

STATES OF JERSEY



DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 4) (JERSEY) LAW 201- (P.91/2017): SECOND AMENDMENT

**Lodged au Greffe on 16th January 2018
by the Corporate Services Scrutiny Panel**

STATES GREFFE

1 PAGE 67, ARTICLE 2 –

In the substituted Article 1 –

- (a) in paragraph (1) for the definition “marriage celebrant” substitute the following definition –
 - “ ‘marriage celebrant’ means, in relation to the solemnization of any marriage, any person mentioned in paragraph (1)(a) to (d) of Article 6;”;
- (b) in paragraph (3) for the words “marriage birth,” there shall be substituted the words “marriage, birth,”.

2 PAGES 71–73, ARTICLE 2 –

(1) In the substituted Article 6 –

- (a) in paragraph (3) after sub-paragraph (b) insert the following sub-paragraph –
 - “(ba) in the case of persons to be authorized as civil celebrants, such qualifications, awarded by such persons or bodies, as the Minister may consider appropriate;”;
 - (b) for paragraph (6) there shall be substituted the following paragraph –
 - “(6) An authorized civil celebrant or an authorized religious official must carry out the solemnization of marriages –
 - (a) in compliance with the requirements of this Law and with any guidance issued by the Superintendent Registrar; and
 - (b) in such a way as to uphold the dignity and solemnity of marriage.”;
 - (c) in paragraph (7)(a) omit the words “under paragraph (3)”.
- (2) For the substituted Article 7 substitute the following Articles –

“7 Religious marriages: no compulsion to solemnize, etc.

- (1) A person to whom paragraph (2) applies shall not be compelled (whether by any provision of this Law, by any requirement imposed by another enactment, or by any other legal requirement including a term of any contract) to do any of the things listed in paragraph (3) in respect of –
 - (a) a same sex marriage; or
 - (b) the marriage of 2 persons, at least one of whom is reasonably believed, by the person to whom paragraph (2) applies (or, in the case where that person is a religious organization, by the marriage celebrant) to be a person of an acquired gender (within the meaning given to that expression by Article 1(2) of the Gender Recognition (Jersey) Law 2010) (and in this

Article and in Article 7A, such a marriage is referred to as an “acquired gender marriage”),

where the reason for not doing such a thing is that the marriage is a same sex marriage or an acquired gender marriage.

(2) This paragraph applies to –

- (a) a religious organization;
- (b) a clergyman; and
- (c) an authorized religious official,

and in the case of an individual, this paragraph applies regardless of whether any religious organization to which the individual belongs consents to same sex marriage or to acquired gender marriage.

(3) The things mentioned in paragraph (1) are –

- (a) solemnizing;
- (b) attending at;
- (c) consenting to;
- (d) applying for authorization for a person to solemnize; or
- (e) certifying any matter relating to,

a same sex marriage or an acquired gender marriage.

(4) For the avoidance of doubt –

- (a) a person shall not be compelled to refrain from doing any of the things listed in paragraph (3); and
- (b) a person may withdraw, and shall not be compelled to refrain from withdrawing, a consent or certificate previously given or an application previously made in respect of a same sex marriage or an acquired gender marriage.

(5) Any duty of a clergyman to solemnize marriages (and any corresponding right of persons to have their marriage solemnized by a clergyman) is not extended by this Law to same sex or acquired gender marriages.

7A Same sex etc. marriages: no compulsion to participate

(1) A person to whom paragraph (2) applies shall not be compelled (whether by any provision of this Law, by any requirement imposed by another enactment, or by any other legal requirement including a term of any contract) to participate in a same sex marriage or an acquired gender marriage.

(2) This paragraph applies to –

- (a) a religious organization;
- (b) the owner or trustee of an approved location, in a case where either –
 - (i) the owner or trustee is a religious organization, or
 - (ii) the approved location’s primary use relates to the activities of the owner or principal occupier, or to the

activities or objects of the trust concerned, as a religious organization;

- (c) a clergyman;
- (d) an authorized religious official; and
- (e) subject to paragraph (4), any person, other than those mentioned in sub-paragraphs (a) to (d), who objects, on the ground of religious conviction, to participating in a marriage because that ceremony relates to a same sex marriage or an acquired gender marriage,

and in the case of an individual, this paragraph applies regardless of whether any religious organization to which the individual belongs consents to same sex marriage or to acquired gender marriage.

