

STATES OF JERSEY



HUMAN RIGHTS COMMITTEE AND STATEMENTS OF COMPATIBILITY

**Lodged au Greffe on 29th May 2008
by the Deputy of St. Martin**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that a Committee to be called the Committee on Human Rights should be established, consisting of members of the States and persons who are not, with the Committee having responsibility for the oversight of human rights and equality issues;
- (b) to request the Privileges and Procedures Committee to bring forward for approval –
 - (i) the necessary amendments to the Standing Orders of the States to give effect to the proposal, and
 - (ii) funding proposals in the Annual Business Plan to cover the cost of operation of the Committee;
- (c) to agree that Article 16 of the Human Rights (Jersey) Law 2000 should be amended to require Ministers to state what Articles of the European Convention on Human Rights, if any, have been considered in relation to the legislation being brought forward and the grounds on which the Minister considers that the proposed legislation is, or is not, compatible with the Convention rights;
- (d) to request the Chief Minister to bring forward the necessary amendment to Article 16 to give effect to the proposal.

DEPUTY OF ST. MARTIN

REPORT

The United Kingdom's ratification of the European Convention on Human Rights in 1951 included Jersey. Island residents who felt their rights had been violated were able to take their grievance to the European Court of Human Rights in Strasbourg.

The Human Rights (Jersey) Law 2000 was adopted by the States on 8th February 2000. However it did not take effect until 10th December 2006. The Law should act as a lever to improve public services and although it created no new Rights it enabled residents to have their grievances addressed through our Courts.

Another consequence of the Jersey Human Rights Law is that Article 16 now places a requirement on Ministers when lodging au Greffe a Projet de Loi. Before the second reading of the projet they must make a statement to the effect that in his/her view the provisions of the projet are compatible with the Convention rights (a statement of compatibility); or make a statement to the effect that although he/she is unable to make a statement of compatibility, he/she nevertheless wishes the States to proceed with the projet.

The statement must be in writing and be published in such manner as the Minister making it considers appropriate. The statement is usually included in the Proposition.

Two interesting points arising from the provisions of Article 16 is that there is no provision for the Minister to explain what Convention Right is affected and why the proposed Law is Convention Compliant.

Another important point is that at present there is no provision for any States body to scrutinise the Minister's statement for possible violations of the Human Rights Law.

In the United Kingdom on 14th December 1998 the then Leader of the House of Commons, Margaret Beckett, announced the establishment of a Joint Committee on Human Rights to conduct enquiries into "general human rights issues" in the U.K. (only), scrutinise Remedial Orders, examine draft legislation where there is a doubt about its compatibility with the European Court of Human Rights and examine whether there is a need for a human rights commission to monitor the operation of the Human Rights Act.

Before the establishment of the Joint Committee considerable thought was given as to what would be its purpose and how it would function. There were a number of proposals from esteemed academics and organisations for a parliamentary committee or parliamentary scrutiny of legislation for human rights compliance.

There were a number of competing views on the purpose of a Human Rights Select Committee. However a common theme of the various independent proposals for a committee was the need to assist Parliament in providing independent scrutiny of executive policies and legislation which impact on human rights. Recognising the dominant role of the "executive in parliament" under the constitutional system it was envisaged that a human rights select committee, in particular a joint committee of both Houses would strengthen the independence of the legislature in performing its allotted functions under the Human Rights Law.

Since 1998 events have moved onward and at present there is Joint Committee on Human Rights which is appointed by the House of Lords and the House of Commons. It considers matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders. The Joint Committee has considerable powers akin to select committees or our scrutiny panels.

The Joint Committee scrutinises Government activity across the board and its work can broadly be divided into three distinct categories –

- *Legislative scrutiny*: the scrutiny of Government Bills, in particular, as well as other bills, draft bills, statutory instruments, consultation documents and other legislative proposals;
- *Thematic inquiries*: inquiries into issues relating to human rights in the U.K., similar to the inquiries

undertaken by departmental select committees except in that it subsequently considers issues which cut across departmental boundaries;

- *Scrutiny of Government*: responses to adverse judgements by the European Court of Human Rights and declarations of incompatibility by the U.K. courts: it monitors, and periodically report on, the action arising from all relevant court cases, including those which lead to remedial orders, as mentioned above.

