

DRAFT HUMAN RIGHTS (JERSEY) LAW 200-

**Lodged au Greffe on 7th December 1999
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

REPORT

Introduction

In September 1998, the States approved the proposition of the Policy and Resources Committee (P.189/98) that legislation should be drafted to give further effect in the law of Jersey to the rights established under the European Convention on Human Rights (“the Convention”) and charged the Legislation Committee to take responsibility for preparation of the drafting instructions and the presentation of the legislation to the States. The draft Law which this Report accompanies is the result. The draft Law has been sent out for consultation to a wide number of persons and organisations. The responses to the consultation process have been considered by the Legislation Committee and the views of the Home Office have also been obtained.

The purpose of this Report is to explain, in general terms, what the legislation does and, in a little more detail, what rights the Convention confers. Further details on the provisions of the Law itself are set out in the Explanatory Note to the Law.

The Human Rights (Jersey) Law

The Human Rights (Jersey) Law 200- (“the Law”) will mark a significant development in ensuring respect for human rights in Jersey. It will incorporate rights and freedoms guaranteed under the Convention into domestic law. This means that rights under the Convention may be relied upon directly in the courts of Jersey.

The Law, in common with similar legislation already enacted in the United Kingdom and to be enacted in the other British Islands, while strengthening representative and democratic government, maintains the principle of sovereignty of parliament, which underpins the constitutional arrangements of all British legislatures.

As the Home Secretary, Mr. Jack Straw, said in Parliament in the debate on the Human Rights Act, “It will enable people to challenge more easily the actions of the state if they fail to match up to the standards set by the Convention. The [Law] will thus create a new relationship between the Government and the people.”.

It will do this in the ways described below.

It will enable cases concerning the rights given under the Convention to be brought in the courts in Jersey. It will help to create a society in which the rights and responsibilities of individuals are properly balanced and in which an awareness of the Convention rights permeates the governmental and legal systems at all levels.

As things stand, an individual who wants to challenge any action by a branch of the government of the Island for non-compliance with the Convention, generally has to go to the European Court of Human Rights in Strasbourg (“the Strasbourg Court”) and may do so only after showing that all available remedies in the Jersey courts have been used up. Not surprisingly, it can take many years for a case to be decided. It is also a very expensive process.

This is unsatisfactory. The importance of maintaining basic rights in Jersey requires that rights under the Convention should be enforceable in the Jersey courts and tribunals.

The Law would achieve this by -

- (a) making it unlawful for a public authority (see Article 7 of the Law and the Explanatory Note for more on the meaning of this) and in two sets of circumstances, the States Assembly, to act incompatibly with Convention rights. A case may then be brought in a Jersey court or tribunal against the authority where it does so, or is about to do so, or against the States where it has done so. However, a public authority or the States Assembly will not have acted unlawfully under the Law if as the result of a provision of principal legislation it could not have acted differently; (The application of the Law to the States Assembly is described further below.)
- (b) requiring that all legislation be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may quash or disapply subordinate legislation; or

- (c) enabling a higher court, to give a declaration of incompatibility for principal legislation thereby drawing attention to the need to amend the legislation to bring it into line with the Convention rights;
- (d) requiring courts to take account of the case-law of the Court and the Commission in Strasbourg and also the Committee of Ministers;
- (e) requiring courts to develop the customary law compatibly with the Convention rights.

Reference was made earlier to the ways in which the Law would impact on the work of the States Assembly. This means the States when sitting as a parliament or legislature, not the administration of the States in the sense of the Committees and the civil service, which are clearly public authorities and bound by the Law to act compatibly with the Convention rights.

In Jersey, as in the United Kingdom and the other British Islands, it is one of the most fundamental of constitutional rules that Parliament is supreme. There is, in other words, no authority above Parliament which is the elected representative body of the people.

