

Is the Human Rights (Jersey) Law 2000 delivering on its promise?

Jersey Law Commission Research report

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This is the second publication in our human rights project. A consultation report titled *Strengthening the Human Rights (Jersey) Law 2000* was published on 10 December 2024. The public consultation period has been extended to 11 April 2025. Visit www.jerseylawcommission.org.je

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1. Executive summary

This report evaluates the effectiveness of the Human Rights (Jersey) Law 2000 (HRJL) 18 years after its launch. It looks at whether the law has achieved its goals, focusing on access to the courts, government compliance, alignment of Jersey laws with human rights standards, and its broader political and social effects. Key findings include:

- **Using ECHR rights in Jersey courts:** The HRJL has increased references to ECHR rights, but barriers remain limiting access for the public.
- **Government compliance:** Jersey public authorities were found to violate ECHR rights in only a small number of cases. More research is needed to gauge the human rights culture.
- **Impact on laws passed by the States Assembly:** The HRJL has led to reforms, but effective scrutiny for ECHR compliance has not developed.
- **Public and political engagement:** There is a lack of civil society involvement, limited political discussion, and minimal public legal education on ECHR rights in Jersey.

This report supports a consultation by the Jersey Law Commission identifying 11 possible reforms.

What the Human Rights (Jersey) Law aimed to achieve

Jersey incorporated the European Convention on Human Rights (ECHR) into domestic law through the HRJL in 2000. The law aimed to:

- enable people to use ECHR rights in Jersey courts
- ensure government actions meet human rights standards
- align laws passed by the States Assembly with ECHR obligations
- maintain legislative supremacy of the States Assembly in Jersey's constitutional framework.

Methodology

This study uses a multi-dimensional policy evaluation approach, looking at:

- **Goal attainment:** How well has the HRJL met its objectives?
- **Process evaluation:** How effectively have institutional mechanisms worked?
- **Distributional outcomes:** Who has benefited or been disadvantaged by the HRJL?
- **Political consequences:** How has the HRJL affected Jersey's political landscape?

Data sources include: court judgments (2006–2024); Hansard records and scrutiny panel reports from the States Assembly; government publications; media coverage.

Key Findings

Accessibility to ECHR Rights in Jersey courts

- In 2022 (a sample year), ECHR rights appeared in **19 court judgments**, showing their acceptance in Jersey's legal system.
- From 2006 to 2024, there were **29 challenge cases** using ECHR rights against public authority decisions.

- **Wealthy individuals and companies** use HRJL litigation for tax and financial disputes.
- **Women are underrepresented** among litigants. Only one challenge case was brought by a woman alone, with three others involving women and male partners.
- There is little litigation over **housing and work regulations**, despite expectations for more cases in this area.
- Beyond challenge cases, ECHR rights have been ‘relied on’ in an estimated 80 cases since 2006. These were mainly criminal proceedings.
- Since 2006, only **two cases from Jersey** reached the European Court of Human Rights (both dismissed), suggesting the HRJL has reduced the need for external litigation.

Government compliance with ECHR Rights

- In **five cases**, Jersey courts found public authorities violated ECHR rights, all related to article 8 (privacy and family life).
- While the low number of successful challenges suggests compliance, it may also show barriers to legal action.

Are Jersey's Laws ECHR-compliant?

- Major legal reforms occurred from 2000–2006 to align existing laws with the ECHR.
- Since 2006, only **one law has been declared incompatible** with ECHR rights by Jersey courts, which is under appeal.
- The UK Ministry of Justice expressed **two concerns** about Jersey laws violating ECHR obligations, resulting in legislative changes.
- There is a lack of **consistent scrutiny** in the States Assembly regarding human rights compliance in law-making.

Political and public engagement

- **Public legal education (PLE) has been neglected.**
- The **States Assembly rejected proposals** for an ECHR rights commissioner and a scrutiny panel focused on ECHR rights.
- **Political discourse on human rights has declined**, with fewer mentions of the HRJL in debates and questions to ministers.
- There is limited activity by **civil society groups** regarding ECHR rights in Jersey.
- Unlike the UK, human rights issues **are not prominent in Jersey's elections.**

Recommendations

This research is part of ongoing work by the Jersey Law Commission evaluating the HRJL. **A separate consultation report was published on 10 December 2024 and can be downloaded from www.jerseylawcommission.org.je. We encourage you to read that report and send feedback to commissioners@jerseylawcommission.org.je. The public consultation period has been extended to Friday 11 April 2025.**

The consultation is seeking feedback on six possible amendments to the HRJL.

- I. After a Jersey court makes a declaration of incompatibility (finding a principal Law breaches an ECHR right), Jersey ministers and the States Assembly could have power to amend the principal Law by Regulations.

2. When a Jersey court decides that subordinate legislation (Regulations, Orders) breaches an ECHR right, the court could have power to make a suspended or prospective quashing order. It may be possible to make this change by ministerial Order rather than amending the HRJL.
3. Jersey courts could have power to award damages where a person is sent to prison at a hearing later held to breach ECHR article 6 (right to a fair trial).
4. Jersey courts could have power to award damages to somebody who suffers harm because of a principal Law declared to be incompatible with ECHR rights.
5. Ministerial compatibility statements under HRJL article 16 could be made not only when a draft principal Law is lodged, but also when 'in principle' proposals are made, draft Regulations are lodged, and the Council of Ministers seeks the Assembly's agreement to extend UK legislation to Jersey. The change could be made voluntarily rather than by amending the HRJL.
6. The terminology in HRJL article 16 could be modernised, replacing 'projet de loi' with 'draft Law'. This is a minor point for the Law Revision Committee.

Feedback is also sought on five areas where there may be room for improving how the HRJL is being implemented.

7. Access to alternative dispute resolution (ADR) for grievances against public authorities involving ECHR rights could be improved.
8. The Legal Aid Guidelines could be redrafted to clarify the scope of human rights legal aid.
9. The Royal Court Rules could be amended to simplify the time limit for starting a legal challenge to a public authority.
10. The quality of public information about the HRJL and ECHR rights in Jersey could be improved.
11. There could be a more joined-up approach to preparing, publishing, and scrutinizing Children's Rights Impact Assessments (CRIAs) and HRJL ministerial compatibility statements.

A final report with recommendations to the Government of Jersey and the States Assembly will be published by February 2026.

Conclusion

The HRJL has embedded ECHR rights in Jersey's legal system, but challenges remain. Limited public engagement, financial barriers, and weak institutional oversight hinder its effectiveness. Without proactive reforms, the HRJL risks becoming a **technical legal framework** instead of a **living document that strengthens Jersey's democracy**.

2. Background

In 1953, Jersey asked the UK government to arrange for the ECHR to be extended to the island. The ECHR is a landmark treaty protecting fundamental rights and freedoms, drafted in the aftermath of the Second World War.¹ In 1976, after some hesitation, Jersey **started to allow individuals to take cases to the European Court of Human Rights** in Strasbourg. Since then, 11 individuals have done so, with Jersey authorities accepting liability for breaching rights in three cases and the others being dismissed.

At the request of the UK Government, in 2000 the States Assembly passed the **Human Rights Jersey Law (HRJL)**, designed to strengthen rights protection in the island. The HRJL came into force in December 2006.

3. Purpose of this report

This report evaluates the effectiveness of the HRJL, based on research by Andrew Le Sueur of the University of Essex in collaboration with the Jersey Law Commission.

Unlike some jurisdictions, Jersey has no tradition of post-legislative scrutiny, where major laws are reviewed by parliament after some years of operation. There also appears to have been no systematic internal government review of the HRJL since its enactment 25 years ago or its implementation 18 years ago.

This lack of review is notable for two reasons. First, the HRJL was initially seen as a significant and positive legal development² but there is no official analysis of whether this been realised. Second, the HRJL was based on the UK's Human Rights Act 1998, which has undergone multiple reviews and generated political controversy.

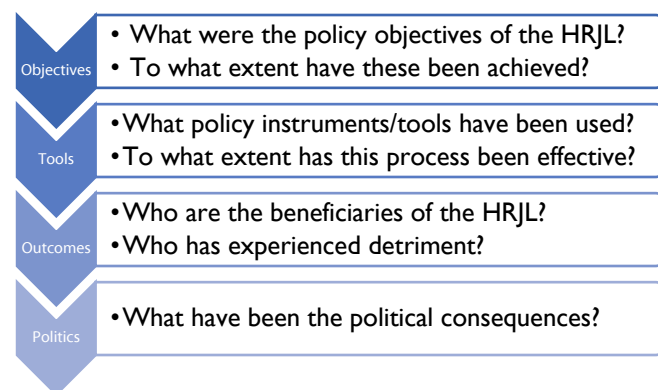
¹ See Annex at the end of this report.

² States of Jersey Human Rights Working Group, *Let's Get it Right!* (States of Jersey 2000).

Post-legislative review of a piece of legislation should be *'a broad form of review, the purpose of which is to address the effects of the legislation in terms of whether the intended policy objectives have been met by the legislation and, if so, how effectively. However this does not preclude consideration of narrow questions of a purely legal or technical nature'*.³

A broad approach is essential for the HRJL, as from the start people recognised that *'This sort of law has never been seen as simply a dry set of rules. It embraces a code of values and principles intended to be central to the whole culture of our country and the way Jersey democracy works'*.⁴

4. Methodology



Desk research methods were used to collect data about the decision to adopt the HRJL and its subsequent use. The focus was on official information: the Jersey Legal Information Board database of judgments, the States Assembly website for *Hansard* and scrutiny panel reports; and the Government of Jersey website. Jersey news media reports were also examined to follow-up specific lines of inquiry. A request was made under the Freedom of Information (Jersey) Law for permission to read official material held by Jersey Archives.

