

STATES OF JERSEY



Jersey

DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202-

Lodged au Greffe on 14th February 2022
by the Minister for Children and Education
Earliest date for debate: 29th March 2022

STATES GREFFE



Jersey

DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Children and Education has made the following statement –

In the view of the Minister for Children and Education, the provisions of the Draft Children (Convention Rights) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy S.M. Wickenden of St. Helier**
Minister for Children and Education

Dated: 10th February 2022

REPORT

1. Introduction

The principal ambition in bringing forward the draft Children (Convention Rights) (Jersey) Law 202- is to achieve significant culture-change in relation to the policies, laws and day-to-day practices which affect Jersey's children. This draft Law is intended to embed consideration of children's rights, as described in the [United Nations Convention on the Rights of the Child](#) ("UNCRC" or "the Convention"), in the policy development and decision-making processes undertaken by the States Assembly and its Bodies, Ministers, Government Departments and civil society organisations working with children and their families.

The UNCRC is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. It was adopted by United Nations General Assembly on 20 November 1989 and has subsequently become the most widely-ratified international human rights treaty in history. The United Kingdom's ratification of the UNCRC, together with two of its Optional Protocols, was [extended to Jersey at the Island's request in 2014](#).

As a part of the UK State Party to the UNCRC, Jersey is subject to the monitoring and reporting processes of the [UN Committee on the Rights of the Child](#) ("the UN Committee") and has an obligation to continue to pursue measures, such as legislation, to further realize children's rights and implement the Convention.

1.1. Background

In July 2017, the final report of the Independent Jersey Care Inquiry ("IJCI") ([R.59/2017](#)) concluded that: "Legislation for children in Jersey has lagged behind the developed world." Later that year the States Assembly voted unanimously to approve [P.63/2017](#) which called for the impact of all new legislation on children's rights to be considered and published, for consideration to be given to the legal incorporation of the UNCRC and for all States employees to receive a copy of the Convention and training where relevant.

Ministers' plans for implementing the recommendations made by the IJCI ([P.108/2017](#)) included the appointment and creation of a [statutory framework](#) for a Children's Commissioner for Jersey who would have, "a key role in holding government to account on its commitment to the [UNCRC]."

Following the election in 2018, the new Council of Ministers decided to pursue an incremental approach to the incorporation of the UNCRC into Jersey law. Ministers confirmed their intention to begin with a 'due regard' model of indirect incorporation, in order to embed consideration of children's rights in policy development processes. This formed part of the commitment to progress an extensive [Children's Legislation Transformation Programme](#).

The model of indirect incorporation proposed in this draft Law includes the introduction of a statutory Children's Rights Impact Assessment ("CRIA") process. CRIAs provide robust evidence of due regard and support policy development and decision making which takes children's rights into account. In [General Comment No. 5](#) the UN Committee

“commends” States which bring forward legislation to place CRIAs on a statutory footing:

“Ensuring that the best interests of the child are a primary consideration in all actions concerning children (art. 3 (1)), and that all the provisions of the Convention are respected in legislation and policy development and delivery at all levels of government demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation). This process needs to be built into government at all levels and as early as possible in the development of policy...”

“The Committee commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements. Every State should consider how it can ensure compliance with article 3 (1) and do so in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.”

The draft Children (Convention Rights) (Jersey) Law 202- realises the domestic commitments made in the [Common Strategic Policy 2018-2022](#) and [Government Plan 2020-2023](#), as part of the strategic priority to [Put Children First](#) and also represents a substantial measure of UNCRC implementation in response to Jersey’s obligations under international law.

2. Summary of the draft Law

The draft Law –

- is based on a model in which groups of ‘duty-bearers’ are required to demonstrate ‘due regard’ to children’s rights when they are engaged in making decisions about the development of legislation, policy or practice which may directly or indirectly affect children;
- introduces a statutory CRIA process to evidence the due regard duty in relation to specified decisions debated by the States Assembly
- provides for duty-bearers to determine their preferred mode of due regard for the decisions identified in the Law which are not subject to debate in the States Assembly;
- sets-out the general obligations falling on duty-bearers to:
 - promote knowledge and understanding of children’s rights;
 - appropriately support children who wish to complain to them about their decisions;
 - take the views of children who may be impacted by their decisions into account;
 - regularly report on how they have fulfilled the duty to have due regard;
- requires the Minister for Children and Education to make, publish and regularly review a Children’s Rights Scheme as the statutory guidance to support duty-bearers to fulfil the duty to have due regard;

- establishes the Minister for Children and Education as the duty-bearer responsible for co-ordinating the implementation of the Law and the Island's obligations under the UNCRC;
- amends the Commissioner for Children and Young People (Jersey) Law 2019 to reflect recent changes to the [Standing Orders of the States Assembly](#).

The following provides further detail on the various Articles, although more information on the effect of the individual Articles is found in the Explanatory Note to the draft Law.

2.1. Defining the due regard duty and duty-bearers (Articles 3-5)

The due regard duty proposed in Article 3 of this draft Law will require four groups of duty-bearers to undertake and demonstrate consideration of children's rights, alongside all other relevant issues, when making the decisions described in Articles 6, 8 and 9. In accordance with the definition established in the UNCRC, children are identified in the draft Law as everyone under the age of 18.

The first three groups of duty-bearers identified in Article 4 (Ministerial duty-bearers; Elected Member duty-bearers; and Assembly Body duty-bearers) have a shared entitlement to lodge propositions for debate in the States Assembly. Consequently, all three groups are able to define and shape Jersey's laws, policies and public spending.

The fourth group of duty-bearers identified in Article 4 comprises those 'public authorities' which fall within the definition set-out in Article 5(1) for the purpose of this draft Law. Each named Public Authority has agreed to be listed in Schedule 1 following consultation by the Minister for Children and Education. The schedule of Public Authority duty-bearers is expected to grow over time in accordance with the proposed Ministerial Order making powers and obligation to consult, described in Article 5(2)-(8). The inclusion of this group of duty-bearers within the scope of the draft Law will support increased consideration and mainstreaming of children's rights across the community and voluntary sector and Government's key civil society partners.

