

Law Drafting Instructions: Amendments to the Children (Jersey) Law 2002 and Marriage and Civil Status (Jersey) Law 2001 to enable parental responsibility for same sex couples

Contacts

Ministerial Sponsor: Minister for Children and Education (with agreement of Home Affairs Minister)

Date of Instructions:

Instructing Officer: Ben Sandeman

Legal Adviser: Frank Le Gros

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Note:

It is intended that the law is amended in Jersey to provide for opposite sex civil partnerships. The instructions below are written as if that change has already been implemented i.e. as if both opposite sex and same sex couples can get married or enter into a civil partnership.

Section 1: Introduction

Legal Parenthood and Parental Responsibility

Legal Parenthood

- 1.1 A child can only have up to two legal parents under Jersey law. One of these parents will usually always be the birth mother. The parent/s are registered as the child's mother and father (if present) in the Register of Births. Being named in the Register of Births provides the parent/s with legal parent status. The names of the registered parent/s will appear on the birth certificate as it is a copy of the entry made in the Register of Births.
- 1.2 Under Jersey customary law, a child's mother at birth is the woman who gave birth, and if she is married to a man, her husband will be the child's other legal parent.
- 1.3 If the birth mother is married and her husband is NOT the father of the child, Article 55 of the Marriage and Civil Status (Jersey) Law 2001 (the "2001 Law") provides for the registration of the father where he is not married to the birth mother. The registration of a father who is not married to the birth mother is also possible where the birth mother is married to another man.
- 1.4 Legal parenthood provides a legal parent-child connection which governs inheritance, financial provision for a child and citizenship.

Parental Responsibility

- 1.5 Article 3 of the Children (Jersey) Law 2002 (the "2002 Law") provides that '*Where a child's father and mother were married to each other at the time of the child's birth they shall each have parental responsibility for that child*'. Or '*Where a child's father and mother were not married to each other at the time of the child's birth –*
 - a) *The mother shall have parental responsibility for the child; and*
 - b) *The father shall not have parental responsibility for the child unless he acquires it in accordance with the provisions of this law.*
- 1.6 Article 5 of the 2002 Law goes on to state that '*Where a child's father and mother were not married to each other at the time of the child's birth then the father shall only have parental responsibility for the child if he becomes registered as the child's father under Article 55 or 56 of the 2001 Law.*'
- 1.7 As such the 2002 Law provides that the legal parents shall acquire parental responsibility by being the registered mother and father of the child under the provisions of the 2001 Law. A child's legal parents have 'parental responsibility' for their child except in very limited circumstances.
- 1.8 A person with 'parental responsibility' has all the duties, rights, responsibilities and authority, which, by law, a legal parent has for his or her child. As Giles Robinson notes, "Essentially this means 'being a parent'. A person who has parental responsibility has the right to make important decisions about a child's education, religion, health care etc."¹

¹ Giles Robinson, 'Parental Responsibility and the Protection of Children' (February 2006) The Jersey Law Review < https://www.jerseylaw.je/publications/jglr/Pages/JLR0602_Robinson.aspx > accessed 25 July 2018

- 1.9 If a father is not the child's legal parent, then the father and mother may by agreement provide for the father to have parental responsibility for the child. This is provided the parental responsibility agreement is made in prescribed form, and where Rules of Court are made prescribing the manner in which parental responsibility agreements must be recorded, it is recorded by the Court in that manner.
- 1.10 A Court can make a residence order in favour of any person who is not the parent of the child to provide that person with parental responsibility for the child.
- 1.11 It is entirely possible for a child to have more than two people with parental responsibility for them, although never possible for a child to have more than two legal parents.

Policy intent and background

- 1.12 The Minister for Children and Education wishes to amend legislation to allow for legal parent status and parental responsibility to be conferred on same sex couples. These legislative changes will further two policy objectives:
1. Opposite sex couples who are parents and same-sex couples who are parents are treated more fairly in law – albeit not exactly the same. A same sex couple are currently not able to obtain legal parent status unless they adopt their child. If they do not adopt and one of the same sex couple is the birth mother, then the couple are only able to both obtain parental responsibility by the Court making a residence order.
 2. Spouses and civil partners who are parents/become parents are treated equally in law. The Children (Jersey) Law 2002 does not confer parental responsibility automatically upon couples who are in a civil partnership with each other. Moreover, the Legitimacy (Jersey) Law 1973 does not recognise children of civil partnerships as legitimate, this is also at odds with the government's policy position.
- 1.13 In 2016, the Children and Adoption (Amendment) (Jersey) Law 2016 provided that the father² of a child, who was not married to the child's mother at the time of the child's birth, would acquire legal parent status, and therefore parental responsibility, by being registered as the child's father in accordance with Article 55 or 56 of the Marriage and Civil Status (Jersey) Law 2001. The entering of the father's name in the register of births can take place either at the point of initial registration of birth or at a later date. The 2016 amendment does not apply to a father + father same sex couple or to a mother + mother same sex couple.
- 1.14 Whilst debating P.77/2015 'Same Sex Marriage, Divorce and Dissolution' the States noted that, in amending the law to allow for same sex marriage, consideration would need to be given to matters relating to parental responsibility for:
- A mother + mother same sex couple who are either married or in a civil partnership at the time at which one of them becomes pregnant or gives birth. Both the birth mother and the second mother should be allowed to be named in the register of births, therefore automatically conferring both mothers with parental responsibility.
 - A father + father same sex couple who are either married or in a civil partnership at the time at which a child is conceived or born using sperm from one of them, should both

² The father named on the birth certificate is the person that states he is the father. LoD have advised it is therefore presumed that he is the biological father.

be allowed to be registered as the child's parents and therefore conferred with parental responsibility.

- 1.15 It is important to note in both cases this will only apply where the child is conceived through artificial insemination, as opposed to through sexual intercourse.
- 1.16 Issues of legal parent status and parental responsibility must also be considered in relation to same-sex couples who are not married or in a civil partnership, but who nevertheless choose to jointly raise children.
- 1.17 Law drafting is required in order to:
 - a. enable opposite sex civil partners to acquire legal parent status and parental responsibility in the same way as a married couple
 - b. enable same sex parents to both be registered as a child's legal parents and therefore named on a Jersey birth certificate
 - c. enable as far as possible, same sex parents to be automatically conferred parental responsibility
 - d. provide appropriate legal recognition to enable parents, whose child is born to a surrogate mother, to become legal parents in Jersey
 - e. provide for the acquisition of parental responsibility by a stepparent by agreement
 - f. enable a child whose parents are of the same sex and who are married/in civil partnership with each other to be recognised as legitimate.
 - g. enable a child whose parents are of the opposite sex and who are in a civil partnership to be recognised as legitimate.

Terms used in this document

Below is an explanation of the terms used. The Law Drafter may deem that other terms need to be used for the purposes of the Law.

Artificial insemination – Any means by which an egg can be fertilised using sperm other than through penetrative sex. This can be done at home or in a licensed clinic.

Birth mother – The woman who gives birth to the child. Includes a surrogate mother and a woman who has given birth having received donated eggs.

Biological father – The man who genetically fathered the child.

Donor (known) – A person who has donated eggs, sperm, embryos or other material whose identity is known to the person receiving the donation.

Donor (unknown) – A person who has donated eggs, sperm, embryos or other material whose identity is not known to the person receiving the donation.

Legal parent – A legal status relating to issues such as inheritance, nationality and financial responsibility in relation to a child. Legal parenthood is different from parental responsibility. A child can only have two legal parents, although any number of people can have parental responsibility for a child.

Parental election forms – Forms that are used at a licensed fertility clinic in England and Wales if the birth mother is not married or in a civil partnership with the second

parent. The forms allow a nomination, only with the birth mother's and second parent's consent, of who is to be considered a second parent to the child. Parental election forms allow the second parent to be named in the birth register so that the second parent automatically acquires legal parent status and parental responsibility.

Parental Order (UK only at the moment but instructions below provide for Jersey Parental Orders) – An order issued by the Court to the intended legal parents of a child born to a surrogate mother which extinguishes the legal parenthood of the surrogate mother and, if registered as the child's father her spouse/civil partner and reassigns legal parenthood and parental responsibility to the intended parents.

In order to apply for a UK parental order one of the intended parents must be:

- genetically related to the child (i.e. the egg or sperm donor),
- if jointly applying either spouse or civil partners or living with other intended parent in an enduring family relationship.

Furthermore, the intended parents must have the child living with them and they must reside permanently in either the UK, Channel Islands or Isle of Man at the point of application.

Parental responsibility – A legal status giving a person authority to make decisions about a child's care, whether or not they are also a legal parent.

Second female parent – The female spouse, civil partner or partner living in an enduring family relationship with the birth mother. She can also be biologically related to the child if she has donated her eggs to be used for gestation, however if there is a biological relationship with the child this does not have any effect on acquisition of parental responsibility or legal parent status.

Sperm donor – A man who donates his sperm for the purpose of allowing another person to conceive a child. A man can only be considered a sperm donor if he does not have penetrative sex with the recipient of the donation. Currently as per the Human Fertilisation and Embryology Act 2008, a sperm donor is considered to have relinquished responsibility for any child conceived using their donated sperm.

Surrogate mother – A birth mother who has a baby with the intention, from before conception, of relinquishing legal parenthood of the child. A woman can only be considered a surrogate mother if the child is conceived using artificial insemination and not conceived through penetrative sex. The surrogate mother does not need to be the biological mother; the eggs and sperm can both be donated.

Section 2: Acquisition of Legal Parent Status and Parental Responsibility

- 2.1 At present, a male civil partner of a birth mother would have to register as the father of a child in the same way as an unmarried father.
- 2.2 Acquisition of legal parent status by the husband of a birth mother takes place under Jersey customary law. The customary law position assumes that the husband of the birth mother is the father of the child, the customary law position does not extend to civil partners.
- 2.3 If provisions to allow a father and mother who are civil partners to acquire legal parent status in the same way as a father and mother who are married are to be introduced, it is first necessary to make provisions in the 2001 Law for the acquisition of legal parent status by birth registration for a father and mother who are married to each other (i.e. to make provision in law as opposed to relying on customary law).
- 2.4 It is therefore necessary to formalise provisions relating to the registration of a birth where the father and mother of the child are married to each other. The inclusion of provisions for civil partners in an article of this nature would allow civil partners to register the birth of their child in the same way as a father and mother who are married to each other, this would further the government's policy position that marriage and civil partnerships are equal.

