

# Marriage and Civil Status

## The Official Record – 24th October 2006

### Questions without notice to the Minister for Home Affairs

#### 4.2 The Deputy of St. Mary:

Does the Minister agree that the effect of the Marriage and Civil Status (Jersey) Law 2001 and subsequent Marriage and Civil Status (Forms, Registration Fees) (Jersey) Order 2002 was to change the form of the Register of Births to include for the first time the surname of the child, although in fact, neither the Law nor the Order specify what the surname should be, and if not, will the Minister outline her reasons for not agreeing?

#### Senator W. Kinnard:

Members will be probably aware from recent press reports that this has been a bit of an ongoing issue, and I would say that probably the fairest way of approaching it is to say that, in my view, the Law is unclear, and I have already expressed the wish to amend the Marriage and Civil Status Jersey Law 2001 to allow parents to choose the surname of their children, and indeed, that parents might be able to give their children either the father's surname, the mother's surname or a combination of those two surnames. I would say, as a matter of policy at the moment, my present view is that it should be limited to one of those 3 choices, but clearly I will be consulting quite widely on this issue and will determine the final policy at the end of that consultation. The amendments would apply equally to married as to unmarried parents.

#### 4.2.1 The Deputy of St. Mary:

Does the Minister agree that the intention of the Law and the Order was to give parents the freedom to choose a name for their child and that there is, at best - as she has indicated - some uncertainty as to the basis of the Registrar's practice of effectively forcing illegitimate children to take their mother's maiden surname? If so, is the Minister willing to use her powers under Article 79 of the Marriage and Civil Status Law to refer the matter to the Royal Court for determination?

#### The Bailiff:

Deputy, I am not sure that was a supplementary question. I think that was another question.

#### Senator W. Kinnard:

It is quite a detailed question, but I think I can answer it, Sir. Article 79 does not apply in this particular context, because Article 79 can only be used in a situation where there has been an error, and an error can only be committed through either the actions of the Registrar or the Minister or someone involved. There has been no error in this situation. The Registrar has acted in accordance with the Law - in accordance with all advice on the matter - so those powers that I may or may not have under Article 79 are just not appropriate in this circumstance. If I go so far as to say that I feel and I believe that the Law is unclear, that does not equal that the Law or what was done under the Law is an error. So, in my view, and certainly advice I have received, Article 79 cannot be used in this particular circumstance and it seems to me, Sir, that it would be not an appropriate thing to do, because it would have implications which go much wider than the particular individual case that I think the Deputy is probably referring to. As a matter of public policy, I think it is right that changes should not be made on the hoof, but should be properly debated in this House.