This report uses and develops a policy evaluation framework designed by Australian academic

³ The Law Commission of England and Wales, *Post-Legislative Scrutiny* (Law Com No 302, Cm 6945, October 2006).

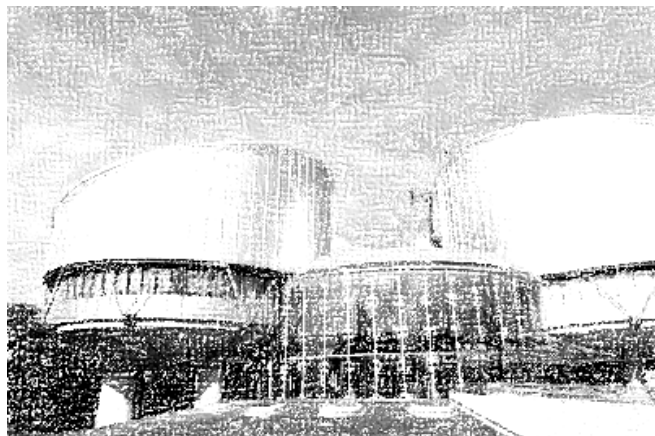
⁴ States of Jersey Human Rights Working Group, *Let's get it right!* (States of Jersey 2000).

Professor Joshua Newman. **Four dimensions are explored: goal attainment, process, distributional outcomes, and political consequences.**⁵

This multi-dimensional approach helps to provide a balanced analysis, avoiding the evaluation becoming overly legalistic or ideologically slanted while capturing a range of perspectives.

5. Have the policy objectives of the HRJL been achieved?

Analysis of the HRJL and relevant background documents from Jersey suggest there were four broadly defined policy objectives. Given that the HRJL closely follows the UK's Human Rights Act (HRA), it is also useful to consider the policy objectives that shaped the HRA in the UK.



European Court of Human Rights, Strasbourg

5.1. Objective 1—Making it easier for people to enforce ECHR rights

To understand how people in Jersey are using ECHR rights in Jersey courts, all judgments from a sample year (2022) were analysed. Nineteen judgments mentioned ECHR rights, suggesting the HRJL facilitated their use roughly once every three weeks. This frequency of references indicates that ECHR rights have become an

established aspect of judicial decision-making in Jersey.

However, further research was needed to determine whether this level of usage of the HRJL reflects broad accessibility to ECHR rights. A distinction can usefully be drawn between

- **challenge cases** in which a person starts legal proceedings in the Royal Court using ECHR rights as a ground on which to question the lawfulness of a public authority's decision,⁶ and
- **reliance cases** where ECHR rights are cited in other types of legal proceedings.⁷

5.1.1. Challenge cases

All judgments between December 2006 and the end of 2024 were searched for references to ECHR rights. Twenty-nine cases were found where an ECHR right was clearly a ground of challenge against a public authority's decision. On average, this was a new challenge case every 7-8 months over the last 18 years. This marks a substantial increase compared to the period before implementation of the HRJL, when cases originating from Jersey reached the European Court of Human Rights approximately every 3.3 years.

This increased frequency of human rights challenges may suggest that the HRJL has made it more feasible for individuals to question the lawfulness of public authorities on ECHR grounds. However, the relatively modest number of cases over nearly two decades may indicate that legal, financial, or procedural barriers continue to limit access to ECHR rights in Jersey courts.

The most frequently used rights were respect for privacy and family life used in 55% of challenge cases, fair trial (37%), protection of property (15%), and prohibition of discrimination (11%).

Ministers were the most frequently challenged type of public authority (13 cases), followed by

⁵ J Newman, 'Measuring Policy Success: Case Studies from Canada and Australia' (2014) 73(2) *Australian Journal of Public Administration* 192.

⁶ HRJL articles 7 and 8(1)(a). In most cases, additional grounds based on domestic law were also used.

⁷ HRJL article 8(1)(b).

Revenue Jersey (6 cases), States of Jersey Police (3 cases), and the Attorney General (2 cases).

In terms of subject matter, the largest category of challenge cases involved finance/tax matters (31%), followed by families/children (21%), and criminal justice (14%). All three new challenge cases started in 2024 were finance/tax related. The high proportion of finance/tax-related cases—many of which resulted in multiple judgments—suggests that the HRJL is increasingly used by wealthy individuals and trust companies.

One category of case has not materialised – challenges to decisions taken under the Housing and Work Law.⁸ In 2000, the States Human Rights Working Group speculated that *‘the Housing law still attracts a lot of controversy and it is likely that human rights issues will continue to figure largely in the future’*.⁹ But this has not happened. We found only one ECHR challenge case since 2006 about housing and work regulation, brought by a person without legal representation, and this was dismissed. The absence of housing and work challenges has been noted by observers. In 2019, the *Jersey Evening Post* reported that *‘human rights lawyers working in Strasbourg also told [Deborah McMillan, then Children’s Commissioner] during a visit to the French city last week that they were surprised that there had been no litigation cases in Jersey challenging the laws that currently do not meet a number of international conventions. For example, the commissioner said that the existing Control of Housing and Work Law could be seen as discriminating against some children and adults because of the restrictions it may place on families’*.¹⁰

There is a striking gender difference in the challenge cases. Only four (14%) were started by a woman, and in three of those the case was brought jointly with a male partner. All four cases related to families/children.

⁸ The legal regulation of housing and right to work is a key tool for controlling inward migration in Jersey. The current framework, under the Control of Housing and Work (Jersey) Law 2012, was adopted six years after the HRJL was brought into force. Simplifying somewhat, a person must be in continuous ordinary residence for 10 years before being able to buy or lease a home; 5 years residency is needed for a person to have freedom in the labour market. In 2021, more than 3,000 people were living in ‘unqualified’ accommodation such as lodging houses or paying for a room in a private household.

This disparity may partly reflect broader social and structural patterns. Men are overrepresented in business ownership and investment, as well as in the criminal justice system—two areas that account for a significant proportion of HRJL challenges. However, other factors may also contribute to women being less likely to use the HRJL to challenge public authorities. Possible explanations could include differences in access to legal resources, risk perception, or trust in formal legal mechanisms. Further research would be needed to explore these patterns in greater depth, including whether women are pursuing alternative avenues for resolving rights-based disputes or facing specific barriers to bringing cases under the HRJL.¹¹

5.1.2. Reliance cases

A search of judgments between December 2006 and 2024, showed an estimated 80 HRJL reliance cases, where a person or the court cited ECHR rights.¹² The majority (approximately 60 cases) were criminal proceedings, with additional instances in civil and family law cases.

This level of use of ECHR rights across different areas of litigation suggests that they have become an embedded feature of judicial decision-making in Jersey, influencing legal arguments and court rulings even in cases where they do not form the primary basis of a challenge against a public authority.

5.1.3. Going to Strasbourg

The policy aim of making it easier for people in Jersey to use ECHR rights in Jersey courts was linked to an associated goal of reducing the number of people who needed to take their case to the European Court of Human Rights in Strasbourg.

⁹ *Let’s Get it Right!* (States of Jersey 2000).

¹⁰ 21 November 2019.

¹¹ See generally Maria Mousmouti, *Policy Paper: Gender-sensitive Post-legislative Scrutiny* (Westminster Foundation for Democracy 2020).

¹² This figure may underestimate the true number of cases. In some instances, judgments alluded to ECHR rights without explicitly referencing the HRJL or specifying a particular right. Such cases were challenging to identify through keyword searches, potentially leading to underreporting.

Since the HRJL came into force, only two cases from Jersey have been taken to the European Court of Human Rights. Both were dismissed on the basis that the applicants had failed to ‘exhaust domestic remedies’ because ECHR points had not been raised clearly enough in Jersey courts and appeals had not been pursued to the Judicial Committee of the Privy Council (the island’s highest court of appeal, based in London).¹³

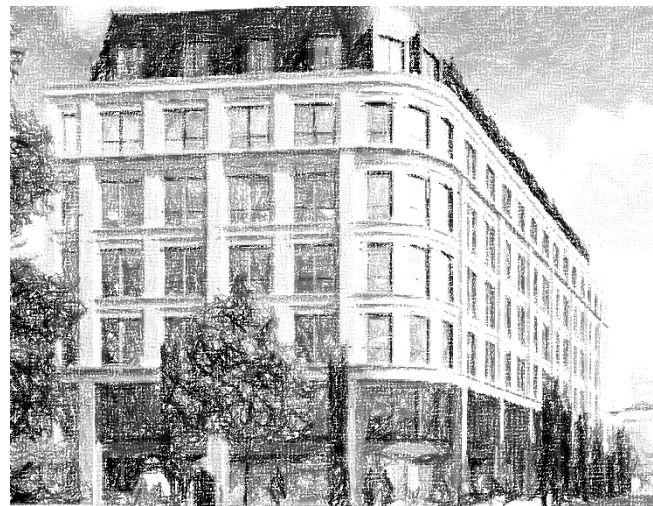
There has therefore been a significant drop in frequency of people taking Jersey cases to Strasbourg since the HRJL came into force (down to a case every 8.5 years and the longest period, 13 years, without a Strasbourg case). This aspect of the policy objective has been achieved.

