

HUMAN RIGHTS (JERSEY) LAW 2000
VISCOUNT'S DEPARTMENT COMPLIANCE

I have been requested to carry out a review of the Viscount's Department and its functions prior to the coming into force of the Human Rights (Jersey) Law, 2000 ("the HRL"). This gives domestic recognition in Jersey to the European Convention on Human Rights ("the Convention"). The purpose of the review is to consider all areas for which the Viscount's Department is responsible and to comment on existing procedures and, where necessary, make recommendations for any improvements or changes which may be required. In other words, the review relates to procedures which exist or which should be introduced or improved for the various activities carried out by the Department through its sections to ensure compliance with the HRL.

In order to carry out this review I have considered applicable statutes and subordinate legislation where necessary. I have not, however, carried out any "audit" or detailed analysis of any legislation to ensure its compliance with the HRL. Such an exercise is not within the scope of the instructions given to me. In any event, it is a function more appropriately carried out independently from my review.

I set out below my comments and observations in relation to the various functions for each section. The list of functions reviewed was agreed as part of the initial instructions given to me.

ENFORCEMENT OF COURT ORDERS

1. **Collection and Enforcement of Fines**

By definition, fines are imposed by the Courts and their collection and enforcement by the Viscount's Department are functions which are carried out pursuant to an Order of the Court. Orders of the Court almost invariably provide for a term of imprisonment in default of the payment of a fine. The Viscount or any of his officers can, therefore, detain and arrange for the imprisonment of a defaulter pursuant to that Order without a further reference back to the Court concerned. An informal arrangement has been reached with the Magistrate whereby a Viscount's Officer may, in appropriate circumstances, allow for an extension of the time in which a fine must be paid. Alternatively, there is always the option of referring the matter back to the Court which has imposed the fine. The effectiveness and

efficiency of the system is indicated by the fact that the Department has a 97% success rate in collecting and enforcing fines.

The system which is in place works very efficiently and does not raise any specific Human Rights issues. Enforcement Officers have received the necessary Human Rights training and there is a wealth of experience in the enforcement section in addressing the issues that arise in carrying out these functions.

2. **Receipt and Payment of Bail Moneys**

The long-established practice has been only to accept cash in respect of bail moneys and payment must be received before a person is released on bail. Where the amount of bail exceeds £1,000 the sum is paid into an interest-bearing account and when it is returned the interest earned is paid over at the same time. The established practice does not seem to raise any particular Human Rights issues.

3. **Arrest and Presentation for Non-Appearance in Court**

This function is always carried out pursuant to an Order of the Court concerned and the Viscount's Officer carrying out the arrest always ensures that the Act of Court is physically in his hands before any action is taken. No Human Rights issues arise from the performance of these functions.

4. **Service of Legal Process**

The responsibility is for service in both civil and criminal matters. In relation to civil matters the procedure is laid down in the Royal Court Rules 1992 which specifies when personal service is required and process is served at the request and on the instructions of the lawyer acting for the plaintiff. Similar principles apply in relation to service of process in family matters. With regard to criminal matters, there is both the service of summonses on defendants and much more frequently the service of witness summonses. The Viscount's Department is responsible for producing the Record of Service and other details relating to the actions which it has taken. The procedures are well established and precedents are available for the various records of service which are required. No other Human Rights considerations would seem to arise.

5. **Collection and Payment of Costs and Compensation**

The Viscount's Department is responsible for seeking to recover from a defendant any costs which he is ordered to pay to the prosecution in a criminal matter. There are no direct or express enforcement powers available in this regard and if a defendant does not pay on request then the practice is for the costs to be written off. This appears to be something of an informal arrangement and no particular Human Rights issues arise.

The enforcement of compensation orders is always pursuant to an Order of the Court and pursuant to statute (see the Criminal Justice (Compensation Orders) (Jersey) Law 1994). Under Article 5 of that Law, where there is a default in payment of a compensation order the Viscount may take the same proceedings for enforcement as he can for a default in payment of a fine. These statutory functions do not give rise to any Human Rights considerations.