Parental Responsibility

- 2.5 Currently, the following people automatically have parental responsibility in Jersey:
 - a) Birth mothers are always considered legal parents and will always have parental responsibility for their child unless it is removed by a Court Order (for example an Adoption Order). This is regardless of whether or not the birth mother is the biological mother (the eggs used to conceive the child may be donated). The birth mother will always be named in the register for birth and named on the child's birth certificate, unless the birth mother is unknown. In the event that, as result of an Adoption Order, the birth mother is no longer the legal parent then the birth record may be 'sealed'.
 - b) As a matter of customary law fathers married to the birth mother at the time the child was born have legal parent status and acquire parental responsibility for the child, this is provided they are registered as the father of the child.
 - c) Fathers who were not married to the birth mother at the time of the child's birth but who are registered as the child's father as per Article 55 of the 2001 Law from the point at which the 2016 Amendment came into force have legal parent status and acquire parental responsibility. This includes:
 - fathers who are married/civil partners/in a relationship with another person, regardless of the sex of that person,
 - fathers who are not the person that the birth mother is married to or in a civil partnership with.

Acquiring legal parent status and parental responsibility

Mother + Father parents

- 2.6 As set out above, the birth mother automatically has legal parent status and parental responsibility. Fathers married to the birth mother at the time of birth also have legal parent

status and parental responsibility conferred automatically if named in the register of births.³ This does not currently include a civil partner of a birth mother. A father who is a civil partner of the birth mother will have to acquire parental responsibility in the same way as an unmarried father.

Fathers who are not married to the birth mother at the time of birth but who:

- a. are registered as the father of the child under Article 55 of the 2001 Law and therefore appear on their child's birth certificate⁴
- b. have obtained a residence order from the Court⁵
- c. have obtained a parental responsibility order from the Court⁶
- d. have entered into a parental responsibility agreement with the child's birth mother⁷
- e. have re-registered the child's birth where no person has been recorded as the father of the child⁸

will acquire parental responsibility, only unmarried fathers registered under Article 55 are able to gain legal parent status, unless the child is subject to an adoption order.

- 2.7 Other people may obtain parental responsibility by a custody order or residence order for a child⁹. Those who have been appointed a guardian or who have adopted a child also have parental responsibility, as do those responsible for a child under an emergency protection order.

Mother + Mother parents

- 2.8 Where a child has a birth mother and second female parent, the birth mother automatically has parental responsibility¹⁰. The child's second female parent cannot be registered as a parent or named on a child's birth certificate – regardless of whether the mothers are married or civil partners. A second female parent must obtain legal parent status and parental responsibility by adoption. The Court can grant a residence order but this will only provide a second female parent with parental responsibility and not legal parent status.
- 2.9 Since amendments were made to Jersey's adoption laws in 2012 a mother + mother couple can adopt a child in Jersey. This is possible regardless of whether the child is the biological child of the adopters. The adopters will both gain legal parent status and parental responsibility for the child as a result of the adoption order being made.

Father + Father parents

- 2.10 If one of the men in a father + father couple is the child's biological father (and the child is born by a surrogate mother), the biological father can gain legal parent status and parental responsibility in any of the ways available to a father who is not married to the birth mother¹¹.
- 2.11 Since amendments were made to Jersey's adoption laws in 2012, same-sex couples have been able to adopt children¹². This includes same-sex couples who are married, in a civil

³ Children (Jersey) Law 2002, art 3(1).

⁴ Children (Jersey) Law 2002, art 5(1)(aa).

⁵ Children (Jersey) Law 2002, art 13(1).

⁶ Children (Jersey) Law 2002, art 5 (1)(a).

⁷ Children (Jersey) Law 2002, art 5 (1)(b).

⁸ Marriage and Civil Status (Jersey) Law 2001, art 56(2).

⁹ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20PRA%20guidance%20notes%20and%20form%2020120103%20BJL.pdf>

¹⁰ Children (Jersey) Law 2002, art 3(2).

¹¹ Marriage and Civil Status (Jersey) Law 2001 art 55

¹² Adoption (Jersey) Law 1961, art 10(1A).

partnership or who are living as partners in an enduring family relationship. It is therefore possible for a father + father couple to adopt a child; this includes a child that is biologically related to one of them.

- 2.12 A father + father couple, via a parental order granted by the courts of England and Wales, can extinguish a surrogate mother's parental responsibility of a child born in the UK, if one of the fathers is the biological father.
- 2.13 The effect in Jersey law of parental orders granted by the courts of England and Wales is the subject of debate. One view, expressed by the Jersey Law Commission, among others, is that parental orders issued under the Human Fertilisation and Embryology Act 2008 to applicants from Jersey would be recognised in Jersey law such that those applicants would be recognised in Jersey law as the legal parents of the surrogate child, pursuant to an Order issued under the 2008 Act.
- 2.14 There is, though, and as proponents of the former view acknowledge, no clear legal basis for that position. It is considered that the better view, and one that is supported by policy, is that that there is unlikely to be any basis in Jersey law on which parental orders granted under the 2008 Law can be recognised or have effect in Jersey law.
- 2.15 While the legal position may be open to debate, given that it is unsatisfactory in policy terms to have uncertainty in an area of such critical importance as civil status of applicant parents, coupled with the equally unsatisfactory position that applicant couples cannot seek direct legal recourse in Jersey law to address parenthood in this context (other than adoption), the policy position is that the law should be amended to enact provisions to provide a solution to these issues.
- 2.16 As such adoption is currently the only way in Jersey law that father + father couples would be able to extinguish the legal parent status and parental responsibility of a child's birth mother.¹³ An adoption order would extinguish the legal parent status and parental responsibility of both the child's birth mother and father (if the father's name appears in the register of births), same-sex couples would therefore have to issue a joint application. A joint application for adoption would also be required if an opposite sex couple use surrogacy as a method to create a child.
- 2.17 In the case of a father + father couple, if the child was born on or after 2 December 2016, the father who is registered as the father of the child in the Register of Births will gain legal parent status and acquire parental responsibility, there is currently no option for both fathers names to be entered in to the Register of Births and therefore appear on the child's birth certificate.¹⁴
- 2.18 A second male parent currently is able to acquire parental responsibility as a result of the Court granting an application for a residence order.

Registration of birth / birth certificates

- 2.19 The provisions relating to the registration of births and birth certificates are set out in the Marriage and Civil Status (Jersey) Law 2001.
- 2.20 Currently Jersey's register of births, and therefore birth certificates, only have spaces for a 'mother' and a 'father'. This means that only one of the parents in a same-sex couple can

¹³ Adoption (Jersey) Law 1961, art 20(2)(a)(i).

¹⁴ Children (Jersey) Law 2002, art 5(1)(aa).

be named in the register of births and on a child's birth certificate and therefore only one parent can acquire legal parent status.

- 2.21 In the case of a mother + mother couple, the child's birth mother must be registered as the mother in the register of births and therefore her name will appear on the child's birth certificate. The child's second female parent cannot currently be registered in the register of births and as a result their name cannot appear on the birth certificate. The parents are not required to state the name of the child's biological father as the identity of the donor is sometimes unknown.
- 2.22 In the case of a father + father couple, the child's birth mother must be registered in the register of births as the mother, as such the birth mother's name will always appear on the child's birth certificate. The biological father can only be registered on the birth certificate as the father¹⁵.
- 2.23 A father who is not married to the child's mother may register or re-register as the child's father at the joint request of both parents or of either party on production of declarations by both the father and birth mother affirming he is the child's father.¹⁶

Donors

- 2.24 In the UK sperm can be donated at both licenced and unlicensed fertility clinics. The status of the clinic has significant repercussions for the legal parentage of a child created as a result of the donated sperm.
- 2.25 Where sperm is donated at a clinic licenced by the Human Fertilisation and Embryology Authority the donor will have no legal rights or responsibilities to children conceived from their donation.
- 2.26 Where the donation takes place outside of a licenced clinic in a private arrangement, the law on who will be the child's legal parent(s) is not straightforward and depends upon:
- if the woman was single or married at the time of conception
 - whether the insemination took place through artificial insemination or sexual intercourse
 - who is named on the birth certificate, and
 - whether the donor will have an established relationship with the child.
- 2.27 Currently the Assisted Reproduction Unit at the Jersey General Hospital is an unlicensed clinic and no legislative provisions in Jersey exist to clarify the legal parentage of children born as a result of donated sperm at an unlicensed clinic. It is proposed to name and include the Assisted Reproduction Unit in legislative provisions that will govern acquisition of legal parent status and parental responsibility to provide certainty for couples who choose artificial insemination as a method to have a child in Jersey.
- 2.28 However, this area of practice is essentially unregulated and no provisions in law exist to regulate the Assisted Reproduction Unit or prohibit a private firm setting up a fertility clinic on the island to offer fertility services, as such if a private clinic was set up its services would be unregulated and there would be implications for the legal parentage of the children produced as a result of the services provided.

¹⁵ This must be done in accordance with Marriage and Civil Status (Jersey) Law 2001, art 55.

¹⁶ Marriage and Civil Status (Jersey) Law 2001, arts 55 and 56.

Stepparents

- 2.29 A stepparent, who is married or in a civil partnership with a child's parent, does not have parental responsibility for that child. As it stands Jersey law does not make any provision at all for stepparents to acquire parental responsibility except by residence order, which is at odds with the provisions made in England and Wales.¹⁷
- 2.30 Providing for the acquisition of parental responsibility of stepparents is a pragmatic response to the complexities that can arise when a child is being brought up by a stepparent who, in law, has no responsibility for that child without having to petition the Court for a residence order.
- 2.31 Allowing stepparents to acquire parental responsibility will help to further strengthen the relationship between the child and stepparent, it will also mean they can be involved in making decisions on that child's behalf, whilst providing further stability with regards to that child's family life.

