

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON TUESDAY 28th SEPTEMBER 2021
ANSWER TO BE TABLED ON TUESDAY 5th OCTOBER 2021**

Question

Will H.M. Attorney General advise members of any steps that can be taken by a Government officer where it is their conclusion that a Law is outdated and their assessment that, if challenged in a court of law, enforcement of the Law would not be upheld or followed by the court; and further advise what ability there is, if any, for the Law to be ignored in such circumstances?

Answer

It is not for Government officers to decide whether a Court would uphold a Law if challenged on the basis that it is outdated. Rather, officers should seek legal advice from the Law Officers' Department and consider whether future legislative reform is needed.

The Court will seek to apply legislation that remains in force if it is relevant to a matter which is before the Court. In practice, much of the older legislation does not cause a problem for the Courts because the subjects it addresses no longer exist or are no longer relevant, despite the Law remaining on the statute books. Alternatively, there may be ways for the Court to construe the Law in accordance with established legal principles of statutory construction to allow the Law to be applied appropriately to the facts of the particular case.

There could also be circumstances where a statute is no longer compatible with rights under the European Convention on Human Rights. Where that is the case, under the Human Rights (Jersey) Law 2000, the Royal Court can interpret the statute in a manner that is compatible with the Convention. Alternatively, it can issue a declaration of incompatibility recognising the incompatible nature of the legislation. Again however, officers should seek legal advice on such questions.