

STATES OF JERSEY



COURT PROCEEDINGS: PROVISION OF LIVE-STREAMING FOR SITTINGS NORMALLY HELD IN PUBLIC (P.43/2020): COMMENTS

**Presented to the States on 20th April 2020
by the Chief Minister**

STATES GREFFE

COMMENTS

Introduction

[P.92/2013](#), adopted by the States Assembly on 25th September 2013, confirms that the Chief Minister is responsible within the Executive branch of Government for Justice, Policy and Resources. These comments are presented within that context. They are intended not only to relate to [P.43/2020](#), lodged by Deputy M. Tadier of St. Brelade, but also to his [amendment](#) to [P.41/2020](#), the Draft Covid-19 (Emergency Provisions – Courts) (Jersey) Regulations 202-.

Deputy Tadier's amendment to the draft Regulations would provide a temporary enabling provision in statute for the courts to broadcast proceedings live on a publicly accessible website. The proposal in his proposition P.43/2020 goes further, in that it would formally require court proceedings that are normally held in public to be live-streamed on a publicly accessible website for the period that the public gallery of the court is closed because of Covid-19. It should be noted, therefore, that P.43/2020 is also a temporary provision.

As the Minister responsible for Justice matters, I have consulted the Chief Justice, Deputy Bailiff and Judicial Greffier on Deputy Tadier's proposals. Following this consultation, and having considered the matter myself, I am unable to support the proposals for the reasons set out below.

Keeping the courts operational

P.92/2013 states that the Chief Minister has democratic responsibility for the components of the overall justice system, including the overall criminal, civil, family and administrative justice system; the courts, tribunals and access to justice. The Chief Minister's responsibility also includes safeguarding human rights.

These are important obligations conferred upon the office of Chief Minister, and I undertake them with the utmost seriousness. The decision of the courts to close the public gallery is one that should only be taken in extraordinary circumstances. These, however, are not ordinary times, and the temporary closure of the public gallery is a decision that has been taken by the courts to safeguard the health and well-being of the public and court staff, and to ensure that current Government requirements, both with respect to the essential movement of people outside the home generally, and social distancing in particular, can be respected. I acknowledge that the decision itself to close the public gallery is not one that is being challenged by Deputy Tadier, but nevertheless think it important for these remarks to be on the record.

It should also be noted that the temporary closure of the public gallery is not the only public health measure being taken by the courts at the current time. By way of example, given that it is not safe or possible at present to assemble a Jury, all Jury trials have been adjourned until later in the year. It is proposed, following an amendment by Scrutiny, that provision is made for a defendant who has elected for a Jury trial to elect instead for an Inferior Number trial and to allow a Court that has determined that a matter will be tried by a Jury to determine instead that it will be heard by the Inferior Number. This temporary change is aimed to ensure that, where it is possible to proceed without a Jury trial in the coming months, this is enabled. This is, similarly, an essential development in the present circumstances.

Furthermore, the draft Regulations proposed in P.41/2020 would make a variety of emergency provisions, many of which are necessitated by the Covid-19 pandemic and wouldn't otherwise be proposed, such as reducing the quorum for the Superior Number of the Royal Court. It should be emphasised that the key purpose behind all the proposals is to ensure that the courts can remain operational to the greatest possible extent throughout this pandemic. Indeed, the draft Regulations were developed in partnership with representatives of the Judiciary and the Law Officers' Department to ensure that they achieved this objective, were workable in practice, and didn't have unintended adverse effects.

Human Rights considerations

Before addressing the various concerns that have been expressed to me, and which I share, with respect to Deputy Tadier's proposals, it is important to confirm to Members the steps I have taken in respect of this matter to fulfil my responsibility within the Executive for safeguarding human rights. To that end, I have been briefed on the human rights implications of the temporary closure of the public gallery, and am advised that this decision, taken in the context of the present extraordinary circumstances, does not represent a breach of Article 6 of the European Convention on Human Rights (ECHR) as is implied by Deputy Tadier in the report within P.43/2020.

This was an important re-assurance. I hope Members will appreciate that it would be inappropriate for a Minister to state anything further, certainly at this stage, in relation to any legal advice which may have been received. That said, Members will be able to seek advice themselves from H.M. Attorney General, either prior to or during the debate on P.41/2020 or P.43/2020. In addition, Members can refer to the comments presented earlier by H.M. Attorney General on P.43/2020 (*see* [P.43/2020 Com.](#)).

The impact of Deputy Tadier's proposals

With reference to the key purpose of the draft Regulations lodged as P.41/2020 (that being to ensure that the courts remain operational to the greatest extent possible), it is vital for States Members to note that Deputy Tadier's proposal would, in practice, likely have the opposite effect as to what is intended by the draft Regulations, and would impact negatively on the continued operation of the courts during this crisis. If P.43/2020 were adopted, it would likely result in more cases being adjourned than would otherwise be necessary, with the associated risk of challenges then being made under Article 6 of the ECHR if cases are not being heard in a reasonable time.