6. **Execution and Enforcement of Civil Judgments**

The execution and enforcement of civil judgments is always done pursuant to a formal order embodied in an Act of Court. No particular Human Rights issues arise save that it should be noted that the enforcement of judgments must be regarded as an integral part of a trial for the purposes of Article 6 of the Convention.

7. **Carrying Out of Evictions**

Following the recent decision by the Royal Court in Eves -v- The Viscount Jersey Unreported 16th May, 2001 revised detailed procedures have been agreed and introduced. These will be followed whenever an eviction has to be carried out. A formal order for eviction always emanates from a Court and there is always a Court Order to be acted upon in carrying out the eviction. On that basis, no particular Human Rights issues arise.

8. **Enforcement of Maintenance Orders and Collection and Payment of "Alimony"**

All the functions for enforcement are carried out in pursuant to statute and pursuant to a Court Order. New legislation in the form of a principal statute the Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000 has been enacted and draft Maintenance Orders (Facilities for Enforcement) (Jersey) Rules have been circulated to interested parties for comment. The Viscount's Department has been fully involved in this consultation

process with particular reference to practical issues regarding enforcement. The new legislation will be Human Rights compliant and no additional issues would seem to arise.

9. **Enforcement of Drug trafficking and other Orders**

Such Orders are in variably made pursuant to the relevant statute. The function of the Viscount and his Department is an administrative one in protecting and administering assets which have been seized. In this regard, the Department is answerable and responsible to the Royal Court and/or HM Attorney General in carrying out these functions. The Principal Enforcement Officer is primarily responsible for these functions with appropriate consultation with the Judicial Greffier and the Deputy Viscount as and when necessary. No particular Human Rights issues arise from the limited functions of administration performed in this regard.

ASSIZE TRIALS / JURY FUNCTIONS

10. **Preparation of Jury List and Maintenance and Operation of Computerised Jury Selection System**

Updated provisions to deal with these matters are being introduced by the enactment of new Rules to be known as the Criminal Procedure (Tirage) (Jersey) Rules 2002. These are currently in draft form pending further consultation and comment and the Deputy Viscount has been involved in their drafting to ensure that the procedures will work satisfactorily. These Rules will have to be Human Rights compliant and no additional issues are likely to arise which impact upon the functions carried out by the Viscount's Department.

11. **Granting Exemptions from Jury Service**

Pursuant to the provisions of the Loi (1864) réglant la procédure criminelle, the Viscount may grant such exemptions. There is currently in draft form being circulated for comment to interested parties an amendment to Article 32A of the 1864 Law which will provide that any person aggrieved with a refusal by the Viscount to grant an exemption may renew the request before the Royal Court. I recommend that where an exemption is refused written reasons are produced and given to an applicant. No other Human Rights implications would seem to arise from the exercise of these functions.

12. **Granting Financial Assistance to Jury Members**

The Viscount has always been charged (by the Finance & Economics Committee) with considering whether financial assistance should be granted to jury members who suffer financial hardship as a result of their service. There is no obligation to provide such assistance nor is there any right (statutory or otherwise) entitling a juror to any such assistance. There is, however, an informal procedure so that if an application for financial assistance is refused then an aggrieved juror may ask for that decision to be reviewed by the Finance & Economics Committee. The decision process in the Viscount's Department is usually performed by the Principal Enforcement Officer. I recommend that in cases where an application for financial assistance is refused then brief written reasons should be given setting out the grounds of the refusal and these reasons should be made available to the applicant.

13. **Acting as Custodian of the Jury**

This is a self-explanatory function when, as a matter of criminal procedure, the jury is placed under the custody of the Viscount. No Human rights issues arise.

CORONER'S FUNCTIONS

14. **Conduct of Inquests**

The basic procedure for the conduct of inquests and related matters is set out in the Inquests and Post-Mortem Examinations (Jersey) Law 1995 and the Inquests and Post-Mortem Examinations (Jersey) Rules 1995. These provide a detailed framework both as to the circumstances in which inquests are required and the procedures to be followed when an inquest takes place. The Deputy Viscount has received full training and has considerable experience in the conduct of inquests and, in addition, has been specifically trained in Human Rights including consideration of such rights in this context. Furthermore, fully trained and qualified Jurats are also available to provide coroner services when required. A full and effective system is in place and I have no recommendations for any additional requirements from the Human Rights perspective.

