



# BILLET D'ÉTAT

IX  
2000

---

WEDNESDAY, 5th April, 2000

---

## STATES ADVISORY AND FINANCE COMMITTEE

Incorporation of the European Convention for the Protection of Human Rights  
and Fundamental Freedoms into Bailiwick Legislation.

# ***BILLET D'ÉTAT***

---

**TO THE MEMBERS OF THE STATES OF  
THE ISLAND OF GUERNSEY**

---

I have the honour to inform you that a Meeting of the States of Deliberation will be held at the **ROYAL COURT HOUSE**, on **WEDNESDAY**, the **5th April, 2000**, at 10 a.m.

---

**STATES ADVISORY AND FINANCE COMMITTEE****INCORPORATION OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF  
HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INTO BAILIWICK LEGISLATION**

The President,  
States of Guernsey,  
Royal Court House,  
St. Peter Port,  
Guernsey.

27th January, 2000.

Sir,

**INCORPORATION OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN  
RIGHTS AND FUNDAMENTAL FREEDOMS INTO BAILIWICK LEGISLATION****Introduction**

1. The European Convention for the Protection of Human Rights and Fundamental Freedoms is a treaty of the Council of Europe, indeed it is its cornerstone. This organisation was established at the end of the Second World War, as part of the Allies' programme to reconstruct durable civilisation on the mainland of Europe, thereby protecting against totalitarianism and a repeat of the wartime atrocities. The Council of Europe was established before the Communities which make up the European Union and, although many nations are members of both, the two bodies are quite separate.
2. The United Kingdom played a major part in drafting the Convention, and was the very first country to ratify it, in March 1951. The Convention was extended to the Bailiwick in 1953, subject to the same reservations as were made by Her Majesty's Government on ratification of the Convention. These reservations related to the right of individual petition to the Court of Human Rights and also the jurisdiction of the Court. In 1966 the United Kingdom accepted that an individual person, and not merely another State, could bring a case against the United Kingdom in Strasbourg (the home of the European Commission of Human Rights and Court of Human Rights, which were established by the Convention). Subsequently the Bailiwick also accepted the right of individuals to take cases to Strasbourg.

3. There are, besides the European Convention, other important international human rights agreements which apply to the UK and the Bailiwick. Foremost among these are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which were adopted by the U.N. in 1966. However, insofar as the continent of Europe is concerned, it is the European Convention which (if only for geographical reasons) has, over the years, become the principal agreement defining standards of behaviour. That Convention was also for many years unique because of the system which it put in place for persons, non-governmental organisations or groups of individuals from the Contracting States to take complaints to Strasbourg and for those complaints to be judicially determined. These arrangements are by now well tried and tested.
4. The constitutional arrangements in most continental European countries have meant that their acceptance of the Convention went hand in hand with its incorporation into their domestic law. Both in the United Kingdom and Guernsey it was long believed that the rights and freedoms guaranteed by the Convention could be delivered under our existing and developing laws. In the last two decades, however, there has been a growing awareness that it is not sufficient to rely on the broad sweep of our common law and that incorporation into domestic legislation is not only desirable but necessary.

#### **The Convention rights**

5. The Convention (appended to this letter) contains Articles which guarantee a number of basic human rights and freedoms. In particular, they deal with-
- the right to life (Article 2);
  - freedom from torture or inhuman or degrading treatment or punishment (Article 3);
  - freedom from slavery and forced or compulsory labour (Article 4);
  - the right to liberty and security of person (Article 5);
  - the right to a fair and public trial within a reasonable time (Article 6);
  - freedom from retrospective criminal law and no punishment without law (Article 7);
  - the right to respect for private and family life, home and correspondence (Article 8);
  - freedom of thought, conscience and religion (Article 9);

