

# ORDER IN COUNCIL

**XIV**  
**2000**

ratifying a Projet de Loi

ENTITLED

## **The Human Rights (Bailiwick of Guernsey) Law, 2000**

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(Registered on the Records of the Island of Guernsey  
on the 22nd January, 2001.)

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2000

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 22nd day of January, 2001 before de Vic Graham Carey, Esquire, Bailiff; present:—David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, and Michael Henry De La Mare, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 13th day of December, 2000, approving and ratifying a *Projet de Loi* entitled “The Human Rights (Bailiwick of Guernsey) Law, 2000”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

*Please note that the Order in Council registered on the records of the Island of Guernsey on the 22nd January, 2001, which is reproduced as pages 3 and 4, is incorrect as it does not refer to the approval of the Law by the States of Alderney and the Chief Pleas of Sark. This error was corrected by the Privy Council Office and a corrected Order in Council was registered on the Records of the Island of Guernsey on the 21st January, 2002 (see pages 5 and 6).*

## At the Court at Buckingham Palace

The 13th day of December, 2000

PRESENT,

### The Queen's Most Excellent Majesty in Council

WHEREAS, there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 20th day of November 2000 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

1. That, in pursuance of their Resolution of the 5th day of April 2000, the States of Deliberation at a meeting held on the 27th day of September, 2000 approved a Bill or “Projet de Loi” entitled “The Human Rights (Bailiwick of Guernsey) Law, 2000”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto.
2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Human Rights (Bailiwick of Guernsey) Law, 2000”, and to order that the same shall have force of law in the Bailiwick of Guernsey.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*A. K. Galloway*





*At the Court at Buckingham Palace*

THE 13th DAY OF DECEMBER 2000

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 20th day of November 2000 in the words following, viz.:-

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:-

“1. That, in pursuance of their Resolution of the 5th day of April 2000, the States of Deliberation at a meeting held on the 27th day of September 2000 approved a Bill or “Projet de Loi” entitled “The Human Rights (Bailiwick of Guernsey) Law, 2000”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 4th day of October 2000 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 4th day of October 2000 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Human Rights (Bailiwick of Guernsey) Law, 2000”, and to order that the same shall have force of law in the Bailiwick of Guernsey”:

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet

de Loi, and to order, and it is hereby ordered, that the same shall have the force of law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Human Rights (Bailiwick of Guernsey) Law, 2000**

### ARRANGEMENT OF SECTIONS

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2. Interpretation of Convention rights.

#### *Legislation*

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17. Interpretation, etc.
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SCHEDULE 1        THE ARTICLES

SCHEDULE 2        DEROGATION AND RESERVATION



# PROJET DE LOI

ENTITLED

## **The Human Rights (Bailiwick of Guernsey) Law, 2000**

**THE STATES**, in pursuance of their Resolution of the 5th day of April, 2000<sup>a</sup>, have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### *Introduction*

#### **The Convention rights.**

**1.** (1) In this Law, "**the Convention rights**" means the rights and fundamental freedoms set out in -

- (a) Articles 2 to 12 and 14 of the Convention,
- (b) Articles 1 to 3 of the First Protocol, and
- (c) Articles 1 and 2 of the Sixth Protocol,

as read with Articles 16 to 18 of the Convention.

(2) Those Articles are to have effect for the purposes of this Law subject to any designated derogation or reservation (as to which see sections 13 and 14).

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<sup>a</sup> Billet d'État No. IX of 2000.

(3) The Articles are set out in Schedule 1.

(4) The Committee, the Alderney Committee and the Sark Committee may by order make such amendment to this Law as they consider appropriate to reflect the effect, in relation to Guernsey, of a protocol.

(5) In subsection (4), "**protocol**" means a protocol to the Convention -

(a) which the United Kingdom has ratified on behalf of Guernsey; or

(b) which the United Kingdom has signed with a view to ratification on behalf of Guernsey.

(6) No amendment may be made by an order under subsection (4) so as to come into force before the protocol concerned is in force in relation to Guernsey.

### **Interpretation of Convention rights.**

2. (1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any -

(a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,

(b) opinion of the Commission given in a report adopted under Article 31 of the Convention,

(c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or

- (d) decision of the Committee of Ministers taken under Article 46 of the Convention,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules of court.

