

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2010

Panel:

Deputy R.G. Le Hérisssier of St. Saviour (Chairman)

Deputy J.M. Maçon of St. Saviour

Deputy M. Tadier of St. Brelade

Witness:

The Deputy Chief Minister (Deputy Chief Minister)

Acting Assistant Chief Executive

In attendance

Mr. M. Haden (Scrutiny Officer)

[10:48]

Deputy R.G. Le Hérisssier:

Well, I would like to thank you very much for coming. I will just draw to your attention, of course, the witness advice which I am sure you are familiar with but I would like to thank you for coming. Basically, our panel felt this was a fairly complex piece of legislation and it was probably important to look at the details and, as we discovered with other laws, because we do not have legislative scrutiny, Members often feel when they get a highly detailed law presented we end up sort of looking at the detail and sometimes because we have not the whole thing structured, we go off in different ways, wrong ways. So it will help the House deal with this and we will produce a little report and possibly, and it will become evident as this scrutiny proceeds, there might be some amendments, nothing of a substantive nature, but there might be but I cannot anticipate what the panel will decide. By the way, I must apologise for Deputy Pitman who has been taken away on urgent family business. So I will kick off with some general questions and I imagine because you will not address the religious issues, which we have other witnesses to do later in the morning per se we will not spend a disproportionate time on that. But I will ask the Deputy Chief Minister, Senator Ozouf, could you tell us whether you are happy with the way the law is structured, what issues or difficulties you anticipate with it, assuming it is going to be accepted by the States?

The Deputy Chief Minister:

Sure. Well, first of all very happy to be here and very pleased and grateful that you are spending some time doing the legislative scrutiny which, as you have rightly said, Chairman, does not often happen. I should start by saying that the Chief Minister would be here but, obviously, he is on his overseas trip. He is ultimately responsible for it but I am standing in for him today but you will also know that I have a particular

interest in this issue, have been at the sort of political lobbying end of same-sex relationship status issues for some time and, obviously, I am very pleased that we are in a position - the Chief Minister and the Council of Ministers - we now have a law. Let us be clear that this is not a law which is enacting into Jersey legislation same-sex marriage. It may come and it will as society moves on in terms of its acceptance of its respect for different lifestyle choices. I have no doubt that this will be a debate that will be live for a period of time. As we know, civil partnerships have been in existence in the United Kingdom now for some years. It is a shame that it has taken so long for the States to have a law. It is very complex. It is not just simply changing one or 2 words in a piece of legislation. It is a very, very substantial piece of work to ensure that the law works in terms of a statutory basis for civil partnerships but also all the attendant consequential amendments to other laws in order to give effect to a relationship which is akin to marriage but is not marriage.

Deputy M. Tadier:

Can I just come in there. If it is so that it is not marriage, what are the substantive differences between civil partnerships in real terms and marriage if they are not the same?

The Deputy Chief Minister:

I have before me one draft law and one law and I suppose it is convenient that I was responsible for the new Marriage and Civil Status (Jersey) Law which was enacted in 2001, brought into force in 2002 and, effectively, this Marriage and Civil Status (Jersey) Law sets out an arrangement between 2 people of opposite sexes and it allows their relationship to be recognised in the eyes of the State but also makes provision for that relationship to be solemnised and, indeed, recognised in the eyes of the leading religious organisations; the established churches, in other words, and the established faith communities.

Deputy M. Tadier:

Those are the only 2 differences, essentially? Of course, one necessary difference is that the gender of 2 couples will be the same sex and not opposite sexes.

The Deputy Chief Minister:

If you were doing same-sex marriage, you would be amending the Marriage and Civil Status (Jersey) Law and that is what you would be doing. We are not. We are creating, as other countries have done - particularly the United Kingdom - a relationship which is equivalent to marriage but is not marriage.

Deputy M. Tadier:

What we are essentially doing, would you agree, that rather than amending the Marriage Law we are copying and pasting the Marriage Law to the Civil Partnership Law and changing the word "spouse" to the word "civil partner" wherever that occurs? So the only substantive difference between the Marriage Law and the Civil Partnership Law is that at the moment we are saying it cannot take place and be solemnised in a religious location. That is, essentially, the only difference.

The Deputy Chief Minister:

Well, "only" is a small word with a great meaning and it is at the heart of the debate about same-sex relationships as to whether or not you accept the fact that marriage

can be a status in the eyes of the State and in the eyes of the faith communities which is available to same-sex couples. That word “only” is pretty significant, of which there are ...

Deputy M. Tadier:

Let us not ... technically, that is the ... there is only one difference, is what I am saying.