- (3) For the purposes of paragraph (1), participating in any marriage includes, but is not limited to, providing any goods or services for or in relation to –
 - (a) a marriage ceremony; and
 - (b) any social event or function associated with and subsequent to a marriage ceremony,

and for the purposes of this paragraph and for the avoidance of doubt, providing goods or services shall not be taken to include providing a location (other than a location mentioned in paragraph (2)(b)).

- (4) Paragraph (2)(e) does not apply to –
 - (a) a person required under this Law to undertake any act or perform any duty in relation to civil marriage;
 - (b) a States' employee (within the meaning given by Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005) or employee of any parish, in the exercise of his or her functions as such an employee;
 - (c) an employee of, or individual whose services are provided by, a person providing goods or services for or in relation to a same sex marriage ceremony or an acquired gender marriage ceremony.”.

3 PAGE 82, ARTICLE 2 –

In the substituted Article 17 –

- (a) in paragraph (1) after the word “subject” insert the word “to”;
- (b) for paragraphs (8) to (10) substitute the following paragraphs –

“(8) A marriage ceremony conducted by a civil marriage celebrant shall not include any religious act, symbol, prayers or any form of religious worship or service, and for the purpose of determining what may constitute such an act, symbol, prayer, worship or service, the Superintendent Registrar shall –

- (a) consult the representative in Jersey of such religious organization as may be appropriate; and

- (b) having so consulted, shall produce guidance for that purpose.
- (9) If a civil marriage celebrant is satisfied that the content of a marriage ceremony does not contravene guidance issued by the Superintendent Registrar under paragraph (8), the celebrant may permit the inclusion in that ceremony of –
 - (a) music, songs, readings or other spoken words, whether or not containing any references to matters of religion or including any text of a religious nature; and
 - (b) vows or statements of commitment, by the persons to each other, making references of a religious or spiritual nature (provided that any such vow or statement does not replicate any vow or statement forming part of any religious marriage ceremony).
- (10) A marriage celebrant shall permit, in the approved location, the use of accessories including candles, lights, incense, ribbons or other decorations, provided that, in the case of a marriage ceremony conducted by a civil celebrant, he or she is satisfied that nothing in the use of such accessories contravenes guidance issued by the Superintendent Registrar under paragraph (8).”.

4 PAGE 86, ARTICLE 2 –

In the substituted Article 22 –

- (a) for paragraph (2) substitute the following paragraph –
 - “(2) A marriage by conversion must be solemnized –
 - (a) between the hours of 8 a.m. and 7 p.m.; and
 - (b) by a marriage celebrant.”;
- (b) for paragraphs (6) to (8) substitute the following paragraphs –
 - “(6) A marriage ceremony conducted under this Article by a civil marriage celebrant shall not include any religious act, symbol, prayers or any form of religious worship or service, and for the purpose of determining what may constitute such an act, symbol, prayer, worship or service, the Superintendent Registrar shall –
 - (a) consult the representative in Jersey of such religious organization as may be appropriate; and
 - (b) having so consulted, shall produce guidance for that purpose.
 - (7) If a civil marriage celebrant is satisfied that the content of the marriage ceremony does not contravene guidance issued by the Superintendent Registrar under paragraph (6), the celebrant may permit the inclusion in that ceremony of –
 - (a) music, songs, readings or other spoken words, whether or not containing any references to matters of religion or including any text of a religious nature; and
 - (b) vows or statements of commitment, by the persons to each other, making references of a religious or spiritual nature (provided that any such vow or statement does not replicate

any vow or statement forming part of any religious marriage ceremony).

- (8) A marriage celebrant shall permit, in the approved location, the use of accessories including candles, lights, incense, ribbons or other decorations, provided that, in the case of a marriage ceremony conducted by a civil celebrant, he or she is satisfied that nothing in the use of such accessories contravenes guidance issued by the Superintendent Registrar under paragraph (6).”.

5 PAGE 89, ARTICLE 2 –

In the substituted Article 23 –

- (a) for paragraph (6) substitute the following paragraph –

“(6) Approval shall not be given for the solemnization of same sex marriages or acquired gender marriages (within the meaning given by Article 7) at a location which is –

- (a) a usual place of public religious worship according to the rites of the Church of England; or
(b) a place certified by the Minister as a place of public religious worship under paragraph (13).”;

- (b) for paragraph (13) substitute the following paragraph –

“(13) The Minister may, in accordance with the process prescribed under paragraph (14) and for the purposes of paragraphs (6) and (7) –

- (a) certify a location as a usual place of public religious worship of any religious organization; and
(b) certify a location (other than such a place as mentioned in paragraph (6)(a)) as a place of public religious worship.”.

