

STATES OF JERSEY



DRAFT MARRIAGE AND CIVIL STATUS (AMENDMENT No. 2) (JERSEY) LAW 200 (P.61/2008): AMENDMENTS (P.61/2008 Amd.) – COMMENTS

**Presented to the States on 30th June 2008
by the Minister for Home Affairs**

STATES GREFFE

COMMENTS

1. Irrespective of the Council of Europe recommendations quoted, the amendment has undergone a human rights audit by the Law Officers' Department and found to be compliant. Regarding the United Nations Convention on the Rights of the Child, I do not agree that the amendment, as drafted, runs contrary to the principles of Article 2 or Article 7. These comments follow the order in which they are presented in the Deputy of St. Martin's amendment.
2. **First amendment.** The Deputy's amendments to Article 59A would allow unrestricted choice in the surname of the child. It is a matter for Members as to whether to accept the choices, albeit limited, contained in the Home Affairs amendment to the law or the wider choice contained in Amendment No. 2 of the Deputy of St. Martin. Members must vote according to their own conscience bearing in mind the fact that there is no European or international standard in these matters and taking into account what the European Court has said that Convention states should be allowed a wide margin of appreciation. A number of factors have been taken into account in proposing the rules surrounding registration of names. Firstly, there is a traditional consideration in the sense that, in the time-honoured way, the vast majority of parents will wish their children to receive the family name, either one or the other, or both. Very few would opt otherwise as it is important to most people to create a sense of belonging to a family unit. The traditions of family life and lineage are still very strong in Jersey and there is little merit in simply mirroring the U.K. legislation where parents can choose any name. Secondly, some consideration needs to be given to protecting the interests of the child from the possibility, albeit unlikely to occur frequently, that a desired name would be patently frivolous having consequences for the child when growing up. This may be construed as 'the States knows best' but, clearly, where registration of a name at birth is concerned, the child cannot speak up for itself and it is the interests of the child that is the main driver for the line I am proposing. Thirdly, and linked to the previous reason, it can be argued that it is incumbent upon the state concerned to set a standard. The standard in this case merely reflects what most people would wish to do in registering a name. Fourthly, a secondary argument can be made for some restriction in choice as it would become more difficult in the future for families to trace their ancestry. Family history research is becoming much more important to many people trying to establish their lineage.
3. **Second amendment.** The Deputy of St. Martin's second amendment relates to the default position where married parents cannot agree upon a surname for their child. The Deputy avers that a married father has a veto and that this is inherently wrong. He could have equally said that, in the case of an unmarried couple, the mother has the veto in that the child would be registered with the mother's maiden surname. However, the real effect of the Deputy's amendment would be to inflict double-barrelled names upon unfortunate children whose parents could not decide or agree upon a name for their child. Although this may seem to be a compromise, it would result in a couple's child not having exactly the same surname as either of theirs and it would not suit parents who might have an aversion to the concept of double-barrelled names. The Deputy's amendment also states that the child should take a combination of both surnames in alphabetical order which seems to run contrary to his general theme of freedom of choice.
4. **Third amendment.** The Deputy's third amendment proposes that in the default position, the child should take the surname by which the mother is currently known rather than have to take the maiden surname of the mother. There is, however, a flaw in this alternative. A mother's current surname may be her married surname which she has kept because her children of a previous marriage have their father's surname. She may not wish a child of a subsequent relationship to have the surname of her previous husband. This is returning to the previous problem that was experienced under the Loi (1842) sur l'Etat Civil where a married woman had to register her children in the name of her husband, even if he was not the father of the child.
5. **Fourth amendment.** Extending the re-registration of children up to the age of 18 years would take retrospective re-registration back to when the 1842 Law was in force. As this amendment is to the 2001 Law, it is more logical to allow re-registrations since the 1st May 2002 when the Law come into force. Clearly, there would be further financial and manpower implications of allowing re-registration to take place from a much earlier date.

6. **Fifth amendment.** In his fifth amendment, the Deputy of St. Martin raises the point that my amendment would not allow a child to be re-registered if one of the parents had died between the date of birth and the date of re-registration. I am grateful to the Deputy for recognising this possibility which I will elaborate on during the debate.

7. **Sixth amendment.** The Deputy of St. Martin's sixth amendment would allow consequential changes where re-registration might result in the duplication of a surname where one had previously been used as a forename. The Deputy gives an example in his amendment. *Prima facie*, the amendment appears reasonable. However, Members should be aware that passing it would create a privilege which those parents re-registering under Article 57 do not have (i.e. where parents wish to legitimise their child and change the child's name having since married). Under these circumstances, parents can only change from the mother's maiden name to the father's name, but cannot remove a duplicate name. The practical answer to this is simply for the child not to use the duplicate name later on if they so wish.