



SAME SEX MARRIAGE AND DIVORCE

DECEMBER 2020

In 2016, the States of Guernsey approved the 'Same Sex Marriage (Guernsey) Law, 2016'. This law came into force on 2nd May 2017 and for the very first time formally permitted same sex marriage in Guernsey. As it stands the law applies only to Guernsey and not to the rest of the Bailiwick, but presumably the law will be extended in the near future.

With marriage comes the possibility of divorce, and the new law grants the Royal Court with the same jurisdiction as currently applies to heterosexual couples under the existing divorce legislation.

The grounds for divorce are the same as for a heterosexual couple, with one notable exception, namely the exclusion of adultery for same sex couples. This means that parties in a same sex marriage who discover that their spouse has been unfaithful to them will not be able to cite adultery as the cause of the breakdown of their marriage, unless the adultery was with someone of the opposite sex. Equally, married heterosexual people are not able to rely on adultery if they discover that their spouse is in a relationship with a person of the same sex.

The new law also extends divorce jurisdiction to circumstances where the parties married in Guernsey, but where there is no jurisdiction in the Courts of their home country to grant divorce or financial orders. Similarly, under the new law Guernsey now recognises the marriage of a same sex couple lawfully celebrated in another jurisdiction. In those circumstances, given that the parties did not marry here in Guernsey, if either party is domiciled or habitually resident in Guernsey then the Royal Court has the power to make financial orders on divorce.

In short, same sex marriages are to be treated the same as marriages between a man and a woman and the same, with the one exception of adultery, in relation to divorce.

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