

**Your Ref:**  
**Our Ref:** LEGLEGA-025 SCN/PW

23<sup>rd</sup> 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**

1. I write in answer to your letter of Friday, 20<sup>th</sup> January, 2006.
2. Rather than my providing for the Scrutiny Panel advice which has already been given on the drafting of the Law, I would prefer to provide advice for the Scrutiny Panel itself, and this for two reasons.
3. The first is that the question of the provision to Scrutiny Panels of advice previously provided to Ministers (and before the change to Ministerial Government, to Committees) is still an open question. I am aware that the Attorney General attended on the 10<sup>th</sup> January 2006, before the Chairmen of the Scrutiny Panels, when the Chief Minister and the Chief Executive also attended, but it is my understanding that the matter has been left that the Committee of Chairmen would write to the Council of Ministers to indicate a formal request. I do not wish to do anything in the unfortunate absence of the Attorney General on sick leave which would pre-empt any decisions which may be taken in the matter.
4. The second reason is that the question of this particular Law reform appears to have first arisen in July, 2003. We have two quite substantial files and advice has been given at different times. It appears to me that a single, comprehensive piece of advice to the Scrutiny Panels would be far more manageable, and of greater assistance for the Scrutiny Panel, than a collection of pieces of advice given at different times.
5. I will provide the comprehensive advice as soon as possible. In the meantime, I am despatching to the Scrutiny Office hard copies of three judgments of the European Court of Human Rights which hold that any distinction between the age at which an individual can give consent to sexual intercourse which is based upon the distinction between heterosexual intercourse and homosexual intercourse is discriminatory and thus a breach of the European Convention on Human Rights. Those cases are –

Sutherland v United Kingdom

L & V v Austria  
S L v Austria

6. You also asked what the legal implications would be if the States do not adopt this legislation. If the States do not adopt this legislation, the legal implications will include the following –

- (i) Jersey will be in breach of the European Convention on Human Rights, which has been extended to the Island.
- (ii) It will raise difficulties in respect of the bringing into force of the Human Rights (Jersey) Law 2000, because the domestic legislation will not be Convention compliant, inasmuch as there will be a breach of the Convention in this area of the Law.
- (iii) A person between the ages of 16 and 18 who wishes to have homosexual intercourse but is unable to do so will be able to bring proceedings before the European Court of Human Rights alleging a breach of his rights under the Convention. The complaint will be upheld by the European Court of Human Rights in accordance with the judgments of which I have sent you copies. The European Court of Human Rights has a power to award an aggrieved complainant damages for a breach of his human rights.

7. I understand from the debate which took place in the States when the draft Law was considered that some members wished to be advised on the power or otherwise of the United Kingdom Government to legislate for Jersey, and I assume that the Scrutiny Panel will wish to be advised on this as well. That is, as I said in my answer to the States, a matter where the opinions of experts differ, and calls for a more detailed response, which I will let you have as soon as I am in a position to do so.

Yours sincerely,

**Solicitor General**