



*Copy to Skinner*

14th March 1997

European Convention on the Legal Status of Children born out of Wedlock.  
627(1)  
Cite. Clk.  
A.G.  
L.D.  
C.A. to St.  
H. & S.S. (2)

7. The Committee, with reference to Act No. 8 of 14th March 1994, of the Committee as previously constituted, recalled that it had considered the question of whether the provisions contained in the European Convention on the Legal Status of Children Born out of Wedlock should be introduced in the Island and had asked the Attorney General to investigate the proposal. It considered a report, dated 24th February 1997, from the Attorney General outlining the obligations under the Convention.

The Committee noted that the broad aim of the Convention was to improve the status of children born out of wedlock so that, as far as possible they were not legally and socially disadvantaged as against legitimate children. It discussed the options available and decided that it wished to give further detailed considerations to the obligations of the Convention and whether compliance would require changes to the Island's domestic law before deciding on whether to recommend that the Convention be extended to the Island.

The Committee considered the following issues -

(a) Maintenance by the father - Article 6

The Committee recalled that a request for an amendment for an unlimited period to be allowed for applications for maintenance was currently in the Law Drafting Programme. It also recalled that legislation was in the process of being drafted in relation to reciprocal enforcement of Maintenance Orders with Scotland.

(b) Ability to confer custody upon the father - Article 7(2)

The Committee noted that this was currently under consideration by the Health and Social Services Committee and that if legislation were enacted it would be necessary for the Island to make a reservation in respect of this Article.

The Committee, therefore, decided to ask the Health and Social Services Committee if it could have sight of the draft Law before it was promoted.

(c) Succession rights - Article 9

The Committee decided that it wished to give detailed consideration in due course on whether it wished to promote legislation to confer equal rights on an illegitimate child to share in the estate of its father.

(d) Article 6(1) - "That a father and mother of a child born out of wedlock should have the same obligation to maintain the child as if it were born in wedlock."

The Committee decided to request the Health and Social Services Committee to address this amendment as part of the Children's (Jersey) Law and asked to be given an opportunity to comment on the draft amendment at the appropriate time.

The Greffier of the States was requested to send a copy of this Act to the Health and Social Services Committee accordingly.

STATE'S GREFFIER  
24. MAR. 1997  
FORWARDED

*CM Woodcock*

copy *St. Skinner for informant.* ✓



LEGISLATION COMMITTEE

14th March 1997

Relate:  
Proposed  
Family  
Mediation  
Service.  
28/1(20)

11. The Committee, with reference to its Act No. 12 of 14th February 1997, received an oral report from the Vice President on the meeting of the Relate Working Group on Mediation which had been held on 3rd March 1997. It noted that accommodation for the provision of this service was being identified and the question of staff training examined. Also that a request for funding was to be submitted to the Health and Social Services Committee.

Ctte.Clk.  
H.&S.S.C.(2)

The Committee welcomed the introduction of this service which was also supported by the Law Society of Jersey and which, when operational could reduce the number of legal aid cases. However, there could be a need for legal advice to be available to the Service.

The Committee decided to advise the Health and Social Services Committee of its support for the introduction of this service.

STATES OF JERSEY  
DEPARTMENT OF HEALTH  
25 MAR 1997  
CHIEF EXECUTIVE  
REFERRED TO.....

*CPH Newcombe*  
Deputy Greffier of the States

STATES OF JERSEY  
24 MAR 1997  
FORWARDED

copy for file 205/6/1 (1/96)

502225

MCB/SB 55/5/11

24th February, 1997.

Deputy I. Nicholls,  
President,  
Legislation Committee,  
States Greffe,  
Jersey.

Dear Madam President,

**European Convention on the Legal Status  
of Children born out of Wedlock**

By Act No.8 of its meeting held on 14th March, 1994 the Legislation Committee asked me to provide certain background information concerning the above Convention. Although the Act does not specify the particular information required, it related to the question of certain reservations which the United Kingdom had entered at the time of ratification of the Convention.

As the Committee is now differently constituted, I propose to summarise the matter at some length including matters which were contained in my report of February 1994 so that all relevant matters for the Committee are contained in this one report. I attach a copy of the Convention for ease of reference.

The Convention was signed on behalf of the United Kingdom by Her Majesty's Government on 15th October, 1975. The broad aim of the Convention is to improve the status of children born out of wedlock so that, as far as possible, they are not legally and socially disadvantaged as against legitimate children.