### *Legislation*

#### **Interpretation of legislation.**

3. (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section -

- (a) applies to primary legislation and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

**Declaration of incompatibility.**

4. (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.

(4) If the court is satisfied -

(a) that the provision is incompatible with a Convention right,  
and

(b) that (disregarding any possibility of revocation) the primary  
legislation concerned prevents removal of the incompatibility,

it may make a declaration of that incompatibility.

(5) In this section, "**court**" means -

(a) the Judicial Committee of the Privy Council;

(b) the Court of Appeal established under and by virtue of the

Court of Appeal (Guernsey) Law, 1961<sup>b</sup>;

- (c) the Royal Court of the Island of Guernsey, sitting otherwise than as an Ordinary Court dealing with a criminal matter;
- (d) the Court of Alderney, sitting otherwise than as a criminal trial court;
- (e) the Court of the Seneschal of Sark, sitting otherwise than as a criminal trial court.

(6) A declaration under this section ("**a declaration of incompatibility**") -

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

**Right of Her Majesty's Procureur to intervene.**

5. (1) Where a court is considering whether to make a declaration of incompatibility, Her Majesty's Procureur is entitled to notice in accordance with rules of court.

(2) In any case to which subsection (1) applies, Her Majesty's Procureur is entitled, on giving notice in accordance with rules of court, to be

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<sup>b</sup> Ordres en Conseil Vol. XVIII, p. 315.

joined as a party to the proceedings.

(3) Notice under subsection (2) may be given at any time during the proceedings.

(4) If a court makes a declaration of incompatibility, it shall cause a copy of that declaration to be served on Her Majesty's Procureur, whether or not he is a party to the proceedings under this section or otherwise.

### *Public authorities*

#### **Acts of public authorities.**

**6.** (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if -

- (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
- (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section, "**public authority**" includes -

- (a) a court or tribunal, and

- (b) any person certain of whose functions are functions of a public nature,

but does not include an Island legislature or a person exercising functions in connection with proceedings in an Island legislature.

(4) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.

(5) "**An act**" includes a failure to act but does not include a failure to -

- (a) introduce in, or lay before, an Island legislature a proposal for legislation; or
- (b) make any primary legislation.

### **Proceedings.**

7. (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may -

- (a) bring proceedings against the authority under this Law in the appropriate court or tribunal, or
- (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.

(2) In subsection (1)(a), "**appropriate court or tribunal**" means such court or tribunal as may be determined in accordance with rules of court; and



proceedings against an authority include a counterclaim or similar proceeding.

(3) Proceedings under subsection (1)(a) must be brought before the end of -

(a) the period of one year beginning with the date on which the act complained of took place; or

(b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(4) In subsection (1)(b), "**legal proceedings**" includes -

(a) proceedings brought by or at the instigation of a public authority; and

(b) an appeal against the decision of a court or tribunal.

(5) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

(6) Nothing in this Law creates a criminal offence.

(7) In making rules of court, regard must be had to section 9.

**Judicial remedies.**

8. (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including -

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining -

- (a) whether to award damages, or
- (b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) In the Island of Guernsey, a public authority against which damages are awarded is to be treated for the purposes of section 18 of the Law Reform (Tort) (Guernsey) Law, 1979<sup>c</sup> as liable in respect of damage suffered by the person to whom the award is made.

(6) In this section -

"**court**" includes a tribunal;

"**damages**" means damages for an unlawful act of a public authority; and

"**unlawful**" means unlawful under section 6(1).

**Judicial acts.**

9. (1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only -

(a) by exercising a right of appeal; or

(b) in such other forum as may be prescribed by rules of court.

(2) In proceedings under this Law in respect of a judicial act, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.

(3) An award of damages permitted by subsection (2) is to be made -

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<sup>c</sup> Ordres en Conseil Vol. XXVII, p. 50.

- (a) in respect of a judicial act done in Alderney, against the States of Alderney; or
- (b) in respect of a judicial act done in Sark, against the Chief Pleas of Sark; or
- (c) in respect of any other judicial act, against the States of Guernsey;

but no award may be made unless Her Majesty's Procureur, if not a party to the proceedings, is joined.

