

STATES OF JERSEY



Jersey

DRAFT CHILDREN AND EDUCATION (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 21st October 2019
by the Minister for Children and Housing

STATES GREFFE



Jersey

DRAFT CHILDREN AND EDUCATION (AMENDMENT) (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 Children and Education (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator S.Y. Mézec**
Minister for Children and Housing

Dated: 17th October 2019

REPORT

1. Introduction

- 1.1 On 15th January 2019 the States Assembly voted to adopt the proposition of Deputy M.R. Le Hegarat of St. Helier ([P.144/2018](#)) to repeal Article 79 of the [Children \(Jersey\) Law 2002](#) (the “2002 Law”), with the result of the Assembly vote being 38 votes for and 3 against. In adopting the proposition, the States Assembly agreed –
- (a) that Article 79 of the 2002 Law should be repealed, together with any other statutory or customary provision of similar effect;
 - (b) to request the Council of Ministers to bring forward the necessary legislative amendments; and
 - (c) to request the Council of Ministers to implement awareness-raising, guidance and training measures in respect of the prohibition of corporal punishment, in conjunction with the introduction of the legislative amendments.
- 1.2 The Draft Children and Education (Amendment) (Jersey) Law 201- (the “draft Law”) gives effect to P.144/2018. It will delete Article 35(5) and replace Article 79 of the 2002 Law to address provisions which infer a right to administer corporal punishment to a child, and which provide for a defence of reasonable corporal punishment of a child. It will amend Article 36A(6) of the [Education \(Jersey\) Law 1999](#) (the “1999 Law”) to bring that Law’s definition of corporal punishment into line with the definition in the 2002 Law.
- 1.3 In the States’ debate on P.144/2018, a number of points were advanced as to why Article 79 of the 2002 Law should be repealed and corporal punishment should be prohibited in all settings. The policy objective which underpins this draft Law is to ensure that children have equal protection from assault under the law, as do adults. As some of the most vulnerable members of society, children deserve more, not less, protection under the law. This draft Law provides a clear statement that the use of any form of physical punishment against children is no longer acceptable in Jersey.
- 1.4 Corporal punishment has been prohibited in all settings, including the home, in 56 states across the world, including in 22 EU countries. In the UK, legal defences for the use of corporal punishment are found in section 58 of the [Children Act 2004](#) in England and Wales, article 2 of the [Law Reform \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2006](#), and section 51 of the [Criminal Justice \(Scotland\) Act 2003](#). However, Scotland voted to repeal the application of the defence in Scots Law in October 2019, and a Bill has been introduced to the Welsh Assembly which, if adopted, will prohibit the use of corporal punishment.
- 1.5 The Government of Jersey’s [Common Strategic Policy 2018–22](#) (“CSP”) and [Government Plan 2020–2023](#) both make a commitment that ‘We will put children first’. This draft Law is one of a number of legislative amendments that the Minister for Children and Housing has committed to bringing forward under the Children’s Legislation Transformation Programme. This programme is designed to amend legislation in support of the Government’s strategic policy objectives, imbedding more effective statutory support for children in the long term.

2. Legislation

- 2.1 Article 79(1) of the 2002 Law provides for a limitation to the customary law defence of reasonable corporal punishment of a child. This limitation is made available to, among others, those with parental responsibility for a child and relatives caring for a child. By limiting “*any defence of reasonable corporal punishment*”, Article 79(1) recognises in Jersey law the existence at customary law of a defence to a charge of assault of reasonable corporal punishment of a child. Article 79(2) of the 2002 Law limits the availability of this defence to those cases in which those with responsibility for a child use a hand to punish a child. In effect, Article 79 of the 2002 Law clarifies that parents and others covered by the provision may “smack” their child or a child in their care in order to punish them, so long as the extent of the physical violence used is reasonable.
- 2.2 Article 3 of the draft Law would replace Article 79 of the 2002 Law with a provision abolishing any defence of reasonable corporal punishment of a child under customary law. In explicitly abolishing the customary law defence, the draft Law makes it clear that corporal punishment of a child can no longer be justified in any civil or criminal proceedings. Article 2 of the draft Law would, if adopted, delete Article 35(5) of the 2002 Law to remove a provision which infers a right of parents, teacher and others to administer physical punishment to a child.
- 2.3 The United Nations Committee on the Rights of the Child has established that part of a States Party’s obligation under Article 19 of the [United Nations Convention on the Rights of the Child](#) (“UNCRC”) to pursue legal reforms to protect children from violence extends to an explicit prohibition of corporal punishment in all settings.¹ As the UNCRC has been extended to Jersey, an express prohibition of all corporal punishment of a child in the draft Law is appropriate as it would, if adopted, bring Jersey’s legislation into closer alignment with the UNCRC.
- 2.4 The effect of the draft Law will be that parents or those with parental consent who administer any form of corporal punishment and who are charged with criminal assault will no longer have the defence of reasonable corporal punishment available to them. Whether a parent or other person is charged with criminal assault in such cases will, in general terms, depend on the severity of the assault and the public interest in taking forward a prosecution. Prosecutions for assault are a matter for the Attorney General and are determined on a case-by-case basis.
- 2.5 The draft Law will not prevent the use of reasonable force for a child’s protection – physical interventions which do not constitute punishment will remain permissible. So, using physical force to prevent harm to a child, for example pulling a child out of a road, will continue to be lawful. For completeness, it should be noted that the power – under Article 36A of the 1999 Law – for those employed as members of staff in schools to use reasonable force in certain prescribed circumstances – also remains. This provision does not permit the use of corporal punishment, but enables teaching staff to use reasonable force to prevent the commission of an offence, personal injury, or damage to property, and to maintain good order and discipline. The draft Law makes a minor amendment to Article 36A(6) of the 1999 Law to bring the definition there of corporal punishment into line with the definition

