

STATES OF JERSEY



Jersey

DRAFT CHILDREN AND CIVIL STATUS (AMENDMENTS) (JERSEY) LAW 202-

Lodged au Greffe on 21st December 2023
by the Minister for Children and Education
Earliest date for debate: 6th February 2024

STATES GREFFE



Jersey

DRAFT CHILDREN AND CIVIL STATUS (AMENDMENTS) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Children and Education has made the following statement –

In the view of the Minister for Children and Education, the provisions of the Draft Children and Civil Status (Amendments) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy I. Gardiner of St. Helier North**
Minister for Children and Education

Dated: 19th December 2023

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Chapter 1: Introduction and overarching policy rationale

Section A: Introduction

1. This draft Law is fundamentally concerned with progressing children's rights. It will, if approved, enable Jersey's laws to, on behalf of a child, facilitate the acquisition of legal parent status and parental responsibility by that child's parents.
2. In June 2014, Jersey became a State Party to the United Nations Convention on the Rights of the Child (UNCRC) when the UK's ratification was extended to the Island. As a result of this extension, Jersey is bound by the UNCRC under international Law and is subject to the monitoring and reporting processes of the UN Committee on the Rights of the Child. Article 4 of the UNCRC expects that State Parties to "*undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention*".
3. Furthermore, the [Children \(Convention Rights\) \(Jersey\) Law 2022](#) was approved by the States Assembly on the 30th March 2022. The Law embeds consideration of children's rights in the policy development and decision-making processes undertaken by the States Assembly and its Bodies, Ministers, Government Departments, and civil society organisations working with children and their families. A Children's Rights Impact Assessment (CRIA) can be found as an **Appendix** to this report given the significant positive impact the draft Law will have on children's rights in Jersey.

4. The amendments made by this draft legislation will enable Jersey Law to further meet the following UNCRC Articles:

Article 4 of the UNCRC states “*State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention*”. The proposed draft Law is an example of this Article being realised.

Article 5 of the UNCRC states “*State Parties shall respect the responsibilities, rights and duties of parents*”. For a State Party to fulfil this Article it must first facilitate the acquisition of these responsibilities, rights and duties by all parents. The proposed draft Law will enable that acquisition by all parents for the first time.

Article 7 of the UNCRC states “*every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents*”. As acquisition of legal parent status is not possible for a same-sex couple, or, in certain circumstances a mixed-sex couple. Article 7 is infringed upon by the 2001 Law, as currently enacted, as one parent of a child is denied from ever acquiring legal parent status for that child.

Article 8 of the UNCRC states “*Every child has the right to an identity. Governments must respect and protect that right, and prevent the child’s name, nationality or family relationships from being changed unlawfully.*” Family relationships are a key part of a child’s identity, it is important that Jersey’s Laws facilitate the acquisition of the legal statuses that underpin these family relationships for all children.

Article 18 of the UNCRC states “*Both parents share responsibility for bringing up their child and should always consider what is best for the child.*” Currently, under Jersey’s Laws it is not possible for both same-sex parents, and, in certain circumstances both mixed-sex parents to acquire legal parent status, it is therefore not possible for both parents to share the full responsibility for making important decisions concerning the upbringing of their child.

5. By enabling Jersey’s Law to fully recognise every child’s parents and providing for all children’s parents to be able to obtain parental responsibility, Jersey is taking a step towards further upholding the Articles of the UNCRC. The draft amendment Law, additionally, equalises how all children’s parents are recognised and treated by the law, as far as possible.

Section B: Background

6. Whilst debating [P.77/2015](#) ‘Same-sex marriage, divorce and dissolution’ the States Assembly noted that, in amending the law to allow for same-sex marriage, consideration should be given to matters relating to parental responsibility for:
 - A female same-sex couple who are either married or in a civil partnership at the time at which one of them becomes pregnant or gives birth. Both the birth mother and the second parent should be allowed to be named in the Register of Births, therefore automatically conferring both mothers with parental responsibility.
 - A male same-sex couple who are either married or in a civil partnership at the time at which a child is conceived or born using sperm from one of them, should both be allowed to be registered as the child’s parents and therefore conferred with parental responsibility.
7. The Minister for Children and Education, with agreement from the Minister for Home Affairs, seeks to amend legislation to:
 - a. allow for legal parent status and parental responsibility to be conferred on same-sex couples;

- b. allow for legal parent status and parental responsibility to be conferred on mixed-sex couples who conceive a child using donor sperm;
 - c. equalise how couples in civil partnerships are treated when compared to married couples in respect of legal parent status and parental responsibility; and
 - d. provide legal parent status and parental responsibility to the parents of children born as a result of surrogacy.
8. These legislative changes will further three policy objectives:
- Mixed-sex couples who are parents and same-sex couples who are parents are treated more fairly in law – albeit not exactly the same. Currently, a same-sex couple are not able to obtain legal parent status unless they adopt their child. Therefore, if they do not adopt and one of the same-sex couple is the birth mother, then the couple are only able to both obtain parental responsibility by the Court making a residence order.
 - Spouses and civil partners who are parents/become parents are treated equally in law
The [Children \(Jersey\) Law 2002](#) (“the Children Law”) does not confer parental responsibility automatically upon couples who are in a civil partnership with each other. Moreover, the [Legitimacy \(Jersey\) Law 1973](#) (“the Legitimacy Law”) does not recognise children of civil partnerships as legitimate, this is also at odds with the Government’s policy position.
 - A continued focus on the implementation of UNCRC rights
The proposed draft Law would make a series of legislative amendments that will further enable Jersey to meet number of UNCRC Articles and provide more effective rights for children.
9. The required amendments to the Legitimacy Law to achieve the above policy intention will form part of further legislative amendments, to be made by secondary legislation prior to the amendment Law coming into force. A Regulation making power has been included in the draft Law for this purpose and to enable consequential amendments to be brought forward to amend other legislation to achieve the original desired policy intentions. The Regulations will amend the Legitimacy Law so that children of same-sex couples and civil partners will be treated equally to children of mixed-sex couples by that Law for the first time.
10. In 2016, the Children and Adoption (Amendment) (Jersey) Law 2016 provided that the father¹ of a child, who was not married to the child’s mother at the time of the child’s birth, would acquire legal parent status, and therefore parental responsibility, by being registered as the child’s father in accordance with Article 55 or 56 of the [Marriage and Civil Status \(Jersey\) Law 2001](#) (“the 2001 Law”). The entering of the father’s name in the Register of Births can take place either at the point of initial registration of birth or at a later date. This does not extend to a male same-sex couple or to a female same-sex couple.

Legal terms used in this document:

Below is an explanation of the legal terms used in the draft Law.

Artificial insemination – Any means by which an egg can be fertilised using sperm other than through penetrative sex. This can be done at home or in a licensed clinic.

¹ The father named on the birth certificate is the person that declares he is the father. The Law Officers’ Department have advised it is therefore presumed that he is the biological father.

Birth mother – The woman who gives birth to the child. Includes a surrogate mother and a woman who has given birth having received donated eggs.

Biological father – The man who genetically fathered the child.

Donor sperm – The sperm provided by a sperm donor.

Fertility treatment services – The creation of embryos *in utero* by artificial insemination, the creation of embryos *in vitro*, procuring, keeping, testing, processing or distributing embryos, procuring, testing, processing, distributing or using sperm, performing other practices designed to secure that embryos are in a suitable condition to be placed in a woman, or the placing of an embryo in a woman.

Legal parent – A legal status relating to issues such as inheritance, nationality and financial responsibility for a child. Legal parenthood is different from parental responsibility. A child can only have two legal parents, although any number of persons may have parental responsibility for a child.

Natural child – A child by natural relation or procreation. A child by birth, as distinguished from a child by adoption or as a result of a parental order being made.

Parental order – An order issued by a Court in England or Wales to the intended legal parents of a child born to a surrogate mother which extinguishes the legal parenthood of the surrogate mother and, if registered as the child's father, her spouse/civil partner. The Order reassigns legal parenthood and parental responsibility to the intended parents.

In order to apply for a parental order one of the intended parents must be:

- genetically related to the child (i.e. the egg or sperm donor); and
- if jointly applying, either a spouse of, or civil partner of, or living with the other intended parent in an enduring family relationship.

Furthermore, the child live with the intended parents and they must reside permanently in either the UK, Channel Islands or Isle of Man at the time of application.

Parental responsibility – A legal status giving a person authority to make decisions about a child's care, irrespective of whether they are also the child's legal parent.

Relevant fertility treatment – Fertility treatment services carried on in Jersey by the Minister for Health and Social Services or carried on in the United Kingdom in accordance with a licence granted under the Human Fertilisation and Embryology Act 2008.

Second parent – The female spouse, civil partner or partner of the birth mother. She can also be biologically related to the child if she has donated her eggs to be used for gestation. However, if there is a biological relationship with the child this does not have any effect on acquisition of parental responsibility or legal parent status.

Sperm donor – A man who donates his sperm for the purpose of allowing another person to conceive a child. A man can only be considered a sperm donor if he does not have penetrative sex with the recipient of the donation. Currently, as per the Human Fertilisation and Embryology Act 2008, a sperm donor is considered to have relinquished responsibility for any child conceived using their donated sperm.

Surrogate mother – A birth mother who has a child with the intention, from before conception, of relinquishing legal parenthood of the child. A woman can only be considered a surrogate mother if the child is conceived using artificial insemination and not conceived through penetrative sex. The surrogate mother does not need to be the biological mother; the eggs and sperm can both be donated.

Legal Parenthood and Parental Responsibility

Legal Parenthood

11. A child may only have up to two legal parents under Jersey Law. One of these parents will always be the birth mother unless the child is adopted. The parent or parents are registered as the child's mother and father (if present) in the Register of Births. Being named in the Register of Births provides the parent or parents with legal parent status. The names of the registered parent or parents will appear on the child's birth certificate as it is a copy of the entry made in the Register of Births.
12. Currently, under Jersey customary law, a child's mother at birth is the woman who gave birth, and if she is married to a man, the law presumes her husband will be the child's other legal parent irrespective of whether he is the child's biological father. If the birth mother is married and her husband is NOT the father of the child, Article 55 of the 2001 Law provides for the registration of the father where he is not married to the birth mother.
13. Legal parenthood provides a legal parent-child connection which governs inheritance, financial provision for a child and citizenship.

Parental Responsibility

14. Article 3 of the Children Law currently provides that:
'Where a child's father and mother were married to each other at the time of the child's birth they shall each have parental responsibility for that child'. Or 'Where a child's father and mother were not married to each other at the time of the child's birth –
 - a. *The mother shall have parental responsibility for the child; and*
 - b. *The father shall not have parental responsibility for the child unless he acquires it in accordance with the provisions of this law.'*
15. Article 5 of the Children Law goes on to state that *'Where a child's father and mother were not married to each other at the time of the child's birth then the father shall only have parental responsibility for the child if he becomes registered as the child's father under Article 55 or 56 of the 2001 Law.'*
16. As such the Children Law provides that the legal parents shall acquire parental responsibility by being the registered mother and father of the child under the provisions of the 2001 Law. A child's legal parents will always have parental responsibility for their child except in very limited circumstances.
17. A person with parental responsibility has all the duties, rights, responsibilities and authority, which, by law, a legal parent has for his or her child. As Giles Robinson notes, *"Essentially this means 'being a parent'. A person who has parental responsibility has the right to make important decisions about a child's education, religion, health care etc."*². Article 5 of the UNCRC requires that *"Governments must respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up."* Amending Jersey Law to enable same-sex couples to acquire parental responsibility more efficiently will ensure that it complies with Article 5 of the UNCRC.
18. If a father is not the child's legal parent, then the father and mother may agree to draft a parental responsibility agreement to enable the father to have parental responsibility for the child. The parental responsibility agreement must be made in prescribed form and must be recorded by the Court in the manner required by Rules of Court.

² Giles Robinson, 'Parental Responsibility and the Protection of Children' (February 2006) The Jersey Law Review https://www.jerseylaw.je/publications/jglr/Pages/JLR0602_Robinson.aspx

19. A Court can, as per the Children Law, make a residence order in favour of any person who is not the parent of the child, to provide that person with parental responsibility for the child. In practice, this is one way that a female same-sex couple can both gain parental responsibility short of adopting the child. The same-sex couple are required to meet the legal costs of this application.
20. As noted above, it is entirely possible for a child to have more than two people with parental responsibility for them, although it is not possible for a child to have more than two legal parents.

Mixed-sex parents

21. As set out above, a birth mother automatically has legal parent status and parental responsibility. Fathers married to the birth mother at the time of birth also have legal parent status and parental responsibility conferred automatically if named in the register of births³. This does not currently include a civil partner of a birth mother. A father who is a civil partner of the birth mother will have to acquire parental responsibility in the same way as an unmarried father, despite being in a civil partnership with the birth mother.
22. Fathers who are not married to a birth mother at the time of birth but who:
 - a. are registered as the father of the child under Article 55 of the 2001 Law and therefore appear on their child's birth certificate⁴
 - b. have obtained a residence order from the Court⁵
 - c. have obtained a parental responsibility order from the Court⁶
 - d. have entered into a parental responsibility agreement with the child's birth mother⁷
 - e. have re-registered the child's birth where no person has been recorded as the father of the child⁸will acquire parental responsibility. Only unmarried fathers registered under Article 55 are able to gain legal parent status.
23. Other people may obtain parental responsibility by a custody order or residence order for a child⁹. Those who have been appointed as a guardian or who have adopted a child also have parental responsibility, as do those responsible for a child under an emergency protection order.

Section C: Abolition of customary law assumption that a man married to birth mother is the father of the child.

24. Under Jersey customary law, a child's mother at birth is the woman who gave birth to the child, and if she is married to a man, her husband will be the child's other legal parent. Increasingly, the current assumption in law proves problematic when couples come to register the birth of a child. It is arguable that the customary law position is outdated – the law should not assume any category of person to be the father of a child solely based on

³ Children (Jersey) Law 2002, art 3(1).

⁴ Children (Jersey) Law 2002, art 5(1)(aa).

⁵ Children (Jersey) Law 2002, art 13(1).

⁶ Children (Jersey) Law 2002, art 5 (1)(a).

⁷ Children (Jersey) Law 2002, art 5 (1)(b).

⁸ Marriage and Civil Status (Jersey) Law 2001, art 56(2).

⁹ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20PRA%20guidance%20notes%20and%20form%2020120103%20BJL.pdf>

marital status. The law should facilitate the allocation of the status of father of a child on the basis of biological fact.

25. The draft Law inserts a new Article 55A that sets out the required requests necessary to register the father if he is married to or in a civil partnership with the birth mother. The declarations required are similar to the existing declarations required to register a father where he is not married to the birth mother.

Section D: Enable same-sex parents to both be registered in the Register of Births and therefore named on a Jersey birth certificate

26. Provisions governing the registration of births and creation of birth certificates are set out in the 2001 Law.
27. Currently, Jersey's Register of Births, and therefore birth certificates, only have particulars, and therefore spaces, for a 'mother' and a 'father'. This means that only one of the parents in a same-sex couple can be named in the Register of Births and appear on a child's birth certificate, and only one parent may acquire legal parent status.
28. In the case of a female same-sex couple, the child's birth mother must be registered as the mother in the Register of Births and so her name will appear on the child's birth certificate. The child's second female parent cannot currently be registered in the Register of Births and, as a result, their name cannot appear on the birth certificate. This engages a number of Articles of the UNCRC:
29. Article 7 of the UNCRC states "*every child has the right to be registered at birth, to have a name and nationality, and, as far as possible, to know and be cared for by their parents*". As acquisition of legal parent status is not possible for a same-sex couple, Article 7 is infringed upon by the 2001 Law, as currently enacted, as one parent of a child is denied from ever acquiring legal parent status for that child.
30. Article 8 of the UNCRC states "*Every child has the right to an identity. Governments must respect and protect that right, and prevent the child's name, nationality or family relationships from being changed unlawfully.*" Family relationships are a key part of a child's identity. It is important that Jersey's Laws facilitate the acquisition of the legal statuses that underpin these relationships for all children.
31. Article 18 of the UNCRC states "*Both parents share responsibility for bringing up their child and should always consider what is best for the child.*" Currently, under Jersey's Laws it is not possible for both same-sex parents to acquire legal parent status. It is, therefore, not possible for both parents to share the full responsibility for making important decisions concerning the upbringing of their child.

Proposed changes

32. The draft Law will, if approved, amend the Children Law to enable a woman who was married to or in a civil partnership with a birth mother at the time of fertility treatment, or who has together with the birth mother satisfied the agreed female parenthood conditions at the time of relevant fertility treatment, to acquire the status of second parent provided the conditions remain satisfied at the time of child's birth.
33. The draft Law will also amend the Children Law to enable a man who was married to or in a civil partnership with a birth mother at the time of fertility treatment or who has together with the birth mother satisfied the agreed female parenthood conditions at the time of relevant fertility treatment (provided the child was conceived with donor sperm) to acquire the status of father if the conditions remain satisfied at the time of the child's birth.

34. The draft Law will also amend the 2001 Law to enable a person who has acquired the status of a second parent or father under the amended Children Law to be registered as a second parent or father of a child if they are married to, or civil partners with the birth mother in the same way as will be required for fathers who are either married or in a civil partnership with the birth mother. Where the second parent or father is not married or in a civil partnership with the birth mother, the father or second parent may be registered as the second parent or father in the same way as an unmarried father can be registered currently.
35. The particulars of the Register of Births will also be amended so that the name of a second parent can appear in an entry in the register. This will also result in the second parent being able to appear on a child's birth certificate.
36. To achieve this expanded acquisition of legal parent status by persons who do not have a biological link to the child or have a biological link to the child based on the donation of an egg, it is necessary to set out the circumstances in which the amended Children Law will permit persons who satisfy certain conditions to acquire the status in law of a father or second parent. This status will enable registration in the Register of Births and the acquisition of parental responsibility as is currently the case for either married or unmarried fathers.

Circumstances A, B, C & D

37. The Circumstances that exist in Schedule A1 of the draft Law, specify who is to be treated in law as the other parent of a child where the child was born as a result of a woman undergoing artificial insemination or relevant fertility treatment.
38. **Circumstance A** applies where the woman who gives birth was married to, or in a civil partnership with a man at the at the time of fertility treatment or artificial insemination that resulted in the birth of the child, and the embryo was not created with that man's sperm. Where Circumstance A is satisfied then that man is to be treated in law as the child's father unless it is shown that he did not consent to the fertility treatment or artificial insemination.
39. **Circumstance B** applies where the woman who gives birth was not married to, or in a civil partnership with a man at the time of the relevant fertility treatment and no man is treated as the child's father by virtue of Circumstance A and no woman is treated as the child's second parent by virtue of Circumstance C. Provided that the woman underwent relevant fertility treatment and at the time of treatment the agreed fatherhood conditions were satisfied, and the embryo carried by the woman was not created with the man's sperm then the man is to be treated in law as the child's father.
40. The agreed fatherhood conditions must be satisfied at the time of the relevant fertility treatment and must continue to be satisfied until the time of the child's birth; they are as follows:
 1. The man has given the person responsible for the woman's fertility treatment a notice stating that he consents to being treated as the father of any child resulting from relevant fertility treatment.
 2. The woman has given the person responsible for the treatment a notice that she consents to the man being treated as the father of any resulting child.
 3. Neither the man nor the woman has, since giving either notice above, given the person responsible for the treatment a further notice withdrawing their consent.
 4. The woman has not given notice that she consents to another man or woman being treated as the father or second parent of the resulting child.
 5. The woman and the man are not within the prohibited degrees of relationship as set out in Schedule 1 of the 2001 Law.

41. Any notice given as part of the agreed fatherhood conditions must be in writing and signed by the person giving it.
42. **Circumstance C** applies where the woman who gives birth was married to, or in a civil partnership with another woman at the time of fertility treatment or artificial insemination that resulted in the birth of the child. Where Circumstance C is satisfied then that woman is to be treated in law as the child's second parent unless it is shown that she did not consent to the embryo, or sperm and eggs being placed in the birth mother or the birth mother receiving fertility treatment or artificial insemination.
43. **Circumstance D** applies where the woman who gives birth was not married to, or in a civil partnership with another woman at the time of relevant fertility treatment and no man is treated as the child's father by virtue of Circumstance A and no woman is treated as the child's second parent by virtue of Circumstance C. Provided the woman underwent relevant fertility treatment and at the time of treatment the agreed parenthood conditions were satisfied, then the other woman would be treated in law as the child's second parent.
44. The agreed parenthood conditions must be satisfied at the time of treatment and must continue to be satisfied until the time of the child's birth; they are as follows:
 1. The other woman has given the person responsible for the woman's relevant fertility treatment a notice stating that she consents to being treated as the second parent of any child resulting from relevant fertility treatment.
 2. The woman has given the person responsible for the treatment a notice that she consents to the other woman being treated as the second parent of any resulting child.
 3. Neither the other woman nor the woman has since giving either notice above given the person responsible for the treatment a further notice withdrawing their consent.
 4. The woman has not given notice that she consents to another man or woman being treated as the father or second parent of the resulting child.
 5. The woman and the other woman are not within the prohibited degrees of relationship as set out in Schedule 1 of the 2001 Law.
45. Any notice given as part of the agreed parenthood conditions must be in writing and signed by the person giving it.
46. The other woman would, through satisfying either Circumstance C or D in Schedule A1 of the amended Children Law, establish herself as a 'second parent' in law, thereby enabling her to be registered as the child's second parent under Article 55B or 55C of the amended 2001 Law. By contrast, a female who is not married to, or in a civil partnership with the prospective birth mother where she is inseminated by non-clinical/home-based means, or similar, can never establish herself as a legal parent under the Children Law. She would have no standing to be registered as a second parent, as Circumstance D requires relevant fertility treatment to be conducted by a clinic licenced by Human Fertilisation and Embryology Authority (HEFA) or fertility treatment services carried on by the Minister for Health and Social Services in Jersey.
47. Once a person has satisfied the relevant circumstances in the Children Law and the 2001 Law including being registered in the Register of Births, they would acquire legal parent status and parental responsibility.
48. The draft Law would insert new provisions into the 2001 Law to enable the registration of:
 1. A father who is married to or in a civil partnership with a birth mother.
 2. A second parent who is neither married to or not in a civil partnership with a birth mother.
 3. A second parent who is married to or in a civil partnership with the birth mother.

These would supplement the existing provisions under Article 55 that currently provides for the registration of a father who is not married to or not in a civil partnership with a birth mother.

Re-registration of birth where a child has been born to a female same-sex couple pre-commencement

49. Currently, the only way female same-sex couples may both gain legal parent status and, thus, parental responsibility is by adoption. The draft Law, if approved, will amend the 2001 Law and the Children Law to enable same-sex couples to acquire legal parent status and parental responsibility in the same way as a mixed-sex couple. However, it is known that there are a number of female same-sex couples who already have children who, for one reason or another, have chosen not to adopt their child.
50. It was decided at an early stage during policy development that the amended legislation should afford the ability for female same-sex couples who already have children to be able to re-register the births of those children, after the Law has come into force, so that the other woman is able to acquire legal parent status and, thus, parental responsibility.
51. The arrangement where re-registration of a birth drives acquisition of legal parent status is novel. Usually, legal parent status is acquired by operation of Law not by act of registration. However, in this instance, where retrospective recognition is being enabled by the draft Law, it is necessary to require a positive action to be taken by the parent and their partner to trigger the change of legal status. Other methods were explored but deemed not to provide appropriate safeguards. Paragraph 9 of Schedule A1 to the draft Law has been created to effect this acquisition of status. It enables the partner of the birth mother in a female same-sex couple to be treated as the second parent of the child if:
 - the child was born before the coming into force of this paragraph, and
 - the child’s mother and the other woman apply jointly for the child’s birth to be re-registered under Article 56C that will be inserted by the draft Law into the 2001 Law.
52. Article 56C applies if before the commencement of the Article, a woman has given birth to a child in Jersey, and that child was conceived as a result of artificial insemination or fertility treatment. This is provided that the woman was married to, or the civil partner of, another woman, and, that woman has consented to her being inseminated. If this is the case, then the mother and her wife or civil partner are required to make a declaration in order to re-register the birth of the child.
53. Where the birth mother was not married to or in a civil partnership with the other woman then the birth mother must have given birth to the child as a result of relevant fertility treatment and the other woman must have consented to the treatment. If this is the case, then the mother and the other woman are able to make a declaration and the child’s birth can be re-registered.

Registration of deceased parents

54. Currently, Jersey’s laws do not facilitate the registration of parents who pre-decease the birth of their child where that parent is not the biological father of the child. Article 8 of the UNCRC states *“Every child has the right to an identity. Governments must respect and protect that right, and prevent the child’s name, nationality, or family relationships from being changed unlawfully.”* It is necessary to enable the law to permit the registration of parents in the Register of Births where they had intended to be a parent of that child and that parent pre-deceases the child. As those parents are deceased, the act of registration is just that, for registration purposes and no other.

55. Paragraph 11 of Schedule A1 of the draft Law will provide the ability for the Law to recognise a man as the father of a child where the creation of the child was brought about using his sperm after his death, or where an embryo was created before his death and was placed in the woman after his death.
56. This is contingent on the man consenting, in writing, to the use of his sperm for the purpose of creating an embryo to be carried by the woman, and to being treated as the father of any resulting child.

Deceased man who was married to or in a civil partnership with the birth mother at the time of death

57. Paragraph 12 of Schedule A1 of the draft Law will provide the ability for the Law to recognise a man as the father of a child where he was married or in a civil partnership with the birth mother, after he has died. The man can be recognised where he has not provided the sperm used in the creation of the embryo but intended to parent any resulting child if he had been alive. It will be possible for the Law to recognise the man as the father of the child for registration purposes if:
 - the man was married or in a civil partnership with the birth mother;
 - the man died before the embryo was placed in the woman;
 - the man consented in writing to the placing of the embryo in the woman after his death and to being treated as the father of any resulting child; and
 - the woman has elected, in writing, before 21 days have passed since the child's birth, for the man to be treated as the child's father for registration purposes only.

Deceased man not married to or in a civil partnership with the birth mother at the time of death

58. Paragraph 13 of Schedule A1 of the draft Law will provide the ability for the Law to recognise a man as the father of a child born after he has died. The man can be recognised where he was not married or in a civil partnership with the birth mother and where he has not provided the sperm used in the creation of the embryo. It will be possible for the Law to recognise the man as the father of the child if:
 - the embryo was created in the course of relevant fertility treatment services provided to the woman;
 - the man consented in writing to the placing of the embryo in the woman after his death and to himself being treated as the father of the resulting child;
 - the man died before the embryo was placed in the woman;
 - immediately before the man's death, the agreed fatherhood conditions as set out in Paragraph 5 of Schedule A1 were met in relation to relevant fertility treatment services; and
 - the woman has elected, in writing, before 21 days have passed since the child's birth, for the man to be treated as the child's father for registration purposes only.

Deceased second parent married to or in a civil partnership with the birth mother at the time of death

59. Paragraph 14 of Schedule A1 of the draft Law will provide the ability for the Law to recognise a woman as the second parent of a child born after she has died provided the following conditions are met:

- the woman gave birth to the child as a result of the placing in her of an embryo, and the embryo was created at a time when she was married to or the civil partner of the second woman;
- the second woman died before the embryo was placed in the woman;
- the second woman consented to the placing of an embryo into the woman, in writing, and that consent was not withdrawn before her death;
- to being treated as the second parent of the resulting child; and
- the woman has elected, in writing, before 21 days have passed since the child’s birth, for the second woman to be treated as the child’s second parent for registration purposes only.

Deceased second parent not married to or in a civil partnership with the birth mother at the time of death

60. Paragraph 15 of Schedule A1 of the draft Law will provide the ability for the Law to recognise a woman as the second parent of a child born after she has died, where she was not married or in a civil partnership with the birth mother. It will be possible for the Law to recognise the woman as the second parent of the child if:

- the woman gave birth to the child as the result of the placing in her of an embryo;
- the embryo was created during the course of relevant fertility treatment services provided to the woman;
- the second woman consented in writing, and did not withdraw the consent, to the placing of the embryo in the woman after her death;
- the second woman consented to being treated as the second parent of any resulting child;
- immediately before the death of the second woman the agreed female parenthood conditions were met in relation to relevant fertility treatment services to be provided to the woman;
- the woman has elected, in writing, before 21 days have passed since the child’s birth, for the second woman to be treated as the child’s second parent for registration purposes only.

Section E: Enable, as far as possible, same-sex parents to be automatically conferred parental responsibility

61. Currently, as per the Children Law, the following people automatically have parental responsibility for a child in Jersey:

- a. Birth mothers are always considered legal parents and will always have parental responsibility for their child unless it is removed by a Court Order (for example an Adoption Order). This is regardless of whether the birth mother is the biological mother (the eggs used to conceive the child may be donated). A birth mother will always be named in the Register of Births and named on the child’s birth certificate, unless the birth mother is unknown. If, as result of an Adoption Order, a birth mother is no longer the legal parent, then the birth record may be ‘sealed’.
- b. As a matter of customary law, a man married to a birth mother at the time the child was born will be registered as the father of the child. Although the Children Law does not automatically provide parental responsibility to an “unmarried father” (a father not married to the birth mother).