- freedom of expression (Article 10);
  - freedom of peaceful assembly and association (Article 11);
  - the right to marry and to found a family (Article 12); and
  - freedom and prohibition of discrimination in the enjoyment of those rights and freedoms (Article 14).
6. The First Protocol to the Convention, which has also been extended to the Bailiwick, guarantees the right to the peaceful enjoyment of possessions and protection of property (Article 1); the right to education (Article 2); and the right to free elections (Article 3). The Sixth Protocol to the Convention, which has recently been extended to the Bailiwick, guarantees the right not to be subjected to the death penalty (Articles 1 and 2).
7. The rights in the Convention are set out in general terms and, other than the absolute rights which cannot be derogated from, they are subject in the Convention to a number of qualifications which are also of a general character. Some of these qualifications are set out in the substantive Articles themselves (for example, Article 10, concerning freedom of expression); others are set out in Articles 16 to 18 of the Convention. Sometimes, too, the rights guaranteed under the Convention need to be balanced against each other (for example, those guaranteed by Article 8 and Article 10).

#### **Applications under the Convention**

8. Anyone within the Bailiwick who is aggrieved by an action of a public authority or public servant or by the effect of the existing law and who believes it is contrary to the European Convention is permitted to submit a petition to the European Court of Human Rights. The Court will first consider whether the petition is admissible. One of the conditions of admissibility is that the applicant must have gone through all the steps available to him or her domestically for challenging the decision which he or she is complaining about. The second condition is that the complaint must be lodged within six months from the date on which the final decision complained about was taken. If the Court declares the complaint admissible and then finds it meritorious, in the absence of a friendly settlement, the Court may "afford just satisfaction" to the injured party by an award of damages and/or an award of costs and expenses. The Court may also find that a formal finding of a violation is sufficient. There is no appeal from the judgment of the Court.

**Effect of a Court judgment**

9. A finding by the European Court of Human Rights of a violation of a Convention right locally does not have the effect of automatically changing domestic law: that is a matter for the relevant legislature. But Guernsey, in common with the other countries covered by the Convention, has agreed to abide by the decisions of the Court. It follows that, in cases where a violation has been found, the Contracting State concerned must ensure that any deficiency in its laws or practices is rectified so as to bring them into line with the Convention. The Contracting State is responsible for deciding what changes are needed, but it must satisfy the Committee of Ministers that the steps taken are sufficient. The States have accepted previously these obligations in full.

**Relationship to current domestic law**

10. When the United Kingdom's ratification of the Convention was extended to the Bailiwick, the view was taken that the rights and freedoms which the Convention guarantees were already, in substance, fully protected in domestic law. It was not considered necessary to duplicate that position by formally incorporating the Convention itself into our domestic law, or to introduce any new laws in order to be sure of being able to comply with the Convention. This followed the position in the United Kingdom.
11. From the point of view of the **international** obligation which the United Kingdom undertook when it signed and ratified the Convention, and when it was extended to the Bailiwick, this was understandable. Moreover, the European Court of Human Rights explicitly confirmed that it was not a necessary part of proper observance of the Convention that it should be incorporated into the laws of the States concerned.
12. However, since its drafting nearly 50 years ago, almost all the Contracting States to the European Convention on Human Rights have gradually incorporated it into their domestic law in one way or another. Ireland and Norway have not done so, but Ireland has a Bill of Rights which guarantees rights similar to those guaranteed by the Convention and Norway is also in the process of incorporating the Convention. Moreover, several other countries which have close links with the British Islands and which share their common law tradition, such as Canada and New Zealand, have provided similar express protection for human rights within their own legal systems.