To avoid prejudicing or abolishing that rule, the United Kingdom's Human Rights Act was drafted in such a way that Parliament is outside the ambit of the Act in respect of all its functions. This means that the Courts cannot strike down principal legislation (Acts of Parliament) nor can they examine the proceedings of Parliament. This is relatively straightforward for Parliament, which has no executive functions and makes no subordinate legislation.

The draft Law comes as close as it can to reproducing that effect for the States. But it cannot wholly reproduce it because the States Assembly does have and exercise some executive functions which ought to be subject to the scrutiny of the courts and, indeed, already are so subject, in that they are susceptible to the remedy of judicial review. That is, the Royal Court may examine those functions in a particular case to see whether they were lawfully exercised.

For this reason, the Law would require the States Assembly to act compatibly with the Convention rights in two areas, namely, when making subordinate legislation and when deciding whether to use its powers of compulsory purchase of land (for instance, under the Housing or Island Planning Laws). But to avoid a person bringing a pre-emptive action to prevent the States even considering making subordinate legislation or whether to acquire land, the right to bring a human rights challenge to the exercise of these functions arises only after the States have made the relevant decision (see on this Article 8(1)(ii) of the Law). The categories of activity of the States which are subject to the Law may be added to, if the need arises.

To this extent the Law differs, not only from the UK Human Rights Act but also from the similar legislation proposed in the Isle of Man and Guernsey. In the Isle of Man, like the UK Parliament, the Island legislature does not have executive powers, nor does it make subordinate legislation. In Guernsey, the position is considerably more complicated, because of the need to take account of the position of the States of Alderney and the Chief Pleas of Sark, both of which have different roles to the States of Deliberation of Guernsey. However, these differences, while interesting and worth noting, are not directly relevant for Jersey. The constitutional position and the functions of the legislature of each Island are not exactly the same. There is, therefore, no reason why the law in each should be mirror images. Indeed, there must be some variations to take account of the differences. For the States of Jersey the Legislation Committee believes that the correct approach is that taken in the Law.

The Convention

The European Convention on Human Rights was adopted in 1950 and was ratified by the United Kingdom on behalf of the Island in 1951. It was designed to give binding effect to the guarantee of various rights and freedoms in the UN Declaration on Human Rights, adopted in December 1948. The Convention is a treaty of the Council of Europe (now consisting of some 40 countries), which was established after the end of the Second World War with the aim of protecting Europe against totalitarianism and a repeat of the wartime atrocities. The Convention is also intended to protect human rights in countries which are democratic by seeking to secure a fair balance between the general interest of society and the protection of the individual's fundamental rights. The United

Kingdom was a prime mover in setting up the Convention and played a major part in its drafting.

The preamble to the Convention says -

“[The signatories] reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other hand by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration...”

The Convention Rights

The Convention guarantees the following rights and freedoms -

- right to life (Article 2)
- freedom from torture and inhuman or degrading treatment or punishment (Article 3)
- freedom from slavery and forced or compulsory labour (Article 4)
- right to liberty and security of person (subject to a derogation applicable to Northern Ireland) (Article 5)
- right to a fair and public trial within a reasonable time (Article 6)
- freedom from retrospective criminal law and no punishment without law (Article 7)

- right to respect for private and family life, home and correspondence (Article 8)
- freedom of thought, conscience and religion (Article 9)
- freedom of expression (Article 10)
- freedom of assembly and association (Article 11)
- right to marry and found a family (Article 12)
- prohibition of discrimination in the enjoyment of the Convention rights (Article 14)
- right to peaceful enjoyment of possessions and protection of property (Article 1 of Protocol 1)
- right to education (Article 2 of Protocol 1)
- right to free elections (Article 3 of Protocol 1)
- right not to be subjected to the death penalty (Articles 1 and 2 of Protocol 6).

These are the Convention rights which are referred to in the Law. The complete wording of the rights is given in the Schedule to the Law.

The rights set out in the articles of the Convention have been explained and developed in the case-law of the Strasbourg bodies (the Court, the Commission and the Committee of Ministers).

