

**DRAFT LOI (199 ) (AMENDEMENT No. 13) SUR L'ETAT CIVIL**

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**ETATS DE JERSEY**

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## Report

The requirement of the Loi (1842) sur l'Etat Civil that a child born during the subsistence of a valid marriage has to be registered as the legitimate child of the husband and wife, even where the natural father of the child is not the husband has, for many years, been a source of resentment and criticism from some quarters.

It is also, quite possibly, in contravention of Article 8 of the European Convention on Human Rights, (the right to respect for private and family life) if the Law prevents the voluntary recognition by the natural father of his child (Jolie and Le Brun -v- Belgium (1986) 11418/85).

No doubt the 1842 Loi reflects the long-standing rule of the customary law (now given statutory force in the Legitimacy (Jersey) Law (1973)) and of English common law, known as the presumption of legitimacy.

The rule is that a child born to a married woman during the subsistence of her marriage is also the child of her husband.

Article 2(1) of the 1973 Law provides 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". Paragraph (2) of that Article, reflecting the customary law position, provides that the fact that a child is born or conceived during the subsistence of a lawful marriage raises a presumption that the husband is the father of the child, which may be rebutted only by strong and satisfactory evidence to the contrary. The presumption of legitimacy is probably of great antiquity, both here and in England, and is found in one form or another, in a great many other jurisdictions, whether based on common law or civil law.

In former times, when illegitimacy carried not only social stigma, but great legal disadvantages, and before scientific testing methods had appeared, the presumption carried greater significance than it does today.

The presumption is not, and never has been, irrefutable, however. Thus, evidence that the husband was incapable of being the father (by absence, impotency, etc.) could displace it. Also in England, but not, apparently, in Jersey, the presumption does not apply where the husband and wife are living apart under a decree of judicial separation.

Nowadays, with less difficulties attaching to illegitimacy, accurate blood and DNA testing and a different set of social mores, the presumption has become somewhat less important, though there are still reasons to retain it. However, at least some room for flexibility in the procedures for registration of births which are in fact illegitimate, could be allowed.

The Etat Civil Committee has looked at ways to achieve this object for several years. It has not proved easy to find a way of doing so which allows registration of a birth in accordance with the facts but which does not affect the legitimacy of the birth in law.

The Committee believes that a way successfully to achieve this object has been found in the draft Law, at the same time providing a safeguard for the absent/estranged husband of a mother of a child registered as de facto illegitimate who believes himself to have been the father of the child.

The scheme of the draft Law is that if a married woman gives birth to a child which is in fact illegitimate (i.e. not her husband's child) the child may be registered as illegitimate with the natural father recorded as such in the register if -

- (a) the mother and de facto father so request by attending on the Registrar;
- (b) the mother so requests and produces declarations by herself and the father as to the actual parentage of the child;
- (c) the father so requests and he produces declarations from himself and the mother as to the actual parentage of the child.

This means that the register of births can reflect the facts of the situation, where the natural father wants to be recognised as such just as he can now where the mother is not married. The entry in the register, accordingly, is stated by the new Article 2 (3) of the Legitimacy (Jersey) Law 1973, inserted by the draft Law, to be prima facie evidence that the child is illegitimate, but not sufficient evidence on its own to displace the legal presumption that the child is legitimate. This means that to have the child's legal status confirmed, it will be necessary for a declaration of illegitimacy to be obtained from the Royal Court.

Where a married woman has a "de facto" illegitimate child but the father does not wish to be registered as the father, the child will be registered as the illegitimate child of the mother and no name or details of the father will be entered in the register in the same way as an illegitimate child of an unmarried mother can be registered at present.

The Etat Civil Committee was particularly concerned that the changes brought about by the amendments should not lead to the registration as illegitimate of a child who is really legitimate, for example, where the husband (and actual father) is away from the Island when the child is born and for a considerable period thereafter. The Committee is satisfied that there is no appreciable risk of this occurring both because it is inherently unlikely that these facts will arise and because, even if they did arise, it would require the mother or both the mother and (claimed) natural father to deceive or conspire to deceive the registrar (and the husband and everyone else) by making false reports or declarations. The mother, or she and the father, would therefore commit a criminal offence under the 1842 Law, punishable by up to a year in prison, and may also commit a more serious offence of conspiracy.

Further, in the unlikely event of this occurring, the register can be corrected if the husband and actual father asks for the amendment of the register by the Committee, under Article 59 of the Etat Civil Law. The Committee may, if it is unsure about such a case, refer it to the Royal Court for a decision.