The Deputy Chief Minister:

Well, technically, you would, I think ...

Deputy M. Tadier:

That difference is the fact that ...

The Deputy Chief Minister:

Technically it would be to underplay the huge significance of it.

Deputy M. Tadier:

Let us not get pedantic. I am just saying there is only one difference and that one difference is the fact that in the Civil Partnership Law, civil partners may not have their ceremony solemnised by a religious individual or in a religious place.

The Deputy Chief Minister:

Civil partnership is not marriage.

Deputy M. Tadier:

The reason it is not marriage is because of that one, single issue, is that case?

The Deputy Chief Minister:

Well, it is an important issue but the fact is marriage is available to ...

Deputy M. Tadier:

It is a simple question. I just want a yes or no.

The Deputy Chief Minister:

Yes, but you cannot answer it in a simple yes or no. I restate that the fact that the States has asked the Council of Ministers to bring forward legislation which is a relationship which is equivalent to marriage but it is not marriage.

Deputy M. Tadier:

The reason it is not marriage is because there is no religious element to it.

The Deputy Chief Minister:

I could not possibly begin to do justice to those arguments.

Deputy M. Tadier:

It is a simple question, Senator. It is not a trap. It is a simple question. Is that the only reason it is different? Otherwise we could have simply amended the Marriage Law, as you have said.

The Deputy Chief Minister:

I have made my position clear on that. If you were going to have same-sex marriage, you would be amending this law, you would not be presenting another law.

Deputy M. Tadier:

Scrutiny is here just to establish facts and it is very difficult ... it is a simple question and I do not know if the other 2 Members want to jump in but we need to progress this in a meaningful way, we need to establish what the facts are.

The Deputy Chief Minister:

I have established the facts and it is a relationship which is equivalent to marriage. It is not marriage. I cannot be clearer than that. That is exactly what the heart of the debate is. There is a difference between civil partnerships and marriage.

Deputy M. Tadier:

Okay, and reiterate that difference for us, if you could.

The Deputy Chief Minister:

You know exactly what the relationship of marriage is. A marriage is a relationship between 2 human beings of opposite sexes. A civil partnership is a relationship between same-sex couples and one of the amendments ... if you do not want to accept the fact that same-sex couples should have a relationship which is equivalent to marriage, then you would amend the Civil Partnership Law to allow human beings of different sex to have civil partnerships. Civil partnerships are for same-sex couples. Marriage is for human beings of a different sex.

Deputy M. Tadier:

I think we need to move on from that.

Deputy R.G. Le Hérisier:

Yes, I think we should move along now.

The Deputy Chief Minister:

It is 2 parallel but equivalent statuses.

Deputy M. Tadier:

It is fair to say, I think, that certainly you as an individual and, hopefully, the Council of Ministers would have borne in mind equality when it comes to civil partnerships. Let us take a ... if I wanted to engage ...

The Deputy Chief Minister:

Can I just stop you here for a second because there is an important premise that we have presented this law on and that is there is a legislative process in the Island which, when dealing with massively important bits of legislation, you seek the permission of the States to approve the principle and then you move to the legislative stage. You are opening up the debate, if I may say, which is an absolutely legitimate debate and a debate that will run for some time, that was appropriate to be debated at the first stage of the States consideration of this issue and the proposition which Tom Gales has, no doubt, a copy of it at hand, the instruction and the decision of the States was to put forward a relationship which was equivalent to marriage but was not marriage.

Deputy M. Tadier:

I think that is understood but, obviously, we are dealing with concepts here. I understand it is not marriage and that we established the reason it is not marriage is because we do not allow those who want to engage in civil partnership to have a civil partnership performed by a priest in a church. Now, perhaps it would be useful at this point ...

The Deputy Chief Minister:

That is a separate issue. There is the multi-sex issue and there is the religious issue.

Deputy M. Tadier:

Exactly. That is the issue we are dealing with at the moment. Could you give some background ... for example, if I wanted to engage in a civil partnership and I also attend church regularly, for example, if I am a Quaker, and Quaker minister is ... I do not think they have ministers but the Quaker religious leader would say: "I am happy to perform this," why is it that Quaker would be able to perform a marriage but he would not be able to form a civil partnership in that property?

The Deputy Chief Minister:

We have moved on. We have moved on to deal with ... we are dealing, I think, in this session, which is very important, with 2 separate issues.