The rights can be relied on by any person, non-governmental organisation or group of individuals and in some cases also by companies and other bodies, but not by governmental organisations, such as local authorities, as the Convention is about protecting fundamental rights and freedoms against the power of the State.

The Convention contains other provisions, largely referring to the machinery for enforcing rights, which are not incorporated. Specifically, Article 13 which requires an effective remedy to be provided in national

courts for violations of Convention rights is not included on the grounds that just such a remedy is provided by the Law itself.

Hierarchy of Rights

There is a hierarchy of Convention rights: some are absolute, some can be limited and some are qualified. Absolute rights cannot be derogated from. They are the right to life, to protection from torture, inhuman and degrading treatment and punishment, the prohibition on slavery and enforced labour, and protection from retrospective criminal penalties. Other rights, such as the right to liberty and right to a fair trial, can be limited under explicit and finite circumstances defined in the Convention itself. Qualified rights include the right to respect for private and family life, the right to freedom of expression, religion and association, the right to the peaceful enjoyment of property and to some extent the right to education. Interference with these rights is permissible subject to various qualifications. These include the qualification that any restriction must have its basis in law, be necessary in a democratic society and be related to the permissible aim set out in the relevant Article (e.g. the prevention of crime or the protection of public order or health).

Interpreting the Convention

To understand the Convention it is important to remember that -

- It is to be given a broad and generous interpretation rather than a strict, legalistic interpretation. Its purpose is the protection of human rights and fundamental freedoms and to maintain and promote the ideals and values of a democratic society.
- The Strasbourg Court looks at the substance and reality of what is involved and seeks to give a practical and effective interpretation to the rights.
- It is a living document - it must be interpreted in the light of present-day conditions. Societies and values change and the Strasbourg Court takes account of these changes in interpreting the Convention. In doing so, it looks to see whether there are common European standards.

- In relation to some Convention rights (particularly those requiring a balance to be struck between competing considerations) the Strasbourg Court allows a “margin of appreciation” to the State and is reluctant to substitute its own views of the merits of the case for that of the domestic authorities. This applies particularly to the justifications given for an interference with a right. It will also look to see if there is a reasonable relationship between a legitimate aim to be pursued and the methods chosen to pursue it.
- Terms and expressions have an autonomous meaning - just because Jersey law defines an expression in a certain way does not mean that the same expression in the Convention is to be given the same meaning. The term or expression has the same meaning for all the countries bound by the Convention.

These principles of interpretation, adopted by the Strasbourg Court, will be followed by the Jersey courts and tribunals.

Conclusion

The draft Law is a real and important step forward in securing human rights and freedoms in Jersey. The draft Law was put out for widespread consultation in July 1999 and none of the consultees has opposed the introduction of the Law. On the contrary, it has been welcomed.

However, it has to be recognised that the Law will have an impact, on the way government in the Island is conducted. There is bound to be extra demand on the resources of the public authorities in coming to terms with the new concepts of the Convention. Extra burdens are likely to be placed on the courts, due to the number of Convention points being taken, at least in the early stages, on the Law Officers in giving advice and scrutinising legislation and, not least, on several States Departments which dispense public services such as social security, education and health care and on the police and prison services. There are bound to be some manpower and financial implications, but it is not possible to predict them with any degree of certainty.

The key requirement will be that of training and the Policy and Resources Committee has agreed to establish a Working Group to organise and oversee the training of relevant staff.

In the United Kingdom the Human Rights Act was enacted in 1998 but will not be brought into force until October 2000 in order to give public authorities adequate time to prepare. The draft Law contains provisions for an Appointed Day and there will clearly be a need to allow plenty of time for adequate preparations before the Law is brought into effect.

Explanatory Note

The purpose of this Law is to incorporate substantive rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms into the domestic law of Jersey thereby giving Jersey courts jurisdiction to determine whether rights enshrined in the Convention have been infringed.

