

STATES OF JERSEY



CIVIL MARRIAGES: SAME SEX COUPLES

Lodged au Greffe on 28th May 2014
by Deputy S.Y. Mézec of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to agree, in principle, that same sex couples should be permitted to enter into civil marriages and to request the Chief Minister to bring forward for approval by the States the necessary draft legislation to give effect to the proposal.

DEPUTY S.Y. MÉZEC OF ST. HELIER

REPORT

Since 2nd April 2012, same sex couples have been able to enter into civil partnerships in Jersey, following an in principle decision by the States in 2009 to accept civil partnerships.

Provision was made in the law so that same sex marriages from the countries that allowed it then would be recognised as civil partnerships in Jersey.

On 13th March 2014, the provisions of the Marriage (Same Sex Couples) Act 2013 came into force in England and Wales, with the first same sex marriages occurring on 29th March 2014.

Once this law came into force, a gap in Jersey law came into existence, where a same sex marriage in the UK would not be recognised in Jersey as a civil partnership, as is the case with same sex marriages from other countries.

On 29th April 2014 I asked the following question of the Chief Minister in the States –

“Following the first same sex marriages in the United Kingdom that took place on 29th March 2014, will the Chief Minister indicate whether he intends to bring forward proposals to ensure that U.K. married couples who move to Jersey are not left unrecognised?”

In his response, the Chief Minister said –

“Jersey’s Civil Partnership Law makes provision for same sex couples married in other jurisdictions to be automatically recognised as civil partners in Jersey. This does not however currently extend to same sex couples married in England because the English legislation came into effect after our Civil Partnership Law. I have therefore instructed officers to review the relevant part of the law to enable any necessary change.”

I have lodged this proposition because I believe that the Chief Minister’s proposals to recognise UK same sex marriages as civil partnerships in Jersey do not go far enough. I believe that to welcome married same sex couples to Jersey by downgrading their relationship to a civil partnership does not accord their relationships the dignity and respect that they deserve from a community that is now far more accepting of same sex relationships than it was years ago. The time to introduce same sex marriage is now.

World trend

When the States first decided in 2009 to accept the principle of civil partnerships, there were only 7 countries in the world that allowed same sex marriage. In 5 years, that number has more than doubled, with 16 countries now allowing same sex marriage (including our 2 closest neighbours, France and the UK).

That is, by all definitions, a trend.

As time goes on, more and more countries will adopt equal marriage legislation. That is the unstoppable direction in which society is going and Jersey will not be an

exception to that. There is no reason for Jersey to remain behind the times on this issue.

Homophobia is a vile form of bigotry that cannot be eradicated soon enough. Its eradication can only be brought forward by the community becoming more accepting of gay people. Much progress has been made in recent years, and further progress will be made by treating gay and lesbian couples as equal to straight couples under the law.

In fact, on 24th May this year, the Jersey Evening Post revealed that an online poll they had conducted with over 1,000 responses (a very good number for an online poll) 81% had said that they were in favour of Jersey allowing same sex marriage.

Jersey is not a bigoted society. We are diverse and we are a richer community because of that diversity. I am confident that the residents of this island would welcome this change with open arms.

Churches

This proposition specifically uses the word “civil” before marriage, because it does not seek to impose the principle of same sex marriage on religious institutions in Jersey.

Whilst the UK has gone ahead with same sex marriage in civil ceremonies, it has not compelled any religious institutions to host such marriages. It leaves it at their own discretion, with the exception of the Church of England and Church of Wales which are not allowed to hold same sex marriages.

It would not be right for Jersey to insist Churches hold same sex marriages, especially the Church of England when its UK counterpart does not hold them.

So those with a religious objection to same sex marriage can still vote for allowing civil same sex marriages and be assured that it will not impact on their Church’s position.

Implications on States Departments and law drafting

The amount of legislation that will be required to be amended is considerable. However, officers in the Chief Minister’s Department are already investigating what laws would need to be changed to implement it. Also, the process of introducing Civil Partnerships would have identified many of the areas which need consideration, so re-identifying them should be relatively quick.

Further technical implications

It would be the responsibility of the Chief Minister’s Department to make sure there is a consultation process when drafting the law, so that the final proposition is fit for purpose and meets the needs of all of those set to benefit from it.

This would include looking at examples of same sex marriage legislation in other jurisdictions than just England and Wales.

In particular, whilst same sex marriage most obviously will affect the lesbian and gay community, there are also implications which affect the trans community, particularly

with how a marriage would be recognised if a spouse decides to go through gender transition. Their views must not be left out.

Human Rights

Article 12 of the European Convention on Human Rights says –

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

It does not explicitly say that those men and women have the right to marry only someone of the opposite gender. The wording is ambiguous, though one can assume that given it was written in the 1950s it was not consciously intended for it to include same sex couples.

There is currently no judgement from the ECtHR ruling that same sex marriage is a human right. However, in 2012, the then President of the ECtHR Sir Nicolas Bratza gave a speech in which he said that the court was ready to rule that same sex marriage is a human right as soon as enough European countries were behind it.

As the trend is towards more European countries allowing same sex marriage, it could only be a matter of time before it is considered against human rights to not allow same sex couples to get married. That is all the more reason for Jersey to make the change sooner rather than later.

Financial and manpower implications

It cost around £155,000 in one-off costs to introduce Civil Partnerships. I would hope that it would be less than that for same sex marriage, as the apparatus and law for marriages already exists and simply needs to be altered to remove the requirement that the 2 people entering into the marriage are of the opposite gender. Funding for this will have to come from existing budgets. Any on-going costs are likely to be negligible as there would not be an overwhelming demand. In fact, demand for civil partnerships may well decrease with marriage as an open alternative, meaning a reduced cost there. Any extra on-going costs would need to be provided for in the next Medium Term Financial Plan.