

## Divorce reform, future of civil partnerships, age of marriage

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### SUMMARY

1. The Minister for Home Affairs wishes to seek Islanders views on three issues - divorce reform, the future of civil partnerships and age of marriage.
  - a. Divorce reform: In September 2015, the States Assembly agreed in principle that new divorce legislation should be introduced and that consideration should be given to:
    - removing the three year bar on divorce - at the moment you have to be married for three years before filing for divorce
    - moving to 'no fault divorce' – allowing a person to file for divorce without having to claim that their spouse was a fault
    - introducing joint filing for divorce
    - removing the ability to contest a divorce
  - b. Future of civil partnerships: In June 2018, the UK Supreme Court ruled that it is discriminatory to only allow same-sex couples to enter into a civil partnership. Jersey needs to consider whether to amend its law to:
    - extend civil partnerships to opposite sex couples, in addition to same sex couples, or
    - close civil partnerships to new couples, but retain existing civil partnerships.
  - c. Age of marriage: The United Nations Committee on the Convention of the Rights of the Child has recommended that Jersey no longer allows 16 and 17 years olds to get married. Consideration needs to be given as to whether the minimum age of marriage should be raised to 18 years.

## WAYS TO COMMENT OR ASK QUESTIONS

2. The Home Affairs Minister would like to hear your comments on divorce reform, the future of civil partnerships and the age of marriage.
3. You can comment online here <https://survey.gov.je/s/divorcereform/> or via email or post using the details below.

Email: b.sandeman3@gov.je  
Post: Ben Sandeman  
Programme Manager,  
Cyril Le Marquand House,  
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You can also attend a public meeting

22<sup>nd</sup> January 18:30 – 20:00, 23<sup>rd</sup> January 12:00 – 13:00 and 24<sup>th</sup> January 18:30 – 20:00

All meetings will take place at St Paul's Centre

Closing date for comments **Friday 22nd February 2019**

### How we will use your information

The information you provide will be processed by the Community and Consultation Affairs Department in compliance with the Data Protection (Jersey) Law 2018 for the purposes of this consultation. For more information, please read our privacy notice at the end of this document.

The States of Jersey may quote or publish responses to this consultation including *(sent to other interested parties on request, sent to the Scrutiny Office, quoted in a published report, reported in the media, published on [www.gov.je](http://www.gov.je), listed on a consultation summary etc.)* but will not publish the names and addresses of individuals without consent. Confidential responses will still be included in any summary of statistical information received and views expressed. Under the Freedom of Information (Jersey) Law 2011, information submitted to this consultation may be released if a Freedom of Information request requires it but no personal data may be released.

Do you give permission for your comments to be quoted?

1. No
2. Yes, anonymously
3. Yes, attributed

Name to attribute comments to:

Organisation to attribute comments to, if applicable:

# Consultation

## Divorce reform, future of civil partnerships, age of marriage

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### Introduction

4. This consultation document has three sections:

Section 1: Divorce Reform (page 4 to 11)

Section 2: Future of civil partnerships (page 12 to 17)

Section 3: Age of marriage (page 18 to 21)

At the end of each section, there are key questions which you can answer if you wish. You may also provide any additional comments that you want, or submit any further information.

5. The deadline for receipt of comments is Friday 22<sup>nd</sup> February 2019. A feedback report summarising the responses received and proposed next steps will be published by the Home Affairs Minister at the latest 8 weeks after the consultation closes.

## SECTION 1: DIVORCE REFORM

### Overview

6. Divorce<sup>1</sup> is a fact of life<sup>2,3</sup> Regardless of how much people, and society as a whole, invest in marriage it is the case that relationships breakdown. When they do it is usually an extremely stressful and traumatic process.
7. From a policy perspective, it is not in anyone's interest to force people to stay in unhappy relationships or to make the process of divorce difficult. Nor is it in anyone's interest to undermine marriage by making it too easy to walk away. The law, whilst never undermining the stability of marriage, should work to minimise unnecessary conflict when a marriage has irretrievably broken down. Such conflict only serves to further damage the couple and any children they may have.
8. Proposed changes to Jersey's existing divorce law could include:
  - moving to 'no fault' divorce – allowing a person to file for divorce without having to claim that their spouse was at fault
  - allowing couples to jointly file for divorce where both believe their marriage has irretrievably broken down – removing the need for one to instigate proceedings against the other
  - removing the requirement for couples who have filed for divorce, but are not yet divorced, to live separately. Allowing them to continue to live together can potentially help facilitate reconciliation
  - removing the ability of one spouse to contest the other spouse's application for divorce
  - removing the three year bar on divorce - at the moment you have to be married for three years before filing for divorce
9. None of the proposed changes are intended to make divorce 'easy' – the focus is on diffusing potential conflict, building in time for reflection and trying to support divorcing couples to maintain a reasonable relationship with each other.

<sup>1</sup> Throughout this consultation document the terms divorce has been used. This is intended to include dissolution of a civil partnership but the term divorce is used for ease of reading.

<sup>2</sup> Approximately 240 to 260 couples petition for divorce each year in Jersey. Due to the way statistics are collected, it is difficult to draw UK/Jersey comparisons, although it is known that 0.37% of the UK population divorced in 2012, compared to 0.39% of the Jersey population.

<sup>3</sup> Civil partnerships were introduced in Jersey in 2012. 15 couples entered a civil partnership in Jersey in 2017. There have been no dissolutions of civil partnerships over that period.

### Note: Public attitudes toward divorce

In January 2018 a small scale digital survey was undertaken to kick-start the process of understanding more about public attitudes towards our divorce law.

972 people participated in that survey which found that:

66% of survey respondents agreed that Jersey should introduce no-fault divorce.

69% of survey respondents did not know that there was a 3 year bar to applying to get divorced

60% of survey respondents said they believed the 3 year bar should be lifted

### **Grounds for divorce**

10. Currently when a person files for divorce in Jersey they must cite the grounds for that divorce (i.e. state the reason why they want to get divorced). Grounds for divorce in Jersey are based on a period of separation (i.e. the spouses do not live together) or on 'fault' (i.e. one spouse declares the other spouse to be fault)

11. There are two period of separation in relation to divorce<sup>4</sup>:

- a. the spouses have lived apart continuously for at least 1 year if both spouses agree to get a divorce, or
- b. the spouses have lived apart continuously for at least 2 years if only one spouse want to divorce.

