

The Jersey Youth Reform Team

*'working to
achieve change'*

Amending Sexual Offences Legislation

*'An ECHR
Perspective'*

Letter from the Director,

The Jersey Youth Reform Team is happy to publish this report, 'Amending Sexual Offences Legislation, An ECHR Perspective'.

The purpose of this report extends purely beyond my forthcoming appearance at the Corporate Services Panel Hearing – Thursday 9th February 2006.

It has been of long concern that the States of Jersey and members of the public will consider the Jersey Youth Reform Team as an organisation working **against** the government; this is an opportunity to define the purpose of the Jersey Youth Reform Team. In a sentence, 'we, as an organisation aim to work alongside the States of Jersey in advancing change'.

The Jersey Youth Reform Team has achieved a great deal, we have recently released our newly designed website (www.youthreform.org.uk), we will shortly release our new website, 'Jersey Youth Reform Team Direct'; a site for politicians and associated organisations to view information, press releases and reports relevant to current campaigns.

As an organisation, we are 'working to achieve change'. This report forms part of our work in order to achieve change and I hope it is satisfactory for all those who read it.

As Director of the Jersey Youth Reform Team I will be appearing before the Corporate Services Panel, answering questions in response to this report. Much of the information in this report has been derived from other sources including the Department for Constitutional Affairs, the States of Jersey, Jersey Youth Reform Team Research and past European Court of Human Rights cases.

I welcome you to send any questions or queries you may have to myself or the team.

We are well on our way to success and we want to share our successes with you.



Luke Small
Director
The Jersey Youth Reform Team

‘Plans for Change’

The Jersey Youth Reform Team was set up in June of 2005 and is now poised to take up an exciting development plan, changing the way we work and how we provide our services.

Any organisation, no matter how successful must at times reflect upon current work and consider ways it can improve. With our small establishment, this has been difficult; however, our new plan has provided a strong and sturdy framework for development.

We have now in place a strategic aims plan, which we will release in due course. This plan will encourage the appreciation, understanding and completion of our strategic aims. We have listened hard, reflected on criticism and are making radical changes to the way we work.

The Jersey Youth Reform Team looks forward to releasing its 2006 Development Plan.

Please advise us by email, if you wish to receive a copy – secretary@youthreform.org.uk

Frequently Asked Questions

When was the Jersey Youth Reform Team established?

The Jersey Youth Reform Team was formed in June 2005.

Who has overriding responsibility for the team?

Directors 1 and 2: Luke Small and Andrew Medder are responsible for the public and private actions of The Jersey Youth Reform Team.

What legal form does the Jersey Youth Reform Team take?

The Jersey Youth Reform Team is not incorporated under any legal form e.g. charitable trust – this allows the team to achieve flexibility in its work and also reduces unnecessary costs / implications.

Who formed the Jersey Youth Reform Team?

The Jersey Youth Reform Team was formed by Luke Small in June 2005. During that month, the director recruited further members and offered an open day for individuals to learn what the team had to offer in terms of resources and publicity for ideas or work they may wish to explore.

What organisational structure does the Jersey Youth Reform Team operate under?

Download the Jersey Youth Reform Team hierarchy from www.youthreform.org.uk

What is the purpose of the Jersey Youth Reform Team?

The Jersey Youth Reform Team was formed in order to act as a vehicle for the carriage of youth views on a broad range of issues. The purpose of the team has recently expanded and we have extended our remit to include campaigning, research and initiators of legal action on the basis of concerning legislation.

What future plans does the Jersey Youth Reform Team have?

The board is currently like-minded to focus our next campaign on Police Equality Policy; however, this may change in accordance with other propositions.

Does the Jersey Youth Reform Team staff, have any common interest?

There is no shared interest within the organisation excluding that of a passion, zeal and enthusiasm on all individuals' parts to achieve a strong, powerful and purposeful youth voice.

The European Convention on Human Rights

"The European Convention on Human Rights is an international treaty which only member States of the Council of Europe may sign. The Convention, which establishes the Court and lays down how it is to function, contains a list of the rights and guarantees which the States have undertaken to respect. "

Council of Europe

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights, was adopted under the auspices of the Council of Europe in 1950 to protect human rights and fundamental freedoms. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

The Convention establishes the European Court of Human Rights. Any person who feels their rights have been violated under the Convention by a state party can take a case to the Court; the decisions of the Court are legally binding, and the Court has the power to award damages. State Parties can also take cases against other State Parties to the Court, although this power is rarely used.