5.1.4. Alternatives to going to court

In 2000, it was recognised that ‘going to court’ should be a last resort.¹⁴ Opportunities for ADR in situations where ECHR rights are in issue have not developed over the past 25 years and there is evidence of unmet need. **The Jersey Law Commission is consulting about this in 2025.**¹⁵

5.1.5. Overall assessment on objective 1

Since introduction of the HRJL, references to ECHR rights have become commonplace in Jersey courts, indicating progress towards making it easier to enforce these rights. However, the overall volume remains modest, and some areas, such as housing and work, have seen virtually no challenges. Moreover, women appear underrepresented among those bringing challenge cases. While access to ECHR rights seems improved, these findings point to continuing barriers—legal, financial, and social—that may limit broad, equitable use of the HRJL in practice.



Government of Jersey headquarters, St Helier

5.2. Objective 2—Ensuring that government action is ECHR compliant

Has the HRJL led to better compliance with ECHR rights by Jersey public authorities when they develop policies and take individual administrative decisions?

Public authorities include ministers, holders of public office (such as the chief officer of the States Police), parishes, courts and tribunals. The HRJL also applies to ‘any person certain of whose functions are functions of a public nature’.¹⁶ The States Assembly is deemed *not* to be a public authority, but it is treated as if it is one in relation to making subordinate legislation and exercising compulsory purchase powers (HRJL article 7).

There are two possible lines of inquiry into how successful Jersey public authorities are in ensuring their decisions are ECHR compatible: looking at court challenges and exploring internal working practices.

¹³ *LL v United Kingdom* (Application 39678/09) decided in 2014 and *Raj Bhojwani v United Kingdom* (Application 49964/11) decided in 2016.

¹⁴ *Let’s Get it Right!* (States of Jersey 2000).

¹⁵ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 8.

¹⁶ There has been no litigation regarding ‘functional’ public authorities in Jersey. Under the UK’s HRA, the courts have held that they include private organisations such as charities that deliver public services, and registered care providers that receive public funding.

5.2.1. Assessing ECHR compliance through court challenges

HRJL article 7 makes it unlawful for a Jersey public authority to act in a way that was incompatible with ECHR.

As noted, since the HRJL came into force there have been 29 challenge cases. In five of these (17%), judges ruled that a public authority had breached an ECHR right (or the public authority conceded there was a breach). The challenges were against ministers, the States Police, and prison service. At least three cases started before the end of the sample period in December 2024 have not yet received a final hearing, so the number of successful cases could increase.

While circumstances varied, it is notable that in all five successful challenges, public authorities were found to have breached ECHR article 8, which protects the right to privacy and family life.

Article 8 is a qualified right, meaning public authorities may interfere with it if they act lawfully, pursue a legitimate public interest (such as crime prevention), and ensure the interference is proportionate. Executive authorities (ministers, the police, etc) make the initial decision, but if a person affected by the decision challenges the public authority in court, it is ultimately the judges who determine whether the interference is justified.

The five cases are the following.

1. The Royal Court ruled that the planned deportation of a Portuguese national after serving 6 years for child sex offenses would be disproportionate. The individual had lived in Jersey for 19 years before his arrest.¹⁷ The person could remain in Jersey on his release.
2. A similar case involved another Portuguese national who had lived in Jersey for over 40 years, was married, and had a Jersey-born son.¹⁸ The person could remain in Jersey on his release.

3. Four children were removed from their parents' home because social workers and police were concerned about living conditions. The Royal Court held this was not done in accordance with the law and was disproportionate.¹⁹ Unspecified damages were paid.
4. The prison governor required a prisoner to wear handcuffs while attending his father's funeral. The Jersey Court of Appeal held that this was an inflexible application of a policy without an individual risk assessment.²⁰ No damages were awarded.
5. A mother consented to her child being placed in a care home. The child's father, who also had parental responsibility, arrived at night seeking to take his daughter home but police officers stopped him doing so. The Children Law states that 'Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the Minister'. The father started legal proceedings against the minister and police. The minister accepted liability and paid damages; but the case against the police is ongoing.²¹

5.2.2. Internal working practices

A different approach to assessing how well the HRJL is operating to achieve ECHR compliance within public authorities would be to research internal institutional culture. This could examine issues such as the effectiveness of human rights awareness training for officials, processes for ensuring compliance at operational level (e.g., using checklists, impact assessments, escalating issues to legal professionals), and the impact of court judgments on practice. This cannot be investigated through desk research methods and public records, which is the focus of the current study. A study along these lines would, however, be useful in understanding what has changed since the HRJL come into force and it could generate useful insights for further improvement.

¹⁷ *J v His Excellency the Lieutenant Governor* [2018] JRC 072A.

¹⁸ *M v Minister for Home Affairs* [2019] JRC 222B.

¹⁹ *F, H, Y, W, T and S v Minister for Children and Education and Chief Officer of States of Jersey Police Force* [2021] JRC 280.

²⁰ *Pearce v Minister for Home Affairs and Governor of HMP La Moye* [2022] JCA 257.

²¹ *J (father) and BB (child) v Chief Officer of the States of Jersey Police Force* [2024] JRC 063 and [2024] JRC 063.

5.2.3. Overall assessment of objective 2

At first glance, five cases in 18 years where Jersey public authorities were found to have breached ECHR rules or are on record as accepting liability may suggest a low rate of non-compliance. This is especially so given the vast number of administrative decisions made over that time, affecting Jersey's population of over 100,000 and its business sector.

But caution is needed in drawing conclusions from the modest frequency of adverse findings in Jersey courts. It is possible that some individuals with valid claims do not to pursue legal action, so the true extent of non-compliance could be higher than the case numbers suggest. There may also be situations where public authorities conceded an ECHR right was violated before a legal challenge was started, so this does not appear on the public record.



States Assembly building, St Helier

5.3. Objective 3—Ensuring that Laws are ECHR compliant

The HRJL aimed to ensure that Jersey's laws comply with the ECHR.

5.3.1. Retrospective impact

After the HRJL was adopted in 2000, audits of departmental practices and legislation led to new laws covering police powers, mental health, compulsory purchase, the rights of children

²² Another factor may have been the radical changes in machinery of government, with ministerial government replacing executive committees in 2005.

whose parents were unmarried, and the equalisation of the age of consent for gay teenagers. This process took 82 months and was the major reason why there was a delay in bringing the HRJL into force.²²

Jersey was bound by the ECHR from 1953. This programme of law reform should have occurred in the decades before the HJRL was adopted. It seems to have been the threat of adverse rulings in Jersey courts that pushed Jersey's authorities to act. Nonetheless, retrospective review and reform of Jersey's statute book and customary laws can be seen as one of the HRJL's achievements.

5.3.2. Prospective impact

The HRJL is designed to ensure that all future laws adopted by the States Assembly comply with ECHR standards.

HRJL article 16 places a duty on ministers to make a written statement when they lodge a proposition for a new Law in the States Assembly, saying that in the minister's view the draft Law is ECHR compatible.²³ This is based on section 19 of the HRA, so it is relevant to look at how policy aims were articulated in the UK. The UK Government's 1997 white paper *Rights brought home: the Human Rights Bill (Cm 3782)* explained its rationale in terms of improving the UK's legislative process. It would be 'a new procedure to make human rights implications of proposed Government legislation more transparent'. In the UK, ministers' statements 'were particularly expected to enhance the depth and quality of parliamentary debate and scrutiny of legislation, as Government ministers were expected to give their reasons as to why they either had or had not made a section 19 statement'.²⁴

For several years, practice in Jersey did not align with the underlying constitutional logic of HRJL article 16. Between 2005-2013, Jersey ministers refused to share information or analysis about ECHR compliance of draft Laws with the States Assembly. HRJL article 16 statements were

²³ A minister has the option to state that the draft Law is not compatible, but this has never happened.

²⁴ Lord Irvine LC, Hansard, House of Lords, 27 November 1997.

published without explanation. This closed approach was driven by strong conventions and legal principles that protect the confidentiality of legal advice. The majority of States members were happy with this practice, twice rejecting proposals from a non-executive member to require ministers to provide reasons for their statements.²⁵ Then, with no fanfare, practice changed in 2013. The proposition for the Draft Discrimination (Jersey) Law (P.6/2013) contained, for the first time, an appendix of ‘human rights notes’ prepared by the Law Officers’ Department. Since then, explanatory notes have been routinely published.

HRJL article 16 ministerial statements are required only for Laws, not subordinate legislation (Regulations, Orders). **In 2025, the Jersey Law Commission is consulting on requiring statements and explanatory notes across all legislative proposals, including ‘in principle’ debates, subordinate legislation, and the extension of UK Acts of Parliament to the island.**²⁶

As with assessing the impact of the HRJL on government action, there could be two main possible lines of inquiry into how successful the HRJL has been in ensuring legislation is ECHR compatible—looking at the public record, and exploring institutional culture.

5.3.3. Analysis of the public record

The public record shows few instances in which a Jersey law has been questioned for its ECHR compatibility since the HRJL, but there have been some.

In two cases, individuals argued in the Royal Court that Regulations (subordinate legislation) were not ECHR-compliant, but these claims were dismissed.²⁷

²⁵ Deputy Bob Hill, P.78/2008 and P.84/2010.

²⁶ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 6.

²⁷ *Gosselin v Minister for Social Security* [2016] JRC 204 (Income Support (Jersey) Regulations 2007); *Larsen v Comptroller of Taxes and The States of Jersey* [2015] JRC 244 (Taxation (Exchange of Information with Third Countries) Regulations 2008).

²⁸ *Imperium Trustees (Jersey) Ltd v Jersey Competent Authority* [2024] JCA 014.

In another case, the court held that a Law was incompatible with ECHR rights, though the government is appealing this judgment.²⁸ The International Cooperation (Protection from Liability)(Jersey) Law 2018 seeks to protect Jersey public authorities from liability for damages and costs when they are carrying out functions under one of nine laws where there is a duty to provide assistance to overseas governments relating to tax or crime. The Jersey Court of Appeal held that the law breached ECHR article 6 (right to a fair trial).