## **Explanatory Note**

This draft Law amends the *Loi (1842) sur l'Etat Civil* ('the Loi') regarding registration of the birth of a child whose parents are not married to each other.

*Article 1* replaces the existing Article 17A of the Loi and adds a new Article 17AA. The existing Article 17A applies where a mother is unmarried at the time of the birth of the child or, where she is married but the illegitimacy of the child has been established in proceedings. In either case, a name for the father of the child is only registered if requested by both the mother and natural father. The substituted Article 17A is of wider application, applying in any case where the mother and natural father are not married to each other at the time of the birth of the child. As before, a name for the father of the child is only registered if requested by the mother and the natural father. The new Article 17AA enables the re-registration of a birth, at the request of both the mother and natural father, where the name of the father was left blank when the birth was first registered.

*Articles 2, 3 and 4* make consequential amendments.

*Article 5* amends Article 2 of the Legitimacy (Jersey) Law 1973 to the effect that registration under Article 17A or 17AA of the Loi is prima facie evidence that the child is not legitimate but does not of itself rebut a presumption of legitimacy.

*Article 6* is the short title. If adopted, the Law will come into force upon registration in the Royal Court.

ENGLISH TRANSLATION

**LOI (1999) (AMENDEMENT No. 13) SUR L'ETAT CIVIL**

**A LAW** to amend further the Loi (1842) sur l'Etat Civil and to amend consequentially other Laws; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 1999)

**STATES OF JERSEY**

The day of 1999

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

For Article 17A of the Loi (1842) sur l'Etat Civil, as amended (hereinafter referred to as "the principal Law") there shall be substituted the following Articles -

**"ARTICLE 17A**

(1) Notwithstanding the foregoing provisions of the present Law, in the case of a child whose father and mother were not married to each other at the time of his birth, no person shall be required, as father of the child, to give information concerning the birth of the child, and the Registrar of the parish shall not record in the Register of Births the name of any person as being that of the father of the child except -

- (a) at the joint request of the mother and the person stating himself to be the father of the child; or
- (b) at the request of the mother, on production -
  - (i) of a declaration made by the mother that that person is the father of the child, and
  - (ii) of a declaration made by that person stating himself to be the father of the child;or
- (c) at the request of that person, on production -
  - (i) of a declaration made by that person stating himself to be the father of the child, and
  - (ii) of a declaration made by the mother that that person is the father of the child.

(2) Every person making a request in accordance with sub-paragraph (a), (b) or (c) of paragraph (1) of this Article shall sign the Register of Births in the presence of the said Registrar.

(3) Where, in the case of a child whose father and mother were not married to each other at the time of his birth, a person stating himself to be the father of the child makes a request to the Registrar in accordance with sub-paragraph (c) of paragraph (1) of this Article, the giving of information by him concerning the birth of the child and the signing of the register by him in the presence of the Registrar shall act as a discharge of any duty imposed by Article 9 of the present Law.

(4) Where the Registrar enters the name of a person as father of a child in accordance with this Article, he shall record the child as the illegitimate child of that person and of the mother.

(5) For the purposes of this Article and Article 17AA of the present Law, any reference to the time of a person's birth shall be taken to include any time during the period beginning with his conception and ending with his birth.

(6) A declaration for the purposes of this Article or Article 17AA of the present Law shall be in such form and contain such information as the Superintendent Registrar may require, and shall be -

- (a) made before him;
- (b) made on oath before a person duly authorized to administer oaths in the Island; or
- (c) made on oath before a person who appears to the Superintendent Registrar to be authorized to administer oaths outside the Island.

#### ARTICLE 17AA

(1) Where, in accordance with the present Law, 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, the Registrar of the parish, subject to paragraph (2) of this Article, shall re-register the birth so as to record the name of a person as the father -

- (a) at the joint request of the mother and that person; or
- (b) at the request of the mother, on production -
  - (i) of a declaration made by the mother that that person is the father of the child, and
  - (ii) of a declaration made by that person stating himself to be the father of the child;or
- (c) at the request of that person, on production -
  - (i) of a declaration made by that person stating himself to be the father of the child, and
  - (ii) of a declaration made by the mother that that person is the father of the child.

(2) No birth shall be re-registered under this Article except in accordance with paragraphs (3) and (4) of this Article and with the authority of the Superintendent Registrar.

(3) On the re-registration of a birth in accordance with this Article -

- (a) the Registrar shall sign the Register of Births; and
- (b) every person making a request in accordance with sub-paragraph (a), (b) or (c) of paragraph (1) of this Article shall also sign the Register in the presence of the said Registrar; and
- (c) in a case where the re-registration takes place more than three months after the birth, the Superintendent Registrar shall also sign the Register.

