

# ORDER IN COUNCIL

**IX  
2020**

ratifying a Projet de Loi

ENTITLED

## **The Same-Sex Marriage (Sark) Law, 2019**

(Registered on the Records of the Island of Guernsey on the 6th  
April, 2020.)



2020

# ORDER IN COUNCIL



## IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of April, 2020 before Richard James McMahon, Esquire, Deputy Bailiff; present:- Stephen Murray Jones, Esquire, O.B.E., Terry John Ferbrache, Alan Stevenson Boyle, Peter Francis Gill and David John Robilliard, Esquires, Marilyn Jasmine King, Tina Jane Le Poidevin, and Paul Martin Burnard, Esquire, Jurats.

The Deputy Bailiff, having this day placed before the Court an Order of Her Majesty in Council dated 11th March 2020, approving and ratifying a Projet de Loi of the Chief Pleas entitled “The Same-Sex Marriage (Sark) Law, 2019”. THE COURT, after the reading of the said Order in Council, ORDERED

1. That the said Order in Council be registered on the records of this Island;  
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Sénéchal of Sark for registration on the records of that Island.

J TORODE  
Her Majesty’s Greffier



*At the Court at Buckingham Palace*

THE 11th DAY OF MARCH 2020

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the Chief Pleas of the Island of Sark:

“That, in pursuance of their Resolution of 2nd October 2019, the Chief Pleas of the Island of Sark at a meeting on 17th December 2019 approved a *Projet de Loi* entitled the Same-Sex Marriage (Sark) Law, 2019. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Same-Sex Marriage (Sark) Law, 2019, and to order that it shall have force of law in the Island of Sark.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Sark and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Richard Tilbrook*

# PROJET DE LOI

ENTITLED

## **The Same-Sex Marriage (Sark) Law, 2019**

### ARRANGEMENT OF SECTIONS

#### PART I

##### EXTENSION OF MARRIAGE TO SAME-SEX COUPLES

1. Extension of marriage to same-sex couples.
2. Interpretation of existing legislation.
3. Interpretation of new legislation.
4. Recognition of overseas same-sex marriages.
5. Provisions which limit equivalence of all marriages etc.

#### PART II

##### RELIGIOUS PROTECTION

6. Disapplication to ecclesiastical law.
7. Disapplication to Church of England marriages.
8. Marriage according to religious rites: no compulsion to solemnise etc.
9. Marriage according to religious rites: opt-in to marriage of same-sex couples.

#### PART III

##### OTHER PROVISIONS RELATING TO MARRIAGES OF SAME-SEX COUPLES

10. Persons already in civil partnership or marriage.
11. Prohibited degrees of consanguinity.

#### PART IV

##### MISCELLANEOUS AND GENERAL

12. General provisions as to subordinate legislation.
13. Interpretation.
14. Citation.
15. Commencement.

SCHEDULE: Provisions which limit equivalence of all marriages.

# PROJET DE LOI

ENTITLED

## **The Same-Sex Marriage (Sark) Law, 2019**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 2<sup>nd</sup> October, 2019, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in Sark.

### PART I

#### EXTENSION OF MARRIAGE TO SAME-SEX COUPLES

##### **Extension of marriage to same-sex couples.**

1. (1) Marriage of same-sex couples is lawful.

(2) In the law of Sark, whether statutory, customary or otherwise, marriage has the same effect in relation to same-sex couples as it has in relation to opposite-sex couples.

(3) The law of Sark, whether statutory, customary or otherwise, has effect in accordance with subsection (2).

##### **Interpretation of existing legislation.**

2. (1) Any reference in any existing legislation to marriage, or to a married couple, or to a person who is married, however expressed, is to be read as including a reference to marriage of a same-sex couple, to a married same-sex couple or to a person who is married to a person of the same sex, as the case may be.

(2) Any related reference in any existing legislation, such as a reference to a marriage which has ended, or to a person whose marriage has ended, however expressed, shall be read accordingly.

(3) Any reference in any existing legislation to persons who are not married but who are living together as a married couple, or to a person who is living with another person as if they were married, however expressed, is to be read as including a same-sex couple who are not married but who are living together as a married couple, or to a person who is living with another person of the same sex as if they were married, as the case may be.

(4) Any related reference in any existing legislation, such as a reference to persons formerly living together as a married couple, however expressed, is to be read accordingly.

