

STATES OF JERSEY



DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 201-

Lodged au Greffe on 12th February 2019
by the Minister for Children and Housing

STATES GREFFE



Jersey

DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 201-

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 Housing has made the following statement –

In the view of the Minister for Children and Housing, the provisions of the Draft Commissioner for Children and Young People (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator S.Y. Mézec**

Minister for Children and Housing

Dated: 8th February 2019

REPORT

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Part 1 – Introduction

Section A: Background and context

What is a Children’s Commissioner?

1. A Children’s Commissioner is a form of independent human rights organisation with a mandate to monitor, promote and protect the human rights of children and young people. A Children’s Commissioner has a key public role in representing children’s interests and promoting regard for children’s rights; and also has a role to assist government and other entities in identifying where more can be done for children. A Children’s Commissioner for Jersey will be the first dedicated and independent Commissioner in Jersey charged with promoting and overseeing compliance with international human rights conventions applicable to Jersey.

Why do we need a Children’s Commissioner?

2. In spring 2017, members of the Children and Vulnerable Adults (“CAVA”) Ministerial Group (subsequently the Community Policy Group) considered the potential establishment, role and remit of a Children’s Commissioner for Jersey. Ministers endorsed the recommended establishment of a full-time post of Children’s Commissioner, subject to that role being aligned with any relevant findings made by the Independent Jersey Care Inquiry (“IJCI”).
3. In July 2017, the IJCI published its recommendations and identified the establishment of a Children’s Commissioner as a key recommendation. On 31st January 2018, the States considered, in-Committee, the “Independent Jersey Care Inquiry Report: implementation of recommendations” ([P.108/2017](#)), in which they agreed that the Children’s Commissioner should be appointed prior to the legislation for that office being in place, and that the legislation should be brought forward in conjunction with the Children’s Commissioner.

4. Following this, the Minister for Treasury and Resources, at the request of the Council of Ministers, released central contingency funding to facilitate the appointment of a Children’s Commissioner for Jersey. The first Children’s Commissioner for Jersey, Deborah McMillan, was appointed in December 2017, operating in shadow form initially, while legislation to underpin the role was developed.

Section B: Development of the Law

5. Building on the recommendations of the IJCI, the policy and legislative development of the Law has been informed by a number of international, national and local sources:

International Sources

- i. The United Nations Convention on the Rights of the Child (the “UNCRC”) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. It requires State Parties to promote and protect children’s rights. Jersey ratified the UNCRC in 2014 and, in doing so, committed to be bound by its provisions. The Committee on the Rights of the Child (the “UN Committee”), which monitors the obligations of State Parties to the UNCRC and provides guidance on the implementation of the UNCRC, has commented that the establishment of a Children’s Commissioner or equivalent is part of the general obligations of a State Party in implementing the UNCRC.
- ii. The IJCI recommended that the establishment of a Children’s Commissioner for Jersey should be “... enshrined in States’ legislation in a manner consistent with the UN Principles Relating to the Status of National Institutions (the **Paris Principles**)”. The Paris Principles are an international set of standards for the establishment of national human rights institutions (“NHRI”), endorsed by the United Nations General Assembly. They set out 6 essential characteristics and features for these institutions –
 - independence guaranteed by statute or constitution
 - autonomy from government
 - pluralism
 - a broad mandate based on human rights standards
 - adequate resources
 - adequate powers of investigation.
- iii. United Nations Committee on the Rights of the Child General Comment No. 2 (2002): The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child (“**General Comment No. 2**”). The Committee on the Rights of the Child (“the Committee”) views NHRIs as an important mechanism to promote and ensure the implementation of the Convention, and considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights. The Committee issued General Comment No. 2 to support States parties in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them.

- iv. The European Network of Ombudspersons for Children (“**ENOC**”) is an association of independent children’s rights institutions whose mandate is to facilitate the promotion and protection of the rights of children, as formulated in the UNCRC. ENOC has developed a set of standards (Standards for Independent Human Rights Institutions for Children 2001) for NHRIs for children, based on the Paris Principles.
6. It should be noted that the ENOC standards and General Comment No. 2 are considered, within academic and international circles, to be an updated interpretation of the Paris Principles, from a child focused perspective.

National Sources

7. Children’s Commissioners have been established in law across the United Kingdom (2001: Wales, 2005: Scotland and England, 2008: Northern Ireland). The remit of the role of these Commissioners varies in each jurisdiction, however there are clear common features –
 - o a duty to promote rights, and
 - o powers to investigate complaints or other matters affecting children’s rights.
8. Legislation relating to UK Commissioners has informed the development of the Law, but equally important has been a number of reviews of UK Commissioners, with each review identifying areas where varying degrees of legislative reform are needed, for example to strengthen the Commissioner’s independence and investigatory powers.

Local sources

9. Jersey has a number of sector-specific Commissions, Commissioners and regulatory authorities, aspects of whose legislation has informed the aspects of the Law (for example, the Health and Social Care Commission, the Charities Commissioner, the Information Commissioner, and the Commissioner for Standards).

Policy objective of the Law

10. The primary objective of the Law is to bring forward legislation establishing a Children’s Commissioner for Jersey, demonstrating that Jersey has not only responded to IJCI recommendations, reflected international best practice and lessons learned from other jurisdictions, but has also established an independent Children’s Commissioner who can act as a champion for the rights of children and young people in Jersey.

Part 2 – The Law

Section C – Establishment, appointment, and removal of the Children’s Commissioner

11. The Law will make provision for the establishment of the office of the Children’s Commissioner, the status of that office, and procedural aspects for the appointment, termination of appointment and removal from office.

Establishment of the Office of the Children’s Commissioner

12. Article 3 of the Law establishes the office of the Commissioner for Children and Young People, and includes a number of provisions aimed at ensuring the independence of the Children’s Commissioner. In doing so, the Law fulfils recommendations made by the IJCI and reflects international standards for

Children’s Commissioners emphasized by the Paris Principles, General Comment No. 2, and the ENOC standards.

13. The independence of a Children’s Commissioner from government has been described by UNICEF as a “defining feature” of the success of the role, giving the role its “main strength and source of legitimacy and authority.”. Important features of the Children’s Commissioner’s independence provided for in the Law are –
 - Exercise of the Children’s Commissioner’s functions must not be subject to the direction or control of any administration of the States, the Chief Executive Officer, a Minister, or the States (Schedule, paragraph 2(1)).
 - An obligation on the States to respect, uphold and defend the independence of the Children’s Commissioner (Schedule, paragraph 2(2)).

Legal Status of the Office of the Children’s Commissioner

14. Paragraph 1 of the Schedule to the Law provides that the person holding the office of Commissioner for Children and Young People is, by that name, a corporation sole.
15. ‘Corporation sole’ is a form of legal personality distinct from the person holding the office in question, providing that corporation with legal capacity. It enables the office to, for example, hold property and enter contracts, and ensures that obligations and liabilities, both statutory and contractual, continue, notwithstanding any change in office holder. Ascribing corporation sole status to Commissioners or Commissions is a typical feature of such roles; for example, the Jersey Charity Commissioner. A corporation sole status is also recognised as an important feature of the independence of the Children’s Commissioner’s role, something specifically recognised in reviews of Commissioner roles in England and Wales.

Appointment of the Children’s Commissioner

16. The appointment process for the Children’s Commissioner is critical to the independence of the role. There is no standard approach to the appointment of Commissioners in the UK or globally, although appointment of a Commissioner or equivalent by the executive is common practice in the UK. This approach, however, is recognised as having a negative impact on the perception of the independence of a Children’s Commissioner, and arguably contradictory to aspects of a Children’s Commissioner’s role, which seeks to monitor government’s respect for children’s rights. Indeed, the IJCI stated that “... *in the interests of independence, any such appointment in Jersey should be made by the States Assembly rather than by Ministers.*”.
17. As such, the Schedule to the Law includes provisions setting out a process for the appointment of the Children’s Commissioner by the States Assembly, in a manner similar to that of the Comptroller and Auditor General, as a means of ensuring the independence of the Children’s Commissioner’s position and accountability to the States Assembly.
18. In essence, the Law will require the Chief Minister and the President of the Chairmen’s Committee to jointly recommend to the Assembly a candidate for the role of Children’s Commissioner. The recommendation will then be debated, *in camera*, by the Assembly.

Term of office

19. The Law provides, in paragraph 4 of the Schedule, that the Children's Commissioner will be appointed for a single, fixed, non-renewable term of office of 8 years. This term reflects the maximum single term of the Scottish Commissioner, and is within the upper limit of 9 years recommended in Jersey Appointments Commission guidance.
20. Reviews of Children's Commissioner roles in the UK consider that a longer term of appointment offers greater stability to the office, facilitates a strategic approach to the role, and ensures that independence is not influenced by the seeking of another term of office. In the UK, Commissioners are appointed for fixed terms, for example 6 years in England and 6 years in Wales.

Disqualification from appointment to Children's Commissioner

21. Paragraph 5 of the Schedule provides a number of grounds for disqualification from appointment as Children's Commissioner. The intention of these grounds is to protect the independence and integrity of the office of the Children's Commissioner.
22. The grounds for disqualification will provide that a person is not eligible to hold the office of Children's Commissioner if he or she –
 - has been, is, or becomes, a Member of the States;
 - has been, or is, a States employee within the meaning of Article 2 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#) (the "2005 Law");
 - has been or is the holder of an office set out in schedule 1 to, the 2005 Law.
23. Given the extent of the proposed disqualifications, it is unlikely that recruitment to the post will be from Jersey in the future. This is to ensure trust and confidence in the office of the Children's Commissioner.

Termination of office as Children's Commissioner

24. The Law provides, at paragraph 6 of the Schedule, the circumstances in which a person appointed to the office of Children's Commissioner may cease to hold office. The grounds for cessation are –
 - resignation;
 - termination of appointment (see below); or
 - expiry of term of office.
25. The grounds on which the Children's Commissioner can be removed from post will, as is common with other Commission and Commissioner posts, relate to misconduct, criminal conviction, or incapacity to perform duties. The grounds for termination of appointment, as set out in paragraph 6(5) of the Schedule, are –
 - The officeholder becomes ineligible to hold office as Children's Commissioner (per the disqualification grounds set out above).
 - Incapacitated by physical or mental illness.
 - Failure to discharge functions without reasonable excuse.
 - Behaviour incompatible with holding the office of Children's Commissioner or is otherwise unable or unfit to discharge the functions of Children's Commissioner (e.g. behaviour incompatible with the Nolan Principles).

26. The grounds and process for termination of appointment as Children's Commissioner are considered to be a further important feature bolstering the independence of the office. As such, the process for dismissal will seek to ensure that the Children's Commissioner cannot be removed as a result of unwarranted or undue pressures and influences.
27. For consistency, the Law provides for a process of termination of appointment which reflects the corresponding appointment process, whereby the States Assembly may remove the Children's Commissioner on a proposition signed by the Chief Minister and the President of the Chairmen's Committee.

Resources

28. It is essential that the Children's Commissioner has sufficient and sustainable financial, staffing and other resources, and financial autonomy, to carry out the mandate of the office. The link between independence and infrastructure, in particular funding, is emphasized by the Paris Principles, UN Committee General Comment No. 2, and ENOC standards. In addition, many of the UN Committee's concluding observations since the UNCRC came into force highlight a lack of adequate funding for NHRIs, impeding the effective functioning of the institution –

“While the Committee acknowledges that this is a very sensitive issue and that State parties function with varying levels of economic resources, the Committee believes that it is the duty of States to make reasonable financial provision for the operation of national human rights institutions in light of Article 4 of the Convention. The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.”

29. To address these standards and concerns, the Law provides, at paragraph 9 of the Schedule, that the States must ensure that the Children's Commissioner is provided with such financial resources, administrative resources, and other support, for the proper and effective discharge of the Children's Commissioner's functions under the Law. Accountability and governance of the Children's Commissioner, including the use of public funds, is addressed under Section F of this report.

Section D – Remit and principal aim of the Children's Commissioner

Remit

30. Part 1 of the Law defines the remit of the Children's Commissioner by reference to the –
 - age and location of children and young people to whom the Children's Commissioner's principal aim and functions relate; and
 - entities and persons in relation to whom the Children's Commissioner may pursue his/her functions or exercise his/her powers.

Age

31. In the main, the Children's Commissioner's functions will apply to children and young people under the age of 18 years. However, the Commissioner's remit will also apply to care experienced young people, young people with additional needs, and young offenders up to the age of 25, to reflect government policy as set out in

the forthcoming Children's Plan. This seeks to recognise the vulnerability of and need for a supported transition into adulthood for young people in these circumstances. In England and Wales, those who are care experienced, and those with special educational needs and/or a disability, are covered by children's (education, health and care) legislation until they are 25 years old.

Location

32. The functions and powers of the Children's Commissioner cover all children and young people in Jersey, in terms of age and circumstance as outlined above in paragraph 31, whether residing in Jersey or in Jersey on a temporary or transitory basis.
33. In addition, the Children's Commissioner's functions will apply in relation to those children who are placed in care off-Island or transferred off-Island under the operation of Jersey law such as Mental Health legislation and Children's legislation. The intention is not to seek extra-territorial powers in this regard, but rather to ensure that the Children's Commissioner has the power to receive complaints regarding, and to raise the issues faced by, children placed in off-Island arrangements by the States, and hold them to account in respect of those arrangements.

Example 1 – Remit for children placed off-Island

A child from Jersey placed in care in the UK would be able to contact the Children's Commissioner in Jersey to raise concerns or complain about any aspect of their care (which could include their care in the UK). The Children's Commissioner cannot directly contact the UK care provider about these concerns, but can raise them with the States of Jersey as the child's corporate parent.

The Children's Commissioner may also work with Children's Commissioners in the UK to highlight concerns raised by children from Jersey about the provision of care outside Jersey. The Children's Commissioner might do this where the issues raised are relevant to other children in those care settings and, therefore, within the remit of the Children's Commissioner of the jurisdiction to address.