[11:00]

We are dealing with marriage and civil partnerships and the parallel relationship of those things. Now, if we have moved on from that issue we can then go on to talk about the religious aspects or otherwise of civil partnerships but it is a separate issue. The first thing that would be important to say is that the coalition in the U.K. (United Kingdom) are now consulting on the issue of whether or not to extend civil partnerships to religious premises and there is a consultation that is underway. I am sure the Panel has looked at it. It is interesting. I have spent a little bit of time looking at it and there is going to be ... we are presenting, as was originally envisaged, a Civil Partnership Law which does not permit and does not have the opt-in of having the ability to perform a civil partnership in a religious place of worship. Now, interestingly, you have raised the issue of Quakers because while we have not been able to definitively confirm this this morning, I am advised that in the United Kingdom the places of worship for Quakers are not approved premises for the purposes for civil marriages in the United Kingdom. So the same issue arises in relation to Quakers.

Deputy M. Tadier:

But that is being slightly pedantic. The point is, and let us take it back one step, I think. You have already highlighted the fact that we have deliberately put provision in our law which says that these civil partnerships cannot take place in a religious place. Now, the law could equally exist if that Article, which is 3(5) and there is a subsequent provision in Article 14, the law would still stand if that Article was not there. It would not oblige churches or religious individuals to perform civil partnerships in their churches. It would simply be permissive rather than proscriptive.

What I would like to ask of the Chief Minister's Department is; what was the rationale for that provision to be put in there rather than for it to be omitted?

The Deputy Chief Minister:

Principally, as is set out in the drafting brief, the fundamental principles of the Civil Partnership Law was to provide a registration in the eyes of the State and that that is the purpose. It is a secular arrangement. It is a secular issue in the eyes of the State.

Deputy M. Tadier:

Okay, we will stop that there. But in the eyes of the State currently, a heterosexual is ... the equivalent institution that exists for heterosexuals - because, remember, they cannot have civil partnerships - is possibly capable of being taken by a religious entity and we are not affording that same possibility to civil partnerships.

The Deputy Chief Minister:

No, we are not and that is why would be ...

Deputy M. Tadier:

So why is that?

The Deputy Chief Minister:

Because the proposal was to bring forward civil partnerships on the same basis as civil partnerships were brought in in the United Kingdom. I am not ...

Deputy M. Tadier:

Well, that is the first flaw.

The Deputy Chief Minister:

It is not a flaw, Deputy. It is the basis on which it was brought forward. Now, you are perfectly entitled and, indeed, it is part of the political process for amendments to be considered and I suspect that you are going to lodge an amendment abolishing Article 34(5) and let us have that debate.

Deputy M. Tadier:

That will depend on the evidence of the panel. Clearly we are evidence based.

The Deputy Chief Minister:

That is fine.

Deputy M. Tadier:

But I still do not see where ... what I and the panel, I think, are getting at; we do not see what the value is of having this Article in here. If anything, it causes problems. It means that we are telling churches what they can and cannot do. We are saying churches cannot perform a civil partnership in their premises if they so desire whereas when it comes to marriage which is the equivalent institution for heterosexuals, there is not that provision. In fact, it is the opposite because it used to be the case, did it not, Senator, that religious individuals could not be registrars for marriage but now it is a case they can.

The Deputy Chief Minister:

There is a difference between the people that can perform the marriage and the place in which it is conducted in the Article ... the paragraph that you are referring to is the place in which it can be done. This is a serious issue on which there needs to be a serious debate and to reflect the magnitude of this issue. It is not a casual issue. It is not something that is a small issue. The proposal in the United Kingdom to remove, and it is just a proposal, it is a consultation to remove the Article that you have raised, is the subject of a detailed 92-page consultation. So it is not a minor issue. It is a fundamental issue.

Deputy M. Tadier:

But that is because they have this clause. Surely, if we did not have this clause in the first place we would not have to have a costly and length consultation period and then followed by costly law-drafting time, at a time when you are trying to save significant amounts of money for the taxpayer.

The Deputy Chief Minister:

I do not think that is fair. It would be wrong to almost slip in a Civil Partnerships Law without the provision and the separate distinction between what can be celebrated in terms of a civil partnership and where it can be celebrated. I may well agree with you that, ultimately, civil partnerships ought to be able to be performed on religious premises but I think it would be wrong not to go through a proper process of discussion with faith communities and with the Island about this issue and with the gay and lesbian groups. It is not a casual issue. It is a really important issue ...

Deputy M. Tadier:

Can I just ask 2 more ...

Deputy R.G. Le Hérissier:

Ask 2 and then we will jump in.