2.2. Duty to have due regard in relation to matters debated by the States Assembly (Articles 6 and 7)

The due regard duty proposed in Article 6 has been framed to ensure the States Assembly is able to consider the children's rights implications of the propositions it debates. To achieve this, duty-bearers will be required to complete CRIAs for the decisions set out in Article 6(1) and (2).

The decisions falling under Article 6(1) apply solely to Ministerial duty-bearers in relation to the development of the annual Government Plan. Ministerial duty-bearers will need to prepare and publish CRIAs for three specified types of policy proposal in order to describe the likely impact on children arising from:

- changes to public expenditure;
- new or revised taxes, duties and associated allowances or reliefs;
- changes to the contributions due under the Social Security Law.

Under Article 6(4), Ministerial duty-bearers are able to exercise discretion in how they discharge this requirement by determining the number of

CRIA to be produced each year. This allows for policy proposals to be grouped thematically, by value, revenue type or any other device. Ministerial duty-bearers consider to be the most appropriate focus for their Government Plan CRIsAs.

There is no requirement under this draft Law for a CRIA to be developed for each year's Government Plan proposition as a whole due to the unfeasible nature of such a task. The proposition lodging the proposed Government Plan has therefore been added to the list of 'exempt decisions' in Schedule 2.

The second aspect of the Article 6 due regard duty applies to Ministerial, Elected Member and Assembly Body duty-bearers, requiring them to prepare and publish CRIsAs for the propositions they lodge for debate in the States Assembly. This duty covers all propositions unless specifically exempted in Schedule 2. This list of exempt decisions can be amended via Ministerial Order following consultation with the Article 6 duty-bearers, to enable future refinements to be made, if required.

Article 7 establishes that the Jersey CRIA process will be two-part process, comprising a 'preliminary assessment' and a 'full assessment'. The CRIA preliminary assessment will function as a brief screening tool to establish whether a proposal is likely to have an impact on children. Where impacts are not shown to be likely in this step, duty-bearers will not need to complete the CRIA full assessment and will be able to provide their preliminary assessment as evidence that they have fulfilled the due regard duty. Where completion of the preliminary assessment indicates that a proposal is likely to impact children, duty-bearers will be required to complete the full assessment.

With respect to the necessity for the Assembly to debate propositions as a matter of urgency from time-to-time, Article 7(5) to (8) establishes the arrangements duty-bearers must follow. These arrangements apply in the event that they would ordinarily be required to complete the CRIA full assessment but have determined that there is insufficient time to do so, as they intend to request that the States agree to reduce the minimum lodging period applicable to their proposition. Where the Assembly agrees to reduce the lodging period, these provisions provide for duty-bearers to delay completion of the CRIA full assessment for up to six weeks after their urgent proposition is debated and approved. Where the States do not agree to reduce a proposition's lodging period, the duty-bearer will be required to complete the CRIA full assessment prior to the date set for its debate.

CRIsAs prepared under the Article 6 duty will relate to propositions and policy proposals which are debated publicly in the States Assembly. Article 7(10) and (11) establish that any attributable personal data, absolutely exempt information or qualified exempt information is prohibited from publication and would therefore need to be redacted to ensure the CRIA could be published in compliance with the Children's Rights Scheme and other relevant legislation¹ to support decision making in the Assembly.

¹ [Data Protection \(Jersey\) Law 2018](#); [Freedom of Information \(Jersey\) Law 2011](#)

2.3 Due regard duties of Ministerial duty-bearers (Article 8)

Under Article 8, Ministerial duty-bearers will be required to have due regard when making decisions about the discharge of any of their functions, or the formulation or revision of policies and subordinate legislation.

The precise form of due regard undertaken to fulfil this Article would be at the discretion of Ministerial duty-bearers, meaning that completion of CRIAs will be optional. Due regard requires duty-bearers to be familiar with the UNCRC, so that potential impacts on children's rights arising from a decision can be considered before it is taken. This might involve engagement with children to explore their views and experiences on an issue, consulting relevant published material including statistics, report or surveys or speaking to children's advocates to support and inform decision-making. This process should result in a balanced consideration of children's rights alongside other relevant laws, policies and priorities which Ministerial duty-bearers need to take into account.

Where a CRIA is voluntarily completed to fulfil the Article 8 duty this must be published, with any absolutely or qualified exempt information redacted, unless it contains attributable personal data. This provision is designed to enable Ministerial duty-bearers to complete a CRIA in relation to a decision concerning potentially identifiable groups or individuals, without being compelled to publish it.

2.4 Due regard duties of Public Authority duty-bearers (Article 9)

Under Article 9, Public Authority duty-bearers will be required to have due regard when making decisions about: the discharge of any of their functions; or the provision of any activities or services that are either regulated by the [Care Commission](#) or delivered under a contract with another duty-bearer under this Law.

In line with Article 8, the precise form of due regard undertaken to fulfil the Article 9 duty would be at the discretion of Public Authority duty-bearers, as the completion of CRIAs will be optional. A range of approaches for fulfilling the due regard duty when CRIAs are not completed by Article 8 and Article 9 duty-bearers, will be set out in the Children's Rights Scheme, which is required under Article 12.

As with Article 8, where a CRIA is completed to fulfil the Article 9 duty this must be published, with any absolutely or qualified exempt information redacted, unless it contains attributable personal data. This provision is designed to enable Public Authority duty-bearers to complete a CRIA in relation to a decision concerning potentially identifiable groups or individuals, without being compelled to publish it.

2.5 General obligations of all duty-bearers and the Minister (Articles 10 and 11)

This draft Law also sets the 'general obligations' of duty-bearers in order to support the due regard duty with respect to the decisions set-out in Articles 6, 8 and 9.