Both must be continuous periods. This means that if the couple spend a single night together, the clock needs to start again. This does not support couples to see if they can reconcile their differences. Indeed the requirement for a continuous period of separation actually deters attempts at reconciliation.

12. There are five grounds for fault:

- a. adultery<sup>5,6</sup>: a spouse has committed adultery and the other finds it intolerable to live with them
- b. desertion: a spouse has deserted the other for two years or more
- c. unreasonable behaviour: a spouse has behaved in such a way that it is unreasonable to expect the other to live with them (for example: violence or abuse, drunkenness or drug-taking, refusing to financially contribute)

<sup>4</sup> These periods of separation are lower than England & Wales which currently stand at 2 years and 5 years.

<sup>5</sup> Adultery is defined as an act between a man and a woman. It cannot be cited if a spouse has an affair with someone of the same-sex (i.e. a man who is married to a woman cannot cite adultery if his wife has an affair with another woman, only if she has an affair with another man)

<sup>6</sup> Adultery is also defined as as a penetrative act. It does not include other sexual acts.

- d. mental disorder: a spouse has a mental disorder for which they have been continually receiving care or treatment for at least five years
  - e. imprisonment: a spouse has been sentenced to life imprisonment or for not less than 15 years
13. Jersey is one of only a relative few jurisdictions<sup>7</sup> that has fault-based divorce, as opposed to no-fault divorce or broader based grounds such as irretrievable breakdown.
  14. Fault-based divorce can be a major contributor to conflict, as one partner is required to state that the other is at fault. In truth, however, it cannot be known if the “innocent party” substantially or wholly contributed to the marriage breakdown. They are merely the person who filed for divorce and cited the fault. Where fault is cited, the other partner rarely defends themselves even if the accusations are unfair. It is expensive to do so (i.e. legal fees) and there are no associated financial benefits. Contrary to common beliefs, the Courts do not award the ‘innocent’ party a greater proportion of assets.
  15. Given that fault-based divorce provides no financial benefit and can be grossly unfair, it is reasonable to question if it should be retained. Fault-based divorce does nothing to support forgiveness or cordial relations – which are critical if divorcing couples are to successfully co-parent in future.
  16. Consideration is being given to removing the current grounds for divorce, both in relation to period of separation and fault based grounds.

### **Divorce process and timeframe**

17. Currently in Jersey, one spouse must petition for divorce, must cite the grounds for divorce and give evidence of those grounds. This builds conflict into the process from the outset.
18. In addition to removing the current grounds for divorce, consideration is also being given to the introduction of a new divorce process and timeframe. That process would mirror the existing two stage process whereby the Courts issue a decree nisi and then a decree absolute, except that:
  - the couple can jointly or either one of the spouses can individually give notice to the court of their intention to divorce,
  - in giving notice to the court, they would state that their marriage had broken down irretrievably, thus removing the need to cite fault.
19. The Court, as per the current process, would issue a decree nisi and then, after a minimum period of time could issue a decree absolute. The decree absolute will formally bring the marriage to an end.
20. The minimum timeframe between decree nisi and decree absolute is currently six weeks. Consideration is being given to extending this minimum period to six months. The purpose of the extended minimum timeframe would provide the couple a more appropriate timeframe in which

<sup>7</sup> England and Wales maintains a fault-based system, as do Scotland, various US States, Canada and France although the grounds for fault do vary between jurisdictions. In some, adultery is a “fact” used to demonstrate a fault such as “irretrievable breakdown”, rather than a fault in its own right.

to consider if divorce is the correct pathway for them and, if so, to allow them sufficient time to agree practical arrangements concerning the changes to family life, housing, financial issues etc.

21. Furthermore, where a spouse/s have filed for divorce, it is proposed that there be no requirement for them to live separately. Allowing the couple to continue to live together can potentially help them to consider reconciliation and can help them avoid financial hardship whilst practical matters are resolved.

#### **Note: Quick Divorce**

Our existing law facilitates the quick divorce. Providing a couple have been married for at least three years, and that the grounds for divorce relate to fault, it can take as little as nine weeks to move from filing for divorce to being divorced. A period which allows no time for reflection.

#### **Contested divorce**

22. Consideration will also be given to amending the law to do away with contested divorce. Whilst contested divorce is currently permitted in Jersey law, it is largely a thing of the past - there have been none in the Island for approximately 20 years.
23. Contesting a divorce is expensive. It rarely results in the Courts refusing to issue a decree absolute and, if fault based divorce is to be abolished, contested divorce becomes virtually obsolete as a spouse will not need to defend themselves from unfair accusations of fault.
24. Furthermore, it is regrettably the case that a marriage has come to an end when one spouse believes or wants it to be so. This would also include in cases of domestic abuse where it is theoretically possible for a perpetrator to mis-use the legal process by contesting a divorce, or cross-petitioning with allegations about the petitioner's conduct, in order to continue their controlling and coercive behaviour.

#### **Three year bar**

25. In Jersey couples must be married for a least three years before they can file for divorce. It is currently only one year in England & Wales, and there is no time limit in Scotland or in Guernsey. This can be three very long and unhappy years for people, who may well be living separate lives, but who are stuck in relationships that have irrevocably broken down<sup>8</sup>.
26. It has previously been argued that the three year bar is a safeguard against irresponsible or hasty marriages but there is no evidence to support this. 69% of respondents to the 2018 digital survey did not know that the three year bar existed – it cannot be a deterrent if people do not know about it. And, even if a person embarking on an irresponsible marriage did know about it, there is nothing to suggest it would act as a deterrent.
27. The three year bar does not support marriage; it only acts to punish people whose relationship has broken down. Consideration is being given to removing the three year bar.

<sup>8</sup> Note: A divorce can be granted in less than three years if there is exceptional hardship or depravity, but this does not include all forms of abuse or adultery.

