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24th January, 2006

Deputy F. J. Hill,
Chairman,
Social Affairs Scrutiny Panel,
States Greffe,
Morier House,
ST. HELIER

Dear Deputy Hill,

Social Affairs Scrutiny Panel
Sexual Offences (Jersey) Law 200- Proposed Review
Power of the United Kingdom to legislate for Jersey

1. I write further to paragraph 7 of my letter of the 23rd January, 2006, in which I said that I would advise separately on the power or otherwise of the United Kingdom Government to legislate for Jersey. This letter is supplementary to the advice on legal implications given in paragraph 6 of that letter, and does not supersede it.

2. As a matter of general principle, the existence or otherwise of such a power is the subject of differing views held by experts in constitutional law. One school of thought holds that the United Kingdom does, in the last resort, have such a power, while another school of thought asserts that it does not. This issue could only be decided by legal proceedings, which would have massive resource implications, would inevitably be damaging to Jersey's relationship with the United Kingdom, and which, if Jersey were to lose, would have very far-reaching adverse effects.

3. In the circumstances of this particular piece of legislation, the general principle is in my opinion modified. Jersey is not a state party to the European Convention on Human Rights. The state party is the United Kingdom, which has, at Jersey's request, ratified the

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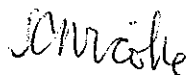
Convention on the Island's behalf. The obligation for ensuring Jersey's compliance with the Convention therefore rests with the United Kingdom, the state party, and not with Jersey.

4. In my opinion, when the United Kingdom, by ratifying a Convention at Jersey's request takes on an international obligation in respect of Jersey, it must follow that Jersey has tacitly or implicitly accepted that the United Kingdom should have the power to legislate for Jersey to the extent necessary to ensure that Jersey does not cause the United Kingdom to be in breach of the international obligations which the United Kingdom has taken on by ratifying the Convention on Jersey's behalf. Putting it another way, legal responsibility for compliance rests with the United Kingdom, and it cannot be the case that the United Kingdom has a responsibility but does not have any powers to discharge that responsibility. If the United Kingdom were to be in breach of its obligations because Jersey was in breach of the Convention, and in order to discharge its obligations the United Kingdom were to legislate to remedy the breach, I do not think that Jersey could properly oppose the legislation.

5. There is a power, contained in Article 15 of the Convention, of derogation from obligations under the Convention, but it can only be exercised in time of war or other public emergency threatening the life of the nation and can only be exercised to the extent strictly required by the exigencies of the situation and provided that the measures are not inconsistent with the Party's other obligations under international law. This would not extend to a derogation from the obligations under Articles 8 (a right to respect for private and family life) and 14 (prohibition of discrimination), which are the provisions in question here. The derogations which have been made and example of a derogation which does fall within this provision is to be found in Schedule 2 to the Human Rights (Jersey) Law 2000 where there is a derogation in respect of powers introduced by anti-terrorism legislation.

6. Either I, or one of the members of this Department who deals with legislation and human rights, would be happy to attend on the Scrutiny Panel should that be of assistance.

Yours sincerely,



Acting Attorney General

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