Persons, bodies or authorities in respect of whom functions and powers may be exercised

34. The Children's Commissioner's aims, functions and powers extend not only to public authorities (e.g. the States, Ministers and government departments), but also to the non-governmental entities and persons (such as voluntary and charitable organisations, and private entities). This reflects the fact that children's rights may be affected by, and can be progressed by, entities and persons operating outside of government. It also reflects General Comment No. 2, ENOC standards, and recommendations made for reform of the Northern Ireland Order in relation to the Northern Ireland Children's Commissioner's remit.
35. The Law does not permit the Children's Commissioner to exercise his/her powers of entry into private dwellings, e.g. family homes. However, the Children's Commissioner, in the exercise of his/her statutory functions, will seek to promote the rights of children, which may involve him/her providing advice or guidance as to matters which come within the sphere of family and private life; for example advocating for the removal of the defence of reasonable corporal punishment in the [Children \(Jersey\) Law 2002](#).

Primary function

36. Under the Paris Principles, NHRIs are required to protect and promote human rights. The establishment of NHRIs with oversight of human rights conventions is seen as important for the implementation of such conventions. As such, Article 4 of the Law states that the primary function of the Children's Commissioner is the promotion and protection of the rights of children and young people. This mirrors the primary aim or function of all Children's Commissioners in the UK.

Duties ancillary to primary function

37. The Law places 2 overarching duties on the Children's Commissioner in the pursuit and exercise of his/her primary function:

Involving Children and Young People

38. Article 6 of the Law requires the Children's Commissioner to take reasonable steps to involve children and young people in the work of the Children's Commissioner. This will involve, among other things, the Children's Commissioner taking steps to ensure that children and young people are made aware of the role of the Children's Commissioner, how to communicate with the Children's Commissioner, and how the Children's Commissioner may respond to any issues which they raise. Moreover, the Children's Commissioner is required to, and must encourage others to, consult children and young people in their work.

Regard to the UNCRC and other Human Rights Instruments

39. The UNCRC and those Optional Protocols extended to Jersey will be the main legal instrument to constitute the basis of the Commissioner's work. However, as the UNCRC only applies to children (i.e. up to 18 years of age), the Commissioner may, where appropriate, also draw on other human rights treaties extended to Jersey in pursuing his/her functions in relation to persons over 18 years of age that fall within the Children's Commissioner's remit as outlined above.

40. As such, Article 7 of the Law requires the Children's Commissioner to –
- (a) regard, and encourage others to regard, the rights of children and young people as a primary consideration; and
 - (b) have regard to, and encourage others to have regard to, the views of children and young people on all matters affecting them, due allowance being made for age and maturity.

Section E – Functions and powers of the Children's Commissioner

General Functions

41. Article 5 of the Law outlines a non-exhaustive list of functions that the Children's Commissioner may undertake or perform in pursuit of the primary function. These functions seek to reflect activities of a NHRI as recommended by UN Committee General Comment No. 2. These are –

- (a) To keep under review the adequacy and effectiveness of law, policy and practice relating to the rights of children and young people, with a view to assessing the adequacy and effectiveness of such law, policy and practice.
- (b) To keep under review the adequacy and effectiveness of services provided for children and young people by relevant authorities.

Example 2 re: functions (a) and (b) above

The Children's Commissioner may review legislation or services provided in relation to children and young people in Jersey, such as adoption, mental health provision and employment of children and young people. This could entail conducting a review of the legislation and arrangements currently in place, and provide advice or recommendations for improvements to better realise the rights of children and young people in those circumstances. Equally, where the government brings forward proposed changes to legislation or the provision of the service, the Children's Commissioner may provide advice as part of the consultation process or as part of a working group, where invited.

- (c) To bring any matter relating to the rights, views and interests of children and young people to the attention of the States Assembly or any relevant authority.

Example 3 re: function (c) above

Where the Children's Commissioner becomes aware of new developments with regard to the progression of children's rights (e.g. guidance, advice, best practice from international bodies or other jurisdictions), he/she may share this with government officials or Ministers to help assist in their ongoing implementation and monitoring of rights treaties. The Commissioner may also share information about such developments with relevant Scrutiny Panels, in order to inform a review or inquiry being undertaken.

- (d) To promote awareness and understanding of the rights of children and young people.
- (e) To provide human rights education for relevant authorities, organisations and institutions that focus on children.

Example 4 re: functions (d) and (e) above

The Children's Commissioner may provide training and resources, or arrange awareness events or initiatives, relating to children's rights, for the public or people working with, or for children, such as health care professionals, teachers and police officers.

- (f) To provide advice and recommendations on the rights, views and interests of children and young people.
- (g) To promote harmonisation of legislation and policy with the UNCRC.
- (h) Monitor the implementation in Jersey of the United Nations Convention on the Rights of the Child.

Example 5 re: functions (g) and (h) above

The Children's Commissioner will, naturally, play an important role in the promotion of implementation measures relating to the UNCRC. This will take many forms, both in terms of working with government to inform and assist, where appropriate, the pursuit of those measures. For example, the Children's Commissioner may, at the invitation of government, offer or co-ordinate the provision of expert advice on implementation measures or critical analysis of legislation, with the aim of supporting government in the transformation of legislation from a UNCRC perspective.

- (i) To report on the government’s implementation and monitoring of children’s rights.

Example 6 re: function (i) above

The Commissioner would prepare an alternative report to the UN Committee, as part of its periodic reporting process. The Commissioner would report on the States’ response to the UN Committee’s concluding observations from the previous periodic review, and also highlight any other issues in progress the States has made in implementing the Convention, and the States’ own monitoring arrangements it has in place to support implementation.

- (j) To look into or investigate any matter relating to the rights or interests of children and young people (N.B. in practice this would include investigating violations of children’s rights) (see paragraphs 49–63 below).
- (k) To bring, intervene in, or assist in relation to, legal proceedings or complaints against relevant authorities (see paragraphs 67–77 below).
- (l) To publish a report on any matter considered or investigated by the Children’s Commissioner.

Power to access premises

- 42. The Paris Principles state that a NHRI should be able to: *“Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence.”* In order to satisfy this requirement, the Law enables the Children’s Commissioner, or a person authorised by him/her, with the power to enter premises, other than a private dwelling, where children are living, detained, or otherwise cared for, or receiving services or treatment, in order to interview any child or to observe standards of care, treatment, services or provision for children in those places. The ability to enter premises and interview children and young people or observe standards can only be used for the purposes of the Children’s Commissioner’s principal aim and general functions.

Example 7 – Power to access premises

The Commissioner may enter schools or regulated institutions where children are receiving care in order to speak to children there. The Children’s Commissioner would, where appropriate, notify the managers or principals of that place before visiting, but if and where access to premises is refused, for whatever reason, the Children’s Commissioner could rely on his/her statutory power to gain entry.

The English Children’s Commissioner has used this power to visit Young Offenders’ Institutions, to follow up on concerns raised in reports by the Prison Inspectorate, to review whether the recommended changes are being implemented, by speaking with children and young people in those institutions.

- 43. For the avoidance of doubt, the power to enter premises does not extend to private dwellings, but applies in respect of any part of premises which is not a private dwelling.

Duty to provide information to the Children’s Commissioner

- 44. In accordance with the Paris Principle requirement that NHRIs should be able to: *“hear any person and obtain any information and any documents necessary for assessing situations falling within its competence”*, the Children’s Commissioner has the ability to request the supply of information from relevant authorities for

the purposes of the Children’s Commissioner’s functions under Article 4 and 5 of the draft Law.

45. Article 8 of the Law places an obligation on relevant authorities to supply information to the Children’s Commissioner. The obligation to provide information will be qualified in a number of cases, in essence where a relevant authority would also be able to refuse a disclosure of information under the [Freedom of Information \(Jersey\) Law 2011](#) (“FOIJL”) or a rule of law, or where another enactment expressly provides that they are not required to comply with a request for information by the Children’s Commissioner.
46. Where a relevant authority determines that it is not required to disclose information to the Commissioner because one of the FOIJL exemptions applied in its case, the Commissioner is able to appeal to the Information Commissioner (and onwards to the Royal Court).

Example 8 – Information gathering

The Children’s Commissioner may ask relevant States departments for data about the numbers of children in different health and care settings on the Island in order to inform the development of a more detailed review.

The English Commissioner used data requested from the NHS about children in different types of care settings to inform the development of a Vulnerability Index.

47. The Children’s Commissioner will not be able to demand or receive information which authorities are not permitted to disclose under other enactments.
48. The Children’s Commissioner will also be able to receive information, relevant to his/her functions, from other persons or authorities, even when he/she has not specifically requested it.

Investigations

49. The ability for a Children’s Commissioner to receive and investigate complaints is an important means of empowering children and young people to exercise their rights, and a further mechanism by which government and institutions can be held to account. UNICEF highlight the importance of receiving and investigating complaints as a means of providing a Commissioner with direct insight into the lives of children and young people and the challenges they face, and can be a valuable source for directing the policy work of the Commissioner. The ability to handle complaints, particularly in individual cases, is recommended and emphasized by the UN Committee in General Comment No. 2. All UK Commissioners are empowered to receive complaints and investigate individual cases.
50. Part 3 of the Law (Articles 10–15) enables the Children’s Commissioner to conduct investigations in relation to matters relating to the rights of children and young people in Jersey, either on receipt of a complaint from or on behalf of children and young people, or of his/her own volition. The ability for the Children’s Commissioner to receive complaints from children is an essential characteristic of Children’s Commissioners, or equivalent, recognised by the UN General Committee and the Paris Principles.
51. Investigations are a formal tool that can be utilised by the Commissioner where there are serious concerns about infringements of children’s rights, and the intention is that the investigation function is used as a mechanism of last resort. As

such, the Law contains a number of qualifications pertaining the use of this function; these require the Commissioner to –

- (a) be satisfied that the issue to be investigated must raise an issue of particular significance to children and young people generally, or particular groups of children and young people;
- (b) consult the advisory panel before commencing an investigation;
- (c) not conduct an investigation into a matter subject of legal proceedings before a court or tribunal;
- (d) make every reasonable effort resolve the matter without investigation, if appropriate.

Investigation Process

52. The Law sets out certain procedural requirements and powers which apply where the Children’s Commissioner determines that an investigation is required –

- The Children’s Commissioner must produce terms of reference for the investigation and take appropriate steps to notify the person or body being investigated of the fact that an investigation is being commenced, and then inform that person of the terms of reference.
- Where the Children’s Commissioner believes that the outcome of an investigation may adversely affect a relevant authority, the Children’s Commissioner must provide that authority with an opportunity to give evidence, cross-examine that evidence.
- Where the Children’s Commissioner conducts an investigation of a general or thematic nature, Article 11(8) of the Law requires those investigations to be held in public, unless the Commissioner is satisfied that there are grounds for taking evidence in private. However, it is considered essential for the protection of the privacy of individual children and young people that such hearings are not conducted in public. As such, Article 11(7) of the Law requires any investigation concerning a specific, individual child or young person to be conducted in private.

Offences relating to obstruction of provision of evidence

53. Article 12(3) of the Law provides that, where the Commissioner requires a person to give evidence, or produce a document under Article 12(1), the Commissioner must give that person a notice in writing. Article 13 contains offence and penalty provisions where a person provided with such notice, among other things, refuses to attend a hearing or fails to answer questions or produce documents.

54. Obstruction of an investigatory or regulatory body, without reasonable excuse, can be a serious matter, given the role of such bodies in holding others to account. The policy reasons for doing so are clear: a failure to co-operate with such bodies, without a reasonable excuse, will likely constitute a conscious or malicious attempt to frustrate the proper regulation of services, or to avoid accountability. Children’s Commissioners have a mandate to promote and protect children’s rights, and perform an essential role in ensuring practices which are incompatible with child rights are challenged. In this role, it is important that the willing obstruction of investigations conducted by Children’s Commissioners is regarded with the same severity as the obstruction of other regulators or inspectors.

55. Provisions setting out an offence of obstructing inspections or investigations, and providing criminal penalties for doing so, are common in Jersey law. For example,

there is a criminal offence of obstructing or non-compliance with an inspection by the Health and Social Care Commission, and there is a criminal offence provision for providing false or misleading information to the Data Protection Authority, each with a varying level of penalty.

56. All UK Children's Commissioners have powers of investigation or examination to some degree, and a comparative precedent for criminal offence provision for obstruction of a Children's Commissioner investigation can be found in the Commissioner for Children and Young People (Scotland) Act 2003. In Northern Ireland and Wales, obstructions of an investigation by the Children's Commissioner can be certified as contempt of court and enforced accordingly. The Equality and Human Rights Commission in the UK can also undertake inquiries into matters relating to human rights and, if a person fails to comply with requests for evidence by that Commissioner, they may be charged with a criminal offence.
57. Where a person is charged with obstructing an investigation by the Children's Commissioner, they will have a defence if they can show there was a reasonable excuse for the refusal or failure. For completeness, it should also be noted that a person required to provide information under the Law; for example, as a result of being issued with a notice by the Children's Commissioner under Article 12(3), is not obliged under the Law to do so if that person would be entitled to refuse to produce that information before a court (see Article 14 of the draft Law – this is a common provision in Jersey legislation).

Investigation Reporting

58. Article 16 of the Law provides that at the conclusion of any investigation, the Children's Commissioner is required to prepare a report as to the findings/result of the investigation. The Children's Commissioner is also required to publish an investigation report, unless the Commissioner reasonably considers it to be inappropriate to do so in the circumstances. An example of this might be where, in the case of an individual child or young person, it would be possible from the report to identify them despite the report being anonymized, as required in Article 24(2)–(4), due to the facts of the investigation referenced in the report being so specific in nature.
59. Prior to a report being finalised, where it is reasonable and practicable to do so, parties named in the report should be given a draft of the report and an opportunity to make representations on it to the Children's Commissioner, within such timeframes as the Children's Commissioner specifies, which the Children's Commissioner may take into account in preparing the report.
60. An investigatory report issued by the Children's Commissioner may contain recommendations to a party named in the report which the Children's Commissioner considers necessary in order to address matters arising from the investigation concerning the rights of children and young persons. The Law requires the Children's Commissioner, so far as reasonable and practicable having regard to the subject matter, to ensure that any report does not name or identify any persons referred to in it.
61. Where a report includes recommendations, the report may also include a requirement on the party so named, to provide a response to those recommendations. The Children's Commissioner may also impose a requirement to respond within a certain timeframe. The party named in the report must then respond setting out what they have done, or propose to do, or those recommendations in relation to which it is proposed to do nothing (and an explanation for that).