Forms and Fees

- 2.32 It is proposed that none of the forms or fees relating to parental orders or stepparent responsibility agreements should be prescribed in Law. Currently the fee for adoption is set by the Family Court and it is proposed that the fee for parental orders should be managed in the same way.
- 2.33 Currently there is no fee charged for the registration of a Parental Responsibility Agreement in Jersey, however, after consultation with the Family Court Registrar it is proposed to introduce a fee of £120 for both Parental Responsibility Agreements and also Stepparent Responsibility Agreements, the amount is in line with Rate G of the Stamp Duties and Fees (Jersey) Law 1998.
- 2.34 Adoption forms are prescribed in Law in England and Wales as adoption is a much more involved and complex process due to the adopters having no genetic relation to the child. Whereas the parental order process in England and Wales is much simpler due to the genetic link between the child and one or both of the intended parents. There is also a pre-existing relationship between the surrogate mother and intended parents, as such in England and Wales there is just a single application form ([Form C51](#)) that is submitted to the Family Court by the intended parent/s, and a single form ([Form C52](#)) for the birth parent/s to complete. Form C52 provides that the birth mother and her partner if applicable acknowledge and consent to the making of the parental order. Completed C52 forms are required from each individual parent with legal parent status.
- 2.35 After consultation with the Family Court Registrar it is proposed that the fee for an application for a parental order should be set at £215, this is comparable to the cost of an application for a parental order in the UK.
- 2.36 It is proposed that similar forms to form C51 and C52 are created and used in Jersey to:
- Enable the intended parents to apply to the Court for a parental order
 - Provide acknowledgement and consent to the making of the parental order by those who have parental responsibility for the child at the time of the parental order application.

¹⁷ Section 4A, Children's Act 1989

Section 3: Same sex legal parenthood and parental responsibility Law Drafting Instructions

3.1 There are a wide range of parental scenarios that need to be addressed by provisions introduced to enable parental responsibility to be acquired by same sex couples, these are set out in the table below.

3.2 The scenarios below all relate to children born in Jersey unless otherwise stated.

Currently happens (or can happen)	What we want to be able to happen
Birth mother / father: married or in a civil partnership with each other at time of the child's birth	
<p>The birth mother and father acquire legal parent status and parental responsibility when registering the birth of a child if they are married.</p> <p>If the father is a civil partner of the mother he can acquire legal parent status and parental responsibility in the same way as an unmarried father.</p>	<p>The Law is to be amended to reflect the extension of civil partnerships to opposite sex couples. i.e. the parents should both automatically acquire legal parent status and parental responsibility if they are married to each other or in a civil partnership with each other by registering the birth of their child.</p>
Birth mother / father: not married or in a civil partnership with each other at time of child's birth	
<p>The birth mother acquires legal parent status and parental responsibility by being the birth mother and is registered as the mother of the child in the register of births.</p> <p>If the father is named in the register of births in accordance with the provision of Article 55 and 56 of 2001 Law then he will acquire legal parent status</p> <p>The father does not have parental responsibility unless he acquires it in accordance with the 2002 Law.</p>	<p>No change is needed to current provisions.</p> <p>Note: where a child is conceived using artificial insemination and the gametes of the male partner are not used (such as when the male partner is infertile), the male partner who is not married or in a civil partnership with the birth mother will not be able to acquire parental responsibility for the child by virtue of Article 55 of the Marriage and Civil Status (Jersey) Law 2001. The father will however in future if the draft amendment Regulations are approved be able to acquire parental responsibility by jointly registering the birth with the agreed parenthood conditions.</p>
Birth mother / mother: married or in a civil partnership with each other at time of child's birth (child has been conceived by artificial insemination)	
<p>The birth mother acquires legal parent status and parental responsibility by being the birth mother and is registered as the mother of the child in the register of births.</p> <p>The second female parent cannot be registered as the child's mother or named on the child's birth certificate, so cannot acquire parental responsibility via that route.</p> <p>The second female parent can acquire legal parent status by adoption, parental responsibility would also be acquired if the adoption was granted.</p>	<p>The Law is to be amended to allow the two mothers to:</p> <ul style="list-style-type: none"> • be both registered as the child's parents • register the birth either together or on their own • be both named on the birth certificate • be the child's legal parents • both acquire parental responsibility providing they are registered as the child's parents in a similar way to a married opposite sex couple as per Article 3 of the 2002 Law. <p>Providing that:</p> <ul style="list-style-type: none"> • one of the mothers is the birth mother

<p>The second female parent can acquire parental responsibility via:</p> <ul style="list-style-type: none"> • adoption • a residence order 	<ul style="list-style-type: none"> • that the birth mother conceived the child via artificial insemination at a licensed clinic or at home (regardless of whether the sperm was supplied by a clinic, or the mother sources her own donor). • it is not shown that the second mother did not consent to the placing of the embryo or the sperm and eggs or to the artificial insemination of the birth mother
<p>Birth mother / mother: married or in a civil partnership at the point at which the child is conceived by sexual intercourse</p>	
<p>The birth mother acquires legal parent status and parental responsibility by being the birth mother and is registered as the mother of the child in the register of births.</p> <p>The biological father (even if the birth mother was married or in civil partnership with someone else) can acquire parental responsibility as per Article 55 or 56 of the 2001 Law, by signing a parental responsibility agreement with the birth mother or by the Court ordering that the father shall have parental responsibility.</p> <p>The second female parent cannot automatically acquire parental responsibility as the biological father will be the legal parent.</p>	<p>If the child is conceived via intercourse, the biological father can acquire parental responsibility by registering or re-registering the birth as per article 55 or 56 of the Marriage and Civil Status (Jersey) Law 2001, by signing a parental responsibility agreement with the birth mother or by the Court ordering that the father shall have parental responsibility¹⁸.</p> <p>The partner of the birth mother will not acquire legal parent status or parental responsibility as the biological father will be the legal parent.</p> <p>Note: A parental order either in the England or Wales or in Jersey (when available) would not be accessible to the couple as the child was conceived by sexual intercourse.</p>
<p>Birth mother / mother: not married or in a civil partnership at the point which the baby is conceived by artificial insemination</p>	
<p>The birth mother acquires legal parent status and parental responsibility by being the birth mother and is registered as the mother of the child in the register of births.</p> <p>The second female parent cannot be named on the child's birth certificate, so cannot acquire legal parent status or parental responsibility via that route.</p> <p>The second female parent can acquire parental responsibility in addition to the birth mother via:</p> <ul style="list-style-type: none"> • adoption • a residence order <p>Current UK arrangements For mother + mother couples who aren't civil partners or married, the second female parent</p>	<p>The law is to be amended so that both mothers will be able to be registered as the child's parent and named on the child's birth certificate. Provided that both mothers have completed and signed the relevant forms at the fertility clinic before the child was conceived i.e. the birth mother has nominated her partner to be the second parent (See agreed parenthood conditions as set out in paragraph 3.27).</p> <p>The partner if the birth mother will acquire legal parent status by being named in the register of births subject to presence of agreed parenthood conditions being presented to the Superintendent Registrar both of them jointly registering the birth. The partner of the mother will then be able to acquire parental responsibility in the same way as a father who is not married to the birth mother under the provisions of the 2002 Law.</p>

¹⁸ Children (Jersey) Law 2002, art 5(1)(a).

<p>can obtain legal parent status and parental responsibility by either:</p> <ul style="list-style-type: none"> • registering the birth together with the birth mother, if the required agreed parenthood conditions were signed at the time of artificial insemination • becoming a civil partner of or marrying the birth mother and re-registering the birth. 	
<p>Mother / mother– not married or in a civil partnership at the point which the baby was conceived by sexual intercourse (one of mother’s is the birth mother)</p>	
<p>The birth mother acquires legal parent status and parental responsibility by being the birth mother and is registered as the mother of the child in the register of births.</p> <p>The biological father (even if the birth mother was married or in civil partnership with someone else) can acquire parental responsibility as per Article 55 or 56 of the Marriage and Civil Status (Jersey) Law 2001, by signing a parental responsibility agreement with the birth mother or by the Court ordering that the father shall have parental responsibility.</p> <p>The second female parent cannot acquire legal parent status as the biological father will be the legal parent.</p>	<p>No amendments needed to current provisions</p> <p>If the child is conceived via intercourse, the biological father can acquire legal parent status by registering or re-registering the birth as per article 55 or 56 of the Marriage and Civil Status (Jersey) Law 2001,</p> <p>The biological father can acquire parental responsibility by signing a parental responsibility agreement with the birth mother or by the Court ordering that the father shall have parental responsibility¹⁹.</p> <p>A partner of the birth mother who was not married to the birth mother at the time of conception by sexual intercourse cannot acquire legal parent status by being named on the birth certificate because unlike a father who was not married to the birth mother at the time of conception, the second mother cannot be the stated parent of the child (i.e. the presumed biological parent), even if she is married or in a civil partnership with the mother <u>by the time the child is born</u>.</p> <p>A Jersey parental order (when available) would not be available to the couple as the child was not conceived by artificial insemination.</p>
<p>Any couple regardless of whether they are married or in a civil partnership –Surrogate mother either married or not married.</p>	
<p>Current</p>	<p>Proposed</p>
<p>Surrogacy in Jersey is currently not governed by any legislation.</p>	<p>Provisions are to be introduced so that the intended parents will be able to apply to the Court in Jersey for a parental order. A parental order will, if granted, extinguish the existing legal parent</p>

¹⁹ Children (Jersey) Law 2002, art 5(1)(a).