Deputy M. Tadier:

The first one is, I think, first of all why are you opposed to giving the same-sex couples the same choice that heterosexual couples have about having a religious aspect to their ceremony. The second question is; where is this opposition? Where is the opposition coming from? Who is saying we do not want our churches to be able to decide what we can and cannot do in our own premises?

The Deputy Chief Minister:

First of all, it is not an issue as I am advised for Quakers because Quakers, according to their own tradition and the rules within Quakers, they will be able to perform civil partnerships and, indeed, civil marriages in the way that they currently do. That is their choice.

Deputy M. Tadier:

They will not be able to perform civil partnerships.

The Deputy Chief Minister:

No. Sorry, they will be able to conduct the same service or whatever Quakers ... I am afraid I have not been to a Quaker celebration so I do not know but they will be treating marriage and civil partnerships on the same basis because they do not register

their premises. Now, there is a debate to be had with the established churches as to whether or not they want to have the ability to opt in. This law is not attempting to enter into the debate about marriage in the eyes of the church. It is - as I repeated earlier and you will be sick of me repeating it - a relationship which is equivalent to marriage in the eyes of the State and that is what this law is about. If you are going to change it, if you are going to make a step, if you were going to move eventually to a situation where you would allow same-sex marriages, then removing that which is a discrimination, I accept that, you would remove that and you would eventually move to mirror and introduce the concept of same-sex couples being able to enter into a civil marriage. Those are the steps that you would evolve. I note with interest that while France has the equivalent of a civil partnership, the French Parliament voted down the Bill presented yesterday in the French Parliament to legalise ... to do the same-sex marriage issue. This is a live debate which is not going to go away and is going to evolve over time.

Deputy R.G. Le Hérisier:

I wonder if I can jump in, and just pursuing this; how extensively were you lobbied over this particular provision? Or the Chief Minister's Office or the legislative committee? How extensively were they lobbied?

The Deputy Chief Minister:

On what particular issue?

Deputy R.G. Le Hérisier:

On the issue of sanctifying the relationship within a religious premises?

The Deputy Chief Minister:

Tom, I do not know if you could help?

Acting Assistant Chief Executive:

One.

Deputy R.G. Le Hérisier:

One?

Deputy M. Tadier:

So you had one protest, so the reason that we are keeping this ...

Deputy R.G. Le Hérisier:

One church or one person?

Acting Assistant Chief Executive:

No, that was your ... we have had no representations.

Deputy M. Tadier:

So we put this provision in the law which takes away the autonomy of churches ...

The Deputy Chief Minister:

No, Deputy. That is not right.

Deputy M. Tadier:

... and that there was no representation from them, is that what was being said?

The Deputy Chief Minister:

No. No, that is not right.

Deputy M. Tadier:

Okay.

The Deputy Chief Minister:

We have been very clear from the start that the legislation would be presented to the Assembly on the basis that it is purely a secular arrangement.

Deputy M. Tadier:

Exactly. On what was that position predicated?

The Deputy Chief Minister:

It was predicated on the consultation that was originally carried out and the States has made a decision and it would be against a States decision, it would be against the instruction I think the Council of Ministers has been under to present a law which is a Civil Partnership Law, which is not something which is moving and a step forward in terms of a move towards same-sex marriage as opposed to civil partnership being an equivalent of same-sex marriage.

Deputy M. Tadier:

Why do we always talk about moving civil partnerships towards marriage as if marriage is some kind of ultimate goal? It could well be that marriage moves down to civil partnership status.

The Deputy Chief Minister:

If you want to wreck the relationship which is akin to marriage then you would allow multi-sex civil partnerships. That is what ...

Deputy M. Tadier:

Wreck the relationship which is akin to marriage?

The Deputy Chief Minister:

You will know this better than I do; in the U.K., the attempts to undermine the status of the Civil Partnership Law were that you allow it to be available to multi-sex couples. That is what all of the gay and lesbian lobby groups were fearful of, and I understand their fear, is that you effectively create a civil partnership which is available to multi-sex couples because then you are genuinely saying that you have marriage, civil marriage here, and you have this other thing called civil partnerships which, by the way, heterosexual couples can opt whether or not they are going to go for the civil partnership route or the marriage route. You want to create the equivalent of civil partnerships on the equivalent of marriage, then you will preserve one for same-sex couples and one for heterosexual couples. It is an important issue.

