

STATES OF JERSEY



HUMAN RIGHTS COMMITTEE AND STATEMENTS OF COMPATIBILITY (P.78/2008): AMENDMENT

**Lodged au Greffe on 24th June 2008
by the Chairmen's Committee**

STATES GREFFE

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In paragraph (c), of the proposition, for the words “to agree that” substitute the words “to request the Privileges and Procedures Committee to consider whether”, and delete paragraph (d).

CHAIRMEN’S COMMITTEE

REPORT

Following discussion with the Deputy of St. Martin, the Chairmen's Committee, at its meeting of 25th April 2008, agreed that the best way forward in this matter would be for an amendment to Article 16 of the Human Rights (Jersey) Law 2000 to be made. The Committee believes that it is incumbent on Ministers to be accountable and thus to make the necessary information available. In this respect the Committee is of the opinion that the matter should be given consideration by the Privileges and Procedures Committee, with the necessary report and proposition to be brought before the States.

In view of the above, the Committee believes that, as consideration of the amendment of Article 16 is the correct way to proceed, it does not support parts (a) and (b) (i) and (ii) of the proposition.

The reasons for this are as follows –

1. The Committee notes the assertion of the Deputy of St. Martin that at the time of the introduction of Ministerial Government and Scrutiny Panels in 2005, very little consideration was given to the oversight of human rights matters. However, whilst it is agreed that no specific mention of human rights was made, it believes that such matters are incorporated within Section 10 of P.79/2003 "Scrutinising primary legislation once lodged "au Greffe" and Section 11 of the same "Considering subordinate legislation".
2. The terms of reference of the Scrutiny Panels contained within Standing Orders, which were drawn up based on the above projet, and following a period of Shadow Scrutiny state –
"136: (c) to scrutinise draft Laws and draft subordinate enactments which are to be made by the States and consider possible amendments to them, if appropriate".
3. All draft Laws or Regulations are referred to the chairman of the relevant scrutiny panel under Article 72 (2) of Standing Orders and any member of the States may propose, without notice, that the States request the panel to reconsider the decision. It is then incumbent on that Panel to consider whether that Law or Regulation merits further consideration. This initial Panel consideration includes consideration of the Human Rights Compatibility Statement as appropriate.

The Chairmen's Committee, consequently, believes scrutiny of Human Rights falls into the remit of the individual Panels. However, this would be as each Panel considers appropriate given its other work load. It is worth Members noting that the Committee is undertaking a review of scrutiny work undertaken in legislative scrutiny since January 2006 and the issue of Human Rights will be included in this.

4. For any viable scrutiny of Human Rights Compatibility statements to be undertaken, an understanding of the rationale behind the decision is essential.
5. This, in turn, requires scrutiny panels to have access to the legal advice provided to the Minister on which (s)he has based the decision.
6. Section 9 of the Code of Practice for Scrutiny Panels and the Public Accounts Committee, adopted by the States on 12th March 2008, denies access to scrutiny to all legal advice provided to Ministers by the Law Officers' Department.

The Chairmen's Committee believes that the constraints placed on the scrutiny function by denying access to the legal advice given to Ministers, will render the scrutiny of Human Rights Compatibility statements unachievable. This would apply to scrutiny by either existing panels or a stand-alone panel.

7. The Deputy of St. Martin has been provided figures for staff support based on the knowledge of the Joint Select Committee staffing on which the Deputy has based his proposition. The figures do, however, take into account the likelihood of considerably reduced officer support than that of the Joint Select Committee.
8. Approximately 52 pieces of legislation with Human Rights Compatibility Statements were brought to the Assembly in 2007. The Deputy of St. Martin suggests that the Committee will have to adopt a "sifting" process. Existing scrutiny panels undertake a similar process when deciding on a review. In order to achieve this, experience has shown that a degree of background work will have to be undertaken before a piece of legislation can be "sifted" out. The background work providing information to the Committee for it to undertake the "sifting" process will presumably be undertaken by officers, as for scrutiny panels. Some matters arise from this –
 - officer(s) undertaking "sifting" or review work will need to have a thorough understanding of the