<p>If a child is born by surrogate the birth mother will be registered as the child's mother in the register of births and named on the birth certificate. The biological father (if there is one) can be registered as the father in the register of births and their name will appear on the birth certificate.</p> <p>The persons named in the register of births will acquire legal parent status.</p> <p>Once 6 weeks has passed the surrogate mother can give agreement that the child can be freed for adoption or for a parental order to be made by a Family Court in England or Wales.</p> <p>The applicant/s can adopt the child in Jersey, this extinguishes the legal parent status and parental responsibility from the birth (surrogate) mother and the child's father if named in the register of births. It will provide legal parent status and parental responsibility to the adopter or adopters It will result in the child having an adoption certificate instead of a Jersey birth certificate.</p> <p>The intended parents can apply for a parental order from a Family Court in England or Wales. This will extinguish legal parent status and parental responsibility from the surrogate mother and father if one has been named in the register of births. It will provide legal parent status and parental responsibility to the intended parents in England and Wales. To obtain a parental order, the intended parents must satisfy the criteria listed under Section 54 of the Human Fertilisation and Embryology Act 1990/2008.</p>	<p>status and parental responsibility for the child and grant the intended parents with legal parent status and parental responsibility.</p> <p>The Superintendent Registrar will upon instruction from the Judicial Greffe register the parent/s into a separate parental order register and then issue a Parental Order Certificate with the names of the intended parents on it in place of a birth certificate.</p> <p>In order to obtain a parental order, the intended parent/s must satisfy the criteria proposed as part of additional provisions governing parental orders in the 2002 Law, these criteria include:</p> <ul style="list-style-type: none"> • The gametes of at least one of the applicants have been used to bring about the creation of the embryo. • The applicants must be civil partners or married or two people in what the Court considers to be an "enduring family relationship". • The applicants must apply within 6 months from the date that the child was born (unless exceptional circumstances are present). • At the time of the application the child's home must be with the applicant/s. • The birth mother i.e. the surrogate who carried the child will have freely, with full understanding of what is involved, agreed unconditionally to the making of the parental order. <p>Once a parental order is made the parental order will be registered in the Jersey Parental Order Register to record the intended parent/s as the legal parent/s, and a parental order certificate will be issued, and the original birth certificate will be sealed. The birth certificate will be accessible only to the child once he or she is over 18 (in a similar way to an adopted child).</p>
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Children (Jersey) Law 2002 Amends

- 3.3 Article 1 of the Children (Jersey) Law 2002 - needs to contain definitions of the terms “Mother”, “Father”, “Second Female Parent” and “Parent”.
- 3.4 The definition of Mother is the birth mother who carried the child and gave birth to the child.
- 3.5 The definition of Father needs to include:
- a) a man who is married to or in a civil partnership with the birth mother, is biologically related to the child and who is named in the register of births, or
 - b) a man who is not married to or in a civil partnership with the birth mother, is biologically related to the child and who is registered as the father of the child as per Article 55 of the 2001 Law and is therefore named in the register of births, or
 - c) a man who is married or in a civil partnership to the birth mother, is not biologically related to the child, but who is therefore a father by virtue of Circumstance A and who is registered as the father of the child and named in the register of births, or
 - d) a man who is not married or in a civil partnership with the birth mother, is not biologically related to the child, but who is the father by virtue of Circumstance B and who is registered as the father of the child and named in the register of births.
- 3.6 The definition of Second Female Parent needs to include:
- a) a woman who is married to or in a civil partnership with the birth mother and who is therefore the second female parent by virtue of Circumstance C of these instructions and who is registered as the second female parent of the child and named in the register of births, or
 - b) a woman who is not married to or in a civil partnership with the birth mother and who is therefore the second female parent by virtue of Circumstance D of these instructions and who is registered as the second female parent of the child and name in the register of births.
- 3.7 The definition of Parent needs to include:
- a) a mother who automatically acquires parental responsibility, and
 - b) a father where he has acquired parental responsibility either by being registered as the child’s father or where the Court has granted him parental responsibility by Order or where he has acquired parental responsibility by agreement, or
 - c) a second female parent where they have acquired parental responsibility by being registered as the child’s second female parent, or
 - d) the adopter/s named on an adoption certificate, or
 - e) the applicant/s named in a parental order granted by the Court.
- 3.8 However, it should be noted in the definition of a parent that the parent/s shall have parental responsibility unless it is removed by the Court.
- 3.9 Article 1 paragraph 2 needs to state that references in this Law:
- a) to a child whose parents were married to, or in a civil partnership with each other at the time of the child’s birth include;
 - b) to a child whose parents were not married to, or in a civil partnership with each other at the time of the child’s birth do not include:
 - 1. a legitimated child within the meaning of the Legitimacy (Jersey) Law 1973

2. a child who was the subject of an adoption order under Article 10 of the Adoption (Jersey) Law 1961
 3. a child who was the subject of a parental order under this law
 4. a child otherwise treated in law as legitimate.
- 3.10 Article 3 of the Children (Jersey) Law 2002 should be amended to provide for a mother + mother couple (birth mother and spouse or civil partner) to acquire parental responsibility where the child has a parent by virtue of Circumstance C below.
- 3.11 Article 3 should also be amended to provide that where a child has a second female parent by virtue of Circumstance D below, that the second female parent should acquire parental responsibility providing she becomes registered as the second female parent of the child as per and amended provision of the Marriage and Civil Status (Jersey) 2001 Law.
- 3.12 Article 3(1) needs to be amended to provide that where a child's mother and father are in a civil partnership with each other at the time of the child's birth, both shall acquire parental responsibility in the same way to a married couple.
- 3.13 Article 3(2) needs to be amended to state that paragraph 2 applies where the mother and father were not married or in a civil partnership with each other.
- 3.14 Article 3 (2) needs to be expanded to provide that a second female parent shall not have parental responsibility unless they acquire it in accordance with the provisions of the amended Law.
- 3.15 In the Children Act 1989, section 4²⁰ enables acquisition of parental responsibility by a father similar to Article 5 of the 2002 law. The following section in the Children Act 1989, Section 4ZA²¹, enables acquisition of parental responsibility by a second female parent who is not in a civil partnership or marriage with the birth mother.
- 3.16 Article 5 of the 2002 Law should be amended to enable acquisition of parental responsibility by mother + mother couples who are not married or in a civil partnership provided the second female parent is named in the register of births.
- 3.17 Article 5 should also allow for mother + mother couples to provide by agreement parental responsibility to the second female parent where both the birth mother and second female parent are registered as the child's parents.

Parenthood as a result of artificial insemination

- 3.18 A particular definition of Mother specific to the purposes of artificial insemination is required for this part/section – The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and therefore no other woman, is to be treated as the mother of the child.
- 3.19 The above definition of mother should not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child.
- 3.20 The above definition of mother should apply irrespective of the location of the woman at the time of the placing in her of the embryo of the sperm and eggs.

²⁰ <http://www.legislation.gov.uk/ukpga/1989/41/section/4>

²¹ <http://www.legislation.gov.uk/ukpga/1989/41/section/4ZA>

- 3.21 The four provisions below will allow for the father or second female parent to be treated as the legal parent where the method of insemination was artificial insemination in Jersey law. This is important to provide legal parent status and subsequent parental responsibility for same sex couples and opposite sex couples who use artificial insemination of donor sperm as a method to have a child. These provisions will determine who is to be treated as the other parent of the child where a child is being or has been carried by a woman as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination.
- 3.22 The law needs to state that Circumstances A, B, C & D below apply in the case of a child who is being carried by a woman as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.
- 3.23 The above paragraph has effect subject to the proposed provisions outlined in paragraphs 3.32 – 3.36 where a partner of the birth mother dies. The provisions in those paragraphs will limit the purposes for which a person is treated as the child's other parent.

Circumstances A, B, C & D

A. Artificial Insemination of woman who is married to or in civil partnership with a man

- 3.24 It is proposed that where a woman is married to or in a civil partner of, a man at the time of the placing in her of the embryo, or of the sperm and eggs or of her artificial insemination, and the creation of the embryo carried by her was not brought about with the sperm of the other party to the marriage or civil partnership, then the other party to the marriage or civil partnership is to be treated as the father of the child, unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her artificial insemination.

B. Artificial Insemination of woman who is not married to or in a civil partnership with a man

- 3.25 The law needs to provide that if no man is treated as the father of the child as a result of provision A, and no woman is treated as a parent of the child as a result of circumstance C but –

The embryo or the sperm and eggs were placed in the woman or the woman was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person who is licenced by the Human Fertilisation and Embryology Authority or by a person discharging treatment as part of the Assisted Reproduction Unit (ARU) in Jersey;

And

If at the time when the embryo or the sperm and eggs were place in the woman or the woman was artificially inseminated:

- a) the agreed parenthood conditions (as set out in paragraphs 3.27 & 3.28 below) were satisfied in relation to a man, in relation to treatment provided to the woman under the licence or by the ARU, and
- b) the man remained alive at that time, and
- c) the creation of the embryo carried by the woman was not brought about with the man's sperm.

Then the man is to be treated as the father of the child.

C. Artificial Insemination of woman who is married to or in a civil partnership to a woman

3.26 The law needs to provide that if at the time of the placing in her of the embryo of the sperm and eggs or of her artificial insemination, the woman was party to a marriage or a civil partnership with another woman, then the other party to the marriage or civil partnership is to be treated as a second female parent of the child, unless it is shown that she did not consent to the placing in the woman of the embryo or the sperm and eggs or to her artificial insemination.

D. Artificial Insemination of woman who is not married to or in a civil partnership with a woman

3.27 If no man is treated as the father of the child as a result of circumstance A, and no woman is treated as a second female parent of the child as a result of circumstance C but –

The embryo or the sperm and eggs were placed in the woman, or the woman was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person who is licenced by the Human Fertilisation and Embryology Authority or by a person discharging treatment as part of the Assisted Reproduction Unit (ARU) in Jersey;

And

If at the time when the embryo or the sperm and eggs were placed in the woman, or the woman was artificially inseminated:

- a) the agreed parenthood conditions (as set out in paragraphs 3.27 & 3.28 below) were met in relation to another second woman, in relation to treatment provided to the woman under that licence, and
- b) the second woman remained alive at the time,

then the other woman is to be treated as a second female parent of the child.

