

THE SAME-SEX MARRIAGE (GUERNSEY) LAW, 2016

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Same-Sex Marriage (Guernsey) Law, 2016", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Law implements the States' Resolution of 10th December 2015. Its main purpose is to enable same-sex couples to get married, either in a civil ceremony or, provided that the religious organisation concerned is in agreement, on religious premises or according to religious rites.

Part I extends marriage to same-sex couples and makes provision for the interpretation of new and existing legislation which contains reference to marriage or married persons. Same-sex marriages are to be treated the same as marriages between a man and a woman. However, provision may be made by Ordinance to alter the effect of the general rule where required. Part I also provides that same-sex marriages contracted outside Guernsey will be recognised under Guernsey Law.

Part II deals with religious protection. The position of the Church of England is dealt with separately because its Canons provide that marriage can only take place between a man and a woman and any change to that would require a Measure approved by Parliament. Accordingly, the Church of England is prohibited from marrying same-sex couples and any duty which a clergyman might have to marry a parishioner does not apply to same-sex couples. Other religious organisations may "opt-in" to solemnising same-sex marriages but are under no obligation to do so – no religious ceremony may take place without the express consent of the religious organisation's governing body.

Part III clarifies that same-sex couples cannot marry in Guernsey if one or both of them is already married or in a civil partnership. It also makes provision, equivalent to the provision made under a 1936 Law for opposite-sex marriages, for prohibited degrees of consanguinity.

Whilst provision is made enabling limitations on the general principle that legislation affects same-sex couples in the same way as opposite-sex couples to be imposed by Ordinance, certain such limitations are contained in the Schedule. Where private legal instruments, such as wills and contracts, are made prior to commencement of this Law, they will be interpreted on the basis that "marriage" means marriage between a

man and a woman. Any such instrument made after commencement will be interpreted in accordance with the principle that “marriage” and related expressions includes same-sex marriage, unless provision is made to the contrary. Amendments to other matrimonial legislation (1) extend the jurisdiction of the Royal Court to entertain matrimonial causes for same-sex marriages where the parties married in Guernsey but there is no jurisdiction in their home country and (2) amend the grounds for divorce, in line with the UK legislation, in relation to all marriages so that only adultery with a person of the opposite sex is in itself a ground for divorce (although sexual misconduct with a person of the same sex could found a petition based on unreasonable behaviour).

PROJET DE LOI

ENTITLED

The Same-Sex Marriage (Guernsey) Law, 2016

ARRANGEMENT OF SECTIONS

PART I

EXTENSION OF MARRIAGE TO SAME-SEX COUPLES

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5. Provisions which limit equivalence of all marriages etc.

PART II

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6. Disapplication to ecclesiastical law.
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8. Marriage according to religious rites: no compulsion to solemnise etc.
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PART III

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SCHEDULE: Provisions which limit equivalence of all marriages.

PROJET DE LOI

ENTITLED

The Same-Sex Marriage (Guernsey) Law, 2016

THE STATES, in pursuance of their Resolution of the 10th December, 2015^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

EXTENSION OF MARRIAGE TO SAME-SEX COUPLES

Extension of marriage to same-sex couples.

1. (1) Marriage of same-sex couples is lawful.

(2) In the law of Guernsey, whether statutory, customary or otherwise, marriage has the same effect in relation to same-sex couples as it has in relation to opposite-sex couples.

(3) The law of Guernsey, whether statutory, customary or otherwise, has effect in accordance with subsection (2).

Interpretation of existing legislation.

2. (1) Any reference in any existing legislation to marriage, or to a

^a Article VII of Billet d'État No. XXIII of 2015.

married couple, or to a person who is married, however expressed, is to be read as including a reference to marriage of a same-sex couple, to a married same-sex couple or to a person who is married to a person of the same sex, as the case may be.

(2) Any related reference in any existing legislation, such as a reference to a marriage which has ended, or to a person whose marriage has ended, however expressed, shall be read accordingly.

(3) Any reference in any existing legislation to persons who are not married but who are living together as a married couple, or to a person who is living with another person as if they were married, however expressed, is to be read as including a same-sex couple who are not married but who are living together as a married couple, or to a person who is living with another person of the same sex as if they were married, as the case may be.