All duty-bearers will be required to:

- promote knowledge and understanding of the UNCRC;
- ensure that they handle any complaints received in a child-friendly manner, publicising how and to whom complaints can be made and

the details of any ways in which an unresolved complaint can be escalated;

- have due regard to the views of children who may be directly or indirectly affected by the decisions they make.

Under Article 10 Ministerial, Assembly Body and Public Authority duty-bearers will also be required to report on how they have fulfilled their due regard duty at regular intervals. This obligation has not been extended to Elected Member duty-bearers to ensure proportionality. However, individual Members or groups of Members could issue a report of this nature if they wished to do so.

Article 11 establishes that the Minister for Children and Education has a number of general duties with respect to the implementation of this draft Law and the Island's obligations under the UNCRC.

2.6. Children's Rights Scheme and requirements for its revision (Articles 12 and 13)

The draft Law requires the publication of a Children's Rights Scheme ("the Scheme") to support duty-bearers to fulfil the duty to have due regard. The Scheme will have the status of statutory guidance and will be the principal resource for duty-bearers and those who support them. The draft Law sets-out the procedures for revising the Scheme and the matters it must cover, including:

- the provision of training and support for duty-bearers;
- the preparation of CRIAs;
- other forms of due regard;
- fulfilling the general obligations.

As a minimum, the draft Law requires that the Scheme is revised at least once during each UNCRC periodic reporting cycle, through which the Island's ongoing implementation of the Convention is reviewed together with progress across the wider UK State Party. This frequency reflects the need for Jersey to consider and respond to each set of Concluding Observations issued by the UN Committee with the requirement to revise the Children's Rights Scheme.

2.7. General provision as to Orders (Article 14)

Under this draft Law, the Minister for Children and Education has Order making powers to:

- amend the definition of Public Authority duty-bearers in Article 5(1);
- amend Schedule 1 to add, remove or rename a Public Authority duty-bearer;
- amend the list of exempt decisions in Schedule 2;
- bring the draft Law into force.

Article 14 provides for the Minister to also amend other affected provisions within the Law as a direct result of exercising these Order making powers.

2.8. Amendment of the Commissioner for Children and Young People (Jersey) Law 2019 (Article 15)

Article 15 of the draft Law set-out proposed amendments to the [Commissioner for Children and Young People \(Jersey\) Law 2019](#) which are required to reflect changes to Standing Orders since this Law was debated and approved.

2.9. Citation and commencement

Other than Article 15 and 16, this draft Law will come into force on a day, or days, specified by the Minister for Children and Education by Order.

This provision allows for the duties described in this draft Law to be enacted simultaneously or incrementally, if a phased approach to implementation is desired.

2.10. Public Authorities (Schedule 1)

The list of Public Authority duty-bearers set-out in Schedule 1 of this draft Law follows the initial period of consultation with the members of the Children's Cluster, Andium Homes and the Comité des Connétables.

In accordance with the arrangements established in Article 5, Schedule 1 can be expected to grow following the enactment of this draft Law, as further eligible organisations confirm their willingness to be scheduled as Public Authority duty-bearers.

2.11. Exempt Decisions (Schedule 2)

Schedule 2 lists the propositions which are exempt from the requirement to prepare and publish a CRIA under Article 6. The schedule of exempt decisions has been compiled to ensure that the time and effort required to produce CRIs can be focused on the propositions most likely to impact children.

3. Conclusion

The draft Children (Convention Rights) (Jersey) Law 202- has been developed to reflect the unique features and machinery of Jersey's legislature, in order to secure robust consideration of children's rights within key decision-making processes and an enduring realisation of the commitment to put children first. The proposed due regard duty is a crucial and common endeavour undertaken by those with the authority and opportunity to protect, fulfil and realise children's full enjoyment of their rights under the UNCRC.

The Minister for Children and Education, supported by the Council of Ministers, is pleased to present this draft Law, is grateful to those that have been involved in the research and consultation, and commends it to the States Assembly.

4. Finance and manpower implications

There are no direct additional financial implications or manpower costs associated with adopting this Law, as existing resources will be applied to support implementation.

5. Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Children (Convention Rights)
(Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Children (Convention Rights) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law, in the form reviewed by them, is compatible with the European Convention on Human Rights (“**ECHR**”)

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law would, if passed, provide for giving further effect in Jersey to the rights and obligations set out in the United Nations Convention on the Rights of the Child (“**UNCRC**”) and make minor amendments to the Commissioner for Children and Young People (Jersey) Law 2019. The principal purpose of the draft Law is to impose on a range of ‘duty-bearers’ a statutory duty to have due regard to the UNCRC, specified Optional Protocols and, where relevant, general comments of the United Nations Committee on the Rights of the Child, whenever specified decisions are made that may have a direct or indirect impact on children.

In general terms, the draft Law is concerned with further implementing the UNCRC in Jersey law, by means of an ‘indirect’ measure of incorporation, namely a statutory duty on specified persons whose functions may have an impact on children to have regard to, inter alia, the UNCRC. The draft Law also sets out several requirements intended to facilitate compliance with the statutory due regard duty (for example, requirements relating to Children’s Rights Impact Assessments (‘**CRIA**’) and a Children’s Rights Scheme). In this general sense, the draft Law does not raise any issues of compatibility with the ECHR.

Article 7 of the draft Law sets out the requirement for duty-bearers to complete a CRIA and it is possible that the assessment of impacts on children’s rights to be undertaken in accordance with the CRIA requirement may involve a discussion of impacts on specific children or groups of children. CRIs are required to be published in accordance with arrangements to be established under the Children’s Rights Scheme (Article 7(9)). Any publication of personal data would raise Article 8 ECHR (right to private life) issues. However, the draft Law contains safeguards against arbitrary disclosure of personal data, prohibiting such disclosure where steps to pseudonymize data in a CRIA does not prevent attribution to particular individuals (see Articles 7(10) and (11); Article 8(4) and (5); Article 9(4) and (5)). These safeguards are considered sufficient to make the provisions for the publication of CRIA compatible with Article 8 ECHR in principle. It is relevant to note also that public authorities, such as those responsible for undertaking and publishing CRIs are required to act in a manner compatible with the ECHR, including the right to private life under Article 8 ECHR, by Article 7 of the Human Rights (Jersey) Law 2000.