**The case for incorporation**

13. The principal advantage of incorporation is that it will provide easier access for local persons to the rights which they already have. Those rights will be directly available to be invoked at the earliest opportunity, rather than only being capable of being relied on at a much later stage. Conversely, the effect of non-incorporation is a very practical one. Enforcing the Convention rights through Strasbourg takes too long and costs too much. It takes on average five years to get an action resolved by the European Court of Human Rights once all domestic remedies have been exhausted; and the costs of doing so are considerable. Incorporating the Convention into Guernsey law will mean that arguments relying on those rights can be developed in our local courts - without this inordinate delay and cost. It will also mean that the rights themselves will be brought much more fully into the jurisprudence of the local courts and their interpretation will thus be far more subtly and powerfully woven into our law. Indirectly, this may also result in our courts' approach to Convention issues having an impact on their development across Europe.
14. Moreover, in the Committee's view, the approach which Guernsey has so far adopted towards the Convention does not sufficiently reflect its importance to our citizens.
15. An indication of this lies in the number of cases in which the European Commission and Court have found that there have been violations of the Convention rights in the United Kingdom. (Until 1999 applications were initially considered by the European Commission for Human Rights and only progressed to the Court if referred to it by one of the parties or with the leave of the Commission. This procedure has now been abolished). The causes vary. The United Kingdom Government recognises that interpretations of the rights guaranteed under the Convention have developed over the years, reflecting changes in society and attitudes. As the Convention is a "living instrument" it must always be interpreted in the light of present day conditions. This means that compatible laws and practices can become incompatible as a result of changes in European standards. In other cases, United Kingdom laws have proved to be inherently at odds with the Convention rights. On other occasions, although the legislative provisions have been found to be satisfactory, the manner in which they have been applied has been held to breach the Convention, even though a United Kingdom court has found the practice acceptable by reference to national standards.

16. In other cases again, there has simply been no framework within which the compatibility with the Convention rights of an executive act or decision can be tested in the British courts: these courts can of course review the exercise of executive discretion, but they can do so only on the basis of what is lawful or unlawful according to the law in the United Kingdom as it stands. The position is similar in Guernsey. It is plainly unsatisfactory that someone should be the victim of a breach of the Convention standards yet cannot bring any case in the local courts, simply because our law does not recognise the right in the same terms as one of those contained in the Convention.
17. For those who wish to complain about an alleged violation of the Convention, and for those advising them, the process of reaching the Court in Strasbourg is long and hard. Even when they get there, the Convention enforcement machinery is often subject to long delays.

#### **Bringing Rights Home**

18. The Advisory and Finance Committee believes that the time has come to enable people to enforce their Convention rights against the insular authorities in Guernsey's courts and tribunals, rather than having to incur the delays and expense which are involved in taking a case to the European Human Rights Court in Strasbourg. Enabling the Convention rights to be adjudicated on by our courts will also lead to closer scrutiny of the human rights implications of new legislation and new policies. If legislation were to be enacted which is incompatible with the Convention, a ruling by the domestic courts to that effect will be much more direct and immediate than a ruling from the European Court of Human Rights. Clearly, the States of Guernsey will want to minimise the risk of such adverse judgments.
19. The Committee's proposal is straightforward. It is to make more directly accessible the rights which the Bailiwick people already enjoy under the Convention. In other words, to bring those rights home. This will require legislation to incorporate the Convention rights into local law.

#### **Effect of incorporation of the Convention in domestic court proceedings**

20. At present, if a party to litigation claims that one of the Convention rights has been violated, that party cannot rely directly on the right. The only forum in which that right can be asserted is the European Court of Human Rights in Strasbourg. Before the Magistrate's Court, the Juvenile Court,

the Royal Court of Guernsey, the Guernsey Court of Appeal, the Judicial Committee of the Privy Council or any other domestic tribunal before which persons could find themselves (eg, the Guernsey Tax Tribunal), the best that can be achieved by reference to the Convention is that it can be prayed in aid as an interpretative tool to resolve any ambiguities in relevant domestic legislation. If there is some form of proceedings which can be taken, or an appeal in proceedings already commenced, an aggrieved party is required to exhaust all such remedies before being in a position to complain to the Strasbourg organs. This is a time-consuming and costly process.