(4) Any related reference in any existing legislation, such as a reference to persons formerly living together as a married couple, however expressed, is to be read accordingly.

(5) The provisions of this section do not limit the effect of section 1.

Interpretation of new legislation.

3. (1) In any new legislation, the following provisions shall apply.

(2) The following expressions have the meanings given -

(a) "**husband**" includes a man who is married to another man,

(b) "**wife**" includes a woman who is married to another

woman,

- (c) "**widower**" includes a man whose marriage to another man ended with that other man's death,
- (d) "**widow**" includes a woman whose marriage to another woman ended with the other woman's death,

and related expressions are to be construed accordingly.

(3) A reference to marriage of same-sex couples, or to a marriage of a same-sex couple, however expressed, is a reference to a marriage between two men or a marriage between two women.

(4) A reference to a same-sex couple who are not married but are living together as a married couple, however expressed, is a reference to -

- (a) two men who are not married but are living together as a married couple, or
- (b) two women who are not married but are living together as a married couple.

(5) The provisions of this section do not limit the effect of section 1.

Recognition of overseas same-sex marriages.

4. (1) A marriage under the law of any country or territory outside Guernsey is not prevented from being recognised under the law of Guernsey only because it is the marriage of a same-sex couple.

(2) For the purposes of this section it is irrelevant whether the law of a particular country or territory -

- (a) already provides for marriage of same-sex couples at the date of commencement, or
- (b) makes such provision at a later date.

Provisions which limit equivalence of all marriages etc.

5. (1) Sections 1(2), 2 and 3 are subject to -

- (a) the provisions of the Schedule,
- (b) any contrary provision made by this Law and any Ordinance made under this Law, and
- (c) any contrary provision made in any new legislation.

(2) The States may by Ordinance, in relation to sections 1(2), 2 and 3 -

- (a) provide that any such provision has effect subject to provision made by that Ordinance, or
- (b) specify cases in which any such provision does not apply.

PART II
RELIGIOUS PROTECTION

Disapplication to ecclesiastical law.

6. (1) Section 1(2) and (3) do not apply in relation to -
- (a) any Measures and Canons of the Church of England, or subordinate legislation made thereunder, in so far as such Measures or Canons or subordinate legislation have effect in the law of Guernsey, or
 - (b) other ecclesiastical law having effect in the law of Guernsey,

whenever passed or made.

(2) No Canon of the Church of England having effect in the law of Guernsey is contrary to the Royal Prerogative or the customs, laws or statutes applicable in Guernsey by virtue of its making provision about marriage being the union of one man with one woman.

Disapplication to Church of England marriages.

7. (1) The marriage of a same-sex couple may not be solemnised according to the rites of the Church of England by a member of the clergy of the Church of England.

(2) Any duty of a member of the clergy of the Church of England to solemnise marriages (and any corresponding right of any person to have a marriage solemnised by any such member of the clergy) is not extended by this Law to marriages of same-sex couples.

(3) Where two persons of the same sex consent to or acquiesce in a marriage according to the rites of the Church of England such marriage shall be void.

Marriage according to religious rites: no compulsion to solemnise etc.

8. (1) A person, including a religious organisation, may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) -

- (a) to conduct a relevant marriage,
- (b) to be present at, carry out, or otherwise participate in, a relevant marriage, or
- (c) to consent to a relevant marriage being conducted,

where the reason for the person not doing that thing is that the relevant marriage concerns a same-sex couple.

(2) In subsection (1), "**relevant marriage**" means a marriage of a same-sex couple solemnised in a place of worship or in another place in accordance with religious rites or usages.

Marriage according to religious rites: opt-in to marriage of same-sex couples.

9. (1) A marriage of a same-sex couple may not be solemnised according to the rites or usages of a religious organisation, or in a place of worship, unless the relevant governing authority has given written consent to such marriages of same-sex couples.

(2) A person, including a religious organisation, may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to give consent for the purposes of this section.

(3) Where two persons of the same sex consent to or acquiesce in a marriage according to the rites or usages of a religious organisation, or in a place of worship, in the absence of the required consent, such marriage shall be void.