6 PAGE 96, ARTICLE 2 –

After Article 2 insert the following Article –

“2A Article 35 amended

In Article 35 of the 2001 Law –

- (a) in paragraph (1)(b) for the words “Article 6” there shall be substituted the words “Article 4(3)”; and
(b) in paragraph (3) for the words “Article 4(2)” there shall be substituted the words “Article 3(5)”.”.

7 PAGE 108, SCHEDULE –

In paragraph 4 of the Schedule, for the inserted paragraphs 24A and 24B there shall be substituted the following paragraph –

“24A Sex or sexual orientation: same sex or acquired gender marriages

(1) A person does not contravene Article 22, so far as it relates to the protected characteristic of sex or sexual orientation, only because the person does not –

- (a) solemnize a same sex or acquired gender marriage;
- (b) attend at or otherwise participate in such a marriage;
- (c) consent to such a marriage being solemnized;
- (d) apply for authorization to solemnize such a marriage; or
- (e) give consent to or certify any matter relating to such a marriage,

in any case where Article 7 or 7A of the Marriage and Civil Status (Jersey) Law 2001 applies so that the person is not compelled to do any such thing as listed in sub-paragraphs (a) to (e).

(2) A word or expression used in this Article and also occurring in the Marriage and Civil Status (Jersey) Law 2001 shall have the same meaning, for the purposes of the interpretation of this Article, as it is given by and for the purposes of that Law.”.

CORPORATE SERVICES SCRUTINY PANEL

REPORT

Introduction

As Members will recall, the Corporate Services Scrutiny Panel (“CSSP”) called in the Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- (“Draft Law”) ([P.91/2017](#)) on 16th November 2017 for scrutiny, after the principles had been adopted by the States. It was made very clear at the time that as far as the Panel was concerned, the States had already agreed to introduce same sex marriage, and our review did not seek to re-open that debate. We have retained that position throughout the review and continue to do so.

It became very clear very rapidly that the Draft Law is basically a rewrite of the existing Law, and is extremely complex, dealing with not only the introduction of same sex marriages, but also open-air marriages, arrangements concerning the Superintendent Registrar, Parish Registrars and Civil Celebrants, as well as introducing protection for religious organisations that, because of their faith (including, for the Church of England, direct conflicts with Canon Law) could not, or did not wish to, participate in the solemnization of same sex marriages. This also extends to certain buildings used by such religious organisations.

It would be fair to say that the fact that 8 pages of [amendments](#) were lodged just over 2 weeks before the scheduled day of debate did give the Panel some concern as to whether the actual process of producing the Draft Law had been rushed.

Accordingly, we are lodging a number of amendments to the Draft Law which flow out of our review. Some are to correct minor drafting and typographical errors, while others are as a result of the evidence we have received. In both cases, they go to show the importance of the legislative scrutiny process, and the need to allow sufficient time for this in the law-making process.

The key themes emerging from the review, around which we are lodging amendments, are as follows –

- accreditation of civil marriage celebrants
- a limited and narrowly defined ‘tolerance’ clause
- protections for buildings owned by religious groups
- use of religious material in civil marriage ceremonies.

Our review has followed a process which has included –

- 3 detailed briefings from policy officers on the Draft Law
- a public call for evidence which received 50 [submissions](#) from interested groups and members of the Public
- 7 [public evidence sessions](#) with key stakeholders
- Detailed line-by-line analysis of the Draft Law.

In particular, we have taken evidence from the Chief Minister, the Superintendent Registrar, the Comité des Connétables, ‘Liberate Jersey’, representatives of Channel Islands humanists, and religious organisations including the Anglican, Roman Catholic and Methodist Churches, the Jersey Evangelical Alliance, and other faith-based groups and denominations.

The amendments that we are proposing are as follows:

Amendment 1

This represents a correction of a typographical error, and a minor redrafting of the definition of “marriage celebrant”. The Article it refers to does not ‘describe’ the persons referred to, it ‘mentions’ them, and therefore we are advised that this should be corrected.