## Minimising conflict/ mediation services

28. It is important to minimise conflict in divorce not just because of the effect it has on couples but also on their children. There is a body of research evidence which clearly shows that conflict between parents has a detrimental effect on children's outcomes, increasing the risk of anxiety, depression, aggression and anti-social behaviour<sup>9</sup>. It is therefore essential that we look to reduce harm.
29. P.77, as adopted by the States Assembly September 2015, proposed that consideration should be given to making it a legal requirement to access and use mediation services<sup>10</sup> subject to appropriate safeguards and human rights considerations.
30. Further to consultation with key stakeholders, this proposal is no longer being progressed; concerns were raised about the associated safeguards and about the effectiveness of what could be perceived as 'forced' or non-consensual mediation.
31. Whilst compulsory mediation is not being progressed, the proposed law changes focus on reconciliation (supporting and encouraging couples to consider whether they should stay together) and on amicable resolution (supporting couples to overcome unnecessary conflict). This will include, as set out above;
  - reducing conflict by moving to a system of joint filing and no fault divorce
  - supporting reconciliation by doing nothing that hinders couples who decide to try and reconcile their differences, for example introducing an extended minimum timeframe between decree nisi and decree absolute and allowing spouses to continue to live together during that period
32. Furthermore, the government will review what steps it should take to help support access to high quality reconciliation and mediation services. This will include reviewing existing government support provided to these services and ensuring better access to guidance on associated matters such as parenting plans, legal principles relating to children and finances etc. (See Addendum 1 to consultation report which provides further background information on collective resolution pathways)

### Note: Divorce in England and Wales

The Ministry of Justice for England and Wales published a consultation on the 15<sup>th</sup> September setting out its divorce reform proposals, many of which are reflected in Jersey's consultation.

<https://consult.justice.gov.uk/digital-communications/reform-of-the-legal-requirements-for-divorce>

<sup>9</sup> See *Equal Marriage* Report (R 170/2014)

<sup>10</sup> The mediation process brings spouses together in order to try and jointly find a solution, as opposed to each person engaging their own separate lawyer who will only represent the interests of that person, or having to resort to the Courts.



## Questions

The 2018 digital survey provides insight into some people's view of divorce reform. It is known however, from preliminary meetings with key professionals and stakeholders, that there are a diverse range of views.

The questions below are intended to help us better understand what these are.

### Divorce reform: Fault based divorce

1. Do you agree that fault based divorce should be abolished.

- Yes
- No
- Don't know/ I have no preference

2. If you agree that fault based divorce should be retained, should the five existing grounds of fault be amended? (See paragraph 12 above)

- Yes
- No
- Don't know/ I have no preference

3. If you agree that adultery should be retained as a grounds for divorce, should the definition be amended to include sexual intercourse with persons of the same sex as well as the opposite sex?

- Yes
- No
- Don't know/ I have no preference

4. If you agree that adultery should be retained as a grounds for divorce then should the requirement to name the co-respondent be removed (i.e. the person with whom the spouse committed adultery)?

- Yes
- No
- Don't know/ I have no preference

5. Further comments.....

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**Divorce reform: Period of separation based ground for divorce**

6. Do you agree that divorce based on a period of separation should be abolished?

- Yes
- No
- Don't know/ I have no preference

7. If you agree that divorce based on a period of separation should be retained, do you agree that the current periods of separation should be retained?

- Yes
- No
- Don't know/ I have no preference

8. If you agree the current periods of separation should be amended, what should they be?

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9. Further comments.....

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**Divorce reform: Filing for divorce**

10. Do you agree that couples should be able to jointly file for divorce as well as independently?

- Yes
- No
- Don't know/ I have no preference

11. Further comments.....

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**Divorce reform: Minimum timeframe for divorce**

12. Do you agree the minimum timeframe between the granting of a decree nisi and decree absolute should be extended?

- Yes
- No
- Don't know/ I have no preference

13. If you agree the minimum timeframe should be amended what do you think it should be?

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**Divorce reform: Contested divorce**

14. Do you agree that the ability to contest a divorce should be abolished?

- Yes
- No
- Don't know/ I have no preference

15. If you agree contested divorce should be abolished, are there any circumstances in which a spouse should be able to contest a divorce?.....

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16. Further comments.....

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**Divorce reform: The three year bar**

17. Do you agree that the three year bar on filing for divorce should be removed?

- Yes
- No
- Don't know/ I have no preference

18. Further comments.....

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**Other areas of reform**

19. Are there any other areas of divorce reform we should be considering?

- Yes
- No
- Don't know/ I have no preference

If so, what are these areas?.....

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## SECTION 2: CIVIL PARTNERSHIPS

### Overview

33. Same-sex marriage became legal in Jersey on 1 July 2018. This means that both opposite-sex and same-sex couples can get married. This is not the case for civil partnerships, which are only available to same-sex couples.
34. In July 2018 the UK Supreme Court ruled that it is discriminatory to only allow same-sex couples to enter into a civil partnership. Jersey should therefore amend its law. The overriding question is:
  - should civil partnerships be retained and extended to opposite-sex couples? (Option 1). Or,
  - should Jersey stop new civil partnerships now that same-sex marriage has been introduced? (Option 2).
35. The purpose of this section of the consultation is to explore those two options. What is not being considered is:
  - abolishing all existing civil partnerships - this would be harmful to couples in existing civil partnerships as these couples would be required to convert their civil partnership to marriage and some jurisdictions, most notably France, do not recognise converted civil partnerships as legal marriages
  - extending civil partnerships to siblings or family members – this is often cited as a way for family members to better manage matters relating to inheritance.

### Background

#### Civil partnerships in Jersey

36. Civil partnerships were introduced in Jersey in 2012. The aim was to provide same-sex couples the same rights and responsibilities that opposite-sex couples could acquire through marriage, at a point in time when same-sex marriage was not considered a viable option.
37. In August 2014, the Chief Minister's Department undertook an *Equal Marriage*<sup>11</sup> consultation. Whilst the consultation primarily focused on the proposed introduction of same-sex marriage, it also asked Islanders whether they thought that civil partnerships should be available to opposite-sex couples.
38. 72% of the people who responded to that particular question agreed that civil partnerships should be available to opposite-sex couples. However, it was very clear from reading the associated comments that their primary concern was a perceived need to provide legal rights for 'common-law' couples, as opposed to supporting the extension of civil partnerships.