3.28 It is also necessary to clarify in Law that where:

- a) a man is to be treated as the father of the child as a result of circumstance A or B, no other man is to be treated as the father of the child.
- b) a woman is treated as the second female parent of the child as a result of circumstance C or D, no man is to be treated as the father of the child.
- c) where the sperm of a man, or any embryo the creation of which was brought about with his sperm, was used after his death, he is not to be treated as the father of the child unless it is in accordance with the further provisions outlined in paragraphs 3.31 & 3.32 below.

3.29 The 2001 Law will also require amending so that where the agreed parenthood conditions are met and present, a second female parent can be registered as a parent of a child at the joint request of the birth mother and the person stating themselves to be second female parent of the child (see paragraph 3.38 below for further instructions to amend the 2001 Law).

Agreed Parenthood Conditions

- 3.30 It is proposed to create provisions to set out 'agreed parenthood conditions'²² that will enable a second person with no genetic links to the child, who is not married to the woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, to be registered as the child's parent and named on the child's birth certificate as a result of circumstances B and D above. This is provided the birth mother, or second person is not married to anyone else.
- 3.31 If this is the case, then the birth mother and the second person shall be able to be registered as the child's parents in the register of births, and named on the child's birth certificate so long as the embryo or the sperm and eggs were placed in the birth mother or the birth mother was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person who is licenced by the Human Fertilisation and Embryology Authority, or by a person discharging treatment as part of the Assisted Reproduction Unit (ARU) in Jersey.

And

At the time when the embryo or the sperm and eggs were placed in the birth mother or the time that the birth mother was artificially inseminated, the following parenthood conditions were met:

- a) the second person has given the clinician responsible a notice stating that they consent to themselves being treated as the father or second female parent of any child resulting from treatment provided to the birth mother under the licence, and
- b) the birth mother has given the person responsible a notice stating that the birth mother agrees to the second person being treated as a father or second female parent of the child resulting from the treatment, and
- c) neither the birth mother or the second person has, since giving notice under (a) or (b), given the person responsible notice of the withdrawal of the second person's or birth mother's consent to the second person being treated as a father or second female parent of any child resulting from the treatment, and
- d) the birth mother has not, since giving the notice under (b), given the person responsible a further notice under that subparagraph stating that the birth mother consents to a woman or man other than the second person being treated as a father or second female parent of any resulting child, and
- e) that the birth mother and the second person are not within any prohibited degrees of relationship in relation to each other as set out in Article 3 of the Marriage and Civil Status (Jersey) Law 2001.

The notices mentioned above must be in writing and signed by the person who is giving them.

Provisions where a partner of a birth mother dies

Use of sperm, or transfer of embryo, after death of the man providing sperm

- 3.32 Where a child has been carried by the birth mother as a result of the placing in her of an embryo or of sperm and eggs or of her artificial insemination, and the creation of that embryo was brought about using the sperm of a man after his death, or the creation of the embryo took place using the sperm of a man before his death but the embryo was placed in the birth

²² These conditions are similar to the agreed female parenthood conditions found in section 44 of the Human Fertilisation and Embryology Act 2008 - <http://www.legislation.gov.uk/ukpga/2008/22/section/44>

mother after the man's death, then provided the man consented in writing and had not withdrawn the consent:

- a) to the use of his sperm after his death the use of which has brought about the creation of the embryo carried by the birth mother, or to the placing in the birth mother after his death of the embryo which was brought about using his sperm before his death, and
- b) to being treated as the father of any resulting child and enabling the man's particulars to be entered as the particulars of the child's father in the relevant register of births, and
- c) the birth mother has elected in writing not later than 21 days from when the child was born for the man to be treated as the father of the child, and
- d) no one else is to be treated as the father of the child as a result of circumstance A or C of these instructions or parent of the child as a result of circumstance B or D of these instructions.

Then the man is to be treated as the father of the child and can be registered as the father of the child in the register of births.

3.33 Where a child has been carried by the birth mother as a result of the placing in her of an embryo and that embryo was created at a time when the birth mother was party to a marriage or civil partnership with a man, then provided:

- a) the embryo was not brought about by using the sperm of the other party to the marriage or civil partnership, and
- b) the other party to the marriage or civil partnership dies before the placing of the embryo in the birth mother, and
- c) the other party to the marriage consented in writing to the placing of the embryo in the birth mother after his death and to him being treated as the father of any resulting child and had not withdrawn that consent, and
- d) the birth mother has elected in writing not later than 21 days from the day on which the child was born for the man to be treated as the father of the child, and
- e) no one else is to be treated as the father of the child as a result of circumstance A or C of these instructions or to be treated as the parent of the child as a result of circumstance B or D of these instructions.

Then the man is to be treated as the father of the child and can be registered as the father of the child in the register of births.

Embryo transferred after death of spouse or civil partner who did not provide sperm.

3.34 Where a man was not married to the birth mother at the time of her treatment and the embryo was created during the course of treatment services provided to the birth mother in the United Kingdom by a person who is licenced by the Human Fertilisation and Embryology Authority or by a person discharging treatment as part of the Assisted Reproduction Unit (ARU) in Jersey, then provided the man consented in writing and had not withdrawn the consent:

- a) to the placing of the embryo in the birth mother after his death and to being treated as the father of any resulting child, and
- b) the creation of the embryo was not brought about with the sperm of that man, and
- c) the man died before the placing of the embryo in the birth mother, and
- d) immediately before the man's death the agreed parenthood conditions set out in paragraph 3.27 & 3.28 of these instructions were met, and
- e) the birth mother has elected in writing no later than 21 days after the birth of the child for the man to be treated and registered as the father of the child, and

- f) no one else is to be treated as father of the child as a result of circumstance A or C of these instructions or as a parent of the child as a result of circumstance B or D of these instructions.

Then the man is to be treated as the father of the child and can be registered as the father of the child in the register of births.

Embryo transferred after death of female spouse or civil partner

3.35 Where a child that has been carried by the birth mother as the result of the placing in her of an embryo and the embryo was created at a time when the birth mother was a party to a civil partnership or marriage to a woman and the other party to the civil partnership or marriage died before the placing of the embryo in the birth mother then provided the other party to the civil partnership or marriage consented in writing and had not withdrawn the consent:

- a) to the placing of the embryo in the birth mother after the death of the other party and to being treated as the second female parent of any resulting child, and
- b) the birth mother elected in writing no later than 21 days from the day which the child was born for the other party to be treated as the second female parent of the child, and
- c) no one else is to be treated as the father of the child by circumstance A or C of these instructions or the second female parent of the child by circumstance B or D of these instructions

Then the other party is to be treated as the second female parent of the child and can be registered as the second female parent of the child in the register of births.

3.36 Where the child that has been carried by the birth mother as the result of the placing in her of an embryo where at the time of creation the birth mother was not married to or in a civil partnership with the second woman but the embryo was created during the course of treatment services provided to the birth mother in the United Kingdom by a person who is licenced by the Human Fertilisation and Embryology Authority or by a person discharging treatment as part of the Assisted Reproduction Unit (ARU) in Jersey. Then provided the woman consented in writing and had not withdrawn that consent:

- a) to the placing of the embryo in the birth mother after the death of the other woman and to herself being treated and registered as the parent of any resulting child, and
- b) the woman died before the placing of the embryo in the birth mother, and
- c) immediately before the woman's death the agreed female parenthood conditions set out in paragraph 3.27 and 3.28 were met, and
- d) the birth mother has elected in writing before 21 days from the birth of the child to the woman to be treated as the parent of the child, and
- e) no one else is to be treated as the father of the child by circumstance A or C of these instructions or as the second female parent of the child by circumstance B or D of these instructions.

Then the woman is to be treated as the second female parent of the child and can be registered as the parent of the child in the register of births.

Persons not to be treated as father

3.37 The law needs to state where the sperm of a man, or an embryo which was created with his sperm was used after his death he is not to be treated as the father of the child unless the provisions set out in paragraph 3.29 and 3.30 are satisfied.

Woman not to be other parent merely because of egg donation

- 3.38 It is proposed that a woman is not to be treated as the second female parent of a child whom she is not carrying or has not carried, except as a result of:
- a) circumstance B of these instructions, or
 - b) circumstance D of these instructions, or
 - c) The provisions in paragraph 3.32 or 3.33 of these instructions

Marriage and Civil Status (Jersey) Law 2001 amends – acquisition of legal parent status by same sex couples who are both married or civil partners

- 3.39 Article 51 of the 2001 Law currently places a duty on the father or mother to inform the registrar of the birth of a child within 21 days. The use of the terms mother and father are problematic as they do not permit a same sex couple to both be informants and registered as the child's parents. The Law will need to be amended to place the same duty on a second parent or father and enable a second parent to register the birth of a child.
- 3.40 Currently registration of a birth and acquisition of legal parent status by a birth mother and father who are married is not set out in law. It is proposed to provide for the legal registration of a child where the birth mother and the father or second parent are married to each other or civil partners in the 2001 law.
- 3.41 The article should not require or permit the giving of particulars by the father or second parent or registration of the father by the Superintendent Registrar or second parent except at the:
- a) joint request of the mother and the person stating himself to be the father or the person stating himself to be the second parent of the child, or
 - b) request of the birth mother on production of a declaration made by the mother that that person is the father or second parent of the child and a declaration made by the spouse or civil partner stating themselves to be the father or second parent of the child, or
 - c) request of the person stating themselves to be the father or second parent of the child, on production of a declaration made by that person stating himself to be the father or second parent of the child, and a declaration made by the mother stating that that person is the father or second parent of the child.
- 3.42 Where the birth mother and father or second parent are married or in a civil partnership with each other, the second parent will be able to acquire legal parent status by being registered as the parent of the child. They will also be named on the birth certificate provided that circumstance A or C (see above) are met.
- 3.43 Article 55 of the 2001 Law provides for the registration of a child where the birth mother and father are not married at the time of the child's birth. The article currently does not permit the registration of a child where the birth mother and second female parent are not married at the time of the child's birth.
- 3.44 It is proposed to amend the 2001 Law to provide for a child to be registered where the birth mother and second parent are not married or in a civil partnership at the time of the child's birth and the birth mother was artificially inseminated.
- 3.45 Where the birth mother and second parent are not married or in a civil partnership with each other the second parent can be registered as the parent of the child and therefore named on

the birth certificate provided that circumstance B and D are met and the agreed parenthood conditions are signed and presented to the Registrar at the time of birth registration.

