

STATES OF JERSEY



STATES STRATEGIC PLAN 2009 – 2014 (P.52/2009): EIGHTH AMENDMENT

Lodged au Greffe on 19th May 2009
by Deputy P.V.F. Le Claire of St. Helier

STATES GREFFE

1 PAGE 2 –

After the words “attached as Appendix 1” insert the words –

“, except that in Aim on page 7, in the fifth bullet point after the words “sound infrastructure” insert the words “and which embraces a progressive culture of openness, transparency and accountability to the public”.

2 PAGE 2 –

After the words “attached as Appendix 1” insert the words –

“, except that in Priority 9 on pages 22–23 in the section entitled “What we will do”, after the last bullet point, insert the following additional bullet points –

- Introduce procedures to allow access to the Courts for registered members of the media in relation to cases involving children to bring greater openness to the family courts.
- Allow for the release of Court Judgements to the media in a way that ensures best practice is followed and adhered to.
- Promote issues pertaining to child welfare in the local media and raise public awareness to reduce and address potential future harm to children.”

3 PAGE 2 –

After the words “attached as Appendix 1” insert the words –

“, except that in Priority 15 on pages 30–31 in the section entitled “What we will do”, after the seventh bullet point, insert the following additional bullet points –

- We will work to improve the public trust in government and establish a system of greater transparency, public participation, and collaboration to strengthen our democracy and promote efficiency and effectiveness in Government.
- Introduce time limits for the public release of government information with appropriate safeguards in relation to these rules to protect matters such as the privacy of individuals in appropriate circumstances.”

DEPUTY P.V.F. LE CLAIRE OF ST. HELIER

REPORT

The remarkable propensity to keep things secret in Jersey has endured to the detriment of the general public for too long.

It came as a great surprise to me some time ago to be told that Jersey had no repeal of the secrets it holds and unlike other countries has no time limit to hold information.

This cannot be right.

I circulated this e-mail recently to which Senator Ozouf remarked kindly upon in the States.

Personally I agree with it and include it below.

From: Paul Le Claire

Sent: 02 May 2009 08:03

To: All States Members (including ex officio members)

Subject: Tranparency [sic]

you may find this article released 1st May this year interesting.

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Transparency and Open Government

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

I direct the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development by appropriate executive departments and agencies, within 120 days, of recommendations for an Open Government Directive, to be issued by the Director of OMB, that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum. The independent agencies should comply with the Open Government Directive.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the *Federal Register*.

BARACK OBAMA

The following extracts from the Mail Website in the U.K. from April of this year highlight why I am seeking the amendment in Jersey in relation to the Courts.

Jack Straw furious at civil servants' bid to sabotage open justice in family courts

By Glen Owen

Last updated at 12:12 AM on 26th April 2009

[Wrongly accused: Nicky Webster, pictured with son Brandon, and her husband Mark (had their three elder children taken away from them in a miscarriage of justice)]

Jack Straw has expressed his fury after civil servants tried to block his flagship battle to bring greater openness to the family courts.

Under new rules being introduced by the Justice Secretary on Monday, the media will have access for the first time to thousands of family hearings, including cases involving children being taken into care.

But Mr Straw has been furious to learn that Justice Department officials have tried to sabotage the reform.

They have said that the media can be allowed into care hearings – but that reporting the proceedings would be contempt of court.

‘This obviously nullifies the point of the reform,’ a source in the department said.

‘However, rest assured that we will get where Jack wants to get.

‘He believes that these hearings should be as open and transparent as possible – that justice is seen to be done – and is convinced that the media can be trusted to report the proceedings in a responsible fashion.’

The rule change follows a campaign for open justice by The Mail on Sunday in the wake of outrage over the case of Mark and Nicky Webster, the Norfolk couple who had their three eldest children taken away from them after false claims of abuse.

Legal experts said that such a miscarriage of justice would have been less likely if the brief hearing which decided their children’s fate had been subject to media scrutiny.

Mr Straw also faces a battle on another front. Family lawyers are trying to block the reporting of divorce cases on the grounds that parties could use the threat of publicity as a bargaining weapon.

London law firms are already drawing up applications to judges arguing that requests by the Press to report the details of warring spouses would amount to a ‘blackmailers’ charter’.

[Fuming: Jack Straw is furious that Justice Department officials have tried to block his reform of family courts]

Last week, Bob Satchwell, director of the Society of Editors, wrote to Mr Straw urging him to overturn the ruling that reporting care cases would amount to contempt of court.

‘We cannot emphasise too highly that if this interpretation is correct, then its effect will be to nullify the entire purpose of the past several years’ discussions and the Government’s stated aim of openness and accountability,’ he wrote.

‘The great majority of the very cases in which public concern is most acute are those which involve children and particularly State intervention in children’s care and upbringing.

‘If the interpretation above is correct, these proceedings would not be reportable and effectively there would be no change at all.

‘The media’s role as the public’s eyes and ears would be completely subverted. This would be a disastrous outcome and clearly one which was surely never the Government’s intention.’

Mr Straw said in a statement last night: ‘Family courts play a crucial role in our society.

‘It is vital that these courts command the confidence of the public. If justice in these courts is seen to be done, they will be trusted by the public.

‘Existing reporting restrictions for the newly attending media will of course still apply, to protect children and families, but I want to ensure a change in the culture and practice of all courts towards greater openness and this is an important step towards that goal.