<sup>11</sup><https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20equal%20marriage%20consultation%20report%20summary%2020141126%20LB.pdf>

39. Other respondents expressed concern that extending civil partnerships would simply create a “2<sup>nd</sup> tier” of marriage, which was not materially differently and therefore viewed as unnecessary (or, in some cases, as a direct threat to the institution of marriage).
40. The 2014 consultation was limited, however, so in 2015, when the States Assembly debated marriage reform, it was accepted that the civil partnership law should remain unaltered until either more was understood about the uptake of civil partnerships post the introduction of same-sex marriage, or there was a related court ruling, which has now happened.

#### Difference between civil partnerships and marriage

41. There is no difference between civil partnership and marriage, except what they are called and people’s perceptions of potential differences.
42. The rights provided to couples in a civil partnership are the same as those provided to married spouses, except in relation to a few matters. These matters arise as result of historic differences in the ways in which males and females were treated in law (such as differences in pension ages), or sex based definitions (such as the legal definition of adultery which, is only applicable to male/female sexual relations). These differences apply to marriage between same-sex couples, not just civil partnerships.
43. It is argued that civil partnerships should be made available to all couples because:
  - it is discriminatory to only allow same-sex couples to enter into a civil partnership. This is true, but equality can be achieved either by extending civil partnership or stopping new civil partnerships;
  - marriage is perceived by some as being an old fashioned and patriarchal institution. It is also argued that people who have previously been married may not, wish to marry again but would like to enter into a civil partnership because they may perceive it as being different to marriage.

#### Other Jurisdictions

44. England and Wales: Theresa May recently announced that “the Government will change the law to allow opposite-sex couples in England and Wales to enter into a civil partnership” this is a commitment to extend civil partnerships without consultation.
45. Scotland: The Scottish Government published a consultation on the future of civil partnerships on the 28 September. Like Jersey, they are considering whether to stop new civil partnerships or extend to opposite-sex couples. <https://beta.gov.scot/publications/future-civil-partnership-scotland/>
46. Sweden and a number of other Nordic countries have closed civil partnerships to new couples since the introduction of same-sex marriage. They have adopted this approach because they do not recognise the need for an alternative legal framework of rights and responsibilities now that all couples can marry.
47. There are jurisdictions, for example the Netherlands, New Zealand and France that have both marriage for all couples and civil partnership for all couples. In those jurisdictions, however, there is often quite substantial legal differences between marriage and civil partnerships unlike in Jersey. For example, the French equivalent to a civil partnership (known as a civil solidarity pact

– PAC) was introduced with the express intent of bringing in rights and responsibilities which were less than marriage.

### **Option 1: Extending to opposite-sex couples**

48. 72% of respondents to the 2014 *Equal Marriage* consultation stated that civil partnerships should be made available to opposite-sex couples. The most commonly cited reasons relate to:

- concerns about a lack of legal rights for cohabiting couples
- the need to introduce opposite-sex civil partnerships on the basis of equality.

#### **Rights of co-habiting couples**

Civil partnerships were not intended to provide rights for co-habiting couples. They were intended to provide rights equivalent to marriage for same-sex couples who could not marry. It is an important distinction.

Some jurisdictions do provide a framework of rights for cohabiting couples and, in some cases these legal frameworks can be misunderstood as being akin to a civil partnership, but the rights provided are not as extensive as those provided to married couples. The issue of whether or not to extend civil partnerships to all couples sometimes becomes entangled with the issue of whether or not to introduce rights for co-habiting couples.

This consultation report is accompanied by a separate Addendum which provides some background information about rights for cohabiting couples and living together agreements.

49. Reasons for extending civil partnerships to opposite-sex couples include:

- Civil partnerships provide a legal framework of rights and responsibilities for opposite-sex couples who do not want to get married. Both same-sex and opposite-sex couples will be able to choose the form of legal relationship which is most relevant to them.
- This would enable couples already in a civil partnership to remain in a civil partnership if one partner changed their legal sex. These couples could, however, convert their civil partnership to a marriage.

50. Reasons for not extending civil partnerships (i.e. closing to new couples) include:

- Civil partnerships were introduced at a time when same sex marriage was not seen as realistic. There is no longer a need for civil partnerships.
- Civil partnerships for all are perceived by some as having the potential to diminish the institution of marriage.
- There is a misconception that the existence of both marriage and civil partnership would provide a choice for couples, whereas in fact the difference lies only in the name: the rights provided by both are virtually the same as the legal and financial responsibilities provided by civil partnerships are equivalent to marriage

- The existence of two separate but almost identical legal relationships (i.e. marriage and civil partnerships) could be confusing to the public and will be more complex to administer.
- It is unclear as to whether or not people will want to enter into civil partnerships if they can marry, in which case it is a very significant change for very little benefit. A consultation undertaken in England & Wales in 2014<sup>12</sup> found that 63% of unmarried heterosexual respondents said they would rather marry, compared to only 20% who would prefer to form a civil partnership. This consultation process will help us establish whether similar attitudes are held in Jersey. Although it should be noted that the Prime Minister has nevertheless still announced plans to introduce civil partnerships for all in England and Wales.
- There is, to date, no evidence of significant demand of opposite sex couples wishing to form a civil partnership. In jurisdictions where comparable opposite sex civil partnerships have been introduced, there is still a clear preference for marriage.
- On a practical level, if Jersey were to extend civil partnerships to opposite-sex couples, those couples would only be recognised as civil partners in other jurisdictions which have opposite-sex civil partnerships. The effect of the legislation could therefore be very limited.