The strands of work are closely inter-related. For example, scrutiny of the Government's counter-terrorism proposals had involved both thematic investigation and scrutiny of specific legislative provisions.

Understandably there are a number of major international matters which require the U.K.'s attention but hopefully would not be relevant to Jersey; however it is evident that Human Right matters are an integral part of scrutiny.

It is also evident that scrutiny carried out by the U.K. Select Committees and our Scrutiny Panels is similar, with the exception of scrutiny of Human Rights issues, which is under the remit of the Joint Committee on Human Rights. However Jersey has no official body with oversight for Human Rights matters from either the Executive or Scrutiny.

At present Jersey has five scrutiny panels with responsibility for scrutinising matters within their remit. There is also the Legislation Advisory Panel and the Law Revision Board; however, like the five Scrutiny Panels, neither has any direct responsibility for Human Rights issues.

It is apparent that when the Jersey Human Rights Law was approved in 2000 and the introduction of Ministerial Government and Scrutiny Panels in 2005 very little consideration was given to the oversight or scrutiny human rights matters.

I have had an interest in the Human Rights Law for some considerable time and have been concerned at how little attention has been given to a number of human rights issues. It is also apparent that should anyone wish to draw attention to possible violations, there is no formal States body to address the matter.

Now that we have our own Human Rights Law I believe we have an obligation to ensure there is some mechanism to scrutinise our legislation to ensure it is Convention compliant. I also believe that should concerns be raised regarding possible convention violations occurring within our public bodies there should be a body with sufficient expertise to address them.

Therefore I believe there are two main issues –

- (1) How the oversight of Human Rights matters should be addressed.
- (2) Amend Article 16 of the Human Rights Law so that Ministers elaborate why they are of the view that the particular Law being lodged is Convention Compliant.

As mentioned above, prior to the introduction of its Human Rights Law and having agreed to the principle that there should oversight of the Law, the U.K. Parliament then considered a number of options as to how oversight would be carried out.

One option was for it to come within the remit of each of the Select Committees. However that option was rejected on the grounds that the most appropriate way forward was to establish a stand alone Joint Committee.

Prior to lodging this proposition I carried out considerable research, including visiting Westminster and discussing the work of the Joint Committee on Human Rights with its chairman, Andrew Dismore, MP and Commons Clerk, Dr. Mark Egan. I also submitted two papers to the Privileges and Procedures Committee, the Chairmen's Scrutiny Committee and the Council of Ministers. I subsequently had meetings with each of the Committees prior to and after my visit to Westminster. I had hoped to discuss my proposals with the Council of Ministers, however it was considered to be more appropriate to meet after I had lodged my Proposition.

The main points arising from my meetings and research are –

- (1) When the States approved the Human Rights law in 2000 (P.197/1999), it was recognised that there were bound to be some manpower and financial implications.
- (2) None or very little consideration was given for the oversight of the Human Rights Law.
- (3) There is no official Executive or Scrutiny body with responsibility for the oversight of the Jersey Human Rights Law.
- (4) There is no independent audit of any of the Ministers' statements of compatibility.
- (5) There is no explanation as to why statements of compatibility are compatible.
- (6) Do all International Human Rights Treaties ratified by the U.K. apply to Jersey?
- (7) Is Jersey party to all the relevant Treaties and Conventions? For example, why is Jersey not party to the Convention on the Rights of the Child (protecting fundamental rights of the child), ratified in 1991.
- (8) Although there was a six year period between approving the Jersey Human Rights Law and the Appointed Day Act, not all Laws were subjected to a Convention audit.
- (9) If allegations were made about Human Rights violations occurring within any of our public bodies, who would address them?

In the U.K. there is a Human Rights Minister within the Ministry of Justice. One of his important tasks is to promote Human Rights and ensure there is adequate training for those involved in the public sector.

There is also the Joint Committee on Human Rights to hold the Executive to account.

I am not advocating that we should copy the U.K. arrangements; however I believe Jersey has an obligation to ensure that we have a statutory body with oversight of our Human Rights Law. I also believe that with the impending Discrimination Law, consideration should be given to establishing a formal body to address Human Rights and Discrimination Issues.

