

Draft Children and Civil Status (Amendments) (Jersey) Law 202-: Scrutiny Review

Children, Education and Home
Affairs Scrutiny Panel

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States of Jersey
States Assembly



États de Jersey
Assemblée des États

CHAIR’S FOREWORD	4
EXECUTIVE SUMMARY	5
FINDINGS AND RECOMMENDATIONS	7
Findings	7
Recommendations	10
INTRODUCTION	12
Background and context	12
Methodology	13
PROPOSED CHANGES TO EXISTING LEGISLATION	14
Children (Jersey) Law 2002	16
Marriage and Civil Status (Jersey) Law 2001	16
Marriage and Civil Status (Jersey) Order 2018	16
Interpretation (Jersey) Law 1954	17
Stamp Duties and Fees (Jersey) Law 1998	17
Consequential Amendments	17
Legislation in other jurisdictions	19
IMPACT ON CHILDREN AND FAMILIES	21
Assessment of Rights	21
Impact on Families	22
RESOURCE AND FUNDING IMPLICATIONS	42
Superintendent Registrar	42
Judicial Greffe and Courts	43
Across other Government Departments	43
Communication of changes	44
OTHER CONSIDERATIONS	46
Government consultation to develop the law	46

Consent regime	46
Language	47
Delays and timescale for change	47
Future review	48
CONCLUSION	50
APPENDIX 1	51
Panel membership	51
Terms of Reference	51
Witnesses and Evidence Gathered	52

Chair's Foreword



There is nothing more important to a child than their family. Over recent decades, with technological advances, with the acknowledgment of same sex couples, and other changes in family structure, there is a need for legislation to recognise and validate these families. We have local families who've been waiting for years to be able to have their family relationships properly registered, and I am so pleased for them that this law is advancing. However, there is still work to be done – the changes impact on other legislation, with many consequential amendments required.

This has been a complex piece of work and the Scrutiny Panel has endeavored to take an objective and evidence based approach. The process included briefings, research, detailed questions, and stakeholder submissions. The Panel recognizes the efforts of other States Members who have worked hard to see this law come to fruition.

The Panel has been advised that the draft law is compatible with the European Convention on Human Rights and is supportive of children's rights under the United Nations Convention on the Rights of the Child.

I would like to express my gratitude to the CEHA Panel members and officers, who have made this report possible in a very short time period.

A handwritten signature in black ink, appearing to read 'Curtis'.

Deputy Catherine Curtis
Chair
Children, Education and Home Affairs Scrutiny Panel

Executive Summary

The '[Draft Children and Civil Status \(Amendments\) \(Jersey\) Law 202-](#)' (P.104/2023) (the 'draft Law') was lodged on 21st December 2023. The Panel agreed its terms of reference to focus on a legislative review of the draft Law and to consider its adequacy and anticipated impact. At its conclusion, the Panel has made twenty-five findings and seven recommendations, which can be read separately [here](#).

The Panel would like to highlight that the method and timing of this review has been impacted by the wider political context in Jersey. Whilst the Scrutiny Panel has not changed its membership through the course of this review, there have been changes to the Ministerial leadership since the proposition was lodged. Additionally, the Panel highlights that through this report we have referenced the 'Minister for Children and Education'. Whilst this title has now changed to the 'Minister for Children and Families' (and, where relevant, the Panel's recommendations address the new Minister) the Panel has retained references to Minister for Children and Education in its findings and report text to reflect the Ministry at the time of correspondence.

The Panel has undertaken a desktop review of the proposed changes to existing legislation and has set out its understanding in a [section](#) of this report. The draft Law is bespoke to Jersey but elements reflect the United Kingdom's Human Fertilisation and Embryology Act. The draft Law will directly amend the following existing legislation:

- Children (Jersey) Law 2002
- Marriage and Civil Status (Jersey) Law 2001
- Marriage and Civil Status (Jersey) Order 2018
- Interpretation (Jersey) Law 1954
- Stamp Duties and Fees (Jersey) Law 1998

The Panel learned that [consequential amendments](#) will also be required to at least thirty-three other pieces of legislation in relation to changes proposed by the draft Law. Two of the Panel's seven amendments relate to the consequential amendments and highlight the importance of the further work that is required in advance of the Commencement Act.

The Panel has also explored the impact the draft Law will have on Children and Families. It found that the effect of the law will be to expand the range of family units in which individuals can be recognised in law as legal parents, without using adoption. The Panel has inserted a [table](#) to illustrate the proposed changes to legal parenthood in the hope that this is a useful comparative tool.

The Panel understands that one of the main policy drivers for the draft Law has been the rights of [same-sex parents](#). The draft Law will allow both partners of a female same-sex couple to be named on the birth certificate for their child (subject to certain circumstances and specific 'agreed female parenthood conditions'). In comparison, both partners in a male same-sex couple could not both be named on the birth certificate of their child, as there is a requirement to register the birth mother. However, parents in a male same-sex couple would both be able to establish themselves as legal parents by utilising a newly introduced [Parental Order](#).

Parental Orders would also be used for any couple who used a surrogate mother, and the draft Law will introduce provisions for [surrogacy](#) into Jersey Law. This is an area where the Government has confirmed it will keep a watching brief on developments. The Panel has made a recommendation that guidance is published about surrogacy when the law comes into force.

Whilst the route to legal parenthood will not be the same for all families, it is noted that the legal effect of Birth Certificates, Parental Orders or Adoption Orders would be the same and the widening scope provided by the addition of a second parent on birth certificates or introduction of Parental Orders will help the law to more accurately reflect intended parents.

The draft Law will also allow for the [re-registration of births](#) and [recognition of Parental Orders](#) granted in England and Wales prior to the Commencement of the draft Law in Jersey. It is not known how many re-registrations of birth will take place to recognise a second female parent, but it is known that there are less than ten Parental Orders granted in the United Kingdom for Jersey children.

The changes proposed by the draft Law do not solely impact families with same-sex couple parents. As mentioned above, the draft Law will include provisions on surrogacy which could impact any couple who chose to become parents using this process. The draft Law will also [remove the presumption of fatherhood](#) from the husband of the birth mother and introduce specific provisions around 'fatherhood conditions' where a child is conceived using fertility treatment or artificial insemination.

Furthermore, where a child is conceived using fertility treatment or artificial insemination, the draft Law provides the mechanism to recognise the intended father or second female parent if that [parent was to die](#) before the birth of the child.

The changes in routes to legal parenthood will also impact the ways in which [parental responsibility](#) is conferred, however, there will also be additional ways in which individuals can acquire parental responsibility. For example, this will now be possible by agreement for [step-parents](#). The Panel has recommended that the Minister consider extending provisions of acquisition of parental responsibility in relation to step-parents in circumstances where a legal parent is deceased.

The Panel has also recommended that the Government commits to reviewing the retention of laws relating to [legitimacy](#). The Minister has advised the Panel that the concept of legitimacy has limited relevance in real terms today, however, as the draft Law stands (noting that no consequential amendments have been available for review at this point in time) the legal union of a child's parents will still be of relevance when their birth is registered. Only a child born into an opposite sex marriage would be registered as legitimate.

The Panel found that, in addition to the [financial and staffing implications](#) set out in the report accompanying the draft Law (namely work to be undertaken by the Superintendent Registrar and Judicial Greffe), there would also be further resources and work required from the Assisted Reproduction Unit and the Government of Jersey Communications Unit.

The Panel has suggested that there should be a public user focused approach to information access about the changes that will be made as a result of the draft Law and any consequential amendments, if adopted. The Panel has asked to see details of the [communications](#) plan from Government prior to the lodging of the Commencement Act and has also recommended that, in due course, the Government should [review](#) the law in practice.

Findings and Recommendations

The Draft Children and Civil Status (Amendments) (Jersey) Law 202- is referred to below as (the 'draft Law').

Findings



FINDING 1

The draft Law is bespoke legislation for Jersey, but certain areas mirror relevant elements of the United Kingdom's Human Fertilisation and Embryology Act.



FINDING 2

A regulation making power for consequential amendments is included in the draft Law. Thirty-three pieces of legislation have been identified as requiring further amendment and the Panel has been advised that the Regulations will be lodged in the States Assembly in Autumn 2024. The Panel expects that the work will require a significant time commitment from the Government, the Legislative Drafting Office and will require scrutiny from panels across the Assembly.



FINDING 3

The Panel notes that the draft Law is considered to be compatible with the European Convention on Human Rights and also supportive of Children's Rights under the United Nations Convention on the Rights of the Child.



FINDING 4

The draft Law works to expand the range of family units in which individuals can be recognised in law as legal parents by introducing the concept of Parental Orders and widening the people who can be included on the registration of birth for the child.



FINDING 5

Due to circumstance, the route to acquire legal parenthood would not be equal for all parents, however, the registration document for the child, namely, a Birth Certificate, a Parental Order, or Adoption Order, would all have the same legal effect.



FINDING 6

The draft Law will provide new routes to the acquisition of parental responsibility and sets out various provisions for this in Article 8 of the draft Law.



FINDING 7

The draft Law will remove a legal presumption of fatherhood and will require a declaration or confirmation to be provided to the Superintendent Registrar from the intended parents.



FINDING 8

No data is available to indicate how many children have been born to parents who are in a same-sex relationship. It is anticipated that numbers of birth registrations recorded to same-sex couples will be publicly available in future.



FINDING 9

Same-sex couples may incur additional costs in conceiving a child, for example funding clinically based fertility treatment or providing expenses for a surrogate mother. This may disadvantage a same-sex couple who was not married but wanted to raise children together as, in order to meet the criteria for “relevant fertility treatment”, they would have to use treatment from a certified clinician.



FINDING 10

Female same-sex couples who have children before the commencement of the draft Law will be able to re-register the birth of a child in order for the second parent to be retrospectively recognised as a legal parent. It is not known how many re-registrations will be requested as a result of this change of law, but it is not expected to be high. The Superintendent Registrar will waive fees relating to the re-registration of births in these circumstances.



FINDING 11

The draft Law introduces provisions for surrogacy in Jersey Law. The Government will keep a watching brief on areas of policy and legislative developments related to surrogacy and matters such as pre-birth surrogacy arrangements.



FINDING 12

There are limits to the monitoring that the Court can provide with regards to payments made in relation to surrogacy arrangements.



FINDING 13

If the draft Law is approved, it is estimated that the Jersey Royal Court would grant 2 Parental Orders per year. Parental Orders issued by the Royal Court must only be in relation to children whose birth is also registered in Jersey.



FINDING 14

The Royal Court will be given the power to recognise Parental Orders granted by courts in England and Wales, which is the first time that an order can be granted to recognise the effect of an order made by another jurisdiction that is not governed by an international treaty. It is expected that the Royal Court will retrospectively recognise less than 10 Parental Orders granted by courts in England and Wales for Jersey children.



FINDING 15

Where a child has been conceived through fertility treatment or artificial insemination, the draft Law provides the mechanism to recognise an intended father or a second female parent if that person was to die before the birth of the

child. The relevant circumstances for this are set out in the proposed Schedule A1 of the Children (Jersey) Law 2002 (as amended).



FINDING 16

The acquisition of parental responsibility by a step-parent would allow a child to gain people legally connected to them, rather than lose or limit the number of people with parental responsibility.



FINDING 17

Agreement of the legal parents and those with parental responsibility for the child is a key feature and is considered to be an important safeguard for providing step-parents with parental responsibility, and avoiding conflict between parental parties. However, where there is disagreement, the step-parent could apply to the Court to resolve. The Court will have a process for applications which have agreement from legal parents and also a process where there is not agreement from the legal parents. Both processes involve the Jersey Family Court Advisory Service.



FINDING 18

The policy objective to address legitimacy as part of the work to enable parental responsibility for same-sex couples was included in scope by previous Governments (pre 2022 election) but has not been included in the lodged draft Law.



FINDING 19

The draft Law reflects the existing Legitimacy (Jersey) Law 1973 which does not extend the concept of legitimacy to children born of civil partnerships or same-sex relationships. Therefore, only children who are born into an opposite sex marriage would be registered as legitimate. However, the Minister for Children and Education has advised that the concept of legitimacy had limited relevance in real terms today.



FINDING 20

The Minister for Children and Education has accepted that steps should be taken to review the wider Jersey law position on legitimacy.



FINDING 21

The Financial and Staffing implications detailed in section K of the report of P.104/2023 focus on the Judicial Greffe and Courts and the Office of the Superintendent Registrar. The Panel notes that there will also be matters requiring action from the Assisted Reproduction Unit and the Government of Jersey Communications Unit but there is no clarity of total costs and whether requirements or resources would be met from existing budgets.