## **Option 2: Stopping new civil partnerships but retain existing ones**

### **Matters for consideration**

51. Whilst it is not proposed that existing civil partnerships are abolished, the law could be amended to prevent people entering into new civil partnerships in Jersey. Doing so would go some way to removing a legal framework which is seen by some as a 2<sup>nd</sup> tier form of marriage.
52. There are however legitimate reasons for keeping civil partnerships, including:
  - civil partnerships provide a social and legal framework that is perceived by some to stop short of marriage, but which supports couples to articulate their commitment to each other
  - civil partnerships are seen by some as a viable alternative to marriage. Whilst civil marriage (i.e. marriage solemnised by the Superintendent Registrar or an independent marriage celebrant in Jersey) is free from religious elements it is still marriage and carries with it traditional associations that some are uncomfortable with
  - if civil partnerships are retained those same-sex couples who believe that marriage is a union between man and a woman, and therefore do not want to get married, can still access a social and legal framework that recognises their relationship

### **Costs associated with change**

53. Regardless of the changes made, there would be a one-off cost to the public sector to make the necessary legal, IT and administrative changes. In addition,
  - if new civil partnerships are stopped, the public sector would incur ongoing costs in relation to administration of civil partnerships as well as marriages until no civil partnerships remained in existence (for example, in relation to court procedures etc)

<sup>12</sup> <https://www.gov.uk/government/consultations/consultation-on-the-future-of-civil-partnership-in-england-and-wales>

- if civil partnerships are extended to opposite couples, there would be ongoing costs associated with the administration of two different forms of legal relationship. Furthermore, there would be costs associated with giving consideration to, and facilitating married couples to convert their marriage to a civil partnership.

**Questions**

Stopping new civil partnerships but retaining existing ones would also mean that couples who do not want to get married would lack legal structure for recognition of their relationship.

However, extending civil partnerships to opposite-sex couples potentially creates a form of 2<sup>nd</sup> tier marriage and increase cost to the public purse over a longer time period. The central dilemma is whether civil partnerships are needed now that any couple can get married?

**Civil Partnerships: What are your views about the future of civil partnerships?**

21. I agree that civil partnerships should be made available to all couples.

- Yes
- No
- Don't know/ I have no preference

22. I agree that we should stop new civil partnerships but retain existing ones

- Yes
- No
- Don't know/ I have no preference

23. Further comments.....  
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**Civil Partnerships: If you are currently not married or in a civil partnership, please answer this question below**

24. Given the choice of forming a civil partnership or marrying your partner, which would you personally prefer? Please choose one answer only.

- I would prefer to form a civil partnership
- I would prefer to marry
- I have no preference
- This question does not apply to me

25. Further comments.....  
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**Civil Partnerships: If you are currently married please answer the question below:**

26. If you had been given the choice at the time at which you got married, which would you personally have preferred to do? Please choose one answer only.

- I would have preferred to form a civil partnership
- I would have preferred to marry
- I have no preference
- This question does not apply to me

27. Further comments.....  
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**Civil Partnerships: If you are currently in a civil partnership please answer the question below:**

28. If you had been given the choice at the time you formed your civil partnership, which would you personally have preferred to do? Please choose one answer only.

- I would have preferred to form a civil partnership
- I would have preferred to marry
- I have no preference
- This question does not apply to me

29. Further comments.....  
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## SECTION 3: AGE OF MARRIAGE

### Overview

54. A 16 year old or 17 year old can currently get married in Jersey if their parent/s consent to that marriage<sup>13</sup>.
55. Allowing a 16 or 17 year old to get married is, however, clearly at odds with the United Nations Convention on the Rights of the Child (UNCRC) which states that a child is a child until they reach the age of 18.
56. Jersey is party to that Convention.
57. It is the view of the UN Committee that oversees compliance with the UNCRC that jurisdictions which permit 16 and 17 years olds to marry are permitting *child marriage*. In 2016, that Committee recommended that UK and all devolved administrations, and Crown Dependencies – which includes Jersey - raise the minimum age of marriage to 18 years.
58. This position is echoed by UNICEF which calls on all governments, not just those in the developing world, to outlaw child marriages. It is argued that developed nations have a special obligation to set standards and outlaw marriage below 18 years of age in order to help protect children, usually young girls, who in some nations are married off at 12 or 13 years of age.

### Background

#### Current position in Jersey

59. 16 and 17 year olds can currently get married in Jersey because the Marriage and Civil Status (Jersey) Law 2001 (the “2001 Law”) permits them to do so. The 2001 Law was based on the preceding *Loi (1842) sur l’Etat Civil*, which reflected the social norms at that time it was drafted. In *Loi (1842) sur l’Etat Civil* prevailing attitudes required the legal minimum age of marriage to mirror the age of sexual consent (i.e., 16 years old) so that teenagers who wanted to have sex could get married first.
60. In *Loi (1842) sur l’Etat Civil* it was seen as particularly important that a 16 or 17 year old girl, who was pregnant, should be able to marry to ensure that the child was not born out of wedlock. Whilst some people still believe it is important for children to be born to married parents, there has been a significant shift in social norms. It is now estimated that approximately 40% of children born in Jersey have unmarried parents<sup>14</sup>, indicating that marriage is no longer seen as prerequisite for having children.
61. Changing attitudes to legitimacy are already reflected in Jersey Law. Since 2011 the Wills and Successions (Jersey) Law 1993 has provided that illegitimate and legitimate children have equal rights of succession.

<sup>13</sup> Guardians may also consent

<sup>14</sup> Based on analysis of the register of births.

62. Whilst 16 or 17 years old children can marry in Jersey, only an extremely small number do<sup>15</sup>. Young people are making different choices, including
- staying in education - currently 68.4% of Jersey's young people continue in education beyond the age of 18<sup>16</sup>
  - cohabitating prior to marriage – figures from the Office of National Statistics (ONS) show that in 2011 84 percent of couples who entered into their first marriage cohabitated prior to it<sup>17</sup>
  - marrying later - ONS figures show for marriages of opposite-sex couples, the average age for men marrying in 2015 was 37.5 years, while for women it was 35.1 years. This represents an increase compared with 2014 (37.0 years for men and 34.6 years for women) and continues the overall rise recorded since the 1970s. The average age at marriage for same-sex couples in 2015 was slightly higher at 40.6 years for men and 37.0 years for women.
63. In the UK just 2% of marriages that took place in 2013 were between people who were under the age of 20
64. Whilst Jersey data is not directly comparable it can probably be assumed that it will broadly replicate UK trends.