3.46 The amended law will need to provide that the registrar shall not enter the name of any person as a parent of the child except where:

- a) circumstance B is met in the case of a father who is not married or in a civil partnership with the birth mother, or
- b) circumstance D is met in the case of a second female parent who is not married or in a civil partnership with the birth mother.

3.47 Where either circumstance B or D is met the registrar shall register the birth at the joint request of the birth mother and the father or second female parent on production of a complete set of signed agreed parenthood conditions.

at the request of the birth mother, on production of –

- a) a declaration made by the birth mother that the person to be registered is the father of the child or that the person to be registered is the second female parent of the child, and
- b) a declaration made by the person to be registered stating themselves to be the father of the child or the person to be registered stating themselves to be the second female parent of the child, and
- c) a complete set of signed agreed parenthood conditions, or

at the request of the person to be registered as the father or at the request of the person to be registered as the second female parent, on production of –

- a) a declaration made by the person to be registered stating themselves to be the father of the child or the person to be registered stating themselves to be the second female parent of the child, and
- b) a declaration made by the birth mother that the person to be registered is the father of the child or that the person to be registered is the second female parent of the child, and
- c) a complete set of signed agreed parenthood conditions.

3.48 Where a birth mother and the father or second female parent make a request to the registrar in accordance with the aforementioned provisions, the giving of particulars of the birth of the child and the signing of the register by them in accordance with Article 72 of the 2001 Law shall act as a discharge of any duty imposed by Article 51 or 52 of the 2001 Law.

3.49 Provisions will need to be made so that where the registrar registers the birth, he or she shall record the child as the illegitimate child of the persons shown as parents of the child.

3.50 References to a child whose parents were not married to each other at the time of the child's birth shall be construed in accordance with the amended Article 1(2) of the Children (Jersey) Law 2002.

3.51 Article 57 needs to be amended to provide for a same sex couple to re-register the birth of their child after they marry or enter into a civil partnership. This will enable the child to be legitimised as a result of the marriage or civil partnership provided the agreed parenthood conditions were presented to the registrar at the time of the original registration.

3.52 Article 61 sets out that in the case of a stillbirth, it is the duty of the father or the mother or in default of the father and the mother, every person who assisted at the stillbirth to inform the registrar within the period of 5 days of the particulars of the stillbirth. In line with the changes to the duty to register a birth the terms father and mother are problematic as they prevent a same sex couple from being informants and registering the stillbirth.

Marriage and Civil Status (Jersey) Order 2018 amends

3.53 Article 46 of the Marriage and Civil Status (Jersey) Order 2018 (the “2018 Order”) sets out the particulars of a birth. The Article also instructs the registrar to enter those particulars in the Register of Births kept by that registrar.

3.54 The particulars currently required to register a birth will become problematic when a same sex couple attempt to register the birth of their child. It is therefore necessary to amend the particulars required by Article 46 of the 2018 Order for both a birth and stillbirth.

3.55 It is proposed that particulars (g) and (h) of Article 46(2) are reordered so that the details of the birth mother or birth parent appear first.

3.56 Article 46(2)(g) currently requires the forenames, surname and occupation or profession of the father. This needs to be amended to require the forenames, surname and previous surname (if any) and occupation or profession of the father or parent.

3.57 Article 46(2)(h) currently requires the forenames, surname and maiden surname and occupation or profession of the mother. This needs to be amended to require the forenames, surname and previous surname (if any) and occupation or profession of the birth mother or birth parent.

3.58 Article 46(2)(i) requires the address of the mother and father is provided, this particular should be amended to require the address of the parents.

3.59 Article 46(2)(j) should be amended to require the date and place of the parents marriage or civil partnership(if any).

3.60 Article 46(3) provides the particulars that are required where a stillbirth is to be registered. It is proposed that particulars (g), (h) and (i) are amended in the same way as the particulars for a birth as described in paragraphs 3.53 to 3.57.

3.61 Article 47 deals with the particulars required where a declaration for the re-registration of a birth where the child’s parents have since married or as a result of these instructions, married or entered into a civil partnership.

3.62 Article 47(e) requires the details of the parent’s marriage including:

- a) Article 47(e)(i) the forenames and surname of the mother,
- b) Article 47(e)(ii) the forenames and surname of the father,
- c) Article 47(e)(v) a statement as to whether the father is named on the original birth certificate,
- d) Article 47(e)(vi) if the father is named on the original birth certificate, a declaration by the father or mother (signed and dated that they are the parents of the child and they wish to re-register the birth of the child following their marriage, and
- e) Article 47(e)(vii) if father is not named on the original birth certificate, a declaration by the mother and father (signed and dated) that they are the parents of the child and they wish to re-register the birth of the child following the marriage.

3.63 The following amends are required to the particulars mentioned in the paragraph above:

- a) Article 47(e)(i) the forenames and surname of the birth mother or birth parent,
- b) Article 47(e)(ii) the forenames and surname of the father or parent,
- c) Article 47(e)(v) a statement as to whether the father or parent is named on the original birth certificate,
- d) Article 47(e)(vi) if the father or parent is named on the original birth certificate, a declaration by the birth mother or birth parent, or father or parent (signed and dated) that they are the parents of the child and they wish to re-register the birth of the child following their marriage or civil partnership, and
- e) Article 47(e)(vii) if the father or parent is not named on the original birth certificate, a declaration by the birth mother or birth parent and father or parent (signed and dated) that they are the parents of the child and they wish to re-register the birth of the child following their marriage or civil partnership and where the child was conceived as a result of circumstance B or D of these instructions a set of signed agreed parenthood conditions.

3.64 Article 51 sets out that a certificate of registration of a stillbirth shall contain the listed particulars. A number of these particulars require amendment as they become problematic where the child's parents are a same sex couple.

3.65 The same amendments made to the particulars required for the registration of a stillbirth in Article 46(3) need to be made to the particulars provided on a certificate of registration of stillbirth so that the particulars recorded on certificate correspond to those in the register of stillbirths.

Section 4: Parental Order Law Drafting Instructions

Power to make parental orders

- 4.1 It is proposed to add provisions to the Children (Jersey) Law 2002 to enable the Royal Court to be able to make a parental order for a child with a Jersey birth certificate. The purpose of a parental order is to in Jersey extinguish all parental responsibility for a child at the point in time that the parental order is made and reallocate legal parent status and parental responsibility to the applicant or applicants.

Restrictions on making parental orders

- 4.2 The law needs to make provisions that do not allow the Court to proceed to hear an application for a parental order in relation to a child where a previous application for a parental order made in relation to the child by the same applicants was refused by the Court. Unless, in refusing the previous application the Court in question directed that this bar would not apply, or it appears to the Court that because of a change in circumstances or for any other reason it is proper to proceed with the application.

Sole applicant

- 4.3 It is proposed that the law will be amended to enable the Royal Court to make an order providing for a child to be treated in law as the child of the applicant upon an application made in the prescribed manner by a sole person resident in Jersey.

Joint applicants

- 4.4 Where an application is made under the amended law in the prescribed manner by two persons jointly, at least one of whom is resident in Jersey the Court may make an order providing for the child to be treated in law as the child of the applicants if and only if, the two persons are married to each other, in a civil partnership with each other, or otherwise living as partners in an enduring family relationship²³. It is irrelevant whether the two persons are of different gender or the same gender.
- 4.5 Regardless of whether the applicant is a sole applicant or two persons the amended law needs to state that:
- a) neither of the applicants can be the birth mother, and
 - b) the gametes of at least one of the applicants must have been used to bring about the creation of the embryo, (if neither of the applicants' gametes have been used then it would be reasonable for the applicants to adopt the child) and
 - c) a parental order can only be made by the Court where the birth mother has carried the child as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination, and
 - d) A parental order can only be made in Jersey for a child that has a Jersey birth certificate.
- 4.6 The application for a parental order must be made within a 6-month period beginning on the date of the child's birth. At the time of the application the child must live with the applicant/s and at the time of the making of the order the applicant/s must have reached the age of 18.

²³ An enduring family relationship does not include two persons one of whom is related to the other as a parent, grandparent, sister, brother, aunt or uncle

- 4.7 The Court must be satisfied that both the father of the child, and the birth mother of the child have freely and with full understanding agreed unconditionally to the making of the parental order.
- 4.8 The Court will not require the agreement of a person who cannot be found or is incapable of giving agreement to make a parental order. Furthermore, the agreement of the woman who carried the child shall be ineffective if given by her less than 6 weeks after the child's birth.
- 4.9 The Court when making the parental order must also be satisfied that no money or other benefit other than expenses reasonably incurred has been given or received by either of the applicants unless authorised by the Court.
- 4.10 A parental order relating to the child must not have previously been made, unless the order has been quashed or an appeal against the previous parental order has been allowed by the Court.

Duty to promote the welfare of the child

- 4.11 The amended law shall require that in reaching any decision relating to an application for a parental order, the Court will be required to have regard to all of the circumstances surrounding the application and that first consideration will be given to the need to safeguard and promote the welfare of the child throughout their childhood.