FINDING 22

If the draft Law is approved, the Government will prepare a coordinated communications plan ahead of the commencement of the draft Law. The purpose of this will be to share information about how Government services will be impacted by the legislative changes.



FINDING 23

The legislation has been in development for a number of years which has resulted in uncertainty for families with young children and feelings that the law was long overdue for change.



FINDING 24

It is not common practice to provide a statutory review timescale in Jersey Law. Whilst the Minister has confirmed that a watching brief will be kept on development of policy and legislation in this area, no commitment has been made to review the adequacy of the draft Law in future.



FINDING 25

It is anticipated that the changes proposed by the draft Law will capture the majority of family circumstances and any situations that are not covered will be rare.

Recommendations



RECOMMENDATION 1

The Minister for Children and Families should provide the Children, Education and Home Affairs Scrutiny Panel with a draft schedule of when the consequential amendments and Commencement Act will be available for scrutiny and subsequently lodged to the States Assembly.



RECOMMENDATION 2

When the Commencement Act for the draft Law is lodged au Greffe, the accompanying report should identify the work undertaken on the consequential amendments.



RECOMMENDATION 3

The Government of Jersey should publish guidance notes about surrogacy alongside the Commencement of the draft Law. It should include information about protection for parents using a surrogate and details about financial payments to a surrogate mother.



RECOMMENDATION 4

The Minister should consider extending the provisions of acquisition of responsibility by a step-parent to situations where one, or both, of the legal parents are deceased.



RECOMMENDATION 5

During the remainder of this electoral term, the Government should undertake and publish a review considering the relevance of retaining laws relating to legitimacy in Jersey, to include consideration of compatibility with the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and how the law reflects public expectation.



RECOMMENDATION 6

The communications plan prepared by Government in relation to the draft Law should ensure that there is a coordinated public user focused approach to information access and, also, include details about Government liaison with third parties who might share relevant information. The communications plan should be shared with the Children, Education and Home Affairs Scrutiny Panel prior to the lodging of the Commencement Act for the draft Law.



RECOMMENDATION 7

The Government of Jersey should commit to a statutory review timescale for the draft Law, once it has been approved by the States Assembly.

Introduction

Background and context

On 21st December 2023, the Minister for Children and Education lodged the '[Draft Children and Civil Status \(Amendments\) \(Jersey\) Law 202-](#)' (P.104/2023) (the 'draft Law'). The draft Law seeks to amend existing legislation to achieve the following:

- allow for legal parent status and parental responsibility to be conferred on same-sex couples;
- allow for legal parent status and parental responsibility to be conferred on mixed-sex couples who conceive a child using donor sperm;
- equalise how couples in civil partnerships are treated when compared to married couples in respect of legal parent status and parental responsibility; and
- provide legal parent status and parental responsibility to the parents of children born as a result of surrogacy.¹

To provide some earlier context, in September 2015 the States Assembly approved '*Same-sex marriage, divorce and dissolution*' ([P.77/2015](#)) which approved same-sex couples to get married in Jersey and that legislation should be amended to confer parental responsibility automatically on unmarried fathers who were named on a child's birth certificate. Same-sex civil partnerships have been possible in Jersey since 2012. Amongst various other recommendations included in the accompanying report was that, in bringing forward same-sex marriage legislation, consideration should be given to parental responsibility for same-sex couples who were either married or in a civil partnership. The report also referenced consideration of parental responsibility for same-sex couples that were not in a legal partnership but chose to jointly raise children.²

A Ministerial Decision on 8th April 2021 approved law drafting instructions for amendments to the Children (Jersey) Law 2002 and the Marriage and Civil Status (Jersey) Law 2001 to enable parental responsibility for same sex couples.³

In March 2022, the States Assembly approved a back-bench proposition, '*Legal parent status and parental responsibility for same sex parents*' ([P.26/2022](#)) which had sought to prioritise the work on the legislation that would change legal parent status and parental responsibility for same-sex parents. At the time the Minister for Children and Education presented comments on P.26/2022 to explain that the law could not be lodged and debated before the election (in June 2022) as there was "insufficient time to prepare the necessary legislation"⁴ which included some highly complex issues and stated that the reason for the delay in bringing it forward was because it had to "compete with other children's law and family law work".⁵ Legislation was not lodged *au Greffe* before the election in June 2022, but work continued under the direction of the Government post-election and, as referenced above, the draft Law was lodged on 21st December 2023.

¹ 'Draft Children and Civil Status (Amendments) (Jersey) Law 202-' [[P.104/2024](#)], Report, pp. 5

² '[Legal Parent Status and Parental Responsibility for Same Sex Parents \(P.26/2022\) – Comments](#)', Minister for Children and Education, presented on 25th February 2022, pp. 18

³ Ministerial Decision Reference [MD-ESC-2021-0004](#)

⁴ '[Legal Parent Status and Parental Responsibility for Same Sex Parents \(P.26/2022\) – Comments](#)', Minister for Children and Education, presented on 25th February 2022, pp.2

⁵ Ibid

The Panel launched its review of the draft Law on 9th January 2024 (the 'Review'). The Panel has conducted its Review and composed this report in the hope that it will be useful to members of the States Assembly and members of the public ahead of the debate.

Since undertaking the evidence collection for the Review, the role of the Minister for Children and Education has changed. The Panel has kept its references to the Minister for Children and Education where that was correct at the time of evidence collection but has redirected any relevant recommendations from the Review towards the new office of Minister for Children and Families.

Methodology

The Review's Terms of Reference can be found in [Appendix 1](#).

The Panel did not include a review of the policy direction taken by the Government, and noted the mandate provided by previous States Assembly decisions for P.77/2015 and P.26/2022.

The Panel received briefings from Government Officers prior to the lodging of the draft Law. It undertook a desktop review and collected most of its evidence and information gathering through targeted stakeholder questions and written correspondence with the Minister for Children and Education. A public call for evidence was also made.

Following the change of Government in early 2024, a decision was taken by the Panel that it would not hold a public hearing with the new Minister or other stakeholders. This was because it would require a further change to the debate date on the States Assembly's Order Paper and the Panel agreed that further evidence collection would not provide additional value to the Review at this time.

Proposed changes to existing Legislation

If approved, the draft Law will directly change the following legislation:

- Children (Jersey) Law 2002
- Marriage and Civil Status (Jersey) Law 2001
- Marriage and Civil Status (Jersey) Order 2018
- Interpretation (Jersey) Law 1954
- Stamp Duties and Fees (Jersey) Law 1998

The report accompanying P.104/2023 sets out the detail of the changes to the above legislation, as proposed by the draft Law. The Panel will not restate all of the information available but, in the hope it will be useful to States Members and members of the public, has produced a high-level summary of its understanding of the draft Law in this section and will go on to set out analysis in the next section titled '[Impact on Children and Families](#)'.

In response to queries from the Panel about comparisons to legislation in the United Kingdom, the Minister for Children and Education advised the Panel that much of the draft Law was bespoke to Jersey:

Elements of the draft Law have been based on legislation in the United Kingdom. However, large parts are based on Jersey's existing legislation or are bespoke because of Jersey's existing legislative framework in this area of Law. The provisions that drive registration (to include Articles 55, 55A, 55B, 55C, 56, 56A, 56B, 56C and others if the draft Law is approved by the States Assembly) are based on the adaptation and expansion of existing birth registration provisions that currently feature in the Marriage and Civil Status (Jersey) Law 2001. The provisions that govern the effect of Parental Orders are largely based on the Adoption (Jersey) Law 1961; this is so that both orders have the same effect once granted.⁶

The changes will come into force following the approval of a Commencement Act for the draft Law by the States Assembly. It is anticipated that the Commencement Act would only be lodged following approval of various consequential amendments.

⁶ [Letter](#) – Minister for Children and Education – 14th February 2024

What will the draft Law do?

Scrutiny Review of the Draft Children and Civil Status (Amendments) (Jersey) Law 202-

RULE OF LAW

The draft law will abolish the rule of law relating to a father's custody of a child based on legitimacy.

It will also abolish the customary law assumption that the husband of the birth mother is the father of the child.

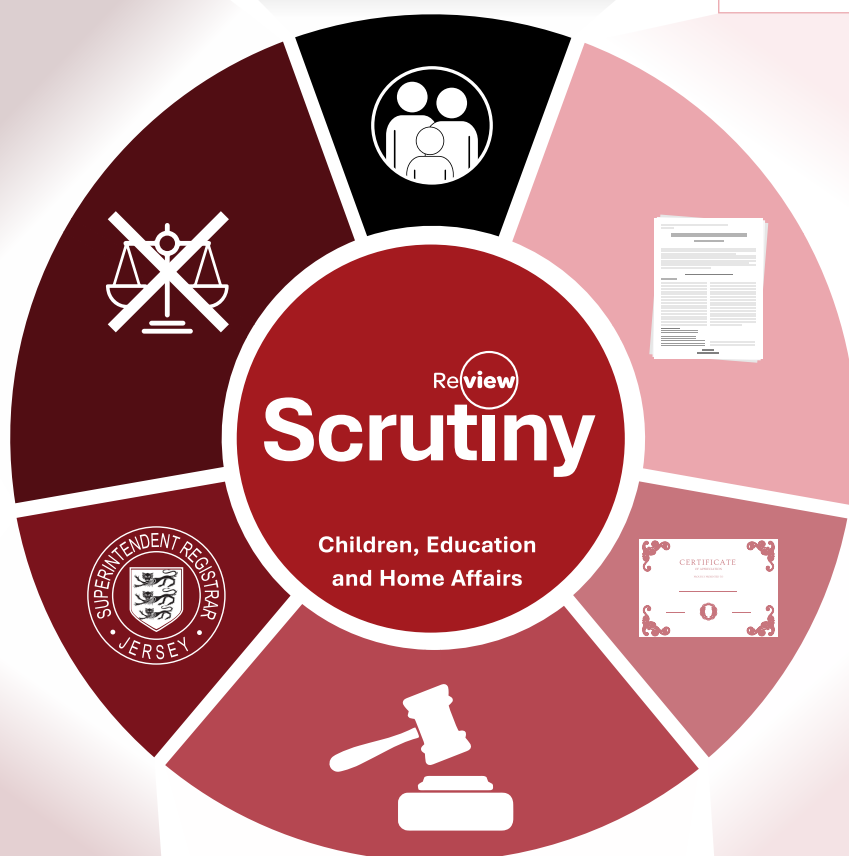
PARENTAL RESPONSIBILITY

The draft law expands the options for acquiring parental responsibility of a child. For example, same-sex parent couples will be able to acquire it in the same way as mixed-sex parent couples and, also, a step-parent will be able to acquire parental responsibility with agreement.

PARENTAL ORDERS

Children born as a result of a surrogacy arrangement will not have to be adopted by their intended parents - instead a Parental Order could be granted by the Court.

Permit retrospective registration of Parental Orders granted by courts in England and Wales for Jersey children.



BIRTH REGISTRATION

The draft law will necessitate changes to various legal registration applications and documents issued by the Superintendent Registrar. For example, birth certificates and marriage certificates will be amended to add 'Second Parent' as a registration particular (in addition to 'Mother / Father / Parent').

LEGAL PARENT STATUS

The draft law will set out specific circumstances in which a person is to be treated in law as a parent if a child is conceived by fertility treatment or artificial insemination.

Same-sex couples will not have to use adoption as the mechanism for them both to become the child's legal parents or gain joint parental responsibility: there would be a wider scope to recognise and capture a child's legal parents through birth registration or parental orders.

DECEASED PARENT

Where a prospective father or second female parent dies before the birth of their child, the draft Law will allow (in certain circumstances) for their recognition as the child's parent for birth registration purposes only.

Children (Jersey) Law 2002

This law deals with the provisions governing the aspects of care of, and responsibilities towards children. The Panel highlights the following proposed changes as a result of the draft Law:

- Provides a definition of a “surrogacy arrangement” and introduces various provisions around surrogacy.
- Various routes to acquiring parental responsibility are set out in the draft Law.
- Provisions are set out around the issue of Parental Orders, which are new to Jersey Law.
- Allows for the recognition of pre-existing Parental Orders made in England and Wales.
- Includes recognition of a man or female second parent as a child’s parent for registration purposes in certain circumstances in the instance where they are deceased before the birth of a child that has been conceived through fertility treatment or artificial insemination.
- Will include a schedule which sets out the “*Circumstances in which a person is treated in law as a parent of child conceived by fertility treatment or artificial insemination*”.