After the States Assembly adopts a Law, it is reviewed in the UK by the Ministry of Justice (MoJ) for compliance with ECHR and other human rights before Royal Assent is granted. This is because the UK Government is responsible for Jersey’s compliance with international law.

ECHR-related concerns raised by MoJ significantly delayed implementation of the Residential Tenancy Law, passed by the States Assembly in July 2009. The Law was eventually approved, but only after the Assembly agreed to pass the Residential Tenancy (Amendment)(Jersey) Law 2012.²⁹

In 2022, MoJ officials spotted errors in two linked pieces of legislation intended to modernise rules about ‘prohibited degrees’ in marriages and civil partnerships. The draft Law was returned to the States Assembly for correction before being presented for Royal Assent.³⁰

The States Assembly typically passes between 25 and 50 laws and pieces of subordinate legislation a year. Given this volume, the relatively low number of challenges—both in the courts and through the MoJ review process—suggests that almost all Jersey’s legislation meets ECHR standards.

²⁹ The issue was whether the Law could empower the minister to make Regulations specifying that a landlord may give less than a month’s notice to terminate a tenancy—MoJ thought this could breach ECHR article 8 (right to respect for private and family life) and Protocol I article 1 (protection of property).

³⁰ See Draft Marriage and Civil Partnerships (Amendments)(Jersey) Law 202- (P.88 Com/2022).

5.3.4. Human rights culture in the Assembly

A second line of inquiry would be to examine the institutional culture for legislative activity in Jersey. Some aspects of this are explored below.

5.3.5. Overall assessment of objective 3

The HRJL was a catalyst for addressing historic areas of ECHR non-compliance within Jersey's statute and customary law, with necessary corrections completed between 2000 and 2006.

Since then, over the past 18 years, only a small number of issues have been raised. These include one declaration of incompatibility in the courts and two concerns identified through the MoJ review process.

5.4. Objective 4—Preserving legislative supremacy

In the UK, it was regarded as imperative that incorporation of ECHR rights should not undermine the constitutional principle of 'supremacy of parliament', by which the UK Parliament has legally unlimited authority to pass an Act of Parliament, even one that infringes fundamental rights. In the HRA, the UK courts' powers were therefore limited to making a non-binding 'declarations of incompatibility', which did not affect the validity of any Act of Parliament a court concludes breaches ECHR rights. This policy goal was carried over into Jersey's HRJL.

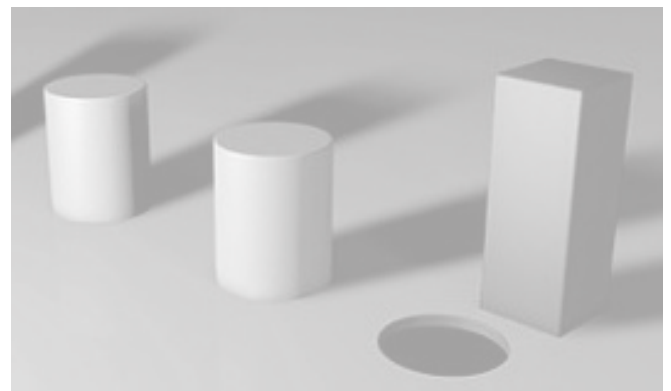
Declarations of incompatibility were expected to be rare, and this has proven to be the case in Jersey. In the first 18 years of the HRJL, Jersey courts have issued only one such declaration (which is currently under appeal by the Jersey government).³¹

However, the policy objective of maintaining legislative supremacy of the States Assembly has two limits. These both applied *before* the HRJL was adopted.

- The first limitation on the Assembly's legislative authority stems from Jersey's status

as a Crown Dependency. The UK government has responsibility for ensuring Jersey complies with international law obligations, including the ECHR. If the States Assembly were to adopt a new Law that breaches the ECHR, or refused to rectify an existing Law, it is unlikely that MoJ would permit this. There are precedents for UK pressure being applied to Jersey when it seemed intent on breaching the ECHR. An example is Jersey's delay in decriminalising male same-sex relationships, which did not take place until 1990.

- The second relates to the power of the European Court of Human Rights. This includes the authority, in international law, to adjudicate on whether a Law passed by the States Assembly violates the ECHR. If the court rules there has been a breach, Jersey must, in international law, comply with its order and amend or repeal the Law. Failure to do so could lead to sanctions, and ultimately expulsion from the Council of Europe (the international organisation that oversees the ECHR).



6. How effective are the chosen policy tools?

When launching a major policy initiative—such as incorporating ECHR rights into domestic law—government and the legislature have various tools available. Evaluating the HRJL therefore includes

³¹ *Imperium Trustees (Jersey) Ltd v Jersey Competent Authority* [2024] JCA 014.

looking at how well the chosen tools have worked in achieving the policy objectives.

6.1. Policy tool 1—the text of the HRJL

In 1998, the UK government made clear its expectation that the States Assembly should adopt a law based on the UK’s HRA. At the time, some islanders questioned whether this approach suited a small community, advocating for a bespoke framework. However, under UK pressure for a uniform approach across the Crown Dependencies and UK, and with limited capacity to develop a bespoke model, this idea was abandoned.

6.1.1. Key provisions relating to litigation

The HRJL contains several provisions designed to make it easier for ECHR rights to be enforced in Jersey courts (objective I). Jersey courts must ‘take into account’ Strasbourg case law (HRJL article 3) and, ‘so far as possible’, interpret Jersey legislation to be compatible with ECHR rights (HRJL article 4). It is unlawful for a public authority to act contrary to ECHR rights (HRJL article 7) and people have a right to raise ECHR rights in Jersey courts and tribunals (HRJL article 8). Close reading of all Jersey cases involving ECHR rights between 2006 and 2024, suggests that these mechanisms in the HRJL are working satisfactorily to achieve objective I.

This conclusion differs from some reviews of the HRA conducted in the UK, including the Independent Human Rights Act Review,³² in-house reviews by the Ministry of Justice during the previous Conservative government,³³ and the influential think-tank Policy Exchange.³⁴

While the HRJL has provided a framework for protecting rights, there are two key areas where

it may not be functioning as effectively as it should.

6.1.2. Keeping the HRJL up to date

The HRJL is not set in aspic and needs to be amended as circumstances change. In Jersey, there is no clear process for systematically updating the HRJL to reflect evolving needs. Nor does there seem to be a shared understanding about whose responsibility this should be.

- For instance, HRJL article 10 prevents Jersey courts from awarding damages to individuals imprisoned after trials later deemed unfair under ECHR article 6. The UK amended the HRA in 2020 following an adverse Strasbourg ruling,³⁵ but Jersey has not followed suit. **The Jersey Law Commission is consulting about this in 2025.**³⁶
- The HRJL was not adjusted after Jersey’s 2005 shift from committee to ministerial government to provide a fast-track mechanism for ministers to rectify laws declared incompatible with human rights—an effective tool in the UK’s HRA that could benefit the island. **The Jersey Law Commission is consulting about this in 2025.**³⁷
- Jersey could consider developing more flexible quashing orders, allowing courts to issue rulings that are either delayed in effect or apply only in the future. **The Jersey Law Commission is consulting about this in 2025.**³⁸

6.1.3. Political responses to declarations of incompatibility

A second issue relates to declarations of incompatibility (HRJL article 5). A fundamental purpose of the declaration of incompatibility mechanism is to foster ‘democratic dialogue’ between the courts, legislature, and executive when a law is held to violate an ECHR right. As

³² Independent Human Rights Act Review (2021), CP 586.

³³ Ministry of Justice, *Human Rights Act Reform: A Modern Bill of Rights, Consultation Response* (2022), CP 704.

³⁴ Richard Ekins, Stephen Laws and Conor Casey, *The Impact of the Human Rights Act 1998 in Twenty-Five Cases* (Policy Exchange, 2024); and Stephen Webb, *Why is it so hard getting immigration numbers down?* (Policy Exchange, 2025).

³⁵ *Hammerton v UK* (Application no. 6287/10).

³⁶ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 5.

³⁷ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 2.

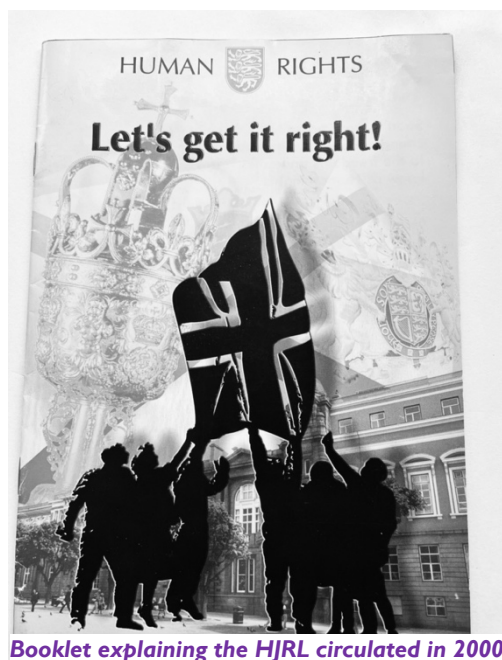
³⁸ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 3.

the *Let's Get it Right!* booklet said, there 'should be a healthy dialogue between the courts on the States Assembly on how best to protect and promote human rights'.