(4) Where the Registrar re-registers the birth of a child in accordance with this Article, he shall record the child as the illegitimate child of the person shown as the father and of the mother.”.

#### ARTICLE 2

In sub-paragraph (d) of paragraph (2), and in paragraph (3), of Article 17B of the principal Law, for the words “Article 17A(2) of the present Law” there shall be substituted the words “Article 17A or Article 17AA of the present Law”.

### ARTICLE 3

In Article 22 of the Adoption (Jersey) Law 1961, as amended, for the words “Article 17B” there shall be substituted the words “Article 17AA or 17B”.

### ARTICLE 4

In paragraph (4) of Article 3 of the Adoption (Jersey) Law 1965, as amended, for the words “Article 17B” there shall be substituted the words “Article 17AA or 17B”.

### ARTICLE 5

After paragraph (2) of Article 2 of the Legitimacy (Jersey) Law 1973, as amended, there shall be inserted the following paragraph -

“(3) For the avoidance of doubt, it is declared that the fact that the birth of a child has been registered or re-registered pursuant to Article 17A or 17AA of the Loi (1842) sur l’Etat Civil is prima facie evidence that the child is not legitimate by birth but, in the case of a child in respect of whom the presumption in paragraph (2) of this Article applies, is not, of itself, sufficient evidence to rebut that presumption.”.

### ARTICLE 6

This Law may be cited as the Loi (1999) (Amendement No. 13) sur l’Etat Civil.

**LOI (1999) (AMENDEMENT No. 13) SUR L'ETAT CIVIL**

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**LOI** pour modifier en plus la Loi (1842) sur l'Etat Civil et pour modifier secondairement d'autres Loïs; confirmée par Ordre de Sa Majesté en Conseil en date du

(Enregistré le      jour de      1999)

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**AUX ETATS DE L'ILE DE JERSEY**

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L'An 1999, le      jour de

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**LES ETATS**, moyennant la sanction de Sa Très Excellente Majesté en Conseil, ont adopté la Loi suivante -

**ARTICLE 1**

A l'Article 17A de la Loi (1842) sur l'Etat Civil, telle que ladite Loi a été modifiée<sup>[1]</sup> (ci-après désignée "la Loi principale"), seront substitués les Articles suivants -

**"ARTICLE 17A**

(1) Nonobstant les dispositions précédantes de la présente Loi, dans le cas d'un enfant dont le père et la mère n'étaient pas mariés l'un à l'autre au moment de sa naissance, aucune personne ne sera tenue, en tant que père de l'enfant, de fournir des renseignements concernant la naissance de l'enfant, et l'Enregistreur de la paroisse ne consignera dans le Registre des Naissances le nom d'aucune personne comme étant le père de l'enfant sauf -

- (a) à la requête conjointe de la mère et de la personne se présentant comme étant le père de l'enfant; ou
- (b) à la requête de la mère, sur présentation -
  - (i) d'une déclaration effectuée par la mère que ladite personne est le père de l'enfant, et
  - (ii) d'une déclaration effectuée par ladite personne se déclarant comme étant lui-même le père de l'enfant;

ou

- (c) à la requête de ladite personne, sur présentation -
  - (i) d'une déclaration effectuée par ladite personne se déclarant comme étant lui-même le père de l'enfant, et
  - (ii) d'une déclaration effectuée par la mère que ladite personne est le père de l'enfant.

(2) Toute personne effectuant une requête conformément au sous-alinéa (a), (b) ou (c) de l'alinéa (1) de cet Article sera tenue de signer le Registre des Naissances en présence dudit Enregistreur.

(3) Lorsque, dans le cas d'un enfant dont le père et la mère n'étaient pas mariés l'un à l'autre au moment de sa naissance, une personne se déclarant comme étant le père de l'enfant effectue une requête à l'Enregistreur conformément au sous-alinéa (c) de l'alinéa (1) de cet Article, la fourniture des renseignements par lui concernant la naissance de l'enfant ainsi que la signature au sein du Registre par lui en présence de l'Enregistreur seront tenues comme satisfaisant toute obligation imposée par l'Article 9 de la présente Loi.

- (4) Lorsque l'Enregistreur consigne le nom d'une personne comme étant celui du père conformément à cet



Article, il enregistrera l'enfant comme étant l'enfant illégitime de cette personne et de la mère.

(5) Aux fins de cet Article et de l'Article 17AA de la présente Loi, toute référence au moment de la naissance d'une personne sera entendue comme incluant tout moment pendant la période commençant avec sa conception et terminant avec sa naissance.