#### Other jurisdictions

65. Numerous other jurisdictions have, historically, taken the same approach as Jersey, with a minimum age of marriage which mirrors the age of sexual consent, but not all. Countries such as Germany, Luxembourg and Portugal already have different ages and others, such as France are in the process of changing to law to make 18 the minimum age of marriage for all.

| Jurisdiction            | Minimum age of Marriage  | Minimum age of sexual consent |
|-------------------------|--|-------------------------------|
| Jersey, England & Wales | 18 (16 with parental consent)  | 16                            |
| Australia               | 18 (16 with permission from parents and the court only granted in exceptional circumstances) | 16                            |
| Canada                  | 18 (16 parental consent)   | 16                            |
| Finland                 | 18 (under 18 with judicial consent in extraordinary circumstances)                           | 16                            |
| Netherlands             | 18 (16 with consent from the Minister of Justice or parental consent in case of pregnancy)   | 16                            |
| France                  | 18 (females may currently marry Aged 15 - 17 old with parental but the                       | 15                            |

<sup>15</sup> Since 2007 there have only been four applications for marriage relating to a 16 or 17 year old. In all causes, it is the bride who has been 16 or 17 years old.

<sup>16</sup> <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Alevelresults20162017%2020180613%20EI.pdf>

<sup>17</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/datasets/marriagestatisticscohabitationandcohortanalyses>

|            |   |    |
|------------|---|----|
|            | government is abolishing this concession) |    |
| Germany    | 18  | 14 |
| Luxembourg | 18  | 16 |
| USA        | 18 (most states)                          | 16 |
| Portugal   | 18 (17 with parental consent)             | 14 |

### Law in Jersey

66. There are two laws which provide for people to get married in Jersey;
- a. the Marriage and Civil Status (Jersey) Law 2001 (the “2001 Law”) which deals with civil and non-Anglican religious wedding, and
  - b. the Canons of the Church of England in Jersey (Canon Law) which deals with marriage in accordance with the rites of the Church of England (Anglican marriage)
67. Both allow for a child aged 16 or 17 years old to get married providing that they have the consent of their parent(s) or their guardian(s)<sup>18</sup>.
68. The 2001 Law allows the States Assembly to increase that the age of marriage by regulation<sup>19</sup> if it is minded to do so, but the Assembly does not have the powers to change Canon Law. That will be a decision of the Church of England.
69. If the States Assembly increased the minimum age of marriage to 18, this would mean that Jersey would end up with two laws each with a different minimum age of marriage. Whilst this may appear to be slightly strange, it is not problematic. The Dean of Jersey, who issues licenses to marry under Canon Law would choose not to issue licences to 16 and 17 years olds on the basis that their marriage would be void because it was contrary to the law of the land.

<sup>18</sup> Article 4 of the 2001 Law sets out that a child aged 16 or 17 years old may get married with the consent of their parent/s or guardian/s. The law also provides for consent to be given in relation to children who are in care.

<sup>19</sup> The power to increase the age of marriage by regulation is set out in Article 82 (1) of the 2001 Law. This power was introduced in July 2018 when the 2001 Law was subject to major amendment to allow for same-sex marriage and open-air marriage, but the age of marriage was not increased at that point because the public had not been consulted about the matter.

**Questions**

**Age of Marriage**

30. I agree the law should be amended to raise the minimum age of marriage to 18.

- Yes
- No
- Don't know/ I have no preference

31. Further comments.....  
.....  
.....

## **ADDENDUM 1**

### **COLLABORATIVE RESOLUTION TOOLBOX**

In Jersey a number of pathways are available for couples who want to work collaboratively to find a solution to end their marriage. There is no statutory basis for mediation, collaborative law or arbitration, but equally there is nothing to prevent agreement being reached in any way in which the parties agree to work. Any agreement reached as a result of mediation, collaborative law or arbitration is usually converted into a draft consent order, which once ordered by the court is enforceable as any other order.

#### **Mediation**

Consideration needs to be given to the following:

- appropriate safeguards and exemptions: for example in the event of domestic violence, or where divorce is urgently sought because one of the spouses has participated in serious criminal activity
- human rights considerations: Under the European Convention for Human Rights (ECHR) consideration must be given to ensuring that there are no disproportionate restrictions in relation to people's ability to access the Courts or get divorced.

In England and Wales, couples are therefore only required to attend a mediation information and assessment meeting, they are not actually required to participate in mediation. Other European countries employ a variety of different incentives and sanctions and in some, mediation is mandatory under prescribed circumstances (for example, in many Nordic countries and in certain areas of Spain). What is critically important is that where mediation is mandatory, it does not impede access to the judicial system.

In America, where the ECHR does not apply, participation in mediation is a legal requirement in 13 States and judges are provided discretion to order couples to enter mediation in 22 States.

In Sweden, mediation is called 'cooperation talks'. These are defined as talks where the parents under expert guidance try to arrive at a common point of view on the questions of custody and access. The goal of the talks is to make the parents reach an agreement, but even if no agreement is reached, through these talks parents may learn how to understand each other's opinions better and how to manage their conflicts in a way that negatively affects the children as little as possible. The goal is partly for them to agree on questions involving their children and partly to improve their ability to cooperate as parents.

Ninety per cent of the parents who separate in Sweden solve the questions regarding custody, residency and access either entirely on their own or with assistance through cooperation talks or family counselling. Ten per cent of the parents receive help from the court to solve the questions mentioned.

In Norway, according to the Marriage Act 1991, which came into force on 1 January 1993, mediation is compulsory for spouses who have children from their marriage who are under 16 years of age (Section 26 Marriage Act), except in specific cases, such as in cases of domestic violence (Section 23 Marriage Act). This does not mean that they are compelled to reach an agreement, but that they must initiate mediation before the case is brought before the County Governor or a court (Section 26 Marriage Act).

#### **Arbitration**

Similar to mediation consideration needs to be given to the following:

- appropriate safeguards: for example in the event of domestic violence, or where divorce is urgently sought because one of the spouses has participated in serious criminal activity
- human rights considerations: Under the European Convention for Human Rights (ECHR) consideration must be given to ensuring that there are no disproportionate restrictions in relation to people's ability to access the Courts or get divorced.