In the UK Parliament, the Joint Committee on Human Rights has set out expectations about when and how a minister must inform Parliament that a court has made a declaration of incompatibility, and how Parliament ensures there is appropriate accountability.³⁹

Jersey has limited experience of the declaration of incompatibility mechanism. The first declaration was not made until January 2024. In June 2024, the Chief Minister made an order amending the operation of the law held to violate ECHR article 6 right to a fair trial.⁴⁰ An appeal by the government to the Judicial Committee of the Privy Council was heard on 24-25 February 2025. But more than a year has passed without any engagement by the States Assembly in the matter.

There appears to be little or no appreciation in Jersey that HRJL article 5 should instigate a process of dialogue. In Jersey, ministers and the States Assembly have no protocol to structure their 'dialogue' after a declaration of incompatibility is made, or for ensuring accountability for ministers' decision-making about responding to a declaration of incompatibility. This seriously undermines the efficacy of the HRJL model.



6.2. Policy tool 2— public legal education

Public education plays a crucial role in policy implementation—from helping individuals make informed choices about lifestyles to road safety. It is also essential in ensuring people understand their rights and know how to exercise them effectively.

Public legal education (PLE) is defined as activities that provide 'people with awareness, knowledge and understanding of rights and legal issues together with the confidence and skills they need to deal with disputes and gain access to justice'.⁴¹ Generally, PLE can help people's understanding across four key areas: being aware of the concept of rights and obligations and recognising where the law applies to a situation; being able to find out what rights and obligations apply in a particular situation; being able to apply relevant information or advice that has been obtained; and being aware of the impact of the law on their lives and lives of others.⁴²

In the context of ECHR rights in Jersey, there could be two main aims of PLE.

³⁹ Joint Committee on Human Rights, *Making of Remedial Orders*, 7th Report of Session 2001-02, HL Paper 58/HC 473. ([link](#)).

⁴⁰ International Co-operation (Protection from Liability) (Jersey) Order 2024.

⁴¹ PLEAS Task Force, *Developing capable citizens: the role of Public Legal Education, the report of the PLEAS Task Force* (2007), 9

⁴² Sharon Collard and Chris Deeming, *Public Legal Education Evaluation Framework* (Ministry of Justice/University of Bristol, 2011) 12.

- First, to help build and maintain a ‘human rights culture’. In 2000, the States Human Rights Working Group said of the HRJL, ‘*This sort of law has never been seen as simply a dry set of rules. It embraces a code of values and principles intended to be central to the whole culture of our country and the way Jersey democracy works*’ and ‘*A human rights culture for all of us will be introduced*’.⁴³
- Second, it might help provide an environment in which a wide range of people feel confident about using ECHR rights in Jersey courts.

PLE was used briefly as a policy instrument when the HRJL was launched in 2000. *Let’s Get It Right!*, a 16-page colour booklet explaining the HRJL, was widely circulated by the States Human Rights Working Group. The text was prepared by UK-based experts, but it included words by the then Bailiff (Sir Philip Bailhache) and Senator Pierre Horsfall, chair of the Assembly’s policy and resources committee.

Since then, there seems to have been no further use of PLE to promote understanding of the ECHR and how the HRJL can help islanders enforce their rights. A review for the Jersey Law Commission of online material about the HRJL revealed there was almost no user-friendly information available; some of the material is misleading.

The failure to sustain PLE as a policy tool for promoting understanding of the ECHR and HRJL contrasts with the substantial investment by the Jersey government in raising awareness of the UN Convention on the Rights of the Child since 2019, through the office of the Children’s Commissioner. Indeed, PLE forms part of the Commissioner’s statutory duties – their general functions include ‘*promoting awareness and understanding of the rights of children and young people*’ and ‘*providing human rights education for*

relevant authorities or other persons that work with, or on behalf of children and young people’.⁴⁴

The States Assembly has consistently voted against proposals to establish a human rights commissioner with a remit over ECHR rights and the HRJL (see below), but there are other public bodies in the island that could commission PLE work. Design and delivery of HRJL-related would need specialist input, as effectiveness of a PLE programme is likely to depend on its design, implementation, and ongoing evaluation.⁴⁵ **The Jersey Law Commission is consulting about these issues during 2025.**⁴⁶

6.3. Policy tool 3—legal aid

One of the key policy goals of the HRJL was to make it easier for people to enforce their ECHR rights in Jersey’s courts (see above).

Legal aid schemes play a crucial role in removing financial barriers that can prevent equal access to justice. Like in many other legal systems, individuals in Jersey with low to moderate incomes and limited savings often struggle to afford legal representation.

In 2004, the Law Society of Jersey—the regulatory body for lawyers in the island—acknowledged the potential impact of the HRJL. It noted that ‘*The Bâtonnier and the Acting Bâtonnier have seen a greatly increased awareness in applicants of their rights under the ECHR, and future challenges are inevitable*’.⁴⁷

There was however no immediate surge in cases following the HRJL’s introduction, as some people predicted might happen. On the contrary, in the first five years of its operation (December 2006–2011), only seven challenge cases were brought under the law. Of these, just one case appears to have received publicly funded legal aid (children were represented by a guardian ad litem, appointed to safeguard their interests). Four individuals pursued Royal Court proceedings

⁴³ States of Jersey Human Rights Working Group, *Let’s get it right!* (2000).

⁴⁴ Commissioner for Children and Young People (Jersey) Law 2019, art 5.

⁴⁵ For an overview, see Lisa Wintersteiger, Sarah Morse, Michael Olatokun and Christopher J Morris, *Effectiveness of Public Legal Education initiatives A literature review* (Legal Services Board, 2021).

⁴⁶ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 11.

⁴⁷ Law Society of Jersey, *Interim Report of the Legal Aid Sub-Committee* (2004) para 4.1. The Bâtonnier is head of the Jersey Bar.

without legal representation. Two legally qualified islanders brought challenges about issues affecting their private lives (one representing themselves, the other being represented by a colleague).

Looking across the period 2006-2024, it is notable that in 12 of the 29 challenge cases (41%), the challenger did not have legal representation. This appears to be a high proportion of cases and may suggest there were financial barriers to accessing the Royal Court.

An Access to Justice Review, with an advisory panel advising the Chief Minister, was launched in 2013. One outcome was a new legal aid scheme, which started in April 2022.⁴⁸ In the previous system, Jersey advocates were required to provide free or reduced cost advice and representation in cases allocated to them according to a rota. The new system expanded the types of cases for which public funding is available (subject to means and merits tests), including 'human rights'. But the Jersey Law Commission has recently expressed concern about how the eligibility criteria are drafted – 'Human Rights breaches (only in exceptional cases where there are legitimate human rights entitlements (subject to a favourable opinion on the merits of the claim))'. Limiting funding to 'exceptional' cases may violate ECHR rights.⁴⁹

The Jersey Law Commission is consulting on this in 2025.⁵⁰

In addition to paying their own legal costs, if a non-legally aided person loses a case the court will normally order that they pay the other side's legal costs. This is a major disincentive to starting a challenge against a public body. The court may mitigate this by making a 'protective costs order' under which the challenger's liability is capped.⁵¹

6.4. Policy tool 4—Institutional responsibility

The HRJL did not require the creation of new institutions. In the UK, similarly the HRA did not require new bodies to be created. Nonetheless, from the outset the UK government encouraged the UK Parliament to establish a specialist committee – the Joint Committee on Human Rights, involving members from the House of Commons and House of Lords. The Equality and Human Rights Commission (EHRC) was launched in 2007, with a remit including '*encouraging and supporting the development of a society in which ... there is respect for and protection of each individual's human rights*'.⁵²

In Jersey, the HRJL's objectives have been left to be achieved through existing bodies and procedures. This contrasts with the indirect incorporation of the UN Convention on the Rights of the Child, which has been supported by establishing the office of the Commissioner for Children and Young People.

The States Assembly have considered backbench proposals for new institutions but has consistently rejected reforms:

- **A commissioner for ECHR rights** has been proposed several times.⁵³ Reasons for rejecting the idea have included costs, the existence of judicial enforcement of rights through Jersey courts and tribunals, and the island's 'overloaded policy pipeline'.
- **A human rights committee in the States Assembly was proposed in 2008.**⁵⁴ This was envisioned to have a composition like the Assembly's Public Accounts Committee, with appointed expert lay members sitting alongside non-executive States members. It was anticipated the committee would cost £330,000 a year to run, with two officers and a part-time legal

⁴⁸ See States Assembly, About the Access to Justice Review ([link](#)).

⁴⁹ In 2014, the English Court of Appeal struck down legal aid guidelines that sought to restrict eligibility to 'exceptional' cases: *R (on the application of Gudanaviciene) v Director of Legal Aid Casework and The Lord Chancellor* [2014] EWCA Civ 1622.

⁵⁰ Jersey Law Commission, *Strengthening the Human Rights (Jersey) Law 2000: Consultation report* (2025) part 9.

⁵¹ See *J and BB v Chief Officer of the States of Jersey Police* [2024] JRC 063.

⁵² Equality Act 2006 s 3.

⁵³ Most recently by Deputy Montford Tadier: see P.78/2020.

⁵⁴ By Deputy Bob Hill. See Hansard, 8 September 2008.

adviser. In rejecting the idea, some members thought the costs were unjustified, There were concerns that members would be expected to choose between rival legal advice – that of the new committee’s legal adviser and the Law Officers. Critics also feared that an additional committee would overstretch non-executive members.

The Assembly’s Procedures and Privileges Committee has acknowledged that Jersey fails to meet the Commonwealth Parliamentary Association’s benchmarks for effective human rights scrutiny by not having an oversight committee in the Assembly and not establishing a human rights commission.⁵⁵

Two consequences flow from the choices not to create new institutions to implement the HRJL. First, executive responsibility rests with a minister. Second, within the States Assembly, there has been a mainstreaming of responsibility for HRJL and ECHR-related matters. We look at these in turn.