62. The Jersey Commissioner may publish any statement provided in response to a requirement to respond and, where he/she considers it appropriate, publicise any failure to comply with a requirement to respond.
63. In addition to the complainant (where relevant) and the person(s) named in the report, the Children's Commissioner may also send the report to any other appropriate person or body (e.g. a relevant Minister or Scrutiny Panel). The Law also enables the Children's Commissioner to present a report on an investigation to the States, through the Greffier of the States.

Example 9 – Investigation process

The Children's Commissioner receives a complaint from a child in a school of systemic bullying, which also evidences a lack of child-friendly procedures through which a child can bring that bullying to the attention of his teachers. The Children's Commissioner is also aware, through a handful of other complaints by parents of children in that school, and his/her own review of publicly available anti-bullying guidance and codes issued by that school, that the school in question could do more for children in that school to encourage measures to combat bullying.

After contacting the school and discussing the gravity of the issue, but not being satisfied that the school is committed to tackling the issue, the Children's Commissioner, having consulted with the Adult Advisory Panel, decides to conduct an investigation utilising his/her powers under the Law.

The Children's Commissioner draws up terms of reference for the investigation and brings notice of the investigation to the attention of the people likely to be affected by it.

That investigation process involves hearing from teachers and staff at the school, and provides an opportunity for school governors, or equivalent, to explain the school's processes and record in relation to bullying.

The Children's Commissioner prepares a report, as is required under the Law, which is issued to the school (which he/she may also publish), in which he/she makes recommendations to the school as to how it can –

- improve processes through which children can bring bullying issues to the attention of children;
- implement measures which will appropriately recognise the right of children to have their voice heard in relation to such matters.

The report requires the school to respond within 3 months as to what it proposes to do to address the issues raised. The school responds within that timeframe by proposing that it will improve its anti-bullying guidance and codes, making them more visible and child-friendly, and improve children's access to school counselling.

The report also included a specific recommendation to roll out comprehensive training to teachers on anti-bullying measures and methods. The school's response indicates that it cannot address this recommendation at the current time due to budgetary pressures.

The Children's Commissioner decides not to publish the report and subsequent response to its recommendations. However, copies of the report are sent to the school, any persons named in the report, and the Chief Minister, the President of the Chairmen's Committee, and H.M. Attorney General, as required under the Law.

Relationships with other bodies

64. The Law provides the Children's Commissioner with an investigatory function which may extend to matters which come within the statutory scope of current, or proposed, Commissions and Ombudsmen. In particular, the Children's Commissioner's investigatory functions may apply to matters which would also be considered or inspected by the Health and Social Care Commission or, in time, the Public Services Ombudsman.
65. Experience of Commissioners in other jurisdictions, most notably in Northern Ireland, has indicated that statutory limits on the scope of a Children's Commissioner's investigation powers sometimes require consideration of whether or not another regulator or Commission would or would not also look to investigate a matter, has resulted in Children's Commissioner's investigation powers being ineffective or seldom used. Review of other Children's Commissioner legislation has recommended that ambiguous or subjective limits on investigation powers are removed in favour of co-operation arrangements at an operative level.
66. The Children's Commissioner may enter into arrangements (for example memoranda of understanding) with other relevant bodies which might be responsible for the receipt of complaints from, or the investigation of matters relating to, children and young people in Jersey. The Welsh Children's Commissioner has such arrangements in place with various other supervisory bodies, for example with the Welsh Public Services Ombudsman.

Power to bring, intervene in, or provide assistance in relation to complaints against relevant authorities

67. Article 18 of the Law enables the Children's Commissioner to offer support to children and young people in seeking to resolve complaints against authorities in Jersey, either by commencing complaints on behalf of the child, or otherwise assisting the complainant in understanding the process, intervening in an existing complaint, or joining the child in progressing those complaints.

Example 10 – Assisting with complaints

A young person who has physical disabilities and attends a mainstream school contacts the Children's Commissioner as she is concerned that the school is not making reasonable adjustments to accommodate her disabilities. These relate to access to computers and physical education. She also raises concern around communication. The Children's Commissioner may take detailed instructions from the young person and agree to attend a multi-disciplinary meeting, also attended by representatives from the school and Children's Services. At the meeting the Children's Commissioner raises the issues that were concerning the young person and ensures that her voice is heard.

Power to commence, intervene, and/or assist in legal proceedings

68. The power to take legal proceedings to address infringements of children's rights, provide legal assistance to children in legal proceedings, and offer expertise in child rights matters to the courts is, as stated by the UN Committee, a recommended activity for NHRIs with a focus on children.
69. Children's Commissioners in the UK have powers, in one form or another, enabling them to assist or take direct action in relation to legal proceedings. In England, the Children's Commissioner has, since establishment of the role in 2005, exercised statutory powers to **intervene** in legal proceedings on a number of

occasions. A recent example of this intervention power concerned the case of a deportation of a mother, in which the English Commissioner submitted evidence and oral submissions to the court on matters affecting the human rights, including under the UNCRC, of her dependent children. In another case, the Children's Commissioner in England intervened in legal proceedings in order to invite the court to consider questions pertinent to the rights of children.

70. In other instances, Children's Commissioners in the UK have **assisted** children and their families financially in bringing proceedings with a wider significance for children's rights and facilitating the provision of legal advice in bringing those proceedings.
71. In Northern Ireland, the Children's Commissioner has the ability to **commence** legal proceedings. She has exercised such powers to bring judicial review proceedings involving human rights claims against the NI Assembly on issues such as reform of the common law 'parental punishment' defence and decisions to bring forward anti-social behaviour order legislation within a shortened consultation timeframe.
72. Articles 19 and 20 of the Law provide the Children's Commissioner with powers to assist, intervene in, and commence legal proceedings involving law or practice concerning the rights of children or young persons. The Children's Commissioner must not seek to bring or intervene in proceedings unless he/she is satisfied that the case raises a question of principle, or there are other special circumstances which make it appropriate for him/her to do so.
73. The Law, through a consequential amendment to the [Human Rights \(Jersey\) Law 2000](#), enables the Children's Commissioner to bring proceedings against an authority in relation to an act, or a proposed act, that is unlawful by reason of being incompatible with the European Convention on Human Rights, or rely on that Convention in any legal proceedings. Enabling Children's Commissioners or other human rights mandated commissions in the UK to bring human rights proceedings is progressively seen as an important power, as evidenced by similar powers being extended to, or proposed for, the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission in the UK.
74. Where the Children's Commissioner intends to exercise the power to commence or intervene in legal proceedings, the Law will require him/her to seek leave of the Court in accordance with Part 16 of the [Royal Court Rules 2004](#). That application would be dealt with in the same way as any other application for leave.
75. The Law provides that, where the child or young person applies (either in their own capacity, or through a representative) to the Children's Commissioner for assistance in relation to proceedings, assistance may be granted if the case raises a question of principle, or there are other special circumstances which make it appropriate for the Commissioner to provide assistance.

Example 11 – Assisting with legal proceedings

The Children's Commissioner might provide assistance in relation to legal proceedings by, among other things, co-ordinating the provision by a properly qualified legal practitioner of oral or written advice, or representation.

It might also mean providing funding to enable a complainant to engage legal representation. The provision of funding in such cases will be subject to strict internal controls and thresholds (as is the practice by other Human Rights and Children's Commissioners).

76. It is important to note that, in Northern Ireland for example, the Children's Commissioner may only provide assistance in relation to legal proceedings if satisfied that it would be unreasonable to expect the child or young person to deal with the case without assistance because of its complexity, or because of his position in relation to another person involved, or for some other reason. This requirement has been criticised for inhibiting the Commissioner's ability to carry out her mandate effectively. The removal of such restrictions labelled a 'personal issue duplication clause', is encouraged by independent reviews of Commissioner legislation.
77. As such, the Law will not seek to impose strict statutory limits to the provision of assistance, other than the need to accord with the grounds mentioned above, and any internal, non-statutory operating controls developed by the Children's Commissioner in time.

Section F – Accountability of the Children's Commissioner

78. A key policy consideration in determining measures of accountability applicable to the Children's Commissioner has been seeking compliance with international standards for National Human Rights Institutions ("NHRIs") (i.e. Paris Principles, UN Committee on the Rights of the Child General Comment No. 2, European Network of Ombudspersons for Children's Standards). Alongside this, there is a requirement to ensure effective governance and accountability to government for responsible use of public funds.
79. NHRIs established in accordance with international standards occupy what is recognised as a "unique and ... awkward position within the state", as they are independent from government but also accountable to them for their governance. These accountability relationships are always challenging – the government has a legitimate concern in ensuring that NHRIs are accountable for spending public money, but those accountability measures should not interfere in the operational independence of the body, i.e. legitimate financial autonomy.
80. The Children's Commissioner will be subject to several accountability and governance measures, under the Law and operationally.

Statutory arrangements

81. The presentation by NHRIs of annual reports to parliament is regarded as the "first layer of accountability, or formal accountability" of these bodies. This should enable parliament to engage in a discussion about the rights issues raised in these reports and review the work of the body in question. This layer of accountability is reflected in the draft Law in that the Children's Commissioner must present to the States an annual report on the discharge of the Commissioner's functions during the financial year (see Article 23). The annual report must, among other things, include a review of the functions discharged by the Commissioner in that year and the accounts of the office for that year (see Article 23(2)).
82. Accountability to the general public, and in particular children and young people, is considered to be a further layer of accountability. The Children's Commissioner must publish any reports produced by the Commissioner on the exercise of its functions (Article 21(1)(b)), including reports into investigations (in the case of reports into individual investigations, the Commissioner may decide against publication if the Commissioner reasonably considers it inappropriate to do so in the circumstances (see Article 17(4)). Moreover, the Children's Commissioner is required to take reasonable steps to involve children and young people in the work

of the Commissioner (Article 6), and must where appropriate ensure that reports, documents and information are presented in a child-friendly manner (Article 24(5)).

83. The Children's Commissioner is required to appoint an Advisory Panel (Article 26) and a Youth Advisory Panel (Article 27), whose role it is to provide advice to the Children's Commissioner on the discharge of its functions and assist in the preparation of the strategic plan and annual reports. The terms of reference and procedures of these Panels must be published following consultation with the Chief Minister and the President of the Chairmen's Committee.
84. In addition, the Children's Commissioner is required to appoint an Audit and Risk Advisory Panel ("ARAP") (see Article 27), whose function it is to ensure that arrangements have been put in place to ensure that the office of the Children's Commissioner is properly managed and governed. The Panel will be appointed in a similar manner to the Advisory and Youth Panels under the draft Law in accordance with terms of reference and procedures which are to be published by the Children's Commissioner, having consulted with the Chief Minister and the President of the Chairmen's Committee. In addition, the Chairman of the Public Accounts Committee will also be consulted, this is intended to reflect the specific accountability and governance remit of the ARAP, and the need for input from PAC as to the sufficiency of the Commissioner's proposed procedures. It should be noted that the appointment of such a Panel is not required under international standards, nor is it a feature of other UK Children's Commissioner legislation. It is, however, acknowledged to be an important measure of reassurance as to the accountability of the Children's Commissioner in the present context.
85. The Children's Commissioner is required to keep proper accounts and records in respect of each financial year (Schedule, paragraph 14). These accounts and records are subject to an auditing and review requirement, and the Law enables review of these arrangements by the Comptroller and Auditor General.

Operational arrangements

86. As a publicly funded independent body, the Children's Commissioner will be required to comply with financial directions as to the responsible use of public funds made under the [Public Finances \(Jersey\) Law 2005](#).
87. The Children's Commissioner will also align its governance conduct to the States of Jersey Code of Conduct, which implements core standards for the conduct of individuals in public life.

Part 3 – Financial and manpower implications

In July 2017, the Minister for Treasury and Resources allocated £1,855,000 and 4 FTEs from contingency funding to support the resourcing and staffing of the Commissioner's Office until the end of 2019. Future funding will be allocated as part of the Government Plan 2020–2023.

Part 4 – Human Rights Statement

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 Commissioner for Children and Young People (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Commissioner for Children and Young People (Jersey) Law 201- (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 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 will establish the office of the Commissioner for Children and Young People, and confer functions on the person holding that office (the “**Commissioner**”) to promote and protect the rights of children and young people in Jersey. The draft Law sets out provisions relating to, in general terms, *inter alia*, the powers of the Commissioner to require the production of information by relevant authorities, the conduct of formal investigations, and reporting powers of the Commissioner.

The Articles of the ECHR engaged by the draft Law are, primarily, Article 8 ECHR (the right to private and home life) and, to a lesser extent, Article 6 ECHR (right to a fair trial). In the case of the former provision, the establishment in law of a Commissioner with a mandate to protect the rights of children represents a measure by the Government which, from a human rights perspective, goes to fulfilling the important positive obligations owed to children under Articles 2, 3 and 8 ECHR, i.e. to take positive steps to protect their lives, to protect them from inhuman and degrading treatment, and to protect their physical integrity (which the Commissioner’s functions and powers will serve in practice).

Powers to request the provision of information, documents and other evidence, and powers to publish, *inter alia*, reports (various Articles)

The draft Law will provide the Commissioner with powers to require relevant authorities (interpreted in accordance with Article 1(1) of the draft Law) to supply or produce to the Commissioner information, documents and evidence. The draft Law will also enable the Commissioner to issue a range of reports, most significantly, reports into formal investigations conducted under Part 3 of the draft Law. In general terms, this range of powers will, to one extent or another, engage Article 8 ECHR.

The Commissioner will have a primary function of promoting and protecting the rights of children and young people (Article 4 of the draft Law), and general functions (Article 5 of the draft Law) which may be carried out in pursuance of the primary function. These broad functions reflect policy for the Commissioner to have a comprehensive mandate, and this is intended to reflect recommended areas of activities for national human rights institutions with a focus on children’s rights, as recognized and encouraged in international narrative (the Paris Principles, UN Committee on the Rights of the Child’s General Comment No. 2, and the European Network of Ombudspersons for Children’s standards). Article 8 of the draft Law will provide the Commissioner with a power to request the supply of information

from relevant authorities in pursuance of the Commissioner's functions in Articles 4 and 5 of the draft Law.

Part 3 of the draft Law will provide the Commissioner with a power to conduct formal investigations, in essence, into complaints or other concerns arising where the matter raises issues of particular significance to children and young people generally, or particular groups of children and young people (see Article 10 of the draft Law). Part 3 of the draft Law sets out a number of conditions and procedural requirements for the conduct of an investigation, including the power for the Commissioner to hold hearings (see Article 11(9) of the draft Law), and to require a person to give evidence and produce documents (see Article 12(1) of the draft Law).