A lack of consultation

I regret that this is perhaps an inevitable consequence of a lack of consultation with the Judiciary on P.43/2020. There is a general principle and convention in Jersey, which I support, that the States Assembly shouldn't legislate about the courts without a detailed and reasonable consultation having taken place first. Indeed, P.92/2013 makes clear that the Chief Minister's responsibilities for Justice matters do not extend to include operational or administrative matters or day-to-day resource management. The live-streaming of proceedings clearly impedes on these areas.

In my experience, an accommodation with the Judiciary on any particular matter is always possible, although depending on the subject at hand it might take some months

to reach a mutually agreeable arrangement. Given the nature of the work of the courts, this is completely understandable and regular.

The introduction of live-streaming of the courts in Jersey via the Internet represents, in my view, a considerable change. It would allow anyone anywhere in the world to view, store and re-use footage from court cases in Jersey in any manner they wish. It is not a decision which should be taken in haste (in this case in a matter of weeks), without full and proper consultation of the policy, administrative and resource implications.

If Jersey's courts were in the future to move to the live-streaming of proceedings, I would expect consultation with, and input from, not only the Judiciary, but also the police, legal profession, representatives of the tribunals, those with relevant experience from other jurisdictions, and other independent experts. None of this has yet been possible to any extent. I would also expect any such change to be permanent, and not a temporary solution to a short-term challenge.

Practical considerations

The Bailiff has made clear to me that there are a number of practical concerns that would arise from the adoption of P.43/2020. These are shared by the Deputy Bailiff and Judicial Greffier. Firstly, there is a concern that the nature and contents of particular cases might be liable to being viewed as entertainment by some, even if only a small number of individuals. In fact, it requires only one individual to make inappropriate use of the material from online court proceedings, and wide embarrassment can be generated for the parties involved in a case.

In addition, the courts are concerned that the broadcasting of evidence may impact on its quality, and may prevent vulnerable witnesses from making complaints to the police or from giving evidence.

Equally, there are concerns around the policing of justified anonymity. By way of example, criminal trials involving serious sexual offences and criminal trials involving children would fall within the boundaries of P.43/2020 and be viewable online. The statutory provisions that provide protection for victims in sexual offence cases and for children would be far more difficult to apply and/or police if the proceedings with which any such individuals are involved can be viewed online by anyone anywhere in the world.

These are, in my view, serious and fundamental concerns which, at present, have not been given any consideration. In the event that P.43/2020 were adopted, the Bailiff has advised me that, as part of consequent work to mitigate against the unintended negative implications the proposition would have for the justice system and the course of justice itself, there may be scenarios where cases would have to be adjourned when they could have otherwise proceeded. Thus, what is intended as a temporary solution would, in practice, create further difficulties for the courts.

Alternative options

As previously stated, I attach great importance to my duties as Minister for Justice. I appreciate and acknowledge the core concern that Deputy Tadier is attempting to address in P.43/2020 (and by means of his amendment to P.41/2020). Although I cannot support these proposals for the reasons I have set out, I have sought to work with the

Courts to identify an alternative temporary solution. This is not a straightforward matter, however, and at the current time I regret that no suitable and practically workable alternative has been identified. I will continue to seek a means by which an individual who has an essential reason to view court proceedings during the pandemic is able to do so, although must stress that the protection of the health of the public and of court staff must be of foremost consideration at the current time. Any arrangements would also need to accord with the parameters of the current 'stay at home' order and social distancing.

I can, as Members would fully expect, also confirm that I have received re-assurance from the Bailiff that the public gallery will re-open as soon as it is safe and possible to do so.

Open justice

In P.43/2020, Deputy Tadier makes reference to the courts being "closed". That is not a fair and complete representation of the current position. The public gallery is indeed temporarily closed for the reasons already explained. However, and as the media release from the Bailiff's Chambers (attached as an Appendix to P.43/2020) confirms, members of the media are still permitted to attend proceedings and, of course, judgements are still published in the usual manner. This not reflective of courts that are "closed".

Conclusion

I recognise the objective of Deputy Tadier's proposal and do not doubt that it is well-intentioned. I regret, however, that it has not been properly researched or consulted upon and is based on an incorrect premise. It is the wrong solution at the wrong time, and would very likely cause more challenges and difficulties for the operation of the courts than it would solve. This surely must not be the objective or result of any temporary or emergency measures taken by this Assembly at the current time.

Deputy Tadier's proposal is opposed by the Minister for Justice, the Chief Justice and the Judicial Greffier. Accordingly, I hope Members will vote against P.43/2020, and Deputy Tadier's associated amendment to P.41/2020.