Marriage and Civil Status (Jersey) Law 2001

This law relates to the prohibited degrees of relationship for marriage, the solemnization of marriages, the registration of births, marriages and deaths, and the appointment of the Superintendent Registrar, the registrars of parishes and other officers, and for connected purposes. The Panel highlights the following proposed changes as a result of the draft Law:

- Registration of birth will also capture “second parent” as an option, in addition to “mother and father”.
- Abolition of the customary law that a woman’s husband is the father of the child, a declaration or joint request would be required for birth registration.
- It will allow for the re-registration of the birth of a child to couple who were married or in a civil partnership (at the time of the child’s birth), if no person has been registered as the child’s father or second parent.
- In certain circumstances, it will allow for the re-registration of the birth of a child to parents who were not in a legal union at the time of a child’s birth, if no person has been registered as the child’s father or second parent.
- Abolition of a wife’s domicile of dependence and details the determination of the domicile of a child who is conceived as a result of relevant fertility treatment or artificial insemination or a child who is the subject of a Parental Order.
- Sets out provisions for a new Parental Orders Register and registration of Parental Orders, including the disclosure of birth records for children who are the subject of a Parental Order.

However, the Panel notes that draft Law, as amended, does not address the wider Jersey law position of legitimacy and illegitimacy. A child will only be considered “legitimate” if parents are married or in a civil partnership and there is a father.

Marriage and Civil Status (Jersey) Order 2018

The Order relates to various Articles set out in the Marriage and Civil Status (Jersey) Law 2001, including the procedures, notices and forms for marriage and the requirements for

registration of births and deaths. The Panel highlights the following changes, which it suggests are mainly administrative:

- Various existing notices and forms will be amended to change “Mother / Father / Parent” to “Mother / Father / Parent / Second Parent” namely:
 - Application for notice of intended marriage;
 - Marriage schedule;
 - Marriage certificate;
 - Application for conversion;
 - Conversion schedule;
 - Register of marriage supplied to incumbent of an Anglican church; and
 - Returns of information for Anglican marriages.
- Further changes to:
 - Registration of births and stillbirths; and
 - Certificate of registration of stillbirth.
- Introduction of a Parental Order certificate.
- Particulars to be recorded in a new Parental Orders register maintained by the Office of the Superintendent Registrar.

Interpretation (Jersey) Law 1954

The minor change to the Interpretation (Jersey) Law 1954 is to insert references to clarify that references to “parent” and “child” include the definitions provided in the proposed Schedule A1 of the Children (Jersey) Law 2002, which details the circumstances in which a person is to be treated in law as a parent if a child conceived by fertility treatment or artificial insemination.

Stamp Duties and Fees (Jersey) Law 1998

The minor change made to the Stamp Duties and Fees (Jersey) Law 1998 is detailed in Article 51 of the draft Law. A fee will be payable in connection with the application for a Parental Order under the Children (Jersey) Law 2002. The rate is proposed as rate G, which is (at the time of this report) set as £130⁷. The Panel notes that the rate is in line with the judicial fees for an adoption application, or other applications as per the Children (Jersey) Law 2002.

The Panel notes that the Stamp Duties and Fees (Jersey) Law 1998 is also included in the list for consequential amendments but does not have details of what that would include at this time.

Consequential Amendments

Article 15 of the draft Law includes a Regulation making power which would be used to “*take care of the consequential amendments across a large number of other Laws that would be required if this Law is approved*”⁸. The Panel asked the Minister for further detail on the laws which had been identified for consequential amendments and was advised that, at the time of the response (on 14th February 2024), 33 separate pieces of legislation (including Laws, Regulations and Orders) had been identified for amendment, but that it was possible that the number could increase.⁹

⁷ [Stamp Duties and Fees \(Jersey\) Law 1998](#), Schedule 1, ‘Judicial Fees’ (accessed 15th February 2024)

⁸ Draft Children and Civil Status (Amendments) (Jersey) Law 202- ([P.104/2023](#)), pp.24

⁹ [Letter](#) – Minister for Children and Education to CEHA Scrutiny Panel – 14th February 2024

The list provided by the Minister is copied below:

Title of legislation being consequentially amended
Adoption (Jersey) Law 1961
Aircraft Registration (Births, Deaths and Missing Persons) (Jersey) Regulations 2015
Bank (Recovery and Resolution) (Jersey) Law 2017
Bankruptcy (Désastre) (Jersey) Law 1990
Bankruptcy (Recovery and Resolution) (Jersey) Law 2017
Capacity and Self-Determination (Capacity and Liberty Assessors) (Jersey) Regulations 2018
Companies (Jersey) Law 1991
Control of Housing and Work (Residential and Employment Status) (Jersey) Regulations 2013
Criminal Law (Child Abduction) (Jersey) Law 2005
Data Protection (Jersey) Law 2018
Employment (Jersey) Law 2003
Fatal Accidents (Jersey) Law 1962
Gambling Commission (Jersey) Law 2010
Gender Recognition (Jersey) Law 2010
Financial Services (Investment Business (Qualifying Segregated Managed Accounts - Exemption)) (Jersey) Order 2014
Incorporated Limited Partnerships (Jersey) Regulations 2011
Legitimacy and Illegitimacy (Re-registration of Births) (Jersey) Regulations 1974
Legitimacy (Jersey) Law 1963
Legitimacy (Jersey) Law 1973
Mental Health (Jersey) Law 2016

Nursing Homes (Jersey) Law 1994
Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967
Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations 1989
Public Employees (Contributory Retirement Scheme) (Former Hospital Scheme) (Jersey) Regulations 1992
Public Employees (Contributory Retirement Scheme) (New Employees) (Jersey) Regulations 1989
Public Employees (Pensions Scheme) (Membership and Benefits) (Jersey) Regulations 2015
Sexual Offences (Jersey) Law 1989
Social Security (Death Grant) (Jersey) Order 1974
Social Security (Jersey) Law 1974
Stamp Duties and Fees (Jersey) Law 1998
Teachers' Superannuation (Existing Members) (Jersey) Order 1986
Teachers' Superannuation (New Members) (Jersey) Order 2007
Wills and Succession (Jersey) Law 1993

10

The Panel also asked for further detail about the timescale for the changes and has been advised that the Regulations would be lodged *au Greffe* in Autumn 2024.

The Panel notes the wide-ranging list of legislation provided above and anticipates that amendments across these areas will require a significant time commitment from the Legislative Drafting Office and from Government.

Regulations are required to be lodged for approval by the States Assembly and the Government must ensure that suitable scrutiny is allowed for all of the regulations, including recognition that there will potentially be cross scrutiny panel work required.

¹⁰ [Letter](#) – Minister for Children and Education to CEHA Scrutiny Panel – 14th February 2024

However, the Panel notes that it has not collected specific details about the scope of the consequential amendments and is therefore unable to offer any detailed comment in this report. The Panel will consider this work as part of its work programme, prior to the Commencement Act coming into force.

Legislation in other jurisdictions

The Panel asked the Minister about the basis for the draft Law and was advised that:

Other jurisdictions were researched at the policy development stage of the project. However, given the differences in other jurisdictions' legal systems (including within the Commonwealth) it was decided to focus on the legislation of the United Kingdom when considering how Jersey's legislation could be drafted to achieve the desired policy effects. The United Kingdom's – and specifically England's – laws are also closest in nature to Jersey's Children's Law, Registration Law and Adoption Law. Therefore it felt it was most practicable to mirror relevant parts of the Human Fertilisation and Embryology Act 1990 ("the 1990 Act") (as amended by the Human Fertilisation and Embryology Act 2008) in the draft Law. The two Acts have also been in force for a considerable period, during which it has been revised, updated and subject to review. On balance, it is for these reasons that some parts of the draft Law (such as Schedule A1) have been largely based on the provisions in the 2008 Act.¹¹

The Panel asked the Minister to highlight key differences and was advised that a comprehensive account would be beyond the scope of the response. The matters which were highlighted as notable differences are addressed in later sections of the report, but the Minister's full response can be read [here](#).

In a submission to the Panel's Review about the draft Law, Advocate Barbara Corbett, on behalf of the Jersey Law Commission, advised the Panel that:

The planned legislation, building as it does on English law as it has evolved over the past 40 years or so, is more comprehensive and simpler than the English provisions which is to be commended. This is an excellent piece of work.¹²



FINDING 1

The draft Law is bespoke legislation for Jersey, but certain areas mirror relevant elements of the United Kingdom's Human Fertilisation and Embryology Act.



FINDING 2

A regulation making power for consequential amendments is included in the draft Law. Thirty-three pieces of legislation have been identified as requiring further amendment and the Panel has been advised that the Regulations will be lodged in the States Assembly in Autumn 2024. The Panel expects that the work will require a significant time commitment from the Government, the Legislative Drafting Office and will require scrutiny from panels across the Assembly.



RECOMMENDATION 1

The Minister for Children and Families should provide the Children, Education and Home Affairs Scrutiny Panel with a draft schedule of when the

¹¹ [Letter](#) – Minister for Children and Education – 14th February 2024

¹² [Written Submission](#) – Jersey Law Commission – 24th January 2024

consequential amendments and Commencement Act will be available for scrutiny and subsequently lodged to the States Assembly.



RECOMMENDATION 2

When the Commencement Act for the draft Law is lodged au Greffe, the accompanying report should identify the work undertaken on the consequential amendments.

Impact on Children and Families

Assessment of Rights

Child Rights Impact Assessment

The Minister's report accompanying the proposition includes a Child Rights Impact Assessment (CRIA) which assesses the draft Law in respect of the relevant Articles from the United Nations Convention on the Rights of the Child (UNCRC). Each of the relevant Articles is detailed in the CRIA, which summarises that the draft Law has a positive impact on children's rights. The CRIA suggests that the draft Law will amend and expand the effect of Jersey's Laws in order to bring them further into line with UNCRC Articles and modernising various provisions relating to legal parent status, parental responsibility, legitimacy and birth registration.

As an example, Article 7 of the UNCRC states that:

*"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents."*¹³

The Panel referenced the aspects noted in Article 7 and asked the Minister for Children and Education whether the draft Law would provide parity for every child in Jersey with regards to these factors. It was confirmed that the draft Law would provide parity for every child as far as possible with regards to their birth registration, but it was acknowledged that there would be different processes and provisions of the law utilised for different circumstances. It was confirmed that a child's right to a name and right to acquire a nationality are unaltered by the draft Law and, the draft Law would provide parity as far as possible for a child to know and be cared for by their parents.¹⁴

The Panel did not receive submissions from external stakeholders which directly referenced the impact the draft Law would have on Children's Rights as per the UNCRC, however, it did receive a number of submissions which referenced that the changes proposed by the draft Law were much needed in order to benefit families and children. Liberate advised the Panel that:

*This legislation is urgently needed by a number of families and must be put before the States Assembly without further delay.*¹⁵

The Family Law Sub Committee of the Jersey Family Law Association advised the Panel that:

*Principally, I will say that the Committee welcome the changes being introduced via the draft law, which we consider are long overdue and will be of significant benefit to Jersey families and, in particular, to Jersey children.*¹⁶

European Convention on Human Rights

Whilst the Human Rights Notes included in Section L of the Proposition Report cannot be used as legal advice by States Members, the Panel notes that the Law Officers have confirmed that

¹³ The United Nations Convention on the Rights of the Child, accessed through [UNICEF webpage](#) on 20/02/2024

¹⁴ [Letter](#) – Minister for Children and Education to CEHA Scrutiny Panel – 14th February 2024

¹⁵ [Written Submission](#) – Liberate – 28th January 2024

¹⁶ [Written Submission](#) – Jersey Family Law Association – 6th February 2024

the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights¹⁷. For further details, see pages 31-48 of P.104/2023.



FINDING 3

The Panel notes that the draft Law is considered to be compatible with the European Convention on Human Rights and also supportive of Children's Rights under the United Nations Convention on the Rights of the Child.

Impact on Families

Legal Parent Status

A child can have a maximum of two legal parents under Jersey Law and it is not proposed that this would change. Legal parent status is currently achieved through registration of birth, or adoption. However, if the draft Law is approved, a person could also become a legal parent through the registration of a Parental Order. Additionally, the parameters for registering parents at birth will be expanded to better reflect modern families, including same-sex marriage and removing the assumption that the husband of the birth mother is the father of the child.