Deputy M. Tadier:

I have been researching this perhaps as much as you have, although maybe not. But if I read a quote to you and I would like you to comment on it. It is from a Professor Robert Sandel¹ (sic), who is at Harvard University and he gave lectures on new morality. He said that: “The debate over same-sex partnerships is fundamentally a debate about whether gay and lesbian unions are worthy of the same honour and recognition that in our society State-sanctioned marriage confers.” Do you agree ultimately with that? The debate about same-sex unions is about whether or not we acknowledge that gay and lesbian relationships are worthy of the same honour that we bestow to heterosexual relationships.

The Deputy Chief Minister:

You quoted that individual in your remarks in the original States and from those remarks it is clear that you believe, and I understand and respect your view, that marriage should be available to same-sex couples and multi-sex couples.

Deputy M. Tadier:

No. No, the question is ... we are not here to look at my views. The question I asked of the Chief Minister’s Department is; do you agree - and again it is a simple yes or no answer - that gay and lesbian unions are worthy of the same honour and recognition of heterosexual relationships, heterosexual unions?

The Deputy Chief Minister:

Yes, and that is why I am representing to you that the best way to achieve that is to afford same-sex couples a relationship which in the eyes of the State is identical to civil marriage. In the eyes of the State. That is what all of the consequential ... that is why this is, unfortunately ...

Deputy M. Tadier:

But it is not because we have afforded religious ... sorry, to interrupt but ...

The Deputy Chief Minister:

I said in the eyes of the State.

Deputy M. Tadier:

In the eyes of the State but the State has then conferred the ability for a religious leader to perform marriage for the State so we have outsourced marriage to churches to be performed by the State but we will not afford that same privilege to civil partnerships.

The Deputy Chief Minister:

I would stop short of saying ... I am not here and I am not going to judge or make observations about religious recognition of same-sex relationships. I am here in a secular capacity, requested to make representations of a relationship in the eyes of the State. There is a debate internationally about the move on in terms of allowing same-sex marriages. That is going to continue.

[11:15]

¹ The correct name is Professor Michael Sandel

This is in the eyes of the State, the equivalent recognition. You use the word “honour” et cetera and I understand those words. Same-sex couples will receive that recognition with the passing of a Civil Partnership Bill which is exclusively for same-sex couples.

Deputy M. Tadier:

I think that is understood.

Deputy R.G. Le Hérisier:

Okay. Yes. Not that we will draw a line under it but I think we will move on to other areas of questioning because clearly there is a difference of approach. Going from the broad issues to the more technical issues, there is a massive list of laws which are going to be amended as a result of this and we have had concerns raised about the Housing Law. We obviously know the never-ending saga of the Inheritance Law and the fact that for good and for bad there has not been revolutionary or radical change to Jersey Inheritance Law. So, essentially, you will inherit the legal system. Any issues that you can think about that have arisen that will continue to pose problems even if this law were to be implemented?

Acting Assistant Chief Executive:

There will always be issues with such a complex piece of legislation. It is the consequential amendments, as you say, that are the issue but I should explain that the law you have there is the primary legislation that needs to be changed. There will have to be subordinate legislation changes between now and when the law comes into place to bring everything into effect, one being housing regulations. That has been raised as an issue but we do not see it as an issue because the housing regulations will be changed. It is only subordinate legislation to give full effect to civil partnerships in the housing regulations.

Deputy R.G. Le Hérisier:

Can you just briefly tell us what is the issue that has been brought to you about housing?

Acting Assistant Chief Executive:

It is just the fact that some lawyers have noted that the housing regulations at the moment, there is no mention of housing in the existing Civil Partnership Law. It needs ... if you like, it was seen as an omission but it is not. It is in the back of our train for the law draftsmen to change. So, yes, the housing regulations will be changed before the law is implemented.

The Deputy Chief Minister:

That is obviously regulations as opposed to statute. So, obviously, the law needs to be passed and then the Privy Council approval?

Acting Assistant Chief Executive:

While these are away at Privy Council a lot more drafting needs to go on.

Deputy R.G. Le Hérisier:

What other areas pose, in your view, problems or issues or challenges?

Acting Assistant Chief Executive:

Difficult to say the issues. The issues are legalistic. I can say the actual volumes are small but there has been some disquiet, if you like, about the extent of the changes you would have to do for income tax, for instance. Income tax is quite a complicated piece of law. If I may say, it is gender specific so making civil partnership match that caused us a few problems. That was done but to give it full effect you have to change forms and procedures to give proper rights to people. Similarly with social security. So there are issues around the one-off costs of changing the forms and procedures.

Deputy R.G. Le Hérisier:

But on income tax, you made a very good point, Tom, that it is gender specific. What solution have you come up with to make it compatible with this law?

