

STATES OF JERSEY



DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 201- (P.18/2019): AMENDMENT (P.18/2019 Amd.) – AMENDMENT (P.18/2019 Amd.Amd.) – ADDENDUM

**Presented to the States on 30th April 2019
by the Minister for Children and Housing**

STATES GREFFE

ADDENDUM TO P.18/2019 Amd.Amd.

As noted on page 10 of P.18/2019 Amd.Amd., in the report accompanying my proposed amendment to the Scrutiny amendment to [P.18/2019](#), a Protocol has been signed by H.M. Attorney General, the Commissioner for Children and Young People, the Chief Minister on behalf of the Government, and I as Minister for Children and Housing.

The Protocol sets out how the Commissioner can raise with the Attorney General questions around the determination of public interest in the disclosure, or not, of Law Officers' advice, and is attached on the following pages.

Protocol to the Commissioner for Children and Young People (Jersey) Law 2019

The purpose of this Protocol

1. This Protocol (the "Protocol") sets out the agreed circumstances, conditions and procedure for the disclosure to the Commissioner for Children and Young People (the "Commissioner") of legal advice provided by the Attorney General or the Solicitor General, as the case may be, to the Government of Jersey and its departments, further to a request for such legal advice to be supplied under Article 8 of the Commissioner for Children and Young People (Jersey) Law 2019 (the "Law").
2. The Chief Minister, the Minister for Children and Housing, the Attorney General and the Commissioner (the "Signatories") have signed this Protocol to provide clarity as to the application of Article 8 of the Law and in order to encourage a cooperative relationship in matters concerning the supply of Law Officers' advice to the Commissioner, so that the Commissioner may efficiently and effectively perform the Commissioner's functions under the Law.
3. This Protocol is intended only to clarify the application of Article 8 of the Law; it cannot override the functions and powers of the Commissioner. However, the Signatories agree to adhere to the principles set out in this Protocol and will show proper regard for each other's activities. There will be complete openness, transparency and honesty between all Signatories. The interests of children and young people will always be paramount.

Context and International standards

4. It is recognized by the Signatories that the central responsibility for protecting human rights in Jersey rests with the Government of Jersey. The European Convention on Human Rights (the "ECHR"), the United Nations Convention on the Rights of the Child and other treaties impose legal obligations to implement the human rights standards in those treaties. In ratifying these human rights instruments, the Government of Jersey is obliged to ensure that rights are realised, and is bound to develop new legislation in compliance with those treaties.
5. It is recognized by the Signatories that the Office of the Commissioner for Children and Young People is a National Human Rights Institution ("NHRI"). The Law has been drafted to comply with the Principles relating to the Status of National Institutions, adopted in 1993 by the United Nations General Assembly (the "Paris Principles"). The Paris Principles provide an international benchmark for the formulation of the functions and powers of NHRIs, including a power to hear any person and obtain any information and any documents necessary for assessing situations falling within its competence. In particular, the Signatories recognize the significance of this aspect of the Paris Principles and also the fundamental importance in the Commissioner having access to information held by relevant authorities (as defined in Article 1(1) of the Law) in order for the Commissioner to

perform the Commissioner's functions under the Law (as set out in Articles 4 and 5 of the Law).

Article 8 of the Law

6. Article 8 of the Law provides –

- (1) *Subject to the following provisions of this Article, a relevant authority must supply the Commissioner with such information in that authority's possession as the Commissioner may reasonably request for the purposes of the discharge of the Commissioner's functions under Articles 4 (primary function of the Commissioner) and 5 (general functions of the Commissioner).*
- (2) *The information supplied must be information which that relevant authority would, apart from paragraph (1), lawfully be able to disclose to the Commissioner.*
- (3) *A relevant authority that is not a public authority need not supply to the Commissioner, under paragraph (1), any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.*
- (4) *Subject to paragraph (5), a relevant authority need not supply to the Commissioner under paragraph (1), any information that is, or relates to, advice by the Attorney General or the Solicitor General where the Attorney General has determined that in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.*
- (5) *Despite determining that the public interest in supplying the information referred to in paragraph (4) is outweighed by the public interest in not doing so, the Attorney General may supply the information requested to the Commissioner, after first consulting the relevant authority concerned.*
- (6) *A relevant authority may, despite not receiving any request from the Commissioner to supply information for the purposes of the discharge of his or her functions under any of Articles 4 and 5, supply any such information it holds to the Commissioner provided that –*
 - (a) *it is lawfully able to do so; or*
 - (b) *in the case of information referred to in paragraph (4), the Attorney General has determined that it is in the public interest to supply it.*

