

4.12 Deputy S.Y. Mézec of the Chief Minister regarding the length of time taken to produce the Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- : [OQ.11/2018]

What explanation can the Chief Minister give for the length of time it took to produce the Draft Marriage and Civil Status Law and is it his assessment that the law, as proposed, does not contain measures which discriminate between same-sex couples and different-sex couples?

Senator I.J. Gorst (The Chief Minister):

As per my answer in September 2017, it took longer than I would have wished because of the extent of the changes required. The proposed law treats all couples equally except with regard to the protections provided for religious organisations and religious officials who cannot be compelled to solemnise a same sex marriage or allow their churches to be used for same sex marriage.

4.12.1 Deputy S.Y. Mézec:

The Chief Minister I am sure will be aware of the statements which are made in the Care Inquiry report which spoke about the difficulty the Island has often had pursuing social legislation. This is clearly one of those items that has taken us significantly longer than it has the other Crown Dependencies. What is the Chief Minister's assessment of the situation, how this seems to be a problem we encounter relatively frequently and what does he think needs to change to enable the Island, when it comes to important bits of social legislation like this, to be able to tackle them more quickly like other jurisdictions seem to be able to do?

Senator I.J. Gorst:

I do not accept the premise of the Deputy's question. As I said to the Care Inquiry when they asked me that same question, perhaps in the past that would have been a fair accusation. This Government and the one preceding it has spent more money on bringing forward social legislation than previous ones. The reason for the delay, as the Deputy knows, because I answered his question last September, was that rather than simply grafting the change that the U.K. brought forward to their law, as Guernsey and the Isle of Man did, we opted for an overhaul of our broader marriage law and covered open air marriage, covered more choice over the content of the ceremony and the wedding celebrant, it included improved safeguards against sham and forced marriages. That is why it took longer because it was an overhaul of the entire law rather than a simple grafting on of someone else's law.

4.12.2 Deputy M. Tadier:

Does the Chief Minister agree that you cannot have equal marriage without having equal dissolution of marriage? Can he confirm that the rules regarding divorce are not equal for same sex couples versus non-same sex couples?

Senator I.J. Gorst:

We had proposed to bring forward wholesale reform as well to the divorce law. Of course, Members will know there is a consequential amendment to that law included in the law as lodged. I took the decision when it became apparent to me - I think it was post the summer recess - that if we continued to reform that law at the same time it would take even longer than the lodging that we currently find ourselves in.

[12:30]

So, yes, there will be difference of treatment in that law as well and that is a piece of work that I understand the Minister for Home Affairs is determined to take forward during 2018.

4.12.3 Deputy M. Tadier:

It should not need to take longer. If the work had been done concurrently by Ministers in different departments as opposed to the silo mentality that we continue to see, there is no reason that the divorce laws and the new marriage laws should not have been ready at the same time. But will the Minister comment specifically on one example which will apply to heterosexual couples but not to same sex couples, which is the non-consummation of a relationship for grounds of divorce, which will not apply to same sex couples but which still applies to heterosexual couples? Is it not completely anachronistic, perverse and voyeuristic to keep this provision in the law and should it not be removed immediately so it is in line with those for same sex marriage?

The Deputy Bailiff:

It does not seem to me that this deals directly with measures to discriminate between same sex couples and different sex couples but ...

Deputy M. Tadier:

I think it does, Sir, because ...

The Deputy Bailiff:

... I am conscious that also the Chief Minister is facing questions without notice in any event. Do you wish to answer this question?

Senator I.J. Gorst:

I am happy to so do. It is unfair of the Deputy to suggest that these laws have been brought forward in silos. The officials dealing with all of these changes briefed myself and the Deputy Chief Minister and said if we continued down this route it would take even longer and we took the decision that we would separate out ... that piece of work continues. As I said, the same officers who have done the Equal Marriage Law are the same officers that will be supporting the Minister for Home Affairs in the greater reform of divorce law. So the problems that the Deputy is referring to continue, but that reform, that change, is being delivered and will be delivered.