(4) For the purposes of this section, "**relevant governing authority**" means the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent for the purposes of this section, and "**relevant religious organisation**" means the religious organisation according to whose rites or usages, or in whose place of worship, the marriage is to be solemnised.

(5) If, for the purposes of this section, a relevant governing authority has given written consent to marriages of same-sex couples, the validity of that consent is not affected only because there is a change in the person or persons constituting that relevant governing authority.

(6) The Registrar-General may, following receipt of notice of a marriage of a same-sex couple according to the rites or usages of a religious organisation, or in a place of worship, require the relevant governing authority to provide a copy of the consent mentioned in subsection (1).

(7) Nothing in this section is to be taken to relate or have any reference to marriages solemnised according to the rites of the Church of England.

PART III

OTHER PROVISIONS RELATING TO MARRIAGES OF SAME-SEX COUPLES

Persons already in civil partnership or marriage.

10. It shall not be lawful for two persons of the same sex to marry if they are, or either of them is, in a civil partnership or, for the avoidance of doubt, if either

of them is already married, and where two persons of the same sex consent to or acquiesce in a marriage in contravention of this section, such marriage shall be void.

Prohibited degrees of consanguinity.

11. (1) It shall not be lawful for two persons of the same sex to marry if one of them is, in relation to the other -

- (a) a parent or other ancestor,
- (b) the divorced or widowed spouse of such parent or other ancestor,
- (c) a sibling,
- (d) a sibling of a parent or other ancestor,
- (e) a child or other descendant,
- (f) a child or other descendant of a sibling,
- (g) a parent or other ancestor of a deceased or divorced spouse,
- (h) a child or other descendant of a deceased or divorced spouse,
- (i) the widowed or divorced spouse of a child or other descendant,
- (j) an adoptive parent or child, or a former adoptive parent

or child,

and a reference to a sibling shall include a reference to a sibling of the half-blood by the same father or the same mother.

(2) Where two persons of the same sex consent to or acquiesce in a marriage in contravention of this section, such marriage shall be void.

PART IV
MISCELLANEOUS AND GENERAL

General provisions as to subordinate legislation.

12. (1) The States may by Ordinance make such provision as they think fit for the purpose of carrying this Law into effect, including (without limitation) such consequential amendments to any enactment or rule of custom as they think fit.

(2) Any Ordinance under subsection (1) may, without limitation, include such provision as the States may think fit for the purpose of securing equal treatment of all married persons, of persons whose marriage has ended and of persons living together as if they were married.

(3) Any power conferred by this Law to make an Ordinance may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

- (4) An Ordinance made under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit, including (without limitation) provision repealing, amending or disapplying any enactment (including this Law).

Interpretation.

13. (1) In this Law -

"civil partnership" means a civil partnership formed under the Civil

Partnership Act 2004^b ("the 2004 Act"), or under the Civil Partnership (Jersey) Law 2012^c, or which is treated under the 2004 Act as having formed by virtue of an overseas relationship being registered, and which has not been dissolved or annulled, and "**civil partner**" shall be construed accordingly,

"**date of commencement**" means the date when this Law comes into force in accordance with any Ordinance made under section 15,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**existing legislation**" means Laws or Ordinances approved by the States of Guernsey on or before the date of commencement (excluding this Law) or subordinate legislation made on or before that date (excluding any such legislation made under this Law),

"**new legislation**" means Laws or Ordinances approved by the States of Guernsey after the date of commencement or subordinate legislation made after that date,

"**place of worship**" means a building used by a religious organisation as its usual place of religious worship,

"**Registrar-General**" means the Registrar-General of Births, Deaths and Marriages,

^b An Act of Parliament (2004 c. 33).

^c Ch. 12.260.

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

(2) Any reference in this Law to an enactment, and the reference in subsection (1) to the Civil Partnership Act 2004 and to the Civil Partnership (Jersey) Law 2012, is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

14. This Law may be cited as the Same-Sex Marriage (Guernsey) Law, 2016.

Commencement.

