

The Union Civile Law

Introduction

The Union Civile proposes that the ability to legally marry two people is removed from all religious groups and becomes a function of the state alone. This is not new. It is a common legal position across the world. New Zealand is a perfect example of where there is one law to marry two people. There, marriage is conducted in a civil ceremony and, for those with a faith, they can choose to have a religious celebration afterwards. This is how the Union Civile would also work.

However, unlike all those countries where marriage is a civil function, our marriage laws in Britain are tied to the Church of England (the established church), which effectively makes marriage a religious function. This is what has given the Church of England its terrific power when it comes to the issue of equal marriage.

During the UK debates over equal marriage, the Church of England stated that:

“The Canons of the Church of England are part of the law of England. The Queen's licence and the Royal Assent are required before a canon may be made and promulgated. Canons are additionally subject to statutory provisions that provide that they do not have effect if they are contrary to the customs, laws or statutes of the realm.”

The Church of England argues that, because Canon Law on marriage is “part of the law of England,” the existence of new statutory law on same-sex civil marriage will create disharmony in British law. However, although Canon Law cannot be made that is contrary to State Law, there is nothing to stop State Law being enacted that is contrary to Canon Law. If Jersey were to create a Union Civile Law that contradicted Canon Law B30 (the Church's marriage law), Canon Law B30 would fall away as legal. As the above paragraph states, “canons are additionally subject to statutory provisions that provide that they do not have effect if they are contrary to the customs, laws or statutes of the realm”.

The polls on equal marriage have proved time and time again that the majority of the Great British Public support equal marriage. The most vocal opposition to equal marriage comes from religious groups. It is unfortunate that those, working within the major religions of the UK, who support equal marriage are not more numerous as although debates on equal marriage within faith communities include passionate pleas from those pro-change they usually result in a vote to maintain the status quo: marriage remains between one man and one woman. The inability of faith groups, especially the Church of England, to move forward in step with the wider society is choking progress on this issue.

The Church of England's own statistics show that it attracts just three million people on Christmas Eve or Christmas Day – five percent of the UK's population. This figure is halved on a normal Sunday. To put those figures in context: between seven and eight million people tune in to watch Coronation Street on any given day! It is a sad truth that the Church of England's congregation is a dwindling one. It can no longer claim to represent the views of the majority of British people on marriage. It is, therefore, questionable as to whether it should have such a disproportionately large say in how marriage laws evolve.

Marriage, which affects every single citizen not just those who are religious, should be a civil function. It is time that it was removed as an automatic function of the Church of England and Jersey has the opportunity to do that in the form of the Union Civile.

(For more information about how marriage works in New Zealand, please refer to:
http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Births-Deaths-and-Marriages-How-to-Get-a-Marriage-Licence?OpenDocument)

10 Basic Principles

Principle 1. The Union Civile Law replaces all other marriage laws.

For marriage to be truly equal there can only be one path to unite couples. The Union Civile replaces the Marriage and Civil Status (Jersey) Law 2001 and the Civil Partnership (Jersey) Law 2012. Both laws are repealed.

Note: the Marriage and Civil Status (Jersey) Law 2001 contains laws regarding the registration of births, marriages and deaths. If it is repealed, the sections on the registration of births, marriages and deaths will need to be passed as a separate law or included in the Union Civile Law.

Principle 2. No existing marriage or civil partnership is invalidated by the Union Civile Law.

Existing marriages or civil partnerships remain valid and legitimate under the law. There is no compulsion on couples to convert their marriage or civil partnership to a Union Civile. However, if couples wish to do so a simple procedure will enable the conversion.

Principle 3. The Union Civile Law permits marriage between two people regardless of their gender.

A Union Civile permits two people to marry regardless of their gender. Persons under the age of 16 or those already lawfully married or in a civil partnership may not marry another partner using the Union Civile. Restrictions on marriage with persons of the same descent and/or with former stepchildren also apply (see Schedule 1 of the Marriage and Civil Status (Jersey) Law 2001).

Principle 4. The Union Civile is a legal process, administered by the States of Jersey.