As noted in the report accompanying P.104/2023, legal parent status is important as it governs aspects such as inheritance, financial provision for the child, and citizenship. The Panel asked the Minister to clarify how the draft Law would change these aspects for a child:

*The Law would not change any aspects of inheritance law, financial provision for a child or citizenship. **The effect of the Law is to merely establish a wider range of family units in which individuals can be recognised in law as being legal parents, and children can be established in law as the child of these individuals.** Children who are deemed to be the child in law of these persons will be treated the same way in law as a child born naturally to a male and female couple, or to any other family unit currently provided for in Jersey law. As such, in general terms, where Jersey law refers to a child or a parent the amendments made by the Law will require those terms to be interpreted as including reference to children and individuals who, by the Children Law and the Marriage Law, would now be recognised in law as legal parents, and established as children of these individuals.*¹⁸

Further details relating to inheritance, financial provision for a child and citizenship were provided by the Minister in a written response, which can be read [here](#).

The current status for acquisition of **legal parent status** and the proposed changes are summarised by the Panel in the table below:

Relationship to child	Current route to acquire legal parent status	Proposed change
Birth mother defined in the Children (Jersey) Law 2002, as amended by the draft Law, as; “the woman who gives birth to a child.”	Registration of birth.	Registration of birth, but a declaration or confirmation to the Superintendent Registrar will be required for all registrations. This will change the process for married

¹⁷ Draft Children and Civil Status (Amendments) (Jersey) Law 202- ([P.104/2023](#)), pp.31

¹⁸ [Letter](#) – Minister for Children and Education – 14th February 2024 [emphasis added]

		couples to be the same as that for unmarried couples.
Biological father defined in the Children (Jersey) Law 2002, as amended by the draft Law as: (a) <i>"In relation to a child conceived by intercourse, the man who participated in the act of intercourse; and</i> (b) <i>In relation to an embryo created by artificial insemination, the man whose sperm was used to create it"</i>	Can be acquired at registration of birth but may have been dependent on the birth mother's legal marital or partnership status.	Can be acquired at registration of birth, regardless of the status of the birth mother's legal marital or partnership status. A declaration or confirmation to the Superintendent Registrar will be required for all registrations. This will change the process for married couples to be the same as that for unmarried couples. If the child has been conceived through fertility treatment and the parents are not in a legal union (Circumstance B), the agreed fatherhood conditions must apply (as per Schedule A1 of the Children (Jersey) Law 2002, as amended by the draft Law).
Legal partner of the birth mother (either sex)	This is different depending on the sex of the legal partner. Where a man is married to a woman who gives birth, he is assumed to be the father of the child, therefore, legal parent status is acquired at registration of birth. Where a man is a civil partner of a woman who gives birth he is not assumed as the father, but can be registered as the child's father in the same way as an unmarried father. Where a woman is married to or civil partner of the birth mother, adoption is the only mechanism for legal parent status to be recognised.	The draft Law will remove the customary law assumption that a man married to a woman is the father of the child. However, a legal union between parents, whether that is through marriage or civil partnership remains a factor in the registration of a child's birth. If the child has been conceived through fertility treatment, the agreed fatherhood conditions or agreed female parenthood conditions must apply (as per Schedule A1 of the Children (Jersey) Law 2002, as amended by the draft Law).
Legal partner of the biological father (either sex)	Adoption	Parental Order
Biological female parent who does not	Adoption	Parental Order

give birth to the child (e.g. surrogacy)		
Second female parent in a female same-sex couple	Adoption	Registration of birth, in specified circumstances. Legal union status of parents will impact the circumstances. If the child has been conceived through fertility treatment, the agreed female parenthood conditions must apply (as per Schedule A1 of the Children Law). Parental Order, in circumstances where a surrogate mother is used but there is a genetic link to one of the intended parents.
Second male parent in a male same-sex couple	Adoption	Parental Order
Step-parent (any sex)	Adoption	Adoption (Note: there are changes to the way step-parents can acquire parental responsibility by agreement, as detailed later in the report).
Deceased father	Registration of birth for a biological father. If a child is conceived through fertility treatment and there is no biological link there is no route to get legal parent status.	Registration of birth dependent on marital or partnership status or agreed fatherhood conditions.
Deceased second female parent	No route to get legal parent status	Registration of birth, dependent on marital or partnership status or agreed second parent conditions.
A couple (any sex) who are not biologically related to the child	Adoption	Adoption

The above table sets out a generalised view of potential family scenarios and it is recognised that there could be much more complexity in real life settings.

However, on review of the above table it is possible to see that where there is currently no route for an individual to get legal parent status, or where the only route for recognition of legal parentage is adoption, the draft Law would create other legal mechanisms to recognise and capture a child's legal parents.

Legal parent status will be acquired by different family units in different ways, for example, a same-sex male couple would not be able to be named on their child's birth certificate. As referenced in the section on Children's Rights, the Panel asked the Minister for an assessment of whether the draft Law would provide parity for children in Jersey. The Minister advised that the draft Law would provide parity, as far as possible, for children in Jersey with regards to their birth registration. Whilst it was recognised that there was not an identical route for all parents, the Minister explained that:

...due to differences between same sex female and male couples in the way that children are conceived and enter the lives of couples, by necessity, different processes and provisions of the Law are required to suit these different circumstances. As such, some children will have a birth certificate, some children will have a parental order certificate and some children may have an adoption certificate as their birth registration document. The legislative provisions that provide for these documents have been designed in such a way that the certificates all have the same effect.¹⁹

The Panel received submissions from a small number of same-sex parent families that have been impacted by the challenges of only one of the intended parents being able to be the child's legal parent. Some of these experiences are shared in the section titled '[Same-sex parent families](#)' below.

Reflecting on the above, the Panel finds that the draft Law works to expand the range of parents who can acquire legal parent status for a child which will, arguably, better reflect modern societal expectations of family life.



FINDING 4

The draft Law works to expand the range of family units in which individuals can be recognised in law as legal parents by introducing the concept of Parental Orders and widening the people who can be included on the registration of birth for the child.



FINDING 5

Due to circumstance, the route to acquire legal parenthood would not be equal for all parents, however, the registration document for the child, namely, a Birth Certificate, a Parental Order, or Adoption Order, would all have the same legal effect.

Parental responsibility

A child's legal parents will always have parental responsibility for them therefore, the widening of the recognition in law for legal parents (for example, recognising a second same-sex parent through a non-adoption route) will also increase the number of routes to acquiring parental responsibility.

Parental Responsibility provides a person with authority to make decisions about a child's care, but it is not confined to the two legal parents of a child.

If the draft Law is approved, the different ways parental responsibility could be acquired will include:

- Acquisition by birth registration (see section on '[Same-sex parent families](#)' or '[Re-registration of births](#)' for further details);

¹⁹ [Letter](#) – Minister for Children and Education – 14th February 2024

- Acquisition by recognition order (see section on '[Parental Orders](#)' for further details);
- Acquisition by Parental Order (see section on '[Parental Orders](#)' for further details);
- Acquisition by agreement (see section on '[Step-parents](#)' for further details);
- Acquisition by court order (this is an existing provision).

Further details on the above are provided in the Minister's letter to the Panel from 14th February 2024 which can be read in full [here](#).

Parental responsibility provisions are set out in Article 8 of the draft Law, which inserts a new Part 1A after Article 9 in the Children (Jersey) Law 2002 setting out "Parental responsibility and parental orders". This includes abolition of the rule of law relating to a father's custody of a child based on legitimacy. Paragraph (5) of new Article 9A specifically states that:

- (5) The following are abolished –
- (a) the rule of law that if a child is legitimate, the child's father has sole custody of the child; and
 - (b) the rule of law that if a child is illegitimate and the child's mother marries, her husband (whether or not he is the father) has sole custody of the child.

The Panel has explored areas where parental responsibility has been expanded such as same-sex parents and step-parents in separate sections below.



FINDING 6

The draft Law will provide new routes to the acquisition of parental responsibility and sets out various provisions for this in Article 8 of the draft Law.

Removal of presumption that the husband of the birth mother is the father of the child

As described by the Minister's report, if a child's birth mother is married, the law presumes that her husband will be the child's other legal parent irrespective of whether he is the child's biological father. The Jersey Family Law Association suggested that the draft Law proposes a positive change:

The removal of the presumption that the husband in a marriage is the biological father of the child is welcomed; this is an old fashioned and out-dated presumption which can, currently, only be rebutted via an application by the presumptive father to the Royal Court for a declaration that the child is illegitimate. On the last occasion on which I assisted a father to make such an application (some 5 or 6 years ago), the Royal Court queried the necessity of the application, notwithstanding that the presumption of fatherhood might have implications for both the father's and the child's estate following death etc, and not least that it was a legal presumption of fatherhood which the husband, quite understandably, did not consider should continue.²⁰

The Jersey Law Commission advised the Panel about the impact that this change would have:

The main effect that this will have is that both parents will need to have a role in the registration of a birth. Currently, with a married couple, on the basis of the presumption,

²⁰ [Written Submission](#) – Jersey Family Law Association – 6th February 2024

*the registration process is slightly simpler. This is small price to pay for more accuracy in the registration of parentage of children.*²¹

This will be a change for married parents registering the birth of their child. The current advice provided by the Superintendent Registrar is as follows:

Who can register the birth of my child?

Married Parents

Only one of the parents is required by law to attend the appointment. However, both parents should attend where possible and both must sign the legal declarations on the Application to Register a Birth form.

Unmarried Parents

Both parents must sign the Application to Register a Birth form and both must attend the appointment.

Single Mother

A mother can register a birth alone if no father is to be registered on the birth registration.

22

A submission to the Panel from Citizens Advice Jersey referenced this proposed change:

*Also, we note a proposed change in the draft law that removes the existing presumption that if a child is born to a married couple, it is assumed that the married man is the child's father even if he is not the biological father. If adopted, the proposed law would determine that the biological father would be the legal father. We wonder if it would be possible for the married father to be deemed the legal parent in this situation if the biological father consents.*²³

The Panel has not had the opportunity to question the Minister on this aspect of the draft Law, but highlights that this query indicates that there will need to be suitable information and guidance published when changes are made. The Panel has explored this further in a later section titled '[Communication of changes](#)'.



FINDING 7

The draft Law will remove a legal presumption of fatherhood and will require a declaration or confirmation to be provided to the Superintendent Registrar from the intended parents.

Same-sex parent families

One of the main policy objectives for the draft Law was that mixed-sex couples who are parents, and same-sex couples who are parents, are treated more fairly in law²⁴.

As detailed above in the section on [legal parenthood](#), the Panel has found that the routes to legal parenthood will not be the same for all parents, but that the end effect of either a birth certificate, a Parental Order, or Adoption Order would be the same.

²¹ [Written Submission](#) – Jersey Law Commission – 20th January 2024

²² Extract from the '[Registration of Birth Guidance and Application Form](#)' (accessed on 27th February 2024)

²³ [Written Submission](#) – Citizens Advice – 23rd January 2024

²⁴ Draft Children and Civil Status (Amendments) (Jersey) Law 202- [\[P.104/2023\]](#), pp.5

The current legal situation for a same-sex couple who are parents is that, in order to jointly obtain legal parent status, they would have to adopt the child and meet the cost of that application. If the couple choose not to adopt but one of the couple is the birth mother, then they are able to obtain parental responsibility through a residence order from the Court and are required to meet the costs of that application.²⁵

The Panel asked the Minister whether there was any data available which could help to illustrate the numbers impacted by various scenarios that the draft Law sought to address. It was confirmed that no data existed of births of children to same-sex couples, but that this data on registration would be accessible in the future, should the draft Law be approved and come into force.²⁶ The Panel has not collected any data with regards to adoptions orders or residence orders.

In its letter of response to Panel queries, Citizens Advice Jersey informed the Panel that:

*Notably, we feel that the proposal of rights for same- sex parents and their children to be automatically conferred with parental responsibility and the enabling of same-sex parents to both be treated as a child's legal parents and named on the Birth certificate, can only be an improvement.*²⁷

The Panel received a small number of submissions from impacted parents (all accessible [here](#)), which highlighted that the changes proposed by the draft Law would have a significant impact on their family life. Some extracts of the submissions are shared below:

Firstly, we'd like to confirm these changes will have a fundamental change to our life. Myself and my wife to be have our son who is just under [redacted] months old and he does not yet have a correct birth certificate with us both named as his parents. The proposed changes will correct this and allow us to re-register his birth retrospectively so we will both be his parents from a legal standpoint and both acquire parental status.

Secondly, when our son was born, we had to pay to have a joint residence order put in place so my wife to be would have parental responsibility for our son. What should have been the most special time of our lives, was over shadowed with us having to attend the family court to explain why she should be granted parental responsibility for her own son, this should not have to take place. The changes to the law, will stop another couple having to endure that situation.

There are no words to truly explain how these changes will positively affect our family. To put it simply, in the eyes of the law, we will be accepted as a family unit and our son will have a legal document acknowledging both his parents. What could be more important?