6.4.1. Institutional arrangements in government

In the absence of an arm’s length body dedicated to ECHR oversight (a human rights commission), executive responsibility for ensuring the effectiveness of Jersey’s ECHR rights protection system rests with a government minister. However, the HRJL does not explicitly assign such a duty to any particular minister.

In 2013, the States Assembly clarified that the Chief Minister was responsible for *‘policy and resources in relation to the overall justice system; the Legislation Advisory Panel; safeguarding human rights; data protection; legal services; constitutional reform; and strengthening democracy’*.⁵⁶

A decade later, the portfolios for justice and home affairs were merged, and in 2023 a new Minister for Justice and Home Affairs was tasked

with *‘supporting and maintaining a safe and inclusive community; promoting equality and diversity; and leading on justice policy and relations with the justice system’*.⁵⁷ Meanwhile, the Chief Minister retained some responsibilities linked to the HRJL, including *‘constitutional affairs’* and *‘liaison with non-ministerial States Bodies’* such as the Bailiff’s Chambers, Judicial Greffe, and Law Officers’ Department.

During this reconfiguration, the explicit reference to any minister’s duty to safeguard human rights disappeared. It is unclear whether this was a deliberate decision or an oversight. Either way, the absence of a clearly identified ministerial role for human rights creates uncertainty.

To evaluate the effectiveness of ministerial responsibility for the HRJL system, we looked for minister-led initiatives promoting or reviewing ECHR rights. The one example we found was the Access to Justice Review (2013–2016), nominally led by the Chief Minister, which did address some issues about the systematic protection of ECHR rights (see above).

Looking across the suite of official documents that make up the ‘Government Programme’, we found only one reference to human rights as a ministerial priority. This reference appeared in the Ministerial Plans (September 2023), where for the Minister for Children and Education there was reference to *‘ensuring that education is shaped around children, their needs and their human rights’*.

Beyond this, we were unable to identify further ministerial efforts aimed at ensuring the HRJL functions as intended or is developed to meet changing needs.

This limited executive engagement with ECHR rights in Jersey stands in marked contrast to recent approaches in Scotland and Wales. Governments in those jurisdictions have used the incorporation of ECHR rights as a springboard for further political initiatives.⁵⁸ By comparison,

⁵⁵ PPC, Recommended Benchmarks for Democratic Legislatures: Commonwealth Parliamentary Association (2022), R.65/2022 ([link](#)).

⁵⁶ Chief Minister, Justice policy and resources: responsibility, P.92/2013.

⁵⁷ Chief Minister, R.10/2023 and R.126/2023. States of Jersey Law 2005 art 30A requires the Chief Minister to publish and maintain a

list of the Chief Minister’s functions and those of each Minister and Assistant Minister. The most recent list of delegations published in July 2024 does not specify ‘human rights’ as an area of responsibility. States of Jersey Law 2005: Article 30A – Ministerial Responsibilities, R.118/2024 ([link](#)).

⁵⁸ For example, the Scottish Government convenes a non-statutory advisory group (Equality and Human Rights Budget

successive Jersey governments appear to have adopted minimalist approaches, focusing on avoiding ECHR violations rather than actively promoting or protecting those rights.

6.4.2. Institutional arrangements in the States Assembly

When the States Assembly decided not to establish a specialist human rights committee, duties of oversight and scrutiny of the HRJL system and ECHR rights were ‘mainstreamed’ across all scrutiny panels and individual States members.

We set out to explore how well this is working by looking at debates and questions recorded in Hansard for two 24-month periods: 2011-2012 (five years after the HRJL had come into force) and 2022-2023 (when the HRJL had been on the Jersey statute book for over 20 years). Our findings suggest there is a general decline in frequency of political speech about ECHR rights and the HRJL in the Assembly. In both periods, most non-executive members did not refer to ECHR rights or the HRJL. We found that human rights comments by non-executive States members fell sharply in the second sample period – from 46 in 2011-12 to nine in 2022-23, a drop of over 80%. The main reason for the decline was the departure from the Assembly of a cohort of non-executive members who were responsible for a large proportion of human rights comments in the first period.⁵⁹ The only member who consistently referred to human rights across both periods was Deputy Montford Tadier.

We also set out to understand the different purposes served when States members refer to ECHR rights and the HRJL. In this study, we expanded our sample beyond Hansard in 2011-2012 and 2022-23 to include the whole parliamentary record since 2000, including reports by Scrutiny Panels. We found three main uses for references to ECHR rights and the HRJL.

Process checking. States members individually and through scrutiny panels sometimes aim to verify that ministers are taking ECHR rights into account during policy making. The focus is on the process, not specific rights or outcomes. Members and panels require a basic understanding of scenarios where ECHR rights may apply. Members do not need to know which specific rights are relevant. The main reason for a minister to reject a proposal for an ECHR audit proposal is likely to be resources.

Legality checking. A different purpose in referring to ECHR rights is where States members seek guidance on what ECHR rights require. These questions check whether what has happened or proposed could violate an ECHR right. The answer can be given by the Attorney General or Solicitor General. Alternatively, if there has been advance notice of a question, a Minister may be briefed to answer.

Use of ECHR rights for scrutiny. ECHR rights can help all scrutiny panels is by providing a standard to measure the Government of Jersey’s practice and policy against. The evidence we have gathered suggests two things in relation to scrutiny.

- First, scrutiny panels may fail to consider at the start of an inquiry whether a topic involves ECHR rights that need exploring. As a result, ECHR issues may be overlooked or only briefly examined.
- Second, scrutiny panels have been extremely cautious about expressing concluded views that a policy, practice or proposed law violates ECHR rights. This contrasts with the approach of committees in the UK Parliament: the Joint Committee on Human Rights and House of Lords Constitution Committee have not held back from criticising action by the UK government as breaching ECHR rights. Why the difference? There may be two factors at play. First, the

Advisory Group) to ‘help shape the ... human rights approach to the budget’; and is conducting a consultation on a Human Rights Bill for Scotland, which will ‘incorporate a range of economic, social and cultural rights into Scots law for the first time’. In Wales, In 2020 commissioning research ‘to examine options to strengthen and advance equality and human rights in Wales’; a key

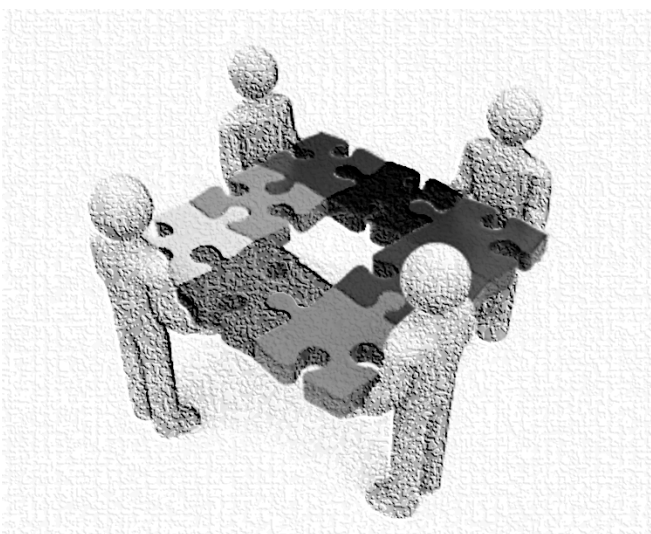
recommendation was to introduce a Human Rights (Wales) Act. In 2022, the Government of Wales published a position statement called *Action to strengthen human rights in Wales: 2018 to 2022*, which was about ‘What the Welsh Government has done to support and improve human rights’.

⁵⁹ Deputies Bob Hill, Trevor Pitman, and Mike Higgins.

States Assembly contains fewer members with a professional background in law and human rights than the UK Parliament.

Secondly, UK parliamentary committees have their own legal advisers, distinct from the UK Government's. In Jersey, scrutiny panels generally access legal advice through the Law Officers' Department, only occasionally seeking advice externally.

One clear conclusion is that the institutional arrangements adopted by the States Assembly have not fostered a strong human rights culture. The evidence shows a marked decline in individual members' use of ECHR rights. While scrutiny panels do make some reference to ECHR rights, this has not developed to the same extent as in the UK Parliament. In Jersey, non-executive members generally do not invoke ECHR rights as a substantive benchmark for assessing ministers' actions and proposals.



7. Distributional outcomes: who benefits?

The third element of the evaluation is identifying which groups and individuals benefit from a particular policy, which ones are disadvantaged, and how strongly these effects are felt. By looking for the 'winners and 'losers' when ECHR rights

were introduced in Jersey, we can gain a bottom-up view of how effectively the policy has been implemented.⁶⁰

It is useful to distinguish between different types of benefits. **Tangible benefits** are concrete and observable such as the grant of legal remedies for individuals, compensation for rights violations, or legislative reforms. **Intangible benefits**, on the other hand, include broader societal impacts like increased public awareness of rights, a stronger culture of accountability, and enhanced trust in public institutions.

Benefits can also be categorized as **individual or collective**. Individual benefits arise when specific people secure justice through the courts, such as a person avoiding unlawful deportation. Collective benefits, however, affect society as a whole, such as when a legal precedent strengthens protections for everybody or when government policies shift to align with international human rights standards.

7.1. Beneficiaries of ECHR compliant policy and legislation

Essentially, anyone covered by legislation passed by the States Assembly since 2000 can be considered a beneficiary of the HRJL. In a sample year (2022), the most frequent users of ECHR-related mechanisms were ministers issuing statements under HRJL article 16 to confirm their belief that a new principal Law they were putting before the States was compatible with ECHR standards. It is therefore possible to claim that the HRJL has had a positive impact on most people's lives, though they may have little appreciation of this.

