

Equal Marriage and Partnership *Options Paper* Report

November 2014

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SECTION 1: EXECUTIVE SUMMARY

This report summarises the findings of a public consultation process undertaken in order to establish whether or not same-sex couples should be able to get married in Jersey.

The report reflects a very clear message, echoed by virtually every person who participated in the consultation process: marriage matters. Despite very stark differences in opinion as to whether marriage should, or should not, evolve to include same-sex couples, there was clear agreement on the importance of marriage in our community.

The commitments summarised below, and explored in more detail in the main body of the report, aim to uphold marriage - for both opposite-sex and same-sex couples. These commitments include:

1. Making same-sex marriage a reality in Jersey by end of 2017 at the very latest (subject to States Members approval).

Legislation will be brought forward to allow same-sex couples to get married in Jersey. This will include civil and religious marriage, with appropriate safeguards in place to protect the right of religious organisations and officials who do not wish to conduct same-sex marriages.

Civil Union (or Union Civile) will not be introduced, nor will humanist marriage.

2. Development of a family policy statement by end 2015.

The States of Jersey should seek to strengthen families in all their forms and support marriage in all its forms – including same-sex marriage – if we are to reduce the incidents and impact of parental conflict on children. The family policy statement will set out what action is needed.

3. Bringing forward a report and proposition, during Quarter 1 2015, which will seek States approval for the process and timeframe associated with bringing forward legislative changes. This will include giving further consideration to:

- the introduction of legal rights for co-habiting couples, and whether this should be achieved by extending civil partnerships to opposite-sex couples, or whether civil partnerships should be abolished altogether;
- whether the grounds for divorce, or dissolution of a civil partnership, should be amended.

SECTION 2: BACKGROUND

2.1 Background to the report

In July 2014 the States Assembly debated P102/2014 and its associated amendments. As a result the Chief Minister was tasked with investigating whether it would be appropriate to introduce same-sex marriage legislation in Jersey, and with reporting back to the Assembly by the end of December 2014¹.

As part of this investigation an *Equal Marriage and Partnership Options Paper (Options Paper)* was released for public consultation providing an opportunity for Islanders to comment on same-sex marriage legislation and related issues.

The feedback from the consultation process provides States Members with valuable insight into what respondents think about the different options set out in the consultation paper, and more broadly about their feelings towards the institution of marriage and towards civil partnerships.

That feedback is supplemented with information arising from research and public policy papers produced in other jurisdictions in order to try and address the central question of whether it is, or is not, appropriate to introduce same-sex marriage in Jersey.

2.2 Background to consultation process

The *Options Paper* (Appendix 1)² was released for consultation on 20 August 2014. The consultation period ended on 22 October 2014.

Written submissions

People could submit their response via a consultation survey or in writing.

1094 people or organisations responded to the consultation survey and an additional 161 letters or emails were also submitted, of which

- 59 were letters or emails
- 55 were individual copies of the same standard letter
- 2 were “petition” style letters signed by 47 people in total.

20 of these 161 written submissions were received from people who also completed the consultation survey.

¹ The States debated P102/2014 and associated amendments. The full text of the States resolution was: “to agree, in relation to the proposal that same-sex couples should be permitted to enter into civil marriages that the Chief Minister be requested by 31st December 2014, to investigate and report to the States as to whether it would be appropriate to introduce legislation to allow this, with appropriate safeguards, and as to the arrangements which should be made for the recognition in Jersey, in some way, of civil partnerships and civil marriages entered into outside of Jersey with the legislation containing specific provisions that religious and faith communities would not be required to conduct same-sex marriages unless they wished to do so.”

² Polish and Portuguese language versions of the *Options Paper* were also released on Monday, 29 September 2014 in response to concerns raised about the potential exclusion of Polish and Portuguese speakers. Whilst it is not standard practice to translate consultation documents into other languages, exceptions are made where it is felt that there is a clear rationale for doing so. With regard to equal marriage, there were legitimate concerns about the potential exclusion of non-English speaking Polish and Portuguese people, many of whom are people of faith.

A copy of the *Feedback Report*, showing how people responded to individual questions in the survey is attached at Appendix 2.

Public meetings

A number of public meetings were also arranged. These were poorly attended, but the majority of those attending did provide positive feedback about the value of the meetings.

Date	Attendees
Monday 15 th September: 12.00-13.15	10
Monday 15 th September: 13.30-14.45	8
Monday 29 th September: 18.30-19.45	11
Tuesday 30 th September: 18.30-19.45	7
Total	36

Facebook

An additional 19 comments were posted on Facebook.

Note: Other feedback

In addition to the response to the *Options Paper* there were other non-States of Jersey led activities which provide some insight into people's response to the potential introduction of same-sex marriage. These include:

- public rally on 12 July 2014, where it was widely reported that hundreds of people turned out in support of same-sex marriage
- a survey sent by Liberate and Trans* Jersey to 69 of the 86 election candidates (the survey was not sent to the 17 unopposed candidates), which indicated that 80% of those who responded to the question about introduction of same-sex marriage were in support of it. See <http://transjersey.org> political consultation for more information.

SECTION 3: FEEDBACK - KEY ISSUES AND THEMES

3.1 Overview

Marriage is a hugely important institution. The principles of long-term commitment, responsibility and fidelity that underpin it help bind our community together and make it stronger.

Virtually everyone who responded to the consultation echoed that belief. They are all supporters of marriage; they just hold very different views about whether marriage should evolve to include same-sex couples or not.

It is very clear from the responses received that this debate, which is very polarised, is predominately rooted in the realm of personal conscience, opinion and belief as opposed to statistics or evidence. This is partly because real ‘facts’ about the impact of same-sex marriage - as opposed to often repeated beliefs that are assumed to be factual - are scarce. There is limited longitudinal data about same-sex marriage, and that which exists is often seemingly contradictory. And partly because, regardless of the ‘facts’, this is a debate of the heart.

It is clear from the responses received that this debate cannot be wholly characterised as liberal versus conservative, or secular versus religious. There are Islanders who hold liberal views on sexuality but who nevertheless voice concerns about the impact of same-sex marriage on the nuclear family, and there are practicing Christians who express bewilderment that their church will not allow all couples that love each other to marry.

There were regrettably a small number of respondents whose opposition to same-sex marriage stemmed from deeply held homophobic attitudes, but these were very much in the minority. The majority of respondents who expressed concern did so because of their personal adherence to a traditional definition of marriage. Most are not, by any stretch of the imagination, homophobic or bigoted.

A number of key issues and themes arose from the consultation. These are set out below in an order that broadly corresponds to the different options set out in the *Options Paper* (plus an additional section on criticisms about the consultation process). Perhaps unsurprising the majority of the issues and themes relate to same-sex marriage, as opposed to humanist marriage or civil partnerships.

These key issues and themes, which are illustrated using a selection of the comments received³, do not represent an exhaustive list of every point raised. There were many additional comments made by single respondents, or by a very small number of respondents, which are not included.

Throughout this section additional information supporting the themes raised is provided in the form of a Note that is clearly shown in a box, or a Response also clearly shown in a box.

³ The comments included in the paper are taken either from the written submissions or from the public meeting notes. Comments have not been amended unless to correct spelling and punctuation for ease of reading, as auto-correct facilities were not available on the online survey. Where a comment has been abbreviated, this is indicated.

Some respondents asked that their comments be anonymous, whilst others stated that they could be publically attributed to them. All names have been withheld, however, in order to ensure no-one is subject to negative feedback.

Note: Limits on consultation process

The feedback from the public consultation process provides valuable insight into respondents' attitudes toward marriage and civil partnership and their response to the options set out in the consultation paper. In reviewing that feedback it is important to recognise that:

- The consultation was not statistically sound. The findings only reflect the views of people who responded, they are not representative of the views of Islanders as a whole.
- Whilst the consultation attracted a high level of respondents for a States of Jersey consultation, the total number of responses, discounting those received from non-Jersey residents, only equates to approximately 1.5⁴% of our population. We simply do not know the views of Islanders who did not respond.
- A consultation is not a referendum. Islanders were not being asked to vote for or against same-sex marriage. They were being asked to express their views in order that States Members are aware of what Islanders think and feel about the issue.

⁴ 1.5% based on population figure of 81,644 from the 2011 Census of over 16 year olds, plus discounting responses from non-Jersey residents.

3.2 Should same-sex marriage be introduced?

3.2 (a) Overview

The survey asked people whether they believed all couples, regardless of their gender, should be able to get married (i.e. should same-sex marriage be introduced). 648 people said yes (60%), 423 people said no, (39%), 12 said don't know (1%) and a further 11 did not answer the question.

Amongst other respondents (i.e. those who wrote individual letters or sent standard/petition letters) 125 were clearly not in favour of same-sex marriage and 6 were in favour⁵.

The total across all respondents is therefore 654 people in favour of same-sex marriage (54%) and 548 people against same –sex marriage (46%). Figures which suggest that the community is far from united on this issue.

As stated above, it is impossible to know how the 98.5% of Islanders who did not respond to this consultation feel about same-sex marriage. Some respondents suggest that others may not have participated because they feel like a silenced majority:

“I firmly believe that the vast majority of couples in Jersey (the silent majority) are happy with the current arrangements ...and would not wish this situation to change. ...There is a risk of a vocal minority stamping over the wishes of the silent majority”

“... I doubt whether you will hear what the majority of men and women presently involved in man and woman family life think!”

“No doubt such views will be considered by some as bigoted and homophobic but I am neither but just one of, I believe, the silent majority who are concerned to make their views known.”

This lack of response could, however, equally indicate that people did not participated in the consultation simply because they believe same-sex marriage is obviously the right thing to do:

“...there is nothing to debate, do it and let people get on with their lives”.

“I am still confused as to why this is debateable, if heterosexual couples can do it, everyone should be able to”.

“Just do it and stop procrastinating”.

⁵ The figures of 125 and 6 exclude those 20 individuals who also completed the consultation survey in order to avoid double counting. In addition, there were 10 responses received where it was not possible to ascertain whether the respondent was, or was not, in favour of same-sex marriage.

3.2(b) Equality/discrimination

The most commonly expressed theme in support of same-sex marriage was very simply that all couples, regardless of their gender, should be allowed to express their love and commitment to each other through marriage.

Some respondents were puzzled that in a modern society, which strove to be inclusive, there could be any question about the right of same-sex couples to marry. To do anything else is perceived by many as a denial of equality.

"I'm embarrassed to say that this has not been legalized yet. Everyone should have the same rights!"

"I want to live in an island, a country and a world where discrimination no longer exists. The greatest gift people can give each other is love and I want the laws of the States of Jersey to recognise the rights and wishes of couples no matter their gender or sexual orientation."

"We are living in the 21st Century. Some people may wish to live their lives based on dubious writings from a book written 2000 years ago, but not me or my loved ones. Equal rights, whatever a person's sexual orientation."

"People are people, love is love. There should not be different laws entitling people to different scenarios in life just because of their preferences. The fact that this still exists today is belittling, degrading and dehumanising. A society that condones and restricts human life should be one that we are ashamed of."

"There is no reasonable argument why same-sex marriage of any variety should be disallowed if we are to live in an ethical, modern society. Fear, ignorance, and outdated religious opinions should not stand in the way of equality."

"As a Jerseyman it pains me to know that when I marry my partner in the British Consulate in Brisbane next year, the island of my birth will not recognise that marriage. I do not believe that religion has any place in deciding whether or not my relationship is equal to a heterosexual one, and the state has no place in defending the rights of those who would seek to continue treating me, in law, as a second class citizen."

"Being in a loving relationship is a good thing for anyone that wants it whatever the gender of the couple, I can't believe the fuss in our society. The government should represent all its people."

"What is the point of introducing discrimination laws, if you discriminate against same sex couples?"

"I firmly believe that we are all equal, and that everyone should be treated the same. Gay marriage is an acknowledgement of equality. Two people should be able to formalise their relationship however they choose to do that, regardless of whether they are both men, both women, or one of each."

"Not allowing same sex marriage is downright refusing human rights. In a society as developed as that of Jersey supposedly is, it is hugely disappointing to see that this is still such a big issue."

"Marriage is about long-term commitment in a loving relationship. Heterosexual partnerships are allowed to express their love with marriage, to deny homosexuals this same expression is cruel and serves no purpose other than to tell them they are not equal citizens"

Other respondents, however, expressed very different views about what should be meant by equal, stating that it is important to recognise that “*equal to*” does not mean “*the same as*” (i.e. a same-sex relationship can be equal to an opposite-sex relationship in terms of love and commitment, but it cannot be the same as an opposite-sex relationship, the prime differences arising from biological sex differences and the ability to procreate as a couple).

The respondents believe that it is essential to recognise equality of love whilst also continuing to recognise the differences between same-sex and opposite-sex relationships. They believe this is best achieved by leaving the institution of marriage as it is, whilst working to create a true understanding of the significance and value of civil partnerships to both civil partners and the community as a whole.

“Can we not simply achieve equality by ensuring that those who choose a civil partnership get exactly equal rights over inheritance, faithfulness etc.? Do we need to change the law to call different relationships the same thing?”

“I feel there should be financial parity for those in marriages, Civil Unions and for co-habiting couples. Men and women have equal rights to be valued and respected as human beings whatever their persuasion. However, though equal, they are not the same and redefining words will never make them so.”

“Equal does not mean the same. A woman is equal to a man but is not a man. A pound of sugar is equal in weight to a pound of salt, but sugar and salt are not the same. ...The union between two men or two women is essentially different from the union between a man and a woman. For centuries the word “marriage” has specifically meant the legal - and often religious - union of a man and a woman. The meaning of this word should not be changed.”

A very small number of respondents argue that all humans are, by their very nature, unequal and the States should be wary of legislating in favour of ‘equality’– where being unequal is part of the human condition - unless it is in the best interests of the individual or the wider community to do so.

“Some people may argue for equal treatment of the thrifty and the generous. In certain areas of life (employment, education, and so on) equal treatment of the thrifty and the generous seems to be morally correct. But the generous are not equal to the thrifty and the state should not, in my view, legislate to make thrifty people equal to generous persons.”

Response

The *Options Paper* refers to Equal Marriage and use of the term ‘equal’ has stirred debate. It is important to clarify however, that equal is not presumed to mean the ‘same as’. People living in same-sex relationships are not the same as people living in opposite-sex relationships, however this does not mean that people should be denied equal treatment simply on the basis that differences exist.

3.2 (c) Marriage as a union between a man and a woman

It is very clear from the consultation responses that many Islanders hold true to the belief that marriage is a union between a man and a woman. This belief:

- is affirmed in Jersey by Canon Law⁶:

“...marriage is in its nature a union permanent and life-long, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children..”

- stated in the Bible:

Matthew 19: 5: *“a man shall leave his father and mother and be joined to his wife, and they shall become one flesh”*

- shaped by peoples' faith:

“The bible says that a marriage should be between a man & a woman for the procreation of children”.

“I believe and follow the bible, which is the word of God. The bible clearly states that man and woman are to marry. I am not bigoted, discriminatory or cruel, but I believe that this should remain.”

“I believe marriage is between a man and a woman. I believe the Bible reveals that the purpose of marriage is to reflect God's both united and diverse nature and that in marriage a man and a woman become one flesh.”

Whilst the majority of those who quoted the Bible did so to explain that their opposition to same-sex marriage is derived from their belief that marriage is about a man and a woman, there were also a small number who used the Bible and theology arguments to express support for same-sex marriage:

“For those using religion as opposition, I would refer to the bible where it is mentioned several times that “God shows no partiality” (Act 10:34 amongst others). He treats everyone alike and what gives you the right to put yourself above your own God?”

“The Bible is the story of God making us for relationships with Himself and with others...the emphasis over and over to Christians in the New Testament is to get their relationships with one another sorted out...To be fully alive is to be in relationship with God and in community with others, especially those we love. ...The theological justification for the use of this paradigm (the paradigm of relationships) is the overwhelming abundance of love that the Father in heaven has for all humanity. And therefore that abundance of love is undiminished and undiluted towards homosexual persons. The call to belong, to friendship with God is the same for all.”