*We sincerely hope our comments are taken into account and we move forward in a positive, inclusive manner and accept the proposed changes with grace.*²⁸

Another point which was raised for the Panel's attention was the importance of parity between same-sex couples and mixed-sex couples:

I welcome you expediting any discussion you need to have to at least bring parity to the law for married parents to have children and be recognised on their birth certificate

²⁵ Ibid, pp.8

²⁶ [Letter](#) – Minister for Children and Education – 14th February 2024

²⁷ [Written Submission](#) – Citizens Advice – 23rd January 2024

²⁸ [Written Submission](#) – Anonymous 3 – 23rd January 2024

as such. We should be inclusive and not an outlier in the western world. To the minority that it affects it really matters, to the majority it flies under the radar as it doesn't affect them. As it currently affects me I talk to my relatives and acquaintances about it. Firstly they are shocked as they assume that it would have been sorted with the marriage law and then they are appalled. ²⁹

The submission highlighted the inequality of the current law:

If I was a husband using a sperm donor I understand that I would be automatically entitled to be the parent. Fair? I think not. ³⁰

The Panel highlights that, per the proposals in the draft Law, where a child was conceived through IVF (In-Vitro Fertilisation) treatment agreed fatherhood conditions or agreed second parent conditions (per the proposed Schedule A1 of the Children (Jersey) 2002 Law, 'Schedule A1') would apply to the second legal parent if a child was conceived by fertility treatment or artificial insemination.

For female couples who use intra-partner IVF, there can be challenges for the biologically linked parent to gain legal parent status. This was highlighted to the Panel as an issue by one local family:

Due to the existing law, [redacted] is unable to be named on the birth certificate of her own son which also means that she is unable to gain any parental responsibility for him, we understand that at the moment the only way for her to do this is for her to adopt him or get a residence order. Both of which feel ridiculous considering he was made using her egg.

Our boy should be just as entitled as any other child to have both of his parents named on his birth certificate. ³¹

The issue of additional cost for same-sex parents in starting a family was also highlighted to the Panel by public submissions. Referring to IVF procedures, one respondent explained:

Going through this procedure was expensive as Jersey does not in real terms help with this cost despite stating it would like to increase its birth rate, complicated by undergoing the treatment in Covid and being reassured during the whole process the law was to be debated as the drafting had started a few years before (we started this in 2019), in 2023 we welcomed our daughter into the world with only one name on the birth certificate and a surname that was not what we wanted it to be as the law updating process had still not been completed/prioritised. ³²

For female parents in a same-sex couple, the "agreed female second parent conditions" would have to be met (as per Schedule A1) and it is therefore highlighted that couples who were not in a legal union would have to use "relevant fertility treatment" to enable the second parent to be recognised as a legal parent on the birth certificate and they would not be able to use home-based insemination means to conceive. With reference to this, one respondent highlighted the following:

What if the mothers cannot afford to get married, or pay for clinical insemination, and still have a child together, perhaps by home-based means? Why should being in a

²⁹ [Written Submission](#) – Anonymous 2 – 20th January 2024

³⁰ Ibid

³¹ [Written Submission](#) – Anonymous 1 – 11th January 2024

³² [Written Submission](#) – Anonymous 2 – 20th January 2024

better financial position define somebody as a legal parent? I understand that this is a complicated question – but currently same sex couples are not provided any financial help to have a baby, so there is high potential of someone trying to have a baby by “home based” means.³³

The Panel has not done any research to ascertain the costs related with relevant fertility treatment but notes that clinical based fertility treatment would be more costly than non-clinical means, for example, acquiring doner sperm for home-based insemination.

For families with two male parents, there is no proposed legal option for them to both be named on a child’s birth certificate as neither of them are giving birth to the child. However, if one of the intended parents had a biological link to the child they could apply for a Parental Order which, as highlighted earlier in this report, would have the same legal effect as birth registration. Further aspects are explored in the sections ‘[Surrogacy](#)’ and ‘[Parental Orders](#)’ below. The Panel did not receive any submissions to this Review from male parents in a same-sex relationship.



FINDING 8

No data is available to indicate how many children have been born to parents who are in a same-sex relationship. It is anticipated that numbers of birth registrations recorded to same-sex couples will be publicly available in future.



FINDING 9

Same-sex couples may incur additional costs in conceiving a child, for example funding clinically based fertility treatment or providing expenses for a surrogate mother. This may disadvantage a same-sex couple who was not married but wanted to raise children together, as in order to meet the criteria for “relevant fertility treatment” they would have to use treatment from a certified clinician.

Re-registration of births

The current Jersey law allows for the re-registration of a child’s birth, however, if approved the draft Law will specifically permit the re-registration of birth of a child to recognise a second female parent.

Therefore, female same-sex couples who already have children (and have chosen not to adopt) will be able to re-register the birth of a child who is born before the draft Law comes into force, providing a second female parent with legal parent status. Re-registration will only be possible for children where no father is already registered for the child.

The Panel enquired about the numbers that might be impacted by this situation and was advised by the Superintendent Registrar that:

It is not known or possible to quantify the number of same sex parents who would wish to re-register their child/children to add a second parent, although the number is not anticipated to be high³⁴.

In correspondence with the Minister for Children and Education, the Panel was advised that the draft Law made the position of a female partner of a birth mother whose child is born pre-commencement different to the law in the UK. When the UK law was amended to extend legal parent status and parental responsibility to same-sex female couples, no retrospective

³³ [Written Submission](#) – April Fosse-Burch – 30th January 2024

³⁴ [Written submission](#) – Superintendent Registrar – 13th February 2024

permission was made for the situation of same-sex female couples who had a child before the commencement.³⁵

The Panel was also advised that there would be no fees charged for the re-registration of births:

*The fee relating to the re-registration of birth for same-sex parents with historic birth registrations of a child will be waived, as will the fee for a birth certificate.*³⁶

Further details about financial implications of the draft Law in relation to the Office of the Superintendent Registrar are referenced in a later [section](#) of the report.



FINDING 10

Female same-sex couples who have children before the commencement of the draft Law will be able to re-register the birth of a child in order for the second parent to be retrospectively recognised as a legal parent. It is not known how many re-registrations will be requested as a result of this change of law, but it is not expected to be high. The Superintendent Registrar will waive fees relating to the re-registration of births in these circumstances.

Surrogacy

The new article 1B of the draft Law will include a definition of “surrogate mother”, “surrogacy arrangement” and related terms. The Panel highlights that the definition of “surrogate mother” means that the woman who is pregnant under a surrogacy arrangement but is not one of the intended parents of the child. However, the surrogate mother is a legal parent and has parental responsibility until the Parental Order is made. Therefore, for clarity, it would not include situations of intra-partner IVF (which can be used by female same-sex couples), where one partner will carry the other’s biological child (one example of this has been referenced above).

The Panel asked Citizens Advice Jersey to provide any comments it had about key aspects of the draft Law. Their response included:

*The proposal to provide appropriate legal recognition to enable parents, whose child is born to a surrogate mother, to become legal parents in Jersey is an important step.*³⁷

Furthermore, the response on behalf of the Jersey Family Law Association advised the Panel that:

*Whilst it is considered that the draft law provides clarity for parents regarding legal parental responsibility for children born via surrogacy prior to the law coming into effect, it would be useful in our view for some straightforward, easy to follow guidance notes to be published alongside the law.*³⁸

The draft Law addresses the matter of payment in connection with a surrogacy arrangement, and does not allow for non-expense payments to be made to the surrogate mother. The Panel asked the Minister for Children and Education how this aspect would be monitored by the Courts to ensure that it was not an area that could be exploited. The Minister provided a response from the Judicial Greffier to this question, which highlighted that the Court would

³⁵ [Letter](#) – Minister for Children and Education – 14th February 2024

³⁶ [Written Submission](#) – Superintendent Registrar – 13th February 2024

³⁷ [Written Submission](#) – Citizens Advice – 23rd January 2024

³⁸ [Written Submission](#) – Jersey Family Law Association – 6th February 2024

only be able to monitor cases that came before it (for example, applications for a Parental Order) and therefore there would be limits to the monitoring that the court could provide.³⁹

In making enquiries about a future review of the draft Law, the Panel was also advised by the Minister that pre-birth surrogacy agreements was an area where a “watching brief” would be kept on developments in policy and legislation in other jurisdictions.⁴⁰ One member of the public queried what protection the draft Law would provide parents using surrogacy.⁴¹ The Panel did not have the opportunity to question the Minister on this point but feel that this could be an area addressed by guidance notes accompanying the Law.

FINDING 11



The draft Law introduces provisions for surrogacy in Jersey Law. The Government will keep a watching brief on areas of policy and legislative developments related to surrogacy and matters such as pre-birth surrogacy arrangements.

FINDING 12



There are limits to the monitoring that the Court can provide with regards to payments made in relation to surrogacy arrangements.

RECOMMENDATION 3



The Government of Jersey should publish guidance notes about surrogacy alongside the Commencement of the draft Law. It should include information about protection for parents using a surrogate and details about financial payments to a surrogate mother.

Parental Orders

The draft Law proposes the introduction of Parental Orders, which could be used to recognise the intended legal parentage of a child of any couple who use a surrogate mother, as an alternative to adoption. The detail around the issue of Parental Orders are set out in the report accompanying P.104/2023. In the section above on [Surrogacy](#), the Panel has recommended the issue of guidance notes alongside the commencement of the draft Law.

The draft Law would retain the requirement for a child’s birth mother to be named on the birth registration, therefore, there is no mechanism for male same-sex couple parents to both be named on the birth certificate for a child, unlike the proposed process for female same-sex couple parents. Therefore, the proposed solution for male same-sex couple parents would be to apply to the Court for a Parental Order.

The Panel asked the Minister for Children and Education to share any data that would illustrate the number of children and families impacted by the issues that the draft Law sought to resolve. With regards to Parental Orders granted in Jersey by the Royal Court, the Minister has estimated that this would be approximately two per year⁴² once any initial influx of

³⁹ [Letter](#) – Minister for Children and Education – 23rd February 2024

⁴⁰ [Letter](#) – Minister for Children and Education – 14th February 2024

⁴¹ [Written Submission](#) – April Fosse-Burch – 30th January 2024

⁴² [Letter](#) – Minister for Children and Education – 14th February 2024

applications have been made. This number is based on the ratio of Adoption Orders to Parental Orders in England and Wales over the past 5 years.

The Panel did not receive any negative feedback about the proposal to introduce Parental Orders in Jersey. The Jersey Family Law Association noted that:

*It is not considered that there will be a significant or detrimental effect on family court proceedings as a result of the introduction of parental orders. In many cases, those applications will be made on a consensual basis.*⁴³

Retrospective recognition of Parental Orders granted by courts in England and Wales

The draft Law will also provide a resolution for a number of families who had been granted Parental Orders by courts in England and Wales, but latterly found that these could not be recognised in Jersey. Both the Minister and the Superintendent Registrar advised the Panel that the number of Parental Orders granted by courts in England and Wales for Jersey born children numbered less than 10.⁴⁴

*The number of parents who hold historic Parental Orders relating to Jersey born children are known and quantifiable, numbering less than 10 children.*⁴⁵

It was highlighted to the Panel that the recognition of pre-existing Parental Orders made in England and Wales would be relatively novel for Jersey law:

*This is the first example in Jersey's history where an order can be granted by the court to recognise the effect of an order made by another jurisdiction that is not governed by an international treaty.*⁴⁶

It was also explained that the proposed provisions for Parental Orders in the draft Law were equivalent to the Human Fertilisation and Embryology Act 2008 and its Regulations. With comparison to the UK Law, specific differences have been highlighted to the Panel, namely: joint or individual application requirements for Parental Orders (per proposed Article 9I); and, also, conditions of where the child's birth must be registered. The draft Law would require that the birth of the child who is subject to a Parental Order is registered in Jersey. The Minister further advised on this point that:

*The policy intent for this distinction in the Jersey law is to operate against couples with children whose birth is registered outside Jersey travelling to Jersey and using it as a forum for obtaining a parental order. This ensures that the Royal Court hears applications from families whose child's birth was registered in Jersey and, whereby, there is a tangible connection with the Island.*⁴⁷



FINDING 13

If the draft Law is approved, it is estimated that the Jersey Royal Court would grant 2 Parental Orders per year. Parental Orders issued by the Royal Court must only be in relation to children whose birth is also registered in Jersey.