Article 1 contains the interpretation provisions. In particular it defines “Convention rights”. These are the parts of the Convention which confer substantive rights or freedoms and which are to be given further effect in domestic law and which are set out in *Schedule 1*. They are Articles 2-12 and 14 of the Convention as read with Article 16-18, Articles 1-3 of the First Protocol and Articles 1 and 2 of the Sixth Protocol.

Article 2 gives effect to the Convention rights for the purposes of this Law subject to any designated derogation or reservation from those rights which the UK makes on the Island’s behalf (and which will take effect by means of an Order made by the Policy and Resources Committee). There is also power for that Committee to amend the Law to reflect any protocol ratified by the UK on the Island’s behalf.

Article 3 requires a court or tribunal determining a question in connection with a Convention right to take into account relevant decisions, etc. of the institutions established by the Convention.

Article 4 requires legislation so far as is possible to be interpreted in a way which is compatible with Convention rights.

Article 5 empowers the Royal Court, the Court of Appeal or the Judicial Committee of the Privy Council to make a “declaration of incompatibility” where it finds that legislation is not compatible with a Convention right. The Attorney General (or his nominee) has a right to intervene where a court is considering making such a declaration (*Article 6*).

Article 7 makes it unlawful for public authorities to act in a way which is incompatible with a Convention right. Though the States Assembly is not within the definition of “public authority”, it is made unlawful for the States to make subordinate legislation or to purchase land compulsorily if this would be incompatible with a Convention right. *Article 8* enables the

victim of the unlawful act to bring proceedings and *Article 9* provides for judicial remedies where a court finds that an act of a public authority or the States Assembly is unlawful. *Article 10* provides for limited remedies in the case of judicial acts.

Article 11 states that reliance on a Convention right does not restrict other rights. *Article 12* makes special provision in relation to freedom of expression and *Article 13* requires a court or tribunal to have particular regard to the right of freedom of thought, conscience and religion in a case where its decision might affect the exercise of that right by a religious organisation.

Articles 14 and 15 provide a mechanism whereby derogations from and reservations to Articles of, or protocols to, the Convention by the UK on the Island's behalf may be given effect to by means of Orders of the Policy and Resources Committee and allow the Committee to amend this Law as appropriate to achieve this. The existing derogation made by the UK on the Island's behalf is set out in *Schedule 2*.

Article 16 requires a Committee lodging a *projet* before the States to make a written statement that the *projet* is compatible with the Convention rights or that it is unable to do so but nevertheless wishes the States to proceed with the *projet*.

Article 17 makes general provision as to Rules and Orders made under this Law and *Article 18* includes the short title and provides for the Law to come into force on such day or days as the States may by Act appoint. The Law is expressed to bind the Crown.

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ARRANGEMENT OF ARTICLES

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SCHEDULE 1 - CONVENTION RIGHTS

SCHEDULE 2 - DEROGATION

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A LAW to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights and for connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

(1) In this Law -

“amend” includes repeal and apply (with or without modifications);

“Commission” means the European Commission of Human Rights;

“Committee” means the Policy and Resources Committee;

“Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the

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Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the Island;

“Convention Rights” means the rights and fundamental freedoms set out in -

- (a) Articles 2 to 12 and 14 of the Convention;
- (b) Articles 1 to 3 of the First Protocol; and
- (c) Articles 1 and 2 of the Sixth Protocol,

as read with Articles 16 to 18 of the Convention;

“declaration of incompatibility” means a declaration of incompatibility made under Article 5 of this Law;

“designated derogation” means -

- (a) the United Kingdom’s derogation from Article 5(3) of the Convention on the Island’s behalf (which is set out in Schedule 2 to this Law); and
- (b) any derogation by the United Kingdom from an Article of the Convention, or of any protocol to the Convention, on the Island’s behalf which is contained in a Designation Order;

“designated reservation” means any reservation to an Article of the Convention, or of any protocol to the Convention, by the United Kingdom on the Island’s behalf and contained in a Designation Order;

“Designation Order” means an Order of the Committee which designates any derogation from, or reservation to, an Article of, or a protocol to, the Convention by the United Kingdom on the Island’s behalf for the purposes of this Law;