Consequences of a parental order

- 4.12 When a parental order has been granted for a child, that child shall be treated in law as if he or she were not a child of any other person other than the applicant or applicants.
- 4.13 Where the applicants are a married couple at the time of application, the child shall be treated as if they had been born as a child of the marriage where the child was born after that marriage was solemnized or registered. This will include where the applicants are married, the child being treated as being born in wedlock. Where the applicants are in a civil partnership, the child will be treated as having been born in the course of that civil partnership.
- 4.14 The amended law will need to – when a parental order is made by the Court – extinguish the parental responsibility that any person has for the child immediately before the making of that order. Any order made prior to the parental order under the Children (Jersey) Law 2002 shall also be extinguished unless the Court directs otherwise. Any duty arising by virtue of an agreement or the order of a court to make payments in respect of that child's maintenance or upbringing for any period shall also be extinguished.
- 4.15 The applicant or applicants shall have parental responsibility for the child once a parental order is granted.
- 4.16 The amended law will require that a parental order certificate is created by the Superintendent Registrar, this parental order certificate will supersede the birth certificate and as such reallocate legal parent status to the applicant/s named on the parental order certificate.
- 4.17 If it becomes necessary to appoint a guardian for a child who is the subject of a parental order the applicant or applicants and the relatives of the applicant or applicants shall, in all matters relating to the formation of the guardianship, be deemed to be relatives of the child who is subject to a parental order. Where a child who is subject to a parental order is under guardianship, the Court shall order that the guardianship be reconstituted.

Functions of Court as to parental orders

4.18 The Court before making a parental order shall need to be satisfied that every person whose consent is necessary under the Law, and whose consent is not dispensed with, has consented to and understands the nature and effect of the parental order for which the application is made, and in particular in the case of any person with parental responsibility that they understand the effect of the parental order will be to permanently extinguish his or her parental responsibility for the child.

Intestacies

4.19 Provisions will need to be created so that where:

- a) at any time after the making of a parental order, the applicant or applicants or child subject to the parental order dies intestate, in respect of any real or personal property, that property shall devolve in all respects as if the child subject to a parental order were the child of the applicant or applicants and were not the child of any other person.
- b) a child is subject to a parental order the child shall be deemed to be the child of the applicant/s and not the child of any other person for all the purposes of the law relating to the right of a person to succeed to the personal property of their ascendants.
- c) in any disposition of real or personal property made after the date of a parental order, the amended law must treat any reference to the child or children of the applicant/s in a way that shall unless contrary intention appears, be construed as a reference to the child subject to the parental order.

4.20 It is proposed that the amended law will in any disposition of real or personal property made after the date of a parental order, ensure that a reference to any child or children of the surrogate parents must be treated as not being, or as not including, a reference to the child who is subject to the parental order, unless the will of the deceased states otherwise.

4.21 It is also proposed that the amended law in any disposition of real or personal property made, after the date of an parental order, ensure that any reference to a person related to the individual subject to the parental order in any degree shall, unless it is stated otherwise, be construed as a reference to the person who would be related to the child subject to the parental order in that same degree as if the individual were the child of the applicant or applicants and were not the child of any other person.

4.22 It is proposed that the amended law ensure that a child subject to a parental order born before a natural child shall rank as principal heir in preference to any other natural child.

4.23 The amended law needs to make provisions so that in the application of the law regarding the devolution of acquired real property and personal property, a child subject to a parental order shall be deemed to be related to any other person being the child or adopted child of the applicant or applicants.

4.24 Where the application is made by two spouses jointly, the child subject to a parental order shall be treated as a brother or sister of whole blood to any other natural child of the applicants. In any other case, the child subject to the parental order should be treated as brother or sister of half-blood.

- 4.25 The amended law needs to set out that there will be no duty on an executor to ascertain if a parental order is present for any person who may be entitled to any interest within the personal estate of a deceased person.
- 4.26 The law needs to set out that nothing written in this law shall effect the devolution of any property on the intestacy of, or any right to the personal property of, any person who died before the date that this amended law came into force.

Parental Order Register

- 4.27 It is proposed that the amended law requires the Superintendent Registrar to maintain a Parental Order Register, in which shall be made entries to register parental orders as granted by the Royal Court, no other entries shall be made in the register.
- 4.28 A certified copy of an entry in the Parental Order Register, if signed by the Superintendent Registrar shall without any further or other proof of that entry be received as evidence of the granting of a parental order and reallocation of parental responsibility and legal parent status for the child concerned. Where the entry contains a record of the date of birth or parish of the birth of the person subject to a parental order that entry shall be received as evidence of that date or parish in all respects as if the copy were a certified copy of an entry in the Registers of Birth.
- 4.29 The Superintendent Registrar shall, in addition to the Parental Order Register and the index thereof, keep such other registers and books, as may be necessary to record and make traceable the connection between any entry in the Registers of Births which has been marked "Parental Order" as prescribed by a later part of these law drafting instructions and the corresponding entry in the Parental Order Register.
- 4.30 The aforementioned registers and books shall not be open to public inspection or search except under an order from the Royal Court. The Superintendent Registrar shall not provide any person with any information contained in or with any copy of extract from any such registers or books.

Registration of parental orders

- 4.31 It is proposed that the amended law shall require each parental order to contain a direction to the Superintendent Registrar to make in the Parental Order Register an entry including the fields set out below.

Prescribed parental order particulars:

Entry number (this being the number of the entry into the Parental Order register).

Surname of child

Forename of child

Sex of child

Date of birth

Place of birth

Parent's forename(s) and surname and birth surname if applicable

Parent's occupation

Second parent's forename(s), surname and birth surname if applicable

Second parent's occupation

Parent's address

Date of parental order

Date of registration

Name and signature of Superintendent Registrar

- 4.32 It would also be sensible to take this opportunity to amend the adoption certificate particulars prescribed in Schedule 1 of the Adoption (Jersey) Law 1961 to match as closely as possible those of a birth certificate so that there is as little difference between a birth certificate, parental order certificate and an adoption certificate as possible.

Amended prescribed adoption order particulars:

Entry number (this being the number of the entry into the Adoption Order register)
Surname of child
Forename of child
Sex of child
Date of birth
Place of birth
Adopter's forename(s) and surname and birth surname if applicable
Adopter's Occupation
Second adopter's forename(s), surname and birth surname if applicable
Second adopter's occupation
Adopter's address
Date of adoption order
Date of registration
Name and signature of Superintendent Registrar

- 4.33 The amended law needs to make provision so that any application for a parental order is proved to the satisfaction of the Court that the identity of the child subject to the parental order corresponds to an entry for a child in the Register of Births. Any parental order made as a result of the application needs to contain a direction to the Superintendent Registrar to cause the entry in the Register of Births to be marked "Parental Order".
- 4.34 The amended law needs to also require the Judicial Greffier to communicate every parental order made by the Royal Court to the Superintendent Registrar, and upon receipt of the communication the Superintendent Registrar will be required to comply with the instructions in the amended Law to update the appropriate registers.

Amendment of parental orders and rectification of registers

- 4.35 It is proposed that the amended Law allows the Court to consider an application within three months of the granting of the parental order, by a spouse or civil partner to give a new name to the child either in lieu of or in addition to a name specified in the Parental Order Register as a result of the granting of the parental order. The Court may also if satisfied that a direction for the marking of an entry in the Registers of Births or Parental Order Register was wrongly included, revoke that direction upon the application of any person concerned.
- 4.36 Where a parental order is amended, or a direction revoked as a result of the instructions in the paragraph above, the Judicial Greffier shall cause the amendment to be communicated to the Superintendent Registrar, who shall amend the entry in the Parental Order Register accordingly; or cause the marking of the entry in the Registers of Births or the Parental Order Register to be cancelled.
- 4.37 Where a parental order has been amended, any certified copy of the relevant entry in the Parental Order Register that may be issued as per these instructions shall be amended as a result of the successful application to the Court. A copy or extract of an entry in any register

which has been cancelled shall only be deemed to be an accurate copy if both the marking and the cancellation are omitted from any certified copy issued.

Disclosure of birth records of a person who is the subject of a parental order

- 4.38 It is proposed that a process similar to the one used by a person who was adopted to access their original record of birth be replicated to provide access to a record of birth where a person was subject to a parental order. Therefore, a person who was subject to a parental order may obtain a certified copy of the record of their birth if:
- a) They are over the age of 18, and
 - b) They have paid the fee as prescribed by Order by the Minister for Health and Social Services, and
 - c) They apply in the manner prescribed by Order by the Minister for Health and Social Services.
- 4.39 Before supplying any information to the applicant, the applicant needs to be informed that counselling services are available. It is the duty of the Minister for Health and Social Services to provide counselling services for the applicant if they are requested.

Retrospective recognition of parental orders granted in England and Wales

- 4.40 It has come to light in discussions with the Law Officers Department that parental orders granted in the courts of England and Wales have no jurisdiction in Jersey as noted in paragraph 2.13, 2.14 & 2.15.
- 4.41 There are currently children living in Jersey whose intended parents sought parental orders that were granted in English or Welsh courts after seeking private legal advice in Jersey. The Law Officers Department have concluded that while untested in a Court, parental orders granted in England and Wales do not have jurisdiction in Jersey. The General Registrar also does not have jurisdiction in Jersey and as such cannot order the sealing of Jersey birth certificates, a process that is normal during the parental order process for an English or Welsh child.
- 4.42 It has been mooted that facilitating the retrospective recognition in Jersey of parental orders granted in England and Wales prior to the implementation of an amended law, which would allow Jersey Courts to grant parental orders, would avoid possible significant reputational risk to the Minister for Children and Housing and the Minister for Health and Social Services.
- 4.43 Being seen to not take steps to resolve a legal oversight that to some individuals might be extremely worrying as it currently leaves parents who have been granted parental orders in England and Wales with doubts as to the validity of their legal parent status in Jersey. The concern is understandable and could also lead to significant negative press coverage. Attention will be drawn to this issue due to efforts to introduce Jersey parental orders, a policy intervention which will stop these situations occurring in the future.
- 4.44 The Court will need to be able to recognise parental orders made in by the courts of England and Wales as having the same effect and function as a parental order made in Jersey when an application is made to the Court. The application to the Court for retrospective recognition of a parental order made in England and Wales will need to be made in a prescribed manner and all parties who have held parental responsibility for the child subject to the original parental order

would need to provide written consent as part of the application process, if they are able, this would include the current parents, birth mother and her spouse or civil partner if they were registered on the birth certificate.