(5) The provisions of this section do not limit the effect of section 1.

### **Interpretation of new legislation.**

3. (1) In any new legislation, the following provisions shall apply.

(2) The following expressions have the meanings given –

(a) "**husband**" includes a man who is married to another man,

(b) "**wife**" includes a woman who is married to another woman,

- (c) "**widower**" includes a man whose marriage to another man ended with that other man's death,
- (d) "**widow**" includes a woman whose marriage to another woman ended with the other woman's death,

and related expressions are to be construed accordingly.

(3) A reference to marriage of same-sex couples, or to a marriage of a same-sex couple, however expressed, is a reference to a marriage between two men or a marriage between two women.

(4) A reference to a same-sex couple who are not married but are living together as a married couple, however expressed, is a reference to –

- (a) two men who are not married but are living together as a married couple, or
- (b) two women who are not married but are living together as a married couple.

(5) The provisions of this section do not limit the effect of section 1.

**Recognition of overseas same-sex marriages.**

4. (1) A marriage under the law of any country or territory outside Sark is not prevented from being recognised under the law of Sark only because it is the marriage of a same-sex couple.

(2) For the purposes of this section it is irrelevant whether the law of a particular country or territory –

(a) already provides for marriage of same-sex couples at the date of commencement, or

(b) makes such provision at a later date.

**Provisions which limit equivalence of all marriages etc.**

5. (1) Sections 1(2), 2 and 3 are subject to –

(a) the provisions of the Schedule,

(b) any contrary provision made by this Law and any Ordinance made under this Law, and

(c) any contrary provision made in any new legislation.

(2) The Chief Pleas may by Ordinance, in relation to sections 1(2), 2 and 3 –

(a) provide that any such provision has effect subject to provision made by that Ordinance, or

(b) specify cases in which any such provision does not apply.

PART II



## RELIGIOUS PROTECTION

### **Disapplication to ecclesiastical law.**

6. (1) Section 1(2) and (3) do not apply in relation to –
- (a) any Measures and Canons of the Church of England, or subordinate legislation made thereunder, in so far as such Measures or Canons or subordinate legislation have effect in the law of Sark, or
  - (b) other ecclesiastical law having effect in the law of Sark,

whenever passed or made.

(2) No Canon of the Church of England having effect in the law of Sark is contrary to the Royal Prerogative or the customs, laws or statutes applicable in Sark by virtue of its making provision about marriage being the union of one man with one woman.

### **Disapplication to Church of England marriages.**

7. (1) The marriage of a same-sex couple may not be solemnised according to the rites of the Church of England by a member of the clergy of the Church of England.

(2) Any duty of a member of the clergy of the Church of England to solemnise marriages (and any corresponding right of any person to have a marriage solemnised by any such member of the clergy) is not extended by this Law to marriages of same-sex couples.

(3) Where two persons of the same sex consent to or acquiesce in a marriage according to the rites of the Church of England such marriage shall be void.

**Marriage according to religious rites: no compulsion to solemnise etc.**

8. (1) A person, including a religious organisation, may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) –

- (a) to conduct a relevant marriage,
- (b) to be present at, carry out, or otherwise participate in, a relevant marriage, or
- (c) to consent to a relevant marriage being conducted,

where the reason for the person not doing that thing is that the relevant marriage concerns a same-sex couple.

(2) In subsection (1), "**relevant marriage**" means a marriage of a same-sex couple solemnised in a place of worship or in another place in accordance with religious rites or usages.

**Marriage according to religious rites: opt-in to marriage of same-sex couples.**

9. (1) A marriage of a same-sex couple may not be solemnised according to the rites or usages of a religious organisation, or in a place of worship, unless the relevant governing authority has given written consent to such marriages of same-sex couples.

(2) A person, including a religious organisation, may not be compelled by any means (including by the enforcement of a contract or a statutory or other legal requirement) to give consent for the purposes of this section.

(3) Where two persons of the same sex consent to or acquiesce in a marriage according to the rites or usages of a religious organisation, or in a place of worship, in the absence of the required consent, such marriage shall be void.

(4) For the purposes of this section, "**relevant governing authority**" means the person or persons recognised by the members of the relevant religious organisation as competent for the purpose of giving consent for the purposes of this section, and "**relevant religious organisation**" means the religious organisation according to whose rites or usages, or in whose place of worship, the marriage is to be solemnised.