Steps to the Union Civile:

- a. notice of marriage is given by the couple to the Superintendent Registrar;
- b. the Superintendent Registrar performs such checks, requests such declarations and posts such notices as are currently required under the Marriage and Civil Status (Jersey) Law 2001 para 8;
- c. if the Superintendent Registrar is satisfied all conditions have been met, a marriage licence is granted to the couple;
- d. for those wishing to marry in the registry office or a place that has not been registered as a building in which marriages may be solemnised, the couple will need to apply to the Connetable of the parish in which the building is situated for authorisation to use the building for that purpose;
- e. the Connetable may not grant a licence to any building that is used as a place of meeting for public religious worship by an established and recognized religion or church – the Union Civile is a legal not a religious process;
- f. if the Connetable is satisfied all conditions have been met, a certificate of registration is granted to the applicant;
- g. upon application by the owner or trustees of the building, the Connetable may also authorize a person or persons nominated by the owner or trustees to solemnize and register marriages in that building without the presence of the registrar of the parish;

- h. alternatively, the Superintendent Registrar or their delegate may solemnize and register the marriage;
- i. the marriage may now be solemnised in the registered building by the authorised person following the conditions currently required under the Marriage and Civil Status (Jersey) Law 2001 para 17.

Principle 5. The Union Civile is not a religious process.

A Union Civile may not, therefore, contain any religious content, take place in a place of worship or be solemnized by a cleric acting in their religious capacity. Marriage services undertaken in a place of worship, under the laws of that religion and solemnized by a cleric acting in a religious capacity will have no validity in law. The States of Jersey will not recognise unions formed in such circumstances as a marriage in the eyes of the law. For all and any legal purposes, a couple married in such a fashion will be treated as co-habiting or common-law. The only way for a couple to legally marry will be through a Union Civile.

However, the Union Civile permits services of religion celebrating the marriage to happen before or after the Union Civile is enacted so long as there is a clear demarcation between the Union Civile and the religious ceremony.

The Union Civile also allows leaders of faith groups to apply to the Connetable of the parish to solemnize and register marriages, although they may not do so within a religious service, within a place of worship or wearing religious vestments. Members of the clergy will be granted authority by the Connetable on the understanding that such authority is a civil appointment divorced from their religious appointment and, as such, they are governed by the island's laws on anti-discrimination in the provision of goods and services.

Principle 6. The registration of marriages is a function of the States of Jersey only.

The registration of marriages may be carried out by the Superintendent Registrar, every Deputy Superintendent Registrar, registrar and deputy registrar, and the registrars and deputy registrars of the parishes under the Union Civile Law. Anglican clergy may no longer automatically be capable of registering marriages.

However, the Union Civile allows leaders of faith groups to apply to the Connetable of the parish to become registrars or deputy registrars. Leaders of faith groups will be appointed by the Connetable on the understanding that the position is a civil appointment divorced from the cleric's religious appointment and, as such, they are governed by the island's laws on anti-discrimination in the provision of goods and services.

Principle 8. The Union Civile includes the ability for those religious leaders that wish to solemnize equal marriages to do so despite the laws of their churches.

The Union Civile is designed in such a way as to permit the leaders of religious groups who are in favour of equal marriage, such as some Methodist ministers, but who do not have permission from their religion to officiate at a same-sex marriage in a place of worship, to celebrate an equal marriage in a secular capacity. Because the Union Civile requires that anyone authorised to solemnize a marriage does so in a civil capacity with no religious involvement, there is nothing to stop clerics who wish to solemnize a same-sex marriage from doing so in a personal capacity.

Principle 9. The Matrimonial Causes (Jersey) Law 1949 is retained as the means by which to dissolve a Union Civile...

...Provided that paragraphs 18 (1) (h) and (i) that deal with nullity of marriage through one party to the marriage undergoing gender reassignment are removed. Because the Union Civile is the only way for two people, regardless of gender, to marry it is no longer material if one party to the marriage undergoes gender reassignment. For those that transition within marriage and wish to retain their partnership, the Union Civile represents a ground-breaking step forward as there is no longer a requirement to divorce and re-marry/civil partner with all the upheaval that represents. For those that transition within marriage and do not manage to retain their relationship, dissolution of the union is available under the Matrimonial Causes (Jersey) Law 1949. There is no requirement for the law put in place special provisions to “protect” the spouse from the trans person’s desire to transition because the spouse will be able to bring an application for divorce on the grounds that the trans person has “behaved in such a way that the applicant cannot reasonably be expected to live with the respondent”.

Principle 10. Equal marriage means equal treatment.

When comparing the Matrimonial Causes (Jersey) Law 1949 and the Civil Partnership (Jersey) Law 2012, there are three glaring omissions from the Civil Partnership (Jersey) Law 2012 when it comes to ending the partnership. A civil partnership cannot be dissolved through adultery or annulled through non-consummation or continued impotence. All three of these conditions are within the Matrimonial Causes (Jersey) Law 1949.

