

PRESS RELEASE

Jersey's tax plans will breach Protocol 12 of the European Convention of Human Rights

In the recent report on the lowering of the age of consent on homosexuality the Solicitor-General reported to the scrutiny panel that the situation in Canada was not relevant as Canada was outside the scope of the ECHR. However, Canada is an observer to the Council of Europe and based its charter of rights on the convention. The Council of Europe makes the same suggestions to Canada, the United States, Japan, Mexico and the Vatican City that it does to any full member and observers are as equally bound by the convention in that they can choose to ignore the recommendations of the council.

Now too on taxation it seems that the advisors may be seeking to extol the party line at all costs.

Financial stability is often quoted as one of the reasons for Jersey's success and yet Senator Le Sueur is risking our future. Whilst the tax changes will cater to the understandable desire of Jersey's finance industry to pay less tax, a desire I am sure many people share, he has failed to take account of the near future changes which will expose Jersey to a potential financial liability of hundreds of millions of pounds.

Article 14 of the convention states *'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.'*

Protocol 12 of the convention will extend this right to areas not normally within the realms of the convention including taxation. That means that each and every shareholder in a business outside the finance industry will be able to place a claim in the Court for the discrimination suffered. For larger companies, this could run to many millions of pounds.

With the inevitability of further near-future changes to the tax package Senator Le Sueur may better serve the long term needs of the island; to secure the stable tax basis required by the finance industry and bring in changes which will satisfy the requirements of this additional protocol.

It is unfortunate that all those selected to advise have been drawn from the very industry which will benefit from the planned changes and without reference to the political developments in the United Kingdom, The European Union and the Council of Europe.

No one seems to have recognised the threat posed by the protocol and to recognise which way the tide is moving. Can Senator Le Sueur achieve what King Canute could not? And what of his self-proclaimed 'long-term vision'?

The current status of Protocol 12

The full text of the protocol may be found at the following URL

<http://www.humanrights.coe.int/Prot12/Protocol%2012%20and%20Exp%20Rep.htm>

A protocol requires ten signatories before it becomes enforceable. Currently 35 members have signed the protocol and 11 have ratified it. It came into force for those countries which had ratified it on 1 April 2005. (For full list of signatories and ratifiers please refer to the following URL)

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=8&DF=19/02/2006&CL=ENG>

The House of Commons Joint Committee on Human Rights has recommended that Britain sign up however the government is adopting a 'wait and see' approach for fear of a rush of litigation.

<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/99/9906.htm>

Underlying Research

Having in June, sought an indication from the Minister for Home Affairs of what Jersey intends to do about Protocol 12 when the UK signs up; i.e. will it ask for an exclusion? To date no response has been received. We have also found that the Solicitor General incorrectly advised the scrutiny panel over the age of consent report. It would seem that scrutiny is not being allowed to be as effective as it might and thus there remains a fear that the advice received by scrutiny panels may not allow them to reach the most appropriate conclusions. To date no submission to the scrutiny panels on GST and Zero-Ten has addressed the above issue.

Having sought from the Economic Policy Unit of the Conservative party the likely effects of Protocol 12 on the area of taxation and some idea of when it seems likely that the UK will sign up, we discovered that as the

European Union has already adopted the principal of no special deals for politically favoured industries in the EU Code of Conduct on Business Taxation there would seem to be little effect on business tax but the fear is that it may harm the resident non-domiciled population of London (who only pay tax on income derived from the United Kingdom).

However, the tax plans of Senator Le Sueur will be invalidated upon the UK signing up unless Jersey requests that the United Kingdom exclude Jersey from the treaty. However, as Senator Walker suggested during the age of consent debate this may be damaging to Jersey's international reputation.

It will also be interesting to see what further delay this will have on the appointed day of the Human Rights (Jersey) Law which as has already been stated will not be implemented until there are no known breaches of the convention in place. As there are a very large number of breaches which have not yet been addressed and Protocol 12 will add significantly to them it might appear that this particular piece of legislation will be a very long time before being enforceable in the courts of Jersey.

About Progress Jersey

Progress Jersey formed in December 2005 following the realization that the average age of Jersey voters was around 70 to encourage the younger people of Jersey to take an interest in the political life of the island in the hope of raising electoral turnouts. Its membership is drawn principally from the Municipality of the Parish of St Helier.

Having successfully lobbied for the introduction of 'Breach of Trust' laws as part of the lowering of the age of homosexual consent in 2006 it continues to lobby for Jersey to bring its laws into line with Human Rights obligations it voluntarily signed up to and has successfully added changes to the Legitimacy Law and the introduction of Homosexual Civil Partnerships to the forthcoming agenda of the legislation committee of the States of Jersey.

Ongoing campaigns include the removal of the Bailiff as speaker in the States Chamber which is a clear breach of the Convention.

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