4.12.4 The Deputy of St. Ouen:

Does the Chief Minister agree that there is a further measure which discriminates against different sex couples in the law, and that is the fact that the option of civil partnerships is not available to different sex couples? Why has the law been drafted in such a way and why could it not have been drafted either to remove the option of civil partnerships or to make it available to all couples?

Senator I.J. Gorst:

The Deputy is right, that does remain. That was not our initial intention. But he will also be aware that there is a case going through the United Kingdom Supreme Court now and the view was taken that we should await the outcome of that particular consideration before we made a decision one way or the other about which of those routes to take.

4.12.5 Deputy S.M. Brée of St. Clement:

These areas of question have been touched on by other Members before but I fear that the Chief Minister may have inadvertently mislead this Assembly by saying that this draft law and the consequential amendments treats all couples the same. It does not. Heterosexual couples are not allowed to enter into civil partnerships and same sex couples are not allowed to sue for

adultery. So could the Chief Minister kindly explain why he said this treats all couples the same?

Senator I.J. Gorst:

I think what the Deputy is referring to is other laws where there remain differential treatments. I was quite clear on that. I have just answered a question from the Deputy of St. Ouen saying just that. The Deputy and Deputy Tadier have referred to the divorce law where there is difference of treatment as well. I have been absolutely clear about that.

4.12.6 Deputy S.M. Brée:

Is the Chief Minister therefore agreeing that the draft Marriage and Civil Status Law and its consequential amendments do create areas of discrimination between heterosexual couples and same sex couples? I cannot quite understand how he can say it does treat all couples the same. If he could clarify exactly what he means by that statement. Thank you.

Senator I.J. Gorst:

We have been quite clear that the introduction of the quadruple lock in this particular piece of legislation creates a difference of approach. Absolutely clear. But there is already a difference of approach in other pieces of legislation. The subsequent amendments in this law addresses some of those. Some of them remain for the reasons that I have just explained.

4.12.7 Deputy S.Y. Mézec:

The Chief Minister said that this law took the length of time it did because it had other aspects latched on to it. Let us be clear, some of those aspects were also out of date as well. It was ridiculous that we have not had open air weddings in Jersey up until now. So I guess the point I was trying to make with my question was: why does it seem like we wait for a whole bunch of out of date things to be identified and then sort them all out at once and then end up with a piece of law in front of us that contains clauses which are inconsistent and even has typos in it? The question I am asking really is would there not be a better way of doing things where we did not have to wait for laws to be out of date by sometimes hundreds of years, for us to be decades behind other jurisdictions on things and then end up with a piece of work in front of us that is not that good and it should be better, given the subjects that it covers. Is there not a better way of doing things is what I am asking him?

Senator I.J. Gorst:

I know Members of this Assembly like to hold me to account but sometimes it is a little bit tricky to take it seriously when they are trying to hold at my door laws which are hundreds of years and decades out of date. This Government has brought forward these changes as it has brought forward a myriad of changes to social legislation, not least of which is the great overhaul of Mental Health Law. Something which, again, was decades out of date but we have made those changes. I have made it absolutely clear the law was delivered ultimately at great pace by the officials and I find it disappointing that the Deputy wishes to make ... of course he can make a cheap point against me, that is politics, but those officials who have been working on this law, some of them have worked solidly over weekends, got very little sleep but that still meant that there were areas that needed amending and small areas and changes that needed to be changed. Typos, for example. I do not think we should criticise those officials for that. They have put a herculean effort into getting this law lodged so that this Assembly could debate it and this legislation could be put on the statute books. I congratulate them for that.

Deputy S.Y. Mézec:

Just to be clear, in that question I am making no statement about the officers, it is about the process.

The Deputy Bailiff:

If you would sit down. Chief Minister, would you withdraw the suggestion it was a cheap point?

Senator I.J. Gorst:

I am not quite sure why you are asking me, Sir, but of course I am always willing to oblige the Chair if you wish me to do so.