ENDS

Family courts will stay secret despite Jack Straw's promise to open them up

By Daily Mail Reporter

Last updated at 12:31 AM on 28th April 2009

Jack Straw's promise to open up the family courts was called into question yesterday after judges refused to break their culture of secrecy.

Rules brought in by the Justice Secretary allowed journalists to observe the workings of the courts which rule on divorce, child custody and protection of children at risk.

But they will not be allowed to report details of cases involving children, despite Mr Straw's promise.

The Royal Courts of Justice

Restrictions: Although the media will be allowed to attend many more family court hearings, the new rules will still contain a number of protective provisions

His plan, originally announced last year, was to shed light on the system to tackle suspicions of bias, injustice and cronyism in the family courts.

Under the reforms, journalists will be able to attend hearings in county courts and cases in the Family Division of the High Court.

More...

- * Jack Straw furious at civil servants' bid to sabotage open justice in family courts
- * EU judges want Sharia law applied in British courts

But judges made sure that reporters would not be allowed to tell the public anything they saw or heard while the court was in session.

Guidelines issued in the name of Sir Mark Potter, the President of the Family Division, declared that 'the proceedings remain proceedings held in private, and that therefore the existing position relating to the publication of matters relating to proceedings which are so heard continues to apply'.

It means the ban on reporting will remain in force. In addition, court documents – key to understanding the background of a case – must remain secret if any party to a case wants them to be.

The continued blackout in family courts will be seen as a setback for Mr Straw, who said last year that privacy and confidentiality rules had gone too far and that incompetent social workers and doctors should not be protected by court orders.

Resentment over family court decisions has led to disruptive demonstrations by groups such as Fathers-4-Justice, which alleges that the courts favour mothers.

[Setback: Justice Secretary Jack Straw]

Mr Straw yesterday promised laws to clear away the barriers to openness.

In a ministerial statement he said: 'This is because key existing restrictions on reporting are contained piecemeal in primary legislation, and the balanced, flexible

and simplified framework which is our aim cannot be achieved through rule changes. We will do this as and when parliamentary time allows.’

It is understood that Mr Straw is committed to pushing ahead with further changes to ensure that courts dealing with cases involving children can be reported on the same basis as criminal cases in the Youth Courts.

This means it would be unlawful to publish anything which would identify any juvenile involved in the case. But it would be possible to identify adults such as social workers and doctors, and to report details of the case such as the allegations involved.

The new rules allowing journalists to attend family proceedings hearings in County Courts and the Family Division of the High Court also provide for their exclusion on a number of grounds:

- * In the interest of any child concerned in, or connected with the proceedings.
- * For the safety and protection of parties, witnesses, or a person connected to a party or witness.
- * For the orderly conduct of proceedings – which is apparently intended to cover situations where more journalists wish to attend than a court can accommodate.

But under the current legal regime, even if journalists are allowed into hearings involving a child which are held in private – as they invariably are – they will be unable to report anything about that case unless the court gives specific consent.

This is because section 12 of the Administration of Justice Act 1960 makes it a contempt of court to publish any information about a hearing in a court which is sitting in private in a number of circumstances.

These include when the case relates to the exercise of the High Court's inherent jurisdiction with respect to minors, when it is brought under the Children Act 1989 – which would cover applications to take a child into care, and disputes between estranged parents about where a child should live – and when a case relates wholly or mainly to a child's maintenance or upbringing.

Officials at the Ministry of Justice who have been involved in discussion with media groups over admitting journalists to family courts insist that private hearings will remain private even if journalists are allowed to attend – and that the section 12 ban on reporting cases involving children will therefore remain in place.

The Newspaper Society and the Society of Editors, supported by the BBC, ITN and the Press Association, have written to Mr Straw expressing their alarm over the Ministry's approach, saying that if it is correct, the effect ‘will be to nullify the entire purpose of the past several years' discussions and the Government's stated aim of openness and accountability’.

The letter went on: ‘The great majority of the very cases in which public concern is most acute are those which involve children, and particularly State intervention in children's care and upbringing. If the interpretation above is correct these proceedings would not be reportable and effectively there would be no change at all.’

A Ministry of Justice spokesman said: ‘The bottom line is that we are transforming the way the family courts can be reported.’

‘We announced that media could attend – from April if possible. That is what we have done.

‘We did not announce that reporting restrictions could or would be lifted in April. To do so we need to change the law through Parliament. We said we would legislate to revise reporting restrictions as soon as parliamentary time allows. We are actively seeking opportunities to do so.

‘The Justice Secretary is clear that while there must be a balance between the need to protect children in family court cases, the aim of the revised reporting restrictions will be to open up the family courts to a greater degree of transparency. This is in line with his overall aim of opening up the justice system.

‘We said the media would be able to discuss in a more informed way how the system works.

‘We said that until legislation revising reporting restrictions is in place, reporters will be able to report sufficient outlines of cases that will allow their readers to understand the gist of proceedings without identifying those involved.’

ENDS

I have recently experienced the stone wall surrounding access to Judgements whilst preparing my proposition for the Family X Children.

I registered for access to the Jersey Law Website for Judgements so that I could use them in my professional capacity as a Politician and have not received even an e-mail acknowledgement (maybe the fault is mine, maybe the website is just tricky?)

Financial and manpower implications

The Council of Ministers have said of their financial and manpower implications for the States Strategic Plan the following –

“Any additional financial and manpower implications will be brought forward in specific policy proposals and the Annual Business Plan”.

If the States agree to these amendments, then I would ask that the same processes as necessary are undertaken and any additional expenditure required and manpower implications identified in the same ways, if possible.