



## **Review of the Human Rights (Jersey) Law 2000**

Project Partner: Jersey Law Commission

### **About Jersey Law Commission**

The Jersey Law Commission (JLC) is an official and independent law reform agency set up by the States of Jersey in 1996. The JLC carries out research and consultations to eliminate anomalies, recommend repeal of obsolete and unnecessary enactments, reduce the number of separate enactments, and simplify and modernise the law of Jersey. The Commission's recommendations are considered by the Government of Jersey and the assembly of the States of Jersey.

<https://www.jerseylawcommission.org/>

### **Project Overview**

The island of Jersey is a small jurisdiction with a population of just over 100,000 people. It is one of the three British Crown Dependencies, the others being the Isle of Man and the Bailiwick of Guernsey (which includes Guernsey, Alderney, Sark, and smaller islands). The Crown Dependencies are not part of the United Kingdom and each one is substantially self-governing. They have some capacity to enter into international agreements, but the United Kingdom remains legally responsible for them in relation to bodies such as the Council of Europe and the United Nations.

Jersey has an executive (the Government of Jersey), legislature (the assembly of the States of Jersey) and independent court system (various tribunals, the Royal Court, Jersey Court of Appeal with final appeals to the Judicial Committee of the Privy Council).

One of the Jersey Law Commissioners is currently Professor Andrew Le Sueur (of the University of Essex), who will be the key point of contact between the project team and the Commission. The project team will have opportunities to meet other Law Commissioners at various points.

The main aim of the project is to contribute to an evaluation of the effectiveness of the Human Rights (Jersey) Law 2000 ('HR(J)L 2000'). This is very closely modelled on the United Kingdom's Human Rights Act 1998 ('HRA 1998'). The UK Government put pressure on the three Crown Dependencies to enact legislation similar to the HRA 1998 to 'bring home' the rights and freedoms in the European Convention on Human Rights (a treaty that the UK and Jersey has been bound by since 1953).

The focus of the project is to explore the operation in practice of the main features of the HR(J)L 2000.

- Article 3: tribunals and courts must 'take into account' judgments of the European Court of Human Rights;
- Article 4: 'principal legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights;
- Article 5: 'If in any proceedings in which a court determines whether a provision of principal legislation is compatible with a Convention right, the court is satisfied that the provision is not so compatible, it may make a declaration of incompatibility;'



- Article 7: 'It is unlawful for a public authority to act in a way which is incompatible with a Convention right;'
- Article 16: Ministers introducing legislation to the assembly of the States of Jersey must make a 'statement of compatibility' that the proposed legislation is compliant with Convention rights, or state explicitly that it is not;
- Schedule 1 sets out the Convention rights: right to life (Art 2); freedom from torture and inhuman or degrading treatment (Art 3); freedom from forced slavery and forced labour (Art 4); right to liberty and security (Art 5); right to a fair trial (Art 6); no punishment without law (Art 7); respect for private and family life, home and correspondence (Art 8); freedom of thought, belief and religion (Art 9); freedom of expression (Art 10); freedom of assembly and association (Art 11); right to marry and start a family (Art 12); protection from discrimination in respect of these rights and freedoms (Art 14); right to peaceful enjoyment of property (Protocol 1, Art 1); right to education (Protocol 1, Art 2); right to participate in free elections (Protocol 1, Art 3); and abolition of the death penalty (Protocol 13, Art 1).

The project will not consider the ECHR rights themselves or the operation of the European Court of Human Rights. These are part of the UK's international law obligations for Jersey and are not open to amendment by the States of Jersey. Rather, the project will examine whether the HR(J)L 2000, passed by the States Assembly 21 years ago, has fulfilled its stated aims. The Jersey Government at the time said the proposed Law would be "a real and important step forward securing human rights and freedoms in Jersey", in particular: - It will enable cases concerning the rights given under the Convention to be brought in courts in Jersey. - It will help to create a society in which rights and responsibilities are properly balanced. - An awareness of the Convention rights [will] permeate the governmental and legal systems at all levels.

A review of the HRA 1998 is currently underway by the Independent Human Rights Act Review. The project will be fine-tuned considering the findings and recommendations of this parallel inquiry.

The JLC's evaluation of the HR(J)L 2000 is addressing four broad questions:

- Does the Human Rights (Jersey) Law 2000 work effectively?
- What are the strengths and weaknesses of the Human Rights (Jersey) Law 2000?
- Is the Human Rights (Jersey) Law 2000 operating in the way that it was intended to?
- What are the implications for Jersey of the findings and recommendations of the UK Independent Human Rights Act Review, due to report in summer/autumn 2021?

The JLC's work will be in two phases.

- Phase 1: a briefing and consultation document setting out initial findings and outlining options for reform of the HR(J)L 2000.
- Phase 2: following receipt of consultation responses and stakeholder engagement, the JLC will go on to develop a final report making formal proposals for reform to the assembly of the States of Jersey and the Jersey Government.

