

MATRIMONIAL CAUSES REFORM REVIEW 2017

Background

How married couples can dissolve, separate and annul their marriages is set out in the Matrimonial Causes (Guernsey) Law, 1939, (the Law). The Law has been amended from time to time but has never been substantially reformed and in light of recent and upcoming legislation changes and an identified need to ensure that the Law is both inclusive and reflective of modern society, a review has been prioritised.

In January 2009, (Billet d'Etat II), the States resolved that the Law should be amended to extend the powers of the Court in relation to the division of assets following divorce or judicial separation. The Court is considering the draft Projet to implement these amendments.

Through the work exploring Union Civile and the resulting policy letter on Same-Sex Marriage, (Billet d'Etat XXIII, December 2015)¹, it was identified that there were some complex issues surrounding the Law that needed to be addressed in detail later. The States agreed 'To direct the Policy Council to bring forward, in a timely manner, separate Policy Letters to address the issues raised by the work on Union Civile, including the dissolution of legal partnerships, as set out in section 6 of that Policy Letter.'

The complex issues specified were adultery, as grounds for divorce, and non-consummation, as grounds for nullity, as well as other options for dissolution of a marriage. At this time, neither adultery with a same-sex partner nor non-consummation can be considered as grounds for the dissolution of a same-sex marriage, which mirrors the UK legal position. This raises a concern over the equality of the Law when applied to same-sex married couples.

There is also the question about the perceived role of government in personal relationships, a position that has changed significantly since the Law was first established. The necessity to prove fault before divorce can take place has been widely questioned. Equally, it may be considered that the other options specified as reasons to dissolve a marriage do not reflect the needs of modern society, such as citing impotency or mental health problems as reasons for annulment of a marriage.

The reform of the Law has been prioritised in the Policy & Resource Plan (Billet d'Etat XII, June 2017), in support of achieving the One Community: inclusive and committed to social justice outcome. The Policy & Resources Committee will lead the work stream in collaboration with St. James' Chambers, officers from Employment & Social Security's Policy & Legislation team and the Family Bar. It is hoped that a policy letter will be presented to the Policy & Resources Committee by the end of 2018.

¹ <https://www.gov.gg/CHttpHandler.ashx?id=98634&p=0>

Terms of reference

The review will consider:

- What changes are needed to make the Law more equal and inclusive in application to all married couples, including the feasibility of introducing no-fault divorce;
- How best to support and encourage parties to reconcile, where there is a willingness to do so;
- When a marriage has irretrievably broken down, what is the most appropriate mechanism to end the marriage which causes the least amount of distress and detriment to all parties, especially when children are involved, such as alternative dispute resolution methods;
- What changes might be needed to simplify the procedures when applying the legislation and any changes proposed, to ensure that any unnecessary barriers or avoidable delays are removed;
- The current terms for divorce, annulment and judicial separation and the Court's powers in these matters;
- The use and enforceability of pre-nuptial agreements;
- The impact of any proposed changes on policy, legislation and stakeholders;
- The legislation changes required to support the policies proposed; and
- The management and implementation of the recommended changes.

The following are out of scope of the review:

- Same-sex marriage as this has recently been legislated upon;
- The marriage procedures and formalities as this is being reviewed separately under the Marriage Law Reform;
- Legislation relating to cohabiting couples as this would require a separate piece of legislation to that which covers how to dissolve a marriage;
- Inheritance laws, as this is already covered by a separate legislation under the Inheritance Laws, 2011;
- How to recognise civil partnerships conducted elsewhere would need a standalone piece of legislation owing to the complexity of recognising different forms of civil partnerships across different jurisdictions;
- Who can be married including the age of consent or the restrictions on marrying within prohibited degrees of kinship, as consideration is being given to this within the Marriage Law Reform review; and
- Recognising a change of gender while married in relation to the validity of marriage and the introduction of gender recognition legislation, which should form part of any gender recognition legislation. The Committee for Employment & Social Security is considering this work stream under its work on equality and inclusion.

Where the out of scope items above are not yet under way or part of an existing work stream it is expected that these would need to be addressed at some point in the future.