- c. Fathers who are not married to the birth mother at the time of the child's birth but who are registered as the child's father as per Article 55 of the 2001 Law from the point at which the 2016 Amendment came into force have legal parent status and acquire parental responsibility when registered. This includes:
- fathers who are married/civil partners/in a relationship with another person; and
 - fathers who are not the person that the birth mother is married to or in a civil partnership with.

Acquiring parental responsibility

Mixed-sex parents

62. As set out above, a birth mother automatically has legal parent status and parental responsibility. Fathers married to a birth mother at the time of birth also have legal parent status and parental responsibility conferred automatically.¹⁰ This does not currently include the civil partner of a birth mother. A father who is a civil partner of a birth mother must acquire parental responsibility in the same way as an unmarried father.
63. Fathers who are not married to a birth mother at the time of birth but who:
- a. are registered as the father of the child under Article 55 of the 2001 Law and, thus, appear on their child's birth certificate;¹¹
 - b. have obtained a residence order from the Court;¹²
 - c. have obtained a parental responsibility order from the Court;¹³
 - d. have entered into a parental responsibility agreement with the child's birth mother;¹⁴ or
 - e. have re-registered the child's birth where no person has been recorded as the father of the child¹⁵
- will acquire parental responsibility.
64. Other persons may obtain parental responsibility by a custody order or residence order for a child.¹⁶ Those who have been appointed a guardian or who have adopted a child also have parental responsibility, as do those responsible for a child under an emergency protection order.

Female same-sex parents

65. Where a child has a birth mother and a second parent, the birth mother automatically has parental responsibility.¹⁷ The Children Law does not currently make any provision for the acquisition of parental responsibility by a second parent. Moreover, the child's second parent cannot be registered as a father or named on a child's birth certificate – regardless of whether they are married to or in a civil partnership with the birth mother. A second parent must obtain legal parent status and parental responsibility by adoption. The Court

¹⁰ Children (Jersey) Law 2002, art 3(1).

¹¹ Children (Jersey) Law 2002, art 5(1)(aa).

¹² Children (Jersey) Law 2002, art 13(1).

¹³ Children (Jersey) Law 2002, art 5 (1)(a).

¹⁴ Children (Jersey) Law 2002, art 5 (1)(b).

¹⁵ Marriage and Civil Status (Jersey) Law 2001, art 56(2).

¹⁶<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20PRA%20guidance%20notes%20and%20form%2020120103%20BJL.pdf>

¹⁷ Children (Jersey) Law 2002, art 3(2).

can grant a residence order, but this will only provide a second female parent with parental responsibility and not legal parent status.

66. Since amendments were made to Jersey's adoption laws in 2012, a female same-sex couple may adopt a child in Jersey. This is possible regardless of whether the child is the biological child of the adopters. The adopters will both gain legal parent status and parental responsibility for the child as a result of the adoption order being made. The female same-sex couple are required to bear the full costs for the adoption application and engage with the full adoption process despite the child being their biological child.

Proposed changes

67. The draft Law, if approved, will insert new provisions into Article 9A (renumbered from Article 5) in the Children Law that will provide parental responsibility to an expanded number of persons in line with the overarching policy ambitions. These are set out in the following paragraphs.
68. A second parent of a child will acquire parental responsibility in the same way as a married father does currently where that second parent is married to, or in a civil partnership with a child's mother at the time of the child's birth (Circumstance C). The second parent will also be able to acquire parental responsibility (albeit not automatically) where that second parent and the child's mother have satisfied the agreed parenthood conditions at the time of relevant fertility treatment and those conditions continue to be satisfied at birth (Circumstance D).
69. A man whose sperm has not been used to conceive the child but who is married to, or in a civil partnership with a birth mother (Circumstance A) or, not married to, or not in a civil partnership with a birth mother and where the agreed fatherhood conditions were satisfied at the time of the relevant fertility treatment and continue to be satisfied at the time of birth (Circumstance B) will be able to be registered as the child's father.
70. The amended Article 9A will provide parental responsibility for the father if he is married to the birth mother at the time of birth. Alternatively, new Article 9C will provide parental responsibility to the father if he is not married to a birth mother at the time of the child's birth but is registered as the child's father in the Register of Births under Article 55 of the amended 2001 Law.
71. Article 9A will also provide legal parent status and, thus, parental responsibility for female same-sex couples who are married to, or in a civil partnership with each other.
72. A new Article 9D provides for a second parent to acquire parental responsibility provided the conditions in Circumstance D are satisfied, and the second parent is registered in the Register of Births under either Article 55B or Article 55C of the 2001 Law, respectively.
73. To enable persons who do not have a biological link to a child or who have a biological link to a child based on the donation of an egg to acquire parental responsibility it is necessary to set out the circumstances where the law will permit persons who satisfy certain conditions to acquire the legal status of a father or second parent. This status will enable acquisition of legal parent status and parental responsibility and permit registration in the Register of Births.

Section F: Provide appropriate legal recognition to enable parents, whose child is born to a surrogate mother, to become legal parents in Jersey

Parental orders and recognition orders

Male same-sex parents

74. Currently, if one of the men in a male same-sex couple is the child's biological father (and the child is born by a surrogate mother), the biological father can gain legal parent status and parental responsibility in any of the ways available to a father who is not married to the birth mother.¹⁸
75. Since amendments were made to Jersey's adoption laws in 2012, same-sex couples have been able to adopt children.¹⁹ This includes same-sex couples who are married, in a civil partnership or who are living as partners in an enduring family relationship. It is therefore possible for a male same-sex couple to adopt a child; this includes a child who is biologically related to one of them.
76. As such, adoption is currently the only way in Jersey law that a male same-sex couple would be able to extinguish the legal parent status and parental responsibility of a child's birth mother.²⁰ An adoption order acts to extinguish the legal parent status and parental responsibility of both the child's birth mother and father (if the father's name appears in the Register of Births), any same-sex couple would, therefore, have to issue a joint application. A joint application for adoption would also be required currently if a mixed-sex couple were to use surrogacy as a method to have a child.
77. In the case of a male same-sex couple, if a child was born to a surrogate on or after 2 December 2016, a father who is registered as the father of the child in the Register of Births will gain legal parent status and acquire parental responsibility. There is currently no option for both fathers' names to be entered into the Register of Births and therefore appear on the child's birth certificate.²¹
78. Once 6 weeks has passed from the birth of a child, the surrogate mother may agree that the child can be freed for adoption in Jersey or for a parental order to be made by the Family Court in England or Wales. Therefore, intended parents currently have two options currently available to them:
 1. The applicant/s can adopt their own biological child in Jersey. This extinguishes the legal parent status and parental responsibility from a birth (surrogate) mother and a child's father if named in the Register of Births. It will provide legal parent status and parental responsibility to the adopter or adopters and will result in a child having an adoption certificate instead of a Jersey birth certificate.
 2. The intended parents can apply for a parental order from a Family Court in England or Wales. Where intended parents of a child with a Jersey birth certificate apply and have made for a parental order from the Family Court in England or Wales.
79. There are currently children living in Jersey whose intended parents sought parental orders from the English courts under Human Fertilisation and Embryology legislation in the UK. There is, however, much uncertainty as to the status and effect in Jersey of these orders. The prevailing view is that there is no clear legal basis, statutory or otherwise, on which English parental orders, issued under English law, and the parent-child relationship they purport to establish, could be recognized in Jersey and take effect as a matter of Jersey law. There is also no obvious legal basis on which the General Registrar of the UK could, in consequence of an English parental order, direct the sealing of birth certificates and

¹⁸ Marriage and Civil Status (Jersey) Law 2001 Article 55

¹⁹ Adoption (Jersey) Law 1961, art 10(1A)

²⁰ Adoption (Jersey) Law 1961, art 20(2)(a)(i).

²¹ Children (Jersey) Law 2002, art 5(1)(aa).

alteration of registers in Jersey, not least because civil status and registration requirements are governed by Jersey law and overseen by the Superintendent Registrar.

80. It is unsatisfactory that applicant couples cannot seek direct legal recourse in Jersey law to address parenthood in this context (other than adoption). It was, therefore, decided that the law should be amended to provide a solution to these issues.
81. Where a child is born in England or Wales, a parental order, extinguishes legal parent status and parental responsibility from the surrogate mother and father, if one has been named in the Register of Births. It provides legal parent status and parental responsibility to the intended parents for children born in England or Wales. To obtain a parental order, the intended parents must satisfy the criteria listed under Section 54 of the Human Fertilisation and Embryology Act 2008 (“the 2008 Act”).
82. It is interesting to note that, despite residents of the Channel Islands and the Isle of Man being permitted to apply to a court in England and Wales for a parental order, the Isle of Man provided for parental orders in its Children and Young Persons Act 2001. Thereby enabling intended parents in the Isle of Man to obtain a parental order from the High Court of the Isle of Man.
83. It is proposed that, in a similar way to the Isle of Man, the Royal Court is provided with the power to make parental orders for children born in Jersey. The purpose of a parental order made by the Royal Court is to extinguish all parental responsibility for a child with a Jersey birth certificate at the point in time that the parental order is made and to reallocate legal parent status and parental responsibility to the applicant or applicants.

Power to make a parental order

84. It is proposed to add provisions to the Children Law to enable the Royal Court to be able to make a parental order for a child with a Jersey birth certificate. The purpose of a parental order is to extinguish all parental responsibility for a child at the point in time that the parental order is made and reallocate legal parent status and parental responsibility to the applicant or applicants, one of whom must be directly biologically related to the child (i.e. either the sperm or egg used in the creation of the embryo must belong to at least one of the applicants).

Restrictions on making a parental order

85. This draft Law would, if approved, allow the Court to proceed to hear an application for a parental order in relation to a child where a previous application for a parental order made in relation to the child by the same applicants was refused by the Court. Unless, in refusing the previous application the Court in question directed that this bar would not apply, or it appears to the Court that, because of a change in circumstances or for any other reason, it is proper to proceed with the application.

Sole applicant

86. It is proposed that the draft Law will amend the Children Law to enable the Royal Court to make an order providing for a child to be treated in law as the child of the applicant upon an application made in the prescribed manner by a sole person resident in Jersey.

Joint applicants

87. Where an application is made under the amended Law in the prescribed manner by two persons jointly, at least one of whom is resident in Jersey, the Court may make a parental

order providing for the child to be treated in law as the child of the applicants only if the two persons are married to each other, in a civil partnership with each other, or otherwise living as partners in an enduring family relationship.²² It is irrelevant whether the two persons are of different gender or the same gender.

88. Regardless of whether the applicant is a sole applicant or two persons, the amended Law, if approved, would require that:
- a) neither of the applicants is the birth mother; and
 - b) the gametes of at least one of the applicants must have been used to bring about the creation of the embryo (if neither of the applicants' gametes have been used then it would be reasonable for the applicants to adopt the child); and
 - c) a parental order can only be made by the Court where the birth mother has carried the child as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination; and
 - d) a parental order can only be made by the Royal Court for a child that has a Jersey birth certificate.
89. The application for a parental order will have to be made within a 6-month period beginning on the date of the child's birth. At the time of the application the child must live with the applicant or applicants and, at the time of the making of the order, the applicant or applicants must have reached the age of 18.
90. The Court must be satisfied that both the father of the child (if recorded on the birth certificate) and the birth mother of the child, have freely and with full understanding agreed unconditionally to the making of the parental order.
91. The Court will not require the agreement of a person who cannot be found or is incapable of giving agreement to make a parental order. Furthermore, the agreement of the woman who carried the child shall be ineffective if given by her less than 6 weeks after the child's birth.
92. When making the parental order, the Court must also be satisfied that no money or other benefit other than expenses reasonably incurred has been given or received by either of the applicants unless authorised by the Court.
93. A parental order relating to the child must not have previously been made unless the order has been quashed or an appeal against the previous parental order has been allowed by the Court.

Duty to promote the welfare of the child

94. The amended Law, if approved, shall require that, in reaching any decision relating to an application for a parental order, the Court must have regard to all of the circumstances surrounding the application and that first consideration will be given to the need to safeguard and promote the welfare of the child throughout their childhood. This accords with Article 3 of the UNCRC "*the best interests of the child must be a top priority in all decisions and actions that affect children*".

Consequences of a parental order

95. When a parental order has been made, the child subject to that parental order shall be treated in law as if he or she were not a child of any other person other than the applicant or applicants.

²² An enduring family relationship does not include two persons one of whom is related to the other as a parent, grandparent, sister, brother, aunt or uncle

96. The amended law will, when a parental order is made by the Court, extinguish the parental responsibility that any person has for the child immediately before the making of that order. Any order made prior to the parental order under the Children Law shall also be extinguished unless the Court directs otherwise. Any duty arising by virtue of an agreement or the order of a court to make payments in respect of that child's maintenance or upbringing for any period shall also be extinguished.
97. The amended law will require that an entry is made in the Parental Order Register and that a parental order certificate is created by the Superintendent Registrar. This parental order certificate will supersede the birth certificate, which will be sealed, and legal parent status will be provided to the applicant/s named on the parental order certificate.
98. If it becomes necessary to appoint a guardian for a child who is the subject of a parental order, the applicant or applicants and the relatives of the applicant or applicants shall, in all matters relating to the formation of the guardianship, be deemed to be relatives of the child who is subject to a parental order. Where a child who is subject to a parental order is under guardianship, the Court shall order that the guardianship be reconstituted.
99. Where the applicants are a married couple at the time of application, the child shall be treated as if they had been born as a child of the marriage. This will include where the applicants are married – the child being treated as being born in wedlock. Where the applicants are in a civil partnership, the child will be treated as having been born during that civil partnership.

Functions of Court as to parental orders

100. Before making a parental order, the Court must be satisfied that every person whose consent is necessary under the Law, and whose consent is not dispensed with, has consented to and understands the nature and effect of the parental order for which the application is made. The Court must ensure that any person with parental responsibility understands the effect of the parental order – that it will permanently extinguish their parental responsibility for the child.

Intestacies

101. If approved, the draft Law will insert provisions so that:
 - a) at any time after the making of a parental order, the applicant or applicants or child subject to the parental order dies intestate, in respect of any real or personal property, that property shall devolve in all respects as if the child subject to a parental order were the child of the applicant or applicants and were not the child of any other person;
 - b) where a child is subject to a parental order that child shall be deemed to be the child of the applicant/s and not the child of any other person for all the purposes of the law relating to the right of a person to succeed to the personal property of their ascendants;
 - c) in any disposition of real or personal property made after the date of a parental order, the amended law must treat any reference to the child or children of the applicant/s in a way that shall, unless contrary intention appears, be construed as a reference to the child subject to the parental order.
102. The draft Law would amend the Children Law to ensure that in any disposition of real or personal property made after the date of a parental order, a reference to any child or children of the surrogate parents must be treated as not being, or as not including, a reference to the child who is subject to the parental order, unless the will of the deceased states otherwise.

103. The draft Law will, if approved, amend the Children Law to ensure, that in any disposition of real or personal property made after the date of a parental order, the child will be treated in the same way as if the individual were the child of the applicant or applicants and were not the child of any other person.
104. Amendments to the Children Law would ensure that a child subject to a parental order who is born before a natural child shall rank as principal heir in preference to any other natural child.
105. The amended Children Law will set out that there will be no duty on an executor to ascertain if a parental order is present for any person who may be entitled to any interest within the personal estate of a deceased person.
106. The amended Children Law will set out that nothing written in that law shall affect the devolution of any property on the intestacy of, or any right to the personal property of, any person who died before the date that this amended law came into force.

Parental Order Register

107. It is proposed that the amended 2001 Law will require the Superintendent Registrar to maintain a Parental Order Register in which entries to register parental orders as made by the Royal Court shall be entered. No other entries shall be made in the register. A certified copy of an entry in the Parental Order Register, if signed by the Superintendent Registrar, may be used as evidence of the granting of a parental order and reallocation of parental responsibility and legal parent status for a child.
108. The Superintendent Registrar shall also, in addition to the Parental Order Register and the index thereof, keep such other registers and books as may be necessary to record and make traceable the connection between any entry in the Registers of Births which has been marked "Parental Order" as prescribed and the corresponding entry in the Parental Order Register. The aforementioned registers and books will not be open to public inspection or search except under an order from the Royal Court in the same way as the registers that concern adoption are not open to public inspection.

Registration of parental orders

109. It is proposed that the amended 2001 Law shall require each parental order to contain a direction to the Superintendent Registrar to make in the Parental Order Register an entry including the fields set out below.

Prescribed parental order particulars:

110. Entry number (this being the number of the entry into the Parental Order Register).
 - Surname of child
 - Forename of child
 - Sex of child
 - Date of birth
 - Place of birth
 - Parent's forename(s) and surname and birth surname if applicable
 - Parent's occupation
 - Second parent's forename(s), surname and birth surname if applicable
 - Second parent's occupation

- Parent’s address
 - Date of parental order
 - Date of registration
 - Name and signature of Superintendent Registrar
111. The amended Children Law will make provision so that in any application for a parental order, it is proven to the satisfaction of the Court that the identity of the child subject to the parental order corresponds to an entry for a child in the Register of Births. Any parental order made as a result of an application must contain a direction to the Superintendent Registrar to cause the entry in the Register of Births to be marked “Parental Order”.
112. The amended Children Law will also require the Judicial Greffier to communicate every parental order made by the Royal Court to the Superintendent Registrar and, upon receipt of the communication, the Superintendent Registrar must comply with the instructions in the amended Law to update the appropriate registers.

Amendment of parental orders and rectification of registers

113. It is proposed that the amended Children Law will allow the Court to consider an application by a spouse or civil partner to give a new name to the child either in lieu of or in addition to a name specified in the Parental Order Register as a result of the granting of that parental order. The application must be made within three months of the granting of the parental order. The Court may also, if satisfied that a direction for the marking of an entry in the Registers of Births or Parental Order Register was wrongly included, revoke that direction upon the application of any person concerned.
114. Where a parental order is amended or a direction revoked as a result of the instructions in the paragraph above, the Judicial Greffier is required to communicate the amendment to the Superintendent Registrar, who shall amend the entry in the Parental Order Register accordingly, or cause the marking of the entry in the Registers of Births or the Parental Order Register to be cancelled.
115. Where a parental order has been amended, any certified copy of the relevant entry in the Parental Order Register that may be issued shall be amended as a result of the successful application to the Court. A copy or extract of an entry in any register which has been cancelled shall only be deemed to be an accurate copy if both the marking and the cancellation are omitted from any certified copy issued.

Disclosure of birth records of a person who is the subject of a parental order

116. If approved, the draft Law will provide a process similar to the one that exists for adoption to enable someone to access their original record of birth where a person is subject to a parental order. Therefore, a person who was subject to a parental order may obtain a certified copy of the record of their birth if:
- a. they are over the age of 18; and
 - b. they have paid the fee as prescribed by Order by the Minister for Justice and Home Affairs; and
 - c. they apply in the manner prescribed by Order by the Minister for Justice and Home Affairs.
117. Before supplying any information to the applicant, the applicant must be informed that counselling services are available. It is the duty of the Minister for Health and Social Services to provide counselling services for the applicant if they are requested.

Retrospective recognition of parental orders granted in England and Wales

118. There are currently children living in Jersey whose intended parents sought parental orders that were granted in English or Welsh courts. It is necessary to resolve the status of Orders already made by courts in England or Wales to remove the potential uncertainty as to who are the legal parents of the child.
119. The amended Children Law will, therefore, enable the Court to make a recognition order. The purpose of which is to be able to recognise parental orders made in by the courts of England and Wales as having the same effect and function as a parental order made in Jersey. The application to the Court for recognition of a parental order made in England and Wales will need to be made in a prescribed manner and all parties who held parental responsibility for the child subject to the original parental order must provide written consent as part of the application process, if they are able to. This would include the current parents, birth mother and her spouse or civil partner if they were registered on the birth certificate.
120. The amended Children Law would enable the Court to make a recognition order. Where a recognition order is made, the Judicial Greffier will communicate every recognition order made by the Court to the Superintendent Registrar, and upon receipt of the communication the Superintendent Registrar shall update the appropriate registers.
121. The amended Children Law will make provision so that the identity of any child subject to an application for a recognition order must be proven to the satisfaction of the Court to correspond with an entry for a child in the Register of Births.
122. Where an application for a recognition order is successful, the Court shall order that the original Jersey birth certificate be sealed by the Superintendent Registrar and a parental order certificate be issued. The entry in Register of Births shall also be marked as “Parental Order” and a corresponding entry created in the Parental Order Register.

Section G: Provide for the acquisition of parental responsibility by a stepparent by agreement

123. Currently, a stepparent, who is married or in a civil partnership with a child’s parent, does not have parental responsibility for that child unless they have acquired it by an order of the Court. As it stands, Jersey Law does not make any provision at all for stepparents to acquire parental responsibility except by residence order, which is at odds with the provisions made in England and Wales.²³
124. Providing for the acquisition of parental responsibility of stepparents is a pragmatic response to the complexities that can arise when a child is being brought up by a stepparent who, in law, has no responsibility for that child without having to petition the Court for a residence order.
125. Allowing stepparents to acquire parental responsibility will help to further strengthen the relationship between the child and stepparent. It also enables them to be involved in making decisions on that child’s behalf, whilst providing further stability in that child’s family life.
126. The draft Law will amend the Children Law, so that, where a child’s parent who has parental responsibility, the child is married to or a civil partner of a person who is not the child’s parent, the parent may agree with the stepparent to provide them with parental responsibility for the child. This is provided all persons with parental responsibility for the child agree including the child’s other legal parent (if they have one). The agreement will

²³ Section 4A, Children’s Act 1989

only have effect if it is made in the prescribed form and is recorded in the prescribed manner.

Section H: Enabling mixed-sex civil partners to acquire legal parent status and parental responsibility in the same way as a married couple

127. Currently, a father who is in a civil partnership with the birth mother of a child is registered as the father of the child in the same way as an unmarried father. He does not automatically acquire parental responsibility in the same way as a father who is married to the birth mother.
128. This does not accord with the Government's policy position that civil partnership is akin to marriage. The draft amendment Law, if approved, will amend the 2001 Law and the Children Law so that a father in a civil partnership with the birth mother will automatically acquire parental responsibility in the same way as a father who is married to the birth mother under the Children Law and will also be able to be registered under Article 55A of the 2001 Law in the same way as a father married to a birth mother.

Section I: Secondary Legislation

129. Article 15 of the draft Law contains a Regulation making power, this power is intended to be used so that Regulations can be brought forward to take care of the consequential amendments across a large number of other Laws that would be required if this Law is approved. It is also known that this draft Law does not currently make any of the required amendments to the Legitimacy Law to equalise how the concept of legitimacy applies to children of married same-sex couples and all civil partnerships who are still treated differently to children of married mixed-sex couples. It is intended to use the Regulation making power provided by Article 15 of the amendment Law to make amendments to the Legitimacy Law. These amendments will be presented to the Assembly in 2024.

Chapter 2: Draft Children and Civil Status (Amendments) (Jersey) Law 202-

Section J: Effects of the draft Children and Civil Status (Amendments) (Jersey) Law 202-

130. The effects of the new Articles and Schedules of the draft Law that are not described in the policy narrative above are described in this section, except for where the changes are very minor in nature, for example, where the 2001 Law is amended simply to correct typographical errors or amend references to individual provisions.

Article 1 Interpretation

This Article of the draft Law contains clarification of references used when referring to different Laws and Orders in the draft Law.

Part 2 of the draft Law amends the Children Law.

Article 2 - Children Law amended

This Article introduces the series of amendments that amend the Children Law.

Article 3 – Article 1 (interpretation) amended

Article 3 amends Article 1 of the Children Law to insert a number of new definitions, including definitions of “father”, “mother”, “parental order”, “relevant fertility treatment” “surrogate mother”. These insertions are necessary to implement a number of new concepts in Law that underpin the legal mechanisms to deliver the expanded effects of the amended Law.

Article 5 – Article 1B Definition of “surrogate mother”, “surrogacy arrangement” and other related items inserted

As part of bringing forward a new type of Order certain references must be defined and clarified. Boundaries must be set for when a surrogate mother could be regarded as a surrogate mother and for what purpose any payment should be for. These references are to assist the Court in determining whether the conditions required to make a parental order have been met.

Article 6 – Article 2 (welfare of the child) amended

Article 6 amends Article 2 of the Children Law to clarify that when making a parental order the Court must have regard to the child’s welfare not just at the point in time that the order is made but “throughout the child’s lifetime”. This codifies the requirement for the Court to be cognisant of how a decision may impact a child in the future using the evidence available to them. This accords with Article 3 of the UNCRC “*the best interests of the child must be a top priority in all decisions and actions that affect children*”.

Article 8 – Part 1A (parental responsibility and parental orders) inserted

Article 8 inserts a new Part 1A, Part 1A contains Articles 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J, 9K, 9L & 9M which deal with parental responsibility and parental orders.

Article 9A Parental Responsibility for children

Article 9A is the relocated Article 3. Article 9A has been expanded to apply to second parents in certain circumstances.

Article 9A restates the basic proposition of the existing Article 3 of the Children Law, namely that, in the absence of an adoption or a parental order, a mother will always have parental responsibility for her child. However, it abolishes the rules of law that a father has sole custody of a legitimate child or of a child who is legitimated by the father’s marriage to the mother. Article 9A also includes provisions that govern the acquisition of parental responsibility by a second parent.

Article 9B Persons without parental responsibility

Article 9B restates the rule in the existing Article 4 of the Children Law, namely that a person who does not have parental responsibility for a child, but has care of the child, may nevertheless do whatever is reasonable in the circumstances for the purposes of safeguarding and promoting the child’s welfare. It also restates the propositions that the presence or absence of parental responsibility does not affect any other obligation that a person may have in relation to a child, nor any right which the person may have in relation to the child’s property on the child’s death.

Article 9C Acquisition of parental responsibility by father

Article 9C deals with the acquisition of parental responsibility by a father who was neither married to, nor the civil partner of the mother at the time of the child’s birth.

Article 9D Acquisition of parental responsibility by second parent

Article 9D deals with the acquisition of parental responsibility by a female second parent in a case where a child is conceived as a result of relevant fertility treatment if the conditions in Circumstance D in new Schedule A1 are satisfied.

Article 9E Acquisition of parental responsibility by step-parent

Article 9E deals with the acquisition of parental responsibility by a step-parent and provides that where a child’s parent who has parental responsibility for the child (“parent A”), together with any other person who has parental responsibility for the child, may agree with the child’s step-parent that the step-parent is to have parental responsibility for the child.

Article 9F Parental responsibility agreements and orders: general

Article 9F makes general provision about the form and effect of parental responsibility agreements and orders ending parental responsibility.

Article 9G Parental orders

Articles 9G to 9M of the Children Law deal with the making of parental orders. A parental order, when made, treats a child who has been born as a result of a surrogacy arrangement as the child of the applicant or applicants for the order, and not the child of anyone else.

Article 9H Amendment of parental order

Article 9H confers a power on the Court to amend a parental order if it contains an error or if the child's name has subsequently been changed within a year of the child's birth.

Article 9I Parental orders: conditions - general

Article 9I specifies conditions which must be met before a parental order may be made. The surrogate mother must not be one of the applicants, and the applicant) or in the case of a joint application at least one of the applicants) must have contributed sperm or an egg to the embryo resulting in the birth of the child. The Article prevents the making of a joint application on the basis that the parties are in an enduring family relationship where the two persons are within the prohibited degrees of relationship for the purposes of Civil Status Law, so that they would not be able to lawfully marry. This Article also makes provision about the case where the contributor of the gametes leading to the birth of a child who is to be the subject of a parental order dies before that order is made. This reflects the decision in the English Family Court case of *Re X (Y and Y v Z and Z and X (through her guardian) [2020] EWFC 39 (Fam)*.

Article 9J When the Court may not make a parental order

Article 9J specifies circumstances in which the Court may not make a parental order, namely where it has previously considered an application for such an order and refused it. However, if the Court indicated it would entertain a subsequent application in particular circumstances, or if it is satisfied that it is proper to do so where there has been a change in the circumstances, it may do so.

Article 9K Restrictions on removal

Article 9K imposes a prohibition on the removal of a child who is the subject of a pending application for a parental order from the care of an applicant, subject to Article 9L which specifies two exceptions.

Article 9L Exception to restrictions on removal

Article 9L sets out the exceptions to the prohibition imposed by Article 9K. They are that the person removing the child does so under an enactment or with the leave of the Court.

Article 9M Parental orders: intestacies etc.