(4) In this section -

**"court"** includes a tribunal;

**"judge"** includes a member of a tribunal, an Assistant Magistrate, a Jurat and any other officer entitled to exercise the jurisdiction of a court; and

**"judicial act"** means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge.

#### *Other rights and proceedings*

#### **Safeguard for existing human rights.**

**10.** A person's reliance on a Convention right does not restrict -

- (a) any other right or freedom conferred on him by or under any law having effect in any part of Guernsey; or

- (b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 7 to 9.

**Freedom of expression.**

11. (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("**the respondent**") is neither present nor represented, no such relief is to be granted unless the court is satisfied -

- (a) that the applicant has taken all practicable steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to-

- (a) the extent to which -

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

(5) In this section -

"**court**" includes a tribunal; and

"**relief**" includes any remedy or order (other than in criminal proceedings).

### **Freedom of thought, conscience and religion.**

**12.** (1) If a court's determination of any question arising under this Law might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

(2) In this section, "**court**" includes a tribunal.

### *Derogations and reservations*

### **Derogations.**

**13.** (1) In this Law, "**designated derogation**" means -

(a) the derogation entered by the United Kingdom on behalf of Guernsey from Article 5(3) of the Convention; and

(b) any derogation entered by the United Kingdom on behalf of Guernsey from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Law in an order made by the Committee, the Alderney Committee and the Sark Committee.

(2) The derogation referred to in subsection (1)(a) is set out in Part I of Schedule 2.

(3) If a designated derogation is amended or replaced it ceases to be a designated derogation.

(4) But subsection (3) does not prevent the Committee, the Alderney Committee and the Sark Committee from exercising their power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.

(5) The Committee, the Alderney Committee and the Sark Committee must by order make such amendments to Schedule 2 as they consider appropriate to reflect -

(a) any designation order; or

(b) the effect of subsection (3).

(6) A designation order may be made in anticipation of the making by the United Kingdom on behalf of Guernsey of a proposed derogation.

### **Reservations.**

**14.** (1) In this Law, "**designated reservation**" means -



- (a) the reservation entered by the United Kingdom on behalf of Guernsey to Article 2 of the First Protocol; and
- (b) any other reservation entered by the United Kingdom on behalf of Guernsey to an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Law in an order made by the Committee, the Alderney Committee and the Sark Committee.

(2) The text of the reservation referred to in subsection (1)(a) is set out in Part II of Schedule 2.

(3) If a designated reservation is withdrawn wholly or in part it ceases to be a designated reservation.

(4) But subsection (3) does not prevent the Committee, the Alderney Committee and the Sark Committee from exercising their power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.

(5) The Committee, the Alderney Committee and the Sark Committee must by order make such amendments to this Law as they consider appropriate to reflect -

- (a) any designation order; or
- (b) the effect of subsection (3).

## *Supplemental*

### **Rules of court.**

**15.** The Royal Court sitting as a Full Court may, from time to time, make rules dealing with all matters of procedure and incidental matters arising under this Law and generally for carrying this Law into effect.

### **Orders under this Law.**

**16. (1)** An order of the Committee, the Alderney Committee and the Sark Committee made under this Law -

- (a) may be amended or repealed by a subsequent order so made;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to those Committees to be necessary or expedient;
- (c) shall be laid before meetings of the Island legislatures as soon as possible and shall, if at that or the next meeting an Island legislature resolves to annul it, cease to have effect in the Island of Guernsey, Alderney or Sark, as the case may be, but without prejudice to anything done under it or to the making of a new order.

**(2)** Any power conferred upon the Committee, the Alderney Committee and the Sark Committee by this Law to make an order may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;

- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Interpretation, etc.**

**17. (1)** In this Law, unless the context otherwise requires -

**"the Alderney Committee"** means the Policy and Finance Committee of the States of Alderney;

**"amend"** includes repeal and apply (with or without modifications);

**"the Commission"** means the European Commission of Human Rights;

**"the Committee"** means the States Advisory and Finance Committee;

**"the Convention"** means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at

Rome on 4th November, 1950 as it has effect for the time being in relation to Guernsey;

**"declaration of incompatibility"** means a declaration under section 4;

**"designation order"** means an order of the Committee which designates any derogation from, or reservation to, an Article of, or of any protocol to, the Convention entered by the United Kingdom on behalf of Guernsey made under section 13(1)(b) or 14(1)(b) (as the case may be);

**"the Eleventh Protocol"** means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May, 1994;

**"the First Protocol"** means the protocol to the Convention agreed at Paris on 20th March, 1952 as it has effect for the time being in relation to Guernsey;