The perceived difficulty here is in the definition of the sex act for gay or lesbian couples. This perception possibly exists in the heterosexual community because of an ignorance of homosexual activities and a somewhat prejudicial view that it can only be “real” sex where penetration of a woman by a man takes place. Frankly, this patronises the LGBT community and downgrades their relationships.

Ask any LGBT person and they will tell you categorically whether they had sex with their partner! Were an annulment on the grounds of non-consummation of a Union Civile by a same-sex couple to be tested in court, it would become clear very quickly under cross-examination whether the union was consummated or not. Put simply, where genital stimulation is involved the union is consummated. Consider this: if cases can be brought involving homosexual rape, it is possible to define what constitutes same-sex sexual activity in law.

There is, therefore, no good reason to remove these conditions. LGBT people can be just as emotionally damaged by a partner’s unwillingness to consummate the marriage or by continued impotence as a party to an opposite-sex union. It doesn’t hinder pro-creation for a same-sex couple, as it does for an opposite-sex couple, but it could make the union intolerable and an annulment desirable.

The same applies to adultery. The emotional betrayal represented by the act is the same for opposite-sex and same-sex couples. This should, therefore, be available as a condition for dissolving a Union Civile for all those who enter into a marriage.

FAQs

Q. If I have a Union Civile will I be married?

A. Yes. You can say you are married and you will receive a marriage certificate from the States of Jersey that will be recognised internationally.

The arguments between the church and state surrounding the use of the word “marriage” are largely down to the definition within Canon Law (Anglican church law) and church liturgy. “Marriage” is defined by the established church as between “one man and one woman”. Until Canon Law is amended, the argument over the meaning of the word will continue.

However, the Union Civile, as its name suggests, is a civil function of the state and is not defined by church law. As such, it is a legal vehicle through which to *marry* two people. Those who disagree with this definition are at liberty to refer to the legal part as their “union civile” and the church service that they have before God and witnesses as their “marriage”.

Q. I am already married/in a civil partnership. How does the Union Civile affect me?

A. The repeal of the Marriage and Civil Status (Jersey) Law 2001 and the Civil Partnership (Jersey) Law 2012 and the introduction of the Union Civile Law do not affect your status or that of your marriage or civil partnership. You will not be forced to convert your marriage or civil partnership to a Union Civile. For the duration of your marriage or civil partnership, it will remain a marriage or civil partnership. Enshrined within the Union Civile Law will be the fact that a marriage and civil partnership have equal standing in law with a Union Civile.

Q. Can I convert my marriage or civil partnership to a Union Civile?

A. Yes. There will be a straight forward process put in place to enable couples who wish to convert their existing marriage or civil partnership to a Union Civile. It will take the form of a declaration of intent to convert the existing marriage or civil partnership and require the signature, before witnesses, of both parties to the marriage or civil partnership. The declaration will then be processed and the marriage or civil partnership registered. Converted unions will register the date of the conversion and the date on which the original ceremony took place in order that the continuity of the marriage or civil partnership is recorded.

Q. What happens if I wish to divorce and end my marriage or civil partnership?

A. It is envisaged that the Matrimonial Causes (Jersey) Law 1949 will be amended only slightly to include provisions for dissolving a Union Civile. Couples in a marriage or civil partnership wishing to divorce must first convert the existing union to a Union Civile (see explanation above). After which, the provisions within the Matrimonial Causes (Jersey) Law 1949 will apply.

Q. I am in a same-sex Union Civile and my partner and I do not engage in penetrative sex, should we do so in order that our marriage cannot be annulled by one or other of us?

A. No. As long as you can testify that your love-making involves genital stimulation of some description it will be considered to have been consummated.

Q. I am a heterosexual person of faith that belongs to a religion that has not accepted same-sex marriage. Will I be able to get married in my place of worship?

A. Of course. You will need to hold a Union Civile first, which is the legal part of the marriage and can be done very quickly at the registry office with no fuss, before you have your wedding at your place of worship and marry before God and in front of witnesses. For you, the Union Civile is akin to registering the birth of a child with the state. The choice to then baptise the child in your faith, or not, is akin to electing to have a wedding in a place of worship following the Union Civile.

Q. I am a leader of a religious group who holds marriage services. Will I be able to marry people under the Union Civile in my place of worship?

A. You will not be able to *legally* join two people and a Union Civile may not be held in a place of religious worship. However, you will be able to unite them in the customs of your faith, before God and in front of witnesses.

It will be a matter for individual religious groups to decide whether they will carry out services for two people not in possession of a Union Civile certificate. However, any “marriage” entered into in those circumstances will not be recognised in law.