Article 9M deals with the effect of a parental order in the case of a person (including the child who is the subject of the order) dying intestate. Article 9M mirrors the corresponding provision in the [Adoption \(Jersey\) Law 1961](#) in the case of an adopted child.

Article 9N Recognition of pre-existing parental orders made in England and Wales

Article 9N of the Children Law deals with the effect in Jersey of a parental order made in England and Wales (a "relevant order") before this Law comes into operation. It provides a mechanism under which a person named in the relevant order may apply to the Court for a recognition order which has the effect of treating the child and the applicants as if the Court had made a parental order under Article 9G on the day on which the relevant order was made.

Article 9O Disclosure of records of children subject to parental orders

Article 9O makes provision about the disclosure of information held by the Court to a person who is the subject of a parental order or a recognition order under Article 9N and who is at least 18. It provides that, before the information is supplied, the Judicial Greffier must inform the applicant of the availability of counselling services approved by the Minister.

Article 9 – Article 13 (residence orders and parental responsibility) amended

Article 9 consequentially amends Article 13 of the Children Law. This is necessary to expand the scope of the existing effect of Article 13 to apply to second parents who obtain a residence order.

Article 13 – Article 66 (effect and duration of orders) amended

Article 13 amends Article 66 of the Children Law to make consequential amendments to Article 66 to deal with the duration of parental orders. So far as parental orders are concerned, the parental responsibility which they confer lasts until the subject of the order attains majority, but otherwise they last throughout the subject's life unless the Court orders otherwise.

Article 14 – Article 82 (transitional provisions and savings) amended

Article 14 amends Article 82 of the Children Law. It deletes Paragraph (3) *which* conferred a power to make consequential amendments to other enactments in connection with the commencement of the Law. That power is superseded by that contained in the new Article 82A of the Children Law (see below).

Article 15 – Article 82A Power to amend enactments inserted

Article 15 inserts a new Article 82A. Article 82A permits the States to make regulations that amend the Children Law or any other enactment to make further provision that it appears to the States to be necessary or expedient in connection with the Children Law or any amendment made by the Children and Civil Status (Amendments) (Jersey) Law 202-.

Article 16 – Schedule A1 inserted

Article 16 inserts a new Schedule A1 into the Children Law. Schedule A1 deals with matters arising from persons being treated as either a father or second parent as a result of artificial insemination or relevant fertility treatment. Schedule A1 also sets out the circumstances in which a person is to be treated as the other parent of a child conceived as a result of fertility treatment or artificial insemination after their death.

Article 17 – Schedule 1 (financial provision for children)

Article 17 amends Schedule 1 of the Children Law. It changes the effect of paragraph 4 of the Schedule. That paragraph, as amended, will permit an order to be made under Paragraph 1 to require financial provision to be provided by a second parent without the fact that it is made against a second parent being stated in the order.

Article 18 – Schedule 4 (disqualification for caring for children)

Article 18 amends Schedule 4 to the Children Law to add the new offence under Article 9K(2) to the list of those which disqualify a person for caring for children. It also deletes a spent reference to Article 54(2) of the Children Law, which has been repealed.

Part 3 of the draft Law amends the Marriage and Civil Status (Jersey) Law 2001.

Article 22 – Article 49 (interpretation of Part 5) amended.

Article 22 amends Article 49 of the Civil Status Law to insert a number of new definitions that are required for the Civil Status Law to operate correctly in respect of parental orders and second parents.

Article 23 – Article 51 (duty to inform relevant registrar of birth within 21 days) amended

Article 23 amends Article 51 of the Civil Status Law to extend the scope of the duty to inform the registrar of a birth or stillbirth to the second parent of a child conceived by fertility treatment or artificial insemination. "Relevant fertility treatment" is defined in the amended Article 1(1) of the Children Law.

Article 24 – Article 53 (power of Superintendent Registrar to require information about birth) amended

Article 24 amends Article 53 of the Civil Status Law to add a reference to a second parent to the list of people from whom the Superintendent Registrar can require information about a birth.

Article 25 – Article 55 (registration of father where parents not married) amended

Article 25 replaces Article 55 of the Civil Status Law to reflect the fact that mixed-sex couples can now be civil partners of each other instead of being married to each other and to bring the text of the Article into line with the new Articles 55A to 55C. The new Article 55 refers to the relevant provisions of Part 1A of the Children Law following the deletion of Article 5 of the Children Law and its re-enactment in Part 1A of that Law.

Article 26 – Articles 55A to 55C inserted

Article 26 inserts Articles 55A to 55C into the Civil Status Law, each of which deals with the registration of a child's birth in different circumstances.

Article 55A deals with the registration of a father as a parent of the child where he and the child's mother are married to each other or civil partners of each other.

Article 55B deals with the situation where a child is born as the result of relevant fertility treatment, but the persons receiving that treatment are neither married to, nor civil partners of, each other at the time of the child's birth.

Article 55C deals with the registration of the birth of a child conceived as a result of fertility treatment if the mother of the child and the second parent are married to or civil partners of each other.

Article 27 – Article 56 (re-registration where parents not married) amended

Article 27 amends Article 56 of the Civil Status Law so that it applies to cases where a child is conceived as a result of intercourse between the parents, and they are neither married to nor civil partners of each other at the time of birth but subsequently marry or become civil partners of each other.

Article 28 – Articles 56A and 56B inserted

Article 28 inserts Articles 56A, 56B and 56C into the Civil Status Law.

Article 56A deals with the re-registration of a child's birth following the marriage of two people who were not married to or civil partners of each other before the birth, but who subsequently marry or form a civil partnership with each other.

Article 56B deals with the re-registration of a child born to a female same-sex couple.

Article 56C deals with the re-registration of a child's birth if the child was born before the Law comes into operation. It applies in the case of a child born to a female same-sex couple following fertility treatment or artificial insemination if the couple are married, civil partners, or following relevant fertility treatment if they were not.

Article 29 – Article 57 (re-registration of birth of legitimated person) substituted

Article 29 replaces the existing Article 57 of the Civil Status Law. It deals with the legitimation of a person under the written or customary law of Jersey. Where a person's father has already been registered as such, one of the parties to the marriage must make a declaration as to the matters prescribed by an order made by the Minister for Justice and Home Affairs. If the person's father has not been recoded as such, the husband and wife may both make declarations as to those matters. If such a declaration is made immediately after the solemnization of the marriage, the person required to register the marriage or make a return of the particulars for registration must countersign the declaration.

Article 30 – Article 59A (surname of child) substituted

Article 30 replaces the existing Article 59A of the Civil Status Law dealing with the surname to be registered for a child in a case where the parents do not agree on the name, to reflect the possibility that the child may be the product of relevant fertility treatment or artificial insemination. In the case of disagreement, the surname to be used will be that officially recorded as the surname of the mother at the time of the re-registration.

Article 31 – Article 60 (short birth certificate) amended

Article 31 replaces the existing Article 60 of the Civil Status Law, which deals with the content of a short birth certificate with a provision which applies to birth certificates, adoption certificates and parental order certificates.

Article 32 – Article 61 (registration of stillbirths) amended

Article 32 amends Article 61 of the Civil Status Law dealing with the reporting of a stillbirth to allow for the fact that the mother may be married to, or the civil partner of, another woman.

Article 33 – Articles 61A to 61F inserted: registration of parental orders

Article 30 inserts Articles 61A, 61B, 61C, 61D, 61E & 61F into the Children and Civil Status Law. These Articles deal with the registration of parental orders.

Article 61A deals with the maintenance of the Parental Orders Register.

Article 61B deals with the mechanics of registering a parental order, and Article 61C with the amendment and rectification of registers.

Article 61D deals with the particulars to be recorded in the Register of Baptisms in respect of the baptism of a child who is the subject of a parental order.

Article 61E provides for the registration of a recognition order. This recognises a parental order made in England and Wales.

Finally, Article 61F deals with the disclosure of information in the Register of Births in the case of a child in respect of whom a parental order has been made.

Article 35 – Part 5A (provisions on domicile) inserted

Article 35 inserts new provisions on domicile as Part 5A of the Civil Status Law. Article 75A of the Civil Status Law abolishes a wife's domicile of dependence, which at present is determined as being that of her husband. That domicile will however continue, as a domicile of choice, until the wife establishes another. The Part also addresses the question of how the domicile of a child who is conceived as a result of relevant fertility treatment or artificial insemination is to be determined (Article 75B of the Civil Status Law). Article 75C of the Civil Status Law provides a similar rule for the determination of the domicile of a person who is the subject of a parental order.

Article 37 – Article 82 (power to make further provision in connection with marriages and registration of births, marriages and deaths) amended

Article 37 amends Article 82 of the Civil Status Law, to extend the power to amend enactments by inserting two new paragraphs which will enable Regulations to amend the Civil Status Law itself, and any other enactment, if that appears to the States to be necessary or expedient in connection with any amendment made by this Law.

Part 4 amends the [Marriage and Civil Status \(Jersey\) Order 2018](#).

The amendments to the 2018 Order introduce the status of Second Parent into the particulars of various prescribed forms that are required as part of civil processes.

Schedule 1 inserts a new Schedule A1 into the Children Law. This Schedule specifies who is to be treated as a parent of a child who is born as the result of fertility treatment or relevant fertility treatment.

Paragraph 1 introduces the Schedule and explains its purpose.

Paragraph 2 sets out Circumstance A, in which is a woman who receives fertility treatment is married to, or the civil partner of, a man who is not the contributor of the sperm. Her husband or male civil partner will be treated as the father of the resulting child unless it is shown that he did not consent, or the child is adopted or subject to a parental order.

Paragraph 3 sets out Circumstance B, which deals with a case where a woman receives relevant fertility treatment, no man is treated as the father under Circumstance A, no woman is treated as the child's second parent under Circumstance C, and the embryo is not created with the man's sperm. A man will not be treated as a parent of the child in this circumstance if the child is adopted or subject to a parental order.

Paragraph 4 makes it clear that if a man is treated as a child's father by virtue of Circumstance A or Circumstance B, no other man is treated as the child's father for any purpose.

Paragraph 5 sets out the agreed fatherhood conditions.

Paragraph 6 sets out Circumstance C. It applies where a woman ("B") is married to, or the civil partner of, another woman ("A") at the time when A receives fertility treatment or is artificially inseminated.

Paragraph 7 sets out Circumstance D, which is where a woman conceives as a result of relevant fertility treatment, no man is treated in law as the father of the child under Circumstance A, no woman is treated as the second parent under Circumstance C and the agreed parenthood conditions are met.

Paragraph 8 sets out the agreed female parenthood conditions.

Paragraph 9 provides that if a woman is treated as the second parent of the child by virtue of paragraph 6 or 7, no man is to be treated in law as the father of the child.

Paragraph 10 deals with the case of a deceased man where either an embryo was created with his sperm after his death, or so created before his death but placed in a woman after his death. If he consented to be recognised as the child's father, his name can be entered in the Register of Births as the father of the child, provided the mother elects, within 21 days of the birth, for him to be so treated.

Paragraph 11 deals with the case of a child conceived by relevant fertility treatment in the case of a woman who was married to, or the civil partner of a man who died before the embryo was placed in her, and whose sperm was not used in the creation of the embryo. He can be registered as the father of the child if he consented to the placing of the embryo in the woman and to being treated as the father of the child for that purpose.

Paragraph 12 deals with the case of a child conceived by relevant fertility treatment where a woman, who was neither married nor in a civil partnership with a man who consented, before his death, to be treated as the child's father. Provided the consent was valid at the time of his death, the agreed fatherhood conditions are met, and the woman elects within 21 days of the birth for the child to be treated as the child's father, he may be registered as the father of the child in the Register of Births.

Paragraphs 13 and 14 make provision corresponding respectively to that in paragraph 11 and 12 in the case of a deceased female spouse or civil partner, or a deceased woman who consented to the mother receiving relevant fertility treatment and to being registered as the second parent of the child.

Paragraph 15 provides that a woman is not to be regarded as the mother of a child merely because she has provided the eggs leading to the birth of a child.

Paragraph 16 provides a rule of construction applicable to legislative and non-legislative instruments alike which requires references to 2 people in any relationship to each other to be read in the light of the provisions of the Schedule.

Section K: Financial and Staffing Implications

131. The amendment Law has a small number of financial and staffing implications.

Judicial Greffe and Courts

132. The amendment Law will provide the Court with the power to make two new types of Order. These Orders will require new Court Rules to be made to set out the processes and standards that will be required by the Court. The drafting of instructions for the Court Rules is being paid for out of existing Judicial Greffe budget. New internal processes, application forms and procedures will also be required to enable applications to be made to the Court, it is envisaged that the cost of developing these will also be met from within existing budgets.

133. The amendment Law also introduces a new fee into the [Stamp Duties and Fees \(Jersey\) Law 1998](#), this fee is set at rate G (£130) and is to cover the costs incurred by the Judicial Greffe in the administering of Parental Order applications.

Office of the Superintendent Registrar

134. The proposed legislative amendments will require new registers to be ordered to reflect the amended particulars required as a result of the changes proposed above. This incurs a one-off cost of approximately £13,000. There will also need to be new processes and forms created to provide for the new types of registration that this amendment Law provides for – the cost of developing these processes and forms will be met from within existing budgets.

Section L: Human Rights Notes

Human rights notes on the draft Children and Civil Status (Amendments) (Jersey) Law 202-

These notes have been prepared in respect of the draft Children and Civil Status (Amendments) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department (draft reviewed version 26 dated 11 December 2023). They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law would, if passed, amend the Children (Jersey) Law 2002 (the “2002 Law”), the Marriage and Civil Status (Jersey) Law 2001 (the “2001 Law”), the Marriage and Civil Status (Jersey) Order 2018 and the Interpretation (Jersey) Law 1954 to make provision about, inter alia, parental orders, the acquisition of parental responsibility and the registration procedures for, and the status of, children who are conceived either as a result of fertility treatment or surrogacy arrangements.

Words and phrases in this note have the meaning given in the draft Law, and references to provisions are to those in the draft Law, unless otherwise stated.

Amendments to the 2002 Law

The following commentary provides an assessment of the ECHR compatibility of the principal amendments that would be made to the 2002 Law by the draft Law. Other than the matters addressed, there are considered to be no substantial human rights issues arising from the amendments to the 2002 Law.

Parental responsibility

New Part 1A to the 2002 Law (“Part 1A”) would, inter alia, make new provision for the acquisition of parental responsibility. Several of the proposed provisions would re-enact, with modifications, current provision in the 2002 Law, extending existing provision to cover the acquisition of parental responsibility in the case of, inter alia, civil partnered parents, second parents and step-parents.

Currently, the 2002 Law provides that a child’s mother and father, where they are married to each other, each have parental responsibility for the child²⁴. An unmarried father is permitted to acquire parental responsibility for his child²⁵ by obtaining registration as father under the 2001 Law, by court order, or by parental responsibility agreement with the child’s mother²⁶. An individual whose acquisition of parental responsibility is not provided for in this way under the current 2002 Law must pursue alternative measures to establish parental responsibility for a child. Key among those measures are an adoption order under the Adoption (Jersey) Law 1961 (the “1961 Law”) or a residence order under the 2002 Law²⁷.

On this analysis, the 2002 Law presently contains several instances of disparity in how parental responsibility is acquired. The following are examples which illustrate instances of that disparity in the 2002 Law, primarily in the status of individuals as married or civil partnered, as male or female, and as parties to an opposite sex or same sex relationship –

- a. The 2002 Law does not permit a woman who is married to the child’s mother²⁸ to acquire parental responsibility for a child born to that relationship (for example, by assisted reproduction) by virtue of marriage. In contrast, such acquisition of parental responsibility is provided for in the case of a man (the child’s father) who is married to the child’s mother.
- b. The 2002 Law does not also permit a man or a woman who is civil partnered²⁹ to the birth mother to acquire parental responsibility for the child by virtue of civil partnership. In contrast, acquisition of parental responsibility is permitted in the case of marriage, for a man, where that man is married to the birth mother. A woman married or civil partnered to the birth mother does not acquire parental responsibility in this way. A father who is civil partnered to the birth mother is required to acquire parental responsibility for his child in the same way that an unmarried father would look to acquire parental responsibility³⁰.

Parental responsibility falls within the scope of the right to private life in Article 8 ECHR. Legal measures dealing with how parental responsibility is acquired, such as those in the 2002 Law

²⁴ Article 3(1).

²⁵ Article 3(2).

²⁶ Article 5.

²⁷ Article 10.

²⁸ Same sex marriage is legal under the 2001 Law.

²⁹ The Civil Partnership (Jersey) Law 2012 was amended this year to enable opposite sex civil partnerships.

³⁰ Under Article 4 and 5 of the 2002 Law.

currently and those proposed in Part 1A will engage Article 8 ECHR. Differences in how these measures apply, for example as between men and women, or between married or civil partnered parents, will, in engaging Article 8 ECHR, come within the ambit of Article 14 ECHR, the protection from discrimination in the enjoyment of ECHR rights.

Part 1A would introduce to the 2002 Law provisions that would have the effect of extending the current formulation of provision for the acquisition of parental responsibility to a wider class of individual. Those provisions are –

- a. Article 9A(1), which would enable a father who is married or civil partnered to the birth mother to acquire parental responsibility for the child by virtue of marriage or civil partnership. By extending the acquisition of parental responsibility to those in a civil partnership, this provision would achieve equivalence in the position of married fathers with civil partnered fathers.
- b. Article 9A(3), which would enable a woman who is the child's second parent and who is married or civil partnered to the birth mother to acquire parental responsibility for the child by virtue of marriage or civil partnership. By extending the acquisition of parental responsibility to both marriage and civil partnership, this would achieve equivalence in the position of married and civil partnered female parents with married and civil partnered male parents.
- c. Article 9A(4) and Article 9D, which would enable a woman who is the child's second parent but who is not married or civil partnered to the birth mother to acquire parental responsibility for the child in the same way that the 2002 Law currently (and would continue³¹) to permit an unmarried father to acquire parental responsibility for the child. By extending to this class of same-sex parent the means of acquiring parental responsibility, this would achieve equivalence in the position of unmarried and non-civil partnered female parents with unmarried and non-civil partnered male parents.

The provisions referenced above are rights-enhancing measures. They are proposed to bring parity in Jersey law in the position of the class of individuals identified. The provisions will contribute to ensuring respect for the Article 8 ECHR private and family life rights of the individuals concerned, while also respecting the private and family life rights of the child involved by providing specific and equivalent provision for the exercise of parental rights by his or her parents. Furthermore, by achieving equality in the position of same-sex and opposite-sex family units, and removing distinctions between marriage and civil partnership, the provisions ensure compatibility with Article 14 ECHR, read in conjunction with Article 8 ECHR.

For completeness, it is noted that the provisions referenced above have corresponding provision in English law. The Children Act 1989 (the "1989 Act") deals with parental responsibility for children and provides for the acquisition of parental responsibility in the case of civil partnered fathers³², female second parents who are married to, or civil partners of, the birth mother³³, and female second parents who are not married to, or civil partners of, the birth mother³⁴. It also contains corresponding provision dealing with the acquisition mechanism for female second parents³⁵.

Parental responsibility orders

New Articles 9A, 9C, 9D and 9E would make provision for the acquisition of parental responsibility. New Article 9F would make general provision about, inter alia, parental responsibility orders. Article 9F(3) would provide that a person's parental responsibility for a

³¹ The current Article 5 of the 2002 Law is re-enacted in new Article 9C.

³² Section 2(1).

³³ Section 2(1A).

³⁴ Section 2(2A).

³⁵ Section 4ZA.

child ceases when the child reaches the age of 18, and new Article 9F(4) would provide that a person who acquires parental responsibility under Article 9C, 9D or 9E ceases to have parental responsibility if the court revokes it or orders that it ceases to have effect.

It is noted that comparable provision is made in the 2002 Law currently (at Article 5(4)), and in the 1989 Act, in respect of ceasing an unmarried or non-civil partnered father's parental responsibility (at section 4(2A)) and, in respect of ceasing an unmarried or non-civil partnered second female parent's parental responsibility (at section 4Z(A)).

The 2002 Law, if amended, would allow for the removal of the parental responsibility of unmarried and non-civil partnered individuals, and those who are step-parents, who had acquired their parental responsibility by the mechanisms set out in Articles 9C, 9D or 9E. The 2002 Law would not, when amended, provide for the removal of the parental responsibility of a father or second parent who had acquired parental responsibility by virtue of marriage or civil partnership to the birth mother (whose position does not come within the scope of Article 9F). That position accords with the current position in the 2002 Law (as regards a married father) and in the 1989 Act.

The power of the English court to remove the parental responsibility of an unmarried person who had acquired that parental responsibility by mechanisms provided in statute but not to have equivalent power to remove parental responsibility in the case of a married person, who had acquired parental responsibility by virtue of marriage, was considered in *MZ v FZ*³⁶. In that case it was held that the failure of the 1989 Act to provide for revocation of a married father's parental responsibility (in that case, in circumstances where the father had inflicted serious domestic abuse on the mother and children) was not incompatible with Article 8 and 14 ECHR. The distinction in the legislative scheme as between married and unmarried fathers in relation to parental responsibility resulted from a deliberate legislative decision by UK Parliament that birth mothers and married fathers should be afforded an irrevocable status which was justifiable in ECHR terms. The court also held that the distinction the legislation drew in its application as between unmarried female mothers (whose parental responsibility was irrevocable) and unmarried fathers (who could have their parental responsibility removed by the court) was also justifiable.

The position as regards the removal of parental responsibility proposed for the 2002 Law, as amended, would correspond with that in the 1989 Act. It is considered reasonable to expect, from the ECHR reasoning applied in *MZ v FZ*, that the enactment of Article 9F(4), which would maintain the power of the Royal Court to remove the parental responsibility of unmarried and non-civil partnered fathers and extend this to the removal of parental responsibility from unmarried and non-civil partnered second parents, but not married or civil partnered parents, is likely to also be considered compatible with Article 8 and 14 ECHR, if a question of compatibility in similar factual and legal terms were to be raised and determined in a Jersey law case.

Parental orders

i) Applications for parental orders by sole and joint / single applicants

Article 7 would insert a new Part 1A to the 2002 Law which, inter alia, would make provision for applications to the Royal Court for a parental order. Proposed Article 9G sets out, inter alia, the nature and effect of a parental order, and proposed Article 9I sets out the application requirements and conditions on which the Court may make a parental order.

In English law, comparable provision is made for parental orders in section 54 and 54A HFEA 2008. The HFEA 2008 had, originally, enabled the grant of a parental order³⁷ by joint applicants, of opposite or same sex, who were married, civil partnered or living in an enduring family relationship. No provision had originally been made for sole applicants to apply for a parental

³⁶ [2022] EWHC295 (Fam).

³⁷ Section 54 HFEA 2008.

order. Section 54 HFEA 2008 was the subject of a declaration of incompatibility with the ECHR³⁸, specifically with Article 14 ECHR read in conjunction with Article 8 ECHR on the grounds of a person's status, i.e. that the person was not married, civil partnered or living in an enduring family relationship. In response, the UK Government brought a remedial order addressing the incompatibility by inserting a new section 54A into the HFEA 2008, which allowed for sole applications for a parental order.

The effect of proposed Article 9G and 9I would be to enable both sole applications and joint applications for parental orders. The provisions in these Articles are drafted in neutral terms, using the term 'applicant' to facilitate joint or sole applications. They do also make specific provision as necessary for the case of joint applications, for example, stating, in the case of a joint application, that the child is the issue of the relationship³⁹, and that a condition for the making of the order is that the applicants are married, civil partnered or living in an enduring family relationship⁴⁰.

It is considered that Article 9G and 9I, in providing for sole and joint applications, are rights enhancing measures, satisfactorily addressing the Article 14 ECHR, read in conjunction with Article 8 ECHR, rights of applicants for parental orders. Article 9G and 9I provide measures that correspond to section 54 and 54A, and accordingly can reasonably be considered as avoiding the incompatibility issues originally identified in section 54 HFEA 2008 as enacted.

ii) Position of prospective parent who dies before application for parental order can be made

Article 9G would provide for applications to the Royal Court for a parental order and Article 9I would provide for the conditions on which the Court is to determine an application for a parental order. Corresponding English law provision is made in section 54 and 54A HFEA 2008.

The provisions of the HFEA 2008 which enable joint applications for parental orders, and the associated conditions on which a parental order could be made by the English court were considered in *Re X (Parental Order: Death of Intended Parent Prior to Birth)*⁴¹. Briefly, the case concerned an application for a parental order, following a surrogacy arrangement involving two prospective parents, but where one of the proposed applicants had died suddenly before the child was born and the application for a parental order could be made. The death of one prospective parent meant that certain requirements in section 54 HFEA 2008 were not met, the most obvious being the requirement for two applicants.

The court held that section 54 HFEA 2008 had the potential to infringe the Article 8 ECHR and Article 14 ECHR rights (read in conjunction with Article 8 ECHR) of both the surviving applicant and, primarily, the child because it prevented legal familial links being established between the child and his or her biological parent (where the deceased prospective parent had provided gametes as part of the surrogacy process) due to that person's premature death. The court underlined the state's responsibility to ensure that it respected a child's right to a private life, and that extended to ensuring a child is provided with recognition of his or her identity as the child of his or her deceased parent in these cases. The court held that Article 14 ECHR was engaged on the basis that the child's Article 8 ECHR rights must be secured without discrimination on any ground, including birth or other status. In *Re X*, the child was not able, without a parental order being made, to have a birth certificate that reflected the relationship and connection the child had with the prospective parents, solely by virtue of the circumstances of the child's birth through surrogacy.

Ultimately, in *Re X*, the English court determined that it could use its interpretative power under section 4 of the Human Rights Act 1998 to read section 54 HFEA 2008 in a manner compatible

³⁸ *In Re Z (A Child) (No.2)*, [2016] EWHC 1191 (Fam).

³⁹ Article 9G(5).

⁴⁰ Article 9I(2)(c).

⁴¹ [2020] EFWC 39. See also, *X v W* [2022] EWFC 34.

with the ECHR. In applying this interpretative power, it found the application for a parental order could be made by the surviving prospective parent on behalf of the deceased prospective parent, on the basis that the relevant section 54 HFEA 2008 criteria were met in the light of the ECHR compliant reading.

The draft Law makes provision for the position of deceased prospective parents and the relevant child, in these factual situations, in the scheme of provisions relating to parental orders. Proposed Article 9I(9) provides that modifications to the conditions for the making of parental orders, set out in Article 9I(2), are to be applied if, after a surrogacy arrangement is made, one of the parties to the surrogacy agreement who, or is intended to be, an applicant for a parental order dies before the parental order is made. The modifications, set out in Article 9I(10), when applied by operation of Article 9I(9), would address specifically the conditions relating to the age of the applicants when the application for a parental order is made and the relationship status of the applicants when that application is made, and would apply a corrective modification generally across Article 9I to account for the situation identified in Article 9I(9).

It is considered that proposed Article 9I(9) and (10) are rights enhancing measures. They ensure the Article 8 and 14 ECHR rights of children subject to a parental order, where one prospective parent has died. The provisions would also provide the Royal Court with the means to adequately address the situation of a child, and surviving prospective parent, in the identified factual circumstances with certainty and in accordance with the law.

iii) Relevance of relationship status of joint applicants

Article 9I sets out the conditions which must be satisfied for the Royal Court to make a parental order. Article 9I(3) would require that, in the case of a joint application, the applicants are spouses or civil partners of each other, or are in an enduring family relationship. Corresponding English law provision is made at section 54(2) HFEA 2008.

Section 54(2) HFEA 2008 was the subject of consideration in the case of *Re N (A Child)*⁴². The detail of *Re N* is not essential for the purposes of this note but, briefly, the case concerned child arrangement orders in the case of a child born pursuant to a surrogacy arrangement where the prospective parents, who had been in an enduring family relationship at the time of the application for a parental order, had separated by the time the court sat to determine the application. The court held, noting that section 54(2) HFEA 2008 did not link its relationship status requirement to any particular time, that the HFEA 2008 did not require the applicants to be in an enduring family relationship both at the time of the making of the application and at the time the parental order was made.

The court in *Re N* stated that the aim of section 54 HFEA 2008 was to allow an order to be made which transformed the legal relationship between the child and the applicants, and that the Article 8 ECHR rights of the child and the prospective parents were engaged. In the circumstances of that case, the court stated that if a parental order were refused because the relationship between the parents no longer existed when the parental order application was determined, there would be an interference with the Article 8 ECHR rights of the applicants and the child. The court went on to state that section 54(2) HFEA 2008 should be read purposively and the existence of the requisite relationship at the point of application (but not when the order was determined) was sufficient for the relevant section 54 HFEA 2008 condition to be satisfied.