Human Rights Law, related issues and substantial legal understanding;

- it is worth noting the comments in the States' Spending Review (R.48/2008) by the Comptroller and Auditor General that that review confirmed that the pressure from competitive salaries (from private sector employers) is a significant problem for the (Law Officers) department;
 - a parallel is drawn in the proposition with the proposed officer support in R.10/2008 "Draft Discrimination (Jersey) Law 200-". The proposed support for this is dependent on the opportunity of sharing a number of resources (such as the Employment Tribunal premises and panel members in order to minimise costs.). Also Manpower implications will include the appointment of a Discrimination Officer and an administrative assistant. Initially, the latter post is expected to be a part-time post.
9. Based on the Deputy of St. Martin's comment "if a job is worth doing it is worth doing well", administrative supports need serious consideration –
- (a) there is no possibility of sharing existing resources from within either the Scrutiny section or the States Greffe;
 - (b) it is highly unlikely to attract a suitably qualified person to the post of support officer for a Human Rights Compliancy Committee –
 - (i) at the same grade as the proposed Discrimination Officer post,
 - (ii) at the same grade as a Scrutiny Officer or even slightly above,
 - (iii) or even on the highest Grade of the costing options provided.
10. If officer support is to undertake background and related work for the revision of all Human Compliancy Statements, more than one officer would be required.
11. Experience of scrutiny has shown that full administrative support is vital; this needs to be more than secretarial, as proposed and full-time.
12. The Deputy of St. Martin contends that for the proposed Committee to be independent, "it must have its own legal adviser". It is proposed that "legal advice can be sought when required and the cost will fluctuate depending on the work required".
13. If the proposed Committee has established independent legal advice, there is a strong possibility that members will be faced with receiving conflicting legal advice [from a private legal representative of the Committee and the Law Officers' Department]. In these circumstances it is not at all clear how the conflict would be resolved, particularly as any legal advice to members in the Chamber during a debate could only come from the Law Officers.
14. The Deputy of St. Martin quotes costing options provided by the Scrutiny Manager. The Committee is of the view that funding for this is unrealistic when the matter could be resolved through the cost-free mechanism of amending Article 16 of the Human Rights (Jersey) Law 2005.

The Committee noted that the proposal is not one of "in principle" approval, and in consideration of that, the Committee believes that there are outstanding matters which have not been sufficiently addressed –

- (1) Committee/elected Membership: the Report states "...our joint committee **could** comprise of States Members and Members of the public." It is recognised that in the United Kingdom the membership is made up from two Houses. In Jersey this structure does not exist. Furthermore, the experience of the scrutiny panels during 2006 to date has shown that there have been a number of occasions when it has been apparent that there have not been sufficient members available to sit on Panels and/or Sub-Panels.
- (2) No consideration has been given to the fact that a further Committee will provide a drain on Member resources, which could have a detrimental effect on future scrutiny panels and sub-panels.
- (3) There is a lack of clarity about the number on the proposed Committee: The proposal is for a membership of both elected and non-elected Members but no indication is given as to the number of the full Membership quota or the balance between elected and non-elected Members, other than it would be fewer than the membership of the Public Accounts Committee.
- (4) The Chairmen's Committee presumes that the HR Committee Chairman will sit on the

Chairmen's Committee, thereby increasing the membership to nine. No consideration appears to have been given to this.

- (5) Accommodation appears also not to have been addressed. Is there is a presumption that this Committee would sit within the scrutiny function? If so, it can also be presumed that the office would be accommodated within the States Greffe in Morier House. In turn this means that it is highly likely that the 1st floor scrutiny office meeting room would be identified for conversion. This is an extremely valuable, well-utilised asset, the loss of which would have a detrimental effect on the work of the existing scrutiny panels.

There are no financial and manpower implications arising from this amendment