No other issues of compatibility are thought to be raised by the draft Law.

EXPLANATORY NOTE

This draft Law, if passed, will make provision giving further effect in Jersey to the rights and obligations set out in the United Nations Convention on the Rights of the Child (the “Convention”). Persons who are described as “duty-bearers” under this Law will be required to have due regard to the requirements of the Convention whenever certain decisions are to be taken by them which may have a direct or indirect impact on children. This Law also takes the opportunity to make minor housekeeping amendments to the Commissioner for Children and Young People (Jersey) Law 2019 (the “Commissioner Law”).

Article 1 contains the definition of certain words and expressions used in this Law.

Article 2 contains grouped definitions of words and expressions that are defined by reference to the same laws.

Article 3 requires duty-bearers, as defined in *Article 4*, to have due regard to the requirements of the Convention and the Optional Protocols to the Convention on the sale of children, child prostitution and child pornography, and the involvement of children in armed conflict. The duty is triggered whenever a duty-bearer in respect of whom *Article 6*, *8* or *9* applies, takes a decision described in those Articles.

Article 4 describes what constitutes a duty-bearer under this Law. Duty-bearers fall into 4 categories namely, Ministerial, Elected Member, Assembly Body and Public Authority.

Article 5 introduces *Schedule 1* which names Public Authority duty-bearers that perform functions in relation to children and their families and have any of the characteristics set out in *Article 5(1)*. *Article 5(2)* enables the Minister for Children and Education (the “Minister”) to amend, by Order, the characteristics listed in *Article 5(1)* or, *Schedule 1* for the purposes of adding or removing a Public Authority duty-bearer. Should the Minister wish to make a person who exercises functions in relation to the administration of justice a Public Authority duty-bearer, the Minister must first consult the Chief Minister or whichever Minister is for the time being responsible for liaison with the department responsible for the administration of justice. This Article further provides that the Minister cannot make an Order to make the Law Officers’ Department a Public Authority duty-bearer.

Article 6 applies in respect of Ministerial, Elected Member and Assembly Body duty-bearers (the “Article 6 duty-bearers”). With regard to Ministerial duty-bearers only, they must exercise the duty to have due regard when making any decision about the formulation of policy in respect of a government plan relating to proposed increases or decreases of expenditure; proposed or revised revenue raising measures; or proposals to change contributions under the Social Security (Jersey) Law 1974. Article 6 duty-bearers must exercise the duty to have due regard when making any decision about the formulation of propositions which, under the Standing Orders of the States of Jersey (“standing orders”), include any draft enactment required to be passed or made by the States. Any exercise of the duty to have due regard under *Article 6* triggers the requirement for the duty-bearer to prepare and publish a children’s rights impact assessment (for the purposes set out in *Article 12(5)(a)*) unless the decision in question relates to the formulation of a proposition exempted under *Schedule 2*.

Article 7 sets out certain requirements for the preparation of children’s rights impact assessments in respect of decisions under *Article 6*. For the purposes of this Article a children’s rights impact assessment is comprised of a preliminary assessment and a full assessment. A preliminary assessment must be undertaken in respect of all decisions

under *Article 6* to determine whether the decision in question is likely to have any direct or indirect impact on children. A full assessment is not required if the preliminary assessment determines that decision is not likely to have an impact. If the preliminary assessment determines that a decision relating to the formulation of a proposition is likely to have an impact, the Article 6 duty-bearer is not required to complete a full assessment if there is insufficient time to complete one and lodges the proposition with the intention of seeking the agreement of the States to reduce the minimum lodging period required in respect of the proposition. If the Article 6 duty-bearer does not seek or obtain the State's agreement to reduce the lodging period, the duty-bearer is required to complete the full assessment and publish it before the proposition is debated. If the States agree to reduce the lodging period, the full assessment must be completed and published not later than 6 weeks after the proposition is debated and adopted by the States. This Article also sets out requirements as to the publication of preliminary and full assessments.

Article 8 provides that Ministerial duty-bearers must exercise the duty to have due regard when making any decision in respect of the discharge of any of their functions (as defined in *Article 1(1)*) or the formulation of any policy. The preparation of a children's rights impact assessment in respect of a decision under this Article, is at the Ministerial duty-bearer's discretion.

Article 9 provides that Public Authority duty-bearers must exercise the duty to have due regard when making any decision in respect of the discharge of any of their functions (as defined in *Article 1(1)*), the provision of a regulated activity as defined in the Regulation of Care (Jersey) Law 2014, or the provision services under a contract of services with any other duty-bearer under this Law. The preparation of a children's rights impact assessment in respect of a decision under this Article, is at the Public Authority duty-bearer's discretion.

Article 10 sets out the 4 general obligations of duty-bearers whenever decisions are made under *Article 6*, *8* or *9*. Those obligations apply in respect of efforts to promote knowledge and understanding of the Convention; taking reasonable steps to ensure that complaints are handled in a child-friendly manner; having regard to the views of children who may be directly or indirectly impacted by any decision; and preparing and publishing annual reports on how the duty to have due regard has been fulfilled.

Article 11 sets out the Minister's general duty under this Law which is to oversee and co-ordinate its implementation and promote the States fulfilment of its obligations as a State party to the Convention.

Article 12 requires the Minister to make and publish a Children's Rights Scheme setting out arrangements for facilitating the fulfilment of the duty to have due regard. This Article sets out the details of what those arrangements must include, such as arrangements for the preparation and publication of children's rights impact assessments and the provision of training, support, and guidance to duty-bearers.

Article 13 provides for the regular revision of the Children's Rights Scheme.

Article 14 sets out the scope of the Order making powers to amend this Law.

Article 15 makes some minor housekeeping amendments to the Commissioner Law to update certain definitions arising from amendments to standing orders.

