

STATES OF JERSEY



Jersey

DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202- (P.19/2022): SECOND AMENDMENT

**Lodged au Greffe on 15th March 2022
by the Children, Education and Home Affairs Scrutiny Panel
Earliest date for debate: 29th March 2022**

STATES GREFFE

DRAFT CHILDREN (CONVENTION RIGHTS) (JERSEY) LAW 202- (P.19/2022):
SECOND AMENDMENT

1 PAGE 21, ARTICLE 6 –

- (1) In paragraph (2) after “proposition” insert –
“or an amendment to a proposition”.
- (2) In paragraph (10) after the definition “allowances and reliefs” insert –
“ “amendment to a proposition” includes an amendment to an amendment and any subsequent amendment to an amendment to a proposition;”.

2 PAGE 22, ARTICLE 7 –

- (1) For paragraph (4) substitute –
“(4) In the case of a decision falling under Article 6(2) that relates to the formulation of an amendment to a proposition, an Article 6 duty-bearer is not required to complete a full assessment even if the preliminary assessment determines that the decision is likely to have a direct or indirect impact on children, but an Article 6 duty-bearer may, nevertheless, complete a full assessment should that duty-bearer wish to do so.”.
- (2) After substituted paragraph (4) insert –
“(5) In the case of a decision falling under Article 6(2) that relates to the formulation of a proposition, paragraph (6) applies where the preliminary assessment determines that the decision is likely to have a direct or indirect impact on children.”,
and renumber the subsequent paragraphs and cross-references accordingly.

3 PAGE 29, SCHEDULE 2 –

Delete sub-paragraph (d) and renumber the subsequent sub-paragraphs accordingly.

CHILDREN, EDUCATION AND HOME AFFAIRS SCRUTINY PANEL

REPORT

The Children, Education and Home Affairs Panel (hereafter “the Panel”) has reviewed the Draft Children (Convention Rights) (Jersey) Law 202- ([P.19/2022](#)) (hereafter the “draft Law”) which intends to create a legal obligation for duty bearers (Minister, elected Members, Assembly Panel’s and Committees) to have due regard to the United Nations Convention on the Rights of the Child (UNCRC) when developing a proposition for debate in the States Assembly. In July 2017, the final report of the Independent Jersey Care Inquiry (“IJCI”) ([R.59/2017](#)) concluded that: “Legislation for children in Jersey has lagged behind the developed world.” Later that year the States Assembly voted unanimously to approve [P.63/2017](#) which called for the impact of all new legislation on children’s rights to be considered and published, for consideration to be given to the legal incorporation of the UNCRC and for all States employees to receive a copy of the Convention and training where relevant.

Accordingly, the Minister for Children and Education has brought forward the draft Law in order to give effect to the Assembly’s decision, albeit adopting a due regard approach, otherwise known as indirect incorporation. The Panel has been kept abreast of the developments in relation to the legislation, dating back to 2020 and thanks the current Minister, previous Ministers, and Officers for doing so.

The Panel notes that the draft Law places a statutory duty on duty bearers to have due regard to the UNCRC when developing a proposition for debate in the States Assembly. This is achieved by undertaking a Children’s Rights Impact Assessment (CRIA). A CRIA is undertaken in two stages. Firstly, a screening, or preliminary assessment, is carried out to identify the impact on children’s rights. Dependent on the outcome of this preliminary assessment, either no further action is required or a full CRIA is required to be completed. A full CRIA requires the evaluation of evidence of the impact on children’s rights and provides significant detail in relation to consideration that is given in that regard within the proposition. As stated previously, the draft Law as drafted places a statutory duty on duty bearers when developing a proposition. It does not, however, extend to amendments to propositions, or any further amendments to amendments etc. The Panel questioned the Minister for Children and Education as to why this approach had been taken in the lodged version as it was aware that the requirement to undertake a preliminary assessment in relation to an amendment to a proposition had been included in earlier iterations of the draft Law. The Minister provided the following rationale for the change to the Panel:

Concerns were raised during the drafting process, following consultation with Scrutiny and Ministers, regarding the volume of additional work for duty-bearers created by the need to complete statutory CRIAs.

To achieve a more manageable and proportionate duty in the first instance, a decision was made to exclude amendments from the Article 6 duty. Analysis of Assembly activity in 2019 suggests that this will remove the need to complete approximately 85 CRIAs each year for amendments, including the amendments made to the Government Plan.

Article 6(2) of the draft Law relies on the definition of ‘proposition’ found in Standing Orders which comprises both propositions and amendments. As such, amendments have been specifically exempted under paragraph (d) of Schedule 2 and thus have not been permanently ruled out of scope.

Following the enactment of the Law, this arrangement will allow the volume of work generated under Article 6 to be monitored whilst duty-bearers become accustomed to the CRIA process and grow into the due regard duty.¹

The Panel notes the rationale for excluding amendments (and any further amendments to amendments) at this stage in the development of the draft Law. It should be noted that within P.63/2017, Deputy Louise Doublet outlined the following key point in relation to the UNCRC:

I would like to see the States of Jersey – all States Members and all employees, whether frontline or departmental staff – flying the flag of the UNCRC and fully embracing it. I believe that this will be a key part of the culture change recommended by the IJCI Report and necessary if we are to realise the fundamental shifts that need to take place in order to best serve all of the Island’s children.²

The Panel does indeed support the draft Law and notes from a recent briefing that the legislation as it currently stands does go further than other legislation in other jurisdictions. However, in keeping with the spirit of the previous decision of the Assembly, it has agreed that it will bring this amendment in order to give the States Assembly a choice as to how far it wishes to extend the requirements for a CRIA to be undertaken.

Purpose of amendment

This amendment, if adopted, would extend the requirement for a CRIA to be undertaken to amendments to propositions, amendments to amendments of propositions, and any further amendment to an amendment. It is important to note that this amendment does not require a full CRIA to be undertaken, however, it will place a statutory duty on all duty bearers to undertake a preliminary assessment on all amendments to propositions and any subsequent amendments to those amendments and so on. If a duty bearer wishes to undertake a full CRIA as a result then they would not be prevented from doing so, however, this would not be an explicit requirement and would remain at the Members discretion. Adopting this amendment would remove paragraph (d) from Schedule 2 (exempt decisions), however, the other exemptions outlined within the Schedule would remain in place.

The Panel notes that the draft Law is the start of a cultural shift to fully considering children’s rights from a legislative and policy perspective and is fully supportive of its intent. Whilst the arguments in relation to proportionality are noted, it is the view of the Panel that in order to achieve a full cultural shift, the requirement for a CRIA to be undertaken in respect of amendments to propositions and all subsequent amendments to amendments will put the focus on children’s rights front and centre of the decision-making process. It will also embed the process at all stages of the democratic process.

Financial and manpower implications

Adoption of this amendment will not have any direct financial or manpower implications as the additional screening required will be met from within existing

¹ Questions – Minister for Children and Education

² P.63/2017

resources and support for duty bearers. As it is intended to monitor the impact of the draft Law in terms of resourcing regardless of whether this amendment is adopted or not, the outcome of monitoring may result in increased need for resources to ensure it is able to continue.