Arbitration proceedings are not overseen by a judge, instead they are conducted by a trained arbitrator who acts in a similar non-court based capacity to a judge. They will decide what decisions need to be made and those decisions will be binding for both parties. However the arbitrator, unlike a judge, can have a greater degree of leniency because all parties can have their say in the landscape of the ruling. This does require a greater amount of trust by both parties as the decision is final and agreements are signed to this end, as such the training criteria and level of expertise required to become an arbitrator is strictly controlled.

Arbitration is currently used in England and Wales however not usually for matters relating to family law, it allows parties to choose a decision maker whilst keeping the entire matter confidential. It also provides a determination that both parties agree to honour when entering into the process and for this reason can be quicker and more cost effective to the parties involved. The awards that arise from a determination can be converted into consent orders in a similar way to a mediated settlement. If we are including facilities within divorce law for mediation then it would be relatively straight forward to incorporate arbitration settlements also. However arbitration does not contain facilities for appeals this is because with both parties agreeing on the appointment of the decision maker it is deemed that appeals would undermine this appointment process. Arbitration also requires full participation from and the trust of both parties and as such will not be suitable for everyone, it is also not bound by divorce laws and as such operates on a parallel plane. A suitable interface with the divorce process would need to be mapped and defined.

### **Collaborative Law**

Similar to mediation and arbitration consideration needs to be given to the following:

- appropriate safeguards: for example in the event of domestic violence, or where divorce is urgently sought because one of the spouses has participated in serious criminal activity
- human rights considerations: Under the European Convention for Human Rights (ECHR) consideration must be given to ensuring that there are no disproportionate restrictions in relation to people's ability to access the Courts.

The underpinning element of collaborative law is both parties working together to agree a solution. Both parties will choose and appoint their own collaboratively trained lawyer. The parties will then come together for a series of face to face meetings to conduct negotiations. Each party have legal advisers present throughout the process to provide support and advice.

All four parties, the couple and their respective lawyers all sign a participation agreement prior to commencing the process. This states that no party will issue proceedings and it also prohibits either lawyer from representing their party in court if the collaborate process breaks down this provides a real incentive for all parties to be absolutely committed to finding the best solution by agreement rather than through court proceedings.

Both parties have the opportunity to consult with an independent financial advisor, a family consultant, a child specialist or an accountant, who will provide specialist guidance regarding financial matters and those concerning children, parenting, communication and emotional support if and when required



## ADDENDUM 2 PROTECTION FOR COHABITATING COUPLES & LIVING TOGETHER AGREEMENTS

The purpose of this Addendum to the, *Divorce reform, future of civil partnerships & age of marriage* consultation document is to provide some background information about protection for cohabiting couples and living together agreements

### Background: Cohabiting couples

In Jersey a significant number of adults live together without being married and a significant number of children are born to unmarried parents and/or live with unmarried adults (this includes children living with one parent and that parent's partner, or both their unmarried parents):

- approximately 40% of children born in Jersey have unmarried parents<sup>20</sup>
- approximately 22% of all couples who live together are not married<sup>21</sup>
- of all households that include a couple and children, 15% of those couples are not married

Cohabitation is more prevalent than marriage amongst younger age groups. Around half of people aged 16 to 34 who live together, are cohabiting as opposed to being married.

The death of one of the partners, or the breakdown of the relationship, is as traumatic for cohabiting partners as it is for those who are married or in a civil partnership. It can also bring added challenges when people realise that, despite having lived together for years and even having children together, their "common-law" relationship has no legal status and that rights of spouses or civil partners do not apply to them. This includes in relation to:

- a. Property ownership: the Court has no power to override the strict legal ownership of the property and cannot divide it as they may do on divorce or dissolution. It may, in some very limited circumstances, be possible to demonstrate beneficial ownership but this is neither a simple nor cheap process in terms of legal fees.
- b. Inheritance: if one of the partners dies without having made a will, the other partner does not have an automatic right to inheritance regardless of how long they have lived together or even if they have children together. This can be contested in Court, but there are obvious emotional and financial implications.
- c. Exemption to testify: spouses and civil partners are exempt from testifying against each other in Court. This does not apply to cohabiting partners.

Because cohabiting couples lack status in law, at the point of break-up, there is no strict recognition of the financial contribution that either partner may have made (for example: paying toward the mortgage even though the family home was owned by the other partner) or of the economic sacrifices that either partners may have made (for example; not working in order to bring up children). This can result in one of the partners, and potentially their children, suffering serious economic disadvantage.

<sup>20</sup> Based on analysis of the register of births.

<sup>21</sup> The Jersey figures have been calculated using 2011 Census data, and are based on the more common household types such as adult couples with or without children. The Jersey figures exclude couples from 'other' household types (for example three generation households, house-sharing or households with a live in au-pair) as the relevant inter-relationship information is not available.

## Background: Living together agreements

Any cohabiting couple in Jersey can set up a living together agreement (also known as a cohabitation agreement) setting out what will happen if the relationship breaks down, particularly in relation to the sharing of property. These agreements do not extend to matters such as pensions and benefits however, as these are a matter for law, nor to matters of inheritance which are governed by the terms of a validly executed will or, in the absence of a will, by the law of succession.

Living together agreements, if they are fair and reasonable, and have been entered into willingly by both partners, can be extremely beneficial in helping to minimise conflict at the point of break-up, particularly where a home, or an asset, needs to be secured or shared for the wellbeing of any children.

Living together agreements can currently be set up as a form of legal deed and, where they are, there is a presumption in law that they stand subject to the discretion of the Court and appropriate safeguards which may, for example, include:

- neither partner was coerced or put undue pressure to sign the agreement
- the agreement was signed at least twelve weeks before the relationship broke down (or potentially a longer period of time)
- both partners received independent legal advice before signing
- both partners provided correct information
- enforcing the agreement would not create financial hardship for their children.