15. **Ancillary Matters Relating to Sudden or Unexpected Death**

The Deputy Viscount has received full training in this aspect of the functions of a coroner and the position is exactly as stated in the previous paragraph.

INSOLVENCY FUNCTIONS

16. **Administration of Désastre Proceedings**

A separate review of the operation of the Désastre Section in relation to Human Rights considerations has been carried out on behalf of the Viscount by the London solicitors Messrs. Lovells. I have not, therefore, taken any steps to review independently the functions of the Désastre Section.

OTHER FUNCTIONS

17. **Acting as Returning Officer at Public Elections**

The functions of Returning Officer or "Autorisé" are dealt with in the Loi (1897) sur les élections publiques. A new draft law dealing with public elections has been circulated to interested parties for comment and this again addresses the responsibilities of the Returning Officer/Autorisé. All these functions are statutory by nature and are therefore clearly laid down. These functions are carried out by the Deputy Viscount as and when required and he has received full training in Human Rights and is also aware of the statutory requirements to which he is subject. In the context of Human Rights it is important to note Article 3 of the First Protocol to the Convention which sets out that the right to vote is a fundamental right and the right to free elections is expressly referred to. The functions of a Returning Officer must ensure the facilitation of that right. The proposed new statute will, of course, have to comply with the HRL.

18. **Administration of Oaths**

From time to time and for various reasons the Viscount or members of his Department are required to administer oaths. No Human Rights issues arise from the performance of this function.

19. **Administration of Collective Investment Funds Compensation Scheme**

Pursuant to the Collective Investment Funds (Jersey) Law, 1998 the Viscount is responsible for any compensation scheme established under the Collective Investment Funds (Recognized Funds) (Compensation for Investors) (Jersey) Regulations, 1988. Those functions are laid out in detail in the Regulations. To date, no such scheme has ever been established and it seems unlikely that one ever will be. If it is so established then the functions are statutory and no Human Rights considerations are likely to arise.

20. **Administration of Estate of Deceased Persons**

By virtue of Article 15 of the Probate (Jersey) Law 1988 the Royal Court may place the estate of a deceased person in the possession of the Viscount on a temporary basis (“pendente lite”). In such circumstances the Viscount is required to act under the direction of the Royal Court. No Human Rights issues arise from the performance of this function.

21. **Attending Sittings of the Court**

Officers of the Viscount’s Department sit as officers of the Court with active responsibilities such as dealing with fines, bail etc. As these functions are to assist the Court and to act upon its directions no specific Human Rights issues would appear to arise from their performance.

22. **Attending Sittings of the States**

By virtue of Article 2 of the States of Jersey Law, 1966, the Viscount is the Executive Officer of the States. For the purposes of the enforcement of Part IV of that Law (which deals with powers, privileges, immunities and offences) the Viscount has, pursuant to Article 56, for the purposes of enforcement and of the application of the provisions of the criminal law, all the powers and he enjoys all the privileges of a Centenier. General principles of the Convention and the HRL apply to the exercise of these functions but no additional matters arise.

23. **Conduct of Vues de Vicomte**

The Viscount is responsible for conducting Vues de Vicomte in accordance with the provisions of Parts XI of the Royal Court Rules 1992. The detailed procedure is set out in

Rule 11/1 of those Rules. The Viscount also has administrative functions to perform if a Vue de Justice is subsequently arranged to review the proceedings at a Vue de Vicomte. Detailed procedures for Vues de Justice are set out in Rule 11/2 of the Royal Court Rules 1992. In practice, such proceedings are dealt with by the Judicial Greffier and the Deputy Viscount who have received appropriate Human Rights training and no additional issues arise in relation to the conduct of these proceedings.

24. **Convening Sittings of The Royal Court and Other Bodies**

Pursuant to Orders of the Bailiff the Viscount's Department has responsibility for convening sittings of the Royal Court and various other bodies. This is a purely administrative function in respect of which no particular Human Rights issues arise.