The draft Law will provide the Commissioner with a power to publish, *inter alia*, reports concerning the work undertaken by the Commissioner (see Article 21 of the draft Law); in particular, reports of formal investigations (see Article 16 of the draft Law), and to disclose investigation reports to specified persons (see Article 17 of the draft Law).

The powers outlined above will engage the Article 8(1) ECHR right to private and home life of certain relevant authorities or individuals in relation to whom they are exercised, as well as those rights of persons who are the subject of published reports. A 'relevant authority' for the purposes of the draft Law will, in addition to public authorities, include private entities (e.g. privately-owned nurseries). The Article 8(1) ECHR right to 'private life' has been recognized as extending to the activities of a professional or business nature, and so the exercise of information-gathering powers against private businesses or undertakings may engage the right to private and home life of those entities, depending on the circumstances. The Article 8(1) ECHR right to private life protects personal data, such as names and addresses; and the right to home life, also protected under Article 8(1) ECHR, covers a right to respect for correspondence and the confidentiality of private communications. Taken together, a power to request information, which might take the form of correspondence or include personal data, from private persons or third sector entities, whether under Article 8 or Part 3 of the draft Law, would constitute an interference with Article 8 ECHR.

The Commissioner may obtain sensitive personal information in the course of the Commissioner's functions. Any disclosure of information intimately connected with an individual's private life, such as matters relating to medical treatment or social care matters, without the consent of the individual, will constitute an interference with private life.

An interference with an Article 8(1) ECHR right must be justified under Article 8(2) ECHR, meaning it must be (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2) ECHR; and (c) necessary in a democratic society. 'Necessity' requires the identification of a pressing social need and the existence of "relevant and sufficient" reasons to justify the interference at issue. A measure will only be proportionate to the legitimate aim if supported by sufficiently persuasive reasons.

Taking this justification analysis in stages, the interferences with the Article 8(1) ECHR right described above would be deemed to be "in accordance with the law"; those powers are contained in provisions which have a basis in domestic law, i.e. the present legislation, and can be viewed as sufficiently precise and accessible, therefore being foreseeable.

The information-gathering powers and reporting powers in the draft Law have a clear objective. The Commissioner has a specific mandate, underpinned by comprehensive functions, for the promotion and protection of the rights of children and young people.

The Commissioner is being established in a context of the Independent Jersey Care Inquiry, and a commitment to meet the recommendations of the Inquiry Panel. The purposes of the information-gathering powers are to ensure that the Commissioner can investigate and seek access to information that will enable the Commissioner to then address rights issues in Jersey, which through the reporting powers, can be brought to the attention of relevant bodies or the Public at large. The rationale for these powers, therefore, comes directly within the protection of ‘rights of others’ qualification in Article 8(2) ECHR.

‘Necessary in a democratic society’ requires there to be a pressing social need for the interference in question. Interfering with the private or home life of private or third-sector relevant authorities, through requests for the provision of information or documents for example, is ‘necessary’ for ensuring that the Commissioner can pursue the overriding function of promoting and protecting rights, particularly as access to information will enable the Commissioner to investigate infringements of rights, provide assistance to children and young people to further respect for their rights and exercise many of the other functions which go toward the same objective. That objective, of ensuring respect for the rights of children and young people, is a ‘pressing social need’ in the local context. As such, interferences with Article 8 ECHR rights of private persons is proportionate, in principle.

There are a number of provisions in the draft Law which help to strike a balance between the Commissioner’s objectives and the Article 8 ECHR rights of private persons engaged by the Commissioner’s powers. An important aspect in determining what is ‘necessary in a democratic society’ is the identification of procedural safeguards which mitigate the exercise of powers interfering with the Article 8(1) ECHR rights. Safeguards ensure that a state remains within its margin of appreciation in fixing the applicable regulatory framework. The European Court of Human Rights has enunciated a list of safeguards which provide adequate protection against abuse of the Article 8 ECHR right, one of which is the requirement for the Law to contain explicit and detailed provisions about how the powers interfering with Article 8 ECHR could be exercised. The draft Law contains a number of safeguards around the exercise of the Commissioner’s information-gathering power, and around the disclosure of information by the Commissioner.

In the case of the Commissioner’s information-gathering power in Article 8 of the draft Law, the Commissioner may only make reasonable requests for information, and the Commissioner must be able to link the request to the functions of the Commissioner in Articles 4 and 5 of the draft Law. A relevant authority referred to in Article 8(2), which would include a private entity, is not required to supply information to the Commissioner if rule of law such as the rule in relation to legal professional privilege would enable a relevant authority to refuse to supply the information requested (see Article 8(3)(a)(ii) of the draft Law), and if it would come within witness privilege (see Article 14 of the draft Law). The existence of such privilege serves important Article 8 ECHR purposes. Legal professional privilege protects the lawyer-client relationship, serving the general interest in a person being able to consult a lawyer under conditions that favour full and uninhibited discussion. Candid and unfettered legal advice enables private individuals to make determinations critical to the protection of their other rights and freedoms. Witness privilege also protects against the disclosure of information which may severely detrimental to a person’s interests (e.g. self-incriminating evidence), which again goes to the protection of other rights and freedoms.

In Part 3 of the draft Law, the exercise by the Commissioner of information-gathering powers in that context will be narrowed by the fact that investigations may only be

conducted in relation to relevant authorities providing services to, or directly in respect of children or young people (see Article 10(4) of the draft Law); only where issues of particular significance are at hand (see Article 10(2) of the draft Law); in limited ‘last resort’ cases (see Article 10(6) of the draft Law); and permits redaction of information covered by Article 8(3) of the draft Law, which again would extend to privileged information, for example (see Article 12(7)). This narrowing of the investigative scope limits the information which might be disclosed to the Commissioner to only that which should be necessary for the legitimate purposes of the matter being investigated. Furthermore, any request for attending to give evidence or to produce documents must be specified by notice to the person in question (see Article 12(3)). This is an added safeguard against disproportionate requests for information.

In Part 3 of the draft Law, where it appears that any report or recommendation by the Commissioner may adversely affect a relevant authority (which could be a private entity) or other person (e.g. an individual who is not the direct focus of the investigation), the Commissioner is required (see Article 11(3) of the draft Law) to enable the testing of the evidence, by way of cross-examination, by the authority or person, who may be assisted by representatives in doing so (see Article 11(5) of the draft Law). The challenging of the evidence base of investigations should operate to ensure that the matters which are reported on are accurate and robust, which protects against frivolous or otherwise inaccurate reporting of information. Moreover, a report of a formal investigation may be finalised only if a person named in the report has been given a copy and an opportunity to make representations on it (see Article 16(7) of the draft Law). Although the Commissioner is not required to take such representations into account, it provides another mitigating safeguard against potentially disproportionate disclosures of information.

Finally, in terms of Article 8 ECHR safeguards, in the context of reporting and disclosures of information, the draft Law will require the Commissioner to comply with anonymity requirements (see Article 24 of the draft Law) around the publication of information. That provision reflects the proper balance between the Commissioner’s ability to publish matters and its obligation to protect the private rights of individuals whom are the subject of the investigation report. Unlawful disclosures of personal information by the Commissioner and, *inter alia*, staff is a criminal offence (see Article 29 of the draft Law). This will be of further deterrent effect.

The Commissioner’s power to publish reports on formal investigations could potentially draw negative scrutiny toward a relevant authority and, by association, a particular individual (albeit anonymized as appropriate). Article 8 ECHR extends to protection for attacks on reputation, and a person’s reputation, even if criticised in a public debate, forms part of his or her personal identity and psychological integrity, therefore coming within the scope of his or her private life. While it might be possible that an interference with the Article 8(1) ECHR right could be established, that interference would be justified. There is a legitimate public interest for the Public in knowing the outcome of investigations into rights issues of particular significance for children and young people, and reporting powers of the Commissioner in this respect are not disproportionate to that end. Moreover, as noted above, persons severely affected by an investigation report must be afforded an opportunity to test evidence against them and, in practice, if the evidence stands, reporting on that matter is a proportionate measure addressing the pressing social need to which it is directed.

Powers to enter premises to conduct interviews or observe standards (Article 9)

Article 9 of the draft Law provides a power for the Commissioner, or a person authorized by the Commissioner, to enter any premises, other than a private dwelling, where a child or young person is living, detained, or otherwise cared for, or receiving services or treatment, for the purposes of interviewing that child or young person or for observing the standard of accommodation, care, detention, services or treatment provided to children or young people in such premises. The power to enter premises applies for the purposes of the Commissioner's functions under Article 4 (promoting and protecting the rights of children and young people) and Article 5 (various general functions of the Commissioner).

As noted above, the Commissioner will have a broad mandate to promote and protect the rights of children and young people. Pursuing that mandate may involve the exercise of the power of entry in relation to relevant authorities who are private entities. The Article 8(1) ECHR right to 'home' life has been recognised to extend to premises used for business purposes and enable companies, in addition to individuals, to rely on its protections. As such, in these cases, the exercise of the Commissioner's power of entry in Article 9 of the draft Law may engage the Article 8(1) ECHR right of the individual or corporate owners of private businesses or premises.

In terms of justification, the interference would be deemed to be 'in accordance with the law'; Article 9(1) of the draft Law requires the power of entry to be exercised for the purposes of the Commissioner's primary function, and associated general functions, which are for the promotion and protection of the rights of children and young people. This objective clearly comes within the 'protection of rights and freedoms of others' aim which is classed as legitimate in Article 8(2) ECHR. Given the present local context surrounding children's matters in Jersey, the promotion and protection of the rights of children and young people is a 'pressing social concern'. It follows that ensuring the Commissioner has a power to enter premises where children and young people are living, detained, or otherwise cared for, or receiving services or treatment, in order to engage with children and young people, and observe how they are cared for, among other things, is a necessary interference.

Given the necessity of the Commissioner entering premises in pursuit of the primary and general functions, the power in Article 9 of the draft Law is, in principle, proportionate to the legitimate aim of that power. In practice, it will be important also that the power is exercised by the Commissioner in a proportionate manner. Nonetheless, there are a number of features in Article 9 of the draft Law which should serve to minimize interferences with the Article 8(1) ECHR right to home life. First and foremost, the power may not be exercised in relation to private dwellings, which keeps the power from interfering with the most sensitive areas of home life. The power of entry may also only be exercised for the specific purpose set out in Article 9(3) of the draft Law, must be exercised at a reasonable time, and only by specific persons, namely the Commissioner and a person authorized by the Commissioner (who must, if required to do so, produce some duly authenticated document showing his or her authority to enter the premises). It should be noted also that the requirement for the Commissioner to consider notification and involvement of parents of children and young people when conducting an interview under Article 9 ECHR (see Article 9(5) of the draft Law) also serves to balance the Article 8 ECHR rights of parents against the legitimate interests served by the Commissioner's power of interview.

Offence of, *inter alia*, failing to comply with Commissioner notice (Article 13)

Article 13 of the draft Law provides for a number of offences which might generally be considered offences of obstructing an investigation by the Commissioner. These offences include failing to attend before the Commissioner as required by a notice issued under Article 12(3); refusing or failing, when attending before the Commissioner as required by an Article 12(3) notice, to answer any question concerning the subjects specified in the notice; and refusing or failing to produce a document which is required to be produced under the Article 12(3) notice. Article 13(2) of the draft Law provides that it is a defence for a person charged with these offences to prove that there was a reasonable excuse for the refusal or failure.

Article 6(2) ECHR provides for the presumption of innocence in criminal proceedings. Article 6(2) ECHR is engaged by Article 13(2) of the draft Law as the defence it provides for is based around a reverse burden of proof, i.e. that it is for the person charged to show that there was a reasonable excuse for the failure or refusal. Article 6(2) ECHR does not prohibit statutory provisions which transfer the burden of proof to the accused to establish the defence, provided the overall burden of establishing guilt remains with the prosecution. In the case of Article 13(2), the legal burden of proof properly falls on the accused because all information relevant to the defence would be known to him or her and not to the prosecutor, i.e. the circumstances which amount to the refusal or failure being reasonably excusable. Balanced against the need to ensure that obstructions of Commissioner investigations are penalised, and the limited penalty under Article 13(3) of the draft Law (a level 3 fine), there is no incompatibility with the ECHR arising from Article 13(2).

Explanatory Note

This draft Commissioner for Children and Young People (Jersey) Law 201- (“Law”), if enacted by the States, would establish the office the Commissioner for Children and Young People and confer functions on the person holding that office (the “Commissioner”) to promote and protect the rights of children and young people in Jersey.

Part 1: interpretation and application (Articles 1 and 2)

Article 1 sets out the meaning of words and expressions used throughout this Law. In particular, a “relevant authority” is any private, public or voluntary sector entity including a charity as defined in the Charities (Jersey) Law 2014. “Children” are persons under the age of 18 and “young people” are persons aged 18 or over but under the age of 25 who have a disability, have been in care as children, or have been or are in youth custody, or sentenced to youth custody.

Article 2 provides for the scope of the Commissioner’s functions which covers not only children and young people who are normally resident in Jersey but also children, or young people with a disability, who are visiting the Island and children and young people who have been placed off-Island under various arrangements under Jersey law.

Part 2: establishment and functions of the Commissioner (Articles 3 to 9)

Article 3 provides for the establishment of the office of the Commissioner for Children and Young People (“the office”) and introduces the *Schedule* to the Law which contains various provisions detailing, amongst other things, the recruitment procedures for the appointment of the Commissioner, termination of the appointment and the general governance of the office.

Article 4 confers the Commissioner’s primary function which is to promote and protect the rights of children and young people. “Rights” is defined in *Article 1(2)* to mean, in relation to children, the rights set out in the United Nations Convention on the Rights of the Child (the “Convention”) and in relation to young people, any rights set out in other European or international treaties or conventions protecting the rights of individuals, which appear to the Commissioner to protect the rights of young people. “Rights” also includes the welfare of children and young people if the context in which the Commissioner is discharging the primary function calls for this interpretation.

Article 5 sets out a non-exhaustive list of general functions which will facilitate the Commissioner’s discharge of the primary function.

Article 6 supplements the Commissioner’s primary function by requiring the Commissioner to take reasonable steps to involve children and young people in the work of the Commissioner by communicating and consulting with them.

