

STATES OF JERSEY



DRAFT SEXUAL OFFENCES (JERSEY) LAW 200- (P.63/2006): COMMENTS

**Presented to the States on 27th June 2006
by the Social Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

The Social Affairs Scrutiny Panel (hereafter referred to as 'the Panel') has been accused of seeking to delay the debate on Draft Sexual Offences (Jersey) Law 200- (P.63/2006). The Panel refutes such a suggestion and presents these comments on the Proposition as a record of the work it has undertaken since Draft Sexual Offences (Jersey) Law 200- (P.196/2005) was debated on 18th January 2005.

At the States Sitting on 18th January 2006 the Draft Sexual Offences (Jersey) Law 200 (P.196/2005) was referred to the Corporate Services and Social Affairs Scrutiny Panels for consideration of a formal review in accordance with Standing Order 79 of the States of Jersey.

Prior to giving its consideration, the Panel requested that the Home Affairs, Education, Sport and Culture, and Health and Social Services Departments forward Committee Minutes and other relevant documentation received and/or submitted in respect of the proposed legislation. The Panel then considered the proposed legislation and the concerns expressed by Members during the debate on P.196/2005.

The Panel was of the opinion that the issues could be summarised in 3 distinct areas –

1. Whether it was necessary to pass the legislation in order to adhere to Human Rights Legislation, namely the European Convention on Human Rights?
2. Whether supporting legislation relating to the Abuse of Trust should be adopted in Jersey, as had been the case in the U.K.?
3. Whether sufficient consultation had been conducted regarding the social implications of the proposed legislation in respect of concerns about –

(a) Education;

(b) Health,

as no comments from the Departments of Health and Social Services and Education, Sport and Culture had been presented with P.196/2005.

(a) What effect would the proposed law have on Education, Sport and Culture Department's "Personal, Social and Health Education programme"?

(b) No comments from the Health and Social Services Committee had been presented; no details of any consultation; no information to indicate whether there are health concerns; no statistics regarding the existing HIV/AIDS situation in the Island; whether the Island has the infrastructure to meet any existing problems; and whether it would have the infrastructure to cope with any increase in sexually transmitted infections that may arise following amendments to the Sexual Offences Law?

The Panel considered that –

(1) The issue regarding Human Rights legislation came under the remit of the Corporate Services Scrutiny Panel.

(2) Supporting legislation relating to Abuse of Trust should be drafted and introduced in conjunction with the Draft Sexual Offences (Jersey) Law 200-.

(3)(a) It should review the background papers from the Home Affairs, Law Officers', Health and Social Services, and Education, Sport and Culture Departments and the former Legislation Committee. Apart from an Education, Sport and Culture Committee Minute dated 27th April 2005, the Panel could not find (and was not supplied with) any comments or evidence of consultation with other Departments, organisations or the public.

The Panel gave consideration to the Education, Sport and Culture Committee's Minute. The relevant part of the Minute records that –

“Clearly, any amendment to legislation in this area may have implications for the programme of study for Personal, Social and Health Education, (PSHE) which are taught and, in particular those for older pupils.”

The Minute listed the areas of the programme and at the conclusion, the Greffier of the States was requested to send a copy of the Act to the Legislation Committee for its information and to arrange for the comments to be presented for consideration by the States once the Draft Sexual Offences Law had been lodged “au Greffe.” The Panel was of the opinion that Education, Sport and Culture's comments were satisfactory in that they addressed the concerns subsequently expressed by Members during the debate.

The Panel could find no evidence of whether the Minute was considered by Home Affairs when that Committee took responsibility for progressing the Draft Sexual Offences Law. If the Minute was discussed, however, Comments were not submitted for consideration by the States when the Draft Sexual Offences (Jersey) Law 200-(P.196/2005) was lodged “au Greffe”. The Panel's view is that the Comments should have accompanied P.196/2005.

(3)(b) The Panel noted that on 3rd December 2004, the former Legislation Committee had requested comments from the Health and Social Services Committee in respect of an amendment to the Draft Sexual Offences (Amendment No. 2) (Jersey) Law 200. The Health and Social Services Committee gave consideration to the request on 4th February 2005 and requested the Department to prepare a formal response to the proposed amendment. The Panel could find no evidence that a report was prepared or considered by the former Health and Social Services Committee; nothing was presented for consideration by the States. The Panel is of the view that Comments from the Health and Social Services Committee should have accompanied P.196/2005.