Article 16 gives the title by which this Law may be cited and for its split commencement. *Articles 15* and *16* are to come into force 7 days after this Law is registered. The remainder of this Law is to come into force on a day (or days) to be specified by Order of the Minister.



Jersey

DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202-

Contents

Article

1	Interpretation.....	17
2	Miscellaneous references	18
3	Duty to have due regard to the Convention on the Rights of the Child	19
4	Duty-bearers.....	19
5	Meaning of “public authority” and related provisions	19
6	Duty to have due regard – Ministerial, Elected Member and Assembly Body duty-bearers	21
7	Children’s rights impact assessments in respect of decisions under Article 6	22
8	Duty to have due regard – Ministerial duty-bearers.....	23
9	Duty to have due regard – Public Authority duty-bearers.....	24
10	General obligations of duty-bearers	24
11	Minister’s general obligations in respect of implementation of the Law and promotion of Convention obligations	25
12	Children’s Rights Scheme	25
13	Revision of Children’s Rights Scheme	26
14	General provision as to Orders	27
15	Amendment of the Commissioner for Children and Young People (Jersey) Law 2019	27
16	Citation and commencement.....	27

SCHEDULE 1 **28**

PUBLIC AUTHORITIES	28
--------------------	----

SCHEDULE 2 **29**

EXEMPT DECISIONS	29
------------------	----



Jersey

DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202-

A LAW to make provision for and in connection with giving further effect in Jersey to the rights and obligations set out in the United Nations Convention on the Rights of the Child; to amend the [Commissioner for Children and Young People \(Jersey\) Law 2019](#) in connection with the [Standing Orders of the States of Jersey](#); and for connected purposes.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

(1) In this Law –

“Article 6 duty-bearer” means Ministerial duty-bearers, Elected Member duty-bearers and Assembly Body duty-bearers;

“child” means an individual who has not reached the age of 18;

“children’s rights impact assessment” means an assessment for the purposes described in Article 12(5)(a);

“Children’s Rights Scheme” and “Scheme” is construed in accordance with Article 12;

“Commissioner” has the definition given in the [Commissioner for Children and Young People \(Jersey\) Law 2019](#);

“Committee” means the Committee on the Rights of the Child established under Article 43(1) of the Convention;

“Convention” means the United Nations Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (General Assembly resolution 44/25), ratified by the United Kingdom on 16th December 1991 and extended to Jersey on 29th April 2014 (including any Optional Protocols to that Convention which are in force in relation to the United Kingdom), subject to any

reservations, objections or interpretative declarations by the United Kingdom for the time being in force;

“duty-bearer” is construed in accordance with Article 4;

“duty to have due regard” is construed in accordance with Article 3;

“functions” means powers or obligations whether derived under customary law, or conferred under an enactment or under any other form of written authority, and include such responsibilities as are calculated to facilitate, or are incidental or conducive to, the discharge of those functions;

“government plan” has the definition given in the Public Finances Law;

“lodge” means lodge au Greffe in accordance with standing orders;

“Minister” means the Minister for Children and Education;

“present” in relation to a report is construed in accordance with standing orders;

“proposition” is construed in accordance with standing orders;

“public authority” is construed in accordance with Article 5;

“Public Finances Law” means the [Public Finances \(Jersey\) Law 2019](#);

“publish” in Articles 10, 12 and 13 means publish online or in any other manner appearing to the person publishing to be likely to bring the matter published to the attention of the public or those whom it concerns;

“Social Security Law” means the [Social Security \(Jersey\) Law 1974](#);

“standing orders” means the [Standing Orders of the States of Jersey](#) including any amendments to them;

“States” means the States of Jersey constituted under Article 2 of the States of Jersey Law;

“States of Jersey Law” means the [States of Jersey Law 2005](#);

“taxation draft” has the definition given in the Public Finances Law.

- (2) The Optional Protocols mentioned in the definition “Convention” are –
- (a) the Optional Protocol on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25th May 2000 and entered into force on 18th January 2002; and
 - (b) the Optional Protocol on the involvement of children in armed conflict, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25th May 2000 and entered into force on 12th February 2002.

2 Miscellaneous references

References in this Law to –

“Ministerial duty-bearers”, “Elected Member duty-bearers”, “Assembly Body duty-bearers” and “Public Authority duty-bearers” are construed in accordance with Article 4;

“absolutely exempt information” and “qualified exempt information” have the definition given in the [Freedom of Information \(Jersey\) Law 2011](#);

“personal data” and “data subject” have the same meaning as in Article 2 of the [Data Protection \(Jersey\) Law 2018](#), and “pseudonymization” has the same meaning as in Article 3 of that Law.

3 Duty to have due regard to the Convention on the Rights of the Child

Whenever decisions falling under Article 6, 8 or 9 are to be taken which may have a direct or indirect impact on children, duty-bearers are required in accordance with this Law to have due regard –

- (a) to the requirements of –
 - (i) Part 1 of the Convention,
 - (ii) Articles 1 to 10 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, and
 - (iii) Articles 1 to 7 of the Optional Protocol to the Convention on the involvement of children in armed conflict; and
- (b) where relevant, to the general comments on the Convention issued by the Committee from time to time.

4 Duty-bearers

- (1) The persons listed in first column of the table are duty-bearers.
- (2) The second column of the table gives duty-bearers the title by which they are referred to in this Law.