Article 9I(3) and other provision in Article 9I, such as the requirement that the child has its home with the applicants at the time of the application and the making of the order, would enable the Court, if it were faced with a case on facts similar to *Re N*, to determine an application for a parental order in a manner compatible with the Article 8 ECHR rights of the child and prospective parents. Article 9I(3) requires only that the Court consider the relationship status of the applicants

⁴² [2019] EWFC 21.

at the point of application, and any later change in that relationship status would not prevent the court from granting an order that would establish legal parent links with the child.

iv) **Time limit for making application for parental order**

Article 9I sets out the conditions which must be satisfied for the Royal Court to make a parental order. Article 9I(2)(d) stipulates that the application for a parental order must be made not later than 6 months after the child's birth. Corresponding English law provision is made at section 54(3) HFEA 2008.

Section 54(3) HFEA 2008 was considered in *Re X (Children) (Parental Orders: Time Limit)*⁴³. The detail of *Re X* is not essential but, briefly, applicants for a parental order under section 54 HFEA 2008 had made the application out of time, though in satisfaction of the remaining conditions of that section. The reason the application had been made out of time was because of the applicants' incorrect belief that declaratory judgments of parentage as to children born to a surrogacy arrangement in the United States of America would be recognised in Denmark and the United Kingdom, and that there was, therefore, no need to obtain a parental order under English law.

In *Re X* the court held that section 54(3) HFEA 2008 did not prevent it from making a parental order merely because an application was made more than six months after birth. Given the transformative effect of section 54 HFEA 2008 on a child's status and identity, the court held that the UK Parliament could not have intended that a delay would be a fatal bar to a child receiving the lifelong benefits a parental order would bestow. That conclusion was also justified having regard to the ECHR. The court held that the HFEA 2008 must be read to ensure that the essence of the applicants' and the child's Article 8 ECHR rights were not impaired.

The scheme of parental order conditions in Article 9I is largely equivalent to section 54 HFEA 2008. The Royal Court, like the English court, is required to read principal legislation and give effect to it in a way which is compatible with the ECHR⁴⁴. It is reasonable, therefore, to anticipate that the Royal Court might, like the English court in *Re X* and in factual circumstances similar to those before the English court in that case, consider that a parental order could be made despite the application being made beyond the 6-month time limit in Article 9I(2)(d). This outcome might be anticipated, too, on the basis that the legislative objective of Article 9G and 9I corresponds to section 54 HFEA 2008. Article 9I(2)(d) is not, therefore, considered to constitute a provision that would prevent the court, in practice, making parental orders for out of time applications. Article 9I(2)(d) can, therefore, be considered compatible with Article 8 ECHR in principle.

Parental orders and intestacy

New Article 9M makes provision for matters relating to the intestate death of an applicant for a parental order, the person who is the subject of the parental order, and any other person related to those matters. The position of a person subject to a parental order, in intestacy, corresponds to the position of an adopted child in intestacy under Jersey law (see Article 23 of the 1961 Law).

Article 9M is a rights enhancing provision. It makes provision for the recognition of the rights of succession of a person subject to a parental order, and entitlement to property which might arise from the application of Jersey succession law. It also ensures there is no discrimination, on the ground of birth or parental status, in these matters in the case of a person subject to a parental order. These measures further the protection of the right to property under Article 1 of the First Protocol to the ECHR ("A1P1") of the individuals concerned, to the extent that the right to property is engaged in matters of succession, and ensures there is no discrimination, contrary to Article 14 ECHR, in the enjoyment of the right to property in this context. Recognition of pre-existing parental orders made in England and Wales

⁴³ [2022] EWHC 198 (Fam).

⁴⁴ Article 4(1), Human Rights (Jersey) Law 2000.

Recognition of pre-existing parental orders made in England and Wales

New Article 9N would make provision for the recognition in Jersey of parental orders made by the courts of England and Wales given legal uncertainty as to the effect of those orders in determining legal parent status in Jersey law. The provision is intended to address cases of individuals who, prior to the commencement of the draft Law, had a child through surrogacy arrangements and applied for, and obtained, a parental order issued under HFEA legislation in the UK.

Article 9N would enable the Royal Court to make a recognition order in those cases where, on an application by the persons named in the English order, it is satisfied that, inter alia, it would have made a parental order under Article 9G of the 2002 Law (as amended), if an application for an order had been made to that court (Article 9N(3)). The effect of an order under Article 9N is to treat the child, in Jersey law, as having become the issue of the applicant(s) for the recognition order on the date on which the relevant English order was made (Article 9N(4)).

In ECHR terms, the effect of a recognition order in establishing a legal parent-child relationship from the date, going forward, on which the English order was made raises questions of potential retrospectivity in the application of the 2002 Law (as amended) and the way certain ECHR rights are engaged. The most relevant rights affected would be Article 8 ECHR and A1P1.

Article 8 ECHR is potentially engaged in two respects. Firstly, by analogy with jurisprudence concerning adoption, the European Court of Human Rights has emphasised the importance of being able to obtain legal recognition for orders which determine legal parent-child relations made lawfully made in another jurisdiction. It has also reiterated the importance of the social reality of a family's situation and has emphasised the need for this reality to be recognised in law⁴⁵. It is relevant too that the state has positive obligations under Article 8 ECHR as regards ensuring the right to private and family life. Secondly, a recognition order would give effect to a legal relationship between individuals which, but for the recognition order, would remain uncertain and of questionable effect in Jersey law from the date of the English order, which may have been made some years prior. This has the potential to engage the right to private and family life of the individuals subject to the English order, the surrogate mother, and each of their wider family members, because the order gives effect in Jersey law to, as yet, potentially ineffectual legal relations.

A1P1 is potentially engaged because in certain factual circumstances it has been held that a legitimate expectation to inherit in a succession could amount to a "possession" for the purpose of A1P1⁴⁶. Matters of property entitlement which are determined by biological and legal relationships, for example in succession, would, in theory, be impacted favourably but potentially also negatively, in the case of other family members, by the making of a recognition order.

For completeness, it can be noted that the draft Law does not propose the retrospective application of the criminal law in any respect, meaning that Article 7 ECHR considerations (namely, the principle of non-retroactivity of the criminal law) are not relevant.

In general terms, the ECHR does not preclude states adopting retrospective legislation to regulate rights under existing laws in civil matters. However, retrospective legislation in a civil context may be challenged under Article 6 ECHR where it is designed to influence the outcome of an existing dispute⁴⁷. Furthermore, in the context of A1P1, in certain circumstances, the retrospective application of legislation whose effect is to deprive someone of a pre-existing "asset" that was part of his or her "possessions" may constitute interference that is liable to upset the fair balance between the demands of the general interest on the one hand and the protection of the right to

⁴⁵ Human Rights Practice R.17: March 2009, para 8.075.

⁴⁶ *Uzan and Others v. Turkey* (Application nos 19620/05, 41487/05, 17613/08 et 19316/08); *Marckx v. Belgium* (Application no. 6833/74).

⁴⁷ *Zielinski, Pradal, Gonzalez and Others v France* [1999] ECHR 108.

peaceful enjoyment of “possessions” on the other⁴⁸. This applies to cases in which the dispute is between private individuals and the State is not itself a party to the proceedings⁴⁹.

Legal parent status is governed by customary law and, in some respects, by statutory law in Jersey (for instance, the 1961 Law⁵⁰). In very general terms, the biological mother and father of a child will ordinarily be treated as the legal parents of a child, and parental responsibility for the child is determined by the 2002 Law. Legal parent relationships may also be established, and extinguished, by adoption orders. It is then, the case, as illustrated, that rights pertaining to family life and private life, in the context of parent-child relationships, are governed by pre-existing statutory and customary law in Jersey.

The draft Law, specifically Article 9N, would look to determine legal parent-child relationships with retrospective effect, i.e. from the date of the English order. This retrospective application of the 2002 Law (as amended), in regulating rights under preexisting Jersey law, is not, in principle, incompatible with the ECHR. The purpose of Article 9N is to give recognition and effect, with certainty, in Jersey law to a pre-existing assumed factual relationship between individuals, namely the relationship of parent and child. The expectation of the parties would have existed from the date the English order was made, and, though not directly relevant for Jersey law purposes, it is not insignificant, in terms of expectations, that the legal relationship would have already existed as a matter of English law from the date of the English order.

Furthermore, Article 9N constitutes a mechanism in Jersey law to enable the Royal Court to give effect to the reality of the de facto situation of the applicants for the English order and the child. These individuals would, in almost every case, have been living as a family in Jersey for a not insignificant period of time. Article 9N is a measure which fulfils Jersey’s positive obligation under Article 8 ECHR, favourably offering a remedy for a situation, at least conceptually, negatively affecting the Article 8 ECHR rights of the affected families. In sum, it is considered that there is no issue of compatibility with Article 8 ECHR in principle by any retrospective effect of a recognition order under Article 9N.

There is also considered to be no question of incompatibility as regards A1P1. In the context of succession, which is perhaps the most relevant area in which the effect of a recognition order might become relevant, the making of a recognition order would not be determinative of entitlement to possessions in the A1P1 sense. The legal right of claimants in a succession is not extinguished by the making of a recognition order. The recognition order would, in essence, have the effect of recognising in Jersey law another potential claimant in succession, in the same way that a prospective parental order or adoption order would. Claims in succession are governed by clear customary and statutory rules and the introduction of a further claimant in a succession, by way of retrospective recognition of their legal status as a family member, does not alter the expectation of how rights in a succession would be determined.

Indeed, as with the Article 8 ECHR analysis, the recognition of the legal parent-child relationship would reflect factual and legal assumptions as to the likely claimants in a succession, based on presumed legal relations. To this end, there is no legitimate expectation, for A1P1 purposes, that is prejudiced by the making of a recognition order. In all events, states have a broad margin of appreciation in the context of property rights, and any impact on entitlement to property in a succession by recognising family relations retrospectively to address an important policy aim, would likely fall within that margin. This considered, there is no anticipated incompatibility with A1P1 by the making of an order under Article 9N.

Disclosure of information to a person subject to a parental order

New Article 9O would provide that a person subject to a parental order or a recognition order (in this section of the note, “X”) may apply to the Court for the supply of a copy of prescribed

⁴⁸ *Maurice v. France* (Application no. 11810/03).

⁴⁹ *Kamoy Radyo Televizyon Yayincilk ve Organizasyon A. S. v. Turkey* (Application no. 19965/06).

⁵⁰ See Article 20.

documents relating to the making of the parental order or the recognition order. It is understood that the documents that could be applied for, i.e. those that are intended to be prescribed by rules, would be a copy of the relevant court order and the application for the court order. These documents would include personal identifying information of the applicants for the court order (the “intended parents”) and, in the case of a parental order, the details (names) of the surrogate parents.

The disclosure of personal information by the court would, in principle, engage the Article 8 ECHR rights of the intended parents and the surrogate parents. The disclosure of the intended parents’ identifying information would be unlikely to interfere with the privacy rights of these individuals as their identity would already be known to X through the legal parent-child relationship created by the parental order, or would be a matter of public record accessible by X.

The identity of the surrogate parent may not, in every case, be made known to, or known by, X. It is understood that, in general terms, there is no fundamental presumption of confidentiality of the identity of surrogate parents when entering surrogacy arrangements. The possibility of disclosure of information to the surrogate child is likely to be consented to as part of surrogacy arrangement. This means, in practice, that the surrogate parent participates in the surrogacy arrangement in the knowledge that their identities would, and with their consent, be known to X or in the knowledge that it could be disclosed to X under the statutory scheme.

Birth, and in particular the circumstances in which a child was born, forms part of a child's, and subsequently an adult's, private life guaranteed by Article 8 ECHR⁵¹. Respect for private life requires that everyone should be able to establish details of their identity as individual human beings⁵². For these reasons, it is important that X is able to establish details of his origins and Article 90 facilitates that by permitting the disclosure of limited information relating to the surrogate parent, much of which would already be a matter of public record. This is considered to be compatible with the Article 8 ECHR right of the surrogate parent and is a rights-enhancing measure for individuals in X’s position.

It is noted that there is corresponding provision to Article 90 in English law. The Human Fertilisation and Embryology (Parental Orders) Regulations 2018 (Schedule 1, para 9), which applies the Adoption and Children Act 2002, with modifications, would permit an individual subject to a parent order under the HFEA 2008 to apply to the High Court for the disclosure of prescribed documents, which would, in essence, be court order-related documents.

Circumstances in which a person is treated in law as a parent where child conceived by fertility treatment or artificial insemination – Proposed Schedule A1 to the 2002 Law

i) Circumstances in which man or woman married or civil partnered to birth mother is treated as father or second parent of child (respectively, Circumstances A and C)

Proposed Schedule A1 to the 2002 Law would specify the circumstances in which a person is treated in law as a parent of a child conceived by fertility treatment or artificial insemination.

Schedule A1, paragraph 2 makes provision for determining who is to be treated in law as the father of a child in a case where the birth mother is married to, or the civil partner of, a man at the time of fertility treatment or artificial insemination, where that man did not provide sperm leading to the child’s conception (also referred to ‘Circumstance A’). In these cases, the husband or civil partner of the birth mother is treated as the father of the child for all purposes unless, inter alia, he did not consent to the treatment. Corresponding provision is made in section 35 HFEA 2008. Schedule A1, paragraph 4, would provide that, where a man is treated as a child’s father by virtue

⁵¹ *Odievre v France* Application no. 42326/98.

⁵² *Mennesson v France* Application no. 65192/11.

of paragraph 2 of Schedule A1, no other person is to be treated as the child's father for any purpose. Corresponding provision is made in section 38(1) HFEA 2008.

The compatibility of section 35 and 38 HFEA 2008 with Article 8 and 14 ECHR was considered in *R (on the application of H) v Secretary of State for Health and Social Care*⁵³. The detail of *Re H* is not essential but, in essence, the case concerned an Article 8 and 14 ECHR challenge by a person born to a surrogacy arrangement that the effect of section 35 and 38 HFEA 2008 unlawfully prevented her genetic father from establishing a legal parent relationship with her. In *Re H*, the child had been born to a surrogate mother who was married to a man who, by operation of section 35 and 38 HFEA 2008, was treated in law as the child's father and named on the birth certificate. The child's genetic father, whose relationship with the surrogate mother had broken down during pregnancy, was prevented by the statutory scheme from being named on the birth certificate and thereby establishing a legal parent relationship to the child.

In *Re H* it was held that sections 35 and 38 HFEA 2008 were not incompatible with the ECHR. It was noted by the English court that the provisions of the HFEA 2008 struck the correct balance between the protection of the child's rights and wider ethical interests. The English court noted, inter alia, in finding that there was no incompatibility, that, although the statutory scheme did interfere with the child's private life, the regulation of artificial reproduction was a legitimate aim and was necessary. The statutory scheme was justified by the need for legal certainty so that the child had at least one and no more than two parents, and to ensure that gamete donors should not be forced to become legal parents. The English court also found that there was no breach of Article 14 ECHR (read in conjunction with Article 8 ECHR) because there were no analogous comparators meaning the child could not establish that she had been treated less favourably in the engaging of her Article 8 ECHR rights than another person in an analogous position.

Schedule A1, paragraphs 2 and 4 are drafted in terms of equivalent effect to section 35 and 38 HFEA 2008 and, it would reasonably follow, that those provisions too might, in principle, be considered compatible with Article 8 and 14 ECHR if subjected to a comparable challenge in a Jersey court in similar statutory and factual terms. By analogy, it would also reasonably follow that Schedule A1, paragraphs 6 and 10, which make provision for the determination of second parent where a woman is married or civil partnered to the birth mother (also referred to as Circumstance C), would also be considered compatible with Article 8 and 14 ECHR.

ii) Position of man or woman not married or civil partnered to the birth mother in respect of child born to fertility treatment, or where child is not born pursuant to relevant fertility treatment

Proposed Schedule A1 sets out circumstances in which a man or woman may establish themselves in law as the father or second parent of a child born to fertility treatment or artificial insemination. Among these circumstances, in brief terms, in the case of a man, Schedule A1, paragraph 2 would treat a man married or civil partnered to the birth mother and who consented to the treatment as the father of the child (Circumstance A). Schedule A1, paragraph 3 would treat a man who was not married or civil partnered to the birth mother but who was party to relevant fertility treatment (i.e. treatment in a licensed clinic), and where the agreed fatherhood conditions are satisfied, as the father of the child (Circumstance B). In the case of a woman, Schedule A1, paragraph 6 would treat a woman married or civil partnered to the birth mother and who consented to the treatment as the second parent of the child (Circumstance C). Schedule A1, paragraph 7 would treat a woman who was not married or civil partnered to the birth mother but who was party to relevant fertility treatment (i.e. treatment in a licensed clinic), and where the agreed female parenthood conditions are satisfied, as the second parent of the child (Circumstance D). Corresponding provision is made in the HFEA 2008 in sections 35 and 36 in respect of a man, and sections 42 and 43 in respect of a woman.

⁵³ [2019] EWHC 2095 (Admin).

Section 42 and 43 HFEA 2008 were considered in the *Northern Irish case, A v J*⁵⁴. Briefly, in that case, the same-sex couple in question, who were not married or civil partnered, had a child by artificial insemination using a private sperm donor, rather than through a licensed clinic. In the circumstances and under the applicable statutory regime, the HFEA 2008, there was no legal mechanism for the female partner of the birth mother to be named on the birth certificate, and so to be recognised as the child's legal parent (the court held to be unlawful a declaration of parentage under Northern Irish law as it was prohibited under the HFEA 2008). The court held that, where a partner in a same-sex relationship was unable to be registered on the birth certificate of a child born through artificial insemination by a private donor, there was no interference with her rights under Article 8 and 14 ECHR because she remained able to play a full part in the child's upbringing.

The reasoning advanced by the court in *A v J* was, in summary, on the one hand, that the scheme of the HFEA 2008 was to recognise the commitment to family life made by two individuals who entered into a marriage or civil partnership, and went on to form a family, by treating the parties to the relationship as legal parents, unless it was demonstrated that there was no consent to being treated as a legal parent. Where same-sex couples not in a civil partnership or marriage wished to parent a child in a way that would recognise them both as legal parents and without reference to the donor, there was the option of using a licensed clinic. The purpose of the HFEA 2008 in these cases was also to provide clarity as to the expected legal relationships and an opportunity to define the gestational, genetic and psychological roles of the parents in the child's upbringing.

In dealing with the Article 8 ECHR challenge, the court noted that the state enjoyed a wide margin of appreciation in the area of assisted reproduction policy and legislation. It noted too that the inability for the female partner of the birth mother to be registered on the birth certificate affected the appellants' family life but did not affect the child's upbringing. The couple had chosen not to pursue clinic treatment because of the cost but the legal options to obtain the outcome they sought had been available to them under the HFEA 2008 nonetheless. There was, accordingly, no interference with the Article 8 ECHR right of the female partner. In dealing with the Article 14 ECHR challenge, the court acknowledged that there was a difference in treatment of the female partner in question based on the status of the child's birth (born to unmarried/non-civil partnered parents as opposed to married/civil partnered parents). However, the female partner in question could still play a decisive role in the child's upbringing and a full part in the family's life, and there were several domestic law orders which could support that. The court held that the inability to obtain registration on the birth certificate did not justify setting aside the carefully constructed HFEA 2008 scheme.

Schedule A1, paragraphs 6 and 7 are of equivalent effect to sections 42 and 43 HFEA 2008. Furthermore, the 2002 Law offers a number of options by which a birth mother's partner could obtain parental responsibility for the child, e.g. a residence order under Article 10 of the 2002 Law. The 1961 Law would also permit a birth mother's partner to adopt her child, and, that way, be treated in law as the parent of the child. It is reasonable to consider, therefore, that it would follow from the assessment of the Article 8 and 14 ECHR issues in *A v J* that, in a similar factual and legal case determined under Jersey law, the provisions of Schedule A1, paragraph 6 and 7 (and by analogy, paragraphs 2 and 3) would also be considered compatible with the ECHR.

iii) Position of female partner of a birth mother whose child is born pre-commencement mother

New Schedule A1, paragraph 9, to the 2002 Law read in conjunction with new Article 56C of the 2001 Law, propose to deal with the legal parent status of a female partner of a birth mother who has given birth prior to the commencement of those provisions. In essence, the provisions would enable the re-registration of the birth of the child to enable the female partner to be registered as the parent of the child and for that person to be treated in law as the second parent of the child.

⁵⁴ [2002] NICA 3.

The amendments to the 2002 Law and the 2001 Law would enable female partners of birth mothers, whether married, civil partnered, or in an enduring family relationship, to acquire legal parent status for a child born to their relationship, and to be recorded as the second parent of the child. As explained in this note, the 2002 Law and 2001 Law amendments provide for this, in general terms, by provisions that would automatically confer second parent status by virtue of the female partner being married or civil partnered to the birth mother, or, in the case of an unmarried or non-civil partnered couple, enable the acquisition of second parent status by means of agreed female parenthood conditions being confirmed through relevant fertility treatment.

There is currently, other than through adoption, no means by which a female partner of a birth mother can be recognised in law as the parent of the child born to that relationship. There are other means through the 2002 Law by which the female partner could exercise parental responsibility for the child (e.g. a residence order) but the exercise of parental responsibility does not equate to legal parent status as regards the child. The provisions in new Schedule A1, paragraph 9, to the 2002 Law and new Article 56C of the 2001 Law would operate to enable female partners to establish legal parent status for a child in this context.

The conditions on which such a re-registration would occur are set out in Article 56C(1). In essence, the re-registration of the birth of a child born to a relationship where the female partner is married or civil partnered to the birth mother is achieved through reliance on the fact of marriage or civil partnership (and supported by declarations to be prescribed in an order).

In the case of a child born to a relationship where the female partner is not married or civil partnered to the birth mother, re-registration of the birth is achieved on the condition that the child was born as a result of assisted reproduction in a licensed clinic and supported by declarations given by the participants. It is understood that the declarations would reflect the type of confirmatory statements that would be provided through the agreed female parenthood conditions (see Schedule A1, paragraph 8). The rationale in this latter case is that, in the absence of marriage or civil partnership, the law looks to these confirmatory statements of the intended, or de facto, parents of the child to ensure certainty as to the legal parent-child relationship. This is the same approach taken in determining the legal parent status of female partners to prospective births under the 2002 Law, as amended, i.e. that legal parent status is either acquired by fact of marriage or civil partnership, where that relationship exists, or by treatment (with associated parenthood conditions) through a licensed clinic, in all other cases.

As has been explained elsewhere in this note, the establishment of legal parent status for a child will engage the Article 8 ECHR rights of the individuals involved and the child. Differences in treatment will engage Article 14 ECHR, read in conjunction with Article 8 ECHR. The policy justification for the application of different conditions for establishing legal parent status in the case of parents who are, or are not, in a legal relationship, is the need for certainty in the intentions, as to parenthood, of the parties to assisted reproduction: where there is a legal relationship, the assumption in law is that the parties intended to establish legal parent status for the child; where there is not a legal relationship, the law must look to the intentions of the parties evidenced through a regulated clinic environment. That difference in treatment is justified in ECHR terms by strong policy arguments for certainty and does not give rise to incompatibility under Article 14 ECHR.

In the case of those female partners looking to establish legal parenthood status where the child was born prior to the commencement of the draft Law, the approach on which that status is acquired in law is identical to the approach that would be applied for prospective parents, i.e. those who in future will come to establish parent status under the 2002 Law, as amended (namely Schedule A1, paras 6 and 7, and their corresponding registration provisions in the 2001 Law, as amended). As such, there is no incompatibility in the difference of treatment as between these cases in the pre-commencement birth setting.

The 2002 Law and the 2001 Law, as amended, would not make provision for the case of a female partner who, either, was not married or civil partnered to the birth mother at the time of the birth,

or who was not married or civil partnered to the birth mother and where the child was not born through treatment in a licensed clinic. In such cases, there would be no means provided for that female partner to acquire legal parent status for the child, other than by existing means of adopting the child under the 1961 Law.

The Article 8 ECHR right of the female partner is engaged in these cases but there is no unlawful interference with that right, and there is no unjustifiable discrimination contrary to Article 14 ECHR on the grounds of birth, in the female partner's case as compared to a female partner who fell into one of the situations described above. The justification for difference in treatment is the fundamental policy requirement for certainty as to intended parental arrangements, which is determined from the fact of marriage or civil partnership, or treatment through licensed clinic arrangements. A female partner who is unable to establish legal parent status under Schedule A1, paragraph 9 and Article 56C is still able to acquire parental responsibility for the child and is not prevented from participating in the upbringing of the child. Furthermore, that female partner may resort to adoption through the 1961 Law in order to acquire legal parent status, or following marriage or civil partnership to the birth mother, by utilising Article 56C. On this basis, there is no clear incompatibility with the Article 8 ECHR rights of the female partner referred.

Amendments to the 2001 Law

The following commentary provides an assessment of the ECHR compatibility of the principal amendments that would be made to the 2001 Law by the draft Law. Other than the matters addressed, there are considered to be no substantial human rights issues arising from the amendments to the 2001 Law.

Registration and re-registration of birth

The draft Law would make several amendments to current provision, and would insert new provision, in the 2001 Law dealing with the registration and re-registration of birth. The breadth of new provision that would be made in the 2001 Law for registration and reregistration of birth reflects the broader class of legal parent that would be recognised in the 2002 Law, if amended.

Presently, civil registration practice and the 2001 Law permits only the following principal cases of registration and re-registration of birth –

- a. The registration of the birth of a child by the child's mother, or together with the child's father, in a case where the mother is married to the child's father.
- b. In a case where the father and mother of a child were not married to each other at the time of the child's birth, an application may be made to the registrar for the registration of the man stating himself to be father of the child. Current Article 55 sets out the mechanisms by which the child's father may obtain registration, such as a joint application with the mother or the provision of a declaration by the mother stating the man to be the child's father.
- c. In a case where the birth of a child whose father and mother were not married to each other at the time of the birth has been registered, and no person has been recorded as the father of the child, an application may be made to the registrar for the re-registration of the child's birth to record the name of the child's father. Current Article 56 sets out the mechanisms by which the child's father may obtain registration, such as a joint application with the mother or the provision of a declaration by the mother stating the man to be the child's father.

Registration of birth and the recording of the names of a child's parent are important features of civil status. In ECHR terms, registration or re-registration will engage the Article 8 ECHR right to private and family life of the child and the child's parents. For instance, registration and re-registration of a father who is not married to the child's mother will enable that man, because of

related provision in the 2002 Law⁵⁵, to establish and exercise parental responsibility for his child. The recording of parent identity in the birth register is also an important feature of a child's and a parent's family life and personal identity, within the scope of Article 8 ECHR.

The draft Law would make several rights-enhancing amendments to the 2002 Law to extend legal parent rights in the case of civil partnered opposite and same-sex couples, and in the case of same-sex married and civil partnered, and non-married and non-civil partnered, couples. These provisions are outlined earlier in this note. The draft Law would amend the 2001 Law to provide correlating provision enabling the registration and re-registration of the birth of a child born to this wider range of parental units. Those provisions are –

- a. Amendment to Article 55 (an existing provision of the 2001 Law), which enables the registration of the father where the parents are neither married nor civil partners.
- b. New Article 55A, which enables the registration of the father where the parents are married or civil partners. This provision codifies the existing practice in relation to the registration of married fathers, but also makes corresponding provision for the registration of civil partnered fathers. This achieves parity as between married and civil partnered fathers.
- c. New Article 55B, which enables the registration of second parents where they are neither married nor civil partnered to the mother. This provision is akin to Article 55 and achieves parity in the position of men and women in cases where they are not married or civil partnered to the mother.
- d. New Article 55C which enables the registration of the second parent where the parents are married or civil partners. This provision is akin to Article 55A in relation to the registration of married and civil partnered fathers, achieving parity in the position of men and women in cases where they are married or civil partnered to the mother.
- e. Amendment to Article 56 (an existing provision of the 2001 Law), which now enables the re-registration of the birth of a child if the child's father or second parent were not married or civil partnered to the mother at the time of birth. The extension of this provision to cover second parents, and to cover civil partners, achieves parity in the position of men and women in cases where they are neither married or civil partners of the mother, and as between marriage and civil partnership.
- f. New Article 56A, which enables the re-registration of birth if the father was married or civil partnered to the mother. This provision codifies existing practice in the case of the re-registration of birth where the child's mother and father were married. It also extends the statutory position to cover the situation of a mother and father who were civil partnered, achieving parity in the position as between marriage and civil partnership.
- g. New Article 56B, which enables the re-registration of birth if the second parent was married or civil partnered to the mother at the time of the child's birth. This provision is akin to Article 55A and achieves parity in the position of male and female parents where they are married to or civil partners of the mother.

The provisions noted above are rights-enhancing measures which would seek to make equal provision in the case of male and female parents, in the case of married and civil partnered parents, and in the case of opposite sex and same sex parents. These provisions, together with those in the 2002 Law in relation to the acquisition of legal parent status and parental responsibility, would remove any pre-existing incompatibility under Article 14 ECHR, read together with the right to private and family life in Article 8 ECHR, in the law in this area.