In a Memorandum dated 9th September 2005 from the Chief Officer of Home Affairs to the Chief Executive of Health and Social Services and the Director of Education, Sport and Culture, the Officers were informed that the Home Affairs Committee had met the day before and had given further consideration to the Draft Sexual Offences (Jersey) Law 200-, which was to be lodged in the States on Tuesday 13th September 2005. The Memorandum stated that Home Affairs was concerned that steps should be taken to ensure that all interested parties were aware of the proposed change in the Law, and would welcome their input on which groups it felt should be notified. It added that clearly there was time pressure to have the matter dealt with quickly because of the desire to bring the Human Rights legislation into force. The Chief Officer of Home Affairs apologised for the somewhat unorthodox way in which he was bringing the matter to their, and their Committees', attention.

The Panel did not receive any evidence to show whether the issues contained in that Memorandum were ever addressed, nor any evidence of consultation with external organisations or the general public. As such the Panel was of the opinion that there was nothing to scrutinise.

Accordingly, in its statement to the States on 31st January 2006, the Panel recommended that the Minister for Home Affairs, Senator W. Kinnard, carried out wide consultation before drafting the appropriate supporting legislation. **In addition the Panel requested that evidence of that consultation be provided to it prior to the proposed legislation being brought back to the States.** (Panel's emphasis) Consequently, the Panel strongly recommended that the debate on the proposed Draft Sexual Offences (Jersey) Law 200- did not go ahead until this course of action had been undertaken.

The Panel was of the opinion that it was likely that the Corporate Services Scrutiny Panel would come to the view that the States should approve the proposed law to adhere to the Human Rights Legislation.

It was also likely that Home Affairs would, as recommended by the Panel, take immediate steps to bring forward the Abuse of Trust Legislation. The Panel was also satisfied with the comments contained in Education, Sport and Culture's Minute dated 27th April 2005.

A primary area of concern to the Panel was the lack of health information as indicated at (3)(b) above. The Panel

was of the view that before the Proposition was re-lodged, it should be provided with evidence of Home Affairs' consultation, particularly with the Health and Social Services Department, Brook Jersey and ACET Jersey (AIDS Care Education and Training). By this time, the Panel had set its work programme for 2006 but felt it would nevertheless be able to find time to scrutinise this subject if it received this evidence soon after such consultation had occurred: consequently, the Panel would not have to find time when the law was re-lodged and it was less likely that the debate would be delayed.

The Corporate Services Scrutiny Panel agreed to carry out a review of the legal issues, which resulted in the debate being deferred.

On 27th February 2006 the Panel wrote to Senator Kinnard welcoming her recent statement that the Abuse of Trust legislation would be forthcoming. The letter also asked for any action that Home Affairs was undertaking in respect of the consultation and requested that the evidence of that consultation be forwarded to the Panel. This letter was not acknowledged. Another letter was sent on 20th March 2006, which was again not acknowledged. In an attempt to progress the matter, the Panel contacted the Chief Minister, Senator F.H. Walker, drawing his attention to the issue.

As a consequence, Senator Kinnard contacted the Panel's Chairman and it was subsequently agreed that the Panel would be forwarded the submissions received by Home Affairs.

On the 2nd May 2007 the Panel gave consideration to the submissions. It was noted that whilst there was a submission from Brook Jersey, there were none from either the Health and Social Services Department or ACET Jersey.

The submission from Brook was in the form of an exchange of e-mails dated 29th January 2006, between Brook and a States Deputy with a c.c. to Senators Kinnard and S. Syvret, Minister for Health and Social Services. In summary, Brook was in support of the proposed legislation. However, it issued the following warning –

“Once again we have been warning States Members of the impending epidemic of sexually transmitted infections if Brook is not provided with funding to carry out those tests where young people will access them.”

No documentation has come to hand to indicate whether the Ministers of Health or Home Affairs have addressed the warning.

On 27th April 2006 the Council of Ministers considered an addendum to the Draft Sexual Offences (Jersey) Law 200-. The Minutes record that one of the main areas of concern amongst States Members during the debate had been the issue of the potential Abuse of Trust. The Council accepted that the presentation of the draft Law had been lacking, particularly in terms of the absence of a written legal opinion. Furthermore, it was felt that insufficient emphasis had been placed upon the fact that there could be constitutional implications if Jersey did not equalise the age of consent for homosexual and heterosexual people, as the United Kingdom would be criticised for Jersey's non-compliance under the European Convention of Human Rights.

The Minutes do not record any concerns regarding the absence of reports/comments from the Health and Social Services and Education, Sport and Culture Departments. The Minutes do, however, record that it was suggested that the Minister of Home Affairs liaise with the Scrutiny Panels to try to ensure that the prospective reviews of either piece of legislation would not cause further unnecessary delays. It was agreed that the Draft Abuse of Trust (Jersey) Law 200-, would be circulated to the Council before the matter was lodged “au Greffe”.