The Convention has several protocols. For example, Protocol 6 prohibits the death penalty except in time of war. The protocols accepted varied from State Party to State Party, though it is understood that State Parties should be party to as many protocols as possible.

Prior to the entry into force of Protocol 11, individuals did not have direct access to the Court; they had to apply to the European Commission on Human Rights, which if it found the case to be well-founded would launch a case in the Court on the individual's behalf. Protocol 11 abolished the Commission, enlarged the Court, and allowed individuals to take cases directly to it.

As of late 2002, thirteen protocols to the Convention have been opened for signature. These can be divided into two main groups: those changing the machinery of the convention, and those adding additional rights to those protected by the convention.

'The European Court of Human Rights'

The European Court of Human Rights is an international court based in Strasbourg. It consists of a number of judges equal to the number of member States of the Council of Europe that have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms – currently forty-five.

The Court's judges sit in their individual capacity and do not represent any State. In dealing with applications, the Court is assisted by a Registry consisting mainly of lawyers from all the member States (who are also known as legal secretaries). They are entirely independent of their country of origin and do not represent either applicants or States.

The Court applies the European Convention on Human Rights. Its task is to ensure that States respect the rights and guarantees set out in the Convention. It does this by examining complaints (known as "applications") lodged by individuals or, sometimes, by States. Where it finds that a member State has violated one or more of these rights and guarantees, the Court delivers a judgment. Judgments are binding: the countries concerned are under an obligation to comply with them.

The powers of the Court depend on the circumstances surrounding a case brought before it. If the Court finds that there has been a violation, it may award "just satisfaction", a sum of money in compensation for certain forms of damage. The Court may also require the State concerned to refund the expenses a complainant has incurred in presenting his/her case.

Jersey's Commitments to the United Kingdom and European Convention on Human Rights

When examining the ways in which the Jersey Youth Reform Team could advance the debate on the Sexual Offences Jersey Law 1990 – our research team examined the UK and its commitments to the European Convention on Human Rights; and; in addition, Jersey's commitments under Her Majesty's responsibilities.

The Department for Constitutional Affairs played a major role in our education of Jersey, its rights and responsibilities. In summary we have found that:

"The United Kingdom is responsible for the Islands' international relations and for their defence and the Crown is ultimately responsible for their good government. This means that, in the circumstances of a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands or the Isle of Man."



Department for
Constitutional Affairs
Justice, rights and democracy

In further additional research, the department has looked at past State's of Jersey minutes, and has reviewed these carefully. In conclusion, we have found the following statement of April 1990.

'A delegation, comprising the Bailiff, myself, Senator Jeune, the Attorney General and the Greffier, met at our request the Rt. Hon. John Patten, Minister of State at the Home Office on Thursday 19th April, to discuss the implications for Jersey of the judgment of the European Court of Human Rights that a law which makes homosexual practices in private between two consenting adults illegal, was in breach of the European Convention on Human Rights. Very full and frank discussions took place from which it has become clear that the Convention contains no provisions which permit of any departure from that judgment.'