“principal legislation” means any -

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- (a) Law;
- (b) Act of Parliament applying directly to the Island;
- (c) Measure of the Church Assembly or General Synod of the Church of England which has effect in the Island in accordance with the provisions of a scheme under the Channel Islands (Church Legislation) Measure 1931, as amended;¹
- (d) Order in Council extending to the Island an Act of Parliament, with or without adaptation, exception or modification;
- (e) triennial Regulations; and
- (f) Order in Council made in exercise of Her Majesty's Royal Prerogative which applies to the Island,

and includes any Regulations, an Order or other instrument made under principal legislation (whether in the Island or in the United Kingdom) to the extent to which it operates to bring one or more provisions of that legislation into force or amends any principal legislation;

“First Protocol” means the protocol to the Convention agreed at Paris on 20th March 1952;

“Sixth Protocol” means the protocol to the Convention agreed at Strasbourg on 28th April 1983;

“Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;

“subordinate legislation” means any -

¹ Tome VII, page 35.

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- (a) Order in Council other than one which is principal legislation; and
- (b) Regulations, Order, Rules, scheme, warrant, Bye-laws or other instrument made under principal legislation (except to the extent to which it operates to bring one or more provision of that principal legislation into force or amends principal legislation);

“tribunal” means any tribunal in which legal proceedings may be brought.

(2) In Article 3(1) of this Law -

- (a) the references in sub-paragraphs (b) and (c) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol;
- (b) the reference in sub-paragraph (d) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol; and
- (c) the references to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

(3) A reference in an Article or other division of this Law to a paragraph by number only, and without further identification, is a reference to the paragraph of that number in the Article or other division of this Law.

(4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from

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time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

ARTICLE 2

The Convention

(1) The Articles of the Convention which comprise the Convention rights (and which are set out in Schedule 1 to this Law) shall have effect for the purposes of this Law subject to any designated derogation or reservation.

(2) The Committee may by Order make such amendments to this Law as it thinks appropriate to reflect the effect, in relation to the Island, of a protocol to the Convention which the United Kingdom has ratified, or signed with a view to ratification, on the Island's behalf.

(3) No amendment may be made by an Order under paragraph (2) so as to come into force before the protocol concerned is in force in relation to the Island.

ARTICLE 3

Interpretation of Convention rights

(1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any -

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;
- (b) opinion of the Commission given in a report adopted under Article 31 of the Convention;
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention; or
- (d) decision of the Committee of Ministers taken under Article 46 of the Convention,

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whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this Article is to be given in proceedings before any court or tribunal in such manner as may be provided -

- (a) in the case of proceedings in the Royal Court or Magistrate's Court by Rules of Court made by the Royal Court;
- (b) in the case of proceedings in the Court of Appeal by Rules of Court made by the Court of Appeal; and
- (c) in the case of proceedings in a tribunal by Order made by the Committee having the power to make Orders in relation to that tribunal.

ARTICLE 4

Legislation

(1) So far as it is possible to do so, principal legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights.

(2) This Article -

- (a) applies to principal and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible principal legislation; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if

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(disregarding any possibility of revocation) principal legislation prevents removal of the incompatibility.

ARTICLE 5

Declaration of incompatibility

(1) If in any proceedings in which a court determines whether a provision of principal legislation is compatible with a Convention right, the court is satisfied that the provision is not so compatible, it may make a declaration of incompatibility.

(2) If in any proceedings in which a court determines whether a provision of subordinate legislation made in the exercise of a power conferred by principal legislation, is compatible with a Convention right, the court is satisfied -

- (a) that the provision is not so compatible; and
- (b) that (disregarding any possibility of revocation) the principal legislation concerned prevents removal of the incompatibility,

it may make a declaration of incompatibility.

(3) In this Article “court” means -

- (a) the Royal Court (Superior or Inferior Number) sitting otherwise than as a court of trial in criminal proceedings;
- (b) the Court of Appeal; or
- (c) the Judicial Committee of the Privy Council.

