



Human Rights (Jersey) Law 2000

Introduction

The Human Rights (Jersey) Law 2000 (“the Human Rights Law”) came into force in 2006. It gives effect in Jersey law to the rights set out in the European Convention of Human Rights. This guide gives an overview of the purpose and effect of the Human Rights Law.

A copy of the law may be found at:

http://www.jerseylaw.je/Law/lawsinforce/consolidated/15/15.350_HumanRightsLaw2000_RevisedEdition_1January2007.pdf

The European Convention of Human Rights (“the Convention”)

The Convention was drafted after the Second World War and the UK signed up to it in 1953. 47 countries are now signatories to the Convention and together make up the Council of Europe. This body is separate from the European Union. Articles 2 to 14 of the Convention set out the rights that it protects and these rights are generally known as Convention Rights. A number of protocols have been agreed by the Council of Europe over time and supplement the Convention. Some of these protocols are procedural in nature; others guarantee additional rights. Jersey has signed up to three of the protocols that guarantee additional rights (the First, Sixth and Thirteenth Protocols) but not to others (the Second, Fourth and Twelfth Protocols). The Convention is interpreted and applied by the European Court of Human Rights (“the ECHR”), which is based in Strasbourg. Its judges are nominated by each of the countries in the Council of Europe.

Further information about the European Convention of Human Rights and human rights generally may be found on the following websites:

<http://www.liberty-human-rights.org.uk> and <http://www.yourrights.org.uk>

The Purpose of the Human Rights Law

Until the Human Rights Law was enacted in Jersey in 2000, the only way in which individuals could seek redress for infringement of their Convention Rights was to bring a case all the way to the ECHR, a time-consuming and costly process. The enactment of the Human Rights Law gives individuals the ability to seek redress for a breach of their Convention Rights locally, in the Jersey courts.

What are an individual's Convention Rights?

The Human Rights Law defines Convention Rights as the rights and fundamental freedoms set out in Articles 2 to 12 and 14 of the Convention, Articles 1 to 3 of the

First Protocol to the Convention, Articles 1 and 2 of the Sixth Protocol and Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention and relevant Protocols appear in full in Schedule 1 of the Law. In summary, the Convention Rights include the following:

1. The right to life;
2. A prohibition on torture;
3. A prohibition on slavery and forced labour;
4. The right to liberty and security;
5. The right to a fair trial;
6. A prohibition on punishment without law;
7. The right to respect for an individual's private and family life;
8. Freedom of thought, conscience and religion;
9. Freedom of expression;
10. Freedom of assembly;
11. The right to marry;
12. A prohibition on discrimination;
13. Protection of property/the right to peaceful enjoyment of possessions;
14. The right to education;
15. The right to free elections; and
16. The abolition of the death penalty.

Some of these rights are absolute, which means that they cannot be infringed in any circumstances. An example of an absolute right is the prohibition on torture. Other rights are known as qualified rights, which means that the State can lawfully interfere with them in certain circumstances. Examples of qualified rights include the right to a private life and freedom of expression. In the case of a qualified right, the right is set out at the start of the relevant article and then qualified by certain criteria (e.g. whether it is in pursuit of a legitimate aim and is necessary in a democratic society). Finally, there are also limited rights, where it is unlawful for the State to interfere with a right unless it does so in such a way that is expressly permitted by the relevant article. An example of a limited right is the right to liberty and security.

A detailed explanation of each of the Convention Rights may be found at:
<http://www.yourrights.org.uk/yourrights/the-human-rights-act/the-convention-rights/>

How does the Human Rights Law give further effect to Convention Rights in Jersey?

The Human Rights Law is designed to give further effect to the rights and freedoms guaranteed by the Convention. It achieves this in a number of ways as follows.

1. Interpretation of Convention Rights in accordance with ECHR decisions

The Law provides that local courts or tribunals should interpret and decide questions regarding Convention Rights in a manner consistent with relevant decisions which have already been made by the ECHR or (in certain circumstances) relevant opinions or decisions which have been the European Commission of Human Rights or the Committee of Ministers of the Council of Europe.

2. Interpretation of local legislation consistently with Convention Rights

The Law provides that so far as it is possible to do so, Jersey legislation is to be read and given effect in a way that is compatible with Convention Rights.

3. Declarations of incompatibility and statements of compatibility

The Law gives the Jersey courts power to declare a provision of Jersey legislation to be incompatible with a Convention Right if, in the course of proceedings relating to that provision, it reaches the conclusion that it is not compatible with the Convention Right in question. However, a declaration of incompatibility does not automatically render the provision of legislation invalid and is not binding on the parties to the proceedings in which it is made.

The Law also requires a Minister who lodges a new legislative bill to make a statement to the effect that in his/her view the bill is compatible with Convention Rights or, if he cannot make such a statement, he/she still wishes to proceed with the bill.

4. Public Authorities and States Assembly to act in accordance with Convention Rights

The Law states that it is unlawful for a public authority to act in a way that is incompatible with a Convention Right. A public authority includes a court or tribunal and any person who performs functions of a public nature. It is also unlawful for the States Assembly to make subordinate legislation, which is incompatible with a Convention Right, or to acquire land by compulsory purchase in such a way that is incompatible with a Convention Right. However, the act of a public authority or the States Assembly will not be unlawful if it could not have acted otherwise or was giving effect to legislation, which itself could only be given effect to in a manner incompatible with a Convention Right.

5. The right of individuals to bring proceedings against Public Authorities or the States Assembly under the Law

The Law allows an individual, who claims that a public authority or the States Assembly has acted unlawfully and incompatibly with his or her Convention Right/s, to may bring proceedings against the public authority or the States Assembly in the Royal Court or rely on the Convention Right/s concerned in any legal proceedings. In order to have a sufficient interest to be entitled to launch such proceedings the individual must be able to show that he/she is (or in the case of a proposed action by a public authority, would be) a victim of the unlawful act. The proceedings must be brought within a period of one year beginning with the date on which the act complained of took place, although the Court does have discretion to extend the period if it thinks it appropriate to do so.

6. The right of individuals to remedies for infringement of Convention Rights by Public Authorities or the States Assembly

It gives the court power to grant such relief or remedy against the public authority or the States Assembly who has behaved unlawfully, as the court thinks appropriate. Damages may be awarded, but only by a court which has the power to award

damages/compensation in civil proceedings (i.e. not by a criminal court). The court only awards damages to the individual if it is satisfied, taking into account all the circumstances (including any remedy already granted in respect of the unlawful act) that an award of damages is necessary to give the individual just satisfaction. There are also certain limits on the form of relief to be granted where the public authority, which has acted unlawfully, is a court, and where the relief to be granted might affect the right to freedom of expression.

Derogations and Reservations

The Human Rights Law also makes provision for the amendment, replacement or withdrawal of what are known as designated derogations and reservations. Designated derogations and reservations refer to ways in which the UK has withdrawn or reserved from the full application of a Convention Right on Jersey's behalf. For example, there is an express derogation from Article 5(3) of the Convention (detained persons to be brought promptly before a judge and to be tried within a reasonable time) to allow for the exercise certain powers of detention under the local terrorism legislation.