## EXAMPLE OF A LIVING TOGETHER AGREEMENT TEMPLATE

|   |
|---|
| THE DATE OF THIS DEED OF AGREEMENT is<br>.....  |
| THE TWO PEOPLE MAKING THIS AGREEMENT ARE:<br>.....  |
| THE BASIS OF OUR AGREEMENT:<br>a) We have decided to live together OR<br>We have been living together since.....<br>b) We want to enter into an agreement that sets out our rights and duties to each other<br>c) We intend that this agreement shall be legally binding on both of us<br>d) We have [both] taken legal advice about making this agreement<br>e) We have honestly and frankly told each other about our individual financial positions and have set out this information in Schedule A at the end of this agreement |
| INFORMATION ABOUT OUR CHILDREN<br>We have no children at present OR We have the following children of whom we are both parents:-<br>.....<br>OR<br>..... already has [a] child[ren] from a previous relationship:<br>.....<br>The other parent [ <i>insert his or her name</i> ]..... is still alive/ has died.   |
| INFORMATION ABOUT OUR HOUSING<br>We [intend to] live at .....<br>.....<br>which is referred to as "the Home" in the rest of this agreement.<br>The Home is rented/owned in our joint names/ ..... 's sole name<br>The way in which it was purchased is set out in Schedule B at the end of this agreement.  |

## OWNING THE HOME

- We [will] own the Home in our joint names as a joint tenancy. We intend to continue to have equal shares in the Home even if we do not make equal contributions.
- We [will] own the Home in our joint names as a tenancy in common.
  - We [will] own equal shares and we intend to continue to have equal shares in the Home even if we do not make equal contributions OR
  - We [will] own the following shares:.....: % .....: %
- .....owns [will own] the Home in his/her sole name and[*the name*] .....understands that s/he will not get any share in the Home rights over the property even if s/he makes a contribution to paying for the Home or the household

**BUYING A NEW HOME:** If we decide to sell the Home and buy another we will own the new property on the same terms, or we will renegotiate the terms on which we hold it.

## ENDOWMENT POLICY

Any surplus profits from the endowment policy with ..... in the name[s] of.....[and]..... are to belong to.....jointly/solely

## HOUSEHOLD EXPENSES AND DEBTS

We have opened/will open a joint bank account with .....Bank,.....Branch.

We [will] pay the following amounts into this account:

[*name*] .....: £..... a month/week/ [*name*] .....: £..... a month/week\*

[We regard these as equal contributions.] [We agree to hold any balance in equal shares.]

[We will hold any balance in the following shares:- [*name*] .....% *name*] .....%]

Either of us may draw cheques on this account with [out] the signature of the other

Out of this account we will pay the following household bills:-

- water rates/council tax/items of furniture and equipment for the home etc.....

OR: We will individually be responsible for the following payments: [*name*...will pay for....[*name* .....will pay for

OR: We have been living together since...We have pooled our finances in a joint account and have paid for everything jointly.

**DEBTS:** We will each remain liable for any debts that we have incurred individually. We cannot be liable for each other's debts, (except for utilities bills/Council Tax where the law gives the supplier the right to pursue anyone who uses the service.)

**Savings:** We have a savings account/ISA with

.....Bank,.....Branch. The account is in .....’s name.

[They alone own the contents of the account] [We agree to hold any balance in equal shares.]

[We will hold any balance in the following shares:- *name*] .....% *name*] .....%]

**OWNERSHIP OF CONTENTS:** These are the rules that we intend to apply to personal property and contents of the home:-

- If one of us owned something before we lived together, it belongs to that person
- If one of us bought something with his or her own money it belongs to that person
- If either of us inherited something, or was given it as a gift, it belongs to that person
- If one of us buys something and gives it to the other it belongs to the person to whom it is given
- If we buy something out of a joint bank account it belongs to us equally/ in the shares in which we hold the account.
- Etc....

**CAR[S].** The car.....registered in the name of ..... belongs to..... alone and will continue to do so even if ..... contributes to its maintenance, repair

or running costs.

OR belongs to us both jointly . It do so even if we do not make equal contributions to its maintenance, repair or running costs.

**CHILDREN**

- While our child[ren] are under the age of [5] ..... will not work [full time] outside the home but will bring up the child[ren].. We intend to treat this as a contribution equal in value to the financial contribution of .....during this period.
- While .....is not working because of child-care responsibilities.....will maintain her/him as far as s/he is able
- While our child[ren] are under the age of ..... we both intend to work part-time and share child-care. During this period we will treat each other's contributions in earnings and child-care and domestic responsibilities as being of equal value
- Since ..... is/are not ..... 's children and ..... receives maintenance for them, we agree that...
- If we have [a] child[ren] it is our intention to share Parental Responsibility and so [name of mother] .....will make sure that [name of father] is registered on the birth certificate. Failing this we will make a Parental Responsibility Agreement

**PENSIONS:** We each will/ have nominate[d] each other to receive .....% of the pension and death in service benefits to which we may each be entitled. If this agreement ends for any reason we shall both be free to cancel these nominations

**ENDING THIS AGREEMENT:** This agreement shall come to an end if any of the following events happens:

- One of us dies/we get married/We make a joint decision to stop living together.
- If this happens the transitional arrangements set out below will apply

**If we cannot agree we intend to seek the help of mediation or solicitor negotiation rather than using the courts.**

**TRANSITIONAL ARRANGEMENTS:**

- We will stop paying into the joint household account
- We will pay any outstanding bills out of the joint household account
- We will divide any balance left over between us equally
- We will divide any furniture/other items bought together. We achieve an equal split by dividing items up, or one person giving the other a payment in compensation.
- [the non-owner]..... will leave the home as soon as possible
- We will sell the home as soon as possible and divide the proceeds of sale (after paying the mortgage etc)
- If, instead of a sale of the home, one of us wishes to buy the other's share, we will have the home valued by a local valuer. We will choose the valuer together and give joint instructions, and split any cost of the valuation equally. If we cannot agree about the choice of valuer we will ask the President of the Institute of Chartered Surveyors to appoint a valuer.

If one of us dies:- [iname of owner of the home] ..... will instruct the executors that if s/he dies before [insert name of non-owner] ..... they must allow her/him a period of six months before s/he has to leave the home

**RENEGOTIATIONS AND CHANGES** We will reconsider this agreement from time to time and change it if appropriate. We will also do this if: we have a[nother] child/either of us changes job, becomes unemployed, becomes seriously ill, or disabled

If we make changes to this agreement, we will write them down

**SIGNED [AS A DEED]**

by the said [ insert full name of first person]

.....

in the presence of: (here a witness should write his/her name signature and address )

