

## **Oral Question re Article 16 Human Rights 17<sup>th</sup> November 2009**

### **2.13 The Deputy of St. Martin of the Minister for Treasury and Resources regarding the compatibility of the Draft Data Protection (Amendment No. 2) (Jersey) Law 200- with the Human Rights (Jersey) Law 2000:**

Will the Minister inform Members why, in his view, the provisions of the Draft Data Protection (Amendment No. 2) (Jersey) Law 200- (P.147/2009) are compatible with the Human Rights (Jersey) Law 2000 and what particular Articles are relevant to the Data Protection Law?

#### **Deputy E.J. Noel (Assistant Minister for Treasury and Resources - rapporteur):**

The department receives advice from the Law Officers on compatibility with the Convention on Human Rights and it is on their advice which we act. In any case, due to Members' concerns we have made the decision to withdraw the proposition to allow scrutiny to review the proposed legislation including its compatibility with the Convention on Human Rights.

#### **2.13.1 The Deputy of St. Martin:**

I understood that the particular P.147 was going to be deferred, not withdrawn. Could I have confirmation from the Minister, please?

#### **Deputy E.J. Noel:**

The Deputy of St. Martin is correct. We have deferred it, not withdrawn it.

#### **The Deputy of St. Martin:**

If that is the case, may I have the answer? Surely the answer stands whether it is deferred or stands?

#### **Deputy E.J. Noel:**

On the advice that we have received we believe that it is compliant.

#### **2.13.2 Deputy G.P. Southern:**

"On the advice that we have received we believe that it is compliant." This is a very neutral statement. Is the Minister stating clearly that he has sought proper advice from the Law Officers' Department that this particular law is compliant with Human Rights 2000?

#### **Deputy E.J. Noel:**

I am happy to confirm that advice has been sought. With regard to this particular area it is outside my personal expertise.

#### **Deputy G.P. Southern:**

That was even more vague: "Advice has been sought" and the answer came back that it was compliant or it might not be compliant and a bit of a grey area was in there. What sort of answer was received?

#### **Deputy E.J. Noel:**

Yes, legal advice was received to the extent that the proposed legislation is compliant.

#### **2.13.3 Deputy R.G. Le Hérissier:**

We know the shadow and mirrors issue about legal advice. Could the Assistant Minister confirm what were the precise defects, if any, identified with the law which led to his or his Minister's decision to defer?

**Deputy E.J. Noel:**

The main reason why I chose to defer it is because I have to inform the Assembly that I am not up to speed on Data Protection Law and, as it was down to myself to be rapporteur today in light of the Minister for Treasury and Resources being away, I thought it was more appropriate to defer it so that I can get up to speed and to deal with this matter accordingly.

**2.13.4 Deputy R.G. Le Hérisssier:**

Would the Minister confirm that from some source in making his deferral decision he received advice that this was not quite the innocent bit of legislation that he thought it was?

**Deputy E.J. Noel:**

Quite on the contrary. The advice I have been given and from the limited knowledge that I have I believe that this proposed legislation is very suitable.

**2.13.5 Senator S.C. Ferguson:**

Would the Minister like to confirm that the debate on this was deferred at the request of the Corporate Services Scrutiny Panel because we are not totally happy with the implications of this particular amendment?

**Deputy E.J. Noel:**

Yes, the Minister did receive a request from the Corporate Services Scrutiny Panel, but at the end of the day the final decision to defer it was mine personally and I am happy to work with the Scrutiny Panel to bring this matter back to the House in January.

**2.13.6 Deputy T.A. Vallois:**

Would the Assistant Minister not confirm that in fact there are additional amendments to be made to the Data Protection Law with this amendment and that I myself, on behalf of the Corporate Services Scrutiny Panel, have sat down with the Data Protection Commissioner and asked for all this to be put together and for it to be scrutinised and to come back to the House?

**Deputy E.J. Noel:**

That is perfectly true. We are, along with the Commissioner, taking this opportunity to work with scrutiny to bring further amendments to those already outlined in the proposition.

**2.13.7 Deputy G.P. Southern:**

Will the Assistant Minister assure the House that the next time he is to act as rapporteur for a projet that he comes to the House fully prepared to deliver that activity and he is up to speed on his brief?

**Deputy E.J. Noel:**

That is exactly what I am doing.

**2.13.8 Deputy D.J.A. Wimberley of St. Mary:**

If scrutiny played such a major role in this deferment happening, why was scrutiny not mentioned right at the outset in your replies to this question?

**Deputy E.J. Noel:**

I welcome the comment from the Deputy of St. Mary and I apologise to the Corporate Scrutiny Board. I should have mentioned their involvement.

**2.13.9 The Deputy of St. Martin:**

Will the Assistant Minister advise or inform the House why the words: “By notice to serve on the relevant data controller” have been removed from the particular article of the Law, and that was the purpose of the proposition, so would he explain why those words have been removed from the particular law at present or why it is intended to remove those words?

**Deputy E.J. Noel:**

Could I have the words again, please?

**The Deputy of St. Martin:**

“By notice on the relevant data controller” has been removed from the law.

**Deputy E.J. Noel:**

I am unable to answer that because I do not acknowledge why that was removed, if indeed it was.

**The Bailiff:**

We come on to question 14 which Deputy Southern will ask of the Assistant Minister for Treasury and Resources