Q. As a leader of a religious group holding a marriage service following a Union Civile, do I still have to complete a register?

A. You do not have to complete a register under the Union Civile Law. However, your group or building may wish to record weddings, as you would do for baptisms. The registration of the Union Civile will now be done by the parish or registry office.

Also, you will no longer be responsible for checking for any legal impediments to a marriage. That will be done by the registry office prior to the Union Civile.

Q. I am an Anglican priest and, as a member of the established church, I am expected to marry any parishioner who requests me to do so. Will I be forced to perform services for same-sex couples against my beliefs?

A. Absolutely not. Under European law, you cannot be forced to do anything within the confines of your religious organisation and building that goes against your beliefs.

Q. I am a faith leader in a non-established religion that holds opposite-sex and same-sex marriage services, will I be permitted to marry two people under the Union Civile Law?

A. As above, you will not be able to *legally* join two people. That will be done by the registrar at the time of the Union Civile. However, you will be able to unite them in the customs of your faith, before God and in front of witnesses.

The Union Civile Law does not stop you from applying to the Superintendent Registrar or to the Connetable of the parish in which you operate to be a deputy registrar. This is a civil appointment, separate from your religious one, and as such does not permit you to discriminate in your provision of services to anyone who approaches you to act as a registrar. It would enable you to *legally* marry two people within a non-religious setting.

Q. Will I have to keep applying for authorisation to solemnize marriages?

A. Not if you are willing to solemnize the marriage of all couples who approach you. It is envisaged that the Union Civile will permit two types of authorisations by applicants to solemnize a marriage. One will be open ended and will be appropriate for leaders of religions prepared to solemnize opposite sex and same sex marriages in non-religious contexts who are asked regularly to solemnize marriages.

The other will be granted for a limited period, usually 24 hours, and authorisation will be given to an individual based on the marriage to be solemnized taking place on a particular day in a particular place within a non-religious context.

The Union Civile: Case Study 1: Simon and Louise

Simon and Louise are both Church of England. They are engaged to be married and would like to have a church wedding. They approach their parish priest who is delighted for them and happy to celebrate their marriage in the church.

The priest explains that, under the Union Civile Law, the process of marriage has changed slightly. He explains that he can no longer apply to the Dean for a marriage licence or publish bans, Simon and Louise must apply to the registry office for their marriage licence. Simon and Louise do just that and their licence is granted.

Two months later, on a Friday, Simon and Louise return to the registry office with two friends. Their marriage is solemnized before their witnesses by the Superintendent Registrar and the register is signed. The process takes about fifteen minutes in total. It is at this point that Simon and Louise are legally married.

Simon and Louise do not considered themselves married yet and, symbolically, they decide to spend that night apart, Louise with her sister and Simon with friends.

The following day, Simon and Louise's friends and family, the men wearing traditional morning suits and the women wearing co-ordinated outfits with stunning hats, fill the parish church. The groom and best man stand at the front of the church looking nervous. Then, *The Arrival of the Queen of Sheba* plays, the congregation stand and Louise, looking beautiful, walks down the aisle on her father's arm. What follows is a recognisably traditional marriage service, no different from those carried out before the introduction of the Union Civile. The register that Simon and Louise sign in the service belongs to the church and is not a government record of the marriage. It simply records the wedding service, just like a church records a baptism service but not the birth of a baby.

It is in this religious setting, before God and witnesses, that Simon and Louise feel their marriage rite is completed.

The Union Civile: Case Study 2: Sarah and Fran

Sarah and Fran have recently been attending an Anglican church. They are engaged to be married and would like to have a church wedding. They have been attending the church for more than the statutory number of weeks required to be considered a parishioner and they approach the vicar to ask if he will marry them.

The vicar explains that he cannot marry them because he is not permitted by the Anglican Synod to marry same-sex couples. Sarah and Fran ask him whether he would be prepared to bless their partnership. Again, the vicar says that he is not permitted to do so. Finally, Sarah and Fran ask whether they might hold a thanksgiving service for their partnership. The vicar refuses, explaining that same-sex partnerships are against his personal religious beliefs and he would not be prepared to hold such a service.

Sarah and Fran, annoyed that they invested time in attending the parish church, seek legal advice about bringing a discrimination case against the priest. They are told that, because the vicar is an employee of a religious organisation and is acting for and on behalf of that religious organisation, they have no case. The vicar is within his rights to refuse to offer a service to a same-sex couple if it is against his or his organisation's religious beliefs.

