

MISCELLANY

Digital transformation of the Royal Court of Jersey

1 A consultation paper was produced by the Royal Court in April 2021 seeking to obtain views on the digital transformation of the court. Technology has of course been employed for more than two decades, even if the pace of change has not been as rapid as some might have wished. The website of the Jersey Legal Information Board (launched in 1999), containing reported and unreported judgments, as well as all the legislation in force, and much else too, is a significant asset for practitioners and the judiciary. From time to time, cases have been conducted electronically, *Crociani v Crociani*¹ being a notable example. But, in general, disputes are resolved, and processes are fixed with paper resources. Litigation still cannot be begun electronically. Stamp duties and court fees can only be paid through a system which could charitably be described as archaic.²

2 The consultation paper must therefore be pushing at an open door so far as the profession is concerned. Some of the questions posed at the conclusion of the paper hardly merit being asked. Is it really necessary, for example, to consult on whether or not all acts of the court, or applications for leave to appeal against decisions of the Employment and Discrimination Tribunal, should be standardised? If it is thought sensible, the Judicial Greffe should get on and do it. Sometimes, consultation is a cause of unnecessary delay.

3 Other questions, however, raise issues which are important. Whether or not budgets should be required for all cases will certainly concentrate minds. Budgets might well help the court to manage cases and to ensure that the overriding objective of dealing with cases justly and at proportionate cost is not just a pious aspiration.

4 Many will look forward *avec impatience*, however, to seeing if the broader hopes of creating a court capable of dealing with most issues electronically, which were generated by the allocation for court digitization of £819,000 in the Government Plan, can be fulfilled.

¹ *Sub nom BNP Paribas Jersey Trust Corp Ltd v de Bourbon des Deux Siciles* [2020] JRC 195.

² It is true that resolution of this problem does not lie within the exclusive remit of the Royal Court. The States Treasury must be persuaded to up its game.

Legislation (Jersey) Law 2021

1 On 23 July 2021, the Royal Court registered an important piece of legislation in the Legislation (Jersey) Law 2021. Its purpose is two-fold. First, and most importantly, it establishes an obligation on the States of Jersey to publish timeously an up-to-date consolidated version of all Jersey laws as they are promulgated and provide an up-to-date consolidated snapshot of all Jersey legislation that is in force. In other words, the intention is for the States of Jersey to make available an official one-stop shop for citizens to access a copy of the law as it stands at the time of access. Secondly, it provides some much-needed housekeeping, bringing together provisions contained in separate pieces of legislation about legislation (how laws are made, when they commence *etc*) which are more conveniently set out in one single statute.

2 Prior to the Legislation (Jersey) Law 2021, current Jersey laws as amended were published *via* a so-called “revised edition,” namely a published text, revised from time to time, pursuant to the Law Revision (Jersey) Law 2003. With some exceptions, the revised edition was obliged to contain all laws made in Jersey that were in force, such laws of the UK Parliament and Orders in Council which had been extended to Jersey and relevant treaties, conventions and EU instruments. As the Report accompanying the draft Legislation (Jersey) Law 202- observes, this was at the time a “huge leap forward” since before there had been no central database of legislation and laws were not generally printed in consolidated form to include amendments. Practitioners will well remember editions of the *Recueil des Lois*, as published from time to time, crossed through and added to in manuscript in order to record the current state of the law. Where repeatedly amended statutes were involved, such as the Housing (Jersey) Law 1949 and the Regulation of Undertakings (Jersey) Law 1973 and their subordinate Regulations, this often made for a messy scrawl of annotations. The advent of electronic publication of statutes on the Jersey Legal Information Board (JLIB) website was another huge leap forward in terms of availability. However, in both cases, there was always a time lag of several months before the revised edition was published. Thus, to quote the Report again, “the revised edition was never strictly an authentic version of Jersey legislation because it was already several months out of date by the time it was published”. Practitioners still had to mark up recent changes to legislation to pick up the time delay.