1 Duty-bearers	2 Title
Chief Minister, Council of Ministers, Ministers, Assistant Ministers and officers exercising delegated functions under Article 28 (power of Ministers to delegate functions) of the States of Jersey Law	Ministerial duty-bearers
Elected members	Elected Member duty-bearers
Any committee or panel established by standing orders (apart from a committee of inquiry) or any other committee, panel, board or body, whether established under an enactment or otherwise, that is permitted under standing orders to lodge a proposition	Assembly Body duty-bearers
Public authorities	Public Authority duty-bearers

5 Meaning of “public authority” and related provisions

- (1) A public authority is a person specified in Schedule 1 that performs functions in relation to children and their families and has any of the following characteristics –

- (a) is established under an enactment, or is an incorporated or unincorporated body or a natural person;
 - (b) is a registered charity as defined in the [Charities \(Jersey\) Law 2014](#);
 - (c) is in receipt of funding from the States;
 - (d) performs functions of a public nature;
 - (e) provides a regulated activity as defined in the [Regulation of Care \(Jersey\) Law 2014](#); or
 - (f) provides services under a contract made with another duty-bearer, the provision of those services being a function of that other duty-bearer.
- (2) The Minister may, by Order, amend –
 - (a) the characteristics set out in paragraph (1); or
 - (b) Schedule 1 –
 - (i) for the purpose of adding or removing a Public Authority duty-bearer, or
 - (ii) for the purpose of re-naming a Public Authority duty-bearer who changes their name.
- (3) Before making an Order under paragraph (2)(b)(i), the Minister must consult and obtain the consent of –
 - (a) any Public Authority duty-bearer the Minister proposes to remove from Schedule 1; or
 - (b) any person who meets the criteria set out in paragraph (1) that the Minister proposes to make a Public Authority duty-bearer and insert into Schedule 1.
- (4) Before making an Order under paragraph (2)(b)(i) for the purposes of making a person referred to in paragraph (5) a Public Authority duty-bearer, the Minister must consult the Chief Minister or any other Minister for the time being responsible for liaison with a relevant Department.
- (5) A person mentioned in paragraph (4) is a person that is discharging functions in relation to the administration of justice under a relevant Department.
- (6) No Order may be made under paragraph (2)(b)(i) for the purposes of making the Law Officers' Department (referred to in Article 1(1)(b) of the 1965 Law) a Public Authority duty-bearer.
- (7) Where a Public Authority duty-bearer proposes to change its name –
 - (a) the Public Authority duty-bearer must notify the Minister of the name-change not less than 6 weeks before the change is to take effect; and
 - (b) the Minister must, before making an Order under paragraph (2)(b)(ii), obtain the Public Authority duty-bearer's consent.
- (8) In this Article –

“1965 Law” means the [Departments of the Judiciary and the Legislature \(Jersey\) Law 1965](#);

“relevant Department” means a Department referred to in Article 1(1) of the 1965 Law in respect of which functions relating to the administration of justice are discharged by a person referred to in paragraph (5).

6 Duty to have due regard – Ministerial, Elected Member and Assembly Body duty-bearers

- (1) Ministerial duty-bearers must exercise the duty to have due regard when making any decision about the formulation of policy in respect of a government plan relating to –
 - (a) proposed increases or decreases of States’ expenditure in the next financial year under an existing or new head of expenditure proposed in a government plan;
 - (b) proposed new or revised revenue raising measures, including allowances and reliefs, for introduction in the next financial year; or
 - (c) proposed measures, for introduction in the next financial year, which will have the effect of changing the amount of contributions paid in accordance with the Social Security Law.
- (2) Ministerial duty-bearers, Elected Member duty-bearers and Assembly Body duty-bearers must exercise the duty to have due regard when making any decision about the formulation of a proposition.
- (3) Whenever the duty to have due regard is exercised in respect of decisions falling under this Article, the Article 6 duty-bearers must, unless Schedule 2 applies and subject to the requirements of Article 7, prepare a children’s rights impact assessment and publish it in accordance with Article 7.
- (4) In relation to children’s rights impact assessments that, in any financial year, are required in connection with decisions falling under paragraph (1), Ministerial duty-bearers must determine what those assessments must focus upon, their scope and how many of them must be prepared.
- (5) A children’s rights impact assessment is not required under this Article if it is in respect of a decision falling under paragraph (2) that is exempted under Schedule 2.
- (6) The Minister may, by Order, amend Schedule 2.
- (7) Before making an Order under paragraph (6), the Minister must consult the Article 6 duty-bearers.
- (8) Despite paragraph (5), an Article 6 duty-bearer may prepare a children’s rights impact assessment in respect of an exempted decision, should that duty-bearer wish to do so.
- (9) A children’s rights impact assessment prepared under paragraph (8) must be published in accordance with Article 7.
- (10) In this Article –

“allowances and reliefs” include any allowances or reliefs referred to in the [Income Tax \(Jersey\) Law 1961](#);

“contributions” means the contributions described in Article 4 of the Social Security Law;

“head of expenditure” has the definition given in the Public Finances Law and “existing”, in relation to a head of expenditure, means expenditure set out in a government plan approved by the States in accordance with the Public Finances Law;

“financial year” means a year starting on 1st January;

“next financial year” means a year starting on 1st January immediately following approval by the States of the government plan in accordance with the Public Finances Law.

7 Children’s rights impact assessments in respect of decisions under Article 6

- (1) For the purposes of this Article a children’s rights impact assessment is comprised of a preliminary assessment and a full assessment.
- (2) An Article 6 duty-bearer must, in respect of a decision falling under Article 6(1) or (2) (a “relevant decision”) prepare a preliminary assessment to determine whether the relevant decision is likely to have a direct or indirect impact on children.
- (3) If a preliminary assessment determines that the relevant decision is not likely to have a direct or indirect impact on children, a full assessment need not be completed.
- (4) Paragraph (5) applies in the case of a decision falling under Article 6(2) (formulation of a proposition) where the preliminary assessment determines that the decision is likely to have an impact on children.
- (5) In a case described in paragraph (4), an Article 6 duty-bearer need not complete a full assessment prior to lodging the proposition provided the Article 6 duty-bearer –
 - (a) has determined that there is insufficient time to complete a full assessment; and
 - (b) lodges the proposition with the intention –
 - (i) where the proposition is listed for debate, of seeking the agreement of the States to reduce the minimum lodging period applicable to that proposition under standing orders, or
 - (ii) where the proposition is not listed for debate –
 - (A) of giving notice, in accordance with standing orders, to propose during a meeting of the States that the States debate the proposition at that meeting, and
 - (B) of seeking the agreement of the States to reduce the minimum lodging period applicable to that proposition under standing orders.
- (6) But an Article 6 duty-bearer under paragraph (5) must complete a full assessment if –
 - (a) that duty-bearer does not carry out the intention referred to in paragraph (5)(b)(i) or (ii); or
 - (b) the States do not agree to reduce the minimum lodging period sought under paragraph (5)(b)(i) or (ii)(B).

