
STATES OF JERSEY



REVIEW OF THE DRAFT CHILDREN AND CIVIL STATUS (AMENDMENTS) (JERSEY) LAW 202-. (S.R.2/2024): RESPONSE OF THE MINISTER FOR CHILDREN AND FAMILIES

**Presented to the States on 24th April 2024
by the Minister for Children and Families**

STATES GREFFE

**REVIEW OF THE DRAFT CHILDREN AND CIVIL STATUS
(AMENDMENTS) (JERSEY) LAW 202-(S.R.2/2024): RESPONSE OF THE
MINISTER FOR CHILDREN AND FAMILIES**

Ministerial Response to:	S.R.2/2024
Ministerial Response required by:	24th April 2024
Review title:	Review of the Draft Children And Civil Status (Amendments) (Jersey) Law 202-.
Scrutiny Panel:	Children, Education and Home Affairs Scrutiny Panel

INTRODUCTION

I am grateful to the Panel for their comprehensive and detailed review of the Draft Children and Civil Status (Amendments) (Jersey) Law 202- I have provided comment on the Panel's findings and recommendations which I hope proves useful to the panel.

FINDINGS

	Findings	Comments
1	The draft Law is bespoke legislation for Jersey, but certain areas mirror relevant elements of the United Kingdom's Human Fertilisation and Embryology Act.	Noted.
2	A regulation making power for consequential amendments is included in the draft Law. Thirty-three pieces of legislation have been identified as requiring further amendment and the Panel has been advised that the Regulations will be lodged in the States Assembly in Autumn 2024. The Panel expects that the work will require a significant time commitment from the Government, the Legislative Drafting Office and will require scrutiny from panels across the Assembly.	Noted.

	Findings	Comments
3	The Panel notes that the draft Law is considered to be compatible with the European Convention on Human Rights and also supportive of Children's Rights under the United Nations Convention on the Rights of the Child.	Noted.
4	The draft Law works to expand the range of family units in which individuals can be recognised in law as legal parents by introducing the concept of Parental Orders and widening the people who can be included on the registration of birth for the child.	Noted.
5	Due to circumstance, the route to acquire legal parenthood would not be equal for all parents, however, the registration document for the child, namely, a Birth Certificate, a Parental Order, or Adoption Order, would all have the same legal effect.	Noted.
6	The draft Law will provide new routes to the acquisition of parental responsibility and sets out various provisions for this in Article 8 of the draft Law.	Noted.
7	The draft Law will remove a legal presumption of fatherhood and will require a declaration or confirmation to be provided to the Superintendent Registrar from the intended parents.	Noted
8	No data is available to indicate how many children have been born to parents who are in a same-sex relationship. It is anticipated that numbers of birth registrations recorded to same-sex couples will be publicly available in future.	All birth registrations are a matter of public record; therefore this information will be collected and accessible to the public once the Law comes into force.
9	Same-sex couples may incur additional costs in conceiving a child, for example funding clinically based fertility treatment or providing expenses for a surrogate mother. This may disadvantage a same-sex couple who	The costs relating to fertility treatment and surrogacy would also be applicable to mixed-sex couples. Policy work to look at potential changes to the subsidies for IVF or IUI remains ongoing and in the event that the Assembly determine that IVF and / or IUI should be provided to more

	Findings	Comments
	was not married but wanted to raise children together as, in order to meet the criteria for “relevant fertility treatment”, they would have to use treatment from a certified clinician.	residents at subsidised cost, the Assembly will also be asked to consider restrictions on the use of anonymous donor sperm.
10	Female same-sex couples who have children before the commencement of the draft Law will be able to re-register the birth of a child in order for the second parent to be retrospectively recognised as a legal parent. It is not known how many re-registrations will be requested as a result of this change of law, but it is not expected to be high. The Superintendent Registrar will waive fees relating to the re-registration of births in these circumstances.	Noted.
11	The draft Law introduces provisions for surrogacy in Jersey Law. The Government will keep a watching brief on areas of policy and legislative developments related to surrogacy and matters such as pre-birth surrogacy arrangements.	Yes, this area of policy is slowly developing globally, horizon scanning in relation to surrogacy will continue.
12	There are limits to the monitoring that the Court can provide with regards to payments made in relation to surrogacy arrangements.	Yes, the Court can only consider the monitoring of payments of cases that come before it.
13	If the draft Law is approved, it is estimated that the Jersey Royal Court would grant 2 Parental Orders per year. Parental Orders issued by the Royal Court must only be in relation to children whose birth is also registered in Jersey.	Noted.
14	The Royal Court will be given the power to recognise Parental Orders granted by courts in England and Wales, which is the first time that an order can be granted to recognise the effect of an order made by another jurisdiction that is not governed by an international treaty. It is expected that the Royal Court will retrospectively recognise less than 10 Parental Orders	Noted.