As a matter of good practice, particularly to avoid delay, the Panel is of the opinion that the Draft Legislation should also have been circulated to the relevant Scrutiny Panels before it was lodged, along with the evidence of the consultation undertaken. The Panel is also of the opinion that the Council of Ministers should have recommended that comments from the Health and Social Services and Education, Sport and Culture Departments be prepared for submission to the States.

The Home Affairs Minister did not liaise with either Scrutiny Panel and it was not until the States sitting on 16th

May 2006 that the Panel was informed that P.196/2005 was being withdrawn and replaced with another proposition. At that States sitting the Home Affairs Minister was asked whether consultation had taken place, in particular with the Health and Social Services Department, ACET and Brook Centre in respect of the health implications; the Minister replied “Yes, yes, yes.”

As the Panel had not received any evidence of Home Affairs’ consultation with ACET and Brook, on 16th May it contacted both organisations for advice on the following –

- When and where did the consultation take place?
- Who was present?
- What were the issues discussed?
- What were the outcomes?

Furthermore, the Panel asked both organisations to forward the Minutes or documentation of any meetings. Both ACET and Brook replied stating that neither organisation had attended any meetings or had been consulted by anyone at Home Affairs.

The Home Affairs Minister was also contacted and informed that the Panel would have to give consideration to scrutinising the new proposition when it was lodged. The Panel did not intend to delay the debate, but felt that advice on when and where the consultation took place between Health and Social Services, ACET and Brook was required.

The Minister’s response (in an e-mail dated 18th May 2006) was –

“Consultation with the Health Department was effected through the Chief Officer of that Department whose response was that there are no health issues which relate specifically to homosexual health and that issues of safe sex apply equally to homo and heterosexuals. In other words, there were felt to be no health implications arising from the law. The views of ACET were taken from the detailed paper that the ACET Manager sent to States Members. My Department verified the health claims it contained with Dr Muscat at the General Hospital. His views are recorded in the new report. The Manager of Brook was consulted personally by the Chief Officer of Home Affairs and she spoke to me directly to express her views; similarly her views are summarised in the new report.”

In addition to the above comments, the Minister stated –

“As an observation, it would be highly unlikely that consultation of this nature took place in formal meetings at which minutes were taken; it just doesn’t happen like that in busy departments with a multiplicity of responsibilities although I would concede, that is normal operating practice for scrutiny.”

Senator Kinnard did not, as requested, forward any documentation to substantiate her claims; therefore it is not known whether any of the concerns raised by ACET or Brook had been addressed.

When the Draft Sexual Offences (Jersey) Law 200- was re-lodged as P.63/2006 during the States sitting on 23rd May 2006, the Deputy of St. Ouen requested that it be referred for comments to Health and Social Services and possibly Education, Sport and Culture. The Home Affairs Minister rejected the request stating, “They have been consulted and they do not wish to comment further.” She added that the comments were in the report. The Bailiff then ruled that as the Minister had said the report had contained the comments, on that basis, they could not be referred for further comments.

In the section of the Report (paragraph 8) devoted to Abuse of Trust, it should be noted that the issue of the provisions of volunteers as opposed to those performing a statutory function, and also that of young adults supervising children under 16, need to be explored further during the consultation period.

In paragraph 24 regarding the grooming issue, it is recorded that there has been insufficient time to conduct any in-depth consultation prior to lodging the Draft Law. Further still, with reference to paragraph 53 concerning

consultation, Home Affairs has failed to include the whole of the paragraph, which had been a serious point of issue since it was included in the Panel's statement on 31st January 2006. The Report correctly records –

“The Panel recommends that the Home Affairs Minister carries out wide consultation before drafting the appropriate legislation”.

However, it has failed to include the next sentence in that paragraph –

“In addition, the Panel requests that evidence of that consultation be provided to it prior to the proposed legislation being brought back to the States. Consequently the Social Affairs Scrutiny Panel strongly recommends the debate on the proposed Sexual Offences (Jersey) Law does not go ahead until this course of action has been undertaken”.

It will be for Members to form their own conclusions as to why such a relevant passage was omitted. However, if Scrutiny is to fulfil its intended function and be a “Critical Friend” then it is incumbent upon Ministers to co-operate with Scrutiny Panels.

In paragraph 55 it is claimed that the Health and Social Services and Education, Sport and Culture Departments have been consulted again. Although requested by the Panel, no evidence of that consultation was received prior to lodging. The Health and Social Services Department's sole contribution to the report can be found in the same paragraph which says, “In its view there are no health implications in that issues of safe sex apply equally to homosexual and heterosexual activity”.