**The project team will contribute to phase 1.** The project team's work (set out below in more detail as different 'work packages') will establish an evidential base on how the key provisions of the HR(J)L 2000 has operated since it came into force in 2006. The focus will be on how the HR(J)L 2000 has shaped the work of the island's legislature, tribunal and courts. Understanding how these institutions have used new powers and duties will be an important



step in assessing the extent to which a new human rights culture has been established by the HR(J)L 2000. The project team will also suggest ways in which the HR(J)L 2000 might be amended to strengthen human rights protections in the island.

## **Project Outputs**

A final version of the project report of 30-40 pages will be submitted to the Jersey Law Commission by 30 June 2022.

An advanced working draft of the report should be ready to be circulated to the members of the Jersey Law Commission by the end of March 2022.

The project report will form a substantial part of a consultation report to be published by the Jersey Law Commission in August 2022. The consultation report will form the foundations of a consultation exercise with stakeholders. The JLC will use this as a basis for developing recommendations to the Government of Jersey and the States of Jersey assembly.

The project team may also be given an opportunity to prepare a blog post for the JLC website, though this will be published only after formal publication of the consultation report.

It is anticipated that the team will focus on the following work packages (WPs).

**WP 1:** understanding the constitutional, legal and cultural and other contexts in Jersey. All team members should be involved in this. Andrew Le Sueur will provide an initial briefing and the group will decide how best to gain these understandings. The project report should include a relatively short (e.g. 2 page) overview of the contexts in which the island's human rights regime operate, including brief reference to Jersey-related cases that have been decided by the European Court of Human Rights before and after the HR(J)L 2000.

**WP 2:** human rights legislation in the Isle of Man and Guernsey. Though not central to the project, an outline understanding of the legislation analogous to the HR(J)L 2000 in the other two Crown Dependencies will be useful and should be included in the project report. This will be drawn from official online sources and any academic commentary that may exist.

**WP 3:** impact of the HR(J)L 2000 on tribunals and courts in Jersey. This will look specifically at articles 3, 4, 5 and 7 of the Law. The Jersey Legal Information Board ([www.jerseylaw.je](http://www.jerseylaw.je)) provides a comprehensive open access database of judgments. Analysis of judgments will be the focus for this WP. Depending on the initial findings, it may be desirable to conduct a small number of interviews (virtually) with legal practitioners involved in key cases. Andrew Le Sueur can provide advice on this, and ethical approval will need to be sought.

**WP 4:** impact of the HR(J)L 2000 on the assembly of the States of Jersey, looking at its legislative functions and role in scrutinizing government. Article 16 of the Law is relevant here, but a diverse range of impacts may be discernible. Desk-based research using the extensive material on the States Assembly website (<https://statesassembly.gov.je>) will be the focus for this WP. Depending on the initial findings, it may be desirable to conduct a small number of interviews (virtually) with politicians. Andrew Le Sueur can provide advice on this, and ethical approval will need to be sought.



## Project Timeline

|            |   |
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| Nov 2021   | WP1 and WP2   |
| Dec 2021   | Focus on WP3  |
| Jan 2022   | Focus on WP4. Ethical approval (Dec-Jan).   |
| Feb 2022   | Conducting interviews related to WP3 and WP4.   |
| Mar 2022   | Advanced draft of project report shared with Jersey Law Commission for review   |
| April 2022 | Presentation of key findings/issues/questions to members of the Jersey Law Commission.  |
| May 2022   | Continued work on draft considering feedback.   |
| June 2022  | Final version of project report submitted to Jersey Law Commission<br>Draft blog post submitted (for publication after August). The project team will be invited to make an oral presentation (via Zoom) to the Jersey Law Commission to receive feedback before the written report is finalised. |

## Essential readings

- Lord Bingham of Cornhill, 'Incorporation Of The European Convention On Human Rights: The Opportunity And The Challenge' (1998) 3 [Jersey and Guernsey Law Review](#).
- Government of Jersey [website](#), 'Human rights and the Law in Jersey' (last accessed 20 August 2021).
- House of Commons Justice Committee, *Crown Dependencies: developments since 2010*, [Tenth Report of Session](#) 2013-14, HC 726.
- Human Rights (Jersey) Law 2000 ([link here](#)).
- D Torrance, [House of Commons Library Briefing Paper: The Crown Dependencies](#) (CBP 8611, 5 July 2019).
- The [Report of the Independent Jersey Care Inquiry 2017](#) (chaired by Frances Oldham QC).
- R Whitehead, 'Human Rights: Coming Home to Jersey?' (2000) 1 [Jersey and Guernsey Law Review](#).
- A Le Sueur, M Sunkin, J Murkens, *Public Law: Text, Cases, and Materials* 4th edn (Oxford, OUP, 2019) chapter 20 ('Using Human Rights in the United Kingdom Courts').
- UK Independent Review of the Human Rights Act [website](#)

## Focal point in Jersey Law Commission

- Professor Andrew Le Sueur [alesueur@essex.ac.uk](mailto:alesueur@essex.ac.uk) Professor of Constitutional Justice and Executive Dean (Faculty of Arts and Humanities) at the University of Essex, and Member of the Jersey Law Commission.

