

# STATES OF JERSEY



## LEGAL PARENT STATUS AND PARENTAL RESPONSIBILITY FOR SAME SEX PARENTS (P.26/2022) – COMMENTS

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Presented to the States on 25th February 2022  
by the Minister for Children and Education

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STATES GREFFE

## COMMENTS

I applaud Deputy Doublet's commitment to this legislation which, as she rightly says, will address a long-standing matter. I, like the Deputy, am equally determined that our law provides same sex parents the same rights as oppose sex parents, but it is nevertheless, regrettably, a matter of fact that this legislation cannot be debated before the election, as there is insufficient time to prepare the necessary legislation.

I acknowledge that there have been delays in bringing forward the legislation as highlighted in Deputy Doublet's report; it has had to compete with other children's law and family law work, but I can assure the Assembly that it has now been prioritised and significant progress has been made under my time.

As Assistant Minister for Children and Education I signed the Ministerial Decision instructing that law drafting should commence on 8th April 2021, just 7 days after the Minister for Home Affairs received a briefing on the subject, demonstrating the priority this legislation had then and still has.

A consultant law drafting officer is in place, the policy intent that underlies the legislation has been determined (as described in Appendix 1) and a working draft has been produced.

The Children Education and Home Affairs Panel (which the Deputy is Vice-Chair of) wrote to me on 8th February 2022 to ask about the progress of the legislation and I responded 3 days later advising that in developing the working draft, officers have identified several highly complex and previously unknown issues which they are working to resolve. 4 days later the Deputy lodged her proposition [P.26/2022](#).

The issues previously advised by letter to the Panel include:

- Complexity that arises from the fact that Jersey does not have in place an equivalent to the UK's Human Fertilisation and Embryology Act 2008. In bringing forward legislation in Jersey to provide for parental responsibility for same-sex parents we are required to create new concepts in law (for example, the concept that a child may have two parents of the same-sex who may acquire legal parent status and parental responsibility without having to adopt that child), as well as new processes (for example, a new parental order that allows intended parents (including two fathers) to become a child's legal parents and hold parental responsibility). When the UK legislated for parental responsibility for same-sex parents, they hung those concepts and process of provisions that already existing in their 2008 Act. We are unable to do that.
- Challenges that arise when determining the domicile of origin for children of same sex parents, as the concept of domicile of origin arises from customary law which does not recognise same sex parents.
- This is important because domicile of origin is the concept the Courts use to determine which legal system applies to an individual who has connections with more than one jurisdiction, and is relevant in matters of personal law, tax law and inheritance law. Failure to resolve matters relating to domicile of origin creates significant uncertainty for children and their parents.

Officers are working to resolving these issues, but this is not the end of the process as a series of pre-lodging reviews and checks must be undertaken. These checks are common to all law drafting processes and include:

Review by key professional stakeholders; in relation to parental responsibility for same sex parents this entails:

- review of the court order making powers set out in the draft legislation by the Judicial Greffier and Family Court
- review of the law from a safeguarding and operational perspective by Children's Services, and Jersey Court Family Advisory Service. This is common to any legislation that relates to parental responsibility and associated matters
- consideration of Children's Rights by the Commissioner for Children Young People
- review of provisions relating to the sealing of birth certificates, the issuing of a parental order certificate and recording of prescribed particulars, which provide foundations for a child's identity, by the Superintendent Registrar.

Legal review: The Law Officers' advice would be required on any amendments arising for the review by key professional stakeholders and would then need to undertake a legal review of the final draft legislation. Advice would also be required on the compatibility of the legislation with the European Convention on Human Rights

Law drafting checks: The Legislative Drafting Office's Editorial Review Team must review the draft Law for errors and anomalies.

The review processes described above will take many weeks. It is a process that cannot be shortcut through an injection of more resources and is likely to necessitate further amendments or refinements to the draft law. A number of stakeholders who need to engage in those review processes have expressed significant reservations about any proposal to push for pre-election lodging. They advise that the timeframe is unrealistic and presents the very real possibility of bringing forward flawed legislation that presents risks to children and their parents.

Even in the event the Assembly and Bailiff were to agree a truncated lodging period on the basis that the proposition is so urgent it should proceed during the pre-election period – which would be in contravention of Standing Order 19A which requires pre-election lodging to be two months before the first day of the nomination period – there can be no assurance that any legislation that was brought forward was fit-for-purpose.

Furthermore, neither this Assembly nor the Scrutiny Panel would have adequate time to review/scrutinise that legislation; legislation that is most likely going to be lodged by October 2022 in any event.

Whilst I fully support the Deputy's desire to see this legislation in place, **I must recommend Members reject the proposition.**

It is entirely right that we provide for same-sex parents and put a stop to the feelings of stress and humiliation reported by the Deputy, but we also need to get the legislation right, as there are few statutory provisions more powerful in a child's life than ones that determine who their parents are.

## Appendix 1

The Children and Civil Status (Amendment) (Jersey) Law 202- is currently being drafted. The provisions set out in that amending law will:

- (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,
- (f) enable a child whose parents are of the same sex and who are married / in civil partnership with each other to be recognised as legitimate,
- (g) enable a child whose parents are of the opposite sex and who are in a civil partnership to be recognised as legitimate