Article 7 requires the Commissioner to have regard to the Convention and its Optional Protocols, when discharging functions under this Law. The Commissioner must also encourage others to put forward the best interests of children and young people as a primary consideration in any decisions which might affect them, and must have regard to, and encourage others to have regard to, the views of children and young people on all matters affecting them. The Commissioner is also required to have regard to any other European or international treaties or conventions, protecting the rights of individuals, which extend to Jersey.

Article 8 requires certain relevant authorities to supply information in their possession to the Commissioner, when requested, for the purposes of the Commissioner's functions. Those relevant authorities are not required to comply with that request if expressly prohibited from so doing by another enactment, or a rule of law such as the rule in relation to legal professional privilege, would enable a relevant authority to refuse to supply the information requested. In the case of a relevant authority which is a "scheduled public authority" as described in Schedule 1 to the Freedom of Information (Jersey) Law 2011 (the "Freedom of Information Law"), that authority may refuse to supply information to the Commissioner if the request were to be treated as if it had been made under the Freedom of Information Law and the authority, in those circumstances, was able to rely on one of the permitted grounds for refusal set out in Article 9 of that Law. If an authority declines to supply information on that basis, then the Commissioner's request is treated as if it had been made under the Freedom of Information Law in the first place, thereby affording the Commissioner appeal rights under that Law.

Article 9 confers a power on the Commissioner to enter premises (other than a private dwelling) where a child or young person is living, detained, or otherwise cared for, or receiving services or treatment, to conduct interviews with children and young people, or staff, or observe standards. An interview with a child or young person may be conducted in private but a parent of the child or young person must be informed of any proposed interview and entitled to be present, unless the Commissioner deems that it would not be in the child's or young person's interest nor practical for the parent to be present, or if the child or young person reasonably objects to their presence.

Part 3: formal investigations and assistance (Articles 10 to 20)

Article 10 gives power to the Commissioner to conduct formal investigations into any matter relating to the rights of children. The exercise of this formal investigation power is subject to the Commissioner being satisfied on reasonable grounds that the information received about the matter raises an issue of particular significance, and having first consulted the advisory panel established under *Article 26*. The Commissioner cannot conduct a formal investigation into a matter which relates to proposed or actual legal proceedings. The Commissioner may investigate a complaint from a child or young person about the infringement of that child's or young person's rights in relation to the delivery of services by a relevant authority to that child or young person. The Commissioner may also investigate such a matter where information comes to his or her attention, without a complaint being made. If it appears that a matter is capable of resolution, the Commissioner must make every reasonable effort to secure the resolution of that matter, before launching a formal investigation.

Article 11 sets out the procedural steps for the initiation of a formal investigation including the drawing up of terms of reference and taking steps to bring notice of the formal investigation to the attentions of persons likely to be affected by it. If during the course of the formal investigation it appears there may be grounds for making any report or recommendation that may adversely affect a relevant authority, the Commissioner must afford to that authority an opportunity to give oral or other evidence.

Article 12 sets out the procedural requirements for the giving of evidence and the production of documents in relation to a formal investigation, including the giving of notice for the giving of evidence and production of documents.

Article 13 makes it an offence if a person given a notice under *Article 12* refuses or fails to attend before the Commissioner, to answer questions, or to produce a document; or knowingly provides false or misleading information or deliberately alters, conceals or destroys a document. A person guilty of any such offence is liable to a fine of level 3 on the standard scale of fines (currently £10,000).

Article 14 enables a person to claim witness privilege if he or she would be entitled, in proceedings before a court, to refuse to answer a question or produce a document in relation to the matter in question.

Article 15 makes the standard provision as to the liability of the officers of a body corporate, or of the partners of a partnership that has separate legal personality, for offences committed by the body corporate or partnership.

Article 16 requires the Commissioner, at the conclusion of any formal investigation conducted under *Article 10*, to prepare a report which must include any recommendations arising out of the formal investigation. In relation to any recommendation, the report may require that a person named in the report provides a statement in writing to the Commissioner setting out what the person in question has done or proposes to do in response to the recommendation, or, if the person does not intend to do anything in response to the recommendation, the reasons for that. A report may be finalised only if a person named in it has been given a copy of the draft report and an opportunity to make representations on it.

Article 17 sets out the persons to whom the Commissioner must provide a copy of the formal investigation report and requires the Commissioner to publish it unless he or she considers that it would not, in all the circumstances of the case, be reasonable or appropriate to do so.

Article 18 sets out the Commissioner's powers to provide assistance to children or young people where a complaint is initiated by them, or on their behalf, against a relevant authority. A "complaint" under this Article is defined in *Article 1(1)* as a statement expressing dissatisfaction about an act done by a relevant authority.

Article 19 provides power for the Commissioner to bring or intervene in legal proceedings involving law or practice concerning the rights of children or young people, or to act as a friend of the court (*amicus curiae*) as a non-party to the proceedings but with an interest in the outcome. However, the Commissioner is prohibited from bringing or intervening in proceedings unless the case raises an issue of particular significance to children and young people generally or particular groups of children and young people.

Under *Article 19(4)(a)*, the Commissioner has the status to bring judicial review proceedings against a public authority that is alleged to have acted in a way which is incompatible with the European Convention on Human Rights. The Commissioner is not required to be the victim of that unlawful act of the public authority in order to have a sufficient interest, as would ordinarily be required under Article 8(1) of the Human Rights (Jersey) Law 2000.

Article 20 enables the Commissioner to assist a child or young person in proceedings involving law or practice concerning the rights of children or young people, provided the Commissioner is satisfied the case raises an issue of particular significance to children and young people generally or particular groups of children and young people.

Part 4: reports and consultation (Articles 21 to 25)

Article 21 provides a general power for the Commissioner to produce and publish reports, documents or other information about the Commissioner's functions.

Article 22 requires the Commissioner to prepare, every 4 years, a strategic plan setting out how the Commissioner proposes to perform his or her functions over the 4 year period. The plan must be presented to the States before the start of the 4 year period to which the plan relates, but the first strategic plan under this Law must be presented not later than 6 months after this Law comes into force.

Article 23 requires the Commissioner to prepare an annual report on the functions discharged by the Commissioner during the financial year, which must be presented to the States not later than 6 months after the end of the financial year to which the report relates.

Article 24 requires the Commissioner to publish the strategic plan and any report which is laid before the States. This Article also sets out requirements as to the anonymising of any report or other document produced, provided or published by the Commissioner who must ensure, so far as is reasonable and practicable, that a child or young person, or group of children or young people is not named or otherwise identifiable. In relation to formal investigation reports, other than naming the relevant authority concerned, any individual referred to in the report must not be named and any particulars which are likely to identify the person concerned must be omitted. The Commissioner must also take reasonable steps to ensure that the content of any report, or other document, whether or not published, takes account, so far as practicable, of the age, understanding and usual language of any children or young people by whom it is intended that such a report or other document will be read, and of the effect of any disabilities they may have.

Article 25 requires a Minister to consult the Commissioner on any proposals to enact legislation directly concerning children or young people. A Minister may consult the Commissioner upon any other matter concerning children or young people generally, including the provision of services to, or directly in respect of them.

Part 5: advisory panels (Articles 26 to 28)

Article 26 requires the Commissioner to appoint an advisory panel consisting of persons who represent a broad range of interests which are relevant to the Commissioner's functions, to provide the Commissioner with advice and assistance relating to the discharge of his or her functions generally.

Article 27 requires the Commissioner to appoint an audit and risk advisory panel consisting of persons who have a broad range of experience relevant to audit and risk management, to provide the Commissioner with advice and assistance on the use of resources, the management of risk and governance matters.

Article 28 requires the Commissioner to appoint a youth advisory panel consisting of children and young people, to provide the Commissioner with advice and assistance relating to the discharge of his or her functions generally. In particular the panel may advise the Commissioner as to the preparation of the strategic plan and the annual report and give its views to the Chief Minister and the president of the chairmen's committee as to the suitability of a person for appointment as the Commissioner.

Part 6: disclosure of information (Article 29)

Article 29, without prejudice to the Data Protection (Jersey) Law 2018, requires the existing Commissioner and former Commissioners, existing or former members of the Commissioner's staff and existing or former members of the advisory panels appointed under *Articles 26 to 28* not to disclose certain descriptions of information, unless it is lawful to do so. Contravention of this Article is an offence punishable with imprisonment for a term of 2 years and to an unlimited fine.

Part 7: closing provisions (Articles 30 to 32)

Article 30 is a standard Regulation-making power enabling the States to make Regulations to make consequential amendments to other enactments, including this Law.

Article 31 takes the opportunity to make some consequential amendments to the Employment of States of Jersey Employees (Jersey) Law 2005 so as to provide that the Commissioner is not a States employee, the Freedom of Information Law so as to make the office a public authority for the purposes of that Law, and the Public Employees (Pensions) (Jersey) Law 2014 so as to enable the Commissioner (and acting Commissioner) to be eligible for membership of the Public Employees Pension Scheme.

Article 32 provides for the title by which this Law may be cited and for it to come into force 7 days after it is registered with the Royal Court.

Schedule: the Commissioner for Children and Young People (paragraphs 1 to 15)

Paragraph 1 provides that the holder of the office of Commissioner for Children and Young People is, by that name, a corporation sole.

Paragraph 2 provides for the Commissioner to be a wholly independent office and requires the States to respect, uphold and defend its independence.

Paragraph 3 is a standard provision enabling the Commissioner to enter into contracts, make reasonable charges for anything he or she does in the discharge of his or her functions and do anything reasonably necessary or expedient for, or incidental to any of the Commissioner's functions.

Paragraph 4 sets out the procedure for appointing the Commissioner and provides that the maximum term of office is 8 years.

Paragraph 5 provides that a Commissioner may only hold the office once, and sets out the restrictions on appointment to the office.

Paragraph 6 sets out the circumstances in which a Commissioner ceases to hold office and the procedure for revoking his or her appointment.

Paragraph 7 sets out the procedure for the appointment of a temporary acting Commissioner in circumstances where the permanent office holder is unable to discharge his or her functions, whether in the short term or until a new Commissioner is appointed.

Paragraph 8 requires the States Employment Board to determine the Commissioner's pay and pension entitlements.

Paragraph 9 requires the States to provide the Commissioner with the resources to enable the Commissioner to discharge his or her functions under this Law, or under any other enactment, properly and effectively.

Paragraph 10 enables the Commissioner to engage paid advisers.

Paragraph 11 enables the Commissioner to authorise other persons to discharge functions on his or her behalf.

Paragraph 12 protects the Commissioner or his or her staff, the Chief Minister, the president of the chairmen's committee and the States from any liability if legal action is taken in relation to anything done by the Commissioner in the discharge of his or her functions.

Paragraph 13 requires the Commissioner to keep and prepare accounts.

Paragraph 14 provides that the Commissioner is not liable to income tax in respect of any charges he or she may make in the discharge of his or her functions.



Jersey

DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (JERSEY) LAW 201-

A LAW to provide for the establishment and functions of an office of the Commissioner for Children and Young People; and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

PART 1

INTERPRETATION AND APPLICATION

1 Interpretation

(1) In this Law, unless the context indicates otherwise –

“2005 Law” means the Employment of States of Jersey Employees (Jersey) Law 2005¹;

“acting Commissioner” is to be construed in accordance with paragraph 7 of the Schedule;

“administration of the States” has the meaning given in Article 1 of the 2005 Law;

“advisory panel” means the panel appointed under Article 26;

“audit and risk advisory panel” means the panel appointed under Article 27;

“chairman of the Public Accounts Committee” means the person appointed under standing order 131(2) of the Standing Orders of the States of Jersey² as chairman of the Public Accounts Committee established under standing order 131(1) of those Standing Orders;

“Chief Executive Officer” has the meaning given in Article 3 of the 2005 Law;

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- “children” means persons who have not attained the age of 18;
- “Children Law” means the Children (Jersey) Law 2002³;
- “Commissioner” means the person for the time being appointed to hold the office of the Commissioner for Children and Young People;
- “complaint” in relation to a relevant authority or other person means a statement (whether oral, written or electronic) expressing dissatisfaction about an act done by that relevant authority or other person, which is made by or on behalf of a child or young person;
- “Data Protection Law” means the Data Protection (Jersey) Law 2018⁴;
- “financial year” means a year beginning on 1st January;
- “formal investigation” means an investigation conducted under Article 10;
- “Freedom of Information Law” means the Freedom of Information (Jersey) Law 2011⁵;
- “Human Rights Law” means the Human Rights (Jersey) Law 2000⁶;
- “Information Commissioner” means the person appointed as such under Article 5(1) of the Data Protection Authority (Jersey) Law 2018⁷;
- “Jersey Appointments Commission” is to be construed in accordance with Article 17 of the 2005 Law;
- “Minister” is to be construed in accordance with the States of Jersey Law 2005⁸ and includes the Chief Minister;
- “parent” has the meaning given in Article 1(1) of the Children Law and includes any person who has acquired parental responsibility in respect of a child by virtue of an order made by the court under the Children Law, or who is a child’s guardian appointed under Article 7 of that Law;
- “person” includes a relevant authority;
- “president of the chairmen’s committee” means the person appointed under standing order 142(2) of the Standing Orders of the States of Jersey to be the president of the chairmen’s committee established under standing order 142(1) of those Standing Orders;
- “primary function” is to be construed in accordance with Article 4;
- “public authority” means a relevant authority described in paragraph (a) and (b) of the definition “relevant authority”;
- “publish” means publish in a manner that is likely to bring it to the attention of those affected;
- “relevant authority” means –
- (a) a public authority listed in any of paragraphs (a) to (i) and (k) of the definition “public authority” in Article 1(1) of the Data Protection Law;
 - (b) to the extent not included in paragraph (a), any body (whether incorporated or unincorporated) which –
 - (i) is in receipt of funding at least half of which is from the States in one or more years,

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- (ii) carries out functions conferred under an enactment,
 - (iii) is appointed, or whose officers are appointed, by a Minister, or
 - (iv) provides any service under a contract made with any public authority included under paragraph (a), the provision of such service being a function of that authority;
- (c) a “Jersey entity” within the meaning of Article 2(3) of the Charities (Jersey) Law 2014⁹, which meets the charity test under Article 5 of that Law);
- (d) a Jersey entity which does not meet the charity test; or
- (e) any form of community, religious, or voluntary entity in Jersey, other than a Jersey entity;

“States Employment Board” means the States Employment Board established under Article 4 of the 2005 Law;

“strategic plan” means the plan prepared under Article 22;

“the office” means the office of Commissioner for Children and Young People;

“United Nations Convention on the Rights of the Child” means the 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;

“young people” means persons who have attained the age of 18 and have not attained the age of 25 who –

- (a) have a disability within the meaning of paragraph 8 of Schedule 1 to the Discrimination (Jersey) Law 2013¹⁰;
- (b) are young adults within the meaning given in Article 1(1) of the Young Offenders Law, and are or have been sentenced or are, or have been placed in custody under Part 2 of that Law;
- (c) whilst young persons within the meaning given in Article 1(1) of the Young Offenders Law, were sentenced or placed in custody under Part 2 of that Law; or
- (d) whilst under the age of 18 –
 - (i) were looked after by the Minister, within the meaning of Article 1A of the Children Law,
 - (ii) were the subject of an emergency protection order under Article 37 of the Children Law,
 - (iii) were accommodated in a voluntary home within the meaning of Article 1(1) of the Children Law, or
 - (iv) were the subject of private fostering arrangements under Part 8 of the Children Law;

“Young Offenders Law” means the Criminal Justice (Young Offenders) (Jersey) Law 2014¹¹;

“youth advisory panel” means the panel appointed under Article 28.