⁵⁵ Current Article 3.

Registration or re-registration of birth with statement of legitimate or illegitimate status

The draft Law would make several amendments to current provision, and would insert new provision, in the 2001 Law dealing with the registration and re-registration of birth. It is a feature of current registration and re-registration provision the 2001 Law that where a child's parents are not married to one another the relevant registrar must record the child as the illegitimate child of the parents (current Article 55(4) and 56(5)). The 2001 Law facilitates the re-registration of the birth of a child on the marriage of his or her parents, in which case the birth entry is recorded to note that that child is the legitimate child of the parents (current Article 57).

Jersey law retains the concept of legitimacy. It is governed, in the main, by the Legitimacy (Jersey) Law 1973 (the "1973 Law") which provides, inter alia, that a child who is legitimate by birth is a child born or conceived during the subsistence of a lawful marriage of whom the father is the husband of the mother (Article 2(1)). The 1973 Law also provides for the legitimation of a child per *subsequens matrimonium* on the marriage of his or her mother and father (Article 4(1)). The 1973 Law makes no provision for a child born to a civil partnered opposite sex couple, nor a child born to a same sex married or civil partnered couple, to be treated as legitimate by birth. The 1973 Law states (Article 3) that an illegitimate child is one who is not legitimate by birth or who has not become a legitimate child by the marriage of his or her mother and father.

The draft Law would amend the 2001 Law to expand the range of registration and reregistration provisions. This is done to accord with the broader range of registration and re-registration applications that would be enabled by the broader scope of legal parental circumstances facilitated by new Part 1A of the 2002 Law. The 2001 Law would, if amended, permit the following –

- a. Registration of birth of a child whose mother and father are neither married nor civil partners (Article 55). In these cases, the child is recorded as illegitimate (Article 55(5)).
- b. Registration of birth of a child whose mother and father are married or civil partners (Article 55A). In a case where the child is born to a father and mother who are married, the child is recorded as legitimate (Article 55A(4)). In a case where the mother and father are civil partners the child is recorded as illegitimate.
- c. Registration of birth of a child whose mother and second parent are neither married nor civil partners (Article 55B). In these cases, the child is recorded as illegitimate (Article 55B(4)).
- d. Registration of birth of a child whose mother and second parent are married or civil partners (Article 55C). In these cases, the child is recorded as illegitimate (Article 55C(4)).
- e. Re-registration of birth of a child if parents are neither married nor civil partners (Article 56). In these cases, the child is recorded as illegitimate (Article 56(6)).
- f. Re-registration of birth of a child if father married to, or civil partner of, mother (Article 56A). In a case where the father and mother are married, the child is recorded as legitimate (Article 56A(6)). In a case where the father and mother are civil partnered, the child is recorded as illegitimate.
- g. Re-registration of birth of a child whose mother and second parent are married or civil partners (Article 56B). In these cases, the child is recorded as illegitimate (Article 56B(6)).
- h. Re-registration of birth of a child born to female same-sex couple before commencement of the Law (Article 56C). In these cases, the child is recorded as illegitimate (Article 56C(5)).

The 2001 Law would, therefore, if amended, retain the legal requirement that a child is recorded as either legitimate or illegitimate. The draft Law would operate to extend the recording of legitimacy status to a wider range of children, who are born to the broader set of legal parents that

would be recognised by the 2002 Law. The status of legitimate or illegitimate is a status that would be applied to children depending on the marital status and sexual orientation of their parents. The amendments to the 2001 Law, in this regard, are required to harmonize with the present state of legitimacy law in Jersey.

In ECHR terms, the personal characteristic of birth status, which includes legitimacy status, has long been assessed in ECHR jurisprudence as a status that engages the prohibition on discrimination under Article 14 ECHR, when read in conjunction with the right to private and family life under Article 8 ECHR and the right to property under A1P1. Many of the cases in this area involve inheritance laws, in which an illegitimate child is in some way denied an entitlement to property because that child was born out of wedlock. The cases have held consistently that restrictions on children's inheritance rights on grounds of birth are incompatible with the ECHR⁵⁶.

In Jersey law, there is no material distinction between legitimate and illegitimate children in matters of succession. The Wills and Succession (Jersey) Law 1993, which makes, inter alia, provision relating to inheritance and wills of movable and immovable estate, has long been amended to include provisions (in Part 3A of that Law) that bring about equality of succession rights of legitimate and illegitimate children. As such, there is no material difference of treatment in Jersey law in the case of a child on the grounds of birth status that would engage Article 14 ECHR, read together with A1P1. There are no other known effects in Jersey law, in respect of matters of property entitlement, that are determined by reference to the status of a person as legitimate or illegitimate.

Similarly, there is nothing known in Jersey law that would render a distinction in the case of a person who is legitimate or illegitimate by birth that would be considered discriminatory under Article 14 ECHR, read together with Article 8 ECHR. For instance, there are no legal measures governing the establishment of family relations or parental links in Jersey law that are affected by a distinction in legitimacy status. There are also no other known measures in matters such as residential status, entitlement to benefits, or social status that raise material issues of incompatibility.

Surname of child

New Article 59A of the 2001 Law would re-enact, with modifications, existing Article 59A of the 2001 Law. That provision deals with the choice of names of a child on the registration and re-registration of birth. Among other things, Article 59A makes provision for the determination of the surname of a child where the parents (mother, father or second parent) do not jointly choose a surname for the child. New Article 59A(6) would, in these circumstances, require the birth of the child to be registered or re-registered with the surname of the mother. Currently, Article 59A(4)(a) would, where the parents were married to one another at the time of the child's birth, require the surname of the father to be recorded.

In principle, matters relating to names engage the right to private and family life under Article 8 ECHR, and differences in treatment as between men and women in measures engaging Article 8 ECHR, could also engage the prohibition against discrimination under Article 14 ECHR. The modification to Article 59A, so that the name of the mother, rather than the father (or, as amended, the second parent), is recorded is, from a policy perspective, justified by the wider move toward removing from civil status legislation outdated principles of ascendancy of fathers.

The policy position, reflected by this amendment to Article 59A, is to give pre-eminence to the relationship of the mother with her child. That position is reflective of modern attitudes. On this basis, it is considered that any question of unjustified interference with the Article 8 ECHR right of fathers, and when read with Article 14 ECHR, any question of discriminatory effect, does not arise. To the extent that those rights are engaged to a material extent, it is considered likely that

⁵⁶ *Marckx v Belgium* Application no.6833/74

the interference would be justified by the persuasive policy shift toward recognition of the pre-eminence of birth mothers in civil registration.

Disclosure of birth records of children subject to parental orders

New Article 61F of the 2001 Law would make provision for the disclosure of birth records of children subject to a parental order. It would require the Superintendent Registrar, on an application, to disclose to persons who had attained the age of 18 information necessary to enable the person to obtain a certified copy of the record of the person's birth. The information disclosed would include particulars of that person's birth parent(s).

The disclosure of the identity of the individual's birth parent(s) will, in principle, engage the Article 8 ECHR right to privacy of those parents. Article 61F is, however, intended only to permit the disclosure of the individual's birth record and to enable the Superintendent Registrar to inform the applicant if they are related in a prohibited degree to a person with whom they intend to marry or form a civil partnership. Disclosures of this nature are a typical feature of civil registration practice in Jersey (see Article 30 of the 1961 Law, for comparative provision in the case of adoption). The ability to obtain information on one's birth is an important aspect of establishing identity and origins, which is a feature of the Article 8 ECHR right to privacy, and any interference with the Article 8 ECHR right of the birth parent(s) is likely to be justified on this basis.

Furthermore, in practice, birth parent(s) will enter into the surrogacy arrangement in the knowledge of their identity being known to the child, or at the very least that their particulars are subject to the statutory framework for parental orders and birth registration, which includes the possibility of disclosure of birth records to the child. Article 61F is, for these reasons, considered to be compatible with Article 8 ECHR.

Abolition of wife's domicile of dependence

New Part 5A to the 2001 Law would introduce provision determine the domicile of dependence of a child subject to a parental order and conceived in circumstances dealt with in new Schedule A1 to the 2002 Law. Part 5A would also re-enact, with some minor modification, Article 77A of the 2001 Law which deals with the abolition of a wife's domicile of dependence.

Prior to the enactment of current Article 77A of the 2001 Law, Jersey customary law provided that a wife's domicile was that of her husband's. As such, a woman who was married to man who was not domiciled in Jersey, was unable to have a domicile of choice in Jersey, irrespective of the length of time she had resided in Jersey. Furthermore, a woman who was married to a Jersey resident man and who sought a domicile of choice abroad was required to retain the same domicile as her husband unless her husband also changed his domicile. This customary position was deemed contrary to Article 15(4) of the Convention on the Elimination of Discrimination Against Women (CEDAW), which provided that "States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence in domicile." The necessary abolition of the customary law arrangements were dealt with by the inclusion of Article 77A.

Pre-existing rules for determining the domicile of married women are likely to have been contrary to Article 14 ECHR, read in conjunction with Article 8 ECHR and A1P1, as they would engage, in a discriminatory manner, matters of personal identity, status, and would have had possible negative implications for entitlement to property and benefits. New Article 75A of the 2001 Law would be a re-enactment of Article 77A and, as with Article 77A, it would continue to be a rights-enhancing measure. Its effect is to abolish the application of a discriminatory rule in Jersey customary law in the case of women, as compared to men, in the establishment of their domicile.

APPENDIX TO REPORT

CHILD RIGHTS IMPACT ASSESSMENT (CRIA)

Name/Title of Duty Bearer:	Minister for Children and Education
Type of Duty Bearer:	Minister
Assessment completed by (name or job title, if different from above):	Policy Principal
Date of CRIA started:	19/12/2023

STAGE 1: SCREENING

The first stage of the CRIA requires summary level information to assess whether a full CRIA (Stages 2-6) is required.

1.1: Name the proposed decision and briefly describe its aim

Draft Children and Civil Status (Amendments) (Jersey) Law 202-

The main aims of the draft Law are:

- a. enable opposite sex civil partners to acquire legal parent status and parental responsibility in the same way as a married couple,
- b. enable same sex parents to both be registered as a child's legal parents and therefore named on a Jersey birth certificate,
- c. enable as far as possible, same sex parents to be automatically conferred parental responsibility
- d. provide appropriate legal recognition to enable parents, whose child is born to a surrogate mother, to become legal parents in Jersey,
- e. provide for the acquisition of parental responsibility by a stepparent by agreement,

1.2: Which children's rights will be impacted?

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity

1.3: Which groups of children and young people are likely to be affected most?

For examples of different groups of children whose rights could be impacted by the decision, please refer to the guidance notes. Unable to specify in box below.

Other (please specify)

Potentially any children who are born in Jersey.

1.4: What is the likely impact of the proposed decision on children in Jersey?
If approved the proposed legislation will make a positive step to amend Jersey's laws so that children's rights are better met through the aims set out above.
1.5: Is a full child rights impact assessment required? Explain your rationale
Yes, due to the number of rights engaged and that the Amendment Law will potentially affect any Jersey born children.

FULL CHILD RIGHTS IMPACT ASSESSMENT

STAGE 2: SCOPING	
2.1: Thinking about the children's rights identified in Section 1.2, explain the expected effect of the proposed decision on those rights?	
Cluster/Article	Further analysis on the expected effect
Article 2 - 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.	Article 2 requires that children are not discriminated against because of their family background. It is arguable that Jersey's treatment of same sex parents in Law amounts to discrimination due to the lack of access to legal parent status or parental responsibility in any of the ways open to opposite sex couples.
Article 3- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.	The draft Law provides the Court with the power to make a Parental Order, these parental orders must be made in the best interests of the child. The welfare principle in the Children Law is being tweaked to require the court to consider the best interests of the child at the time of the decision and also in the future.
Article 4- States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such	The draft Law is an example of a State Party undertaking a legislative measure to further implement the rights recognized in the present Convention.

measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.	
Article 5- States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.	To enable a State Party to respect the responsibilities, rights and duties of parents, that State Party must possess statute that fully provides those responsibilities, rights and duties. The draft Law expands the acquisition of parental responsibilities, rights and duties to civil partners and same sex couples.
Article 7- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.	The draft Law will provide legislative mechanisms for children whose parents are same sex or mixed sex and have used donor sperm to both be registered as the parents of that child in the Register of Births.

STAGE 3: EVIDENCE

3.1: What evidence has been used to inform your assessment? Include published results which have involved consultation with children and young people and any relevant research

Evidence collected	Explanation of the importance	What are the data gaps, if any?
Legislative Gap Analysis of provisions relating to children across Jersey's statute	This gap analysis formed the basis of the ongoing Children's Legislation Transformation Programme.	Please see here for further information - ID Childrens Legislation Transformation Programme - Schedule 20190104v2 FW.pdf (gov.je)
Legal advice from Law Officers	Provided advice as to current shortcomings in relation to Parental Orders granted in England and Wales, lack of provision for children of same sex couples, lack of provision for children of mixed sex couples where donor sperm has been used to conceive.	N/A
Gap analysis of current Legislation when compared to the Human Fertilisation and Embryology Act 2008.	Provided an understanding of where Jersey's Law needed to be expanded to facilitate the acquisition of legal parent status and parental responsibility by	N/A

	an expanded range of parents.	
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STAGE 4: CHILDREN'S INVOLVEMENT

4.1: What groups of children and young people (or those who speak on their behalf, such as social workers, teachers or youth workers) have been directly or indirectly involved in developing the decision?

Groups consulted	How they were involved	What were the findings?
Children's Social Services	A number of discussion meetings	Supportive of the approach and provisions of the draft Law.
Same Sex Parents Group	A number of discussion meetings and provided with copies of the draft Law to review	Supportive of the approach and provisions of the draft Law.
Bailiff and Deputy Bailiff	Provided with a copy of the draft Law to review and a follow up discussion meeting to discuss any issues	Supportive of the approach and provisions of the draft Law.
Jersey Community Relations Trust	A number of discussion meetings and provided with copies of the draft Law to review	Supportive of the approach and provisions of the draft Law.
Jersey Family Law Society	A number of discussion meetings and provided with copies of the draft Law to review	Supportive of the approach and provisions of the draft Law.
Liberate Jersey	A number of discussion meetings and provided with copies of the draft Law to review	Supportive of the approach and provisions of the draft Law.

STAGE 5: ASSESSING IMPACT

5.1: What likely impact will the proposed decision have on children and young people's rights?

Type of impact <i>[please highlight]</i>	Justification for Argument.	Likely or actual short/medium/long-term outcomes. Include resource implications (financial, regulatory, workforce, structural) as necessary

Positive	The draft law, will, if approved, enable children born to same sex couples, mixed sex couples who use donor sperm to conceive and same/mixed sex couples via surrogacy to have the same legal parental arrangements as children born to mixed sex couples, currently.	Short and medium term. Once the Law comes into force it will have immediate effect.
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5.2: What are the likely different impacts on different groups of children and young people?

Group of children affected	Initial analysis of the positive impact on rights	Initial analysis of the negative impact on rights
Children born to same sex couples, mixed sex couples who conceive using donor sperm and children subject to parental orders	The draft Law upholds all of the rights identified above.	None identified

5.3: If a negative impact is identified for any area of rights or any group of children and young people, what options are there to modify the proposed decision to mitigate the impact?

Describe the negative impact	What options are there to modify the measure(s) or mitigate the impact?
None identified	N/A

STAGE 6: CONCLUSIONS

6.1: In summary what are your key findings on the impact of the decision on children and young people's rights?

The draft Law has a positive impact on children's rights. It amends and expands the effect of Jersey's Laws to bring them further into line across a number of UNCRC Articles by modernising the provisions that govern legal parental status, parental responsibility, legitimacy and birth registration. So that children born to same sex couples, mixed sex couples who use donor sperm to conceive and children born by surrogacy all will be able to benefit from both parents having the appropriate legal parent status and parental responsibility from the time of the registration of the birth or the making of the parental order. There will no longer be a requirement for parents to see out court orders to gain parental responsibility for their own children.

EXPLANATORY NOTE

This draft Law will, if passed, amend the Children (Jersey) Law 2002, the Marriage and Civil Status (Jersey) Law 2001, the Marriage and Civil Status (Jersey) Order 2018 and the Interpretation (Jersey) Law 1954 to make provision about parental orders, the acquisition of parental responsibility and the registration procedures for, and the status of, children who are conceived either as a result of fertility treatment or surrogacy arrangements.

Part 1 contains *Article 1* and defines 5 shorthand expressions used in the Law.

Part 2 contains *Articles 2 to 19*, which amend the Children (Jersey) Law 2002 (the “Children Law”).

Article 2 introduces the amendments.

Article 3 amends *Article 1* of the Children Law, inserting new definitions of terms used elsewhere in the Children Law, and amends others in consequence of the changes made by the amending Law. The newly inserted paragraph (9) of *Article 1* of the Children Law introduces *Schedule A1* to that Law, which specifies who is treated in law as the parent of a child who is conceived as a result of artificial insemination or fertility treatment. *Article 3* also makes minor amendments to reflect changes in legislative drafting practice.

Article 4 amends *Article 1A* of the Children Law to substitute “if” for “where” in line with current drafting practice.

Article 5 inserts new *Article 1B* into the Children Law, which defines “surrogacy arrangement” and related expressions that are used in the new *Articles 9I* and *9O*.

Article 6 amends *Article 2* of the Children Law by modifying the welfare principle in that *Article* in the context of the making or revocation of a parental order or a recognition order to require the court (i.e. the Royal Court) to have regard to the effect of the order on the whole life of the child concerned.

Article 7 deletes the existing *Articles 3, 4* and *5* of the Children Law. They are re-enacted, with amendments, in the new *Part 1A* of the Children Law, which is inserted by *Article 8*.

Article 8 inserts a new *Part 1A* into the Children Law, which deals with parental responsibility and parental orders. That *Part* comprises new *Articles 9A* to *9M*.

New *Articles 9A* to *9F* of the Children Law deal generally with the acquisition of parental responsibility. *Article 9A* restates the existing basic proposition of the existing *Article 3* of the Children Law, namely that, in the absence of an adoption or a parental order, a mother will always have parental responsibility for her child. However, it abolishes the rules of law that a father has sole custody of a legitimate child or of a child who is legitimated by the father’s marriage to the mother. New *Article 9B* restates the rule in the existing *Article 4* of the Children Law, namely that a person who does not have parental responsibility for a child, but has care of the child, may nevertheless do whatever is reasonable in the circumstances for the purposes of safeguarding and promoting the child’s welfare. It also restates the propositions that the presence or absence of parental responsibility does not affect any other obligation that a person may have in relation to a child, nor any right that the person may have in relation to the child’s property on the child’s death. *Article 9C* deals with the acquisition of parental responsibility by a father who was neither married to, nor the civil partner of the mother at the time of the child’s birth, and *Article 9D* deals with the acquisition of parental responsibility by a female second parent who was neither married to, nor the civil partner of the mother at the time of the child’s birth. *Article 9E* deals with the acquisition of parental responsibility by a step-parent and provides that if a child’s parent has parental responsibility for the child (“parent A”), parent A, together with any other person who has parental responsibility for the child, may agree with the child’s step-parent that the step-parent

is to have parental responsibility for the child. Article 9F makes general provision about the form and effect of parental responsibility agreements and orders ending parental responsibility.

New Articles 9G to 9M of the Children Law deal with the making of parental orders. A parental order treats a child who has been born as a result of a surrogacy arrangement as the child of the applicant or applicants for the order, and not the child of anyone else, but this does not affect entitlement to property that is dependent on the biological relationship between the child who is the subject of the order and the applicant, or anything else that is dependent on that relationship. A parental order has the effect of transferring parental responsibility for the child to the applicant or applicants. New Article 9H confers a power on the court to amend a parental order if it contains an error or if the child's name has subsequently been changed within a year of the child's birth.

New Article 9I specifies conditions that must be met before a parental order may be made. The surrogate mother must not be one of the applicants, and the applicant (or, in the case of a joint application, at least one of the applicants) must have contributed sperm or an egg to the embryo resulting in the birth of the child. The Article prevents the making of a joint application on the basis that the parties are in an enduring family relationship if the 2 people are within the prohibited degrees of relationship for the purposes of the Civil Status Law (so that they could not lawfully marry). This Article also makes provision about the case where an applicant for a parental order, or a person who was intended before their death to have been an applicant, dies before that order is made. This provision deals with a factual scenario similar to that which arose in the English Family Court case of *Re X (Y and Y v Z and Z and X (through her guardian) [2020] EWFC 39 (Fam)*. New Article 9J specifies circumstances in which the court may not make a parental order, namely if it has previously considered an application for a parental order and refused it. However, if the court indicated it would entertain a subsequent application in particular circumstances, or if it is satisfied that it is proper to do so if there has been a change in the circumstances, it may do so. New Article 9K imposes a prohibition on the removal of a child who is the subject of a pending application for a parental order from the care of an applicant, subject to new Article 9L, which specifies two exceptions. They are that the person removing the child does so under an enactment or with the leave of the court. New Article 9M deals with the effect of a parental order in the case of a person (including the child who is the subject of the order) dying intestate. Article 9M mirrors the corresponding provision in the Adoption (Jersey) Law 1961 in the case of an adopted child.

New Article 9N of the Children Law deals with the effect in Jersey of a parental order made in England and Wales (a "relevant order") before this Law comes into operation. It provides a mechanism under which a person named in the relevant order may apply to the court for a recognition order, which has the effect of treating the child and the applicants as if the court had made a parental order under Article 9G on the day on which the relevant order was made. Finally, new Article 9O makes provision about the disclosure of information held by the court to a person who is the subject of a parental order or a recognition order under Article 9N and who is at least 18 years old. It provides that before the information is supplied the Judicial Greffier must inform the applicant of the availability of counselling services approved by the Minister.

Article 9 consequentially amends Article 13 of the Children Law, replacing a cross-reference to Article 5 with one to the new Articles 9C and 9D and expanding the scope of Article 13 of the Children Law to deal with the grant of parental responsibility for a child in respect of whom a second parent obtains a residence order.

Article 10 makes a minor amendment to Article 14 of the Children Law to bring the Article into line with current drafting practice.

Article 11 amends Article 58 of the Children Law to make it clear that a child who is placed with the prospective applicants for a parental order is not to be regarded as a privately fostered child. It also makes a minor drafting correction to Article 58.

Article 12 makes a minor amendment to Article 59 of the Children Law consistent with current drafting practice.

Article 13 makes consequential amendments to Article 66 of the Children Law to deal with the duration of parental orders. It also reverses the order of paragraphs (5) and (6) of that Article to improve the flow of the text. So far as parental orders are concerned, the parental responsibility that they confer lasts until the subject of the order attains majority, but otherwise they last throughout the subject's life unless the court orders otherwise.

Article 14 deletes Article 82(3) of the Children Law, which conferred a power to make consequential amendments to other enactments in connection with the commencement of the Law. That power is superseded by that contained in the new Article 82A of the Children Law (see below).

Article 15 inserts a new Article 82A of the Children Law to confer a power on the States to amend the Children Law or any other enactment in connection with a provision of that Law or any amendment made by the present draft Law.

Article 16 inserts a new Schedule A1 into the Children Law to set out the circumstances in which a person is to be treated as the other parent of a child conceived as a result of fertility treatment or artificial insemination. Schedule A1 is set out as *Schedule 1* to the present draft Law.

Article 17 amends Schedule 1 to the Children Law. It makes a number of minor amendments to reflect current drafting practice. It also changes the effect of paragraph 4 of the Schedule. Under that paragraph as amended, if an order is made requiring a person other than the father or second parent to make financial provision for a child it must record the fact that that person is not the child's father or second parent.

Article 18 amends Schedule 4 to the Children Law to add the new offence under Article 9K(2) to the list of those that disqualify a person for caring for children. It also deletes a spent reference to Article 54(2) of the Children Law, which has been repealed.

Article 19 deletes paragraphs 1 to 8 of Schedule 5 to the Children Law, which are spent.

Part 3 contains *Articles 20 to 37*, which amend the Marriage and Civil Status (Jersey) Law 2001 ("the Civil Status Law").

Article 20 introduces the amendments.

Article 21 amends the heading for Part 5 of the Civil Status Law to reflect its new content.

Article 22 amends Article 49 of the Civil Status Law to incorporate new defined terms used in the text of Part 5 of that Law. It replaces paragraph (1) of the Article and adds a reference to parental orders in paragraph (2). It also replaces the existing paragraph (3) with new paragraphs (3), (3A) and (3B), the latter pair of paragraphs dealing with the extended meaning of references to a child whose parents were or were not married at the time of the child's birth for the purposes of the Part.

Article 23 amends Article 51 of the Civil Status Law to extend the scope of the duty to inform the registrar of a birth or stillbirth to the second parent of a child conceived by fertility treatment or artificial insemination. "Relevant fertility treatment" is defined in the amended Article 1(1) of the Children Law (see commentary on *Article 3*).

Article 24 amends Article 53 of the Civil Status Law to add a reference to a second parent to the list of people from whom the Superintendent Registrar can require information about a birth.

Article 25 replaces Article 55 of the Civil Status Law to reflect the fact that opposite sex couples can now be civil partners of each other instead of being married to each other and to bring the text into line with that of the new Articles 55A to 55C. The new Article 55 refers to the relevant provisions of Part 1A of the Children Law following the deletion of Article 5 of the Children Law and its re-enactment in Part 1A of that Law.

Article 26 inserts new Articles 55A to 55C into the Civil Status Law, each of which deals with the registration of a child's birth in different circumstances. New Article 55A deals with the registration of a father as a parent of the child if he and the child's mother are married to each

other or civil partners of each other. New Article 55B deals with the situation where a child is born as the result of relevant fertility treatment, but the persons receiving that treatment are neither married to, nor civil partners of, each other at the time of the child's birth. New Article 55C deals with the registration of the birth of a child conceived as a result of fertility treatment or artificial insemination if the mother of the child and the second parent are married to or civil partners of each other at the time of the child's birth.

Article 27 amends Article 56 of the Civil Status Law so that that Article applies to cases where a child's parents are neither married to, nor civil partners of, each other at the time of the birth, but subsequently marry or become civil partners.

Article 28 inserts new Articles 56A, 56B and 56C into the Civil Status Law. New Article 56A deals with the re-registration of a child's birth if the parents were married to, or civil partners of, each other at the time of the birth, but no-one has been registered as the father of the child. New Article 56B deals with the re-registration of a child born to a female same-sex couple who were married to each other, or civil partners of each other when the child was born but no-one has been registered as the father or second parent of the child. New Article 56C deals with the re-registration of a child's birth if the child was born before the Law comes into operation. It applies in the case of a child born to a female same-sex couple following fertility treatment or artificial insemination if the couple are married or civil partners or following relevant fertility treatment if they were not.

Article 29 replaces the existing Article 57 of the Civil Status Law. It deals with the legitimation of a person under the written or customary law of Jersey. Where a person's father has already been registered as such, one of the parties to the marriage must make a declaration as to the matters prescribed by an order made by the Minister for Justice and Home Affairs. If the person's father has not been recorded as such, the husband and wife may both make declarations as to those matters. If such a declaration is made immediately after the solemnisation of the marriage, the person required to register the marriage or make a return of the particulars for registration must countersign the declaration. The person countersigning the declaration is entitled to receive half the fee paid for the registration.

Article 30 replaces the existing Article 59A of the Civil Status Law dealing with the surname to be registered for a child in a case where the parents do not agree on the name, to reflect the possibility that the child may be the product of relevant fertility treatment or artificial insemination. In the case of disagreement, the surname to be used will be that officially recorded as the surname of the mother at the time of the re-registration.

Article 31 replaces the existing Article 60 of the Civil Status Law dealing with the content of a short birth certificate with a provision that applies to birth certificates, adoption certificates and parental order certificates.

Article 32 amends Article 61 of the Civil Status Law dealing with the reporting of a stillbirth to allow for the fact that the mother may be married to, or the civil partner of, another woman.

Article 33 inserts new Articles 61A to 61F into the Civil Status Law dealing with the registration of parental orders. New Article 61A deals with the maintenance of the Parental Orders Register, new Article 61B with the mechanics of registering a parental order, and new Article 61C with the amendment of orders and rectification of registers. New Article 61D deals with the particulars to be recorded in a register of baptisms in respect of the baptism of a child who is the subject of a parental order. New Article 61E provides for the registration of a recognition order. Finally, new Article 61F deals with the disclosure of information in the register of births in the case of a child in respect of whom a parental order has been made.

Article 34 replaces the existing Article 72 of the Civil Status Law dealing with the signing of particulars to be entered in the registers of birth, stillbirth and death, partly as a consequence of the fact that the relevant registration functions have been transferred from the parishes to the Superintendent Registrar in the majority of cases, but also to improve readability.