- 4.45 The amended Law should enable the Court to recognise a parental order made by the courts of England or Wales before the coming into force of these amends to have had jurisdiction in Jersey from the date it was made.
- 4.46 The Law needs to require the Judicial Greffier to communicate every successful application for retrospective recognition of a parental order made by the Court to the Superintendent Registrar, and upon receipt of the communication the Superintendent Registrar shall comply with the instructions in the amended Law to update the appropriate registers.
- 4.47 The amended Law needs to make provision so that the identity of any child subject of an application for retrospective recognition of a parental order granted in England or Wales, is proven to the satisfaction of the Court to correspond with an entry for a child in the Register of Births.
- 4.48 Where an application for recognition of a parental order is successful the Court shall order that the original Jersey birth certificate be sealed by the Superintendent Registrar and a parental order certificate be issued. The entry in Register of Births shall also be marked as "Parental Order" and a corresponding entry created in the Parental Order Register.
- 4.49 Consideration has been given as to if the views of the child should be sought as part of the retrospective recognition of parental orders process. It is important, if possible, that the Court have regard to the views of the child subject to the parental order, where the child is of a suitable age, if their views are to be sought due allowance should be given for their age and maturity.

Section 5: Step Parent Responsibility Law Drafting Instructions

Type of relationship	Stepparents in any type of relationship O/S or S/S Marriage or civil partnership
Current	Proposed
No recognition in Jersey Law.	Stepparent agreement to be recognised in Jersey Law. Can be same sex or opposite sex as other law amendments will allow registration on birth cert.

- 5.1 The 2002 Law should be amended to allow for the acquisition of parental responsibility by a stepparent via a stepparent parental responsibility agreement (SPPRA). Where that step-parent is married to, or in a civil partnership with, the child's parent but only where the parents ex-partner or ex-spouse who is named on the child's birth certificate and has parental responsibility for that child agrees to the making of the agreement.
- 5.2 The stepparent cannot be someone who is only co-habiting with the parent although this does not preclude the co-habiting stepparent from adopting the child subject to the provisions and requirements of the Adoption (Jersey) Law 1961.
- 5.3 The SSPRA should be made in a prescribed form. The Minister should have the powers to amend the form and provide for the information to be provided. See below as an example a step-parent parental responsibility agreement; Section 4A (1)(a) Children Act 1989 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687729/c_pra2_eng.pdf)
- 5.4 A separate agreement would be needed in relation to each child that the stepparent is to have responsibility for.
- 5.5 A SSPRA can be entered into:
- a) if all the other people with parental responsibility for the child also agree that the stepparent should have parental responsibility, or
 - b) if the Court orders, on receipt of an application that the stepparent should have parental responsibility.
- 5.6 An application may be made by:
- a) anyone who has parental responsibility for the child, or
 - b) the child, if they have the Court's permission to apply and if the Court is satisfied that the child has sufficient understanding to make that application
- 5.7 A SSPRA can only be ended by Court order. The agreement will also end on the child's 18th birthday.

Section 6: Legitimacy Law Drafting Instructions

Legitimacy should apply in relation to civil partnerships as well as marriages

- 6.1 It is proposed that the Legitimacy (Jersey) Law 1973 is amended, the law currently does not make any allowance for children whose parents, regardless of gender, have entered into a civil partnership with each other. The Law also needs to be amended so children are legitimate regardless of whether their parents are married to each other or in a civil partnership.
- 6.2 Currently under Jersey law a child is legitimate if they are:
- a) born to parents who are married to each other, regardless of whether they were married at the time when the child is conceived, or
 - b) or conceived before the parents obtained a divorce (i.e. they might not still be married at the point of birth)
- 6.3 The concept of legitimacy and illegitimacy in Jersey is set out in the following:
- Legitimacy (Jersey) Law 1973
 - Legitimacy Rules 1974
 - Legitimacy and Illegitimacy (Re-registration of births) (Jersey) Regulations 1974
- 6.4 These pieces of legislation only allow for the concept of legitimacy to apply in relation to children born to opposite sex parents who may or may not have been married. The laws need to be amended to reflect the fact that a child can be the legitimate child of two women or two men providing:
- a) they were either married or in a civil partnership with each other at the time at which the child was born, or
 - b) they were either married or in a civil partnership with each other at the time at which the child was born and a parental order has been granted by the Court, or
 - c) that the child was conceived before the parents obtained a divorce or dissolution of their civil partnership.
- 6.5 At the point at which the Civil Partnership (Jersey) Law 2012 was introduced the issue of legitimacy in relation to the child of civil parents was not addressed for the same reasons that the issue of parental responsibility was not addressed; at the time it was perceived as beyond what was required. However, it is now felt that these outstanding issues need to be addressed as they do not promote the government's policy objectives, that marriage and civil partnerships should be treated equally and that same-sex couples should be treated in the same way as opposite sex couples as far as it is reasonably possible.
- 6.6 Article 2(1) of the 1973 Law states that a child who is legitimate by birth is a child born or conceived during the subsistence of lawful marriage of whom the father is the husband of the wife.
- 6.7 This sub-paragraph is problematic for a number of reasons, it firstly requires the couple to be married, it also requires the father to be the husband of the mother. It is proposed that the law

should be amended so that a child who is legitimate by birth can include a child conceived during both a marriage or civil partnership. Furthermore, it is proposed that the references to gender be expanded to include;

- a) the father who is the civil partner of the birth mother,
- b) the second mother who is the wife or civil partner of the birth mother.

- 6.8 Article 2(2) states that the presumption of legitimacy (i.e. that the husband is the father of the child) may be rebutted only by strong and satisfactory evidence. Whilst this presumption remains in relation to fathers who are married to birth mothers, it is proposed that this sub paragraph is amended to include wording of the same effect that covers female same sex relationships if the child was conceived by artificial insemination.
- 6.9 Article 4 of the 1973 Law sets out the child will become a legitimate child if, during the child's lifetime, the mother and father marry and the father, either before or at the time of the marriage acknowledges himself as the father of the child. Article 4 will need to be amended to recognise that if, during the lifetime of the child, the father and mother enter into a civil partnership or marriage and the father either before, at the time of or after the civil partnership, acknowledges himself to be the father of the child.
- 6.10 Article 4 will also need to be amended so that where a child has a second female parent and, at the time of birth (or conception) the birth mother and second female parent were not married or in a civil partnership with each other, but during the course of the child's lifetime they marry or enter into a civil partnership with each other, the child will be legitimate from the date of the marriage or civil partnership.
- 6.11 If a child has been the subject of a parental order, should the parents of the child marry or form a civil partnership during the course of the child's lifetime the child will be legitimate from the date of the marriage or civil partnership.
- 6.12 Article 6(1) needs to be amended to recognise that a declaration of legitimacy can also be based on the fact that a person's parents were in a civil partnership (as opposed to just recognising marriage) and that the marriage or civil partnership may be between parents of the same gender as opposed to just between a mother and a father. Or between grandparents of the same gender, as opposed to just between a grandfather and a grandmother.
- 6.13 Article 7 of the 1973 Law sets out that a declaration of illegitimacy can be sought by the following persons:
- a) the man who is presumed to be the father as per Article 2 (i.e. the husband of the birth mother)
 - b) the mother
 - c) a man who claims to be the father
- 6.14 This article needs to be amended so that a declaration of illegitimacy can also be sought by the second mother in the event that the second mother has evidence that the child was not conceived via treatment (i.e. the birth mother conceived the child via sexual intercourse).
- 6.15 Article 8 deals with evidence based on the question of adultery. By definition, adultery currently can only be committed people of the opposite sex, therefore whilst adultery is relevant in relation to a wife, who is married to a man, having an adulterous relationship, it does not deal with the following scenarios:
- a) a man, who is married or in a civil partnership with a man, conceiving a child through intercourse with the birth mother, or

- b) a birth mother, who is married to, or in a civil partnership with a woman, conceiving a child through intercourse with a man.

6.16 If same-sex relationships are to be treated equally then the definition of adultery should be expanded to include these scenarios. Similarly, if the ground of adultery was to have continued use within the Matrimonial Causes (Jersey) 1949 Law it would also need to be amended to acknowledge that adultery can be committed with members of the same sex. Changes to the 1949 Law are scheduled to be made next year as part of efforts to reform divorce in Jersey, it is proposed that these amendments are included as part of those changes.

Legitimacy and Illegitimacy (Re-registration of births) (Jersey) Regulations 1974

- 6.17 Both Article 3(2)(b)(i) & (ii) need to be amended to allow a former surname to be entered in either column as either partner may have a former surname in a same-sex relationship.
- 6.18 Article 3(2)(b)(i) needs to be amended to reflect that the registry entry to be amended may not include the details of a father or mother (i.e. the entry could have two mothers or two fathers).
- 6.19 Article 3(2)(b)(ii) needs to be amended to reflect that the registry entry to be amended under the heading "Forenames, surname and maiden surname of mother" could be male or female. As such the wording needs to allow an amendment of either sex and to change the term maiden name to former name.
- 6.20 The Wills and Successions (Jersey) Law 1993 does not differentiate between a spouse or civil partner and treats them as the same. Apart from where a spouse or civil partner is living apart in which case different Articles of the Law deal with spouses and civil partners living apart but both are essentially treated the same.

Re-registration of birth of a legitimated person

- 6.21 It is important to note that this amendment is covered in recently issued Opposite Sex Civil Partnership Law Drafting Instructions
- 6.22 The Marriage and Civil Status (Jersey) 2001 Law provides in Article 57 for the re-registration of the birth of a person who is legitimated as a result of their parents' subsequent marriage. It needs to be amended to provide for the formation of a civil partnership and subsequent same-sex marriage.
- 6.23 Article 57(1) also needs to provide for a person being legitimated by the subsequent marriage or civil partnership of his/her parents (as opposed to mother and father).