25. **Granting Exemptions from Payment of Judicial Fees**

In accordance with the provisions of Article 7 of the Stamp Duties and Fees (Jersey) Law 1998 the Viscount may grant, on such conditions as he thinks fit, an exemption to an indigent person from the payment of stamp duty. The detailed requirements as to how an application is to be made are set out in Article 7. The Viscount may require an affidavit to be sworn in support of any application. As a matter of practice I recommend that where such an application is refused written reasons should be given to the applicant setting out the grounds for the refusal.

26. **Acting as Curator or Tuteur**

The Deputy Viscount is frequently appointed to act as a Curator pursuant to Article 50 of the Mental Health (Jersey) Law 1969. Similarly, he is appointed from time to time as a Tuteur for the administration of the assets of a minor in accordance with the Loi (1862) sur les tuteurs. The powers and obligations of Curator or a Tuteur are either laid down by statute or arise as matters of customary law. The Deputy Viscount has considerable experience and expertise in these particular areas and has also received full Human Rights training.

27. **Acting as Trustee for Criminal Injuries Compensation Awards to Minors**

The Criminal Injuries Compensation Scheme is established under the terms of an Act of the States dated 4th December, 1990. This provides for the making of compensation orders by the Criminal Injuries Compensation Board.

Article 17 of the Scheme as set out in the Act of the States allows the Board to make payments to a trustee. The Board may make such a payment if it is of the opinion that it is in the interests of the applicant for an award to do so whether or not that applicant is a minor or a person under any other capacity. Article 17 sets out in full the basis of the trusts which the Board may specify when making a payment to a trustee. The exercise of trustee functions by the Viscount does not give rise to any particular Human Rights considerations. These functions are really a general matter of trust law and the Deputy Viscount has considerable experience in this area of administration by virtue of his involvement in trusts under this scheme and Curatorships and Tutelles. No additional Human Rights considerations arise.

28. **Dealing with Proceeds of Sale after Default on States Loans**

The function of the Viscount is specified in Article 13 of the Building Loans (Jersey) Law, 1950. This Article provides that where there is a default on a States Loan the Housing Committee may sell the property concerned and after paying all sums due in respect of the loan together with costs and expenses any balance must be paid to the Viscount for the benefit of the former owner. Article 13 requires the Viscount to place a notice in the Gazette advising creditors to issue proceedings against the defaulter and if such proceedings are not issued within a specified time the Viscount is obliged to pay the money to the former owner. The functions of the Viscount are expressly statutory and there are no particular Human Rights considerations.

29. **Taking of Evidence on behalf of Foreign Courts**

There are various statutory provisions in force which provide for the Royal Court to give assistance in the taking of evidence for foreign courts and/or under various criminal investigation provisions. The taking of evidence itself is very much a judicial function which may be performed by the Deputy Viscount (as well as the Judicial Greffier or Master of the Royal Court). The Deputy Viscount has received all requisite Human Rights training in this regard. In addition, there are already in place suitable arrangements to meet the logistical requirements for the actual taking of evidence.

30. **Acting as Usher for Children giving Video Linked Evidence**

The Criminal Justice (Evidence and Procedure) (Jersey) Law 1997 and the Evidence (Television and Video Recordings) (Jersey) Rules 1997 provide for the taking of evidence

by way of video from young children in specified circumstances. An Officer of the Viscount's Department may be appointed to act as an usher to any such child. There is one trained officer in the Viscount's Department who performs this function. No particular Human Rights issues arise from the performance of these duties.

31. **Human Rights Training**

I understand that members of the Department have received appropriate initial Human Rights training. I recommend that consideration is given to ensure appropriate levels of continuation training for the future. The Human Rights Act 1998 has now been operative in the United Kingdom for some time. It may well be possible, therefore, to take advantage of appropriate opportunities to take advantage of the United Kingdom experience.

There are set out above my conclusions and recommendations following my review of the functions performed by the Viscount's Department.

J. G. P. Wheeler
Master of the Royal Court

8th May, 2002