- (2) Subject to paragraph (3), references in this Law to the “rights of children and young people” means –
 - (a) in relation to children, the rights set out in the United Nations Convention on the Rights of the Child, and
 - (b) in relation to young people, any rights set out in other European or international treaties or conventions protecting the rights of individuals, which extend or apply to Jersey, and which appear to the Commissioner to protect the rights of young people.
- (3) Without prejudice to the generality of paragraph (2), “rights” shall also be taken to include the welfare of children and young people if, in the course of the Commissioner’s discharge of the primary function, the context so requires.
- (4) The States may by Regulations amend the definitions contained in this Article.

2 Application of Law

- (1) The discharge of functions by the Commissioner under this Law, applies in relation to children and young people in Jersey, including –
 - (a) children who are in Jersey on a temporary or transitory basis;
 - (b) young people (within the meaning given in paragraph (a) of the definition in Article 1(1)) who are in Jersey on a temporary or transitory basis;
 - (c) children (within the meaning of the Children Law) living outside Jersey by reason of arrangements to assist such children under paragraph 4 of Part 1 of Schedule 2 (ministerial support for children and families – arrangements for children looked after by the Minister) to the Children Law;
 - (d) children placed outside Jersey by reason of arrangements under the Children (Placement) (Jersey) Regulations 2005¹²;
 - (e) children and young people who are removed from Jersey under Part 12 (transfer of patients between Jersey and other jurisdictions) of the Mental Health (Jersey) Law 2016¹³; and
 - (f) children and young persons sentenced to youth detention (within the meanings given for those words in Article 1(1) of the Young Offenders Law) which is being served outside Jersey under the Crime (Sentences) Act 1997 of the United Kingdom.
- (2) The States may, by Regulations, amend this Article for the purpose of making further provision about the application of the Commissioner’s functions.

PART 2

ESTABLISHMENT AND FUNCTIONS OF THE COMMISSIONER

3 Establishment of the Commissioner for Children and Young People

- (1) There is established an office to be known as the Commissioner for Children and Young People.
- (2) The Schedule makes further provision about the office.
- (3) The States may, by Regulations, amend the Schedule for the purpose of making further provision about the office.

4 Primary function of the Commissioner

The primary function of the Commissioner is to promote and protect the rights of children and young people.

5 General functions of the Commissioner

- (1) The Commissioner, in discharging the primary function, may, in particular, discharge the following general functions –
 - (a) keeping under review the adequacy and effectiveness of law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
 - (b) keeping under review the adequacy and effectiveness of services provided for children and young people by relevant authorities;
 - (c) promoting awareness and understanding of the rights of children and young people;
 - (d) providing human rights education for relevant authorities or other persons that work with, or on behalf of children and young people;
 - (e) promoting harmonisation of legislation and policy with the United Nations Convention on the Rights of the Child, and any other European or international treaties or conventions, protecting the rights of individuals, which extend or apply to Jersey;
 - (f) providing advice and recommendations on the rights of children and young people;
 - (g) bringing any matter relating to the rights of children and young people to the attention of the States or any relevant authority;
 - (h) looking into, or formally investigating any matter relating to the rights of children and young people;
 - (i) bringing, intervening in, or assisting in relation to, legal proceedings or complaints against relevant authorities;
 - (j) monitoring the implementation in Jersey of the United Nations Convention on the Rights of the Child and any other European or international treaties or conventions, protecting the rights of individuals, which extend or apply to Jersey;

- (k) encouraging the ratification of, and implementation by Jersey of any European or international treaties or conventions, protecting the rights of individuals, which have not been extended, or do not apply to Jersey;
 - (l) reporting on the States' implementation and monitoring of the rights of children and young people;
 - (m) publishing a report on any matter looked into, or formally investigated by the Commissioner.
- (2) Nothing in paragraph (1) is intended to limit the scope of the Commissioner's general functions, which may include discharging such other functions as appear to the Commissioner to be calculated to facilitate, or are incidental or conducive to, the discharge of the Commissioner's primary function.

6 Involving children and young people

- (1) The Commissioner must take reasonable steps to involve children and young people in the work of the Commissioner.
- (2) The Commissioner must, in particular, take reasonable steps to –
 - (a) ensure that children and young people are made aware of –
 - (i) the functions of the Commissioner,
 - (ii) the ways in which they may communicate with the Commissioner, and
 - (iii) the ways in which the Commissioner may respond to any issues which they raise; and
 - (b) consult children and young people, relevant authorities and persons working with, and on behalf of children and young people on –
 - (i) the discharge of the Commissioner's functions, and
 - (ii) the work to be undertaken by the Commissioner.

7 United Nations Convention on the Rights of the Child

- (1) In discharging functions under this Law, the Commissioner must –
 - (a) in relation to children, have regard to the United Nations Convention on the Rights of the Child and its Optional Protocols (as may be amended from time to time); and
 - (b) in relation to children and young people –
 - (i) have regard to the best interests of children and young people as a primary consideration,
 - (ii) encourage others to put forward the best interests of children and young people as a primary consideration whenever decisions are made in respect of, or have a bearing on children or young people,
 - (iii) have regard to, and encourage others to have regard to, the views of children and young people on all matters affecting

-
- them, with due allowance being made for age and maturity, and
- (iv) have regard to any other European or international treaties or conventions, protecting the rights of individuals, which extend or apply to Jersey.
- (2) The Optional Protocols referred to in paragraph (1)(a) 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.
- (3) The States may by Regulations amend this Article.

8 Provision of information to Commissioner

- (1) This paragraph applies to a relevant authority –
- (a) described in paragraphs (c), (d) or (e) of the definition “relevant authority” in Article 1(1); or
- (b) which is a public authority within the list of scheduled public authorities in Schedule 1 to the Freedom of Information Law.
- (2) Subject to paragraph (3), a relevant authority to which paragraph (1) applies 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).
- (3) Further to a request for information referred to in paragraph (2) -
- (a) a relevant authority to which paragraph (1) applies is not required to supply information it holds to the Commissioner –
- (i) if another enactment expressly provides that such a relevant authority is not required to comply with paragraph (2), or
- (ii) if a rule of law would enable that authority to refuse to supply the information requested; or
- (b) a relevant authority to which paragraph (1)(b) applies is not required to supply information it holds to the Commissioner if –
- (i) the request were to be treated as if it was a request for information under the Freedom of Information Law, and
- (ii) the authority would, in those circumstances, otherwise be able to refuse to supply that information under Article 9(1) or (2) (when a scheduled public authority may refuse to supply information it holds) of that Law.

- (4) If the Commissioner's request for information is refused under paragraph (3)(b), that request must be treated as if it had been made under the Freedom of Information Law in the first instance and the Commissioner is entitled to bring an appeal as an aggrieved person –
 - (a) under Article 46 of the Freedom of Information Law, to the Information Commissioner against the authority's decision; and
 - (b) under Article 47 of the Freedom of Information Law, to the Royal Court against a decision of the Information Commissioner under Article 46 of that Law.
- (5) Subject to paragraph (6), a relevant authority not falling within paragraph (1) may 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 and 5.
- (6) A relevant authority not falling within paragraph (1) is not required to supply information it holds to the Commissioner if another enactment expressly so provides, or if a rule of law would enable that authority to refuse to supply the information requested.
- (7) Information supplied by a relevant authority under paragraph (2) or (5) must be supplied in such manner and within such period as the Commissioner may reasonably specify.
- (8) This paragraph applies where the Commissioner has not made a request for information from a relevant authority.
- (9) Where paragraph (8) applies, the Commissioner is not prohibited from receiving information from a relevant authority which is for the purposes of the discharge of the Commissioner's functions under Articles 4 and 5.
- (10) The States may, by Regulations, amend this Article for the purpose of making further provision about the supply of information to the Commissioner.

9 Powers to enter premises to conduct interviews or observe standards

- (1) This Article applies for the purposes of the discharge of the Commissioner's functions under Articles 4 and 5.
- (2) The Commissioner, or a person authorised by the Commissioner may, at any reasonable time, enter any premises where a child or young person is living, detained, or otherwise cared for, or receiving services or treatment, for the purposes specified in paragraph (3).
- (3) The purposes referred to in paragraph (2) are –
 - (a) for the purpose of interviewing that child or young person; or
 - (b) for the purpose of observing the standard of accommodation, care, detention, services or treatment provided to children or young people in such premises.
- (4) Subject to paragraphs (5) to (7), an interview of a child or young person under paragraph (3)(a) may be conducted –

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- (a) in private and without the presence of a person who works on the premises, if the child or young person consents;
 - (b) in private at the request of the child or young person in question, and may exclude the presence of any person specified by that child or young person.
- (5) Before interviewing any child or young person, the Commissioner must –
- (a) inform the parent of the child or young person –
 - (i) of the Commissioner’s intention to interview the child or young person, and
 - (ii) of the parent’s right under paragraph (7); and
 - (b) supply the parent with sufficient information to enable him or her to exercise that right.
- (6) Paragraph (5) does not apply if in the Commissioner’s opinion –
- (a) it would not be in the interests of the child or young person to inform the parent in accordance with that paragraph; or
 - (b) it would not in the circumstances be practicable to do so.
- (7) The parent of the child or young person has the right to be present at any interview unless –
- (a) in the Commissioner’s opinion –
 - (i) it would not be in the interests of the child or young person for his or her parent to be present, or
 - (ii) it is in the circumstances not practicable for the parent to be present; or
 - (b) the child or young person objects to the parent being present and, in the Commissioner’s opinion, that objection is reasonable (regard being had in particular to the age and understanding of the child or young person).
- (8) Where the Commissioner or a person authorised by the Commissioner proposes to enter premises under paragraph (2), he or she must, if so required, produce some duly authenticated document showing his or her authority to enter premises for the purposes described in paragraph (3).
- (9) A person who enters premises under paragraph (2) may interview any person present on the premises who works there.
- (10) It is immaterial for the purposes of paragraph (4)(a) or (9) whether a person's work is paid under a contract of employment, a contract for services or otherwise, or is unpaid.
- (11) Nothing in this Article authorises the Commissioner to enter any premises (or any part of any premises) used wholly or mainly as a private dwelling.

PART 3**FORMAL INVESTIGATIONS AND ASSISTANCE****10 Conduct of formal investigations**

- (1) This Article applies where the Commissioner proposes to formally investigate any matter relating to the rights of children and young people under Article 5(1)(h).
- (2) Subject to paragraph (3), the Commissioner may conduct a formal investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to –
 - (a) children and young people generally; or
 - (b) particular groups of children and young people.
- (3) Before conducting a formal investigation under this Article, the Commissioner must first consult the advisory panel.
- (4) The Commissioner may conduct a formal investigation under this Article –
 - (a) where he or she receives a complaint from, or on behalf of a child or young person, that the child's or young person's rights have been infringed or adversely affected by any act done by a relevant authority in the provision of services to, or directly in respect of that child or young person; or
 - (b) of his or her own volition where the Commissioner becomes aware of, or receives information about any matter concerning the provision of services by a relevant authority, to or directly in respect of children or young people, where the rights of those children or young people appear to have been infringed or adversely affected.
- (5) The Commissioner must not conduct a formal investigation under this Article in so far as it would relate to –
 - (a) the making of decisions or taking of action in particular legal proceedings before a court or tribunal; or
 - (b) a matter which is the subject of legal proceedings before a court or tribunal.
- (6) Where it appears reasonable that the matter is capable of being resolved without a formal investigation, the Commissioner must make every reasonable effort to secure that outcome before conducting such an investigation.
- (7) The Commissioner may determine not to conduct a formal investigation into a complaint under paragraph (4)(a) if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.

11 Initiation of formal investigation

- (1) If the Commissioner decides to conduct a formal investigation, he or she must –
 - (a) draw up terms of reference for that investigation; and
 - (b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the formal investigation and terms of reference to the attention of persons likely to be affected by it.
- (2) Where the Commissioner determines to conduct a formal investigation into a complaint under Article 10(4)(a), or of his or her own volition under Article 10(4)(b), the Commissioner must –
 - (a) provide the relevant authority concerned with –
 - (i) the substance of the allegation made in the complaint, or
 - (ii) the substance of the information about the matter of which the Commissioner became aware, or received, as the case may be; and
 - (b) afford that relevant authority an opportunity to comment on any allegation made in the complaint, or on the matter of which the Commissioner became aware, or received.
- (3) If at any time during the course of a formal investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect a relevant authority or other person, the Commissioner must afford to that authority or other person an opportunity –
 - (a) to give oral or other evidence;
 - (b) to test, by way of cross-examination, any oral evidence given; and
 - (c) only if it appears to the Commissioner reasonable to do so, to test, by way of cross-examination, any other evidence given.
- (4) Where the opportunities set out in paragraph (3) are given to a relevant authority or other person then, in any formal investigation into a complaint under Article 10(4)(a), the same opportunities must be given to the person who made the complaint.
- (5) A relevant authority or the person who made the complaint is entitled to be represented where –
 - (a) oral evidence is to be given, and cross-examined (if applicable) under paragraph (3)(a) and (b);
 - (b) other evidence is to be cross-examined under paragraph (3)(c); or
 - (c) a hearing is to be held under paragraph (9).
- (6) Subject to paragraphs (7) and (8), the procedure for the conduct of the formal investigation including the holding of any hearing under paragraph (9), must be such as the Commissioner considers appropriate in the circumstances of the case.
- (7) A formal investigation into a matter concerning an individual child or young person must be conducted in private.