21. If the Convention is incorporated in the manner envisaged, when a case before any of those courts or tribunals is being heard, parties can rely upon the Convention rights and require the court or tribunal to determine the case before it having regard to them. This may mean that the party doing so has available additional arguments to pursue a claim or to defend one being brought against him, whether in the civil or criminal sphere.
22. The Convention rights themselves will not change by virtue of incorporation. The rights referred to above already apply in Guernsey, but only under international law. Any violation of them is (and will still remain) justiciable in Strasbourg, in an action brought against Her Majesty's Government, (ie, the respondent is the United Kingdom acting on behalf of Guernsey). The clear advantage of incorporation is that local persons, who already have the rights in question secured for them, can make proper use of them in our courts and tribunals. The Advisory and Finance Committee believes that the requirement for persons alleging that their Convention rights have been violated to exhaust their domestic remedies before being in a position to complain to Strasbourg should now be regarded as unduly onerous.
23. Rather than maintaining the system whereby the Guernsey authorities accord to persons the Convention rights but withhold from them the ability to utilise them directly before our courts and tribunals, it is recommended that the example of the United Kingdom Human Rights Act 1998 is followed to enable the rights to become a part of Guernsey, rather than international, law. To that end, a decision in favour of incorporation is a decision to afford local persons the means by which the rights they have previously been granted can actually be used by them; it will enhance their access to justice.

**The proposed legislation**

24. In the United Kingdom the Convention was incorporated into domestic legislation by the Human Rights Act 1998. The proposed Bailiwick legislation will be based, in large measure, on the Human Rights Act 1998 but with adaptations and modifications appropriate to the Bailiwick. In particular, it will:
- (a) define the relevant articles of the Convention and Protocols and provide for the subsequent amendment of the Law by order of the Committee to reflect the effect, in relation to Guernsey, of a Protocol;
  - (b) provide that a court or tribunal determining a question arising in connection with a Convention right must take into account any
    - (i) judgment, etc. of the European Court of Human Rights;
    - (ii) opinion or decision of the Commission;
    - (iii) decision of the Committee of Ministers taken under Article 46 of the Convention
 which is relevant to the proceedings in question;
  - (c) provide that legislation must be read and given effect, so far as is possible, in a way which is compatible with the Convention rights;
  - (d) provide that the Judicial Committee of the Privy Council, the Guernsey Court of Appeal and the Royal Court may make declarations that provisions of legislation are incompatible with Convention rights;
  - (e) entitle Her Majesty's Procureur to be notified where a court is considering whether to make a declaration of incompatibility and to entitle him to be joined as a party to the proceedings;
  - (f) provide that it shall be unlawful for a public authority to act in a way which is incompatible with a Convention right: the States of Deliberation, as it is a parliament, will be excluded from this provision;

- (g) provide that a person who claims that a public authority has acted in a way which is incompatible with a Convention right may bring proceedings before an appropriate court or tribunal: such proceedings may only be taken if the person is (or would be) a victim of the unlawful act and if the proceedings are brought within one year of the date on which the act complained of took place;
- (h) allow courts to grant such relief or remedy or make such other order as it may consider just and appropriate: no award will be made, however, unless the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made;
- (i) provide that proceedings in respect of a judicial act may be brought only by exercising a right of appeal or in such other forum as set out in rules of court: awards of damages made in these circumstances will be made against the States of Guernsey;
- (j) provide that a person's reliance on a Convention right does not restrict any other freedom or right conferred in any other law having effect in Guernsey;
- (k) provide that where a court is considering whether to make an order which might affect the Convention right to freedom of expression it shall not make the order until it has notified the person against whom the order is to be made, unless there are compelling reasons why it should not advise that person. The courts will be required to have particular regard to the extent to which the material has, or is about to be made available to the public and whether it would be in the public interest for the material to be published;
- (l) provide that when a court is determining any question which might affect the exercise by a religious organisation of the Convention right to freedom of thought, conscience and religion it must have particular regard to the importance of that right;
- (m) enable the Royal Court to make rules dealing with all matters of procedure and incidental matters arising under the Law.

#### **Practical effects of incorporation**

25. Although respect for the Convention rights has been required for close on 50 years, it would not be unreasonable to conclude that there are areas of law and practice in the Bailiwick which would probably not be defensible were complaints made to

Strasbourg. Upon incorporation, persons claiming violations of their rights will be able to sue for an appropriate remedy in domestic courts (the new statutory action referred to in paragraph 24(g) above). Consequently, one of the exercises that will have to be undertaken in preparation for bringing the incorporation Law into force is a review of all areas of the administration of public authorities.