3 JLIB and the Legislative Drafting Office (previously the Law Draftsman’s Office) collaborated to produce an unofficial

consolidated and up-to-date statute book on the website and this has been active since May 2019. It has proved very popular and most legislation is now accessed *via* that gateway. The initiative has proved particularly important during the Covid-19 pandemic during which (so far) over 120 separate pieces of Covid-19 legislation have entered the statute book, often adjusting the rules that govern our daily lives to reflect the effects of the pandemic as it ebbed and flowed.

4 Article 16 of the Legislation (Jersey) Law 2021 states, in effect, that the Legislative Drafting Office must ensure that all as-enacted legislation must be published in consolidated form as soon as practicable after it is made. As a result, under art 17, “all as-enacted legislation is an official version of the legislation” and “any consolidated legislation . . . is an official version of the legislation if it contains a statement that it is an official version”. An “official version of legislation is admissible in evidence in any proceedings and a court or person acting judicially must take judicial notice of any official version of legislation.”

5 These are progressive steps for a small jurisdiction determined to keep apace and even out do larger jurisdictions in terms of the accessibility of statute law for the benefit of all citizens.

6 Part 2 of the Law, although of lesser overall significance, nonetheless is a boon to clarity and simplification. This Part is entitled “Making, amending and repealing Jersey legislation”. Amongst other things it sets out how Jersey law is made and is treated as having been made. It confirms when a law commences, the exercise of statutory powers before commencement of a law, the effect of repeal and expiry, and the powers to make Jersey subordinate legislation. Much of this part brings together provisions previously contained in several statutes. The centralisation of these provisions in one statute is to be welcomed.

7 Part 4 rings the changes in a small but significant way whereby, for reasons of gender neutrality, the Law Draftsman’s Office is now to be known as the Legislative Drafting Office.

8 Interestingly, Part 4 ostensibly makes the Principal Legislative Drafter “responsible for all the drafting of legislation to be presented to the States and any amendments to it”. There is considerable sense in having all legislation professionally drafted according to consistent standards—not least because of the habit of lawyers to read great intentions into changes in wording. Whether this is best achieved by writing into positive law a rule that seems to suggest that nothing can be done legislatively without the sign off of the Legislative Drafting Office is another matter. There are doubtless hazards in backbenchers being allowed to present their own drafting but there are constitutional complications if this provision empowers the Principal

Legislative Drafter to tell legislators to wait their turn. It is no secret that Departments do bid for law drafting time, and prioritisation is an inevitable part of administration. Whether it proves sensible to give the Principal Legislative Drafter a statutory “captain of the ship” responsibility for drafting is something that only time will tell.

9 There is also a Jersey complication, in that advice to the Government and to members of the States Assembly on drafting comes from the Legislative Drafting Office but advice on what the drafting means is legal advice, and comes from the Law Officers. It is a complication that requires navigating with care at present. To introduce a law that means one Office has the final word on content, whilst a different Office retains the final word on meaning, may prove problematic should conflicts arise. Such issues would not arise in Guernsey, where drafting and advice are both done and given by or on behalf of the Law Officers of the Crown. That does carry with it the problem once noted by Lord Halsbury in *Hilder v Dexter*:

“I have more than once had occasion to say that in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting.”¹

10 However, it should be noted that Lord Halsbury was of course giving his view in the context of UK parliamentary counsel who have a somewhat narrower role to the drafters in the Law Officers’ Chambers in Guernsey. The drafters in the Law Officers’ Chambers, due in part to the lack of subject matter experts in Guernsey’s relatively small civil service, often act at both instructing solicitor and parliamentary counsel and may be involved in policy formulation and reports prior to the draft legislation being developed. They are often more directly engaged with the rationale for the draft legislation and are therefore much more *au fait* with the policy issues being discussed. By contrast, UK parliamentary draftsmen are principally instructed by departmental solicitors and are not involved in the initial formulation of policy reports.

11 Finally, it should also be noted that the new Law gives responsibility to the Principal Legislative Drafter for all “Jersey subordinate legislation”, which goes beyond Regulations and Orders to include “any . . . other instrument having legislative effect in Jersey which is made in Jersey under any Jersey legislation”. On the face of it, that is a very broad remit.

12 The Legislation (Jersey) Law 2021 came into force on 28 September 2021.

¹ [1902] AC 424 at 477.