

STATES OF JERSEY



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

**Lodged au Greffe on 30th October 2017
by the Chief Minister**

STATES GREFFE

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

1 PAGE 67, ARTICLE 2 –

- (1) In the substituted Article 1, in the definition “Deputy Superintendent Registrar”, after the words “this Law” insert the words “or a person engaged as an assistant Deputy Superintendent Registrar under Article 41(1B)”.
- (2) In the substituted Article 1, after the definition “licence”, insert the following definition –
“ ‘parish assembly’ means, in relation to a parish, the assembly of principals and officers of the parish;”.

2 PAGE 69, ARTICLE 2 –

In the substituted Article 3(4)(b), after the words “spouse’s adoptive child or” insert “adoptive”.

3 PAGE 70, ARTICLE 2 –

- (1) In the substituted Article 4(4), delete the words “certificate or”.
- (2) In the substituted Article 4(8), after the words “certificate of no impediment” insert the words “to marriage”.

4 PAGE 71, ARTICLE 2 –

In the substituted Article 5(2)(d)(ii), after the words “spouse’s adoptive child or” insert “adoptive”.

5 PAGE 72, ARTICLE 2 –

- (1) In the substituted Article 6(3)(h), for the words “authorize or renew an authorization, impose a condition on the grant or renewal of an authorization or revoke” substitute the words “grant or renew an authorization, impose a condition on the grant or renewal of an authorization or suspend or revoke”.
- (2) For the substituted Article 6(7)(b) and (c), substitute the following subparagraphs –
 - “(b) during that period shall only be authorized to solemnize marriages of persons in buildings in respect of which he or she was authorized to solemnize marriages before the coming into force of that Law, unless the Superintendent Registrar, upon the application of that person, authorizes him or her to solemnize marriages in another approved location;
 - (c) during that period shall only be authorized to solemnize marriages of persons of the opposite sex unless the

Superintendent Registrar, upon the application of that person, authorizes that person to solemnize marriages of persons of the same sex.”.

6 PAGE 73, ARTICLE 2 –

For the substituted Article 7(2), substitute the following paragraph –

“(2) For the avoidance of doubt –

- (a) a person cannot be compelled by any means to refrain from doing any of the activities described in paragraph (1)(a), (b), (c), (d), (e) or (f); 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.”.

7 PAGE 75, ARTICLE 2 –

- (1) In the substituted Article 9(3)(a), after the word “false” insert the words “or inaccurate”.
- (2) In the substituted Article 10(3), for the word “where” substitute the words “in a case where Article 24 applies or where” and delete the words “or in a case where Article 24 applies” that appear at the end of that paragraph.

8 PAGE 80, ARTICLE 2 –

In the substituted Article 15(10)(b), for the words “not specified” substitute the words “not solemnized”.

9 PAGE 81, ARTICLE 2 –

- (1) In the substituted Article 16(4), for the word “agent” substitute the word “representative”.
- (2) In the substituted Article 16(4), for sub-paragraphs (a) and (b) substitute the following sub-paragraphs –
 - “(a) any lawful impediment has been shown to his or her satisfaction;
 - (b) its issue has been forbidden under Article 13;
 - (c) any party to the marriage is incapable of consenting to the marriage or is not entering into the marriage freely; or
 - (d) any other ground exists for not issuing a certificate of no impediment to marriage.”.
- (3) In the inserted paragraph 16(6)(b), delete the words “date of”.

10 PAGE 83, ARTICLE 2 –

In the substituted Article 17(10), for the words “paragraph (6)” substitute the words “paragraph (8)”.

11 PAGE 84, ARTICLE 2 –

In the substituted Article 19(3)(c)(ii), for the word “position” substitute the word “status”.

12 PAGE 86, ARTICLE 2 –

- (1) In the substituted Article 21(5), for the word “where” substitute the words “in a case where Article 24 applies or where”.
- (2) In the substituted Article 21(7), for the words “the prescribed information” substitute the words “such particulars as may be prescribed”.

13 PAGE 89, ARTICLE 2 –

- (1) In the substituted Article 23(5)(l), after the word “review” insert the words “or appeal”.
- (2) In the substituted Article 23(8), for the words “consent to the approval of that location for the solemnization same sex marriages and where” substitute the words “consent, or refrain from giving consent, to the approval of that location for the solemnization of same sex marriages where the reason for not consenting is that such marriages would be between 2 persons of the same sex and, where”.