Jersey is now an International Finance Centre with an international presence. As such we are party to a number of international laws and agreements which have implications for our finance industry and also our social structure. To address this issue, I believe we should establish some mechanism for oversight of our Human Rights obligations. Having looked at various options, I believe there are only two which are worthy of consideration.

Option One

One option is for Human Rights issues to come within the remit of the existing five scrutiny panels. Whilst this may be the least costly and expedient way, I believe it would be seen that Jersey is paying lip service to our obligations. The Human Rights Law is a complex piece of legislation which cuts across a number of departmental boundaries. This could pose difficulties in identifying which panel would be the most appropriate to deal with any enquiries or conduct any review.

Another very important point is that a degree of expertise is required. Given the existing workload, any additional responsibility for the existing scrutiny panels could become burdensome and because of the Law's complexity, Human Rights matters could be put lower down the pecking order.

It should also be noted that the U.K. did not choose the above option.

Option Two

During my discussions with Mr. Dismore and Dr. Egan it became apparent why the U.K. decided to establish a joint committee on human rights, mainly because of the problems identified in Option One above. The Westminster model involves members from both Houses and all political parties; it appears to function well and many of the initial teething problems have been ironed out.

Clearly if Option Two was approved there would be financial and manpower implications. However “if a job is worth doing, it is worth doing well.” Also given concerns raised recently regarding possible Human Rights violations occurring in some of our establishments, doing nothing is not an option. Opting for Option One may be seen as an easy option and quick fix. However, by proposing a standalone Committee I believe we would be sending out a positive message that we are fully prepared to accept our human rights obligations irrespective of cost.

In the Bailiff’s Liberation address he said “I do not believe that Jersey is an uncaring society. On the contrary, there is a strong political will to protect the poor and vulnerable in the community and to correct any mistakes of the past”. Similar sentiments were expressed by the Chief Minister in his Liberation address.

As it is apparent there is a “political will” we should therefore endorse that “political will” by establishing a formal body with oversight for Human Rights.

There will be manpower requirements, not only to form the Committee but also for officer support. I believe we can use the U.K. model as a template but our joint committee could comprise of States Members and members of the public. Such an arrangement currently exists with the Public Accounts Committee. That Committee has six States Members and five members of the public with an interest in that field.

There are a number of Jersey residents with interest in Human Rights and this would be an ideal opportunity for them to be considered. I would not envisage the committee being as large as the PAC or the U.K. Joint Committee.

In addition to officer support; if the Committee is to be independent, it must have its own legal advisor. Given the number of Laws lodged each year, the Committee will have to adopt a “sifting” process. Inevitably, whilst some Laws will be uncontroversial and will not require undue attention, others will require closer observation and may require legal opinions and reviews. It is then that cost will be involved, but that is inevitable and was envisaged when the Law was approved in 2000 but not addressed.

I do not believe it will be necessary to appoint a full-time legal advisor, however legal advice can be sought when required and the cost will fluctuate depending on the work required.

In 2006 when the Health, Social Security and Housing Scrutiny Panel was established (P.64/2006), the financial and manpower implications amounted to £188,348. Staff cost was around £98,000 for two staff members with a further running cost of £90,000. Two years on, these costs have increased.

To assist in providing manpower and financial implications, the Scrutiny Manager has helpfully provided an estimate of what the cost of the new Committee/Panel could be if it was to have proper legal support. Three options have been provided and the cost will depend on the balance between having “in house” legal advice as opposed to buying it in.

I am grateful for the information which is as follows –

Costs for standalone scrutiny panel into Human Rights

- Housing new officers would necessitate the loss of the 1st floor meeting room which is regularly used.
- Grading for officers would depend on qualifications needed. Given that the Law Officers’ Department has concerns that qualified staff are being lured away by offers of significantly larger

salaries [C&AG report on States Spending], it seems unlikely that officers with legal training could be procured on the equivalent grade of Scrutiny Officer or even significantly higher.