The obligations of the Convention are set out under Articles 2 and 10. Articles 2 to 5 deal with maternal and paternal affiliation of children born out of wedlock. Article 6 gives children born out of wedlock similar rights to maintenance from their parents and family as legitimate children. Article 8 deals with access to the child by a parent who does not have parental authority over or custody of the child born out of wedlock.

Article 9 provides for property rights for children born out of wedlock. This Article provides that a child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock. Finally, Article 10 provides that the marriage between the father and mother of a child born out of wedlock shall confer on the child the legal status of a child born in wedlock.

In due course the Island was asked if it was in favour of a declaration being made under Article 13 to apply the Convention to Jersey. The Legislation Committee asked for the Law Officers' advice in a memorandum of 13th July, 1976. The Law Officers replied in a letter of 16th February, 1977 in which they advised that there was no reason in their opinion why the Committee should not seek the extension of the Convention to the Island. However, it was explained that such a 'declaration' would require amendments to insular law which would make fundamental changes to the law on succession. Under the customary law of the Island, an illegitimate child had no right to inherit any part of the real or personal property of either his mother or his natural father on an intestacy, nor did he enjoy the right of 'legitime' which legitimate children have in the succession to the personal property of each of their parents (that is to say, the right by operation of law jointly with any siblings to one third of the personal estate of the father or to two thirds where there is no widow, and to two thirds of the personal estate of the mother). Equally a parent could not inherit the estate of an illegitimate child which formerly devolved upon the Seigneur, or escheated to the Crown as bona vacantia. The Legitimacy (Jersey) Law, 1973, altered the common law rules to the extent that it conferred for the first time a right upon an illegitimate child to inherit from the estate of his mother in all respects as if he were legitimate. Conversely, it conferred a right upon the mother of an illegitimate child to succeed to his real or personal property upon an intestacy.

It was suggested that a further amendment might be made to Article 11 of the Legitimacy (Jersey) Law, 1973, to enable an illegitimate child to succeed to the estate of his natural father upon both testate and intestate succession. This would be in line with the United Kingdom provisions set out in sections 14 and 15 of the Family Law Reform Act, 1969. However, the Law Officers pointed out that the Convention goes further than this as part of Article 9 requires that an illegitimate child should have the same rights of succession in the estate of a member of its father's or mother's family as if he had been born in wedlock. The Law Officers expressed their view that this was a natural corollary to the aim of the Convention to improve the status of children born out of wedlock. However, they also accepted that this raised wider issues and that the Committee might wish to reserve its opinion on that point. This could be achieved by seeking a reservation excluding for the time being the application of Article 9 of the Convention in so far as the words "*and of a member of its father's or mother's family*" are concerned.

The Law Officers advised that, save for Article 9 (rights of succession) the existing domestic law of the Island conformed to the requirements of the Convention.

At a meeting of 28th March, 1977 the Legislation Committee considered the comments of the Law Officers and decided that it did not wish the Convention to be extended to the Island for the time being.

On 7th August, 1979, the Bailiff circulated a memorandum advising that the United Kingdom had sought reservations in respect of Article 6(1), 6(2) and 9.

At a meeting of 10th December, 1979, the Committee reiterated its decision not to extend the Convention to the Island for the time being. However, it stated that it would be prepared to reconsider the matter in the event of the United Kingdom withdrawing its reservations.

I have now received up to date information from the Home Office in relation to the reservations made. The United Kingdom ratified the Convention on the 20th February, 1981. At that time certain reservations were made.

- (i) In respect of Article 6(1) a reservation was made on behalf of England, Wales and Northern Ireland.
- (ii) In respect of Article 6(2) a reservation was made on behalf of Scotland only.
- (iii) A reservation was also made in respect of Article 9 so that it applies only in relation to the estates of the father and mother of a child born out of wedlock and not to their respective family members.
- (iv) The Convention has also been extended to the Bailiwick of Guernsey, Herm and Jethou with a reservation in respect of Article 9 so that it applies only in respect of the testate succession in the estate of a father or mother of a child born out of wedlock.
- (v) Finally a declaration was made by the United Kingdom that it was their understanding that neither Article 9 nor Article 10 of the Convention was to be interpreted as conferring upon a child born out of wedlock any rights of succession to the Crown or a title of Honour or any right of inheritance to an entailed interest.

The UK no longer has any need to retain the reservations at (i) and (iii) above. That at (i) was addressed by the Child Support Act, 1991 which put the mother and father under exactly the same obligation to maintain the child and the reservation at (iii) was addressed first of all by Section 14 of the Family Law Reform Act, 1969 (which enabled a child to inherit from both father and mother) and subsequently by Sections 18 and 19 of the Family Law Reform Act, 1987 which put children born out of wedlock in the same position as regards inheritance generally as children born in wedlock with the sole exception that children born out of wedlock remain unable to inherit titles or honour, etc., or to succeed to the Throne. I have not been informed as to the reservation in relation to Scotland contained at (ii).