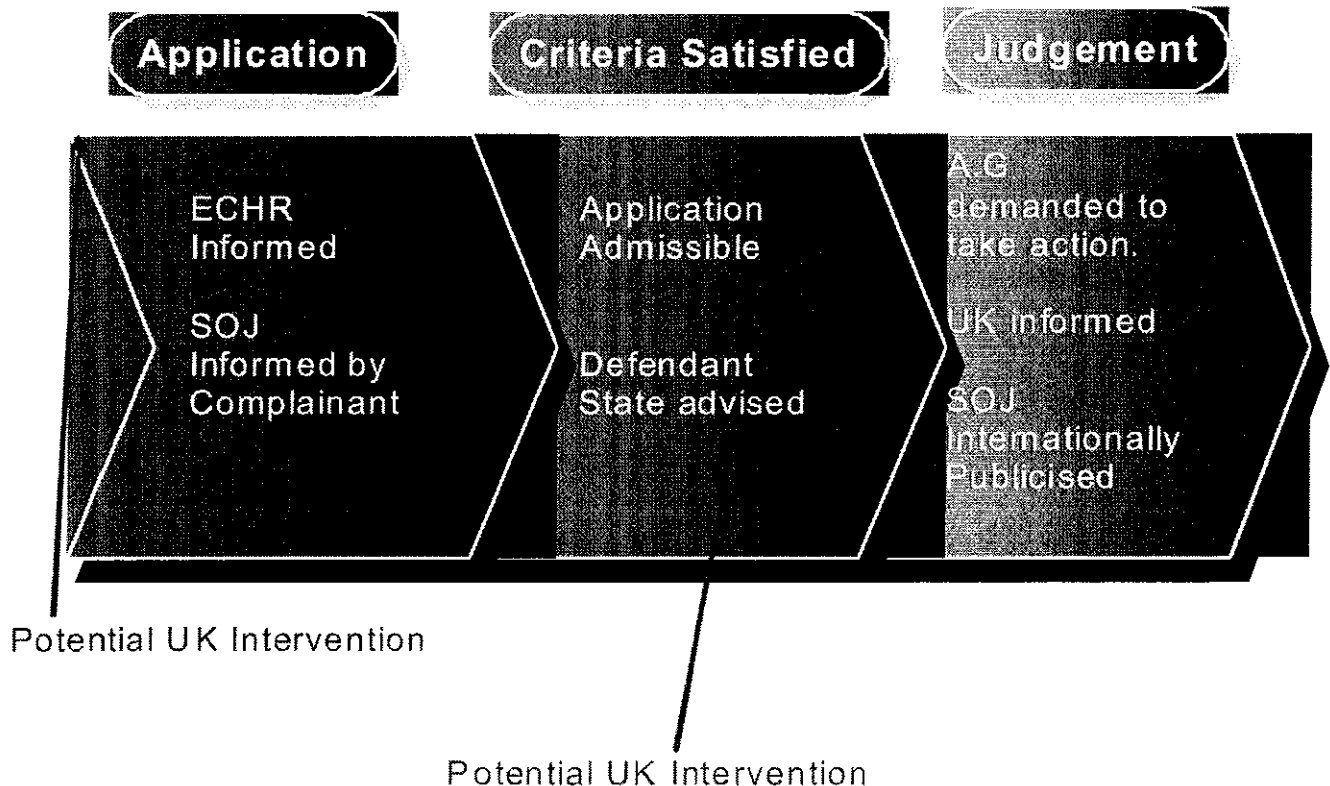
'The Minister explained that that judgment was binding on Her Majesty's Government in the United Kingdom as a signatory to the Convention and that Her Majesty's Government had already taken steps to bring the law in Northern Ireland into line with that in the rest of the United Kingdom which was in conformity with the judgment.'

'The Minister reminded the delegation that the Convention had been extended to Jersey at the request of the insular authorities and it was the responsibility of Her Majesty's Government to fulfill its international obligations by ensuring that Jersey law was not in breach of the Convention. He said that the customary law in Jersey regarding sodomy was in breach of the Convention and that it was therefore imperative that the law was changed and he hoped that the Island would legislate accordingly. He made it clear that, if the Island did not, then in order to fulfill its international obligations, the United Kingdom reluctantly would have no option but to legislate itself in this matter.'



Having concluded our recent research into Jersey's commitments to the UK and indeed the UK's International obligations, the Jersey Youth Reform Team have found that there are several possibilities where the UK could intervene, should Jersey decide it is unwilling to amend the legislation.

The Jersey Youth Reform Team has demonstrated this in the form of a diagram showing the progress of a case in the European Court of Human Rights. Points of potential intervention from the UK government are indicated by arrows.



'Local Information on European Court of Human Rights Commitments'

'The Convention is binding on the United Kingdom and on Jersey under international law. If (which has not happened so far) the European Court of Human Rights were to find a violation of the Convention in respect of Jersey, then the United Kingdom must ensure that Jersey takes action to rectify any deficiency in its internal laws or practices so as to bring them into line with the Convention. Of course, if this ever occurred, Jersey would itself take such action without any prompting from the United Kingdom.'