¹ See United Nations Committee on the Rights of the Child, General Comment No. 8

taken forward in the amended 2002 Law, and to remove the reference in that Article to the suggestion that corporal punishment could be justified.

3. Implementation

- 3.1 Practitioners within Jersey's child protection services who receive referrals of potential assault against children already follow a robust practice model. All cases of potential assault against children are investigated by specialist officers in the States of Jersey Police Force and by specialist practitioners in the [Multi-Agency Safeguarding Hub](#) ("MASH"). In this regard, Jersey's child protection practice model is sufficiently robust to deal with the introduction of the prohibition of corporal punishment.
- 3.2 Evidence from other jurisdictions which have banned all forms of corporal punishment indicate that there is likely to be an initial increase in the number of reports of violence against children. In the medium to longer term, however, the overall impact on these countries' police forces – as in the case in New Zealand – has been minimal.²
- 3.3 Central to the successful implementation of the prohibition of corporal punishment will be an effective awareness-raising strategy. If the draft Law is adopted, information will be made available to relevant practitioners, parents and the general public which explains the new legal framework surrounding corporal punishment, the impact of corporal punishment, the benefits of positive parenting, and the support services available for parents and children.
- 3.4 Providing parenting support and positive parenting advice is designed to engage parents with, and to encourage the use of, non-violent forms of parenting. The Department for Children, Young People, Education and Skills currently delivers this through the ["Triple P" Positive Parenting Programmes](#). This is a universal service provided at no cost to participants.

4. Financial and manpower implications

- 4.1 Funding of £7,000 is available for a public awareness campaign prior to the implementation of the draft Law. This is an upfront cost as, in future years, awareness-raising of the prohibition of corporal punishment will require less widespread media coverage and can be subsumed, if necessary, into existing departmental budgets.
- 4.2 As part of the Government of Jersey's response to the [findings of the Independent Jersey Care Inquiry](#), there have been increases in the number of Family Support Workers and capacity added to the Public Protection Unit – which will be responsible for investigating allegations of assault against children. Services are prepared to deal with any potential increase in the number of referrals.
- 4.3 There should be no additional cost implications in providing universal parenting support services. The "Triple P" Positive Parenting Programmes are currently delivered, with the costs of the trained family support workers covered under existing budgets.

² Hughes, P., Chief Executive, Ministry of Social Development (2009) Report to the Minister for Social Development and Employment: pursuant to section 7(2) of the Crimes (substituted section 59) Act, New Zealand Ministry of Social Development

5. Human Rights

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

APPENDIX TO REPORT**Human Rights Notes on the Draft Children and Education (Amendment)
(Jersey) Law 201-**

These Notes have been prepared in respect of the Draft Children and Education (Amendment) (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, if passed, would amend the Children (Jersey) Law 2002 (the “Children Law”) and the Education (Jersey) Law 1999, so as to give the effect of prohibiting the corporal punishment of children. The principal amendments made by the draft Law are: with regard to Article 35 (causing harm to or neglecting children under 16) of the Children Law so as to remove the inference that a parent, teacher or other person with lawful control of a child has an inherent right to administer corporal punishment to a child and which, in the context of Article 35, might be used as a defence to any charge of causing harm to, or harmfully neglecting a child; and with regard to the replacement of Article 79 (limitation of defence of reasonable corporal punishment) of the Children Law so as to abolish any defence under customary law of reasonable corporal punishment, with the effect that corporal punishment cannot be justified under any rule of customary law, either in civil or criminal proceedings, as constituting reasonable punishment or acceptable conduct.