Acting Assistant Chief Executive:

Basically, to give civil partners a right to choose Partner A and Partner B because there are differences in allowances between male and female and they have the right to choose which one is which and that gives full effect to the same rights as a married couple. They have the choice to say which one becomes the premier earner, if you like, in the household.

The Deputy Chief Minister:

But that would not result in a same-sex couple being at any disadvantage to a heterosexual couple because, effectively, you can, you know, in a modern world you have an earning working mum and a house father and vice versa in the same way that you have that in relation to civil partnership. So the effect of it, while it is a bit tricky because the legislation did not originally envisage single sex, in fact, the end result is going to be that we will have achieved the equivalent. It has been a little difficult. As Minister for Treasury and Resources you would probably like to move to a single assessment but that is a ... because we can deal with a whole raft of other issues in relation to the interaction between social security and income tax but we are working on that as well.

Acting Assistant Chief Executive:

I think social security is slightly different. Back in 2001 the laws were changed to make it less gender-specific, if you like. It will be individual-based so the problems they have with Survivors' Benefit in the U.K., did not materialise as much although there is an amendment for the Survivors' Benefit in the air.

Deputy R.G. Le Hérisier:

What about an issue which has probably more resonance in terms of people who are not necessarily supporters, or natural supporters, should we say, of this law? What about the Adoption Law? How have you dealt with that? Any changes?

Acting Assistant Chief Executive:

There are changes in the Adoption Law to make it explicit, if you like, that you can adopt as a civil partnership. It happens now. That is purely because the Adoption Law does not explicitly exclude it. So it happens now. So basically the new changes to the Adoption Law are just to clarify that position.

Deputy J.M. Maçon:

Yes, just going back briefly, you talked about the different forms and procedures that will have to go forward and a lot of laws are going to have to be changed and subsequently a lot of advice is going to have to be given. What factoring has been made into the training of staff on the new procedures and advice and things, and information packs and things like that which will need to be produced?

Acting Assistant Chief Executive:

Fortunately, that will be left to the departments to do. The principal ones are Social Security and Tax and I know they have already those in hand. Other departments have to look at their literature, their advice, particularly at Health with the Adoption Law. It is not for me to guide them in any way but we are advising them if they want any help about what the interpretation of the law is and whatever, we can do that.

Deputy J.M. Maçon:

So that has been flagged up with the departments?

Deputy M. Tadier:

Is the department expecting any opposition to any of these amendments, for example, the Adoption Law?

Acting Assistant Chief Executive:

Not heard of any.

The Deputy Chief Minister:

It has been discussed at the Council of Ministers and all Ministers have had to sign off their own legislation and while there is obviously a difference in view of one Minister who has made his position quite clear, I think that all Ministers have signed off their own legislation.

Deputy R.G. Le Hérisier:

Obviously, back to the list of legislation there was one overarching piece which despite the very brief reference made to it, we know is of enormous importance in this context, that is the Human Rights Convention. We know this game that is played in the States that we are not allowed to look at the detail of the advice you have received but quite clearly it must be very important in this context. So can you tell us what areas you have been looking at to make sure that this statement stands up to scrutiny?

Acting Assistant Chief Executive:

Obviously, we have been advised by the Law Officers but there are also various public documents including the consultation with the U.K., and going back to the concept of the difference between marriage, heterosexual and marriage for homosexual couples. That was clearly not a breach to have that marriage for heterosexual and civil partnership for same-sex partnership is not a breach of the Human Rights. That has been proved by a case in Austria.

The Deputy Chief Minister:

It is worth just probably repeating this lest there be any lack of confidence which I do not have in terms of our Law Officer advice, the Chief Minister has signed a declaration on the convention saying that it is human rights compliant and that seems to also ...

Acting Assistant Chief Executive:

U.K. advice as well.

Deputy R.G. Le Hérisier:

Did that advice, Deputy Chief Minister, deal with the points ... I do not wish to open the former debate again. Did it deal with the points that Deputy Tadier raised of is a civil partnership a real marriage? Because to his mind, obviously, it ...

The Deputy Chief Minister:

It is worth saying that in the recent case of *Schalk and Kopf v Austria*, against the European Convention on Human Rights found that marriage only for opposite sex couples and civil partnerships only for same-sex couples did not breach Article 8, the right to private and family life; Article 12, the right to marry; and Article 14, the prohibition of discrimination in the rights granted by the E.C.H.R. (European Convention on Human Rights). It also found that it is for national law to determine whether or not to permit same-sex marriage. So that is a fairly definitive statement. That is the U.K.'s position. Obviously, as a jurisdiction that are signing up to the European Convention of Human Rights and that is, obviously, relating to the Austrian case.

