Advocate Benest.

Advocate:

Sure.

Deputy R.G. Le Hérissier:

I mean, I ask with trepidation in case my dear friend gets it wrong ... but are there any other issues, while we cannot get into a great debate about it at this stage, you feel from your broad reading of the law that we ought to take account of?

Advocate:

I do not think so.

Deputy R.G. Le Hérissier:

Okay.

Advocate:

It is just I think generally speaking the reviews of all the existing legislation have been very thorough, and a lot of thought has been put into it. It may be that just the housing issue slipped through the cracks.

Deputy R.G. Le Hérissier:

We have had a briefing on the whole issue of wills and inheritance obviously.

Advocate:

I have seen the briefing note in relation to all the other ...

Deputy R.G. Le Hérissier:

Good, but in the absence of reform of those laws of course they are basically having to go with total parity even if it is not a system you want in an overall sense to go with but that is another issue. Okay, well thank you very much indeed.

Advocate:

Pleasure.

Deputy J.M. Maçon:

Thank you.

[12:40]