26. The benefit of such an exercise is that at the end of the process our citizens should find that public services are delivered in a more effective way. In other words, all our citizens will be the ultimate beneficiaries. The rights which they are meant to enjoy, and which they may not always enjoy as they should because of laws and practices which actually infringe those rights, will be more readily available to them. If public authorities fail to remove potentially infringing laws and practices, they run the risk of litigation.
27. The task of reviewing our laws and practices cannot be underestimated. Many commentators on the situation in the United Kingdom have taken the view that the area which is most likely to face challenges is in the field of criminal law. We will be in a position to see what changes, if any, are being proposed by the United Kingdom authorities and then decide how or if to follow suit.

#### **Proposal for enforcing the Convention rights**

28. The essential feature of the proposed law is that Guernsey will not be bound to give effect to the Convention rights merely as a matter of international law, but will also give them further effect directly in domestic law.

#### **A new requirement on public authorities**

29. A "public authority" will include a court or tribunal and any person whose functions are of a public nature but will not include the States of Deliberation, because of the need to preserve that parliament's sovereignty. Although Guernsey has an international obligation to comply with the Convention, at present there is no requirement in our domestic law on the Island authorities to exercise those powers in a way which is compatible with the Convention. This proposed Law will change that by making it unlawful for public authorities to act in a way which is incompatible with the Convention rights. The definition of what constitutes a public authority is in wide terms. Examples of persons or organisations whose acts or omissions it is intended should be able to be challenged are

States Committees; Douzaines; the police; immigration officers; prison; courts and tribunals themselves; and, to the extent that they are exercising public functions, companies responsible for areas of activity within the public sector, such as private utilities. However, as with the Westminster Parliament under the 1998 Act, the actions of the States of Deliberation are to be excluded.

30. A person who is aggrieved by an act or omission on the part of a public authority which is incompatible with the Convention rights will be able to challenge the act or omission in the courts. The effects will be wide-ranging. They will extend both to legal actions which a public authority pursues against individuals (for example, where a criminal prosecution is brought or where an administrative decision is being enforced through legal proceedings) and to cases which individuals pursue against a public authority. Convention points will normally be taken in the context of proceedings instituted against individuals or already open to them, but, if none is available, it will be possible for people to bring cases on Convention grounds alone. Individuals or organisations seeking a review of decisions by public authorities on Convention grounds will need to show that they have been directly affected as a "victim", just as they must if they wish to take a case to Strasbourg.
31. It is intended that persons or organisations should be able to argue that their Convention rights have been infringed by a public authority in our courts at any level. This will enable the Convention rights to be applied from the outset against the facts and background of a particular case, and the people concerned to obtain their remedy at the earliest possible moment. This is considered preferable to allowing cases to run their ordinary course but then referring them to some kind of separate constitutional court which, like the European Court of Human Rights, would simply review cases which had already passed through the established legal machinery. In considering Convention points, our courts will be required to take account of relevant decisions of the Strasbourg organs (although these will not be binding).
32. The Convention is often described as a "living instrument" because it is interpreted by the European Court in the light of prevailing conditions and therefore reflects changing social attitudes and the changes in the circumstances of society. In future our judges will be able to contribute to this dynamic and evolving interpretation of the Convention. In particular, our courts will be required to balance the protection of individuals' fundamental rights against the demands of the general interest of the community, particularly in relation to Articles 8-11 where a State may restrict the protected right only to the extent that this is "necessary in a democratic society".

**Remedies for a failure to comply with the Convention**

33. A public authority which is found to have acted unlawfully by failing to comply with the Convention will not be exposed to any new criminal penalties. However, the court or tribunal will be able to grant the injured person any remedy which is within its normal powers to grant and which it considers appropriate and just in the circumstances. What remedy is appropriate will of course depend both on the facts of the case and on a proper balance between the rights of the individual and the public interest. In some cases, the right course may be for the decision of the public authority in the particular case to be quashed. In other cases, the only appropriate remedy may be an award of damages. The proposed law will provide that, in considering an award of damages on Convention grounds, the courts are to take into account the principles applied by the European Court of Human Rights in awarding compensation, so that people will be able to receive compensation from a domestic court broadly equivalent to that which they would have received in Strasbourg.