In relation to the reservation at (iv), the United Kingdom omitted to renew the reservation which was only valid for a period of 5 years. The question must therefore arise as to whether Guernsey Law is consistent with its obligations under the Convention and a choice may have to be made between denouncing the Convention in respect of Guernsey or amending Guernsey Law so as to comply with the Convention. However I have not thought it politic to enquire further into that problem.

### Consistency of Jersey Law with the Convention

In 1977 the Law Officers advised that, save for Article 9 (rights of succession) Jersey's existing domestic law conformed with the requirements of the Convention. I have to say that I do not think this advice was correct. In one respect it is arguable but in the second respect I am in no doubt.

#### 1. **Article 6(1)**

*"The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock."*

This is undoubtedly true of the mother under Jersey Law. The position of the father is not quite so clear cut. It is open to the mother to apply to the Court for an order that the father pay to her a "*pension alimentaire*" (affiliation order). This will be set at such level as the Court thinks fit having regard to the requirements of the child for food, upkeep and education and the father's means. It could be contended that this obligation is not quite as extensive as the general duty of the father of a legitimate child to maintain that child.

For my own part I am not convinced that there is any material difference and the position of a divorced father in relation to the maintenance of his child seems very similar. Nevertheless the United Kingdom took the view when it ratified the Treaty that there was some doubt as to whether the system of affiliation proceedings put the father of a child born out of wedlock under exactly the same obligation and accordingly entered a reservation as a precaution. It would seem prudent that, if Jersey were to ask for the Convention to be extended, a similar reservation should be entered unless or until our Law is amended.

2. **Article 7(2)**

*"There shall be power to transfer parental authority; cases of transfer should be governed by the internal law."*

Under Jersey's customary law the custody of an illegitimate child vests in the mother alone. The father does not have the right to apply for parental authority (i.e. custody) to be transferred to him. Jersey would therefore need to enter a reservation in respect of this Article.

3. **Article 9**

*"A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock."*

As stated earlier this rule is complied with in respect of a mother. However an illegitimate child has no rights to the estate of the father, nor in respect of the members of the father's or mother's family. Accordingly a reservation both in respect of the father and in respect of the respective families would need to be entered.

**SUMMARY**

**Domestic Law**

It seems to me that the logical step is for the Committee first to consider whether it wishes to propose any amendments to our domestic law so as to comply with the obligations under the Convention. The Committee would therefore need to consider the following areas:

(i) **Maintenance by the father**

Although at present a mother can obtain an order for maintenance by the father, it would be preferable to broaden the obligation slightly - although there would be no practical difference - so as to comply with the requirements of the Convention along the lines of the statement of principle in the Child Support Act, 1991 of the United Kingdom. The Committee might also wish to consider whether it is time to abolish or lengthen the period in which such proceedings can be brought which is a year and a day from birth unless the father has acknowledged the position.

(ii) **Ability to confer custody upon the father**

This matter is presently under consideration by the Health and Social Services Committee and is due to be dealt with in the new Childrens Law, the drafting brief for which is in course of preparation. Accordingly, if that Law is passed, it will not be necessary for Jersey to make a reservation in respect of this Article.

(iii) **Succession rights**

The Committee may wish to consider whether it wishes:

- a) To confer equal rights on an illegitimate child to share in the estate of its father.
- b) Extend the right to cover members of the family of both mother and father, e.g. uncles, aunts, brothers, sisters, grandparents, etc.

**Should we sign up to the Convention**

If Jersey were to sign up now, it would certainly need to make reservations in respect of Articles 7(2) and 9 and ought probably to make a reservation in respect of Article 6(1). Those reservations would need to be extended every 5 years and there would always be the risk of a failure to do so in which event we would find ourselves in a similar position to Guernsey in having to choose between denouncing the Convention or being compelled to amend our law.

It could be argued that signing up to the Convention with the above reservations will make no difference to our present Law and is therefore perhaps unnecessary. It might be more appropriate to consider what, if any, reforms we wish to make in our domestic law and then sign up to the Convention once those reforms have been effected. Conversely, if the Committee decides that it does not wish to promote any of the amendments to domestic law referred to above, it will need to consider whether to sign up to the Convention subject to the three stated reservations.

In any event the Committee may think it right to consult with the Health and Social Services Committee.

I have the honour to be,  
Madam,  
Your obedient Servant

Attorney General

Enc.