(4) A declaration of incompatibility -

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and

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- (b) is not binding on the parties to the proceedings in which it is made.

ARTICLE 6

Right of Attorney General to intervene

(1) Where a court is considering whether to make a declaration of incompatibility, the Attorney General shall be notified in accordance with Rules of Court made by that court.

(2) In any case to which paragraph (1) applies, the Attorney General (or a person nominated by him) shall, on giving notice in accordance with the Rules referred to in that paragraph at any time during the proceedings, be joined as a party to the proceedings.

(3) A person who has been joined as a party to criminal proceedings as a result of a notice under paragraph (2) may, with leave, appeal against any declaration of incompatibility made in the proceedings.

ARTICLE 7

Public authorities and the States Assembly

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) In this Article “public authority” includes -

(a) a court or tribunal; and

(b) any person certain of whose functions are functions of a public nature,

but does not include the States Assembly or a person exercising functions in connection with proceedings in the States Assembly.

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(3) In relation to a particular act, a person is not a public authority by virtue only of paragraph (2)(b) if the nature of the act is private.

(4) Notwithstanding that the States Assembly is not a public authority for the purposes of this Law, it shall be unlawful for the States Assembly -

- (a) to make subordinate legislation which is incompatible with a Convention right; or
- (b) to acquire land by compulsory purchase pursuant to powers contained in any enactment in a way which is incompatible with a Convention right.

(5) The States may by Regulations amend paragraph (4) so as to add further categories of activity in which it may be unlawful for the States Assembly to act in a way which is incompatible with a Convention right.

(6) Paragraphs (1) and (4) do not apply to an act if -

- (a) as the result of one or more provisions of principal legislation, the authority or the Assembly, as the case may be, could not have acted differently; or
- (b) in the case of one or more provisions of, or made under, principal legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority or the Assembly, as the case may be, was acting so as to give effect to or enforce those provisions.

(7) "An act" includes a failure to act but does not include a failure to -

- (a) lodge *au Greffe* or introduce in the States a proposal for legislation;
- (b) make any principal legislation.

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ARTICLE 8

Proceedings

- (1) A person who claims that -
- (i) a public authority has acted, or proposes to act, in a way which is made unlawful by Article 7(1) of this Law; or
 - (ii) the States Assembly has acted in a way which is made unlawful by paragraph (4) of that Article,
- may -
- (a) bring proceedings against the authority or, in the case of the Assembly, the States, under this Law in the Royal Court; or
 - (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or, in the case of proposed action by a public authority, would be) a victim of the unlawful act.

(2) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

(3) A person wishing to bring proceedings under paragraph (1)(a) must do so before the end of -

- (a) the period of one year beginning with the date on which the act complained of took place; or
- (b) such longer period as the court considers equitable having regard to all the circumstances,

unless Rules of Court made by the Royal Court impose a stricter time limit in relation to the procedure in question.

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- (4) In paragraph (1)(b) “legal proceedings” includes -
- (a) proceedings brought by or at the instigation of a public authority; and
 - (b) an appeal against the decision of a court or tribunal.

(5) For the purposes of this Article, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

(6) Nothing in this Law creates a criminal offence.

(7) In making Rules regard must be had to Article 10 of this Law.

(8) The Committee having the power to make Orders in relation to a particular tribunal may, to the extent that it considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or a proposed act) of a public authority which is (or would be) unlawful as a result of Article 7(1) of this Law, or an act of the States Assembly which is unlawful as a result of paragraph (4) of that Article, by Order add to -

- (a) the relief or remedies which the tribunal may grant; or
- (b) the grounds on which it may grant any of them.