As discussed above, an audit of pre-2000 law and practice led to updates being introduced. Much of the legislation that needed to change before the HRJL was brought into force affected historically marginalised groups: people in contact with the police, terrorist suspects, mentally ill people, gay men, and children whose parents were unmarried. People in these groups have benefited from new laws that are fairer than before.

⁶⁰ Newman, n 5 above.

7.2. Beneficiaries of ECHR rights in Jersey courts

Individuals in Jersey have used the HRJL to invoke ECHR rights in court since December 2006. We estimate that around 150 people have been directly involved in such litigation over the past 18 years. However, indirect beneficiaries extend beyond those named in the cases. Family members, for example, may benefit if a court ruling favourable to an individual, and the wider public can gain from reforms implemented by public authorities in response to court decisions.

At least two challenge cases that did not succeed in court still produced tangible outcomes for the individuals involved because the litigation prompted political action.

It is important to recognise that, overall, most ECHR-based arguments in Jersey courts have not succeeded. In challenge cases—where individuals claimed that a public authority had breached their ECHR rights—23 out of 29 attempts were dismissed (an 80% failure rate). Similarly, in reliance cases—where ECHR rights were used in other types of litigation—only a small number of litigants saw a direct change in their outcome.

Although the HRJL has enabled more people to use ECHR rights in Jersey courts than in the European Court of Human Rights, the success rate for individuals in Jersey is slightly lower than in Strasbourg. Six of the 29 HRJL cases (21%) resulted in a Jersey court making a favourable ruling for the individual on an ECHR issue. The success rate in Strasbourg is 3 out of 11 cases (27%).

7.2.1. Foreign national offenders

When all litigation in Jersey courts (challenge and reliance cases) between December 2006 and the end of 2024 is considered, the largest group of beneficiaries is foreign national prisoners who have used ECHR to avoid being deported to the country of their nationality at the end of their sentence. It is important to understand the role of ECHR article 8 in these cases. This protects the right to family life but is a ‘qualified’ right, meaning the state can lawfully interfere with it

under certain conditions. When deciding whether to deport a prisoner, there must be a careful balancing exercise.

- On one side is the public interest—primarily public protection and preventing future crime, which can include examining the nature and seriousness of the offence.
- On the other side are the offender’s circumstances and their family’s interests. Factors include how long the person has lived in Jersey, the strength of their local ties, and the potential hardships spouses or children would face if deportation takes place. The wellbeing of any children is treated as a primary consideration.

The Royal Court is involved at two stages.

During sentencing. When an offender is sentenced, the Jurats (lay judges) consider whether the individual should be deported after completing their prison term. Because the court is a public authority, it must apply ECHR rights when making this recommendation. In our sample, we found that in 12 cases, the court decided an offender should not be deported, while in 25 cases it ordered deportation.

Approaching release. As the offender nears the end of their sentence, the Minister for Justice and Home Affairs makes the final decision on deportation. The minister is not bound by the earlier recommendation from the Royal Court because family or other circumstances may have changed over time. If the Minister does order deportation, the offender can challenge it in court. The Royal Court then determines whether that decision complies with ECHR article 8. As noted above, in the five successful challenge cases two involved Portuguese nationals convicted of sex offences against children. They had lived in Jersey for many years and had strong family ties in the island.

7.2.2. Wealthy individuals and trust companies

Another significant trend in the challenge cases is the growing use of ECHR rights by wealthy individuals and trust companies. As noted earlier, 31% of all challenges involved disputes with public

authorities over tax matters or financial services regulation. The first declaration of incompatibility related to a Law designed to limit recovery of costs in this context, if the litigant won against the public authority. Four of these cases were brought by corporate entities, which can also claim certain ECHR rights—such as the right to a fair trial (Article 6), the right to privacy (Article 8), and protection of property (Protocol I, Article 1). Notably, in 2024, all new challenge cases fell into this category and were initiated by trust companies. This type of case is also more likely to be appealed from the Royal Court.

7.3. Has anybody suffered disadvantage from the HRJL?

In the UK, there is a recurring political narrative that the HRA overly protects the rights of criminal suspects or offenders, sometimes at the expense of victims. Critics argue that procedural protections under articles 6 (right to a fair trial) and 8 (right to private life) can be used to shield perpetrators from full accountability or from public scrutiny. There has been no commentary along similar lines in Jersey, critical of the impact of the HRJL on the island's criminal justice system.

In the UK, critics of the HRA have also argued that ECHR rights place undue constraints on immigration control and asylum decisions. Since 1953, Jersey's population has more than doubled—from around 50,000 to over 100,000—primarily due to net inward migration, although in practice the island receives very few asylum applications.

Although Jersey generally applies UK immigration and asylum law through Acts of Parliament extended to the island, there has been little HRJL litigation or adverse political criticism of ECHR rights in this policy area.

8. Political impact of the HRJL



The final dimension of the policy evaluation is to examine the political consequences of the decision to incorporate ECHR rights in Jersey through the HRJL 25 years ago. The overarching theme is that ECHR rights and the HRJL are not regarded as politically relevant. Many islanders may feel they do not have sufficient knowledge of the issues to express an opinion (though more data are needed to confirm this). ECHR rights and the HRJL were not an electoral issue in 2022.

Jersey has generally taken a consensual approach to ECHR rights and the HRJL from the outset. In 2000, only one States member voted against its adoption, and in 2006, it was brought into force with minimal opposition. While a few members voiced concerns about its potential implications, there was broad political agreement on its desirability.

8.1. Jersey public opinion

One marker of the success of a policy is the extent to which it is supported, or accepted, by people. There is, however, currently no available data on public perceptions of ECHR rights in Jersey. However, it is reasonable to consider whether attitudes in Jersey might reflect those in the UK, where surveys show that many people have limited knowledge of the HRA and ECHR. When people do express an opinion, they often

support the idea that human rights should be legally protected, though with some caution. Surveys also indicate that public concern exists around the potential misuse of ECHR rights, particularly in areas such as criminal justice and immigration. These concerns may be shaped by negative portrayals of human rights issues in several newspapers. The mainstream media in Jersey, in contrast, has been generally supportive of human rights or at least neutral in reporting the small number of stories they covered relating to ECHR rights.

The HRJL operates in an institutional context of government, the States Assembly, and judiciary. It can be useful therefore to look at Jersey data for 2024 show, which show low levels of trust in the States Assembly at 4.3 (out of 10, with 1 being 'do not trust at all'), Government scoring neutrally at 5.2, with the judiciary having a moderately high level of trust at 6.0.⁶¹ This is broadly comparable to data relating to the UK and devolved institutions.

8.2. Civil society groups

The success of a human rights policy can be measured not only by legal outcomes but also by how civil society groups—think tanks, campaign groups, and other organisations—engage with it. These groups influence public awareness, political debate, and legal challenges.

In contrast to the intense lobbying and legal activism in the UK, Jersey's civil society groups have played only a modest role in shaping human rights policy and no role in litigation.

One of the earliest groups advocating for stronger human rights protections in Jersey was the **Jersey Rights Association (JRA)**, founded in 1990. Supported by funding from the UK-based Joseph Rowntree Reform Trust, the JRA aimed to expose and challenge social injustices and human rights issues in the island. The JRA had some political influence. One of its members, Gary Matthews, was elected as a Deputy in 1993. In 1995, Matthews successfully introduced an amendment requiring the States Assembly's

Policy and Resources Committee to prepare a report on the case for and against a Bill of Rights in Jersey. Although the report was completed, it was never published. Alongside supportive members of the Law Officers' Department, the JRA played a role in preparing political opinion for what would later become the HRJL. However, its influence waned over time, and by 2014, the JRA appears to have ceased public lobbying activities.

The **Jersey Human Rights Group** is one of the few membership organisations still active in promoting discussion and awareness of human rights. It organises speaker events, often held in the States Building, and has been led by sitting members of the Assembly. The group maintains a Facebook page, but its overall presence in public discourse has been limited.

Several other civil society organisations advocate on issues linked to ECHR rights:

- Liberate focuses on supporting and campaigning for historically excluded groups, particularly in relation to LGBT+ rights.
- The Jersey Community Relations Trust works to combat discrimination and promote equality.
- By contrast, some religious groups, particularly those associated with the Jersey Evangelical Alliance, have actively lobbied against legislative changes related to LGBT+ rights, such as equalising the age of consent for gay teenagers, civil partnerships, and same-sex marriage. However, their opposition has generally been based on religious or moral arguments rather than direct engagement with ECHR rights.

Analysing Jersey's civil society ecosystem in relation to human rights, three key observations emerge:

- Lack of legal interventions – unlike in the UK, where organisations may intervene in HRA cases, no civil society group in Jersey has intervened in an HRJL challenge case.

⁶¹ Statistics Jersey, *Jersey Opinions and Life Style Survey Report 2024* (2024).

- Absence of financial support for litigation – there is no evidence of any group funding a legal challenge under the HRJL. In the UK, campaign organisations sometimes provide financial backing for strategic litigation.⁶²
- Limited political engagement – Jersey civil society groups have engaged with the States Assembly only sporadically, mostly in connection with LGBT+ law reform and debates on the right to die.
- Civil society groups have made only modest attempts to educate the public about their ECHR rights and monitoring government compliance.