- (7) Where paragraph (6) applies, the Article 6 duty-bearer must publish the full assessment before the date upon which the proposition is to be debated.
- (8) If the States agree to reduce the minimum lodging period sought under paragraph (5)(b)(i) or (ii)(B), the Article 6 duty-bearer must complete the full assessment and publish it not later than 6 weeks after the proposition was debated and adopted by the States.
- (9) Any preliminary or full assessment carried out under this Article must, subject to paragraphs (10) and (11), be published in accordance with arrangements established under the Children's Rights Scheme.
- (10) If data or information of the type described in paragraph (11) is contained in a preliminary or full assessment, that data or information is prohibited from publication.
- (11) The following data and information is prohibited from publication –
 - (a) personal data about a data subject which despite pseudonymization is capable of being attributed to that data subject; and
 - (b) absolutely exempt information or qualified exempt information.
- (12) In this Article “listed for debate” is construed in accordance with standing orders.

8 Duty to have due regard – Ministerial duty-bearers

- (1) In addition to the decisions falling under Article 6, Ministerial duty-bearers must exercise the duty to have due regard when making any decision in respect of –
 - (a) the discharge of any of their functions; or
 - (b) the formulation of any policy including policy in relation to the making of subordinate legislation.
- (2) The preparation of a children's rights impact assessment is not a requirement for the purpose of fulfilling the duty to have due regard in respect of any decision under this Article, but a Ministerial duty-bearer may prepare a children's rights impact assessment should that duty-bearer wish to do so.
- (3) If a children's rights impact assessment is prepared under this Article, it must, subject to paragraphs (4) and (5), be published in accordance with arrangements established under the Children's Rights Scheme.
- (4) If the children's rights impact assessment contains personal data about a data subject which despite pseudonymization is capable of being attributed to that data subject, that children's rights impact assessment is prohibited from publication.
- (5) If the children's rights impact assessment contains absolutely exempt information or qualified exempt information, that information is prohibited from publication.
- (6) In this Article –

“policy” includes the formulation of policy in respect of a government plan that does not relate to the proposals set out in Article 6(1);

“formulation of any policy” includes a review of, or change to, any existing policy;

“subordinate legislation” means any Order made by a Minister or other instrument that is not an enactment that is required to be passed or made by the States, having legislative effect in Jersey that is made in Jersey under any Jersey legislation as defined in the [Legislation \(Jersey\) Law 2021](#).

9 Duty to have due regard – Public Authority duty-bearers

- (1) Public Authority duty-bearers must exercise the duty to have due regard when making any decision concerning –
 - (a) the discharge of any of their functions; or
 - (b) the provision of a regulated activity or services respectively mentioned in Article 5(1)(e) and (f).
- (2) The preparation of a children’s rights impact assessment is not a requirement for the purpose of fulfilling the duty to have due regard in respect of any decision under this Article, but a Public Authority duty-bearer may prepare a children’s rights impact assessment should that duty-bearer wish to do so.
- (3) If a children’s rights impact assessment is prepared under this Article, it must, subject to paragraphs (4) and (5), be published in accordance with arrangements established under the Children’s Rights Scheme.
- (4) If the children’s rights impact assessment contains personal data about a data subject which despite pseudonymization is capable of being attributed to that data subject, that children’s rights impact assessment is prohibited from publication.
- (5) If the children’s rights impact assessment contains absolutely exempt information or qualified exempt information, that information is prohibited from publication.

10 General obligations of duty-bearers

- (1) In order to demonstrate fulfilment of the duty to have due regard whenever decisions falling under Article 6, 8 or 9 are made, duty-bearers must –
 - (a) take such steps as are appropriate and proportionate to promote knowledge and understanding of the Convention amongst persons within the duty-bearer’s own sphere of influence, or operation;
 - (b) in relation to complaints arising in respect of a decision which directly or indirectly impacts children, take such steps as are reasonably practicable to ensure –
 - (i) that complaints are handled in a child-friendly manner including publicising how complaints may be made, and to whom, and
 - (ii) that complainants are provided with information as to how and to whom, if anyone, unresolved complaints may be escalated;
 - (c) have due regard to the views of any children who may be directly or indirectly impacted by any decision; and

- (d) apart from Elected Member duty-bearers, in every 12 month period or such other timescale as the Children's Rights Scheme may specify prepare a report –
 - (i) on how they have fulfilled the duty to have due regard over the previous 12 month period, or such other timescale as may be specified in the Scheme, and
 - (ii) publish that report not later than 6 months after the end of the 12 month period or timescale to which the report relates, or period of such other length as may be specified in the Children's Rights Scheme.
- (2) A report mentioned in paragraph (1)(d) may be published either separately, or as part of, any other report or document.

11 Minister's general obligations in respect of implementation of the Law and promotion of Convention obligations

It is the Minister's general duty to –

- (a) oversee and co-ordinate the implementation of this Law and the operation (including revision) of the Children's Rights Scheme; and
- (b) promote the States fulfilment of its obligations as a State party to the Convention.