Amendment 2 – first part

Accreditation for civil celebrants

The amendment ensures that civil celebrants who hold themselves out to represent a particular organisation have appropriate accreditation from that organisation. The role of civil celebrant is a new one within in the Law, and it is important that the correct level of governance around this sector is in place. This amendment strengthens the proposed controls laid out within the Draft Law.

Whilst stakeholders seem generally happy with the introduction of civil celebrants, we received concerns from representatives of Channel Islands Humanists that the Draft Law opened the possibility for “sham humanists” conducting “humanist ceremonies”¹. This amendment helps to address that concern and will apply to civil celebrants, whatever organisation they represent. From discussions, it was not felt appropriate to single out any one body in particular, but the Panel consider that this should meet the concerns expressed.

The amendment also expressly requires both civil celebrants and authorized religious officials to comply with guidance issued by the Superintendent Registrar.

Amendment 2 – second part

Article 7 of the Law already exists. This has been redrafted in order to simplify and improve the language of the original Article being proposed. There is no substantive difference in meaning between the Article 7 proposed in the Draft Law, and that proposed by the Panel. We are however advised that this wording represents an improvement on that originally presented to the Assembly.

Amendment 2 – third part

Tolerance Clause

Canon Law, which applies to the Church of England, and which was approved by the States Assembly, states that marriage is between a man and a woman.²

¹ [Written evidence](#)

² Extract from The Canons of the Church of England in Jersey:

B30 OF HOLY MATRIMONY:

“1. The Church of England affirms, according to Our Lord’s teaching, that marriage is in its nature a union permanent and life-long, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which the one ought to have of the other, both in prosperity and adversity.”

The Canons are law to the clergy, and reflect the teachings of the Church of England to its followers. Many other religious organisations in Jersey reflect similar views.

According to the [2015 Annual Social Survey](#), over half (54%) of adults regarded themselves as having a religion.

The Draft Law presently introduces a quadruple lock to protect religious officials and religious organisations from having to solemnize same sex marriages. The majority of stakeholders thought that this was important and necessary. A significant proportion of the evidence we received from a range of religious and faith-based organisations expressed concern that the draft Law did not protect people who had a conscientious objection to same sex marriage on the basis of their religion – but who were not religious officials or clergy.

This concern was raised because of several legal and disciplinary cases where peoples' religious conviction had come into conflict with the law. These include –

- a religious couple, who owned a bakery in Northern Ireland, were taken to court for refusing to bake a cake with a slogan in support of gay marriage (known as the 'Ashers Bakery' case)³;
- an employee of British Airways, who was not allowed to wear a cross pendant at work, successfully took her case to the European Court of Human Rights to defend her right to publicly display her faith; and
- a student who was removed from his course at his University, partly because he expressed a traditional view of marriage on social media.

Other examples have been highlighted to us concerning the negative treatment of magistrates, marriage registrars, councillors and teachers when they expressed their religious views on same sex marriage. There have also been concerns about anomalies regarding the use of church-related buildings.

With the aim of preventing similar cases occurring in Jersey, submissions from representatives of several religious organisations called for the introduction of a tolerance clause (also referred to as a conscience clause) in the Draft Law.

The Dean of Jersey, for example, told us –

[...] it is the task of legislation to accommodate contested loyalties surrounding religion and conscience and not to give public endorsement to one group while silencing another [...].⁴

There were 3 separate, but inter-related, elements to the tolerance clause that were raised during our review, including –

- protecting freedom of speech and the rights of religious people to express their views;
- establishing the principle of “reasonable accommodation”; this principle would require an accommodation of religious practice to be made by employers and public sector bodies;

³ We understand that this case is now going before the Supreme Court in April 2018.

⁴ Public Hearing with the Dean of Jersey, 9th January 2018, pp. 7–8.

- not compelling a person to provide goods or services for, or in relation to, a same sex marriage event, who objects on the grounds of religious conviction.

There is clearly a challenge in drafting any Law which exempts a specific group of people from having to comply with the Law. Indeed, we received evidence from some stakeholders, including ‘Liberate Jersey’, who were concerned about the implications of including a tolerance clause in the draft Law.