⁴³ [Written Submission](#) – Jersey Family Law Association – 6th February 2024

⁴⁴ [Letter](#) – Minister for Children and Education – 14th February 2024

⁴⁵ [Written submission](#) – Superintendent Registrar – 13th February 2024

⁴⁶ [Letter](#) – Minister for Children and Education – 14th February 2024

⁴⁷ Ibid



FINDING 14

The Royal Court will be given the power to recognise Parental Orders granted by courts in England and Wales, which is the first time that an order can be granted to recognise the effect of an order made by another jurisdiction that is not governed by an international treaty. It is expected that the Royal Court will retrospectively recognise less than 10 Parental Orders granted by courts in England and Wales for Jersey children.

Deceased parents

The Panel understands that a biological father of a child can currently be recognised if they pre-decease the birth of their child. However, where a child has been conceived by fertility treatment or artificial insemination the draft Law would provide the mechanism to recognise an intended father or a second female parent if that parent was to die before the birth of the child.

Paragraphs 11, 12, 13, 14 and 15 of Schedule A1 (which refers to the circumstances in which a person is treated in law as a parent if a child is conceived by fertility treatment or artificial insemination) specifically outline the following:

- Use of sperm, or transfer of embryo, after death of man providing sperm;
- Embryo transferred after death of male spouse or civil partner who did not provide sperm;
- Embryo transferred after death of man who consented to be recorded as father in register of births;
- Embryo transferred after death of female spouse or civil partner who consented to be recorded as second parent in register of births; and
- Embryo transferred after death of woman who consented to be recorded as second parent in register of births.

With comparative references to the law in the United Kingdom, one of the main differences of the draft Law and the Human Fertilisation and Embryology Act 2008 which was highlighted to the Panel was related to the applications for Parental Orders. The UK law does not specifically address what would happen if an applicant for a Parental Order should die before the Parental Order is made. The Minister has confirmed that, with regards to Parental Orders, explicit provision has been made in the draft Law for the position of a deceased prospective parents and the relevant child⁴⁸ and the Panel has noted the content of Articles 9I, paragraphs (9) and (10) in this scenario.



FINDING 15

Where a child has been conceived through fertility treatment or artificial insemination, the draft Law provides the mechanism to recognise an intended father or a second female parent if that person was to die before the birth of the child. The relevant circumstances for this are set out in the proposed Schedule A1 of the Children (Jersey) Law 2002 (as amended).

⁴⁸ [Letter](#) – Minister for Children and Education – 14th February 2024

Biological parents or donors

The Panel asked the Minister for Children and Education how the draft Law impacted a child's right to know their biological parents, or donors. The Minister responded to advise that:

The draft Law, if approved, would further the implementation of a child's right to know their biological parents. It facilitates the acquisition of legal parent status and parental responsibility for a whole class of biological parents who have not been able to access this status before. Previously, a biological parent, such as a female who has donated an egg to be carried by her partner, would not be able to acquire legal parent status unless they adopted the child, or sought an Article 10 order through the court. Both often require significant expense and legal advice.⁴⁹

In respect of donors, where a child is conceived using sperm from an anonymous donor, that child cannot know who their biological father is. It is currently the case that Jersey Law does not prohibit the use of sperm from anonymous donors, unlike United Kingdom Law.⁵⁰

The practicalities and ethics around the use of donor eggs or donor sperm is outside the scope of this Review, but in the letter to the Panel the Minister explained that:

In the event that the States Assembly determines that IVF and/or IUI [Intrauterine insemination] should be provided to more residents at subsidised cost, the States Assembly will also be asked to consider restrictions on the use of anonymous donor sperm in Jersey.⁵¹

Additionally, the Panel noted that the draft Law (as per proposed new Article 61F of the Marriage and Civil Status (Jersey) Law 2001) permits an individual who is the subject of a Parental Order to access their original birth record (similar to the process for children who have been adopted) to ensure that there is no prohibition on the relations whom it is prohibited to marry.

It is specified in Schedule A1 of the draft Law that a woman is not to be considered a parent merely because of egg donation, and there are other conditions (set out in paragraph 16 of the schedule) which detail what the requirements are.

Step-parents

Another feature of the draft Law (as per new Article 9E of the Children (Jersey) Law 2002) is the acquisition of parental responsibility by a step-parent, which could be approved by a Court, if the individuals who already had parental responsibility for the child agreed.

The Panel was advised that step-parents currently had limited ability to gain parental responsibility for a child. The current process requires application to the Court for a residence order, however, this would only grant parental responsibility on a limited basis whilst the child resided with the step-parent.⁵²

⁴⁹ [Letter](#) – Minister for Children and Education – 14th February 2024

⁵⁰ Ibid

⁵¹ [Letter](#) – Minister for Children and Education – 14th February 2024

⁵² [Letter](#) – Minister for Children and Education – 23rd February 2024

Regarding the data or numbers of children that this would impact, it was noted that applications are currently rare, with less than 5 applications per year and no applications at all in some years.⁵³

The Panel received evidence from a number of stakeholders about this aspect of the draft Law. The Jersey Law Commission explained that:

*The ability for step-parents to obtain parental responsibility will avoid the desire of some to adopt their step-children (not an advisable approach as this legally deprives a child of half of their birth family permanently). The requirement for consent of the other birth parent is a helpful safeguard. The child gains people with responsibility for them, rather than losing or exchanging people legally connected to them.*⁵⁴

Support for the proposal was also provided by the Jersey Family Law Association, who emphasised the importance of parental consent. The submission also suggested that the proposal could be extended to situations where the child's parent(s) were deceased as this aspect was not addressed by the draft Law:

*We agree with the proposal for stepparents to acquire parental rights, but only, as is proposed, where this agreed by the parents. We do not consider it would be appropriate for the Court to have the power to award parental rights to stepparents where the consent of the other parent(s) was not forthcoming; this would likely result in a significant number of such applications where the parents are in conflict. Consideration could, however, be given to the potential extension of this proposal to situations in which one or both of the parents is/are deceased.*⁵⁵

The Panel has not had the opportunity to question the Minister directly on the matter of extending this provision, however, feels that it is a reasonable suggestion, particularly in light of other areas of the draft Law permitting the registration of a deceased person as a legal parent of a child in certain circumstances where that child has been conceived through artificial insemination or fertility treatment.

The submission to the Panel's Review from Citizens Advice Jersey highlighted that, if one parent did not provide their agreement the practical course of action for step-parents acquiring parental rights was not clear:

*We note that changes are proposed as regards, step parents acquiring parental rights over their step children though we are unclear as to how this would take place if the biological father does not agree.*⁵⁶

The Panel queried this aspect with the Minister to ascertain whether there was any ability for a step-parent to acquire parental responsibility for a child if one of the child's legal parents did not agree. The Minister provided a response from the Judicial Greffier which advised that:

⁵³ Ibid

⁵⁴ [Written Submission](#) – Jersey Law Commission – 24th January 2024

⁵⁵ [Written Submission](#) – Jersey Family Law Association – 6th February 2024

⁵⁶ [Written Submission](#) – Citizens Advice – 23rd January 2024

The Draft Law provides for a significant departure from the current position, in that step-parents will now be allowed to make an application for PR on a stand-alone basis, in two ways:

- 1. Either with the consent of the legal parents; or*
- 2. In the event of a dispute with one or other of the legal parents by application to the court.*

It is anticipated that these applications will be dealt with by the Family Judge rather than by the Royal Court.

In an agreed application, it is proposed that the Rules will contain a series of checks aimed at ensuring that:

- a. It is clear that both legal parents are aware of the application and have been served with it;*
- b. That in the case of an agreed application, the agreement is both genuine and reasonable. This would be done with the assistance of a JFCAS safeguarding letter, which requires checks to be carried out by JFCAS, but which stops short of a full report;*
- c. That there is a short hearing in which the Court is able to hear evidence from the parties.*

In the event of an application which is not agreed, similar rules would be put in place and additional rules would be added to ensure that the Family Judge would require a report to be prepared by an independent agency such as JFCAS, who would seek the views of the legal parents, the step-parents, any interested parties and the child's view, if appropriate. This report would be paid for by the party making the application."

57

Therefore, the Panel notes that there are courses of action for applications to the Court which are agreed and not agreed by families and notes that both of these routes include the involvement of the Jersey Family Court Advisory Service (JFCAS) which appears to provide safeguards around ascertaining that the parental agreement is genuine and / or collecting the views of interested parties including that of the child, if appropriate.



FINDING 16

The acquisition of parental responsibility by a step-parent would allow a child to gain people legally connected to them, rather than lose or limit the number of people with parental responsibility.



FINDING 17

Agreement of the legal parents and those with parental responsibility for the child is a key feature and is considered to be an important safeguard for providing step-parents with parental responsibility, and avoiding conflict between parental parties. However, where there is disagreement, the step-parent could apply to the Court to resolve. The Court will have a process for applications which have agreement from legal parents and also a process where there is not agreement from the legal parents. Both processes involve the Jersey Family Court Advisory Service.



RECOMMENDATION 4

The Minister should consider extending the provisions of acquisition of responsibility by a step-parent to situations where one, or both, of the legal parents are deceased.

Legal union of parents

One of the main policy objectives furthered by the draft law is that spouses and civil partners who are parents are treated equally in law.⁵⁸

As part of its letter of response, Citizens Advice Jersey advised the Panel that:

*... the proposed enabling of mixed-sex civil partners to acquire legal parent status & parental responsibility just as a married couple are able to will be welcomed by those concerned.*⁵⁹

This can be seen through the proposed changes to the Marriage and Civil Status (Jersey) Law 2001, where current articles relating to the Registration of father (Article 55) or Re-Registration where parents are not married (Article 56) are replaced with articles to reflect new provisions for birth registration of a father or second parent dependant on if parents are either married or in a civil partnership OR not married or in a civil partnership (Articles 55, 55A-C, 56, 56A-C).

Legitimacy

As per the Legitimacy (Jersey) Law 1973, a child is considered legitimate if it was born or conceived during a lawful marriage between a man and a woman. A child can be legitimised by the marriage of their mother and father after their birth.

The Panel notes that factors relating to legitimacy are not included in the provisions of the draft Law. The original law drafting instructions (available [here](#)) stated that legitimacy should apply in relation to civil partnerships as well as marriages and referenced that this was not addressed at the point that the Civil Partnerships (Jersey) Law 2012 was introduced (for the same reason that the issue of parental responsibility was not addressed), as it was perceived to be beyond what was required at that time. At the point the law drafting instructions were finalised in 2021, with regards to legitimacy it was stated that:

*However, it is now felt that these outstanding issues need to be addressed as they do not promote the government's policy objectives, that marriage and civil partnerships should be treated equally and that same-sex couples should be treated in the same way as opposite sex couples as far as it is reasonable possible.*⁶⁰

Furthermore, in the [Comments](#) provided by a previous Minister for Children and Education to 'Legal Parent Status and Parental Responsibility for Same Sex Parents' (P.26/2022), the appendix points (f) and (g) referenced that legitimacy remained a planned provision in the draft Law:

⁵⁸ Draft Children and Civil Status (Amendments) (Jersey) Law 202- ([P.104/2023](#)), pp.5

⁵⁹ [Written Submission](#) – Citizens Advice – 23rd January 2024

⁶⁰ [Law drafting instructions](#): Amendments to the Children (Jersey) Law 2002 and Marriage and Civil Status (Jersey) Law 2001 to enable parental responsibility for same sex couples, accessed through Ministerial Decision Reference [MD-ESC-2021-0004](#)

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

61

However, since that time the scope of the draft Law appears to have been changed to remove this aspect. The Panel noted that the lodged version of the draft Law retains the legal concept of "legitimate" and "illegitimate" so that only the child of a married couple where there is a father can be legally registered, or re-registered as "legitimate", therefore providing inconsistency with children of same-sex married couples. The Panel put this question to the Minister and was advised that the draft Law reflects the existing Legitimacy (Jersey) Law 1973 which does not extend the concept of legitimacy to children born of civil partnerships or same-sex relationships. Therefore, only children who are born into an opposite sex marriage would be registered as legitimate and children born to parents in a civil partnership, a same-sex marriage, or who were unmarried were all classed as "illegitimate".⁶²

The Minister for Children and Education advised the Panel that the concept of legitimacy was not addressed within the draft Law as "*It was not within the policy scope of the Law to address the concept of legitimacy in Jersey law at its root.*"⁶³ However, as legitimacy was a specific matter that was outlined to be addressed in the original law drafting instructions and included in the named provisions of the draft Law as recently as 2022, it appears to the Panel that this aspect has been removed from the scope of the draft Law.