The notion that marriage is a union between a man and a woman is not however exclusively based on people's religious belief. Others hold this view based on concerns that the introduction of same-sex marriage will damage the institution of marriage.

⁶ Section B30 of the Canons of the Church of England in Jersey (Canon Law)

"I believe marriage should be for heterosexuals only - this is not a particularly religious conviction but I consider that if any of the specified options (i.e.. same-sex religious and/or same-sex civil marriage) are accepted it would dilute the meaning and purpose of marriage, to the potential detriment of the majority."

Even to the extreme of opening the door to polygamy⁷:

"...having been redefined once, what is to stop it being redefined again to allow polygamy?"

The belief that marriage is an opposite-sex union is, in many cases, strongly related to the notion that the prime purpose of marriage is the procreation of children.

"Marriage is the formal agreement of two people of opposite sex, the purpose of which is the procreation of children through that formal, physical relationship."

"A marriage is a common law contract between one man and one woman for the purpose of procreation; this should remain the legal definition. Statutory law is an inferior law and should not seek to interfere with the Common Law."

"We cannot complete Question E because we do not recognize that the term 'marriage' can be applied to same-sex partnership (Question E being: if same-sex marriage is introduced in Jersey which one of the following three options do you think should be used?)."

For those that believe marriage can only ever be an opposite-sex union, same-sex marriage represents a threat to the core meaning of marriage, with some people perceiving it as potentially devaluing their own marriage:

"My understanding of marriage is a union of man and woman. Any other definition or interpretation undermines that understanding and debases the sanctity of my own marriage."

"Marriage is the institution for man and woman to create a family and thus offering protection to a natural family unit...I do not doubt that God loves people in same sex relationships every bit as much as he loves people in married relationships. However, that is not the same as believing that God views each type of relationship as of equal value or in accordance with his plans. I believe that what is proposed here is actually an attempt to usurp the status of marriage and change its centuries held meaning."

Response

The law may be amended, but it is clear that for many respondents the law will then be wrong, because it remains an absolute truth for them that same-sex marriage cannot exist.

⁷ Concerns about polygamy are based partly on Dutch legislation which allows for three-way relationships to be registered as civil partnerships and an active lobby in British Columbia which argues that same-sex marriage legislation justifies the legalisation of polygamous relationships.

3.2 (d) The meaning of 'marriage': interpretation and language

Both supporters and opponents of same-sex marriage are very clear about the importance of the meaning of 'marriage'. Both believe that marriage is of huge personal and social significance, and wish it to remain so.

There are clear differences of opinion however as to whether or not same-sex marriage would devalue the meaning of marriage for all, or simply allow more people to participate in, and benefit from, marriage.

A number of consultation responses focus on the word 'marriage', with respondents stating they are supportive of same-sex unions providing those unions are not called marriage.

"I wholly favour the ability of two people of the same sex to have a formal union and be entitled to all of the same benefits enjoyed by a man and a woman in a marriage. I just don't want them to use the sacred word "marriage...I see no reason why same sex couples should not be asked to find another agreeable word to describe their own relationships".

"I fully support the right of same-sex couples to have a legal civil partnership but they should not hijack the meaning of the word 'marriage'

"The sticking point is the term "marriage". I would regard marriage within a traditional view that it is between a man and woman ...I would not have a problem with a same-sex union with the same rights and obligations as a "marriage" but I struggle to understand why the term "marriage" is looking to be re-defined."

"I think the law should provide for same-sex partnerships, but they should not be termed marriage..... Such a fundamental building block of society cannot be redefined merely to give an appearance of equality."

"I disagree with the concept of marriage for same sex couples. I think it makes a mockery of what marriage is. I think same sex couples should have rights under the law to be recognised as a couple (but) I think in our haste to be liberal and tolerant of others, we are forgetting the very basic understanding of language and values that makes a society"

Some respondents make reference to dictionary definitions;

"Marriage is defined in the dictionary as a condition of man and woman legally united for purpose of living together and usually procreating lawful offspring. The definition should not change. If there is to be a legal union of persons of the same sex then a new term should be used instead of 'marriage'."

"Marriage and "Union" do not apply to same sex - partnership is a more appropriate word. See definition in any good dictionary."

Reliance on such definitions is, however, not correct. Since 2013 with the Oxford English Dictionary has defined marriage as:

"The legally or formally recognized union of a man and a woman (or, in some jurisdictions, two people of the same sex) as partners in a relationship."

Regardless of dictionary definitions however, the suggestion that a different word can be found is very much at odds with the position taken by those who want same-sex marriage. For them anything but marriage falls short because it fails to carry the same culture and emotional resonance.

“Linguistically ‘Civil partnership’ is a meaningless phrase in most other countries.... ‘Partner’ isn’t a word that communicates to a listener either the nature or the seriousness of the relationship. People ask why I am fighting for the right to get married, why is my civil partnership not enough? My answer is “I am fighting for the same reason you’re fighting not to let me get married. You believe that marriage matters as much as I do.”

“If it isn’t called marriage, it isn’t marriage.”

Issues of language and meaning extend to the use of the words ‘husband’ and ‘wife’. Some respondents are concerned that same-sex marriage will devalue their meaning, potentially leading to their loss in favour of the gender neutral language.

“A wife should still be called a wife, a husband called a husband, a mother called a mother etc. It would be wrong to loose these words and their meaning simply to fit a politically correct agenda”

A very small number of respondents support the introduction of gender neutral terms:

“It should be far simpler to remove the restrictions in law that refer to the sex of a person. Instead of “husband, wife, man or woman” it should be “the couple or person” ...the Law should remain neutral to sex of a person or couple.”

“..it is difficult to consider any reform about equal marriage if the terminology used in law is inherently exclusionary”

Although this view is not reflected by other respondents, many of whom have a full appreciation of those terms and want the right to be able to use them:

“I want to be married. My husband should be my husband, not my partner”

“You play golf or do business with a partner. You love and cherish your husband or wife”

Note: Changes in terminology

In other jurisdictions there have been changes in terminology, which have been driven in part by the introduction of same-sex marriage legislation, for example:

- In Massachusetts all marriage forms are now gender neutral and read ‘Party A’ and ‘Party B’, as opposed to ‘husband’ and ‘wife’.
- In Spain the words ‘mother’ and ‘father’ on birth certificates have changed to ‘Progenitor A’ and ‘Progenitor B’.

Response

The legal rights of married couples are virtually exactly the same as those in civil partnerships. The battleground is therefore not about legal rights but about the word 'marriage' and its social and historical associations and meaning. Opponents of same-sex marriage do not want same-sex couples to be able to use the word 'marriage', just as much as supporters want to use the word 'marriage'.

Changing the law to allow for same-sex marriage will, in some people's opinion, change the meaning of the word 'marriage', although not in other people's opinion. In creating these changes, however, consideration must be given to ensuring how words such as husband/wife and mother/father continue to be used. Same-sex marriage legislation does not need to drive them out, as they remain words of meaning.

3.2 (e) Minority issue

Opponents of same-sex marriage queried whether it is possible to justify the introduction of same-sex marriage, given that it only directly benefits a very small number of Islanders (0.4% of the population⁸) whilst, in their view, fundamentally changing the meaning of marriage to the detriment of the wider community.

"Why do we have to change the law for a minority of people? Surely the majority has the right."

"...those who press for it need to make a case for it that has coherence rather than vilifying anyone who doesn't agree, and additionally shouting the mantra of equality rather misses the point that men and women are different."

"This is political correctness aimed at appeasing a small minority at the expense of a centuries old tradition that worked."

"Just because a vocal, organised minority "want it" does not mean everybody should roll over and give them what they want (like spoilt kids)."

"I do not believe that we have the right to change the understanding of 'marriage' which been accepted and practiced by society for millennia in order to satisfy the demands of a small minority today."

Whilst some opponents of same-sex marriage perceive this as an issue driven by the minority for the benefit of that minority, there are others who hold a completely contrary view. They believe that there is potential for a religious minority, as opposed to gay rights minority, to impose their stance over the majority:

"..I suspect the religious activists in Jersey (will) manage to filibuster the gender/sexual issues"

"Several religious institutions are already afforded privileged status in Jersey, through an unelected representative in the States, tax breaks and influence over many things in the island. If they want such perks to continue, they should drop their unjustified rejection of civil-sex"

⁸ According to Jersey Census, 219 same-sex couples were living together in Jersey in March 2011 – equivalent to 0.4% of the population.

marriage...Passing such a law which brings equality at the detriment of no-one, except for a few religious folk ...would be a good step towards bringing us into line with the modern world."

"I don't think the church should be influencing the way people think about this..... I think it is a human issue. All people should enjoy the right and the legality to get married."

"The island has many pressing problems to resolve requiring debate in the States. I consider this whole matter to be a complete waste of time and space foisted upon us largely by a minority of superstitious (i.e. religious) people and unfortunately a few closet homophobes."

"Although civil and religious marriages are deemed as different ceremonies for some opposite sex couples (depending on who or what they religiously or do not religiously believe in), I believe that the general consensus upon the meaning of marriage is not wholly religious. It is no longer seen as a religious action to get married."

"This is the 21st century, I do not want to live in a society ruled by religious bigotry."

"...marriage was originally a religious concept however in modern times we no longer adhere to such strict religious laws and live in a multi-facetted, multi faith/belief society that live to modern cultural ideals and no longer a mono-religious belief system"

Response

There are very clear differences of opinion amongst some respondents about whether same-sex marriage is supported by the minority or majority of Islanders. Regardless of the number of people supporting same-sex marriage, it is nevertheless the case that it will only directly benefit a very small number of Islanders, approximately 44 couples⁹, although arguably many more people will indirectly benefit from living in a community that is perceived to be both inclusive and tolerant.

Regardless of how many people benefit, however, it is legitimate to legislate in favour of minority groups, where it is in the interests of that group to do so and is not detrimental to the wider community.

3.2 (f) Are civil partnerships sufficient?

Concerns about whether or not same-sex marriage is a 'minority' issue were further compounded by some people's view that same-sex marriage is simply not needed because existing civil partnership arrangements provide legal protection for same-sex couples:

"Civil partnerships for same sex couples should suffice."

"I truly believed that the introduction of civil partnerships had been a huge step in attempting to ensure that same sex couples were afforded the political and equal rights of traditional married couples without affecting those in religious organisations."

"..civil partnerships already exist, why the need to impose other's beliefs on existing practice."

⁹ Assuming uptake is around 20%, as in other jurisdictions that have introduced same sex marriage, based on Jersey Census findings that 219 same-sex couples were living together in Jersey in March 2011.

“The option of marriage between opposite sexes confers legal rights as does the option of civil partnerships between same-sex couples. Those wishing to have legal rights have these options already available.”

“..there are no important legal disadvantages to a couple in a civil partnership as opposed to a marriage. The change in law is proposed to give “the same emotional resonance as the institution of marriage.” This is an unsatisfactory basis for legislation. ...A visit by the Queen does not give “the same emotional resonance” to a republican as to a royalist. ...These differences do not justify changing the way affairs are conducted in Jersey.”

Others, whilst recognising the legal protection provided by civil partnerships, believe that they are simply a legal compromise, positioning same-sex couples as ‘second class’ couples.

“Civil partnerships are a sop. They were introduced as a compromise so that gay people didn’t need to get married, because marriage isn’t for us second class citizens. The State should not be defending this position.”

Note: Uptake of Civil Partnerships in Jersey

Civil partnerships were introduced in Jersey in 2012. 44 couples entered a civil partnership in Jersey in 2012 and 2013. There have been no dissolutions of civil partnerships over that period. 2014 figures are not yet available.

Response

The ability of same-sex couples to enter into civil partnerships does not derogate from the argument that same-sex couples should be able to marry. What is being sought is not the legal rights associated with marriage, but equality in terms of the status that marriage attracts in the eyes of society at large.

3.2 (g) Impact on the family

A number of respondents raised concerns about the impact of same-sex marriage on children and the family unit.

“What about the rights of children to be brought up by their biological father and mother? Children are part of the marriage debate and should not be ignored; the main purpose for marriage is to produce a relationship of commitment, different gender roles, emotional support of father and mother for their children who have a right to have a father and mother.”

“Whether we are Jewish, Christian, Moslem, Hindu, Buddhist or any other religion of our world, or humanist or atheist, marriage and family life is the best place for children to be born and nurtured. To distort the definition for the sake of a few is very suspect, highly unwise and there are consequences.”

“Same sex marriages would lead to more same sex couple adopting children which in turn would result in more children having same sex parents. What life are these children going to be brought up in, taunted by peers.”

Note: Same-sex adoption in Jersey

It is unlikely that the introduction of same-sex marriage in Jersey would have any significant effect on adoption. As it currently stands in Law a married couple, or couple in a civil partnership, can jointly adopt a child. In addition, proposals are already being formulated to amend the Adoption (Jersey) Law 1961 to allow any couple in an “*enduring family relationship*” to jointly adopt (for example, a co-habiting couple).

An individual person, as opposed to a couple, can also adopt a child in Jersey regardless of the person’s sexual orientation.

The key factor in all adoption cases is whether it is in the child’s best interest to be adopted by that couple/individual, not the gender or sexual orientation of the couple/individual.

“Redefining marriage to include same-sex relationships gives the message that one sex (either male or female) is no longer important to the bringing up of children..... the foundations of family life in Jersey are not strong at this moment in time - lets invest in building strong foundations for our young people rather than further complicating family life.”

“We should be doing more to support traditional families, well proven for providing the most stable relationships for children.”

“The most basic unit of society, the family, is based on biology not ideology. Children are conceived through heterosexual intercourse and studies constantly show that children need male and female role models. Statistics repeatedly affirm that life-long and loving heterosexual marriage is the ideal context in which to raise children. Hence for the good of children and the good of adults the law has to date rightly protected and privileged marriage.”

Response

There is very clear evidence that children are more likely to do well in life if raised in a stable family environment. The traditional nuclear family is best for children. That does not, however, preclude children from flourishing in non-nuclear families. Stability is key.

Same-sex marriage will not result in increased numbers of children being raised by a gay or lesbian parent, as that parent will be gay or lesbian regardless of whether or not same-sex marriage is introduced. It is also not clear that same-sex marriage would result in an increased number of children being raised by two parents of the same-sex, as our existing laws already allow for this.

Same-sex marriage will not destabilise existing families, or create an increased number of new unstable families.

What is important is that adults are supported to have stable marriages in which their children can flourish. And, where marriages do breakdown, the impact on children is minimised.

3.2 (h) Promotion of homosexuality

Some respondents believe that the introduction of same-sex marriage will result in a “normalisation” of homosexuality.

“As a teacher, I see teenagers uncomfortable with the concept of sexuality and how they will be judged. This decision is not just a legal matter, but one that signals to teenagers and adults that it is okay to be bi, gay...or even straight! ...changing these laws will make a positive statement in society: you are not judged by your gender; you are not judged by the colour of your skin; you are not judged by your religious beliefs; you are not judged by your sexuality. Simple.”

“It is so hard for gay people, especially young people who are finding out who they are but can't express themselves ...due to the lack of respect from the government for equality. I just wish the government would take a step back & look at it through the public's eyes. Take a public vote and see how much support there is in the Channel Islands for gay equality.”

“If we allow change in marriage then same sex relationships will be promoted as equal and the same to children who will grow up and sexually experiment and more will choose same sex relationships because they can.”

Response

The introduction of same-sex marriage may help support de-stigmatisation of homosexuality but it cannot be assumed – as some respondents argue – that it will result in more people being homosexual. People will be gay regardless of whether or not same-sex marriage is introduced.

There are studies¹⁰ which suggest that children raised by gay parents may be more likely to experiment sexually or be homosexual. It cannot be assumed however that more children will be raised by gay parents simply because same-sex marriage is introduced and, even if it were so, there are differences of opinion whether it matters.

¹⁰ Walter R Schumm “Children of homosexuals are more apt to be homosexuals” J Biosoc Sci Nov 2010

3.3 What form should same-sex marriage take?

3.3 (a) Overview

If same-sex marriage is introduced there are a number of different forms that same-sex marriage could take:

- civil marriage only
- civil marriage and religious marriage
- Civil Union (civil marriage only for same-sex and opposite sex couples)

A religious marriage is conducted, or solemnized, by a religious official such as a Vicar or Priest, according to the rites of the religion. A civil marriage, which has no religious content, is conducted by a Registrar (i.e. a government official). Civil Union, also referred to as Union Civile, is a system of civil marriage for both same-sex and opposite sex couples i.e. no-one can have a religious marriage.