Article 35 inserts new provisions on domicile as Part 5A of the Civil Status Law (new Articles 75A, 75B and 75C). New Article 75A abolishes a wife's domicile of dependence, which at present is determined as being that of her husband. That domicile will however continue, as a domicile of choice, until the wife establishes another. The Part also addresses the question of how the domicile of a child who is conceived as a result of relevant fertility treatment or artificial insemination is to be determined (new Article 75B). New Article 75C provides a similar rule for the determination of the domicile of a person who is the subject of a parental order.

Article 36 deletes Article 77A of the Civil Status Law, which made provision in the same terms as Article 75A inserted by this Law.

Article 37 amends Article 82 of the Civil Status Law, to extend the power to amend enactments by inserting 2 new paragraphs that will enable Regulations to amend the Civil Status Law itself, and any other enactment, if that appears to the States to be necessary or expedient in connection with any amendment made by this Law.

Part 4 contains *Articles 38 to 49*, which amend the Marriage and Civil Status (Jersey) Order 2018 ("the Civil Status Order").

Article 38 introduces the amendments.

Article 39 amends Article 28(b) of the Civil Status Order, which concerns the particulars to be contained in an application for a notice of intended marriage, to include the possibility that the parents of a party to the proposed marriage may include a female second parent.

Article 40 amends Article 31(e) of the Civil Status Order to make a corresponding change to the particulars to be recorded in the marriage schedule and for the same reason.

Article 41 makes a corresponding amendment to the particulars required to be entered in a marriage certificate by Article 33 of the Civil Status Order, while *Article 42* makes a similar change to the particulars to be recorded under Article 35 of the Civil Status Order in an application for a conversion of a civil partnership to a marriage.

Article 43 makes a corresponding change to the particulars to be recorded in a conversion schedule under Article 36 of the Civil Status Order. *Article 44* amends the text of Article 41(1)(d) of the Civil Status Order, which prescribes the classes of parent whose particulars are to be entered in relation to a party to a marriage, while *Article 45* makes a corresponding amendment to Article 43(2)(d) of the Civil Status Order, which relates to a return of particulars by the incumbent of an Anglican parish.

Article 46 amends Article 46(2) and (3) of the Civil Status Order relating to the particulars to be entered in the registers of births and stillbirths to reorder the entries to reflect the fact that in relation to a birth entry there will always be a mother but there may not now always be a father, to recognise that a parent of the child may have changed their surname, and to include the details of the parents' marriage or civil partnership (if any) in the case of a stillbirth.

Article 47 amends Article 51 of the Civil Status Order dealing with the content of a certificate of stillbirth, to provide for a female second parent.

Article 48 inserts a new Article 51B into the Civil Status Order dealing with the issue of a certificate of the registration of a parental order.

Article 49 inserts a new Schedule 1A (which is set out in *Schedule 2*), into the Civil Status Order. Schedule 1A specifies the particulars to be entered in the Parental Orders Register.

Part 5 contains Articles 50, 51 and 52, which are the Law's closing provisions.

Article 50 inserts new definitions of "child" and "parent" into the Interpretation (Jersey) Law 1954 to reflect the extended meaning of those terms as a result of the provisions of Schedule A1 to the Children Law, inserted by Schedule 1 to this draft Law.

Article 51 amends Schedule 1 to the Stamp Duties Law to provide for a fee to be payable in connection with an application for a parental order.

Article 52 provides for the citation and commencement of the Law by Act of the States.

Schedule 1 inserts a new Schedule A1 into the Children Law.

Paragraph 1 introduces Schedule A1 to the Children Law and sets out the circumstances in which a person is to be treated as a parent of a child who is born as the result of relevant fertility treatment or artificial insemination. Paragraph 2 sets out Circumstance A, in which a woman who receives fertility treatment is married to, or the civil partner of, a man who is not the contributor of the sperm. Her husband or male civil partner will be treated as the father of the resulting child unless it is shown that he did not consent, or the child is adopted or is the subject of a parental order.

Paragraph 3 sets out Circumstance B, in which a woman receives relevant fertility treatment, and no man is treated as the father under Circumstance A, no woman is treated as the child's second parent under Circumstance C, and the embryo is not created with the man's sperm. A man will not be treated as a parent of the child in this circumstance if the child is adopted or is the subject of a parental order.

Paragraph 4 makes it clear that if a man is treated as a child's father by virtue of Circumstance A or Circumstance B, no other man is treated as the child's father for any purpose.

Paragraph 5 sets out the agreed fatherhood conditions.

Paragraph 6 sets out Circumstance C. It applies if a woman ("B") is married to, or the civil partner of, another woman ("A") at the time when A receives fertility treatment or is artificially inseminated.

Paragraph 7 sets out Circumstance D, which is where a woman conceives as a result of relevant fertility treatment, no man is treated in law as the father of the child under Circumstance A, no woman is treated as the second parent under Circumstance C or paragraph 9 and the agreed parenthood conditions are met.

Paragraph 8 sets out the agreed female parenthood conditions.

Paragraph 9 deals with the case of a child born to a female same-sex couple before the commencement of the paragraph and whose birth is re-registered under Article 56C of the Civil Status Law.

Paragraph 10 provides that if a woman is treated as the second parent of the child by virtue of paragraph 6, 7 or 9 no man is to be treated in law as the father of the child.

Paragraph 11 deals with the case of a deceased man if either an embryo was created with his sperm after his death, or so created before his death but placed in a woman after his death. If he consented to be recognised as the child's father, his name can be entered in the register of births as the father of the child, provided the mother elects, within 21 days of the birth, for him to be treated as the child's father.

Paragraph 12 deals with the case of a child conceived by relevant fertility treatment in the case of a woman who was married to, or the civil partner of a man who died before the embryo was placed in her, and whose sperm was not used in the creation of the embryo. He can be registered as the child's father if he consented to the placing of the embryo in the woman and to being treated as the father for that purpose.

Paragraph 13 deals with the case of a child conceived by relevant fertility treatment in the case of a woman who was neither married nor a civil partner and a man consented, before his death to be treated as the child's father. Provided the consent was valid at the time of his death, the agreed fatherhood conditions are met, and the woman elects within 21 days of the birth for the man to be treated as the child's father, he may be registered as the father of the child in the register of births.

Paragraphs 14 and 15 make provision corresponding respectively to that in paragraphs 12 and 13 in the case of a deceased female spouse or civil partner, or a deceased woman who consented to the mother receiving relevant fertility treatment and to being registered as the second parent of the child.

Paragraph 16 provides that a woman is not to be regarded as the mother of a child merely because she has provided the eggs leading to the birth of a child.



Jersey

DRAFT CHILDREN AND CIVIL STATUS (AMENDMENTS) (JERSEY) LAW 202-

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Jersey

DRAFT CHILDREN AND CIVIL STATUS (AMENDMENTS) (JERSEY) LAW 202-

A LAW to amend the [Children \(Jersey\) Law 2002](#), the [Marriage and Civil Status \(Jersey\) Law 2001](#), the [Marriage and Civil Status \(Jersey\) Order 2018](#) and the [Interpretation \(Jersey\) Law 1954](#) to provide for the status of children conceived by artificial insemination, the rights and responsibilities of those who are parties to agreements leading to the birth of those children, and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

In this Law –

- “Children Law” means the [Children \(Jersey\) Law 2002](#);
- “Civil Status Law” means the [Marriage and Civil Status \(Jersey\) Law 2001](#);
- “Civil Status Order” means the [Marriage and Civil Status \(Jersey\) Order 2018](#);
- “Interpretation Law” means the [Interpretation \(Jersey\) Law 1954](#);
- “Stamp Duties Law” means the [Stamp Duties and Fees \(Jersey\) Law 1998](#).

PART 2

AMENDMENTS TO THE CHILDREN LAW

2 Children Law amended

This Part amends the Children Law.

3 Article 1 (interpretation) amended

(1) This Article amends Article 1.

(2) In paragraph (1) –

(a) in the opening words for “except where” there is substituted “unless”;

(b) immediately before the definition “appointed foster parent” there is inserted –
“ “agreed female parenthood conditions” is construed in accordance with paragraph 8 of Schedule A1;

“applicant”, apart from in Articles 9N and 9O, means a person who applies for a parental order;”;

(c) after the definition “Article 10 order” there is inserted –

“ “artificial insemination” means the fertilisation of a human egg by means other than intercourse;

“biological father” means –

(a) in relation to a child conceived by intercourse, the man who participated in the act of intercourse; and

(b) in relation to an embryo created by artificial insemination, the man whose sperm was used to create it;”;

(d) in the definition “care order” for “except where” there is substituted “unless”;

(e) after the definition “children’s home service” there is inserted –

“ “Circumstance A”, “Circumstance B”, “Circumstance C” and “Circumstance D” are construed in accordance with Schedule A1;

“Civil Status Law” means the [Marriage and Civil Status \(Jersey\) Law 2001](#);

“Civil Status Order” means the [Marriage and Civil Status \(Jersey\) Order 2018](#);”;

(f) after the definition “family proceedings” there is inserted –

“ “fertility treatment services” means –

(a) creating embryos *in utero* by artificial insemination;

(b) creating embryos *in vitro*;

(c) procuring, keeping, testing, processing or distributing embryos;

(d) procuring, testing, processing, distributing or using sperm;

(e) performing other practices designed to ensure that embryos are in a suitable condition to be placed in a woman; or

(f) placing an embryo in a woman;”;

(g) after the definition “Minister” there is inserted –

“ “mother” means the woman who gives birth to a child;”;

- (h) for the definition “parent” there is substituted –
“parent”, whether or not that person has parental responsibility for the child, includes –
- (a) the child’s mother;
 - (b) the child’s biological father;
 - (c) a man who is the child’s father under Schedule A1;
 - (d) a woman who is the child’s second parent under Schedule A1;
 - (e) a person named in a parental order as the child’s parent;
 - (f) a person named as the child’s parent in an order described in Article 9N(1) in respect of whom a recognition order has been made;”;
- (i) after the definition “parent” there is inserted –
“parental order” means an order made by the court under Article 9G or, in relation to children outside Jersey, by a court of a jurisdiction outside Jersey that has an effect corresponding to an order made under Article 9G;”;
- (j) for the definition “parental responsibility” there is substituted –
“parental responsibility” means all the rights, duties, powers, responsibilities and authority that the parent of a child has in relation to the child and the child’s property;”;
- (k) for the definition “parental responsibility agreement” there is substituted –
“parental responsibility agreement” means an agreement under Article 9C(1)(b), 9D(b) or 9E(a);”;
- (l) after the definition “prohibited steps order” there is inserted –
“recognition order” has the meaning given by Article 9N;”;
- (m) after the definition “relative” there is inserted –
“relevant fertility treatment services” means fertility treatment services –
- (a) carried on in Jersey by the Minister for Health and Social Services; or
 - (b) carried on in the United Kingdom in accordance with a licence granted under the Human Fertilisation and Embryology Act 2008 of the United Kingdom,
- and “relevant fertility treatment” is construed accordingly;”;
- (n) after the definition “school” there is inserted –
“second parent” is construed in accordance with paragraph 6, 7 or 9 of Schedule A1 (as the case may be);”;
- (o) for the definitions “supervision order” and “supervised child and supervisor” there is substituted –
“supervised child” means a child who is (or is to be) placed under the supervision of a supervisor in accordance with a supervision order;
“supervision order” means an order under Article 24(1)(b) and includes an interim supervision order under Article 30;
“supervisor” means, in relation to a supervised child, the person under whose supervision the child is to be placed in accordance with the supervision order;”;
- (p) immediately before the definition “upbringing” there is inserted –
“surrogacy arrangement” has the meaning given by Article 1B;

“surrogate mother” has the meaning given by Article 1B;”.

- (3) For paragraph (2) there is substituted –
- “(2) References in this Law –
- (a) to a child whose parents were married to each other at the time of the child’s birth include a relevant child; and
 - (b) to a child whose parents were not married to each other at the time of the child’s birth do not include a relevant child.
- (2A) For the purposes of paragraph (2), a “relevant child” is a child of any of the following descriptions –
- (a) a legitimated child as defined by the [Legitimacy \(Jersey\) Law 1973](#);
 - (b) a child who is the subject of an adoption order under Article 10 of the [Adoption \(Jersey\) Law 1961](#);
 - (c) a child who is otherwise treated as legitimate.”.
- (4) After paragraph (3) there is inserted –
- “(3A) For the purposes of this Law, a woman who has not conceived naturally becomes pregnant at the time of the particular instance of fertility treatment that results in the woman’s pregnancy.”.
- (5) After paragraph (8) there is inserted –
- “(9) The States may by Regulations amend the definition “parent” in paragraph (1).
- (10) Schedule A1 sets out circumstances (including Circumstance A, Circumstance B, Circumstance C and Circumstance D) in which a person is treated in law as the father, or second parent, of a child conceived as a result of fertility treatment or artificial insemination.”.

4 Article 1A (references to a child who is looked after by the Minister)

In Article 1A(c) for “where” there is substituted “if”.

5 Article 1B inserted

After Article 1A there is inserted –

“1B Definition of “surrogate mother”, “surrogacy arrangement” and related terms

- (1) This Article provides for the construction in this Law of references to –
- (a) a surrogate mother or a surrogacy arrangement; and
 - (b) payment in connection with a surrogacy arrangement.
- (2) “Surrogate mother” means a woman who is pregnant under an arrangement (“a surrogacy arrangement”) made –
- (a) before the woman became pregnant; and
 - (b) with a view to a child born of the pregnancy, under the arrangement, being handed over to, and parental responsibility being met (so far as practicable) by, another person.

- (3) In determining whether an arrangement is a surrogacy arrangement, regard may be had to the circumstances as a whole and, in particular, to any promise or understanding that a payment will, or may, be made to the woman, or for her benefit, in respect of the pregnancy as a result of the arrangement.
- (4) An arrangement may be a surrogacy arrangement even though it contains, or is subject to, conditions relating to the handing over of a child.
- (5) In this Article “payment” means payment in money or money’s worth.”.

6 Article 2 (welfare of the child) amended

In Article 2 after paragraph (2) there is inserted –

- “(2A) The making or revocation of a parental order or of a recognition order is a question with respect to the upbringing of a child.
- (2B) Paragraph (1) is to be read as if after “the child’s welfare” there is inserted “throughout the child’s lifetime” in a case involving –
 - (a) the making or revocation of a parental order; or
 - (b) the making or revocation of a recognition order.”.

7 Articles 3, 4 and 5 deleted

The following Articles, which are amended and relocated in Part 1A, are deleted –

- (a) Article 3 (parental responsibility for children);
- (b) Article 4 (person without parental responsibility); and
- (c) Article 5 (acquisition of parental responsibility by father).

8 Part 1A (parental responsibility and parental orders) inserted

After Article 9 there is inserted –

“PART 1A

PARENTAL RESPONSIBILITY AND PARENTAL ORDERS

9A Parental responsibility for children

- (1) If a child’s mother and father were married to, or civil partners of, each other at the time of the child’s birth, they each have parental responsibility for the child.
- (2) If a child’s mother and father were not married to, nor civil partners of, each other at the time of the child’s birth –
 - (a) the mother has parental responsibility for the child; and
 - (b) the father does not have parental responsibility for the child, unless he acquires it in accordance with Article 9C.
- (3) If a child’s mother and second parent were married to, or civil partners of, each other at the time of the child’s birth, they each have parental responsibility for the child.

- (4) If a child's mother and second parent were not married to, nor civil partners of, each other at the time of the child's birth –
 - (a) the mother has parental responsibility for the child; and
 - (b) the second parent does not have parental responsibility for the child, unless she acquires it in accordance with Article 9D.
- (5) The following are abolished –
 - (a) the rule of law that if a child is legitimate, the child's father has sole custody of the child; and
 - (b) the rule of law that if a child is illegitimate and the child's mother marries, her husband (whether or not he is the father) has sole custody of the child.
- (6) More than one person may have parental responsibility for the same child at the same time.
- (7) A person who has parental responsibility for a child at any time does not cease to have that responsibility solely because another person subsequently acquires parental responsibility for the child.
- (8) If more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility.
- (9) Nothing in this Part is to be taken to affect the operation of an enactment that requires the consent of more than one person in a matter affecting the child.
- (10) The fact that a person has parental responsibility for a child does not entitle the person to act in a way that would be incompatible with an order made with respect to the child under this Law.
- (11) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another, but may arrange for some or all of it to be met by one or more people acting on the person's behalf.
- (12) Paragraph (11) does not prevent the making of an adoption order, a parental order or a recognition order.
- (13) The person with whom an arrangement under paragraph (11) is made may be a person who already has parental responsibility for the child concerned.
- (14) The making of an arrangement under paragraph (11) does not affect any liability of the person making it that may arise from a failure to meet any part of the person's parental responsibility for the child concerned.

9B Person without parental responsibility

- (1) The fact that a person has, or does not have, parental responsibility for a child does not affect –
 - (a) an obligation that the person may have in relation to the child (such as a duty to maintain the child); or
 - (b) rights that, in the event of the child's death, the person (or another person) may have in relation to the child's property.
- (2) A person who does not have parental responsibility for a child, but has care of that child, may do whatever is reasonable in all the circumstances of the case for the purposes of safeguarding or promoting the child's welfare.

9C Acquisition of parental responsibility by father

- (1) If a child's father and mother are neither married to, nor civil partners of, each other at the time of the child's birth –
 - (a) subject to paragraph (2), the father has parental responsibility for the child if he becomes registered as the child's father under Part 5 of the Civil Status Law;
 - (b) the mother and father may make an agreement providing for the father to have parental responsibility for the child; or
 - (c) the court may, on the father's application, order that he is to have parental responsibility for the child.
- (2) But a father does not acquire parental responsibility for a child under paragraph (1)(a) if he was registered as the father under the Civil Status Law before the commencement of the Children and Adoption (Amendment) (Jersey) Law 2016.
- (3) If a child is treated in law as legitimate the court may order that a man is to have parental responsibility if –
 - (a) he makes an application stating that he is the child's biological father; and
 - (b) the court is satisfied that the man is the child's biological father.

9D Acquisition of parental responsibility by second parent

If a child's mother and second parent are neither married to, nor civil partners of, each other at the time of the child's birth –

- (a) the second parent has parental responsibility for the child if she becomes registered as the child's second parent under Part 5 of the Civil Status Law;
- (b) the mother and the second parent may make an agreement providing for the second parent to have parental responsibility for the child; or
- (c) the court may, on the second parent's application, order that she is to have parental responsibility for the child.

9E Acquisition of parental responsibility by step-parent

If a child's parent who has parental responsibility for the child ("parent A") is married to, or a civil partner of, a person who is the child's step-parent –

- (a) parent A or, if any other person has parental responsibility for the child, all of those people, may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or
- (b) the court may, on the application of the step-parent, order that the step-parent is to have parental responsibility for the child.

9F Parental responsibility agreements and orders: general

- (1) A parental responsibility agreement has effect for the purposes of this Law only if –
 - (a) it is made in the prescribed form; and

- (b) it is recorded in the prescribed manner (if any).
- (2) Paragraphs (3) and (4) are subject to Article 13(4).
- (3) A person who has parental responsibility for a child ceases to have that responsibility when the child reaches the age of 18, subject to paragraph (4).
- (4) A person who has acquired parental responsibility under Article 9C, 9D or 9E ceases to have parental responsibility if the court –
 - (a) revokes the parental responsibility order; or
 - (b) orders that the parental responsibility agreement giving that person parental responsibility ceases to have effect.
- (5) The court may make an order under paragraph (4) on the application of –
 - (a) a person who has parental responsibility for the child; or
 - (b) the child with the leave of the court.
- (6) The court may grant leave under paragraph (5)(b) only if satisfied that the child has sufficient understanding to make the application.

9G Parental orders

- (1) A parental order is an order made by the court conferring parental responsibility for a child on the applicant.
- (2) If a parental order is made, the child who is the subject of the order is to be treated in law, from the time that the order is made, as the child of the applicant and not of any other person.
- (3) But paragraph (2) does not affect entitlement to property that is dependent upon the biological relationship between the child who is the subject of the order and an applicant for the order, or anything else dependent on that relationship.
- (4) The making of a parental order extinguishes –
 - (a) the parental responsibility that anyone has, immediately before the making of the order, in relation to the child who is the subject of the order;
 - (b) every order under this Law, unless the court otherwise orders; and
 - (c) every duty arising under an agreement or an order of the court to make payments in respect of the child's maintenance or upbringing for any period after the making of the parental order.
- (5) Paragraph (4)(c) does not apply to a duty arising under an agreement that –
 - (a) constitutes a trust; or
 - (b) expressly provides that the duty is not to be extinguished by the making of a parental order.
- (6) If 2 people are named in a parental order as the parents of the child, the child is to be treated in law as the issue of their relationship.
- (7) A parental order does not affect parental responsibility so far as it relates to a period before the making of the order.

9H Amendment of parental order

- (1) The court may amend a parental order by the correction of an error in the particulars contained in the order, on application by a person who applied for the order, or who is the subject of the order.
- (2) The court may also amend a parental order, by substituting or adding a name, if paragraph (3) applies.
- (3) On the application of a person who is named in a parental order, the court may amend that parental order if the court is satisfied that, within one year beginning with the date of the birth of the person who is the subject of the order (“S”) –
 - (a) a new name has been given to S whether in baptism or otherwise; or
 - (b) a new name has been given to S instead of, or in addition to, a name entered in the Parental Orders Register under Schedule 1A to the Civil Status Order.
- (4) Paragraph (5) applies if –
 - (a) a parental order includes a direction for the marking of an entry in the register of births as required under Article 61B(5) of the Civil Status Law; and
 - (b) a person who was a party to the proceedings in which the parental order was made, or a person who has the leave of the court, applies for the revocation of the direction.
- (5) The court may revoke the direction referred to in paragraph (4) if the court is satisfied that the direction was wrongly included in the parental order.
- (6) If a parental order is amended under paragraph (3) or a direction is revoked under paragraph (5), the Judicial Greffier must, as soon as is reasonably practicable, cause the amendment or revocation to be communicated to the Superintendent Registrar, who must –
 - (a) cause the entry in the Parental Orders Register to be amended; or
 - (b) cause the marking of the entry in the register of births to be cancelled.
- (7) In this Article “Parental Orders Register”, “register of births” and “Superintendent Registrar” have the meaning given to those terms in the Civil Status Law.

9I Application for parental order

- (1) An application for a parental order must be made in the prescribed manner.
- (2) A parental order may be made only if –
 - (a) the child was borne by a woman who is not one of the applicants for the parental order as a result of the placing in her of an embryo or sperm and eggs, or of artificial insemination (whether in a course of relevant fertility treatment or otherwise);
 - (b) the child’s birth is registered in Jersey;
 - (c) the applicant’s gametes or, in the case of a joint application, the gametes of at least one of the applicants, were used in the child’s conception;
 - (d) the application for the order is made not later than 6 months after the child’s birth;

- (e) the applicant is at least 18 years old, or in the case of a joint application, both applicants are at least 18 years old, when the parental order is made;
 - (f) at the time of the application and of the making of the order –
 - (i) the child's home is the same as the applicant's, and
 - (ii) the applicant, or, in the case of a joint application at least one of the applicants, is domiciled in Jersey; and
 - (g) no other parental order has been made in relation to the child, unless that order has been quashed or an appeal against the order has been allowed.
- (3) In the case of a joint application, at the time the application is made, the applicants must be –
- (a) spouses or civil partners of each other; or
 - (b) in an enduring family relationship with each other.
- (4) The reference in paragraph (3)(b) to an enduring family relationship does not include one in which one of the people in it is within a prohibited degree of relationship in relation to the other for the purposes of the Civil Status Law.
- (5) Before making a parental order, the court must be satisfied that each of the following have freely and unconditionally consented to the making of the order, with full understanding of what is involved –
- (a) the surrogate mother; and
 - (b) every other parent of the child who is not one of the applicants (including a man who is the father under Circumstance A or Circumstance B, and a woman who is the second parent under Circumstance C or Circumstance D).
- (6) For the purposes of paragraph (5) –
- (a) the consent of the surrogate mother is ineffective if given in the first 6 weeks after the birth; and
 - (b) the requirement for a person's consent does not apply if that person is incapable of giving consent or cannot be found.
- (7) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by the surrogate mother for, or in consideration of –
- (a) the making of the order;
 - (b) consent required by paragraph (5);
 - (c) handing the child over to the applicant; or
 - (d) making arrangements with a view to obtaining the order.
- (8) Paragraph (7) does not apply if the payment of money or the conferment of the benefit is authorised by the court.
- (9) This paragraph applies if, after a surrogacy arrangement is made, one of the parties to the surrogacy arrangement who is, or is intended to be, an applicant for a parental order in respect of the child dies before the parental order is made.
- (10) If paragraph (9) applies this Article is to be read –
- (a) with the following modifications –

- (i) for paragraph (2)(e) there is substituted –
 - “(e) the surviving applicant is at least 18 years old when the order is made, and the applicant who has died would, but for their death, have been at least 18 when the order is made;”;
- (ii) for paragraph (3) there is substituted –
 - “(3) The applicants must have been spouses or civil partners of each other, or in an enduring family relationship with each other, immediately before the death of one of the parties to the surrogacy arrangement.”; and
- (b) as if references in this Article to the applicants are taken to include –
 - (i) a person whom the court is satisfied would have been one of the applicants had they not died before the making of the application, and
 - (ii) an applicant who died before the making of the order.

9J When court may not make a parental order

The court must not hear an application for a parental order if a previous application has been made by an applicant in respect of the same child and refused by the court, unless –

- (a) when refusing the previous application, the court directed that this Article was not to apply; or
- (b) the court is satisfied that, by reason of a change in the applicant’s circumstances, or any other reason that appears to the court to be sufficient, it is proper to hear the application.

9K Restrictions on removal

- (1) A person must not remove a child from the care of an applicant for a parental order, other than in accordance with Article 9L, if –
 - (a) the child’s home is the same as the applicant’s; and
 - (b) the application has not been determined.
- (2) A person who contravenes this Article commits an offence and is liable to imprisonment for a term of 3 months and to a fine of level 3 on the standard scale.

9L Exception to restrictions on removal

If Article 9K(1) applies, a child may be removed from the care of an applicant for a parental order by –

- (a) a person who has obtained the court’s leave; or
- (b) a person who acts under a power conferred by an enactment.

9M Parental orders: intestacies etc.

- (1) Paragraph (2) applies if, at any time after the making of a parental order, one of the following dies intestate in respect of all or any part of that person’s immovable or movable property –

- (a) the applicant;
 - (b) the person who is the subject of the parental order (“S”); or
 - (c) any other person.
- (2) The property referred to in paragraph (1) devolves in all respects as if S were the child of the applicant and not the child of another person.
- (3) For the purposes of the law relating to the indefeasible right of a person to succeed to the movable property of the person’s ascendants, S is taken to be the child of the applicant and not the child of another person.
- (4) In a disposition of immovable or movable property made, whether by instrument *inter vivos* or by will (including codicil), after the date of a parental order, unless a contrary intention appears, a reference (express or implied) in the instrument or will –
 - (a) to the child of the applicant for the order, is to be construed as, or as including, a reference to S;
 - (b) to the child of a surrogate mother is to be construed as not being, or as not including, a reference to S; and
 - (c) to a person related to S in any degree is to be construed as a reference to the person who would be related to S in that degree if S were the natural child of the applicant and not the child of another person.
- (5) For the purposes of paragraph (4), a disposition made by will or codicil is to be treated as made on the date of the death of the testator.
- (6) If S is born before a natural child, S ranks as principal heir in preference to the natural child.
- (7) In the application of the law regarding the devolution of acquired immovable property (*acquêts*) and movable property (*meubles*), and for the purposes of the construction of a disposition of the property referred to in paragraph (4), S is treated as related to a child or adopted child of the applicant –
 - (a) as brother or sister of the whole blood if the parental order was made in favour of 2 spouses or civil partners jointly, or in favour of 2 persons living in an enduring family relationship jointly, and that other person is the child or adopted child of both of them;
 - (b) in any other case, as brother or sister of the half-blood.
- (8) Despite anything in this Article, an executor of the will or an administrator of the estate of a deceased person –
 - (a) may distribute movable property to or among the people entitled to that property without having established whether a parental order has been made by virtue of which any person is, or may be, entitled to an interest in that property; and
 - (b) is not liable to a person of whose claim the executor of the will or the administrator of the estate has not had notice at the time of the distribution.
- (9) Nothing in paragraph (8) affects the right of a person claiming to be entitled to an interest as mentioned in sub-paragraph (a) of that paragraph to follow such property, or any property representing it, into the hands of a person who may have acquired it by devolution or descent.
- (10) In this Article –

“movable property” does not include movable property that is subject to an entailed interest under a disposition not falling within paragraph (4);
“parental order” includes a recognition order.