We should add that in submissions to us, all parties have been respectful of the opposing view. However, it is also the case that in Hearings or submissions, there has been reference to abuse received by people not agreeing with the view being expressed. Whether it was a supporter of the LGBT+ community receiving abuse, or whether it was members of the Christian faith including church leaders, who had received abuse both verbally and online.

Hence this subject is a matter of great sensitivity.

We also note that tolerance clauses already exist in legislation (for example, Article 5 of the [Termination of Pregnancy \(Jersey\) Law 1997](#)) and in the [Discrimination \(Jersey\) Law 2013](#). Private Members’ clubs are allowed to be selective on the basis of gender in some circumstances, and sports clubs are allowed to have single-sex teams and competitions.

We have therefore brought forward an amendment to address 2 main areas – firstly, any anomalies concerning the use of church-related buildings (for example, church halls); and secondly, a narrow exemption to avoid being compelled to participate in the provision of goods or services. This would not cover employees, or public officials, and would not address the issues of the Ashers Bakery case, or the student referred to earlier; which would need to be dealt with by a separate change to discrimination or employment laws by what is sometimes referred to as a ‘reasonable accommodation’ clause, and (we are advised) is outside the scope of this Law.

In developing this amendment, we were careful to define the Law narrowly so that it only focussed on participation in a same sex marriage or associated marriage celebration. However, we believe issues around making reasonable accommodation in the workplace are important issues that might need to be investigated further in the future.

Balancing the rights of people to enjoy a family life with the rights of people to live by their religious conviction is no easy task, and is one that has been debated in several other jurisdictions. We have listened to all the arguments for and against implementing a tolerance or conscience clause. We do not take on this subject lightly, and appreciate the concerns of people who have misgivings about its adoption. However, we are concerned about the absence of protections in the Law if a tolerance clause is not adopted, for people who believe they cannot participate in same sex marriage on the basis of their religious conviction. We do not believe it is acceptable to leave this until after the Draft Law has been adopted by the States, which is why we have lodged an amendment on this issue.

To return to the matter of buildings – the ‘protection’ as presently drafted for church buildings only extends to usual places of public worship. Therefore it may not capture the chapel at La Hougue Bie (we deal with this later), or with a reception at a church

hall. Religious organisations have already stated that they are careful as to the use for which a church hall (for example) is used. They do not allow certain types of spiritual classes, or certain rock bands (due to the nature of the lyrics), because they do not consider them to be consistent with their own faiths. Accordingly, they are extremely concerned that they might be compelled to allow a wedding reception for a same sex couple (for example) in the church hall, if they have ever allowed the same for a traditional wedding. The amendment seeks to address this type of concern.

Amendment 3 – first part

This is to correct a minor typographical error.

Amendment 3 – second part

Religious content in civil ceremonies

The Draft Law states, in Article 17(8), that no religious content is permitted in civil ceremonies. However, Article 17(9) then permits limited use of some content in a ceremony which could be considered to be of a religious nature. These include hymns, readings from holy books, and limited forms of religious vows or statements. The use of any of these elements would be down to the civil celebrant to decide on. We have brought an amendment to ensure that appropriate religious organisations play a role in this decision.

Amendment 4

In essence this does exactly the same as Amendment 3, second part, but for conversions from a civil partnership.

Amendment 5

Religious buildings

This has been partially referred to earlier.

Whilst churches are covered by the quadruple lock, we heard concerns that other buildings owned by religious organisations might not be covered. For example, a church hall that is in a separate location to the church building, or other buildings owned by religious organisations. The tolerance clause we are proposing will ensure that these latter buildings are covered.

With regard to church buildings, the Draft Law only extended to churches that are a “usual place of public religious worship”. This would not include chapels and other consecrated buildings that are not a usual place of public worship, such as the chapels at La Hougue Bie (which are part of the responsibility of the Rector of Grouville), or private chapels within a house. The Panel has therefore made a minor amendment to the relevant Article to clarify that such places are covered by the law.

Amendment 6

This represents corrections of cross-referencing errors, whereby an Article that was not amended in the Draft Law had references to Articles that had been renumbered as a result of the Draft Law, and therefore the Law did not make sense as proposed.

Amendment 7

This represents an improvement to the existing Article 24A, and clarifies the link with the proposed Article 7A.

Conclusion

This report is principally concerned with the amendments that we have lodged. We will report in full on our review of the Draft Law prior to the debate on 30th January 2018. We hope that Members will read our full report in conjunction with these amendments.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these amendments.