

Chief Minister's Department

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 2014¹.

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?

¹ 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

Write 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.

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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 world², 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 jurisdictions³. 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.

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

³ 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 marriage⁴ 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)⁵.

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”)⁶. 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.

⁴ 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.

⁵ This can be the Superintendent Registrar, a deputy or a delegate.

⁶ 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 takes⁷.

⁷ 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 counties 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 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 couples⁸.

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.

⁸ 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

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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.

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 terms⁹.
- 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.

⁹ 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	<input type="checkbox"/>

Please state the name of the organisation you represent

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

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
- Slovenia