Although the Convention is binding under international law, it is not however enforceable in domestic law. The Jersey courts may apply the Convention in limited circumstances: for example, where the courts have a statutory discretion to exercise, they may seek to act in a way which does not violate the Convention and the Convention may be referred to in order to resolve ambiguity in legislation. But the general position is that they are unable either to take account of the Convention in deciding issues before them, or to hear cases based solely on the Convention rights.'

Extracted from: *'Human Rights: Coming Home to Jersey? Richard Whitehead*

www.jerseylegalinfo.je

It is worth emphasising that this information is from an employed Law Officer.

In support of this evidence, three cases against Jersey, of which none were upheld, have been taken before the European Court of Human Rights. This does in effect demonstrate:

- (a) the right of application available to Jersey citizens;
- (b) the availability of a legal remedy in the European Court of Human Rights to Jersey citizens; and;
- (c) the possibility of a binding judgement being issued against Jersey.

The States of Jersey, if they choose to ignore their Human Rights obligations will be placing the island in a compromising position, a position "which could have disastrous consequences."

Chief Minister Walker – January Debate

'The Legal Situation'

Many options are available to the States of Jersey at present, but each of these options carries implications for the people of Jersey, the States of Jersey and the United Kingdom. Some of these implications could indeed be positive – but circumstantial.

1. **Maintain the current stance on the Sexual Offences Jersey Law 1990** *By making no amendment to current legislation, the States of Jersey place the island, its government and its relationships under a great deal of strain. The Jersey Youth Reform Team would progress its case in the European Court of Human Rights and in conclusion, receive a binding judgement against the United Kingdom.*

Because of a judgement like this being issued, the States of Jersey may face difficulties in its relationship with the United Kingdom, the Council of Europe, other European Member States and ultimately the States of Jersey could be responsible for a potential constitutional crisis.

Implications:

- *Jersey will be taken before the European Court of Human Rights and a judgement will be definitively issued.*
- *HM Crown may amend Jersey's legislation for it, but not only in the Sexual Offences area, across Jersey's legislation.*
- *Jersey will face negative international publicity.*
- *The island and its UK counterpart may be expelled from the Council of Europe.*
- *The States of Jersey loses many islanders confidence in dealing with issues like this which form the basis of Jersey's society – Human Rights.*
- *Jersey could, be challenged in its own courts (when the Human Rights Jersey Law 2000 is enacted) if it does not legislate on this matter.*
- *Jersey reinforces to its National and International neighbours, its inability to maintain a modernised approach to Human Rights issues.*
- *Jersey could be forced to pay damages any person under a judgement from the European Court of Human Rights.*

2. **Amend the age of consent to 18 / 17 for both homosexuals and heterosexuals.**

As the Solicitor General mentions in her speech below, extracted from the States of Jersey January 18th. Dealing with this situation by increasing the age of consent for heterosexuals would not be considered as proportionate. The Jersey Youth Reform Team would also in this case, take the States of Jersey under the United Kingdom, to the European Court of Human Rights in order to gain a binding judgement.

By amending the age of consent for heterosexuals, the States of Jersey also undertake the responsibility of large-scale change, across a broad range of matters including marriage, driving, the right to vote, age of consent for non-penetrative sexual activities and much more.

"The Solicitor General:

As to whether it would meet the criteria that would depend upon whether the raising of the age was proportionate. As I said when reading out the provision in Article 8 about interference, the wording is: "There shall be no interference save for..." and then it sets out the objectives which will justify interference and I added to that that it is an established principle that the interference must be proportionate. Therefore, the legislation, whatever it was, would have to be proportionate. So, firstly, to give an answer you would have to have your legislation in draft and look at the objective which underlies this interference and then secondly, is the raising of the age to 17 proportionate? This obviously would have to be considered against the background that there has been an age of 16 for a considerable period for heterosexual intercourse. Therefore it is arguably possible that some aggrieved person who wished to practice heterosexual sex at the age of 16 might object that it is not proportionate to using the words that the "statute interfere with my right up to the age of 17." It cannot be proportionate because for decades - and indeed longer than decades - it has been 16. Now, I do not see how that would be decided but it is an argument which, as a matter of law, could be advanced."