(5) If, for the purposes of this section, a relevant governing authority has given written consent to marriages of same-sex couples, the validity of that consent is not affected only because there is a change in the person or persons constituting that relevant governing authority.

(6) The Registrar may, following receipt of notice of a marriage of a same-sex couple according to the rites or usages of a religious organisation, or in a place of worship, require the relevant governing authority to provide a copy of the consent mentioned in subsection (1).

(7) Nothing in this section is to be taken to relate or have any reference to marriages solemnised according to the rites of the Church of England.

### PART III

#### OTHER PROVISIONS RELATING TO MARRIAGES OF SAME-SEX COUPLES

##### **Persons already in civil partnership or marriage.**

10. It shall not be lawful for two persons of the same sex to marry if they are, or either of them is, in a civil partnership or, for the avoidance of doubt, if either of them is already married, and where two persons of the same sex consent to or acquiesce in a marriage in contravention of this section, such marriage shall be void.

##### **Prohibited degrees of consanguinity.**

11. (1) It shall not be lawful for two persons of the same sex to marry if one of them is, in relation to the other –

- (a) a parent or other ancestor,
- (b) the divorced or widowed spouse of such parent or other ancestor,
- (c) a sibling,
- (d) a sibling of a parent or other ancestor,
- (e) a child or other descendant,
- (f) a child or other descendant of a sibling,
- (g) a parent or other ancestor of a deceased or divorced spouse,

- (h) a child or other descendant of a deceased or divorced spouse,
- (i) the widowed or divorced spouse of a child or other descendant,
- (j) an adoptive parent or child, or a former adoptive parent or child,

and a reference to a sibling shall include a reference to a sibling of the half-blood by the same father or the same mother.

(2) Where two persons of the same sex consent to or acquiesce in a marriage in contravention of this section, such marriage shall be void.

#### PART IV

#### MISCELLANEOUS AND GENERAL

##### **General provisions as to subordinate legislation.**

12. (1) The Chief Pleas may by Ordinance make such provision as they think fit for the purpose of carrying this Law into effect, including (without limitation) such consequential amendments to any enactment or rule of custom as they think fit.

(2) An Ordinance under subsection (1) may, without limitation, include such provision as the Chief Pleas may think fit for the purpose of securing equal treatment of all married persons, of persons whose marriage has ended and of persons living together as if they were married.

(3) An Ordinance made under this Law may contain such transitional, consequential, incidental, supplementary and savings provisions as the Chief Pleas think fit, including (without limitation) provision repealing, amending or disapplying any enactment (including this Law).

**Interpretation.**

13. (1) In this Law –

"**civil partnership**" means a civil partnership formed under the Civil Partnership Act 2004<sup>a</sup> ("**the 2004 Act**"), or under the Civil Partnership (Jersey) Law 2012<sup>b</sup>, or which is treated under the 2004 Act as having formed by virtue of an overseas relationship being registered, and which has not been dissolved or annulled, and "**civil partner**" shall be construed accordingly,

"**date of commencement**" means the date when this Law comes into force in accordance with any Ordinance made under section 15,

"**existing legislation**" means –

(a) Laws (excluding this Law) or Ordinances –

(i) approved by the Chief Pleas, or

(ii) approved by the States of Guernsey on behalf of the Bailiwick,

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<sup>a</sup> An Act of Parliament (2004 c. 33).

<sup>b</sup> Ch. 12.260.

on or before the date of commencement,

- (b) Acts of Parliament extended to Sark with effect on or before that date, or
- (c) subordinate legislation made on or before that date (excluding any such legislation made under this Law),

**"new legislation"** means –

- (a) Laws or Ordinances –
  - (i) approved by the Chief Pleas, or
  - (ii) approved by the States of Guernsey on behalf of the Bailiwick,

after the date of commencement,

- (b) Acts of Parliament extended to Sark with effect after that date, or
- (c) subordinate legislation made after that date,

**"place of worship"** means a building used by a religious organisation as its usual place of religious worship,

**"Registrar"** means the Registrar of Marriages in the Island of Sark.

(2) The reference in subsection (1) to the Civil Partnership Act 2004 and to the Civil Partnership (Jersey) Law 2012 is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