The *Options Paper* asked Islanders whether, if same-sex marriage is introduced, the law should:

- only allow civil marriage for same-sex couples
- allow both civil and religious marriage for same-sex couples
- only allow civil marriage for both same-sex and opposite-sex couples (i.e. remove the right of opposite-sex couples to have a religious marriage).

64% of respondents who answered the relevant survey questions agreed with the introduction of same-sex civil marriage only (35% said no). 55% agreed with the introduction of same-sex civil and same-sex religious marriage (43% said no). Only 16% agreed with the introduction of Civil Union (74% said no). On the face of it therefore, more people agreed to the introduction of same-sex civil marriage only, than with the introduction of same-sex civil and same-sex religious marriage.

This position changed however when survey respondents were asked to state their preferred options, at which point more people opted for civil and religious marriage (56%) than for civil marriage only (34%)¹¹.

None of the other respondents (i.e. those who wrote individual letters, or sent standard/petition letters) explicitly stated a preference for civil marriage only, or civil and religious marriage, although 77 did clearly state their opposition to Civil Union.

3.3 (b) Protecting religious freedoms

The *Options Paper* clearly stated that if same-sex religious marriage is introduced, religious organisations and religious officials will not be compelled to marry same-sex couples against their wishes (i.e. they would be provided an “opt-in”). This is in accordance with a decision taken by States Members during the P102/2014 debate.

¹¹ 130 people chose not to state whether they preferred civil marriage only, or civil marriage and religious marriage. 121 of these 130 people had however previously stated that they did not agree with same-sex marriage, so it therefore assumed that they felt unable to state any preference, even if that preference equated to a “least worst scenario”. Even allowing for the high number of non-respondents, a total of 583 people stated a preference for civil and religious marriage (53% of all 1094 survey respondents), as opposed to only 324 people who stated a preference for civil marriage only (29% of all survey respondents)

Most of the respondents who expressed a view, agreed with this position:

“Religious organisations should be able to choose if they want to conduct a marriage for a same sex couple, but they should not be forced..... I myself am non-religious and should not have my rights governed by a theocratic system that I do not support.In the spirit of freedom of, and from religion, it is important to me that my choices do not negatively impact others. To achieve this, Option 2 (i.e.. the introduction of same-sex civil marriage and same-sex religious marriage) is the only choice that allows fair treatment for all involved.”

Although there was some divergence of views, from those that believe the church should be totally exempt from conducting same-sex marriage, to those that believe the church has a duty to treat all people the same:

“I am a lesbian..It broke my heart when I was unable to enter into (a civil partnership) with my partner on my home island of Jersey..though this has now thankfully, changed. That said, I do not accept that same sex couples have a right to impose their sexuality on religious doctrine... Religious people have rights too and they should have the right to have their beliefs and feelings recognised...it would be an imposition of the desire of c. 1.5% of the population on the rest who may (or may not) have strong feelings on this”.

“If the church cannot treat everyone equally then it has no place in society.”

“Marriage should be the same for everyone regardless of their sex, colour, religion, etc. If a couple wish to have a religious ceremony of any kind, it should be completely up to them and the states should have nothing to do with it nor should it recognise any system of beliefs as "special".

There was also a group of respondents concerned that, despite assurances provided in the *Options Paper*, religious organisations will eventually be forced into conducting same-sex marriages by the European Court on Human Rights or others:

“I am concerned that Churches will be forced into 'marrying' same sex couples as the groups promoting this idea are very vocal and rather intimidating. I get the impression that should any vicar/priest etc. not wish to 'marry' a same sex couple they will be verbally abused and intimidated until they give in to the baying mob.”

“I feel that the introduction of same-sex marriage (whether civil or religious) will eventually lead to churches who do not wish to conduct such ceremonies being pressured into doing so.I fear that eventually the church would be compelled to conduct same sex ceremonies either through pressure by the State or by human rights campaigners.”

Note: UK position on civil and religious same-sex marriage

The UK Government had originally proposed to introduce just same-sex civil marriage; however they reviewed this position and eventually moved to introduce both same-sex civil and religious marriage. They based this decision on:

- the majority of respondents to the UK consultation disagreed with the civil marriage only proposal, stating that religious marriage should also be available to same-sex couples
- legal opinion which stated that the European Court of Human Rights would not force religious organisations to conduct same-sex marriage (see Section 4.1).

Note: Discrimination legislation

Some respondents questioned whether protection of religious freedoms would extend beyond religious organisations and officials. A number cited the case of an Irish Baker who faced legal action for refusing to make a pro-gay marriage cake.

The Social Security Department is currently developing regulations to protect against discrimination on the grounds of sexual orientation. Whilst these regulations will not place a requirement on religious organisations and officials to marry same-sex couples, it was envisaged that they would apply to other service providers (e.g. hoteliers etc).

In light of this consultation, this matter will be given further consideration, although it is understood that it would be extremely difficult to decide whether a service was withheld on the grounds of religious belief or homophobic attitudes.

3.3 (c) Civil Union (as known as Union Civile)

The *Options Paper* proposed the possible introduction of a system of civil marriages for all, known as Civil Union. This would entail removing the existing right of opposite-sex couples to have a religious marriage.

Whilst a small number of respondents support the introduction of Civil Union (approx. 17%), the greater majority (approximately 75%) do not:

"I felt that the most important part of my wedding day (and marriage) were the promises which I made before God in my Church. The 'civil' part of signing the register was merely a formality"

"Union Civile is inappropriate, fundamentally changes the nature of marriage as God intended, and is incapable of recognition before God."

"There is something infinitely solemn and moving in hearing a couple making their promises 'before Almighty God and in the face of this congregation'. To deny people the privilege of a church wedding is completely wrong".

"We have been brought up in the Church and are encouraged to bring our children up in church and its only right that they are allowed to get married in God's house."

A small number stated their decision not to support Civil Union was purely pragmatic; they believed it is potentially the most desirable option but was unlikely to be introduced:

"Although Civil Union would introduce truly equal marriage the disturbance that its introduction would cause to the long-standing relationship of the Church of England to the Crown and the State would necessitate a much bigger and longer constitutional debate. Although option 2 (introduction of same-sex civil and same-sex religious marriage) is a compromised version of option 3 (Civil Union) it is a compromise worth making to achieve essentially the same goal."

"I feel that Option 3 (Civil Union) is the ideal scenario in that it creates a level playing field for all people irrespective of gender, sexuality and religion. However, I think that there would be very strong opposition to removing the right of the Anglican Church to conduct marriages, particularly given the lack of religious neutrality of Jersey/UK."

3.4 Humanist and non-religious marriage

Only 50% of respondents explicitly stated their support for the introduction of humanist and non-religious marriage. Whilst some people made comments, this was an area of the survey that attracted little input compared to other areas of the survey.

Of those who did comment, people in support largely expressed the view that humanist and non-religious marriage provided for greater equality and acceptance of people's different philosophical beliefs:

"There is room in this world for all."

"Surely in this day and age EVERYONE should have a choice, whether it be a religious ceremony, a non-religious ceremony, or legal partnership. Everyone has different opinions, beliefs etc. why can't we cater for these?"

"On the basis that I wish to be allowed to practice a religion, I too must respect the right of others to turn their beliefs into (socially acceptable) practice."

Those opposed to humanist marriage predominately queried the need for its introduction, given that civil marriages can currently be followed by a humanist blessing:

"The status quo has been in existence for thousands of years with no major problems. Why should we give in to Liberal/Left wing ideology just because the UK has done it?"

"Humanists and non-religious people can already have a secular marriage."

"Humanists can currently have a Civil Wedding and celebrate it however they like."

"Surely the non-religious civil marriage ceremony ticks all these boxes."

"Religious beliefs are protected by law, just as someone's right to not have any religious belief is protected by law. However, humanism is not a belief system it is a philosophy, so while there is a need for a religious person to have certain religious aspects to their ceremony (for their deity) there are no such requirements that need to be met for humanism. It might be 'nice' for someone to have a humanist blessing but it cannot be considered a requirement of a belief system since it isn't a belief system. There are a multitude of 'isms' in existence today centring around shared philosophical and ethical stances, and altering the law to allow humanist marriages will just leave the law open to multiple changes in the future."

A very small number of respondents expressed the view that non-religious marriage, in any form, was not possible:

"Marriage is a promise before God and so if you do not believe in God you cannot get married."

Response

The law needs to be amended to allow same-sex couples to get married, because they are currently refused the means to marry. It does not need to be amended to allow humanists to get married. They can already marry via a civil ceremony in Jersey, or via a humanist ceremony in another jurisdiction that has already introduced humanist marriage (e.g. Scotland).

In considering the extent to which law should be amended, it is important to recognise that there is a difference between providing all couples the means to marry and providing all couples the means to choose the manner in which they marry.

3.5 Civil partnerships for opposite-sex couples

Currently only same-sex couples can have a civil partnership in Jersey.

Opposite-sex couples, who are not married but who live together as if they were married (a common-law relationship), are not able to enter a civil partnership and benefit from the associated legal rights. Nor does their common-law relationship have legal status in Jersey. This means that if the relationship breaks down, neither person has the special rights of a spouse or civil partner, regardless of the length of the relationship or whether the couple have children.

72% of survey respondents stated that civil partnerships should be available to opposite-sex couples, as well as same-sex couples. In addition, 38% of those who do not support opposite-sex civil partnerships nevertheless agree that common-law couples should be provided with more legal rights.

The provision of rights to common-law couples, whether or not through a civil partnership framework was, out of all the issues raised in the *Options Paper*, the one which generated the most support:

“In my view the giving of legal rights to cohabittees is the most important part of this whole issue - certainly for the number of people affected. I consider it very important that legislation is drawn up urgently to give increased rights to the cohabittees and to clarify their rights as regards children.”

“If a couple have chosen to join as 'common-law' couples, there should be some way in which they can enter a legal agreement together should the relationship break down, especially with regards to children, property and inheritance.”

“There should be recognition in law of committed relationships (i.e. those who go beyond some form of loose co-habitation). Committed relationships are a net benefit to society. Children brought up in loving, stable and committed relationships, regardless of the gender of those parents/guardians, generally perform better at school, get better grades and have fewer behavioural issues.”

“I would not like to see marriage being eroded, but I do believe that if same sex people live together and set up home they should have legal rights to protect their partnership.”

“My partner and I don't want kids and, therefore, have no particular need to get married. However, we have just bought a house and ...my name cannot be on the 'deeds'. This leaves me in a difficult position if anything were to happen to my partner and so we are arranging to get married..... this means we're forced to have a wedding ...that neither of us actually wants or needs. ...It would seem sensible that the States produced some kind of contract that couples can sign to ensure that they are legally each other's next of kin for all matters, basically sorting all affairs that would be automatically sorted by getting married.”

Those who support the introduction of opposite-sex civil partnerships did so largely on the basis of equality:

“Retaining civil partnerships for same-sex couples only is just as unequal as having marriages for opposite-sex couples only.”

“At present same sex couples are discriminated against by not giving them the same privileges as others. Opposite sex couples are also discriminated against by not being allowed the same privileges as same sex couples.”

“It shouldn't be one rule for one and one for another with anything. Equality across the board.”

Those who do not support opposite-sex civil partnerships most commonly cite concerns around the impact on marriage.

“Civil partnerships erode the institution of marriage and to extend civil partnerships to opposite-sex couples simply compounds the problem. The notion being that people who want to make a commitment to each other should do so through marriage, not civil partnership. Changing marriage for the benefit of a minority to the detriment of a majority is not fair.”

“I can't see what providing an ability to have a civil partnership given marriage can be a civil ceremony will add.”

“No, marriage is available if you want to commit to each other.”

Civil partnerships could potentially be abolished in favour of marriage if same-sex marriage is introduced. Whilst the *Options Paper* sets out that this option was not under consideration, a number of respondents nevertheless spoke in favour of this move, which will be given further consideration.

“The only change to be made is to scrap the civil partnerships, as all types of couples will be married the same way.”

“Marriage should be for all and Civil Partnerships should not be for opposing sex. Civil Partnerships would become obsolete if marriage for all is achieved.”

“Civil partnerships were only a way of allowing marriage for same sex couples but avoiding the word "marriage" in order to pacify the religious right. Once marriage equality is passed into law there is no need for this second class marriage to exist. Take a look at Australia's 'de-facto' partnerships. They would satisfy the need to give more legal rights to co-habiting couples.”

“Civil Partnership is a transitional option until marriage is fully equal in society.”

“Although there will need to be a transition period, eventually it makes sense for civil partnerships to become marriages. If same sex marriages are available it is likely that very few civil partnerships will be celebrated. The reason why civil partnerships were introduced was to give same sex couples the possibility to have their unions recognised and for them to benefit from all the rights and responsibilities of marriage. Once same sex marriages are available, there will be no need to retain the option for civil partnerships..... The impetus in England and Wales for opposite sex couples to be able to enter civil partnerships is related to tax saving purposes. This is less important in Jersey, but in any event, the purpose of a civil partnership was to allow people to be able to have loving relationships recognised. They should not be hijacked for taxation purposes.”

Questions were also raised about the limitations of such a change, in particular around who could, or could not, enter a civil partnership and therefore benefit from the associated rights.

“This needs more thought and other factors taken into consideration e.g. do sisters and brothers living together have the same rights as civil partnership between opposite sex couples?”

“Civil partnerships should be available to those who wish to be next of kin for purposes of pension, inheritance, authority for medical consent and other purposes with no presumption of sexual intercourse: brother and sister may wish for such an arrangement.”

“What about incest. Can I marry my sister or partner my brother? It is not fair that opposite couples have no choice at present while same sex couples can choose. However there is a minefield in it for normal couples. What about inheritance, what about housing and quallies and tax. Many laws will have to be amended. What a muddle.”

Response

The introduction of opposite-sex civil partnerships found favour with many respondents. On reading their comments however, it would seem that their primary concern was the need for legal rights and protection for co-habiting couples, as opposed to the extension of civil partnerships per se.

3.6 Adultery as a ground for divorce or dissolution

Adultery is currently grounds for divorce but not grounds for dissolution¹² of a civil partnership. As adultery is defined as an act between a man and a woman it cannot be cited in a divorce if a spouse has an affair with someone of the same-sex (i.e. a man who is married to a woman cannot cite adultery if his wife has an affair with another woman, only if she has an affair with another man).

3.6 (a) Adultery as a grounds for dissolution

65% of respondents stated that there should be no differences between the grounds for divorce and the grounds for dissolution. Of that 65%, only 11% felt that parity should be achieved by removing adultery as a ground for divorce (i.e. it should be included as a ground for dissolution.)

Respondents believe it is important to be able to cite adultery because it speaks to sexual fidelity, which matters as much to same-sex couples as it does to opposite-sex couples.

“Adultery happens in same sex marriages even if currently that is not the correct term! Again treat everyone the same”

“It seems to me that both a civil partnership and a marriage involve a commitment of fidelity to the other partner, therefore adultery breaks the vow, regardless of whether committed with a man or a woman.”

“Adultery is about the promises we make to be committed and faithful. The bar should be high. It is as important to gay people as it to heterosexual people”.

“Fidelity is the cornerstone of any successful relationship, whether it be between same-sex or opposite-sex couples. Adultery should therefore be a ground for divorce for any who enter into a marriage, not for opposite-sex couples only. I appreciate, both as a lawyer and a gay man, that my preference on this issue will require careful and extended legal drafting to ensure that the new definition is workable and appropriate.”

“I agree that to removing the notion of adultery could potentially remove the significance of fidelity within a relationship, and should be applied equally within any marriage and applicable regardless of the sex of either of the adulterous couple.”

3.6 (b) Adultery as a grounds for divorce only

25% of respondents did not agree that the differences in grounds for divorce and dissolution should be removed (i.e. they believed that adultery should only be cited in divorce, not dissolution). 68% of that 25% were opposed to same-sex marriage per se.