15. This Law shall come into force on the day appointed by Ordinance of the States.

SCHEDULE
PROVISIONS WHICH LIMIT EQUIVALENCE OF ALL MARRIAGES

Section 5

Interpretation of private legal instruments.

1. (1) The provisions of this Law do not, unless a contrary intention is expressed, alter the effect of any private legal instrument made before the date of commencement, and it does not matter whether such contrary intention is expressed in the instrument itself or in any variation or addition thereto validly executed before or after the date of commencement.

(2) The provisions of section 3 shall, unless a contrary intention is expressed, apply to the construction of any private legal instrument made on or after the date of commencement as they would apply to any new legislation.

(3) For the purposes of this section "**private legal instrument**" means any contract, settlement or deed, including (without limitation) -

- (a) a will,
- (b) an instrument which settles property or provides for the use, disposal or devolution of property,
- (c) an instrument which establishes a body or regulates the purposes and administration of a body, whether the body is incorporated or not and whether it is charitable or not.

Amendment to the Matrimonial Causes (Guernsey) Law, 1939.

2. The Matrimonial Causes Law (Guernsey) 1939^d is amended as follows.

3. In Article 15(1), for "It" substitute "Subject to paragraph (3), it".

4. Immediately after Article 15(2), insert the following additional paragraph -

"(3) The Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples) has effect."

5. Immediately after Article 16A(6) insert the following additional paragraph -

"(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this Article."

6. In Article 22(1), and in Article 33(1), for "It" substitute "Subject to the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), it".

7. In the proviso to Article 34, immediately after sub-paragraph (b), insert ", and" and insert the following additional sub-paragraph -

^d Ordres en Conseil Vol. XI, p. 318; Vol. XII, p. 278; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489; Vol. XXVII, p. 99; Vol. XXXI, pp. 171 and 278; Vol. XXXII, p. 85; Vol. XXXVI, p. 639; Vol. XXXVII, p. 308; Order in Council Nos. XI and XXXI of 2003; No. XIII of 2011; No. XII of 2015; Ordinance No. XXXIII of 2003; No. VII of 2010.

"(c) the grounds specified in paragraphs (1), (3) and (4), and the requirement in sub-paragraph (b)(iii) of this proviso, do not apply in the case of a marriage of a same-sex couple."

8. In Article 38(1), for "It" substitute "Subject to the provisions of the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), it".

9. After Article 72, insert the following Schedule -

"SCHEDULE
JURISDICTION IN RELATION TO MARRIAGE OF SAME-SEX
COUPLES

Articles 15(3), 22(1), 33(1) and 38

1. This Schedule shall have effect with respect to the jurisdiction of the Court in the following proceedings in relation to the marriage of a same-sex couple -

- (a) proceedings for divorce, judicial separation or nullity of marriage, and
- (b) proceedings for the grant of a decree of presumption of death and of dissolution of marriage thereupon.

2. The Court shall have jurisdiction in divorce causes and matters under Part II, in any suit for judicial separation under Part III, or in suits for nullity of marriage under Part V, in relation to the marriage of a same-sex couple, if -

- (a) the condition in Article 15(1), 22(1) or 33(1) (as the case may be) is satisfied, or
- (b) the following conditions are met -
 - (i) the parties to the marriage married each other under the law of Guernsey, and
 - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case.

3. The Court shall have jurisdiction with regard to the granting of decrees of presumption of death and of dissolution of marriage thereupon, in relation to the marriage of a same-sex couple, if -

- (a) the condition in Article 38(1) is satisfied, or
- (b) the following conditions are met -
 - (i) the parties to the marriage married each other under the law of Guernsey, and
 - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case."

Amendment to the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988.

10. In section 1 of the Domestic Proceedings and Magistrate's Court

(Guernsey) Law, 1988^e, the text is renumbered as subsection (1) and the following additional subsection is inserted -

"(2) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of subsection (1)(e).".

^e Ordres en Conseil Vol. XXXI, p. 171; Vol. XXXI, p. 278; Vol. XXXIV, p. 129; Vol. XXXV(2), p. 619; Vol. XXXVI, p. 61; Ordinance No. XXXIII of 2003; No. VII of 2010.