The Minister for Children and Education provided the Panel with some assurance about the limited relevance of the concept of legitimacy:

⁶¹ 'Draft Legal Parent Status and Parental Responsibility for Same Sex Parents' - Comments ([P.26/2022 Com](#)), pp.4

⁶² [Letter](#) – Minister for Children and Education – 14th February 2024

⁶³ Ibid

Legitimacy in Jersey law is, in real terms, of limited relevance today. A classification of illegitimacy presents no bar to the registration of the birth of a child, does not prevent the establishment of legal relations between the child and the child's parents, and does not prevent that child or the child's family accessing benefits or services. Importantly, the distinction between legitimate and illegitimate children in matters of succession was removed in Jersey law in 2010 by an amendment to the Wills and Successions (Jersey) Law 1993 (see Part 3A of that Law). As such, in inheritance matters, Jersey law provides that an illegitimate child has the same rights of succession as if he or she were the legitimate issue of his or her parents (see Article 8C(1) of the Wills and Successions Law).⁶⁴

In response to queries, the Minister referenced the consideration of the draft Law's compatibility with the rights of the child under the UNCRC and highlighted the right of non-discrimination:

As such, though an illegitimate child in Jersey may not experience discrimination in the enjoyment of his or her rights under the UNCRC, for example birth registration, nationality and the right to know and be cared for by parents (Article 7), the UNCRC requires Jersey to protect its children against all forms of unjustifiable discrimination.⁶⁵

The Panel explored this area in an earlier section of this report in the section titled '[Assessment of Rights](#)'.

The Human Rights notes which accompany the lodged proposition note that legitimacy status is considered a personal characteristic of birth status which engages the prohibition on discrimination under Article 14 of the European Court of Human Rights (ECHR). However, the report confirms that:

...there is nothing known in Jersey law that would render a distinction in the case of a person who is legitimate or illegitimate by birth that would be considered discriminatory under Article 14 ECHR, read together with Article 8 ECHR. For instance, there are no legal measures governing the establishment of family relations or parental links in Jersey law that are affected by a distinction in legitimacy status. There are also no other known measures in matters such as residential status, entitlement to benefits, or social status that raise material issues of incompatibility.⁶⁶

Nevertheless, the Panel notes the Minister's comments that:

It is accepted, however, that steps should be taken to review the wider Jersey law position on legitimacy to consider, among other things, how the Jersey law in relation to legitimacy is compatible with the UNCRC and the position of children in modern society. As and when policy work toward consideration of the concept of legitimacy in Jersey law gets underway, I will work with other ministers and officers to this end.⁶⁷

The Panel does note that legitimacy legislation is detailed on the list of [consequential amendments](#) provided to the Panel as part of this review, however, there is no detail provided of what the specific amendments to those will be at this point in time. During this report's fact-checking process it was highlighted to the Panel that the consequential amendments will include regulations to change the legitimacy law that will address the disparity between children who are born into an opposite sex marriage (being registered as legitimate) and any

⁶⁴ [Letter](#) – Minister for Children and Education – 14th February 2024

⁶⁵ Ibid

⁶⁶ Draft Children and Civil Status (Amendments) (Jersey) Law 202- ([P.104/2023](#)), pp.47

⁶⁷ [Letter](#) – Minister for Children and Education – 14th February 2024

other children born to parents who are not in an opposite sex marriage (who would currently be registered as illegitimate). It is understood that this future proposed change would ensure that legitimacy is a concept equally applied to children born to any couple in a marriage or civil partnership.



FINDING 18

The policy objective to address legitimacy as part of the work to enable parental responsibility for same-sex couples was included in scope by previous Governments (pre 2022 election) but has not been included in the lodged draft Law.



FINDING 19

The draft Law reflects the existing Legitimacy (Jersey) Law 1973 which does not extend the concept of legitimacy to children born of civil partnerships or same-sex relationships. Therefore, only children who are born into an opposite sex marriage would be registered as legitimate. However, the Minister for Children and Education has advised that the concept of legitimacy had limited relevance in real terms today.



FINDING 20

The Minister for Children and Education has accepted that steps should be taken to review the wider Jersey law position on legitimacy.



RECOMMENDATION 5

During the remainder of this electoral term, the Government should undertake and publish a review considering the relevance of retaining laws relating to legitimacy in Jersey, to include consideration of compatibility with the United Nations Convention on the Rights of the Child, the European Convention on Human Rights and how the law reflects public expectation.

Resource and funding implications

Superintendent Registrar

The Panel was grateful for a written submission from the Superintendent Registrar, which can be read in full [here](#).

As detailed in Section K of the proposition report, there is anticipated to be a one-off cost to Government of £13,000 which relates to the new registers required to reflect the amended particulars required as a result of the changes from the draft Law.⁶⁸

There was also expected to be a cost related to the creation of new processes and forms relating to the new type of registration, however, it is advised that this cost will be met by existing budgets.

The Panel was advised that there would be no fees charged for the re-registration of births in certain circumstances:

*The fee relating to the re-registration of birth for same-sex parents with historic birth registrations of a child will be waived, as will the fee for a birth certificate.*⁶⁹

No fee is charged for initial birth registration in Jersey, but fees are typically charged for:

- copies of birth certificates: a current standard birth certificate is £32.31 and a short form birth certificate is £10.77⁷⁰
- re-registering a child's birth, for example, to change their name and get a replacement birth certificate is £91.54⁷¹

The Superintendent Registrar advised the Panel the reasoning for waiving the fee for re-registration in the circumstances was that:

*The financial implications to the Superintendent Registrar of waiving the fees in historic cases have been weighed against the inequity of the circumstances experienced by affected parents and children.*⁷²

The Panel is advised that operational staff within the Office of the Superintendent Registrar will be required to re-train in matters relating to standard requirements for all applications for registrations of birth, however, has advised that this is not anticipated to be complex.

There will be more onerous responsibilities for the Superintendent Registrar and Deputy Superintendent Registrar including the matters relating to the redesign, development and sourcing of all documents, registers, forms, digital resources and systems and training manuals as well as customer resources relating to changes made by the draft Law relating to birth and Parental Order registrations. It was confirmed that these requirements had been taken into account and would form part of the plan of works for both members of staff, should the draft Law be adopted.⁷³

⁶⁸ Draft Children and Civil Status (Amendments) (Jersey) Law 202- ([P.104/2023](#)), pp.31

⁶⁹ [Written Submission](#) – Superintendent Registrar – 13th February 2024

⁷⁰ Costs taken from webpage: [Registering your child's birth in Jersey \(gov.je\)](#) (accessed on 28th February 2024)

⁷¹ Costs taken from webpage: [How to change your child's name in Jersey \(gov.je\)](#) (accessed on 28th February 2024)

⁷² [Written Submission](#) – Superintendent Registrar – 13th February 2024

⁷³ Ibid

The Minister separately advised that “*I understand that the Superintendent Registrar is confident in meeting the proposed timescales based on the provisions of the draft Law as currently drafted*”.⁷⁴

Judicial Greffe and Courts

As detailed earlier in this report in reference to changes proposed to the [Stamp Duties and Fees \(Jersey\) Law 1998](#), there will be a fee charged to the applicant of a Parental Order. This will be set at rate G, which is currently £130 and is to cover the Judicial Greffe's costs in administering the Parental Order applications.

The Panel enquired about the practical matters that would need to be actioned before the draft Law was operational and was advised that, as was usual course of practice, the Judicial Greffier would have responsibility for drafting instructions which would result in the drafting of rules to accompany the law. It was explained that the process was commenced in 2023 using an outsourced King's Council from England and Wales due to internal capacity and expertise. Draft law drafting instructions for the rules had been provided to the Judicial Greffier for review, but it was noted that the process would not be finalised until after the draft Law had been agreed by the States Assembly.

Also, the Panel is advised that a one-off piece of work would be required to draft application forms, notes for guidance for applicants, publication of information on the Courts.je website and any other documents which would be needed to enable the Law and Rules to take operational effect.⁷⁵

As detailed in Section K of the proposition report, the work of the Judicial Greffe to draft instructions for court rules and new processes, application forms and procedures will be paid for out of the department's existing budget, but there is no indication given of the estimated cost of time or staff resources that would be required for the task.⁷⁶

Across other Government Departments

The Panel was interested to understand the anticipated resource and funding implications of the draft Law and in response to queries sent to the Minister for Children and Education received details about the following additional areas to those that are specifically detailed in Section K of report accompanying P.104/2023.

Health services

The Panel is advised that the Assisted Reproduction Unit (ARU) will be required to:

- Create application and consent forms (based on forms that exist in the UK); and
- Provide guidance from prospective parents including updates to webpages to provide information and explain the procedure and process for members of the public.⁷⁷

The Minister for Children and Education further explained that:

The clinicians overseeing the ARU have extensive senior expertise in the discharge of functions under the Human Fertilisation and Embryology Act 2008 and as such are

⁷⁴ [Letter](#) – Minister for Children and Education – 23rd February 2024

⁷⁵ Ibid

⁷⁶ Draft Children and Civil Status (Amendments) (Jersey) Law 202- ([P.104/2023](#)), pp.31

⁷⁷ [Letter](#) – Minister for Children and Education – 23rd February 2024

*confident that they can create the required documentation and procedures to enable compliance with the provisions in the draft Law.*⁷⁸

The Panel does not have any further details about the cost or resource implications that the noted practical implications would have on the budget of the ARU.

Counselling Services

Within the report accompanying P.104/2023, it was detailed that counselling services should be offered to individuals who apply for disclosure of their birth records when they are the subject of a Parental Order and that these services were the duty of the Minister for Health and Social Services.

In a response to queries about this matter, the Minister for Children and Education clarified that the draft Law places a duty to provide counselling services subject to a Parental Order on the Minister for Children and Education rather than the Minister for Health and Social Services (as described in the report). It was highlighted that this approach mirrored that which was taken by the Adoption (Jersey) Law 1961. The Panel notes that, since the time of that response, the name of the relevant Minister has changed and the provision of services would now be the responsibility of Minister for Children and Families but would not be required in the immediate future.⁷⁹

Communication of changes

The Panel wanted to find out how the changes resulting from the draft Law would be communicated to Islanders. The Superintendent Registrar advised the Panel that:

*A communications plan will be developed and coordinated across GOJ departments, led by the Government Communication Unit targeting affected parents and stakeholder groups and to assist public understanding of the changes to the law.*⁸⁰

This was reiterated by the Minister for Children and Education, who outlined that:

If the draft primary Law is approved by the States Assembly, then work will begin to deliver the communications plan for the run up to the Law, Regulations and Orders coming into force. It is envisaged this will be led by the government services that this legislation affects, such as the: Office of the Superintendent Registrar, Judicial Greffe, Jersey Family Court Advisory Service, Assisted Reproduction Unit supported by the Government Communications Unit. It is also envisaged that Liberate Jersey, the Same Sex Parental Responsibility Group and Jersey Surrogacy Networks will publicise the effects of the Law to those who may be affected by these changes.

*Parents who have sought a parental order from courts in England and Wales will also be targeted to make them aware that they may make an application to the court for a recognition order.*⁸¹

The Panel notes that access to information will be key and is pleased to note the intention for a communications plan. The Minister has stated that this will be led by the relevant Government services and supported by the central Communications Unit. The Panel highlights that where information is shared by different Government departments on related matters, there is a risk that members of the public trying to access the information might not

⁷⁸ [Letter](#) – Minister for Children and Education – 23rd February 2024

⁷⁹ Ibid

⁸⁰ [Written submission](#) – Superintendent Registrar – 13th February 2024

⁸¹ [Letter](#) – Minister for Children and Education – 14th February 2024

look in all of the right places. For example, the cross over of information relating to conception through fertility treatment or assisted reproduction, and the birth registration of any resulting child might be provided in different areas of the Government website.

In addition to communications from the Government of Jersey, there will be external agencies that will likely disseminate information about changes to the law. The Minister mentioned some third parties in the response, however, did not include Citizens Advice Jersey, which the Panel had contacted with queries about the draft Law. Citizens Advice has confirmed that:

As an advice agency, we hold a website providing information on a variety of subjects. In the event that the above law is passed at the States Assembly, we would incorporate the necessary changes made within the content of our website and update our staff accordingly.⁸²

The Panel highlights the importance of information access and for the Government to ensure that any changes resulting from the law change in due course would be published and shared suitably.



FINDING 21

The Financial and Staffing implications detailed in section K of the report of P.104/2023 focus on the Judicial Greffe and Courts and the Office of the Superintendent Registrar. The Panel notes that there will also be matters requiring action from the Assisted Reproduction Unit and the Government of Jersey Communications Unit but there is no clarity of total costs and whether requirements or resources would be met from existing budgets.



FINDING 22

If the draft Law is approved, the Government will prepare a coordinated communications plan ahead of the commencement of the draft Law. The purpose of this will be to share information about how Government services will be impacted by the legislative changes.