**Interpretation of legislation**

34. The proposed Law will provide for legislation to be interpreted so far as possible so as to be compatible with the Convention. This goes far beyond the present rule which enables the courts to take the Convention into account in resolving any ambiguity in a legislative provision. The courts will be required to interpret legislation so as to uphold the Convention rights unless the legislation itself is so clearly incompatible with the Convention that it is impossible to do so.
35. This "rule of construction" is to apply to past as well as to future legislation. To the extent that it affects the meaning of a legislative provision, the courts will not be bound by previous interpretations. They will be able to build a new body of case law, taking into account the Convention rights. In doing so, they will give enactments a broad and general construction, adopting European interpretations, rather than a strict, "black letter", legalistic approach which has been the traditional foundation of English and Guernsey law.

**A declaration of incompatibility with the Convention rights**

36. If the courts referred to in paragraph 24(d) above decide in any case that it is impossible to interpret an enactment which cannot otherwise be struck down in a way which is compatible with the Convention, the proposed Law will enable a formal declaration to be made that its provisions are incompatible

with the Convention. A declaration of incompatibility will be an important statement to make, which is the reason why the power to make it will be reserved to the higher courts. They will be able to make a declaration in any proceedings before them, whether the case originated with them (as in the Royal Court) or in considering an appeal from a lower court or tribunal. The Law Officers will have the right to intervene in any proceedings where the relevant court is considering making such a declaration. A decision by the Royal Court or Court of Appeal, determining whether or not such a declaration should be made, will itself be appealable.

#### **Effect of court decisions on legislation**

37. A declaration that legislation is incompatible with the Convention rights will not of itself have the effect of changing the law, which will continue to apply. The "remedial order" procedure established under the 1998 Act is inappropriate for replication in Guernsey. Any necessary changes to enactments can just as easily be pursued under the usual legislative procedures.
38. The United Kingdom Government has considered very carefully whether it would be right for the U.K. Act to go further, and give to courts in the United Kingdom the power to set aside an Act of Parliament which they believe is incompatible with the Convention rights. It has, however, reached the conclusion that courts should not have the power to set aside primary legislation, past or future, on the ground of incompatibility with the Convention. This conclusion arises from the importance of Parliamentary sovereignty. In this context, Parliamentary sovereignty means that, subject to some qualifications under European Community law, a Parliament is competent to make any law on any matter of its choosing and no court may question the validity of any Law that it passes. In enacting legislation, the States of Guernsey are making decisions about important matters of public policy. The authority to make those decisions derives from a democratic mandate. Members of those legislatures possess such a mandate because they are elected, accountable and representative. To make provision in the proposed law for the courts to set aside primary legislation (such as Laws) would confer on the judiciary a general power over the decisions of the legislature which under our present constitutional arrangements they do not possess. The Committee has reached a similar conclusion and does not propose to give our courts the power to set aside primary legislation.

39. It has been suggested that the courts should be able to uphold the rights in the proposed Human Rights Law in preference to any provisions of earlier legislation which are incompatible with those rights. This is on the basis that a later law takes precedence over an earlier law if there is a conflict. But the proposed Human Rights Law is intended to provide a new basis for judicial interpretation of all legislation, not a basis for striking down any part of it. Consequently, it is not proposed to provide that incorporating the Convention rights produces the effect of impliedly repealing inconsistent provisions in earlier enactments.
40. The courts will, however, be able to strike down or set aside subordinate legislation (such as Ordinances or Guernsey statutory instruments made under powers contained in Laws or Acts of Parliament extended to Guernsey by Order in Council) which is incompatible with the Convention, unless the terms of the parent statute make this impossible. The courts can already strike down or set aside subordinate legislation when they consider it to be outside the powers conferred by the statute under which it is made, and it is right that they should be able to do so when it is incompatible with the Convention rights and could have been framed differently.
41. Appended to this letter are those articles of, and protocols to, the Convention relevant to these present proposals.