Deputy R.G. Le Hérisier:

That was an incredible opt out that you identified at the end, it is up to each national state as to whether it wishes to proceed.

Deputy M. Tadier:

But they are obliged to provide civil partnerships, presumably.

The Deputy Chief Minister:

Pardon?

Deputy M. Tadier:

But they are still obliged to provide civil partnerships, are they?

The Deputy Chief Minister:

Not all, I do not think every single European Union country is now enacted. But it is, clearly ...

Deputy M. Tadier:

But they would be under pressure to.

The Deputy Chief Minister:

Well, I mean, quite apart from the legal Human Rights compliance issue they are national ... interestingly, which I did not know, is that apparently in France a January poll published by Canal Plus found that 58 respondents in France believes that gays should be able to marry up from 45 per cent 5 years ago. Now, there is clearly an evolution of public opinion on this issue.

Deputy M. Tadier:

Taking it one step back because I appreciate now we have had ...

The Deputy Chief Minister:

So it is human rights compliant. We think there is a very ... a certificate has been signed on advice and that also then ... there is evidence from other jurisdictions.

Deputy R.G. Le Hérisier:

You saw the advice, did you?

The Deputy Chief Minister:

The Chief Minister signed it. I did not.

Deputy R.G. Le Hérisier:

He saw it? Yes.

Deputy M. Tadier:

Part of the problem, taking it one step back, it has been acknowledged the fact that certainly there is no obligation for any E.U. (European Union) country to provide marriage for same-sex couples, as soon as we say there is difference and that civil partnership is not marriage and vice versa, then it would presumably seem okay if we say: "Well, there are significant differences in entitlement between civil partnerships and marriages." Now, clearly, from a pragmatic point of view we try and make them as fair and as equal as possible. Would there be anything to stop, for example, the entitlement under one from being vastly different to the other?

The Deputy Chief Minister:

There is no point in dancing around this issue. You believe, it is clear from your observations which are absolutely clear from the original debate, that you believe in same-sex marriage and that is a fine, legitimate issue.

Deputy M. Tadier:

I am not bringing that ... that is not the point I am making. I am trying to take a step back and saying that given that the 2 are not the same, to what extent would it be possible to say: "Not only are we not going to allow civil partnerships to take place in churches but we are also going to say that civil partnerships are not entitled to other things which married couples are"?

The Deputy Chief Minister:

But we are not saying that.

Deputy M. Tadier:

But we could though.

The Deputy Chief Minister:

But we are not and we do not want to. We want to give the civil partnership the status, in the eyes of the State, in the eyes of the States of Jersey, the exact entitlement that the civil marriage has.

Deputy M. Tadier:

Is it fair to say that there has had to have been some very clever thinking with regard to tactics because we know that we have a diverse States membership? If I can give

you an example, one of my neighbours would not have supported this law if they thought it was marriage. The Minister for Home Affairs did not support this law because he did think it was marriage. I had reservations about supporting this law because I did not think it goes far enough because I know it is not marriage. So we are having to balance all these issues. We know it is marriage, essentially, do we not? We know to all intents and purposes this is marriage but we cannot call it marriage because we live in a society where marriage is reserved for where it has religious connotations. Is that a ... you cannot voice that necessarily ...

The Deputy Chief Minister:

We could spend hours discussing this. The definition of marriage ...

Deputy R.G. Le Hérisier:

So your question is, does the Minister agree with your observations?

The Deputy Chief Minister:

No.

Deputy M. Tadier:

Is that a valid ... was that considered ...

The Deputy Chief Minister:

No. I mean, I understand what the Deputy is saying and I will agree with him in relation to some of his views.

Deputy M. Tadier:

That could mean anything.

The Deputy Chief Minister:

Okay, some things. But let us be clear, the definition of marriage in the eyes of the States of Jersey is the stated relationship between husband of wife, the institution of marriage, the contract made by man and a woman to live as husband and wife. That is what marriage is.

Deputy M. Tadier:

Okay.

Deputy R.G. Le Hérisier:

Okay. I wonder ... we are in the last few minutes and why I appreciate my colleague has brought up some very interesting philosophical issues, the rest of the panel is struggling with the more mundane practical issues, I am afraid.

Acting Assistant Chief Executive:

Sorry, can I just phase back to the human rights aspect? Obviously, human rights aspects change as time goes on so we have a watching brief, if you like, to watch what is going on in the European courts and in the U.K., particularly with things like ... I do not know if you know the case about the Burden sisters? They wanted to form a civil partnership to get around the Inheritance Act. So we look at things like that and that is a case that is ...