9N Recognition of pre-existing parental orders made in England and Wales

- (1) This Article applies if –
 - (a) a parental order was made in England and Wales, before the commencement of this Article, under section 30 of the Human Fertilisation and Embryology Act 1990 of the United Kingdom (when that section was in force) or section 54 or 54A of the Human Fertilisation and Embryology Act 2008 of the United Kingdom (the “relevant order”); and
 - (b) the relevant order is in force when this Article is commenced and is not then the subject of an appeal to a court having an appellate jurisdiction in respect of proceedings relating to children in England and Wales.
- (2) A person (the “applicant”) named in the relevant order may apply to the court for an order (a “recognition order”) that the relevant order have the same effect in Jersey as a parental order made under Article 9G on the same day as the relevant order, but subject to paragraphs (3) to (7).
- (3) If an application is made under paragraph (2), the court must make a recognition order unless –
 - (a) the court would have refused to make a parental order under Article 9G if the applicant had applied for such an order at the time the relevant order was made; or
 - (b) it would be manifestly contrary to public policy to make a recognition order.
- (4) The child who is the subject of the recognition order is to be treated in law as having become the issue of the applicant on the date on which the relevant order was made.
- (5) Before making a recognition order, the court may require an applicant to provide such evidence as it considers necessary to determine the application.
- (6) As soon as reasonably practicable after a recognition order is made, the Judicial Greffier must cause the order to be sent to the Superintendent Registrar.
- (7) For the purposes of this Article, Article 9G must be treated as having been in force on the day the relevant order was made.

9O Disclosure of records of children subject to parental orders

- (1) This Article applies to a person who has attained the age of 18 and is the subject of –
 - (a) a parental order; or
 - (b) a recognition order.
- (2) The person mentioned in paragraph (1) (the “applicant”) may apply to the court in the prescribed manner, for the supply to the applicant of a copy of any

prescribed document relating to the making of the parental order or the recognition order.

- (3) The court must supply any prescribed document to the applicant but, before doing so, the Judicial Greffier must inform the applicant of the availability of any counselling services approved by the Minister.”.

9 Article 13 (residence orders and parental responsibility) amended

- (1) This Article amends Article 13.
- (2) For paragraph (1) there is substituted –
 - “(1) If the court makes a residence order in favour of the father or second parent of a child, it must, if the father or second parent would not otherwise have parental responsibility for the child, make an order –
 - (a) under Article 9C giving the father parental responsibility; or
 - (b) under Article 9D giving the second parent parental responsibility.”.
- (3) In paragraphs (2), (3) and (4) for “Where” there is substituted “If”.
- (4) In paragraph (4) for “under Article 5 in respect of the father of the child” there is substituted “under Article 9C in respect of the father of the child or under Article 9D in respect of the second parent of the child”.

10 Article 14 (change of child’s name or removal from jurisdiction) amended

In Article 14(1) for “Where” there is substituted “If”.

11 Article 58 (meaning of privately fostered child)

In Article 58(2) –

- (a) in sub-paragraph (j) “he or she” is deleted;
- (b) after sub-paragraph (j) there is inserted –
 - “(k) is in the care of a person who intends to apply for a parental order in respect of the child.”.

12 Article 59 (notification in respect of privately fostered children) amended

In Article 59(4) and (6) for “Where” there is substituted “If”.

13 Article 66 (effect and duration of orders) amended

- (1) This Article amends Article 66.
- (2) In paragraph (4) –
 - (a) in sub-paragraph (a) “5(1) or (2) or” is deleted;
 - (b) sub-paragraph (b) is deleted.
- (3) After paragraph (4) there is inserted –
 - “(4A) An order under Part 1A continues in force, unless it is earlier revoked by an order of the court –

- (a) throughout the lifetime of the child who is the subject of the order, so far as it determines who the child's parents are; and
 - (b) for all other purposes, until the child reaches the age of 18.”.
- (4) For paragraphs (5) and (6) there is substituted –
- “(5) An Article 10 order, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18, unless it is to have effect beyond that age by virtue of Article 11(6)(a).
 - (6) An order under Schedule 1 has effect as specified in that Schedule.”.

14 Article 82 (transitional provisions and savings) amended

In Article 82, paragraph (3) is deleted.

15 Article 82A inserted

After Article 82 there is inserted –

“82A Power to amend enactments

- (1) The States may by Regulations amend this Law or any other enactment to make further provision that appears to the States to be necessary or expedient in connection with –
 - (a) a provision of this Law; or
 - (b) an amendment made by the Children and Civil Status (Amendments) (Jersey) Law 202-.
- (2) In paragraph (1) “further provision” includes any consequential, incidental, supplemental or transitional provision.”.

16 Schedule A1 inserted

After Article 83 there is inserted Schedule A1 (circumstances in which a person is treated in law as a parent if child conceived by fertility treatment or artificial insemination), and that Schedule is set out in Schedule 1 to this Law.

17 Schedule 1 (financial provision for children) amended

- (1) This Article amends Schedule 1.
- (2) In paragraph 1(3) for “Where” there is substituted “If”.
- (3) In paragraph 2(3) for “Where” there is substituted “If”.
- (4) In paragraph 3(4) for “Where” there is substituted “If”.
- (5) In paragraph 4 –
 - (a) in the opening words of sub-paragraph (2) for “mother or father”, there is substituted “mother, father or second parent”;
 - (b) for sub-paragraph (3) there is substituted –

- “(3) An order under paragraph 1 against a person who is not the child’s father or second parent must record the fact that the person is not the child’s father or second parent.”;
- (c) in sub-paragraph (4)(b) for “mother and father” there is substituted “mother, father and second parent”.
- (6) In paragraph 5(3) for “Where” there is substituted “If”.
- (7) In paragraph 6(3) and (5) for “Where” there is substituted “If”.
- (8) In paragraph 7 –
 - (a) in sub-paragraph (1) for “where” there is substituted “if”;
 - (b) in sub-paragraph (2) for “Where” there is substituted “If”.
- (9) In paragraph 8(1) for “Where” there is substituted “If”.
- (10) In paragraph 9 –
 - (a) in sub-paragraph (1) for “where” there is substituted “if”;
 - (b) in sub-paragraphs (3) and (4) for “Where” there is substituted “If”.
- (11) In paragraphs 11(1) and 12 for “Where” there is substituted “If”.

18 Schedule 4 (disqualification for caring for children) amended

- (1) This Article amends Schedule 4.
- (2) In paragraph 1 “Article 54(2) and” is deleted.
- (3) In paragraph 2(1), after “an offence under” there is inserted “Article 9K(2),”.

19 Schedule 5 (transitional provisions and savings) amended

In Schedule 5, paragraphs 1 to 8 are deleted.

PART 3

AMENDMENTS TO THE CIVIL STATUS LAW

20 Civil Status Law amended

This Part amends the Civil Status Law.

21 Heading to Part 5 (registration of births, deaths and marriages) amended

For the heading to Part 5 there is substituted –

“REGISTRATION OF BIRTHS, DEATHS, MARRIAGES AND PARENTAL ORDERS”.

22 Article 49 (interpretation of Part 5) amended

- (1) This Article amends Article 49.
- (2) For paragraph (1) there is substituted –
 - “(1) In this Part –

“Adopted Children Register” means the register maintained under Article 24 of the Adoption Law;

“Adoption Law” means the [Adoption \(Jersey\) Law 1961](#);

“agreed fatherhood conditions” means the conditions set out in paragraph 5 of Schedule A1 to the Children Law;

“agreed female parenthood conditions” means the conditions set out in paragraph 8 of Schedule A1 to the Children Law;

“Children Law” means the [Children \(Jersey\) Law 2002](#);

“Circumstance A”, “Circumstance B”, “Circumstance C” and “Circumstance D” are construed in accordance with Schedule A1 to the Children Law, and a reference to “Circumstances” is construed accordingly;

“informant” means the person giving the particulars of a birth, stillbirth or death for the purposes of registration;

“parental order” has the meaning given in the Children Law;

“parental responsibility agreement” has the meaning given in the Children Law;

“relevant fertility treatment” has the meaning given in the Children Law;

“second parent” has the meaning given in the Children Law;

“stillbirth” means the birth of a child after the 24th week of pregnancy (calculated from the mother’s last menstrual period) that does not, at any time after being expelled from its mother, breathe or show any other sign of life;

“stillborn child” is construed in accordance with the definition “stillbirth”.

(3) In paragraph (2) for “death or marriage” there is substituted “death, marriage or parental order”.

(4) For paragraph (3) there is substituted –

“(3) In this Part, references to a register of births, stillbirths, parental orders, marriages or deaths are references, in relation to the registration of a birth, stillbirth, parental order, marriage or death (as the case may be), to the register kept for the purpose of that registration by the relevant registrar.

(3A) In this Part, references –

(a) to a child whose parents were married to each other at the time of the child’s birth include a child described in paragraph (3B); and

(b) to a child whose parents were not married to each other at the time of the child’s birth do not include a child described in paragraph (3B).

(3B) For the purposes of paragraph (3A) a child means –

(a) a legitimated child as defined by the [Legitimacy \(Jersey\) Law 1973](#);

(b) a child who is the subject of an adoption order under Article 10 of the Adoption Law; and

(c) a child who is otherwise treated as legitimate.”.

23 Article 51 (duty to inform relevant registrar of birth within 21 days) amended

In Article 51(1) –

(a) for sub-paragraph (a) there is substituted –

- “(a) the mother, father or second parent;”;
- (b) in sub-paragraph (c) for “the father and the mother” there is substituted “the people mentioned in sub-paragraph (a)”.

24 Article 53 (power of Superintendent Registrar to require information about birth) amended

In Article 53(1) for “father or mother” there is substituted “mother, father or second parent”.

25 Article 55 substituted

For Article 55 there is substituted –

“55 Registration of father if parents neither married nor civil partners

- (1) This Article applies if the mother and the father of a child were neither married to, nor civil partners of, each other at the time of the child’s birth.
- (2) A person who is the child’s father is not required under this Part to give particulars of the birth of the child and the relevant registrar must not enter the name of that person in the register of births as being the child’s the father except –
 - (a) at the joint request of the mother and the person stating himself to be the child’s father (“F”);
 - (b) at the request of the mother, on production of –
 - (i) a declaration by the mother that that person is the child’s father, and
 - (ii) a declaration by that person that he is the child’s father;
 - (c) at the request of F on production of –
 - (i) a declaration by him that he is the child’s father, and
 - (ii) a declaration by the mother that he is the child’s father;
 - (d) at the request of the mother or F on production of –
 - (i) a copy of a parental responsibility agreement made between them in relation to the child, and
 - (ii) a declaration by the person making the request that the agreement was made in compliance with Article 9F of the Children Law and has not ceased to have effect by an order of the Royal Court;
 - (e) at the request of the mother or F on production of –
 - (i) a certified copy of an order under Article 9C of the Children Law giving F parental responsibility for the child, and
 - (ii) a declaration by the person making the request that the order has not ceased to have effect by an order of the Royal Court; or
 - (f) at the request of the mother or F on production of –
 - (i) a certified copy of an order under paragraph 1 of Schedule 1 to the Children Law (and which is not an order under

- paragraph 4(3) of that Schedule) requiring F to make financial provision for the child, and
- (ii) a declaration by the person making the request that the order has not been discharged.
- (3) If F makes a request to the relevant registrar under paragraph (2) the giving by F of particulars of the birth of the child and the signing of the register of births under Article 72 acts as a discharge of the duties imposed under Article 51 or 52.
- (4) If, in accordance with this Article, the relevant registrar enters the name of a person in the register of births as the child's father, the relevant registrar must register the child as the illegitimate child of the father and the mother.”.

26 Articles 55A to 55C inserted

After Article 55 there is inserted –

“55A Registration of father if parents married or civil partners

- (1) This Article applies if the mother and the father of a child were married to, or civil partners of, each other at the time of the child's birth.
- (2) The relevant registrar must not enter the name of a person in the register of births as the child's father except –
- (a) at the joint request of the mother and her husband or civil partner;
- (b) at the request of the mother, on production of –
- (i) a declaration by her that her husband or civil partner is the child's father, and
- (ii) a declaration by that person that he is the child's father;
- (c) at the request of the mother's husband or civil partner on production of –
- (i) a declaration by him that he is the child's father, and
- (ii) a declaration by the mother that that person is the child's father; or
- (d) at the request of a person on production of a declaration by him that he is –
- (i) the child's father, and
- (ii) married to, or the civil partner of, the child's mother.
- (3) If a person makes a request to the relevant registrar under paragraph (2), the giving by that person of particulars of the birth of the child and the signing of the register of births under Article 72 acts as a discharge of the duties imposed under Article 51 or 52.
- (4) If in accordance with this Article, the relevant registrar enters the name of a person in the register of births as the child's father, the relevant registrar must, if the father and mother are married to each other, register the child as the legitimate child of the father and mother.

55B Registration of second parent if parents neither married nor civil partners

- (1) This Article applies if the mother and the second parent of a child were neither married to, nor civil partners of, each other at the time of the child's birth.
- (2) A woman who is the second parent of a child is not required under this Part to give particulars of the birth of the child and the relevant registrar must not enter that woman's name in the register of births as being the second parent of the child except –
 - (a) at the joint request of the mother and the woman stating herself to be the second parent of the child (“W”);
 - (b) at the request of the mother, on production of –
 - (i) a declaration by the mother that that woman is the second parent of the child, and
 - (ii) a declaration by that woman that she is the second parent of the child;
 - (c) at the request of W on production of –
 - (i) a declaration by W that she is the second parent of the child, and
 - (ii) a declaration by the mother that W is the second parent of the child;
 - (d) at the request of the mother or W on production of –
 - (i) a copy of a parental responsibility agreement between them in relation to the child, and
 - (ii) a declaration by the person making the request that the agreement was made in compliance with Article 9F of the Children Law and has not ceased to have effect by an order of the Royal Court;
 - (e) at the request of the mother or W on production of –
 - (i) a certified copy of an order under Article 9D of the Children Law giving W parental responsibility for the child, and
 - (ii) a declaration, by the person making the request, that the order has not ceased to have effect by order of the Royal Court; or
 - (f) at the request of the mother or W on production of –
 - (i) a certified copy of an order under paragraph 1 of Schedule 1 to the Children Law (and which is not an order under paragraph 4(3) of that Schedule) requiring W to make financial provision for the child, and
 - (ii) a declaration, by the person making the request, that the order has not been discharged by an order of the Royal Court.
- (3) If W makes a request to the relevant registrar under paragraph (2), the giving by W of particulars of the birth of the child and the signing the register of births in accordance with Article 72 acts as a discharge of the duties imposed under Article 51 or 52.
- (4) If, in accordance with this Article, the relevant registrar enters the name of a woman in the register of births as the second parent of the child, the relevant registrar must register the child as the illegitimate child of that woman and the mother.

55C Registration of second parent if parents married or civil partners

- (1) This Article applies if the mother and the second parent of a child were married to, or civil partners of, each other at the time of the child's birth.
- (2) The relevant registrar must not enter a woman's name in the register of births as the second parent of the child except –
 - (a) at the joint request of the mother and her wife or civil partner;
 - (b) at the request of the mother, on production of –
 - (i) a declaration by the mother that her wife or civil partner is the second parent of the child, and
 - (ii) a declaration by the mother's wife or civil partner that she is the second parent of the child;
 - (c) at the request of the mother's wife or civil partner, on production of –
 - (i) a declaration by the mother's wife or civil partner that she is the second parent of the child, and
 - (ii) a declaration by the mother that her wife or civil partner is the second parent of the child; or
 - (d) at the request of the second parent of the child on production of a declaration by her that she is –
 - (i) the second parent of the child, and
 - (ii) married to, or the civil partner of, the mother.
- (3) If a woman makes a request to the relevant registrar under paragraph (2), the giving by her of particulars of the birth of the child and the signing of the register of births in accordance with Article 72 acts as a discharge of the duties imposed under Article 51 or 52.
- (4) If, in accordance with this Article, the relevant registrar enters the name of a woman in the register of births as the second parent of the child, the relevant registrar must register the child as the illegitimate child of that woman and the mother.”.

27 Article 56 (re-registration where parents not married) substituted

For Article 56 there is substituted –

“56 Re-registration of birth of child if parents neither married nor civil partners

- (1) This Article applies if the child's mother and the child's father or second parent were neither married to, nor civil partners of, each other at the time of the child's birth, and no person has been registered as the father or second parent of the child.
- (2) The relevant registrar must re-register the birth to register the name of a person as the father or second parent –
 - (a) at the joint request of the mother and the father or second parent;
 - (b) at the request of the mother on production of –
 - (i) a declaration by the mother that that person is the father or second parent of the child, and

- (ii) a declaration by that person that that person is the father or second parent of the child;
 - (c) at the request of the father or second parent on production of –
 - (i) a declaration by that person that that person is the father or second parent of the child, and
 - (ii) a declaration by the mother that that person is the father or second parent of the child;
 - (d) at the request of the mother, father or second parent on production of –
 - (i) a copy of a parental responsibility agreement made between them in relation to the child, and
 - (ii) a declaration, by the person making the request, that the agreement was made in compliance with Article 9F of the Children Law and has not ceased to have effect by an order of the Royal Court;
 - (e) at the request of the mother, father or second parent on production of –
 - (i) a certified copy of an order under Article 9C or 9D of the Children Law giving the father or second parent parental responsibility for the child, and
 - (ii) a declaration, by the person making the request, that the order has not ceased to have effect by an order of the Royal Court; or
 - (f) at the request of the mother, father or second parent on production of –
 - (i) a certified copy of an order under paragraph 1 of Schedule 1 to the Children Law (and which is not an order under paragraph 4(3) of that Schedule) requiring the father or second parent to make financial provision for the child, and
 - (ii) a declaration, by the person making the request, that the order has not been discharged by an order of the Royal Court.
- (3) A birth may be re-registered in accordance with this Article only by, or with the authority of, the Superintendent Registrar and on payment of the prescribed fee.
 - (4) On the re-registration of a birth to record the name of a person as the father or second parent, in addition to the requirements of Article 72, the register of births must be signed by the relevant registrar.
 - (5) If the relevant registration functions are retained for the parish in which the birth occurred and the re-registration takes place more than 3 months after the birth, the register must be countersigned by the Superintendent Registrar.
 - (6) If the relevant registrar re-registers the birth of a child under this Article, the relevant registrar must register the child as the illegitimate child of the parents.”.

28 Articles 56A to 56C inserted

After Article 56 there is inserted –

“56A Re-registration of birth of child if father married to, or civil partner of, mother

- (1) This Article applies if the birth has been registered of a child whose father and mother were married to, or civil partners of, each other, at the time of the child’s birth, but no person has been registered as the child’s father.
- (2) The relevant registrar must re-register the birth to register the name of the mother’s husband or civil partner as the child’s father –
 - (a) at the joint request of the mother and her husband or civil partner;
 - (b) at the request of the mother on production of –
 - (i) a declaration by her that her husband or civil partner is the child’s father, and
 - (ii) a declaration by her husband or civil partner that he is the child’s father;
 - (c) at the request of the mother’s husband or civil partner on production of –
 - (i) a declaration by him that he is the child’s father, and
 - (ii) a declaration by the mother that he is the child’s father; or
 - (d) at the request of the father on production of a declaration by him that he is –
 - (i) the child’s father, and
 - (ii) married to, or the civil partner of, the mother.
- (3) A birth may be re-registered in accordance with this Article only by, or with the authority of, the Superintendent Registrar and on payment of the prescribed fee.
- (4) On the re-registration of a birth to register the name of the father, in addition to the requirements of Article 72, the register must be signed by the relevant registrar.
- (5) If the relevant registration functions are retained for the parish in which the birth occurred, and the re-registration takes place more than 3 months after the birth, the Superintendent Registrar must countersign the register.
- (6) If the relevant registrar re-registers the birth, the relevant registrar must register the child –
 - (a) as the legitimate child of the father and mother if they are married; and
 - (b) as the illegitimate child of the father and mother if they are civil partners of each other.

56B Re-registration of birth of child if mother married to, or civil partner of, second parent

- (1) This Article applies if the birth has been registered of a child whose mother was married to, or the civil partner of, another woman at the time of the child’s birth, but no person has been registered as the child’s father or second parent.
- (2) The relevant registrar must re-register the birth to register the name of the mother’s wife or civil partner as the second parent of the child –
 - (a) at the joint request of the mother and her wife or civil partner;

- (b) at the request of the mother on production of –
 - (i) a declaration by her that her wife or civil partner is the second parent of the child, and
 - (ii) a declaration by her wife or civil partner that she is the second parent of the child;
 - (c) at the request of the mother's wife or civil partner on production of –
 - (i) a declaration by her that she is the second parent of the child, and
 - (ii) a declaration by the mother of the child that her wife or civil partner is the second parent of the child; or
 - (d) at the request of the second parent on production of a declaration by her that she is –
 - (i) the second parent of the child, and
 - (ii) married to, or the civil partner of, the mother.
- (3) A birth may be re-registered under this Article only by, or with the authority of, the Superintendent Registrar and on payment of the prescribed fee.
- (4) On the re-registration of a birth to register the name of the second parent, in addition to the requirements of Article 72, the register must be signed by the relevant registrar.
- (5) If the relevant registration functions are retained for the parish in which the birth occurred, and the re-registration takes place more than 3 months after the birth, the register must be countersigned by the Superintendent Registrar.
- (6) If the relevant registrar re-registers the birth, the relevant registrar must register the child as the illegitimate child of the mother and the woman registered as the second parent.

56C Re-registration of birth of child of female same-sex couple before commencement

- (1) This Article applies if, before the commencement of this Article, a woman gives birth in Jersey to a child conceived as a result of –
- (a) artificial insemination or fertility treatment, if –
 - (i) at the time of her insemination or treatment she was married to, or the civil partner of, another woman who had consented to her being so inseminated or treated, and
 - (ii) the mother and her wife or civil partner make a declaration containing the prescribed particulars; or
 - (b) relevant fertility treatment if –
 - (i) at the time of that treatment, another woman consented to her being so treated, and
 - (ii) the mother and the other woman make a declaration containing the prescribed particulars.
- (2) If this Article applies, the child's mother and her wife or civil partner, or in a case falling within paragraph (1)(b) the mother and the other woman, may apply for the birth of the child to be re-registered in accordance with paragraph (3).

- (3) The relevant registrar must re-register the birth to register the name of the wife or civil partner of the mother, or in a case falling within paragraph (1)(b) the other woman, as the second parent of the child –
 - (a) at the joint request of the child’s mother and either her wife, civil partner or the other woman; and
 - (b) on production of the declaration referred to in paragraph (1).
- (4) A birth must only be re-registered under this Article on payment of the prescribed fee and with the authority of the Superintendent Registrar.
- (5) On the re-registration of a birth to register the name of a person as the second parent, in addition to the requirements of Article 72, the register of births must be signed by the relevant registrar.
- (6) If the relevant registration functions are retained by the parish in which the birth occurred, and the re-registration takes place more than 3 months after the birth, the register of births must be countersigned by the Superintendent Registrar.
- (7) If the relevant registrar re-registers the birth of a child under this Article, the relevant registrar must register the child as the illegitimate child of the mother and the second parent.”.

29 Article 57 (re-registration of birth of legitimated person) substituted

For Article 57 there is substituted –

“57 Re-registration of birth of legitimated person

- (1) This Article applies if, according to the law of Jersey, whether written or customary, a person is legitimated by the subsequent marriage of the person’s parents.
- (2) If, under Article 55 or 56, the name of the husband of the person’s mother has already been entered in the register of births as the person’s father, the husband or the person’s mother must, not later than 3 months after the date of the solemnisation of the marriage, make a declaration as to the prescribed matters.
- (3) If the name of the husband has not been entered in the register of births as the person’s father, the husband and wife, following the solemnisation of their marriage, may make a declaration as to the prescribed matters.
- (4) If more than one person is legitimated by the marriage of the husband and wife, a separate declaration must be made in respect of each person.
- (5) Paragraph (6) applies to a person who is required by or under this Law to register a marriage, or to make a return of the particulars of the marriage for the purposes of registration.
- (6) The person to whom this paragraph applies must countersign a declaration and deliver it to the Superintendent Registrar if the declaration is made immediately after the solemnisation of the marriage and in the person’s presence.
- (7) A person requesting re-registration under this Article must pay the prescribed fee to the Superintendent Registrar.

- (8) The person countersigning the declaration under paragraph (6) is entitled to receive from the Superintendent Registrar one half of the fee paid under paragraph (7).
- (9) If a request for re-registration is made in accordance with this Article, the Superintendent Registrar must –
 - (a) if the relevant registration duties have not been retained –
 - (i) cause an entry to be made in the register for the parish in which the birth took place as if the child had been legitimate at birth, and
 - (ii) note the re-registration against the original entry; or
 - (b) if the relevant registration duties are retained by the parish –
 - (i) direct the registrar for the parish in which the birth took place to make an entry in the register of births as if the child had been legitimate at birth, and
 - (ii) note the re-registration against the original entry.
- (10) Before acting in accordance with paragraph (9), the Superintendent Registrar may refer the matter to the Royal Court.
- (11) If the legitimation of a person is established by a judgment of the Royal Court, the Judicial Greffier must, as soon as reasonably practicable, send a copy of the legitimation order to the Superintendent Registrar.”.

30 Article 59A substituted

For Article 59A there is substituted –

“59A Surname of child

- (1) The mother and either the father or second parent of a child may, on registering or re-registering their child’s birth under this Part, choose the name to be registered as the child’s surname.
- (2) The surname chosen by the child’s parents in accordance with paragraph (1) must be evidenced by –
 - (a) the parents’ joint request for registration or re-registration; or
 - (b) if only one of the parents registers or re-registers the birth –
 - (i) the request of the person registering or re-registering the birth, and
 - (ii) the production of a declaration by the other parent stating the parents’ agreed choice of surname.
- (3) In the case of a child whose mother and father are not married to each other at the time of the child’s birth, and the child has not been legitimated by the subsequent marriage of the mother and father, a surname must not be registered or re-registered unless –
 - (a) the father is, or is being, registered as the father under this Part; or
 - (b) the birth is being re-registered under Article 57 and the father’s particulars are or are to be entered in the register.

- (4) If a choice of surname is made in accordance with paragraph (1) and (2) on the re-registration of a child's birth, the mother and either the father or second parent may, at the same time, request the addition to or removal from the register of any forename for the child.
- (5) A request made under paragraph (4) must be evidenced in accordance with paragraph (2).
- (6) If the mother and the father or second parent of a child do not, in accordance with paragraphs (1) and (2), jointly choose a surname for the child, the surname registered or re-registered for the child is to be that registered for the mother in the register of births.
- (7) But if the mother has been adopted, or has executed a deed poll that has been registered in the Royal Court, the child's surname is to be that –
 - (a) entered for the mother in the Adopted Children Register, if she has been adopted; or
 - (b) registered for the mother in the Royal Court, if she has executed a deed poll.”.

31 Article 60 (short birth certificate) substituted

For Article 60 there is substituted –

“60 Short birth, adoption or parental order certificate

- (1) A person may request –
 - (a) the relevant registrar to issue a short birth certificate, in the form that the Superintendent Registrar may by notice specify, containing the prescribed particulars in respect of a birth registered by the relevant registrar;
 - (b) the Superintendent Registrar to issue a certificate, in the form that the Superintendent Registrar may by notice specify, containing the prescribed particulars –
 - (i) in respect of a birth for which an entry has been made in the Parental Orders Register maintained under Article 61A, or
 - (ii) in respect of a birth for which an entry has been made in the Adopted Children Register.
- (2) Unless the request under paragraph (1) is made at the time of registration of the birth, adoption or parental order (as the case may be) the person making it must provide the registrar to whom the request is made with whatever particulars may be necessary in order to find the entry in the register.
- (3) A person making a request under paragraph (1) must pay to the person to whom the request is made the sum prescribed for the provision of the certificate issued under that paragraph.”.

32 Article 61 (registration of stillbirths) amended

- (1) This Article amends Article 61.
- (2) For paragraph (1) there is substituted –

- “(1) Each of the people listed in paragraph (1A) is under a duty to –
 - (a) inform the relevant registrar of a stillbirth not later than 5 days after its occurrence;
 - (b) provide the relevant registrar with the prescribed particulars; and
 - (c) produce to the relevant registrar the certificate if one is given under paragraph (3).
- (1A) Those people are –
 - (a) the mother and either the father or the second parent; and
 - (b) in default of the people referred to in sub-paragraph (a) every person who assisted at the stillbirth.”.
- (3) In paragraph (2) for “shall act” there is substituted “acts”.
- (4) For paragraph (4) there is substituted –
 - “(4) If paragraph (1) has not been complied with, the Superintendent Registrar may, by notice in writing, require any of the people referred to in paragraph (1A) to provide particulars of the stillbirth, to the best of their ability, to the Superintendent Registrar.”.