- (8) A formal investigation into any other matter must be conducted in public except to the extent that the Commissioner considers that the taking of evidence in private is necessary or appropriate.
- (9) In conducting a formal investigation, the Commissioner may hold a hearing for the purposes of gathering evidence in relation to the matter in question, but the Commissioner is not obliged to hold such a hearing, and no person is entitled as of right to be heard by the Commissioner.

12 Formal investigations: witnesses and documents

- (1) The Commissioner may require a person –
 - (a) to give evidence on any matter within the terms of reference of a formal investigation; or
 - (b) to produce documents in the custody or control of that person which have a bearing on any such matter.
- (2) A person required to give evidence or produce documents under paragraph (1) is entitled to be supported by a representative.
- (3) Where the Commissioner requires a person to give evidence, or produce a document under paragraph (1), the Commissioner must give that person notice in writing specifying –
 - (a) the time and place at which the person is to attend before the Commissioner and the particular subjects concerning which that person is required to give evidence; or
 - (b) the documents, or types of documents, which that person is to produce, the date by which that person is to produce them, and the particular subjects concerning which they are required.
- (4) Such notice must be given –
 - (a) by sending it by post addressed to that person at the person's usual or last known address, or the person's registered or principal office;
 - (b) by delivery to that person's address (including delivery by a courier or messenger service);
 - (c) by electronic communication; or
 - (d) in the case of an individual, by being handed personally to the individual in question, or to his or her representative, if any.
- (5) The power in paragraph (1)(b) to require a person to produce documents includes, in relation to documents kept by means of a computer or other electronic device for the storage of information, power to require the person to produce documents in a legible form.
- (6) A person complies with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.
- (7) Any document required to be produced by a relevant authority under paragraph (1)(b) may be redacted if Article 8(3) or (6) applies in relation to any information contained in that document.

13 Offences

- (1) A person given a notice under Article 12 is guilty of an offence if he or she –
 - (a) refuses or fails to attend before the Commissioner as required by the notice;
 - (b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice;
 - (c) knowingly provides false or misleading information;
 - (d) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice; or
 - (e) refuses or fails to produce any such document.
- (2) It is a defence for a person charged with an offence under paragraph (1)(a), (b) or (e) to prove that there was a reasonable excuse for the refusal or failure.
- (3) A person guilty of an offence under this Article is liable to a fine of level 3 on the standard scale.

14 Witness privilege

A person is not obliged under this Law to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings before a court.

15 Offences by bodies corporate and partnerships

- (1) This paragraph applies where an offence committed under Article 13 by a body corporate, limited liability partnership or separate limited partnership, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or
 - (b) any person purporting to act in any such capacity.
- (2) Where paragraph (1) applies, the person is also guilty of the offence, and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (3) Where the affairs of a body corporate are managed by its members, paragraphs (1) and (2) apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.
- (4) In this Article –
 - (a) “limited liability partnership” is to be construed in accordance with Article 2 of the Limited Liability Partnerships (Jersey) Law 1997¹⁴;

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- (b) “separate limited partnership” is to be construed in accordance with Article 3 of the Separate Limited Partnerships (Jersey) Law 2011¹⁵.

16 Reports of formal investigations

- (1) The Commissioner must, at the conclusion of any formal investigation, prepare a report of that investigation.
- (2) The Commissioner may prepare a report of a formal investigation in such form or manner as he or she considers appropriate.
- (3) The report must contain any recommendations by the Commissioner arising out of the formal investigation.
- (4) In relation to any such recommendation, the report may include a requirement to respond.
- (5) A requirement to respond is a requirement that a person named in the report must provide, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out –
 - (a) what the person in question has done or proposes to do in response to the recommendation; or
 - (b) if the person does not intend to do anything in response to the recommendation, the reasons for that.
- (6) Subject to the anonymity requirements set out in Article 24(2) to (4), if the Commissioner considers it appropriate to do so, he or she may –
 - (a) publish a statement provided under paragraph (5) regardless of whether or not the Commissioner intends to publish the report of the formal investigation under Article 17(4); or
 - (b) publicise, in such manner as the Commissioner considers appropriate, a failure to comply with a requirement to respond under paragraph (5).
- (7) A report of a formal investigation may be finalised only if a person named in the report has been given a copy of the draft report and an opportunity to make representations on it within such period as the Commissioner determines is reasonable.
- (8) The Commissioner, in finalising his or her report, is not required to take into account any representations made.

17 Disclosure of reports of formal investigations

- (1) The anonymity requirements set out in Article 24(2) to (4) are to apply for the purposes of any report presented, provided or published under this Article.
- (2) The Commissioner must provide a copy of the report of his or her formal investigation to –
 - (a) the person who made the complaint received under Article 10(4)(a), where applicable;
 - (b) the person who is the subject of the formal investigation;

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- (c) the Chief Minister and the president of the chairmen's committee;
 - (d) the Attorney General; and
 - (e) the Chief Executive Officer.
- (3) If the Commissioner considers it necessary or appropriate to do so, he or she may provide a copy of the report of his or her investigation to such other person as the Commissioner considers appropriate.
 - (4) Unless the Commissioner considers that it would not, in all the circumstances of the case, be reasonable or appropriate to do so, he or she must, in the discharge of his or her general function under Article 5(1)(m), publish the report of his or her investigation and present it to the States.
 - (5) Where paragraph (4) applies, the Commissioner must provide the report to the Greffier of the States who must lay it before the States.

18 Assistance in relation to complaints

- (1) The Commissioner may, in the discharge of his or her general function under Article 5(1)(i), assist a child or young person in relation to the making of a complaint against a relevant authority or other person.
- (2) The giving of assistance under this Article may, for example, include –
 - (a) providing advice on the process or procedure for the making of a complaint to a relevant authority;
 - (b) instigating a complaint on behalf of a child or young person;
 - (c) intervening in a complaint which has been submitted to the relevant authority concerned.
- (3) Intervening in a complaint under paragraph (2)(c) may, for example, include –
 - (a) enquiring into the progress of a complaint on behalf of the child or young person concerned;
 - (b) representing or accompanying the child or young person in any meeting to discuss the complaint with the relevant authority or other person.
- (4) The Commissioner is not precluded from conducting a formal investigation under Article 10 where he or she has assisted a child or young person under this Article.

19 Power to bring or intervene in legal proceedings

- (1) The Commissioner may, in the discharge of his or her general function under Article 5(1)(i), in any court or tribunal –
 - (a) bring proceedings (other than criminal proceedings) involving law or practice concerning the rights of children or young people;
 - (b) intervene in any proceedings involving law or practice concerning the rights of children or young people; or
 - (c) act as *amicus curiae* in any such proceedings.

- (2) The bringing of, or intervening in proceedings under paragraph (1) must not be made except with the leave of the court or tribunal (where required).
- (3) The Commissioner must not bring or apply to intervene in proceedings unless he or she is satisfied that the case raises an issue of particular significance to –
 - (a) children and young people generally; or
 - (b) particular groups of children and young people.
- (4) The Commissioner may, in the course of proceedings for judicial review which the Commissioner brings (or in which he or she intervenes), rely on Article 8(1)(b) (proceedings) of the Human Rights Law and for that purpose –
 - (a) the Commissioner need not be a victim or potential victim of the unlawful act to which the proceedings relate;
 - (b) the Commissioner may act only if there is or would be one or more victims of the unlawful act;
 - (c) Article 8(2) of the Human Rights Law is not to apply; and
 - (d) no award of damages may be made to the Commissioner (whether or not the exception in Article 9(3) (judicial remedies) of the Human Rights Law applies).
- (5) An expression used in paragraph (4) has the same meaning given for that expression as in Article 8 of the Human Rights Law.

20 Assistance in relation to legal proceedings

- (1) A child or young person may seek the Commissioner's assistance in relation to –
 - (a) proceedings involving law or practice concerning the rights of children or young people which that child or young person has commenced, or wishes to commence; or
 - (b) proceedings in the course of which the child or young person relies, or wishes to rely, on such law or practice.
- (2) Where this Article applies, the Commissioner may, in the discharge of his or her general function under Article 5(1)(i), assist the child or young person concerned provided the Commissioner is satisfied that the case raises an issue of particular significance to –
 - (a) children and young people generally; or
 - (b) particular groups of children and young people.

PART 4

REPORTS AND CONSULTATION

21 Provision of reports and other documents

- (1) Subject to the anonymity requirements set out in Article 24(2) to (4), the Commissioner may, if he or she considers it necessary or appropriate to do so –
 - (a) produce in such form or manner as he or she determines, reports (other than reports of formal investigations prepared under Article 16), documents or other information, about, or in connection with the discharge of the Commissioner's functions;
 - (b) publish any such reports, documents or other information; and
 - (c) in the case of a report, present it to the States.
- (2) Where paragraph (1)(c) applies, the Commissioner must provide the report to the Greffier of the States who must lay it before the States.

22 Strategic plans

- (1) The Commissioner must, in respect of each 4 year period, prepare a plan (referred to in this Article as a “strategic plan”) setting out how the Commissioner proposes to perform the Commissioner's functions during the 4 year period.
- (2) Subject to paragraphs (3), (6) and (8), the strategic plan must be presented to the States not later than the beginning of the 4 year period to which the plan relates.
- (3) The Commissioner must provide the strategic plan to the Greffier of the States who must lay it before the States.
- (4) The Commissioner may, at any time during a 4 year period, review the strategic plan for the period and present to the States a revised strategic plan.
- (5) Paragraphs (2) and (4) apply to a revised strategic plan as they apply to a strategic plan.
- (6) In the case of a new Commissioner appointed either within, or as at the expiry of the 4 year period, that Commissioner must present to the States a new strategic plan not later than 6 months after the date of his or her appointment, and the 4 year period is to begin as at the date of appointment.
- (7) Paragraphs (2) and (4) apply in the case a new strategic plan published under paragraph (6).
- (8) In the case of the first Commissioner appointed under this Law, that Commissioner must present to the States the first strategic plan not later than 6 months after this Law comes into force.

- (9) In this Article, “4 year period” means the period of 4 years beginning on the day this Law comes into force, and, subject to paragraph (6), each subsequent period of 4 years.

23 Annual reports

- (1) The Commissioner must prepare annually a report (the “annual report”) on the discharge of the Commissioner's functions during the financial year.
- (2) The annual report must include –
- (a) a review of issues identified by the Commissioner in the financial year as being relevant to children and young people;
 - (b) a review of the functions discharged by the Commissioner's in the financial year;
 - (c) any recommendations made by the Commissioner arising out of the functions discharged;
 - (d) an overview of work to be undertaken by the Commissioner in the next financial year, including the strategy for involving children and young people in the work of the Commissioner; and
 - (e) the accounts of the office for the financial year.
- (3) Subject to paragraph (4), the report must be presented to the States not later than 6 months after the end of the financial year to which the report relates.
- (4) The Commissioner must provide the report to the Greffier of the States who must lay it before the States.

24 Publication and anonymity requirements

- (1) Subject to the provisions of this Article, the Commissioner must publish the strategic plan and any report laid before the States under Articles 21(2) (provision of reports and other documents) and 23(4) (annual reports).
- (2) The Commissioner must ensure, so far as is reasonable and practicable having regard to the subject matter, that any report, document, statement, or other information which may, or is required to be produced, provided, published or otherwise publicised under any provision of this Law, does not name or identify (whether by reference to any particular characteristics, or otherwise) any child or young person, or group of children or young people, referred to in it.
- (3) This paragraph applies in relation to the following items –
- (a) a report published under paragraph (1);
 - (b) a statement published under Article 16(6)(a) (reports of formal investigations);
 - (c) a failure to comply with a requirement to respond under Article 16(5), publicised under Article 16(6)(b); and

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- (d) a report provided under Article 17(2) and (3), and published under Article 17(4) (disclosure of reports of formal investigations).
 - (4) Apart from identifying any relevant authority, unless the Commissioner determines that it is necessary to do so, any item listed under paragraph (3) –
 - (a) must not name any individual person referred to in that item; and
 - (b) may also omit any particulars which are likely to identify the person concerned and which, in the Commissioner's opinion, can be omitted without impairing the effectiveness of the item in question.
 - (5) The Commissioner must take reasonable steps to ensure that the content of any report, document or other information, whether or not published, takes account, so far as practicable, of the age, understanding and usual language of any children or young people by whom it is intended that such a report or other document will be read, and of the effect of any disabilities they may have.

25 Minister's duty to consult Commissioner

- (1) A Minister –
 - (a) must consult the Commissioner upon any proposals for the preparation of any enactment directly concerning children or young people; and
 - (b) may consult the Commissioner upon any other matter concerning children or young people generally, including the provision of services to, or directly in respect of them.
- (2) The Commissioner must, in so far as it appears to the Commissioner reasonable to do so, advise a Minister when so consulted.

PART 5

ADVISORY PANELS

26 Advisory panel

- (1) Subject to paragraph (3), the Commissioner must appoint an advisory panel to provide the Commissioner with advice and assistance relating to the discharge of his or her functions generally.
- (2) The advisory panel must consist of persons who (taken together) represent a broad range of interests which are relevant to the Commissioner's functions.
- (3) Following consultation with the Chief Minister and the president of the chairmen's committee, the Commissioner must determine and publish –
 - (a) the criteria and process for appointment to the panel;
 - (b) the terms and conditions applying in respect of an appointment; and

-
- (c) the panel's procedures.

27 Audit and risk advisory panel

- (1) Subject to paragraph (3), the Commissioner must appoint an audit and risk advisory panel to provide the Commissioner with advice and assistance in relation to the following matters –
 - (a) the use of resources by the office;
 - (b) the management of risk by the office; and
 - (c) the governance of the office.
- (2) The audit and risk advisory panel must consist of persons who (taken together) have a broad range of experience relevant to audit and risk management.
- (3) The audit and risk advisory panel may, amongst other things, advise the Commissioner upon the appointment of auditors under paragraph 13 (accounts and audit) of the Schedule.
- (4) Following consultation with the Chief Minister, the president of the chairmen's committee, and the chairman of the Public Accounts Committee, the Commissioner must determine and publish –
 - (a) the criteria and process for appointment to the panel;
 - (b) the terms and conditions applying in respect of an appointment; and
 - (c) the panel's procedures.