**"Guernsey"** means the Bailiwick of Guernsey;

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller;

**"Island legislature"** means -

- (a) in the Island of Guernsey, the States of Deliberation;
- (b) in Alderney, the States of Alderney;
- (c) in Sark, the Chief Pleas of Sark;

**"the Island of Guernsey"** includes the Islands of Herm and Jethou;

**"the Island of Sark"** includes the Island of Brecqhou;

**"primary legislation"** means any -

(a) Act of Parliament which applies or extends directly to Guernsey;

(b) Measure of -

(i) the Church Assembly, or

(ii) the General Synod of the Church of England,

which has effect in Guernsey in accordance with the provisions of a Scheme under the Channel Islands (Church Legislation) Measure, 1931, as amended<sup>d</sup>;

(c) Order in Council extending to Guernsey an Act of Parliament (with or without exceptions, adaptations or modifications);

(d) Law;

(e) Ordinance other than one made under a power contained in another enactment;

(f) Order in Council -

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<sup>d</sup> Ordres en Conseil Vol. IX, p. 127; Vol. XVII, p. 457.

(i) made in exercise of Her Majesty's Royal Prerogative;  
or

(ii) amending an Act of Parliament;

which applies to Guernsey;

and includes an Ordinance, order or other instrument made under primary legislation to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation;

**"the Sark Committee"** means the General Purposes and Advisory Committee of the Chief Pleas;

**"the Sixth Protocol"** means the protocol to the Convention agreed at Strasbourg on 28th April, 1983 as it has effect for the time being in relation to Guernsey;

**"subordinate legislation"** means any -

(a) Ordinance made under a power contained in another enactment (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation);

(b) Order in Council other than one -

(i) extending to Guernsey an Act of Parliament  
(with or without exceptions, adaptations or

modifications);

(ii) made in exercise of Her Majesty's Royal Prerogative; or

(iii) amending an Act of Parliament;

(c) order, rules, regulations, scheme, warrant or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation);

(d) order, rules, regulations, scheme, warrant or other instrument made under legislation mentioned in paragraph (a) or (b);

**"tribunal"** means any tribunal in which legal proceedings may be brought.

(2) The references in section 2(1)(b) and (c) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(3) The reference in section 2(1)(d) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).



(5) The provisions of the Interpretation (Guernsey) Law, 1948<sup>e</sup> shall apply to the interpretation of this Law throughout the Bailiwick.

**Citation, commencement and application.**

**18.** (1) This Law may be cited as the Human Rights (Bailiwick of Guernsey) Law, 2000.

(2) This Law shall come into operation on such date as the States may by Ordinance appoint; and different dates may be appointed for different provisions and for different purposes.

(3) Section 7(1)(b) applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise section 7(1) does not apply to an act committed before the coming into force of that section.

(4) This Law binds the Crown.

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<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.

## SCHEDULE 1

### Section 1(3)

## 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.

## SCHEDULE 2

### Sections 13 and 14

## DEROGATION AND RESERVATION

### PART I

## DEROGATION

### *The 1988 notification*

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950.

There have been in the United Kingdom in recent years campaigns of organised terrorism connected with the affairs of Northern Ireland which have manifested themselves in activities which have included repeated murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire raising which have resulted in death, injury and widespread destruction of property. As a result, a public emergency within the meaning of Article 15(1) of the Convention exists in the United Kingdom.

The Government found it necessary in 1974 to introduce and since then, in cases concerning persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of certain offences under the legislation, who have been detained for 48 hours, to exercise powers enabling further detention without charge, for periods of up to five days, on the authority of the Secretary of State. These powers are at present to be found in Section 12 of the

Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 provides for a person whom a constable has arrested on reasonable grounds of suspecting him to be guilty of an offence under Section 1, 9 or 10 of the Act, or to be or to have been involved in terrorism connected with the affairs of Northern Ireland, to be detained in right of the arrest for up to 48 hours and thereafter, where the Secretary of State extends the detention period, for up to a further five days. Section 12 substantially re-enacted Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1976 which, in turn, substantially re-enacted Section 7 of the Prevention of Terrorism (Temporary Provisions) Act 1974.

Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 (SI 1984/417) and Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 (SI 1984/418) were both made under Sections 13 and 14 of and Schedule 3 to the 1984 Act and substantially re-enacted powers of detention in Orders made under the 1974 and 1976 Acts. A person who is being examined under Article 4 of either Order on his arrival in, or seeking to leave, Northern Ireland or Great Britain for the purpose of determining whether he is or has been involved in terrorism connected with the affairs of Northern Ireland, or whether there are grounds for suspecting that he has committed an offence under Section 9 of the 1984 Act, may be detained under Article 9 or 10, as appropriate, pending the conclusion of his examination. The period of this examination may exceed 12 hours if an examining officer has reasonable grounds for suspecting him to be or to have been involved in acts of terrorism connected with the affairs of Northern Ireland.

Where such a person is detained under the said Article 9 or 10 he may be detained for up to 48 hours on the authority of an examining officer and thereafter, where the Secretary of State extends the detention period, for up to a further five days.

In its judgment of 29 November 1988 in the Case of *Brogan and Others*, the European Court of Human Rights held that there had been a violation of Article 5(3) in respect of the applicants, all of whom had been detained under Section 12 of the 1984 Act. The Court held that even the shortest of the four periods of detention concerned, namely four days and six hours, fell outside the constraints as to time permitted by the first part of Article 5(3). In addition, the Court held that there had been a violation of Article 5(5) in the case of each applicant.

Following this judgment, the Secretary of State for the Home Department informed Parliament on 6 December 1988 that, against the background of the terrorist campaign, and the over-riding need to bring terrorists to justice, the Government did not believe that the maximum period of detention should be reduced. He informed Parliament that the Government were examining the matter with a view to responding to the judgment. On 22 December 1988, the Secretary of State further informed Parliament that it remained the Government's wish, if it could be achieved, to find a judicial process under which extended detention might be reviewed and where appropriate authorised by a judge or other judicial officer. But a further period of reflection and consultation was necessary before the Government could bring forward a firm and final view.

Since the judgment of 29 November 1988 as well as previously, the Government have found it necessary to continue to exercise, in relation to terrorism connected with the affairs of Northern Ireland, the powers described above enabling further detention without charge for periods of up to 5 days, on the authority of the Secretary of State, to the extent strictly required by the exigencies of the situation to



enable necessary enquiries and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. To the extent that the exercise of these powers may be inconsistent with the obligations imposed by the Convention the Government has availed itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

Dated 23 December 1988.

### *The 1989 notification*

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information.

In his communication to the Secretary General of 23 December 1988, reference was made to the introduction and exercise of certain powers under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

These provisions have been replaced by section 14 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989, which make comparable provision. They came into force on 22 March 1989. A copy of these provisions is enclosed.

The United Kingdom Permanent Representative avails himself of this opportunity to renew to the Secretary General the assurance of his highest consideration.

Dated 23 March 1989.

*The 1998 notification*

On the instruction of my authorities, I have the honour to convey to you the following information.

In communications from this Delegation to the then Secretary-General of 23 December 1988 and 23 March 1989, reference was made to the introduction and exercise of certain powers under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 and to the replacement of those provisions by Section 14 and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989.

These powers were previously extended by Order in Council to cover the Channel Islands and the Isle of Man. Following the adoption, by the authorities in Jersey, Guernsey and the Isle of Man of legislation making comparable provision, the relevant Orders in Council have been repealed. A copy of the new legislation for the Isle of Man, Guernsey and Jersey is enclosed. In respect of the Isle of Man the relevant provisions are Section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism Act 1990 which entered into force on 1 December 1990. In respect of Guernsey the relevant provisions are Section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Bailiwick of Guernsey) Law 1990 which entered into force on 1 January 1991. In respect of Jersey the relevant provisions are Article 13 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Jersey) Law 1996 which entered into force on 1 July 1996.

I avail myself of this opportunity to renew to you, Sir, the assurances of my highest consideration.

Dated 12 November 1998. Made by the United Kingdom Permanent Representative to the Council of Europe.

## PART II

### RESERVATION

In view of certain provisions of the Education (Guernsey) Laws ..., the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure in Guernsey ...

First reservation attached to the declaration that the First Protocol shall apply *inter alia* to Guernsey contained in a letter from the Permanent Representative of the United Kingdom to the Council of Europe, dated 22 February 1988 registered at the Secretariat General on 25 February 1988.