14 PAGE 90, ARTICLE 2 –

For the substituted Article 23(16) substitute –

“(16) Despite the repeal of the Marriage and Civil Status (Approved Premises) (Jersey) Order 2002 –

- (a) an approval of premises for the solemnization of marriages that was granted under that Order before the coming into force of the Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- shall be deemed to be an approval of a location under the scheme established under this Article;
- (b) any premises that are deemed to be an approved location under sub-paragraph (a) shall be deemed to be an approved location for the purpose of solemnizing civil marriages of persons of the same sex and persons of the opposite sex;
- (c) the deemed approval of a location shall end on the earlier of –
 - (i) the day on which the approval of the premises would have ended if the Marriage and Civil Status (Approved Premises) (Jersey) Order 2002 had not been repealed, or
 - (ii) the day on which the trustee or proprietor of the premises notifies the Superintendent Registrar that the trustee or proprietor no longer wishes to permit the solemnisation of civil marriages to be conducted at that location.”.

15 PAGE 91, ARTICLE 2 –

In the substituted Article 24(2)(e), delete the words “or conversion, as the case may be”.

16 PAGE 96, ARTICLE 2 –

In the substituted Article 24F(1)(b), after the word “notice,” insert the word “schedule,”.

17 PAGE 97, ARTICLE 5 –

- (1) In the substituted Article 41(1), for the words “one or more Deputy Superintendent Registrars shall be employed by the States Employment Board” there shall be substituted the words “the Deputy Superintendent Registrars shall be States’ employees (within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005) in the department for which the Minister for Home Affairs has responsibility.”.
- (2) In the substituted Article 41(1A), for the words “employed in that position by the States Employment Board” there shall be substituted the words “employed in that position as a States’ employee”.
- (3) Substituted Article 41(1B) shall be re-numbered (1C).
- (4) After the substituted Article 41(1A) insert the following paragraph –
“(1B) The Superintendent Registrar may from time to time engage the services of one or more persons to act as an assistant Deputy Superintendent Registrar who shall carry out such functions of the Superintendent Registrar under this Law as the Superintendent Registrar may from time to time require.”.
- (5) In the substituted Article 41(1C) (as re-numbered), for the words “be deemed to have been employed by the States Employment Board as a Deputy Superintendent Registrar” there shall be substituted the words “have the status of assistant Deputy Superintendent Registrar”.
- (6) In the substituted Article 41(3), after the words “Deputy Superintendent Registrar” there shall be inserted the words “and assistant Deputy Superintendent Registrar, as the case may be,”.

18 PAGE 97, ARTICLE 6 –

For Article 6 substitute the following Article –

“6 Article 42 substituted

For Article 42 of the 2001 Law there shall be substituted the following Article –

“42 Registrars and deputy registrars

- (1) The Superintendent Registrar shall publish a role description in respect of the roles of registrar and deputy registrar in a parish and a scheme setting out the process for –
 - (a) the training and monitoring of registrars and deputy registrars;
 - (b) investigating complaints against a registrar or deputy registrar;
 - (c) the circumstances in which a person may or must be suspended or removed from the role of registrar or deputy registrar; and
 - (d) the review of any decision to suspend or remove a person from the role of registrar or deputy registrar.
- (2) In each parish –
 - (a) having regard to the published role description for registrars, the Connétable of each parish shall appoint a person as the registrar of the parish; and
 - (b) having regard to the published role description for deputy registrars, the Connétable of each parish shall appoint one or more persons as a deputy registrar of the parish.
- (3) In the case of each parish other than St. Helier, subject to paragraph (8), a person appointed under paragraph (2)(a) or (b) –
 - (a) must be resident in the parish of which he or she is appointed; and
 - (b) shall cease to be a registrar or deputy registrar, as the case may be, of that parish upon ceasing to reside in that parish.
- (4) A person appointed under paragraph (2)(a) or (b) shall be appointed for a term not exceeding 5 years and any person so appointed may be re-appointed at the end of that term.
- (5) A Connétable shall not appoint a person under paragraph (2)(a) or (b) unless he or she has notified the parish assembly of the intended appointment.
- (6) A person who is appointed to the position of registrar or deputy registrar must give the Connétable of the parish not less than 3 months’ notice of his or her intention to vacate that position.
- (7) In a case where there is no registrar in a parish, a deputy registrar shall act as the registrar until such time as a new registrar is appointed.
- (8) In a case where there is no registrar or deputy registrar in a parish, the Superintendent Registrar, a registrar or a deputy registrar of a different parish or an employee of the parish, may, with the consent of the Connétable and whether or not

he or she resides in the parish, act in the capacity of the registrar or deputy registrar of the parish.”.”.