“Adultery is adultery - breaking the “forsaking all others”; it is a ground for divorce. If you can't define it for a same sex marriage, then it isn't a same sex marriage. Call it something else but not marriage”.

¹² Dissolution in a civil partnership is equivalent to divorce in a marriage.

“Adultery ABSOLUTELY should not be removed as a ground for divorce. Unfaithfulness in the form of adultery has for thousands of years been recognised as a very serious violation of the marriage covenant and should not be removed.”

“I agree with the view that faithfulness to one's marriage partner is key and that it will diminish that if adultery is no longer a ground for divorce”.

3.6 (c) No-fault divorce/dissolution

Whilst the majority of respondents clearly believe that spouses or, in many cases spouses and civil partners, should have the right to cite adultery, there were a small number of respondents who do not. Many of whom put forward considered arguments around the need to move away from the cycles of blame that only compound the pain of divorce/dissolution

“I consider that the introduction of same sex marriages is an ideal opportunity to change the law on the dissolution of marriages (and civil partnerships). No fault divorce/dissolution should be introduced. This would obviate the need for a fault based grounds for divorce, indeed any grounds for divorce. No fault divorce which can be applied for by either party, regardless of the length of the marriage would be beneficial to people and would reduce much of the animosity which can be engendered by the current fault based grounds.”

“Any move towards a no-fault divorce process would be appreciated. With a legal system encouraging the two parties to cast blame on each other it is indeed difficult to maintain a civil and non-acrimonious divorce.”

“There are numerous reasons for a couple to divorce, such as physical abuse, that are not specifically listed in law but are covered by the catch-all of "unreasonable behaviour". Adultery is just one more example.”

“I think the no fault option should be used. I don't think you should blame one party for the end of a marriage. Both parties are always to blame. This option would make the separation process a lot easier for everyone involved.”

“Blaming after the event is fruitless, creates negativity which people clutch onto and it ends up eating away at you.”

Note: No fault divorce in the UK

England and Wales is one of the few legal systems to have retained fault as a basis for divorce. The Family Law Act introduced by the Conservative government in 1996 provided for no fault divorce, but the relevant part of the Act was never implemented by the incoming Labour government due to concerns that it would increase break-ups rather than help families.

That said, UK survey evidence¹³ shows that the introduction of no-fault divorce is still the highest priority for UK family lawyers, followed by protection for cohabiting couples.

¹³ 2013 Grant Thornton Matrimonial Survey

3.6 (d) A new definition of adultery

40% of respondents indicated that a new definition of adultery should be introduced. Some felt it should include people of the same sex as well as those of the opposite sex – and thus treat all couples, regardless of their gender, equally – whilst others felt it should also be able to recognise emotional infidelity, as well as sexual infidelity.

“Adultery definition should not just include a sexual act. It should also include development of an emotional intimate relationship.”

“A new definition of adultery is needed. An adulterer is somebody who cheats on their wife/husband/partner. It should be deemed as unfair in both marriage and civil partnership and should be grounds for both divorce and dissolution. All marriages and partnerships should then be deemed as equal in eyes of the law”.

“Surely Option 3 (a new definition of adultery) would have to apply alongside Option 1 (introduction of adultery as a ground for dissolution in a civil partnership) for it to work?”

“Having pastorally cared for one wife whose husband walked out into a homosexual relationship, it may have been helpful if she could have cited this as grounds for divorce.”

“... if adultery was to be retained as a grounds for divorce, it should certainly be redefined... If the current definition of adultery only refers to penetrative... intercourse, that definition is frankly inadequate for heterosexual couples and does not include an awful lot of activities which I would count as infidelity if my partner did with someone else...I don't see expanding the definition of adulterous behaviour as an insurmountable challenge; plus, expanding the definition beyond one particular act would benefit heterosexual couples too.”

Others however did not support a new definition. Some because they believe it further diminishes the traditional definition of marriage as a union between a man and a woman, and some because they believe the term ‘adultery’ only applies in a religious construct and therefore cannot, or should not, be applied to same-sex relations.

“Let us accept that there are going to be differences in the way men and women behave in current marriages and future same sex ones, and no amount of political correctness or fiddling with the law will change that. The current laws about adultery have evolved over hundreds of years to strengthen family relationships and assist their survival as the stable and long lasting family is the hope of children and society.”

“We cannot use a term that is grounded in religion when referring to a non-religious marriage.”

“...technically it is very difficult if not impossible to legislate for adultery outside of a religious bond”

3.7 Criticism of the process and the consultation

A number of respondents, including those who attended public meetings, were critical of the consultation process.

This included criticism of the initial proposition (P102/2014, July 2014) which they perceived as an attempt to bounce the States into making a decision without due consideration. They believed it denied Islanders the opportunity to be heard.

"I want everyone to be able to get married, but I don't think it was right to try and get an instant decision. People just feel bullied. It sets us all back."

Concerns were also raised that the consultation is a waste of time, as some respondents believe that the decision to introduce same-sex marriage has already been made.

"What a waste of time and money this all is, just allow people the freedom of choice and let government deal with more pressing issues."

"Although my responses are in favour of same sex marriage and in favour of opposite sex civil partnerships, in the light of comments made ...I consider the consultation to be something of a sham."

"Indeed, Iassume the decision has already been taken".

Some respondents were concerned that people would not participate in the consultation for fear of criticism for their views:

"I think that many people are too frightened to state their views openly on this subject because of the bullying attitude of the promoters of 'gay marriage'.

"With a well-organised vocal minority on one hand and a fearful and silence minority on the other, it seems unlikely that this present consultation will elicit a representative response from the public."

In addition, criticism was levelled at the consultation paper with some respondents believing it was too complicated and others that it was leading.

"Why is this consultation so ridiculously long and complicated????!! It seems designed to put people off from reading it and responding."

"I have a problem with this consultation survey because all of the questions are leading and many of them present three options, of which I consider all three objectionable. I am also very aware that "offensive comments" include, these days, just about any statement which says "I believe marriage is between a man and a woman" and that such a statement is already labelled as "hate speech" practically immediately. I also suspect that this consultation will be highly self-selecting and that the majority of correspondents will be in favour of same-sex marriage and, indeed, the very title of the survey is biased."

“Question E is formulated in a very cunning way and should not be asked here. You will ask why? Because someone who prepared this question is trying in a cunning way to get approval for same sex from a person who does not agree. Please do not try to manipulate the masses.”

Response

The consultation paper was complicated. This complexity reflected the challenges associated with setting out the myriad of relevant facts and issues. Consideration was given as to whether the consultation could be more straightforward – for example, a one-off ‘yes’ or ‘no’ - however this would not have generated meaningful considered responses.

It is accepted that Question A (e), referred to in comments above, should have included an ‘I do not agree’ option, although many respondents worked around this omission by simply not answering the question.

SECTION 4: SUPPLEMENTARY INFORMATION

This section provides background and supplementary information about issues related to, and arising from, the *Options Paper* and consultation. This includes:

- information about the position of the European Court of Human Rights in regard to same-sex marriage;
- a summary of research undertaken in other jurisdictions, which focuses on issues related to same-sex marriage and family wellbeing.

4.1 European Court on Human Rights (ECHR)

4.1 (a) Does the ECHR require same-sex marriage to be introduced or recognised in law?

Article 12 of the ECHR is the right to marry. The Convention states that:

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

Article 12 has been subject to legal challenge using both Articles 8 and 14 as the lever. Article 8 enshrines the right to respect for private and family life and Article 14 provides for prohibition of discrimination on any grounds. These legal challenges, which are partly based on the notion that Articles 8 and 14 “trump” Article 12, include the cases of *Schalk and Kopf v Austria* in 2010 and *Hämäläinen v Finland* in 2014.

In their judgments on these cases the ECHR has:

- rejected the argument that Article 12 does not exclude same-sex marriage (i.e. it is intended to enshrine the traditional concept of marriage as being between a man and a woman);
- clarified that the Convention does not oblige member states to legislate for, or legally recognise, same-sex marriages, but where same-sex marriage is legalised, the ECHR would consider same-sex marriage as analogous to opposite sex-marriage for the purposes of anti-discrimination.

The ECHR does not place an obligation on Jersey, or any other jurisdiction, to allow for same-sex marriage.

4.1 (b) Will the ECHR require religious organisations to marry same-sex couples?

Whilst the ECHR does not require the introduction or recognition of same-sex marriage, it has stated that where it is legalised, same-sex marriage will be considered as analogous to opposite-sex marriage for the purposes of anti-discrimination.

The question therefore arises as to whether, if same-sex marriage is legalised, a system of “opt-in” for religious organisations would be overturned by the ECHR on the grounds that if a same-sex couple’s right to marry is recognised in law, that right should be on the same terms as opposite-sex couples.

The UK Government is confident that the ECHR will not require religious organisations and officials to marry same sex couples, their view, which is centred on Article 9 of the Convention (the right to freedom of thought, conscience and religion), is supported by the UK's Equality and Human Rights Commission¹⁴ and by Liberty¹⁵.

The Equality and Human Rights Commission clearly state that a religious official cannot be penalised for expressing opposition to same-sex marriage providing that opposition "*accords with the religious doctrines and ethos of the organisation they represent. Religious organisations retain the right to maintain and enforce adherence to their religious tenets*"¹⁶.

Their view is based on legal opinion¹⁷ provided to the Commission which sets out that: "*It does not breach the rights of same sex couples to restrict their opportunities for a religious marriage ceremony to those organisations and individual office-holders who consent to such a ceremony. We consider it to be extremely unlikely that any different view would be taken by the courts, including the ECtHR when considering the provisions of the European Convention on Human Rights ("ECHR");*"

Liberty¹⁸ hold the position that a system of opt-in would stand on the basis that any requirement to compel a religious organisation to conduct same-sex marriages would itself fall foul of human rights protections:

"The Article 9 protection afforded religious organisations is strong [and]... would provide real safeguards to a religious organisation that did not wish to conduct same-sex marriages on doctrinal grounds"

"Indeed a requirement that a church or other religious organisation conduct same-sex marriages, contrary to their faith, would very likely be regarded as discriminatory ... Treating churches and religious organisations that have doctrinal objections to same-sex marriage in the same way as those that do not, is to fail to make a distinction between the two which will result in a discriminatory outcome."

Despite these strongly framed opinions, however, questions about the robustness of the opt-in will only be fully answered once a case has been determined by the ECHR, hence ongoing speculation and concerns expressed by religious officials and observers in the UK and elsewhere.

¹⁴ The Equality and Human Rights Commission has responsibility for the promotion and enforcement of equality and human rights laws in England, Scotland and Wales.

¹⁵ Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations.

¹⁶ *A Quick Guide to the Marriage (Same Sex Couples) Act 2013* published by the Equality and Human Rights Commission March 2014.

¹⁷ Legal opinion provided by Robin Allen QC to Equality and Human Rights Commission

¹⁸ Extract from Liberty's Committee Stage Briefing on the Marriage (Same Sex Couples) Bill in the House of Commons, February 2013. Extract quotes Opinion provided by QC Karon Monaghan which is appended to the Liberty Briefing

4.2 Research

4.2 (a) Same-sex marriage longevity and impact

Same-sex marriage is, in research terms, a relatively new phenomenon. As a result there is limited quantitative data about the longevity of same-sex marriages as opposed to opposite-sex marriages, plus limited qualitative information about the “success” of same-sex marriages, in terms of the impact on children, levels of happiness, spousal satisfaction, or reasons for relationship breakdown.

The limited studies that have been undertaken draw some very different conclusions. Differences that derive from a number of factors such as the study period (i.e. the number of years between the introduction of same-sex marriage/civil partnership and the point at which the study was conducted), the jurisdiction in which the research was conducted and associated cultural attitudes to same-sex relationships, plus other associated jurisdictional variations such as differences in adoption laws and civil partnership legislation.

A 2012 discussion paper produced by the Department of Research and Statistics¹⁹ in Norway concludes that same-sex couples had a “*higher risk of divorce compared with opposite-sex married couples and that female couples were significantly more divorce prone than male couples*”.

A 2014 paper produced by Stanford University²⁰ reached very different conclusions however stating that “*the break-up rates for same-sex couples is comparable to (and not statistically distinguishable from) the break-up rate for heterosexual couples.*” This paper goes on to state that “*married couples are dramatically more likely to stay together than unmarried couples*” and that “*marriage is a uniquely important predictor of couple stability, both for heterosexual and for same-sex couples*”.

A 2011 paper by the UK Office on National Statistics²¹ which analyses data from the first five years after the introduction of civil partnership legislation in England and Wales, suggests that marriages²² are more likely to end in divorce than civil partnerships are to end in dissolution. The paper notes, however, that the findings may be distorted by a high proportion of civil partnerships being formed initially to couples who had already been together a significant length of time, thus illustrating the limitations of short term data.

A 2011 paper²³ produced by the USA based Institute for Marriage and Public Policy reviewed marriage statistics 10 years after same-sex marriage was first introduced in the Netherlands. This paper highlights the fact that uptake of same-sex marriage is low, at only around 20% of same-sex couples, and that since its introduction there has been a decline in levels of opposite-sex marriage. A number of survey respondents have quoted this paper, inferring that the introduction of same-sex marriage is directly related to the decline of marriage as a social institution. The paper makes clear however, that whilst there is no evidence to suggest that same-sex marriage strengthens marriage generally (as suggested in the findings of the 2014 paper referenced above), it should not be concluded that the introduction of same-sex marriage has been a contributing factor to the decline in the numbers of opposite-sex marriage. Another paper produced by Spain’s Instituto Nacional de Estadística in 2012²⁴ – also quoted by survey respondents – similarly shows a decline in opposite-sex marriage over a period that broadly corresponds to the introduction of same-sex marriage, but once

¹⁹ Wiik, Seierstad and Noack (2012). *Divorce in Norwegian same-sex marriages 2003 to 2011*.

²⁰ Rosenfeld, Stanford University (2014), *Couple longevity in the era of same-sex marriage in the US*

²¹ Ross, Gask, Berrington (2011), Office of National Statistics, *Civil Partnerships Five Years On*

²² At this point in time in the UK, this only included opposite-sex marriage as same-sex marriage had not be introduced

²³ iMAPP Research Brief Institute for Marriage and Public Policy Vol. 4, No. 3,

²⁴ Instituto Nacional de Estadística, Vital Statistics, and Basic Demographic Indicators: Preview data for 2011, 29 June 2012

again it does not claim that there is any correlation between the two. Other social and economic factors could equally be at play.

Response

Based on the findings of these papers it is not possible to draw solid conclusions about the longevity of same-sex marriage, the longevity of civil partnerships vis-à-vis marriage, or the relationship between the introduction of same-sex marriage and the decline in opposite-sex marriage.

Note: Marriage and divorce rates in Jersey

Whilst the divorce rate in Jersey is not known population data shows that, in 2012,

- 47% of UK residents are married and 9% are divorced²⁵
- 48% of Jersey residents are married and 10% are divorced²⁶

This represents a decrease in the number of people who are married in Jersey, and an increase in the number of people who are divorced, over the 20 year period from 1971 to 2011²⁷

Marital status² per 1,000 adult population 1971 – 2011²⁸

Status	1971	1981	1991	2001	2011
Married	643	597	531	439	399
Remarried				79	79
Separated			23	27	24
Married, Remarried or Separated (total)	643	597	554	545	502
Divorced	21	40	54	84	101
Widowed	92	88	77	70	58
Never Married	244	275	315	301	339

4.2 (b) Sexual promiscuity

In addition to research projects focusing specifically on the issue of same-sex marriage/civil partnerships, there are other studies exploring broader issues around sexual behaviour and attitudes which are drawn into the same-sex marriage debate. In most cases, it is wrong to do so as the studies quoted predominately focus on a broad range of lifestyles, including single people or people living in “open” relationships (i.e. relationships where the couple have agreed not to commit to sexual fidelity) as opposed to focusing specifically on same-sex couples in committed relationships.