	Findings	Comments
	granted by courts in England and Wales for Jersey children.	
15	Where a child has been conceived through fertility treatment or artificial insemination, the draft Law provides the mechanism to recognise an intended father or a second female parent if that person were to die before the birth of the child. The relevant circumstances for this are set out in the proposed Schedule A1 of the Children (Jersey) Law 2002 (as amended).	Noted.
16	The acquisition of parental responsibility by a step-parent would allow a child to gain people legally connected to them, rather than lose or limit the number of people with parental responsibility.	A child can have any number of people with parental responsibility for them, if those persons acquire parental responsibility in accordance with the Children (Jersey) Law 2002. The acquisition of parental responsibility by a step-parent is another method to legally acquire parental responsibility that is limited to step-parents who are married or in a civil partnership with a legal parent only.
17	Agreement of the legal parents and those with parental responsibility for the child is a key feature and is considered to be an important safeguard for providing step-parents with parental responsibility, and avoiding conflict between parental parties. However, where there is disagreement, the stepparent could apply to the Court to resolve. The Court will have a process for applications which have agreement from legal parents and also a process where there is not agreement from the legal parents. Both processes involve the Jersey Family Court Advisory Service.	Noted.
18	The policy objective to address legitimacy as part of the work to enable parental responsibility for same-sex couples was included in scope by previous Governments (pre 2022 election) but has not been included in the lodged draft Law.	This work will form part of the consequential amendment Regulations to be brought before the Assembly this year.

	Findings	Comments
19	The draft Law reflects the existing Legitimacy (Jersey) Law 1973 which does not extend the concept of legitimacy to children born of civil partnerships or same-sex relationships. Therefore, only children who are born into an opposite sex marriage would be registered as legitimate. However, the Minister for Children and Education has advised that the concept of legitimacy had limited relevance in real terms today.	The Legitimacy (Jersey) Law 1973 will be amended before the Children and Civil Status (Amendment) Law 2024 comes into effect to equalise the 1973 Law's effect on civil partners and their children.
20	The Minister for Children and Education has accepted that steps should be taken to review the wider Jersey law position on legitimacy.	The Legitimacy (Jersey) Law 1973 falls under the remit of the Chief Minister. The Chief Minister has confirmed he also accepts review should be undertaken and this is to be completed during the current term of government.
21	The Financial and Staffing implications detailed in section K of the report of P.104/2023 focus on the Judicial Greffe and Courts and the Office of the Superintendent Registrar. The Panel notes that there will also be matters requiring action from the Assisted Reproduction Unit and the Government of Jersey Communications Unit but there is no clarity of total costs and whether requirements or resources would be met from existing budgets.	The actions that fall to the Assisted Reproduction Unit and the Government of Jersey Communications Unit will be met from existing budgets. In terms of drafting a communications plan and providing communications support this is very much falls within the usual tasks of the Communications Unit
22	If the draft Law is approved, the Government will prepare a coordinated communications plan ahead of the commencement of the draft Law. The purpose of this will be to share information about how Government services will be impacted by the legislative changes.	The work to develop this communications plan has commenced.
23	The legislation has been in development for a number of years which has resulted in uncertainty for families with young children and feelings that the law was long overdue for change.	Noted. It is a complex law and attempts to mitigate any uncertainty have been addressed by the development of retrospective provisions within the Law.
24	It is not common practice to provide a statutory review timescale in Jersey	A statutory commitment of this nature would be very unusual; I cannot think of another piece of

	Findings	Comments
	Law. Whilst the Minister has confirmed that a watching brief will be kept on development of policy and legislation in this area, no commitment has been made to review the adequacy of the draft Law in future.	legislation where this review timescale has been placed in statute. Jersey is a small jurisdiction with a limited policy and legislative drafting resource, it would be inappropriate to tie the hands of future governments to review a piece of legislation without significant reason for a shift in policy. As mentioned in my response to the Scrutiny Panel's initial review questions, a watching brief will be kept on the policy area and legislative amends considered should it be viewed necessary or desirable by any future Minister or backbench politician via a lodged proposition.
25	It is anticipated that the changes proposed by the draft Law will capture the majority of family circumstances and any situations that are not covered will be rare.	Noted. Part of the reason the Law took so long to develop was so that there would be no unintended consequences for any family circumstances.