#### **Implementation, Education and Training**

42. If the States approve the proposals for the enactment of legislation it is hoped that the resulting projet de loi will receive Royal Assent before the end of the year. It is proposed that the Commencement Ordinance would be made by the States at least twelve months before the Law itself will enter into force. From a practical point of view this means that the Law is unlikely to commence before the 1st January 2002 at the very earliest.
43. The reason for this long lead-in period is that there will be a considerable amount of work to be done in preparation for implementation and, therefore, it cannot happen straight away. For example,
- all courts and tribunals will need training to enable them to deal confidently with Convention points in the cases that come before them;
  - States committees and departments will need to review legislation and procedures for which they are responsible for compliance with the Convention rights;

- other public authorities will need to review their policies, particularly when they carry out statutory functions;
- staff will need to be trained generally in an awareness of the Convention rights and, where appropriate, to a greater depth of understanding according to their individual responsibilities;
- consideration will have to be given to the publication of a dedicated booklet setting out the text of all human rights instruments applicable to the Bailiwick.

#### **Alderney and Sark**

44. The Authorities in Alderney and Sark have already been consulted and will be considering their positions separately in the near future. Because of the fundamental nature of these proposals, the Advisory and Finance Committee sincerely hopes that those Islands will also wish to incorporate the Convention in a similar fashion to the manner proposed in this letter. In that way, all the Bailiwick's citizens will reap the benefit of having more direct access to the Convention rights and there will be no risk of differential developments in the exercise of those rights throughout the Bailiwick. If that is the case and the relevant Authorities agree, the incorporating Law will be drafted as either a single Bailiwick Law, as a Law having effect in two Islands which opt for incorporation in that manner or each Island will have its own legislation.

#### **Recommendations**

45. The Advisory and Finance Committee recommends the States to agree that the European Convention for the Protection of Human Rights and Fundamental Freedoms be incorporated into Guernsey legislation and that legislation be prepared on the lines set out in paragraph 24 and, if appropriate, paragraph 44 of this report.
46. I have the honour to request that you be good enough to lay this matter before the States with appropriate propositions, including one directing the preparation of the necessary legislation.

I am, Sir,  
 Your obedient Servant,  
 L. C. MORGAN,  
 President,  
 States Advisory and Finance Committee.

SCHEDULE 1

THE ARTICLES

PART I  
THE CONVENTION

RIGHTS AND FREEDOMS

*Article 2*

*Right to life*

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

*Article 3*

*Prohibition of torture*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 4**Prohibition of slavery and forced labour*

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.

*Article 5**Right to liberty and security*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;

- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

#### *Article 6*

#### *Right to a fair trial*

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

*Article 7*

*No punishment without law*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

*Article 8*

*Right to respect for private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

*Article 9*

*Freedom of thought, conscience and religion*

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

*Article 10*

*Freedom of expression*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the

prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

*Article 11*

*Freedom of assembly and association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

*Article 12*

*Right to marry*

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

*Article 14*

*Prohibition of discrimination*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

*Article 16**Restrictions on political activity of aliens*

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

*Article 17**Prohibition of abuse of rights*

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

*Article 18**Limitation on use of restrictions on rights*

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II  
THE FIRST PROTOCOL

*Article 1*  
*Protection of property*

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

*Article 2*  
*Right to education*

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

*Article 3*  
*Right to free elections*

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

PART III  
THE SIXTH PROTOCOL

*Article 1*  
*Abolition of the death penalty*

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

*Article 2*  
*Death penalty in time of war*

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

---

The States are asked to decide:—

Whether, after consideration of the Report dated the 27th January, 2000, of the States Advisory and Finance Committee, they are of opinion:-

1. That the European Convention for the Protection of Human Rights and Fundamental Freedoms shall be incorporated into Guernsey legislation and that legislation shall be prepared on the lines set out in paragraph 24 and, if appropriate, paragraph 44 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

DE V. G. CAREY  
Bailiff and President of the States

The Royal Court House,  
Guernsey.  
The 25th February, 2000.