²⁵ Office of National Statistics - <http://www.ons.gov.uk>

²⁶ 2012 Census report - <http://www.gov.je>

²⁷ 2012 Census report - <http://www.gov.je>

²⁸ 2012 Census report - <http://www.gov.je>

4.2 (c) Children and parenting

The issue of same-sex marriage automatically raises questions about the well-being of children raised in same-sex relations, in part because of the assumption that the introduction of same-sex marriage will result in increased numbers of children being raised by same-sex parents²⁹.

There are research studies that look at how well children do when raised by same-sex parents as opposed to opposite-sex parents. One of the complexities inherent in these studies however is that they focus on a small group of children, who are often hard to reach, and therefore caution is required when drawing conclusions based on such small study groups.

These studies include:

In 2004, the American Psychological Association³⁰ issued a policy statement stating: *“Research³¹ has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that children of lesbian and gay parents are as likely as those of heterosexual parents to flourish”*

A 2009 literature review³² undertaken for Scottish Government Social Research noted that children growing up with a lesbian or gay parent had, in the main, positive perceptions about their experience. The children did not see their parents sexuality as determining whether they were a good or a bad parent and that any bullying they experienced was as a result of other people’s negative attitudes and prejudices.

A 2005 paper by Meezen and Rauch, *Gay Marriage, Same-Sex Parenting and America’s Children*, concluded that children raised by same-sex parents do as well as other children. They note that children benefit from marriage – both through the legal rights it confers and through increased potential for their parents to have a durable, stable relationship - and conclude that same-sex marriage could potentially extend these benefits to children raised by same-sex parents.

A 2013 American Academy of Pediatrics paper³³, which reviewed more than 30 years of research data, concluded that:

- Children raised by gay and lesbian parents demonstrate resilience with regard to social, psychological, and sexual health despite economic and legal disparities and social stigma.
- The children’s well-being is affected much more by their relationships with their parents, their parents’ sense of competence and security, and the presence of social and economic support for the family than by the gender or the sexual orientation of their parents.
- Lack of opportunity for same-gender couples to marry adds to families’ stress, which affects the health and welfare of all household members. Because marriage strengthens families and, in so doing, benefits children’s development, children should not be deprived of the opportunity for their parents to be married.

²⁹ It is difficult to establish whether same-sex marriage will result in more children being raised by same-sex parents. In countries, such as Netherlands and Norway, where same-sex marriage has been in place for a number of years there has been a rise but this cannot necessarily be attributed to same-sex marriage alone. It is also a reflection of the introduction of civil partnership legislation (or those jurisdictions equivalent), changes in adoption laws and more liberal attitudes towards same-sex parenting generally.

³⁰ The American Psychological Association is world’s largest association of psychologists, with nearly 130,000 researchers, educators, clinicians, consultants and students as members.

³¹ APA quoted research: Patterson, 2004b; Perrin et al., 2002; Stacey & Biblarz, 2001;

³² The Experiences of Children with Lesbian and Gay Parents – Scottish Government Social Research 2009

³³ Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian, Perrin and Siegel, MD, 2013 American Academy of Pediatrics

However, many of these and other similar studies are dismissed as being flawed, or as not being conducted “according to general accepted standards of scientific research”³⁴, in part because they focus on such a small group of children.

As a counter balance to the studies set out above, there is also a plethora of other information that indicates that children do best when they grow up in a stable family with a mother and father (for example, Patricia Morgan, *Children as Trophies* 2002; a position that informs much of the family policy work taking place in the UK and in other jurisdictions, and which explains the focus on supporting marriages and relationships under stress.

The UK Government’s *Social Justice: Transforming Lives* document³⁵ quotes evidence that suggests ‘children who have experienced parental relationship breakdown are more likely to have poor cognitive development and education and employment outcomes than those who have lived with both birth parents.’ Being raised by both birth parents is unquestionably the ideal but in many cases this is not possible. The focus therefore is on ensuring children grow in a stable family, with the same parents, even if that is not the birth parents: “the impact of multiple relationship transitions and changes in family structure are particularly detrimental to children. So, where it is practicable and safe, the presence of the same two parents in a warm, stable relationship throughout childhood is particularly important”.

Response

There is significant evidence to suggest that children fare best when raised by both birth parents in a stable family. That does not, however, preclude children from flourishing in other family settings. It is instability in the family structures that carries the greatest potential risk. The introduction of same-sex marriage may, in some cases, reduce that risk.

The States of Jersey should seek to strengthen families in all their forms, and support marriage in all its forms – including same-sex marriage - if we are to help reduce the incidents and impact of parental conflict on children (See Family Policy Note in Section 5.2)

Note: Family Research Council

A number of people who responded to the *Options Paper* made reference to *The Slippery Slope of Same-Sex Marriage*, a paper issued in 2004 by the American based Family Research Council (FRC)³⁶.

Within this paper, the FRC quote public opinion surveys that indicate that respondents are opposed to same-sex marriage and position that information as “evidence” that same-sex marriage should not be allowed. Public opinion polls or public petitions information cannot reliably be positioned as evidence as to whether same-sex marriage should, or should not be, introduced. Such information provides insight into the views of those who responded but, as per our consultation survey, it is not statistically robust and it only reflects the view of self-selecting respondents.

³⁴ Patricia Morgan: The Marriage files 2014 reference to *Halpern v Attorney General of Canada* No 684/00

³⁵ Social Justice: transforming lives: Secretary of State for work and pensions, 2012. www.official-documents.gov.uk

³⁶ FRC is a Christian public policy ministry. The FRC holds the position that homosexuality is “unnatural” and “homosexual conduct is harmful to the persons who engage in it and to society at large”.

SECTION 5: CONCLUSION

5.1 Is same-sex marriage appropriate in Jersey?

P102/2014 requires the Chief Minister to report to the States whether it is 'appropriate' to introduce same-sex marriage legislation in Jersey.

Appropriateness is a subjective concept. What one person considers appropriate may be regarded as highly inappropriate by another. A determination of 'appropriateness' is therefore hard to achieve, particularly given that many Islanders hold very strong, very polarised views and that the evidence or facts used to illustrate or inform those views is often seemingly contradictory.

A number of questions have therefore been considered in order to help conclude whether or not it is appropriate for same-sex marriage to be introduced in Jersey:

Q: Does Jersey have to introduce same-sex marriage legislation?

No. Neither the European Court or any other body requires Jersey to allow for same-sex marriage.

Q: Do Islanders want same-sex marriage?

More said yes in response to the consultation than said no, but only 1.5% of Islanders responded. We really do not know what others think.

Q: Will many people benefit from the change?

Only a small number of people will directly benefit (estimated at approximately 44 couples)³⁷. This includes same-sex couples who want to get married and their children if that marriage supports their parents' relationship to flourish.

Potentially, all other Islanders will indirectly benefit from living in a community that treats people with greater equality and which takes steps to de-stigmatize same-sex relationships. Although, conversely it could be perceived to not benefit other Islanders if same-sex marriage is seen to damage the institution of marriage.

Q: Will same-sex marriage damage, or potentially bolster, marriage?

Marriage is important. The principles of long-term commitment, responsibility and fidelity that underpin it help bind our community together and make it stronger. From a government perspective we want to support marriage, not undermine it.

We know that marriage rates are already declining and divorce rates are increasing. What we do not know is whether same-sex marriage will have any material impact on that trend. In countries where same-sex marriage has already been introduced, the decline in marriage rates was already underway, so you cannot point to same-sex marriage as the cause.

³⁷ 44 couples represent 20% of same-sex couples living in Jersey at the time of the 2011 census. 20% uptake of same-sex marriage is based on survey evidence from the Netherlands, obviously more or less that 20% of same-sex couples may choose to get married.

Similarly we do not know if same-sex marriage will bolster the institution of marriage. There is not sufficient longitudinal evidence to draw robust conclusions about relationship longevity and satisfaction.

What we do know is that children fare better if raised in stable families with two parents. The States of Jersey therefore needs to support all marriages and, where a marriage fails, support children and parents to overcome any potential damage.

Q: Will the Island's reputation benefit from the change?

Jersey can, and does, make independent decisions about legislative changes. It is the case, however, that as more jurisdictions allow for same-sex marriage, it will become increasingly untenable for Jersey not to follow suit.

Whilst many opponents argue that credence should not be given to such matters, it is the case that failure to introduce same-sex marriage could potentially damage our reputation, positioning us as a regressive, as opposed to a progressive, jurisdiction.

Q: The Anglican Church is the Island's established church. Is it right to introduce same-sex marriage when it directly contradicts the teachings of that Church, and the religious beliefs held by many Islanders?

It is unquestionably the case that the introduction of same-sex marriage will be difficult for people whose objections arise from their religious beliefs. Not all people of faith object however.

Whilst the Anglican Church is our established Church, with the Dean sitting in the States Assembly, it does not mean that the teachings of the Church are of paramount consideration in matters of legislation. Whilst acknowledging the position of the Church in Jersey, it is right that the States recognises that not all people prescribe to the teachings of that Church.

That said, the States should vigorously oppose any attempt to undermine the freedom that religions have to hold their own beliefs with regard to marriage and to put those beliefs into practice. Legislation must therefore ensure that no religious organisation or official is compelled to marry same-sex couples.

Q: Will it cost money to allow for the introduction of same-sex marriage in Jersey?

Yes. There will be costs associated with amending legislation and official documents, particularly in relation to staff costs. There will be no additional monies available, so all costs must be found within existing States budgets.



Key Question: Can it be appropriate to refuse people who want to get married, the means to marry?

Yes, if there is a reasoned and valid foundation for that refusal.

Whilst it is absolutely understood that much religious teaching is opposed to same-sex marriage, and that many people of faith find it difficult to support, it is nevertheless the case - as is shown in responses to this consultation - that there are equally as many people, if not more, who believe it would be unreasonable not to allow same-sex couples, who love each, to marry each other.

Similarly, it is believed by some that marriage is union between a man and a woman, primarily for the purposes of procreation. But that argument can be difficult to uphold as a reason for

refusing same-sex couples the right to marriage, given that we consider marriages between opposite-sex couples who cannot have children, or choose not to have children, as valid loving marriages.

What would be absolutely unreasonable is to refuse same-sex couples the right to marry on the grounds of entrenched homophobic attitudes. Discrimination on the grounds of sexual orientation is not acceptable.

It would be reasonable to refuse if there was clear evidence that showed that same-sex marriage undermined the institution of marriage or that it was harmful to children, but clear evidence does not exist. What is known, however, is that divorce can have a very detrimental impact on children, so the States must look to support all families and all marriages, not just opposite-sex marriages.

Response

In conclusion the States of Jersey should bring forward same-sex marriage legislation because it would be unreasonable, and inappropriate, to continue to deny same-sex couples the opportunity to get married.

5.2 Next Steps

5.2 (a) Same-sex marriage

- Legislation will be brought forward to allow same-sex couples to get married in Jersey. This will include civil and religious marriage.
- The legislation will protect the right of religious organisations and officials not to conduct same-sex marriages unless they want to. This will be broadly based on the UK's quadruple lock:
 1. Same-sex religious marriage will only be possible if:
 - the religious organisation has opted-in to same-sex marriages, and
 - the religious official consents to conduct the marriage, and
 - if ceremony is in a place of worship, it is registered for same-sex marriages.
 2. Our law will explicitly state no religious organisation or official can be compelled to opt-in.
 3. Our Discrimination Law will state that it is not unlawful for religious organisations or officials to refuse to marry same-sex couples. This does not extend to other people or service providers (for example: hoteliers; registrars; parish officials) refusing to provide services to people based on their sexual orientation.
 4. The existing legal duty on the Anglican Church to marry parishioners would not extend to same-sex couples PLUS Canon Law, which states marriage is a union between a man and woman, would be protected.
- Couples currently in a civil partnership will be able to convert their civil partnership into a marriage. They will be able to hold a conversion ceremony. This will not include allowing marriages to be converted into a civil partnership.
- The legislation will allow for people to change their gender whilst they are married without having to end their marriage. They may also apply for gender recognition without their husband or wife's consent. (The requirement for consent, known as the 'spousal veto' is a feature of law in England and Wales, but not in Scotland).
- Civil Union (i.e. civil marriages for all and the removal of the right of people to have religious marriage) will not be introduced.

5.2 (b) Humanist marriage

- Legislation to allow for humanist marriage in Jersey will not be brought forward. Unlike same-sex couples, humanists can already get married in Jersey.

5.2 (c) Civil Partnerships/legal protection for cohabiting or common-law couples

- The *Options Paper* stated consideration was not currently being given to abolishing civil partnerships in the event that same-sex marriage is introduced. This position is to be reviewed as it is considered desirable to avoid creating a “2nd tier” of marriage.
- Consideration will however be given to the abolishing civil partnerships if:
 - appropriate transitional arrangements can be developed for all couples currently in a civil partnership, including those whose civil partnerships was formed in another jurisdiction;
 - other appropriate mechanisms can be found to provide more rights for co-habiting couples. This will include consideration of:
 - when and how these rights and responsibilities are acquired, as unlike marriage or civil partnerships there is currently no form of registration;
 - how cohabiting couples opt-in or out of such rights.
- In the event that viable alternative arrangements cannot be developed to provide rights for co-habiting same-sex and opposite-sex couples, civil partnership legislation will be extended to opposite-sex couples (i.e. civil partnerships will not be maintained just for same-sex couples).

5.2(d) Divorce and dissolution

- It is recognised that a no-fault divorce may be significantly less adversarial than a divorce in which adultery is cited. It is also recognised, however, that the majority of consultation respondents believe adultery should remain a ground for divorce because it speaks of sexual fidelity.
- Further work is to be undertaken to consider whether:
 - adultery should be removed as a ground for divorce (i.e. introduce no-fault divorce);
 - adultery should remain a ground for divorce.
- A decision about whether to include adultery as grounds for dissolution in a civil partnership will be made after it has been determined whether or not a new workable definition can be developed, and whether civil partnerships are to remain.
- Consideration will also be given to bringing forward legislation that:
 - allows couples to jointly apply for divorce/dissolution, where they both wish to do so, as opposed to maintaining the current, more adversarial system, whereby one person files for divorce/dissolution;
 - puts in place a legal requirement for mediation or dispute resolution prior to any matter being considered by the Court (subject to appropriate safeguards);
 - couples are bound by pre-nuptial agreements subject to the discretion of the Court.

5.2 (e) Parental responsibility

- As part of these changes, consideration will also be given as to how parental responsibility is conferred to parents who are in a civil partnership or a same-sex marriage. This will include how parental responsibility is conferred on unmarried fathers.³⁸

Note: Family policy

There is a significant amount of evidence to show:

- that family is the first, and the most important building block, in a child's life;
- that conflict between parents has a detrimental effect on children's outcomes, increasing the risk of anxiety, depression, aggression and anti-social behaviour; and that
- multiple changes in family structure can be detrimental to children.

Whilst the nuclear family, with two birth parents, is the best environment for children, there is a plethora of evidence showing that all types of family structures have the potential to provide children with the stability, warmth and love that will allow them to flourish.

Many children already live in non-nuclear families with single, foster, adoptive or step-parents. Same-sex marriage will not change this. Marriage rates are already down and divorce rates are already up, and there is no evidence to support concerns that same-sex marriage will change this.

The States of Jersey must therefore seek to strengthen families in all their forms, and support marriage in all its forms – including same-sex marriage - if we are to help reduce the incidents and impact of parental conflict on children.

There are a range of factors that put families under pressure including: mental and physical health problems; poverty; unemployment; poor housing; drug and alcohol dependency, domestic violence. We need to look at how we are tackling these issues, and how we support people to build and rebuild their own families and marriages, if we want children to thrive. This includes reviewing:

- our benefits and tax systems to ensure they do not dis-incentivise marriage;
- our social housing policies to establish whether they put increased pressure on families, and whether parents who live apart are supported to sustain their relationship with their children;
- what can be done to support relationships and marriages that are under stress;
- what can be done to help separated and separating parents work together in the best interests of their children;
- what early intervention services are needed so that families can prevent problems arising and tackle issues before they become embedded
- what can be done to best support the first 1001 days of child's life (from conception to 2 years of age), a key period during which all families experience huge change.

In addition, we must continue to work to tackle domestic violence and support people into employment.

- An overarching family policy statement will be developed, setting out what will be done, and by whom, in order to support families and marriage in Jersey.