Paragraph 56 reports that Brook is in favour of equalising the age of consent, but no reference is made to its concerns regarding sexually transmitted infections. In paragraph 57, it is claimed that ACET is opposed to the proposal; this is not correct. In its submission, ACET drew attention to the health risks and made recommendations which it believed should be implemented before the law is enacted, in order to reduce health risks. Unlike the Health and Social Services Department's comment, which only made reference to safe sex, ACET drew attention to risks associated with unprotected anal intercourse and the possible outcomes of lowering the age of consent to 16 for homosexual men. In a summary of its nine page submission, ACET made the following recommendations for implementation, prior to any consideration of lowering the age of consent of sex between men –

1. The urgent need for improved surveillance, including an Unlinked Anonymous Prevalence Monitoring Programme, coupled with research to establish a better understanding of the sexual networks, health seeking behaviour and risk behaviour of the homosexual/bi-sexual community in Jersey.
2. The re-establishment of a multi-agency group to deliver an integrated programme of sexual health promotion and the development of an HIV and Sexual Health Strategy with a costed Action Plan.
3. A public Information Campaign and expanded PSHE curriculum to warn adults and young people of the dangers of unprotected anal intercourse.
4. Targeted HIV prevention programmes for men who have sex with men.
5. The promotion of HIV testing to all sexually active people to improve early diagnosis of the virus and minimise the risk of infecting others coupled with a programme that encourages men who have sex with men and to have an annual HIV test.

Paragraph 58 makes reference to ACET's submission to the Corporate Services Scrutiny Panel. It draws attention to the risks associated with unprotected anal intercourse and, consequently, possible outcomes of lowering the age of consent to 16 for homosexual men. However, ACET's concerns and recommendations, listed above, are not included. It is not known whether they are valid and if they are what action is being proposed to address them. The information contained in paragraphs 58 and 59, appears to have been drawn from material extracted from the draft copy of the HIV and STI section of the Medical Officer of Health's Annual Report. Whilst the statistics are in line with ACET's submission, the report does not address their concerns. The Report also records –

“As far as it can ascertain there has been no research published on the impact of lowering the age of consent for anal sex from 18 to 16 on HIV and STI transmission.”

Paragraphs 62 and 63 contain Home Affairs' conclusions. The Panel is pleased to see that the Draft Sexual Offences (Jersey) Law 200- includes proposed Abuse of Trust Legislation. Whilst Home Affairs may be of the view that the proposed legislation is a socio-political decision and not a medical one, the Panel believes that the medical issues should not be ignored. It believes that the Island has a duty of care and, irrespective of what obligations it has to Human Rights Legislation, it would be totally wrong to advance any legislation without ensuring that the necessary health safeguards are in place or are in the process of being put in place.

The Panel has sought to establish whether the Island has appropriate safeguards in place. Home Affairs has not been as co-operative as it should have in forwarding an exchange of e-mails between itself and the Health and Social Services Department between 21st April and 2nd May 2006. The exchange requested that Health and Social Services comment on statistical information regarding the prevalence of AIDS (in paragraphs 58 to 60) and referred to above. However, it does not address ACET's concerns.

The exchange only came to light after the Panel wrote to the Health and Social Services Department, seeking answers to a number of questions to establish what advice was sought from Home Affairs. The problems emanating since the lodging of P.196/2005 and subsequently, P.63/2006, would not have occurred had comments from the Health and Social Services and Education, Sport and Culture Departments been presented in accordance with normal States practice. Their comments have now been formally presented. However, it would appear that these comments have been presented only due to pressure from the Panel.

It should be noted that prior to the announcement on 6th June 2006 by the Minister for Home Affairs that Health and Social Services would present comments, the Panel had written to Health and Social Services. It drew attention and sought answers to a number of concerns raised by the Panel, ACET and Brook. The Panel was subsequently assured that some comment on the views of ACET, and Brook's comments, would be included.

Health and Social Services presented its Comments on 20th June 2006 but the Panel believes they have not fully addressed the concerns raised. In fact, it is of the belief that the concerns are unfounded. The Panel is disappointed that Health and Social Services should be so dismissive of those who support the proposed legislation but have sought to ensure that safeguards are in place prior to the enactment of the Law. This concern has greater significance as the Island does not have a Sexual Health Strategy.

The Panel feels that during its research, inaccurate accusations were made that it had adopted tactics with the intention of delaying the debate. It is evident that the Panel has had to overcome obstacles which were not envisaged when it first wrote to Home Affairs on 27th February 2006. In spite of these difficulties, the Panel has endeavoured to fulfil its remit in an appropriate manner to avoid delays.

As such the Panel is of the view that sufficient scrutiny has been conducted and will not ask for the proposition to be referred to it for scrutiny.