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To: Scrutiny
Subject: Submission re Draft Sexual Offences (Jersey) Law 200

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Dear Mr Haden

I understand that the amendments on the law have been passed to the relevant scrutiny committee, and I would be obliged if you could forward this submission to them.

Draft Sexual Offences (Jersey) Law 200

I have been perusing the Hansard notes on this Law, and would comment as follows:

It appears from the Hansard notes that the Jersey legislation differs from the UK legislation in **not** creating the offence of abuse of a position of trust. I note that the UK Sexual Offences (Amendment) Act 2000, as well as equalising the ages of consent for homosexual and heterosexual activity, created a new offence of abuse of a position of trust. The main reason for that, as stated by the lawyer John Deft (<http://www.johndeft.u-net.com/llm-jad.htm>), was because the law (and also the 2003 UK Law) removed incest as a criminal offense, allowing for the fact that modern families are often more complex, and abusive relationships can occur between, for instance, step-parents and children over the age of consent of 16, and also people in care.

The UK Act provides new protections for children by creating a bundle of offences concerned with 'abuse of a position of trust' in relation to any person under 18 years of age. Those in positions of trust include adults who look after persons under 18 who are accommodated and cared for in an institution. The Act provides still further protection by introducing a new bundle of 'familial child sex offences' governing sexual activity within the family. The traditional blood tie of incest is replaced by a wider range of relationships. The crime of incest is therefore replaced by two new offences of familial sexual activity dealing with sexual activity with a child family member and sex with an adult relative. ***In the case of the provisions relating to children the offences are not just limited to blood relations but acknowledge the looser structure of modern families and extend to adoptive children and other non-blood relatives.***

In doing so, the Act attempts to reflect the looser structure of modern families and protect the victims of sexual crimes that take place within them. Protection of others who are more vulnerable, especially the mentally disordered, was also considered necessary. The Group found that many mentally impaired people regarded sexual abuse as a normal part of their lives. ***The fact that the mental disorder impedes choice connects the theme of protection with that of consent.***

In this respect, the Act is taking account of the vulnerability and loss of protection brought about by compliance with the European Convention on Human Rights, and ***seeking to make good the deficiencies that might arise***. This does not contravene the Convention on Human Rights, but it seeks to both allow it to have force, and to protect those who are most likely to be harmed by the predatory actions of others.

I would be re-assured by changes to the Jersey Law if it ensured that - like the U.K. Law went for a complete package of reform ***with safeguards*** rather than relying on segments of antecedent laws which may or may not prove adequate to fit with the piecemeal approach, and may in fact leave some people in society more vulnerable than they need be.

Regards

Tony Bellows

<http://www.opsi.gov.uk/acts/acts2003/20030042.htm>