(6) Une déclaration aux fins de cet Article ou de l'Article 17AA de la présente Loi sera en telle forme et contiendra tels renseignements que l'Enregistreur-Surintendant pourra exiger, et sera -

- (a) effectuée par-devant lui;
- (b) faite sous serment par-devant une personne dûment autorisée à faire prêter serment dans l'Ile; ou
- (c) faite sous serment par-devant une personne apparaissant à l'Enregistreur-Surintendant comme étant autorisée à faire prêter serment hors de l'Ile.

#### ARTICLE 17AA

(1) Lorsque, conformément à la présente Loi, la naissance d'un enfant dont le père et la mère n'étaient pas mariés l'un à l'autre au moment de sa naissance a été enregistrée, et que personne n'a été consignée comme étant le père de l'enfant, l'Enregistreur de la paroisse, sous réserve des dispositions de l'alinéa (2) de cet Article, sera tenu d'enregistrer de nouveau la naissance afin de faire consigner le nom d'une personne comme étant le père -

- (a) à la requête conjointe de la mère et de ladite personne; ou
  - (b) à la requête de la mère, sur présentation -
    - (i) d'une déclaration effectuée par la mère que ladite personne est le père de l'enfant, et
    - (ii) d'une déclaration effectuée par ladite personne se déclarant comme étant lui-même le père de l'enfant;
- ou
- (c) à la requête de ladite personne, sur présentation -
    - (i) d'une déclaration effectuée par ladite personne se déclarant comme étant lui-même le père de l'enfant, et
    - (ii) d'une déclaration effectuée par la mère que ladite personne est le père de l'enfant.

(2) Il ne sera procédé à aucun nouvel enregistrement de naissance en vertu de cet Article sauf conformément aux alinéas (3) et (4) de cet Article et avec l'autorité de l'Enregistreur-Surintendant.

(3) Lors du nouvel enregistrement d'une naissance conformément à cet Article -

- (a) l'Enregistreur sera tenu de signer le Registre des Naissances; et
- (b) toute personne effectuant une requête conformément au sous-alinéa (a), (b) ou (c) de l'alinéa (1) de cet Article sera tenue en outre de signer le Registre en présence dudit Enregistreur; et
- (c) dans le cas où le nouvel enregistrement est effectuée plus de trois mois après la naissance, l'Enregistreur-Surintendant sera tenu en outre de signer le Registre.

(4) Lorsque l'Enregistreur procède au nouvel enregistrement de naissance d'un enfant conformément à cet Article, il consignera l'enfant comme étant l'enfant illégitime de la personne figurant comme étant le père et de la mère.”.

#### ARTICLE 2

Dans le sous-alinéa (d) de l'alinéa (2) et l'alinéa (3) de l'Article 17B de la Loi principale,<sup>[2]</sup> aux mots “l'Article

17A(2) de la présente Loi” seront substitués les mots “l’Article 17A ou l’Article 17AA de la présente Loi”.

### ARTICLE 3

Dans l’Article 22 de la Loi dite “Adoption (Jersey) Law 1961”,<sup>[3]</sup> telle que ladite Loi a été modifiée, aux mots “Article 17B” seront substitués les mots “Article 17AA or 17B”.

### ARTICLE 4

Dans l’alinéa (4) de l’Article 3 de la Loi dite “Adoption (Jersey) Law 1965”,<sup>[4]</sup> telle que ladite Loi a été modifiée, aux mots “Article 17B” seront substitués les mots “Article 17AA or 17B”.

### ARTICLE 5

Après l’alinéa (2) de l’Article 2 de la Loi dite “Legitimacy (Jersey) Law 1973”,<sup>[5]</sup> telle que ladite Loi a été modifiée, sera inséré l’alinéa suivant -

“(3) For the avoidance of doubt, it is declared that the fact that the birth of a child has been registered or re-registered pursuant to Article 17A or 17AA of the *Loi (1842) sur l’Etat Civil* is prima facie evidence that the child is not legitimate by birth but, in the case of a child in respect of whom the presumption in paragraph (2) of this Article applies, is not, of itself, sufficient evidence to rebut that presumption.”.

### ARTICLE 6

La présente Loi pourra être citée sous le titre de “Loi (1999) Amendement No. 13) sur l’Etat Civil”.

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<sup>[1]</sup> Tomes I-III, page 93.

<sup>[2]</sup> Tomes I-III, page 94.

<sup>[3]</sup> Volume 1961-1962, page 380.

<sup>[4]</sup> Volume 1963-1965, page 448.

<sup>[5]</sup> Volume 1973-1974, page 6.