RECOMMENDATION 6

The communications plan prepared by Government in relation to the draft Law should ensure that there is a coordinated public user focused approach to information access and, also, include details about Government liaison with third parties who might share relevant information. The communications plan should be shared with the Children, Education and Home Affairs Scrutiny Panel prior to the lodging of the Commencement Act for the draft Law.

⁸² [Written Submission](#) – Citizens Advice – 23rd January 2024

Other considerations

Government consultation to develop the law

The Panel asked for details about the discussion and consultation undertaken with stakeholders during the policy development and law drafting process and was provided with the following list:

The following stakeholders/groups were consulted during the policy development and law drafting process:

- **The Bailiff** - provided with the draft Law and briefed by officers
- **The Deputy Bailiff** - provided with the draft Law and briefed by officers
- **Family Court Registrar** - provided with the draft Law and briefed by officers
- **Jersey's Same-Sex Parental Responsibility Group** - provided with draft Law and briefed by officers on a number of occasions,
- **Liberate Jersey** - provided with the draft Law and briefed by officers on a number of occasions
- **Advocate Barbara Corbett (as a member of the Jersey Law Commission and Jersey Family Law expert)** - provided with the draft Law and briefed by officers
- **The senior leadership team of Children's Services including all Heads of Service** - briefed by officers
- **The Fostering and Adoption Service** - briefed by officers
- **The Jersey Community Relations Trust** - provided with the draft Law for comment and questions answered
- **The Judicial Greffier** - provided with the draft Law and briefed by officers on a number of occasions
- **The Superintendent Registrar** - provided with the draft Law and briefed by officers on a number of occasions
- **The Clinician in charge of the Assisted Reproduction Unit** - provided with draft Law and briefed by officers on a number of occasions
- **The Greffier of the States of Guernsey** - briefed by officers

83

The Panel has not had the opportunity to question the Minister further on this list. During the fact checking process it was identified that the Office of the Children's Commissioner was omitted from the list previously provided to the Panel and it was confirmed that the Children's Commissioner for Jersey was consulted as per the requirement in the Commissioner for Children and Young People (Jersey) Law 2019.

Consent regime

The Panel has noted that in November 2023 the United Kingdom's Human Fertilisation and Embryology Authority (HFEA) made recommendations⁸⁴ for changes to the Human Fertilisation and Embryology Act 1990 (as amended) (the 'UK Act').

One of the areas recommended for change was "*an overhaul of the consent regime in the Act*".⁸⁵ The Panel notes that there are sections of the draft Law relating to consent, for example the agreed parenthood conditions in schedule 1A of the Children Law. The Panel asked the

⁸³ [Letter](#) – Minister for Children and Education – 14th February 2024

⁸⁴ [Modernising fertility law | HFEA](#) (accessed on 28th February 2024)

⁸⁵ Ibid, reference Proposal 11

Minister to explain whether the draft Law's proposed consent regime was similar to that of the UK Act. The Minister advised the Panel that:

The consent regime outlined in the UK Act is quite different to the consent regime in the draft Law insofar as it has to also deal with consent to storage and consent for research. Storage does not take place in Jersey as there are no facilities for long term storage. Research also does not take place in Jersey. Therefore, if a person living in Jersey wishes to store their sperm or eggs, they must do so at a clinic in the United Kingdom that is regulated by the Human Fertilisation and Embryology Authority. Bearing this in mind, the consent regime in the draft Law is immediately simplified. Furthermore, the report only makes proposals that the consent regime should be overhauled, there are no recommendations as to how the consent regime should be amended.

The policy for the draft Law has been settled for over a year to allow law drafting to take place. Therefore, whilst the recommendations are noted they are a long way from being implemented via legislation amendment, to begin to revisit how the draft Law stands up its consent regime now would delay this project significantly⁸⁶.

The Panel notes this response and recognises the delays that further review of the consent regime would create, however, suggests that this aspect be one of the factors that is considered for future review of the law.

Language

The Panel asked the Minister about the choice of language to describe parents and suggested that it appeared to be largely based on gender, for example, using "fatherhood conditions", "female parenthood conditions" and "biological father".

The Minister clarified that the choice of language in the provisions is not based on gender, but was based on a reflection of the legal status to which the terminology relates, or in order to ensure functionality of the legislation.⁸⁷ The full response can be read [here](#).

The report accompanying the proposition referenced that the mandate for the work of the draft Law originated from [P.77/2015](#). That proposition referenced the findings of the 2014 Equal Marriage Consultation (Options paper report was presented as [R.170/2014](#)) which had noted the importance of language and the retention of certain terms in legislation, including "mother" and "father".⁸⁸ This public consultation was not specifically asking questions about same-sex parents and is now 10 years old, so must reflect that context.

Delays and timescale for change

As set out in the '[Background and context](#)' section of this report, the origins of the draft Law followed recommendations that came from the debate on 'Same-sex marriage, divorce and dissolution' ([P.77/2015](#)) in 2015, which highlighted that, in bringing forward same-sex marriage legislation, consideration should be given to parental responsibility for same-sex couples who were either married or in a civil partnership. The report also referenced

⁸⁶ [Letter](#) – Minister for Children and Education – 14th February 2024

⁸⁷ [Ibid](#)

⁸⁸ 'Equal Marriage and Partnership: Options Paper Report – November 2014' ([R.170/2014](#)), pp. 14

consideration of parental responsibility for same-sex couples that were not in a legal partnership but chose to jointly raise children.⁸⁹

Many of the submissions received by the Panel referenced the extended timeframe for the development of the draft Law and the impact this had on families. Liberate advised that:

*The process by which the draft law has arrived at the stage of being scrutinised has been extremely lengthy.... The result of a long, drawn out process was to place a number of families under duress and in a position of uncertainty over the status of their child(ren) on the day of their birth. We would remind the Panel that the agreement to change the law was made in principle in 2015 by States Members. It took a further 3 years to commence drafting the law. The oldest children born to same-sex couples since agreeing this law was needed are in Year 4 at school now. This was not 'putting children first'.*⁹⁰

The Panel also received submissions from some parents who had been impacted directly. With reference to the draft Law, one parent stated:

*It is with great sadness that as a Jersey person by birth and lineage that I have to write this in 2024 and that I have a fear that this will be delayed, dragged out and put back as not a priority due to Jersey politics and lack of decision making and progressive thinking.*⁹¹

As referenced earlier in this report, the submission to the Panel from the Family Law Sub Committee of the Jersey Family Law Association highlighted that:

*Principally, I will say that the Committee welcome the changes being introduced via the draft law, which we consider are long overdue and will be of significant benefit to Jersey families and, in particular, to Jersey children.*⁹²



FINDING 23

The legislation has been in development for a number of years which has resulted in uncertainty for families with young children and feelings that the law was long overdue for change.

Future review

The Panel asked the Minister when the Government would review the adequacy of the law if it was adopted and brought into effect. The Minister advised that:

*Whilst it is unusual to provide for a statutory review timescale in Jersey Law, a watching brief will be kept on developments within this area of policy and legislation. One area, for example, where there are likely to be developments is in the introduction of pre-birth surrogacy agreements which is currently under consideration in a number of jurisdictions.*⁹³

⁸⁹ [‘Legal Parent Status and Parental Responsibility for Same Sex Parents \(P.26/2022\) – Comments’](#), Minister for Children and Education, presented on 25th February 2022, pp. 18

⁹⁰ [Written Submission](#) – Liberate – 28th January 2024

⁹¹ [Written Submission](#) – Anonymous 2 - 20th January 2024

⁹² [Written Submission](#) – Jersey Family Law Association – 6th February 2024

⁹³ [Letter](#) – Minister for Children and Education – 14th February 2024

As noted in sections of the report above, there may be areas such as the [consent regime](#) which also require further assessment in future.

The submission to the Panel from Liberate did not discount the possibility that there would be family scenarios in future that were not captured by the provisions in the draft Law:

*It is entirely possible that there may be a family circumstance that is not covered by the permutations of the law, such is the variety of families, but given the detail and length of the consultation and drafting process, we hope these scenarios will be rare, if at all.*⁹⁴

Liberate highlighted the case of Freddy McConnell to the Panel as an example of one situation that would not be covered by the draft Law:

The case of Freddy McConnell, a UK transgender man who gave birth in 2018 and who sought a legal means to be registered as his child's father or parent on the birth certificate, was discussed at length with the team working on this law. Mr McConnell's case failed at the Supreme Court whilst this law was being drafted.

We accept that the use of the word mother in the draft legislation is unavoidable at this time without giving effect to a large number of changes to other laws, which would delay the passage of this legislation considerably.

*There has not been a case like that of Freddy McConnell in Jersey, but we anticipate there will be one at some point. Mr McConnell is taking his case to the European Court of Human Rights. When the judgement from the ECHR is returned, Jersey may need to revisit its position on this issue to review legislation and consider language that includes families that have a transgender parent, and that seeks to augment rather than replace established words like mother.*⁹⁵

The Panel is conscious that the draft Law will touch on many areas where there will be continuing developments, for example, in the fields of science and technology related to artificial insemination and fertility treatment. Changes in these areas may create change in societal expectations and raise important ethical questions for debate.



FINDING 24

It is not common practice to provide a statutory review timescale in Jersey Law. Whilst the Minister has confirmed that a watching brief will be kept on development of policy and legislation in this area, no commitment has been made to review the adequacy of the draft Law in future.



FINDING 25

It is anticipated that the changes proposed by the draft Law will capture the majority of family circumstances and any situations that are not covered will be rare.



RECOMMENDATION 7

The Government of Jersey should commit to a statutory review timescale for the draft Law, once it has been approved by the States Assembly.

⁹⁴ [Written Submission](#) – Liberate – 28th January 2024

⁹⁵ Ibid

Conclusion

When same-sex marriage legislation was approved in Jersey in 2015 there were accompanying recommendations that consideration should be given to parental responsibility for same-sex couples who were either married or in a civil partnership.

The majority of a decade has passed since that time and same-sex couples in Jersey who are married or civil partners still have to utilise adoption to gain equal legal parental rights for their children, even if there is a biological relationship with the child.

In concluding its Review, the Panel is supportive of the draft Law, but highlights that there is still significant work to be done on the consequential amendments and practical guidance that will be required for the law to come into force. The Panel found that the draft Law will impact thirty-three pieces of legislation through further consequential amendments, which it considers to be a significantly high number. The Minister for Children and Education has advised that the consequential amendments will come forward to the Assembly by Autumn 2024.

The Panel notes that the draft Law does not solely impact families where parents are in a same-sex relationship, but will also impact any family who uses forms of artificial insemination or relevant fertility treatment to conceive their child, families where step-parents have previously had challenges in acquiring parental responsibility and the changes will also abolish the customary law assumption that the husband of the birth mother is the father of a child.

Overall, the Panel understands that the purpose of the draft Law is to modernise Jersey law to reflect modern family circumstances and believes that this will create a positive impact for children and families.

The Panel has made twenty-five findings in the report and seven recommendations which it believes will support the Minister and the Government in ensuring the Law is fit for purpose. The Panel believes that the changes made to the Law need to be understandable for the public and make consideration for further changes and modernisation in future. This position is reflected in the Panel's final recommendations made to Government.

Appendix 1

Panel membership

The Panel comprised of the following States Members:



Deputy Catherine
Curtis (Chair)



Connétable Mark
Labey (Vice-Chair)



Deputy Beatriz Porée

Terms of Reference

1. To conduct legislative scrutiny of the Children and Civil Status (Amendments) (Jersey) Law 202- (the draft Law) to ensure the accuracy and adequacy of the draft Law.
2. To assess the consultation process undertaken to inform the draft Law by gathering the views of key stakeholders.
3. To consider the Government's assessment of the impact of the draft Law on children and young people.
4. To assess the consequential amendments arising from the adoption of the draft Law.

Witnesses and Evidence Gathered

Responses to written questions were received from the following Ministers:

- The Minister for Children and Education – 14th February 2024; and
- The Minister for Children and Education – 23rd February 2024

There was a public call for evidence and requests for written submissions were sent to 15 stakeholders and responses were received from the following:

- Superintendent Registrar;
- Jersey Family Law Association, Family Law Sub-Committee
- Jersey Law Commission
- Citizens Advice Jersey
- Liberate
- Jersey Youth Service
- Anonymous 1
- Anonymous 2
- Anonymous 3
- April Fosse-Burch

To view all the submissions, responses to written questions and public hearing transcripts, please visit the [review page](#) on the States Assembly website.

Report costs

The Review has not incurred any additional costs, the work has been supported by officers in the States Greffe as part of business-as-usual work for the Children, Education and Home Affairs Scrutiny Panel.