19 PAGE 98, ARTICLE 7 –

After Article 7, insert the following Article –

“8 Article 45 amended

For Article 45(1) of the 2001 Law, there shall be substituted the following Article –

- (1) The registrar and each deputy of each parish shall display on the exterior of any premises which he or she uses as his or her office in his or her capacity as the registrar or deputy registrar, as the case may be, of that parish a notice stating his or her name and whether he or she is the registrar or a deputy registrar.”,

and re-number the subsequent Articles.

20 PAGE 101, ARTICLE 21 (RE-NUMBERED ARTICLE 22) –

- (1) In the substituted Article 76(3)(d), after the word “licence” insert the word “, schedule,”.
- (2) In the substituted Article 76(3)(f), for the word “celebrant” in both places where it appears substitute the word “official”.
- (3) In the substituted Article 76(3)(h) –
 - (a) for the word “celebrant” substitute the word “official”;
 - (b) for the words “the religious organization” substitute the words “a religious organization”.
- (4) After the substituted Article 76(7), insert –

“(8) It shall be an offence for a person, knowingly and voluntarily, to make a false declaration or sign any false document or otherwise provide false or inaccurate information –

- (a) for the purpose of an application for an authorization of a person as an authorized civil celebrant or authorized religious official;
- (b) for the purpose of an application for approval of a location as an approved location.”,

and re-number the subsequent paragraph.

21 PAGE 104, ARTICLE 24 (RE-NUMBERED ARTICLE 25) –

For the substituted Article 82(5), substitute the following paragraph –

- “(5) The Minister may prescribe such transitional arrangements as the Minister considers necessary or expedient in consequence of the coming into force of the Marriage and Civil Status (Amendment

No. 4) (Jersey) Law 201- for the purposes of this Law including any such arrangements in respect of –

- (a) any notice, certificate, licence or schedules issued under this Law;
- (b) any caveat, consent, authorization or approval given under this Law;
- (c) any forms, books, records, registers or other documents used or kept for the purposes of this Law;
- (d) any fees paid or payable; and
- (e) any other formality required under this Law.”.

22 PAGE 107, ARTICLE 26 (RE-NUMBERED ARTICLE 27)–

After Article 27 insert the following Article –

“28 Repeals

The following Orders are repealed –

- (a) The Marriage and Civil Status (Approved Premises) (Jersey) Order 2002;
- (b) The Marriage and Civil Status Forms, Registration and Fees) (Jersey) Order 2002.”,

and re-number the subsequent Article.

23 PAGE 109, SCHEDULE –

(1) For paragraph 7(2), substitute the following paragraph –

“(2) For Article 2 there shall be substituted the following Article –

“2 Application for gender recognition certificate

- (1) A person of full age may apply to the Court for a gender recognition certificate.
- (2) An application for a gender recognition certificate shall be in a form approved by the Court and shall include –
 - (a) such evidence as may be prescribed; and
 - (b) any other information or evidence required by the Court, if the Court gives reasons for so requiring it.”.”.

(2) For paragraph 7(6) substitute the following paragraph –

“(6) In Article 17 of the Law –

- (a) in the heading there shall be deleted the words “marriage or”;
- (b) for paragraphs (2), (3), (4) and (5) there shall be substituted the following paragraphs –

- “(2) Accordingly, a person is not to be regarded as being in a civil partnership by reason of having entered into a foreign post-recognition civil partnership.
- (3) Notwithstanding paragraph (2), on and from the issue of a full certificate to a person who has entered into a foreign post-recognition civil partnership, the civil partnership is no longer to be regarded as being void on the ground that (at the time when it was entered into) the parties to it were not either both male or both female.
- (4) Paragraph (3) does not apply to a foreign post-recognition civil partnership if a party to it has entered into a later, valid, marriage or civil partnership before the issue of the full certificate.”.”.

CHIEF MINISTER

REPORT

The Draft Marriage and Civil Status (Amendment No. 4) (Jersey) Law 201- ([P.91/2017](#)) was lodged on 3rd October 2017. In lodging P.91/2017, it was recognised that further amendments may be required post-lodging to address matters that had not previously been identified.

