STATES OF JERSEY

CIVIL MARRIAGES: SAME SEX COUPLES (P.102/2014) – SECOND AMENDMENT

Lodged au Greffe on 7th July 2014
by Senator B.I. Le Marquand

STATES GREFFE

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For the words “in principle,” substitute the words “in relation to the proposal”; for the words “and to request” substitute the words “, that the” and for the words “to bring forward for approval by the States the necessary draft legislation to give effect to the proposal” substitute the words “be requested by 31st December 2014, to investigate and report to the States as to whether it would be appropriate to introduce legislation to allow this, with appropriate safeguards, and as to the arrangements which should be made for the recognition in Jersey, in some way, of civil partnerships and civil marriages entered into outside of Jersey.”.

SENATOR B.I. LE MARQUAND

REPORT

The reasons for this amendment

I must first apologise for the lateness of this amendment and explain the reasons for this.

I had understood that a similar amendment would be lodged by a Member of the States. What was actually lodged was the amendment of Senator P.F.C. Ozouf. Unfortunately, this asks the Members of this Assembly to make a decision in principle on the issue of same sex civil marriages prior to any public consultation or detailed study of the effects of this in Jersey.

Furthermore, although Senator Ozouf's amendment does refer to any subsequent legislation containing specific provisions that religious and faith communities would not be required to conduct same sex marriages unless they wished to do so, this does not, in my view, cover all the issues and difficulties which may arise from Deputy S.Y. Mézec of St. Helier's proposal.

In addition, neither the proposal nor the Amendment give consideration to the closely associated issue of the recognition in Jersey of civil partnerships or civil marriages entered by same sex couples outside of Jersey.

My detailed consideration of these issues was delayed because of my other commitments in relation to States business. However, when I began to study the proposition and amendment in detail, I realised that the States was being asked to make a decision in principle on this highly controversial and divisive issue without any detailed study having been made of the effects in Jersey. When this area was looked at previously, a detailed study was made by a working party, which looked at all the alternatives and concluded that civil partnerships were the appropriate route for Jersey to take. That study was made only a few years ago and no such detailed study has been attempted since.

I therefore came to the conclusion that early in the debate I should move the proposal that this proposition be referred to the appropriate Scrutiny Panel, which appears to me to be Corporate Services. That would only delay the debate for one week to the next States Sitting, which is due to commence on 14th July 2014. However, it then occurred to me that if the Scrutiny Panel decided that they did not wish to scrutinise the proposition, then that would leave the Members of the Assembly in the same position of debating the proposition without any detailed study having been made.

Although this amendment is late and members may not wish to allow it to be heard as part of the debate on the proposition because of its lateness, it does offer to the Members of the Assembly an alternative route in relation to a detailed study to that of referral to the Scrutiny Panel. If the proposition were referred to the Scrutiny Panel and the Scrutiny Panel did not wish to conduct this review, then this amendment would be within time for debate on 15th July 2014.

I do not mind which route is followed: either a study by the Scrutiny Panel or a detailed study by the Chief Minister, but I do not believe that the Members of this Assembly should be making a decision on the principle of this issue without such a detailed study.

So that no member is unaware of what I am proposing to do, it is my intention to first propose at an early stage that this proposition should be referred to the appropriate Scrutiny Panel for them to consider what they want to do. If the Assembly were to agree to this, then the matter would be put off to the next Sitting. If the Scrutiny Panel were to then decide to proceed with a detailed study then this amendment would effectively fall away, although I hope that the issue of the recognition in an appropriate way of foreign civil partnerships and civil marriages by same sex couples would be included in the ambit of the Scrutiny process.

The areas which need to be considered in detail

I am not going to set out here all the arguments against the proposition, but merely to seek the areas in relation to which it appears to me that a detailed study ought to be made prior to a decision being made in principle on this issue. I believe that the following areas will need to be studied –

(A) Whether satisfactory arrangements can be made for the recognition in some way of civil marriages by same sex couples, which have been made or will be made outside of Jersey. In particular, the issue will arise as to whether it could be appropriate for them to be treated in Jersey as if they were civil partnerships. The amendment of Senator Ozouf helpfully informs us that 19 States in the USA have permitted such civil marriages. However, that means that 31 States in the same country have not. There must be precedents from the USA and from other countries as to how this situation is dealt with in an appropriate manner.