³⁸ Currently, under Jersey law, an unmarried father is not automatically conferred with parental responsibility for his child. This can only be acquired with the mother's consent or via a Court Order. This position is out of step with UK law, which recognises the need to ensure that all fathers, not just those who are married, hold parental responsibility.

5.3. When and how?

The changes detailed above are significant and broad ranging. A scoping exercise will be undertaken to determine whether these changes should be brought forward via amendments to existing legislation or whether a new, fit-for-purpose Family Law reform law should be brought forward to replace existing legislation.

The development of a reform law will take longer than amending existing legislation, however, it could potentially deliver more benefits to more Islanders and, in terms of the investment required to bring forward these changes, represent better value for money.

In the first Quarter of 2015, a report and proposition will be lodged for States debate. It will seek States approval for the process and timeframe associated with the developments set out in Section 5.2 above.

This will include:

- a commitment to full public and specialist stakeholder consultation on the draft legislation
- a commitment to making same-sex marriage a reality in Jersey by end 2017 at the very latest
- a commitment to developing a family policy statement by end 2015

Note: Timeframe for same-sex marriage

The issue of same-sex marriage was first raised in the States Assembly in July 2014. The implementation date of December 2017 is three years and five months after that date.

This timescale reflects the amount of work required to bring forward the necessary changes to the law, and the need to manage this alongside other essential pieces of work.

The timescale also reflects the UK's. Same-sex marriage became a reality in England and Wales in March 2014, three years and one month, after it was first raised in Parliament.

Consultation

Equal marriage and partnership

20th August 2014

Summary: To consult Islanders about different issues related to equal marriage, including options for the development of same-sex marriage legislation in Jersey. The consultation will close on 22nd October, 2014

Why are we consulting?

In July 2014 the States Assembly asked the Chief Minister to investigate whether it was appropriate that same-sex marriage legislation should be introduced in Jersey, and requested that the Chief Minister report back to the Assembly by the end of December 2014³⁹.

This consultation process forms an important part of that investigation. It provides an opportunity for Islanders to comment on a range of different issues related to same-sex marriage legislation, and also on other issues related to equal marriage and equal partnership, including civil partnership legislation.

The findings from this consultation will be set out in a report that the Chief Minister will provide to the States Assembly. That report will also be publically available.

Whilst the Chief Minister is not required to report back until the end of December 2014, he has decided to aim to do so in November 2014. His decision is in light of the high level of public interest in the issue of same-sex marriage.

Who should respond?

We would like to hear from:

- members of the public
- voluntary & community sector organisations
- religious and faith groups
- lesbian, gay, bisexual & transgender groups

What we would like to know?

A number of different options and issues relating to equal marriage are set out in this consultation paper. We would like to know:

- which of same-sex marriage options that we outline in this document do you think is most appropriate for Jersey?
- whether you think we should introduce humanist and non-religious marriage?
- whether you think civil partnerships should be introduced for opposite-sex couples, in addition to same-sex couples?
- if you think we should introduce adultery as a grounds for dissolution in civil partnership, or remove adultery as a grounds for divorce in marriage?

³⁹ The full text of the States resolution was: "to agree, in relation to the proposal that same-sex couples should be permitted to enter into civil marriages that the Chief Minister be requested by 31st December 2014, to investigate and report to the States as to whether it would be appropriate to introduce legislation to allow this, with appropriate safeguards, and as to the arrangements which should be made for the recognition in Jersey, in some way, of civil partnerships and civil marriages entered into outside of Jersey with the legislation containing specific provisions that religious and faith communities would not be required to conduct same-sex marriages unless they wished to do so."

How to participate in the consultation

You can attend a consultation event

Date	Time	Venue
Monday 15 th September	12.00-13.15	St Paul's Centre
Monday 15 th September	13.30-14.45	St Paul's Centre
Monday 29 th September	18.30-19.45	St Helier Town Hall
Tuesday 30 th September	18.30-19.45	St Helier Town Hall

The total capacity of St Paul's Centre is 110 people and for the Town Hall is 250 people. In order to ensure a place at the event, please book in advance by sending an email to a.hamon2@gov.je or by calling 01534 440682. In the event that the numbers of people attending is more than the above, those with a booking will be given priority. Please note, if the consultation events are oversubscribed, Islanders can still participate via the on-line consultation.

You can submit your comments:

- by completing our online consultation (www.gov.je/consult)
- by email (a.hamon2@gov.je)
- in writing to: Same-sex marriage consultation
Cyril Le Marquand House, PO Box 140
St Helier
Jersey JE4 8QT

Facebook and Twitter

Comments made on the States of Jersey Facebook page (<https://www.facebook.com/StatesofJersey>) and the States of Jersey Twitter feed using the hashtag #equalmarriage will be reviewed but will not necessarily be included in the final report, unless they address the issues raised in this consultation document.

Your submission

If you are writing or emailing please provide the following information with your response:

- your name and contact details
- whether you are responding on behalf of an organisation or as a member of the public.

Please note that consultation responses may be made public (for example; sent to other interested parties on request, provided to the Scrutiny Office, quoted in a published report, reported in the media etc.). You therefore need to tell us if you:

- a. agree that your comments may be made public and attributed to you
- b. agree that your comments may be made public but not attributed (i.e. anonymous)
- c. do not want your comments made public.

In the event that you do not provide this information, we will assume that you do not want your comments, or your name, made public.

Offensive comments

Offensive comments will not be included in the consultation report and, if any are posted, via Facebook or Twitter, they will be removed.

EQUAL MARRIAGE

Consultation

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Terms and expressions

The following terms and expressions have been used in this paper:

- Blessing – refers to the blessing or ceremony that often takes place after, or sometimes before, a civil marriage. Blessings or ceremonies are often conducted by a religious official and provide religious recognition of a marriage that has been solemnized by a Registrar. They do not do have any legal standing.
- Civil premises - refers to the places, other than places of worship, where people can get married, have a blessing or a civil partnership. Examples include the Register Office or other approved places such as hotels and heritage sites.
- Dissolution – dissolution in a civil partnership is equivalent to divorce in a marriage.
- Place of worship – refers to churches, and other places such as chapels, synagogues, meeting houses etc., that have been registered, with the Superintendent Registrar, as places where people can get married.
- Religious officials - refers to the officials of the church or other faith groups, for example vicars, priests, ministers, rabbis, pastors.
- Religious organisations – refers to religious or faith groups, for example Christian, Jewish, Muslim, Quaker

SECTION 1: INTRODUCTION

A. Background

Marriage is a hugely important institution. The principles of long-term commitment, responsibility and fidelity that underpin it help bind our community together and make it stronger. Like all institutions however, marriage is not static. It has historically evolved in response to social changes, such as increased religious diversity and increased numbers of second marriages.

In March 2014, marriage was opened up to same-sex couples in England and Wales, and similar legislation will also come into effect in Scotland over the coming months. The position taken by the United Kingdom (UK) Government is that society should not prevent couples from marrying unless there are very good reasons to do so, and they do not consider loving someone of the same sex to be a good reason to prevent marriage. Indeed, an increasing number of governments across the world⁴⁰, believe that same-sex marriage makes society fairer and more inclusive.

In recognising that some other jurisdictions have decided that all people should be allowed to marry, it is also important to recognise that there are some key differences in the type of legislation introduced. These differences are driven by the characteristics and aspirations of those jurisdictions, and also by their existing laws.

Section 2 of the paper describes the current position in Jersey with regard to equal marriage. This includes issues related to same-sex marriage but also includes issues related to humanist marriage, civil partnership and adultery.

Section 3 sets out different options related to each of these issues, including different ways in which same-sex marriage could be introduced Jersey. For example, we could allow for same-sex civil marriage only; or broadly follow UK legislation and allow for both same-sex civil marriage and same-sex religious marriage; or we could look to introduce a system of civil marriage only for both same-sex and opposite-sex couples. This system is also known civil union – or union civile – and is the model used in many other European jurisdictions⁴¹. A series of consultation questions are also included in Section 3, asking Islanders their view of the options described.

Section 4 asks for basic information, such as contact details, from people who respond to this consultation. We need this so that we can process the consultation responses and keep in touch.

It is recognised that different people hold very different views about same-sex marriage, but this paper is not intended to address or navigate those differences. It does, however, provide space for people to express their personal view through the conversation questions set out in this paper and in the on-line version (www.gov.je/consult). These views will be summarised in the report provided to the States Assembly, except for where they are expressed in terms which are deemed offensive.

B. Next steps

This consultation finishes on **Wednesday 22nd October, 2014**. We will then review all the comments received and develop a report to present to the States Assembly in November 2014.

That report will summarise the consultation feedback and set out recommended next steps. Those recommendations will include the actions that need to be taken in order to fully investigate and scope proposed changes to our laws. Ultimately, however, it will be for the the States Assembly to debate and agree those changes.

⁴⁰ See Appendix 2 for list of other jurisdictions that have introduced, or are in the processing of introducing, same-sex marriage legislation

⁴¹ See Appendix 3 for a list

SECTION 2: CURRENT POSITION

A. Marriage

Currently, in Jersey, a marriage can only be between people of the opposite sex (i.e. a man and a woman). A marriage can be conducted either through a religious ceremony (a religious marriage) or a civil ceremony (a civil marriage).

A religious marriage⁴² is conducted, or solemnized, by a religious official such as a Vicar or Priest. A civil marriage is conducted by a Registrar (i.e. a government official)⁴³.

Whether it is religious or civil marriage, it is conducted by saying a prescribed form of words. For religious marriage these words are in accordance with the rites of that religion or in accordance with words set out in the Marriage and Civil Status (Jersey) Law 2001 (the “Marriage Law”)⁴⁴. For a civil marriage there is no religious content to the words, or indeed to any element of the ceremony – hence civil marriage is sometimes referred to as secular marriage.

A civil marriage can only take place in a civil premises and a religious marriage in a place of worship.

B. Same-sex marriage

People of the same-sex cannot currently get married in Jersey, either in a religious or civil ceremony. If they have been married elsewhere, their marriage is not recognised as a marriage in Jersey although it may be recognised as a civil partnership under the Civil Partnerships (Jersey) Law 2012 (the “Civil Partnerships Law”).

England & Wales

Same-sex couples can get married in England and Wales. They can have a civil marriage, or a religious marriage where the religious organisation and religious official have agreed to marry same-sex couples.

Same-sex marriage can take place in civil premises or a place of worship if the religious organisation has agreed that the place of worship can be registered for same-sex marriages.

Couples in a civil partnership can convert that partnership to a marriage if they want to.

Note: Church of England and the Church in Wales

The Church of England and the Church in Wales have a legal duty to marry parishioners – unlike any other religious organisation in England & Wales – and therefore their same-sex marriage law has had to make it very clear that this legal duty does not extend to same-sex couples (i.e. they cannot be compelled to marry same-sex couples although, like all other religious organisations, they can choose to).

Their law also protects the Church of England’s Canon Law, which states the belief that marriage is between a man and a woman. Canon Law is the Church of England’s own body of laws.

⁴² Where a marriage is taking place in Jersey in a non-Anglican church, for example in a Catholic church, it can only be performed if a licence has been issued by Jersey’s Superintendent Registrar. The licence permits the couple to have a religious marriage in a place of worship.

⁴³ This can be the Superintendent Registrar, a deputy or a delegate.

⁴⁴ The Marriage Law sets out proceedings and requirements relating to marriage in Jersey. This includes a prescribed form of words used to solemnize the marriage if it is not taking place in an Anglican Church.

Scotland

The law has been changed in Scotland and same-sex couples will be able to get married there in the very near future. Like England, they will be able to have a civil marriage, or a religious marriage where the religious organisation and religious official has agreed to marry same-sex couples.

Northern Ireland

In Northern Ireland, proposals to allow same-sex marriage were recently defeated, but it is widely anticipated that new proposals will be developed shortly and that the law will change.

C. Humanist and non-religious marriage

Humanism is a philosophical and ethical stance that focuses on the value of human beings, with humanists basing their world view and ethics on reason and empathy, rather than religious doctrine.

Humanist marriages cannot currently be conducted in Jersey – either for opposite-sex or same-sex couples - although humanists can have a humanist ceremony after having had a civil marriage. It may be argued, however, that this is unfair as humanist marriage is about the values and beliefs of humanism which are more than, and different to, a civil marriage. It may also be argued that if religious marriage is available to those of religious beliefs, humanist marriage should be available to those with humanist beliefs.

If a couple had a humanist marriage elsewhere, that marriage would only be recognised in Jersey, if it was legally recognised in the country where the couple married, and if they are an opposite-sex couple.

England & Wales, Northern Ireland

The Ministry of Justice is currently consulting on whether humanist and non-religious belief organisations should be able to conduct marriages. It is estimated that approximately six to eight hundred couples have humanist weddings per year in England and Wales, but those marriages currently have no legal standing.

Scotland

Humanist and other non-religious belief marriages can be conducted in Scotland. These marriages, which are conducted by a registered “celebrant” have legal standing.

Scotland is one of only a few countries where humanist and non-religious marriage is legally recognised. The other countries include Australia, Canada, Iceland, Ireland, New Zealand, Norway and certain states of the USA

D. Civil partnership

Civil partnerships were introduced in Jersey in 2012 for same-sex couples only. At the time they were seen as potential “alternative” to marriage. Whilst people in a civil partnership have almost exactly the same rights as married people, it is not the case that civil partnership is the same as marriage.

Civil partnerships are entirely a civil event, in which the partnership is registered via the signing of a civil partnership document. Civil partnerships are not considered by many people to have the same emotional resonance as the institution of marriage.

UK

Civil Partnerships are possible for same-sex couples throughout the UK. They are not possible for opposite-sex couples.

E. Common-law relationships

Couples who are unmarried, but who live together as if married, are often referred to as having a 'common-law marriage'. Common-law marriages have no legal status in Jersey and, if the relationship breaks down, neither person has the special rights of a spouse or civil partner (e.g. the rights of inheritance). Their relationship may, however, be recognised in certain situations, for example means-tested benefits.

UK

The situation in the UK is similar to that in Jersey, common-law marriages do not have legal status as such.

F. Transgender persons who are married or in a civil partnership

In Jersey if a person legally changes their gender whilst married they must end their marriage because two people of the same gender cannot currently be married (for example, if a man transitions to become a woman, the marriage must end because a woman cannot be married to a woman).

If a person legally changes their gender whilst in a civil partnership, they must end their civil partnership and, if they wish to retain their union, get married, because two people of opposite-sex cannot currently have a civil partnership (for example, if a woman in a civil partnership with another woman transitions to become a man, the civil partnership must end because a man cannot have a civil partnership with a woman).

Many people who are married to someone who transitions, or who have themselves transitioned, do not want to have to end their relationship. They still love their partner and for emotional, family and financial reasons they want to remain married. This also applies to civil partnerships.

England & Wales

Because same-sex marriage is possible in England and Wales, a married transperson can transition without having to end the marriage as long as their spouse agrees (the so-called "spousal veto").

Opposite-sex civil partnership is not possible in either England & Wales, therefore if someone in a civil partnership transitions they must end their civil partnership, or they can covert it to a same-sex marriage.

Scotland

The situation in Scotland will differ from England & Wales from the end of 2014, when same-sex marriage becomes legal in Scotland, because the Scottish law does not include the spousal veto.

G. Adultery as a ground for divorce or dissolution

There are currently small legal differences between marriage and civil partnership. One of these includes adultery being a ground for divorce in a marriage, but not a ground for dissolution of a civil partnership.

This is primarily because the legal definition states that adultery is an act that takes place between a man and a woman. Adultery does not apply to same-sex couples because the definition relates to the form that the sexual act takes⁴⁵.

⁴⁵ The same also applies to non-consummation which is a ground for annulment of a marriage, but is not grounds for annulment of a civil partnership. This is also because, like adultery, the definition of non-consummation that it is an act between and man and a woman.

Therefore whilst adultery is currently a grounds for divorce, it can only be cited if the affair is with someone of the opposite-sex (i.e. a man who is married to a woman cannot cite adultery if his wife has an affair with another woman, only if she has an affair with another man).

