

# STATES OF JERSEY



## HUMAN RIGHTS LAW: STATEMENTS OF COMPATIBILITY (P.84/2010) – COMMENTS

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Presented to the States on 6th July 2010  
by the Council of Ministers

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STATES GREFFE

## COMMENTS

The Deputy of St. Martin's Proposition P.84/2010 asks the States to agree that Article 16 of the Human Rights (Jersey) Law 2000 should be amended to require a Minister to state –

- (a) what Articles of the European Convention on Human Rights, if any, are engaged in relation to legislation being brought to the States; and
- (b) the reasons why the Minister considers the proposed legislation is, or is not, compatible with the Convention rights.

The Council of Ministers is opposed to the proposal because it considers that –

- 1. the suggested changes would be unnecessary;
- 2. existing procedures are effective; and
- 3. the resource implications are not justifiable.

Article 16 of the Human Rights (Jersey) Law 2000 ('the Law') states –

- (1) A Minister who lodges *au Greffe* a *projet de loi* must, before the second reading of the *projet* –
  - (a) make a statement to the effect that in the Minister's 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 the Minister is unable to make a statement of compatibility, he or she 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 Minister making it considers appropriate.

It is not clear what level of detail would be envisaged under the proposed amendment, and the existing provisions do not in fact impose any limit on the detail given. Furthermore, it is unclear that any additional benefit would be obtained by providing a detailed analysis of the legal position.

At present, the Attorney General or the Solicitor General attends the States meetings and is available during debates to provide advice to the Assembly in response to specific questions on human rights compatibility, if requested.

In addition, the existing scrutiny process provides an important and effective opportunity for Scrutiny Panel members to consider any legislative proposal before it is brought to the Assembly, including assessment of any perceived human rights issues.

Moreover, before a Jersey Law receives Royal Assent, it is given further consideration by lawyers within the Ministry of Justice prior to submission to the Privy Council to ensure that it would not place the United Kingdom in breach of its own obligations under the European Convention on Human Rights.

The Law Officers have an obligation to report to the Privy Council on any Jersey Law and to advise whether or not the legislation would put the United Kingdom in breach of its international obligations. Accordingly, the Law Officers would have an obligation to bring any such difficulty, including any difficulty with the Convention, to the attention of the Assembly prior to that legislation being passed.

Since the Law came into force in 2006, and previously when voluntary statements of compatibility were made, there has been no indication that the present form of compatibility statement has caused any problems or that the position would be improved with a more extensive statement.

It is therefore considered that appropriate and effective checks and balances are already in place through independent legal advice, separate Scrutiny review and Privy Council assessment to ensure full appraisal of any human rights implications.

### **Resource implications**

In broad numbers, the States consider around 35 principal Laws each year. If detailed explanations of the legal considerations leading up to a statement of compatibility were required, in lay language, to be published in every case, it is certain to result in significant delay in lodging legislation.

In addition, the workload involved is estimated to require up to one additional Legal Adviser in the Law Officers' Department, with associated costs.

Such additional costs, at a time when the States are looking at reducing unnecessary expenditure, is seen as unjustifiable when the existing procedures are entirely effective.