12 Children's Rights Scheme

- (1) The Minister must, as soon as is reasonably practicable after the commencement of this Article, make a Children's Rights Scheme setting out arrangements for facilitating the fulfilment of the duty to have due regard.
- (2) As soon as is reasonably practicable after making the Children's Rights Scheme the Minister must present the Scheme as a report to the States and publish it.
- (3) The Children's Rights Scheme must be revised in accordance with Article 13.
- (4) The arrangements mentioned in paragraph (1) must include arrangements –
 - (a) for the provision of training and support to assist duty-bearers in fulfilling the duty to have due regard; and
 - (b) for establishing and maintaining systems and procedures for the completion and publication of children's rights impact assessments subject to the prohibitions mentioned in –
 - (i) Article 7(10) and (11),
 - (ii) Article 8(4) and (5), and
 - (iii) Article 9(4) and (5).
- (5) The Children's Rights Scheme must also –
 - (a) make provision about the preparation of children's rights impact assessments for the purposes of –

- (i) analysing the impact on children of making any decisions under Article 6, 8 or 9,
 - (ii) assessing how making any of those decisions support and promote the Convention,
 - (iii) advising and informing duty-bearers as to the impact, if any, of making of any of those decisions,
 - (iv) recording and communicating the findings and outcome of the children's rights impact assessment, and
 - (v) monitoring, reviewing and evaluating whether or not any of those decisions resulted in the likely impact determined by the children's rights impact assessment, or resulted in a different or unexpected impact; and
- (b) contain guidance for the purpose of assisting duty-bearers in –
- (i) preparing children's rights impact assessments,
 - (ii) fulfilling the duty to have due regard where no children's rights impact assessment is required, and
 - (iii) fulfilling their obligations under Article 10.
- (6) The Children's Rights Scheme may contain such other matters as the Minister considers appropriate.

13 Revision of Children's Rights Scheme

- (1) The Minister must revise the Children's Rights Scheme first made under Article 12(1) not later than one year after the Committee publishes its concluding observations.
- (2) On every subsequent occasion the Committee publishes its concluding observations, the Children's Rights Scheme must be revised not later than one year after the publication of those observations.
- (3) The Minister may revise the Children's Rights Scheme at any time before the concluding observations are published.
- (4) Every time the Children's Rights Scheme is revised –
 - (a) the Minister must consult –
 - (i) duty-bearers,
 - (ii) children,
 - (iii) the Commissioner,
 - (iv) any scrutiny panel established under standing orders to which is assigned scrutiny of matters relating to children, and
 - (v) any other persons the Minister considers appropriate; and
 - (b) the Minister must publish the revised Scheme and present it as a report to the States.
- (5) The requirements under paragraph (4) do not apply if the Children's Rights Scheme is revised simply for the purposes of making minor corrections or updating factual information and provided neither amounts to any substantive change to the scope of the Scheme.

- (6) In this Article “concluding observations” means the Committee’s observations, suggestions and general recommendations made, under Article 45 of the Convention, in relation to Jersey after consideration of information contained in a report submitted by the United Kingdom as required under Article 44 of the Convention.

14 General provision as to Orders

A power under this Law to amend a provision of this Law by Order, includes the power to make such transitional, consequential, incidental or supplementary provision as appears to the Minister to be necessary or expedient for the purposes of the Law.

15 Amendment of the [Commissioner for Children and Young People \(Jersey\) Law 2019](#)

- (1) This Article amends the [Commissioner for Children and Young People \(Jersey\) Law 2019](#).
- (2) In Article 1(1) –
- (a) for the definition “chairman of the Public Accounts Committee” there is substituted –
- ““chair of the Public Accounts Committee” means the individual appointed as chair of the committee of that name established by the [Standing Orders of the States of Jersey](#);”;
- (b) for the definition “president of the chairmen’s committee” there is substituted –
- ““president of the scrutiny liaison committee” means the individual appointed as president of the committee of that name established by the [Standing Orders of the States of Jersey](#);”.
- (3) In Article 27(4) for “chairman” there is substituted “chair”.
- (4) In Articles 17(2)(c), 26(3), 27(4) and 28(4) and (5), for “chairmen’s committee” there is substituted “scrutiny liaison committee”.
- (5) In the Schedule, in paragraphs 2(3), 4(2), (4) and (5), 6(1)(a), (2), (3) and (9), 7(1) and (5) and 12(1)(c), for “chairmen’s committee” there is substituted “scrutiny liaison committee”.

16 Citation and commencement

- (1) This Law may be cited as the Children (Convention Rights) (Jersey) Law 202-.
- (2) Article 15 and this Article come into force 7 days after this Law is registered.
- (3) The remainder of this Law comes into force on a day to be specified by the Minister by Order.

SCHEDULE 1

(Article 5(1))

PUBLIC AUTHORITIES

Andium Homes Limited

Autism Jersey

Family Nursing and Home Care (Jersey) Incorporated

Jersey Cares Limited, also known as “Jersey Cares”

Jersey Child Care Trust

Jersey Society for the Provision of a Children's Resources Centre, also known as
“Centre Point Trust” and “Centrepoint”

Jersey Sport Limited

The parishes

SCHEDULE 2

(Article 6(5))

EXEMPT DECISIONS

A decision falling under Article 6(2) is exempt from the requirement under Article 6(3) to prepare a children's rights impact assessment if it is in relation to any of the following propositions –

- (a) an Act of the States specifying a day for the commencement of a Law or Regulations;
- (b) an Act of the States giving a taxation draft immediate effect under Article 12 of the Public Finances Law;
- (c) an Act of the States under Article 2 of the [Public Holidays and Bank Holidays \(Jersey\) Law 1951](#);
- (d) a proposition to amend a proposition including a proposition to amend a proposed amendment to a proposition and any subsequent proposition to amend a proposed amendment to a proposition;
- (e) a proposition to amend standing orders;
- (f) a proposition in respect of which a minimum lodging period of 2 weeks applies under standing orders;
- (g) a proposition lodging a government plan under Article 9 of the Public Finances Law;
- (h) a proposition lodging draft legislation containing a taxation draft to implement a proposal of a lodged government plan referred to in Article 11(1) of the Public Finances Law;
- (i) a proposition lodging draft legislation amending the Social Security Law or [Health Insurance Fund \(Miscellaneous Provisions\) \(Jersey\) Law 2011](#) which will give effect to proposals contained in a government plan;
- (j) a proposition to approve a statement of the Council of Ministers' common strategic policy lodged under Article 18(2)(e) of the States of Jersey Law; and
- (k) a proposition for the appointment of any person to any tribunal, public body or office.