

## Appendix 2

### **2. The Projet**

2.1 The Projet appended to this Policy Letter has been written to give effect to the decisions of the States of 28th February, 2019 (Billet d'État III of 2019). However, it is necessary to draw Members' attention to matters which have been raised during the legislative drafting process that were not specifically covered by the 2019 Policy Letter.

2.2 The Policy & Resources Committee is supportive of these revisions and as such they have been incorporated into the Projet, subject to the States' approval. The relevant matters are as follows:

#### **Prohibited Degrees**

2.3 The 2019 Policy Letter stated that in drafting the new legislation, the opportunity would be taken where possible to incorporate and modernise provisions relating to the procedures and formalities of marriage presently contained in other enactments, including prohibited degrees of consanguinity. However, the 2019 Policy Letter concluded that "no substantive amendments" were required, which in this instance is not the case.

2.4 To ensure compliance with human rights requirements and alignment to other jurisdictions there is a requirement to remove the prohibition of marriage between certain parties who were formerly related by marriage. For example, amendments to legislation in England and Wales (The Marriage Act 1949 (Remedial) Order 2007 ), which have since been replicated in Jersey through the Marriage and Civil Status (Amendment No.4) (Jersey) Law 20185, removed this prohibition.

2.5 The amendments arise from the deliberation of a case by the European Court for Human Rights ("ECHR") (B. and L. v. the United Kingdom, 13th September 20056) that deemed that the marriage law in England & Wales, which prohibited any marriage between a person and the parent of their former spouse and between a person and the former spouse of their child, violated the European Convention for the Protection of Human Rights and Fundamental Freedoms, specifically Article 12: The right to marry and to found a family.

2.6 In light of the precedent set by the ECHR case and subsequent legislative changes in other jurisdictions, the Law Officers have advised that legislative provisions which absolutely prohibit marriage between parties who were formerly related by marriage should be removed. Such marriages will not be prohibited so long as both parties are aged 18 or over at the time of the marriage and the younger of the couple has never lived with the other as a child of the family. This is consistent with the provisions in England and Wales and in Jersey and removes the bar whilst protecting against the possible exploitation of the younger party by a person who has been in a position of parental authority.

2.7 It is also proposed that the existing prohibitions concerning relationships by marriage or former marriage should be extended to relationships by civil partnership or former civil partnership. This is also consistent with England and Wales and with Jersey.

#### **Formation of marriage**

2.8 The formation of marriage refers to the point, or act, in the ceremony where a marriage becomes legally binding. At present, there is no provision identifying the moment when a marriage is formed and it is desirable that this should be clarified to avoid doubt.

2.9 The 2019 Policy Letter provided that a marriage would be formed 'once both parties and witnesses sign the registration form'. No requirement was included for the celebrant to have also signed the return form.

2.10 From a legal and practical perspective it is proposed that this be amended such that the marriage is formed once the celebrant, having had the opportunity to observe the demeanour of the parties and their signatures on the return form, and being satisfied as to their identity and that they are freely consenting to the marriage, has signed the return.

2.11 The proposed amendment provides an additional layer of protection against illegal marriage and aligns with the provision in Jersey.