Article 8(1) ECHR provides that everyone has the right, among other things, to respect for his or her family life and is intended to protect the individual from arbitrary interference by the state in family life. The right includes the right to exercise one’s parental authority over one’s children including, for example, the right to decide where the child will reside, and the right to restrict to some extent the child’s freedom of movement. However, a prohibition of corporal punishment of children, including by parents, and the imposition of criminal law sanctions for assault, has been held not to affect a parent’s right to respect for family life. Articles 2 and 3 of the draft Law make amendments to the Children Law which, in general terms, have the effect of prohibiting the corporal punishment of children. This is done through removing a reference in Article 35 of the Children Law to a right of parents, among others, to give corporal punishment to a child, and to replacing Article 79 of the Children Law with a provision which abolishes any defence of reasonable corporal punishment in civil or criminal proceedings. These provisions – the effect of which is to prohibit corporal punishment and to remove a defence to a criminal sanction – do not infringe the Article 8(1) ECHR right of parents to family life.

No other articles of the ECHR are thought to be engaged by the draft Law.

EXPLANATORY NOTE

The Draft Children and Education (Amendment) (Jersey) Law 201- (“draft Law”), if passed, would amend the Children (Jersey) Law 2002 (the “Children Law”) and the Education (Jersey) Law 1999 (the “Education Law”) so as to give the effect of prohibiting the corporal punishment of children.

Article 1 is an introductory provision.

Article 2 amends Article 35 (causing harm to or neglecting children under 16) of the Children Law so as to remove the inference that a parent, teacher or other person with lawful control of a child has an inherent right to administer corporal punishment to a child and which, in the context of Article 35, might be used as a defence to any charge of causing harm to, or harmfully neglecting a child.

Article 3 replaces Article 79 (limitation of defence of reasonable corporal punishment) of the Children Law so as to abolish any defence under customary law of reasonable corporal punishment with the effect that corporal punishment cannot be justified under any rule of customary law, either in civil or criminal proceedings, as constituting reasonable punishment or acceptable conduct.

Article 4 amends Article 36A(6) (power of members of staff to use reasonable force) of the Education Law as a consequence of replacing Article 79 of the Children Law so that the reference to corporal punishment in Article 36A(5) of the Education Law is in line with the definition in Article 79(3) of the Children Law.

Article 5 gives the title of the draft Law and provides for it to come into force 7 days after it is registered with the Royal Court.



Jersey

DRAFT CHILDREN AND EDUCATION (AMENDMENT) (JERSEY) LAW 201-

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Jersey

DRAFT CHILDREN AND EDUCATION (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend the Children (Jersey) Law 2002 and Education (Jersey) Law 1999.

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

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

1 Children (Jersey) Law 2002 amended

The Children (Jersey) Law 2002¹ is amended in accordance with Articles 2 and 3.

2 Article 35 (causing harm to or neglecting children under 16) amended

In Article 35, paragraph (5) is deleted.

3 Article 79 (limitation of defence of reasonable corporal punishment) substituted

For Article 79 there is substituted –

“79 Abolition of defence of reasonable corporal punishment

- (1) Any defence of reasonable corporal punishment of a child under customary law is abolished.
- (2) Accordingly, corporal punishment of a child cannot be justified in any civil or criminal proceedings on the grounds that it constituted, for the purposes of any rule of customary law –
 - (a) reasonable punishment; or
 - (b) acceptable conduct.

- (3) In this Article, “corporal punishment” means, in relation to a child, administering a physical act on the person of a child for the purpose of punishing that child (whether or not there are other reasons for administering the act) which would constitute assault.”.

4 Education (Jersey) Law 1999 amended

In Article 36A (power of members of staff to use reasonable force) of the Education (Jersey) Law 1999², for paragraph (6) there is substituted –

- “(6) In paragraph (5), the reference to giving corporal punishment to a child is to administering a physical act on the person of a child, for the purpose of punishing that child (whether or not there are other reasons for administering the act) which would constitute assault.”.

5 Citation and commencement

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

ENDNOTES

Table of Endnote References

<i>1</i>	<i>chapter 12.200</i>
<i>2</i>	<i>chapter 10.800</i>