The majority of the required amendments are very minor. They address typographical errors, serve to clarify matters of language or provide additional clarity to the effect of the provisions but do not change those provisions. This applies to amendments; 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 15, 16, 20, 22 and 23.

The amendments which are of more substance, in that their application will have an effect which is different from that set out in P.91/2017 include:

Amendment 5: Transitional arrangements relating to solemnization of marriage by religious officials

P.91/2017 provided that a religious official who is currently authorised to solemnize marriage will continue to be authorised to do so, in the locations in which they are currently authorised, for a 12 month period after the amended Law comes into force.

Amendment 5 substitutes Article 6(7)(b) and (c) in order to clarify that, during that 12 month period, the religious official may choose to apply to solemnize marriage in other locations and/or solemnize same-sex marriage.

Amendment 6: Clarification in relation to protection for religious officials

The substituted Article 7(2) clarifies that, in addition to a religious official or religious organisation not being compelled to refrain from any activity in relation to same-sex marriage (i.e. they can give their consent if they choose to), they also cannot be compelled to refrain from withdrawing their consent (i.e. even if they have previously given consent, they can withdraw that consent).

Amendment 14: Transitional arrangements relating to places approved for the solemnization of marriage

The substituted Article 23(16) clarifies that locations which are currently approved for civil weddings will continue to be approved for civil weddings up until the point at which their current approval expires. They will automatically be approved for both opposite sex and same sex marriage.

The provisions set out in P.91/2017 only extended approval for a 12 month period, but these provisions have been amended as they potentially disadvantaged locations whose current approval extends beyond that 12 month period.

Amendment 17: Employment of Superintendent Registrar, Deputy Registrar and Assistant Deputy Registrar

The amendments to Article 41 clarify that the Superintendent Registrar and Deputy Registrars are employees of the States of Jersey, and also provides for existing delegates (who solemnize marriage under the 2001 Law) to take on the role of Assistant Deputy

Registrars, thus allowing them to continue to solemnize marriage as and when required. As per current arrangements, they will not be employees of the States of Jersey.

Amendment 18: Registrars and Deputy Registrars

The amendments to P.91/2017 have been brought forward further to additional consultation with Parish Connétables. The amended Article provides that –

- The Connétable will appoint the Parish Registrar and Deputies, and will notify the Parish Assembly in advance.
- The Parish Registrar and Deputies will need to be resident in the Parish unless there is a vacancy, in which case the Connétable may appoint the Superintendent Registrar, a Parish employee or the Registrar of another Parish to act as Registrar.

Related to this, Amendment 19 amends Article 45 so a notice of office can be displayed at any office used by the Registrar, as opposed to requiring that it is displayed at the Registrar's home.

Amendment 21: Offences

Amendment 21 sets out that it will be an offence for a person to knowingly and voluntarily make a false declaration or provide false information when applying for a person to be approved as a marriage celebrant or a location to be approved for the solemnization of marriage. Inclusion of this offence addresses an oversight in P.91/2017.

Amendment 24: Amendment to Gender Recognition (Jersey) Law 2010 (“the 2010 Law”)

Article 2 of the 2010 Law provides that a person may apply to the Court in Jersey for a Gender Recognition Certificate if they have changed gender in accordance with the law in another jurisdiction.

Where a person who is married has sought to change their gender in the UK, the UK authorities will only issue an interim Gender Recognition Certificate, as opposed to a full Gender Recognition Certificate, unless the person's spouse has consented to the issuing of a full certificate. This means the spouse can veto that person's right to change gender.

In 2015, the States Assembly agreed, in principle, that there should be no spousal veto in Jersey. Article 2 of the 2010 Law is therefore substituted so that a person does not have to have changed gender in accordance with the law of another jurisdiction to apply to the Royal Court for a Gender Recognition Certificate. Instead, the Court will determine what evidence they need to consider an application.

The effect of this change is that a person who holds an interim, as opposed to a full UK certificate, can have their acquired gender recognised in Jersey, i.e. their spouse cannot veto their right to change gender.

Financial and manpower implications

The financial and manpower implications outlined in [P.91/2017](#) are not altered as a result of this amendment.

There are no additional financial or manpower implications for the States arising from the adoption of this amendment.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the amendment, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).