Implications:

- *Jersey will be taken before the European Court of Human Rights and a judgement will be definitively issued on the grounds of an interference which is not proportionate, in accordance with Article 8 of the European Convention on Human Rights.*
- *HM Crown may amend Jersey's legislation for it, but not only in the Sexual Offences area, across Jersey's legislation.*
- *Jersey will face negative international publicity.*
- *The island and its UK counterpart may be expelled from the Council of Europe.*
- *The States of Jersey loses many islanders confidence in dealing with issues like this which form the basis of Jersey's society – Human Rights.*
- *Jersey could, be challenged in its own courts (when the Human Rights Jersey Law 2000 is enacted) if it does not legislate on this matter.*
- *Jersey reinforces to it's National and International neighbours, its inability to maintain a modernised approach to Human Rights issues.*
- *Jersey could be forced to pay damages any person under a judgement from the European Court of Human Rights.*

1. Amend the age of consent to 16 for both heterosexuals and homosexuals.

The States of Jersey, by amending the age of consent to 16 for homosexuals, in line with heterosexuals remove the risk of being subjected to an European Court of Human Rights judgement and straining it's relationships across the world.

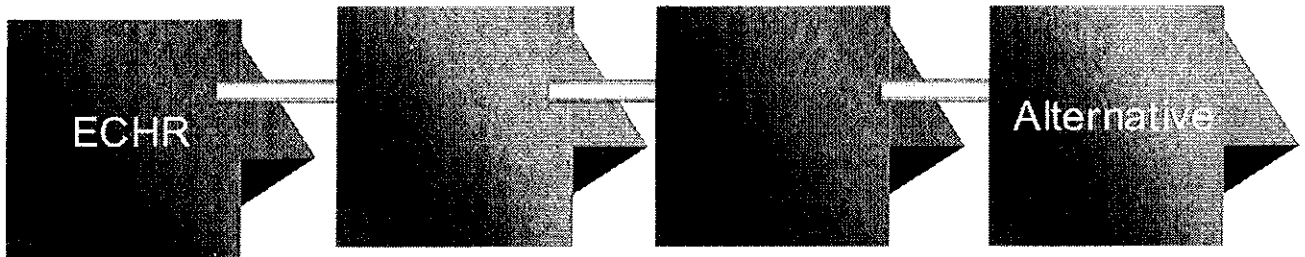
In addition, it provides a reassurance to both the homosexual and heterosexual community that the island is willing to modernise and effectively implement the rights each citizen is entitled to.

Implications:

- + Jersey will not be taken before the European Court of Human Rights and a judgement will not be issued.*
- + HM Crown will not amend Jersey's legislation for it, nor will it have reason to highlight other legislation.*
- + Jersey will face positive international publicity.*
- + The island and its UK counterpart show Jersey in a positive light before the Council of Europe.*
- + The States of Jersey gains islanders' confidence in dealing with issues like this which form the basis of Jersey's society – Human Rights.*
- + Jersey will avoid being challenged in its own courts (when the Human Rights Jersey Law 2000 is enacted).*
- + Jersey reinforces to its National and International neighbours, its ability to maintain a modernised approach to Human Rights issues.*
- + Jersey will avoid being forced to pay damages any person under a judgement from the European Court of Human Rights.*

It is, of course the recommendation of the Jersey Youth Reform Team that the States of Jersey press forward on Option 3. If they fail to do so, it can be guaranteed that the Jersey Youth Reform Team will take Jersey before the European Court of Human Rights on the grounds of a breach.

The European Court of Human Rights is the wrong choice, as demonstrated below against the alternative of amending legislation.



Expensive for SOJ

International Reputation

Pressure from UK

No real costs

No need for International Intervention.

SOJ maintain International Personality

Our European Court of Human Rights Case

The Jersey Youth Reform Team has prepared a fully documented case and presented it before the European Court of Human Rights in preparation for the State's decision (Option 1).

Our case is based on three violations:

- Article 1; Obligation to respect human rights
The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.

- Article 8; Right to respect for private and family life
Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- Article 14 – Prohibition of discrimination
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or any other status.

The Jersey Youth Reform Team has invoked these articles in its case before the European Court of Human Rights. We have justified the use of each article below.