14. This Law may be cited as the Same-Sex Marriage (Sark) Law, 2019.

**Commencement.**

15. This Law shall come into force on the day appointed by Ordinance of the Chief Pleas.



SCHEDULE  
PROVISIONS WHICH LIMIT EQUIVALENCE OF ALL MARRIAGES

Section 5

**Interpretation of private legal instruments.**

1. (1) The provisions of this Law do not, unless a contrary intention is expressed, alter the effect of any private legal instrument made before the date of commencement, and it does not matter whether such contrary intention is expressed in the instrument itself or in any variation or addition thereto validly executed before or after the date of commencement.

(2) The provisions of section 3 shall, unless a contrary intention is expressed, apply to the construction of any private legal instrument made on or after the date of commencement as they would apply to any new legislation.

(3) For the purposes of this section "**private legal instrument**" means any contract, settlement or deed, including (without limitation) –

- (a) a will,
- (b) an instrument which settles property or provides for the use, disposal or devolution of property,
- (c) an instrument which establishes a body or regulates the purposes and administration of a body, whether the body is incorporated or not and whether it is charitable or not.

**Amendment to the Matrimonial Causes (Guernsey) Law, 1939.**

2. The Matrimonial Causes Law (Guernsey) 1939<sup>c</sup> is amended as follows.

3. In Article 15(1), for "It" substitute "Subject to paragraph (3), it".

4. Immediately after Article 15(2), insert the following additional paragraph –

"(3) The Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples) has effect."

5. Immediately after Article 16A(6) insert the following additional paragraph –

"(7) Only conduct between the respondent and a person of the opposite sex may constitute adultery for the purposes of this Article."

6. In Article 22(1), and in Article 33(1), for "It" substitute "Subject to the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), it".

7. In the proviso to Article 34, immediately after sub-paragraph (b), insert ", and" and insert the following additional sub-paragraph –

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<sup>c</sup> Ordres en Conseil Vol. XI, p. 318; amended by Vol. XII, p. 278; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489; Vol. XXVII, p. 99; Vol. XXXI, pp. 171 and 278; Vol. XXXII, p. 85; Vol. XXXVI, p. 639; Vol. XXXVII, p. 308; Order in Council Nos. XI and XXXI of 2003; No. XIII of 2011; No. XII of 2015; Ordinance No. XXXIII of 2003; No. VII of 2010. Amended in relation to Guernsey by Order in Council No. II of 2017; Ordinance No. XIII of 2017. Amended in relation to Alderney by Order in Council No. I of 2018; Alderney Ordinance No. VIII of 2018.

"(c) the grounds specified in paragraphs (1), (3) and (4), and the requirement in sub-paragraph (b)(iii) of this proviso, do not apply in the case of a marriage of a same-sex couple."

8. In Article 38(1), for "It" substitute "Subject to the provisions of the Schedule (Jurisdiction in relation to Marriage of Same-Sex Couples), it".

9. After Article 72, insert the following Schedule –

"SCHEDULE  
JURISDICTION IN RELATION TO MARRIAGE OF SAME-SEX COUPLES

Articles 15(3), 22(1), 33(1) and 38

1. This Schedule shall have effect with respect to the jurisdiction of the Court in the following proceedings in relation to the marriage of a same-sex couple –

(a) proceedings for divorce, judicial separation or nullity of marriage, and

(b) proceedings for the grant of a decree of presumption of death and of dissolution of marriage thereupon.

2. The Court shall have jurisdiction in divorce causes and matters under Part II, in any suit for judicial separation under Part III, or in

suits for nullity of marriage under Part V, in relation to the marriage of a same-sex couple, if –

- (a) the condition in Article 15(1), 22(1) or 33(1) (as the case may be) is satisfied, or
- (b) the following conditions are met –
  - (i) the parties to the marriage married each other under the law of Sark, and
  - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case.

3. The Court shall have jurisdiction with regard to the granting of decrees of presumption of death and of dissolution of marriage thereupon, in relation to the marriage of a same-sex couple, if –

- (a) the condition in Article 38(1) is satisfied, or
- (b) the following conditions are met –
  - (i) the parties to the marriage married each other under the law of Sark, and
  - (ii) it appears to the Court to be in the interests of justice to assume jurisdiction in the case."