33 Articles 61A to 61F inserted: registration of parental orders

After Article 61 there is inserted –

“Parental orders

61A Parental Orders Register

- (1) The Superintendent Registrar must maintain a register, to be called the Parental Orders Register, in which there are to be made the entries that are –
 - (a) directed to be made by parental orders; or
 - (b) required to be made under Article 61B or 61E.
- (2) No other entries must be made in the Parental Orders Register.
- (3) A person –
 - (a) may request the Superintendent Registrar to issue a certificate (a “parental order certificate”), in the form that the Superintendent Registrar may specify, containing the prescribed particulars in respect of a parental order registered in the Parental Orders Register; and
 - (b) must, unless the request is made at the time of the registration, provide the Superintendent Registrar with any particulars that the Superintendent Registrar may require to enable the Superintendent Registrar to find the relevant entry in the Parental Orders Register.
- (4) A parental order certificate that appears to be signed by the Superintendent Registrar –
 - (a) must be treated, without any other proof of the entry in the Parental Orders Register, as evidence of the parental order to which it relates; and

- (b) must, if paragraph (5) applies, be treated without any other proof of the entry in the Parental Orders Register, as if it were a certified copy of an entry in the register of births.
- (5) If a parental order certificate described in paragraph (4) contains the date of birth, or the country or the parish of birth, of the person who is the subject of the parental order, the certificate must be treated as evidence of the matters stated in it for the purpose of paragraph (4)(b).
 - (6) The Superintendent Registrar must cause an index of the Parental Orders Register to be made and kept in the Superintendent Registrar's office.
 - (7) A person is entitled to search that index and to obtain a certified copy of an entry in the Parental Orders Register, subject to the same terms and conditions, including as to payment of fees, as apply to the registers of births, deaths and marriages.
 - (8) The Superintendent Registrar must also keep other registers and books, and make the entries in those registers and books, that may be necessary to record and make traceable the connection between –
 - (a) an entry in the register of births marked "Parental Order" under Article 61B; and
 - (b) a corresponding entry in the Parental Orders Register.
 - (9) The registers and books kept under paragraph (8) and any index of those registers and books are not to be open to public inspection or search.
 - (10) But the Royal Court may order the Superintendent Registrar to provide a person with information contained in, or with a copy of, or extract from, those registers or books.

61B Registration of parental orders

- (1) A parental order must contain a direction to the Superintendent Registrar to make an entry in the Parental Orders Register in the prescribed form.
- (2) The names to be specified as the names of the child are the forename or names and surname stated in the application for the parental order, but if –
 - (a) no forename is so stated, the forename to be entered is that chosen under Article 58A;
 - (b) no surname is so stated, the surname to be entered is that of the applicant, or in the case of a joint application –
 - (i) if the gametes of only one applicant were used in the conception of the child, the surname of the applicant whose gametes were used, and
 - (ii) if the gametes of both applicants were used, the surname of the applicant from whom the child derives their domicile of dependence in accordance with Part 5A.
- (3) If particulars of a child are to be entered in the Parental Orders Register, but the parish in which the birth of the child took place is not proved to the satisfaction of the Royal Court, the child is to be treated as born in the parish of St. Helier.
- (4) As soon as reasonably practicable after a parental order is made, the Judicial Greffier must cause the order to be sent to the Superintendent Registrar, and

upon receipt the Superintendent Registrar must cause the prescribed particulars to be entered in the Parental Orders Register.

- (5) If, upon an application for a parental order in respect of a child, the court is satisfied that the child who is the subject of the application is a child to whom an entry in the register of births relates, the parental order made on the application must contain a direction to the Superintendent Registrar to cause the entry in the register of births to be marked with the words “Parental Order”.
- (6) If an entry is made in the Parental Orders Register, the Superintendent Registrar may by notice require a person to deliver to the Superintendent Registrar, not later than 28 days after the making of the entry, every certified copy of the original entry of birth that is in that person’s possession or control.

61C Amendment of orders and rectification of registers

If a parental order has been amended under Article 9H of the Children Law –

- (a) a parental order certificate for the entry to which it relates in the Parental Orders Register must be a copy of the entry as amended, without the reproduction of any note or marking relating to the amendment or of any matter cancelled in accordance with the amendment; and
- (b) a copy or extract of an entry in a register, the marking of which has been cancelled, is treated as an accurate copy only if both the marking and the cancellation are omitted from the extract.

61D Registration of baptism

- (1) This Article applies if a child in respect of whom a parental order has been made is baptised.
- (2) The person who has performed the rite of baptism or who has the custody of a register in which the baptism is registered must record in that register that the child is the child of the person in whose favour the parental order was made, instead of recording that the child is the child of a natural parent who did not apply for the parental order.

61E Registration of a recognition order

- (1) If a recognition order is made under Article 9N of the Children Law, the Superintendent Registrar must enter in the Parental Orders Register the information contained in the order that the Judicial Greffier has sent to the Superintendent Registrar under Article 9N(6) of that Law, and any other information that may be prescribed.
- (2) An entry under paragraph (1) must be authenticated in any manner that may be prescribed.

61F Disclosure of birth records of children subject to parental orders

- (1) Paragraph (2) applies if an application is made in the prescribed manner, and accompanied by the prescribed fee, by a person –
 - (a) who has attained the age of 18;

- (b) who is the subject of a parental order; and
 - (c) whose birth is recorded in a register kept by the Superintendent Registrar.
- (2) The Superintendent Registrar must supply to the person described in paragraph (1) the information necessary to enable the person to obtain a certified copy of the record of the person's birth.
- (3) Paragraph (4) applies if an application is made in the prescribed manner, and accompanied by the prescribed fee, by a person –
- (a) who is the subject of a parental order;
 - (b) whose birth is recorded in a register kept by the Superintendent Registrar; and
 - (c) who intends to marry or form a civil partnership in Jersey.
- (4) The Superintendent Registrar must inform the person described in paragraph (3) whether or not it appears from information contained in the register of births, or other records –
- (a) that the person and the intended spouse may be prohibited from marrying under Articles 3 and 5, or be within the degrees of relationship prohibited by Schedule 1; or
 - (b) that the person and the intended civil partner may not be eligible to form a civil partnership under Article 4 of the [Civil Partnership \(Jersey\) Law 2012](#), or may be within the degrees of relationship prohibited by Schedule 2 to that Law.
- (5) Before information is supplied under paragraph (2) or (4), the Superintendent Registrar must inform the person in question of the availability of any counselling services approved by the Minister.”.

34 Article 72 (duty of informant to sign register) substituted

For Article 72 there is substituted –

“72 Duty of informant to sign register

- (1) When giving particulars of a birth, stillbirth or death for the purpose of registration in the appropriate register, the informant must sign the entry in that register in the presence of the relevant registrar.
- (2) An entry of a birth, stillbirth or death of a child must not be admitted as proof of the information contained in it unless the entry –
 - (a) has been signed by the informant; and
 - (b) contains particulars of the qualifications required for the informant to give the information.
- (3) Paragraph (4) applies if the required particulars for the registration of an entry in a register maintained by the relevant registrar have been given and the entry has been signed by the informant.
- (4) The actions of the informant under paragraph (3) discharge any other person's obligation under this Law to give the required particulars and sign the entry.”.

35 Part 5A (provisions on domicile) inserted

After Article 75 (duty of Minister) there is inserted –

“PART 5A**PROVISIONS ON DOMICILE****75A Abolition of wife’s domicile of dependence**

- (1) Unless paragraph (2) applies, at any time after the coming into force of this Article, the domicile of a married woman, instead of being the same as her husband’s by virtue only of marriage, is to be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile.
- (2) If, immediately before this Article came into force, a married woman was treated as having her husband’s domicile by dependence, the woman is to be treated as retaining that domicile (as a domicile of choice) unless and until it is changed by the acquisition or revival of another domicile, either on or after the coming into force of this Article.

75B Domicile of child conceived in Circumstance C or Circumstance D, or to whom paragraph 9 of Schedule A1 to the Children Law applies

- (1) This Article applies in the case of a child –
 - (a) conceived in Circumstance C or Circumstance D; or
 - (b) to whom paragraph 9 (female same-sex couples: child born before commencement) of Schedule A1 to the Children Law applies.
- (2) The child’s domicile of dependence (and hence the child’s domicile of origin) is derived from the child’s mother.

75C Domicile of child subject to parental order

- (1) This Article applies in the case of a child who is the subject of a parental order under Article 9G of the Children Law.
- (2) The child’s domicile of dependence (and hence the child’s domicile of origin) is that of the applicant for the parental order whose gametes were used in the child’s conception.
- (3) If 2 people apply jointly for a parental order (the “applicants”), and the gametes of both applicants were used in the conception of the child, the child derives its domicile of dependence –
 - (a) from the male applicant if at the time of the child’s birth the applicants were married to, or were civil partners, of each other; and
 - (b) from the female applicant if at the time of the child’s birth the applicants were not married to, nor civil partners of, each other.
- (4) If a child is born as the result of a surrogacy arrangement entered into by the surrogate with 2 people, one of whom has died before the making of the

parental order, the deceased person is to be treated, in the application of this Article, as if they were an applicant for the order.”.

36 Article 77A (abolition of wife’s domicile of dependence) deleted

Article 77A is deleted.

37 Article 82 (power to make further provision in connection with marriages and registration of births, marriages and deaths) amended

(1) In the heading to Article 82, after “births,” there is inserted “parental orders,”.

(2) In Article 82, after paragraph (5) there is inserted –

“(6) The States may by Regulations amend this Law or any other enactment to make further provision that appears to the States to be necessary or expedient in connection with any amendment made by the Children and Civil Status (Amendments) (Jersey) Law 202-.

(7) In paragraph (6) “further provision” includes any consequential, incidental, supplemental or transitional provision.”.

PART 4

AMENDMENTS TO THE CIVIL STATUS ORDER

38 Civil Status Order amended

This Part amends the Civil Status Order.

39 Article 28 (application for notice of intended marriage) amended

In Article 28(b) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

40 Article 31 (marriage schedule) amended

In Article 31(e) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

41 Article 33 (marriage certificate) amended

In Article 33(1)(f) and (2)(d) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

42 Article 35 (application for conversion) amended

In Article 35(b) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

43 Article 36 (conversion schedule) amended

In Article 36(d) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

44 Article 41 (register of marriage supplied to incumbent of an Anglican church) amended

In Article 41(1)(d) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

45 Article 43 (returns of information for Anglican marriages)

In Article 43(2)(d) for “Mother/Father/Parent” there is substituted “Mother/Father/Parent/Second Parent”.

46 Article 46 (registration of births and stillbirths) amended

(1) This Article amends Article 46.

(2) In paragraph (2) for sub-paragraphs (g) to (i) there is substituted –

- “(g) the forenames, surname and previous surname (if any) and occupation or profession of the mother;
- (h) the forenames, surname and previous surname (if any) and occupation or profession of the father or the second parent;
- (i) the address of the people whose particulars are entered under sub-paragraphs (g) and (h);”.

(3) In paragraph (3) for sub-paragraphs (g) to (i) there is substituted –

- “(g) the forenames, surname and previous surname (if any) and occupation or profession of the mother;
- (h) the forenames, surname and previous surname (if any) and occupation or profession of the father or the second parent;
- (i) the address of the people whose particulars are entered under sub-paragraphs (g) and (h);”.

47 Article 51 (certificate of registration of stillbirth) amended

In Article 51, for sub-paragraphs (f) to (h) there is substituted –

- “(f) the forenames, surname and previous surname (if any) and occupation or profession of the mother;
- (g) the forenames, surname and previous surname (if any) and occupation or profession of the father or the second parent;
- (h) the address of the parents;”.

48 Article 51B (parental order certificate) inserted

After Article 51A there is inserted –

“51B Parental order certificate

- (1) A parental order certificate under Article 61A of the Law must contain the particulars specified in Schedule 1A.
- (2) The particulars in respect of items 2 to 13 in Schedule 1A must be those recorded in the copy of the parental order sent to the Superintendent Registrar under Article 61B(4) of the Law.
- (3) The Superintendent Registrar must –
 - (a) authenticate the certificate with a statement that the parental order has been registered in accordance with the Law;
 - (b) sign and date the certificate; and
 - (c) add the Superintendent Registrar’s name and official description.”.

49 Schedule 1A inserted

After Schedule 1 (fees) there is inserted Schedule 1A (particulars to be recorded in the Parental Orders Register), as set out in Schedule 2 to this Law.

PART 5

**AMENDMENTS TO THE INTERPRETATION LAW AND THE STAMP DUTIES LAW, AND
CLOSING PROVISION**

50 Part 1 of the Schedule (defined expressions) to the Interpretation Law amended

In Part 1 of the Schedule to the Interpretation Law –

- (a) after the definition “British Islands” there is inserted –

“ “child”, in relation to a parent, includes a person who is that parent’s child by virtue of Schedule A1 to the [Children \(Jersey\) Law 2002](#);”;
- (b) after the definition “oath” there is inserted –

“ “parent”, in relation to a child, includes a person who is that child’s parent by virtue of Schedule A1 to the [Children \(Jersey\) Law 2002](#);”.

51 Schedule 1 (judicial fees) to the Stamp Duties Law amended

In the table of judicial fees in paragraph 3 of Schedule 1 to the Stamp Duties Law there is inserted after item 4 (but before item 4A) –

“	Item 4AA.	Stamp Duty, by Figure or Rate	Chargeable Document	Designated Officer
4AA.	PARENTAL ORDER, application and hearing under the Children (Jersey) Law 2002	rate G	Application	Greffier”

52 Citation and commencement

This Law may be cited as the Children and Civil Status (Amendments) (Jersey) Law 202- and comes into force on a day to be specified by the States by Act.

SCHEDULE 1

(Article 16)

SCHEDULE A1 INSERTED IN THE CHILDREN LAW

“SCHEDULE A1

(Article 1(10))

CIRCUMSTANCES IN WHICH A PERSON IS TREATED IN LAW AS A PARENT IF CHILD CONCEIVED BY FERTILITY TREATMENT OR ARTIFICIAL INSEMINATION

1 Application and interpretation of Schedule

- (1) This Schedule specifies who is to be treated in law as the other parent of a child if the child was born as a result of –
 - (a) the placing in a woman of an embryo or sperm and eggs; or
 - (b) a woman’s artificial insemination.
- (2) Only paragraph 9, and paragraph 16(a) so far as it relates to paragraph 9, apply in the case of a child born before this Schedule comes into force, but otherwise the Schedule applies in the case of a child born after it comes into force.
- (3) A reference in a paragraph of this Schedule to a “resulting child” is a reference to a child born as a result of the process (whether artificial insemination or relevant fertility treatment) described in that paragraph.

2 Circumstance A: woman married to, or civil partner of, a man at time of treatment

- (1) This paragraph sets out Circumstance A and applies whether the woman referred to in sub-paragraph (2) was in Jersey or elsewhere at the time referred to in that sub-paragraph.
- (2) A man is treated in law as a child’s father for all purposes if a woman was married to the man, or was the man’s civil partner –
 - (a) at the time when –
 - (i) an embryo was, or sperm and eggs were, placed in the woman, resulting in the birth of the child, or
 - (ii) the woman was artificially inseminated, resulting in the birth of the child; and
 - (b) the embryo carried by the woman was not created with the man’s sperm.
- (3) But a man is not treated in law as a child’s father for any purpose if –
 - (a) it is shown that he did not consent to the placing of the embryo, or the sperm and eggs, in the woman, or her artificial insemination; or
 - (b) the child is treated by virtue of adoption or a parental order as not being the man’s child.

3 Circumstance B: treatment provided to a woman if agreed fatherhood conditions apply

- (1) This paragraph sets out Circumstance B and applies if –
 - (a) no man is treated under paragraph 2 as a child’s father; and
 - (b) no woman is treated under paragraph 6, 7 or 9 as a child’s second parent.
- (2) A man is treated in law as a child’s father for all purposes if –
 - (a) a woman underwent relevant fertility treatment;
 - (b) at the time of the placing in the woman of an embryo or sperm and eggs, or of her artificial insemination in the course of that treatment, the agreed fatherhood conditions (set out in paragraph 5) were fulfilled in relation to the man;
 - (c) the man was alive at that time; and
 - (d) the embryo carried by the woman was not created with the man’s sperm.
- (3) But a man is not treated in law as a child’s father for any purpose if the child is treated by virtue of adoption or a parental order as not being the man’s child.

4 Further provisions relating to Circumstances A and B

If a man is treated in law as a child’s father by virtue of paragraph 2 or 3, no other person is to be treated as the child’s father for any purpose.

5 Agreed fatherhood conditions

- (1) The agreed fatherhood conditions referred to in paragraph 3(2)(b) are set out in sub-paragraph (2).
- (2) The conditions are that –
 - (a) the man has given the person responsible for the woman’s fertility treatment (the “person responsible”) a notice stating that the man consents to being treated as the father of any resulting child;
 - (b) the woman has given the person responsible a notice that she consents to the man being treated as the father of any resulting child;
 - (c) neither the man nor the woman has, since giving the notice referred to in clause (a) or (b), given the person responsible notice of the withdrawal of the man’s or woman’s consent to the man being treated as the father of any resulting child;
 - (d) the woman has not, since giving notice under clause (b), given the person responsible –
 - (i) a further notice under that clause stating that she consents to another man being treated as the father of the resulting child, or
 - (ii) a notice under paragraph 8(2)(b) stating that she consents to a woman being treated as the second parent of the resulting child; and
 - (e) the woman and the man are not within the prohibited degrees of relationship with each other set out in Schedule 1 to the Civil Status Law, or, in the case where the woman and the man are in an enduring

family relationship, they would not be within those prohibited degrees of relationship if they were married to each other.

- (3) A notice under sub-paragraph (2)(a), (b) or (c) must be in writing signed by the person giving it.

6 Circumstance C: woman married to, or civil partner of, a woman at time of treatment

- (1) This paragraph sets out Circumstance C and applies whether a woman (“A”) was in Jersey or elsewhere at the time referred to in sub-paragraph (2).
- (2) A woman (“B”) is treated as a child’s second parent for all purposes if A was married to B, or was B’s civil partner at the time when –
 - (a) an embryo was, or sperm and eggs were, placed in A resulting in the birth of the child; or
 - (b) A was artificially inseminated, resulting in the birth of the child.
- (3) But B is not treated as a child’s second parent for any purpose if –
 - (a) it is shown that B did not consent to the placing of the embryo or the sperm and eggs in A, or A’s artificial insemination; or
 - (b) the child is treated by virtue of adoption or a parental order as not being B’s child.

7 Circumstance D: treatment provided to a woman if agreed female parenthood conditions apply

- (1) This paragraph sets out Circumstance D and applies if –
 - (a) no man is treated under paragraph 2 as a child’s father; and
 - (b) no woman is treated under paragraph 6 or 9 as a child’s second parent.
- (2) Another woman (“B”) is treated as a child’s second parent for all purposes if –
 - (a) a woman (“A”) underwent relevant fertility treatment;
 - (b) at the time of the placing in A of an embryo or sperm and eggs, or of her artificial insemination in the course of that treatment, the agreed female parenthood conditions (set out in paragraph 8) were fulfilled in relation to B; and
 - (c) B was alive at that time.
- (3) But B is not treated as a child’s second parent for any purpose if the resulting child is treated by virtue of adoption or a parental order as not being B’s child.

8 Agreed female parenthood conditions

- (1) The agreed female parenthood conditions referred to in paragraph 7(2)(b) are set out in sub-paragraph (2).
- (2) The conditions are that –
 - (a) B has given the person responsible for the woman’s relevant fertility treatment (the “person responsible”) a notice stating that B consents to being treated as the second parent of any resulting child;

- (b) the woman undergoing relevant fertility treatment (“A”) has given the person responsible a notice that she consents to B being treated as the second parent of any resulting child;
 - (c) neither B nor A has, since giving notice under clause (a) or (b), given the person responsible notice of the withdrawal of B or A’s consent to B being treated as the second parent of any resulting child;
 - (d) A has not, since giving notice under clause (b), given the person responsible –
 - (i) a further notice under that clause stating that she consents to a woman other than B being treated as the second parent of any resulting child, or
 - (ii) a notice under paragraph 5(2)(b) stating that she consents to a man being treated as the father of any resulting child; and
 - (e) A and B are not within the prohibited degrees of relationship set out in Schedule 1 to the Civil Status Law, or in a case where A and B are in an enduring family relationship with each other, they would not be within the prohibited degrees of relationship if they were married to each other.
- (3) A notice under sub-paragraph (2)(a), (b) or (c) must be in writing signed by the person giving it.

9 Female same-sex couples: child born before commencement

- (1) This paragraph applies if –
 - (a) a child was born before the coming into force of this paragraph; and
 - (b) the child’s birth is re-registered under Article 56C of the Civil Status Law on the joint application of the mother and another woman.
- (2) If this paragraph applies the other woman is treated as the second parent of the child.

10 Further provision relating to cases involving female same-sex couple

If a woman is treated as a child’s second parent by virtue of paragraph 6, 7 or 9 no man is to be treated in law as the child’s father for any purpose.

11 Use of sperm, or transfer of embryo, after death of man providing sperm

- (1) If the conditions set out in sub-paragraph (2) are fulfilled, a deceased man is treated in law as a child’s father only for the purpose of enabling the man’s particulars to be entered as the particulars of the child’s father in a register of births.
- (2) The conditions are that –
 - (a) the child was borne by a woman as a result of the placing in her of an embryo or sperm and eggs, or her artificial insemination, whether the woman was in Jersey or elsewhere at the time;
 - (b) the embryo carried by the woman was created using the man’s sperm after his death, or the embryo was created before the man’s death, but placed in the woman after his death;

- (c) the man consented in writing (and did not withdraw the consent) –
 - (i) to the use of his sperm after his death for the purpose of creating an embryo to be carried by the woman, or to the placing in the woman, after his death, of the embryo created using the man's sperm before his death, and
 - (ii) to his being treated as the father of any resulting child only for the purpose specified in sub-paragraph (1);
- (d) the woman has elected in writing, not later than the end of the period of 21 days beginning with the day on which the child was born, for the man to be treated for the purpose specified in sub-paragraph (1) as the child's father; and
- (e) no-one else is to be treated –
 - (i) as the child's father under paragraph 2 or 3,
 - (ii) as the child's second parent under paragraph 6, 7 or 9, or
 - (iii) as the child's parent by virtue of adoption or a parental order.

12 Embryo transferred after death of male spouse or civil partner who did not provide sperm

- (1) If the conditions set out in sub-paragraph (2) are fulfilled, a deceased man is treated in law as a child's father for the purpose only of enabling the man's particulars to be entered as the particulars of the child's father in a register of births.
- (2) The conditions are that –
 - (a) the child was borne by a woman as a result of the placing in her of an embryo, whether the woman was in Jersey or elsewhere at the time the embryo was placed in her;
 - (b) the embryo was created at a time when the woman was married to the man or was the man's civil partner;
 - (c) the embryo was not created with the man's sperm;
 - (d) the man died before the embryo was placed in the woman;
 - (e) the man consented in writing (and did not withdraw that consent) –
 - (i) to the placing of the embryo in the woman after his death, and
 - (ii) to his being treated as the father of any resulting child for the purpose specified in sub-paragraph (1);
 - (f) the woman has elected in writing, not later than the end of the period of 21 days beginning with the day on which the child was born, for the man to be treated for the purpose specified in sub-paragraph (1) as the child's father; and
 - (g) no-one else is to be treated –
 - (i) as the child's father under paragraph 2 or 3,
 - (ii) as the child's second parent under paragraph 6, 7 or 9, or
 - (iii) as the child's parent by virtue of adoption or a parental order.

13 Embryo transferred after death of man who consented to be recorded as father in register of births

- (1) If the conditions set out in sub-paragraph (2) are fulfilled, a deceased man is treated in law as a child's father for the purpose only of enabling the man's particulars to be entered as the particulars of the child's father in a register of births.
- (2) The conditions are that –
 - (a) the child was borne by a woman as a result of the placing in her of an embryo, whether the woman was in Jersey or elsewhere at the time the embryo was placed in her;
 - (b) the embryo was not created at a time when the woman was married or in a civil partnership but was created in the course of relevant fertility treatment services provided to the woman;
 - (c) a man consented in writing (and did not withdraw the consent) –
 - (i) to the placing of the embryo in the woman after his death, and
 - (ii) to his being treated as the father of any resulting child for the purpose specified in sub-paragraph (1);
 - (d) the embryo was not created with the man's sperm;
 - (e) the man died before the embryo was placed in the woman;
 - (f) immediately before the man's death, the agreed fatherhood conditions set out in paragraph 5 were fulfilled in relation to relevant fertility treatment services proposed to be provided to the woman;
 - (g) the woman has elected in writing, not later than the end of the period of 21 days beginning with the day on which the child was born, for the man to be treated for the purpose specified in sub-paragraph (1) as the child's father; and
 - (h) no-one else is to be treated –
 - (i) as the child's father under paragraph 2 or 3,
 - (ii) as the child's second parent under paragraph 6,7 or 9, or
 - (iii) as the child's parent by virtue of adoption or a parental order.

14 Embryo transferred after death of female spouse or civil partner who consented to be recorded as second parent in register of births

- (1) If the conditions in sub-paragraph (2) are fulfilled, the woman referred to in that sub-paragraph as B is treated as a child's second parent for the purpose only of enabling B's particulars to be entered as the particulars of the child's second parent in a register of births.
- (2) The conditions are that –
 - (a) the child was borne by a woman ("A") as a result of the placing in her of an embryo, whether she was in Jersey or elsewhere at that time;
 - (b) the embryo was created at a time when the woman was married to, or the civil partner of, another woman ("B");
 - (c) B died before the embryo was placed in A;
 - (d) B consented in writing (and did not withdraw that consent) –

- (i) to the placing of the embryo in A after B's death, and
 - (ii) to being treated, for the purpose specified in sub-paragraph (1), as the second parent of any resulting child;
- (e) A has elected in writing, not later than the end of the period of 21 days from the day on which the child was born, for B to be treated for the purpose specified in sub-paragraph (1) as the child's second parent; and
- (f) no-one else is to be treated –
- (i) as the child's father under paragraph 2 or 3,
 - (ii) as the child's second parent under paragraph 6, 7 or 9, or
 - (iii) as the child's parent by virtue of adoption or a parental order.

15 Embryo transferred after death of woman who consented to be recorded as second parent in register of births

- (1) If the conditions in sub-paragraph (2) are fulfilled, the woman referred to in that sub-paragraph as B is treated as a child's second parent for the purpose only of enabling B's particulars to be entered as the particulars of the child's second parent in a register of births.
- (2) The conditions are that –
- (a) the child was borne by a woman ("A") as a result of the placing in her of an embryo, whether she was in Jersey or elsewhere at that time;
 - (b) the embryo was not created at a time when A was married or in a civil partnership but was created in the course of relevant fertility treatment services provided to A;
 - (c) another woman ("B") consented in writing (and did not withdraw the consent) –
 - (i) to the placing of the embryo in A after B's death, and
 - (ii) to being treated, for the purpose specified in sub-paragraph (1) as the second parent of any resulting child;
 - (d) B died before the embryo was placed in A;
 - (e) immediately before B's death, the agreed female parenthood conditions set out in paragraph 8 were met in relation to relevant fertility treatment services proposed to be provided to A;
 - (f) A has elected, in writing not later than the end of the period of 21 days from the day on which the child was born, for B to be treated for the purpose specified in sub-paragraph (1) as the child's second parent; and
 - (g) no-one else is treated –
 - (i) as the child's father under paragraph 2 or 3,
 - (ii) as the child's second parent under paragraph 6, 7 or 9, or
 - (iii) as the child's parent by virtue of adoption or a parental order.

16 Woman not to be parent merely because of egg donation

A woman is not to be treated for any purpose as the parent of a child whom she is not bearing and has not borne, unless she is treated as the child's parent –

- (a) under paragraph 6, 7 or 9;
- (b) for the purpose specified under paragraph 14(1) or 15(1); or
- (c) by virtue of adoption or a parental order.”.

SCHEDULE 2

(Article 49)

SCHEDULE 1A INSERTED IN THE CIVIL STATUS ORDER**“SCHEDULE 1A**

(Article 51B)

PARTICULARS TO BE RECORDED IN THE PARENTAL ORDERS REGISTER

1. The number of the entry in the register
2. Surname of child
3. Forename of child
4. Sex of child
5. Date of birth
6. Place of birth (including in the case of a child born in Jersey, the parish)
7. Forename(s) and surname and birth surname if applicable of the first person named in the order as a person in whose favour the parental order is made
8. Occupation of the person named in item 7
9. Forename(s), surname and birth surname if applicable of the second person (if any) named in the order as a person in whose favour the parental order is made
10. Occupation of the person named in item 9
11. Date and place of the marriage or civil partnership (if any) of the persons named in items 7 and 9
12. Address of the persons named in items 7 and 9
13. Date of parental order
14. Date of registration
15. Name of the Superintendent Registrar”.