ARTICLE 9

Judicial remedies

- (1) In relation to -
- (a) any act or proposed act of a public authority which the court finds is, or would be, unlawful; or

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- (b) any act of the States Assembly which the court finds is unlawful,

the court may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) Damages may be awarded under this Article only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) A court shall not award damages under this Article unless, taking account of all the circumstances of the case, including -

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court); and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

it is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining whether to award damages or the amount of an award the court shall take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) Where damages are awarded under this Article against a public authority or, in respect of the States Assembly, the States, that authority or the States, as the case may be, shall be treated for the purposes of Article 5 of the Law Reform (Miscellaneous Provisions) (Jersey) Law 1960² as liable in respect of damage suffered by the person to whom the award is made.

(6) In this Article -

² Tome VIII, page 809.

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“court” includes a tribunal;

“damages” means damages for an unlawful act of a public authority or the States Assembly; and

“unlawful” means unlawful under Article 7(1) or (4) of this Law.

ARTICLE 10

Judicial acts

(1) Proceedings under Article 8(1)(a) of this Law in respect of a judicial act may be brought only -

- (a) by exercising a right of appeal;
- (b) on an application for judicial review; or
- (c) in such other forum as may be prescribed by Rules of Court made by the Royal Court.

(2) Nothing in paragraph (1) affects any rule of law which prevents a court from being the subject of judicial review.

(3) In proceedings under this Law in respect of a judicial act, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.

(4) An award of damages permitted by paragraph (3) -

- (a) shall be made against the States; and
- (b) shall not be made unless the Attorney General is joined as a party to the proceedings.

(5) In this Article -

“court” includes a tribunal;

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“judge” includes a member of a tribunal, a Jurat and an officer entitled to exercise the jurisdiction of a court;

“judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf of, a judge.

ARTICLE 11

Safeguard for existing human rights

A person’s reliance on a Convention right does not restrict -

- (a) any other right or freedom conferred on him by or under any law having effect in the Island; or
- (b) his right to make any claim or bring any proceedings which he could make or bring apart from Articles 8 to 10 of this Law.

ARTICLE 12

Freedom of expression

(1) This Article applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied -

- (a) that the applicant has taken all practicable steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

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(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court shall have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to -

(a) the extent to which -

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published; and

(b) any relevant privacy code.

(5) In this Article -

“court” includes a tribunal; and

“relief” includes any remedy or order (other than in criminal proceedings).

ARTICLE 13

Freedom of thought, conscience and religion

If a court or tribunal’s determination of any question arising under this Law might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it shall have particular regard to the importance of that right.

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ARTICLE 14

Derogations

(1) If a designated derogation is amended or replaced it ceases to be a designated derogation.

(2) Nothing in paragraph (1) shall prevent the Committee from making a further Designation Order in respect of the Article of, or protocol to, the Convention concerned.

(3) The Committee shall, by Order, make such amendments to Schedule 2 to this Law as it thinks appropriate to reflect -

(a) any Designation Order; or

(b) the effect of paragraph (1).

(4) A Designation Order may be made in anticipation of the making by the United Kingdom of a proposed derogation from any Article of or protocol to the Convention on the Island's behalf.

ARTICLE 15

Reservations

(1) If a designated reservation is withdrawn wholly or partly it ceases to be a designated reservation.

(2) Nothing in paragraph (1) shall prevent the Committee from making a further Designation Order in respect of the Article of, or protocol to, the Convention concerned.

(3) The Committee shall, by Order, make such amendments to this Law as it thinks appropriate to reflect -

(a) any Designation Order; or

(b) the effect of paragraph (1).

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ARTICLE 16

Statements of compatibility

(1) A Committee which lodges *au Greffe* a *projet de loi* must, before the second reading of the *projet* -

- (a) make a statement to the effect that in its view the provisions of the *projet* are compatible with the Convention rights (“a statement of compatibility”); or
- (b) make a statement to the effect that although it is unable to make a statement of compatibility, it nevertheless wishes the States to proceed with the *projet*.

(2) The statement referred to in paragraph (1) must be in writing and be published in such manner as the Committee making it considers appropriate.

ARTICLE 17

Rules and Orders

(1) The Committee may by Order make provision for carrying this Law into effect and, in particular but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by Order under this Law.