RECOMMENDATIONS

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completion
1	The Minister for Children and Families should provide the Children, Education and Home Affairs Scrutiny Panel with a draft schedule of when the consequential amendments and Commencement Act will be available for scrutiny and subsequently lodged to the States Assembly.		Accept	The panel will be briefed once these timescales are known in detail.	June 2024
2	When the Commencement Act for the draft Law is lodged au Greffe, the accompanying report should identify the work		Accept	The consequential amendments will be brought forward for debate in the Assembly prior to the commencement act being lodged, as such this is not required.	N/A

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completi on
	undertaken on the consequential amendments.				
3	The Government of Jersey should publish guidance notes about surrogacy alongside the Commencement of the draft Law. It should include information about protection for parents using a surrogate and details about financial payments to a surrogate mother.		Accept	This will form part of the preparatory work that will be undertaken in conjunction with the Jersey Family Court Advisory Service	End of 2024
4	The Minister should consider extending the provisions of acquisition of responsibility by a step-parent to situations where one, or both, of the legal parents are deceased.		Reject	The Court is already able to take this action via the appointment of a guardian or by making a residence order or similar order provided for by the Children (Jersey) Law 2002.	
5	During the remainder of this electoral term, the Government should undertake and publish a review considering the relevance of retaining laws relating to legitimacy in Jersey, to include consideration of compatibility with the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and how the law reflects public expectation.		Accept	As per the comment on Finding 20; the Legitimacy (Jersey) Law 1973 falls under the remit of the Chief Minister. The Chief Minister has confirmed he also accepts review should be undertaken and this is to be completed during term of government.	Q2 2026

	Recommendations	To	Accept/ Reject	Comments	Target date of action/ completi on
6	The communications plan prepared by Government in relation to the draft Law should ensure that there is a coordinated public user focused approach to information access and, also, include details about Government liaison with third parties who might share relevant information. The communications plan should be shared with the Children, Education and Home Affairs Scrutiny Panel prior to the lodging of the Commencement Act for the draft Law.		Accept	I understand Communications Officers have already engaged with Policy Officers to ensure a comprehensive approach is taken so that access to information is available to all who should need it. I absolutely assure the Panel that this plan will be shared with them, in good time, prior to the lodging of the Commencement Act.	Q3 2024
7	The Government of Jersey should commit to a statutory review timescale for the draft Law, once it has been approved by the States Assembly.		Reject	As per the comment on finding 24; A statutory commitment of this nature would be very unusual; I cannot think of another piece of legislation where this review timescale has been placed in statute. Jersey is a small jurisdiction with a limited policy and legislative drafting resource, it would be inappropriate to tie the hands of future governments to review a piece of legislation without significant reason for a shift in policy. As mentioned in my response to the Scrutiny Panel's initial review questions, a watching brief will be kept on the policy area and legislative amends considered should it be viewed necessary or desirable by any future Minister or backbench politician via a lodged proposition.	

CONCLUSION

I wish to thank the Children, Education and Home Affairs Scrutiny Panel for undertaking a review of the Children and Civil Status (Amendment) (Jersey) Law 202- in a shortened timescale. Despite the timings and the complexity of the Law the review was thorough and made a number of important findings and recommendations.

I will ensure that the accepted recommendations are acted upon, and the Panel will be kept abreast of the delivery of these actions during the year. The importance of communicating the effects of the Law clearly to islanders and prospective parents is well recognised, Government departments will work together with the Government Communications Unit to ensure that this is achieved.

Steps are currently being taken to progress the development of the secondary legislation required to enable the Law to be brought into force. Officers will work through the summer to this end and it is accepted that further engagement with the Panel will take place in a timely manner before any debate on both the secondary legislation and commencement act. I look forward to working with the Panel to discuss these two pieces of legislation later on this year.