Sarah and Fran decide to get married at the registry office instead and are married in front of friends and family by the Superintendent Registrar. It is at this point that they are legally married and they leave in style in a speed boat for their reception on board a luxury yacht anchored in St Aubin's Bay.

The Union Civile: Case Study 3: Freddie and Peter

Freddie and Peter are both Methodists. They are engaged to be married and would like to have a church wedding. Their minister is pro-equal marriage and wishes that the Methodist Conference allowed their ministers to marry same-sex couples. She is pleased that they are working towards that goal but knows it will take some time before it is a reality. In the meantime, she is permitted to bless the marriage of a same-sex couple. Freddie and Peter have asked their minister for a blessing.

Under the Union Civile Law, Freddie and Peter's minister decides to apply to the Superintendent Registrar for the authority to act as a deputy registrar. This is granted on the understanding that it is a civil appointment and, as such, is bound by the island's discrimination laws. It is not a religious appointment so the minister will not be able to use her religious beliefs as a defence if she were to refuse a marriage to any couple on discriminatory grounds.

In the meantime, Freddie and Peter apply to the registry office for their marriage licence, which is granted.

Freddie and Peter's big day starts with a celebratory service at the church that they both attend, led by their minister. There are Bible readings, hymns and prayers. The minister asks the congregation to bear witness to Freddie and Peter's love for each other and blesses their partnership in the sight of God.

At the end of the church service, while the guests are chatting and making their way to the reception at a local hotel, Freddie, Peter, their closest friends and family leave the church for the garden of the manse where a marquee has been erected. The minister takes a moment to go via the vestry to remove her religious vestments and then joins the small marriage party in the manse garden.

It is in this non-religious setting that Freddie and Peter's marriage licence is seen to be in order, their marriage is solemnized by their minister, acting in a civil capacity, and the register is signed before witnesses. It is at this point that Freddie and Peter are legally married.

The Union Civile: Case Study 4: James and Christian

James and Christian have no religious faith but they are both passionate about amateur dramatics. They are engaged to be married and would like to have their wedding in the theatre where they met.

They apply to the Connetable of the parish in which the theatre is situated for approval for the premises and the owner of the theatre applies for their friend, Mike, to be given authority to solemnize their marriage. After ensuring that Mike understands his duties as the Superintendent Registrar's representative, the Connetable gives his approval. James and Christian also apply to the registry office for their marriage licence, which is granted.

James and Christian's marriage is one to remember as it includes a duet by the grooms from *South Pacific* and ends with a big production number featuring a chorus line of high-kicking dancers. Mike solemnizes their marriage in the middle of the "show" on top of a set designed to look like a giant wedding cake and the register is also signed here before witnesses. It is at this point that James and Christian are legally married.

The Union Civile: Case Study 5: Trevor and Gwen

Trevor and Gwen are members of an Anglican evangelical group who are utterly opposed to same-sex marriage. They are engaged to be married and are determined that they will not "buy into" the new Union Civile, thus condoning equal marriage. They approach their preacher who agrees with their stance and suggests that, under the Canon Law of the Church of England, he can legally marry them.

Trevor and Gwen don't like the fact that they cannot apply for their marriage licence from the Dean but their preacher says he will publish bans for them, even though the States does not recognise bans as a legitimate way of obtaining a licence to marry. In order that the marriage service can go ahead, Trevor and Gwen apply to the registry office for a marriage licence anyway and are granted one.

On a beautiful spring day, Trevor and Gwen hold a traditional Anglican marriage service with their friends and family in attendance. There are hymns, prayers and Bible readings. They sign the church's register before witnesses and when their preacher says, "I now pronounce you man and wife", they believe themselves to be married.

After the service, the preacher attempts to file the registration of the marriage with the registry office. His application is refused because it is incomplete; Trevor and Gwen have not held their Union Civile – the legal part of their marriage.

The preacher encourages Trevor and Gwen to fight the State for the right to have their marriage recognised. After much wrangling and several thousand pounds in legal fees, the European Court rules that Canon Law does not overrule the law of the land where there is a conflict, and never has done*.

Trevor and Gwen stick by their decision not to get married using the Union Civile Law. In the end, they decide that being married in the sight of God is the most important thing for them and they don't need a marriage certificate from the State.

(* “Since the First Act of Supremacy 1534, canon law has been formally subservient to ‘state law.’ In contemporary England, canon law has become progressively subsumed by both common and statutory law, but has often retained a strong influence, particularly in regards to marriage.”

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For more information, read Paul Johnson’s article: <http://jurist.org/hotline/2012/06/paul-johnson-lgbt-coe.php>)

You are cordially invited to a Union Civile...