In the UK, civil society engagement with human rights is highly polarised. Think tanks and advocacy groups have taken opposing sides:

- Against the Human Rights Act/ECHR: Policy Exchange, Civitas, and Migration Watch UK argue that human rights laws constrain UK sovereignty and interfere with government policy.
- In Defence of the HRA/ECHR: Liberty, JUSTICE, and the British Institute of Human Rights work to protect and expand human rights protections.

These UK-based groups influence policy by commissioning research, submitting evidence to parliamentary scrutiny committees, engaging with the media, and—importantly—intervening in court cases to shape legal interpretations of human rights law.

8.3. Electoral politics

One way to assess the political impact of a policy is to examine its prominence in elections. To explore this, we analysed the June 2022 States Assembly general election manifestos of 93 candidates contesting 49 seats. Voter turnout remained low, with only 41.6% of registered voters casting a ballot.

Candidates were submitted one-page manifestos in an official election booklet for each

constituency. The findings suggest that ECHR rights and the HRJL had low political salience in the election: 94% of candidates made no explicit or implied reference to ECHR rights or the HRJL.

Two candidates expressed views that could be seen as opposing ECHR rights or the HRJL—neither was elected. Four candidates made supportive statements about ECHR rights—three independents and one Reform Jersey member were elected.

Most successful candidates were independents, but both political parties that won seats mentioned human rights in some form:

- Reform Jersey, which won 10 seats, pledged to explore an Equality and Human Rights Commission to challenge discriminatory laws and uphold human rights obligations.
- The Jersey Liberal Conservatives (JLC) formed a coalition with the Progress Party and issued a joint manifesto. While it did not mention ECHR rights explicitly, it supported the UN Convention on the Rights of the Child and criticised the lack of progress in implementing children’s rights. Two JLC members were elected.

These results indicate that human rights policies were not a major electoral issue in Jersey. However, referencing human rights in manifestos did not negatively impact electoral success.

8.4. Political acceptance

Another indicator of policy success is the extent to which it becomes a settled issue. In Jersey, some constitutional policy changes have remained subjects of ongoing debate. For example, the question of whether the States Assembly should include Senators elected on an island-wide basis has been revisited multiple times over the past 25 years.

To assess whether the incorporation of European ECHR provisions through the HRJL has achieved broad political acceptance, an analysis of the States Assembly’s public record was conducted

⁶² In Jersey and the UK, only ‘victims’ of an alleged ECHR violation have standing to start legal proceedings, so campaign organisations generally cannot bring proceedings in their own name.

to identify instances of opposition. The findings indicate that political criticism was concentrated in only two years: 2000 and 2006.

On 8 February 2000, the States Assembly debated the draft HRJL. The legislation progressed through all its stages in a single day and was adopted by a vote of 49 in favour and one against (Deputy Gerard Baudains).⁶³

Six years later, opposition to the ECHR resurfaced when Jersey was required to equalize the age of consent for gay teenagers in 2006. Several States members voiced concerns about the implications of compliance with ECHR standards in this context and rejected the minister's initial proposals.

- Deputy Baudains said we 'seem to be allowing ourselves to be told what to do by an unelected foreign power'.
- Connétable Dan Murphy of Grouville said he 'worried about us caving-in to EU [sic]⁶⁴ bullying. The Assistant Minister spoke earlier in this debate about an international profile but I do not want to see our international profile as being people who bow our heads to every dictate coming out of Europe'.
- Deputy Jacqui Huet of St Helier said, 'I am beginning to think I do not want to sign up to this because I understood that human rights was to stop people being tortured, being raped, being starved, abused children, making women second class citizens. This is what I thought we were signing up to on human rights'.
- Senator Len Norman stated, 'I will not be persuaded, and I will not be swayed by these scaremongering comments of the Chief Minister earlier this morning who told us that we have to accept this change in the law. Clearly he does not want to fall out with his new chums at the Department of Constitutional Affairs'.⁶⁵

Several weeks later, after lengthy debate, States members voted 38 in favour, 11 against, and three abstained in adopting the principles of the draft Sexual Offences (Jersey) Law that equalised the age of consent.⁶⁶

In November 2006, the Assembly debated bringing the HRJL in to force. Deputy Baudains again spoke against the Law, recalling that '*during the debate 6 years ago, I think it was, I voted against the legislation. If I recall correctly I was the only person who did. I was somewhat disappointed with that because there were quite a number of Members who had spoken to me prior to the debate who said that they were not going to support it, but bottled out at the end ... in my view this legislation ensures the rights of murderers, paedophiles, rapists and the like but removes ordinary people's rights in the process*'.

Several other members spoke disapprovingly about what they saw as the implications of the new Law. Deputy Jacqui Huet was particularly critical, saying '*I believe the need for Human Rights Laws is in other countries*' and recounting several tabloid newspaper stories about human rights. Other States Members spoke in favour of the Law. When the vote was called, Members voted 44 *pour*, 1 *contre* (Deputy Baudains).⁶⁷

Since November 2006, *Hansard* contains no record of focused opposition to HRJL or incorporation of ECHR into Jersey law. This level of consensus suggests that, despite initial opposition or concerns from a minority of States members, the integration of ECHR rights into local law has become an accepted aspect of the island's legal framework. This stands in sharp contrast to the UK Parliament, where the HRA and ECHR have remained contentious issues, frequently sparking political debate and division between parties.

⁶³ Hansard did not start until 2005, so there is no verbatim record of the debate.

⁶⁴ The ECHR is not connected to the European Union. It operates under a different international organization, the Council of Europe.

⁶⁵ Hansard, 18 January 2006, debating Draft Sexual Offences (Jersey) Law 200- (P.196/2005).

⁶⁶ Jersey Youth Reform Team, a pressure group of young people formed in June 2005, lobbied for change on equalisation of the age

of consent, submitting evidence to scrutiny panels. In 2006, one of its leaders, 16-year-old Luke Small, started proceedings in the European Court of Human Rights. The Jersey government accepted there was a violation, agreed to amend Jersey law and paid Euros 5,830 damages. *Small v United Kingdom* (Application 7330/06).

⁶⁷ Hansard, 22 November 2006, debating Draft Human Rights (Jersey) Law 200- (Appointed Day) Act 200- (P.140/2006).

9. Conclusion

This report has assessed the impact of the HRJL over the past 25 years, examining whether it has fulfilled its intended goals. The HRJL was introduced to make ECHR rights more accessible to the people of Jersey, ensure government and legislative compliance with human rights standards, and preserve the constitutional balance of power. Our analysis finds that while the HRJL has yielded considerable successes, in several respects it has not fully lived up to its early promise.

One of the HRJL's key achievements is that it has made ECHR rights a recognised part of Jersey's legal landscape. References to these rights have become common in courts, particularly in criminal and administrative law cases. The number of legal challenges citing ECHR rights has increased compared to the period before the HRJL, indicating that more people are using the law to hold public authorities accountable for ECHR non-compliance. However, legal and financial barriers may still limit access, raising questions about who truly benefits from ECHR rights in Jersey's courts.

Since the HRJL, there seems to be a good level of government compliance with ECHR rights. But while only a handful of cases have resulted in successful human rights challenges, this does not necessarily mean that public authorities consistently act within the law. The limited number of cases could also reflect difficulties in accessing justice.

The government does not actively promote ECHR rights awareness. Unlike in other jurisdictions, there is no independent human rights commission or parliamentary oversight committee to monitor compliance.

The HRJL has had an impact on legislative processes, ensuring that laws passed by the States Assembly are ECHR-compliant. However, the lack of transparency in the early years—where ministers refused to provide explanations for human rights compliance—delayed the development of a culture of accountability.

One of the most striking findings of this study is the lack of political and public engagement with ECHR rights issues in Jersey. Unlike in the UK, where ECHR rights law is a topic of intense political debate, the HRJL operates in relative obscurity. Human rights issues rarely feature in election campaigns, and civil society organisations have played little role in shaping policy or supporting legal challenges. This lack of engagement risks turning human rights law into a technical legal framework rather than a living set of principles shaping Jersey's democracy.

10. Future research

This study highlights several areas that require further investigation:

- **Access to justice** – More research is needed into the financial and structural barriers preventing individuals—particularly women and lower income islanders—from bringing human rights cases.
- **Institutional culture** – Future studies should explore whether government officials receive adequate human rights training and whether public authorities have internal mechanisms to ensure compliance.
- **Public attitudes** – There is currently no data on how Jersey residents view human rights and the HRJL. A survey and other research could help policymakers understand public perceptions and improve public awareness and engagement.
- **Scrutiny oversight** – A comparative study of how human rights oversight functions in other small jurisdictions could offer insights into strengthening Jersey's approach.

The HRJL was a significant step forward for Jersey, but there is a risk that without further measures to improve access, accountability, and public engagement, its potential remains unfulfilled. The findings of this report suggest that now is the time for renewed debate about how to strengthen human rights protections for all islanders.

11. Annex: ECHR rights written into Jersey law

Schedule 1 to the HRJL reproduces in full the text the following rights from the European Convention on Human Rights.

Article 2: Right to life

Article 3: Prohibition of torture, inhuman or degrading treatment

Article 4: Prohibition of slavery and forced labour

Article 5: Right to liberty and security

Article 6: Right to a fair trial

Article 7: No punishment without law

Article 8: Right to respect for private and family life

Article 9: Freedom of thought, belief and religion

Article 10: Freedom of expression

Article 11: Freedom of assembly and association

Article 12: Right to marry

Article 14: Prohibition of discrimination in relation to other ECHR rights

Protocol 1, article 1: Protection of property

Protocol 1, article 2: Right to education

Protocol 1, article 3: Right to free elections

Protocol 13, article 1: Abolition of the death penalty.