(2) Any power conferred by this Law to make Rules or Orders may be exercised -

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
- (b) so as to make in relation to the cases in relation to which it is exercised -

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- (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
- (ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Law; or
- (iii) any other provision either unconditionally or subject to any specified conditions.

(3) Any Rules or Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the court or the Committee making the Order, as the case may be, to be necessary or expedient for the purposes of the Rules or Order.

(4) The power to make Rules of Court under -

- (a) Article 11 of the Royal Court (Jersey) Law 1948;³ or
- (b) Article 19 of the Court of Appeal (Jersey) Law 1961,⁴

shall include a power to make Rules for the purposes of this Law.

(5) The Subordinate Legislation (Jersey) Law 1960⁵ shall apply to Orders made under this Law.

ARTICLE 18

Citation, commencement and application

(1) This Law may be cited as the Human Rights (Jersey) Law 200-.

³ Tome VII, page 510, and Volume 1996-1997, page 147.

⁴ Volume 1961-1962, page 107.

⁵ Tome VIII, page 849.

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(2) This Law shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions and different purposes of this Law.

(3) Sub-paragraph (b) of paragraph (1) of Article 8 of this Law applies to proceedings brought by or at the instigation of a public authority after the commencement of that Article whenever the act in question took place; but otherwise that paragraph does not apply to an act taking place before the commencement of that Article.

(4) This Law binds the Crown.

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SCHEDULE 1

(Articles 1(1) and 2(1))

CONVENTION RIGHTS

PART 1

THE CONVENTION

Article 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is not more than absolutely necessary -

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

Prohibition of torture

No one shall be subjected to torture or inhuman or degrading treatment or punishment.

*Draft Human Rights (Jersey) Law 200-**Article 4**Prohibition of slavery and forced labour*

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term “forced or compulsory labour” shall not include -
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

*Article 5**Right to liberty and security*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law -
 - (a) the lawful detention of a person after conviction by a competent court;

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- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of

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his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

*Article 6**Right to a fair trial*

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights -

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

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- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

*Article 7**No punishment without law*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilized nations.

*Article 8**Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*Draft Human Rights (Jersey) Law 200-**Article 9**Freedom of thought, conscience and religion*

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

*Article 10**Freedom of expression*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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Article 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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Article 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II

THE FIRST PROTOCOL

Article 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

*Article 2**Right to education*

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

*Article 3**Right to free elections*

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

PART III

THE SIXTH PROTOCOL

*Article 1**Abolition of the death penalty*

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

*Draft Human Rights (Jersey) Law 200-**Article 2**Death penalty in time of war*

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

*Draft Human Rights (Jersey) Law 200-**SCHEDULE 2***(Articles 1(1) and 14)**

DEROGATION

The United Kingdom Permanent Representative to the Council of Europe, on the instructions of his authorities, has the honour to convey to the Secretary General of the Council the following information.

In communications from this Delegation to the then Secretary General of 23 December 1988, reference was made to the introduction and exercise of certain powers under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and to the replacement of those provisions by Section 14 and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989.

These powers were previously extended by Order in Council to cover the Channel Islands and the Isle of Man. Following the adoption by the authorities in Jersey, Guernsey and the Isle of Man of legislation making comparable provision, the relevant Orders in Council have been repealed. A copy of the new legislation for the Isle of Man, Guernsey and Jersey is enclosed. In respect of the Isle of Man the relevant provisions are section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism Act 1990 which entered into force on 1st December 1990. In respect of Guernsey the relevant provisions are section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Bailiwick of Guernsey) Law 1990 which entered into force on 1 January 1991. In respect of Jersey the relevant provisions are Article 13 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Jersey) Law 1996⁶ which entered into force on 1st July 1996.

⁶ Volume 1996-1997, pages 194 and 239.

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The United Kingdom Permanent Representative avails himself of this opportunity to renew to the Secretary General the assurance of his highest consideration.

12 November 1998.