Deputy R.G. Le Hérissier:

Maybe you could very quickly ... you have laid yourself open to a question. Could you identify what the major H.R. (Human Rights) changes have been since the passage of the in principle to the point we are now at?

Acting Assistant Chief Executive:

I could tell you that the *Burden* case has been looked at. There is this *Schalk and Kopf* case was one that came up. There are still appeals outstanding on some of the cases.

Deputy R.G. Le Hérissier:

How was the *Burden* case seen as trying to evade obligations?

Acting Assistant Chief Executive:

Well, it is basically 2 sisters coming together who are looking at trying to pass assets on and that is one of the issues that came up with intergenerational relationships.

[11:30]

Deputy M. Tadier:

That could not happen in Jersey, could it? Because we have provision to stop relatives having civil partnerships, presumably.

The Deputy Chief Minister:

Well, 2 sisters cannot get married.

Deputy M. Tadier:

No. But this is not marriage, Senator. This is civil partnership.

Deputy R.G. Le Hérissier:

No, I cannot go down there again.

Deputy M. Tadier:

Two sisters cannot get married.

Deputy R.G. Le Hérissier:

Is that your review of the H.R. issues?

Acting Assistant Chief Executive:

Yes. There are also questions around prescribed relationships, again with siblings and things like that. They were in ...

Deputy M. Tadier:

Two brothers cannot enter into a civil partnership.

Deputy R.G. Le Hérissier:

The new H.R. in this statement reflects these new developments?

Acting Assistant Chief Executive:

Yes.

Deputy R.G. Le Hérissier:

Even though we are not permitted to ever look at these statements?

Acting Assistant Chief Executive:

2011.

Deputy R.G. Le Hérissier:

Okay. Very quickly we have to wrap up. I am going to ask Deputy Maçon, who has been enormously patient.

Deputy J.M. Maçon:

Just very briefly, you highlighted that ongoing regulations have to be changed. Can you just indicate what else will have done? You indicated the housing regulations rules have to change but what else?

Acting Assistant Chief Executive:

Most of the laws have subordinate legislation that qualify the primary legislation. Social security, for instance, we will have to change some of their orders and claiming provision orders will have to change. I am just trying to think of other subordinate legislation. But as I said there are ... it will have to go to the States.

The Deputy Chief Minister:

We have a list of ... I do not know whether the panel has seen the Council of Ministers paper on all of them, the massive list of consequential legislation?

Acting Assistant Chief Executive:

That was in the original proposition. That is primary legislation.

The Deputy Chief Minister:

Okay, but the thing that the Council of Ministers saw in relation to all of the individual ministerial legislation, it is all in there.

Acting Assistant Chief Executive:

That is primary.

The Deputy Chief Minister:

All right. Primary, so that is all subordinate ...

Acting Assistant Chief Executive:

We can try and liaise with the Law Draftsmen because he has, obviously, this in hand.

Deputy J.M. Maçon:

I think it would be good to give Members an idea of what else will happen.

Deputy R.G. Le Hérissier:

Yes, it would be good to see the complexity ...

Acting Assistant Chief Executive:

There is the issue that we have not covered but I think you have one of the Law Officers attending upon you to talk about inheritance.

Deputy R.G. Le Hérisier:

Yes, we have had that discussion.

Acting Assistant Chief Executive:

You have had that? We have had to do away with the concept of widow and widower in terms of the fiduciary right and ... it was completely wrong.

Deputy R.G. Le Hérisier:

Okay. Anything else?

Deputy M. Tadier:

No, I think that is fine. Should I thank these individuals for coming in? Thanks for coming in. We appreciate it is a very complex law, as well.

Deputy R.G. Le Hérisier:

Have they any wrap-up comments?

The Deputy Chief Minister:

I welcome the fact that there are going to be some amendments on the details. It is healthy thing to have.

Deputy R.G. Le Hérisier:

There may be.

The Deputy Chief Minister:

There may be. There may well be. I think they are expected. All the amendments to improve the legislation, to deal with any issues of making sure that it is equivalent to marriage are fine. No doubt there will be further considerations by the States about the issue of marriage and making that available at some point after an original in-principle proposition to allow that for same-sex couples. But what we should not do, and I know I have said it about 10 times, but I do not think we should be trying to legislate for same-sex marriage by the use of the Civil Partnership Law. I think that is quite an important principle that we would hold on to.

Deputy R.G. Le Hérisier:

Anything else? Okay. Thank you both very much indeed for coming.

[11:33]