28 Youth advisory panel

- (1) The Commissioner must appoint an advisory panel to be known as the "youth advisory panel", to provide the Commissioner with advice and assistance relating to the discharge of his or her functions generally.
- (2) The youth advisory panel must consist of children and young people who (taken together) represent a broad range of interests which are relevant to the Commissioner's functions.
- (3) The youth advisory panel, may, in particular advise the Commissioner in relation to the preparation of the strategic plan and the annual report.
- (4) The youth advisory panel may also give its views to the Chief Minister and the president of the chairmen's committee as to the suitability of a person for appointment to the office under paragraph 4 of the Schedule.
- (5) Following consultation with the Chief Minister and the president of the chairmen's committee, the Commissioner must determine and publish –
 - (a) the criteria and process for appointment to the panel;
 - (b) the terms and conditions applying in respect of an appointment; and
 - (c) the panel's procedures.

PART 6

DISCLOSURE OF INFORMATION

29 Duty not to disclose information without lawful authority

- (1) This paragraph applies to a person who is, or has been –
 - (a) the Commissioner;
 - (b) a member of the Commissioner’s staff;
 - (c) a person discharging functions on behalf of the Commissioner; or
 - (d) a person appointed to the advisory panel, audit and risk advisory panel, or youth advisory panel, as the case may be.
- (2) Without prejudice to the Data Protection Law, a person to whom paragraph (1) applies must not, except with lawful authority, disclose information that –
 - (a) has been obtained by, or furnished to, the Commissioner or the office under or for the purposes of this Law;
 - (b) relates to an identified or identifiable individual or relevant authority; and
 - (c) is not at the time of the disclosure, and has not previously been, available to the public from other sources.
- (3) For the purposes of paragraph (2), a disclosure of information is made with lawful authority if –
 - (a) the disclosure is made with the consent of the individual or relevant authority;
 - (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under this Law;
 - (c) the disclosure is made for the purposes of, and is necessary for, the discharge of a function under this Law;
 - (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Law or otherwise; or
 - (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (3) A person who knowingly or recklessly discloses information in contravention of paragraph (2) is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

PART 7

CLOSING PROVISIONS

30 Regulations

The States may by Regulations amend any enactment, including this Law, for the purpose of making such transitional, consequential, incidental, supplementary or savings provisions as they consider necessary or expedient in consequence of any provision made by, or under this Law.

31 Consequential amendment of enactments

- (1) In Schedule 1 (offices the holders of which are not States' employees) to the 2005 Law, after "Information Commissioner", there is inserted "Commissioner for Children and Young People (within the meaning of the Commissioner for Children and Young People (Jersey) Law 201-¹⁶)".
- (2) In Schedule 1 (scheduled public authorities) to the Freedom of Information Law, after the entry numbered 8 there is inserted –
 - "9 The office of the Commissioner for Children and Young People established under the Commissioner for Children and Young People (Jersey) Law 201-¹⁷."
- (3) In Article 1(2) (interpretation) of the Public Employees (Pensions) (Jersey) Law 2014¹⁸ –
 - (a) for the full stop at the end of sub-paragraph (g) there is substituted a semi-colon;
 - (b) after sub-paragraph (g) there is inserted –
 - "(h) the holder of the office of the Commissioner for Children and Young People (and acting Commissioner) (within the meaning of the Commissioner for Children and Young People (Jersey) Law 201-¹⁹)".

32 Citation and commencement

This Law may be cited as the Commissioner for Children and Young People (Jersey) Law 201- and comes into force 7 days after the day on which it is registered.

SCHEDULE

(Article 2(2))

THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

1 Status

The person for the time being holding the office of Commissioner for Children and Young People is, by that name, a corporation sole.

2 Independence of Commissioner

- (1) In discharging or performing the functions conferred under this Law or any other enactment, the Commissioner must act independently and in a manner free from direct or indirect influence, whether from any administration of the States, the Chief Executive Officer, a Minister, the States or any other person.
- (2) The States must respect, uphold and defend the independence of the Commissioner.
- (3) The terms and conditions of the appointment of the Commissioner must not be construed so as to create a contract of employment or agency between the States, or the Chief Minister and the president of the chairmen's committee, and the person appointed.
- (4) Despite sub-paragraphs (2) and (3) the remuneration of, and the payment of allowances, pension or gratuities to the Commissioner, due under the terms of his or her appointment, must be paid out of the annual income of the States.

3 General powers

The Commissioner may, for any purpose of his or her office –

- (a) enter into an agreement;
- (b) acquire, hold and dispose of movable or immovable property;
- (c) sue and be sued in any civil proceedings;
- (d) if charged with an offence, defend criminal proceedings;
- (e) determine and charge reasonable sums for anything done or provided by the Commissioner in the discharge of, or in connection with, the Commissioner's functions; and
- (f) generally do anything reasonably necessary or expedient for or incidental to any of the Commissioner's functions.

4 Appointment and tenure of office

- (1) Subject to the provisions of this Schedule, the Commissioner must hold and vacate office as the Commissioner in accordance with the terms and conditions of his or her appointment.
- (2) The office must be held by a person appointed by the States on a proposition signed by the Chief Minister and the president of the chairmen's committee.
- (3) The States must debate the proposition in camera.
- (4) Before recommending to the States the appointment of a person to hold the office, the Chief Minister and the president of the chairmen's committee must consult with, and take into account the views and recommendations, of the Jersey Appointments Commission, and the views of the youth advisory panel as to the suitability of the person concerned.
- (5) The Chief Minister and the president of the chairmen's committee must –
 - (a) not recommend a person for appointment unless satisfied that the person has the qualifications and experience necessary to discharge the functions of the office; and
 - (b) make a recommendation of a person for appointment on the basis that such a recommendation respects, upholds and defends the independence of the office of Commissioner.
- (6) Subject to paragraph 5(5)(b), an appointment to hold the office of Commissioner is for a fixed term of 8 years which cannot be extended.

5 Disqualification for appointment, restrictions on holding other appointments and exceptions

- (1) A person cannot be appointed to hold the office of Commissioner more than once.
- (2) A person cannot hold the office of Commissioner if he or she –
 - (a) has been, is, or becomes a member of the States;
 - (b) subject to sub-paragraph (5), is a States' employee (within the meaning of Article 2 of the 2005 Law);
 - (c) has been, or is the holder of an office listed in Schedule 1 to the 2005 Law;
 - (d) has an interest in the provision of services in respect of children and young people in Jersey –
 - (i) whether financial, or
 - (ii) in his or her capacity as an officer, member, trustee or employee of a body providing such services; or
 - (e) has been, or is acting Commissioner and clause (d) has applied or applies in his or her case.
- (3) A person on being appointed to hold the office of Commissioner must cease to hold any other office or employment (whether or not for

remuneration) with any States funded body or independently audited States body.

- (4) A person whilst holding office cannot take up any other office or employment referred to in sub-paragraph (3).
- (5) Despite sub-paragraph (2)(b) –
 - (a) a person appointed to carry out the functions of the Commissioner before the commencement of this Law is –
 - (i) to hold the office of the Commissioner upon the commencement of this Law, and
 - (ii) taken to have been appointed in accordance with paragraph 4; and
 - (b) any period served by the person mentioned in clause (a) before the commencement of this Law, is to be disregarded for the purposes of the 8 year fixed term specified in paragraph 4(6).

6 Termination of office as Commissioner

- (1) The Commissioner ceases to hold office –
 - (a) if he or she resigns by giving, in writing, such notice as is required under the terms and conditions of his or her appointment to the Chief Minister and the president of the chairmen’s committee;
 - (b) if his or her appointment is revoked under sub-paragraph (3); or
 - (c) on the expiry of his or her term of office.
- (2) Where the Commissioner resigns from office by virtue of sub-paragraph (1)(a), the Chief Minister and the president of the chairmen’s committee must, as soon as practicable after receiving that notice of resignation, report it to the States.
- (3) The States may revoke the appointment of the Commissioner on a proposition signed by the Chief Minister and the president of the chairmen’s committee.
- (4) The States must debate the proposition in camera.
- (5) The proposition must allege one of the following grounds for revocation, namely, that the Commissioner –
 - (a) has become, by virtue of one of the provisions in paragraph 5(2)(a) to (d), disqualified for appointment;
 - (b) is incapacitated by physical or mental illness;
 - (c) without reasonable excuse, has failed to discharge his or her functions; or
 - (d) has behaved in a way that is not compatible with his or her continuing in office, or is otherwise unable or unfit to discharge the functions of the Commissioner.
- (6) The report accompanying the proposition must set out details of the evidence to be relied upon to support the allegation.
- (7) The proposition must not be lodged unless the Commissioner –

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- (a) has been given a copy of the report mentioned in sub-paragraph (6); and
 - (b) has been given such reasonable opportunity as the circumstances allow to prepare a written statement in respect of the evidence mentioned in the report.
- (8) Any statement prepared in accordance with sub-paragraph (7)(b) must accompany the proposition when it is lodged.
- (9) When the proposition has been lodged the Chief Minister may, with the approval of the president of the chairmen's committee, suspend the Commissioner from office.
- (10) The Commissioner must be restored to office without loss of remuneration or any other benefits if the proposition –
- (a) is withdrawn;
 - (b) is not approved by the States after debate; or
 - (c) is not debated by the States within 3 months of being lodged.

7 Appointment of acting Commissioner

- (1) Where there is no Commissioner for the time being, or the Commissioner is unable to act, the Chief Minister and the president of the chairmen's committee may appoint a person (whether or not a member of the Commissioner's staff) to discharge the Commissioner's functions until a new Commissioner is appointed under paragraph 4, or the Commissioner is again able to act.
- (2) A person appointed under sub-paragraph (1) is to be referred to as the "acting Commissioner".
- (3) A person cannot hold the office of acting Commissioner if paragraph 5(2)(a) or (c) applies in his or her case.
- (4) Whilst holding office as such, the acting Commissioner is to be treated as if he or she were the Commissioner for the purposes of this Law.
- (5) The Chief Minister and the president of the chairmen's committee must, as soon as practicable, report an appointment under this paragraph to the States.

8 Remuneration and pension of Commissioner

The States Employment Board must determine the Commissioner's –

- (a) remuneration and allowances; and
- (b) entitlement to a pension, or gratuities.

9 Staff and resources of Commissioner

- (1) The States must ensure that the Commissioner is provided with such financial and administrative resources, and other support, including staff, services, equipment and accommodation, so as to enable the

Commissioner to discharge his or her functions under this Law, or under any other enactment, properly and effectively.

- (2) To the extent that any States' employee (within the meaning of the 2005 Law), while provided under sub-paragraph (1), performs a function under the direction of the Commissioner, the employee is to be treated as a member of the Commissioner's staff for the purposes of this Law.

10 Advisers and other services

- (1) The Commissioner may obtain such legal advice, or any other advice, assistance or service from any person who, in the opinion of the Commissioner, is qualified to give it, as is required to facilitate, or is conducive or incidental to –
 - (a) the discharge of the Commissioner's functions; or
 - (b) the proper governance and management of the office.
- (2) The Commissioner may pay to a person referred to in sub-paragraph (1), such fees and allowances as the Commissioner determines are reasonable.

11 Delegation of functions

The Commissioner may authorise any person to discharge functions on behalf of the Commissioner to the extent specified in the authorisation, but any such delegation of authority does not –

- (a) affect the responsibility of the Commissioner for the discharge of the functions; or
- (b) prevent the discharge of the functions by the Commissioner himself or herself.

12 Limitation of civil liability

- (1) This paragraph applies to –
 - (a) a person who is or has been the Commissioner;
 - (b) a person who is, or has been a member of staff, or is acting or has acted as an agent of the office of the Commissioner, or who is performing any duty or exercising any power on behalf of the office of the Commissioner;
 - (c) except where any enactment or contract provides otherwise, the Chief Minister, the president of the chairmen's committee and the States.
- (2) A person to whom this paragraph applies is not liable in damages for any act done or omitted in the discharge, or purported discharge, of the functions of the Commissioner by or under this Law or any other enactment.
- (3) Sub-paragraph (2) does not apply –
 - (a) if it is shown that the act was done in bad faith; or

-
- (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000²⁰.

13 Accounts and audit

- (1) The Commissioner must –
 - (a) keep proper accounts and proper records in relation to the accounts; and
 - (b) prepare accounts in respect of each financial year.
- (2) The Commissioner may, on such basis as the Commissioner determines, appoint auditors –
 - (a) qualified to be recognised auditors in accordance with Article 112 of the Companies (Jersey) Law 1991²¹;
 - (b) to audit the accounts of the office in accordance with generally accepted accounting principles and show a true and fair view of the profit or loss of the office for the financial year in question and of the state of the office's affairs at the end of that year.
- (3) This paragraph is without prejudice to any additional accounting requirements –
 - (a) imposed by any enactment; or
 - (b) agreed as a condition lawfully attached to any funding accepted by the Commissioner from the States.

14 Exemption from income tax

Any sum received in respect of a charge made under paragraph 3(e), must not be treated as income liable to income tax under the Income Tax (Jersey) Law 1961²².

1	<i>chapter 16.325</i>
2	<i>chapter 16.800.15</i>
3	<i>chapter 12.200</i>
4	<i>L.3/2018</i>
5	<i>chapter 16.330</i>
6	<i>chapter 15.350</i>
7	<i>L.4/2018</i>
8	<i>chapter 16.800</i>
9	<i>chapter 15.070</i>
10	<i>chapter 15.260</i>
11	<i>chapter 08.380</i>
12	<i>chapter 12.200.50</i>
13	<i>L.29/2016</i>
14	<i>chapter 13.475</i>
15	<i>chapter 13.780</i>
16	<i>P.18/2019</i>
17	<i>P.18/2019</i>
18	<i>chapter 16.640</i>
19	<i>P.18/2019</i>
20	<i>chapter 15.350</i>
21	<i>chapter 13.125</i>
22	<i>chapter 24.750</i>