(B) The effect which the redefinition of marriage will have in relation to the institution of marriage. Historically marriage has been understood as a committed relationship between a man and a woman which is intended to be "until death us do part". It has been seen both in the secular world and in the religious as the most important unit of society, indeed as the foundation of community and society. If the State is to change that definition in order to include same sex couples, then what effect is that going to have upon the institution of marriage itself. If it can be redefined in this way, then in what other ways could it be redefined in the future. This is a very important issue indeed, and one in relation to which there ought first, in my view, be some detailed consideration and study before a decision in principle is made.

(C) The effect which this proposal will have, both in the short term and the long term in relation to the Church of England in Jersey. I am both a Member of the Church of England in Jersey and a licensed Reader (lay preacher) and so have some understanding of these issues. Although Senator Ozouf has an understanding of the issue in relation to an opt-out from conducting such same sex marriages, he does not appear to have understood the full extent of the problem. Although some denominations such as Catholics have for years drawn a distinction between what the State accepts as a valid marriage and what the Church accepts as a valid marriage, that has not been the position for the Church of England in Jersey, which has accepted civil marriage as marriage. Although there have been restrictions from time to time on allowing re-marriage in a Church of England Church, there has never to my knowledge been a division between what the State accepts as marriage and what the Church of England in Jersey accepts as marriage. In this context, the use of

the term 'civil marriage' in the proposition is not helpful because there is no distinction in the Church of England in Jersey. This is going to create a very strange situation.

Before I move on, I need to remind Members of the peculiar status of the Rector of a Jersey Parish and of matters such as the Parish Ecclesiastical Assembly. I believe that this Assembly (and particularly the Connétables) needs to be very careful not to take any action which might prejudice this historic and important relationship.

Although such an opt-out from being obliged to conduct such a same sex marriage would be helpful, the issue is bound to arise as to for how long such an opt-out will last. The difficulty is that such an opt-out will clearly create a situation in which the Church of England will be discriminating against same sex couples in a situation in which the State has recognised same sex marriages as being the same as heterosexual marriages. For how long will that position be sustainable? If it becomes unsustainable, then inevitably the Church of England may find itself forced to not perform any civil marriages at all. How will that be consistent with the current historic relationship between Parish Church and Parish community?

I am highlighting here the type of complex issue which may arise.

(D) The next area which I need to mention is the possible need for protection for people of faith and for faith-based organisations. What will be the position of the faith schools, which are currently all Catholic. What will they be required to teach as part of a required curriculum in future? Will they be required as part of a condition of receiving a grant from the States that same sex married couples are the same as heterosexual couples? What about individual teachers working in the States-run schools? Will there be any safeguards for them in matters of personal conscience and belief? In my view, these are issues which should properly be studied before a decision is made in principle.

(E) There may be other similar issues which may arise during such a study.

The issue of mutual recognition

This amendment seeks to widen the area of study beyond that of the allowing of same sex civil marriages to that of the recognition of foreign civil partnerships and civil marriages. This is not merely an issue in relation to the UK. Historically, there has been recognition of foreign marriages, provided that they fulfilled certain criteria. With the mixed picture which has now arisen in this area, which is further complicated by concepts such as what in France is called a *Pacte Civil de Solidarité*, there is a need for a general review as to what should be recognised, and in what way, in order to avoid the situation in which couples moving to Jersey from another jurisdiction find that they have no status whatsoever in Jersey.

Conclusion

Some members may object that this amendment is a delaying tactic. I would point out in response that the original proposition does not set any timescale in relation to this issue, whereas this amendment sets a timescale of 31st December 2014. It is clear that, even under the proposition, the decisions in relation to the details of this are going to be decided by the next States Assembly. Clearly, this will be a major election issue in the autumn 2014 General Election. If the next States Assembly takes a different view

to this Assembly, then any decision which is now made may be overturned. In those circumstances, I cannot see that the issue as to whether the detailed study is made before the decision is made will actually cause any delay. I maintain the position that the States ought not to make such a major and far-reaching decision in principle without there first being an appropriate study of the complex issues which arise.

Financial and manpower implications

There will be some financial implications in relation to the work on such a study, but I cannot quantify this and would maintain, in any event, that most of the work involved would have to be done in any event at a later stage. The work in relation to the consideration of mutual recognition is, in any event, work which needs to be done independently. Again, I am unable to quantify this. In both cases, I would expect most of the work to be completed by existing staff, although there may be a need to employ outside experts in relation to certain areas.