If a spouse has an affair with someone of the same sex, they could be divorced on the grounds of unreasonable behaviour, which would be taken to include a same-sex affair.

England & Wales

Like Jersey, adultery is a ground for divorce, in both same-sex and opposite-sex marriages, but is not a ground for dissolution in a civil partnership.

As the definition of adultery is the same in the UK, this means that people in same-sex marriages who discover that their spouse is unfaithful to them cannot divorce them for adultery, unless it was with someone of the opposite-sex.

SECTION 3: OPTIONS FOR CHANGE

There are a number of different ways to allow same-sex couples to get married.

We could introduce same-sex civil or same-sex religious marriages - where the religious organisation consents – or, only allow civil marriages for all couples, regardless of their gender (also known as civil union).

Whichever option is chosen, a number of existing laws will need to be amended. This will be a complicated process and will take time – the exact amount of time will be dependent on the option chosen, as some are more complex than others.

In looking at same-sex marriage, we are also provided with an opportunity to consider other issues related to equal marriage and equal partnership, for example the potential introduction of humanist marriages, and the potential introduction of civil partnerships for people of the opposite-sex.

This paper therefore sets out a range of options, which are explained in more detail on the following pages, including:

- A. Same-sex marriage
 - Option 1: same-sex civil marriage only
 - Option 2: same-sex civil marriage and same-sex religious marriage
 - Option 3: same-sex and opposite-sex civil marriage only (also known as civil union)
- B. Humanist and non-religious marriage
- C. Civil partnerships
 - Option 1: Civil partnerships for opposite-sex and same-sex couples
 - Option 2: Civil partnerships for same-sex couples only
- D. Adultery as a ground for divorce or dissolution
 - Option 1: Introduce adultery as grounds for dissolution of a civil partnership
 - Option 2: Remove adultery as grounds for divorce in a marriage
 - Option 3: New definition of adultery

A number of questions are included at the end parts A – D. If you are answering all, or any of these questions, please also complete the questions set out in Section 4 as this will help us to know who has responded to the consultation.

The questions in this consultation document can be answered online at www.gov.je/consult

A. Same-sex marriage

Option 1: Same-sex civil marriage only

We could enable same-sex couples to enter into a civil marriage.

This marriage would be conducted by a Registrar in civil premises, in exactly the same way as opposite-sex civil marriages are currently conducted.

Under this option, same-sex religious marriages would not be permitted, although a religious blessing could be performed after the civil marriage, if the religious organisation and religious official agree to conduct the blessing.

We could restrict same-sex marriage blessings to civil premises only, or also allow them in a place of worship, with the agreement of the religious organisation and the religious official concerned.

- This option enables same-sex couples to get married, but they cannot have a religious marriage, regardless of their faith, even if the religious organisation and/or religious official wanted to conduct the marriage.
- In addition, it enables transgender persons, who are already married, to transition without having to end that marriage, because a married man can become a woman and remain married to a woman, and vice versa.

Option 2: Same-sex civil marriage and same-sex religious marriage

We could enable same-sex civil marriages and, in addition, also enable same-sex religious marriages. A same-sex religious marriage could be conducted by a religious official, but only if the religious organisation and the religious official agreed to conduct the marriage. This would be similar to the UK.

The same-sex religious marriage could be conducted in a place of worship, providing the religious organisation and religious official agreed.

- This option allows same-sex couples to have a religious marriage, if both the religious organisation and religious official agree to conduct the marriage. The marriage could not take place however, if the religious organisation does not consent, regardless of whether or not the religious official wishes to undertake the marriage.
- As with same-sex civil marriage, this option will allow transgender persons who are currently married to legally transition without having to end their marriage.

Note: Compelling religious organisations to conduct same-sex marriage

There is no intention to compel religious organisations and/or religious officials to conduct same-sex marriages against their will and conscience. The States Assembly have already agreed religious organisations should be free to choose and act according to their doctrines and beliefs.

Option 3: Same-sex and opposite-sex civil marriage only (civil union)

In Jersey an opposite-sex couple can currently choose to have a civil marriage or a religious marriage. In many European countries all marriages are civil marriages and are performed by a government official (e.g.: a registrar), as opposed to a religious official. This system is known as civil union, sometime also referred to as Union Civile.

If Jersey were to introduce civil union, this would mean that all couples, regardless of gender, would have a civil marriage that was performed and solemnized by the state official.

The couple's marriage could then be followed by a religious blessing, which would provide religious recognition of the marriage. Religious organisations and religious officials would not, however, have to conduct a same-sex religious blessing unless they agreed to do so.

- This option treats same-sex and opposite sex-couples in the same way; it could be considered more fully to represent the concept of *equal marriage*.
- It does however have significant implications, such as:
 - removing the right of opposite-sex couples to have a religious marriage, that is recognised in law. Regardless of their faith, couples would only be able to have a civil marriage
 - removing the right of religious organisations and religious officials to conduct marriages, although they could conduct blessings
 - it changes, in part, the historical and long-held role of the Anglican Church in relation to marriage.

Note: Role of Anglican Church

Jersey, like the UK, is a non-secular state. That means it does not purport to be officially neutral in matters of religion.

The Anglican Church is the Island's official established church and is rooted in the Jersey's social and political heritage. Its position is perceived by many as being a defining characteristic of our Island.

Under our existing marriage laws, the Anglican Church holds a unique position in that, unlike other religious organisations, it can solemnize a marriage without requiring a certificate from the Registrar. This right would be removed if Jersey only allowed for civil marriage for all couples⁴⁶.

Note: Conversion of civil partnerships to same-sex marriages

If same-sex marriage is introduced, regardless of whether is in accordance with Option 1, 2 or 3, it would allow civil partners to convert their partnership to a marriage, if they wanted to. It is proposed that, if same-sex marriage is introduced, couples converting from a civil partnership to a marriage should be able to have special "conversion" ceremonies, in order that they can celebrate and recognise their marriage.

⁴⁶ In Jersey, as in England and Wales, a rector or minister of an Anglican church is effectively a registrar in his or her own right. This reflects the long history of registration which began in the sixteenth century when the newly-created Church of England started to require the registration of baptisms, marriages and burials. Civil registration was established two centuries later, in 1842 in Jersey.

Questions related to A

a) Do you agree that all couples, regardless of their gender, should be able to get married?
Please tick:

Yes?	
No?	
Don't know?	

b) Do you agree with the introduction of same-sex civil marriage?

Yes?	
No?	
Don't know?	

c) Do you agree with the introduction of same-sex civil marriage and same-sex religious marriage, where the religious organisation and religious official agree?

Yes?	
No?	
Don't know?	

d) Do you agree with replacing the current system of civil marriages and religious marriages, in favour of civil marriages only for both opposite-sex and same-sex couples? (i.e. remove the right of religious organisations to conduct religious marriages). This is also known as civil union?

Yes?	
No?	
Don't know?	

e) If same-sex marriage is introduced in Jersey which one of the following three options do you think should be used?: Please tick:

<u>Option 1:</u> Introduce same-sex civil marriage only.	
<u>Option 2:</u> Introduce same-sex civil marriage and same-sex religious marriage, where the religious organisation and religious official agrees.	
<u>Option 3:</u> Replace the current system of civil marriages and religious marriages, in favour of civil marriages only for both opposite-sex and same-sex couples?	

f) Comments

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If you are answering any of questions above, please could you also complete the questions set out in Section 4, as this will help us to know who has responded to the consultation.

B. Humanist and non-religious marriage

We could allow humanist and other forms non-religious marriages to be performed in Jersey for both opposite-sex and same-sex couples. Scotland has already introduced humanist marriages and it is widely anticipated that they will also be introduced in England & Wales, where a full public consultation is currently underway.

- This option would enable people to have a marriage, which reflected their humanist and non-religious beliefs, and which was more than a civil marriage.
- If same-sex marriage legislation were also introduced in Jersey, this would allow for opposite-sex and same-sex couples to have a humanist marriage.
- The option to introduce humanist marriages would fall away if we were to introduce a system of civil marriages for all (See Part A, Option 3 above). If this were the case, the marriage would have to be a civil marriage, followed by a humanist blessing if the couple wished.

Questions related to B

- a) Do you think we should allow for humanists and other forms of non-religious marriage?
Please tick one:

Yes?	
No?	
Don't know?	

- b) Comments

If you are answering any of questions above, please could you also complete the questions set out in Section 4, as this will help us to know who has responded to the consultation.

C. Civil Partnership

Option 1: Civil partnerships for opposite-sex and same-sex couples

Currently only same-sex couples can have a civil partnership in Jersey. Opposite-sex couples, who do not wish to get married but who live together, are not afforded the opportunity of a civil partnership and the associated legal rights. This is also the case in the UK and many other jurisdictions.

Jersey law could, however, be amended to extend civil partnerships to opposite-sex couples.

This would help provide protection to opposite-sex couples who are not married, although it could be argued that there are other ways this could be achieved without creating what some may consider to be a two tier system of marriage and civil partnerships.

- This option helps provide protection to opposite-sex partners who do not wish to get married, but who would like their relationship to have legal status, and would like to be afforded the same rights as same-sex couples in a civil partnership.
- This option would allow a transgender civil partner to transition without having to end their civil partnership.
- If Jersey was to introduce opposite-sex civil partnerships, that partnership could only be legally recognised in Jersey and other jurisdictions that also have a mechanism for opposite-sex civil partnerships. It would not be recognised in the UK, unless the UK was to change its position on opposite-sex civil partnerships.

Option 2: Civil partnerships for same-sex couples only

This option reflects the current situation, which some people consider to be unfair and unequal.

- Maintaining civil partnership just for same-sex couples means that opposite-sex couples who do not wish to get married cannot benefit from the legal rights that civil partnerships provide. It is however possible that better legal protection for co-habiting or “common-law” couples can be provided in other ways.
- It may be argued that the very existence of civil partnerships erodes the institution of marriage and that to extend civil partnerships to opposite-sex couples simply compounds the problem. The notion being that people who want to make a commitment to each other should do so through marriage, not civil partnership.

Note: Abolishing civil partnerships

If same-sex marriage is introduced, civil partnerships could theoretically be abolished in favour of marriage.

This option is not currently being considered, however, because abolishing civil partnerships would result in existing civil partners having to end their partnership or convert it to marriage, potentially against their wishes. It could also create problems with regard to recognising civil partnerships formed in other jurisdictions.

Questions related to C

a) Do you think that civil partnerships should be available to opposite-sex couples? Please tick:

Yes?	
No?	
Don't know?	

b) If no, do you think we should investigate other ways to provide more legal rights to co-habiting or "common-law" couples? Please tick:

Yes?	
No?	
Don't know?	

c) Comments

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If you are answering any of questions above, please could you also complete the questions set out in Section 4, as this will help us to know who has responded to the consultation.

D. Adultery as a ground for divorce or dissolution

Adultery is currently a ground for a divorce, but not a ground for dissolution of a civil partnership. This is primarily because adultery is defined as an act between a man and a woman.

Option 1: Introduce adultery as grounds for dissolution of a civil partnership

We could amend civil partnership legislation so it includes adultery as a ground for dissolution using the existing definition of adultery.

- This would create more parity between marriage and civil partnerships – both civil partners and spouses could cite adultery if their partner had an affair, but only if that affair was with a person of the opposite-sex. It may be argued, however, that this is of little real benefit to same-sex couples.
- If, however, opposite-sex civil partnerships were introduced this option could be of greater benefit to them.

Option 2: Remove adultery as grounds for divorce in a marriage

We could remove adultery as a ground for divorce, whether in an opposite-sex marriage or a same-sex marriage, if these are introduced.

- This option would create more parity between marriage and civil partnerships – neither spouses or civil partners could cite adultery if their partner had an affair.
- This would support a move towards the introduction of “no fault” divorces in all cases. In “no fault” divorces, the spouse who is petitioning for the divorce does not have to prove that their husband or wife has been at “fault”. It is widely believed that “no fault” divorces can be less acrimonious and that they cost far less, in both financial and emotional terms⁴⁷.
- It is also argued however that removing adultery as ground for divorce is tantamount to diminishing the status of marriage, and the notion of sexual fidelity as a key commitment of marriage.

Option 3: New definition of adultery

We could amend the definition of adultery - so that it applies to both opposite-sex and same-sex relations – and introduce it as a ground in both marriage and civil partnership.

- This option would create parity between marriage and civil partnership.
- It would allow both spouses and civil partners to cite adultery, regardless of the gender of the person that their partner had an affair with. This could be considered as significantly more beneficial than Option 1, which is limited to affairs between people of the opposite-sex.
- It is envisaged that a new definition may be difficult to achieve because of the complexities of defining the differences in the sexual act between same-sex and opposite-sex couples.

⁴⁷ The Jersey Law Commission are to undertake a review of divorce reform, which will include proposals to move to “a no fault” divorce in all cases, thereby removing grounds such as adultery, desertion or unreasonable behaviour. The findings and recommendations of the Law Commission review would need to be considered by States Members alongside the findings of this equal marriage consultation

Questions related to D

a) Do you think we should remove the differences in the grounds for divorce in marriage and dissolution in civil partnership? Please tick:

Yes?	
No?	
Don't know?	

b) If yes, which one following options do you most agree with?

<u>Option 1:</u> Introduce adultery as grounds for dissolution of a civil partnership	
<u>Option 2:</u> Remove adultery as grounds for divorce in a marriage	
<u>Option 3:</u> New definition of adultery	

c) Comments

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If you are answering any of questions above, please could you also complete the questions set out in Section 4, as this will help us to know who has responded to the consultation.

SECTION 4: RESPONDING TO THE CONSULTATION

If you are responding to any of the consultation question in Section 3 above, please could you complete the following questions. This information will help us to process the consultation responses and to keep in touch.

About you

a) Your name:

b) Email address:

c) Postal address (a postal address is only required if no email address is provided).

d) Are you a Jersey resident? Please tick:

Yes?	<input type="checkbox"/>
No?	<input type="checkbox"/>

e) If no, where are you resident?

f) Are you responding in your personal capacity? Please tick:

Yes?	<input type="checkbox"/>
No?	<input type="checkbox"/>

g) Are you responding as an official representative of an organisation or group? Please tick:

Yes?	<input type="checkbox"/>
No?	<input type="checkbox"/>

h) If yes, is that organisation or group:

i.	a faith group or religious organisation	<input type="checkbox"/>
ii.	a group representing people who identify as being lesbian, gay, bisexual or transsexual	<input type="checkbox"/>
iii.	other (please state):.....	<input type="checkbox"/>

Publication of responses

Consultation responses may be made public (for example sent to interested parties on request, quoted in a published report, reported in the media etc.). Please indicate which one of the following three options applies to you.

<u>Option 1</u> You agree that your comments may be made public and attributed to you	<input type="checkbox"/>
<u>Option 2</u> You agree that your comments may be made public but not attributed to you (i.e. anonymous)	<input type="checkbox"/>
<u>Option 3</u> You do not want your comments made public.	<input type="checkbox"/>

APPENDIX 1: QUESTIONS AND ANSWERS

Q: Isn't civil partnership already the same as marriage?

A: There are small legal differences between civil partnership and marriage, such as restrictions on the inheritance of pension provisions. A widow(er) in a marriage is entitled to their spouse's entire pension fund on their death. A widow(er) in a civil partnership is entitled to their partner's pension fund from the date of their civil partnership onwards only. What many people consider most important – regardless of whether they support the concept of same-sex marriage or not – is the potential differences between how marriage and civil partnerships are perceived in society.

Q: Will religious organisations or religious officials will be forced to conduct same-sex marriages, if same same-sex marriage is permitted in Jersey?

A: No. The States Assembly have already stated that no religious organisation or religious official should be forced to conduct same-sex marriages in Jersey.

All religious organisations would be free to choose and act according to their doctrines and beliefs.

Q: Would Anglican Churches in Jersey be banned by the States from conducting same-sex marriage in Jersey?

No. If same-sex religious marriage is introduced in Jersey the Anglican Church, like all other churches, could choose to conduct same-sex marriage, but it would not be compelled to. The Anglican Church would only be banned from conducting same-sex marriage, if the States Assembly to introduce civil union, in which case no religious organisation would be able to conduct marriage, regardless of whether it were same-sex or opposite-sex marriage.