Article 1

The States of Jersey, by maintaining its current stance on the Sexual Offences Jersey Law 1990, is not meeting its local, national and international obligations 'to respect human rights'. Therefore the Jersey Youth Reform Team have included this article in it's '*Exposé de la ou des violation(s) de la convention et/ou des protocols alléguée(s), ainsi, que des arguments à l'appui.*'

Article 8

The States of Jersey, are in accordance with International Law, failing to respect the private lives of young homosexual men across the island and therefore, a clear justification is presented for the use of this article in the *Exposé de la ou des violation(s) de la convention et/ou des protocols alléguée(s), ainsi, que des arguments à l'appui.*'

Article 14

The States of Jersey are using discrimination to justify discrimination, which is in breach of the convention. Article 14 is broad; therefore it can be cross-applied to Article 8 and 1 as a sub-breach. In effect, Article 1 and 8 are in breach, but are also supported by a breach of Article 14. This article has been invoked in our *Exposé de la ou des violation(s) de la convention et/ou des protocols alléguée(s), ainsi, que des arguments à l'appui.*'

Our original European Court of Human Rights Proposal Application (edited for the purpose of privacy and for the purpose of language related accessibility) is shown below, in both French and English, the official languages of the court.

It is a certainty, that the application will be declared admissible and in due course, if no action is taken on the governments part, that a judgement will be issued, alongside just satisfaction.

The Jersey Youth Reform Team sees no reason why such action need be taken, when, in fact, the States of Jersey can simply amend current legislation and save money, time and the risk of loosing their so far maintained 'international personality'.

Past Cases from the European Court of Human Rights

All past cases in the European Court of Human Rights challenging the articles given, have, through one way or another, been upheld in accordance with Paragraphs 1 – 35 of the Rules of the Court.

An example of these cases is 'Sutherland v. UK – 1996/2001' which firstly took place (in accordance with Protocol 11) in the European Commission on Human Rights, whose responsibilities have now become merged into the European Court of Human Rights workload.

'Euan Sutherland was a young gay man who took the United Kingdom government to the European Court of Human Rights, aided by the campaigning organisation Stonewall, in the mid-1990s, to fight to equalise the age of consent for gay sex in the UK.'

'The July 1, 1997 decision in the case Sutherland v. the United Kingdom was instrumental in Tony Blair's new Labour government's subsequent equalisation of the age of consent, finally enacted in the Sexual Offences (Amendment) Act 2000, after the use of the Parliament Act, on November 30, 2000.'

www.wikipedia.org

Regardless of Mr. Sutherland's age, the European Court of Human Rights granted him a judgment which in effect forced the United Kingdom to amend their legislative position.

It is imperative that the States of Jersey should take this case into account.

The Jersey Youth Reform Team Recommendations

The Jersey Youth Reform Team having evaluated all the available evidence gathered by its research and evidence department – has produced the following points and recommendations:

- The island is under International obligation to ensure compliancy with the European Convention on Human Rights and must comply in order to remove the possibility of being challenged in the European Court of Human Rights.
- The island will be taken to the European Court of Human Rights if it does not amend the age of consent (proportionately, which is supported by evidence to be set at 16 years)
- The island could face a constitutional crisis if it does not comply with the European Convention on Human Rights which it has voluntarily agreed to join.
- The UK, in accordance with its past statements, could amend the legislation for Jersey should it not agree to amend, in an attempt to remove the possibility, of a judgement being issued by the European Court of Human Rights.
- Challenges in the European Court of Human Rights have proven that the States of Jersey are currently breaching articles of the European Convention on Human Rights.
- That the States of Jersey take note of the Chief Ministers comments in the 17/18th January 2006 debate regarding Jersey and its current obligations.
- That the States of Jersey use the Jersey Youth Reform Team as guidance on associated youth views when dealing with this matter and aim to reach a compromise with the Jersey Youth Reform Team, which is later agreed in accordance with decisions from both Board 1 and 2.
- That the debate is resumed in the very near future and a vote is made on the legislation, so that relevant parties may launch responses to the decision.

The Jersey Youth Reform Team Thanks;



..... The States of Jersey



HM Department for Constitutional Affairs



..... **HM Attorney General**
..... **HM Solicitor General**
..... **Law Officers Department**



**COUNCIL
OF EUROPE**

..... **Council of Europe**



Equality & Justice for
Lesbians, Gay Men & Bisexuals

..... **Stonewall.org.uk**