- (7) *Nothing in this Article is intended to limit the operation of the Freedom of Information Law or to prevent the Commissioner from making a request for information under that Law.*
- (8) *Information supplied by a relevant authority under paragraph (1) must be supplied in such manner and within such period as the Commissioner may reasonably specify.*
- (9) *The States may, by Regulations, amend this Article for the purpose of making further provision about the supply of information to the Commissioner.*

Law Officers' Advice privilege

7. The Law Officers are the principal legal advisers to the Government of Jersey and other departments and entities of the States of Jersey, providing advice on legal matters that ensures members of the Government of Jersey, States of Jersey, departments and other entities are able to act lawfully. It is recognized by the Signatories that Law Officers' advice privilege is a longstanding, undisputable constitutional convention. The convention provides that neither the fact, nor the content, of legal advice provided by the Law Officers to the Government of Jersey and other entities should be disclosed without the prior consent of both the Law Officers and the recipient of that advice.
8. It is recognized by the Signatories that the purpose of the confidentiality protected by the convention is to protect fully informed decision making by allowing government to seek legal advice in private, without fear of adverse inferences being drawn from either the content of the advice or the fact that it was sought. It ensures that government is neither discouraged from seeking advice in appropriate cases, nor pressurised to seek advice in inappropriate cases.

Procedure for making a request for the supply of information where it is, or relates to, advice provided by the Attorney General or the Solicitor General to a relevant authority

9. The Signatories agree that requests for the provision of information that is or relates to advice from the Attorney General or the Solicitor General will be made in writing by the Commissioner. In urgent cases, such a request may be made orally by the Commissioner but, unless otherwise agreed, written confirmation of that request will be provided by the Commissioner as soon is practicable after being made and, in any event, within 2 working days.
10. Receipt of a request by the Commissioner for the supply of information will be confirmed in writing by the relevant authority or the Attorney General, depending on to whom the request is directed. Receipt of an oral request for information will be confirmed in writing, where practicable.

11. The Chief Minister and the Minister for Children and Housing agree that where the Commissioner makes a request to a relevant authority (ie a relevant authority other than the Attorney General or the Solicitor General) for the supply of information, that relevant authority will, without unreasonable delay, refer that request to the Attorney General. The Attorney General agrees that receipt of such a referral will be confirmed in writing.
12. The Commissioner must specify in any request –
 - a. a description of the information required;
 - b. the purpose for which the information is sought; and
 - c. to whom, if anyone, onward disclosure of information provided to the Commissioner may be necessary and the purpose such disclosure would serve.
13. Each request for the supply of information will be assessed on a case-by-case basis by the Attorney General in accordance with Article 8. That assessment, and any other determination under this Protocol, will be made by the Attorney General with regard to the best interests of any child or young person affected by the information in question.
14. In any case where the request for information is refused in part or whole, the Attorney General will provide the reasons for that refusal. The Commissioner may publicise the Attorney General's reasons for refusing a disclosure of information.
15. Where the Attorney General determines that information is to be disclosed, that information will be made available to the Commissioner in such form and manner, and within such period of time as the Commissioner may reasonably specify.
16. In urgent cases, the Attorney General will determine the matters specified in paragraph 13 above within 24 hours from the time the relevant oral or written request is provided.

Confidentiality

17. The Commissioner agrees that information supplied by the Attorney General or a relevant authority that is or relates to the provision of advice by the Attorney General or the Solicitor General is not to be disclosed to any other person without the consent of the Attorney General, that consent to be provided either at the time the information is supplied to the Commissioner or within the time periods specified in paragraphs 15 or 16, depending on the nature of the original request for information.

Retention of disclosed information

18. The Commissioner acknowledges that any information provided under this Protocol must not be retained for longer than is reasonably required to fulfil the purpose for which it was sought or for longer than is permitted under applicable laws, regulations and requirements. As soon as practicable after any information supplied under this Protocol is no longer required, the Commissioner will dispose of it in a secure manner.
19. The Commissioner will inform the Attorney General in writing when any such information is disposed of, and the circumstances of its disposal.

Review

20. The Signatories agree to review this Protocol on a date on or around the expiry of 6 months from its signing, and on or around the expiry of each 6 month period thereafter. The Signatories agree to work together to improve the efficacy and operation of the Protocol, and to resolve any matters as comprehensively as is practicable.
21. The Signatories agree that the Protocol may be amended at any time when, among other things –
- a. There are changes of circumstance
 - b. Matters set out in the Protocol prove to be unworkable or in need of adjustment, or
 - c. Matters arise which were not foreseen at the time the Protocol was agreed.
22. Any amendments to the Protocol must be agreed in writing by all Signatories.


SIGNED, on 29 April 2019, by –



Deborah McMillan
Commissioner for Children and Young People



Senator John Le Fondré
Chief Minister



Robert MacRae QC
HM Attorney General



Senator Sam Mézec
Minister for Children and Housing