Q: Would the European Court of Human Rights force religious organisations to conduct same-sex marriages?

A: The case law of the European Court of Human Rights makes it clear that same-sex marriage is a matter for individual governments to decide. If a case was to be brought before the Court, it would be against the government, not the religious organisation.

The European Court, in considering the case, would be bound to give priority to the rights of a religious organisation under Article 9 of the European Convention on Human Rights, which guarantees the right to freedom of religion.

Q: If the law is changed to allow for same-sex marriage, will the terms 'husband', 'wife', 'mother' and 'father' be abolished?

A: No, these very important terms will continue to exist and will continue to be used by people to explain their relationship to each other. 'Husband' will still refer to married men and 'wife' will still refer to married woman.

Q: If same-sex marriage becomes legal in Jersey will teachers have to promote it to pupils in sex and relationships education?

A: The Personal, Social, Health and Economic (PSHE) Curriculum provides schools with an established framework to address and teach to a range of issues. This includes 'relationships' as a core theme. PSHE education provides balanced and accurate information to support pupils in developing the emotional and social skills required to stay safe, maintain personal health and well-being, and manage their lives now and in the future. This area would need to consider same-sex marriage and would, as with other areas considered, deal with this issue openly and sensitively. There should be no direct promotion of sexual orientation.

APPENDIX 2: SAME-SEX MARRIAGE IN OTHER JURISDICTIONS

Same-sex marriages are currently legal in other jurisdictions including:

- Argentina
- Belgium
- Canada
- England & Wales
- Denmark
- France
- Iceland
- Mexico (2 states)
- New Zealand
- Norway
- Portugal
- Scotland (from end 2014)
- South Africa
- Spain
- Sweden
- The Netherlands
- United States (19 states)
- Uruguay

With plans to bring forward legislation in:

- Luxembourg
- Greenland
- Finland.

A referendum is to be held in the Republic of Ireland in 2015, with Irish Government stating that it will be "actively supporting" the introduction same-sex marriage in that referendum.

APPENDIX 3: EUROPEAN COUNTRIES WHERE ONLY CIVIL MARRIAGE IS LEGALLY RECOGNISED

The following European countries have a system of civil marriage only for all couples (also known as Civil Union).

- France
- Germany
- Netherlands
- Belgium
- Switzerland
- Luxembourg
- Romania
- Hungary
- Serbia
- Bulgaria
- Bosnia & Herzegovina

APPENDIX 2: CONSULTATION FEEDBACK REPORT EQUAL MARRIAGE AND PARTNERSHIP SURVEY

1. Introduction

This appendix sets out the responses received to the Equal Marriage and Partnership *Options Paper* released for consultation from 20 August 2014 to 22 October 2014.

People could submit their response to the *Options Paper* via a consultation survey or in writing.

- 1094 people or organisations responded to the consultation survey;
- an additional 161 letters or emails were also submitted, of which;
 - 59 were letters or emails;
 - 55 were individual copies of the same standard letter;
 - 2 were “*petition*” style letters signed by 47 people.

20 of these 161 written submissions were received from people who also completed the consultation survey.

This appendix focuses on responses to the consultation survey only. Information about other respondents is included in the main *Options Paper Feedback Report*.

2. Consultation survey respondents

A total of 1,094 people or organisations responded to the consultation survey. Of those some stated their comments:

- could be made public and attributed to them (369);
- could be made public but not attributed to them, i.e. anonymous (581); or
- did not specify how their comments should be treated (144).

Where respondents did not specify how their comments should be managed, they have been treated anonymously.

	Jersey resident	Non-Jersey resident	Residency not specified	Total
Responding in personal capacity	1030	33	7	1070
Responding as representative of an organisation or group	23	1	0	23
Total	1053	34	7	1,094

Separating the responses by type of organisation;

	Jersey resident	Non-Jersey resident	Residency not specified	Total
Faith group or religious organisation	17	0	0	17
A group representing people who identify as being lesbian, gay, bisexual or transsexual	4	0	0	4
Other	1	1	0	2
Total	22	1	0	23

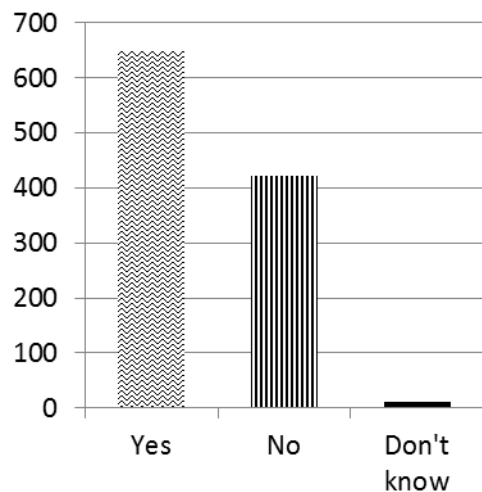
The two people who responded as “Other” to type of organisation;

- one stated they represented the LGBT community; and
- one stated they were representative as a member of the Catholic Church.

3. Response to individual questions

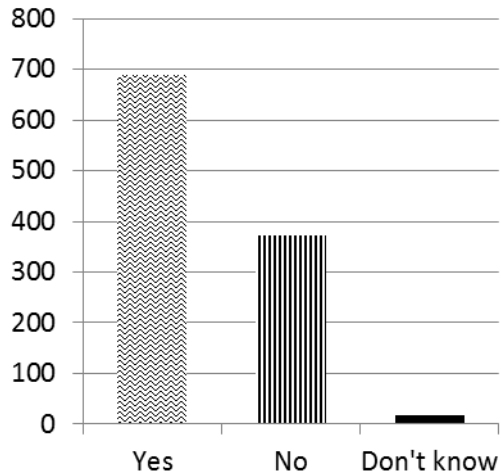
Question A: Same-sex marriage

g) Do you agree that all couples, regardless of their gender, should be able to get married?



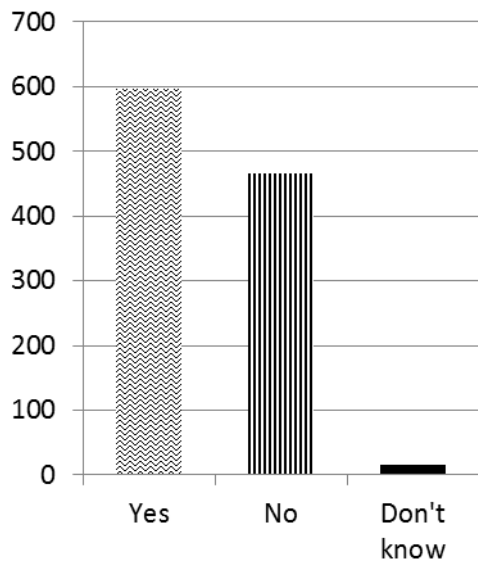
	%	Numbers of responses
Yes	59.83%	648
No	39.06%	423
Don't know	1.11%	12
Total answering question	-	1,083
Total number of non-responses	-	11
Total	100.00%	1,094

b) Do you agree with the introduction of same-sex civil marriage?



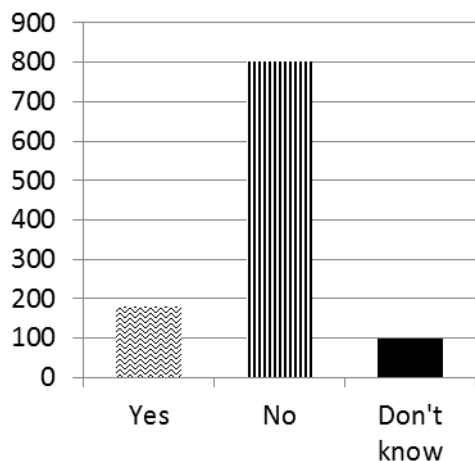
	%	Numbers of responses
Yes	63.82%	688
No	34.60%	373
Don't know	1.58%	17
Total answering question	-	1,078
Total number of non-responses	-	16
Total	100.00%	1,094

c) Do you agree with the introduction of same-sex civil marriage and same-sex religious marriage, where the religious organisation and religious official agree?



	%	Numbers of responses
Yes	55.43%	597
No	43.18%	465
Don't know	1.39%	15
Total answering question	-	1,077
Total number of non-responses	-	17
Total	100.00%	1,094

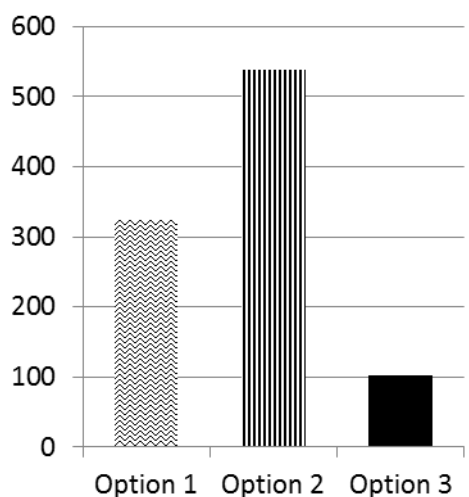
d) Do you agree with replacing the current system of civil marriages and religious marriages, in favour of civil marriages only for both opposite-sex and same-sex couples? (i.e. remove the right of religious organisations to conduct religious marriages). This is also known as civil union?



	%	Numbers of responses
Yes	16.68%	180
No	74.24%	801
Don't know	9.08%	98
Total answering question	-	1,079
Total number of non-responses	-	15
Total	100.00%	1,094

e) If same-sex marriage is introduced in Jersey which one of the following three options do you think should be used?

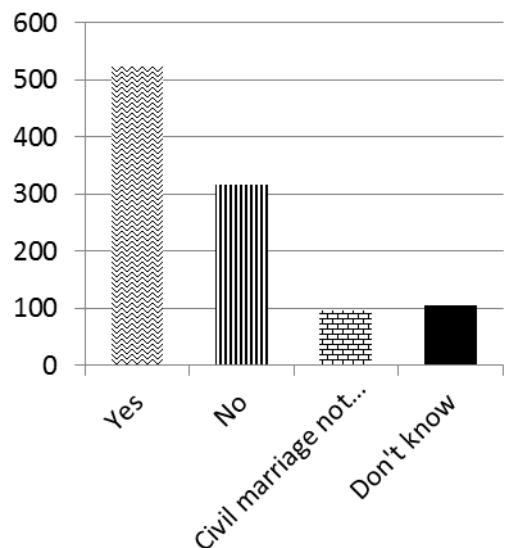
- Option 1: Introduce same-sex civil marriage only;
- Option 2: Introduce same-sex civil marriage and same-sex religious marriage, where the religious organisation and religious official agrees;
- Option 3: Replace the current system of civil marriage and religious marriage, in favour of civil marriages only for both opposite-sex and same-sex couples.



	%	Numbers of responses
Option 1	33.61%	324
Option 2	55.81%	538
Option 3	10.58%	102
Total answering question	-	964
Total number of non-responses	-	130
Total	100.00%	1,094

Questions B: Humanist and non-religious marriage question

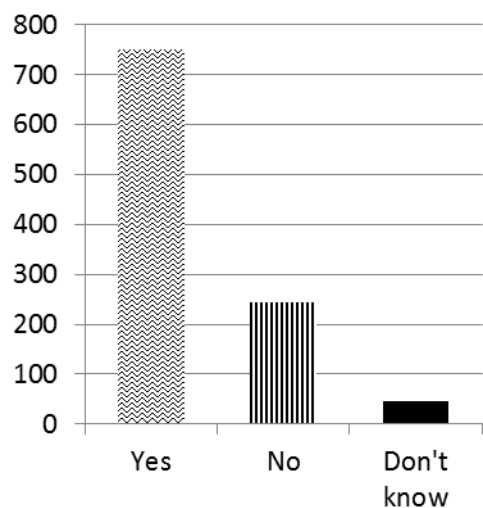
a) Do you think we should allow for humanists and other forms of non-religious marriage? Please tick one:



	%	Numbers of responses
Yes	50.24%	524
No	30.39%	317
Only if Civil Marriage for all not introduced	9.30%	97
Don't know	10.07%	105
Total answering question	-	1043
Total number of non-responses	-	51
Total	100.00%	1,094

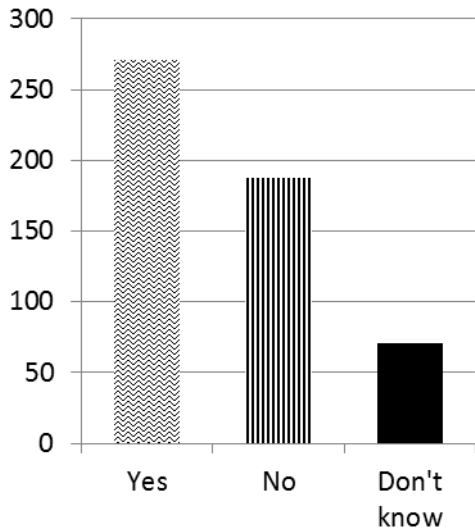
Question C: Civil partnerships questions

a) Do you think that civil partnerships should be available to opposite-sex couples? Please tick:



	%	Numbers of responses
Yes	72.17%	752
No	23.51%	245
Don't know	4.32%	45
Total answering question	-	1042
Total number of non-responses	-	52
Total	100.00%	1,094

b) If no, do you think we should investigate other ways to provide more legal rights to co-habiting or “common-law” couples? Please tick:



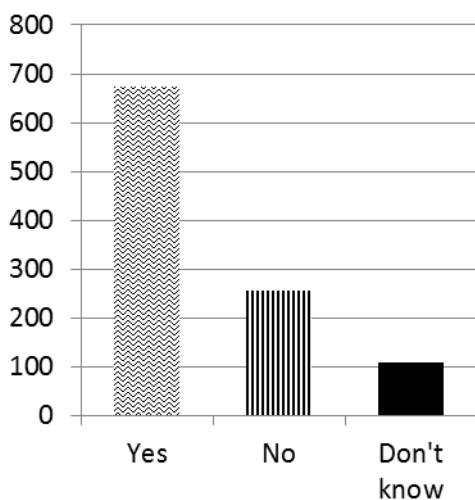
	%	Numbers of responses
Yes	51.13%%	271
No	35.47%	188
Don't know	13.40%	71
Total answering question	-	530
Total number of non-responses	-	564
Total	100.00%	1,094

290 people responded ‘no’ or ‘don’t know’ to Question C a), of which 109 responded ‘yes’s to Question C b).

Therefore 38% of people who do not support civil partnerships for opposite-sex couples, nevertheless believe that more legal rights should be provided to co-habiting or common-law couples.

Question D: Adultery as a ground for divorce or dissolution questions

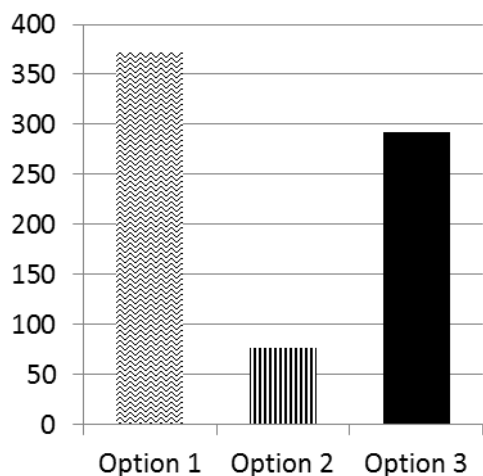
a) Do you think we should remove the differences in the grounds for divorce in marriage and dissolution in civil partnership? Please tick:



	%	Numbers of responses
Yes	64.77%%	673
No	24.74%	257
Don't know	10.49%	109
Total answering question	-	1039
Total number of non-responses	-	55
Total	100.00%	1,094

h) If yes, which one of the following options do you most agree with?

- Option 1; Introduce adultery as grounds for dissolution of a civil partnership;
- Option 2; Remove adultery as grounds for divorce in a marriage;
- Option 3; New definition of adultery.



	%	Numbers of responses
Option 1	50.20%	372
Option 2	10.39%	77
Option 3	39.41%	292
Total answering question	-	741
Total number of non-responses	-	353
Total	100.00%	1,094