- Given that the Deputy of St. Martin has taken soundings from the Joint Select Committee – this is how that is staffed –

*“One Commons Clerk (team leader) – a fast-stream civil servant;
One Lords Clerk – also at that level – soon to be replaced by a part-time new-ish fast streamer;
One Legal Adviser – a full-time employee and qualified barrister – in civil service terms, pretty high-powered;
Two Committee Specialists – both legally qualified;
One Committee Assistant;
One Secretary;
About to get a Chief Office Clerk;
The assistance of a media officer as well who works for several committees.”*

- In view of the fact that scrutiny in Jersey would not undertake as wide a remit as the Select Committee, it could be reasonably expected that staffing would be considerably lower. However, consideration of appointing legally trained support staff needs to be given.

Option 1 – £329,772

Two Grade 10 officers	£99,264
Legal advice bought in @£300 per hour for 30 weeks	£180,000
General admin support	£45,438
Accommodation	£3,000
Start-up costs equipment	£2,070
	£329,772

Option 2 – £260,142

Two Grade 12 officers	£119,634
Legal advice bought in to lesser extent than option 1 @£300 per hour for 15 weeks	£90,000
General admin support	£45,438
Accommodation	£3,000
Start-up costs equipment	£2,070
	£260,142

Option 3 – £286,030

Two Grade 14 officers with some legal knowledge	£145,522
Legal advice bought in @ £300 per hour for 15 weeks	£90,000
General admin. support	£45,438
Accommodation	£3,000
Start-up costs equipment	£2,070
	£286,030

The above figures are provided as a guide. However for comparison I believe it is helpful to show the likely cost if the proposed Race Discrimination Law is approved.

In 1999 a Race Relations Working Party was established with the view to paving the way for the introduction of a Discrimination Law. In 2002 the States strongly supported the principle of a Race Discrimination Law (P.32/2002). It was proposed that the legislation would have wide-ranging implications for society in Jersey and

for the States, both as an employer and as a provider of services. It would also support (when Regulations are brought into force) Jersey's commitments to international standards, in particular the United Nations Convention on the Elimination of all forms of Racial Discrimination (CERD).

Six years on, the proposed legislation has not been drafted. However, on 5th February this year, the Minister for Home Affairs lodged [R.10/2008](#): Draft Discrimination (Jersey) Law 200-: consultation report – White Paper. The Report sets out the background to proposals for the introduction of a Discrimination Law in Jersey.

Under Resource Implications it is estimated that the full year cost of the Discrimination (Jersey) Law, if approved, may be in the region of £250,000. In subsequent years it is anticipated that enforcement costs, and therefore annual cost, will increase as each set of Regulations introducing an additional attribute, such as sex or disability, is introduced, up to a maximum cost of £500,000 annually to implement the legislation once all phases are in place.

Funding to implement the Law will be subject to States approval in the 2009 Business Plan.

The manpower implications will include the appointment of a Discrimination Officer and Administrative Assistant. However, members of the Discrimination Panel will not fall to be classified as States employees and therefore will not affect headcount.

I welcome the introduction of Law and the funding being sought; however I submit that funding should be also be found to establish a body for Oversight of the Human Rights Law.

Amending Article 16 of the Human Rights (Jersey) Law 2000

As mentioned above, Article 16 of the Law places a requirement on Ministers when lodging au Greffe a Projet de Loi, and before the second reading of the projet, to make a statement to the effect that in their view the provisions of the projet are compatible with the Convention rights (a statement of compatibility); or make a statement to the effect that although he/she is unable to make a statement of compatibility, he/she nevertheless wishes the States to proceed with the projet.

The statement referred to above must be in writing and be published in such manner as the Minister making it considers appropriate. However, there is no requirement for the Minister to explain what Convention Articles are affected by the Law being proposed, and why in the Minister's view there is no significant risk that Convention rights may be violated. Also, if Ministers are unable to make statements of compatibility, who is responsible for scrutinising the proposed legislation?

I believe the absence of an explanation is unsatisfactory and a more detailed analysis should be provided. The provision of more details should enable Members to be better informed and more aware of the Human Right implications of the legislation being proposed.

The provision of more detailed analysis should not impose too great a burden on the Ministers because they are obligated to make a declaration of compatibility and will be in possession of the necessary information. Therefore there should not be any financial or manpower implications.